

**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	*	MAGISTRATE CHASEZ
COMPANY AND XACTWARE SOLUTIONS	*	
INC.,	*	
Defendants.	*	
	*	

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO COMPEL

NOW INTO COURT come Plaintiffs Kathleen and Gordon Schafer who respectfully submit the instant Reply Memorandum in Support of Motion to Compel.

I. A STATE FARM CORPORATE REPRESENTATIVE HAS TESTIFIED THAT MCKINSEY & CO. PROVIDED CONSULTATION DURING THE TIME FRAME IT ADJUSTED KATRINA CLAIMS.

In its Opposition, State Farm stated: "McKinsey has not provided any services or documents to State Farm in connection with the adjustment or handling of Hurricane Katrina property claims, and McKinsey materials accordingly are wholly irrelevant here."

The Gourgues affidavit (attached to State Farm's Opposition) states, in part: "Since that time [1998], however, McKinsey & Co. has provided no services to State Farm that have impacted the handling of Hurricane Katrina property claims in Louisiana."

This is just not true.

On September 7, 2006 and November 17, 2006, the deposition of Susan Q. Hood was taken in the case of *Watkins v. State Farm Fire & Casualty Company*, No. CJ-2000-303 in the

State District Court of Grady County, State of Oklahoma.¹ See Deposition of Susan Q. Hood, attached as Exhibit “A”. Ms. Hood identified herself as the highest ranking claims person in the State Farm organization. Id. at 5.

When Ms. Hood was asked if McKinsey & Company was consulting with State Farm, she indicated they were currently working on “the materials that we use for building estimates . . .” She testified:

QUESTION: Is McKinsey & Company involved in any aspect of State Farm’s operation right now?

ANSWER: Yes, I think they are.

QUESTION: In what capacity?

ANSWER: I don’t know in every capacity.

QUESTION: Is it --

ANSWER: I don’t know all the different things McKinsey might be doing for the company.

QUESTION: Which ones fo you know of?

ANSWER: I know some – some work that McKinsey is doing in my respective department.

QUESTION: Which is?

ANSWER: The work?

QUESTION: Yes.

ANSWER: They are working with us right now in reviewing the materials that we use for – for building estimates and the contents that – that – and how we replace contents

¹ It should not go unnoticed that Heidi Dalenberg was at this deposition and is one of State Farm’s attorneys in the case at bar.

for our policyholders.

QUESTION: Estimatics or Xactimate?

ANSWER: That's the – Xactimate is –

QUESTION: Right.

ANSWER: It's the same –is an estimatics platform.

QUESTION: Right.

ANSWER: I don't know – they're involved in the – the materials that are used in estimates, or helping us review the materials that we use in estimates.

Id. at 119-120.

QUESTION: Have you reported McKinsey's involvement and what they're doing to this member of the chairman's council?

ANSWER: I believe – I have not personally reported on the work that McKinsey has done, or an interim report on the work McKinsey has done, but I believe the member of chairman's council to whom I report is aware that we have engaged McKinsey.

Id. at 121-22.

Moreover, State Farm's in house counsel and counsel in this case Hedi Dalenberg knew this:

QUESTION: Are State Farm's in-house counsel participants in this program with McKinsey that's going on currently?

ANSWER: I don't know whether State – whether any of our corporate attorneys are involved in this work. I would – I would – I'd be specul – well, I'll say it this way. I assume that there probably is an attorney working with us.

Id. at 124.

Finally, Ms. Hood had numerous conversations with numerous McKinsey employees even before her deposition:

QUESTION: Okay. Well, give me some of the names of the McKinsey people that you do know?

ANSWER: I have had conversations with Mike Pertulla (phonetic). I've had conversations with Navdeep (phonetic) Aurora. I've had conversations with a person named Kevin Ratichis (phonetic), and those are the people that I remember right now.

Id.

Thus, State Farm's highest claims person admitted under oath that McKinsey had provided services to State Farm that directly related to the adjustment of claims during the period of time Hurricane Katrina claims were being adjusted and would continue to be adjusted for years to come. State Farm's numerous assertions to the contrary are, at best, half-truths using twisted word-play. State Farm hired a high priced consultant to make money and that consultant worked on Xactimate – which is the program used in adjusting the Schafer's claim. Plaintiffs are entitled to discover information relative to this issue because it strikes at the heart of State Farm's misuse of this program and its intentional undervaluation of the Schafer's claim.

WHEREFORE Plaintiffs respectfully request that the Motion to Compel be granted and the requested relief be ordered.

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: sherman@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 29th day of March, 2010.

_____/s/ Soren Gisleson_____
