

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

KATHLEEN AND GORDON SCHAFFER,	*	CIVIL ACTION NO. 06-8262
	*	
Plaintiffs,	*	
	*	
VERSUS	*	SECTION "I"(5)
	*	
STATE FARM FIRE AND CASUALTY	*	JUDGE AFRICK
COMPANY AND XACTWARE SOLUTIONS	*	
INC.,	*	MAGISTRATE CHASEZ
	*	
Defendants.	*	
	*	

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO
DECLASSIFY DOCUMENTS**

NOW INTO COURT come Plaintiffs, through undersigned counsel, who respectfully submit the instant Supplemental Memorandum in Support of Plaintiffs' Motion to Declassify Documents. Plaintiffs submit this late filing based upon a State Farm corporate representative deposition that was taken on December 18, 2009.

I. STATE FARM CANNOT UN-RING THIS BELL.

On December 18, 2009, undersigned took the corporate representative deposition of State Farm in Brown v. State Farm Fire & Cas. Co., No. 06-07269, pending in Orleans Parish Civil District Court, Chief Judge Lloyd Medley, presiding. The deposition was not subject to a protective order.

As its corporate representative, State Farm proffered Christopher Lapinskie – the same person it put on the stand as its corporate representative at the hearing on class certification.¹ In his deposition, Mr. Lapinskie testified as to all manner of topics and areas of inquiry that are the subject of Plaintiffs’ Motion to Declassify. See 1442 Deposition of State Farm Fire & Cas. Co., attached in globo as Exhibit “A”.

The most explosive testimony confirms what has been the central allegation in this case (and in which the bulk of the documents that are the subject of the Motion to Declassify address), namely, that State Farm takes the pricelists that Xactware tells the public (and its customers) reflect market prices, and State Farm changes them.

State Farm testified that it licensed the software from Xactware (the makers of Xactimate) and that it would receive the pricelists separately of which it could reduce the unit prices. Id. at 30. He stated that Mark Richter, the pricing specialist for State Farm, was the one who suggested decreasing the unit price for roofing prices in Louisiana.

He testified as follows:

QUESTION: And the price lists originate from Xactware and then are sent to State Farm; correct?

ANSWER: The price list that State Farm uses as their price list is based on a price list that we receive from Xactware; yes.

QUESTION: And then State Farm pursuant to its agreement with Xactware has the option of increasing the unit price, lowering the unit price or keeping the unit price the same, correct?

¹ Mr. Lapinskie testified that one of the five attorneys who prepared him for the Brown deposition was Joe Cancila from the firm Schiff Hardin in Chicago, defense counsel in this case. Id. at 18-19. Mr. Cancila is not counsel of record in Brown.

ANSWER: Once we receive the price list from Xactware, we have the ability to make changes to that price list, yes, sir.

Id. at 30.

As it relates specifically to what State Farm did to the Brown's price list, the corporate representative testified as follows:

QUESTION: And in terms of the Brown claim, and the unit items identified in the Brown claim, did State Farm keep those unit prices the same from Xactware, did they increase the unit prices or decrease the unit prices?

ANSWER: There were two unit prices that were revised by State Farm. That would be the removal of roofing and the replacement of roofing. In my preparation for this deposition, I asked whether that was an increase or a decrease and it was a decrease in price.

QUESTION: Did you ask – And this is Mark Richter who told you this?

ANSWER: The information I just relayed was information I received from pricing specialist Mark Richter.

Id. at 30-31.

In other words, Mr. Lapinskie testified that State Farm reduced the unit price for repairing and replacing 25 year tab roofing – one of the single largest line items on a Katrina wind claim.

Mr. Lapinskie even testified concerning State Farm's policy, practice, and procedure for how to use the Xactimate program, how the Xactimate estimate is uploaded into State Farm's servers,

and how it is stored. Id. at 77-80. He testified concerning the coding of the Xactimate price lists, Xactimate's formatting, and how base service charges are identified. Id. at 170-173.

Mr. Lapinski testified concerning XacTotal, id. at 5, 210-212, 231-232, 234. He testified concerning XactAnalysis, id. at 84-87, 93.

Mr. Lapinski provided extensive testimony concerning how the claims file is maintained, id. at 58-59, the format of the claims file, id. at 59-60, State Farm's claims software identified as Claim Service Record ("CSR"), id. at 60-65, the activity log, id. at 64, the claim function keys, id. at 66-67, and State Farm issued lap top computers, id. at 70-71.

Much of the documents that are the subject of the Motion to Declassify concern the very subject matter that Mr. Lapinskie addressed in the Brown deposition. The central subject in all of the documents that are requested to be declassified bear upon State Farm's misconduct of reducing the unit prices it receives from Xactware. The Xactware pricelists, the State Farm pricelists, the communications by Mark Richter, the deposition of Mr. Economou are all NOT trade secrets or proprietary information if another State Farm representative is testifying to there scheme in other cases filed in state court.

WHEREFORE Plaintiffs respectfully request that the Motion to Declassify be granted and that the identified documents be declassified.

Respectfully Submitted,

/s/ Soren Gisleson

STEPHEN J. HERMAN, La. Bar No. 23129
SOREN E. GISLESON, La. Bar No. 26302

HERMAN, HERMAN, KATZ & COTLAR, LLP
820 O'Keefe Avenue
New Orleans, Louisiana 70113
Telephone: (504) 581-4892
Fax No. (504) 561-6024
E-Mail: sgisleson@hhkc.com

AND

MARK P. GLAGO, La. Bar No. 25395
Glago Law Firm, LLC
One Canal Place - 17th Floor
365 Canal Street - Suite 1700
New Orleans, Louisiana 71030
Telephone: (504) 599-8666
Fax No.: (504) 599-8699
Email: Mglago@GlagoLawFirm.com

AND

T. CAREY WICKER, III, La. Bar No. 13450
J. ALEX WATKINS, La. Bar No. 29472
CAPITELLI & WICKER
1100 Poydras Street
2950 Energy Centre
New Orleans, Louisiana 70163-2950
Telephone: (504) 582-2425
Fax No. (504) 582-2422
E-Mail: JAW@Capitelliandwicker.com

COUNSEL FOR PLAINTIFFS.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing Motion will be filed electronically with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF system thereby serving notice on all counsel this 12th day of January, 2010.

/s/ Soren Gisleson