

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

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THOMAS C. and PAMELA McINTOSH,

Plaintiffs,

v.

STATE FARM FIRE & CASUALTY CO.  
and FORENSIC ANALYSIS &  
ENGINEERING CO., et al.,

Defendants.

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CIVIL ACTION NO.

1:06-CV-1080-LTS-RHW

**MEMORANDUM IN SUPPORT OF THE RIGSBYS' MOTION TO QUASH OR,  
IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER**

Cori Rigsby and Kerri Rigsby (“the Rigsbys”), by counsel, file this motion to quash pursuant to Fed. R. Civ. P. 45(c)(3)(a)(iii)-(iv), or in the alternative for a protective order pursuant to Fed. R. Civ. P. 26(c), regarding subpoenas duces tecum issued by State Farm to AT&T Inc., AT&T Mobility, LLC, and Cellular South, Inc. for the telephone records of the Rigsbys. The subpoenas are attached as Exhibit A. The subpoenas request all of the Rigsbys’ telephone records over a several month period without any limitations and without regard to whether this information is relevant or privileged. The Rigsbys have asked State Farm to withdraw or modify the subpoena. *See* Exhibit B (Nov. 9, 2007 email to Benjamin Mullen, counsel for State Farm).

The Court should quash the subpoenas, or grant a protective order, because they are overbroad, sweeping in all calls to and from the Rigsbys without regard to relevance for this suit

or the Rigsbys' privacy. In addition, the subpoenas request information about privileged calls to attorneys and law enforcement officials.

### **FACTS**

State Farm issued the subpoenas in question on November 1, 2007, the last day of discovery in this case. The three subpoenas demand from the Rigsbys' various telephone companies the production of:

Any and all...telephone records for Kerri Ribsby (Ocean Springs, MS); Cori (Moran) Rigsby (Ocean Springs, MS) and Patricia Lobrano (Ocean Springs, MS) reflecting calls made or received by each between 10/12/05 and 2/28/06.

*See* Exhibit A. These subpoenas follow in the wake of numerous other subpoenas issued by State Farm, including subpoenas for documents to the Rigsbys' themselves, as well as to their banks, accountant, and internet service provider. In response to the prior subpoenas, the Rigsbys have provided State Farm with over 2,700 pages of documents.

### **ARGUMENT**

1. The subpoenas should be quashed, or subject to a protective order, because they are overbroad and are not calculated to lead to the discovery of admissible evidence. The phone records requested contain very personal, private and confidential information regarding each and every person to whom the Rigsbys have spoken over a several-month period. The subpoenas make no effort to limit the scope of the request to records of calls between the Rigsbys and particular people with whom they might have had conversations relevant to this case. Nor do the subpoenas suggest how every phone call made or received by the Rigsbys during that period is relevant to the pending litigation.

State Farm is not entitled to go on a "fishing expedition" to try and find private, personal and confidential information about the Rigsbys. Fed. R. Civ. P. 26(b)(1); *Sovereign Partners*

*Ltd. P'ship v. Rest. Teams Int'l, Inc.*, 1999 U.S. Dist. Lexis 17014, \*10 (S.D.N.Y. Nov. 2, 1999) (“[t]he fact that the telephone records contain relevant information and are not privileged does not mean they are subject to unlimited discovery”); *Will-Drill Resources, Inc. v. J.R. Pounds, Inc.*, 2007 U.S. Dist. Lexis 12877, \*13-14 (S.D. Miss. Feb. 23, 2007) (invalidating subpoenas to non-parties because party issuing subpoena failed to address how requests were “relevant to the claims, issues, or defenses raised in this matter, or are otherwise calculated to lead to the discovery of admissible evidence”); *BG Real Estate Serv. Inc. v. American Equity Ins. Co.*, 2005 U.S. Dist. Lexis 10330, \*8 (E.D. La. May 18, 2005) (“Rule 26(b) is not a discovery blank check. It requires balancing and imposes on the court the obligation to rein in overly broad, potentially abusive discovery....”). In an analogous situation, this Court limited an overly broad subpoena for all emails during a three-month period because such a subpoena encompassed “information that is irrelevant, confidential and/or subject to privilege.” *Illing v. State Farm*, 2007 U.S. Dist. Lexis 12453, \*4, 6 (S.D. Miss. Feb. 9, 2007).

2. The subpoenas should also be quashed, or subject to a protective order, because the phone records requested likely contain privileged or protected communications. Fed. R. Civ. P. 45(c)(3)(A)(iv) (“the court by which a subpoena was issued shall quash or modify the subpoena if it...requires disclosure of privileged or other protected matter and no exception or waiver applies.”). The Rigsbys’ phone records may reflect privileged attorney-client communications between the Rigsbys and their respective attorneys. The phone records may also reflect protected communications between the Rigsbys and law enforcement officials, including the FBI and United States Department of Justice. The subpoenas contain no exceptions for these types of privileged or protected communications.

**CONCLUSION**

Accordingly, for the reasons explained above, the Court should enter an order pursuant to Fed. R. Civ. P. 45(c)(3)(A)(iii)-(iv) quashing the subpoena, or in the alternative grant a protective order pursuant to Fed. R. Civ. P. 26(c).

November 9, 2007

Respectfully submitted,

/s/ Harlan F. Winn, III

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**CERTIFICATE OF SERVICE**

I certify that on November 9, 2007, I caused a copy of the foregoing Memorandum in Support of the Rigsbys' Motion to Quash, Or In the Alternative, For a Protective Order, to be electronically mailed to counsel of record and also to be deposited in the United States Mails, first class postage prepaid, addressed for delivery to them, as follows:

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