

**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. 1:06-cv-433-LTS-RHW

STATE FARM FIRE AND  
CASUALTY COMPANY, et al.

DEFENDANTS/COUNTER-PLAINTIFFS

**RESPONSE IN OPPOSITION TO STATE FARM FIRE AND CASUALTY  
COMPANY'S MOTION TO COMPEL PATRICIA LOBRANO**

State Farm Fire and Casualty Company's ("State Farm") Motion to Compel Patricia Lobrano to Comply with [499] Subpoena Duces Tecum ("Motion") greatly exaggerates the parties' dispute as to Ms. Lobrano's subpoena. As Ms. Lobrano's original objections and her recent deposition testimony confirm, there simply are no responsive materials to the vast majority of State Farm's requests.

**Request 1: Documents reflecting communications with Kerri or Cori Rigsby related to State Farm, the McIntosh property or insurance claims for Hurricane Katrina damage to the Lobrano request.**

Because Ms. Lobrano primarily communicates with her daughters verbally, there are very few documents reflecting *any* communications between them. The few documents that do exist are not relevant.

State Farm argues that Ms. Lobrano's communications with her daughters regarding State Farm, the McIntosh property, or Ms. Lobrano's insurance claims are relevant because Tammy Hardison testified that the Rigsbys were involved in adjusting Ms. Lobrano's Katrina damage insurance claim, and as such, these documents "may further reveal attempts by the Rigsbys to

improperly influence the outcome of Mrs. Lobrano's State Farm insurance claim, which would be relevant to the Rigsbys' bias, prejudice, credibility and motive."

Ms. Lobrano is willing to produce any documents reflecting communications with her daughters related to her insurance claim. But, she has no such documents. Ms. Lobrano cannot produce documents that do not exist or that are not within her possession.

State Farm seeks more, demanding documents related to all communications between Ms. Lobrano and her daughters related to State Farm in any context. State Farm offers no explanation as to why this broader category of documents, all communications between Ms. Lobrano and her daughters regarding State Farm, are relevant.<sup>1</sup>

As explained in her initial objections, Ms. Lobrano primarily communicates with her daughters either in person or by the telephone. *See* April 5, 2010 letter from B. Davidson to R. Galloway, attached to State Farm's Motion to Compel as Exhibit B at 2 ("Lobrano objections"). State Farm questioned Ms. Lobrano about these communications during her deposition, and she explained:

[Kerri and Cori Rigsby] don't, either one, recollect that we ever e-mailed any information. The only thing we ever have e-mailed to each other that we could remember is occasionally if I'm reading an interesting article or something pertaining to the case over the last few years, I might forward to them one e-mail, but that would be the only thing. It would be forwarded usually without any comments, just an FYI.

Lobrano Transcript 33:18-34:11. Attached to Motion as Exhibit A. E-mails from Ms. Lobrano to her daughters forwarding "an article or something pertaining to this case" are not relevant.<sup>2</sup>

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<sup>1</sup> Ms. Lobrano and Cori and Kerri Rigsby dispute the accuracy of Tammy Hardison's testimony. But, even if Ms. Hardison's testimony is accurate, it would only establish that communications between Ms. Lobrano and her daughters regarding Ms. Lobrano's insurance claim are relevant.

<sup>2</sup> It is not clear whether these documents are even responsive to State Farm's subpoena.

Not only would they have been written after the last date for discoverable information this Court previously announced, but more fundamentally, an e-mail from Ms. Lobrano forwarding a news story to her daughters cannot possibly be relevant to her daughters' bias, credibility, or motive. *See* [447] at 1 (“the Court finds that the latest date for discoverable information is the date on which the McIntosh homeowner claim was closed”). Ms. Lobrano's notes to her daughters related to this litigation or with personal notes, sent long after the operative relevant occurrences here can have no relevance to this litigation.

**Requests 4 and 5: All documents reflecting Hurricane Katrina damage to the Lobrano residence and all documents depicting the weather, tidal surge or wind at the Lobrano residence.**

Ms. Lobrano's insurance claim against State Farm has been settled. Even if documents depicting the damage to Ms. Lobrano's residence were somehow relevant, the only documents responsive to these requests are already in State Farm's possession because Ms. Lobrano's insurance policies were with State Farm and she would have provided these documents as part of the adjustment process. State Farm argues in its motion that Ms. Lobrano admits to having taken pictures of her home at least some of which were previously unknown to State Farm. Motion at 3, 6-7.

Ms. Lobrano testified that shortly after Hurricane Katrina she took pictures of her home, she “turned a lot of them over in [her] claims report,” and any pictures she did not turn over to State Farm “would probably be on [her] computer.” Exhibit A at 142: 3-24. Ms. Lobrano also testified that she was not sure if that computer was still working, and she did not know where it was. *Id.* at 39:13-40:6. Following her deposition, Ms. Lobrano searched for the laptop where

the pictures of her home would have been, and she was unable to locate it. As such, there is nothing to compel because Stat Farm is already in possession of all responsive documents.<sup>3</sup>

**Request No. 6: All documents reflecting communications with any person, entity or government agency related to the Lobrano's' insurance claim for Hurricane Katrina damage to the Lobrano residence.**

State Farm has not offered any explanation as to why communications between Ms. Lobrano and anyone other than the Rigsbys about Ms. Lobrano's insurance claim could potentially be relevant. Regardless, State Farm seeks production of Ms. Lobrano's communications with other persons and government agencies regarding her insurance claim. State Farm contends that there is "no question" that Ms. Lobrano is in possession of responsive materials because Ms. Lobrano testified that she has documents reflecting communications with government agencies "like FEMA" as well as a "Mississippi grant." Motion at 3, citing Lobrano dep at 102-105. Ms. Lobrano was referring to applications for grants she filed with FEMA and the state of Mississippi. The funds Ms. Lobrano may have received from government agencies to assist her recovery from the damage her home sustained during Hurricane Katrina are not relevant. Moreover, Ms. Lobrano had no communications with any government agencies relating to the McIntosh claim or the allegations in this lawsuit, and the Rigsbys had no involvement in Ms. Lobrano's grant applications. As such, any documents Ms. Lobrano may have are simply not relevant.

**Request 7 and 10: All rental agreements relating to living spaces for the Lobrano family and all canceled checks or bank statements indicating payments to Payton properties.**

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<sup>3</sup> Given the fact that State Farm adjusted Ms. Lobrano's insurance claim, issued payments under her homeowner and flood policies, and defended and settled a litigation brought by Ms. Lobrano, any claim that State Farm needs still further evidence relating to the damage Ms. Lobrano's claim sustained is dubious.

Ms. Lobrano is not in possession of any canceled checks or bank statements indicating payments to Payton Properties. State Farm already has the rental agreement between Ms. Lobrano and her daughters, and State Farm questioned Ms. Lobrano about that agreement during her deposition. Ex. A at 156:19 - 159:20. The only other potentially responsive document is an email from Tammy Hardison attaching a sample residential lease contract. Ms. Lobrano will produce that document. There is nothing else to compel.

**Request 8: All records relating to video rentals from December 2005 to May 2006**

Ms. Lobrano's video rental records during that period are unavailable. The video store where Ms. Lobrano rented "*The Insider*" is no longer in business. Ms. Lobrano contacted the corporate organization of that video store and was told they do not keep video rental records on file for more than 18 months. There is nothing to compel.

**Request No. 9: All telephone records including home and telephone records from December 2005 to May 2006.**

Ms. Lobrano is not in possession of any telephone records during that period.

**Request No. 11-13: All documents reflecting communications with Tammy Hardison, Dana Lee, Dreaux Seghers, or Brian Ford after Hurricane Katrina**

This request is overbroad because it seeks *all* communications with these individuals, and not communications within a limited topic. Ms. Lobrano is not in possession of any communications with any of these individuals related to this litigation or even her insurance claim against State Farm. Ms. Lobrano will produce the email from Tammy Hardison attaching a draft lease agreement.

**Request No. 14-15: All Documents reflecting or relating to payments or reimbursements by Dick Scruggs or his associates either to Ms. Lobrano or on behalf of Cori or Kerri Rigsby.**

Ms. Lobrano's Objections stated that the only payment she received was as a result of her individual policyholder litigation against State Farm. That payment was made by State Farm and to Ms. Lobrano in settling the lawsuit she brought following Hurricane Katrina. Richard Scruggs and the other identified entities did not make any payments to Ms. Lobrano either directly or on behalf of the Rigsbys. Again, there is nothing to compel.

**Other items identified by State Farm**

State Farm has identified 3 other items that it believes Ms. Lobrano has, and that it alleges are responsive to their subpoena. First, State Farm identifies an e-mail from Richard Scruggs' assistant that Ms. Lobrano mentioned during her deposition. Motion at 4. Ms. Lobrano testified that she received a message from Scruggs' secretary attempting to set up a meeting between Ms. Lobrano and Mr. Scruggs. Ex. A at 90:4-17. This email is not responsive to State Farm's subpoena because it does not relate to any payments or reimbursements made by Scruggs or his associates. However, Ms. Lobrano has produced the email to avoid further dispute.

Second, State Farm mentions the laptop computer Ms. Lobrano described on pages 39-43 of her deposition transcript, and her PC computer described on pages 35 to 36 of her deposition transcript. As explained above, in response to request Nos. 4 and 5. Ms. Lobrano no longer has her laptop computer – an old computer that Ms. Lobrano has not used for some years.

Ms. Lobrano's PC computer is not responsive to State Farm's subpoena and she should not be compelled to produce it. Ms. Lobrano purchased her PC computer in late 2008 or early 2009. It does not contain any information related to State Farm, the McIntosh claim, her

insurance claim, or Hurricane Katrina. The fact that Ms. Lobrano mentioned owning a computer during her deposition surely does not entitle State Farm to acquire that computer by subpoena, particularly since Ms. Lobrano has no objection to producing responsive materials that happen to be on that computer. Ms. Lobrano's husband uses the computer in connection with his medical practice, and it contains patient records and other information that is private and protected by a doctor patient privilege that exists between Dr. Lobrano and his patients. Given that this computer does not contain or store documents responsive to State Farm's subpoena, Ms. Lobrano should not be required to produce it simply because she mentioned owning it in her deposition.

THIS the 1st day of June, 2010

Respectfully submitted,

/s/ C. Maison Heidelberg

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**CERTIFICATE OF SERVICE**

I, C. Maison Heidelberg, attorney for Cori Rigsby and Kerri Rigsby, do hereby certify that I have this day caused the foregoing document to be filed with the Court's CM/ECF system, which will cause notice to be delivered to all counsel of record.

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## **Exhibit A**

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
3           SOUTHERN DIVISION

4   UNITED STATES OF AMERICA,  
5   ex rel., CORI RIGSBY and  
6   KERRI RIGSBY                   RELATORS/COUNTER-DEFENDANTS

7   VERSUS                   CIVIL ACTION NO: 1:06cv433-LTS-RHW

8   STATE FARM MUTUAL INSURANCE  
9   COMPANY                   DEFENDANT/COUNTER-PLAINTIFF

10   AND

11   FORENSIC ANALYSIS ENGINEERING  
12   CORPORATION; HAAG ENGINEERING  
13   CO. AND ALEXIS KING                   DEFENDANTS

14           VIDEOTAPED DEPOSITION OF PATRICIA LOBRANO

15  
16           Taken at the offices of Butler, Snow,  
17           O'Mara, Stevens & Cannada, PLLC, 1300  
18           25th Avenue, Suite 204, Gulfport,  
19           Mississippi, on Thursday, April 8, 2010,  
20           beginning at 9:02 a.m.

21   REPORTED BY:

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21 ALSO PRESENT:

22 KERRI RIGSBY

23 VIDEO TECHNICIAN:

24 ED HARDING  
25

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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1 is nothing in Number 13. And Number 14, you have  
2 a copy of the only document that exists in that  
3 one. And there are no documents in 15.

4 Q. What document are you referring to in  
5 14?

6 A. I believe my settlement check for the  
7 settlement, the class action.

8 Q. Anything else?

9 A. Number 1, there are no documents that  
10 exist.

11 Q. Were there documents that existed?

12 A. No. I don't believe there ever were any  
13 documents. We all lived together for a year, so  
14 there would be no e-mails to communicate. And  
15 then after we didn't live together, we spoke on  
16 the phone, but we never talked in detail on the  
17 phone about anything that pertains to this case.

18 Q. Let me ask you this question: In  
19 determining whether you had materials to give us  
20 in response to this subpoena, did you contact  
21 Kerri or Cori and ask them if they had any  
22 documents that were responsive to the subpoena?

23 A. I did ask them do they remember any  
24 e-mails. I said, I can't remember any, can you.  
25 And they said, no, I don't think we ever e-mailed

1 each other.

2 Q. Kerri told you that?

3 A. Kerri and Cori. They don't, either one,  
4 recollect that we ever e-mailed any information.  
5 The only thing we ever have e-mailed to each other  
6 that we could remember is occasionally if I'm  
7 reading an interesting article or something  
8 pertaining to the case over the last few years, I  
9 might forward it to them on e-mail, but that would  
10 be the only thing. It would be forwarded usually  
11 without any comments, just an FYI.

12 Q. Okay. So to make sure I understand your  
13 testimony -- first of all, would all of the e-mail  
14 communications from August 29, 2005 to the present  
15 between you and Kerri or Cori have been through  
16 your AOL account?

17 A. Well, yes. That's the only account I've  
18 ever had, but I didn't have a computer that first  
19 year, you know. I lived with them and I used  
20 their computer, so I wouldn't have e-mailed them  
21 on their own computer. So --

22 Q. Okay. When you -- whose computer did  
23 you use when you lived with them?

24 A. Whatever computer was sitting in their  
25 office, I suppose. Their computer, I might use



1     though, your answer can stand.

2     MR. WALKER:

3             No, no. We want to make sure you get it  
4     right.

5     MR. HEIDELBERG:

6             Well, let's clarify that to make sure.  
7     I don't know if you're talking about e-mails or  
8     computer -- you've already asked her about her  
9     computer still standing.

10    MR. WALKER:

11            Q.    The hardware, the computer itself.

12            A.    What are you asking?

13            Q.    Since Hurricane Katrina, okay, have you  
14    either stopped using or destroyed a personal  
15    computer that you owned?

16            A.    Stopped using?

17            Q.    Right. As in it's sitting over there in  
18    the corner gathering dust, but you still have it.

19            A.    Okay. I have an old laptop that I had  
20    that I don't use anymore, and I don't know when  
21    I've used it. I had it with my former job like in  
22    the '90s, so I don't know that it's even working.

23            Q.    What kind of laptop is that?

24            A.    I don't remember.

25            Q.    All right. We'll just call that the

1 laptop, if that's all right with you.

2 A. And I think I still have it, so --

3 Q. Did you use -- have you used the laptop  
4 since Hurricane Katrina?

5 A. I don't believe, but I can't tell you  
6 for sure.

7 Q. Okay. Does Dr. Lobrano have a personal  
8 computer or laptop or anything like that that you  
9 might have used from time to time?

10 A. He and I use the same one at home.

11 MR. HEIDELBERG:

12 Jeff, when you get to a stopping point,  
13 let's take a break.

14 MR. WALKER:

15 We'll stop right now. That's fine.  
16 Let's go off the record.

17 VIDEO TECHNICIAN:

18 The time is 9:42. We're off the record  
19 (Off the record.)

20 VIDEO TECHNICIAN:

21 The time is 10:03. We're on the record.

22 MR. WALKER:

23 Q. Mrs. Lobrano, we had a short break. Is  
24 there anything that you thought of during the  
25 break that causes you to want to change or modify

1 agreement?

2 MR. WALKER:

3 Yes.

4 A. The only e-mail I ever remember getting  
5 from his office was from his secretary after I had  
6 tried to contact him for an appointment and we had  
7 miscommunicated. The secretary thought she had  
8 sent him a message that I had tried to contact him  
9 back in the fall.

10 And so I think in February, she e-mailed  
11 me when she realized that he had not contacted me.  
12 And she said, would you like to -- Dick is coming  
13 in town; would you like for me to set up a meeting  
14 with him. And I do remember that e-mail, so I got  
15 that e-mail from her. And there may have been  
16 little things like that, but that's the only one I  
17 can recall.

18 MR. WALKER:

19 Q. That would have been to your AOL  
20 account?

21 MR. HEIDELBERG:

22 Same objection. Do we have our  
23 agreement?

24 MR. WALKER:

25 Yes.

1 A. From the house -- from the street? Yes.

2 Yeah, I'm sure I did. I don't know.

3 Q. Were these Polaroid pictures?

4 A. No. I don't think so.

5 Q. What kind of camera did you have?

6 A. I don't even recall.

7 Q. Okay.

8 A. And I'm not sure I took a picture  
9 walking down the street. But just -- when I got  
10 there, I did take some pictures, and I would  
11 assume it was then because I think -- and, you  
12 know, I'm saying that and we went back out there,  
13 so I might have taken them the second trip out.  
14 I'm not sure. And then I took more pictures. I  
15 took thousands of pictures of the house, so I  
16 don't remember if we had them that very first  
17 time.

18 Q. Where are those pictures now?

19 A. I've turned a lot of them over in my  
20 claims report, so --

21 Q. Where are the pictures that you didn't  
22 turn over to State Farm?

23 A. I think they would be probably on my  
24 computer.

25 Q. Okay. And I'll ask you not to delete

1 Prior to it being unsealed.

2 MR. HEIDELBERG:

3 Can you give us a date of when that was  
4 or let her know?

5 MS. BARBOUR:

6 Wasn't it like August '07?

7 MR. WALKER:

8 Q. Yeah. August 2007.

9 A. I don't recall.

10 Q. All right. Do you recall Cori or Kerri  
11 ever discussing in your presence to third parties  
12 other than your attorneys the fact that the qui  
13 tam lawsuit had been filed under seal?

14 A. No, I don't.

15 MR. WALKER:

16 This is 4.

17 (Exhibit 4 was marked.)

18 MR. WALKER:

19 Q. Mrs. Lobrano, I'm going to hand you a  
20 copy of a document that's been marked as Exhibit  
21 4, and it purports to be a copy of a lease  
22 agreement between William and Patricia Lobrano and  
23 Payton Properties. I'll ask you if you can  
24 identify that for me, please, ma'am?

25 A. That's my handwriting, uh-huh.

1 Q. Okay. What is Payton Properties?

2 A. That was our -- our lease agreement  
3 title.

4 Q. Well, yeah. I mean, Payton Properties  
5 was the landlord, correct?

6 A. Correct.

7 Q. And you and Dr. Lobrano were the  
8 tenants, correct?

9 A. Yes.

10 Q. All right. And this was for -- this is  
11 a lease agreement for Kerri Rigsby's house at Rue  
12 Tonti, correct?

13 A. Correct.

14 Q. All right. Now, tell me, as best you  
15 can recall, how it came to be that you entered  
16 into this lease agreement.

17 A. Okay. We were living in the trailer and  
18 it was getting rather cramped. And we looked  
19 around and knew that Kerri was alone in her big  
20 house, and we approached -- in the meantime, there  
21 was no place to rent, okay, in Ocean Springs or  
22 even all the way down the Coast. There was  
23 nothing to rent. And we didn't see how we could  
24 live in her little trailer that much longer.

25 And so I was covered. I had ALE, and I

1 knew I could rent something for a while. And so I  
2 proposed to Kerri that we'd like to rent a section  
3 of her house and -- since we had the ALE. And so  
4 we decided that we could do that and -- but Lecky  
5 King had told the girls that when she assigned my  
6 house to one of the adjusters, that under no  
7 circumstances were they to let that adjuster know  
8 that I was their mother because she felt like it  
9 would give a lot of added pressure to him. And  
10 she wanted this to be objective, and we understood  
11 and we agreed with her.

12           So -- and I had to send everything  
13 through my adjuster for approval, my ALE.  
14 Everything had to go through him so he would  
15 approve the ALE payments.

16           Q. And just so the record is clear, I don't  
17 mean to interrupt you, but who was your adjuster  
18 at this time?

19           A. That was Jamie Woody, was his name.

20           Q. Okay. I'm sorry. Go ahead.

21           A. And so we didn't know how I could pay  
22 rent without him finding out I was their mother,  
23 if I was paying Kerri rent. So we just sort of  
24 thought, well, we're going to have to do it under  
25 a name that he won't recognize.

1           And so Lecky King's granddaughter's name  
2 was Payton and Kerri's puppy's name was Payton,  
3 and we said, we'll just do Payton Properties. And  
4 I checked with my banker to make sure I could do  
5 that. And later, I think I asked an attorney if  
6 that was okay, did I do the right thing, because I  
7 had already done it, but they said, sure, you can  
8 do that.

9           And so since Lecky knew and people at  
10 State Farm knew that I was living at Kerri's  
11 house, we did it that way to protect Jamie Woody  
12 from finding out because we knew that would not  
13 be good.

14           Q.    So were you present when this  
15 conversation allegedly took place between Kerri  
16 and Lecky King?

17           A.    I wasn't sure it was Kerri, but it was  
18 the girls.

19           Q.    I'm sorry. Who was it?

20           A.    One of the girls.

21           Q.    You don't remember whether it was Kerri  
22 or Cori?

23           A.    No, no. I just know they said Lecky was  
24 adamant that Jamie should not know I was -- and  
25 she was -- she picked my adjuster. I don't think