

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.
CORI RIGSBY and KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE NO. 1:06cv433-LTS-RHW

STATE FARM MUTUAL INSURANCE COMPANY

DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS ENGINEERING CORPORATION;
HAAG ENGINEERING CO.; and ALEXIS KING

DEFENDANTS

**DEFENDANT/COUNTER-PLAINTIFF
STATE FARM FIRE AND CASUALTY COMPANY'S
MOTION FOR ENTRY OF CONSENT PROTECTIVE ORDER**

Defendant/Counter-Plaintiff State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as “State Farm Mutual Insurance Company” (“State Farm”), moves the Court for entry of a Consent Protective Order in this action, in the form attached to this Motion as Exhibit “A.” In support of its Motion, State Farm shows that the form of the Consent Protective Order has been agreed to by all remaining parties who have been properly served with process in this action.

WHEREFORE, PREMISES CONSIDERED State Farm Fire and Casualty Company prays that the Court will enter the attached Consent Protective Order.

Respectfully submitted, this the 25th day of January, 2010.

STATE FARM FIRE AND CASUALTY COMPANY

By: s/ Robert C. Galloway (MSB # 4388)
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Jeffrey A. Walker (MSB # 6879)
E. Barney Robinson III (MSB # 09432)
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PRO HAC VICE

CERTIFICATE OF SERVICE

I, Robert C. Galloway, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via e-mail:

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ATTORNEYS FOR FORENSIC ANALYSIS
ENGINEERING CORPORATION

THIS the 25th day of January, 2010.

s/ Robert C. Galloway (MSB # 4388)
Robert C. Galloway (MSB # 4388)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.
CORI RIGSBY AND KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

VS.

CIVIL ACTION NO. 1:06-cv-00433-LTS-RHW

STATE FARM MUTUAL INSURANCE
COMPANY;

DEFENDANT/COUNTER-PLAINTIFF

FORENSIC ANALYSIS ENGINEERING CORPORATION;
and HAAG ENGINEERING CO.

DEFENDANTS

CONSENT PROTECTIVE ORDER

Relators and all remaining Defendants state that they may produce or be required to produce correspondence, memoranda, guidelines, booklets, pamphlets, formulas, documents, reports, computer printouts, answer interrogatories, otherwise respond to discovery and provide testimony that might reveal confidential, trade secret, and proprietary information that should not be disclosed outside of this litigation. Some information of that type already has been requested and will be produced in response to discovery requests. Accordingly, all parties hereto stipulate and agree, subject to this Court's approval, that:

1. **Definition of Protected Information:** "Protected Information" as used herein means any information that is designated as being subject to the terms of this Protective Order by a party or other person producing such information (the "Designating Entity"). Information shall be designated as "Protected Information" only upon a good faith belief that the information is confidential, trade secret, or proprietary information and subject to protection under Rule 26 of the Federal Rules of

Civil Procedure.
1229/001/1186200.1

EXHIBIT

A

2. **Designation of Protected Information:** Documents containing Protected Information shall be designated as being subject to the terms of this Protective Order by placing the following legend (or a substantial equivalent) on the document:

**UNITED STATES OF AMERICA ET AL V. SF ET AL
CONFIDENTIAL - PRODUCED PURSUANT TO PROTECTIVE ORDER**

For purposes of this Order, the term “document” means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to Rule 30 and/or Rule 45 subpoena, by agreement or otherwise. Interrogatory answers, responses to requests for admissions, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection may be designated as Protected Information but, to the extent feasible, shall be prepared in such a manner that Protected Information is bound separately from that not entitled to protection.

3. **Non-Disclosure of Protected Information:** No Protected Information may be disclosed to, disseminated to, or otherwise discussed with any person, except with the prior written consent of the Designating Entity, or as hereinafter provided under this Order. Any summary, copy, electronic imaging or database, of any Protected Information likewise shall be subject to the terms of this Order to the same extent as the Protected Information from which the summary or copy is made.

Persons obtaining access to Protected Information under this Order shall use the information only for the instant litigation (including appeals and retrials), and shall not use such information for any other purpose, including business, governmental, commercial, or administrative or judicial proceedings. However, nothing in this Order shall be deemed to restrict in any manner the use by any party of its own documents or materials.

4. **Permissible Disclosure of Protected Information:**

a. Subject to paragraph 3, Protected Information may be disclosed to the parties, including counsel for the United States assigned to and with responsibility for monitoring this action, to employees and agents of the remaining defendants, to in-house and outside counsel for the parties, lawyers, secretaries, paralegal assistants and employees of such an attorneys to the extent reasonably necessary to render professional services in this litigation; and to court officials and court reporters involved in this litigation.

b. Subject to paragraph 3, Protected Information may also be disclosed to potential witnesses, to persons noticed for depositions or designated as trial witnesses to the extent reasonably necessary in preparing to testify, and to outside consultants or experts retained for the purpose of assisting counsel in this litigation, provided, however, that in all such cases the individual to whom disclosure is to be made has reviewed this Order and executed an affidavit of compliance in the form attached hereto as Exhibit "A."

5. **Protected Information in Depositions:**

a. During a deposition, a deponent may be shown and examined regarding Protected Information if the deponent has access to the Protected Information or if there has been compliance with the provisions of paragraph 4(b). Deponents shall not retain or copy portions of the transcript of their deposition that contain Protected Information not provided by them or the entities with which they are affiliated unless they sign the form prescribed in paragraph 4(b). A deponent who is not a party or a representative of a party shall be furnished a copy of this Order before being examined about, or asked to produce, potential Protected Information.

b. At the time of the deposition or within thirty (30) days after receiving a deposition transcript, parties (and deponents) may designate all or portions of the transcript (and exhibits thereto) as containing Protected Information. Protected Information within the deposition transcript may be designated by a statement made on the record or by indicating page and line numbers of such information by correspondence. Until expiration of the thirty (30) day period, the entire deposition will be treated as subject to protection against disclosure under this Order. If no party or deponent timely designates Protected Information in a deposition, then none of the transcript or its exhibits (unless the exhibits have previously been designated as Protected Information pursuant to paragraph 2) will be granted status and protection as Protected Information. If a timely designation is made the Protected Information portions and exhibits shall be maintained separate from the portions and exhibits not so marked.

6. **Informal Resolution Encouraged:** If a party objects to the classification of documents, testimony or information as Protected Information on the grounds that such documents, testimony, or information are not entitled to such status and protection, the objecting party shall notify in writing counsel for the Designating Entity, setting forth the reasons supporting such objections and specifying the bates numbers or other identifiers for the documents, or page and line numbers for the transcripts in question. The objecting party and the Designating Entity shall promptly meet and confer in a good faith attempt to resolve the objection. If the parties cannot resolve the objection, the Designating Entity shall respond within thirty (30) days of its receipt of such notification (or such longer period as may be agreed to by counsel or for good cause shown), by either (i) withdrawing the classification, or (ii) stating the refusal to do so. Failure to respond shall be construed as a refusal. Upon receipt of notification of refusal, counsel for the objecting party

may move the Court for an order removing the Protected Information designation. While the motion is pending, and for a period of ten (10) days following any order that such information is not Protected Information (and for any period during which an appeal or any such order is pending), the information shall be treated as Protected Information. If any document designated as containing Protected Information is declassified pursuant to this paragraph, a copy of the document without that designation shall be produced.

7. **Subpoena by Other Courts or Agencies:** If Protected Information that a party has obtained under the terms of this Order is subpoenaed or its production is otherwise demanded, such party shall notify in writing the Designating Entity of the receipt of such subpoena or order within three business days of its receipt, and in all events before the time the production is otherwise demanded, and shall cooperate with the Designating Entity in ensuring continued protected treatment of such documents.

8. **Filing Under Seal:** If it is deemed necessary to bring to the attention of the Court any Protected Information, the party seeking to use the Protected Information shall first seek the Court's permission, pursuant to Local Rule 79, to file the pleading, brief, or other document containing such information or reference in a sealed container labeled with the title of this action, an identification of the nature of its contents, the identity of the party filing the material, the word, "**PROTECTED INFORMATION,**" and a statement substantially in the following form:

**SUBJECT TO PROTECTIVE ORDER
NOT TO BE OPENED OR THE CONTENTS REVEALED
EXCEPT (1) TO THE COURT OR (2) BY ORDER OF THIS COURT**

9. **Return of Protected Information:** Within one hundred twenty (120) days after conclusion of all aspects of this litigation, all documents containing Protected Information and all

copies of same (other than exhibits or record) shall be returned to the Designating Entity or, at the option of the Designating Entity, shall be destroyed. Counsel of record shall make written certification of compliance herewith and shall deliver the same to counsel or the Designating Entity not more than one hundred fifty (150) days after final termination of this litigation.

10. **Inadvertent Disclosure and Prior Disclosure:**

a. Inadvertent disclosure of any document or information in this action shall be without prejudice to any claims that such material is Protected Information, privileged, work product or otherwise protected from discovery, and no party shall be held to have waived any rights by such disclosure. Any document or information so disclosed and subject to a subsequent claim of privilege, work product or other protection, shall be returned immediately to the appropriate party and such document or information shall not be introduced into evidence in this or any other proceeding by any person without either (i) the consent of said party or (ii) by order of the court, nor will such document or information be subject to production (other than *in camera*) in any proceeding by virtue of the fact that it was inadvertently produced in this proceeding.

b. Within thirty (30) days of entry of this Order, any party may designate as Confidential pursuant to this Order any documents produced, regardless of original source, or any deposition transcripts of previous testimony in this action. Pending the expiration of the thirty (30) day period all prior deposition transcripts and previously produced documents shall be treated as confidential.

11. **Non-Waiver:** Disclosure of Protected Information to third parties by any party or person, except the Designating Entity, shall not waive the protected nature of such information or the obligations hereunder.

12. **Modification Permitted**: Nothing in this Order shall prevent any party from seeking modification of this Order to seek additional or different protection under the Federal Rules of Civil Procedure, including that certain information not to be disclosed under any circumstances, or from objecting to discovery that it believes to be otherwise improper.

13. **Added Parties**: This Order shall inure to the benefit and be binding upon any future party or counsel to this litigation as well as upon any non-party who produces documents in this litigation.

14. **Non-Parties**: Any subpoenaed non-party who designates and provides Protected Information in this action may petition the court for enforcement of this Order.

15. **Responsibility of Attorneys**: The attorneys of record are responsible for employing reasonable measures to control, consistent with this Order, duplication of, access to, and distribution of Protected Information.

16. **Sanctions for Violation**: The Court may assess appropriate sanctions against persons violating the provisions of this Order. This provision for sanctions is in addition to and not in lieu of the right that any party injured by a violation of this Protective Order may have to pursue claims for damages and such other relief that may be deemed appropriate under law or in equity, including but not limited to injunctive relief.

17. **Court Retains Jurisdiction**: After the conclusion of this litigation, the provisions of this Order shall continue to be binding and this Court shall retain jurisdiction over the parties and any other person who has access to Protected Information produced pursuant to this Order for the purpose of enforcement of this Order.

IT IS SO ORDERED AND ADJUDGED, this the _____ day of _____,

2010.

UNITED STATES MAGISTRATE JUDGE

Issuance of the foregoing Order
is hereby consented and agreed to and
approved:

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ATTORNEYS FOR FORENSIC ANALYSIS ENGINEERING CORPORATION

EXHIBIT "A"

ACKNOWLEDGMENT AND AFFIDAVIT OF COMPLIANCE

I hereby acknowledge that I have been given a copy of the Protective Order dated the _____ day of _____, 2007, in the case captioned **"UNITED STATES EX REL. RIGSBY V. STATE FARM MUTUAL INSURANCE COMPANY, FORENSIC ANALYSIS ENGINEERING CORPORATION, & HAAG ENGINEERING CO., 1:06-cv-00433-LTS-RHW (S.D. MISS.)"**; that I have read the Protective Order; and that I agree to be bound by it. I further understand and agree that I shall not disclose Protected Information to others, except in accordance with the Protective Order. I further understand and agree that my obligation to honor the protected nature of such Protected Information will continue even after the termination of this litigation. I further understand and agree that, in the event that I violate the terms of the Protective Order, I will be subject to sanctions, including but not limited to sanctions by way of contempt of court. I further understand and agree to, and hereby do, submit myself to the personal jurisdiction of this Court for any and all such purposes.

DATED, this the _____ day of _____, 2010.

STATE OF MISSISSIPPI

COUNTY OF _____

On this the _____ day of _____, 2007, before me, a Notary Public, in and for said State and County, personally appeared _____, to me personally known, who being by me first duly sworn, acknowledged that he/she executed the foregoing instrument for the purposes therein mentioned and set forth.

NOTARY PUBLIC

My Commission expires:

Jackson 4724203v1

Jackson 4767483v1