

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

E.A. RENFROE & CO., INC.

Plaintiff,

v.

CORI RIGSBY and KERRI RIGSBY,

Defendants.

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No. 2:06-cv-1752-WMA

**DEFENDANTS' CONSOLIDATED RESPONSE TO RENFROE'S MOTION
TO QUASH CERTAIN TOPICS OF DEFENDANTS' SUBPOENA FOR A
STATE FARM DEPOSITION AND RENFROE'S MOTION TO QUASH
PORTIONS OF DEFENDANTS' SUBPOENA FOR STATE FARM
DOCUMENTS**

COME NOW defendants Cori Rigsby and Kerri Rigsby ("Rigsbys" or "Defendants"), by and through their undersigned counsel, and respond in opposition to Renfroe's Motion to Quash Certain Topics of Defendants' Subpoena for a State Farm Deposition as well as Renfroe's Motion to Quash Portions of Defendants' Subpoena for State Farm Documents. In support of this response, the Rigsbys' state as follows:

1. Renfroe's motions relate to subpoenas issued to non-party State Farm Fire & Casualty Company ("State Farm") through the United States District Court for the Central District of Illinois ("the Illinois Court") to State Farm on November 16, 2007. These subpoenas are the subject of various motions in a related case,

Renfroe v. Rigsby, Civil Action No.: 2:08-MC-00908-LSC, which was consolidated on May 30, 2008 with the underlying matter in which Renfroe filed its motions.

2. State Farm filed responses and objections to the subpoena for documents and the subpoena for deposition testimony on November 30, 2007.

3. The Rigsbys filed a motion to compel the production of said documents and a motion to compel the testimony of a State Farm witness on January 15, 2008 in the Illinois Court. (Dkt. #1, 3, 2:08-mc-00908-WMA, United States District Court for the Northern District of Alabama). State Farm filed motions for protective orders regarding the two subpoenas on February 29, 2008 in the Illinois Court. (Dkt. # 20, 21, 2:08-mc-00908-WMA, United States District Court for the Northern District of Alabama).

4. On May 23, 2008 – over *six months* after the Rigsbys served the subpoenas on State Farm requesting certain relevant documents and deposition testimony in the Renfroe matter – Renfroe filed motions to quash certain portions of said subpoenas to State Farm. (Dkt. #312, 313, 2:06-cv-01752-WMA, United States District Court for the Northern District of Alabama).

5. Federal Rule 45 provides that a motion to quash shall be “timely” filed. Though neither the Rule nor the Comments directly addresses the issue of the “timeliness” of the filing of a motion to quash, certainly the federal rules do not

contemplate six-months as “timely” when such rules give only fourteen days to the party to whom a subpoena is issued to object to such subpoena. Fed. R. Civ. P. 45(c)(2)(B).¹

6. Second, a party has no standing to challenge a subpoena to a non-party absent said party alleging a “personal right or privilege” with respect to the materials subpoenaed or the areas of testimony requested by the subpoena. *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. (Tex) 1979); *see also Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc.*, 231 F.R.D. 426, 429 (M.D. Fla. 2005); 9 Wright & Miller, Federal Practice and Procedure: Civil §2457 at 431 (absent a claim of privilege, a party has no standing to challenge a subpoena to a nonparty). The only materials to which Renfroe alleges a personal right or privilege in either of its motions to quash is with respect to Requests for Production #13 and #17. (Dkt. #313, 2:06-cv-01752-WMA, United States District Court for the Northern District of Alabama). With respect to every other category of document or area of testimony, Renfroe does not allege a personal right or privilege with respect to said

¹ The Rigsbys have located two cases that have discussed the issue of “timeliness” with respect to motions to quash. These two cases in no way support a finding that waiting six months to file a motion to quash would be considered “timely” under the federal rules. *See Schaaf v. Smithkline Beecham Corp.*, 2006 WL 2246146 at *2 (M.D. Fla. 2006) (a motion to quash filed *fifteen* days after service was considered “timely”); *Edw. C. Levy Co., Inc. v. Int’l Union of Operating Engineers, Local 150, AFL-CIO*, 2006 WL 1544727 (N.D. Ind. 2006) (motion to quash held to be timely filed even though it was filed *twenty-seven days* after service of the subpoena).

7. Furthermore, assuming Renfroe has standing to challenge the subpoenas, under Rule 45(c)(3)(A) there are only four grounds upon which a court may quash a subpoena:

- (1) If the subpoena fails to allow a *reasonable time to comply*;
- (2) If the subpoena requires a non-party to *travel more than 100 miles* from that person's residence, place of employment or the place where that person or entity regularly transacts business;
- (3) If the subpoena requires the *disclosure of privileged or other protected matter*; or
- (4) If the subpoena subjects a person to *undue burden*.

Fed. R. Civ. P. 45(c)(3)(A)(i-iv).

8. As noted above, Renfroe's motions to quash raise numerous reasons that Renfroe believes this Court should quash the subpoenas to State Farm (relevance, over-breadth, harassing, unduly burdensome, vagueness, and lack of any nexus between Renfroe's claims or the Rigsby's defenses and the documents that have been requested in the subpoenas). (Dkt. #312, 313, 2:06-cv-01752-

WMA, United States District Court for the Northern District of Alabama). However, assuming Renfroe has standing to challenge the subpoenas, the only argument advanced by Renfroe upon which this Court may take into consideration in addressing Renfroe's motions to quash is its argument that the requests and/or topics of testimony place an undue burden upon Renfroe. Fed. R. Civ. P. 45(c)(3)(A)(iv); *see also Clayton Brokerage Co., Inc. of St. Louis v. Clement*, 87 F.R.D. 569, 571 (D.C. Md. 1980) ("The nonparty to whom the subpoena duces tecum is directed may challenge the subpoena on the limited grounds of unreasonability or oppressiveness. Thus, relevancy is available to neither the bank nor the defendant as a basis for challenging the subpoena directed to the bank."). The "burden" Renfroe addresses is with respect to only limited document requests wherein Renfroe argues that production of such documents by State Farm would *likely* include "thousands" of documents and that sifting through such documents would place an undue burden on Renfroe. Such a vague and conclusory argument does not warrant this Court quashing the subpoenas.

9. In its motions, Renfroe argues that certain areas of testimony and certain document requests are irrelevant to the underlying matter. To the extent this Court entertains such arguments despite the restrictions of Rule 45(c)(3)(A),²

² *See also Clayton Brokerage Co., Inc.*, 87 F.R.D. at 571 ("The nonparty to whom the subpoena duces tecum is directed may challenge the subpoena on the limited grounds of unreasonability or oppressiveness. Thus, relevancy is available to

the Rigsbys have addressed these very same concerns in memorandums in support of motions to compel State Farm to produce certain documents responsive to the subpoena and to produce a witness in response to the deposition subpoena as well as in response to State Farm's motions for protective orders, all filed in the Illinois Court. (Dkt. #2, #4, #27, #28, 2:08-mc-00908-WMA, United States District Court for the Northern District of Alabama). Thus the Rigsbys incorporate by reference the arguments set forth in their previously filed memorandums supporting their motions to compel, as well as the arguments set forth in their previously filed responses in opposition to State Farm's motions for protective orders.

CONCLUSION

For the foregoing reasons, the Rigsbys respectfully request that this Court deny Renfroe's motions to quash the subpoenas issued to State Farm.

Respectfully submitted,

Jon H. Patterson

Robert E. Battle (ASB-7807-T67R)

Harlan F. Winn, III (ASB-7322-N73H)

Jon H. Patterson (ASB-4981-J69P)

Attorneys for Defendants, Cori Rigsby and Kerri Rigsby

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OF COUNSEL:

**BATTLE FLEENOR GREEN
WINN & CLEMMER LLP**

The Financial Center
505 North 20th Street, Suite 1150
Birmingham, Alabama 35203

Telephone: (205) 397-8160

Fax: (205) 397-8179

Email: rbattle@bfgwc.com
hwinn@bfgwc.com
jpatterson@bfgwc.com

CERTIFICATE OF SERVICE

I hereby certify that on June 3, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Barbara Ellis Stanley
One City Centre, Suite 1290
1021 Main Street
Houston, Texas 77002
bstanley@helmsgreene.com

Jack Held
J. Rushton McClees
Sirote & Permutt
2311 Highland Avenue
Birmingham, Alabama 35203
Post Office Box 55727
Birmingham, Alabama 35201
jackheld@sirote.com
rmcclees@sirote.com

And, I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Patrick C. Finnegan
[Helmsing, Leach, Herlong, Newman & Rouse, P.C.](http://www.helmsing.com)
The LaClede Building, 150 Government Street, Suite 2000
Mobile, Alabama 36602
pcf@helmsinglaw.com

Michael Beers
Beers, Anderson, Jackson, Patty, & Fawal, P.C.
250 Commerce Street, Suite 100
Montgomery, Alabama 36104
mbeers@beersanderson.com

Jon H. Patterson

OF COUNSEL