

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

STATE FARM FIRE AND CASUALTY  
COMPANY AND STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY

PLAINTIFFS

VS.

CIVIL NO. 2:07CV188BP

JIM HOOD, IN HIS OFFICIAL  
CAPACITY AS ATTORNEY GENERAL  
OF THE STATE OF MISSISSIPPI

DEFENDANT

HEARING

BEFORE THE HONORABLE DAVID C. BRAMLETTE  
UNITED STATES DISTRICT JUDGE  
FEBRUARY 6TH AND 7TH, 2008  
NATCHEZ, MISSISSIPPI

REPORTED BY: MARY VIRGINIA "Gina" MORRIS, RMR, CRR  
Mississippi CSR #1253

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1 APPEARANCES:  
 2  
 3 FOR THE PLAINTIFFS: MR. E. BARNEY ROBINSON III  
 4 MR. ROBERT C. GALLOWAY  
 5 MR. JEFFREY A. WALKER  
 6 MR. J. KENNEDY TURNER  
 7 MR. JAMES R. ROBIE  
 8  
 9 FOR THE DEFENDANT: MR. J. LAWSON HESTER  
 10 MR. DANNY E. CUPIT  
 11 MR. WILLIAM H. LISTON  
 12 MS. MARY JO WOODS  
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1 (COURT CALLED TO ORDER)  
 2 THE COURT: Thank you, Ms. Jackson. Good morning.  
 3 Take your seat. Good morning. Take your seat, please. All  
 4 right. Let me ask you to do the same thing you did when we  
 5 were here before and that's identify yourself. I think I know  
 6 who you are, but we may have someone that is here today that  
 7 was not here in November. Would you do so, please, beginning  
 8 with Mr. Robinson over here.  
 9 MR. ROBINSON: Yes, sir, your Honor. Barney Robinson  
 10 for the plaintiffs and Bob Galloway, Jeff Walker, Jack Purvis  
 11 from our IT staff, Ken Turner and Mr. Jim Robie.  
 12 THE COURT: Good morning, Mr. Hester.  
 13 MR. HESTER: Morning, your Honor. Lawson Hester for  
 14 the Office of the Attorney General, State of Mississippi. With  
 15 me is Danny Cupit, Mary Jo Woods, Mr. William Liston and also  
 16 Jackie Ray from my office.  
 17 THE COURT: Very well. What says the plaintiff this  
 18 morning? Are you ready to proceed?  
 19 MR. ROBINSON: We are, your Honor. We'd resume by  
 20 recalling our first witness, who we did not complete,  
 21 Mr. Snyder.  
 22 THE COURT: Very well. Yes.  
 23 MR. WALKER: Your Honor, one housekeeping matter.  
 24 When we were here back in November, we introduced plaintiffs'  
 25 Exhibit 54, which I believe had a portion of one of the

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1 attachments cut off. And I've confirmed that with the deputy  
 2 this morning. And we would ask permission to substitute a  
 3 non-cutoff version of plaintiffs' Exhibit 54.  
 4 THE COURT: Any objection?  
 5 MR. HESTER: We have no objection.  
 6 (EXHIBIT P-54 MARKED)  
 7 MR. HESTER: May it please the court.  
 8 THE COURT: Mr. Hester, let me say to you, the  
 9 microphone system in this new courtroom is less than desirable;  
 10 and Ms. Morris is having a little hard time picking you up. So  
 11 if you would speak loudly. You don't have to sit down and get  
 12 right into microphone. Just keep your voice up. We have some  
 13 technology people who are coming down here to try to adjust  
 14 these microphones, but she's having a little difficulty. Go  
 15 ahead, Mr. Hester.  
 16 MR. HESTER: Yes, your Honor. Based upon your Honor's  
 17 ruling and order entered in January regarding this matter, it  
 18 was our understanding from your Honor's ruling that the first  
 19 matter to be taken up this morning prior to even considering  
 20 whether any further testimony would be required would be the  
 21 defendant's abstention-based motion to dismiss. That was  
 22 contained in your Honor's order. And I believe paraphrasing  
 23 your Honor's order the statement was that if the defendant's  
 24 motion is denied, the testimony would be allowed.  
 25 THE COURT: Let's kind of go over that a little bit.

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1 You all have a seat and let's sort of review where we were and  
 2 where we've come from. There were two previous hearings; and  
 3 the issues that the court was interested in, as you recall, was  
 4 itemized by the court. And you have the transcript. And I  
 5 don't remember the page of that transcript wherein the court  
 6 addressed the issues that it's interested in hearing from you  
 7 concerning.  
 8 Let the record show that this is a continuation of the  
 9 other two hearings. Let me also say to all of you that there  
 10 will be no decision announced from the bench. Quite often I  
 11 try to do that and do announce my opinions from the bench when  
 12 I am equipped to do so. But here the issues are simply too  
 13 complex and in some instances there may be very little judicial  
 14 precedent to guide the court.  
 15 There is a TRO in place issued by Judge Starrett, as  
 16 all of you know. I believe the date of that is September 2007.  
 17 Now, this TRO has been in place by agreement for several  
 18 months. No rights will be compromised, in my opinion, if the  
 19 parties agree. And that's what I'm asking you to do, that the  
 20 court will be given a reasonable time to rule.  
 21 We're not trying to enjoin an asteroid from hitting  
 22 the earth tomorrow morning. I need time, ladies and gentlemen,  
 23 to fashion an opinion which covers all of the issues; and it's  
 24 going to take me some time to do that. And when I say "some  
 25 time," I'm not talking about months. I'm talking about days

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1 and perhaps weeks, as many motions as which have been filed in  
 2 this case right up until this week and including this week.  
 3 And I'm catching them faster than I can put them on a stringer.  
 4 And so I've got to have some time. And I ask you if  
 5 there's any objection from either side to let this TRO stay in  
 6 place temporarily until such time as I can give you a written  
 7 opinion. Now, your question to me is how long am I talking  
 8 about. 20 days perhaps, whatever you can agree upon. What  
 9 says the plaintiff, Mr. Robinson?  
 10 MR. ROBINSON: No objection on behalf --  
 11 THE COURT: What says Mr. Hester?  
 12 MR. HESTER: No, sir, your Honor. Based upon the  
 13 terms and the status quo of the court's order, I think the  
 14 terms and conditions the court had in place are proper.  
 15 THE COURT: Thank you very much, both of you. I thank  
 16 you kindly for that. And we will -- I won't limit myself to 20  
 17 days. It may be 21; but, certainly, within 30 days I will have  
 18 something out for you.  
 19 The second thing I want to mention is this. We have  
 20 talked previously about this 1/23/07 agreement. Judge Starrett  
 21 found and you have pointed out in your documents and your  
 22 pleadings that the reading is unambiguous. I don't differ with  
 23 Judge Starrett. He said -- and I agree -- the language is  
 24 clear; but taking the language at face value, it's somewhat  
 25 difficult for me to determine what it covers. In other words,

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1 what is it that this document is saying? The court will  
 2 consider some parol evidence. The court recognizes that and I  
 3 tell you that parol evidence cannot be used to alter an  
 4 agreement or to modify. I understand that. But it can be used  
 5 to explain the meaning of a document.  
 6 Now, the analysis of this document should begin by an  
 7 inquiry as to whether the reasonable expectations of the  
 8 parties here can be ascertained under an objective standard by  
 9 explaining the language of the document and examining -- I  
 10 should have said examining the language of the document is what  
 11 I intended to say. Let me be more specific with you.  
 12 The letter agreement of 1/23/07 says the attorney  
 13 general will conclude the investigation. What is the  
 14 investigation? What was the investigation? There needs to be  
 15 some explanation it seems to me as to what this investigation  
 16 involved. I understand what that statement says. It says that  
 17 the investigation will be concluded, but there is some concern  
 18 as to what the investigation did involve.  
 19 Now, let's move on to another related matter. Let me  
 20 refer you to page 11 of the plaintiffs' submission of 1/25/08.  
 21 And we're talking about here a new investigation. What is this  
 22 new investigation? Does it violate the terms of the January 23  
 23 letter agreement? State Farm says that the new investigation  
 24 is outlined in General Hood's letter of July 16, '07, to United  
 25 States Attorney Alice Martin over in Alabama.

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1 Now, State Farm was not present when the court  
 2 considered in camera the review -- a review of the new  
 3 investigation. The court has some knowledge of what this  
 4 involves. The plaintiff here, State Farm, has no knowledge.  
 5 But the plaintiff is speculating, is it not?  
 6 Referring again to page 11 of that submission, State  
 7 Farm says, and I quote, Further, in a letter dated July 16,  
 8 2007, to the United States Attorney Alice Martin, Attorney  
 9 General Hood described this current investigation, meaning the  
 10 one that's ongoing now, the one that's the subject of this  
 11 hearing and this suit, as follows. And then you go on to say,  
 12 State Farm, in there -- and I might as well just read it so  
 13 that both sides will understand what we're talking about. I'm  
 14 quoting now from State Farm's submissions.  
 15 "By way of background you're probably aware that  
 16 Mr. Scruggs represents Cori and Kerri Moran, two sisters  
 17 employed by Renfroe who were working as contractors for State  
 18 Farm on the Mississippi gulf coast following Hurricane Katrina.  
 19 The sisters became concerned with the apparently fraudulent  
 20 practices that they witnessed in handling of Katrina claims  
 21 and, in the spring of 2006, removed incriminating documents  
 22 from State Farms' catastrophe office. Renfroe has sued the  
 23 sisters for violating their employment contract and has  
 24 demanded the return of the documents."  
 25 I'll continue with this letter which is a quote from

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1 Attorney General Hood's office, a quote from the letter. "Our  
 2 investigation into the conduct of State Farm necessarily  
 3 implicates Renfroe because Renfroe is the preferred adjusting  
 4 services provider used by State Farm and the direct link to the  
 5 National Flood Insurance Program, the point at which we believe  
 6 the fraudulent claim assessments were passed on to the  
 7 taxpayers for payment."  
 8 Mr. -- and I continue to quote. "Mr. Scruggs has  
 9 functioned as a confidential informant for our investigation  
 10 and is protected by state law as a whistleblower. Using those  
 11 documents, my office here has conducted an ongoing  
 12 investigation into what we believe is State Farm's fraudulent  
 13 conduct not only for their own policyholders, but also against  
 14 the National Flood Insurance Program as well."  
 15 Now, the reason I read that is because, once again,  
 16 State Farm is speculating as to what this new investigation  
 17 involves. Now, I tell y'all this to also tell you that I'm  
 18 going to allow State Farm the liberty of questioning the  
 19 witnesses for the defendant regarding the National Flood  
 20 Insurance Program. If, indeed, this program is the focus of  
 21 the new investigation, then today's exploration of how the  
 22 program may be involved may preclude another hearing. That's  
 23 what I'm trying to avoid. I want to resolve all of these  
 24 issues during this hearing if possible.  
 25 Now, let me tell you that I make absolutely no

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1 representation of if or how the flood program may be the focus  
 2 of any new grand jury inquiry, but if the flood program and the  
 3 claims emanating therefrom involved any -- involve now any new  
 4 investigation, then at some point this court may be asked to  
 5 decide if this program was covered by the non-prosecutorial  
 6 agreement. So that's the whole purpose of it.  
 7 Also State Farm argues that if, indeed, it is right in  
 8 speculating that this flood program is the gravamen of the new  
 9 investigation, State Farm argues that the Attorney General of  
 10 the United States may initiate a prosecution for violation of  
 11 federal law and that General Hood may not do so. You may want  
 12 to produce evidence as to that if that is your desire.  
 13 Now, let me say also at the very beginning of this  
 14 hearing that I can discern from the media and from the  
 15 pleadings that emotions are elevated in this case. And this is  
 16 not unusual where there are overtones which reach far beyond  
 17 the issues which the court is being called upon to decide,  
 18 overtones which involve ongoing investigations in the Northern  
 19 District of Mississippi together with political innuendo and  
 20 issues of public interest.  
 21 I say this to you to be able to tell you that  
 22 contention, as you know, sometimes leads to petulance. And  
 23 it's the issue of this court to resolve the issues which are in  
 24 this case and to resolve the contention and to avoid any  
 25 petulance which would distract the court and all of you from

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1 the ultimate goal, which is to apply the law to the facts. And  
 2 my goal is to discern the facts from the evidence.  
 3 I ask you to continue to be cordial to each other as  
 4 you have been. Beginning this morning we're going to pan the  
 5 debris and the sand and the rocks and we're going to get to the  
 6 essence of that and that is where we begin.  
 7 Now, in response to the statement made by Mr. Hester,  
 8 I'm going to let the plaintiff continue. This motion to  
 9 dismiss is what Mr. Hester has addressed based on the Younger  
 10 abstention doctrine. The court is not willing at this time to  
 11 make a ruling on this. I'm going to hear the evidence. I'm  
 12 going to let both sides go into the issues which have been  
 13 raised in your pleadings untethered. I'm not going to stop  
 14 you. I'm going to let the plaintiff proceed.  
 15 We have already found, have we not -- I believe the  
 16 court earlier determined that the prerequisites of abstaining  
 17 under Younger had been met. They've been satisfied. I said  
 18 that earlier. This hearing will address whether or not there  
 19 are any exceptions to the Younger doctrine. There are narrowly  
 20 tailored exceptions, as you know, that are available; and that  
 21 may be applicable in this case. And that's what we're here  
 22 today to do, one of the things, so that I can properly  
 23 adjudicate the merits.  
 24 So to answer, Mr. Hester, I'm not going to rule in  
 25 your favor on the issue you just raised, sir. I'm going to

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1 have a full-throated hearing on all of these issues. You may  
 2 begin, Mr. Robinson.  
 3 MR. HESTER: Thank you, your Honor.  
 4 THE COURT: Yes, sir. Thank you, Mr. Hester.  
 5 MR. ROBINSON: Thank you, your Honor.  
 6 THE COURT: And let me say for those of you who have  
 7 laptops -- and the marshal may have said something to you about  
 8 that earlier. We have a problem here technologically in the  
 9 courtroom. If you use your laptops between now and noon, there  
 10 will be a problem with Ms. Morris picking up what she's trying  
 11 to do. So do not use them until I let you know. We have a  
 12 technician coming down from Jackson that will do whatever he's  
 13 got to do to allow you to use your laptops and I apologize for  
 14 that.  
 15 MR. HESTER: Your Honor, we'd like to invoke the rule.  
 16 THE COURT: All right. The rule is invoked. The  
 17 sequestration rule is invoked. You may keep your  
 18 representative in the courtroom and you may name them if you'd  
 19 like to.  
 20 (PAUSE)  
 21 THE COURT: Now, Mr. Robinson, what were you saying,  
 22 sir? Who is your representative?  
 23 MR. ROBINSON: Yes, your Honor. I believe -- and I'm  
 24 going to ask Mr. Galloway to correct me if I get this wrong --  
 25 that the only client representative who is in the courtroom who

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1 we've identified as a potential witness is Mr. Jeff Jackson who  
 2 is in-house counsel with State Farm.  
 3 THE COURT: All right.  
 4 MR. ROBINSON: Am I correct in that?  
 5 MR. GALLOWAY: I think that's correct, your Honor.  
 6 Mr. Jackson was our representative at the previous hearing.  
 7 THE COURT: Very well. He will be allowed to remain.  
 8 And what about the defense?  
 9 MR. HESTER: The representative, your Honor, will be  
 10 Attorney General Jim Hood. When Mr. Hood arrives, we'd like  
 11 him to remain in the courtroom.  
 12 THE COURT: All right, sir. You may proceed, sir.  
 13 MR. TURNER: May it please the court, your Honor.  
 14 THE COURT: Mr. Turner, all right. Your witness is on  
 15 the stand.  
 16 THE CLERK: Should we swear him in?  
 17 THE COURT: What's your question? About swearing him  
 18 in. Go ahead and do so. He was sworn previously, but let's do  
 19 it again so the record will be clear.  
 20 ED SNYDER,  
 21 having first been duly sworn, testified as follows:  
 22 DIRECT EXAMINATION  
 23 BY MR. TURNER:  
 24 Q. Mr. Snyder, when we had our hearing some months ago, you  
 25 had testified on direct and then cross-examination and now

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1 we're back on direct. Is that correct?  
 2 A. That's correct.  
 3 Q. And I believe when we discussed this back in November, you  
 4 had indicated that as to the January 23rd letter agreement  
 5 that's been introduced into evidence, which is Exhibit 23 which  
 6 is now before you, that you had been responsible for assisting  
 7 Attorney General Hood in the drafting of the first paragraph  
 8 but not the second paragraph. Is that correct?  
 9 A. Well, I assisted him in modifying the previously drafted  
 10 agreement.  
 11 Q. You had not been involved up until January the 23rd. Is  
 12 that correct?  
 13 A. That's correct.  
 14 Q. All right. And to address one of the court's questions  
 15 about -- under -- oh, midway through the paragraph, that the  
 16 Attorney General of the State of Mississippi will conclude the  
 17 investigation as to State Farm, up about beginning the third  
 18 line of that first paragraph, it says in the criminal  
 19 investigation being conducted by the Mississippi Attorney  
 20 General's Office in State Farm's handling of Hurricane Katrina  
 21 claims hereinafter investigation. That is how the  
 22 investigation was defined for the purposes of the agreement, is  
 23 it not?  
 24 A. That's correct.  
 25 Q. And I believe -- correct me if I'm wrong, but I believe you

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1 told the court at the last hearing that you were not involved  
 2 in the drafting of the second -- or in redrafting, whatever the  
 3 case may be, of the second paragraph. Is that correct?  
 4 A. That's correct.  
 5 Q. But you were aware that a five-million-dollar payment was  
 6 made to the Attorney General's Office the day after in  
 7 connection with this investigation. Is that correct?  
 8 A. The day or the day of or the day after. I don't recall.  
 9 Q. Okay. But that payment was made. Correct?  
 10 A. I assume it was. I was called and asked who would receive  
 11 it for our office and I gave an attorney at your office the  
 12 name of that individual. Had that individual called.  
 13 Q. I believe this was not known to you when I asked the  
 14 question last time, but you were sent here instead of Attorney  
 15 General Hood to testify last time. Is that correct?  
 16 A. I don't know how I got here.  
 17 Q. All right.  
 18 THE COURT: Did you come by seawater or --  
 19 A. I think they dropped me in, your Honor.  
 20 BY MR. TURNER:  
 21 Q. Were you not asked whether or not you had brought any of  
 22 the documentation that Magistrate Judge Parker had required  
 23 defense to bring in terms of verifying the cost of the  
 24 investigation? Do you recall that question?  
 25 A. Say that again.

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1 Q. Do you recall being asked whether or not you brought any of  
 2 the documentation verifying the cost of the five-million-dollar  
 3 investigation last time?  
 4 A. I don't recall being asked that, but I didn't -- I didn't  
 5 bring anything and I wasn't told to bring anything concerning  
 6 that.  
 7 Q. All right. Did you bring anything or were you told to  
 8 bring anything in connection with the documents which would  
 9 verify the cost of the investigation to the hearing today?  
 10 A. I was not.  
 11 Q. Okay. Again, when you testified on November the 1st, I  
 12 believe you said that you had met with the attorney general and  
 13 with attorney Dickie Scruggs on one occasion. Is that correct?  
 14 A. That's correct.  
 15 Q. And did you tell me that it was sometime shortly before the  
 16 issuance of the first subpoena duces tecum?  
 17 A. That's correct. I believe it must have been in February of  
 18 '06.  
 19 Q. Where did that meeting occur?  
 20 A. In the Attorney General's Office.  
 21 Q. Was anyone present other than yourself and Attorney General  
 22 Hood and Dickie Scruggs?  
 23 A. Oh, yes.  
 24 Q. Who was present?  
 25 A. Tim Howard with our office. I know the Charlie Maris, the

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1 head of the criminal appeals section, was there. I think  
 2 Deshun Martin was there.  
 3 Q. And, now, who is Deshun Martin, please?  
 4 A. He's also with the -- at the time I believe he was with the  
 5 criminal division. I'm not sure. There may have been others.  
 6 I do remember those.  
 7 Q. Were there --  
 8 A. And Scott Johnson may have been there. I don't recall.  
 9 Q. Were there any other persons other than the representatives  
 10 of the Attorney General's Office and General Hood there, any  
 11 other private individuals other than Mr. Scruggs?  
 12 A. I don't recall any other private individuals.  
 13 Q. What was the purpose of meeting with Mr. Scruggs in  
 14 February 2006?  
 15 A. Well, I don't -- you know, Tim Howard was handling the case  
 16 and I was just told to be there. I was there.  
 17 Q. Maybe a better question would be, what was discussed at the  
 18 meeting?  
 19 A. It was mentioned that there was some informant who had  
 20 records, and that was discussed.  
 21 Q. Did the name of the informants come up?  
 22 A. Their names -- I don't recall their name was mentioned. At  
 23 least if it were, I don't recall it being mentioned.  
 24 Q. Whether it was mentioned there or subsequently, you learned  
 25 it was Cori and Kerri Rigsby. Is that correct?

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1 A. That's correct.  
 2 Q. And also the subject that they had documents came up. Is  
 3 that correct?  
 4 A. That's correct.  
 5 Q. Tell me what was said about the documents.  
 6 A. Well, it wasn't all that much said about the documents.  
 7 Tim had been working on the case and I believe it was discussed  
 8 that they had to do with engineering reports.  
 9 Q. Were any documents brought by Mr. Scruggs to this meeting?  
 10 A. I don't recall.  
 11 Q. Could have been, but you don't know one way or the other at  
 12 this time?  
 13 A. If there were documents -- I mean, I don't recall them  
 14 being brought; but if there were, there were very few.  
 15 Q. What, if anything, was said or planned with regard to  
 16 Mr. Scruggs turning over any documents from these informants in  
 17 the future?  
 18 A. Well, I don't recall specifically, but I'm sure that there  
 19 was some understanding that they would be turned over. But I  
 20 don't recall specifically.  
 21 Q. Did the fact come up for discussion that these documents  
 22 had been stolen from State Farm by these informants?  
 23 A. No. Stolen wasn't mentioned. No.  
 24 Q. Was there another word that you could substitute for  
 25 "stolen"? Taken without authority or anything of that nature?

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1 A. Well, my impression was that they had access to the  
 2 documents and they took documents they had access to.  
 3 Q. Without State Farm's permission?  
 4 A. Well, it was clear that State Farm had not given  
 5 permission.  
 6 Q. And wasn't it also clear that State Farm had no knowledge  
 7 that they had taken the documents?  
 8 A. Apparently, that's correct.  
 9 Q. Did any discussion come up, not necessarily with  
 10 Mr. Scruggs in the meeting, but afterwards with Mr. Hood and  
 11 the other members of the Attorney General's Office, of the  
 12 legality of accepting documents that had been taken without  
 13 permission and without knowledge from a company?  
 14 A. Well, I was not asked to research that.  
 15 Q. Do you know if anyone was asked to research it?  
 16 A. I don't know.  
 17 Q. Were there other matters that were discussed at this  
 18 meeting other than the fact of the informant and these  
 19 documents that they had taken without permission and without  
 20 knowledge?  
 21 A. Well, there may have been some other matters discussed, but  
 22 it does not stand out in my mind.  
 23 Q. No one told Mr. Scruggs "Don't bring us any documents that  
 24 we might need to get a search warrant for if it was coming  
 25 directly from us," did they?

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1 A. No. Well, that wouldn't have -- probably wouldn't have  
 2 come up because it would have been -- see, I didn't know how  
 3 many documents there were. And, you know, the Fourth Amendment  
 4 doesn't apply to private parties. If a private party took it  
 5 and gave it to another private party and they examined them and  
 6 they turned them over to us, you know, there wouldn't be any  
 7 Fourth Amendment issue.  
 8 Q. Yes, sir. And if that happened the second time or the  
 9 third time, there might start to be a suspicion raised on the  
 10 Silver Platter Doctrine or something like that?  
 11 A. Well, we wouldn't have exceeded the scope of the private  
 12 party's inspection of those documents. If they looked at them,  
 13 examined them, that's all that our office would have done  
 14 anyway.  
 15 Q. So if you knew that they were taking the documents without  
 16 permission and without knowledge of the company from which they  
 17 were taking them, even though they may come to you three, four,  
 18 five or ten times with stolen documents and the Attorney  
 19 General's Office knew they were stolen, you would still accept  
 20 them and not tell them that there might be some illegality  
 21 involved?  
 22 MR. HESTER: Objection. There's been no objection to  
 23 the documents themselves being stolen. The question,  
 24 therefore, is misleading.  
 25 THE COURT: Sustained as to stolen. Rephrase your

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1 question, counsel.  
 2 MR. TURNER: Sure. Thank you, your Honor.  
 3 BY MR. TURNER:  
 4 Q. Even though the Attorney General's Office would know that  
 5 these informants were taking documents without permission and  
 6 without the knowledge of the company from which they were being  
 7 taken, is it your testimony that the Attorney General's Office  
 8 would still continue to take those documents no matter how many  
 9 times they came back to the Attorney General's Office? There  
 10 would never be any warning given them that the Attorney  
 11 General's Office at some point might be violating the party's  
 12 Fourth Amendment rights?  
 13 A. Well, the Attorney General's Office certainly would not  
 14 make them an agent of the office.  
 15 Q. I'm sorry?  
 16 A. The Attorney General's Office would not make a private  
 17 citizen an agent of the Attorney General's Office to take  
 18 documents that it would make them an agent for the Attorney  
 19 General's Office.  
 20 Q. Yes, but my question is -- I understand your point that if  
 21 you get some documents and you haven't asked for them and the  
 22 persons that brought them to you just brought them to you  
 23 voluntarily, are you saying that they could repeat that act  
 24 six, ten, 12 times and you could just keep taking the  
 25 documents? There would never be a point at which the Attorney

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1 General's Office would recognize that the informants had at  
 2 least become a de facto agent and were accepting -- giving  
 3 documents to the attorney general?  
 4 A. My assumption was that they had gotten all the documents  
 5 they were going to get.  
 6 Q. In February?  
 7 A. That was my assumption.  
 8 Q. All right. But my question now to you is, if your  
 9 assumption was wrong and if they had continued to bring  
 10 documents, not only in February, but in March and May and June,  
 11 are you saying that the Attorney General's Office could still  
 12 accept those documents without there being a Fourth Amendment  
 13 violation?  
 14 MR. HESTER: Again, your Honor, it's a hypothetical  
 15 question assuming facts not in evidence. I don't think it's a  
 16 fair question of the witness.  
 17 THE COURT: Overruled. He may answer.  
 18 A. There's no way that I can answer that because I didn't know  
 19 that to be the situation.  
 20 BY MR. TURNER:  
 21 Q. Okay. But you --  
 22 A. My assumption is that they had gotten all the documents  
 23 that they were going to get and they contacted Scruggs and that  
 24 was it. That was my understanding at that February meeting.  
 25 Q. Okay. And later it came to be your understanding, did it

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1 not, that in June of 2006 these same informants in what's come  
 2 to be known as the data dump -- I won't use the word  
 3 "illegally" yet, but without State Farm's permission and  
 4 without State Farm's knowledge over a weekend, which State  
 5 Farm's offices were closed, downloaded, printed and delivered  
 6 to the Attorney General's Office thousands of documents, did  
 7 they not?  
 8 A. I don't know anything about that.  
 9 Q. You don't know anything about it?  
 10 A. No.  
 11 Q. Okay.  
 12 A. I'm assuming that the documents that were discussed in  
 13 February were all the documents that they had turned over.  
 14 Q. You mentioned that Mr. Howard, Tim Howard, with the  
 15 Attorney General's Office was at this meeting in which  
 16 Mr. Scruggs was present. Is that correct?  
 17 A. That's correct.  
 18 Q. How long had Mr. Howard been working on the case prior to  
 19 the meeting with Mr. Scruggs?  
 20 A. I would imagine a very short period of time. I don't know.  
 21 Q. Okay. You mentioned that you would not have an agent of  
 22 the state acquire without knowledge and without permission  
 23 documents and bring them to the Attorney General's Office. Is  
 24 that correct?  
 25 A. That's -- that's what I would do.

Page 24

1 Q. Okay.  
 2 A. I would not make someone an agent of the state to take  
 3 private documents.  
 4 Q. Okay. A confidential informant would be considered an  
 5 agent of the state, would he not?  
 6 MR. HESTER: I object, your Honor, to that. That  
 7 calls certainly for a legal conclusion.  
 8 THE COURT: Sustained. I sustain it.  
 9 BY MR. TURNER:  
 10 Q. How long have you been a prosecutor, Mr. Snyder?  
 11 A. Since about I guess 1969.  
 12 Q. Okay. A great part of that time was as a district  
 13 attorney. Is that correct?  
 14 A. That's correct.  
 15 Q. And as a district attorney, you were familiar with the use  
 16 of confidential informants in criminal cases, were you not?  
 17 A. That's correct.  
 18 Q. And your knowledge of that continued when you worked with  
 19 the Attorney General's Office. Is that correct?  
 20 A. Yes.  
 21 Q. As you were doing your job as district attorney, did you  
 22 consider confidential informants agents of the state?  
 23 MR. HESTER: Same objection, your Honor. Still calls  
 24 for --  
 25 THE COURT: Overruled. I'll let him answer that.

Page 25

1 A. They could be and they may not be. They can be a  
 2 confidential informant by coming with information and that's  
 3 all they do.  
 4 BY MR. TURNER:  
 5 Q. If they do more than --  
 6 A. They can be a confidential informant and work with bureau  
 7 of narcotics agents in an ongoing investigation and they still  
 8 would be confidential informants and working in an ongoing  
 9 capacity.  
 10 Q. But they could also be agents of the state depending on the  
 11 circumstances?  
 12 A. Depending on the circumstances, they could be.  
 13 Q. All right. Switch gears a little bit. If we could pull up  
 14 Exhibit 2, please, which has been previously introduced into  
 15 evidence. This is the first subpoena duces tecum, the  
 16 March 2006 subpoena duces tecum, that was issued served on  
 17 State Farm. To address another one of His Honor's questions or  
 18 areas of interest that he identified today, the March 2006  
 19 Harrison County subpoena duces tecum doesn't make any  
 20 distinction between homeowner files and NFIP flood files, does  
 21 it?  
 22 A. I don't see any distinction there.  
 23 Q. All right. And if we could pull up Exhibit 17, please,  
 24 which is the December 2006 Jackson County grand jury subpoena.  
 25 It may take a little longer to read these; but if you would

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1 read the items that are called for in that subpoena duces  
 2 tecum, my question to you is the same. This subpoena,  
 3 likewise, doesn't make any distinction between homeowner files  
 4 and flood files, does it?  
 5 THE COURT: What is the date of that, sir?  
 6 MR. TURNER: Your Honor, this is the December 18,  
 7 2006, grand jury subpoena, Exhibit Number 17.  
 8 A. When was this subpoena --  
 9 BY MR. TURNER:  
 10 Q. I believe it was actually served on State Farm maybe  
 11 December 22. It's dated December 18, signed by the clerk of  
 12 the court.  
 13 A. It does not mention the flood insurance program.  
 14 Q. And my question to you is, it doesn't distinguish between  
 15 homeowner or flood, does it? It just requires the production  
 16 of those documents whether they apply to homeowner policies or  
 17 whether they apply to flood policies. Right?  
 18 A. It requires those documents. That's correct.  
 19 Q. Now, you also I believe testified at the last hearing that  
 20 State Farm --  
 21 A. Now, you've got to understand that that first subpoena --  
 22 you would have a different level of knowledge in later  
 23 subpoenas than you would the first subpoena. So when the first  
 24 subpoena was issued and even later on there was no concern  
 25 about the National Flood Insurance Program. What was being

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1 investigated is the denial of the wind claims.  
 2 Q. And when did State Farm get told this by the Attorney  
 3 General's Office --  
 4 A. We don't --  
 5 Q. -- that they were looking at homeowner claims, not NFIP  
 6 claims?  
 7 A. That would not have been told to State Farm or any other  
 8 entity or person being investigated.  
 9 Q. So when these documents were asked to be provided and it  
 10 didn't distinguish between homeowner claims or flood claims,  
 11 State Farm was required to produce both, was it not?  
 12 A. It was just required to produce the documents mentioned in  
 13 the subpoena.  
 14 Q. Yeah. And if it applied to flood claims, produce those  
 15 too. Correct?  
 16 A. If it applied to flood claims, yes.  
 17 Q. All right. Now, you also testified, did you not, at the  
 18 last meeting that as a result of the subpoenas issued by the  
 19 Attorney General's Office State Farm had produced hundreds of  
 20 thousands of documents. Correct?  
 21 A. Many banker's boxes.  
 22 Q. And I believe you said you had not had the opportunity to  
 23 review those to say what was in them and what was not. Is that  
 24 correct?  
 25 A. No, I did not review them.

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1 Q. Are you now aware that if you had looked at those documents  
 2 you would have seen that State Farm produced documents related  
 3 to both homeowner and flood claims?  
 4 A. Well, I haven't looked at them. So I don't know what they  
 5 show.  
 6 Q. Are you aware that you would have seen documents such as  
 7 the FEMA Write Your Own bulletins, the FEMA finance and  
 8 substantive agreement, the operation guide for flood payments,  
 9 flood reports, flood claims processing, training?  
 10 A. No, I'm not aware of that.  
 11 MR. HESTER: I object. The witness has said he hasn't  
 12 reviewed the document.  
 13 THE COURT: Yes. And I think he answered that way,  
 14 Mr. Hester. Thank you, sir.  
 15 BY MR. TURNER:  
 16 Q. I believe you testified that the -- if we could pull up the  
 17 Exhibit 46, please, which is the August 23, 2007, subpoena that  
 18 was issued to State Farm, you testified that related to a new  
 19 matter. Is that correct?  
 20 A. That's correct.  
 21 Q. When did this new matter come to the attention of the  
 22 Attorney General's Office?  
 23 A. I can answer when it came to my attention, but it was  
 24 sometime in July or August of '07 I suppose, somewhere in  
 25 there. I'm not real sure.

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1 Q. And I believe, if I'm correct, you told us that Assistant  
 2 Attorney General Courtney Schloemer and Scott Johnson came to  
 3 you. Is that correct?  
 4 A. That's correct.  
 5 Q. Is that how you learned of it?  
 6 A. Now, I may have -- it may have been that it was mentioned  
 7 in discussion around the office, but that's when they came and  
 8 asked my opinion about a certain aspect concerning the case.  
 9 Q. Okay. And I believe you told us at the last hearing when  
 10 it was pointed out that the August 23rd, 2007, subpoena and the  
 11 December 18, 2006, subpoenas were practically identical, you  
 12 said that the language of the subpoena was problematic. Is  
 13 that correct?  
 14 A. That's correct.  
 15 Q. And you speculated that maybe Ms. Schloemer had used the  
 16 wrong form or carried over the language from one subpoena to  
 17 the other. Is that correct?  
 18 A. That's correct.  
 19 Q. Let's look at Exhibit -- excuse me. Just a minute, your  
 20 Honor. Let me drop back to the Exhibit 17 which is the  
 21 December 2nd -- excuse me -- December 18, 2006, subpoena.  
 22 Let's pull up on the second page, paragraph (e). Paragraph (e)  
 23 specifically asked for documents evidencing the policy and  
 24 procedures used by State Farm in submitting claims to the  
 25 National Flood Insurance Program, including correspondence,

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1 standard forms and training materials. Is that correct?  
 2 A. That's correct.  
 3 Q. All right. So at least as of that date NFIP issues were on  
 4 the attorney general's radar screen, were they not?  
 5 A. Well, it mentions it there. And a month later I sat  
 6 through the entire grand jury and I heard the testimony that  
 7 was presented. And at the grand jury they weren't talking  
 8 about the National Flood Insurance Program.  
 9 Q. But --  
 10 A. That entire case and the witnesses were asked nothing about  
 11 the National Flood Insurance Program except maybe as it would  
 12 indirectly relate to how they processed wind claims. That  
 13 grand jury was focused on wind claims.  
 14 Q. All right. And that was at the choosing of whom? The  
 15 Attorney General's Office. Correct?  
 16 A. Sure.  
 17 Q. And if the Attorney General's Office chose not to ask any  
 18 witnesses questions about the issues or documents such as what  
 19 is seen in Exhibit E to the December subpoena, that was the  
 20 attorney general's decision at that point. Correct?  
 21 A. That's correct.  
 22 Q. All right. Now let's pull up Exhibit 111.  
 23 MR. TURNER: Your Honor, I'm sorry. This has not been  
 24 introduced. May I approach?  
 25 THE COURT: You may.

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1 BY MR. TURNER:  
 2 Q. This is the proposed exhibit that was tendered by the  
 3 attorney general after the hearing before this court in  
 4 November. If you'll turn to the next to the last page,  
 5 Mr. Snyder.  
 6 THE COURT: Wait just a minute, counsel. Is that  
 7 exhibit in evidence or not?  
 8 MR. TURNER: It's not, your Honor. We would offer to  
 9 have it entered at this time.  
 10 THE COURT: Mr. Hester do you know what it is and do  
 11 you have any objections to it, sir?  
 12 MR. HESTER: We do have an objection, your Honor. It  
 13 is a letter, for purposes of the record, written by me within  
 14 the strict confines and express invocation of provisions of  
 15 Rule of Evidence 408 relative to an offer of compromise and,  
 16 thus, is inadmissible.  
 17 MR. TURNER: Your Honor, may I?  
 18 MR. HESTER: It's, likewise, hearsay inasmuch as it's  
 19 written by me as opposed to the Attorney General's Office.  
 20 MR. TURNER: We were instructed at the last hearing  
 21 that the Attorney General's Office was going to construct a  
 22 more narrowly drawn subpoena, that it was going to be vetted by  
 23 Magistrate Judge Parker and submitted to us. And I intend, if  
 24 I'm allowed, to show through the testimony of this witness that  
 25 the subpoena essentially asks for the same things that the

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1 December 18 and the August 23rd subpoena ask for.  
 2 THE COURT: All right. I haven't seen what you have  
 3 tendered to the witness, which would be proposed Exhibit 111.  
 4 I'll let you go -- I'll let you propound some questions to the  
 5 witness; and then if you offer it, I will make a ruling on it  
 6 or take it under advisement and have it marked for  
 7 identification. You may proceed with your questions, sir. Do  
 8 you have an extra copy of that, by any chance?  
 9 MR. TURNER: Yes, your Honor, I do.  
 10 THE COURT: Now, so that I'll be familiar with what  
 11 you're doing here, counsel, if you would, state for the witness  
 12 and for the court what you have tendered to him.  
 13 MR. TURNER: Your Honor, I have tendered to the  
 14 witness the proposed subpoena duces tecum that was provided to  
 15 State Farm by the plaintiffs' attorney after the last hearing  
 16 before the court in November which was rejected by State Farm,  
 17 but this is what was proposed to us.  
 18 MR. HESTER: And, again, your Honor, we reiterate our  
 19 Rule 408 objection, as expressly set forth in the first page of  
 20 my transmittal correspondence to Mr. Galloway and Mr. Walker.  
 21 That was done in conjunction with the magistrate judge with the  
 22 express implication of Rule 408, and all contents including the  
 23 exhibit are beyond the scope of what is relevant or admissible  
 24 for purposes of this proceeding. The letter, likewise,  
 25 purports to invoke the individual seal of this document as

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1 Judge Parker specifically allowed with regard to any individual  
 2 document that might come before the court after the seal was  
 3 lifted.  
 4 MR. TURNER: Your Honor, I'd respond on two points.  
 5 One is that Mr. Hester waived that confidentiality by attaching  
 6 it to our response. It was put in the public domain.  
 7 Secondly, one of the issues the court has asked to be inquired  
 8 into is whether or not there was any legitimate or new claim.  
 9 And we intend to show by this document that it's almost  
 10 identical to the other subpoena duces tecums, which would be an  
 11 indication that there is no new claim and that there's bad  
 12 faith in suggesting that there is.  
 13 THE COURT: All right. Let me take a moment to read  
 14 the letter. I have not seen it. This is a letter dated  
 15 December 4, 2007, to Mr. Walker and to Mr. Galloway. Let me  
 16 take a moment to read it, counsel.  
 17 (DOCUMENT EXAMINED BY THE COURT)  
 18 THE COURT: All right. The letter was tendered by  
 19 Mr. Hester to Mr. Galloway and Mr. Walker under 408 as an offer  
 20 to try to resolve the differences pursuant a request from  
 21 Judge Parker who was trying to work with you all -- who was,  
 22 indeed, working with you to try to reach some type of  
 23 rapprochement on here. I understand what it is now.  
 24 Now, counsel, now that I've read the letter and now  
 25 that I see here that it was tendered to you by Mr. Hester under

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1 the protections of 408, I ask you again, tell me what it is you  
 2 want to do with this letter. What is your mission here? What  
 3 is your intent, sir?  
 4 MR. TURNER: Your Honor, my intent is to show that the  
 5 items requested under this proposed subpoena duces tecum still  
 6 relate to the January 23rd letter agreement and the previous  
 7 subpoena duces tecums.  
 8 THE COURT: How do you react, though, to Mr. Hester's  
 9 objection today and also his -- the content of his letter of  
 10 December 4 wherein he says "I'm sending this to you under the  
 11 protections of 408"? How would you get -- how would you escape  
 12 that? How do you get out from under the protective cover of  
 13 Federal Rules of Evidence 408?  
 14 MR. TURNER: Your Honor, I apologize. If I could  
 15 approach. I don't have but one copy of this. But in the  
 16 attorney general's memorandum in response he refers  
 17 specifically to our response to his proposal and attaches it as  
 18 an exhibit to the pleadings. And it's not under seal. And we  
 19 would propose that he waived it under those circumstances.  
 20 THE COURT: All right. Just a minute. I can only  
 21 hear one of you at a time. Tell me, sir, you say that you have  
 22 a document in your hand. Tender that to Ms. Jackson and let me  
 23 see it, if you would, please.  
 24 MR. TURNER: Yes, your Honor. Your Honor, that one  
 25 doesn't have the exhibits attached, but it's docket item number

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1 80, and attached to it was our response to the attorney  
 2 general's proposal.  
 3 THE COURT: All right. Now, let's let the record be  
 4 clear. You have tendered to me and I have in my hand a  
 5 memorandum which was submitted to the court by Attorney  
 6 General Hood through counsel which was filed on 1/18/08. And  
 7 this document is entitled Memorandum in Support of Defendant's  
 8 Motion to Reconvene Proceedings, Dissolve Restraining Order and  
 9 to Resolve Issue of Abstention. Now, you're saying that  
 10 appended to this was this letter?  
 11 MR. TURNER: Your Honor --  
 12 THE COURT: Or the --  
 13 MR. TURNER: -- it was our response to the letter and  
 14 to the proposed subpoena duces tecum.  
 15 THE COURT: Say that again.  
 16 MR. TURNER: Attached to it as an exhibit to the  
 17 defendant's memorandum was our response to what we're now  
 18 offering as Exhibit 111, which is the proposed subpoena.  
 19 THE COURT: Where is that response so I can read it  
 20 also? In other words, what I'm trying to figure out here is  
 21 has there been some sort of waiver by Mr. Hester --  
 22 MR. TURNER: Yes, sir, your Honor --  
 23 THE COURT: -- regarding this document. And to be  
 24 able to make that decision, I've got to have everything before  
 25 me.

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1 MR. TURNER: Yes, sir, your Honor. I apologize for  
 2 not having that exhibit with me. It's docket item number 80 on  
 3 Pacer, which we can get in just a few minutes.  
 4 THE COURT: All right. Then we will mark for  
 5 identification what you have tendered to Mr. Snyder.  
 6 MR. TURNER: Thank you, your Honor.  
 7 (EXHIBIT P-111 MARKED FOR IDENTIFICATION)  
 8 THE COURT: And then I'll let you reoffer that at some  
 9 appropriate time, counsel, after you have given me everything I  
 10 can see. Ms. Jackson, give this back to counsel if you would,  
 11 please, ma'am.  
 12 MR. TURNER: Thank you, your Honor. Indulge me just  
 13 one moment, please, your Honor.  
 14 (PAUSE)  
 15 THE COURT: I will let you question the witness and  
 16 make a proffer if you would like. So you won't have to call  
 17 him back later, I'll let you make a proffer, counsel. And then  
 18 I will either receive the evidence subsequently and accept the  
 19 proffer as part of his testimony or keep it out.  
 20 MR. TURNER: Thank you, your Honor. Let's pull up 111  
 21 again, please. And could you pull up Exhibit 46 side by side.  
 22 Your Honor, if I could approach, I'm going to give the  
 23 witness a copy of Exhibit 46 because he may not be able to read  
 24 it on the screen. And I've got an extra copy for your Honor.  
 25 THE COURT: Thank you.

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1 (DOCUMENT TENDERED TO THE COURT)  
 2 BY MR. TURNER:  
 3 Q. Mr. Snyder, would you agree that comparing item number two  
 4 from the August 23 subpoena to item number two of the proposed  
 5 subpoena, which is marked for identification, that it asks for  
 6 the same information?  
 7 THE COURT: What is the date of the subpoena that has  
 8 already issued that you refer to in one of these columns,  
 9 counsel?  
 10 MR. TURNER: It's August 23, 2007. That's the  
 11 subpoena duces tecum that was originally the contention that  
 12 brought about this matter, your Honor.  
 13 (WITNESS EXAMINED DOCUMENT)  
 14 BY MR. TURNER:  
 15 Q. Same information?  
 16 A. You want me to compare items one, two and three on the  
 17 December the 4th --  
 18 Q. No. My question is compare item number two on the proposed  
 19 December 4th subpoena to item number two on the August 23rd  
 20 subpoena and tell me whether or not it asks for the exact same  
 21 information.  
 22 (WITNESS EXAMINED DOCUMENT)  
 23 A. They both are similar.  
 24 Q. Okay. Do you see any differences other than --  
 25 A. Well, there's additional words.

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1 Q. But it asks the same thing, doesn't it?

2 A. In essence.

3 Q. Okay. And compare item number three on the proposed

4 December 4 subpoena to item number three on the August 23,

5 2007, subpoena.

6 (WITNESS EXAMINED DOCUMENT)

7 A. That too is very similar.

8 Q. Okay. Not quite word for word, but almost, isn't it?

9 A. Almost.

10 Q. And it asks for essentially the same material, doesn't it?

11 A. That's correct.

12 Q. Item number one is the only thing that's not contained on

13 the August 23rd subpoena. But are you aware that any such

14 request would only be made in connection with State Farm claim

15 handling of Katrina claims?

16 A. I don't know.

17 MR. TURNER: Let's pull up Exhibit Number 40 if we

18 could, please.

19 THE COURT: Let's let the record be clear on this,

20 counsel, lest we somehow forget. The subpoena that you have

21 asked him to compare to the 8/23/07 subpoena has not been

22 issued, has it?

23 MR. TURNER: It has not been issued. It was only

24 presented to State Farm.

25 THE COURT: It was presented to State Farm by the

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1 attorney general pursuant to the request from Judge Parker that

2 the two sides try to reach some type of amicable resolution of

3 the issue. And that's what I want the record to reflect, that

4 this subpoena that has been mentioned here at this point is one

5 that was tendered by Mr. Hester and he says very clearly in his

6 letter under Federal Rule of Evidence 408. All right.

7 Proceed.

8 BY MR. TURNER:

9 Q. And for the record, Mr. Snyder, we had already covered this

10 territory during the last -- your last testimony and earlier

11 today. But the August 23rd, 2007, subpoena was basically --

12 basically mimicked the December 2006 subpoena, did it not?

13 A. I believe that's correct.

14 Q. If you'll referred to Exhibit 40, which has previously been

15 introduced into evidence, this is the letter to U.S. Attorney

16 Alice Martin in Alabama sent by Attorney General Hood dated

17 July 16, 2007. Is that correct?

18 A. That's correct.

19 Q. And you testified earlier that when you saw this letter for

20 the first time was the first time that you were aware that

21 Dickie Scruggs was being considered a confidential informant by

22 the Attorney General's Office. Is that correct?

23 A. That's correct.

24 Q. Now, if you'll look down on into the body of the letter, I

25 believe paragraph 4, "Using those documents, my office has

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1 conducted an ongoing investigation into what we believe is

2 State Farm's fraudulent conduct not only toward their

3 policyholders, but also against the National Flood Insurance

4 Program as well. Our investigation continues." Did I read

5 that correct?

6 A. Did you say paragraph 4?

7 Q. Let me get a copy of the letter up here that I can see

8 clearly and make sure I'm right.

9 (PAUSE)

10 Q. Look at the second page.

11 MR. TURNER: Indulge me just one moment, your Honor,

12 please.

13 THE COURT: All right.

14 (PAUSE)

15 MR. HESTER: So I'll not belabor the court with

16 further objections, are we still in the proffer stage or is

17 that concluded?

18 MR. TURNER: We're concluded at this point.

19 THE COURT: He's concluded the proffer.

20 BY MR. TURNER:

21 Q. It will be the first full paragraph on the second page,

22 Mr. Snyder. "Mr. Scruggs has functioned as a confidential

23 informant for our investigation and is protected by state law

24 as a whistleblower." Let me stop there just a minute and ask

25 you, what state law is he protected by as a whistleblower?

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1 A. We have a state statute that relates to whistleblowers.

2 Now, I've only used it concerning government employees.

3 Q. That's because that's the only thing the statute refers to,

4 is it not?

5 A. I've never seen it apply to anything else.

6 Q. Yes, sir. And is it not correct that the statute defines

7 itself as a statute for whistleblowing related to improper

8 governmental conduct?

9 A. I can't recall, but it's something along those lines. It's

10 something that I've never used with respect to anyone except

11 government -- state government employees.

12 Q. You're not aware of state law that would cover Mr. Scruggs

13 as a whistleblower, are you?

14 A. I'm not aware of one.

15 Q. Then the next sentence, "Using those documents, my office

16 has conducted an ongoing investigation into what we believe is

17 State Farm's fraudulent conduct, not only toward their

18 policyholders, but also against the National Flood Insurance

19 Program as well."

20 Now, ongoing investigation against policy -- about fraud

21 against policyholders and NFIP, that would suggest that the

22 investigation never ceased, would it not?

23 MR. HESTER: I object to that, your Honor. There's

24 been no proof as to when the subsequent investigation regarding

25 the NFIP began. This question is misleading because counsel

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1 has not provided the appropriate background information  
 2 relating to the second investigation and he's construing --  
 3 he's misconstruing the dates and times of the involvement of  
 4 the Attorney General's Office, not just this individual  
 5 witness.  
 6 THE COURT: Restate your question, counsel. I heard  
 7 the objection. I'm trying to apply the objection to the issue.  
 8 Would you restate your question?  
 9 MR. TURNER: Yes.  
 10 BY MR. TURNER:  
 11 Q. The court has asked us to address the issue of the  
 12 investigation and what it entailed. And Mr. Hood's letter at  
 13 least of July 17, 2006 -- excuse me -- 2007, tells the U.S.  
 14 Attorney in Alabama that its ongoing investigation is into  
 15 State Farm's fraudulent conduct regarding its policyholders and  
 16 the National Flood Insurance Program. Correct?  
 17 A. That's what it says.  
 18 Q. And it doesn't say "We've started a new investigation,"  
 19 does it?  
 20 THE COURT: I'll let him answer.  
 21 A. It doesn't say that.  
 22 BY MR. TURNER:  
 23 Q. And, for that matter, it doesn't even tell the  
 24 U.S. prosecutor that he had signed a January 23rd letter  
 25 agreement agreeing not to prosecute State Farm for any

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1 Hurricane Katrina flood-handling claims, does it?  
 2 A. Well, it's not -- I don't recall it being anywhere else in  
 3 that letter, and I don't know exactly when the new information  
 4 came to General Hood's attention.  
 5 Q. And another thing that it doesn't point out is that this  
 6 confidential informant is a plaintiffs' lawyer who stands to  
 7 make millions of dollars off Hurricane Katrina claims, does it?  
 8 A. Doesn't mention it in the letter.  
 9 Q. And it doesn't mention in the letter that the Rigsby  
 10 sisters that he refers to are on the payroll of this  
 11 confidential informant to the tune of \$150,000 a year, does it?  
 12 MR. HESTER: I object. We can go through 150 things  
 13 the letter doesn't say. I think the document speaks for  
 14 itself, and he's getting into evidence again that is not before  
 15 the court.  
 16 MR. TURNER: I think I'm getting into evidence of bad  
 17 faith, your Honor.  
 18 THE COURT: I'll let you proceed. Overruled.  
 19 BY MR. TURNER:  
 20 Q. It doesn't mention that, does it?  
 21 A. It does not mention -- use those words in this letter, no.  
 22 Q. Mr. Hester is correct that we don't -- at least in the  
 23 sense that we don't have the benefit of knowing what was  
 24 testified to by you in camera, but my question to you is this:  
 25 At least as of July the 17th, 2007, Mr. Hood's representation

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1 to the U.S. Attorney in order to keep Mr. Scruggs from being  
 2 punished for contempt is that he has an ongoing investigation  
 3 into State Farm's fraudulent handling of policyholder claims  
 4 and NFIP claims. Is that what was said in camera?  
 5 MR. HESTER: I object to that, your Honor. What was  
 6 said in camera is confidential.  
 7 MR. TURNER: Your Honor, I move the court to allow us  
 8 to ask the witness what was said in camera at this point.  
 9 MR. HESTER: To which we object, your Honor, on all  
 10 grounds previously stated.  
 11 THE COURT: I'll take that matter up either in  
 12 chambers or at some other time, counsel. Your motion is noted.  
 13 It will be taken under advisement, and I will sustain the  
 14 objection as to what was done in camera.  
 15 We're going into a new arena here, and I've got to  
 16 make a decision as to whether or not what we talked about in  
 17 camera should be allowed to be discussed in open court. I do  
 18 have a question for Mr. Snyder.  
 19 Mr. Snyder, lest I forget, you are a highly  
 20 accomplished attorney, well respected in the state, well known.  
 21 You were at these meetings. Tell me, you formed some  
 22 conclusion as to what Mr. Scruggs was doing there. Tell me,  
 23 what impression did you have as to why he was there? Why was  
 24 Mr. Scruggs involved in all of this? What impression, if any,  
 25 did you form? I mean, you just weren't sitting there in a

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1 vacuum. As I say, your mind is turning all the time. Tell me  
 2 what -- looking back on it, why was he there, in your opinion?  
 3 A. Well, the initial impression was that he was there to turn  
 4 over information that he had to assist in an investigation that  
 5 was just getting underway -- a criminal investigation that was  
 6 just getting underway.  
 7 THE COURT: All right.  
 8 A. Now, I would -- you know, that was my initial impression.  
 9 And, of course, I participated in drafting the Chinese wall  
 10 agreement because I know you've got to keep them separate.  
 11 THE COURT: All right. Thank you, sir.  
 12 MR. TURNER: Your Honor, subject to your ruling on the  
 13 in camera request and subject -- I wanted to bring to the  
 14 court's attention the document that we're referring to is  
 15 number 79-1 that we can have printed for you and present that  
 16 to the court. Subject to that, I don't have any more questions  
 17 at this time.  
 18 THE COURT: All right, sir.  
 19 (COUNSEL CONFERRED)  
 20 MR. TURNER: Oh, if I could pursue one item brought up  
 21 by your Honor.  
 22 THE COURT: All right.  
 23 BY MR. TURNER:  
 24 Q. Mr. Snyder, you mentioned that that was your initial  
 25 impression, that Mr. Scruggs was there just to discuss turning

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1 over the documents. Is that correct?  
 2 A. That's correct.  
 3 Q. Is your subsequent impression somehow different?  
 4 A. Well, nothing changes my initial impression. My initial  
 5 impression was my initial impression.  
 6 THE COURT: What he's trying to ask you is -- and the  
 7 court is interested in this too -- when you say "initial  
 8 impression," that leads counsel to form the opinion that there  
 9 was subsequent impressions. Were there subsequent impressions  
 10 and what were they? That's what he wants to know.  
 11 A. Well, your Honor, the -- there's always -- in prosecution  
 12 you always have folks who are involved that's -- well, you  
 13 don't always, but from time to time you have civil litigation  
 14 that's going on that relates to a criminal case.  
 15 And, of course, the prosecution likes to be a one-way  
 16 street. They like to receive information from the civil case  
 17 if it would benefit the criminal case, but at the same time we  
 18 can't be a two-way street where we provide information to the  
 19 civil case. And, obviously -- but at the same time, the civil  
 20 lawyers like to try to get the benefit out of the criminal  
 21 case.  
 22 Certainly, we've got a statute that says that if there's a  
 23 civil case and a criminal case and there's a conviction  
 24 obtained in the criminal case, then if the issue in the civil  
 25 case is the same, that determines liability; and then all they

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1 have to do is try damages. So that's why you kind of have to  
 2 be very, very careful that you don't admix the civil and the  
 3 criminal, although the civil can benefit from the criminal.  
 4 BY MR. TURNER:  
 5 Q. And my question remains about your subsequent opinion of  
 6 Mr. Scruggs. And I gathered from that that subsequent to that  
 7 February meeting Mr. Scruggs was urging the Attorney General's  
 8 Office to pursue the criminal case in order to help his civil  
 9 case. Is that correct?  
 10 A. Now, I never heard that and I -- I was -- I didn't have any  
 11 other meetings with Mr. Scruggs. I was never privy to any  
 12 conversation that he had with anybody in our office.  
 13 Q. And you mentioned the Chinese wall. I believe you said you  
 14 helped construct that. Was that in relation to the subpoena  
 15 duces tecums that were issued in Harrison and Jackson County?  
 16 A. That's correct.  
 17 THE COURT: Hold on just a minute. Define for the  
 18 court and for the record the term "Chinese wall." It was  
 19 mentioned in some of the earlier hearings, and I don't know  
 20 that in the record there is an explanation as to what that is.  
 21 Would you do so, please, sir.  
 22 A. Yes, your Honor. As I use the term and as it was used in  
 23 this case, it is implementing a series of procedures concerning  
 24 the communications and the handling of evidence where the  
 25 attorneys and the participants in the civil case are not able

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1 to acquire information that is obtained in the criminal case by  
 2 the use of subpoenas and investigative powers.  
 3 Q. And vice versa, is it not? The attorneys in the civil case  
 4 are not able to provide criminal attorneys what they have got.  
 5 A. That's correct.  
 6 Q. And the Attorney General's Office was aware at some point  
 7 in time, at least if not by February of 2006, that Mr. Scruggs  
 8 represented numerous plaintiffs in civil cases regarding  
 9 Hurricane Katrina claims, did he not?  
 10 A. Were we aware of it in February?  
 11 Q. Yeah.  
 12 A. I don't recall whether he had filed any, but I'm sure it  
 13 was well known that he would represent plaintiffs in litigating  
 14 some claims.  
 15 Q. And, certainly, by April when the Chinese walls were  
 16 implemented, the Attorney General's Office were aware of that,  
 17 were they not?  
 18 A. Oh, yeah.  
 19 Q. And it would be improper after that point for the Attorney  
 20 General's Office to accept documents obtained by a civil  
 21 lawyer -- for the criminal office of the Attorney General to  
 22 accept those documents, would it not?  
 23 A. Well, now, the civil case, the Chinese wall was to separate  
 24 the Attorney General's civil case from the Public Integrity  
 25 Division's criminal case.

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1 Q. Okay.  
 2 A. Because -- but, now, a private person's civil case, that  
 3 was not part of the Chinese wall. Now, the Chinese wall  
 4 requirements, we could not provide that information to anyone  
 5 in our office who was handling the civil case. And, of course,  
 6 we don't need a Chinese wall to tell us not to provide  
 7 information to civil attorneys who are not associated with our  
 8 office.  
 9 Q. So any documents that Mr. Scruggs would have provided,  
 10 whether as a civil attorney or as a confidential informant or  
 11 as a self-seeking person wanting to enrich himself, that would  
 12 be something the attorney general would have to take up on a  
 13 case-by-case basis?  
 14 A. That would be correct.  
 15 Q. And would you not agree that at some point in time it  
 16 becomes obvious that if a person knocks on the door and leaves  
 17 you documents, that you've got to question where these  
 18 documents are coming from?  
 19 A. Well, I don't know whether you ever run into that situation  
 20 where they just show up like an abandoned baby or something  
 21 like that. You always take depositions or pleadings or  
 22 anything you can get your hands on that are generated in a  
 23 civil case.  
 24 Q. Do you ever look behind why they're being given to you?  
 25 A. Well, we don't -- you can assume why they're being given to

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1 you; but if you can use them and if they're helpful, you don't  
 2 question them.  
 3 Q. Do you ever look behind whether or not they were illegally  
 4 obtained in the first place?  
 5 A. At some point you may have to research it, but, you know,  
 6 for example, you've got husband-and-wife privilege. You have  
 7 wives and spouses who come to you with information against the  
 8 other one and you can certainly use that information to get a  
 9 search warrant and so forth like that. You know that there's a  
 10 privilege, but you don't turn them away.  
 11 Q. Right. But Mr. Hood and Mr. Scruggs, of course, weren't  
 12 married. So my point is, did the -- my question is, did the  
 13 Attorney General's Office ever research the matter that you  
 14 just said at some point you've at least got to research?  
 15 A. I didn't -- I didn't research it. I wasn't using that  
 16 example to imply that they were married. I was applying the  
 17 principle.  
 18 Q. I understand.  
 19 MR. TURNER: No further questions, your Honor.  
 20 THE COURT: Very well. Any questions of the witness  
 21 at this time, Mr. Hester?  
 22 MR. HESTER: I have questions, your Honor, and subject  
 23 to the right to recall the witness.  
 24 THE COURT: You may do both. Just one second.  
 25 (PAUSE)

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1 THE COURT: All right. You may proceed, Mr. Hester.  
 2 MR. HESTER: May it please the court.  
 3 CROSS-EXAMINATION  
 4 BY MR. HESTER:  
 5 Q. Mr. Snyder, if you would, I want to refer you to some  
 6 questions that were asked of you by opposing counsel. And I  
 7 want to clarify first for purposes of the record some of the  
 8 things that you were asked about specifically.  
 9 I would like you to state again for the record when you  
 10 were asked about what the scope of the first investigation by  
 11 the Attorney General's Office of State Farm was, could you  
 12 elaborate for the court on exactly what the first  
 13 investigation, the criminal investigation, if you will, of  
 14 State Farm consisted of and what was its purpose?  
 15 A. The purpose was to investigate whether or not State Farm in  
 16 order to keep from paying claims of their policyholders for  
 17 wind damage, whether they were engaging in any type of  
 18 deception or fraud to avoid paying from their coffers the  
 19 policyholders.  
 20 Q. All right, sir. And you were asked several questions  
 21 relative to comparison of subpoenas. And without getting into  
 22 the subject matter of the subpoena that was tendered under Rule  
 23 408, you were asked to compare certain categories of document  
 24 requests. Do you recall those questions?  
 25 A. Yes.

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1 Q. All right, sir. And would you explain for the court why it  
 2 is that one subpoena may, indeed, overlap another in terms of  
 3 the scope of the documents that are requested?  
 4 A. Well, there are not too many ways that you can -- you don't  
 5 want to have your request tailored too narrowly or you won't  
 6 get the information you're seeking. I mean, generally,  
 7 subpoenas are drawn up and they use broad terms to -- because  
 8 you're just trying to -- the grand jury can be a fishing  
 9 expedition. You're just trying to get information to determine  
 10 if you have a case.  
 11 Q. All right, sir. And you were asked questions by opposing  
 12 counsel about whether or not the inclusion of the National  
 13 Flood Insurance Program document request in the first three  
 14 subpoenas or in reference to any of those first three subpoenas  
 15 whether or not that meant that the Attorney General's Office  
 16 was investigating the National Flood Insurance Program as  
 17 regards State Farm. Was that within the scope of the first  
 18 investigation?  
 19 A. Within the scope of my knowledge, I never discussed the  
 20 National Flood Insurance Program. In the meetings that I had  
 21 with Scott and Courtney, the things they asked me about, it  
 22 all -- it never related to the National Flood Insurance  
 23 Program. As a matter of fact, I couldn't explain to the court  
 24 in camera how the National Flood Insurance Program worked  
 25 because I don't know anything about it.

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1 Q. All right. And if you would, in further elaboration, if  
 2 you will, of the first investigation of State Farm by the  
 3 Office of the Attorney General, could you delineate for us,  
 4 again the first investigation only for which the first three  
 5 grand jury subpoenas were issued, what potential criminal  
 6 offenses were being investigated?  
 7 A. First it started out fraudulent denial of claim. Then it  
 8 went to some type of fraud, mail, wire fraud or something along  
 9 those lines, general fraud violations.  
 10 Q. All right. And can you tell us whether or not the first  
 11 investigation dealt solely with whether or not State Farm had,  
 12 in fact, defrauded its policyholders under first party policy  
 13 claims?  
 14 A. That's what it involved.  
 15 Q. Thank you.  
 16 THE COURT: You say first policy? Is that what you  
 17 said, sir?  
 18 MR. HESTER: First party policy claims, your Honor,  
 19 meaning that -- I'll clarify with the witness if I may.  
 20 BY MR. HESTER:  
 21 Q. For purposes of the record, define what a first party  
 22 policyholder would be. Can you elaborate what that would mean  
 23 in the investigation context?  
 24 A. Well, to me it's easier just to refer to it as the wind  
 25 claims. State Farm insured the homes for damage by wind. That

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1 was the peril that they were dealing with. The federal  
 2 government is the one that provides the flood insurance policy.  
 3 So we were investigating those claims that were being made to  
 4 State Farm concerning wind damage.  
 5 Now, obviously, you always have overlap because if it's not  
 6 wind damage, it's flood. You can't ask questions about one  
 7 without implicating the other.  
 8 Q. All right, sir. And in the context of your involvement  
 9 with the grand jury, again dealing with the first investigation  
 10 only, you sat through that entire process?  
 11 A. That's correct.  
 12 Q. And was there any presentation of the issue of the National  
 13 Flood Insurance Program to the grand jury at that time?  
 14 A. There were no -- there were no questions or evidence -- no  
 15 questions asked or evidence presented that would in any way  
 16 implicate the National Flood Insurance Program. They all  
 17 related to fraud of the policyholder concerning wind claims.  
 18 Q. All right, sir. And when you were asked questions  
 19 relative --  
 20 A. Now, let me explain to you, further elaborate. The reason  
 21 that I was there at the grand jury -- I did not prepare the  
 22 grand jury. I was there to hear the testimony and form my  
 23 opinion as to the weight of the evidence.  
 24 Q. Fair enough. You were not the presenter. Is that correct?  
 25 A. I was not the presenter, although I did ask some questions

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1 for my own clarification.  
 2 Q. You were -- and I'm going to shift gears just a moment if I  
 3 can. You were asked questions by opposing counsel relative to  
 4 when you first became involved in the -- with regard to the  
 5 issuance of the -- or the investigation that resulted in the  
 6 issuance of the August 23, '07, grand jury subpoena, which was  
 7 Exhibit 46 for the record, which was the fourth subpoena, the  
 8 last subpoena that was issued. I believe you stated, did you  
 9 not, that your first personal involvement came in July of 2007?  
 10 Is that correct?  
 11 A. It was in there somewhere.  
 12 Q. All right. And do you have any personal knowledge as to  
 13 how soon prior to that or in what month prior to that that the  
 14 Office of the Attorney General was first contacted regarding  
 15 the subject matter that went into the August 23, 2007, grand  
 16 jury subpoena?  
 17 A. I don't -- I don't recall. I was not in the loop on that.  
 18 Q. You were not in the loop on that?  
 19 A. No.  
 20 Q. Okay. And can you tell us whether -- and you were asked to  
 21 compare that fourth grand jury subpoena, that August 23, 2007,  
 22 grand jury subpoena, to prior subpoenas. And again I would ask  
 23 you as a prosecutor, does the fact that there is some  
 24 request -- excuse me -- some duplication or overlap in the  
 25 request for documentation between prior subpoenas and the

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1 fourth grand jury subpoena, does that mean that the focus of  
 2 the investigation is the same?  
 3 A. It doesn't. It's just the nature of the beast. Sometimes  
 4 that's just the way you have to word them, but it does not mean  
 5 they're the same. But Courtney was the one who was familiar  
 6 with the details. She was the one who drafted them, at least  
 7 the last ones. I think Tim did the initial subpoenas in early  
 8 '06.  
 9 Q. All right, sir. And you were asked about a document that  
 10 was Exhibit Number 40, which was the letter from Attorney  
 11 General Hood to U.S. attorney Alice Martin in Alabama.  
 12 A. Yes.  
 13 Q. Were you involved in the drafting of that document?  
 14 A. No.  
 15 Q. And did Attorney General Hood discuss with you what he  
 16 meant by the terms in that document?  
 17 A. No.  
 18 Q. And, again, do you know from your own personal knowledge  
 19 whether or not the Attorney General's Office had been contacted  
 20 by one or more individuals regarding any of the new matters set  
 21 forth in that letter subsequent to January 23, 2007?  
 22 A. I don't know when they were contacted.  
 23 Q. You just know your first involvement came in July of 2007.  
 24 A. That's correct.  
 25 Q. Okay. Which was the same month the letter was written to

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1 Alice Martin.  
 2 A. Yes, sir. Apparently so. Yes.  
 3 Q. And just a couple of more questions for you, Mr. Snyder, at  
 4 this time. You were asked questions about what's been commonly  
 5 referred to as Chinese walls, Chinese wall orders.  
 6 A. Yes, sir.  
 7 Q. And did you ever see those Chinese wall orders?  
 8 A. Yes.  
 9 Q. Okay.  
 10 MR. HESTER: May I approach the witness, your Honor?  
 11 THE COURT: Yes.  
 12 BY MR. HESTER:  
 13 Q. I'm handing you a copy of the three Chinese wall orders I  
 14 believe which have been entered. Do you recognize those  
 15 documents?  
 16 THE COURT: You say they've been entered, counsel.  
 17 Entered where?  
 18 MR. HESTER: Entered in -- I'll ask the witness and  
 19 clarify that.  
 20 A. I believe two of them are the same. There are two  
 21 pertaining to the order Judge Prisock signed and the one  
 22 Judge Simpson signed.  
 23 BY MR. HESTER:  
 24 Q. And if you will, as to the two separate Chinese wall  
 25 orders, would you clarify which court pertained to each

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1 separate Chinese wall order, which court entered those orders?  
 2 A. Well, Judge Simpson is the circuit judge in Harrison County  
 3 and Judge Prisock was the special appointed judge for the grand  
 4 jury proceedings in Jackson County. I believe that both or --  
 5 both or all of the circuit judges in Jackson County recused  
 6 themselves; and the Supreme Court appointed JudgeáPrisock, who,  
 7 incidentally, was a chancellor. And he is the one who signed  
 8 the Chinese wall order for the Jackson County grand jury which  
 9 more or less incorporated the Harrison County order.  
 10 Q. And do you have any awareness or knowledge as to how it  
 11 came about that the need or request for a Chinese wall order to  
 12 be entered was made?  
 13 A. I don't recall. There was a hearing before Judge Simpson.  
 14 I did not attend the hearing. General Hood and Tim Howard  
 15 attended that hearing, but it was brought up at one of those  
 16 earlier hearings.  
 17 Q. All right. And do you know either way whether or not  
 18 either of those Chinese wall orders were issued at the request  
 19 of State Farm going to state court to make sure that those were  
 20 entered or to seek a request from the court that those be  
 21 entered?  
 22 A. Well, there was a hearing specifically involving a  
 23 mechanism to separate the civil from the criminal via a Chinese  
 24 wall. So I'm sure they had a lot of input.  
 25 Q. All right. And are you familiar with the general substance

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1 of those two orders prior to today?  
 2 A. Generally, yes.  
 3 Q. And would you describe, generally speaking, based upon your  
 4 knowledge as a prosecutor working within the Office of the  
 5 Attorney General, what did you understand the import and the  
 6 effect of those orders to be.  
 7 A. Well, the -- without getting into any specifics, it's  
 8 basically telling the Attorney General's Office, the civil  
 9 division, you run your case and stay away from the criminal  
 10 case and the same thing for the criminal section. You do your  
 11 investigation in the criminal side and don't admix it with the  
 12 civil.  
 13 Q. And for clarification purposes, to put those orders in  
 14 context, are you aware, in fact, that there was a civil case  
 15 brought by the Attorney General's Office against State Farm?  
 16 A. Yes.  
 17 Q. All right. And, likewise, there was an ongoing criminal  
 18 prosecution or investigation, if you will, of State Farm that  
 19 was simultaneously ongoing. Correct?  
 20 A. That's correct.  
 21 Q. All right. And as I understand your testimony -- please  
 22 correct me if it's incorrect -- the import and purpose of those  
 23 two orders was to make sure that, if you will, the civil side,  
 24 being the left hand of the Attorney General's Office, did not  
 25 discuss or disclose what the right hand -- that information

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1 which was gathered and vice versa.  
 2 A. That's correct.  
 3 Q. All right. And do you recognize those two orders as being  
 4 true and correct copies of the orders that you identified for  
 5 the court?  
 6 A. They appear to be the ones that I've seen in the past.  
 7 MR. HESTER: Your Honor, we would move for the  
 8 admission of those documents as the next marked exhibit.  
 9 THE COURT: Any objection?  
 10 MR. TURNER: Your Honor, I don't have any objection  
 11 other than I think they may already be exhibits.  
 12 THE COURT: All right. They'll come in without  
 13 objection. And if they're exhibits, we'll have two sets of  
 14 them.  
 15 THE CLERK: What are the exhibit numbers?  
 16 MR. HESTER: These are not marked.  
 17 THE COURT: Give me the numbers if you would,  
 18 Ms. Jackson.  
 19 MR. HESTER: It will be the last number.  
 20 THE CLERK: They're not on the list?  
 21 MR. HESTER: No.  
 22 THE CLERK: Okay. D-113.  
 23 MR. HESTER: Your Honor, we'd ask they be marked as a  
 24 collective exhibit.  
 25 THE COURT: Collectively they'll be received as D-113.

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1 (EXHIBIT D-113 MARKED)  
 2 BY MR. HESTER:  
 3 Q. My final question for you at this time, Mr. Snyder, is can  
 4 you tell us, to the best of your own personal knowledge based  
 5 upon your involvement in the Office of the Attorney General,  
 6 were the Chinese wall orders that were implemented by those two  
 7 courts adhered to and complied with by the Office of the  
 8 Attorney General, to the best of your knowledge?  
 9 A. They were.  
 10 MR. HESTER: Your Honor, we'd like to reserve all  
 11 further questions for this witness pending certain rulings made  
 12 by the court and, likewise, reserve the right to recall this  
 13 witness in our case in chief.  
 14 THE COURT: You may do so as to each.  
 15 MR. TURNER: Your Honor, if it please the court, may I  
 16 ask two or three follow-up questions?  
 17 THE COURT: You may.  
 18 REDIRECT EXAMINATION  
 19 BY MR. TURNER:  
 20 Q. Mr. Snyder, there was an exception to the Chinese wall, was  
 21 there not?  
 22 A. I don't recall.  
 23 Q. Wasn't General Hood given permission to see both sets of  
 24 documents?  
 25 A. That's correct.

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1 THE COURT: Restate that. I didn't understand it.  
 2 BY MR. TURNER:  
 3 Q. Wasn't General Hood given permission to see both sets of  
 4 documents that applied both to the criminal case and the civil  
 5 case?  
 6 A. That's correct.  
 7 Q. And you mentioned that the grand jury that met in  
 8 January 2007 only discussed wind claims. Is that correct?  
 9 A. That's correct.  
 10 Q. But why would the Attorney General's Office have subpoenaed  
 11 NFIP matters prior to that if he wasn't interested in them?  
 12 A. Well, Courtney will have to answer that; but, obviously, if  
 13 they don't pay a wind claim, they're handing it off to the  
 14 flood insurance program to pay.  
 15 Q. Exactly. And as you said, you can't really talk about one  
 16 without talking about the other, can you?  
 17 A. That's correct.  
 18 Q. And if a person has a wind -- has a wind policy and a flood  
 19 policy and the allegation is that they have somehow been  
 20 defrauded by not having an appropriate amount paid on the wind  
 21 policy by having it called flood, then automatically what we're  
 22 talking about is the wind claim has been fraudulently shifted  
 23 to the flood claim. Is that correct?  
 24 A. Well, that would be -- that would be correct.  
 25 Q. All right. And that's what was discussed in the January

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1 grand jury, wasn't it?  
 2 A. Well, the -- what was discussed in the grand jury is  
 3 focused on the policyholders or -- being deprived, because  
 4 there were some caps under the flood insurance program and the  
 5 policyholders were not being paid for their total loss.  
 6 Q. But the Attorney General's Office knew of at least the  
 7 allegation that allegedly the way State Farm was defrauding the  
 8 policyholders was by calling wind damage flood damage.  
 9 Correct?  
 10 A. Correct.  
 11 Q. Is that right?  
 12 A. Correct.  
 13 Q. All right. And the Attorney General's Office also knew  
 14 that if that were the case, then by calling wind damage flood  
 15 damage, it would be the NFIP who would be the victim of that  
 16 particular -- or one of the victims of that particular alleged  
 17 crime. Correct?  
 18 A. Could be.  
 19 MR. TURNER: That's all.  
 20 A. But I will say this --  
 21 MR. TURNER: Your Honor, I'm through with my  
 22 questions.  
 23 THE COURT: Let him explain.  
 24 A. But I'm not through with my answer. But the --  
 25 THE COURT: Come on up to the lectern, counsel. He's

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1 got something he wants to say to you.  
 2 MR. TURNER: All right.  
 3 THE COURT: All right. You have to stand there and  
 4 take it. Go ahead.  
 5 MR. TURNER: I'll take it.  
 6 A. But there was a different subject matter concerning this  
 7 last investigation than the first one. It involved different  
 8 things.  
 9 BY MR. TURNER:  
 10 Q. And that was --  
 11 A. It's a different scheme.  
 12 Q. And that would have been what you talked to the judge about  
 13 in camera?  
 14 A. That's correct.  
 15 Q. Well -- okay.  
 16 THE COURT: All right. Are we finished with this  
 17 witness at this time? Hearing nothing, I guess we are. You  
 18 may step down, Mr. Snyder.  
 19 Who do we have next, counselor? Let me say next to  
 20 you, it's 11:43. We're going to take a break at about five  
 21 until 12. Do you want to call your witness and let them  
 22 identify himself or she identify herself? What says the  
 23 plaintiff?  
 24 MR. ROBIE: Your Honor, the plaintiff will call  
 25 Attorney General Jim Hood.

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1 THE COURT: Where is Mr. Hood?  
 2 MR. HESTER: I believe he's here, your Honor. He's  
 3 not in the courtroom.  
 4 THE COURT: Would you prefer to take a lunch break now  
 5 and do that after lunch? Does that suit both sides? My  
 6 problem is I have an engagement beginning at 12:00 that's going  
 7 to take me a little bit beyond one. So I would give you longer  
 8 for lunch than we ordinarily do, and I don't hear you  
 9 complaining about that.  
 10 It's 11:44. 12:44. Is 1:30 too late to ask y'all to  
 11 be ready to proceed? That's longer than I take. Let's say  
 12 1:20. Will Mr. Hood be available at that time, counselor, do  
 13 you think?  
 14 MR. HESTER: Yes, sir.  
 15 THE COURT: Very well. We'll reassemble by 1:20. By  
 16 then I hope you'll be able to use your laptops. Court will be  
 17 in recess.  
 18 (NOON RECESS)  
 19 THE COURT: Take your seat, please. All right.  
 20 Ladies and gentlemen, the court was ready to proceed on time.  
 21 The lawyers asked for some additional time to get themselves  
 22 familiar with some other documents, and I allowed that time.  
 23 And I only say that to let you know that we were ready to go  
 24 and now you are. Where are we? Do we have another witness?  
 25 General Hood, is that so?

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1 MR. ROBINSON: That's correct, your Honor. Before we  
 2 do that, before we adjourned the court asked me if I could  
 3 provide a copy of docket item 79-1, which is the letter  
 4 Mr. Turner was referring to. And I have one, and if I may  
 5 approach. It's the same. It's already in the record.  
 6 THE COURT: You may do so.  
 7 MR. ROBINSON: Thank you, your Honor.  
 8 THE COURT: Is this in evidence?  
 9 MR. ROBINSON: Your Honor, it was filed of record by  
 10 the defendant as an exhibit to I believe it was the motion to  
 11 dissolve TRO; but it has not been offered in evidence at this  
 12 hearing.  
 13 THE COURT: All right. And I haven't read it. Does  
 14 this have to do with the 408 issue that we talked about  
 15 earlier?  
 16 MR. ROBINSON: Yes, your Honor. This is the document  
 17 that Mr. Turner pointed out to the court is the basis for our  
 18 waiver argument, because it was part of the sealed proceedings  
 19 that was placed in the public record by the defendant on behalf  
 20 of --  
 21 THE COURT: I will take the time later this afternoon  
 22 to read that and make a ruling on the 408 issue, counsel. You  
 23 may proceed.  
 24 MR. ROBINSON: Thank you, your Honor.  
 25 MR. ROBIE: If we may, your Honor, plaintiff would

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1 call Attorney General Jim Hood.  
 2 THE COURT: Good afternoon, General Hood. Come around  
 3 and have a seat, please. Yes, sir.  
 4 MR. HESTER: May it please the court, we would simply  
 5 reiterate and reurge all prior objections of record as to  
 6 impropriety of General Hood being called as a witness in this  
 7 matter.  
 8 THE COURT: All right. Let the record so indicate.  
 9 Thank you. You may proceed.  
 10 JIM HOOD,  
 11 having first been duly sworn, testified as follows:  
 12 DIRECT EXAMINATION  
 13 BY MR. ROBIE:  
 14 Q. Good afternoon, General Hood.  
 15 A. Good afternoon.  
 16 Q. Did you, by any chance, bring with you the backup material  
 17 to establish how you calculated the five-million-dollar fee  
 18 that you charged State Farm?  
 19 A. No, sir.  
 20 Q. Who in your office would have that?  
 21 A. I'm sorry. I don't know what material you're talking  
 22 about.  
 23 Q. Well, we subpoenaed some months ago --  
 24 A. I wasn't aware of that.  
 25 Q. -- the backup material for how you calculated the \$500 --

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1 or five-million-dollar investigation charge that State Farm  
 2 paid to settle with you in January of 2007. Do you have those  
 3 materials?  
 4 A. As far as documentation of how many hours that we spent?  
 5 Is that -- if that's what you're inquiring about, we would have  
 6 those materials. As to how the \$5 million was arrived at, that  
 7 was just an estimate that we negotiated with State Farm.  
 8 What we had planned to do was deduct the amount of time  
 9 that our investigators and lawyers had to spend as we do in a  
 10 case where we recover on a consumer protection issue,  
 11 for example. We're entitled to get those fees and the  
 12 remainder be paid over to the state as a penalty.  
 13 Q. Has that been done?  
 14 A. No, it has not.  
 15 Q. Have you calculated the hours spent by your staff in  
 16 investigating State Farm?  
 17 A. I'm sure we did to some point, but these hours are still  
 18 going right now. Y'all are costing us money by being down  
 19 here.  
 20 Q. You never shut off your investigation?  
 21 A. Well, no. I mean, part of the litigation, it included the  
 22 civil litigation as well -- as far as the five-million-dollar  
 23 costs go. We would have those figures -- I would think have  
 24 that calculated as to some point in time.  
 25 Q. The civil litigation was settled on January 23rd, 2007, as

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1 well, wasn't it?  
 2 A. That's correct.  
 3 Q. And the criminal investigation was concluded on  
 4 January 23rd, 2007, wasn't it?  
 5 A. That's correct.  
 6 Q. What ongoing charges would there be after January 23, 2007?  
 7 A. For cost? When State Farm breached our agreement with them  
 8 and we had to turn around and file an action for breach -- I  
 9 mean, we spent time trying to negotiate with State Farm. We  
 10 developed a settlement agreement that we would -- before  
 11 Judge Senter. He asked that we prepare it. We had to take a  
 12 lot of action after State Farm breached the agreement.  
 13 Q. And when is it that you contend State Farm breached the  
 14 settlement agreement?  
 15 A. Well, what the agreement was -- in the state court  
 16 settlement agreement filed in chancery court, there's a section  
 17 3(b), your Honor, Roman numeral 3(b), in which it says in that  
 18 agreement that State Farm had to make new offers based upon  
 19 criteria and guidelines approved by the federal court.  
 20 They have never done that. And when they rejected --  
 21 Judge Senter, when he initially decided not to accept their  
 22 state court -- I mean their settlement agreement that they  
 23 proposed to him -- now, that wasn't anything I had to do with  
 24 as far as signing off on or anything. That was the plaintiffs  
 25 as well as State Farm.

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1 But, see, Judge Senter gave them about 11 conditions that  
 2 he said he would require and it was in that order. I think it  
 3 was 11. And those conditions, State Farm never came back and  
 4 tried to meet them.  
 5 And so what we did was we prepared -- we took those  
 6 conditions and we put it in a settlement agreement that we  
 7 thought that the judge would accept. I had some correspondence  
 8 with Judge Senter. And so State Farm breached it when they did  
 9 not make any attempt at all to comply with Judge Senter's  
 10 conditions.  
 11 Q. Actually, your informant, your confidential informant,  
 12 Dickie Scruggs, dismissed the Woullard case and deprived  
 13 Judge Senter of all further jurisdiction on that matter, didn't  
 14 he?  
 15 A. Well, our state settlement did not address the Woullard  
 16 case. It simply said that there shall be -- that -- section  
 17 3(a) says they have to go submit it to a federal court and  
 18 establish administrative procedure. We don't have a class  
 19 action in state court. So it had to be administered by the  
 20 federal courts.  
 21 Our state court agreement says you go to federal to the  
 22 court, you submit it to the court. 3(a) says you submit it to  
 23 the court. But 3(b) says then you have to make offers based on  
 24 criteria and guidelines approved by the state court. And that  
 25 State Farm has never done.

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1 Q. Well, we'll get -- you've got an action making those  
 2 allegations on breach of contract.  
 3 A. Right. That's in state court.  
 4 Q. Right.  
 5 A. But that's filed in about June I believe.  
 6 Q. Right. You filed that action. My question -- let's go  
 7 back to where we started, which is your calculation of the  
 8 \$5 million in charges. You told me that you're continuing to  
 9 run that tab, if you will, because State Farm is continuing to  
 10 cost you money. Are you charging them for prosecuting a breach  
 11 of contract action against them?  
 12 A. What I'm saying is that that \$5 million was tendered, your  
 13 Honor. What our state court agreement was, it provided  
 14 restitution. I have to talk in criminal terms. You know, I've  
 15 been a DA and a prosecutor my entire career.  
 16 It's just like the way that the agreement was established  
 17 was this \$5 million was nothing but costs and penalty to State  
 18 Farm; but they had to pay restitution also, just like  
 19 restitution in a criminal case if you injure somebody. And  
 20 that was the -- the restitution had to go through state court.  
 21 So the \$5 million was nothing more than costs that the  
 22 state gets in cases where we prosecute a criminal consumer  
 23 protection case, be it civil or criminal-type case, as well as  
 24 the penalty. The remainder would just be the penalty. So even  
 25 though you may pay a fine, the court orders you also to pay

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1 restitution.  
 2 Q. Well, I didn't see a restitution order as part of the  
 3 settlement. As I read the document, it says, "State Farm will  
 4 pay \$5 million," which constitutes the cost of your  
 5 investigation. Do I have it wrong?  
 6 A. Well, do you have that letter that -- our state court  
 7 letter here? And I suspect we'll be talking about it.  
 8 Q. We'll get to that in a minute. I didn't want to start my  
 9 cross-examination on this subject. We'll get to that  
 10 settlement in a bit. I'm just interested in knowing how you  
 11 calculated those charges.  
 12 A. As I said, it was a negotiated amount. We estimated what  
 13 our costs would be. We were going to subtract it and turn the  
 14 rest over to the general fund. That has not been done. It's  
 15 been held in trust because of this litigation, because of State  
 16 Farm's breach of our agreement.  
 17 Q. Did you tender the \$5 million back as part of your breach  
 18 of contract claim in order to rescind the settlement agreement?  
 19 A. It is held in trust.  
 20 Q. No. My question is, did you tender it back as part of your  
 21 lawsuit to try to rescind the settlement agreement?  
 22 A. No. I had hoped State Farm would go on and meet the  
 23 requirements that Judge Senter set forth in the agreement that  
 24 we still have open to even today.  
 25 Q. What investigation have you done to find out how much State

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1 Farm has paid to policyholders on the gulf coast in  
 2 reevaluating their claims?  
 3 A. We've written letters to Commissioner Dale as well as to  
 4 State Farm asking that we keep posted. It's my  
 5 understanding -- I'm sure you have those letters that State  
 6 Farm wrote to us. But once we filed our breach suit, I think  
 7 State Farm stopped providing us with any information.  
 8 Q. My question wasn't that, General Hood. My question is,  
 9 what investigation have you done to determine how much State  
 10 Farm has paid in reevaluating claims for people on the gulf  
 11 coast?  
 12 A. I thought that was responsive in that we sent a letter  
 13 requesting information, yet it was not provided.  
 14 Q. You sent that to the Department of Insurance?  
 15 A. That's my recollection, as well as a series of letters that  
 16 went between Kim Brunner and I. He was the general counsel for  
 17 State Farm that I negotiated with. There were a series of  
 18 letters that we have and that you have I'm sure that talk about  
 19 asking him to go on and follow through with the agreement.  
 20 There was some request for information, but you'll just have to  
 21 show me the documents because I don't remember.  
 22 Q. Would it surprise you if State Farm has spent in excess of  
 23 \$70 million on reevaluated Hurricane Katrina claims on the  
 24 coast?  
 25 A. Probably, in that I don't know what State Farm's included

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1 in that 70 million. It could be legal fees, all that type  
 2 thing. They have had statistical -- we take questions about  
 3 their statistics frequently when they name how many  
 4 policyholders settled and so forth.  
 5 Q. If I ask you to assume that they paid \$70 million -- in  
 6 excess of \$70 million in the form of contractual benefit  
 7 payments to policyholders, would you agree with me that that  
 8 number exceeds the contemplated \$50 million that was stated in  
 9 your settlement agreement?  
 10 MR. HESTER: Your Honor, I would object to that as  
 11 misleading. The attorney general has already testified  
 12 relative to terms and conditions under which the payments were  
 13 to be made and supervised under the purview of the  
 14 U.S. District Court. Counsel is now attempting to confuse two  
 15 separate payments, and that's an improper question to the  
 16 attorney general and it's also misleading.  
 17 THE COURT: Well, I'm aware that there are two  
 18 separate issues here possibly, but I'll let him ask  
 19 GeneraláHood questions as he has done regarding the amount that  
 20 State Farm has paid to these policyholders on the coast after  
 21 this agreement was made. That may or may not have relevance,  
 22 but I will be mindful of that when we issue an order in this  
 23 case. But I'll let him proceed with this questioning.  
 24 MR. HESTER: Yes, sir. Thank you, your Honor.  
 25 A. I think I understand your question. Your Honor, even if

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1 they paid 70 million, there was nothing in our state court  
 2 agreement that talked about a 50-million-dollar minimum that I  
 3 recall. That was all part of their federal court agreement.  
 4 But, nevertheless, even if they paid 100 million -- and we  
 5 anticipated it going up to 500 million they would have to pay  
 6 because it had binding arbitration in it. And that was one of  
 7 the agreements, that that's in our state court order that  
 8 required that they have that as a condition in there.  
 9 So with binding arbitration, we felt like under  
 10 JudgeáSenter's supervision it would go up to 500 million you  
 11 know, whatever the figure is. But my point is is that -- that  
 12 they never got it approved and made offers on criteria  
 13 guidelines approved by Judge Senter, and so they breached it no  
 14 matter what they paid. Is that --  
 15 BY MR. ROBIE:  
 16 Q. Would you agree with me, General Hood, that if we offered  
 17 the policyholders on the coast exactly the same formula for  
 18 adjusting claims, reevaluated claims, but we gave them the  
 19 additional option of not going to binding arbitration if they  
 20 didn't want to but the ability to either take our money,  
 21 arbitrate it if they wanted or file a lawsuit if they wanted,  
 22 that that's going to be an even better deal for the  
 23 policyholders on the coast?  
 24 MR. HESTER: Your Honor, this is again totally  
 25 irrelevant. It also assumes facts not in evidence in this

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1 case. It's unfair and misleading and irrelevant.  
 2 THE COURT: Overruled. Proceed.  
 3 A. Your Honor, I think he's -- what the question is is that  
 4 does the George Dale procedure that they entered into comply  
 5 with our state court agreement, and I contend that it does not.  
 6 And that section 3(b) is what catches them every time. They  
 7 had to get it submitted to Judge Senter under 3(a), but then  
 8 they had to make offers on criteria and guidelines approved by  
 9 the federal court.  
 10 And so they didn't -- they didn't get Judge Senter's  
 11 guidelines incorporated into the offers that you made. So  
 12 although you may argue that -- that the mediation program is  
 13 some type of compliance to our agreement, I contend that it's  
 14 not, because you breached the state court agreement under  
 15 section 3(b).  
 16 BY MR. ROBIE:  
 17 Q. So it doesn't matter how much they paid or will continue to  
 18 pay, it doesn't matter under what terms they're offering these  
 19 payments, it doesn't matter how and what rights they're giving  
 20 to the policyholders to assert their position, none of that  
 21 matters as long as Judge Senter isn't supervising it. Is that  
 22 what you're telling us?  
 23 A. I would -- Judge Bramlette is a judge in the Southern  
 24 District. And I still submit to State Farm even to this day  
 25 that the settlement agreement that we drafted that incorporated

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1 Judge Senter's criteria, it doesn't matter necessarily the  
 2 judge that handles it and -- but it does matter that -- your  
 3 Honor, my -- our agreement -- we didn't agree with that federal  
 4 class action they filed. We had some problems with it.  
 5 But I did -- you know, a man from up in the hills in north  
 6 Mississippi, knowing Judge Senter, I knew he was going to have  
 7 a fairness hearing. And I knew that he was going to require  
 8 that they change some things in there. And that's exactly what  
 9 he did. But as a gentleman that he is, rather than bringing  
 10 them in court and accepting it and then having the fairness  
 11 hearing like I think is the federal process, he gave them an  
 12 opportunity to get out of it.  
 13 And that was what I reached a state court agreement about,  
 14 that 3(a), they submitted to the court, 3(b) that they make  
 15 offers and guidelines approved by the federal court and have  
 16 arbitration. With federal oversight, I'm fine with whatever  
 17 occurs out there; but that was what Judge Senter set forth in  
 18 the conditions.  
 19 And I contend that once they entered that state court  
 20 agreement saying they're going to do this, that they're going  
 21 to make offers based upon criteria and guidelines approved by  
 22 the federal court, then they had to do it. They had to do what  
 23 Judge Senter said no matter what it was. And, of course, they  
 24 could have appealed it or something of that nature. They just  
 25 backed off and never would even try.

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1 And we went in another case -- or went -- worked with the  
 2 judge to -- and I have some correspondence with the court about  
 3 that, trying to get it back on track with different lawyers,  
 4 with -- the Scruggs Katrina Group was apparently some -- a  
 5 lightning rod in the situation. The court had indicated that  
 6 other lawyers needed to be involved. And that's when we  
 7 engaged with that federal process.  
 8 THE COURT: The settlement agreement that you all are  
 9 talking about, is that here?  
 10 MR. ROBIE: It is, your Honor. It's been premarked  
 11 for identification as Exhibit 27. If we have a copy, we could  
 12 submit it. Maybe it's a good time to go right through it.  
 13 THE COURT: I'm just unfamiliar with it. I've heard  
 14 you refer to it, but I don't think I've seen it.  
 15 MR. ROBIE: Your Honor, may I hand one to the witness?  
 16 THE COURT: You may, sir. And if you would, counsel,  
 17 in your questioning of the witness or you may state it to the  
 18 court if counsel opposite would approve of it, what the court  
 19 is interested in knowing is the genesis of this settlement  
 20 agreement. What brought it about? What does it say? What's  
 21 the meaning of it insofar as this case is concerned? That's  
 22 what I want to know.  
 23 MR. ROBIE: I will go directly there, your Honor.  
 24 BY MR. ROBIE:  
 25 Q. General Hood, this is the settlement agreement that you've

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1 been testifying about for the last ten minutes, isn't it?  
 2 A. That's correct. It's been marked Exhibit 27. That's the  
 3 Chancery Court, Hinds County, settlement agreement.  
 4 Q. Right. This resolved the case that you filed two weeks  
 5 after Hurricane Katrina hit on August 29th, 2005?  
 6 A. Yes. Your Honor, two weeks after the hurricane I learned  
 7 on Saturday when I went in and talked to the sheriff of Jackson  
 8 County about the problems that they were having with this  
 9 exclusionary clause and the anti-concurrent cause.  
 10 I filed an action in chancery court asking the court to do  
 11 two things. And there never would have ever been a lawyer  
 12 hired in either of these cases if they had not blocked us from  
 13 doing that -- or delayed it, rather.  
 14 And we asked just have the court to say the exclusionary  
 15 clause is valid or invalid and the anti-concurrent cause is  
 16 valid or invalid. So we filed that state court action. We  
 17 have yet to have a decision. But that's the case that we  
 18 settled in. We sued several insurance companies. And so this  
 19 state court order was entered in the state court case that we  
 20 initially sued on.  
 21 Now, the federal court case, they wanted me to sign off on  
 22 that settlement agreement that they -- or that proposed class  
 23 action, and I wouldn't do it because I didn't agree with it.  
 24 THE COURT: I understand.  
 25 A. Yes, sir.

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1 THE COURT: This settlement agreement is settling the  
 2 case which counsel just alluded to, which I believe was filed  
 3 down in Jackson County, and all other cases. Is that what  
 4 you're saying?  
 5 A. No, sir. This settlement agreement just addressed the suit  
 6 that we -- the simple question on those two issues in chancery  
 7 court in Hinds County. And then -- so when we settled our case  
 8 with them, this is the case that we filed. And there's only  
 9 been one suit that I filed against State Farm and that's in the  
 10 chancery court. Now, there was one last summer --  
 11 THE COURT: In chancery court in Hinds County.  
 12 A. Yes, sir.  
 13 THE COURT: Not in Jackson County.  
 14 A. Yes, sir.  
 15 THE COURT: I misunderstood what you said. I  
 16 understand it now. Thank you. You may proceed.  
 17 MR. ROBIE: Thank you, your Honor.  
 18 BY MR. ROBIE:  
 19 Q. If I understand this correctly, General Hood, within two  
 20 weeks of Hurricane Katrina making landfall on August 29th you  
 21 sued State Farm and several other insurance companies.  
 22 A. And that's -- that's correct. And what we were doing was  
 23 simply asking for a legal conclusion in filing suit.  
 24 MR. ROBIE: Your Honor, I think it's going to be very  
 25 difficult to go on a question-answer basis if he gives a speech

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1 every time I ask a yes or no question.  
 2 THE COURT: Well, he has a right to explain his  
 3 answer, counsel. And it may take a little longer than you or I  
 4 want or maybe General Hood wants, but go ahead and ask your  
 5 question. And be as responsive as you can, but I'll certainly  
 6 give you an opportunity, General, to explain your answer. You  
 7 may proceed, sir.  
 8 A. Yes, sir.  
 9 BY MR. ROBIE:  
 10 Q. That lawsuit is still pending against other insurance  
 11 companies, isn't it?  
 12 A. That's correct.  
 13 Q. And you have still not received any order of any court  
 14 invalidating the water exclusions in the standard homeowners  
 15 policies, have you?  
 16 A. Not in these cases. Judge Senter did rule, but I was not a  
 17 party to those cases.  
 18 Q. Actually, the Tuetpker case has now been resolved by the  
 19 Fifth Circuit and concluded that those exclusions are valid.  
 20 A. I'm not sure of the name, but that's correct. The Fifth  
 21 Circuit has overruled Judge Senter on some of those --  
 22 Q. Right. There is no case that has overruled those  
 23 exclusions that you're aware of, is there?  
 24 THE COURT: He's confused about the question. Restate  
 25 your question, counsel.

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1 BY MR. ROBIE:  
 2 Q. There is no Court of Appeal decision in the history of  
 3 Mississippi that you're aware of that has ever invalidated the  
 4 water damage exclusion that's found in the standard homeowners  
 5 policy in Mississippi. Isn't that a fact?  
 6 A. Not in federal court. But, there again, state law applies.  
 7 In all of the seven Camille cases and the one Betsy case we  
 8 contend that that was never upheld. So it needs to be a state  
 9 court decision to decide that issue.  
 10 Q. Right. There hasn't been one in your favor, has there?  
 11 A. No, sir, nor in State Farm's favor in state court.  
 12 Q. The federal courts have uniformly upheld those exclusions.  
 13 A. But they're basing it on their interpretation of state law  
 14 which has not been decided.  
 15 Q. Right. But in every case the Federal Court of Appeal, the  
 16 Fifth Circuit has said these are valid exclusions. Right?  
 17 A. I'm not sure. I -- from what I've read -- I haven't  
 18 tracked all the civil cases.  
 19 Q. All right. You filed this case after consulting with  
 20 Dickie Scruggs, didn't you?  
 21 THE COURT: Which case are you talking about?  
 22 MR. ROBIE: The Hinds County case to try to invalidate  
 23 the water damage exclusions in the State Farm homeowners  
 24 policy.  
 25 A. I consulted with a lot of people. And, your Honor, I

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1 don't -- I won't go off on it, but I think it's important for  
 2 the court to understand why this suit was filed. It was filed  
 3 two weeks after. It was strictly filed to get a quick answer  
 4 so there wouldn't be a lot of litigation. That was what I had  
 5 hoped for people because I knew our courts were already shut  
 6 down. The idea came from the sheriff in Jackson County.  
 7 I met with Mr. Scruggs. I met with a lot of lawyers from  
 8 around the state before we filed it because we wanted to  
 9 pinpoint the issue just on those two issues and make it clear  
 10 so we'd have a decision. We wouldn't have had all this  
 11 litigation had we had that decision.  
 12 Q. So if I heard your answer correctly, you met with  
 13 Mr. Scruggs to discuss your strategy before you filed that suit  
 14 within 14 days of Katrina.  
 15 A. And there was probably 15 lawyers in one meeting I know  
 16 that we had. I think a couple of them, three or four three of  
 17 them are here today.  
 18 Q. Where did that meeting take place?  
 19 A. In our office.  
 20 Q. When did it take place?  
 21 A. Sometime before we filed the suit.  
 22 Q. And can you tell the names of the lawyers that you  
 23 consulted with about your filing this lawsuit to try to  
 24 invalidate the water exclusion in the standard homeowners  
 25 policies in Mississippi?

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1 A. I can think of a few of them; but, I mean, I don't recall  
 2 all of the names. I think Danny Cupit was there. I think  
 3 Mr. Liston was there. Crymes Pittman, Mr. Scruggs was there.  
 4 There was about -- Precious Martin was there. Former  
 5 U.S. Attorney Brad Pigott was there.  
 6 Q. I'm sorry?  
 7 A. Former U.S. Attorney Brad Pigott was there; Carlton Reeves,  
 8 an old law clerk buddy of mine that worked with Mr. Pigott in  
 9 his firm in Jackson. Maybe Governor Lang was there. I'm not  
 10 sure. I think he was. I think he was there as well. I'm  
 11 sorry. I don't recall all the names. There were more, though.  
 12 I can tell you that.  
 13 Q. How many days before you filed the suit was it that you had  
 14 this consultation?  
 15 A. I don't know. I don't know. I mean, it was --  
 16 Q. Three, four days?  
 17 A. It was -- probably. I think we had a draft. I mean, we  
 18 were discussing we had a draft. It was a very simple case;  
 19 just is it a valid exclusionary clause and is the  
 20 anti-concurrent cause valid. So it was very simple.  
 21 Q. Right, because you knew that the standard homeowners policy  
 22 that had been written for years in Mississippi did not provide  
 23 coverage for water damage, flood, storm surge; and unless the  
 24 homeowner had a flood policy, they wouldn't be covered for  
 25 those water damages as a result of this hurricane. You knew

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1 that, didn't you?  
 2 A. Your Honor, I don't know if he wants me to argue the merits  
 3 of the wind/water.  
 4 THE COURT: I think he just wants you to answer yes or  
 5 no.  
 6 A. Yes, sir.  
 7 THE COURT: I think that's what he wants.  
 8 A. I'm afraid since I've got that state court litigation going  
 9 on I have to -- I'm trying to be careful. You know, I -- this  
 10 is the first time -- you saw me raise my left hand. I've never  
 11 been a witness. I've tried 100 jury trials, but I've never  
 12 been a witness and it's --  
 13 THE COURT: I know you know your left hand from your  
 14 right one.  
 15 A. Yes, sir. I'll do -- I'll do the best I can with that. I  
 16 guess we just reserve our rights in our litigation without -- I  
 17 don't want to argue with you about the law and I don't think  
 18 the court wants to hear that.  
 19 BY MR. ROBIE:  
 20 Q. I hope I don't sound like I'm arguing with you, Mr. Hood.  
 21 I'm just asking, if you filed the lawsuit to invalidate the  
 22 exclusions in the standard homeowners policies, you knew when  
 23 Hurricane Katrina hit that the homeowners policies in place  
 24 excluded damage from storm surge, flood, wind-driven water; and  
 25 unless the people of Mississippi have flood policies, they

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1 wouldn't recover insurance benefits for those kinds of damages.  
 2 A. Well, no, sir, I didn't know when it hit. I found out from  
 3 the deputy sheriff that the insurance companies were going to  
 4 deny claims. That's when I begun -- I began to do some  
 5 research. And we -- we began to find cases, the seven -- the  
 6 seven Camille cases that were in '69. They were actually --  
 7 the cases were dated '72. There was the Betsy case out there.  
 8 The exclusionary clause was -- went in effect in '68 after  
 9 the federal flood program had passed separating those issues.  
 10 And so that policy -- those terms I later found out were the  
 11 same, yet they didn't change them. And they lost every single  
 12 case after Camille. They -- the insurance companies did.  
 13 Q. Mr. Hood, the reason you filed the complaint is because as  
 14 the attorney general of the State of Mississippi you uniquely  
 15 could bring all of the insurance carriers, the major ones, into  
 16 one lawsuit and get a ruling to try to invalidate those water  
 17 exclusions. Isn't that what you were doing?  
 18 A. Yes, sir. The victims, the people on the coast -- we  
 19 didn't need -- our criminal courts were already going to be  
 20 backed up for months. 270 days we were running. So we didn't  
 21 need all this litigation. We wanted to have a quick decision  
 22 by a chancery court. We filed it in Hinds, because the courts  
 23 were shut down on the coast, to get a quick decision one way or  
 24 another. Is the exclusionary clause valid? Is the  
 25 anti-concurrent cause valid?

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1 Q. All right. Did you also consult with Joey Langston or Tim  
 2 Balducci or Mr. Patterson?  
 3 A. No, sir. I know Mr. Patterson. Of course, he's not a  
 4 lawyer, but he wasn't involved. I don't know if Mr. Balducci  
 5 was. Mr. Langston didn't have anything to do with these  
 6 Katrina suits that I'm aware of. Now, he may have -- we may  
 7 have consulted with him or sent him circulation of the draft  
 8 complaint, but he -- he didn't, as far as I recall.  
 9 Q. Did you circulate that complaint amongst the plaintiffs'  
 10 prominent attorneys before you filed it?  
 11 A. Yes, sir.  
 12 Q. And how many of those lawyers got that draft before you  
 13 filed that suit?  
 14 A. There again, I don't know. It would have been at least  
 15 those that were in the meeting that I've named and there were  
 16 some more, but I don't know exactly the names of those people.  
 17 Q. So Dickie Scruggs would have at least seen a draft of your  
 18 complaint before you filed it.  
 19 A. Yes, sir. And the -- these lawyers were doing all this  
 20 pro bono to try to help the people on the coast to get a quick  
 21 decision one way or another because we foresaw a massive amount  
 22 of litigation occurring and we wanted to help the people. And  
 23 that was -- that was the reason I as attorney general had a  
 24 duty to protect those people as best I could.  
 25 Q. Did Mr. Scruggs make any changes or proposed changes to

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1 your draft?  
 2 A. I don't know.  
 3 Q. Was he a confidential consultant of yours at that time?  
 4 A. No.  
 5 Q. Was he a confidential informant?  
 6 A. At that time?  
 7 Q. Yes.  
 8 A. There -- the first part of that suit, your Honor, asked for  
 9 injunctive relief. Mr. Scruggs' secretary, her home was  
 10 flooded. And the people on that street, the insurance  
 11 companies were going by trying to get them to sign a form. And  
 12 the form said something to the effect -- we attached it to our  
 13 complaint -- that I -- I acknowledge that I have damage both  
 14 based upon wind and water. They had to get that to get their  
 15 living expenses.  
 16 And, of course, the policies don't require that as a  
 17 condition. They were making an admission against their own  
 18 interest. So we moved to enjoin them from that. That was one  
 19 of the issues.  
 20 So the answer, he did provide me some information before I  
 21 filed the suit. But if you're trying to couch it in the terms  
 22 of confidential informant, that was after that some people -- I  
 23 mean, there were a lot of lawyers that were finding cases on  
 24 the coast that brought us information. And I have a duty to  
 25 protect the identity of those that provided us with that

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1 information.  
 2 Does that answer your question as far as when he actually  
 3 became what I would consider like a, you know, confidential  
 4 informant?  
 5 Q. No.  
 6 A. Okay. Well, let's try again.  
 7 Q. He wasn't a confidential informant when he reviewed the  
 8 draft of your proposed complaint against five insurance  
 9 companies that you filed two weeks after Katrina. Do I have  
 10 that right?  
 11 A. Yes. He -- he provided information to us that was -- led  
 12 us to witnesses that we went out and interviewed.  
 13 Q. But he wasn't a confidential informant at that point.  
 14 A. Well, you know, confidential informant is not a term of  
 15 art. It's -- a lot of those lawyers -- there were people who  
 16 were providing information, a lot of the policyholders. A lot  
 17 of people were providing us information. I mean, you could  
 18 call them confidential informants or call them people gathering  
 19 information. Now, I don't know at that point when we called --  
 20 began to call Mr. Scruggs a confidential informant.  
 21 Q. I've read a lot of newspaper reports. I think Anita Lee  
 22 who's here in the audience wrote a lot of them in the Biloxi  
 23 Sun Herald and a lot of the Clarion-Ledger reports, even the  
 24 Wall Street Journal, and I've never ever heard any interview  
 25 where you have described Mr. Scruggs as a confidential

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1 informant.  
 2 A. Well, you don't go around --  
 3 Q. Did you ever use that term publicly to describe him?  
 4 A. You don't necessarily go around disclosing who provides you  
 5 with information. So I wouldn't have called him a confidential  
 6 informant in the press. No.  
 7 Q. But you have made it clear to the press that he was helping  
 8 you and working with you and strategizing with you, haven't  
 9 you?  
 10 A. He provided us information. He initially reviewed the  
 11 complaint along with a lot of other lawyers. The answer to  
 12 that would be yes.  
 13 Q. Right. And he also provided you with documents that you  
 14 ultimately used as the starting point for a criminal  
 15 investigation of State Farm, didn't he?  
 16 A. He provided us documents, right.  
 17 Q. When did he do that?  
 18 A. You know, I'm not sure. I remember a couple of engineering  
 19 reports that were conflicting, but I think it would have been  
 20 in the spring of 2006. I know that the best dates I can come  
 21 up with are -- you know, are based upon things that -- when we  
 22 issued our grand jury subpoena, which would have been in I  
 23 think March. So it would have been sometime shortly before we  
 24 issued those subpoenas. But there were other lawyers providing  
 25 us information about engineering reports from down on the

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1 coast. It wasn't just Mr. Scruggs.  
 2 Q. I'm not interested in the other lawyers today. I'm  
 3 interested in Mr. Scruggs. Did he give you documents in  
 4 February of 2006?  
 5 A. I think that date would probably be correct. I'm not sure  
 6 of the exact date, but somewhere in that area, yes, sir.  
 7 Q. Did you attend a meeting in your office with Mr. Scruggs  
 8 where documents were discussed?  
 9 A. Probably so.  
 10 Q. And who else was there?  
 11 A. You know, there again, that's -- when I say probably, I  
 12 don't actually recall the meeting when those documents were --  
 13 the first documents that we received were given to us.  
 14 Q. Could it have been as early as November of 2005?  
 15 A. No, sir. I don't think so.  
 16 Q. Was it likely in December of 2005?  
 17 A. I think it was shortly before the grand jury subpoenas were  
 18 issued, the first grand jury subpoena.  
 19 Q. Could it have been between Christmas and New Year's of  
 20 2005?  
 21 A. I don't think so. I want to guess in February, but I'm --  
 22 there again, I don't know. I don't have a schedule of all our  
 23 meetings.  
 24 Q. Right. And these are documents that were -- that were  
 25 taken from State Farm by Kerri or Cori Rigsby. Right?

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1 A. I'm not sure. I'm not sure which one you're talking about.  
 2 Q. Either or both.  
 3 A. Either what?  
 4 Q. Either Kerri or Cori Rigsby. Cori Moran used to be married  
 5 to Mr. Moran. She's reverted back to Kerri Rigsby.  
 6 A. I'm sorry. I don't mean to interrupt. I know the ladies  
 7 that you're talking about. As far as what documents, when we  
 8 received them, that type thing, I don't know. I think in  
 9 February he gave us some engineering reports. That's correct.  
 10 But I don't know how many, from whom they came, that type of  
 11 information.  
 12 Q. How many whistleblowers did Mr. Scruggs bring to you?  
 13 A. Courtney Schloemer, a lawyer basically from Natchez, has  
 14 conducted that investigation. Our Public Integrity Division  
 15 was off in another building. Ed Snyder was there, Scott  
 16 Johnson. And Courtney Schloemer was -- they were the primary  
 17 people who handled the day-to-day collection of documents,  
 18 accepting the information, be it from policyholders or lawyers  
 19 or whomever. So you may be able to ask her. She may be able  
 20 to give you a more definite statement about when we gave  
 21 those -- when we got what documents.  
 22 Q. I asked you how many whistleblowers Mr. Scruggs introduced  
 23 to you.  
 24 A. I never was introduced to any of them.  
 25 Q. How many were you told about?

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1 A. I was told about the two sisters, but I don't know when.  
 2 Q. Were you ever told about any other whistleblower from  
 3 Mr. Scruggs other than the sisters?  
 4 A. I don't recall. I understand that there were more, but I  
 5 don't know that.  
 6 Q. How do you know there were more?  
 7 A. Having read some of the documents involved in this case or  
 8 testimony. I'm the state's designee. I'm able to do that. I  
 9 recall some mention or some transcript about somebody else that  
 10 was assisting. I'm not sure.  
 11 Q. A whistleblower from State Farm?  
 12 A. I'm not sure. I mean, there were people that were  
 13 providing Mr. Scruggs I think with information. I don't know  
 14 if you want to call it whistleblowers, but they were --  
 15 Q. Well, I'm just interested in knowing if you can identify  
 16 any whistleblowers developed by Mr. Scruggs out of the State  
 17 Farm operation other than the Rigsby sisters.  
 18 A. No, sir. I don't know. You can ask Courtney Schloemer  
 19 that question.  
 20 Q. You, Jim Hood, are not aware of any others, are you?  
 21 A. No, sir. But just as I told you, I -- I'm doing a lot of  
 22 other things as attorney general and I have a division that  
 23 handles that. So Ms. Schloemer would be able to answer that,  
 24 most likely the best person.  
 25 Q. Did you go to Oxford on December 9th, 2005, prior to

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1 heading off to a duck-hunting trip in the Delta to meet with  
 2 Mr. Scruggs to talk about the Rigsby whistleblowers?  
 3 A. No, sir. I think December 9th, 2005, I was here in Natchez  
 4 with my wife. That would have been my anniversary. I know two  
 5 of my last four have been spent here in Natchez. And so I  
 6 think I was probably here.  
 7 Q. In the first two weeks of December 2005 did you go to  
 8 Oxford and meet with Mr. Scruggs to talk to him about  
 9 whistleblowers from State Farm?  
 10 A. I don't remember. I don't remember it, but that doesn't  
 11 mean I didn't. I don't recall.  
 12 Q. In December of 2005 did you tell Lee Harrell that you and  
 13 Dickie Scruggs were going to use the tobacco strategy; and if  
 14 State Farm didn't settle with y'all, that you were going to  
 15 start indicting people all the way from Ed Rust down?  
 16 A. You're asking about two or three questions there. And,  
 17 your Honor, I'll try to address them as best I recall him  
 18 asking us -- asking me. No, I absolutely never told anybody  
 19 whatsoever -- that's one thing I do know. And I won't -- I  
 20 won't get close to the line of something I don't -- I'll tell  
 21 the court -- I'm not sure. But I do know that I never even  
 22 discussed anything about a tobacco procedure. I don't know --  
 23 that's the first thing I've heard about that is what State  
 24 Farm's brought up.  
 25 Now, as to a comment by Mr. Harrell that -- I wasn't there

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1 when he was in a deposition. I didn't have a chance to  
 2 cross-examine him to try to figure out the context in which he  
 3 was making this allegation. There were five people. Let's  
 4 see. It was Danny Cupit, Mary Jo Woods, Mike Moore, George  
 5 Dale and Lee Harrell sitting in my office. I brought them over  
 6 there to talk about the insurance market. We were almost about  
 7 to settle the -- we were working toward a settlement. I had to  
 8 get their information. That date was January 12th.  
 9 I can state positively and the witnesses back me up on that  
 10 that I never made any statement about indicting all of them if  
 11 they didn't settle with us. That's an absolute untruth and I  
 12 know that to be a fact because I have witnesses to back us up  
 13 on that. I mean, I trust their memory as well as mine on that  
 14 issue.  
 15 Q. Did you ever say that to Jeff Jackson, the general counsel  
 16 for State Farm that's sitting over there in the corner?  
 17 A. No. As far as --  
 18 Q. That --  
 19 A. Say what? Now, tell me -- let's get the questions right.  
 20 Q. That you were going to indict State Farm people if they  
 21 didn't settle these claims.  
 22 A. No. I -- let me -- your Honor, there is something --  
 23 MR. ROBIE: Your Honor, could we get an answer before  
 24 he gives an explanation?  
 25 A. I just said no. I mean -- I'm sorry.

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1 THE COURT: Did you answer the question "no, sir"?  
 2 A. Yes, sir.  
 3 THE COURT: Do you understand that to be the answer?  
 4 MR. ROBIE: I do now.  
 5 THE COURT: You asked him if he ever said that to  
 6 Mr. Jackson.  
 7 MR. ROBIE: If he ever said that to Mr. Jackson. I  
 8 now understand no to be his answer.  
 9 THE COURT: He may explain his answer if there's an  
 10 explanation that you'd like to give.  
 11 A. Your Honor, there was a first with meeting State Farm.  
 12 They brought State Farm. You know James was head of the  
 13 criminal division in the U.S. Attorney's Office for a long  
 14 time, a friend of mine. He was representing them in their  
 15 criminal capacity, State Farm.  
 16 They came to my office in November 2006 sometime. They  
 17 brought down Bob Abrams, who was a former attorney general from  
 18 New York, someone I know representing State Farm as well. And  
 19 James Tucker was there; Geoffrey Morgan, my chief of staff,  
 20 Judge Morgan's brother; and Mike Moore. And I told -- and  
 21 Jeffrey Jackson.  
 22 And I -- they had their three State Farm lawyers. And I  
 23 went around the table and I said, "I'm not going to talk about  
 24 a criminal prosecution in the context of settling a civil  
 25 case." And I pointed at them. I said, "James," I said, "do

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1 you want to sign this agreement? Or you and I will meet  
 2 separately and we'll run them out of here. We'll talk about  
 3 the criminal case." But I wasn't in any position to talk even  
 4 about settling that case at that point because I didn't know  
 5 what the facts all were.  
 6 Then I pointed at Bob Abrams from New York, former attorney  
 7 general up there. He agreed that they were going to waive any  
 8 question about it and they understood that we were not going  
 9 to -- it never happened, because I'm a stickler for making sure  
 10 that we separated those two. In every meeting I did that.  
 11 And Jeff Jackson, I pointed to him; and I said, "Jeff," I  
 12 said, "do you agree that we're not going to" -- "this is  
 13 not" -- "these are two separate issues?" and "We'll have  
 14 separate meetings if y'all want to?" They all agreed that that  
 15 was not a problem. So your question did I tell Jeff Jackson we  
 16 were going to indict them if they didn't settle, that is not  
 17 true.  
 18 The -- and another thing I want to correct about when you  
 19 say "settle with us," any settlement that I was talking about  
 20 with Jeff Jackson or Lee Harrell was strictly our state court  
 21 settlement order. It had nothing to do with Mr. Scruggs'  
 22 cases. It had nothing to do with that class action that they  
 23 filed.  
 24 Mr. Scruggs' cases had already been settled in November I  
 25 understand. State Farm sent a letter saying sometime in

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1 November of '06 that those cases with his 640 cases or 700,  
 2 whatever it was, were already settled. So his cases were  
 3 totally separate anyway.  
 4 Only thing we talked about was my state court action and  
 5 then my state court action talks about going to federal court  
 6 and filing a federal class action.  
 7 Q. So you never told Mr. Jackson that if he didn't pay money  
 8 to Scruggs that you were going to indict State Farm employees.  
 9 A. No.  
 10 Q. Did you tell him that it would be very beneficial for State  
 11 Farm's position in the criminal case if you got some money to  
 12 Scruggs by Christmas of 2006?  
 13 A. No.  
 14 Q. I'd like you to look, please, if you would, at Exhibit 40.  
 15 I put it up on the witness stand before we started. That's  
 16 where we were going to start. It's a letter dated July 16,  
 17 2007. Did you write that letter?  
 18 A. Actually, it was drafted I think by Courtney Schloemer.  
 19 Some of it was changed, because you can tell my writing. It's  
 20 straight to the point. And it was probably compiled by  
 21 Courtney, but I signed the letter.  
 22 Q. Do you want to try to go through the letter paragraph by  
 23 paragraph and tell me which is straight and to the point and is  
 24 yours?  
 25 A. I can -- if you ask me a question about it, I'll try to

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1 answer it for you.  
 2 Q. You signed the letter?  
 3 A. I'll tell you -- if you ask me a question -- yes, sir, I  
 4 signed it. I'll take responsibility for it. I'm not trying  
 5 to --  
 6 Q. You intended this to be the position of the Office of Jim  
 7 Hood, Attorney General of the State of Mississippi.  
 8 A. Sure.  
 9 Q. And you wrote this letter just about six months after you  
 10 settled with State Farm. You settled your civil matter and you  
 11 settled your criminal investigation and criminal prosecution,  
 12 didn't you?  
 13 A. Yes, sir, from January 23rd to July 16th, yes, sir.  
 14 Q. That's about six months.  
 15 A. Okay.  
 16 Q. Had you notified State Farm that you were reopening a  
 17 criminal investigation before you sent this letter to Alice  
 18 Martin?  
 19 A. No, sir. I don't -- in state court you don't issue a  
 20 target letter or anything. I mean, if you reopen an  
 21 investigation, you don't go tell somebody that you're looking  
 22 into their activities.  
 23 Q. Had you notified anybody that you were reopening an  
 24 investigation of State Farm?  
 25 MR. HESTER: I'll object to the question as misleading

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1 to the extent it assumes that there's a reopening of an  
 2 investigation. That fact has not yet been established by  
 3 counsel.  
 4 THE COURT: Well, I'll let him answer if he knows.  
 5 That's the only way he can answer, of course. But I'll  
 6 overrule your objection and let you -- do you understand the  
 7 question, General?  
 8 A. Yes, sir. Now, you use the term "reopen" and I say that  
 9 that's not a correct term. And the reason is because on  
 10 January 23rd we settled the investigation that was ongoing at  
 11 that time. Between that time, sometime around April, we  
 12 received new information.  
 13 Q. About what?  
 14 A. About -- your Honor, I can't talk about an ongoing criminal  
 15 investigation.  
 16 THE COURT: What you received was some additional  
 17 information that caused you to initiate the investigation which  
 18 has resulted in this suit.  
 19 A. Yes, sir. That's -- well -- yes, sir.  
 20 THE COURT: All right.  
 21 MR. HESTER: And for the record, if I might just  
 22 interpose an objection as we had previously regarding any prior  
 23 grand jury matters, just as General Hood has stated from the  
 24 stand.  
 25 THE COURT: All right, sir.

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1 BY MR. ROBIE:  
 2 Q. I'm not sure where this leaves me. What information did  
 3 you receive?  
 4 A. Your Honor, I don't know how to approach it. But we  
 5 received new information, if I may just --  
 6 THE COURT: I understand. What he doesn't want to go  
 7 into, counsel, is he doesn't want to reveal the information he  
 8 received that resulted in this current investigation which is  
 9 the gravamen of this suit.  
 10 The court has under advisement the issue of whether or  
 11 not this matter should be an in camera matter, as it has been  
 12 to this point, or whether it should be revealed in open court.  
 13 I'm going to meet with the lawyers outside of the courtroom at  
 14 some point and discuss that in camera, as we have in the past,  
 15 and make a decision on it. At this point then I sustain the  
 16 objection, counsel.  
 17 MR. HESTER: Thank you.  
 18 BY MR. ROBIE:  
 19 Q. Did I hear you correctly that you got this information in  
 20 April of '07?  
 21 A. Yes, sir. I think sometime in April.  
 22 Q. And that's when you opened a new investigation.  
 23 A. Yes, sir.  
 24 Q. Did you issue any grand jury subpoenas before August of  
 25 '07?

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1 A. Not that I'm aware of.  
 2 Q. Did you issue any grand jury subpoenas on this new  
 3 investigation until you sued State Farm in civil court for  
 4 breach of contract?  
 5 A. There again, I don't want to even get close to making a  
 6 mistake. Lord knows, I make plenty of them. But Courtney can  
 7 tell you if there was one issued. I don't recall her issuing  
 8 one.  
 9 Q. Well, there's only been one on this new investigation.  
 10 Isn't that a fact?  
 11 A. Well, I'm not -- you're asking me subpoenas which could  
 12 have gone to other people, and I don't know the answer to that  
 13 question.  
 14 Q. I'm only asking about subpoenas to State Farm.  
 15 A. Well, if you -- okay. If you're asking about subpoenas to  
 16 State Farm, as far as I know, this subpoena that y'all filed  
 17 this suit over is the one subpoena issued to State Farm.  
 18 Q. And how long after you sued State Farm in civil court for  
 19 breach of contract was it that you issued this grand jury  
 20 subpoena that we're talking about here in this case?  
 21 A. I'm not sure of the date when the grand jury subpoena in  
 22 this case -- I think y'all attached it in the complaint -- went  
 23 out. I don't issue grand jury subpoenas. That's the court  
 24 that issues the subpoenas when the prosecutor requests them.  
 25 Q. Is your answer you don't know?

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1 A. Yes, sir, I don't know. And it's part of the complaint. I  
 2 mean, if you show me the document, I can tell you the date on  
 3 it, if that's what you're asking.  
 4 Q. I'm asking for your knowledge, Mr. Hood. If you don't  
 5 know, there's no shame in saying that.  
 6 A. I've stated awhile ago I thought that it was in August of  
 7 '07. That was your first question. And I think it was in  
 8 August. I don't know the exact date.  
 9 Q. Within days of filing your lawsuit against State Farm in  
 10 civil court for breach of contract?  
 11 A. There again, I do not know the date when the civil action  
 12 was filed. If you'll show me the document, I'll be glad to  
 13 state that date, exact date. But to insinuate that there's  
 14 some connection between those two, that is absolutely not true.  
 15 Has no connection.  
 16 Q. This Exhibit 40, your letter of July 16, 2007, to Alice  
 17 Martin, why did you write that letter?  
 18 A. Because -- your Honor, this litigation over there in  
 19 Alabama, State Farm was trying to get records that Mr. Scruggs  
 20 had turned over to our office through the confidential  
 21 informants. And he was the conduit, as lawyers are a lot of  
 22 the times. If you flip one codefendant against the other, the  
 23 lawyer is the conduit. Usually, the codefendant doesn't tell  
 24 you anything until you give them a written immunization  
 25 agreement.

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1 But in this case we got those documents. And the federal  
 2 court was about to turn them over to State Farm and their  
 3 engineering firm. And I was trying to protect our confidential  
 4 informants, those women in that suit. This -- our -- as far as  
 5 the Alabama litigation goes, our grand jury was something like  
 6 mid January of '07; and we were getting ready to interview in  
 7 the grand jury State Farm witnesses, State Farm employees. And  
 8 we were -- we had feared that if the federal court turned them  
 9 over to State Farm, then they would know what questions we  
 10 would ask. So we were doing two things. We were -- we were  
 11 concerned about them.  
 12 Now, there's absolutely no way that I would ever try to in  
 13 any way circumvent an order of a federal district judge or a  
 14 state court or a justice court judge or any judge. If the  
 15 court's ordered it, I can appeal it or whatever.  
 16 But this letter was written in an attempt to let a fellow  
 17 prosecutor, Ms. Martin, who is the U.S. Attorney over there,  
 18 realize that in matters of comity, if I'm in a prosecution --  
 19 Dunn Lampton has these documents as well. It hurts our case if  
 20 it's given to the other side. And as a matter of comity, the  
 21 court should give some consideration to our people that are  
 22 providing us that information. I'm trying to protect my  
 23 witness.  
 24 So if I've got a witness that's a witness in a dope case,  
 25 I've got a duty to try to protect them if somebody is trying to

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1 shoot them or whatever. Same goes for any kind of litigation.  
 2 Q. You said a mouthful there, General Hood. Let's see if I  
 3 can unload a little bit of it. First of all, State Farm was  
 4 not a party to the Renfroe case in Alabama, was it?  
 5 A. I'm not sure. I didn't get -- I didn't read the pleadings  
 6 there. I know -- I think Renfroe is pretty much -- State Farm  
 7 has all their documents. I mean, they're joined at the hip.  
 8 Q. General Hood, could you take a look, please, at Exhibit 11,  
 9 which is in evidence. It's a brief your office filed in the  
 10 Renfroe case. We can bring it up on the screen.  
 11 A. Okay. If you'll hand me a copy of it, I --  
 12 Q. We'll put it on the screen.  
 13 A. Okay.  
 14 THE COURT: Is that in evidence in this case  
 15 introduced earlier?  
 16 MR. ROBIE: I have -- on my evidence checklist, Judge,  
 17 I show it is in evidence. I believe it is. Yes.  
 18 THE CLERK: It is.  
 19 THE COURT: It is in evidence Ms. Jackson reports.  
 20 You may proceed, counsel.  
 21 MR. ROBIE: Yes, sir.  
 22 BY MR. ROBIE:  
 23 Q. Who are the defendants in that case?  
 24 A. Cori Rigsby Moran and Kerri Rigsby.  
 25 Q. State Farm isn't a defendant, is it?

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1 A. No, sir.  
 2 Q. And who gave you some order that suggests that Judge Acker  
 3 was going to turn over documents to State Farm?  
 4 A. Who gave me an order that suggested that he was going to?  
 5 Q. Yes.  
 6 A. I've never seen that order I don't think. There again,  
 7 Courtney Schloemer handled all of this in the Alabama case.  
 8 She was really concerned about State Farm through Renfroe  
 9 forcing the documents to be turned over.  
 10 I think she filed some type action intervening. I think  
 11 she was allowed to intervene. And then this amicus brief -- I  
 12 don't know if it was in support of the motion to intervene or  
 13 whatever. I never read any of those documents. And I think  
 14 Courtney is available if you'd like to ask her about those  
 15 documents about that litigation.  
 16 All I know is, generally, they were -- we felt like that  
 17 our witnesses were being intimidated and that the information  
 18 would be turned over to State Farm, which it was. As my  
 19 recollection is, Renfroe actually downloaded the documents to  
 20 State Farm.  
 21 Q. Where did you get that information?  
 22 A. That's -- that's information that was related to me by  
 23 Courtney.  
 24 Q. Courtney told you that Renfroe downloaded the information  
 25 to State Farm.

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1 A. There's something filed in federal court. I think the  
 2 defense -- Renfroe said it was an accident or something, the  
 3 information was turned over. Maybe it was to the lawyers for  
 4 State Farm. I'm not sure who --  
 5 Q. General Hood, I've read every pleading in that case and --  
 6 MR. HESTER: Object to argument by counsel.  
 7 BY MR. ROBIE:  
 8 Q. I would like to --  
 9 THE COURT: Just a minute. Let him finish his  
 10 question. Counsel, go ahead.  
 11 BY MR. ROBIE:  
 12 Q. Can you describe for me as carefully as possible what  
 13 document you read that suggests that Renfroe gave documents to  
 14 State Farm?  
 15 A. No, sir. I didn't say I read a document. I said it was --  
 16 I was told that by Courtney Schloemer. Now, ask Courtney and  
 17 she can tell you all about the federal litigation over in  
 18 Alabama. I was not involved in that.  
 19 Q. This letter --  
 20 A. That was actually hearsay technically. And being a  
 21 prosecutor, I'm sorry for having made a comment about what  
 22 somebody told me. If you ask me what somebody told me, then  
 23 I'll answer it I guess.  
 24 Q. General Hood, this letter, Exhibit 40 that we were looking  
 25 at, you wrote to the attorney general of the Northern District

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1 of Alabama asking Alice Martin to not prosecute Dickie Scruggs  
 2 on the contempt citation issued by Judge Acker in the Renfroe  
 3 litigation. Isn't that what this is?  
 4 A. Ms. Martin is the United States Attorney. She's not the --  
 5 Q. I apologize.  
 6 A. -- attorney general. But I wrote to Ms. Martin expressing  
 7 my concerns about, as a matter of comity, if we start allowing  
 8 one state court to be used to impede investigations in other  
 9 states, that it causes difficulty for prosecutors.  
 10 She obviously realized that because, there again, it's my  
 11 understanding she did not pursue that suit. Now, I read that  
 12 in the paper she didn't proceed in that suit. I don't know  
 13 that for a fact, but I assume that is correct.  
 14 Q. The United States Attorney took a referral from Judge  
 15 Acker, a sitting judge in the United States District Court in  
 16 the Northern District of Alabama, to prosecute Dickie Scruggs  
 17 for criminal contempt for his failure to turn over documents  
 18 pursuant Judge Acker's order and his, in fact, delivery of  
 19 those documents to your office. Isn't that a fact?  
 20 A. That question was a little long. If you will, just --  
 21 Q. I'll break it down. Judge Acker ordered Dick Scruggs to  
 22 turn over the documents which the Rigsbys had taken from State  
 23 Farm and give them to Renfroe's counsel, didn't he?  
 24 A. Yes, sir. Your question before asked about referral to the  
 25 United States Attorney, and that's why I was confused.

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1 Q. Let me start at the very beginning and we'll take it in  
 2 baby steps.  
 3 A. Well, maybe I can just make it clear -- or quicker. He  
 4 referred it, I guess, if you will. She declined to prosecute.  
 5 And the judge did order Mr. Scruggs to turn over documents.  
 6 Q. Actually, let's put the cart after the horse. Judge Acker  
 7 ordered Dick Scruggs to turn over the data dump and other  
 8 documents that the Rigsbys had taken from State Farm's  
 9 database -- he ordered him to give those documents back to  
 10 Renfroe, the Rigsbys' employer, didn't he?  
 11 A. There was an order for Mr. Scruggs to return documents.  
 12 Where they came from, that type of information you're adding, I  
 13 don't know the answer to all that.  
 14 Q. You had a set of the documents yourself, didn't you?  
 15 A. I was given a set of documents, as was the Mississippi --  
 16 Dunn Lampton, the United States Attorney's Office. Our offices  
 17 were given some documents. State Farm gave us documents.  
 18 Q. Wait. Wait. The Rigsbys gave you the very same documents  
 19 that they gave to Mr. Scruggs that were the subject of  
 20 Judge Acker's contempt citation, didn't they?  
 21 A. First of all, there again, you'll have to ask Courtney.  
 22 But my understanding is that all -- what they sent to our  
 23 office was never opened. It was left just like they were sent  
 24 to our office. And so we don't know what -- you know, whether  
 25 they were the same thing or not. I mean, I'm trying to answer

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1 your question to be concise.  
 2 Q. General Hood, after the data-dump weekend, you had an  
 3 investigator from your office go to the Rigsbys' house and pick  
 4 up a set of the documents, didn't you?  
 5 A. No, sir, I did not.  
 6 Q. Did Courtney do that?  
 7 A. I don't know the answer to that question. You'll have to  
 8 ask Courtney.  
 9 Q. We can pull out the record from the Renfroe case in which  
 10 Judge Acker makes such a finding, that the day after the data  
 11 dump an investigator from your office went to the Rigsbys'  
 12 house and picked up a set of the documents. You know that to  
 13 be a fact, don't you?  
 14 A. No, sir. I haven't read Judge Acker's order or anything  
 15 that he found.  
 16 Q. Do you also know --  
 17 A. Now, if you'll let me answer that --  
 18 MR. HESTER: May he explain, sir?  
 19 THE COURT: Just a minute. Sir?  
 20 MR. HESTER: May he be allowed to explain?  
 21 THE COURT: Certainly.  
 22 A. My understanding was the documents were given to our office  
 23 and the United States Attorney's on the same day. How they got  
 24 there, I don't go directing people to go pick up documents or  
 25 let them deliver. There again, that division was over in

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1 another building. Where I'm now housed in one building, I  
 2 still don't see them as much as I'd like to. So you'll have to  
 3 ask Courtney about the documents, whether they were turned  
 4 over, you know, that type stuff. I just don't know the answer  
 5 to those questions.  
 6 BY MR. ROBIE:  
 7 Q. But you do know they were never opened.  
 8 A. That's what Courtney told me. You know, if you want me to  
 9 just say what is my personal knowledge, I will do so. And I  
 10 will add that this is -- I'm trying to keep it as short as I  
 11 can. So...  
 12 Q. I don't think that is generally the result when we start  
 13 speculating.  
 14 A. Okay. We'll --  
 15 MR. HESTER: Object to comments by counsel, your  
 16 Honor.  
 17 THE COURT: Well, he's kept that to a minimum. Let's  
 18 proceed. What's your next question, counsel?  
 19 BY MR. ROBIE:  
 20 Q. My next question is, when Judge Acker issued an order for  
 21 Dick Scruggs to turn over the very same documents which your  
 22 office already had, your office asked Mr. Scruggs to bring them  
 23 there, didn't they?  
 24 A. There again, the premise of your question is they're the  
 25 very same documents. I told you I don't know. Secondly, I did

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1 send -- well, Courtney sent a letter to Mr. Scruggs asking for  
 2 those documents. That is correct.  
 3 Q. You saw Courtney's letter asking Dickie Scruggs to send the  
 4 documents to your office?  
 5 A. There was some communication. I don't know what form. I  
 6 didn't see it. No, sir. That's my -- there again, I'm trying  
 7 to state what you need to be asking Courtney.  
 8 Q. And you know, don't you, that because Mr. Scruggs defied a  
 9 court order and gave the documents to Courtney Schloemer, that  
 10 Judge Acker held him in criminal contempt? You know that,  
 11 don't you?  
 12 A. You know, I think it's debatable. I know that the court  
 13 found that it was in contempt, but I think there was some law  
 14 enforcement exception and I -- I did read something that the --  
 15 that the -- the Ninth Circuit ruled that there was a law  
 16 enforcement exception.  
 17 So I take -- to answer your question the best I can, yes,  
 18 the judge held him in contempt for delivering those documents.  
 19 I do not agree with your characterization of whether or not he  
 20 should have -- he was actually in contempt.  
 21 MR. ROBIE: Your Honor, I'd like to show the witness  
 22 Exhibit 13, the document we'll mark as 13 for identification.  
 23 THE COURT: You may do so.  
 24 (DOCUMENT TENDERED TO WITNESS)  
 25 A. Okay.

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1 BY MR. ROBIE:  
 2 Q. Mr. Hood, is this a letter that your office sent to  
 3 Mr. Scruggs asking him to turn over the documents to you rather  
 4 than to Renfroe pursuant Judge Acker's order?  
 5 A. I don't know. I've never seen the letter. So I don't  
 6 know.  
 7 THE COURT: All right. Wait just a minute. Take a  
 8 little time to read it if you would, General Hood. Let me do  
 9 the same. So if you'll just give me an opportunity to read  
 10 this letter, please.  
 11 (COURT EXAMINED DOCUMENT)  
 12 THE COURT: All right. You may proceed, counsel.  
 13 A. Yes, sir.  
 14 BY MR. ROBIE:  
 15 Q. Is that a letter that Courtney Schloemer sent out for your  
 16 office?  
 17 A. There again, I don't know if she sent it out. I have read  
 18 it and I'm familiar with -- that Courtney sent some document to  
 19 him asking for it. And then she sent him another letter saying  
 20 that we're not saying defy the court's order. I think there  
 21 was a clarification. I think there was another letter, e-mail,  
 22 communication, some type documentation. I haven't seen either  
 23 of them, though.  
 24 Q. Did you talk to Mr. Scruggs between the date of  
 25 Judge Acker's order and Courtney sending him a letter telling

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1 him to bring the documents to your office?  
 2 A. I have been told -- and I don't know if I actually read any  
 3 of the transcript -- that Mr. Scruggs said that he called me.  
 4 And, there again, that would have been -- from my  
 5 understanding -- I try to get some dates straight. It would  
 6 have been December 9th, which was a Friday. I know that on  
 7 that day of the year, which would have been '06, I was down  
 8 here again on my anniversary on the 9th, that Friday night  
 9 and -- here in Natchez.  
 10 THE COURT: I hope your presence here today, General,  
 11 won't stop you from coming to Natchez.  
 12 A. Yes, sir. My wife loves it and I do too. And we stayed  
 13 here that night. The Saturday night I went back. My folks had  
 14 their 50th anniversary in Jackson. We went out that night. I  
 15 don't know when I talked to Mr. Scruggs. I do agree that I  
 16 did. I don't know the date. I don't even remember the  
 17 conversation.  
 18 I remember driving down with my wife on the phone the whole  
 19 time and feeling bad about it. And if I talked to Mr. Scruggs,  
 20 I do not know. I -- if he says that I did, I do not dispute  
 21 that.  
 22 Q. Well, the record in the Renfro case has a specific finding  
 23 in the contempt citation that he talked to you and that the two  
 24 of you decided he would take the documents -- or the documents  
 25 would be delivered to your office. Do you dispute that?

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1 A. I haven't read any of the findings of what Judge Acker has  
 2 done. There again, I understand Mr. Scruggs testified to that  
 3 and I don't -- I don't dispute that, that we asked him to send  
 4 us the documents.  
 5 Q. Right.  
 6 A. That's correct.  
 7 Q. And did he do that?  
 8 A. Not to me. But as far as I know, he did send them to our  
 9 office. I never saw the documents. I never -- there again,  
 10 they were sealed and never -- never touched by our office.  
 11 Q. That set was never opened either, huh?  
 12 A. As far -- no. I thought we were talking about the set  
 13 that -- which set are you talking about?  
 14 Q. I'm talking now about the second set, the Dickie Scruggs  
 15 set that he brought to you in violation of Judge Acker's order.  
 16 A. There again, I don't agree that there was not some law  
 17 enforcement exception. So your answer -- you want me to answer  
 18 that he violated the order. The answer to that is no. As far  
 19 as what he sent us, the documents that were sent to us in  
 20 December of '06 were not opened it's my understanding. And  
 21 Courtney can tell you about that.  
 22 Q. So neither set of the Rigsby data-dump documents were ever  
 23 opened by your office.  
 24 A. I'm sure that the -- that the -- that the first information  
 25 we got when we received it from -- the day that Dunn Lampton,

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1 the U.S. Attorney, and all of us received those documents, I'm  
 2 sure we went into those documents. I didn't --  
 3 Q. Have you read Judge Acker's memorandum of opinion?  
 4 A. No, sir. I don't recall if I did.  
 5 MR. ROBIE: Your Honor, I'd like to mark for  
 6 identification document 41, which is Judge Acker's memorandum  
 7 opinion. I believe it's already in evidence. So I don't need  
 8 to mark it again.  
 9 THE COURT: Do you have it there, Ms. Jackson?  
 10 THE CLERK: 41?  
 11 MR. ROBIE: Yes.  
 12 THE CLERK: Yes.  
 13 THE COURT: It's in evidence, counsel. You don't have  
 14 to mark it again. You're right. You can refer to it. Now,  
 15 Exhibit 13 is for ID only. That's been marked for ID.  
 16 MR. ROBIE: I'd offer it in evidence, your Honor.  
 17 THE COURT: All right. What says -- he's offering 13.  
 18 13 was held in abeyance for a few moments. And I didn't want  
 19 to get past 13 into something else without making the ruling on  
 20 13. What says the defendant to Exhibit 13 now tendered for  
 21 admission into evidence?  
 22 MR. HESTER: Your Honor, I believe based on the  
 23 witness' testimony, he said he wasn't sure whether or not that  
 24 was the letter sent by Ms. Courtney Schloemer or not. I think  
 25 that we have no objection as to identification, but it's not --

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1 the foundation --  
 2 THE COURT: All right. I'll sustain that. We'll  
 3 leave it for ID purposes and let Ms. Schloemer testify about  
 4 it.  
 5 (EXHIBIT P-13 MARKED FOR IDENTIFICATION)  
 6 THE COURT: All right. You may proceed, counsel. Go  
 7 ahead.  
 8 BY MR. ROBIE:  
 9 Q. Direct your attention, please, to page 20 of this  
 10 memorandum opinion by Judge Acker.  
 11 A. Yes, sir.  
 12 Q. And I'd like you to please read, if you would, the first  
 13 two sentences of the second full paragraph on that page.  
 14 MR. HESTER: Your Honor, I think this entire line of  
 15 questioning has now become totally irrelevant to the issues in  
 16 this case. I think that he's getting far afield from what  
 17 State Farm is claiming in the complaint, far afield from  
 18 anything to do with what the subsequent developments are in  
 19 State Farm's claim and the elements of their case. And I don't  
 20 think this goes to prove anything at all, and it's legally and  
 21 factually irrelevant.  
 22 THE COURT: Well, first of all, this is in evidence.  
 23 MR. HESTER: Yes, sir.  
 24 THE COURT: Second of all, what we're doing here today  
 25 and we'll be doing for quite some time it seems in this suit is

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1 getting evidence from which the court can find facts which  
 2 either support or do not support the exception to the Younger  
 3 abstention doctrine which has to do with harassment and perhaps  
 4 bad faith as well. And that's I think the way he said. The  
 5 objection is overruled. You may proceed.  
 6 MR. ROBIE: Thank you, your Honor.  
 7 A. You want me to read this.  
 8 BY MR. ROBIE:  
 9 Q. Yes, please.  
 10 A. Okay. "Scruggs argues that he did not violate the  
 11 injunction because the injunction as he interprets it" --  
 12 THE COURT: General, slow down just a little bit.  
 13 She's trying to take it down. Go ahead.  
 14 A. -- "contains an express carve-out for law enforcement. To  
 15 read the preliminary injunction, to permit Scruggs to deliver  
 16 the documents to Hood rather than to counsel for Renfroe is  
 17 such a strained construction and so contrary to the  
 18 injunction's clear terms as to lack any credibility  
 19 whatsoever."  
 20 BY MR. ROBIE:  
 21 Q. Is right this minute the first time you've ever read that  
 22 language from Judge Acker?  
 23 A. As I told you, I don't recall ever having read his order.  
 24 I was not a party in that litigation. I know Courtney filed  
 25 something to intervene. But from my understanding there was

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1 some law enforcement exception that the court put in that  
 2 order. And it was -- it was an exception and it's a debate  
 3 over whether or not giving it to us was -- met that exception.  
 4 Q. General Hood, the law enforcement exception was the very  
 5 reason why the court did not order you to return the set of  
 6 documents that you had, wasn't it?  
 7 A. I don't know. There again, I haven't read Judge Acker's  
 8 orders. So I don't know.  
 9 Q. Courtney didn't tell you that Judge Acker had ordered  
 10 Scruggs to return that -- the very same set of documents that  
 11 you had in your possession, but that you could continue to keep  
 12 yours and use them for whatever investigation you were doing?  
 13 She didn't tell you that?  
 14 A. You'll have to ask Courtney. I don't remember her  
 15 specifically telling me that.  
 16 Q. As you sit here today, is this the first time you've heard  
 17 that?  
 18 A. I did know that the judge ordered some documents returned.  
 19 I didn't know whether they -- he ordered the originals or  
 20 Scruggs sent us copies of those that were never opened that I'm  
 21 talking about or whether he sent them what the court ordered  
 22 and sent us one copy. I didn't know the details. That was  
 23 handled by our insurance fraud unit.  
 24 Q. Did you have the originals?  
 25 A. No, as far as I know. You're going to have to ask Courtney

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1 this, whether it was original or a copy or whatever.  
 2 Q. But what you do know is whatever it was, whatever documents  
 3 that the Rigsby sisters downloaded from State Farm's computers,  
 4 your office never opened even though they went out and picked  
 5 them up. Isn't that right?  
 6 A. No. I'm sure -- I mean --  
 7 MR. HESTER: Object to the characterization of his  
 8 prior testimony.  
 9 THE COURT: Restate that question and let me just hear  
 10 it again.  
 11 BY MR. ROBIE:  
 12 Q. Did I hear you correctly, General Hood, when you said that  
 13 the boxes which your investigator had picked up that were  
 14 filled with documents that the Rigsby sisters downloaded from  
 15 State Farm computers were never opened by your staff?  
 16 A. Okay. Let me try to be clear so that you understand this.  
 17 I don't know that our investigators picked them up. I know we  
 18 got some documents -- I was told that we got some documents  
 19 same date that the documents were turned over to the United  
 20 States Attorney. I am confident that our people went through  
 21 those documents.  
 22 There was another group of documents that was sent to us  
 23 pursuant to our request by Mr. Scruggs. That was not opened.  
 24 Maybe where you're getting confused is I didn't know what --  
 25 the ones that were never opened, I didn't know if that was

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1 Mr. Scruggs' copy and he sent the originals or sent some --  
 2 another copy to the court. I didn't know the answer. I don't  
 3 know the answers to that question. So does that clear it up  
 4 for you?  
 5 Q. Well, what's equally clear, General Hood, is that your  
 6 request that Scruggs bring his set of those documents to your  
 7 office was a direct violation of Judge Acker's order in the  
 8 Renfroe case, wasn't it?  
 9 A. Well, now, you're trying to get me to argue about Judge --  
 10 Judge Acker's order and -- and I don't know. And it's a debate  
 11 as to whether or not it fit the law enforcement exception. I  
 12 don't know enough about it to argue with you. I'm sorry.  
 13 Q. Well, you do know that Mr. Scruggs today stands ready to  
 14 start a trial for criminal contempt for that act, don't you?  
 15 A. Well, I know that an experienced United States Attorney,  
 16 Ms. Martin, who's prosecuted a lot of white collar crime cases  
 17 refused to prosecute it. The federal judge actually entered an  
 18 order having some type of special insurance defense lawyers to  
 19 look into it. And I'm --  
 20 Q. My question wasn't that. My question is, Dick Scruggs,  
 21 your confidential informant, today is awaiting trial on a  
 22 criminal contempt citation for delivering those documents to  
 23 you. Isn't that a fact?  
 24 A. As far as I know.  
 25 Q. The court also expressed incredible surprise at the

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1 decision for your office to ask Mr. Scruggs to bring those  
 2 documents to them rather than comply with the court order,  
 3 didn't he?  
 4 A. There again, I don't know what Judge Acker did. I was not  
 5 a party to that litigation. I thought that it was an attempt  
 6 by State Farm to harass our witnesses, obtain documents that we  
 7 were about to cross-examine witnesses within weeks in the grand  
 8 jury. I was concerned about it. I didn't go through all the  
 9 details of it because I was not a party.  
 10 Q. How was State Farm harassing anybody if they weren't a  
 11 party to this case?  
 12 A. Well, Renfroe I think does like 85 percent of their work  
 13 for State Farm. I understand that Renfroe actually doesn't  
 14 even keep the documents -- their own documents. State Farm  
 15 keeps them for them. And so they're joined at the hip.  
 16 They're just called an independent contractor, my understanding  
 17 of their relationship.  
 18 Q. So you are able to sit here and tell us that State Farm  
 19 controls this Renfroe case?  
 20 A. No, sir. I don't know that for a fact. It just appears  
 21 that way. And that was what appeared to be the intent of the  
 22 litigation.  
 23 Q. You don't know what was done with the Renfroe documents in  
 24 your office, but you're prepared to tell us that State Farm  
 25 dominates and controls Renfroe?

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1 A. You're asking me about litigation that I've already told  
 2 you I don't know about. I haven't read those orders. And so  
 3 I'm telling what you I -- what I understand. And, I mean, I  
 4 don't know what -- anything else to tell you other than what  
 5 I -- from what I've been told about that litigation.  
 6 Q. Would you take a look, please, at page 20 of Exhibit 41,  
 7 and starting with the words "Moreover, Schloemer's December 12  
 8 letter," and read, please, down to the bottom of that page and  
 9 up to the end of the first paragraph on the next page.  
 10 A. "Moreover, Schloemer's December 12th, 2006, letter which  
 11 Scruggs says was a follow-up to his December 8th, 2006,  
 12 conversation with Hood, states that Hood's office was not  
 13 comfortable that the protective measures put in place by the  
 14 court will be effective in keeping these documents out of the  
 15 grasp of State Farm." Did you want me to continue?  
 16 Q. Please.  
 17 A. "If Hood and Scruggs really thought that the injunction  
 18 permitted Scruggs to do what he did, why did Hood believe that  
 19 the protective measures in the injunction were insufficient?  
 20 Q. Keep reading.  
 21 A. "If that truly was Hood's and Scruggs' interpretation, why  
 22 did Hood not instead send a letter to Scruggs requesting  
 23 delivery of the documents as expressly permitted by the  
 24 protective measures built into the injunction?"  
 25 Q. Why didn't you write that kind of letter?

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1 A. There again, I haven't seen this order. And I told you,  
 2 Courtney Schloemer handled the letters. I haven't seen this  
 3 letter. I don't know what the exception said. Courtney is the  
 4 person that you need to be asking these questions about this  
 5 Alabama litigation.  
 6 Q. Could you take a look, please, at page 21, third line from  
 7 the bottom, starting with the words "The court does not  
 8 understand," please, and read through to the word "contempt" on  
 9 the next page.  
 10 A. "The court does not understand how this would have  
 11 jeopardized a criminal investigation of State Farm --"  
 12 THE COURT: Wait just a minute. Let them pull that up  
 13 on this screen if you would.  
 14 (COMPLIED WITH REQUEST)  
 15 THE COURT: Go ahead.  
 16 A. Yes, sir. "The court does not understand how this would  
 17 have jeopardized a criminal investigation of State Farm" --  
 18 BY MR. ROBIE:  
 19 Q. Keep going, please.  
 20 A. -- "unless, as Renfroe has hinted at, Scruggs and Hood had  
 21 teamed up to bully State Farm into civil and criminal  
 22 settlements by telling State Farm that they had 15,000  
 23 inculpatory documents, but not allowing State Farm to see them.  
 24 The court does not see why it was worth it to Scruggs to risk  
 25 contempt."

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1 Q. Has Scruggs told you why it was worth it for him to risk  
 2 contempt?  
 3 A. No, sir.  
 4 Q. But he did ask you to intervene on his behalf and write a  
 5 letter to Alice Martin urging her to not take the prosecution  
 6 which Judge Acker was referring to her, didn't he?  
 7 A. No, sir. I don't recall Mr. Scruggs ever asking me to send  
 8 a letter or to intervene or anything.  
 9 Q. So you did this all on your own?  
 10 A. Well, Courtney was -- Courtney was the one that was  
 11 handling all these documents, that was handling the grand jury.  
 12 She was the one that had more concern about the Alabama  
 13 litigation than did I.  
 14 Q. General Hood --  
 15 A. If you'll let me answer, I'll try to --  
 16 Q. I'm sorry.  
 17 A. -- answer.  
 18 THE COURT: Go ahead.  
 19 A. So Courtney sent the letters. Courtney was the one who was  
 20 handling the Alabama litigation. I did send a letter. It was  
 21 not at Mr. Scruggs' request. I don't recall him ever asking me  
 22 to send that letter or anything of that nature.  
 23 I had a concern as a prosecutor. And I knew Ms. Martin who  
 24 as a prosecutor and has prosecuted a lot of white collar crime  
 25 over in Alabama would also have a concern about litigation in

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1 another state that is designed to or the effect of harassing  
 2 witnesses that we're about to put in before the grand jury and  
 3 disclosing those documents. That was primarily Courtney's  
 4 concern. It was my concern as well. And that's why I wrote  
 5 the letter.  
 6 Q. So you did it out of the kindness of your heart and your  
 7 conscientiousness as the attorney general of the State of  
 8 Mississippi.  
 9 A. Out of the kindness of my heart. I can tell you I have a  
 10 duty to protect people as a prosecutor. If it's a dope dealer  
 11 that's going to testify for me in a case, I have a duty to try  
 12 to protect him as best I can. And that is the duty upon where  
 13 I act. It's not out of the kindness of my heart or any kind of  
 14 comments like that. But it was just my duty I felt to protect  
 15 witnesses and grand jury information.  
 16 Q. Which witnesses were you protecting?  
 17 A. The Rigsby sisters, the documents. See, we were about to  
 18 cross-examine, your Honor, these witnesses that were State  
 19 Farm's people, employees. They were coming to our grand jury  
 20 down in Jackson County. And this was all going on about three  
 21 weeks before our grand jury.  
 22 And so Courtney's concern and my concern was they were  
 23 going to give the documents to these witnesses so they'd know  
 24 what we were going to ask them. And so that was our concern.  
 25 And that's what I conveyed in the letter to the United States

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1 Attorney, that that was where our concern was coming from. And  
 2 it was because states have to get along and the state and  
 3 federal systems both have to work together in prosecuting white  
 4 collar crime cases.  
 5 Q. I'm still trying to get a simple answer to the simple  
 6 question of which witnesses you were protecting.  
 7 A. I was trying to protect the -- I thought I answered that,  
 8 but I'll try again -- the two -- the two confidential  
 9 informants, the documents themselves. Mr. Scruggs had provided  
 10 us with a lot more information than -- I don't know. He had --  
 11 it wasn't just what those witnesses gave us. It was a lot of  
 12 other information that he had discovered during discovery,  
 13 depositions. Other lawyers were doing that as well. So I was  
 14 trying to protect those three individuals as well as the  
 15 documents and the integrity of my grand jury in Jackson County.  
 16 Q. And what jeopardy were the Rigsbys under?  
 17 A. Well, they are being sued over in state court by an  
 18 independent contractor of State Farm. We felt like it was  
 19 designed to intimidate our witnesses and make them turn over  
 20 documents that they had already given to the federal  
 21 government. They had filed a qui-tam suit which is protected,  
 22 as I understand it, by the whistleblower protections under  
 23 federal law and had given them to the state prosecutor in the  
 24 state.  
 25 Q. Right. In fact, Mr. Scruggs had filed a qui-tam suit in

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1 the spring of '06, hadn't he?  
 2 A. Don't know the date.  
 3 Q. Did you see that complaint?  
 4 A. I probably got a copy of it, but I didn't read it.  
 5 Q. He sent you a copy, but you didn't read it?  
 6 A. I don't know that he ever sent me a copy. I just -- I  
 7 don't know. I never read -- I never recall having read any  
 8 qui-tam actions. I just know that one was filed.  
 9 Q. Was the investigation that you conducted through the grand  
 10 jury structured on the basis of the allegations made in that  
 11 qui-tam complaint?  
 12 A. That's a hard one to answer because I just -- I told you I  
 13 didn't -- don't recall ever having read any of that information  
 14 in his complaint.  
 15 Q. Did you structure the scope of the investigation once the  
 16 grand jury was actually convened?  
 17 A. Did I structure the scope of the investigation?  
 18 Q. Yes.  
 19 A. You mean me personally?  
 20 Q. Yes.  
 21 A. Did I tell Courtney and them to go call these witnesses?  
 22 Is that what you meant?  
 23 Q. Or ask these questions or cover these issues or investigate  
 24 these facts.  
 25 A. It was primarily handled by her, Ed Snyder. I mean, Ed's

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1 been a prosecutor for 30 -- nearly 30 years. Yeah, probably  
 2 over that. Scott --  
 3 Q. I'm looking for your involvement.  
 4 A. No, I --  
 5 Q. What was your role?  
 6 A. No, sir. I didn't tell them -- I didn't direct all that.  
 7 I'm sorry. I didn't catch your name.  
 8 Q. My name is Jim Robie. I'm a Jim too.  
 9 A. Mr. Robie, I'm dealing today with two capital murder cases  
 10 of children and I have a lot of other responsibilities I have  
 11 as attorney general. I don't direct and point and micromanage  
 12 my prosecutors. I trust what they do. In this investigation  
 13 they keep me apprised of what actions are taken, but I don't  
 14 tell them to go do this or that as far as questioning what  
 15 witnesses.  
 16 Q. So you can't tell us what issues were investigated by your  
 17 grand jury.  
 18 A. The issues that we were looking at -- I can tell you  
 19 that -- I'm not going to tell -- well, I will tell you if the  
 20 court orders me to -- what was said in that grand jury. I  
 21 wasn't in that grand jury, but I don't feel it proper to talk  
 22 about testimony that occurred in the grand jury room. But I  
 23 can tell you that issues we were looking at were that -- the  
 24 nonpayment of claims to policyholders down on the coast. That  
 25 was the issue that we were addressing in that grand jury.

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1 Q. You weren't present at the grand jury hearings.  
 2 A. No, sir.  
 3 Q. You weren't present when any witness was cross-examined.  
 4 A. No, sir.  
 5 Q. And you weren't present when any document was presented to  
 6 them.  
 7 A. I wasn't present.  
 8 Q. And you weren't present when Kerri Rigsby gave her  
 9 testimony there as well, were you?  
 10 A. No, sir.  
 11 Q. Were you present when the issue of the McIntosh-State Farm  
 12 claim was examined with the State Farm personnel who appeared  
 13 before that grand jury?  
 14 A. Mr. Robie, there was a grand jury that went three days. I  
 15 was -- I was never present in those three days before that  
 16 grand jury.  
 17 Q. Right. And State Farm produced how many witnesses for you  
 18 voluntarily at that grand jury?  
 19 A. We subpoenaed them. We had them -- we had battles I  
 20 remember in other states trying to get witnesses. Now, I don't  
 21 know -- if you say they're voluntary or whatever, I don't know  
 22 how many that they produced.  
 23 Q. You don't know that State Farm paid to fly them in to  
 24 accommodate you so that witnesses could appear at your grand  
 25 jury? You don't know that?

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1 A. No, sir. Are you testifying to that? Is that you saying  
 2 that --  
 3 Q. No. I'm asking you if you know that to be a fact.  
 4 A. No, I don't know.  
 5 Q. Let's go back to this Exhibit 40, please, the first  
 6 paragraph. It's the letter I put on the stand when we first  
 7 started.  
 8 A. You want me to read the first paragraph of Exhibit 40?  
 9 Q. No. I'll direct your attention to what -- as soon as we  
 10 get it up on the screen. I was trying to help everyone follow  
 11 along. The middle of the first paragraph says, "Since  
 12 Mr. Scruggs was a confidential informant, I respectfully  
 13 request that you consider as a matter of comity the impact a  
 14 criminal contempt prosecution will have upon our ability as  
 15 prosecutors to fight white collar crime as well as the damage  
 16 such a prosecution would cause to statewide whistleblower  
 17 protections." Did I read that right?  
 18 A. Yes, sir.  
 19 Q. Was Mr. Scruggs a whistleblower?  
 20 A. He represented whistleblowers. And, there again, your  
 21 Honor, the term -- us prosecutors understand that. Ms. Martin  
 22 would understand what I'm talking about. If I flip one  
 23 codefendant against the other, the lawyer is the conduit for  
 24 the information that they're going to give me that that witness  
 25 will testify to and give us.

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1 Now, Mr. Scruggs was providing us information from a lot of  
 2 depositions that didn't have anything to do with these two  
 3 confidential informants, those two ladies. There were other  
 4 lawyers down on the coast, and I can't remember one of them's  
 5 name, but he gave me some excellent documents on another  
 6 company, another engineering company. And so there were a lot  
 7 of people that were providing us information.  
 8 And prosecutors don't make cases. I bet 90 percent of our  
 9 cases are made on information that we get, instead of like we  
 10 like to think about all these high-tech things that we have.  
 11 It's by people telling you stuff. And we were getting  
 12 information from all kinds of sources.  
 13 And as to the letter that I wrote to try to protect that  
 14 information that we had received, the documents, the witnesses  
 15 themselves, as well as Mr. Scruggs who had provided us  
 16 confidential information that was confidential, it was  
 17 information that was used in our investigation, then, yes,  
 18 Ms. Martin would have understood me using that term  
 19 "confidential informant" in that context.  
 20 Q. Would you take a look at page two of this letter, please,  
 21 middle paragraph?  
 22 A. Okay.  
 23 (WITNESS EXAMINED DOCUMENT)  
 24 Q. Do you see the middle paragraph?  
 25 A. Yes, sir.

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1 Q. Why don't you read that first sentence for me, please.  
 2 A. "Mr. Scruggs has functioned as a confidential informant for  
 3 our investigation and is protected by state law as a  
 4 whistleblower."  
 5 Q. What state law protected Mr. Scruggs as a whistleblower in  
 6 July of 2007?  
 7 A. I don't know the exact section that we have for those  
 8 protections. Your Honor, unlike federal law which has  
 9 protections that you can file as qui-tam-type actions and do  
 10 all these things and, you know, they have the witness  
 11 protection program, as usual in our state law we've got about  
 12 one sentence that addresses the whistleblower protections.  
 13 There's nothing in our law that just defines that.  
 14 We can find it if you want to see that statute, but I don't  
 15 know it and cannot quote it to you right now. I just know  
 16 generally there is that like one sentence protection for  
 17 whistleblowers.  
 18 Q. I thought the only Missouri statute on -- or Mississippi  
 19 statute on whistleblowers involved government employees. Am I  
 20 wrong?  
 21 A. I don't think so, but I'm not sure. I'll have to look at  
 22 that section. Have you got it?  
 23 Q. Are you aware of any statute that would protect Mr. Scruggs  
 24 as a whistleblower, a Mississippi statute, where he's not a  
 25 state employee?

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1 A. There again, if you'll show me that statute, I'll be glad  
 2 to try to interpret it for you.  
 3 Q. Now, when you spoke attorney general to U.S. attorney and  
 4 you had this common vocabulary about confidential informant and  
 5 whistleblowers, you were trying to protect your witnesses, the  
 6 Rigsbys, and your own investigation. Right?  
 7 A. Yes, sir.  
 8 Q. And you didn't want your grand jury compromised by having  
 9 documents turned over somehow to State Farm witnesses who are  
 10 about to testify. Right?  
 11 A. That was one of the three protections we were trying to  
 12 protect: The witnesses, the documents themselves, as well as  
 13 Mr. Scruggs, now. Here again, I think you don't understand.  
 14 He was providing us information of what these particular -- I  
 15 guess these two ladies -- he may have had more. I don't know.  
 16 He was giving us information. He was the conduit. So that's  
 17 why I considered him to be a protected person as well. He was  
 18 providing us information as well as were these ladies through  
 19 documents.  
 20 Q. Mr. Hood, why did you need to protect the witnesses in  
 21 order to -- in order to protect the sanctity of your grand jury  
 22 proceedings, your documents or Mr. Hood -- or Mr. Scruggs when  
 23 you had -- you had already closed down that investigation six  
 24 months earlier? You had stopped the grand jury. You weren't  
 25 taking any more testimony. You had already settled with State

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1 Farm and agreed your investigation was over as was your  
 2 prosecution.  
 3 A. You're correct about us closing that investigation; but as  
 4 the court knows, we got information in April. And this letter  
 5 was written in -- on July 16th. So that letter was in the  
 6 context of the new information and the new investigation we  
 7 received.  
 8 Q. Was it your position that Mr. Scruggs was a whistleblower  
 9 and a confidential informant on the new investigation?  
 10 A. He had provided us information. Okay. It was confidential  
 11 information that we could use before a grand jury.  
 12 Some of the documentation, your Honor, that we received in  
 13 the first investigation has to be juxtaposed over the new  
 14 information that we're asking for pursuant to this subpoena.  
 15 So, in other words, some of the documents we received, you've  
 16 got to use them -- some of that information. Mr. Scruggs  
 17 provided us through those witnesses with that information.  
 18 THE COURT: We're going to give Ms. Morris a break.  
 19 It's about two hours into this afternoon's hearing. Let's take  
 20 about a 15-minute recess, which will be the only recess we take  
 21 this afternoon. I would like to see Mr. Hester and any lawyer,  
 22 just one of you, from the plaintiffs' side at side bar just a  
 23 second. Everybody else can take their recess.  
 24 You may step down, General Hood. We're taking a  
 25 15-minute recess.

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1 (RECESS)  
 2 THE COURT: Mr. Robie, you may continue.  
 3 MR. ROBIE: Thank you, your Honor.  
 4 BY MR. ROBIE:  
 5 Q. Is it your testimony, Mr. Hood, that Dickie Scruggs gave  
 6 you information in April to start a new investigation?  
 7 A. No, sir, I don't recall whether he did or didn't.  
 8 Q. Can you tell me the name of the person or people who did  
 9 that?  
 10 A. Your Honor, that would be information regarding where the  
 11 genesis is.  
 12 THE COURT: You don't have to answer that.  
 13 MR. HESTER: We object on the same grounds.  
 14 THE COURT: Sustained.  
 15 BY MR. ROBIE:  
 16 Q. Is Mr. Scruggs still your confidential informant?  
 17 A. As I explained it to the judge right before we left, the  
 18 information that he gave us that we retained from all the first  
 19 investigations, some of that information can be used with  
 20 either information. We're asking State Farm for the new  
 21 documents so that we can juxtapose them over it.  
 22 So the answer to your question is, yes, he did provide us  
 23 information that will help in our second investigation.  
 24 Q. My question is: Is he still a confidential informant?  
 25 A. I haven't talked to him, especially since all of this

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1 litigation, the indictments and so forth. So I haven't spoken  
 2 with him.  
 3 Q. Is he still a confidential informant for your office?  
 4 A. He was; and if he's a witness in a case, he would still  
 5 have some protection with the state.  
 6 Q. When did that confidential informant status start between  
 7 you and Mr. Scruggs?  
 8 A. There again, he provided us information. We had a duty to  
 9 keep it confidential. As far as when he stopped providing us  
 10 with information, I don't know the date of that. Courtney  
 11 perhaps can answer that for you.  
 12 Q. Was the information that he provided that was confidential,  
 13 was that provided before he met with you in your office in  
 14 February of '06?  
 15 A. Well, as I explained, within two weeks of the storm, he  
 16 gave us some information about somebody on his secretary's  
 17 street that we sent investigators to about the forms that  
 18 insurance companies were requiring people to file. That was  
 19 information. That's when it began, and he continued to provide  
 20 us with information. Along with a lot of other lawyers. They  
 21 were finding our more than we were through discovery and  
 22 depositions and documents and so forth. So there were lawyers  
 23 and individuals, engineers. Just a lot of people provided us  
 24 with information.  
 25 Q. And if I heard you correctly, you had no communication with

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1 Mr. Scruggs at all before you sent this letter to Alice Martin  
 2 asking her not to prosecute him?  
 3 A. I sent my -- if I recall correctly I testified that I don't  
 4 recall Mr. Scruggs ever asking me to send a letter on his  
 5 behalf.  
 6 Q. We have a document that's in evidence that's Exhibit 54,  
 7 which is the -- your candidate report of 2007, receipts and  
 8 disbursements for the period June 1 through June 30. I believe  
 9 it's Exhibit 54, and I believe it's in evidence for the  
 10 calendar year, the reporting period June 1, '07 to June 30,  
 11 '07.  
 12 Mr. Hood, that document reflects that during that period of  
 13 time between June 1 and June 10, Dickie Scruggs contributed  
 14 \$33,000 to your campaign.  
 15 A. Yes, sir. I don't see the document. Are you asking me  
 16 that or telling me that?  
 17 Q. I'm telling you that's what the document says that you  
 18 filed.  
 19 A. Okay.  
 20 Q. Did the fact that he paid your campaign \$33,000 have any  
 21 impact on your personal decision to write this letter asking  
 22 the United States Attorney for the Northern District of Alabama  
 23 to not prosecute him?  
 24 A. Absolutely not. Your Honor, these inferences that they're  
 25 trying to raise about Mr. Scruggs contributing to my campaign

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1 or my knowing Mr. Scruggs or him providing us information, I  
 2 assure the court on my oath as an officer as well as the oath I  
 3 took here today, Mr. Scruggs had no influence on my decisions  
 4 and our use of our criminal justice process in the State of  
 5 Mississippi. No contributions, no influence from Mr. Moore,  
 6 all these other things that they continue to allude to, had any  
 7 impact whatsoever on my decision-making process and pursuing my  
 8 duties as a prosecutor.  
 9 When this new information arrived in April, I had a duty to  
 10 follow it to ground, in other words, to follow it out to see if  
 11 there's anything to it or not, if there's a case that needed to  
 12 be made. Statute of limitations was getting close for a  
 13 two-year period, and that's the reason that we decided. And  
 14 that was based upon an analysis by Ed Snyder, 30-year  
 15 prosecutor, Scott Johnson and Courtney Schloemer. Courtney  
 16 Schloemer was the primary prosecutor in this case. But none of  
 17 those people -- those are career prosecutors whom I have very  
 18 much respect for.  
 19 Because people contribute to me, that has no affect on  
 20 them, your Honor. They make decisions based upon the facts and  
 21 the law. They were the primary people to make this decision to  
 22 follow the second investigation, follow the information where  
 23 it went, request these documents. Of course, I was a part of  
 24 that decision-making process, but these contributions or  
 25 influence had nothing to do with their decision nor mine.

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1 THE COURT: If you're right, General Hood, that there  
 2 have been implications both in these documents and the  
 3 pleadings that have been filed in this case and perhaps in the  
 4 media as well -- made by those whom I don't really know and I  
 5 don't know the specifics of it -- you're under oath. You're  
 6 here in this courtroom. Now is your opportunity to respond to  
 7 that, and you've done so. All right.  
 8 A. Thank you.  
 9 BY MR. ROBIE:  
 10 Q. Mr. Hood, would you explain to the judge what the  
 11 Democratic Attorney General Association is, DAGA.  
 12 A. The Democratic Association of Attorneys General is made up  
 13 of democratic attorney generals by a board of attorney  
 14 generals, and the Republicans have an attorney generals  
 15 association as well. We have a gentlemen's agreement, if you  
 16 will, that we don't -- we don't go after one another's  
 17 incumbents. We do raise money, and we do contribute to other  
 18 attorney generals, primarily sitting attorneys generals, as  
 19 well as challengers on the partisan side.  
 20 Q. Do you know how much money Mr. Scruggs contributed to DAGA  
 21 in October of '07?  
 22 A. No, sir, I do not.  
 23 Q. How about Mr. Langston?  
 24 A. No, sir, I don't. I don't know when those are made public.  
 25 I thought it was in January. And I actually went on the

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1 Internet and looked in January, but I haven't looked lately so  
 2 I don't know.  
 3 Q. They were filed Friday with the IRS.  
 4 A. I thought it was -- okay. If you say so.  
 5 Q. The contribution statement was filed this past Friday with  
 6 the IRS. It is on the Internet.  
 7 A. Okay.  
 8 Q. I don't want to belabor this because we don't have much  
 9 time, and I want to get right to the heart of the things that  
 10 his Honor, I think, is most interested in. But if I ask you to  
 11 assume that Scruggs contributed 3,000 -- \$300,000 to DAGA in  
 12 October of '07 and that Langston contributed 100,000, Nutt  
 13 contributed 50,000 and Barrett contributed \$20,000, would that  
 14 surprise you?  
 15 A. It's news to me here today; but, there again, any  
 16 contributions made to me -- it's unfortunate in this  
 17 atmosphere, your Honor, that we're in now of how much it costs  
 18 to run a campaign. Mike Moore when tobacco was coming at him  
 19 had to spend \$500,000 at most. I had to raise three times  
 20 that. The Democratic AG's contributed to my campaign, but  
 21 there was never any type of directing any kind of money to me  
 22 or any other methods.  
 23 I suppose over the past three years, I've worked to help  
 24 raise money because I knew I was going to have to run; and I  
 25 knew some of the companies that I was battling were going to

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1 come at us. And I had to raise money from those sources, and  
 2 so there was never any directions of any money, if that's what  
 3 you're insinuating. As to my campaign, I had no knowledge of  
 4 those contributions.  
 5 Q. You do know that you received \$850,000 from DAGA, don't  
 6 you?  
 7 A. I don't know the total; but if you've read the reports,  
 8 then I would accept your word for it.  
 9 Q. And do you also know, Mr. Hood, where you rank among the  
 10 DAGA-supported attorney generals in terms of the total dollars  
 11 contributed?  
 12 A. No, sir. I haven't read the -- there again, I haven't read  
 13 the reports.  
 14 Q. And is there any doubt in your mind that the numbers I've  
 15 given you for Scruggs, Langston, Hughes -- or Barrett and Nutt  
 16 are accurate?  
 17 A. There again, I told you I haven't read the reports so --  
 18 but I can tell you this: It didn't have any influence on my  
 19 decision to go forward in this new criminal investigation.  
 20 That was done. And I don't know the dates of when these  
 21 contributions were, but it -- I didn't know about it. It  
 22 didn't have any bearing on our decisions in our office.  
 23 Especially nothing on my prosecutors to make those decisions.  
 24 Q. General Hood, you did know from the very first time you  
 25 ever spoke to anybody at State Farm about your criminal

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1 prosecution, your criminal investigation, that State Farm was  
 2 never going to settle your civil suit, the Scruggs Katrina  
 3 Group civil litigation and fight your criminal prosecution or  
 4 your criminal investigation unless they could all be settled at  
 5 the same time. They made that clear to you, didn't they?  
 6 MR. HESTER: Objection, your Honor. That's two simple  
 7 questions. I request they be broken down into one. It's a  
 8 compound question.  
 9 THE COURT: Well, let me ask General Hood. Do you  
 10 understand the question, General Hood? Would you rather for  
 11 him to break it down, or can you answer it as posed to you?  
 12 A. I think I can answer it, your Honor. What he's saying is  
 13 that State Farm -- they've insinuated that I've used the  
 14 criminal process to force them to settle a case. That's  
 15 unethical. It violates rules of the prosecutor and would  
 16 impugn integrity of the prosecutorial branch. Our office and  
 17 all the prosecutors, we don't do that. That's why I made it  
 18 clear there will be no discussion of use of the prosecution to  
 19 settle these civil cases. That was them that came to me and  
 20 wanted us to do that.  
 21 I said, Y'all leave me alone and let me -- when they  
 22 started -- the first meeting when they came into my office,  
 23 which was November of '06, if I recall correctly, that's when  
 24 Bob Abrams and them were there and Joe Jeff Jackson. I told  
 25 them, I said, Just leave me alone. Let me get through with my

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1 grand jury. I'll know what kind of case I've got, and then  
 2 make a decision as to whether or not we should work something  
 3 out on the criminal case. If you want to talk about the civil  
 4 case, I'll be glad to do that with you.  
 5 This agreement, this letter that I sent them, I didn't send  
 6 that until the day we settled, after we had already settled it.  
 7 We had already settled with Scruggs in November whenever he  
 8 came to me. Then they wanted to talk about it and I wouldn't  
 9 talk about it with them. It was them that wanted to confuse  
 10 the two, and that's why I pointed at them in the meeting and  
 11 told them that it was not proper to mix the two.  
 12 And so we did go through our grand jury. We got through  
 13 our grand jury. That was on Friday, and then I met with them  
 14 on Monday, and that's when I made the decision. And we  
 15 actually didn't -- we did the state civil court settlement on  
 16 Monday in Memphis on, I guess, the 22nd.  
 17 And then I came back to Jackson to my office, and that's  
 18 when Ed and I sat down. I said, Ed, you help me craft this  
 19 letter I'm going to send them. And Ed helped me craft it  
 20 because we weren't going to give them just blanket immunity.  
 21 We were in that letter giving them conditions that they had to  
 22 put -- that they had to meet before they would have any  
 23 immunity. And the first condition -- and I don't have that  
 24 letter with me, but -- there were two conditions, one of which  
 25 was that they pay a substantial penalty to the victims. That's

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1 criminal language where they had actually entered a --  
 2 basically entered a plea, but we didn't do it before the court  
 3 in a plea in my terminology. They paid the fine, but then the  
 4 restitution had to go through pursuant to the state court  
 5 agreement down to the federal process.  
 6 BY MR. ROBIE:  
 7 Q. General Hood, somewhere around November 27th, you flew to  
 8 Fort Lauderdale to meet with State Farm representatives to  
 9 discuss settlement of your civil case.  
 10 A. We had an attorney generals conference. Our winter  
 11 conference was down there in Fort Lauderdale or one of those  
 12 towns right there nearby. I did have a meeting with Sheila  
 13 Birnbaum, Jeffrey Jackson. And Mike Moore was in there when I  
 14 discussed it with them. Scruggs and his crew were there, but I  
 15 don't recall them actually discussing at all with us in that  
 16 meeting room at the same time. I think we discussed them  
 17 separately.  
 18 Q. If I understand what you're telling us here today, your  
 19 decision to write and sign this document, this settlement  
 20 document, which is Exhibit 23 in this case, was something that  
 21 you decided on your own as the result of the completion of your  
 22 criminal investigation with State Farm.  
 23 A. This letter that I sent to State Farm on January 23rd?  
 24 Q. Right.  
 25 A. 2007?

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1 Q. Right.

2 A. It was a letter that they wanted -- basically a gentlemen's

3 agreement that if they meet these conditions, then they would

4 not be prosecuted for those matters that were part of the

5 investigation at that time, and that dealt with policyholders'

6 claims.

7 Q. Well, you wrote this document, didn't you?

8 A. Well, first draft was sent to me by James Tucker. Actually

9 Sheila Birnbaum gave me one to start with, and it was in civil

10 terms. Then Tucker sent me one the next morning, and that's

11 when Ed and I were sitting in my office, and we went back and

12 forth with different versions. We have copies of those

13 versions.

14 Q. Right. And you wrote this. You wrote this and signed it,

15 didn't you?

16 A. Ed and I crafted it, and I signed it. Yes, sir.

17 Q. And this was a contract. It's not a gentlemen's agreement.

18 It's a contract, isn't it?

19 A. No, sir. Under Mississippi law, there is a statute that

20 prohibits a prosecutor from immunizing a client without the

21 court's approval. I think it's 99-15-53. And Tucker -- I

22 don't know if he's here, but he's a federal prosecutor. But he

23 knew what we were doing was giving them a letter saying, If you

24 meet these conditions -- and that condition was that they go to

25 the -- pay the restitution through the federal court process,

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1 that they had to make offers based on criteria approved by the

2 federal court. That system, they did not comply with.

3 Therefore, they didn't -- they didn't comply with the

4 conditions set forth in that letter. Now, if you want to

5 term -- make it a terminology of contract, I don't really

6 understand it in those terms as well. But if you have a

7 question about it, I'll be glad to try to field it.

8 Q. I thought I asked the question. You don't consider this a

9 contract?

10 A. I consider it a letter in which I set forth conditions. If

11 you do this, then we won't investigate, won't further

12 investigate or prosecute you on these particular charges. I

13 mean, we went back and forth during this negotiation with

14 Tucker, your Honor, as to -- you know, do we write in there

15 to -- up to January 23rd, you know. They wanted to set it, you

16 know -- cut it off at that date.

17 I said, Well, Ed, what if they -- we find out later that

18 they've done some heinous act before that date that we weren't

19 investigating? I don't want to put that in there. We took it

20 out in one of those versions.

21 So we went back and forth and crafted this, but we put

22 those conditions in there, and it was strictly drawn to just

23 deal with the investigation that we were conducting on

24 January 23, which we did, in fact, seize.

25 Q. Well, the investigation that you were conducting on

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1 January 23rd included an investigation of State Farm's handling

2 of national flood policies, didn't it?

3 A. No. The investigation that we were dealing with dealt with

4 the policyholders' claims.

5 Q. Well, let's see if we can't find that December subpoena.

6 Let's look at Exhibit 17. Exhibit 17 is in evidence.

7 MR. ROBIE: I'll hand the witness one, if I may, your

8 Honor, just to make it easier for him.

9 THE COURT: You may.

10 MR. ROBIE: And if the court would like one, I have an

11 extra hard copy.

12 THE COURT: I have one. Well, let me have that.

13 Ms. Jackson.

14 (DOCUMENT TENDERED TO THE COURT AND WITNESS)

15 BY MR. ROBIE:

16 Q. Your office isn't in the business of subpoenaing records

17 that aren't part of the investigation, is it?

18 A. Well, no, sir, but -- okay. Go ahead.

19 Q. Would you look at page 2, item small case (e).

20 A. On page 2?

21 Q. Yes.

22 A. Okay.

23 Q. Read the description of those documents, please.

24 A. Subsection (e) on page 2 reads, "Documents evidencing the

25 policy and procedures used by State Farm in submitting claims

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1 to the National Flood Insurance Program, including

2 correspondence, standard forms and training material."

3 Q. You knew based upon your efforts to invalidate the water

4 damage exclusions in the standard homeowners policies that the

5 National Flood Insurance Program was the available insurance

6 vehicle for people on the coast who suffered storm surge

7 damage, didn't you?

8 A. After the storm hit, I found out that information; but, you

9 know, the -- the wind-versus-water dispute is separate from

10 what we're looking at now. There was -- wind-versus-water is

11 one issue. And, naturally, if it's claimed to be water, then

12 the federal flood program, according to the insurance industry,

13 is supposed to pay that. But that's not the same issue that

14 we're looking at today, if that's your question.

15 Q. Well, as I understand it, I'm not allowed to ask that

16 question. The question that I'm asking is: You knew when you

17 filed your original action that the National Flood Insurance

18 Program was a naturally promulgated program underwritten by

19 every insurance company or sold through every insurance company

20 that wrote homeowners insurance in that state, didn't you?

21 A. I knew there was a National Flood Insurance Program. I

22 didn't know that every one that -- every insurance company that

23 wrote homeowners had to provide that.

24 Q. You later learned that, though, didn't you?

25 A. No, sir. You just told me that. I assume it's true.

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1 Q. Until right now you never knew that?  
 2 A. I didn't know that was a requirement. No, sir.  
 3 Q. Did you know as you conducted your investigation that  
 4 national flood policies are sold through admitted carriers here  
 5 in Mississippi, homeowners carriers?  
 6 A. Sure. But I didn't know that they were required if you  
 7 wrote homeowners that you were required to provide that. You  
 8 know Courtney asked for -- she drafted this subpoena along with  
 9 Ed and others in our office. That's not a question that I know  
 10 the answer to as far as subsection (e) goes as to what part.  
 11 Now, as I understand it, your Honor, I can tell you that  
 12 what we were looking at in our first one because that one's  
 13 closed. But the content of the second one is what I'm  
 14 prohibited, I believe, to tell you.  
 15 Q. We're running out of time. I'm trying make my questions as  
 16 simple as I can. Did you know that the national flood product  
 17 that State Farm sold was sold on State Farm policy forms?  
 18 A. No, sir. I haven't been through those forms. I admit --  
 19 if that's what you want me to admit, that I knew insurance  
 20 companies sold those policies, yes, sir.  
 21 Q. That wasn't my question.  
 22 A. Well, as far as State Farm goes, I don't know what form  
 23 that they used.  
 24 Q. Did you --  
 25 A. I don't know.

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1 Q. Did you know that wherever a policyholder had homeowners  
 2 insurance with State Farm, had a national flood policy with  
 3 State Farm, that the same adjuster would be appointed to adjust  
 4 that loss for both contracts?  
 5 A. I've been told that State Farm adjusters and Allstate,  
 6 different people -- different companies, adjusters adjusted for  
 7 the federal flood program, which appears to be a conflict to  
 8 me. But apparently that's what the federal government allowed.  
 9 Q. General Hood, isn't that what the federal government has  
 10 required?  
 11 A. I don't know a lot about the federal flood program. I do a  
 12 lot as attorney general, but I don't know about the federal  
 13 flood program.  
 14 Q. Well, you've been investigating these issues for two --  
 15 three years now, more than three years now. Haven't you  
 16 learned that the National Flood Insurance Program requires that  
 17 where a homeowner's insurance company also issues a national  
 18 flood policy on a risk, that both of the losses at that risk  
 19 have to be adjusted by the same adjuster?  
 20 A. That's my understanding; but, there again, you know,  
 21 Courtney is -- would know a lot more than these questions that  
 22 you're asking. But my understanding -- we weren't looking at  
 23 the federal flood program. That's why they have the federal  
 24 government to investigate that.  
 25 Q. Mr. Hood, didn't you submit testimony to Congress in which

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1 you accused State Farm of fraudulently shifting losses to the  
 2 flood policy and not paying on wind?  
 3 A. I don't know that I would couch it in those terms. As I  
 4 recall it, I testified before a congressional committee and  
 5 before Senator Lott and the Senate. And my testimony was a  
 6 recommendation -- or based upon questions that I recall -- that  
 7 the federal government needed to look into whether or not those  
 8 taxpayers got ripped off because State Farm was dumping on  
 9 them. That is what the context of my statement I believe was.  
 10 Q. And you made a rather impassioned speech based upon the  
 11 fraud of State Farm in the McIntosh claim. Do you remember  
 12 that?  
 13 A. No, sir, I don't remember a passionate speech. But I -- I  
 14 don't really remember exactly talking or which -- which are you  
 15 talking about? The congressional testimony or the Senate  
 16 testimony or exactly what do you want to solicit?  
 17 Q. Wasn't one of your favorite themes for over a year and a  
 18 half, two years, was that State Farm committed fraud because it  
 19 changed the McIntosh forensic analysis engineering report from  
 20 a cause of wind to a cause of flood?  
 21 A. If you're talking about the two engineering reports, one  
 22 was October something '05. And about a week later, State Farm  
 23 got another one from the same engineer; and there was a sticky  
 24 note on it that said, "Don't pay this claim. Don't talk about  
 25 this."

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1 If that's the two engineering reports and if that is the  
 2 McIntosh case -- I don't know, but if that's the case you are  
 3 talking about, that was an example. That created probable  
 4 cause for the grand jury investigation to begin on State Farm.  
 5 If you got one that says that the -- that State Farm owes  
 6 the money and then a week later they get them to change -- we  
 7 had some e-mails -- I remember talking about some e-mails  
 8 before Congress where engineers were talking about State Farm  
 9 was forcing them to change their engineering reports and they  
 10 thought that was improper. I suspect I probably did -- was  
 11 more -- a stronger statement if you will. I don't know about  
 12 an impassioned speech. I'm not very good at that. But I did  
 13 talk to Congress about those two reports. And if it is  
 14 McIntosh, then that would be the case.  
 15 Q. That would be McIntosh.  
 16 A. Okay.  
 17 Q. Did you tell Congress that Carrie Rigsby adjusted the  
 18 McIntosh claim?  
 19 A. I didn't know that.  
 20 Q. You didn't know that?  
 21 A. Unh-unh (indicating no).  
 22 Q. When did you find that out?  
 23 A. My knowledge was it was the same engineer. Ms. Rigsby is  
 24 not an engineer. You're talking about an adjuster. But there  
 25 was two -- the same engineer changed his report a week later.

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1 And as far as the adjustment of that claim, I don't know who  
 2 adjusted it.  
 3 Q. You don't know that Kerri Rigsby went out and paid  
 4 Mr. McIntosh on the first visit \$250,000 for flood damage to  
 5 his house and \$100,000 for flood damage to the contents of the  
 6 first floor of that house? You don't know that?  
 7 A. Your Honor, my focus of the investigation was the criminal  
 8 aspects of what they did. I didn't follow all these civil  
 9 cases that were out there and who filed them and that type  
 10 thing. We did receive information from discovery in some of  
 11 those cases, but I didn't follow the case in Alabama. I didn't  
 12 follow those things. My -- my case was concentrating on the  
 13 documents. So I don't -- I don't know the details of who  
 14 adjusted the McIntosh claim or any of these other claims, what  
 15 adjusters were sent there.  
 16 Q. If it was the change in the documents, the engineering  
 17 reports on McIntosh that provided you with probable cause to  
 18 initiate a criminal investigation, shouldn't you have  
 19 investigated how that claim was handled and how those reports  
 20 came to be changed?  
 21 A. I suspect Courtney and our investigators in the insurance  
 22 fraud unit probably know that information. She's available to  
 23 testify.  
 24 Q. But you don't?  
 25 A. No, sir. I didn't go into all the details.

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1 Q. You didn't know that Kerri Rigsby wrote checks for both  
 2 wind damage and flood damage the first time she was at that  
 3 house, do you?  
 4 A. Are you testifying to that as being a fact?  
 5 Q. I'm asking whether you know that to be a fact.  
 6 A. No. I don't know that to be a fact.  
 7 Q. Did you know that Kerri Rigsby was paid \$150,000 a year by  
 8 Mr. Scruggs?  
 9 A. That I have read in the papers.  
 10 Q. And her sister, Cori, also was paid \$150,000 a year -- has  
 11 been paid \$150,000 a year.  
 12 A. I don't know that to be a fact. I've read it in the  
 13 papers.  
 14 Q. Well, wouldn't that fact have to be disclosed to your grand  
 15 jury if Kerri or Cori Rigsby was going to testify?  
 16 A. If I were in there -- I always show the grand jury the  
 17 good, bad and the ugly of the case. The Killen murders over in  
 18 Philadelphia: I point out the good parts of the case and the  
 19 bad. I told you before, I was not in that grand jury. If I  
 20 were, I wouldn't be able to tell you what was -- I don't  
 21 believe what actually went on in that grand jury itself.  
 22 Perhaps the court can elicit that from some other witness that  
 23 was there. But I would say I would have told them the good  
 24 parts of this witness and the bad parts and, you know -- try to  
 25 give them a whole picture because I don't want an indictment

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1 that I can't convict on at trial.  
 2 Q. Mr. Hood, did Scruggs ever tell you that he paid three  
 3 separate criminal law firms to defend right up to the present  
 4 time claims against the Rigsbys and he agreed to defend and  
 5 indemnify them against any liability?  
 6 MR. HESTER: I think that's entirely irrelevant to any  
 7 issue before this case -- before this court.  
 8 THE COURT: Overruled. You may answer.  
 9 A. No, sir, I don't recall Mr. Scruggs having told me about  
 10 paying their attorneys.  
 11 BY MR. ROBIE  
 12 Q. Don't you think that would have been important to you in  
 13 addressing your concerns when you wrote this Exhibit 40 letter  
 14 to Alice Martin trying to protect your witnesses? Wouldn't it  
 15 be important to know that Mr. Scruggs was paying them \$150,000  
 16 a year each plus paying for criminal defense lawyers in  
 17 Washington, D.C., and in Alabama and in Mississippi and  
 18 agreeing to defend and indemnify them from any liability?  
 19 A. Now, I think they -- they had already given us those  
 20 documents, I believe, when all that was -- when I wrote this  
 21 letter maybe a year before. I wrote this letter. And I don't  
 22 see how that if you've already given something that's  
 23 preserved, how it would affect their testimony or the documents  
 24 that they gave me. If you're trying to say that it makes that  
 25 witness subject to cross-examination in a criminal case look

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1 worse, I would agree with that.  
 2 Q. No. I'm saying they had already testified six months  
 3 before you wrote this letter. You had already dismissed your  
 4 grand jury, and you had settled with State Farm before you took  
 5 the steps of trying to protect them by writing this letter to  
 6 Alice Martin.  
 7 A. Well, now, your question was about they were being paid  
 8 money, a salary or whatever, by Mr. Scruggs. And I'm not sure  
 9 that I understand where you're wanting to go or you're wanting  
 10 me to answer as far as my writing that letter on their behalf.  
 11 Q. Mr. Hood, before Scruggs settled with State Farm -- and by  
 12 "Scruggs" I mean Dickie Scruggs and the SKG, Scruggs Katrina  
 13 Group. Before they settled the case with 640 plaintiffs, which  
 14 generated a fee in excess of \$20 million for Mr. Scruggs and  
 15 his partners, did they dispatch Mr. Balducci and Mr. Patterson  
 16 to have dinner with you in a restaurant in Jackson to talk  
 17 about that?  
 18 A. I don't know.  
 19 MR. HESTER: Lack of relevance at all, your Honor.  
 20 That's just totally inflammatory, incendiary and --  
 21 THE COURT: Well, it is inflammatory, and I agree with  
 22 that, counsel. But, here again, if you talk about harassment,  
 23 then that's what you're talking about. I mean, that's the very  
 24 nature of the harassment exception to the Younger abstention  
 25 rule. And notwithstanding the nature of it, I feel that it has

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1 some relevance or it may have some relevance. I overrule the  
 2 objection. Go ahead.  
 3 A. I answered your question, I thought. I didn't know that.  
 4 Q. I'm asking you whether or not Mr. Scruggs sent Mr. Balducci  
 5 and Mr. Patterson to have dinner with you here at a restaurant  
 6 in Jackson to talk about settlement of that case.  
 7 A. I don't know what Mr. Scruggs did with Balducci and  
 8 Patterson.  
 9 Q. Did you have dinner with Mr. Balducci or Mr. Patterson at  
 10 Crechale's restaurant where they discussed Scruggs' desire to  
 11 settle that case?  
 12 A. No, sir. I haven't been to Crechale's in a long time.  
 13 Q. You did not have dinner with them where they discussed --  
 14 A. When are you talking about? And you said "Crechale's." I  
 15 haven't been to Crechale's so I know I didn't have dinner with  
 16 anybody at Crechale's.  
 17 Q. My real question is: Did Mr. Patterson or Mr. Balducci  
 18 have dinner with you and tell you that if you did not  
 19 participate or assist Mr. Scruggs in settling that mass tort  
 20 action which was going to generate a 20-million-dollar-plus  
 21 fee, that he would fund an alternative candidate to run against  
 22 you for attorney general?  
 23 A. If you're asking me did somebody come to me and threaten  
 24 me, the answer is no. Now, out of all candor in this, I don't  
 25 want to mislead you. I remember having dinner on one occasion

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1 with Mr. Balducci and Mr. Patterson, but that conversation was  
 2 about they were leaving the firm that they were presently --  
 3 that Mr. Balducci was presently with. They didn't convey any  
 4 threats to me about settling the case or anything like that.  
 5 Q. They never suggested that if you didn't participate in  
 6 dropping your criminal investigation that Dickie Scruggs would  
 7 fund an alternate candidate and Mike Moore would support that?  
 8 A. No, sir. Absolutely not.  
 9 MR. ROBIE: Your Honor, I have a document which I've  
 10 marked as 55, Exhibit 55 for identification. It's the  
 11 testimony of Jim Hood before the United States House of  
 12 Representatives Committee on Financial Services on February 28,  
 13 2007.  
 14 THE COURT: All right, sir.  
 15 BY MR. ROBIE  
 16 Q. This is the testimony you submitted to this subcommittee on  
 17 oversight and investigation in February of 2007?  
 18 A. Yes, sir.  
 19 Q. And it is a summary essentially of the insurance industry's  
 20 response to Hurricane Katrina and your work in that effort.  
 21 Correct?  
 22 A. Yes, sir. I haven't seen it in a while. The document  
 23 speaks for itself.  
 24 MR. ROBIE: I'd move the introduction of 55, your  
 25 Honor.

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1 THE COURT: Any objection?  
 2 MR. HESTER: No objection, your Honor.  
 3 THE COURT: Received without objection.  
 4 (EXHIBIT P-55 MARKED)  
 5 BY MR. ROBIE:  
 6 Q. I'll direct your attention, please, in the first page, page  
 7 1, right in the middle of the center paragraph.  
 8 A. Yes, sir.  
 9 Q. The document reads that, "Those Mississippians who did  
 10 purchase flood insurance soon learned that while flood claims  
 11 were paid relatively quickly courtesy of the federal  
 12 government, claims against privately written wind policies were  
 13 denied with little or no explanation and apparently erratic or  
 14 nonexistent investigation. The long-term consequences for an  
 15 already overburdened National Flood Insurance Program and for a  
 16 private insurer pretending that Katrina was a windless  
 17 hurricane remains to be seen."  
 18 These are conclusions that you reached as a result of the  
 19 investigation you conducted from August 29, 2005, to the end of  
 20 January 2007. Isn't that correct?  
 21 A. Well, as far as the criminal investigation, I don't know  
 22 that it took anything criminal to arrive at the conclusion that  
 23 there is a major problem with trying to split the different  
 24 damages of a storm, trying to divide a hurricane into wind and  
 25 water. And my -- I was advocating, your Honor, to Congress

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1 that they either need to let the market and private companies  
 2 write both of them or either the federal government as Gene  
 3 Taylor suggested in his bill and Senator Lott also, let the  
 4 government take over, because that is an inherent conflict.  
 5 That wasn't anything to do with my criminal investigation.  
 6 Now, that was just something that I was trying to advise  
 7 Congress that I wish they would pass something that would stop  
 8 that inherent conflict of interest.  
 9 Q. General Hood, isn't it a fact that State Farm produced for  
 10 you pursuant to your subpoena a copy of every single flood and  
 11 wind policy that was jointly adjusted or flood and wind claim  
 12 that was jointly adjusted by State Farm adjusters or its  
 13 independents?  
 14 A. I don't know.  
 15 Q. In fact, isn't it true that State Farm produced so many  
 16 thousands of pages of documents to you that your office and  
 17 State Farm went back to court and got an order allowing them to  
 18 electronically transfer something in the millions of pages of  
 19 documents to avoid having to transport paper?  
 20 A. I know they covered several papers, Your Honor, on this  
 21 grand jury panel. We had to go to spend like \$80,000 on a  
 22 software program so we could collate the pages and keep up with  
 23 it. There was a lot of hard-copy documents sent. I think it  
 24 was State Farm's suggestion about this document tank, if you  
 25 will, in cyberspace. We had problems with that. We don't know

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1 whether we got all State Farm was supposed to produce or not.  
 2 Q. Well, is there any doubt in your mind that State Farm at  
 3 least represented to you that they produced everything that you  
 4 asked for?  
 5 A. I don't know about that. I mean, they gave us -- I mean,  
 6 they gave us information pursuant to the grand jury subpoena,  
 7 and I'm not sure. Courtney will be able to tell what -- how  
 8 many documents, all that type information.  
 9 Q. And that material that was produced included the duplicates  
 10 of every claim file where an adjuster paid a flood loss under  
 11 the NFIP policy and a wind loss under the homeowner's policy.  
 12 Isn't that a fact?  
 13 A. There again, are you testifying to that? It is in evidence  
 14 already? I don't know. You'll have to ask Courtney if it's  
 15 about what documents were produced.  
 16 Q. But there's no question whatsoever that the information  
 17 you're summarizing in this report to Congress came as a result  
 18 of your looking at State Farm records. Isn't that a fact?  
 19 A. This sentence you've talked about in my testimony, I was  
 20 pointing out to Congress there's a problem with the federal  
 21 flood program. All you had to do was read the newspaper  
 22 reports to figure that out. I didn't examine these documents  
 23 that State Farm sent us over to come up with that conclusion,  
 24 no, sir.  
 25 Q. Take a look at page 10 if you would, please, bottom

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1 paragraph.  
 2 A. Yes, sir.  
 3 Q. Why don't you read for me starting with the words "In our  
 4 investigation."  
 5 A. Okay. In the last paragraph, the second sentence -- third  
 6 sentence? Is that correct? Is that where you want to start?  
 7 Q. The last paragraph after the boldface heading starting with  
 8 the words "In our investigation."  
 9 A. "In our investigation, we found evidence that E. A. Renfroe  
 10 Adjusters working for State Farm were dispatched to damage  
 11 sites and instructed to determine whether the damage could be  
 12 categorized as a slab, popsicle stick" -- and that's in  
 13 parentheses -- "or cabana." That's in parentheses. Do you  
 14 want me to continue?  
 15 Q. Please.  
 16 A. "Popsicle stick is industry slang for a foundation with  
 17 support pilings intact. A cabana is industry slang for a  
 18 structure that maintains some degree of post and lintel" --  
 19 L-I-N-T-E-L -- "support but is otherwise a skeleton due to  
 20 water washing through."  
 21 Are you asking me to continue?  
 22 Q. Yes, please read through the end of the paragraph.  
 23 A. Okay. "Not much effort beyond riding past the property in  
 24 a car and looking out the window would seem to be required to  
 25 make this determination, but the fees for this adjusting

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1 service were passed along to the NFIP."  
 2 Q. Okay. Why don't you turn the page and complete the  
 3 paragraph.  
 4 A. "Adjusters were instructed that if they found the property  
 5 to be in one of these three conditions, they were to request  
 6 that an engineering inspection be ordered to provide additional  
 7 guidance in assessing the damage. This subsumes that the  
 8 adjusters were not considered qualified or sufficient to make a  
 9 final determination as to the cause of damage. However, many  
 10 of these adjusters at this stage, without the benefit of an  
 11 environmental (sic) report and often without the benefit of  
 12 proper flood training and certification themselves, would go  
 13 ahead and recommend maximum of flood coverage and contents  
 14 coverage through the NFIP."  
 15 Q. It was your conclusion based upon the investigation you  
 16 conducted that State Farm was shifting payable wind claims to  
 17 the NFIP and paying them out under the flood policy, wasn't it?  
 18 A. There again, Congress asked me to come testify about  
 19 suggested types of legislation. I recognized, as we all do,  
 20 that there's a problem with the federal flood program. There  
 21 is an inherent conflict when you send the fox out to watch the  
 22 henhouse. And the problem with this was, was that State  
 23 Farm -- they did this wind-versus-water protocol they sent out  
 24 within about three weeks of the storm to their adjusters. And  
 25 that wind-versus-water protocol was the most subtle change in

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1 law that I have ever seen done. It was a very smooth protocol.  
 2 It flipped upside down the burden of proof in these cases. I  
 3 discovered that type of information through our investigation.  
 4 These observations about the NFIP were based upon observations  
 5 that there is an inherent conflict.  
 6 Q. Could you turn to page 14, please.  
 7 (WITNESS EXAMINED DOCUMENT)  
 8 Q. Would you read the conclusion that you put in all bold type  
 9 and under -- not underlined, but under the underlined paragraph  
 10 subject heading. If I'm being unclear, I mean for you to start  
 11 reading with the words "Stated differently."  
 12 A. "Stated differently, the protocol dictates that if damage  
 13 is caused by both wind and water, the policyholder only gets  
 14 paid if they have a flood policy. If they have a wind policy,  
 15 they get nothing. Thus, the anti-concurrent causation clause  
 16 is applied to deny claims of policyholders who have no flood  
 17 insurance and is used shift the burden to the federal  
 18 government through the NFIP."  
 19 Q. That is a conclusion you reached following your  
 20 investigation of State Farm's claims handling, wasn't it?  
 21 A. I reached that conclusion after. Yes, the answer is  
 22 correct. But, there again, that was not the focus of our  
 23 investigation. As far as the federal floods program went,  
 24 that's for the federal government to look at. We possibly had  
 25 some state claims regarding that. But the focus of our first

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1 investigation, your Honor, that closed out on January 23rd was  
 2 strictly dealing with the claims by the insured, the  
 3 policyholders, and whether or not State Farm didn't treat them  
 4 properly in the adjustment of those particular claims.  
 5 Q. If I look at the language on page 6 of this agreement or  
 6 this -- before I get to that, one of the reasons you were  
 7 willing to go to Congress and give testimony is that based on  
 8 your investigation of State Farm you had developed a rather  
 9 sophisticated knowledge of the existence and interplay between  
 10 the NFIP product and the homeowners product, didn't you?  
 11 A. I don't think I was any expert at all. I mean they had  
 12 people there that were -- that testified, I believe, in the  
 13 House when I was there. They had the head of FEMA was there  
 14 testifying, which the NFIP, I believe, comes under.  
 15 I learned a lot about insurance. I learned a lot about the  
 16 coverages and things of that nature that I was not familiar  
 17 with before. But I was brought to Congress -- I thought the  
 18 reason that I went there was to try to make some suggestions  
 19 about Mississippi and what we've experienced. And when the  
 20 next hurricane hits Florida, we're going to have, you know,  
 21 those problems over again. I was trying to get Congress to  
 22 do -- to do a national government funded major risk policy as  
 23 Congressman Taylor was supporting that bill or, which I  
 24 preferred, the route of letting the market handle it. But  
 25 that's why -- the reason I went to Congress, I thought.

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1 Q. But, in fact, when you stated your conclusion on page 14  
 2 that I just had you read about the protocol on wind and water,  
 3 can you identify any other insurance company that had a  
 4 wind-and-water protocol except State Farm?  
 5 A. No, sir, I don't know. I don't know if any of the rest of  
 6 them did that. You know, none of the rest of them -- your  
 7 Honor, most of the other companies paid something. State Farm  
 8 used that anti-concurrent cause and that wind-and-water  
 9 protocol to zero people. I mean, I know a federal judge that  
 10 they -- you know, it blew the shingles off my roof in Brandon,  
 11 and I'm 160 miles inland. And they didn't even send them a  
 12 check or -- many of those people down there on the coast, State  
 13 Farm zeroed them. And they said, "We don't owe you a dime, not  
 14 for even shingles."  
 15 So that was why the wind-and-water protocol was the most  
 16 smooth maneuver I've ever seen; and, two, that's why we filed  
 17 the suit to try to stop them from using the anti-concurrent  
 18 cause provision. And in our state court agreement, your Honor,  
 19 it's very subtle in here, but we made them stop using, agree to  
 20 stop using it in our state court order. And we did some things  
 21 like making them produce all the reports to people that ask for  
 22 them. If they had two engineering reports, one water and one  
 23 wind, we made them produce all that. Our state court agreement  
 24 made them do a lot of things that were good for the consumers,  
 25 and it made them stop using that anti-concurrent cause

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1 provision. As well --  
 2 THE COURT: How can -- how can government -- this is  
 3 more a curiosity question -- force a private entity such as  
 4 Allstate, State Farm, any other company, to take out the  
 5 anti-concurrent causation clause? How can that be done? You  
 6 studied this. You know about; I don't. How can you do that?  
 7 Under what authority can you do that, I guess is my question.  
 8 A. Judge Senter, he kicked it out in his decisions down there  
 9 on the coast. And our state court lawsuit dealt with the bait  
 10 and switch, basically, the consumer protection statute where  
 11 they sell you a policy that's supposed to cover wind, but what  
 12 happens is they said, "If water gets in the way of it, a  
 13 concurrent cause, then we don't owe you a dime."  
 14 And that's how they zeroed people out, and. It's the bait  
 15 and switch that they sell you something and it's not any good.  
 16 And that was the reason that we were trying to strike that  
 17 particular clause.  
 18 THE COURT: All right, sir.  
 19 BY MR. ROBIE:  
 20 Q. It is your testimony that somewhere in the settlement  
 21 agreement there's a provision that says the anti-concurrent  
 22 cause provision of the insurance policy will be eliminated?  
 23 A. Yes, sir. When we were negotiating, I wanted it to  
 24 expressly state that. I can find that paragraph.  
 25 THE COURT: Now, which settlement agreement are you

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1 talking about?  
 2 A. The one in our state court suit, Exhibit 27. That's our  
 3 state court settlement agreement.  
 4 BY MR. ROBIE:  
 5 Q. Could you show me which paragraph contains the provision  
 6 that says State Farm will eliminate the concurrent cause  
 7 provision from its insurance policy?  
 8 A. And it's not -- there again, I wanted it to say we will not  
 9 use the anti-concurrent cause provision. They wouldn't do that  
 10 because in other states they were worried about having that.  
 11 So it was subtly in there. And I think if you look at section  
 12 3(f) -- 3(a) and(b) is what I've been talking about, but I  
 13 think under 3(f), "During the reevaluation and arbitration  
 14 process, State Farm will not assert as a ground for the total  
 15 denial of a settlement of claim that water contributed to the  
 16 policyholder's loss if wind damage occurred." "Total denial of  
 17 claim," that means zeroing people out. And so it was very  
 18 subtle.  
 19 I mean, they're the masters of crafting subtle language;  
 20 but we finally figured out it got us where we wanted to be,  
 21 that they wouldn't -- in the arbitration process and doing fair  
 22 dealing, which our state court agreement required, they  
 23 wouldn't be able to use that anti-concurrent cause provision.  
 24 Q. I'm more confused now than ever. I understand that this  
 25 provision says in reevaluating claims State Farm agrees that it

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1 will not assert as a ground for its total denial of a  
 2 settlement claim that water contributed to the loss,  
 3 policyholder's loss, if wind damage occurred. That's what they  
 4 do in a reevaluation program on existing Katrina claims on the  
 5 coast. Right? That's what they agreed to do.  
 6 A. Are you talking about the George Dale program or what they  
 7 agreed to do in this agreement?  
 8 Q. Let's start with your agreement, the subtle one.  
 9 A. Okay. What they're saying is right here, they won't  
 10 totally deny a claim, they won't zero --  
 11 Q. Right.  
 12 A. -- okay -- a claim that water contributed to the  
 13 policyholder's loss, if wind damage occurred.  
 14 Q. Right.  
 15 A. And we went back and forth over this language. I wanted  
 16 them to just say, "We won't use the anti-concurrent cause  
 17 provision."  
 18 Q. They didn't agree to that, did they?  
 19 A. Well, we did it with language.  
 20 Q. Okay. That's how you read it.  
 21 A. That's the way we all read it, that they weren't going to  
 22 assert anti-concurrent cause. And the second part of it  
 23 deals --  
 24 Q. General Hood, could I just ask you a question -- if I may  
 25 interrupt your speech for just a second. Have they -- have

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1 they lived up to this provision in the reevaluation program  
 2 they're working on with the department of insurance?  
 3 A. We don't know, your Honor. I mean, you know, this George  
 4 Dale program over there -- as I've said, they had a duty under  
 5 this order to keep us up to date on what they were doing.  
 6 There were several provisions that required them to provide us  
 7 with information. But, there again, the George Dale program is  
 8 not make an offer based upon criteria and guidelines approved  
 9 by the federal court. So it is not -- it violated the state  
 10 court agreement.  
 11 Q. Did I hear the answer to my question to be "I don't know"?  
 12 Is that what I heard?  
 13 A. If you'll ask it again, perhaps --  
 14 Q. Can you tell me --  
 15 A. -- I can answer it.  
 16 Q. -- whether or not State Farm is currently conducting  
 17 reevaluation of Katrina damage claims on the coast in  
 18 conformity with this provision (f) that we've discussed?  
 19 A. I don't know what -- I just explained it. I thought I just  
 20 said. I don't know what they're doing under the George Dale  
 21 program. That's the problem.  
 22 Q. So you don't know whether they are living up to this or  
 23 not?  
 24 MR. HESTER: May he explaining his answer?  
 25 THE COURT: He may explain.

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1 A. You're looking at one section saying are they doing this  
 2 and making a statement as if it's a fact. I can go back to  
 3 this other section, 3(b), that I pointed out continuously, that  
 4 they didn't comply with it. So I don't know what they're doing  
 5 on that program, and it doesn't really matter.  
 6 BY MR. ROBIE  
 7 Q. Mr. Hood --  
 8 A. They agreed -- if you'll allow me to finish. They agreed  
 9 to go to Judge Senter and get him to approve a settlement  
 10 agreement, and I knew Judge Senter would make it be fair, and  
 11 that's why I entered a state court order agreeing for them to  
 12 have to go do that. They drafted what they thought was a  
 13 settlement agreement that he would pass -- he would approve.  
 14 He didn't.  
 15 They had a duty under our state court agreement to go down  
 16 there and get it approved, submitted and under 3(b) make new  
 17 offers based on criteria and guidelines approved by the federal  
 18 court. Now, if they're making offers under section (e) and not  
 19 using this and doing that or doing these kind of provisions,  
 20 they didn't do it pursuant to Judge Senter's order and the  
 21 criteria he set forth.  
 22 Q. Can we concentrate for just one second on section 1 of this  
 23 agreement? Let's not talk about Judge Senter. Let's just talk  
 24 about section 1. It has three provisions, (a), (b) and (c).  
 25 Is State Farm reevaluating Katrina damage claims on the coast

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1 in accordance with those provisions?  
 2 A. We don't know because the provisions -- I'll try to find it  
 3 in here for you. They have a duty under (b) to keep us posted  
 4 as to what they're doing. And that -- there again, that just  
 5 shows that they're violating the state court order. If I don't  
 6 know, they haven't provided us that information.  
 7 Q. Can we talk about section 2, page 2. It deals with  
 8 independent contractors hired by State Farm. It has  
 9 subsections (a) through (f). Do you know whether or not State  
 10 Farm is reevaluating Katrina damage claims on the coast in  
 11 accordance with each of those provisions?  
 12 A. There again, I don't know what State Farm is doing. But in  
 13 explanation to my answer, the reason that I don't know is  
 14 because they're violating the terms of section 1 where they've  
 15 got to provide us with updates as to what they're doing. The  
 16 reason that they're also in violation of 2 is because they  
 17 didn't follow section 3 where Judge Senter or a judge -- it  
 18 could be Judge Bramlette. I wish Judge Bramlette would take  
 19 this bull by the horn and get you to agree to do what you said  
 20 you would do in the state court agreement. But a Southern  
 21 District Court judge --  
 22 THE COURT: I'd rather try to take a real bull by the  
 23 horns than do that.  
 24 MR. ROBIE: That's a wise decision, your Honor.  
 25 BY MR. ROBIE

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1 Q. Could we look at paragraph 3?  
 2 A. Paragraph 3 or section 3?  
 3 Q. Section 3. I know all about the lead-in paragraph that  
 4 talks about Judge Senter. I don't want to know any more about  
 5 that, Mr. Hood. I've heard it. I want to talk about  
 6 paragraphs (a) through (f), not the lead-in paragraph, not  
 7 about Judge Senter's guidelines, supervision, lunch breaks,  
 8 willingness to do anything. I just want to talk about the  
 9 specific paragraphs that are headed (a), (b), (c), (d), (e) and  
 10 (f). Can you do that for me?  
 11 A. So you don't want to talk about the first paragraph that  
 12 doesn't have a letter on it?  
 13 Q. I don't want to talk about the one with the Roman numeral  
 14 3. I want to talk about (a), (b), (c), (d), (e), and (f). Can  
 15 we do that?  
 16 A. If you'd ask me a question, I believe we could get right to  
 17 it.  
 18 Q. Is State Farm reevaluating Katrina homeowners damage claims  
 19 on the coast in conformity with those provisions that are  
 20 captioned (a) through (f)?  
 21 A. Your Honor, if you'll look at (b) with me is what he's  
 22 wanting me to talk about. That's the section (b) -- 3(b) I  
 23 kept talking about. It's not the first heading up there. It  
 24 says, "After each claim has been reviewed and considered, State  
 25 Farm will set -- will submit an offer of settlement to the

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1 policyholder" -- this is operative line -- "based upon criteria  
 2 and guidelines approved by the United States District Court for  
 3 the Southern District of Mississippi and the provisions of this  
 4 settlement."  
 5 So to answer your question about (b) alone, State Farm has  
 6 violated this agreement of section 3(b). They have never  
 7 gotten any orders from any district judge in the Southern  
 8 District of Mississippi and followed the guidelines set forth  
 9 by one of those judges. They have not, they cannot until they  
 10 come before the court that they have agreed to do.  
 11 State Farm has violated that provision. I have done  
 12 everything I can do, your Honor. I wrote them letters. We  
 13 even took the agreement they initially did and took Judge  
 14 Senter's 11 conditions and put it in a -- something and said,  
 15 "Sign this." Went to Judge Senter. "Judge Senter, get some  
 16 more lawyers -- we want to have a hearing where other lawyers  
 17 can come in. If Scruggs Katrina Group is the problem, get some  
 18 other lawyers to administer this settlement agreement." We  
 19 hand fed it to them. We did exactly what Judge Senter required  
 20 of them, but they still won't follow 3(b). They cannot make  
 21 offers -- they can't do the George Dale system. They can't  
 22 make an offer when it's not approved on -- and it's not based  
 23 on guidelines and criteria approved by the federal district  
 24 court.  
 25 Now, do you want to talk about (c) or just --

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1 Q. Mr. Hood, would you like to ask your own questions?  
 2 THE COURT: Go ahead, counsel. Ask the questions.  
 3 What's the next question?  
 4 BY MR. ROBIE:  
 5 Q. The next question is: How about (a), 3(a)? Are they  
 6 violating that provision or are they living up to it?  
 7 A. Section (a) says, "State Farm will review and reconsider  
 8 every claim under the policyholder's request -- upon the  
 9 policyholder's request. And during that process, State Farm  
 10 will not use any adjusters who was involved -- any adjuster who  
 11 was involved in the previous adjustment of said claims."  
 12 Now, it's my understanding of the George Dale program that  
 13 they're not readjusting claims, they're just looking at the  
 14 paperwork and saying, "We'll give you 10 percent more," or some  
 15 percentage. So obviously they're not using any adjusters that  
 16 I'm aware of. But, there again, we've not kept abreast of what  
 17 they have done. I can't dispute -- if you're trying to testify  
 18 or state that they're doing this, I don't know.  
 19 Q. Mr. Hood --  
 20 A. Is there testimony previous to me being here that  
 21 substantiates that?  
 22 Q. I'm just trying to find out what you know.  
 23 A. Okay. I don't know under (a). Under (c) -- you want me to  
 24 go into specifics of (c)?  
 25 Q. If you can tell me if you know whether or not State Farm is

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1 following that provision in the reevaluation of Katrina damages  
 2 claims on the coast, please do so. If you can't, I'd also like  
 3 to hear that.  
 4 A. Subsection (c). They are violating the terms of that  
 5 provision, and they're not following subsection (c). It says,  
 6 "For any policyholder who disagrees and rejects State Farm's  
 7 settlement offer, a fair and expeditious arbitration process  
 8 will be available for such policyholders, and such arbitration  
 9 process will be binding upon the parties. Prior to the  
 10 arbitration, State Farm will provide to the arbitrator and  
 11 policyholder a copy of nonprivileged information in the  
 12 policyholder's claims files, including any and all engineering  
 13 reports in State Farm's file concerning the inspection of the  
 14 insured property." There is no arbitration process in the  
 15 George Dale program.  
 16 Q. No, in fact, Mr. Hood, if the policyholder doesn't like the  
 17 settlement offer, they're entitled to file a lawsuit and sue,  
 18 aren't they? Under the George Dale/State Farm program.  
 19 A. Well --  
 20 Q. They aren't bound to go to binding arbitration, are they?  
 21 A. But State Farm agrees -- you're asking me did they  
 22 violate -- are they following these conditions. And I'm  
 23 telling you they did not. You agreed to provide a binding --  
 24 excuse me. Not you, excuse me -- State Farm provide a binding  
 25 arbitration process that would be administered by the federal

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1 district court with oversight. You haven't -- State Farm has  
 2 not done that. They have violated subsection 3(c) of this  
 3 provision.  
 4 Q. Right. And they did that by allowing the policyholder to  
 5 reject the settlement offer and preserve their right to go to  
 6 court if they choose. Isn't that a fact?  
 7 A. I don't know what the -- what you're stating, but I do know  
 8 that they did not comply with subsection (c).  
 9 Q. You know that the policyholders under the current program  
 10 are not compelled to go to binding arbitration if they don't  
 11 like the offer State Farm makes. You know that, don't you?  
 12 A. You agreed to provide arbitration and have you not -- State  
 13 Farm has not done so.  
 14 Q. Mr. Hood, if a policyholder wants to go to arbitration, are  
 15 you aware of any situation under this reevaluation program  
 16 where State Farm has declined it?  
 17 MR. HESTER: May it please the court, we would object  
 18 on the repetitive grounds. Mr. Robie's question was whether or  
 19 not State Farm was complying with provisions (a), (b), (c),  
 20 (d), (e) and (f). That's exactly what he's attempting to  
 21 respond to. Mr. Robie is now changing his question mid  
 22 response, and we object to that. The attorney general should  
 23 be allowed to fulfill the original question.  
 24 THE COURT: General Hood, do you feel like you've been  
 25 given an opportunity to give a full answer to the question,

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1 sir, and is there anything else that you feel like you need to  
 2 say? Your attorney feels that there's something you've been  
 3 prohibited from saying or maybe cut off, and I'm going to give  
 4 you an opportunity to explain anything that you want to. Would  
 5 you like to?  
 6 A. Yes, sir. Under -- section (d) that he asked provides,  
 7 "State Farm will pay all costs associated with the arbitration  
 8 process except that policyholder is required to pay their own  
 9 expenses such as experts and attorney's fees." Your Honor,  
 10 they agreed to set up an arbitration process. And binding  
 11 arbitration would hold State Farm -- and we estimated it would  
 12 be in the hundreds of million dollars because the court would  
 13 require fair arbitrators, and we don't know who the -- who  
 14 they've got over there overseeing it. So they didn't provide  
 15 arbitration under (d).  
 16 And section (e), there's no class action overseen by the  
 17 federal court where they can opt out or opt in or either.  
 18 And under (f), there again, it talks about reevaluation and  
 19 arbitration process. So it's my position, your Honor, they  
 20 violated every term under subsection 3.  
 21 THE COURT: I guess what counsel is trying to do here  
 22 in questioning you, Attorney General Hood, is getting at  
 23 whether or not State Farm has upheld its obligation under the  
 24 January 23, 2007, letter, which is to willingly enter into a  
 25 settlement agreement requiring State Farm to pay a substantial

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1 penalty. Is that what you're --  
 2 MR. ROBIE: Precisely, your Honor.  
 3 THE COURT: Well, let me ask General Hood this very  
 4 question: Is it your position, General Hood, that State Farm  
 5 has not been willing to enter into a settlement agreement and  
 6 has not been willing to pay a substantial penalty to the  
 7 victims? Is that your position or is that not your position?  
 8 If that is not your position, then we may be wasting a lot of  
 9 time here today. Do you understand my question?  
 10 A. Yes, sir. And the answer is yes to both. Under our state  
 11 court agreement -- which that letter that I wrote them refers  
 12 to this settlement agreement, and that settlement agreement  
 13 refers to the federal class action. So it's my position that  
 14 they didn't pay a substantial penalty pursuant to the state  
 15 court agreement nor did they get the class approved under 3(b)  
 16 and submit claims under the guidelines of the federal court.  
 17 THE COURT: Well, this letter doesn't detail exactly  
 18 what State Farm is to do under the settlement agreement. It  
 19 doesn't detail Roman numeral 3 (a) through (f). All it does is  
 20 says State Farm has to be willing to enter into a settlement  
 21 agreement, which it did do, and pay a substantial penalty to  
 22 the victim. So they did enter a settlement agreement.  
 23 The second question is: Have they paid a substantial  
 24 penalty to the victims? Now, when you say "substantial,"  
 25 anybody can say, "Well, what does that mean? What is

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1 substantial?" It may not be substantial to General Hood; it  
 2 may be substantial to State Farm. That may be something that  
 3 the court has to decide. But my question to you is: Have they  
 4 paid a penalty to these victims? Have they? Do you know, sir?  
 5 A. No, sir, I don't know. I don't know how much they've paid.  
 6 But I do know that -- when I say that they're willing to enter  
 7 a settlement agreement, that's a little "s" and little "a,"  
 8 settlement agreement. That was referring to this state court  
 9 settlement agreement.  
 10 THE COURT: But it doesn't say that, though. I mean,  
 11 it doesn't tell me -- I'm here trying to make a decision based  
 12 on what's before me, and that's the January 23, 2007, letter.  
 13 It says, "willingness to enter into a settlement agreement."  
 14 Let me ask -- maybe we can clear it up this way. Let me ask  
 15 Mr. Robie: Is it State Farm's position that it is this  
 16 settlement agreement that you all agreed to enter into or some  
 17 other settlement agreement?  
 18 MR. ROBIE: It is this settlement agreement, and it's  
 19 State Farm's position that they were obligated to try to go to  
 20 Judge Senter to get his approval to do it. They did do that.  
 21 And Mr. Scruggs dismissed the lawsuit, and Judge Senter lost  
 22 jurisdiction and wouldn't anything to do with it. So they went  
 23 to the insurance commissioner and adopted verbatim this  
 24 settlement agreement with the exception of giving the  
 25 policyholder the option of rejecting the offer and preserving

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1 their legal rights.

2 THE COURT: It is your position that State Farm -- now

3 that you tell me you did enter this agreement and now that you

4 tell me this was the agreement that was contemplated by the

5 January 23, 2007, letter, now, tell me is it your position that

6 you have paid a substantial penalty?

7 MR. ROBIE: We have paid in excess of \$70 million and

8 are still shelling out money.

9 THE COURT: All right. I understand the respective

10 positions now. Thank you for clearing it up. You may proceed,

11 counsel.

12 A. Your Honor, if I may add one brief comment to that. Since

13 they have admitted that they're talking about the state court

14 agreement, then that's where they've entered into agreement

15 that they have to get it approved by the federal court and make

16 those -- actually submit it to the federal court and make those

17 offers.

18 And that's why I say that not only is this a separate

19 investigation, but they also breached this one. I mean,

20 there -- the letter agreement. Because if they're admitting

21 that the letter agreement referred to this state court order,

22 which is Exhibit 27, and 3(b) of that one says that they've got

23 to make those offers based upon criteria and guidelines

24 approved by the federal court and George Dale's program doesn't

25 have it -- and that's why I submit to the court that the dollar

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1 figure is not as important as the federal court oversight, a

2 magistrate, somebody -- a judge-appointed referee, somebody to

3 make sure that it's done properly in following those

4 guidelines.

5 THE COURT: All right. It's 5:00. How much more time

6 do you have? Give me your best judgment, counselor, how much

7 more time do you think you have?

8 MR. ROBIE: Probably another hour or so, your Honor.

9 THE COURT: We'll resume in the morning at 9:00. I do

10 want to see if we can expedite some things, perhaps get some

11 exhibits in by agreement, things that we routinely do at the

12 end of the day. So let me meet with counsel for both sides in

13 accordance with the sidebar that we had a moment ago. We will

14 do that on the third floor. There is a conference room up

15 there, and it's got a table and lots of room. I'll give you

16 about ten minutes, if you would like, and then I'll see counsel

17 and parties as we discussed in ten minutes on the third floor.

18 Court's in recess until 9:00 in the morning.

19 (RECESS ON 2-6-08 AND RESUMED ON 2-7-08)

20 (COURT CALLED TO ORDER)

21 THE COURT: All right. I apologize to those of you

22 who are interested in this case, those of you who are outside

23 the well of the court. I apologize for the delay. We were

24 going to begin this morning at 9:00. Late last evening -- or I

25 say late. 9:00 or so the parties announced to the court that

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1 they had reached an agreement, a settlement agreement. The

2 court is prepared to enter a judgment of dismissal in this

3 case, which it will do momentarily.

4 If there is anyone here who wants a copy of this

5 judgment, I'll be happy to provide it for you if you will come

6 back. Or you can do it from the courtroom. Ask Ms. Jackson

7 here for a copy and I'll be happy to provide it for you.

8 This judgment of dismissal is a very short document.

9 It simply says that this case is dismissed. There is a

10 settlement agreement which will remain under seal which will be

11 filed; but, as I said, it will be under seal.

12 I do want to say one further thing and that is this:

13 Both parties have been represented by very competent counsel.

14 This has been a hard-fought case. I have read the briefs, many

15 many briefs, all of which have been extremely well prepared and

16 presented to the court covering all of the issues that the

17 court would have had to rule upon had not the parties reached

18 an amicable resolution. So I commend the lawyers for your hard

19 work and for your courtesies to the court and to each other.

20 Is there anything further now from the plaintiffs,

21 State Farm?

22 MR. ROBINSON: No, sir, your Honor.

23 THE COURT: Anything further from the defense?

24 MR. HESTER: No. Thank you, your Honor.

25 THE COURT: This court then is adjourned until

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1 Tuesday, the 12th of February. Court's in recess.

2 (RECESS)

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I, MARY VIRGINIA MORRIS, Official Court Reporter,  
United States District Court, Southern District of  
Mississippi, do hereby certify that the above and foregoing  
pages contain a full, true and correct transcript of the  
proceedings had in the aforementioned case at the time and  
place indicated, which proceedings were recorded by me to  
the best of my skill and ability.

I certify that the transcript fees and format  
comply with those prescribed by the Court and Judicial  
Conference of the United States.

This the 7th day of February, 2008.

---

M. VIRGINIA "Gina" MORRIS, RMR, CRR