

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

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

RELATORS/COUNTER-DEFENDANTS

VERSUS

CIVIL ACTION NO. 1:06CV433 -HSO-RHW

STATE FARM FIRE AND
CASUALTY COMPANY

DEFENDANT/COUNTER-CLAIMANT

ORDER GRANTING MOTION FOR RECONSIDERATION

Before the Court is Relators' motion for reconsideration as it relates to an *in camera* list submitted by State Farm in response to this Court's order of August 10, 2009. Doc. [344] & [1268]. State Farm compiled the *in camera* list to identify potential properties and policyholders that met certain criteria similar to that of the McIntosh claim, which had served as the initial bellweather false claim tried by the Court. Doc. [343] at 10-11. The *in camera* list was intended to identify the "outer limits of the potential claims involved in this action." *Id.* In a decision dated July 13, 2015, the Fifth Circuit remanded this matter to permit additional discovery on other potential false claims or records. *See United States ex rel. Rigsby v. State Farm Fire & Cas. Co.*, 794 F.3d 457, 469-70 (5th Cir. 2015). The Fifth Circuit stated that a reasonable place to begin with this additional discovery would be to allow the Relators access to the *in camera* list. *Id.* at 470 n.8.

On February 5, 2016, in light of the Fifth Circuit's remand, the Court directed the parties to submit simultaneous briefs regarding the scope of discovery. *See Minute Entry (2/5/2016)*. After the parties filed their briefs, the undersigned conducted a telephone conference on March 2, 2016, to address discovery and scheduling issues related to the *in camera* list. *See Minute Entry*

(3/2/2016). State Farm represented to the Court in its brief regarding the scope of discovery and during the telephone conference that it needed to notify policyholders who are not parties to this lawsuit that their personal information would be disclosed as part of discovery. State Farm cited to unspecified state and federal privacy regulations as the basis of this obligation. *See* Doc. [1260] at 10 n.8. Based on this representation, the undersigned orally directed State Farm to draft, with input from Relators, a proposed notice to policyholders regarding the disclosure of their information. Less than a week after the telephone conference, Relators filed the instant motion to reconsider and argued that State Farm is in fact under no legal obligation to notify policyholders that their information will be disclosed as part of a judicial proceeding.

The Court's directives were intended as the first step in what could prove to be a lengthy and complex litigation process. The Fifth Circuit instructed that the *in camera* list was a reasonable place to begin with discovery. Hence, the undersigned addressed the *in camera* list as the first order of discovery business. By filing their motion to reconsider, Relators in effect are requesting this Court to rule on the narrow legal issue of whether State Farm is under a legal obligation to give policyholders on the *in camera* list advance notice that their information is going to be disclosed as part of the discovery process in a judicial proceeding. Relators also are asking this Court to compel State Farm to produce the *in camera* list immediately.

The Court finds that there is no statutory or regulatory requirement that State Farm notify its policyholders of the imminent disclosure of their information. Both the Gramm-Leach-Bliley Act (GLBA) and Mississippi Department of Insurance Regulation 2001-1 contain substantively similar provisions that authorize production, without notice, of non-public personal information to respond to judicial process. *See* 15 U.S.C. § 6802(e)(8); Miss. Dept. Ins. Reg. 2001-1, Art. IV,

Section 16(A)(8); *Marks v. Global Mortgage Group, Inc.*, 218 F.R.D. 492, 496 (S.D.W.Va. 2003); *Martino v. Barnett*, 595 S.E.2d 65, 72 (W.Va. 2004). State Farm argues that the judicial process exception under GLBA does not apply because Relators are not seeking disclosure of nonpublic personal information pursuant to a subpoena, document request, or other formal discovery device. The Court disagrees. The Fifth Circuit remanded this case to allow further discovery with the specific direction that the *in camera* list is a reasonable place to begin discovery. Hence, production of the *in camera* list has become an obligatory part of the discovery process in this judicial proceeding; therefore, the judicial process exception applies and notice to the policyholders is not be required by either GLBA or the Mississippi Department of Insurance Regulations. Given the express authorization for disclosure of this information by the GLBA and Mississippi Department of Insurance Regulations, the Court rejects State Farm's invocation of state common law right to privacy as a basis for requiring pre-disclosure notice of the *in camera* list.

Relators' motion to reconsider is granted to the extent that State Farm is not judicially required to provide notice; therefore, the parties are relieved of their obligation to draft a proposed notice to policyholders. The motion to reconsider is further granted to the extent that State Farm shall provide Relators with a copy of the *in camera* list within 14 days of the entry of this Order. The information on the *in camera* list shall be treated as confidential under the Court's protective order. The stay of discovery otherwise remains in effect until such time as the Court conducts a case management conference. *See* Doc. [1228] at 2 ("discovery shall remain stayed until such time as State Farm elects whether to file an amended counterclaim and until such time as the Court conducts a case management conference.").

IT IS THEREFORE ORDERED AND ADJUDGED that the [1268] Motion to Reconsider is GRANTED subject to the provisions outlined in this Order.

SO ORDERED, this the 3rd day of May, 2016.

/s/ Robert H. Walker

ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE