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May 9, 2008

The Honorable Robert H. Walker
United States Magistrate Judge for the
Southern District of Mississippi
2012 15th Street, Suite 672
Gulfport, Mississippi 39501

Re: Civ. No. 1:06-cv-01080-LTS-RHW
McIntosh, et al. v. State Farm Fire & Casualty Company,
et al.

Dear Judge Walker:

In follow-up to this Court's request of May 1, 2008, regarding outstanding discovery matters, and on behalf of State Farm Fire & Casualty Company, below is a pared-down list of outstanding matters in pending discovery motions concerning the Scruggses and the Rigsbys that State Farm believes still require decision from the Court.

For purposes of context, in general, these items of discovery are crucial because Plaintiffs' bad faith claim for punitive and extra-contractual damages remains pending. As the Court observed in its December 11, 2007 order (Doc. 911), the "original engineering report on the McIntosh property has become a critical point in this litigation, as it appears to be the linchpin of Plaintiffs' bad faith claims." *Id.* at 2. The Court further noted that "one might reasonably infer that Scruggs was the source of [Joe] Rhee's information [*i.e.*, the October 12, 2005 engineer report with the sticky note] regarding the McIntosh claim," *id.* at 3, and that "Defendants

Exhibit "D"

understandably desire to question Richard and/or Zach Scruggs about the report . . . the circumstances surrounding the receipt of such documents and the chain of custody of the documents after the Scruggses received them. . . . The Court is of the opinion that Defendants should be allowed to pursue this information from the Scruggses.” *Id.* at 4. The December 11 order was subsequently affirmed by Judge Senter in his January 9, 2007 Order (Doc. 988), noting “[t]his is why the Scruggses’ depositions are appropriate – to ferret through this forest of relationships, especially in terms of the timing of the various conduct and activity.” *Id.* at 2.

With respect to Richard and Zach Scruggs and Cori and Kerri Rigsby, we need decisions issued on the pending motions concerning the following discovery, as these documents and testimony continue to be crucial to State Farm’s defense of Plaintiffs’ bad faith claims.

Motions re: Written Discovery from Richard Scruggs and Zachary Scruggs [Docs. 1075, 1051, 1072, 1083, 1086, 1110, 1111, and any other related papers.]

As the Court is aware, the Scruggses have not complied in any manner with State Farm’s outstanding subpoenas *duces tecum*. Given the remaining issues in the case, State Farm requests that the Court compel the response to the following subpoena requests:

- 1) Scruggs Subpoenas Request No. 1: The original October 12, 2005 engineer report purported to be prepared by Forensic Analysis & Engineering Company regarding the McIntosh property at 2558 S. Shore Drive, Biloxi, Mississippi.
- 2) Scruggs Subpoenas Request No. 2: The original sticky note on the October 12, 2005 engineer report
- 3) Scruggs Subpoenas Request No. 5: All documents concerning the American Broadcast Company, including without limitation ABC News, 20/20, and Joe Rhee, pertaining to State Farm and Hurricane Katrina.
- 4) Scruggs Subpoenas Request No. 9: All documents concerning any communications between “you” and Brian Ford, including without limitation any proposed or actual employment, reimbursement, indemnity, and/or compensation.
- 5) Scruggs Subpoenas Request No. 10: All documents concerning communications between “you” and any State Farm employee who worked on any Hurricane Katrina claim.

- 6) Scruggs Subpoenas Request No. 11: All documents concerning any communications between “you” and any person affiliated with or employed by any media outlet pertaining to or arising out of Hurricane Katrina, including without limitation any documents provided by you.
- 7) Scruggs Subpoenas Request No. 17: All documents there were represented to “you” to have been taken from, removed from, copied from, forwarded from, or downloaded from, directly or indirectly, any State Farm office or State Farm computer system, including, without limitation emails, pertaining to or arising out of Hurricane Katrina.
- 8) Scruggs Subpoenas Request No. 23: All documents picked up or otherwise retrieved by Richard Scruggs from a highly placed source at State Farm on a trip to Bloomington, Illinois, which Richard Scruggs referenced in a March 30, 2006 interview.
- 9) Scruggs Subpoenas Request No. 25: All documents concerning any financial interest that “you” have in this matter or any other State Farm-related Hurricane Katrina matter following you withdrawal as counsel of record.

Motions re: Deposition Testimony of Cori Rigsby and Kerri Rigsby [Docs. 945, 946, 992, 1085, and 115, and any other related papers.]

State Farm’s motions to compel further testimony from Cori and Kerri Rigsby regarding their meetings with Richard Scruggs that were held in the presence of third parties also remain outstanding. As stated in State Farm’s Motion to Compel Cori and Kerri Rigsby to Answer Deposition Questions (Doc. 945) and supporting papers (Docs. 946 at 10-11, 992 at 6-8, 1085 and 1115), the Rigsbys have repeatedly refused to answer questions regarding their meetings with the Scruggses, as well as issues surrounding the chain-of-custody concerning the documents they admittedly stole from State Farm, despite the fact that these meetings were not privileged and were admittedly held in the presence of third-parties, *i.e.*, Dr. and Mrs. Lobrano, thus effecting a waiver of any privilege that might otherwise have attached. Discovery of these non-privileged meetings and related matters is reasonably calculated to lead to discovery of admissible evidence and State Farm is still in need of this testimony to properly support their defenses to Plaintiffs’ bad faith claims.

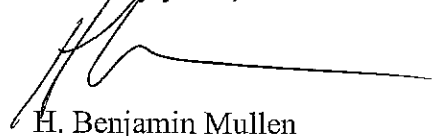
Motions re: Written Discovery from Cori Rigsby and Kerri Rigsby [Docs. 969, 970, 1050, 1147, 1148, 1156, and any other related papers.]

The Rigsbys have not produced crucial documents despite this Court's order to do so. In particular, State Farm seeks the production of the Rigsbys' calendars and their "journal of questionable happenings," that came to light in the *qui tam* action as well as in deposition testimony of Cori Rigsby (*see* Docs. 969, 970 at 2, 5-8, 1050). State Farm's motion to compel documents from the Rigsbys to the extent it seeks these documents are reasonably calculated to lead to the discovery of admissible evidence that will further support State Farm's defense against the bad faith claims.

Finally, State Farm requests that the Cori Rigsby's Motion to Permanently Delete All Copies of the Lists of Files Recovered From Cori Rigsby's Computer (Docs. 1147, 1148) be denied outright or denied as moot. While these lists were originally distributed to counsel on or about February 12, 2008, the Court indicated that that they not be further distributed among counsel nor used by them, pending the filing and decision on Rigsby's motion. These lists currently represent the only information that has ever been recovered from Cori Rigsby's computer and may contain vital clues to discoverable material and information that is reasonably calculated to lead to the discovery of admissible evidence. State Farm requests that the Court deny the motion and permit the use of these materials immediately.

With kindest regards, I remain,

Sincerely yours,

A handwritten signature in black ink, appearing to read "H. Benjamin Mullen", with a long horizontal flourish extending to the right.

H. Benjamin Mullen

For the Firm

cc: All Counsel of Record