

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;
EXPONENT, INC.; HAAG ENGINEERING CO.;
JADE ENGINEERING; RIMKUS CONSULTING GROUP INC.;
STRUCTURES GROUP; E.A. RENFROE, INC.;
JANA RENFROE; GENE RENFROE; and
ALEXIS KING

DEFENDANTS

**DEFENDANT/COUNTER-PLAINTIFF
STATE FARM FIRE AND CASUALTY COMPANY'S
RESPONSE TO THIS COURT'S ORDER [266] AND
THE RIGSBYS' SUBMISSIONS [264] & [267] RE: RULE 56(f) DISCOVERY**

Defendant/Counter-plaintiff State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as "State Farm Mutual Insurance Company" ("State Farm"), respectfully submits this Response to this Court's Order ([266]) and the Rigsbys' submissions ([264] & [267]) regarding Rule 56(f) discovery.

1. Without waiving its position that no discovery is appropriate with respect to the issue of whether the Rigsbys are an "original source," State Farm does not object to producing, subject to the entry of an appropriate protective order, certain documents that are responsive to the Rigsbys' document list. To this end, State Farm will produce:

- (1) The McIntosh flood claim file;
- (2) The McIntosh homeowner's claim file;
- (3) Any photographs or video images of the McIntosh property in State Farm's possession;

- (4) The repair invoices and related materials concerning the McIntosh property; and
- (5) The prior deposition testimony of Brian Ford, Jack Kelly, Cori Rigsby, Kerri Rigsby, and Robert McVadon (the McIntoshes' construction contractor) taken in *McIntosh v. State Farm Fire & Casualty Co.*, No. 1:06-cv-1080-LTS-RHW (S.D. Miss.), and other proceedings.¹

2. However, State Farm objects to certain of the depositions of the various witnesses the Rigsbys request to take. Those depositions do not satisfy the standards of Rule 56(f), since they are not essential to justify the Rigsbys' opposition to the pending motions, nor do they satisfy the well-delineated standards set forth in this Court's Orders.

WHEREFORE, PREMISES CONSIDERED, while not waiving its position that the Rigsbys have failed to satisfy Rule 56(f) or the terms of this Court's Order [266], for the foregoing reasons, State Farm does not object to certain discovery, on the terms State Farm respectfully suggests in its concomitant Memorandum of Authorities, which is incorporated by reference herein. Further, State Farm respectfully requests this Court to set an in-person pre-hearing conference.

This the 2nd day of April, 2009.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

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¹ State Farm believes that the Rigsbys possess all of the exhibits attached to the complaint in *Shows v. State Farm Automobile Ins. Co.*, 1:07-cv-709-LTS-RHW (S.D. Miss. filed June 20, 2007), and, thus, already have copies of, among other things, all the correspondence to or from State Farm related to Forensic's assessment of the damage to the McIntosh property that State Farm could produce. *See* ([264-2] at 3 (Davidson Aff't)). State Farm thus objects to having to go through the unnecessary burden of reproducing such documents. State Farm reserves all potential objections to the admission into evidence of all potential exhibits, including, but not limited to, any produced by State Farm in this Action.

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CERTIFICATE OF SERVICE

I, E. Barney Robinson III, 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 2nd day of April, 2009.

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