

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

THOMAS C. AND PAMELA McINTOSH PLAINTIFFS

VERSUS) CIVIL ACTION NO: 1:06cv1080-LTS-RHW

STATE FARM FIRE & CASUALTY COMPANY
FORENSIC ANALYSIS & ENGINEERING CORPORATION
And E. A. RENFROE & COMPANY, INC. DEFENDANTS

VIDEOTAPE DEPOSITION OF JACK KELLY

9:33 a.m.
Monday, September 17, 2007
Office of Galloway, Johnson, Tompkins, Burr & Smith
Gulfport, MS

Reported by:
Nancy L. Farris, CSR-1535

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1 do we get these e-mails, these discoverable e-mails put away
 2 in a separate computer --
 3 A. Un --
 4 BY MR. CANADA: Objection.
 5 MR. WYATT CONTINUED:
 6 Q. Excuse me. These discoverable e-mails put away in a
 7 separate computer zone, as you referred to it?
 8 BY MR. CANADA: Object to form.
 9 MR. WYATT CONTINUED:
 10 Q. Is that correct?
 11 A. No, it would be undiscoverable e-mails.
 12 Q. Because you were trying to make them that way?
 13 A. That's correct.
 14 Q. Okay.
 15 A. And that's what it says where Bob says further --
 16 you can go ahead and read that.
 17 Q. Maybe we need some legalese in front of each to
 18 create an attorney work product or attorney/client privilege
 19 presumption; is that what he's talking about?
 20 A. That's what I take it as.
 21 Q. Uh huh (affirmative response), so that the contents
 22 will be considered attorney/client privilege. He just goes on
 23 and says it, doesn't he?
 24 A. Yes.
 25 Q. Did all that come out of the conference with Mr.

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1 Canada that started this e-mail chain?
 2 BY MR. CANADA: Again don't discuss our
 3 conference. We're going to take action on this
 4 because this is inadvertently disclosed, and you are
 5 --
 6 BY MR. WYATT: And we're going to proffer --
 7 BY MR. CANADA: Any way we'll deal with it.
 8 BY MR. WYATT: -- that, counsel, if your file
 9 reflects that you were counseling someone about how
 10 to commit fraud, there's a serious problem, and I
 11 won't say any more.
 12 BY MR. CANADA: Right, and you're going to run
 13 into serious problems making those allegations
 14 because you're totally mischaracterizing this
 15 e-mail.
 16 BY MR. WYATT: We shall see.
 17 BY MR. CANADA: And you shouldn't have it to
 18 begin with.
 19 BY MR. WYATT: We shall see.
 20 BY MR. CANADA: How did you get it?
 21 BY MR. WYATT: We shall see.
 22 BY MR. CANADA: How did you get it?
 23 MR. WYATT CONTINUED:
 24 Q. And then this e-mail finishes with, please, discuss
 25 with Larry; is that Mr. Canada?

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1 A. He's the only Larry I knew at the time.
 2 Q. And let us know if that is needed or would be
 3 helpful. And what he's referring to, if it's needed is that
 4 you plug in something legal into the e-mail, some kind of
 5 language that would color it with the presumption of
 6 attorney/client privilege or work product?
 7 A. That's what it appears to be.
 8 Q. All right, thank you. Let me show you an e-mail,
 9 Mr. Kelly, that is dated January 30th, 2006, 9:45 a.m., and
 10 it's from you, right?
 11 A. Uh huh (affirmative response).
 12 Q. To Nellie, right? Is that correct? You have to
 13 answer. I'm sorry.
 14 A. Yes, I'm sorry.
 15 Q. We all do it.
 16 A. I was reading and answering, and I can't multi task.
 17 Q. Neither can I. And also copies Down, Randy Down?
 18 A. Yes.
 19 Q. All right, this is about the McIntosh case, right?
 20 Job No. 88?
 21 A. Job 88 is McIntosh.
 22 Q. Okay, by now we all know that number, if we don't
 23 know any other, right?
 24 A. Well I know that number.
 25 Q. Okay, let me take this line by line with you.

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1 A. Yes.
 2 Q. Okay, you say I'm trying to look for a precedent to
 3 address the SF issue. That means State Farm?
 4 A. State Farm, yes.
 5 Q. On Job 12. I came across Job 88. Now you say you
 6 came across it. You've long since been and rewrote the
 7 McIntosh inspection report, right?
 8 BY MR. CANADA: Objection to form.
 9 MR. WYATT CONTINUED:
 10 Q. Brian Ford was there first, and then you came on the
 11 20th, October 20th? Just eight days after Brian?
 12 A. A week later, right.
 13 Q. Okay, so when you came across Job 88, this is
 14 January, you're looking in your files?
 15 A. Yes.
 16 Q. Okay, I came across Job 88 in the data I have. What
 17 data are you referring to there?
 18 A. The case files.
 19 Q. On your laptop computer?
 20 A. No, in a box.
 21 Q. Well hard copy?
 22 A. Hard copies, yes.
 23 Q. That's the same information that you later turned
 24 over to the criminal authorities who served you with
 25 subpoenas?