

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

RAYMOND LIZANA

PLAINTIFF

VS.

CAUSE NUMBER: 1:08CV501-LTS-MTP

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

**REBUTTAL OF THE DEFENDANT, STATE FARM FIRE AND CASUALTY
COMPANY, TO THE PLAINTIFFS' RESPONSE TO THE [35] MOTION FOR
PROTECTIVE ORDER**

Comes now the defendant, State Farm Fire and Casualty Company, and rebuts the plaintiffs' response [31] to State Farm Fire's earlier-filed motion [30] for a protective order.

1. The plaintiffs have responded to State Farm Fire's motion for a protective order with the concern that the proposed protective order is a "blanket protective order."

2. Paragraph 4 of the proposed Consent Protective Order clearly states that "confidential information" may be so designated on the face of the document. State Farm Fire has produced untold numbers of pages of documents in Katrina litigation marked "confidential," and never had such designations challenged.

3. The proposed Consent Protective Order is a duplicate of hundreds of such orders entered in prior and current Katrina cases, both by consent and over objection. The response of the plaintiffs presents no new argument or information suggesting that in this particular case the proposed Consent Protective Order is in any way inappropriate.

4. Recently, in the case styled *O'Keefe, et al v. State Farm Fire and Casualty Co., et al*, and having Civil Action Number 1:08cv600-HSO-LRA, United States Magistrate Judge Anderson once again found that good cause exists for a protective order in Katrina litigation against State Farm. The finding of good cause was echoed in the protective order issued in *D. Neil Harris and*

Assoc., P.A., et al, v .State Farm Fire and Cas. Co., et al, Civil Action Number 1:08cv1489-HSO-MTP, as it has been in numerous Katrina cases in which State Farm Fire has been a defendant.

5. In any event, Judge Anderson also held that the protective order advanced by State Farm in *O'Keefe* was overly broad, and in her order dated July 2, 2009, directed the O'Keefes' counsel to submit plaintiffs' proposed protective order for entry.

6. In acknowledgment of the *O'Keefe* ruling, State Farm Fire attaches hereto as Exhibit C an amended proposed protective order. The order is essentially identical to that entered in *O'Keefe*, except that language has been added to Paragraphs 1 and 4. The additional language is intended to allow State Farm Fire to indicate the confidential nature of documents by labeling them as "Trade Secret Materials." Said changes will, in the event such materials are produced in the instant litigation, simply decrease the expense and increase the efficiency of producing said materials.

7. The amended proposed protective order attached hereto also addresses plaintiffs' concerns of a "blanket protective order," in that it more clearly delineates the procedure for marking protected documents as confidential.

8. Finally, the proposed protective order contains no directive that the documents listed in State Farm Fire's motion will not be produced. It instead allows the documents to be produced and available to the plaintiffs subject to the reasonable restrictions that protect State Farm Fire's proprietary interests as set forth in State Farm Fire's motion for the protective order. Accordingly, plaintiffs' cries that they will not have the documents available are nothing more than a red herring.

WHEREFORE, PREMISES CONSIDERED, the defendant, State Farm Fire and Casualty Company, requests the Court enter an appropriate protective order in the above-styled case.

Respectfully submitted, this the 7th day of August, 2009.

STATE FARM FIRE AND CASUALTY
COMPANY

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BY: /s/ H. Scot Spragins
H. SCOT SPRAGINS, MSB # 7748

CERTIFICATE OF SERVICE

I, **H. SCOT SPRAGINS**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have on this date electronically filed the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record.

DATED, August 7, 2009

/s/ H. Scot Spragins _____

H. SCOT SPRAGINS

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CONSENT PROTECTIVE ORDER

The Court, being duly advised in the premises, finds that good cause exists for the issuance of a Protective Order; therefore, it is ORDERED and ADJUDGED that:

1. “Confidential Information” shall mean and refer to all documents, testimony, tax and income records, business records, information on magnetic media, computer tapes, computer disks, hard copies or printouts derived from computer tapes or computer disks, or individual portions thereof, of other information which is produced by any party in this litigation during discovery that is so designated by any party in good faith. Documents labeled as “trade secret materials” are included in the instant definition of “confidential information.”

2. “Confidential information” may be inspected by or revealed to only the following “qualified persons”:

(a) Counsel of Record in this litigation, the parties to this litigation, and Associate Counsel and the parties to any other suits against State Farm Fire & Casualty Company for losses arising out of Hurricane Katrina in which Counsel for these Plaintiffs are and/or become associated, including all associates, paralegals, and stenographic and clerical employees employed by the undersigned in those other cases;

(b) Any outside witness, consultant, advisor or expert retained, deposed or consulted

Exhibit “C”

by a party for the purpose of obtaining such individual's advice or opinion regarding issues in this litigation, or any other suits filed by the undersigned counsel of record against State Farm Fire & Casualty Company for losses arising out of Hurricane Katrina, but the only to the extent necessary for the individual to provide such advise or opinion and provided the individual has executed an agreement to maintain confidentiality in the form attached hereto as Exhibit "A";

(c) The Court, including any Judge, Magistrate, or Judicial Law Clerk who is assigned to this case or any other case filed by the undersigned counsel of record against State Farm Fire & Casualty Company and/or State Farm Mutual Automobile Insurance Company for losses arising out of Hurricane Katrina.

3. "Confidential Information" shall be used solely for purposes of this action and/or the purposes of any other action, in which Counsel for the Plaintiffs are Counsel of Record, against State Farm Fire and Casualty Company for losses arising out of Hurricane Katrina and shall not be used, directly or indirectly, for any business purpose, commercial purpose, competitive purpose, or any other purpose.

4. The designating party or its counsel may place a stamp or other designation of confidentiality or trade secret materials on the documents produced. Said stamp or other designation shall not be so pervasive as to obscure or render illegible the contents of said document.

5. Persons may be deposed regarding "Confidential Information" of which they have knowledge. Only "qualified persons", including the court reporter and the witness, shall be present at such depositions. The transcript of said deposition shall be treated in accordance with this Order.

6. Any "Confidential Information" which is revealed by or included in any discovery proceeding (whether formal or informal and whether in the form depositions, transcripts, interrogatory answers, or document production) or in any motions, pleadings, affidavits, briefs or

other documents submitted to this Court, shall be subject to this Order.

7. “Confidential Information” included as a part of any pleading or memorandum shall be filed in sealed envelopes or other containers and shall be endorsed with the title of the pending action, an indication of the nature of the contents, the word “confidential” and the following statement:

This envelope containing documents that are filed in this case by _____ is not to be opened nor the contents thereof revealed except by court order; provided, however, that counsel of record in this case may open this envelope in the office of the Clerk of this Court and there inspect the contents hereof, without order of this court, and upon completion of each inspection by counsel, the envelope containing such documents shall be released.

8. No person receiving a “confidential” document or transcript shall disclose it or its contents to any person other than (a) to those “qualified persons” described in paragraph 2 and for the purposes specified; (b) in any motions, pleadings, affidavits, briefs or other documents submitted to the Court in this action, subject to the restrictions imposed by paragraph 7 of this Order; or (c) in any hearing, trial, or other judicial proceeding before the Court in this action. Counsel shall be responsible for obtaining an executed agreement to maintain confidentiality in the form attached hereto as Exhibit “A” for all persons, other than counsel and staff members under counsel’s control, to whom any confidential document, information or transcript is disclosed. Counsel shall be responsible for maintaining all executed agreements to maintain confidentiality and the agreement shall be available for inspection by counsel at the request of the producing party, unless said request would infringe upon counsel’s trial strategy, and if so, shall be available for inspection at the conclusion of said case.

9. Each person signing the attached confidentiality agreement submits to the personal jurisdiction of the Court for the purposes of enforcement of this Order, either prior to or following

completion of this action. Jurisdiction of this action is to be retained by this Court after final determination for purposes of enabling any party or persons affected by this Order to apply to the Court at any time for such direction or further decree as may be appropriate for the construction or enforcement of this Order or for such additional relief as may become appropriate.

10. Within sixty (60) days after the conclusion of all aspects of litigation against State Farm Fire and Casualty Company in which Counsel for Plaintiffs are Counsel of Record involving claims arising from Hurricane Katrina, all documents containing confidential information and all copies of same (other than exhibits or record) shall be returned to the designating entity along with executed copies of Exhibit "A".

ACKNOWLEDGMENT AND AFFIDAVIT OF COMPLIANCE

Counsel of record shall make written certification of compliance herewith and shall deliver the same to counsel or the designating entity not more than ninety (90) days after final termination of the litigation described in paragraph 10.

11. Inadvertent disclosure of any document or information shall be without prejudice to any claims that such material is "Confidential Information", privileged, work product or otherwise protected from discovery, and no party shall be held to have waived any rights by such disclosure. Any documents or information so disclosed, subject to a subsequent, good faith and timely claim of inadvertent production, and of privilege, work product or other protection, shall be returned immediately to the appropriate party and such document or information shall not be introduced into evidence in this or any other proceedings by any person without either (i) consent of the party, or (ii) by order of the Court, nor will such document or information be subject to production (other than *in camera*) in any proceeding by virtue of the fact that it was inadvertently produced in this proceeding or in any other suit filed by counsel of record for the Plaintiffs against State Farm Fire

& Casualty Company for losses arising out of Hurricane Katrina.

12. Disclosure of “Confidential Information” to third parties by any party or person, except the designating entity, shall not waive the confidentiality of such information or the obligations hereunder.

13. This Order shall inure to the benefit and be binding upon any future party or counsel to this litigation, as well as upon non-party who produces documents in this litigation.

14. The attorneys of record are responsible for employing reasonable measures to control, consistent with this Order, duplication of, access to, and distribution of “Confidential Information”.

15. Parties agree that disputes concerning the confidential designation of any particular document shall be governed by the provisions contained in Rule 37 of the Federal Rules of Civil Procedure, and Uniform Rules of the Northern and Southern Districts, Rule 37.1. Nothing contained in this Order is intended to waive remedies provided in these rules.

On this the _____ day of _____, 2009.

UNITED STATES MAGISTRATE JUDGE

AGREED:

Attorney for Plaintiff

Attorney for Defendant