

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

**STATE FARM FIRE AND CASUALTY COMPANY'S  
ANSWER, DEFENSES AND COUNTERCLAIM TO  
RELATORS' PERSONAL CLAIMS IN  
RELATORS' FIRST AMENDED COMPLAINT**

*(Jury Trial Demanded)*

Defendant/Counter-Plaintiff State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as "State Farm Mutual Insurance Company" ("State Farm" or "Defendant"), subject to all its defenses, including Rule 12 defenses, submits this its Answer and Defenses ("Answer") and Counterclaim to Relators' personal claims (Count V in "Relator's [sic] First Amended Complaint For Damages Under the False Claims Act, 31 U.S.C. § 3729 et. seq." ("Complaint")), filed by Relators Cori Rigsby and Kerri Rigsby (collectively the "Rigsbys") in this Action, as follows:

This pleading is intended to satisfy Fed. R. Civ. P. 12 as to the Rigsbys' personal claims against State Farm. Pursuant to the Federal Rules of Civil Procedure, including but not limited to Rules 8, 9 & 12, in lieu of a responsive pleading to Counts I through IV of the Complaint (the "FCA Claims"), State Farm has filed appropriate motions to dismiss those Counts and claims in

documents entitled “State Farm Fire and Casualty Company’s Motion to Dismiss for Lack of Subject Matter Jurisdiction” and “State Farm Fire and Casualty Company’s Motion to Dismiss the Amended Complaint Under Federal Rules of Civil Procedure 12(b)(6) and 9(b)” (collectively “Motions to Dismiss”).

This pleading responds only to the claims personal to the Rigsbys that are asserted in Count V of the Complaint. This pleading does not respond to the FCA Claims, which are the subject of State Farm’s Motions to Dismiss and to which State Farm refers the Court.

### **FIRST DEFENSE**

Some or all of the claims or requested remedies are barred by the False Claims Act, 31 U.S.C. § 3729 *et seq.* (“FCA”).

### **SECOND DEFENSE - ANSWER**

For its answer to the averments of the Complaint (excluding Counts I through IV), paragraph by paragraph, State Farm states as follows:

#### **General Statement**

No response is required to the Complaint’s headings and subheadings. In the alternative, to the extent such a response is required, those averments are denied.

1. State Farm admits that the Rigsbys purport to bring this Action under the statutes referenced in paragraph 1 of the Complaint. State Farm denies that it has any liability for the matters pled, denies that this Court has subject matter jurisdiction, denies that the Rigsbys have stated a claim and further denies the remainder of the averments of paragraph 1 of the Complaint.

2. Paragraph 2 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself and denies the remainder of the averments of paragraph 2 of the Complaint to the extent they imply wrongdoing

or liability on the part of State Farm. State Farm further avers that the Rigsbys violated the seal by publicly disclosing the subject matter of this Action.

3. State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averments that “[a] copy of the evidentiary disclosure ...has already been served on the United States” and that a “second, supplemental disclosure was made on December 8, 2006.” State Farm denies the remainder of the averments of paragraph 3 of the Complaint.

4. Paragraph 4 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself and denies the remainder of the averments of paragraph 4 of the Complaint to the extent they imply wrongdoing or liability on the part of State Farm.

5. State Farm admits that it transacts business in this judicial district. State Farm denies the remainder of the averments of paragraph 5 of the Complaint.

6. The averments of paragraph 6 of the Complaint are not directed at State Farm and therefore no response is required. In the alternative only, State Farm admits that Nationwide Insurance Company (“Nationwide”) transacts business in this judicial district. State Farm denies the remainder of the averments of paragraph 6 of the Complaint.

7. The averments of paragraph 7 of the Complaint are not directed at State Farm and therefore no response is required. In the alternative only, State Farm denies the averments of paragraph 7 of the Complaint.

8. The averments of paragraph 8 of the Complaint are not directed at State Farm and therefore no response is required. In the alternative only, State Farm denies the remainder of the averments of paragraph 8 of the Complaint.

9. The averments of paragraph 9 of the Complaint are not directed at State Farm and therefore no response is required. In the alternative only, State Farm denies the averments of paragraph 9 of the Complaint.

10. State Farm denies the averments of paragraph 10 of the Complaint.

11. State Farm admits that Relator Cori Rigsby is a resident citizen of the State of Mississippi. State Farm admits that E.A. Renfroe & Company, Inc. (“Renfroe”) has been an independent contractor to State Farm. The averments of paragraph 11 addressing Renfroe’s relationship with USAA and Nationwide are not directed to State Farm and therefore no response is required. In the alternative only, State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averment that Renfroe “is” an independent contractor for USAA and Nationwide. State Farm denies that Cori Rigsby “is” a claims manager. State Farm denies the remainder of the averments of paragraph 11 of the Complaint.

12. State Farm admits that Relator Kerri Rigsby is a resident citizen of the State of Mississippi. State Farm admits that Renfroe has been an independent contractor to State Farm. The averments of paragraph 12 addressing Renfroe’s relationship with USAA and Nationwide are not directed to State Farm and therefore no response is required. In the alternative only, State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averment that Renfroe “is” an independent contractor for USAA and Nationwide. State Farm denies that Kerri Rigsby “is” a claims manager. State Farm denies the remainder of the averments of paragraph 12 of the Complaint.

13. State Farm admits that it transacts business in this judicial district. Paragraph 13 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself. State Farm further admits that it is

authorized by the Federal Emergency Management Agency Federal Insurance Association (“FEMA”) to write federal flood insurance under the “Write Your Own” (“WYO”) program. State Farm denies the remainder of the averments of paragraph 13 of the Complaint.

14. The averments of paragraph 14 of the Complaint are not directed at State Farm and therefore no response is required. In the alternative only, State Farm admits that Nationwide transacts business in this judicial district. Paragraph 14 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself. State Farm further admits that Nationwide is authorized by FEMA to write federal flood insurance under the WYO program. State Farm denies the remainder of the averments of paragraph 14 of the Complaint.

15. The averments of paragraph 15 of the Complaint are not directed at State Farm and therefore no response is required. In the alternative only, State Farm admits that USAA transacts business in this judicial district. Paragraph 15 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself. State Farm further admits that USAA is authorized by FEMA to write federal flood insurance under the WYO program. State Farm denies the remainder of the averments of paragraph 15 of the Complaint.

16. The averments of paragraph 16 of the Complaint are not directed at State Farm and therefore no response is required. In the alternative only, State Farm admits that Allstate Insurance Company (“Allstate”) transacts business in this judicial district. Paragraph 16 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself. State Farm further admits that Allstate is

authorized by FEMA to write federal flood insurance under the WYO program. State Farm denies the remainder of the averments of paragraph 16 of the Complaint.

17. State Farm admits that Forensic Analysis & Engineering Corporation (“Forensic”) is an engineering firm that provided engineering services to State Farm in connection with certain claims made following Hurricane Katrina. State Farm denies the remainder of the averments of paragraph 17 of the Complaint.

18. State Farm admits that Exponent, Inc. (“Exponent”) is an engineering firm that provided engineering services to State Farm in connection with certain claims made following Hurricane Katrina. The averments of paragraph 18 of the Complaint concerning Exponent’s interaction with Nationwide, Allstate and USAA are not directed at State Farm and therefore no response is required. State Farm denies the remainder of the averments of paragraph 18 of the Complaint.

19. State Farm admits that Haag Engineering Company (“Haag”) is an engineering firm that provided engineering services to State Farm in connection with certain claims made following Hurricane Katrina. The averments of paragraph 19 of the Complaint concerning Haag’s interaction with Nationwide, Allstate and USAA are not directed at State Farm and therefore no response is required. State Farm denies the remainder of the averments of paragraph 19 of the Complaint.

20. State Farm admits that Jade Engineering (“Jade”) is an engineering firm that provided engineering services to State Farm in connection with certain claims made following Hurricane Katrina. The averments of paragraph 20 of the Complaint concerning Jade’s interaction with Nationwide, Allstate and USAA are not directed at State Farm and therefore no response is required. State Farm denies the remainder of the averments of paragraph 20 of the Complaint.

21. State Farm admits that Rimkus Consulting Group, Inc. (“Rimkus”) is an engineering firm that provided engineering services to State Farm in connection with certain claims made following Hurricane Katrina. The averments of paragraph 21 of the Complaint concerning Rimkus’ interaction with Nationwide, Allstate and USAA are not directed at State Farm and therefore no response is required. State Farm denies the remainder of the averments of paragraph 21 of the Complaint.

22. State Farm admits that Structures Group (“Structures”) is an engineering firm that has provided engineering services to State Farm in connection with certain claims made following Hurricane Katrina. The averments of paragraph 22 of the Complaint concerning Structure’s interaction with Nationwide, Allstate and USAA are not directed at State Farm and therefore no response is required. State Farm denies the remainder of the averments of paragraph 22 of the Complaint.

23. State Farm admits that the averments of paragraph 23 of the Complaint define the term “Engineering Defendants” to include Structures, Rimkus, Haag, Jade, Exponent and Forensic. State Farm denies the remainder of the averments of paragraph 23 of the Complaint.

24. State Farm admits that Renfroe, improperly referred to in the Complaint as “E.A. Renfroe, Inc.” [sic], is a Georgia corporation, that provides claims adjusting services to insurance companies. State Farm admits that the Rigsbys were formerly employed by Renfroe and that, while in Renfroe’s employ, the Rigsbys were assigned by Renfroe to claims-related activities for State Farm following Hurricane Katrina. State Farm denies the remainder of the averments of paragraph 24 of the Complaint.

25. State Farm denies the averments of paragraph 25 of the Complaint.

26. State Farm denies the averments of paragraph 26 of the Complaint.

27. State Farm admits that the Rigsbys were employed by Renfroe. State Farm further admits that Renfroe, as an independent contractor, has from time-to-time provided certain services to State Farm pursuant to contracts between Renfroe and State Farm. State Farm admits that the Rigsbys have met with representatives of the United States Attorney's Office for the Southern District of Mississippi ("USAO"), as well as representatives of the Office of the Attorney General of the State of Mississippi. The averments of paragraph 27 concerning Renfroe's interaction with Nationwide, Allstate and USAA are not directed at State Farm and therefore no response is required. State Farm denies the remainder of the averments of paragraph 27 of the Complaint.

28. State Farm denies the averments of paragraph 28 of the Complaint.

29. State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averment that the Rigsbys met with a United States Attorney on the specific date of April 19, 2006. State Farm denies that there is any such position as the "United States Attorney for the State of Mississippi." State Farm admits that the Rigsbys have met with representatives of the USAO and have provided the USAO documents and information that the Rigsbys and others wrongfully and unlawfully obtained from State Farm. State Farm denies the remainder of the averments of paragraph 29 of the Complaint.

30. State Farm admits that the Rigsbys have provided the USAO documents and information that the Rigsbys and others wrongfully and unlawfully obtained from State Farm. State Farm further admits that the Rigsbys have surreptitiously and unlawfully accessed, converted and misappropriated documents and information from State Farm. State Farm denies the remainder of the averments of paragraph 30 of the Complaint.

31. State Farm admits that the Rigsbys have surreptitiously and unlawfully accessed, converted and misappropriated documents and information from State Farm, including but not limited to, participating in wrongful and unlawful activities that occurred on or about June 3, 2006. State Farm denies the remainder of the averments of paragraph 31 of the Complaint.

32. State Farm admits that on or about June 5, 2006, the Rigsbys informed a State Farm manager that they had given State Farm information and documents to the USAO. State Farm further admits that the Rigsbys have provided the USAO documents and information that were wrongfully and unlawfully obtained from State Farm. State Farm denies the remainder of the averments of paragraph 32 of the Complaint.

33. State Farm admits that on or about June 6, 2006, State Farm attorneys asked the Rigsbys to disclose to State Farm any information the Rigsbys were aware of concerning fraud or any other wrongful or unlawful conduct by State Farm in connection with the handling of claims following Hurricane Katrina. State Farm further admits that the Rigsbys stated that, upon advice of attorney Richard F. "Dickie" Scruggs, they would not discuss any such matters with State Farm. State Farm denies the remainder of the averments of paragraph 33 of the Complaint.

34. State Farm denies the averments of paragraph 34 of the Complaint.

35. State Farm admits that on September 1, 2006, Renfroe filed a civil action styled *E.A. Renfroe & Company, Inc. v. Cori Rigsby Moran and Kerri Rigsby*; in the United States District Court for the Northern District of Alabama, Southern Division; Civil Action No. 2:06cv1752-WMA-JEO (the "*Renfroe Suit*"). State Farm denies the remainder of the averments of paragraph 35 of the Complaint.

36. The court filings of the parties in the *Renfro* Suit, to which State Farm is not a party, speak for themselves. State Farm admits that, according to public court records, the Rigsbys resisted the return of State Farm's property and have attempted without success to defend their wrongful and unlawful actions. State Farm further admits that, according to public court records, on or about December 8, 2006, United States District Court Judge William Acker granted a preliminary injunction [docket no. 60 in the *Renfro* Suit] against the Rigsbys. State Farm further admits that, according to public court records, the Rigsbys contended in the *Renfro* Suit that they no longer have possession of the documents that are the subject of the referenced preliminary injunction; however, State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of such assertion. State Farm denies the remainder of the averments of paragraph 36 of the Complaint.

37. The court filings of the parties to the *Renfro* Suit, to which State Farm is not a party, speak for themselves. State Farm denies the remainder of the averments of paragraph 37 of the Complaint.

38. The court filings of the parties to the *Renfro* Suit, to which State Farm is not a party, speak for themselves. State Farm denies the remainder of the averments of paragraph 38 of the Complaint.

39. State Farm admits that, according to public court records, Dickie Scruggs has provided the Rigsbys with attorneys to represent the Rigsbys in the *Renfro* Suit. State Farm denies the averment suggesting that the Rigsbys have personally incurred financial responsibility for attorneys' fees in the *Renfro* Suit. State Farm denies the remainder of the averments of paragraph 39 of the Complaint.

40. State Farm admits that, as a general proposition, a rise in water level can cause flooding in coastal areas, under certain circumstances that are too numerous to enumerate. State Farm further admits that a significant portion of the Atlantic and Gulf Coast coastlines of the United States has an elevation of fewer than 10 feet above mean sea level. State Farm also admits that hurricanes can create or influence storm surge. State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the remainder of the averments of paragraph 40 of the Complaint, but denies any implication of wrongdoing or liability contained in paragraph 40 of the Complaint.

41. State Farm admits that paragraph 41 contains a URL to a Webpage that speaks for itself. State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the remainder of the averments of paragraph 41 of the Complaint, but denies any implication of wrongdoing or liability contained in paragraph 41 of the Complaint.

42. State Farm denies the averments of paragraph 42 of the Complaint.

43. State Farm denies the averments of paragraph 43 of the Complaint. Further, State Farm would show that, in a deposition taken in *Melissa Marion and Andrew Marion v. State Farm Fire and Casualty Company, State Farm Mutual Automobile Company and John and Jane Does A-H*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv00969-LTS-RHW, on June 21-22, 2007, Cori Riggsby testified under oath to facts which demonstrate that the averments of paragraph 43 of the Complaint are false:

Q. Okay. Not in the context of representation by Mr. Scruggs or any kind of claim that you might have through any other firms, but in the context of being an employee of Renfroe while you were at State Farm, I'd like to ask you did you ever see anything in the Haag report that you thought was factually wrong or incorrect?

A. No.

(Dp. at 303.)

44. State Farm denies the averments of paragraph 44 of the Complaint.

45. State Farm denies the averments of paragraph 45 of the Complaint.

46. State Farm denies the averments of paragraph 46 of the Complaint.

47. State Farm denies the averments of paragraph 47 of the Complaint.

48. Paragraph 48 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself and denies the remainder of the averments of paragraph 48 of the Complaint to the extent they imply wrongdoing or liability on the part of State Farm.

49. Paragraph 49 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself and denies the remainder of the averments of paragraph 49 of the Complaint to the extent they imply wrongdoing or liability on the part of State Farm.

50. State Farm denies the averments of paragraph 50 of the Complaint.

51. State Farm denies the averments of paragraph 51 of the Complaint.

52. Paragraph 52 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself and denies the remainder of the averments of paragraph 52 of the Complaint to the extent they imply wrongdoing or liability on the part of State Farm.

53. State Farm denies the averments of paragraph 53 of the Complaint.

54. The averments of paragraph 54 of the Complaint concerning other “defendant insurance company[ies]” are not directed at State Farm and therefore no response is required. In the alternative only, State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averments in paragraph 54 of the Complaint concerning other “defendant insurance company[ies].” State Farm denies the remainder of the averments of paragraph 54 of the Complaint.

55. Paragraph 55 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself and denies the remainder of the averments of paragraph 55 of the Complaint to the extent they imply wrongdoing or liability on the part of State Farm.

56. The averments of paragraph 56 of the Complaint concerning other “defendant insurance company[ies]” are not directed at State Farm and therefore no response is required. In the alternative only, State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averments in paragraph 56 of the Complaint concerning other “defendant insurance company[ies].” State Farm denies the remaining averments of paragraph 56 of the Complaint.

57. State Farm denies the averments of paragraph 57 of the Complaint.

58. State Farm denies the averments of paragraph 58 of the Complaint.

59. State Farm denies the averments of paragraph 59 of the Complaint.

60. State Farm denies the averments of paragraph 60 of the Complaint.

61. State Farm denies the averments of paragraph 61 of the Complaint.

62. State Farm denies the averments of paragraph 62 of the Complaint. Further, State Farm would show that, in a deposition taken in *Melissa Marion and Andrew Marion v. State Farm Fire and Casualty Company, State Farm Mutual Automobile Company and John and Jane Does A-H*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv00969-LTS-RHW, on June 20, 2007, Kerri Rigsby testified under oath to facts which demonstrate that the averments of paragraph 62 of the Complaint are false:

Q. What was the square footage calculator?

A. It was -- well, it was a program, Xacttotal program, where you put in the square footage and then the materials the house was constructed with, and it -- it's kind of a formula and it spits out an amount for you.

....

Q. Do you remember situations where a calculation would be made using that square footage of the house and then you or someone on your team would go back to a policyholder and find out, for example, perhaps they had more outlets or some custom electrical or custom cabinetry or granite countertops or whatever, and then you could plug those features in to increase the value of the home for purposes of the flood payment?

A. Yes.

Q. Are you aware that all of that that I've just described was sanctioned and approved by the National Flood Insurance Program?

MR. BARRETT: Object to the form.

A. I assume it was.

(Dp. at 117-120.)

63. State Farm denies the averments of paragraph 63 of the Complaint.

64. State Farm denies the averments of paragraph 64 of the Complaint.

65. State Farm denies the averments of paragraph 65 of the Complaint.

66. State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averment that "FAEC carried out the assignment on October 7, 2005" and

“[t]he firm did a site inspection and reached conclusions based on the inspection.” State Farm denies the remainder of the averments of paragraph 66 of the Complaint.

67. The referenced document speaks for itself. State Farm denies the remainder of the averments of paragraph 67 of the Complaint.

68. The referenced document speaks for itself. State Farm denies the remainder of the averments of paragraph 68 of the Complaint.

69. State Farm denies the averments of paragraph 69 of the Complaint.

70. State Farm denies the averments of paragraph 70 of the Complaint. Further, State Farm would show that in a deposition taken in *Melissa Marion and Andrew Marion v. State Farm Fire and Casualty Company, State Farm Mutual Automobile Company and John and Jane Does A-H*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv00969-LTS-RHW, on June 20, 2007, Kerri Rigsby testified under oath to facts which demonstrate that the averments of paragraph 70 of the Complaint are false:

Q. This second report that we just marked as Exhibit 33 is a report that was dated October 20th, 2005. Comparing the two reports, the one we looked at a moment ago, the first forensic report of October 12 and this October 20th report, would you agree that in both reports, the engineers, in one case being Mr. Brian Ford, the other case being Mr. John Kelly, both of them addressed wind damage?

A. Yes.

Q. And then in addition to -- and the change or the difference is in addition to wind damage, the Kelly report of October 20th also reaches a conclusion that the damage to the first floor walls and floors appear to be predominantly caused by rising water from storm surge and waves. As far as conclusions, that's the -- that's the major difference, isn't it?

A. Correct.

Q. In addition, under wind damage, Mr. Kelly puts a little bit more detail in with regard to what was damaged by wind in this second bullet point. Do you see that?

A. Yes.

Q. The top two bullet points, are those -- in Mr. Kelly's report of October 20th, were those consistent with what you saw when you went out to the McIntosh home? And I'm talking about the top two bullet points in his conclusions.

A. Yes.

Q. The third bullet point, which states the damage to the first floor walls and floors appears to be predominantly caused by rising water from storm surge and waves, was that consistent with what you saw when you went out to the McIntosh home?

A. Yes.

Q. I've heard these two reports described by different individuals as being a change, that the first report said it was wind and the second report said it was water. Would you agree with me that the second report, other than being a little longer, says it was wind and water?

MR HAWLEY: Object to the form, but answer if you can.

A. It says "predominantly" for the first floor water. But, yes, it discusses wind and water.

BY MR. BANAHAN:

Q. Based on what you saw when you went out there, and looking at the photographs you've seen of the McIntosh home, and the flood payment of \$250,000 that was made, can you understand how anyone in State Farm management might have been concerned with the lack of completeness of the October 12th, 2005, report?

MR. VAN CLEAVE: Object to the form.

A. Yes, I could see where they could be.

(Dp. at 141-43.) Additionally, to the extent the Rigsbys are alleging that the McIntosh claim is an example of a false claim submitted to the National Flood Insurance Program ("NFIP"), State Farm would show that Kerri Rigsby, who participated in the adjustment process related to the McIntosh flood policy claim, in a deposition taken in *Melissa Marion and Andrew Marion v. State Farm Fire and Casualty Company, State Farm Mutual Automobile Company and John and Jane Does A-H*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv00969-LTS-RHW, on June 20, 2007, testified under

oath as to both the validity of the payment for flood damages and as to the insufficiency of the October 12, 2005 report:

Q. Do you believe this report – this report would support a \$250,000 payment under the National Flood Insurance Program on the home?

A. No.

Q. And when you made the payment or agreed or authorized your subordinate, who was working -- primarily working the claim, to request authority for \$250,000, you thought there was at least that much flood damage to the home, didn't you?

A. Was a lot of the damage to that home.

MR. VAN CLEAVE: Objection. Leading.

A. It was a large home. It was insured for a lot of money, and I -- yeah, I believe I thought there was \$250,000 worth of flood damage to that home.

(Dp. at 139.)

71. State Farm denies the averments of paragraph 71 of the Complaint. Further, State Farm would show that the Rigsbys' use of the Mullins property as a putative example of alleged misallocation of wind damage to a NFIP flood policy has no basis in fact because the owners of the property identified in paragraph 71 of the Complaint have filed a sworn statement in *Terri Mullins and William Mullins v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., John B. Kelly and William C. Forbes*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv00457-LTS-RHW, acknowledging that they "have never applied for or obtained flood insurance with the National Flood Insurance Program for the property located at 6057 Pine Tree Drive, Kiln, Mississippi."

72. The referenced document speaks for itself. State Farm denies the remainder of the averments of paragraph 72 of the Complaint.

73. The referenced document speaks for itself. State Farm denies the remainder of the averments of paragraph 73 of the Complaint.

74. The referenced document speaks for itself. State Farm denies the remainder of the averments of paragraph 74 of the Complaint.

75. The referenced document speaks for itself. State Farm denies the remainder of the averments of paragraph 75 of the Complaint.

76. The referenced document speaks for itself. State Farm denies the remainder of the averments of paragraph 76 of the Complaint.

77. The referenced document speaks for itself. State Farm denies the remainder of the averments of paragraph 77 of the Complaint.

78. State Farm admits that it has utilized the services of a commercial document disposal company known as Shred It for lawful purposes. State Farm denies the remainder of the averments of paragraph 78 of the Complaint. Further, State Farm would show that in a deposition taken in *Melissa Marion and Andrew Marion v. State Farm Fire and Casualty Company, State Farm Mutual Automobile Company and John and Jane Does A-H*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv00969-LTS-RHW, on June 20, 2007, Kerri Rigsby testified under oath to facts which demonstrate that the averments of paragraph 78 of the Complaint are false:

Q. And listen to my question because I wasn't even asking you what somebody else may have told you. I was asking you do you have any knowledge -- and I don't care what the source of it is, but do you have any knowledge, because if you do I want to explore it --

A. Right.

Q. -- about a single document in a State Farm policyholder file that should be in their file that was shredded -- intentionally shredded or destroyed by State Farm?

MR. BARRETT: I'm going to object and instruct her not to answer at any time from which the attorney-client privilege attached. So anything you found out after the attorney-client privilege.

A. I was working with State Farm, no. No.

(Dp. at 199-200.)

79. State Farm denies the averments of paragraph 79 of the Complaint.

80. State Farm denies the averments of paragraph 80 of the Complaint.

81. The referenced document(s) speaks for themselves. In the alternative, State Farm denies the averments of paragraph 81 of the Complaint.

82. State Farm denies the averments of paragraph 82 of the Complaint.

83. State Farm denies the averments of paragraph 83 of the Complaint.

84. The averments of paragraph 84 of the Complaint concerning other "defendants" are not directed at State Farm and therefore no response is required. In the alternative only, State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averments in paragraph 84 of the Complaint concerning other "defendants." State Farm denies the remaining averments of paragraph 84 of the Complaint.

85. State Farm denies the averments of paragraph 85 of the Complaint.

86. State Farm denies the averments of paragraph 86 of the Complaint.

87. State Farm admits that Dreux Seghers provided engineering services to State Farm in connection with a claim regarding Anna Vela's residence. The referenced document speaks for itself. State Farm denies the remainder of the averments of paragraph 87 of the Complaint.

88. State Farm denies the averments of paragraph 88 of the Complaint.

89. State Farm denies the averments of paragraph 89 of the Complaint.

90. State Farm denies the averments of paragraph 90 of the Complaint.

91. State Farm admits that other State Farm policyholders made Hurricane Katrina-related claims regarding structures located on Baywood Drive. State Farm denies the remainder of the averments of paragraph 91 of the Complaint. Further, State Farm would show that, in a deposition taken in *Melissa Marion and Andrew Marion v. State Farm Fire and Casualty Company, State Farm Mutual Automobile Company and John and Jane Does A-H*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv00969-LTS-RHW, on June 21-22, 2007, Cori Rigsby admitted under oath that she has no basis in fact to support the averments of paragraph 91 of the Complaint:

Q. Well, the statement you made was that the rest of the houses on the street got denied for wind. Is it your testimony now that you don't know if that claim was denied for wind, the next-door neighbor's?

A. Well, when I say denied, what I meant is denied as a total loss. It was my understanding that Ana Vela's claim was paid limits under the wind. So when I say denied, I mean denied limits under the wind.

Q. Okay. So there could have been a partial payment under the wind; as far as you know --

A. I don't know the answer.

(Dp. at 325.)

92. Due to the vague nature of the averment that “[i]n October, Congress passed a grant program for gulf coast Katrina victims,” State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averments of paragraph 92 of the Complaint.

93. Paragraph 93 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that the law speaks for itself and denies the

remainder of the averments of paragraph 93 of the Complaint to the extent they imply wrongdoing or liability on the part of State Farm.

94. State Farm denies the averments of paragraph 94 of the Complaint.

95. State Farm denies the averments of paragraph 95 of the Complaint.

96. State Farm denies the averments of paragraph 96 of the Complaint.

97. State Farm denies the averments of paragraph 97 of the Complaint.

98. State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averment that “several of his friends and associates did not have flood insurance.” State Farm denies the remainder of the averments of paragraph 98 of the Complaint.

99. State Farm denies the averments of paragraph 99 of the Complaint.

100. State Farm denies the averments of paragraph 100 of the Complaint. Further, State Farm would show that, in a deposition taken in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfro & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, on April 30, 2007, Kerri Rigsby admitted under oath that she has no basis in fact to support the averments of paragraphs 97 through 100 of the Complaint:

Q. Do you have any personal knowledge yourself that would support or provide any evidence that such backdating allegedly occurred had actually occurred?

A. I have no personal knowledge.

....

Q. But other than Mike Meyers, any other specific agency name or agent name that you can recall?

A. No, no.

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Q. Even in the form of an allegation against an agent?

A. Not even in the form of an allegation.

(Dp. at 384-86.)

101. Paragraph 101 of the Complaint asserts conclusions of law to which no response is required. In the alternative only, State Farm admits that NFIP documents pertaining to the single adjuster program speak for themselves and denies the remainder of the averments of paragraph 101 of the Complaint to the extent they imply wrongdoing or liability on the part of State Farm.

102. The averments of paragraph 102 of the Complaint concerning other defendants are not directed at State Farm and therefore no response is required. In the alternative only, State Farm lacks information or knowledge sufficient to form a belief as to the truth or falsity of the averments in paragraph 102 of the Complaint concerning other defendants. State Farm admits that it has contracted with independent adjusting firms. State Farm denies the averments of paragraph 102 of the Complaint.

103. State Farm denies the averments of paragraph 103 of the Complaint.

104. State Farm denies the averments of paragraph 104 of the Complaint.

105. State Farm denies the averments of paragraph 105 of the Complaint.

106. State Farm denies the averments of paragraph 106 of the Complaint.

107. State Farm denies the averments of paragraph 107 of the Complaint.

108. State Farm incorporates by reference its responses to the preceding averments of the Complaint.

109. In lieu of answering the averments of paragraph 109, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

110. In lieu of answering the averments of paragraph 110, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

111. In lieu of answering the averments of paragraph 111, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

112. In lieu of answering the averments of paragraph 112, including subparagraphs a.-f. thereto, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

113. In lieu of answering the averments of paragraph 113 pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

114. In lieu of answering the averments of paragraph 114 pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

115. In lieu of answering the averments of paragraph 115, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

With respect to the unnumbered paragraph beginning with the phrase “WHEREFORE, Relators demand judgment” which follows paragraph 115 of the Complaint, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

116. State Farm incorporates by reference its responses to the preceding averments of the Complaint.

117. In lieu of answering the averments of paragraph 117, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

118. In lieu of answering the averments of paragraph 118, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

119. In lieu of answering the averments of paragraph 119, including subparagraphs a.-f. thereto, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

120. In lieu of answering the averments of paragraph 120, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

121. In lieu of answering the averments of paragraph 121, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

122. In lieu of answering the averments of paragraph 122, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

With respect to the unnumbered paragraph beginning with the phrase “WHEREFORE, Relators demand judgment” which follows paragraph 122 of the Complaint, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

123. State Farm incorporates by reference its responses to the preceding averments of the Complaint.

124. In lieu of answering the averments of paragraph 124, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

125. In lieu of answering the averments of paragraph 125, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

126. In lieu of answering the averments of paragraph 126, including subparagraphs a.-d.i. thereto, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

127. In lieu of answering the averments of paragraph 127, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

128. In lieu of answering the averments of paragraph 128, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

129. In lieu of answering the averments of paragraph 129, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

130. In lieu of answering the averments of paragraph 130, including the chart contained therein, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

131. In lieu of answering the averments of paragraph 131, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

132. In lieu of answering the averments of paragraph 132, including subparagraphs a.-e. thereto, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

133. In lieu of answering the averments of paragraph 133, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

134. In lieu of answering the averments of paragraph 134, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

With respect to the unnumbered paragraph beginning with the phrase “WHEREFORE, Relators demand judgment” which follows paragraph 134 of the Complaint, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

135. State Farm incorporates by reference its responses to the preceding averments of the Complaint.

136. In lieu of answering the averments of paragraph 136, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

137. In lieu of answering the averments of paragraph 137, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

138. In lieu of answering the averments of paragraph 138, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

139. In lieu of answering the averments of paragraph 139, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

140. In lieu of answering the averments of paragraph 140, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

141. In lieu of answering the averments of paragraph 141, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

142. In lieu of answering the averments of paragraph 142, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

143. In lieu of answering the averments of paragraph 143, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

144. In lieu of answering the averments of paragraph 144, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

145. In lieu of answering the averments of paragraph 145, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

With respect to the unnumbered paragraph beginning with the phrase “WHEREFORE, Relators demand judgment” which follows paragraph 145 of the Complaint, pursuant to the Federal Rules of Civil Procedure, including, but not limited to Fed. R. Civ. P. 9 & 12(b), State Farm references, asserts and invokes its pending Motions to Dismiss.

146. State Farm incorporates by reference its responses to the preceding averments of the Complaint.

147. State Farm denies the averments of paragraph 147 of the Complaint.

148. State Farm denies the averments of paragraph 148 of the Complaint.

149. State Farm denies the averments of paragraph 149 of the Complaint.

150. State Farm denies the averments of paragraph 150 of the Complaint.

151. State Farm denies the averments of paragraph 151 of the Complaint. Further, State Farm would show that, in a deposition taken in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, on November 19, 2007, Kerri Rigsby testified under oath that she has no basis in fact to support the averments of paragraph 151 of the Complaint:

Q. You do not have any information to testify under oath that State Farm shredded any documents responsive to any grand jury subpoena, do you?

A. No.

Q. You wouldn't have any information about that, would you?

A. No.

Q. You are not aware of any document that Lecky King shredded, are you?

A. No.

(Dp. at 509-10.)

152. State Farm denies the averments of paragraph 152 of the Complaint.

153. State Farm denies the averments of paragraph 153 of the Complaint, including the averments of subparagraphs a. through j. thereto.

154. State Farm denies the averments of paragraph 154 of the Complaint.

State Farm denies the averments of the unnumbered paragraph beginning with the phrase “WHEREFORE, Relators demand judgment” which follows paragraph 154 of the Complaint.

State Farm denies that State Farm committed or is liable for any tort or wrongful act. State Farm further denies that the Rigsbys are entitled to any relief in this Action from State Farm, either at law or in equity. State Farm prays that the Complaint be dismissed with prejudice, and that State Farm’s costs and expenses of litigation, including attorneys’ fees, will be assessed against the Rigsbys and their attorneys.

**THIRD DEFENSE**

Some or all of the claims fail to state a claim upon which relief may be granted.

**FOURTH DEFENSE**

The Rigsbys have failed to comply with Rules 8 & 9 of the Federal Rules of Civil Procedure, as certain matters have not been pled with the requisite particularity and/or specificity.

**FIFTH DEFENSE**

Some or all of the claims may be barred by the applicable statutes of limitations.

**SIXTH DEFENSE**

Some or all of the claims are barred by the doctrines of laches and unclean hands.

**SEVENTH DEFENSE**

The Government and the Rigsbys have failed to mitigate their alleged damages, if any.

**EIGHTH DEFENSE**

The Rigsbys are not an original source.

**NINTH DEFENSE**

Defendant “State Farm Mutual Insurance Company” is an improper Party-Defendant and is not the entity that participated in the Write-Your-Own National Flood Insurance Program in Mississippi. “State Farm Mutual Insurance Company” is a stranger to this Action and has been misjoined and/or improperly joined.

**TENTH DEFENSE**

Some or all of the claims are barred by the applicable provisions of the contracts, policies and/or agreements at issue in this litigation.

**ELEVENTH DEFENSE**

The Rigsbys’ recovery, if any, should be barred or reduced by their contributory or comparative negligence or fault. State Farm invokes apportionment of fault as to all parties and non-parties who may be jointly or severally liable for the Rigsbys' alleged injuries.

**TWELFTH DEFENSE**

State Farm invokes all rights afforded under Mississippi's 1993, 2002 and 2004 Tort Reform Acts, including but not limited to Miss. Code Ann. § 11-1-65.

**THIRTEENTH DEFENSE**

Punitive damages violate the due process, equal protection, and excessive fines clauses of the constitutions of the United States of America and the State of Mississippi.

**FOURTEENTH DEFENSE**

No act or omission of State Farm was malicious, willful, wanton, reckless or grossly negligent and, therefore, any award of punitive damages is barred. Additionally, because of the lack of clear standards, the imposition of punitive damages against State Farm is unconstitutionally vague and/or over-broad.

**FIFTEENTH DEFENSE**

With respect to the Rigbys' demand for punitive damages, State Farm specifically incorporates by reference any and all standards or limitations regarding the determination and enforceability of punitive damage awards which arose by virtue of the United States Supreme Court's decisions in *Philip Morris USA v. Williams*, \_\_\_ U.S. \_\_\_, 127 S. Ct. 1057 (2007), *State Farm v. Campbell*, 123 S.Ct. 1513 (2003), *BMW of North America v. Gore*, 517 U.S.559, 116 S.Ct. 1589 (1996) and *TXO Production Corp. v. Alliance Resources, Inc.*, 509 U.S. 443 (1993).

**SIXTEENTH DEFENSE**

The claims for punitive damages cannot be sustained because an award of punitive damages without proof of every element of such claim beyond a reasonable doubt would violate State Farm's due process rights under the Fourteenth Amendment to the United States Constitution and under Article 3, § 14 of the Constitution of the State of Mississippi.

**SEVENTEENTH DEFENSE**

Alternatively, unless all of State Farm's alleged liability for punitive damages and the appropriate amount of punitive damages to be assessed are required to be established by clear and convincing evidence, any award of punitive damages would violate State Farm's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

**EIGHTEENTH DEFENSE**

The claims for punitive damages cannot be sustained because an award of punitive damages subject to an excessive pre-determined upper limit would violate State Farm's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi, and may result in a violation of

State Farm's right not to be subjected to an excessive award in violation of the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and Article 3, § 28 of the Constitution of the State of Mississippi.

**NINETEENTH DEFENSE**

The claims for punitive damages cannot be sustained because an award of punitive damages by a fact finder that is not provided with standards of sufficient clarity and uniformity for determining the appropriateness or the appropriate size of a punitive damage award would violate State Farm's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

**TWENTIETH DEFENSE**

The claims for punitive damages cannot be sustained because an award of punitive damages by a fact finder that is not instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment and is not instructed to award only that amount of punitive damages as reflects a necessary relationship between the amount of punitive damages and the actual harm in question would violate State Farm's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

**TWENTY-FIRST DEFENSE**

The claims for punitive damages cannot be sustained because an award of punitive damages by a fact finder that is not expressly prohibited from awarding punitive damages, in whole or in part, on the basis of an invidiously discriminatory characteristic, including State Farm's corporate status, would violate State Farm's due process and equal protection rights

guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

**TWENTY-SECOND DEFENSE**

The claims for punitive damages cannot be sustained because an award of punitive damages by a fact finder that is permitted to award punitive damages under standards for determining liability for, and the amount of, punitive damages that are vague, imprecise, inconsistent and arbitrary and do not define with sufficient clarity to give advance notice to a potential defendant of the prohibited conduct or mental state that makes an award of punitive damages possible, would violate State Farm's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

**TWENTY-THIRD DEFENSE**

The claims for punitive damages cannot be sustained because an award of punitive damages by a fact finder that is not subject to trial and appellate court review on the basis of uniform and objective standards would violate State Farm's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

**TWENTY-FOURTH DEFENSE**

The claims for punitive damages cannot be sustained because an award of punitive damages without affording State Farm protections similar to those that are accorded to criminal defendants, including, but not limited to, the protection against unreasonable searches and seizures, double jeopardy or impermissible multiple punishments and compelled self-incrimination, and the right to confront adverse witnesses, to compulsory process for favorable

witnesses, and to the effective assistance of counsel, would violate State Farm's rights guaranteed by the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth and Sixth Amendments as incorporated into the Fourteenth Amendment to the United States Constitution and under Article 3, §§ 14, 22, 26 and 31 of the Constitution of the State of Mississippi.

**TWENTY-FIFTH DEFENSE**

Only one person may bring a *qui tam* action under the False Claims Act and therefore all, or at least one, of the Relators must be dismissed as to each allegation under the False Claims Act.

**TWENTY-SIXTH DEFENSE**

The claims for punitive damages are barred by Article 3, § 17 of the Mississippi Constitution.

**TWENTY-SEVENTH DEFENSE**

The Government (including FEMA) would be obligated to arbitrate, not litigate, all of the claims the Rigsbys purport to assert herein as Relators. The Government (including FEMA) having given no notice to State Farm of a dispute covered by the applicable arbitration provision and having made no demand for arbitration, has not asserted or properly authorized the claims putatively brought by Relators herein. Accordingly, for this and related reasons, the Rigsbys lack standing to assert these claims and the entirety of the claims herein should be dismissed. Additionally and alternatively, should the Government (including FEMA) subsequently give notice to State Farm of a dispute covered by the applicable arbitration provision and/or make a demand for arbitration under the Arrangement or otherwise, State Farm reserves the right to demand and require arbitration of all such claims related to that dispute.

**TWENTY-EIGHTH DEFENSE**

Some or all of the claims may be barred by the doctrines of merger, waiver or discharge.

**TWENTY-NINTH DEFENSE**

State Farm pleads insufficiency of process and/or service of process as to some or all Defendants.

**THIRTIETH DEFENSE**

The Rigsbys have not specifically stated their special damages, if any, as required by Fed. R. Civ. P. 9(g). Accordingly, they are barred from recovering any such damages.

**THIRTY-FIRST DEFENSE**

Some or all of the claims are barred by 31 U.S.C. § 3730(e)(4) and 31 U.S.C. § 3730(b)(5).

**THIRTY-SECOND DEFENSE**

Some or all of the claims are barred by public policy.

**THIRTY-THIRD DEFENSE**

Some or all of the claims are barred by documents and information which are of public record.

**THIRTY-FOURTH DEFENSE**

Some or all of the claims may be barred by lack of standing.

**THIRTY-FIFTH DEFENSE**

Some or all of the claims are barred by the filed-rate and regulatory approval doctrines.

**THIRTY-SIXTH DEFENSE**

Some or all of the claims are barred by the doctrines of exclusive or primary jurisdiction.

**THIRTY-SEVENTH DEFENSE**

Some or all of the claims are barred because State Farm complied with all applicable statutes and with the requirements and regulations of the appropriate regulatory agencies.

**THIRTY-EIGHTH DEFENSE**

Some or all of the claims are barred by independent contractor status and/or the fact that State Farm lacks *respondeat superior* or other vicarious liability for certain persons.

**THIRTY-NINTH DEFENSE**

Some or all of the claims are barred due to preemption by federal law, including federal statutes and regulations.

**FORTIETH DEFENSE**

Some or all of the claims may be barred by the employment-at-will doctrine.

**FORTY-FIRST DEFENSE**

Some or all of the claims are barred by the Rigsbys' employment and other agreement(s) with Renfroe.

**FORTY-SECOND DEFENSE**

Some or all of the claims are barred by the State Farm Network Access Agreements executed by the Rigsbys.

**FORTY-THIRD DEFENSE**

Some or all of the claims are barred by the Agreement for Property and Homeowners Independent Claim Adjuster Services in Catastrophe Situations between State Farm and Renfroe.

**FORTY-FOURTH DEFENSE**

Some or all of the claims may be barred by United States Pub. Law 106-102 (1999), section 104, the Graham-Leach-Bliley Act of 1999, and the regulations promulgated thereunder.

**FORTY-FIFTH DEFENSE**

Some or all of the claims may be barred by estoppel, collateral estoppel, judicial estoppel, and/or res judicata.

**FORTY-SIXTH DEFENSE**

Some or all of the claims may be barred by the doctrines of illegality and/or intervening or superseding cause.

**FOURTY-SEVENTH DEFENSE**

Some or all of the claims may be barred by the doctrine of "*ex dolo malo non oritur actio.*"

**FOURTY-EIGHTH DEFENSE**

Some or all of the claims are barred because the alleged injuries and damages, if any, were caused by persons and entities for which State Farm is not responsible.

**FOURTY-NINTH DEFENSE**

Some or all of the claims are barred by contamination through champerty and maintenance.

**FIFTIETH DEFENSE**

The False Claims Act and this Action are in violation of the United States Constitution's Appointments Clause and the Take Care Clause of Article II.

**FIFTY-FIRST DEFENSE**

Some or all of the claims or requested remedies may be barred by payment and satisfaction.

**FIFTY-SECOND DEFENSE**

Some or all of the claims or the requested remedies may be barred by consent, ratification and/or merger.

**FIFTY-THIRD DEFENSE**

Some or all of the claims or the requested remedies may be barred by the failure of conditions precedent.

**FIFTY-FOURTH DEFENSE**

This Court lacks subject matter jurisdiction over the claims against State Farm in this Action.

**FIFTY-FIFTH DEFENSE**

Some or all of the claims have been misjoined. This Action should be severed due to misjoinder of both claims and Parties. *See* Fed. R. Civ. P. 20 & 21. The misjoinder of the claims is so severe and inappropriate that it rises to a level which will deny State Farm certain state and federal constitutional protections, including the right to due process and a fair trial.

**FIFTY-SIXTH DEFENSE**

Some or all of the claims may be barred by the doctrine of *in pari delicto*, as the Rigsbys may have actively and knowingly participated in the alleged wrongdoing of which they complain and which was actually perpetrated by the Rigsbys and other persons against State Farm. Some or all of the claims may also be barred by the doctrine of *in pari delicto* as applied to the Government.

**FIFTY-SEVENTH DEFENSE**

Some or all of the claims may be barred by the statutes and regulations relating to the National Flood Insurance Program.

**FIFTY-EIGHTH DEFENSE**

Some or all of the claims may be barred by the doctrines of sovereign compulsion and/or approval.

**FIFTY-NINTH DEFENSE**

Some or all of the claims may be barred by the statutes and regulations governing the Federal Emergency Management Agency and its operations/powers.

**SIXTIETH DEFENSE**

State Farm pleads recoupment and/or set-off.

**SIXTY-FIRST DEFENSE**

The Rigsbys' personal claims are barred due to their having engaged in unprivileged unlawful acts.

**SIXTY-SECOND DEFENSE**

Pursuant to Fed. R. Civ. P. 42 and other law, State Farm reserves the right to request: (A) bifurcation of its Counterclaim against the Rigsbys from all claims against State Farm in this Action; or (B) a separate trial of said Counterclaim from all claims in this Action, with, under either alternative, State Farm's Counterclaim to be tried first in time to all other claims in this Action.

**SIXTY-THIRD DEFENSE**

Some or all of the claims are barred by rulings and/or orders in *E.A. Renfro & Company, Inc. v. Cori Rigsby Moran and Kerri Rigsby*; in the United States District Court for the Northern District of Alabama, Southern Division; Civil Action No. 2:06cv01752-WMA-JEO.

**SIXTY-FOURTH DEFENSE**

Some or all of the claims are barred by the Government Knowledge Defense. Further, the Government was aware, and approved of the procedures implemented and followed by State Farm for the purposes of processing claims under the NFIP.

**SIXTY-FIFTH DEFENSE**

Some or all of the claims are barred by the Rigsbys' public disclosures.

**SIXTY-SIXTH DEFENSE**

The Government and the Rigsbys have not suffered any actual injury or damages.

**SIXTY-SEVENTH DEFENSE**

For purposes of the "Reverse False Claims" allegation, during the relevant period, there existed no "obligation" upon State Farm to transfer money to the United States Government as that term is used in 31 U.S.C.A. § 3729(a)(7).

**SIXTY-EIGHTH DEFENSE**

Some or all of the claims are barred by public disclosure.

**SIXTY-NINTH DEFENSE**

This Court lacks jurisdiction due to the Government's failure to exhaust mandatory remedies, including mandatory contractual and arbitration remedies.

**SEVENTIETH DEFENSE**

This Action and all claims herein are barred by the April 4, 2008 "Order of Disqualification and for the Exclusion of Evidence" and "Memorandum Opinion on Motion to Disqualify Members of the Katrina Litigation Group and Associated Counsel" in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States

District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, docket nos. 1172 & 1173.

**SEVENTY-FIRST DEFENSE**

The Rigsbys lack standing to bring this Action as Relators, are barred from prosecuting this Action, are barred from serving as witnesses in this Action and are precluded from using any unlawfully obtained evidence in this Action by the April 4, 2008 “Order of Disqualification and for the Exclusion of Evidence” and “Memorandum Opinion on Motion to Disqualify Members of the Katrina Litigation Group and Associated Counsel” in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, docket nos. 1172 & 1173.

AND NOW, having answered Counts I through IV of the Complaint, and having pled its defenses, State Farm denies that State Farm is liable in any amount. State Farm demands that all claims against it be dismissed.

**Counterclaim**

COMES NOW State Farm, positioned herein as Counter-Plaintiff, and makes the following Counterclaim against Plaintiffs/Counter-Defendants the Rigsbys, as specified below. State Farm would show:

1. This is a Counterclaim brought to redress violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and for other unlawful acts or omissions under the laws of the State of Mississippi that have proximately caused damage to State Farm.

2. Counter-Plaintiff State Farm is a stock insurance company organized and existing under the insurance laws of the State of Illinois, is a wholly owned subsidiary of State Farm Mutual Automobile Insurance Company, and has its principal place of business in Illinois.

3. At all times relevant hereto, Richard F. "Dickie" Scruggs was an attorney who was licensed to practice law in the State of Mississippi; he was affiliated with, and, at all times relevant hereto, conducted his law practice as an agent of The Scruggs Law Firm, P.A.

4. At all times relevant hereto, David Zachary "Zach" Scruggs was an attorney who was licensed to practice law in the State of Mississippi; he was affiliated with, and, at all times relevant hereto, conducted his law practice as an agent of The Scruggs Law Firm, P.A.

5. At all times relevant hereto, The Scruggs Law Firm, P.A., was a Mississippi professional association with its principal place of business at 120A Courthouse Square, Oxford, Mississippi.

6. Anthony L. Dewitt, Edward D. "Chip" Robertson, Jr., and Mary Doerhoff Winter are attorneys who have been licensed to practice law in the State of Missouri; they are affiliated with, and, at all times relevant hereto, have conducted their law practices as agents of Bartimus, Frickleton, Robertson & Gorny, P.C.

7. Anthony L. Dewitt was admitted pro hac vice in this Action to represent the Rigsbys, pursuant to a motion signed by Dickie Scruggs.

8. Edward D. "Chip" Robertson, Jr. was admitted pro hac vice in this Action to represent the Rigsbys, pursuant to a motion signed by Dickie Scruggs.

9. Mary Doerhoff Winter was admitted pro hac vice in this Action to represent the Rigsbys, pursuant to a motion signed by Dickie Scruggs.

10. Bartimus, Frickleton, Robertson & Gorny, P.C., is a Missouri professional corporation with its principal place of business at 715 Swifts Highway, Jefferson City, Missouri.

11. Todd Graves is an attorney who has been licensed to practice law in the State of Missouri; he is affiliated with, and, at all times relevant hereto, has conducted his law practice as an agent of, Bartle, Marcus & Graves, P.C. or Graves, Bartle & Marcus, LLC.

12. Todd Graves was admitted pro hac vice in this Action to represent the Rigsbys, pursuant to a motion signed by Dickie Scruggs.

13. Todd A. Scott is an attorney who has been licensed to practice law in the State of Missouri; he is affiliated with, and, at all times relevant hereto, has conducted his law practice as an agent of, Bartle, Marcus & Graves, P.C. or Graves, Bartle & Marcus, LLC.

14. Counter-Defendants Kerri Rigsby and Cori Rigsby, formerly known as Cori Rigsby Moran (collectively the “Rigsbys”), are sisters who worked for E.A. Renfroe & Company, Inc. (“Renfroe”), a company that provides claim adjusting and related services to insurers such as State Farm.

15. As used hereinafter in this Counterclaim, the term the “Conspirators” shall collectively include Richard F. “Dickie” Scruggs, David Zachary “Zach” Scruggs, The Scruggs Law Firm, P.A., Patricia Lobrano, Anthony L. Dewitt, Edward D. “Chip” Robertson, Jr., Mary Doerhoff Winter, Bartimus, Frickleton, Robertson & Gorny, P.C., Todd Graves, Bartle, Marcus & Graves, P.C. and Graves, Bartle & Marcus, LLC.

**DEMAND FOR JURY TRIAL**

16. State Farm demands a trial by jury on all counts of its Counterclaim.

**JURISDICTION**

*Subject Matter*

17. This Court has jurisdiction over the subject matter of State Farm's Counterclaim pursuant to the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*, specifically, 18 U.S.C. § 1030(a)(2), (a)(4), (a)(5), (g) and 28 U.S.C. § 1331, as those matters arise under the laws of the United States of America.

18. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 because the state law claims asserted in this Counterclaim are so related to the federal law claims that they form part of the same case or controversy under Article III of the United States Constitution.

19. Alternatively, jurisdiction over the subject matter and the Rigsbys in this case is proper pursuant to 28 U.S.C. § 1332 because State Farm and the Rigsbys are citizens of different states and the amount in controversy exceeds \$75,000 for each Counter-Defendant, exclusive of interest and costs.

#### ***Statute(s) of Limitations***

20. State Farm's Counterclaim against the Rigsbys is compulsory.

21. As State Farm's Counterclaim against the Rigsbys is compulsory, it relates back to the date of the filing of the original complaint in this Action for purposes of statute(s) of limitations.

#### ***In Personam***

22. This Court has *in personam* jurisdiction over the Rigsbys.

#### **VENUE**

23. Venue is proper pursuant to 28 U.S.C. § 1391(b) in this district as a substantial part of the events or omissions giving rise to State Farm's claims occurred in this district.

#### **FACTS**

24. Since Hurricane Katrina made landfall on August 29, 2005, the Rigsbys have engaged in an unlawful conspiracy to defraud State Farm and to misappropriate the property of State Farm.

25. Following Hurricane Katrina, Dickie Scruggs, Zach Scruggs, and the Scruggs Law Firm filed a large number of civil actions against State Farm and, together with the Rigsbys, have filed this Action against State Farm.

26. Rather than conducting legal proceedings concerning State Farm in accordance with lawful processes and legal procedures, the Conspirators agreed to, and did, engage in multiple illegal and/or unlawful acts to further the interests of their conspiracy.

27. Objects of the conspiracy included the unlawful misappropriation of State Farm's property, including documents and electronically stored information ("ESI"), to prepare for and litigate civil actions against State Farm, and to unlawfully extort civil settlements from State Farm through improper use of criminal process and influence over certain prosecutorial authorities.

28. To these ends, amongst other illegal, unlawful and/or improper conduct, the Conspirators knowingly encouraged, solicited, and participated in a fraud scheme to wrongfully misappropriate confidential and proprietary information from State Farm to further the objectives of their conspiracy.

***The Fraud Scheme to Unlawfully Obtain and Misappropriate Confidential and Proprietary Information From State Farm In Furtherance of Their Conspiracy***

29. Beginning in or about 1998, the Rigsbys began working for Renfroe.

30. In providing services to insurance companies, such as State Farm, Renfroe's employees, such as the Rigsbys, are given access to commercially sensitive, confidential and private information.

31. As part of Renfroe's policies and practices designed to safeguard such confidential information, Renfroe employees, such as the Rigsbys, enter into agreements with Renfroe not to disclose or misappropriate confidential information during the period of their employment and for a two-year period thereafter.

32. During the course of their employment with Renfroe, each of the Rigsbys entered into and executed employment agreements with Renfroe.

33. By way of example, the Renfroe employment agreement signed by Cori Rigsbys on or about August 13, 2004 provides in part that:

(a) Confidential Information In the course of employment, the Employee will become privy to confidential information of RENFROE, its clients and their customers. During employment and for a two year period after termination of employment with RENFROE, Employee will not disclose or misappropriate any confidential information of RENFROE, its clients or their customers for the Employee's own use or for the use of any other corporation, partnership, firm or entity, except as the President of RENFROE expressly authorizes. Confidential information includes data and information relating to the business of RENFROE and its clients which is or has been disclosed to the Employee or which the Employee became aware as a consequence of or through employment with RENFROE and which has value to RENFROE or its clients but is not generally known to the public. Confidential information further includes any information which is or has been disclosed to the Employee or which the Employee became aware as a consequence of or through employment with RENFROE from or pertaining to the customers of RENFROE's clients. Confidential information shall not include any data or information that has been voluntarily disclosed to the public by RENFROE, its clients or their customers, except where such disclosure has been made by the Employee in an unauthorized manner, or that has been independently developed and disclosed by others, or that otherwise enters the public domain through lawful means. For purposes of this Agreement, misappropriate means disclosing or using for any purpose other than fulfilling the Employee's responsibilities to RENFROE.

34. Having been assigned by Renfroe to work on State Farm matters, and to protect the confidential, private or proprietary nature of the information maintained by State Farm, each of the Rigsbys was required to sign various confidentiality agreements, including an agreement

governing their access to the State Farm computer network (“State Farm Network Access Agreement”).

35. On or about January 21, 2005, and January 20, 2006, each of the Rigsbys signed a State Farm Network Access Agreement.

36. For example, a true and correct copy of Cori Rigsby’s January 20, 2006 State Farm Network Access Agreement is reproduced on the next page:

State Farm®  
Providing Insurance and Financial Services  
Home Office, Bloomington, Illinois 61710

**Confidential**



Dear Associate:

I am advised that you will be gaining access to the State Farm Mutual Automobile Insurance Company's computer network (the State Farm Network). In order that you may have access to the State Farm Network, you must read and follow the terms and conditions of this letter.

1. You shall keep strictly confidential any and all information of State Farm or of third parties, including but not limited to vendors, consultants, suppliers, or customers of State Farm, including any business, trade secret, technical, or proprietary or other like information whether or not such information is specifically designated as confidential. You may not use any information of State Farm or third parties for your own benefit or for the benefit of any other person besides State Farm.
2. You shall use your access to the State Farm Network solely for the purpose of facilitating business communications with State Farm, or complying with mutually agreed to contractual obligations to State Farm.
3. You shall take all necessary precautions to ensure that data (documents, files, programs, etc.) is free of computer viruses before the data is transferred to or used on the State Farm Network by scanning data with the most currently available antivirus software.
4. To enable your access to the State Farm Network, State Farm may assign to you one or more Logon IDs and/or passwords. Under no circumstances whatsoever shall you share your password(s) with anyone, inform anyone of your password(s), or post or document your password(s) in such a way as to give others access to your password(s). You are responsible for all actions performed by your Logon ID while it is active within the State Farm's Network. **IF IT IS DETERMINED THAT UNAUTHORIZED INDIVIDUALS HAVE ACCESS TO THE STATE FARM NETWORK USING YOUR LOGON ID ANY AND ALL OF YOUR ACCESS PRIVILEGES MAY BE REVOKED AND OTHER ACTIONS MAY BE TAKEN AS APPROPRIATE.**
5. You shall not connect to the State Farm Network and any other network simultaneously. The use of a network security device provided by State Farm may allow some concessions to this policy on a case by case basis. All concessions will be carefully examined before being approved and qualified by State Farm Security Services Management.
6. Your use of the State Farm Network, including the State Farm email system is primarily for State Farm business only. **THERE IS NO EXPECTATION OF PRIVACY IN YOUR USE OF THE STATE FARM NETWORK AND THE STATE FARM E-MAIL SYSTEM. THE STATE FARM NETWORK AND THE STATE FARM EMAIL SYSTEM ARE OWNED BY STATE FARM AND ARE SUBJECT TO BEING MONITORED WITHOUT NOTICE.**
7. You shall access only those systems, tools, data and facilities at State Farm that you have been authorized to access. State Farm may revoke your access to the State Farm Network or any portion thereof or to any State Farm facility for any reason without advance warning.
8. You shall comply with all parts of the State Farm Enterprise Information Security Policy, standards, and guidelines that are relevant to your job function.

Without a commitment of confidentiality, we cannot make the State Farm Network available to you. Only the signer of this letter may have access to the State Farm Network.

Please confirm your understanding of and intended compliance with the above terms and conditions by signing below and return this letter to the Department Representative listed below.

Sincerely,

Department Representative Signature

Name: Rick Cecile  
 Title: Staff Consultant  
 Date: January 25, 2006

Associate's Signature

Cori Moran HYNV  
 Print Associate's Name  
 E.A. Repfroe & Company  
 Title/Company  
 1/28/06  
 Date

Print out the form and sign in the appropriate area. Fax the completed form to 309 735 7919 or mail to:

External Coordination  
 Information Technology Systems Services, P-1  
 Corporate South  
 Three State Farm Plaza South  
 Bloomington, IL 61791

122255.1 Rev. 05-05-2004

37. In a deposition taken in *Melissa Marion and Andrew Marion v. State Farm Fire and Casualty Company, State Farm Mutual Automobile Company and John and Jane Does A-H*; in the United States District Court for the Southern District of Mississippi, Southern Division;

Civil Action No. 1:06cv00969-LTS-RHW, on June 20, 2007, Kerri Rigsby admitted under oath that she has violated the State Farm Network Access Agreement:

Q. You -- you were asked to identify your signature on what's been marked as Exhibit 29, and those are various confidentiality agreements with State Farm; correct?

A. Correct.

Q. In those confidentiality agreements, if you'll look at the last paragraph or so, they address the right of the person who's signing that form to access the State Farm network; is that correct?

A. Correct.

Q. And unless someone signs that form, according to this -- this agreement, they would not be allowed to access the State Farm network; is that correct?

MR. HAWLEY: Object. Calls for a legal conclusion, but answer if you can.

BY MR. BANAHAN:

Q. Is that your interpretation of what you're reading there?

A. What I interpret is they cannot make it available to me unless I sign it.

Q. Okay. The -- without going through every phrase and word in this agreement, can we agree that by taking documents from the State Farm system that you violated the terms of this agreement with State Farm?

MR. HAWLEY: Object to the form.

MR. BARRETT: Object to the form.

MR. HAWLEY: Calls for a legal conclusion, but answer if you can.

BY MR. BANAHAN:

Q. I think you have, but did you -- did you violate this agreement?

A. Yes.

Q. Did you have -- and I'm not going to pull it out because I think we went through it when you were being asked questions by Mr. Webb in the McIntosh deposition about the Renfroe confidentiality agreement. Can we agree that you also violated that agreement?

MR. HAWLEY: Same objection. Answer if you can.

MR. BARRETT: I join.

A. Yes.

(Dp. at 74-76.)

38. In a deposition taken in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, on May 1, 2007, Cori Rigsby also admitted under oath that she has violated the State Farm Network Access Agreement:

Q. Okay. Did you have an understanding that at the time that you took those documents, whether electronically or making copies out of the State Farm system, that your actions were in violation of those agreements you had signed with State Farm?

....

A. I -- yes. I'm sure I was aware when I took documents, I was breaking some sort of agreement, yes.

(Dp. at 63-64.)

39. The contracts averred above were not the only legal constraints on the Rigsbys' improper access to and/or disclosure of State Farm's confidential information.

40. For example, Miss. Code Ann. § 97-45-5 provides in part that:

(1) An offense against computer users is the intentional:

....

(b) Use or disclosure to another, without consent, of the numbers, codes, passwords or other means of access to a computer, a computer system, a computer network or computer services.

(2) Whoever commits an offense against computer users shall be punished, upon conviction, by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and

imprisonment. However, when the damage or loss amounts to a value of One Hundred Dollars (\$100.00) or more, the offender may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars (\$10,000.00), or imprisonment for not more than five (5) years, or by both such fine and imprisonment.

*Id.*

41. Additionally, Miss. Code Ann. § 97-45-9 provides that:

(1) An offense against intellectual property is the intentional:

....

(b) Disclosure, use, copying, taking or accessing, without consent, of intellectual property.

(2) Whoever commits an offense against intellectual property shall be punished, upon conviction, by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. However, when the damage or loss amounts to a value of One Hundred Dollars (\$100.00) or more, the offender may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

*Id.*

42. Further, Miss. Code Ann. § 97-45-3 provides in part that:

(1) Computer fraud is the accessing or causing to be accessed of any computer, computer system, computer network or any part thereof with the intent to:

(a) Defraud;

(b) Obtain money, property or services by means of false or fraudulent conduct, practices or representations; or through the false or fraudulent alteration, deletion or insertion of programs or data;....

....

(2) Whoever commits the offense of computer fraud shall be punished, upon conviction, by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. However, when the damage or loss or attempted damage or loss amounts to a value of Five Hundred Dollars (\$500.00) or more, the offender may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

*Id.*

43. Mississippi has long followed the rule of *ignorantia juris non excusat*; that is, every person is charged with knowledge of the law.

44. As a result, the Rigsbys were charged by law with knowledge of these statutory prohibitions against unlawful access and/or disclosure of State Farm's confidential property and information.

45. Shortly after Hurricane Katrina made landfall on the Mississippi Gulf Coast on August 29, 2005, the Rigsbys were deployed by Renfroe for assignments on the Mississippi Gulf Coast in support of State Farm's catastrophe claims handling.

46. As a result of the Rigsbys' execution of State Farm Network Access Agreement, State Farm had issued each of the Rigsbys a laptop computer and a password which enabled them to access various State Farm databases, including State Farm's Claim Service Record ("CSR"), that contained confidential, private or proprietary information maintained by State Farm.

47. In connection with their deployment to the Mississippi Gulf Coast following Hurricane Katrina and because they had signed State Farm's Network Access Agreement, the Rigsbys had access to confidential, proprietary, private and/or trade secret information of State Farm.

48. That information included documents and ESI that derived independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and was the subject of efforts that were reasonable under the circumstances to maintain its secrecy.

49. At some point no later than October 2005, the Rigsbys began to misappropriate physical and electronic records, ESI, documents, or other materials containing, comprising, or relating to the confidential, proprietary, private and/or trade secret information of State Farm.

50. At some point no later than October 2005, the Rigsbys shared at least some of this information with their mother, Patricia Lobrano.

51. No later than February 2006, and continuing thereafter through at least June 2006, the Rigsbys agreed with Dickie Scruggs, Zach Scruggs and some or all of the other Conspirators to engage in a scheme to abuse and exploit their access to State Farm's systems and records for the purpose of misappropriating proprietary, private or confidential information from State Farm to further the objectives of their conspiracy.

52. To this end, the Rigsbys embarked on a scheme by which they fraudulently misrepresented to Renfroe and to State Farm that they were continuing to provide honest services for the benefit of Renfroe and State Farm when, in fact, they were abusing and exploiting their employment with Renfroe to improperly and unlawfully access and misappropriate proprietary, private, protected and/or confidential information from State Farm for the purpose of furthering the objectives of their conspiracy.

53. Directly and as agents for the other Conspirators, and contrary to the representations made by the Rigsbys that they would use their access to the State Farm network solely for authorized purposes and that all such access would comport with the requirements of the State Farm Network Access Agreement, the Rigsbys embarked on a scheme by which they fraudulently misrepresented to State Farm that they were accessing State Farm's protected computers solely for authorized purposes in accordance with the requirements of the State Farm Network Access Agreement when, in fact, they were accessing State Farm's protected computers

and system in order to unlawfully misappropriate proprietary, private, protected and/or confidential information from State Farm for purposes of furthering the objectives of their conspiracy.

54. In *E.A. Renfroe & Company, Inc. v. Cori Rigsby Moran and Kerri Rigsby*; in the United States District Court for the Northern District of Alabama, Southern Division; Civil Action No. 2:06cv01752-WMA-JEO, on January 26, 2007, Kerri Rigsby testified under oath that she provided State Farm's documents to Dickie Scruggs and other Conspirators for use in policyholder lawsuits filed against State Farm:

Q. Well, let me ask you this: Did you authorize Richard Scruggs to give copies of the documents that you gave him for safekeeping to the members of the Scruggs Katrina Group?

A. Yes.

Q. When did you do -- when did you authorize him to do that?

A. I authorized him to do that when he first got the first set of documents.

Q. Okay. So that goes back to February?

A. Yes.

Q. All right. So when [Dickie Scruggs] got the first set of documents, you understood that he was part of a group of lawyers that were involved in these other lawsuits, correct?

A. Yes.

Q. And you understood in February when you gave him copies of the documents, that the documents that you were giving him would be used to further these other lawsuits?

A. Further current lawsuits that were already in progress?

Q. Or ones that would be filed later.

A. I had no objection to that.

(Dp. at 100.)

55. Each time the Rigsbys logged into and accessed State Farm's computer network using their Logon IDs or passwords for purposes of wrongfully obtaining information for purposes of furthering the objectives of their conspiracy, the Rigsbys, directly and as agents of the other

Conspirators, were depriving State Farm of the right of honest services and were misrepresenting to State Farm that such access was in accordance with the terms of the State Farm Network Access Agreement.

56. As part of this scheme to defraud, the Rigsbys obtained information from State Farm's protected computers and system, and such access of State Farm's protected computers and system involved interstate communication between the State Farm computers issued to the Rigsbys which were located in Mississippi and State Farm's computer servers located in other states.

57. On December 15, 2005, a meeting was held between and among Dickie Scruggs, then-Mississippi Commissioner of Insurance George Dale, and Mississippi Deputy Commissioner of Insurance David Lee Harrell at the Mississippi Department of Insurance's offices ("the December 15, 2005 Meeting").

58. During the December 15, 2005 Meeting, Dickie Scruggs represented that a couple of high ranking State Farm representatives were working for him as insiders.

59. Dickie Scruggs has frequently described the Rigsbys as "insiders" with knowledge of claims files and engineer reports.

60. The "insiders" that Defendant Scruggs referred to at the December 15, 2005 Meeting were, in fact, the Rigsbys.

61. Beginning no later than February 2006, the Rigsbys used State Farm laptop computers to wrongfully and unlawfully access the State Farm CSR database.

62. In a deposition taken in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company,*

*Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, on November 20, 2007, Kerri Rigsby testified under oath that Dickie Scruggs was present on more than one occasion when the Rigsbys accessed the State Farm network via the laptop computers that State Farm had issued them:

Q. Okay. Now, the first meeting, it would have been --

A. In the last week of February.

Q. Yeah. That was the first meeting. I'm sorry. And then as we fast-forward to the March -- the additional meetings that occurred at Cori's house?

A. Right. That would be March and April.

Q. Right. At the first March or April meeting, who was present at that meeting?

A. The first March or April at Cori's home?

Q. Uh-huh.

A. Cori, Dick, my mother. And my mother's husband, Bill Lobrano, may have been there, but I don't think -- remember him participating. I think he was there for the first meeting at Cori's home. I'm not sure he was there at any other meeting at Cori's home.

....

Q. The meeting that occurred -- the first March or April 2006 meeting at Cori's house.

A. The second meeting at Cori's house?

Q. Yes.

....

Q. Okay. And were there documents present at that meeting?

A. Yes. I believe there were.

Q. What about a computer?

A. I think there was a computer present. I know there was a computer present at our first meeting.

Q. And by "the first meeting," you mean the February 2006 meeting?

A. February. And I believe there was a computer present at our second meeting, as well.

Q. That occurred at Cori's house?

A. Yes.

....

Q. Okay. And was the computer accessed during the course of the meetings?

MR. BACKSTROM:

Let me object and instruct not to answer as to any materials reviewed during that meeting.

MS. LIPSEY:

I don't believe that's what I'm asking for.

Q. I'm just asking if a computer was accessed during that meeting?

A. Was accessed?

Q. Yeah. Did somebody get on the computer in the course of the meeting?

A. Yes.

Q. And who was that?

A. I know Cori did, and I believe I did as well.

Q. Okay. And was State Farm information accessed at that meeting?

MR. BACKSTROM:

I'm going to object and instruct not to answer.

MS. LIPSEY:

Q. The computers that were at the meeting, I think you said it may have been either perhaps both your computer and Cori's computer. Both of these computers are laptops, right?

A. Yes.

Q. And both of these were State Farm computers, right?

A. Yes.

(Dp. at 625-28.)

63. The Rigsbys furnished Dickie Scruggs and other Conspirators with various documents and/or ESI pertaining to Hurricane Katrina claims that they had wrongfully and unlawfully misappropriated from State Farm.

64. Some of the documents and/or ESI wrongfully accessed by the Rigsbys contained nonpublic personal information regarding State Farm policyholders.

65. Some of the documents and/or ESI wrongfully accessed by the Rigsbys contained nonpublic personal information protected by the privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6827.

66. Some of the documents and/or ESI the Rigsbys furnished Dickie Scruggs and other Conspirators contained nonpublic personal information regarding State Farm policyholders.

67. Some of the documents and/or ESI the Rigsbys furnished Dickie Scruggs and other Conspirators contained nonpublic personal information protected by the privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6827.

68. The Rigsbys' access was in violation of, among other things, the State Farm Network Access Agreement, and was done for purposes of wrongfully and unlawfully obtaining the information for the illicit benefit of the Conspirators and in furtherance of the unlawful objectives of their conspiracy.

69. The Rigsbys obtained confidential, private or proprietary information and data by both copying and accessing State Farm's protected computers and password protected databases.

70. As agents of the other Conspirators, the Rigsbys obtained confidential, private or proprietary information and data by both copying and accessing State Farm's protected computers and password-protected databases.

71. As agents of the other Conspirators, the Rigsbys forwarded internal State Farm e-mails and documents from State Farm computers to their respective personal e-mail accounts, through use of interstate wires, in violation of, among other things, the State Farm Network Access Agreement, and in furtherance of the unlawful objectives of their conspiracy.

72. In a deposition taken in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW on April 30, 2007, Kerri Rigsby testified under oath that she e-mailed documents from the State Farm system to The Scruggs Law Firm, P.A.:

Q. Okay. Do you recall whether you ever forwarded via e-mail either to your personal account or to any third-party e-mail account any documents that you obtained from the State Farm system, documents that ended up with Mr. Scruggs' firm and/or others?

A. I only e-mailed those to my personal e-mail account.

Q. Okay. Only to your personal e-mail account. How many times did you do that?

A. It was a lot of e-mails.

(Dp. at 40.)

73. In a deposition taken in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, on November 19, 2007, Cori Rigsby testified under oath that she transferred data from her State Farm laptop to Zach Scruggs:

Q. Okay. Did you ever transfer data from your State Farm computer to your home computer?

A. I forwarded e-mails.

Q. Okay. Did you forward anything else, any other data?

A. Well, the only thing I would -- I mean, it would have to be attached in the e-mail.

Q. Okay.

A. Yeah. So there could have been a roster or something that I --

Q. E-mails and any attachments?

A. Right.

Q. Okay. Anything else that you can think of?

A. No.

Q. Okay. Did you forward any data from your State Farm computer to any computer other than your home computer?

A. I think I did.

Q. Okay. And what computer would that be?

A. I think I forwarded something to Zach Scruggs.

(Dp. at 539-40.)

74. Dickie Scruggs provided to some or all of the other Conspirators copies of the State Farm documents that the Rigsbys had misappropriated by fraud from State Farm.

75. On or about March 11, 2006, a meeting was held in a trailer under the control of Dickie Scruggs in or near Pascagoula, Mississippi (the "Scruggs Trailer").

76. Among others, the Rigsbys were present at the meeting held in the Scruggs Trailer on or about March 11, 2006.

77. In a deposition taken in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, on November 19,

2007, Cori Rigsby testified under oath that she and Kerri Rigsby literally turned over Cori Rigsby's State Farm laptop to Tony DeWitt, Dickie Scruggs, Zach Scruggs, Mary Winter and Chip Robertson:

Q. At any point in time, did you furnish your State Farm laptop to any lawyer?

A. Yes.

Q. Who?

A. Tony DeWitt.

Q. Who's Tony DeWitt?

A. He's my attorney.

....

A. He's my Qui Tam lawyer.

MR. ROBIE:

Q. He's still your lawyer?

A. Yes.

Q. And when did you give Tony DeWitt your laptop?

A. In April.

Q. Did you also give him your password?

A. I don't remember.

Q. Well, it wouldn't do much good to have the laptop without the password, would it?

A. Well, I was sitting right next to him.

Q. All right. Did you boot it up for him?

A. I don't remember.

Q. What were you searching for?

A. I'm not -- I'm not sure of the exact -- that we had a list. There were some documents that we were talking about. We were talking -- I'm not sure which documents he retrieved. I let him in the computer, and I can't speak after that.

....

Q. He came to your house?

A. No. We met in a trailer.

Q. Pardon me?

A. We met at a trailer.

Q. Okay. Who else was there?

A. Tony DeWitt. There were two meetings in this trailer, and I'm going to get confused as to who was at which meeting.

Q. Well, do your best.

A. Okay. Tony DeWitt, Dick Scruggs, Zach Scruggs, Mary Winters [sic], Chip -

Q. Chip who?

A. I don't remember Chip's last name. Kerri, myself and my mother.

Q. Now, whose trailer was this?

A. I believe it was Dick's trailer.

Q. And where was it at?

A. It seems like it was in the -- in a parking lot by the Longfellow house. I could be wrong on that.

Q. How did you know to go there?

A. Dick set up the meeting.

(Dp. at 392-95.)

78. Patricia Lobrano was present at the meeting held in the Scruggs Trailer on or about March 11, 2006.

79. Dickie Scruggs was present at the meeting held in the Scruggs Trailer on or about March 11, 2006.

80. Anthony "Tony" Dewitt was present at the meeting held in the Scruggs Trailer on or about March 11, 2006.

81. Mary Winter was present at the meeting held in the Scruggs Trailer on or about March 11, 2006.

82. In a deposition taken in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfro & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of

Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, on November 20, 2007, Kerri Rigsby testified under oath as follows:

Q. You met with Mr. Scruggs in a trailer sometime in '06?

A. I did.

Q. And when was that?

A. I believe that was March of '06.

....

Q. You drove with your mom and your sister?

A. Correct.

Q. Anyone else?

A. It was just the three of us.

Q. And who did you meet with at the trailer?

A. We met with several attorneys at that trailer.

Q. Give me their names, please.

A. Tony Dewitt, there was an attorney named Mary, Todd, and Chip.

Q. Mary's last name?

A. I don't recall her last name.

Q. Is she an attorney?

A. She is an attorney. She works with Tony Dewitt.

Q. Does Tony Dewitt have a law firm name?

A. It does, but I don't know what the name is.

Q. How about Todd, was he an attorney?

A. He's an attorney, but I don't believe he's in the same office.

Q. Do you know what firm he's with?

A. I don't.

Q. And Chip, does he have a last name?

A. He does, but I don't recall his last name.

Q. Is he a lawyer?

A. He's a lawyer. I believe he's the head of that firm that Tony works with.

Q. Is that the Merlin firm?

A. I don't think so, no.

Q. Anybody else there?

A. Dick Scruggs was there.

Q. Anyone else?

A. Zach Scruggs may have been there, but I don't -- I don't recall.

Q. And where was this trailer set up?

A. In Pascagoula, right off the beach.

(Dp. at 454:1-5; 454:25-456:13.)

83. On information and belief, the "Todd" about whom Kerri Rigsby testified in the preceding paragraph is either Todd Graves or Todd A. Scott.

84. Edward "Chip" Robertson, Jr. was present at the meeting held in the Scruggs Trailer on or about March 11, 2006.

85. At the meeting held in the Scruggs Trailer on or about March 11, 2006, the Rigsbys used a State Farm laptop to access the State Farm CSR through use of interstate wires.

86. This was done in furtherance of the unlawful objectives of their conspiracy.

87. In or around April 2006 another meeting was held in the Scruggs Trailer.

88. In a deposition taken in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfro & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, Kerri Rigsby testified under oath that:

Q. And then you said that there was another trailer meeting?

A. There's another trailer meeting.

Q. Okay. And do you remember approximately when the second trailer meeting was?

A. I believe it was in April.

Q. Okay. And who was present at that meeting?

A. Cori, my mother, Tony Dewitt, Mary. And she works with him. She's an attorney at that same firm. I don't -- I don't recall if Zach --Zach could have been there, and Dick could have been there, and I don't remember if he was there. If he was there, he didn't stay the whole time because I can remember it just being my mother, my sister, Tony, and Mary, all of us. I can just visualize us sitting in a group talking. You know, I remember that. Is it -- it's possible Dick and Zach were in and out.

Q. Okay.

A. That's -- that was the second meeting at the trailer.

Q. Is this the same trailer?

A. Same trailer.

Q. Okay. And was the trailer in the same location as it was the first time?

A. Yes, yes.

Q. About how long was the meeting?

A. I remember it being several hours.

Q. Were documents reviewed at that meeting?

....

A. Yeah. I believe we reviewed documents at that meeting, I do.

(Dp. at 613-15.)

89. Among others, the Rigsbys were present at the meeting held in the Scruggs Trailer in or about April 2006.

90. Patricia Lobrano was present at the meeting held in the Scruggs Trailer on or about April 2006.

91. Tony Dewitt was present at the meeting held in the Scruggs Trailer on or about April 2006.

92. Mary Winter was present at the meeting held in the Scruggs Trailer on or about April 2006.

93. Todd Graves was present at the meeting held in the Scruggs Trailer on or about April 2006.

94. Chip Robertson was present at the meeting held in the Scruggs Trailer on or about April 2006.

95. Dickie Scruggs was present at the meeting held in the Scruggs Trailer on or about April 2006.

96. Zach Scruggs was present at the meeting held in the Scruggs Trailer on or about April 2006.

97. At the meeting held in the Scruggs Trailer in or about April 2006, the Rigsbys used a State Farm laptop to access the State Farm CSR.

98. The Rigsbys further allowed other Conspirators to observe, read and obtain confidential, private, or proprietary information and data from State Farm's password-protected computer database through use of interstate wires in furtherance of the unlawful objectives of their conspiracy.

99. During the weekend of June 2-5, 2006, the Rigsbys, as agents for the other Conspirators, conducted a data-mining operation, which they have referred to as a "data dump."

100. The "data dump" was done in furtherance of the unlawful objectives of their conspiracy.

101. For example, the Rigsbys have testified under oath that, at the time of the "data dump," they had in their possession a list of Dickie Scruggs' State Farm policyholder clients and used that list for purposes of determining which policyholder files to access and print and/or download.

102. In *E.A. Renfroe & Company, Inc. v. Cori Rigsby Moran and Kerri Rigsby*; in the United States District Court for the Northern District of Alabama, Southern Division; Civil Action

No. 2:06cv01752-WMA-JEO, on January 14, 2008, Cori Rigsby gave sworn testimony confirming the data-mining operation for Dickie Scruggs:

Q. Ms. Rigsby, you've testified regarding engineering roster. Was that the only roster used to download data on or about June 3?

A. No.

Q. What other roster did you use?

A. I had a roster of Dick's clients.

(Dp. at 91.)

103. Over the course of the “data dump” weekend, the Rigsbys used their State Farm laptops, and allowed one or more of the other persons with whom they were working to use their State Farm laptops, to unlawfully access and obtain ESI from the State Farm CSR, through use of interstate wires, in violation of, among other things, the State Farm Network Access Agreement, and in furtherance of the unlawful objectives of their conspiracy.

104. The June 2 through 5, 2006 data-mining operation was intentionally held over the weekend in an effort to avoid or minimize the risk of detection by State Farm.

105. In a deposition taken in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, on May 1, 2007, Cori Rigsby testified under oath that the data-mining operation was conducted over a weekend to help avoid detection by State Farm:

A. My understanding was that the Birmingham office where the server was housed would not be manned over the weekend. So Monday morning when they came to work, they were going to know what we had copied. So that was my deadline, Sunday evening.

(Dp. at 40.)

106. Kerri Rigsby made a similar admission on November 20, 2007 in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfro & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, when she testified under oath as follows:

Q. Well, was it your view that you – that the monitoring at State Farm probably was not taking place over the weekend and you could get away with this?

A. We -- correct. Correct.

(Dp. at 573.)

107. Surreptitiously, covertly and without authorization and/or in excess of authorized access, the Rigsbys and those with whom they were working printed out, downloaded and/or copied a total of what is believed to be some 15,000 pages (or page images) of State Farm documents.

108. During this unauthorized, wrongful and unlawful access, the Conspirators, through their agents the Rigsbys, obtained confidential, private, trade secret and/or proprietary information and data from State Farm's protected computers.

109. The June 2 through 5, 2006 access, and every other access of State Farm's protected computers by the Rigsbys, involved interstate communication between the Rigsbys' access point in Mississippi and State Farm's computer servers located in other states.

110. After the June 2 through 5, 2006 data-mining operation was complete, the Rigsbys gave a copy of the State Farm documents and/or ESI that they had wrongfully and unlawfully misappropriated to Dickie Scruggs to use in his civil litigation against State Farm in furtherance of the unlawful objectives of their conspiracy.

111. Copies of those State Farm documents and/or ESI were also shared with the other Conspirators.

112. Prior to June 5, 2006, and beginning in early 2006, the Rigsbys engaged in multiple and repeated discussions with State Farm employees concerning the identities of the individuals who were working (as so-called "moles" or "insiders") with one or more of the Conspirators.

113. The Rigsbys were repeatedly asked by State Farm employees whether they were those individuals.

114. During those discussions, the Rigsbys repeatedly and regularly misrepresented that they were not those individuals.

115. The Rigsbys' repeated misrepresentations to State Farm employees regarding their involvement with one or more of the Conspirators and their affirmative acts to conceal the fact that they were undertaking actions on behalf of their conspiracy were made in furtherance of their scheme to fraudulently deprive State Farm of the right of honest services and to

misappropriate State Farm's confidential, private or proprietary information and data and in furtherance of the unlawful objectives of their conspiracy.

116. It was not until June 5, 2006, after the "data-dump" weekend data-mining operation was complete, that the Rigsbys disclosed to State Farm any facts relating to their role in the wrongful and unlawful misappropriation of State Farm information and property.

117. No later than July 2006, the Rigsbys were hired by The Scruggs Law Firm, P.A., as so-called "litigation consultants," each with a yearly salary of \$150,000.

118. At the time the Rigsbys were offered and accepted the \$150,000 yearly "salary," each of the Conspirators knew that the Rigsbys were material fact witnesses who would be called to testify in the various legal proceedings that were initiated and being conducted by various Conspirators.

119. In connection with their \$150,000 annual "salary," the Rigsbys each receive twice monthly payments of \$6,250.

120. Such payments have continued at least through December 2007.

121. As part of their compensation package, the Rigsbys have also been provided reimbursement of expenses, personal indemnification by Dickie Scruggs, and payment of their attorneys' fees, costs and expenses from at least three different law firms.

122. Despite being paid \$150,000 as so-called "litigation consultants," the Rigsbys had no set office hours, they were not required to account for their time, they came and went as they pleased, and some weeks they did not "work" at all.

123. The conduct of the Rigsbys and the other Conspirators implicates several Mississippi statutes.

124. Miss. Code Ann. § 97-9-11 provides that:

It shall be unlawful for any person, firm, partnership, corporation, group, organization, or association, either incorporated or unincorporated, either before or after proceedings commenced: (a) to promise, give, or offer, or to conspire or agree to promise, give, or offer, (b) to receive or accept, or to agree or conspire to receive or accept, (c) to solicit, request, or donate, any money, bank note, bank check, chose in action, personal services, or any other personal or real property, or any other thing of value, or any other assistance as an inducement to any person to commence or to prosecute further, or for the purpose of assisting such person to commence or prosecute further, any proceeding in any court or before any administrative board or other agency, regardless of jurisdiction; provided, however, this section shall not be construed to prohibit the constitutional right of regular employment of any attorney at law or solicitor in chancery, for either a fixed fee or upon a contingent basis, to represent such person, firm, partnership, corporation, group, organization, or association before any court or administrative agency.

*Id.*

125. Miss. Code Ann. § 97-9-13 provides that:

Any person violating any of the provisions of section 97-9-11 shall be guilty of maintenance and, upon conviction thereof, shall be punished by imprisonment for one year in the state penitentiary.

*Id.*

126. Miss. Code Ann. § 97-9-10 provides in part that:

(1) Commercial bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any private agent, employee or fiduciary, without the knowledge and consent of the principal or employer, with the intent to influence such agent's, employee's or fiduciary's action in relation to the principal's or employer's affairs.

(2) The agent's, employee's or fiduciary's acceptance of or offer to accept, directly or indirectly, anything of apparent present or prospective value under the circumstances set forth in subsection (1) of this section shall also constitute commercial bribery.

....

(4) Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than six (6) months, or by both such fine or imprisonment.

*Id.*

127. The Rigsbys were charged by law with knowledge of the above statutory prohibitions against champerty, maintenance and commercial bribery.

128. The aforementioned payments and inducements to the Rigsbys are wrongful and unlawful.

129. The Rigsbys' compensation as so-called "litigation consultants" was and is intended to reward them for having misappropriated by fraud thousands of State Farm documents and/or ESI, to pay them for providing testimony in legal proceedings in which they are material fact witnesses, to pay them for conspiring with the other Conspirators to further the objectives of their conspiracy.

130. In an April 4, 2008 "Memorandum Opinion on Motion to Disqualify Members of the Katrina Litigation Group and Associated Counsel" in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, docket nos. 1172, the Court held in part that:

It is apparent to me, from my review of the deposition testimony of the Rigsby sisters, that there was no legitimate reason for these payments and that the "consulting" work that ostensibly justified these payments was a sham. Even if this were not the case, the performance of legitimate work that is closely related to a matter in litigation cannot justify an attorney's payment of a substantial sum of money to a non-expert material witness. Payments to non-expert witnesses are specifically limited to statutory witness fees; reasonable expenses actually incurred for mileage, meals, and lodging; and reasonable compensation for time lost from work while attending a trial or testifying by deposition. (Opinion No. 145 of the Mississippi State Bar Ethics Committee, March 11, 1988). The payments Scruggs made to the Rigsby sisters bears no reasonable connection to any work they performed or to any of expenses they incurred in testifying. These payments were clearly improper. *N.L.R.B. v. Thermon Heat Tracing Services, Inc.*, 143 F.3d 181 (5<sup>th</sup> Cir.1998); *Golden Door Jewelry Creations, Inc. v. Lloyds Underwriters Non-Marine Ass'n*, 865 F.Supp 1516, 1526 (S.D.Fla.1994); *Rentclub, Inc. v. Transamerica Rental Fin. Corp.*, 811 F.Supp 651, 653 (M.D.Fla.1992), *aff'd* 43 F.3d 1439 (11<sup>th</sup> Cir.1995); *Wagner v. Lehman Bros. Kuhn Loeb Inc.*, 646 F.Supp 643 (N.D.Ill.1986).

*Id.*

131. In an April 4, 2008 “Order of Disqualification and for the Exclusion of Evidence” in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, docket nos. 1173, the Court ordered in part that:

That the second motion [966] of State Farm Fire and Casualty Company and the motion [978] of E. A. Renfroe & Company, Inc., to disqualify the members of the Scruggs Katrina Group joint venture who are current counsel of record in this action, the Barrett Law Office, P.A.; Nutt & McAlister, P.L.L.C.; and the Lovelace Law Firm, P.A. , and to disqualify the associated firm of Hesse & Butterworth, P.L.L.C., (and other attorneys associated as counsel for the plaintiffs by these firms) are hereby **GRANTED**;

That these firms and any other associated counsel are hereby **DISQUALIFIED** from representing these plaintiffs or any other individuals who have claims against State Farm Fire and Casualty Company and against E. A. Renfroe & Company, Inc., for property damage sustained in Hurricane Katrina in this case and in any other cases in the United States District Court for the Southern District of Mississippi;

*Id.*

132. Anthony L. Dewitt, Edward D. “Chip” Robertson, Jr., Mary Doerhoff Winter, Bartimus, Frickleton, Robertson & Gorny, P.C., Todd Graves, Bartle, Marcus & Graves, P.C. and Graves, Bartle & Marcus, LLC are “other associated counsel” as that term is used by the Court in the Order quoted in the preceding paragraph.

**Claims**

**COUNT I**

*Violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(2)*

133. State Farm incorporates by reference the preceding averments of its Counterclaim.

134. State Farm’s computers and computer systems, including without limitation its computer servers, are used in interstate commerce or communication and are “protected

computers” under the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030(e)(2). State Farm maintains its “protected computers” in several different states.

135. The Rigsbys, directly or through their agents and the other Conspirators, accessed State Farm’s protected computers to observe, copy, download, print, collect or otherwise misappropriate confidential, private, trade secret and/or protected information and data for their benefit.

136. By accessing State Farm’s protected computers to observe, copy, download, print, collect or otherwise misappropriate confidential, private, trade secret and/or protected information and data for their benefit, the Rigsbys impaired the integrity of such information and data.

137. The Rigsbys, directly or through their agents and the other Conspirators, accessed State Farm’s protected computers and computer systems in violation of the State Farm Network Access Agreement.

138. The Rigsbys, directly or through their agents and the other Conspirators, obtained and sent proprietary information over State Farm’s computer and computer systems without authorization and/or in excess of authorized access.

139. The Rigsbys’ access to State Farm’s protected computers without authorization and/or in excess of authorized access constituted violations of State Farm’s rights by wrongful and dishonest means, methods or schemes.

140. State Farm has been required to spend substantial time and money to respond to, assess or otherwise address the Rigsbys’ access of State Farm’s protected computers without authorization and/or in excess of authorized access. Such sums have exceeded \$5000.00.

141. Almost all computer communications over the Internet are interstate in nature.

142. As but one example, computer communications between a laptop computer in Mississippi and a computer server in another state involve interstate communication.

143. By the actions alleged above, the Rigsbys knowingly and intentionally accessed a computer without authorization and/or in excess of authorized access and thereby obtained information from a protected computer by conduct that involved an interstate communication.

144. By the actions alleged above, the Rigsbys caused a “loss,” as that term is defined in the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(e)(11), to State Farm of more than \$5,000 in value during any one-year period, thus implicating the factors set forth in 18 U.S.C. § 1030(a)(5)(B)(i).

145. The Rigsbys’ activity constitutes a violation of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(2).

146. Based on the actions alleged above, and as a result of the Rigsbys’ wrongful, unlawful and unauthorized acts, State Farm is entitled to all damages permitted by 18 U.S.C. § 1030.

## **COUNT II**

### *Violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(4)*

147. State Farm incorporates by reference the preceding averments of its Counterclaim.

148. By the actions alleged above, the Rigsbys, directly or through their agents and the other Conspirators, knowingly and with intent to defraud, accessed State Farm’s protected computers and computer systems, without authorization and/or in excess of authorized access.

149. By the actions alleged above, the Rigsbys furthered the intended fraud and obtained unauthorized use of State Farm's protected computers and computer systems, obtained things of value, and caused a "loss," as that term is defined in the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(e)(11), to State Farm of more than \$5,000 in value during any one-year period, thus implicating the factors set forth in 18 U.S.C. § 1030(a)(5)(B)(i).

150. The Rigsbys' activity constitutes a violation of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(4).

151. Based on the actions alleged above, and as a result of the Rigsbys' wrongful, unlawful and unauthorized acts, State Farm is entitled to all damages permitted by 18 U.S.C. § 1030.

### **COUNT III**

#### *Violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(5)*

152. State Farm incorporates by reference the preceding averments of its Counterclaim.

153. By the actions alleged above, the Rigsbys, directly or through their agents and the other Conspirators, knowingly and intentionally accessed State Farm's protected computers and computer systems without authorization, and as a result of such action, caused damage.

154. By the actions alleged above, the Rigsbys knowingly and intentionally accessed State Farm's protected computers and knowingly caused the transmission of a program, information, code, or command, without authorization and/or in excess of authorized access, and intentionally caused damage.

155. By the actions alleged above, the Rigsbys intentionally caused damage, recklessly caused damage, or simply caused damage as the term “damage” is defined in the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(e)(8).

156. By the actions alleged above, the Rigsbys caused a “loss,” as that term is defined in the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(e)(11), to State Farm of more than \$5,000 in value during any one-year period, thus implicating the factors set forth in 18 U.S.C. § 1030(a)(5)(B)(i).

157. The Rigsbys’ activity constitutes a violation of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(5).

158. Based on the actions alleged above, and as a result of the Rigsbys’ wrongful, unlawful and unauthorized acts, State Farm is entitled to all damages permitted by 18 U.S.C. § 1030.

#### **COUNT IV**

##### *Trespass to Chattels*

159. State Farm incorporates by reference the preceding averments of its Counterclaim.

160. State Farm’s computers and computer systems, including without limitation its computer servers, and documents and ESI therein are the personal property of State Farm.

161. The Rigsbys, directly or through their agents and other Conspirators, misappropriated non-public documents and ESI from State Farm’s files and computers systems.

162. The Rigsbys were aware that their actions were specifically prohibited by the State Farm Network Access Agreement and/or were on notice that their actions were not authorized by State Farm.

163. The Rigsbys, directly or through their agents and other Conspirators, have knowingly, intentionally and without authorization used and intentionally trespassed upon State Farm's property.

164. The Rigsbys' trespass on State Farm's property was willful, malicious, oppressive, and in wanton and conscious disregard of State Farm's rights. State Farm is, therefore, entitled to an award of punitive damages to punish their wrongful conduct and to deter future wrongful conduct.

165. As a result of the Rigsbys' wrongful and unlawful actions, State Farm has been damaged in an amount to be proven at trial.

#### **COUNT V**

##### *Conversion*

166. State Farm incorporates by reference the preceding averments of its Counterclaim.

167. The Rigsbys, directly or through their agents and other Conspirators, have intentionally and wrongfully interfered with and converted State Farm's personal property without lawful justification, and they have put such property to unauthorized uses, as a result of which State Farm has been deprived of possession and use of its property.

168. The Rigsbys' conversion of State Farm's property was willful, malicious, oppressive, and in wanton and conscious disregard of State Farm's rights. State Farm is, therefore,

entitled to an award of punitive damages to punish their wrongful conduct and to deter future wrongful conduct.

169. As a result of the Rigsbys' wrongful and unlawful actions and omissions, State Farm has been damaged in an amount to be proven at trial.

**COUNT VI**

*Common Law Fraud*

170. State Farm incorporates by reference the preceding averments of its Counterclaim.

171. The Rigsbys, directly or through their agents and other Conspirators, have knowingly and/or recklessly engaged in the deceptive practices, material misrepresentations and material omissions complained of herein in order to deprive State Farm of the right of honest services.

172. The Rigsbys, directly or through their agents and other Conspirators, have knowingly and/or recklessly engaged in the deceptive practices, material misrepresentations, and material omissions – including the fraudulent concealments - complained of herein in order to improperly access and misappropriate proprietary, private or confidential information from State Farm.

173. The Rigsbys, directly or through their agents and other Conspirators, intended that their material misrepresentations and material omissions complained of herein should be acted upon by State Farm and in the manner reasonably contemplated.

174. State Farm had no knowledge of the falsity of the Rigsbys' misrepresentations until the time of the limited disclosures made by the Rigsbys to State Farm on June 5, 2006, and

State Farm had a right to rely upon and did rely upon the Rigsbys' deceptive practices, material misrepresentations and material omissions to its detriment.

175. The Rigsbys' deceptive practices, material misrepresentations and material omissions were willful, malicious, oppressive, and in wanton and conscious disregard of State Farm's rights. State Farm is, therefore, entitled to an award of punitive damages to punish their wrongful conduct and to deter future wrongful conduct.

176. As a result of the Rigsbys' wrongful and unlawful actions, State Farm has been damaged in an amount to be proven at trial.

#### **COUNT VII**

##### *Violation of the Mississippi Trade Secrets Act*

177. State Farm incorporates by reference the preceding averments of its Counterclaim.

178. During their employment with Renfroe, the Rigsbys gained knowledge of confidential and propriety information, including trade secrets of State Farm, which trade secrets were disclosed to the Rigsbys only on express conditions as set forth herein.

179. The Rigsbys were under a duty to maintain the secrecy and limit the use of State Farm's trade secrets to legitimate and authorized purposes.

180. By engaging in the acts and omissions described herein, the Rigsbys have disclosed, and/or, in the alternative, inevitably in the future will disclose, State Farm's trade secrets in violation of the law, including the Mississippi Trade Secrets Act, Miss. Code Ann. § 75-26-1 *et seq.*

181. The Rigsbys have engaged in "improper means" with respect to their access to and use of State Farm's trade secrets, as that term is defined by Miss. Code Ann. § 75-26-3.

182. The Rigsbys have engaged in “misappropriation” with respect to State Farm’s trade secrets, as that term is defined by Miss. Code Ann. § 75-26-3.

183. The Rigsbys and the other Conspirators have obtained and used State Farm’s trade secrets from the Rigsbys, knowing that the trade secrets were obtained by improper means.

184. Such conduct by the Rigsbys amounts to a willful, wanton and, in the alternative, reckless violation of Mississippi law.

185. State Farm is entitled to preliminary and permanent injunction prohibiting the Rigsbys from disclosing, misappropriating or utilizing in any manner, State Farm’s trade secrets.

186. Further, the Rigsbys are liable to State Farm for damages and a constructive trust should be impressed upon their ill-gotten gains.

187. Miss. Code Ann. § 75-26-7 (1972) provides that:

(1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages.

*Id.*

188. Additionally and alternatively, the Rigsbys are liable to State Farm for all remedies and damages available under the Mississippi Trade Secrets Act, including those authorized by Miss. Code Ann. § 75-26-7 (1972).

**COUNT VIII**

*Breach of Contract*

189. State Farm incorporates by reference the preceding averments of its Counterclaim.

190. The State Farm Network Access Agreements executed by the Rigsbys are contracts.

191. The Rigsbys represented to State Farm that they intended to be bound by all the terms of the State Farm Network Access Agreements through their execution of same.

192. By executing the State Farm Network Access Agreements, the Rigsbys contracted to perform all the terms of the State Farm Network Access Agreements as written.

193. By executing the State Farm Network Access Agreements, the Rigsbys bound themselves to fully perform the State Farm Network Access Agreements.

194. By executing the State Farm Network Access Agreements, the Rigsbys bound themselves to engage in good faith and fair dealing in their performance of the State Farm Network Access Agreements.

195. At the time of their respective execution of the State Farm Network Access Agreements, the Rigsbys intended to be bound by and to honor each and every written representation they made to State Farm in the State Farm Network Access Agreements.

196. At the time of their respective execution of the State Farm Network Access Agreements, the Rigsbys intended to be bound by and to honor each and every term of the State Farm Network Access Agreements.

197. At the time of the Rigsbys' respective execution of the State Farm Network Access Agreements, State Farm had the right to believe that the Rigsbys intended to be bound by each and every written representation they were making to State Farm in the State Farm Network Access Agreements.

198. The State Farm Network Access Agreements state in part that:

1. You shall keep strictly confidential any and all information of State Farm or of third parties, including but not limited to vendors, consultants, suppliers, or customers of State Farm, including any business, trade secret, technical or proprietary or other like information whether or not such information is specifically designated as confidential. You may not use any information of State Farm or third parties for your own benefit or for the benefit of any other person besides State Farm.
2. You shall use your access to the State Farm Network solely for the purpose of facilitating business communications with State Farm, or complying with mutually agreed to contractual obligations to State Farm.
3. ....
4. ...Under no circumstances whatsoever shall you share your password(s) with anyone, inform anyone of your password(s), or post or document your password(s) in such a way as to give others access to your password(s). You are responsible for all actions performed by your Logon Id while it is active within State Farm's network....

199. The acts and omissions of the Rigsbys, including, but not limited to their breach of representations made in the State Farm Network Access Agreements, constitute material uncured breaches of contract.

200. The acts and omissions of the Rigsbys, including, but not limited to their breach of the covenant of good faith and fair dealing with respect to the State Farm Network Access Agreements, constitute material uncured breaches of contract.

201. The Rigsbys have failed to cure their material breaches of the State Farm Network Access Agreements.

202. The acts of the Rigsbys have caused and are causing State Farm consequent and proximate injury.

203. The acts of the Rigsbys have caused and are causing State Farm damage.

204. The acts and omissions of the Rigsbys have damaged and continue to damage State Farm by causing it to incur unnecessary attorneys' fees, costs and expenses.

205. The Rigsbys are liable to State Farm for all such actual damages as State Farm has and may further suffer as a result of the Rigsbys' breaches of contract, including its actual damages, incidental damages, attorneys' fees, expenses and court costs.

### **COUNT IX**

#### *Civil Conspiracy*

206. State Farm incorporates by reference the preceding averments of its Counterclaim.

207. The Rigsbys and the other Conspirators, willfully, knowingly, and intentionally agreed and conspired with each other for the purpose of engaging in unlawful conduct, for unlawful purposes, including acts of fraud, violation of the Computer Fraud and Abuse Act, trespass, conversion and misappropriation of trade secrets, and for the purpose of engaging in both otherwise lawful and unlawful conduct by wrongful conduct and means.

208. Rigsbys and the other Conspirators, committed the acts alleged pursuant to, and in furtherance of, that agreement and furthered the conspiracy by cooperating, encouraging, ratifying, or adopting the acts of the others.

209. As a direct and proximate result of the acts in furtherance of the conspiracy, State Farm has suffered injury, damage, loss, and harm. The wrongful conduct committed pursuant to the conspiracy was a substantial factor in causing this harm.

210. The Rigsbys' intentional agreement to commit, and the commission of, these wrongful acts was willful, malicious, oppressive, and in wanton and conscious disregard of State Farm's rights. State Farm is, therefore, entitled to an award of punitive damages to punish their wrongful conduct and to deter future wrongful conduct.

211. As a result of the Rigsbys' wrongful and unlawful actions, State Farm has been damaged in an amount to be proven at trial.

### **VICARIOUS LIABILITY**

#### *Bases for Vicarious Liability*

212. State Farm incorporates by reference the preceding averments of its Counterclaim.

213. The Rigsbys are each vicariously liable for all their respective wrongful acts and omissions alleged herein, including those of the other Conspirators, under the doctrines of: respondeat superior; conspiracy; aiding and abetting; agency; joint venture; co-adventure; and/or joint tortfeasor.

### **PRAYER AND AD DAMNUM**

214. State Farm incorporates by reference the preceding averments of its Counterclaim.

215. State Farm demands judgment from and against the Rigsbys, jointly and severally for:

- (1) All such damages recoverable under 18 U.S.C. § 1030;
- (2) All such damages recoverable under the Mississippi Trade Secrets Act, Miss. Code Ann. § 75-26-1 *et seq.*, including those authorized by Miss. Code Ann. § 75-26-7 (1972);
- (3) All attorneys' fees, costs and expenses State Farm has incurred and will incur in the defense of Count V of the Rigsbys' Complaint and in the prosecution of State Farm's Counterclaim;
- (4) Such other actual damages as to which State Farm may be justly entitled;
- (5) Such punitive and exemplary damages, sanctions, penalties or other relief as may be appropriate in the premises;
- (6) A permanent injunction ordering the Rigsbys to return all chattels and ESI of State Farm in their possession, custody and/or control, whether in physical and/or electronic media and prohibiting them from further using or disclosing in any manner whatsoever, any documents, ESI, media or information concerning State Farm which they garnered via wrongful acts, including prohibiting their use in this Action;
- (7) The imposition of a constructive trust on the Rigsbys' ill-gotten gains, as well as an award and order of disgorgement;
- (8) Pre and Post judgment interest as allowed by applicable law; and
- (9) Such further, supplemental or alternative relief as may be appropriate at law or in equity.

This the 8<sup>th</sup> day of April, 2008.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

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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 8<sup>th</sup> day of April, 2008.

s/ E. Barney Robinson III (MSB #09432)  
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