

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

MOTION FOR PROTECTIVE ORDER
(With Good Faith Certificate)

Defendant/Counter-Plaintiff State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as “State Farm Mutual Insurance Company” (“State Farm”), by and through counsel of record, and pursuant to Federal Rule of Civil Procedure 26(c), hereby moves the Court for a protective order in the above styled and numbered cause and would show unto the Court as follows:

1. In the original Complaint [2] and in the First Amended Complaint [16], Relators Cori Rigsby and Kerri Rigsby (“the Rigsbys”) made a variety of allegations of misconduct by numerous firms and individuals; however, discovery is open only on the issue set for trial, “one specific instance of misconduct: the McIntosh claim,” August 10, 2009 Memorandum Opinion [343] i.e., the claim of Thomas C. and Pamela McIntosh for flood damage to their residence at 2558 South Shore Drive, Biloxi, Mississippi that State Farm paid and for which State Farm was reimbursed by the NFIP.

2. As this Court has ruled at least twice previously, “The trial of this case will be limited to the McIntosh claim.” September 24, 2009 Order [363]; [343]. Having so ordered, this Court also ruled that it “will limit the presentation of evidence in this action to facts relevant to the McIntosh claim.” [343]. Furthermore, the Court determined that, “In light of the extensive discovery that has already been conducted with respect to this claim, I do not believe there will be much in the way of additional preparation necessary to bring this case to trial.” *Id.*

3. As set forth below, despite the Court’s repeated admonition that this case will be restricted solely to the presentation of evidence to facts relevant to the McIntosh flood claim, the Rigsbys’ First Set of Interrogatories to State Farm (Nos. 4 and 11) and First Set of Requests for Production of Documents to State Farm (Nos. 2, 11, and 12) seek to wade off into extraneous territory, evincing an apparent determination on the part of the Rigsbys to litigate issues that this Court has already ruled will not be a part of this trial.

4. Interrogatory No. 4 states:

Identify each engineering report prepared by Forensic for which State Farm challenged or disputed in any way the final written report. For each engineering report identified state the insured’s name, address, and policyholder number, explain the subject of the dispute, and state whether Forensic supplemented its report or provided a new report for that claim.

5. Interrogatory No. 4 seeks information regarding engineering reports from claim files other than McIntosh and clearly oversteps the bounds of discovery set by this Court. Further, said interrogatory is unduly burdensome, over-broad and harassing, seeks information that is irrelevant to the claims and defenses of this action, seeks information that otherwise is not reasonably calculated to lead to the discovery of admissible evidence, seeks information concerning events long after the McIntosh flood claim was paid on October 2, 2005, and would

implicate the right of privacy of State Farm policyholders. More specifically, Interrogatory No. 4 seeks information about homeowners policy claims unrelated to the McIntosh flood claim.

6. Interrogatory No. 11 states:

Describe your procedures for using engineering reports for adjusting claims for damage caused by Hurricane Katrina. In answering this interrogatory, explain the type of claims for which engineering reports were ordered, whether, if ever you cancelled engineering reports after they had been ordered, and your procedures for handling, reviewing, and filing engineering reports once they were received and should state whether any of these procedures varied by office or state.

7. Interrogatory No. 11 seeks information regarding engineering reports from claim files, including homeowners policy claim files, other than McIntosh and clearly oversteps the bounds of discovery set by this Court. Further, said interrogatory is unduly burdensome, overbroad and harassing, seeks information that is irrelevant to the claims and defenses of this action, seeks information that otherwise is not reasonably calculated to lead to the discovery of admissible evidence, and seeks information concerning events long after the McIntosh flood claim was paid on October 2, 2005.

8. Document Request No. 2 seeks:

All documents related to your adjusting of claims under flood policies or homeowner policies for properties located within a half mile of the McIntosh home. The request includes but is not limited to complete copies of the flood file and homeowner file for each such claim.

9. This request seeks information concerning State Farm policyholders other than the McIntoshes as well as information that is otherwise unrelated to the McIntosh flood claim. For example, the request seeks information related to the adjustment of other *homeowners* claims which, by their very nature, have nothing to do with the McIntosh *flood* claim. Additionally, the request seeks information concerning events long after the McIntosh flood claim was paid on October 2, 2005.

10. Document Request No. 11 seeks:

All documents related to use of engineers in assessing damage caused by Hurricane Katrina. This request includes but is not limited to any decisions to order or cancel multiple engineer reports, and decisions to order or cancel engineer reports on a blanket or categorical basis.

11. This request seeks information concerning State Farm policyholders other than the McIntoshes as well as information that is otherwise unrelated to the McIntosh flood claim. For example, the request seeks information related to the adjustment of other *homeowners* claims which, by their very nature, have nothing to do with the McIntosh *flood* claim. Additionally, the request seeks information concerning events long after the McIntosh flood claim was paid on October 2, 2005.

12. Document Request No. 12 seeks:

All documents related to the procedures used by engineers to assess damage caused by Hurricane Katrina. This request includes but is not limited to the procedures for handling finished engineering reports and any instructions given to engineering firms related to how to conduct an engineering analysis including the use of eye witness testimony, distinguishing between damage caused by wind and damage caused by water, and describing the damage sustained by a home.

13. This request seeks information concerning State Farm policyholders other than the McIntoshes as well as information that is otherwise unrelated to the McIntosh flood claim. For example, the request seeks information related to the adjustment of other *homeowners* claims which, by their very nature, have nothing to do with the McIntosh *flood* claim. Additionally, the request seeks information concerning events long after the McIntosh flood claim was paid on October 2, 2005.

14. Counsel for Movant has, in good faith, conferred with counsel for the Rigsbys in an effort to determine to what extent the issues in question can be resolved without Court intervention, as shown by a Good Faith Certificate attached hereto as Exhibit "A" and

incorporated herein by reference, but has been unable to resolve the objections set forth in this motion.

WHEREFORE, PREMISES CONSIDERED, Defendant State Farm moves this Court for a protective order absolving State Farm from the responsibility of responding to Interrogatories Nos. 4 and 11 and Requests for Production of Documents Nos. 2, 11, and 12, and ordering the parties hereto to limit the scope of discovery to materials and information related to the McIntosh flood claim, heretofore identified by the Court as the sole subject matter of this case.

This the 11th day of January, 2010.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

By: s/Robert C. Galloway
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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 the means directed by the Court's Electronic Filing System.

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This the 11th day of January, 2010.

s/ Robert C. Galloway
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DEFENDANTS

GOOD FAITH CERTIFICATE

Counsel for Relators and State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as “State Farm Mutual Insurance Company” (“State Farm”), certify that they have conferred in good faith to resolve the discovery issues in question and that it is necessary for State Farm to file the following motion:

Motion for Protective Order

Counsel further certify that:

1. The motion is unopposed by all parties.
2. The motion is unopposed by:
3. The motion is opposed by: Relators
4. The parties agree that replies and rebuttals to the motion shall be submitted to the magistrate judge in accordance with the time limitations stated in Uniform Local Rule 7(b)(4).

This the 11th day of January, 2010.

/s/ Robert C. Galloway

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