

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

TRENT LOTT and
TRICIA LOTT

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:05CV671-LTS-RHW

STATE FARM FIRE & CASUALTY COMPANY, et alS

DEFENDANTS

ORDER ON PLAINTIFFS' MOTION TO UNSEAL DEPOSITIONS

Before the Court is Plaintiffs' [85] Motion to Remove Seal on Deposition Transcripts of Alexis "Lecky" King, David Randel, and Mark Drain. Each of the deponents has filed a response to Plaintiffs' motion.

The Court has entered orders sealing the deposition transcripts of King, Randel, and Drain. The initial [100] Order was entered in the case of *McFarland v. State Farm*, Civil Action No. 1:06cv932; however, the order sealing the depositions applied equally to this case as well. The basis of the initial motions to seal the depositions was to protect the deponents' Fifth Amendment privilege against self-incrimination. Plaintiffs filed the instant motion to lift the seal based on their assertion that the criminal investigation of State Farm and certain of its employees is inactive. The deponents have responded that the State Attorney General has indicated that the criminal investigation might still go forward.

In sealing the deposition transcripts, the Court's intention was to protect the interests of the deponents should they invoke their Fifth Amendment privilege against self-incrimination. Plaintiffs counter that there is a public interest in open and transparent judicial proceedings and

that the public has a right to access judicial records. The depositions at issue in this case are not a part of the Court record at this time; therefore, there is no countervailing interest in public access to judicial records to balance against the deponents' constitutional rights. Plaintiffs assert that the Fifth Amendment invocations may become part of the record as an "adverse inference" should the case go to trial. Nevertheless, the depositions and their contents are not part of the judicial record at this time. The issue of unsealing the transcripts can be addressed if and when this case proceeds to trial, or at some other relevant judicial proceeding. Moreover, the Court finds that it is not clear that the criminal investigation has concluded, or is "inactive" as asserted by Plaintiffs. Plaintiffs have demonstrated no prejudice to the depositions remaining under seal at this time. Thus the Court finds that in those cases where the deponent has invoked his or her Fifth Amendment privilege against self-incrimination, the deposition should remain under seal. However, in those cases where the deponent has not invoked his or her Fifth Amendment privilege, the depositions may be unsealed.

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiffs' [85] Motion to Unseal is GRANTED in part and DENIED in part.

SO ORDERED, this the 25th day of April, 2007.

s/ Robert H. Walker

UNITED STATES MAGISTRATE JUDGE