

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

THOMAS C. & PAMELA MCINTOSH

PLAINTIFFS

VERSUS

1:06-cv-1080-LTS-RHW

**STATE FARM FIRE AND CASUALTY COMPANY; and
E. A. RENFROE & COMPANY, INC., et al**

DEFENDANTS

**MOTION TO COMPEL CORI AND KERRI RIGSBY
TO ANSWER DEPOSITION QUESTIONS**

Defendant State Farm Fire and Casualty Company, by and through its counsel of record, pursuant to Federal Rule 37, moves the Honorable Court for an order: (i) overruling the objections interposed by the Rigsbys' and plaintiffs' counsel at the Rigsbys' November 19 and 20, 2007 depositions and ordering them to fully respond to questions concerning their misuse of State Farm laptops and documents that they stole from State Farm and funneled to the former SKG; (ii) granting State Farm an additional hour to reconvene the deposition of Cori Rigsby and an additional hour to reconvene the deposition of Kerri Rigsby in order to get full and complete answers on these issues; and (iii) awarding State Farm its attorneys fees and costs in connection with this motion and necessitated by reconvening the Rigsbys' depositions. In support thereof, and as more fully set forth in its Memorandum of Law in support of this motion, State Farm states as follows:

I.

On October 1, 2007, this Court overruled unfounded privilege objections and ordered that State Farm was entitled to reconvene the Rigsbys' depositions. *See* October 1, 2007 Order at 7 (Doc. 563).

II.

On November 19, 2007, Cori Rigsby's deposition was reconvened. On November 20, 2007, Kerri Rigsby's deposition was reconvened. At the direction of their and plaintiffs' counsel, the Rigsbys have yet again refused to answer questions regarding their unauthorized use of State Farm computers and documents they admittedly stole from State Farm. Instead, they asserted claims of purported work product and attorney-client privilege.

III.

Subsequent to the October 1 Order, this Court has ruled on two occasions that State Farm is entitled to the information it seeks from the Rigsbys. By Order dated December 14, 2007 (Doc. 919), this Court ordered the Rigsbys to produce numerous documents that they stole from State Farm. Without exception, this Court rejected the Rigsbys' claims of privilege. Similarly, by Order dated December 11, 2007 (Doc. 911), this Court ruled that State Farm is permitted to depose Richard Scruggs and Zach Scruggs and to pursue discovery with respect to documents stolen from State Farm by the Rigsbys and provided to the former SKG.

IV.

Even if a privilege existed, which one does not, it was waived by the presence of third persons at the Rigsbys' meetings with the SKG.

V.

Even if a privilege existed, it was vitiated by the crime fraud exception.

VI.

Pursuant to Federal Rule 37, State Farm is entitled to recover its attorneys fees and costs in connection with this motion and necessitated by reconvening the Rigsbys' depositions.

WHEREFORE, PREMISES CONSIDERED, State Farm, pursuant to Federal Rule 37, respectfully moves this Honorable Court for an order: (i) overruling the objections interposed by the Rigsbys' and plaintiffs' counsel at the Rigsbys' November 19 and 20, 2007 depositions and ordering them to fully respond to questions concerning their misuse of State Farm laptops and documents that they stole from State Farm and funneled to the former SKG; (ii) granting State Farm an additional hour to reconvene the deposition of Cori Rigsby and an additional hour to reconvene the deposition of Kerri Rigsby in order to get full and complete answers on these issues; and (iii) awarding State Farm its attorneys fees and costs in connection with this motion and necessitated by reconvening the Rigsbys' depositions. In addition, State Farm reserves its right to reconvene the Rigsbys' depositions with respect to documents that they have yet to produce.

Dated: December 21, 2007

Respectfully submitted,

BRYAN, NELSON, SCHROEDER
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Attorneys for Defendant,
STATE FARM FIRE & CAS. CO.

BY: s/John A. Banahan
JOHN A. BANAHAN (1731)

CERTIFICATE OF SERVICE

I, **JOHN A. BANAHAN**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have this date electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of such filing to the following to:

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DATED, this the 21st day of December, 2007.

/s/ John A. Banahan
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