

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

UNITED STATES OF AMERICA *ex rel.*
CORI RIGSBY and KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE NO. 1:06cv433-LTS-RHW

STATE FARM MUTUAL INSURANCE COMPANY DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS ENGINEERING CORPORATION;
EXPONENT, INC.; HAAG ENGINEERING CO.;
JADE ENGINEERING; RIMKUS CONSULTING GROUP INC.;
STRUCTURES GROUP; E. A. RENFROE, INC.;
JANA RENFROE; GENE RENFROE; and
ALEXIS KING

DEFENDANTS

**STATE FARM FIRE AND CASUALTY COMPANY'S
MEMORANDUM IN RESPONSE TO
RELATORS' MOTION TO STAY PROCEEDINGS
PENDING A RULING ON DEFENDANT'S MOTION TO DISQUALIFY**

Defendant/Counter-Plaintiff State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as "State Farm Mutual Insurance Company" ("State Farm" or "Defendant"), subject to all its defenses, including its Rule 9 & 12 defenses, submits this Memorandum in Response to Relators' Motion to Stay Proceedings Pending a Ruling on Defendant's Motion to Disqualify.

ARGUMENT

I. THE RIGSBYS' COUNSEL ARE ALREADY DISQUALIFIED

In an April 4, 2008 "Order of Disqualification and for the Exclusion of Evidence" in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, et. al.*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, docket nos. 1173, the Court ordered in part that:

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

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

(*Id.*, ex. A to Resp.)¹ Richard Scruggs, Zach Scruggs and Sidney Backstrom of The Scruggs Law Firm, P.A. (former head of the Scruggs Katrina Group) were co-counsel of record in this Action prior to their withdrawal following criminal indictments.

Anthony L. Dewitt, Edward D. “Chip” Robertson, Jr., Mary Doerhoff Winter, Bartimus, Frickleton, Robertson & Gorny, P.C., Todd Graves, Bartle, Marcus & Graves, P.C. and Graves, Bartle & Marcus, LLC (the “Rigsbys’ Counsel”) are “other associated counsel” as that term is used by the Court in the Order quoted in the preceding paragraph. As a result, the Rigsbys’ counsel *have already been disqualified* as counsel in this Action.²

II. THE LAW REQUIRES SUBJECT MATTER JURISDICTION TO BE ADDRESSED BEFORE DISQUALIFICATION ISSUES

State Farm agrees that disqualification is a threshold issue; however, subject matter jurisdiction is a more important threshold issue. Indeed, the approach suggested here by the

¹ See also (04/08/08 “Memorandum Opinion on Motion to Disqualify Members of the Katrina Litigation Group and Associated Counsel” in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, docket no. 1172, ex. B to Resp.)

² Due to the Government having declined to intervene, this Action is essentially a suit concerning “property damage sustained in Hurricane Katrina[,]” as envisioned by this Court’s *McIntosh* Order. (04/08/08 Order in *McIntosh*, no. 1:06cv01080-LTS-RHW, docket no. 1173, ex. A to Resp.) In the alternative, should State Farm be mistaken in its understanding of the Order, State Farm respectfully submits that the same considerations present in *McIntosh* also justify entry of a disqualification order here. State Farm has filed a motion to disqualify (docket no. 103) herein, not only to preserve in the record its position that the Rigsbys’ Counsel are already disqualified on the basis of this Court’s April 4, 2008 Order in *McIntosh*, but also to assert the additional disqualification bases set forth in the motion – which State Farm believes provide further compelling justifications for disqualification in this Action.

Rigsbys has been consistently rejected by the courts, as it is well established that subject matter jurisdiction must be addressed *before* issues concerning attorney disqualification. *See Rice v. Rice Foundation*, 610 F.2d 471, 474 (7th Cir. 1979)(reversing order disqualifying counsel due to district court’s failure to first address subject matter jurisdiction and holding that “[t]he initial inquiry in any suit filed in federal court must be whether the federal court possesses subject matter jurisdiction”); *Dinger v. Gulino*, 661 F. Supp. 438, 442 (E.D. N.Y. 1987)(collecting cases and holding that “[c]ontrary to plaintiff’s position, the Court concludes that the question of whether this Court has jurisdiction over this matter should be considered before plaintiff’s motion to disqualify defendant’s attorney. Absent jurisdiction, it would be inappropriate for this Court to enter orders, even regarding a motion to disqualify an attorney, in this matter. When faced with simultaneous motions to dismiss for lack of jurisdiction and attorney disqualification, other courts have decided the jurisdictional question first”); *cf. Rockwell Intern. Corp. v. U.S.*, ___ U.S. ___, 127 S.Ct. 1397, 1406 (2007)(“Here the jurisdictional nature of the original-source requirement [of the False Claims Act] is clear *ex visceribus verborum*”); *Wang v. FMC Corp.*, 975 F.2d 1412, 1415 (9th Cir. 1992)(False Claims Act decision noting that “[f]ederal courts have no power to consider claims for which they lack subject matter jurisdiction” and “[w]e must examine . . . the jurisdictional bar of section 3730(3)(4) *before* we can consider any other question”).

This Court’s decision in *McIntosh* is dispositive of the disqualification issue. Both the Rigsbys and their current counsel are already disqualified from proceeding.³ Were the Rigsbys’

³ State Farm takes strong issue with a number of statements in the Rigsbys’ motion; especially the misrepresentation that “State Farm’s disqualification motion is based upon the misguided premise that GBM and BFRG are vicariously responsible and can be disqualified for acts about which they had no or incomplete knowledge, and did not in any way direct” ([121] at ¶5) – which both mischaracterizes State Farm’s position and misstates the facts of the Rigsbys’ Counsel’s unlawful conduct. State Farm further rejects the contention that “some uncertainty exists as to whether GBM and BFRG will continue to represent Relators going forward.” (*Id.* at ¶8.) In light of this Court’s Order, no “uncertainty” exists over the prohibition of the Rigsbys’ Counsel’s continued

counsel prepared to obey this Court's Order and withdraw immediately, their request for a temporary stay of proceedings might have some merit. Yet the Rigsbys and their counsel should not be able to use their resistance to this Court's clear mandate as a means to obtain an indefinite extension of time for the Rigsbys to respond to the threshold jurisdictional issues.

CONCLUSION

State Farm respectfully submits that this Court should proceed to consideration of both its motion to dismiss for lack of jurisdiction [91] and its motion to disqualify [103]. As State Farm's subject matter jurisdiction motion – if granted – would leave State Farm's counterclaim and the Rigsbys' Count V 31 U.S.C. § 3730(h) retaliation personal claim pending for independent adjudication, this Court may address both the subject matter jurisdiction motion and disqualification motion in tandem.

For this reason, while State Farm does not oppose a temporary stay of the other pending motions, State Farm must oppose the Rigsbys' request for a stay of the motion to dismiss for lack of subject matter jurisdiction.

To be clear, nothing in this Response is intended to suggest that State Farm believes the Rigsbys' Counsel have the right to make any filings of any type in this Action. State Farm believes that this Court's April 8, 2008 Order in *McIntosh* requires the immediate and unconditional withdrawal of the Rigsbys' Counsel, as well as the voluntary dismissal of the Rigsbys' claims, as they no longer have any putative standing to serve as Relators or to request or oppose *any* relief herein.

representation of the Rigsbys in this Action. Finally, the Rigsbys' contention that "[s]taying these proceedings pending a ruling on the Motion to Disqualify will cause no prejudice to Defendants[.]" (*id.* at ¶10), is simply incorrect. Delaying decision on State Farm's dispositive motions merely postpones resolution of important issues, including the issue of subject matter jurisdiction and therefore deprives State Farm of an expeditious end to this vexatious litigation by the Rigsbys.

This the 10th day of April, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, E. Barney Robinson III, one of the attorneys for State Farm Fire and Casualty Company herein do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System:

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THIS the 10th day of April, 2008.

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