

FILED UNDER SEAL

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

E.A. RENFROE & COMPANY, INC.,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	
V.)	2:06-cv-1752-WMA
)	
CORI RIGSBY MORAN and KERRI)	
RIGSBY,)	Judge William M. Acker, Jr.
)	
Defendants.)	

**RENFROE’S MOTION FOR PROTECTIVE ORDER AND
RESPONSE TO DEFENDANTS’ MOTION TO
COMPEL TESTIMONY OF WITNESSES**

Counsel for Plaintiff E.A. Renfroe & Company, Inc. (“Renfroe”) has been in communication with counsel for Defendants Cori Rigsby (Moran) and Kerri Rigsby (“Defendants” or “the Rigsbys”) in a good-faith effort to resolve their differences regarding the deposition testimony of Renfroe employees Don Goodin and Steve Cantrell. The parties have resolved some, but not all, of their differences. Renfroe, therefore, respectfully moves for a protective order and responds to Defendants’ sealed Motion to Compel Testimony of Witnesses Over Renfroe Counsel’s Instruction Not to Answer Questions Based on Form and Relevance Objections and For Sanctions (“Defendants’ Motion”) (Dkt. No. 283) as follows.

I. I. Renfroe Agrees to Offer Additional Testimony.

As part of its good-faith efforts to resolve discovery disputes, Renfroe has agreed to make Goodin and Cantrell available to answer the questions and reasonable additional follow-up questions specifically related to those questions originally posed to Goodin in his April 3, 2008 deposition at 53:5-54:13; 55:20-57:12; 70:5-18; and 236:10-238:2, and to Cantrell in his April 2, 2008 deposition at 36:22-41:15 and 310:10-311:7. Renfroe has agreed to pay Defendants' reasonable fees and expenses for the re-deposition of these two witnesses on the questions listed above along with limited follow-up questions related to the questions listed above. Renfroe has communicated this agreement to counsel for Defendants.

Defendants have withdrawn that part of their motion to compel regarding questions to Goodin at 223:18-224:7 and 224:15-225:4 and their request that any portion of Renfroe's complaint be stricken.

II. Continued Disagreement.

Defendants continue to insist on questions to these two witnesses on two topics that Renfroe contends are not relevant and are either waived or privileged, and, therefore, are out of bounds for discovery.

A. Defendants' retaliatory discharge claims, if not barred entirely, are waived and are not relevant to this action.

The first topic for which Defendants seek to compel testimony involves questions related to Defendants' purported retaliatory discharge. More than eight

months after this action commenced, Defendants made claims of retaliatory discharge in their Mississippi qui tam lawsuit.¹ They consciously chose not to bring those claims in this action – even after this Court expressed its considered opinion that they were compulsory counterclaims in this Court.²

Defendants' questions to Goodin at 181:5-184:3 and 184:9-185:6 ask solely about whether certain personnel evaluations of the Rigsbys by Renfroe employee Steve Cantrell were "subjective" rather than "objective." Defendants' questions to Steve Cantrell at 218:19-224:18 and 234:8-21 ask him to explain why he had evaluated the Rigsbys as he did and with whom he had discussed the evaluation.

In instructing Goodin not to answer the referenced questions about the Rigsbys' evaluations, counsel for Renfroe specified that relevance was not the only objection. She stated: "... I want to be very clear that [relevance] is not the only basis for objection. As we went through in – in some detail this morning, we reserve all the other objections as well." (See Defendants' Exhibit A to Dkt. No. 283, Goodin deposition at 182:22-183:4).

¹ See *United States ex rel. Cori Rigsby and Kerri Rigsby v. State Farm et al*, Case No. 1:06-cv-433, United States District Court for the Southern District of Mississippi, First Amended Complaint, May 22, 2007 (Dkt. No. 16) at p.39 (stating claim for retaliation pursuant to 31 U.S.C. § 3730(h)).

² See Exhibit A, a true and correct copy of excerpts from transcript of August 29, 2007 hearing at p.11:15-17; p.24-25. In this discussion of Defendants' counterclaims asserted in the Mississippi qui tam action, the Court stated: "There is no way in the world that that's not a compulsory counterclaim in this case unless this unique set of circumstances changes that." *Id.* at p.11:15-17. The Court continued: "And this case will control the outcome of the retaliation claim down there one way or the other." *Id.* at p.13:7-9.

Defendants' chose not to pursue their retaliatory discharge claims in this Court even after the Court brought to their attention the compulsory nature of those claims. As such, those claims are now barred by operation of the compulsory counterclaim rule. FED. R. CIV. P. 13(a).³ Even if those retaliation claims were not barred by Rule 13(a) (which they are), Defendants declined this Court's invitation to transfer the qui tam claims to this Court for consolidation.⁴ They should not now be heard to demand discovery on matters they waived by determining not to present them in this case – especially given that the Court put them on notice of the propriety and opportunity of doing do so.

Even if Defendants' determination to forego their retaliation claims in this Court was not a waiver (which it is), the discovery Defendants' demand has no relation to any issue to be decided in this case. Renfroe's two asserted claims are clear and straightforward; Defendants have not, and could not, contend that an alleged retaliatory discharge somehow provides a defense to those claims.

³ A relator's claims under 31 U.S.C. § 3730(h) are personal claims that are not inextricably tied to the claims being litigated under 31 U.S.C. § 3729(a) in Mississippi. Many courts, including the Eleventh Circuit, have held that a Sec. 3730(h) claim can proceed even if no false claims case is ever filed at all. *Childee v. UA/AG GA Chem., Inc.*, 92 F.3d 1140, 1146 (11th Cir. 1996).

⁴ This Court invited the Rigbys to consolidate their qui tam action with this case. See Exhibit A at pp. 11-14 and 24-25. In open court through counsel Defendants refused to transfer the qui tam case to Alabama. Exhibit B, true and correct excerpts from transcript of September 21, 2007 hearing at pp. 11-12.

The Rigsbys' retaliatory discharge claim is still pending in their Mississippi qui tam suit. It is improper for them to attempt to take discovery in this litigation related solely to a claim pending elsewhere that they have specifically waived in this case. For the reasons stated above, Renfroe's objections to Defendants' questions about retaliatory discharge were proper, and Renfroe asks this Court to sustain those objections.

B. Questions about "investigations" after suit is filed seek disclosure of information that is privileged, not relevant, and subject of law enforcement efforts to keep confidential.

Defendants attempted to question Goodin regarding purported allegations made by Cori Rigsby's ex-husband Paul Moran about reports of dual engineering reports in Katrina claims in Louisiana. (Goodin at 233:6-234:2). Although the specific objection recorded on the transcript is to form, Renfroe's counsel had previously specified that she also reserved other bases for objections. (Defendants' Exhibit A to Dkt. No. 283, Goodin deposition at 182:22-183:4). The form objection was properly made lest it be waived, but the problems with this inquiry resulting in a dispute were far more significant than the form of the question.

The purported allegations by Paul Moran that counsel for Defendants asked about were not made to anyone at Renfroe until months AFTER the Rigsbys decided to steal documents without first coming to Renfroe with any concerns and months after this action was filed. Jana Renfroe made this point abundantly clear

in her May 14, 2008 deposition.⁵ Mrs. Renfroe testified that the conversation with Paul Moran about which Defendants inquired of Goodin⁶ occurred in November or December 2006 in the context of a meeting with Renfroe's counsel.⁷ The Rigsbys began stealing documents without coming to Renfroe in the fall of 2005.⁸ This lawsuit was filed September 1, 2006.

Renfroe's reaction to Mr. Moran's allegation could not, therefore, have had any impact on the Defendants' understanding of how Renfroe would react to a report alleging wrongdoing by State Farm when they began giving stolen documents to Scruggs in the fall of 2005. Any purported allegation regarding engineering reports made to Renfroe by Mr. Moran or anyone else after Defendants had taken it upon themselves to steal documents and give them to Scruggs without bringing any of their supposed concerns to Renfroe has no relevance to the claims or defenses in this case.

At the time of the Paul Moran conversation, Renfroe was cooperating with government law enforcement agencies in their Katrina investigations. The allegations of dual engineering reports were part of those investigations. Any

⁵ See Exhibit C, true and correct copies of excerpts from Jana Renfroe's May 14, 2008 deposition at 36:1-43:23; 72:2-23, which is confidential pursuant to the January 25, 2008 protective order (Dkt. No. 265) .

⁶ Jana Renfroe – not Don Goodin – was the party to the call with Paul Moran.

⁷ See Note 5 above.

⁸ See Exhibit D, a true and correct copy of excerpts from Kerri Rigsby's January 26, 2007 deposition at 44:15-47:20.

alleged impact that dual engineering reports might have had on State Farm's obligations to its policyholders is wholly irrelevant to whether the Rigsbys breached their employment contracts or violated the Alabama Trade Secrets Act.

As Mrs. Renfroe further testified, the occasion of Mr. Moran's "report" was a call initiated by Renfroe to Moran (not a call from Moran to Renfroe to report allegations of wrongdoing) in the context of Renfroe's consultation with counsel.⁹ Consequently, Renfroe's communications regarding the November-December, 2006 "report" by Paul Moral are privileged as part of an attorney-client communication, attorney work product, or the self-investigation privileges.

Renfroe has, moreover, been requested by the law enforcement officials conducting the investigations to keep private the nature and details of Renfroe's cooperation in those investigations. Renfroe has been trying, and is trying now, to honor those requests. For these reasons, Renfroe asks this Court to sustain its objections to these questions.

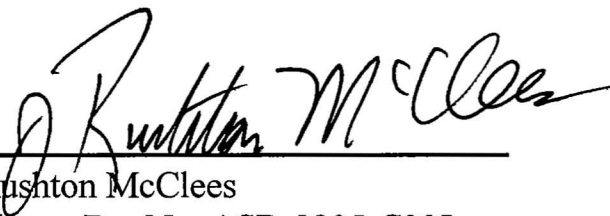
PRAYER

ACCORDINGLY, Renfroe respectfully requests that Renfroe be permitted to offer Goodin and Cantrell for continued depositions as specified and as limited in Section I, above. Renfroe further respectfully requests that this Court deny Defendants' Motion (Dkt. No. 283), sustain Renfroe's objections, and grant

⁹ See Note 5.

Renfroe's motion for protective order with respect to the discovery matters discussed in Section II, above.

Respectfully submitted this 22nd day of May, 2008.



J. Rushton McClees
Alabama Bar No. ASB-8805-C39J
rmcclees@sirote.com

Jack E. Held
Alabama Bar No. ASB-6188-H65J
jackheld@sirote.com

Sirote & Permutt, P.C.
The Crescent Office Bldg, Suite 500
2311 Highland Avenue South
Birmingham, AL 35205
Post Office Box 55727
Birmingham, AL 35255
tel: (205) 930-5100
fax: (205) 930-5101

and

Barbara Ellis Stanley
Admitted to Practice *Pro Hac Vice*
Texas Bar No. 19043800
Helms & Greene, LLC
One City Centre, Suite 1290
1021 Main Street
Houston, TX 77002
tel: (713) 651-0277
fax: (713) 651-0288
bstanley@helmsgreene.com

ATTORNEYS FOR PLAINTIFF,
E.A. RENFROE & COMPANY, INC.

ADDITIONAL CO-COUNSEL FOR PLAINTIFF:

Victoria L. Helms, Esq.
(Admitted to Practice *Pro Hac Vice*)
Georgia Bar No. 344228
vhelms@helmsgreene.com

Steven S. Greene, Esq.
(Admitted to Practice *Pro Hac Vice*)
Georgia Bar No. 308715
sgreene@helmsgreene.com

Helms & Greene, LLC
115 Perimeter Center Place
Suite 635
Atlanta, GA 30346
tel: (770) 206-3371
fax: (770) 206-3381

CERTIFICATE OF SERVICE

I hereby certify that copies of the above and foregoing have been served upon the following counsel of record to this proceeding via e-mail transmission and United States Mail, properly addressed and postage prepaid, on this the 22nd day of May, 2008, as follows:

Robert E. Battle, Esq. / rbattle@bfgwc.com
Harlan F. Winn, III, Esq. / hwinn@bfgwc.com
Jon H. Patterson, Esq. / jpatterson@bfgwc.com
Battle Fleenor Green Winn & Clemmer LLP
The Financial Center
505 North 20th Street
Suite 1150
Birmingham, AL 35203

Frank M. Bainbridge, Esq. / fbainbridge@bainbridgemims.com
Bruce F. Rogers, Esq. / brogers@bainbridgemims.com
Bainbridge, Mims, Rogers & Smith, LLP
Post Office Box 530886
Birmingham, AL 35253

John W. Keker, Esq. / jwk@kvn.com
Brook Dooley, Esq. / bdooley@kvn.com
Keker & Van Nest, LLP
710 Sansome Street
San Francisco, CA 94111-1704



J. Rushton McClees
Of Counsel for Plaintiff

EXHIBIT "A"

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

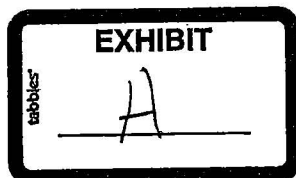
E. A. RENFROE & COMPANY, INC.,)
)
Plaintiff,)
)
v.)
)
CORI RIGSBY MORAN and)
KERRI RIGSBY,)
)
Defendants.)

Case No. 2:06-cv-01752-WMA
Birmingham, Alabama
August 29, 2007

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE WILLIAM M. ACKER, JR.
SENIOR UNITED STATES DISTRICT JUDGE

Court Reporter:

Virginia W. Flowers, RPR
325 U. S. Courthouse
1729 5th Avenue North
Birmingham, AL 35203
Tel. 205.862.8115



1 I can see why the Rigsbys did not file a counterclaim in
2 my court asserting what they assert in this amendment to
3 their qui tam case because the qui tam case was under seal
4 and they couldn't violate that seal by asserting by July 2,
5 2007, before the seal was lifted down there, a counterclaim,
6 which would reveal the subject matter in the qui tam case. I
7 can figure that out.

8 But what I can't figure out is what to do about it.
9 Because although Mr. Scruggs is not a lawyer in this case,
10 and I've just called all the lawyers in this case and his
11 name is not among them, he is the lawyer in the qui tam case
12 and he represents the Rigsbys in that case, which I now know
13 about. And he asserts in that case on their behalf that they
14 are the victims of retaliation.

15 There is no way in the world that that's not a compulsory
16 counterclaim in this case unless this unique set of
17 circumstances changes that.

18 If this case goes to trial on this schedule with no
19 amendment and no counterclaim, which would cover that, and
20 this case reaches a conclusion by dispositive order and is
21 entered, it will preclude anything -- Now, that's just my
22 free legal advice, because I can't control what another judge
23 does in another case. But I can give you some free legal
24 advice on both sides, that the first one of those cases that
25 gets to trial and resolves the question of who did what to

1 whom as between the Rigsbys and Renfroe -- Now, let me add
2 this dimension.

3 This case has a dispositive motion schedule for January
4 next year. I've forgotten when discovery is completed, but
5 the dispositive motion is in January. I don't know how much
6 familiarity you all have, any of you, with qui tam
7 litigation. But looking at this amended complaint in the qui
8 tam case, it is, I'd say, carefully crafted, well-drawn. I'm
9 not going to talk about the merits of it, but I'm going to
10 say that it will take a long time, unless it settles in some
11 way, to be resolved. It will not be resolved by January of
12 2008, the qui tam case won't be. Too many people involved,
13 too many parties involved, too many issues involved. And I
14 can't even tell now. Just recently the seal has been lifted,
15 so I don't even know whether State Farm and Nationwide and
16 all these other named defendants including Renfroe in that
17 case have answered or filed motions.

18 I don't know where it is. Nobody has told me. All
19 you've told me -- I say you. Any of you all didn't tell me.
20 Somebody else told me. But I know, and I think I can take
21 judicial knowledge of it that I just happened to find it out
22 some way of a paper filed in the Eleventh Circuit in this
23 case, respecting this case, some aspect of it, anyway,
24 collateral though it may be.

25 And you don't have to know all about qui tam law to know

1 that that case is going to take a long time. So I predict
2 that unless you, not I, because I can't -- I'm not calling
3 the judge down in Mississippi and begging for him to transfer
4 something to me. But if he, whoever it is, that's got that
5 case down there, the qui tam case, manages it or mismanages
6 it, whatever, by the time that case is over, this case will
7 have already been over. And this case will control the
8 outcome of the retaliation claim down there one way or the
9 other.

10 How you get all that melded together into one ball so
11 that somebody is going to ride herd on both of them, I'm not
12 sure. I think it's going to require some cooperative effort
13 by you and some participation by Mr. Scruggs, who is doing
14 that case down there.

15 And the mechanics of trying to get them together, I know
16 I said I wasn't going to call the judge down there and beg to
17 have it sent here, and I'm sure not going to call down there
18 and beg him to take mine. I'm not going to do that either.

19 Unless you all can do something about it and figure out
20 what to do about it, I'm going to do nothing. I'm just
21 telling you what the problem is. But the solution is going
22 to have to be worked out by you and somebody else.

23 Now, I'll cooperate. If you come up with a scheme where
24 I can contribute something to solve the problem, sure, I want
25 to help get the thing done, because I'd like to clean my

1 docket up one of these days in this case. But how we go
2 about it, I'm just contributing my free legal advice, you've
3 got to get that case somehow, whoever is handling it or who
4 is riding herd on it, to figure out with you how to get both
5 of them up here, is what I think, because I don't see how
6 they could take and add this case to a qui tam case. That
7 doesn't make sense. It makes a lot more sense to bring that
8 up here if it can be done or if you all can figure it out.

9 I don't know whether you all anticipated this question or
10 this problem for discussion. And I don't know if anybody on
11 either side of this wants to say something on this subject
12 now after I've explained how I'll view it and what the
13 problem is as I see it. I'll be glad to hear from either
14 side if you want to comment on it. If you just want to
15 receive the surprise and go try to do something about it
16 together or with somebody else, then I've made my speech and
17 I'll close it off right there.

18 Anybody got any argument with there being a problem? I
19 think you understand that there is a problem. How big it is
20 and what the solution is remains to be seen.

21 The only other thing that occurs to me that might be
22 worth mentioning, and it's, like I said, didn't occur to me
23 until after the opinion of the Eleventh Circuit went down
24 whenever it was last week, I said that the dispositive motion
25 deadline was January. The opinion of the Eleventh Circuit of

1 or that I don't depending on --

2 (Laughter.)

3 MR. TAYLOR: We will reflect heavily on those
4 issues. I don't think I'll be with you in New Haven -- it's
5 not my year -- but those are always wonderful events.

6 THE COURT: You're a New Havenite?

7 MR. TAYLOR: I am, Your Honor.

8 THE COURT: Well, we're glad to have you. This is
9 my 55th. I don't know whether we need to keep all this on
10 the record....

11 (Discussion off record.)

12 MR. TAYLOR: Your Honor, I do think it's possible
13 that we'll want to see you before you leave.

14 THE COURT: I think that would be good. We'll
15 figure out. We'll look at my calendar and find a time in
16 late September when we can get together for another visit for
17 a morning.

18 MR. TAYLOR: I think that would be -- We would
19 appreciate that.

20 THE COURT: Y'all talk to your clients, talk to
21 whoever you need to talk to. I think that somebody needs to
22 talk to Scruggs because he's got an interest in what I'm
23 talking about. Of course, he's got an interest in other
24 things, but he's got an interest in what I call and
25 characterize as a compulsory counterclaim. But when we get

1 together, somebody needs to be ready to tell me not in
2 just -- and I think it's part of the reaction to what I
3 brought up -- what kind of pleading is going on in the qui
4 tam case with respect to Renfroe. Renfroe now knows that
5 it's been sued.

6 MR. TAYLOR: Hasn't been served though.

7 THE COURT: Well, I didn't know that. Well, that's
8 another --

9 MR. TAYLOR: That's the protocol in the qui tam
10 process.

11 THE COURT: Well, I think the protocol though, isn't
12 it, when the seal is off, service is required?

13 MR. TAYLOR: No --

14 THE COURT: So that there's a service obligation now
15 under just Rule 4(m). It may be 120 days just like any other
16 4(m). But once that seal comes off, I think service must
17 be -- Now, I think that Renfroe knows about it. I'm guessing
18 they do. The allegation in the qui tam cases alleges that
19 they knew or should have known. So I don't know whether they
20 are going to be able to prove that or other things, but they
21 now know it. They know it now because I've just told them.

22 MR. TAYLOR: Well, I think, Your Honor, and I'll
23 have to refresh on this, but I think nothing moves until the
24 United States of America decides what position they are going
25 to take on the case. And then that --

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I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Virginia W. Flowers

8-31-07

Virginia W. Flowers, RPR

Date

EXHIBIT "B"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

E. A. RENFROE & COMPANY, INC.,))	
Plaintiff,)	
v.)	Case No. 2:06-cv-01752-WMA
CORI RIGSBY MORAN and)	Birmingham, Alabama
KERRI RIGSBY,)	September 21, 2007
Defendants.)	

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE WILLIAM M. ACKER, JR.
SENIOR UNITED STATES DISTRICT JUDGE

Court Reporter:

Virginia W. Flowers, RPR
325 U. S. Courthouse
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Birmingham, AL 35203
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1 would have to handle it.

2 Well, let me turn to the defendants and see. I think
3 that's a reasonable period of time to respond to this because
4 it is an important issue. And if you can file sooner, do it.
5 And if you do file, whenever you file, whether it takes a
6 full two weeks or not, you'll have a week to respond to
7 whatever she files. So that will be the schedule and I'll
8 get a little order out to say that.

9 Now, if there's no objection to the scheduling order
10 change, I propose to sign that. But I held it because I
11 wanted to know what, if anything, either side thinks needs to
12 be done by me, if anything, with respect to accommodating or
13 adjusting to what I think is a problem resulting from the qui
14 tam case, that portion of it that's not true qui tam. It's a
15 separate issue between the relaters as individuals and
16 Renfroe and its principals.

17 Now, what you do about that, I don't know. What you have
18 done about it, I don't know.

19 Now, does anybody want to tell me what they think about
20 that or what they are going to do about it?

21 MR. TAYLOR: Well, Your Honor, we took very
22 seriously the problem that you raised. And although it's
23 very rare when we find that we're not able to completely
24 agree with the Court, having considered the issue with qui
25 tam counsel as well, the decision has been made that we

1 believe that the claims are correctly filed where they are
2 and understand --

3 THE COURT: I don't disagree with that. I agree
4 with you that they are correctly filed. The effect of the
5 result in one over the other is something that some judge may
6 end up having to deal with, and it might be me because I
7 might still be here, and it might not be me because I might
8 not be here. But that's for another day. I just wanted you
9 to know that I see a problem for you out yonder in the
10 distance. It's not this second.

11 MR. TAYLOR: Well, we appreciate that, Your Honor,
12 and I think we're prepared to accept --

13 THE COURT: Well, I can follow that and I don't
14 disagree with that as your feeling about it or yours and qui
15 tam counsels' joint feeling about it. It makes some sense.
16 But I just wanted to get my thoughts out there for you to
17 see. And you've seen them and you've studied them and you've
18 answered my question, and I think you might well be right. I
19 might do the same thing if I were you.

20 MR. TAYLOR: Well, can I address the schedule that
21 you've just ordered, at least --

22 THE COURT: All right.

23 MR. TAYLOR: There's some substantial discovery that
24 we think we can get done by the first of the year which
25 hasn't been done. As you know, most of the parties'

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I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Virginia W. Flowers

10-24-07

Virginia W. Flowers, RPR

Date

EXHIBIT "C"

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

COPY

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION
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7 CIVIL ACTION NO.: 2:06-cv-1752-WMA
8

9 E.A. RENFROE & COMPANY, INC.,
10 Plaintiff,
11

12 v.
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14 CORI RIGSBY, et al.,
15 Defendants.
16
17

18 DEPOSITION TESTIMONY OF:

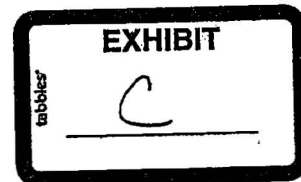
19 JANA RENFROE

20 May 14, 2008

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Job #58369

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 36

1 Q. Okay. And you said, other than
2 this August 15th conversation that you
3 had with Cori, you didn't take any notes
4 related to the Rigsbys. And I'm not
5 talking about pre-Katrina, but Katrina
6 thereafter, you didn't take any -- any
7 notes?

8 MS. HELMS: Object to --

9 Q. Related to the Rigsbys.

10 MS. HELMS: Object to the extent
11 it would call for the disclosure of
12 attorney-client privileged information.

13 THE WITNESS: I need to -- I
14 need to tell you -- I need to tell you
15 one more thing.

16 MS. HELMS: May we have a
17 moment?

18 MR. BATTLE: Sure.

19 THE VIDEOGRAPHER: We're going
20 off the record. The time is 9:46 a.m.

21 (Break taken.)

22 THE VIDEOGRAPHER: We are back
23 on the record. The time is 9:47 a.m.

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Court Reporting * Legal Videography * Trial Services

Page 37

1 MS. HELMS: Can I just --

2 MR. BATTLE: Sure.

3 MS. HELMS: -- jump in here? We
4 -- we conferred with Mrs. Renfroe,
5 because of course she does want to be
6 forthcoming in this deposition, and she
7 wanted to make sure that her testimony is
8 full and complete. And so I would like
9 to get a clarification from you that you
10 are not intending to inquire of her of
11 the communications that she has with
12 counsel in connection with litigation.
13 For example, I prepare and propose a
14 draft brief for her. She looks at it and
15 makes notes and provides me notes back on
16 that, her comments on the brief.

17 MR. BATTLE: Right.

18 MS. HELMS: Those sort of things
19 that we all have agreed don't need to go
20 on a privilege log. You're not intending
21 to acquire -- inquire about those sort
22 things; is that correct?

23 MR. BATTLE: That's correct.

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1 THE WITNESS: Okay.

2 MS. HELMS: I think you may want
3 to go back to the last question.

4 MR. BATTLE: Yeah. With that
5 understanding, could you read the last
6 question back.

7 (Requested portion read.)

8 MS. HELMS: Same objection to
9 the extent it would call for the
10 disclosure of attorney-client privileged
11 information. But to the extent you can
12 answer, please do so.

13 THE WITNESS: Okay.

14 A. In another matter, I had a
15 conversation, on which I took notes at
16 the instruction of counsel, with Paul
17 Moran. It was not about the Rigsbys.
18 Whether or not the Rigsbys' name may have
19 been mentioned, because Paul was married
20 to Cori, I don't remember. And I gave
21 those notes to counsel in the other
22 matter. So that's that.

23 Q. Okay. And when was that? Do

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1 you recall?

2 A. I want to say it was either
3 November of two thousand -- November,
4 December 2006. Probably November.

5 Q. And was that related to a phone
6 call with Paul Moran?

7 A. Yes.

8 Q. And did it relate to multiple
9 engineering reports related to a
10 policyholder file?

11 MS. HELMS: Object to form.
12 That calls for disclosure of
13 attorney-client privileged information.
14 Don't answer.

15 MR. BATTLE: Not the
16 conversation between she and Paul.

17 MS. HELMS: Oh, I understand.
18 Right.

19 You can reveal your -- the
20 subject of your communication with Paul.

21 A. Paul mentioned that.

22 Q. (By Mr. Battle) Okay. What do
23 you recall about that conversation with

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1 Paul?

2 A. Well, I was listening, and he
3 was talking. And Paul -- I think what I
4 remember about it was him -- he was in
5 Louisiana. He told me he worked in
6 Louisiana; that in Louisiana he had seen
7 instances of more than one engineering
8 report being in a file. He talked
9 about -- I believe he talked about his
10 belief that the concurrent causation
11 language in the policy was illegal.

12 He talked a little bit about
13 that we missed out on getting to work
14 some slab cases. I -- I can't remember
15 the whole gist of that part of the
16 conversation. That he had tried to get
17 us to -- to get some adjusters in there
18 and we hadn't done it and so we missed
19 out on those claims.

20 He talked about -- I believe he
21 talked about how dangerous it was where
22 he was working. And he talked a little
23 bit -- I can't remember the gist of the

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1 conversation, but he talked something
2 about Lecky King -- Lecky King and the --
3 the day rate compensation or the flat
4 rate compensation on flood files.

5 And that's pretty much all I
6 remember about that conversation.

7 Q. Okay. And so Paul called you?

8 A. I think Paul called in to the
9 office, and I called Paul back.

10 Q. Okay. And as far as the
11 multiple engineering --

12 A. And I called Paul back at the
13 instruction of counsel.

14 Q. Okay. Did you know why Paul was
15 calling before you talked to your
16 counsel?

17 A. I did.

18 Q. Okay. Why -- how did you find
19 out why Paul was calling?

20 A. Well, and that's --

21 MS. HELMS: Be careful here.

22 THE WITNESS: Yeah. That's --

23 MS. HELMS: This -- the way the

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1 questioning is going in light of the
2 testimony that's been given, the question
3 could end up calling for the disclosure
4 of attorney-client privileged
5 information.

6 MR. BATTLE: Well, she said she
7 contacted counsel after he called.

8 A. No. Counsel was there.

9 Q. (By Mr. Battle) Okay. Who told
10 you that Paul had called? Was it
11 somebody at the Renfroe Birmingham
12 office?

13 A. It might have been Christy
14 Lucas, our receptionist. You know, I'm
15 not sure.

16 Q. Okay. Did any Renfroe employees
17 tell you why Paul was calling you?

18 MS. HELMS: That -- that still
19 could implicate a privileged matter.
20 What you're really getting to was what
21 was the purpose of -- of the
22 communication between Paul and Mrs.
23 Renfroe, and that is a privileged matter.

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1 The way that it's being asked.

2 MR. BATTLE: Okay. Well, my
3 understanding is Paul placed a call to
4 the Renfroe office, and Jana called him
5 back. When Paul called, he had to talk
6 to somebody at the Renfroe office, and
7 Paul would have said, this is why I'm
8 calling. Which I assume, for Jana to
9 call him back, she would know the purpose
10 of why he was calling.

11 A. Well, all of this was at
12 instruction of counsel.

13 MS. HELMS: And I don't want to
14 reveal anything privileged, but maybe it
15 will help you to understand that when
16 Paul called in, he didn't do so without
17 prompting. There were efforts to contact
18 him in connection with another matter.
19 So he was returning a call.

20 MR. BATTLE: Okay. So Paul was
21 returning, okay.

22 MS. HELMS: Right.

23 MR. BATTLE: That does help.

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1 A. No.

2 Q. Do you consider Paul Moran's
3 report in November of 2006 --

4 A. Well, and -- and -- and I need
5 to say -- I'm sorry. I'm sorry to
6 interrupt you, but the Rigsbys didn't --
7 didn't report that to me either. So
8 actually, nobody's ever reported that to
9 me.

10 Q. Have you ever become aware of
11 any suspicions of fraud in the handling
12 of claims files as it relates to any
13 Renfroe adjuster?

14 MS. HELMS: Object to form.

15 A. I became aware of Kerri and
16 Cori's allegations of fraud.

17 Q. Okay. When did you first become
18 aware of that?

19 A. It would have been the 20/20.

20 MS. HELMS: Do we all know what
21 we're talking about by 20/20? The
22 television program?

23 MR. BATTLE: Yes.


1 C E R T I F I C A T E

2 STATE OF ALABAMA)

3 COUNTY OF JEFFERSON)

4 I hereby certify that the
5 above and foregoing proceeding was taken
6 down by me by stenographic means, and
7 that the content herein was produced in
8 transcript form by computer aid under my
9 supervision, and that the foregoing
10 represents, to the best of my ability, a
11 true and correct transcript of the
12 proceedings occurring on said date at
13 said time.

14 I further certify that I am
15 neither of counsel nor of kin to the
16 parties to the action; nor am I in
17 anywise interested in the result of said
18 case.

19 -----

20 LANE C. BUTLER, Commissioner

21 Certified Court Reporter

22 ACCR# 418 -- Expires 9/30/08

23 Registered Professional Reporter

EXHIBIT "D"

ORIGINAL

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

E.A. RENFROE & COMPANY,)
INC.)
Plaintiff,)

VERSUS)

NO: 06-WMA-1752-S

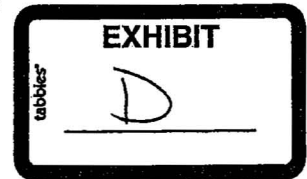
CORI RIGSBY MORAN and)
KERRI RIGSBY,)
Defendants.)

VIDEOTAPED DEPOSITION OF KERRI RIGSBY

Taken at the offices of Balch & Bingham,
1310 25th Avenue, Gulfport, Mississippi,
on Friday, January 26, 2007, beginning
at 9:41 a.m.

REPORTED BY:

F. Dusty Burdine, CSR No. 1171
Simpson Burdine & Miguez
Post Office Box 4134
Biloxi, Mississippi 39535
dusty@sbmreporting.com
(228) 388-3130



1 faith to me. I mean, they knew. Every -- it was
2 just kind of an underlying what's going on.

3 But, again, you just keep going. It's
4 hectic. You're working a lot, conditions are bad.
5 And you just -- you keep going. But when you, you
6 know, get an e-mail that says, you know, reports
7 will be kept under lock and key, you wonder, you
8 know, why.

9 So anyway, that was -- so I knew when I
10 got this report and it's not under lock and key
11 and I'm holding it, I still don't think anything
12 about it. Again, I go to the file, and that's
13 when I see the other engineer report, the revised
14 version.

15 Q. All right. And after you discovered the
16 second engineering report, what did you do?

17 A. Well, I read it. I read the two reports
18 and compared them and realized finally what was
19 going on.

20 Q. And what did you perceive was going on?

21 A. That reports were coming to Lecky, and
22 she was reviewing them. If she didn't agree with
23 them, she would have them changed.

24 Q. Who did you report this problem to?

25 A. At first, no one.

1 Q. Why not?

2 A. I think I was horrified, shocked.

3 Q. And after the initial shock wore off,
4 who did you report it to?

5 A. Well, I documented it. I made a copy,
6 and I held onto it. I didn't initially report it
7 to anyone.

8 Q. Do you recall from our look at the Code
9 of Conduct that you'd signed earlier that the Code
10 of Conduct insisted that any concerns over
11 problems or ethical issues should be reported to
12 Gene or Jana Renfroe; do you recall that?

13 A. Yes.

14 Q. Did you report your concerns or your
15 discoveries of what you considered to be ethical
16 problems to Gene or Jana Renfroe?

17 A. No. I did not.

18 Q. Did you report it to anybody higher up
19 than Lecky King at State Farm?

20 A. No. I did not. I didn't know if Lecky
21 was acting on her own or if she was being
22 directed. And I didn't -- you know, I hadn't been
23 through this before. I --

24 Q. Did you -- excuse me. Go ahead.

25 A. I didn't know who I could trust at State

1 Farm. And I didn't know -- I didn't know if Gene
2 and Jana could do anything.

3 Q. But you didn't give them a chance, did
4 you?

5 A. No.

6 Q. When was it that you read that second
7 engineering report and discovered this problem?

8 A. October.

9 Q. Do you recall approximately when in
10 October?

11 A. I believe the dates on the report were
12 October 13th and October 20th.

13 Q. Okay. So obviously it would have been
14 after that?

15 A. It would have to be after that.

16 Q. Okay. So do you recall if it was pretty
17 close to October the 20th or if it was closer to
18 Halloween or --

19 A. Halloween.

20 Q. Closer to Halloween?

21 A. (Nodding head affirmatively.)

22 Q. Okay. Now, you have discovered this
23 problem and you've gotten over your shock. Then
24 what did you do? You said you documented. You
25 made copies.

1 A. Can we take a break?

2 Q. Sure.

3 VIDEO TECHNICIAN:

4 The time is approximately 10:35. We're
5 off the record.

6 (Off the record.)

7 VIDEO TECHNICIAN:

8 It's approximately 10:48. We're back on
9 the record.

10 MS. STANLEY:

11 Q. Ms. Rigsby, if we can go back and just
12 find out what you did after you documented the
13 information on the second engineering report and
14 the yellow sticky. How did you document that?

15 A. I just made copies --

16 Q. Okay.

17 A. -- of the report.

18 Q. Then what did you do?

19 A. I brought them home and put them in my
20 desk drawer.

21 Q. Remind me where you were living.

22 A. 306 Rue Tonti.

23 Q. And was your mother living with you
24 then?

25 A. Yes.

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CERTIFICATE OF COURT REPORTER

I, F. DUSTY BURDINE, Court Reporter and Notary Public, in and for the County of Harrison, State of Mississippi, hereby certify that the foregoing pages, and including this page, contain a true and correct transcript of the testimony of the witness, as taken by me at the time and place heretofore stated, and later reduced to typewritten form by computer-aided transcription under my supervision, to the best of my skill and ability.

I further certify that I placed the witness under oath to truthfully answer all questions in this matter under the authority vested in me by the State of Mississippi.

I further certify that I am not in the employ of, or related to, any counsel or party in this matter, and have no interest, monetary or otherwise, in the final outcome of the proceedings.

Witness my signature and seal, this the 30th day of January, 2007.

F. Dusty Burdine
F. Dusty Burdine, CSR #1171
My Commission Expires 4/20/09