

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

**DEFENDANT/COUNTER-PLAINTIFF
STATE FARM FIRE AND CASUALTY COMPANY'S
ATTACHMENT TO
[98] "STATE FIRE AND CASUALTY COMPANY'S
MOTION TO DISMISS THE AMENDED COMPLAINT UNDER
FEDERAL RULES OF CIVIL PROCEDURE 12(b)(6) AND RULE 9(b)"**

Defendant/Counter-Plaintiff State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as "State Farm Mutual Insurance Company" ("State Farm"), respectfully submits this Attachment to [98] "State Fire and Casualty Company's Motion to Dismiss the Amended Complaint Under Federal Rules of Civil Procedure 12(B)(6) and Rule 9(B)" ("Motion to Dismiss"). In further evidentiary support of its Motion to Dismiss, State Farm supplements the record with newly discovered evidence as follows:

NATURE OF THIS ATTACHMENT

1. On April 8, 2008, State Farm filed its Motion to Dismiss ([98]), one of the motions to which the Rigsbys' response deadline is currently suspended. The Motion to Dismiss asserts several grounds for dismissal. Among them is a request for dismissal of the Rigsbys' claims due to the intentional disclosure of information and documents related to this Action by

the Rigsbys and their then counsel at a time when it was under seal and such disclosure was prohibited by law.¹

2. As explained in more detail below, in the course of a production in *McIntosh*,² the Scruggses have recently produced documents to State Farm revealing numerous additional violations of the seal order in this Action by both the Rigsbys and their then counsel.

3. This filing is an Attachment; or, put differently, an evidentiary supplement to State Farm's Motion to Dismiss. ([98].) It is intended to offer additional and newly discovered evidence in support of the portions of the Motion to Dismiss seeking dismissal of the Rigsbys' claims based on their and their then counsel's repeated violation of the seal provisions of the False Claims Act and this Court's April 26, 2006 Order ("Seal Order"). ([1].)

4. State Farm makes this filing at this time so as to avoid any potential argument by any Party that by not promptly placing these additional matters into the record, State Farm has somehow waived the right to invoke them in connection with its Motion to Dismiss or otherwise.

5. In a July 25, 2008 Order ([194]), this Court extended the Rigsbys' deadline to retain new counsel until September 5, 2008. In a text-only Order that same day, the Court further suspended the Rigsbys' deadline to respond to all pending motions, until further order of the Court. (07-25-2008 Text-only Order.)

¹ See ([98] at 13-15 & [98-5 through 98-7]) & ([99] at 23-26.) As noted in State Farm's Motion to Dismiss, it was evident that the Rigsbys and their counsel had violated the seal from the fact that Congressman Gene Taylor knew, prior to August 1, 2007, that a False Claims Act complaint had been filed and that State Farm and E.A. Renfroe & Company were Defendants. The more recently obtained evidence shows that their unlawful disclosures were even more widespread.

² *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire & Casualty Co., et al.*; in the United States District Court for the Southern District of Mississippi, Southern Division, no. 1:06cv1080-LTS-RHW.

6. State Farm recognizes that new counsel has only recently appeared in this Action for the Rigsbys. State Farm consents to the suspension of the Rigsbys' deadline to respond to the additional matters raised by this filing, until such deadline as may be set by this Court for the Rigsbys' response to State Farm's Motion to Dismiss, to which this filing attaches. ([98].)

INTRODUCTION

7. In furtherance of their attempt to prosecute claims against State Farm by unconventional and improper means, the Rigsbys and their then counsel have "used every trick in the book, political, public opinion and legal...."³ Apparently because, in their minds, "[t]hese are not legal wars.... They are public relations and political wars.'" *A Lawyer Like a Hurricane*, New York Times, March 16, 2007 (Ex. C) (quoting Richard Scruggs).⁴

8. Contrary to the Rigsbys' apparent belief that the civil justice system is "war" – and one in which extrajudicial tactics are appropriate – the law places strict restrictions on such conduct. Here, two such restrictions are the False Claims Act's seal provision and this Court's April 26, 2006 Seal Order. ([1].)

9. Blatantly disregarding those restrictions, and in an attempt to lay the groundwork for the poisoning of public opinion (and the jury pool) against State Farm, the Rigsbys and their then counsel unlawfully, repeatedly and manipulatively disclosed the sealed pleadings and evidentiary disclosures in this Action to major news organizations in this country – ABC News, the Associated Press, the New York Times and CBS News – up to a year before this Court lifted the seal. Such misconduct warrants dismissal of the Rigsbys' claims.

³ (Excerpts from Transcript of 2/28/07 Hearing in *Dennis Woullard v. State Farm Fire & Casualty Company*, In the United States District Court for the Southern District of Mississippi, Civil Action No. 1:06cv1057-LTS-RHW at 10 & 27, Ex. A) (quoting Richard Scruggs).

⁴ <http://www.nytimes.com/2007/03/16/business/16scruggs.html>

SUMMARY OF EVIDENTIARY SUPPLEMENT

10. On April 26, 2006, Cori and Kerri Rigsby filed their initial False Claims Act *qui tam* Complaint ([2]) in camera, pursuant to this Court’s April 26, 2006 Seal Order. ([1].) The Seal Order stated in part that the Complaint shall not “appear on any docket *available to the public* until further Order of this Court.” ([1]) (emphasis added).

11. On May 22, 2007, the Rigsbys filed their First Amended Complaint, also in camera and under seal. ([16].) Not until August 1, 2007 – over two months later - did the Court enter an Order unsealing this case. ([25].)

12. Earlier this year, in *McIntosh*, State Farm served nonparty subpoenas duces tecum on Richard F. Scruggs and D. Zachary Scruggs. (*McIntosh* [1035].) In response to Court orders compelling their compliance, (*McIntosh* [1994, 1211 & 1212]), the Scruggses recently produced documents revealing that the Rigsbys and their then counsel repeatedly disclosed sealed pleadings and evidentiary disclosures from this Action up to a year before this Court lifted the seal.

13. For example, on July 27, 2006, Richard Scruggs spoke with Joseph E. Rhee, the ABC News producer for the August 25, 2006 “20/20” story featuring the Rigsbys. (Ex. D, E-mail, Bates no. SMPH1-002665.)

14. Just days later, on August 8, 2006, in violation of the seal (and nearly a year before it was lifted on August 1, 2007), Scruggs’ assistant Beth Jones e-mailed the Rigsbys’ Evidentiary Disclosure made in this Action to Mr. Rhee at ABC News – apparently for him to use as background information in advance of the Rigsbys’ then-upcoming 20/20 story. (Ex. E, E-mail, Bates nos. SMPD1-00387 to 424 & Ex. F, 20/20 Trans.)

15. The fact that Mr. Scruggs and his staff knew this disclosure was wrongful is starkly shown by another e-mail sent that same day. Mr. Scruggs' assistant told Mr. Rhee that "Mr. Scruggs wanted me to let you know that this information [*i.e.*, engineering reports] is *not* the information that is under seal." (Ex. G, E-mail, Bates no. SMPD1-002559) (emphasis added). Of course, the information that *was* under seal – the sealed Evidentiary Disclosure – was sent to Mr. Rhee that same day. (Ex. E, E-mail, Bates nos. SMPD1-00387 to 424.)

16. A little more than one-week later, on August 14, 2006, Mr. Scruggs personally e-mailed a copy of the sealed Evidentiary Disclosure to Michael Kunzelman at the Associated Press.⁵ (Ex. H, E-mail, Bates nos. SMPD1-00115 to 149.)

17. On August 25, 2006, ABC News aired its *20/20* story featuring the Rigsbys, which aired allegations against State Farm substantively identical to those raised in the then-sealed *qui tam* Complaint and Evidentiary Disclosure. (Ex. F, *20/20* Trans.)

18. For example, both the *20/20* story and the Evidentiary Disclosure provided to Mr. Rhee described the Rigsbys' allegations that reports were being replaced or changed so that insurance claims would not have to be paid. *Compare* (Ex. F, *20/20* Trans. at 4) *with* (Evidentiary Discl. at 8-14). Both the *20/20* story and the Evidentiary Disclosure described the Post-It sticky note on the McIntosh report. *Compare* (Ex. F, *20/20* Trans. at 4) *with* (Evidentiary Discl. at 9-10). Both the *20/20* story and the Evidentiary Disclosure described the allegation that there was shredding occurring and the Rigsbys' belief that the shredding was done to destroy key documents. *Compare* (Ex. F, *20/20* Trans. at 4) *with* (Evidentiary Discl. at 8 & 14-16.)

⁵ Mr. Scruggs' August 14-19, 2006 weekly schedule reveals numerous meetings with media, including an August 16, 2006 Interview with Joseph Rhee of ABC News. (Ex. N, Bates SMPD-1-000028.)

19. The very next day, on August 26, 2006, Michael Kunzelman⁶ of the Associated Press – to whom Mr. Scruggs had provided a copy of the Rigsbys’ sealed Evidentiary Disclosure – published “*Sisters Were Whistleblowers on Handling of Katrina Damage Claims*,” Associated Press Newswires. (Ex. J.) In his story, Mr. Kunzelman discussed the engineer reports and other matters contained in the sealed Evidentiary Disclosure that the Rigsbys’ then counsel unlawfully provided him on August 14, 2006. (Ex. H, E-mail, Bates nos. SMPD1-00115 to 149.)

20. A few weeks later, on September 18, 2006, the Rigsbys’ then counsel made yet a third unlawful release of the sealed Evidentiary Disclosure, this time by having Dick Scruggs’ assistant e-mail it to reporter Joseph Treaster of the New York Times. (Ex. K, E-mail, Bates nos. SMPD1-000271-305.)

21. On January 22, 2007, the Rigsbys’ then counsel again e-mailed something confidential to Joseph Treaster of the New York Times. Unfortunately, we do not yet know what it was, as Mr. Scruggs failed to produce the attachment to the original e-mail, although Ms. Jones stated “Dick asked that I send you this in confidence.” (Ex. L, E-mail, Bates nos. SMPD1-000093.)

⁶ The Rigsbys’ former counsel were not only feeding sealed information and documents to the press at their and the Rigsbys’ own behest, they also eagerly responded to press requests for documents that might support stories fitting the Rigsbys’ agenda. In a discovery that is both shocking in its implication of media bias, as well as to the Rigsbys and their former counsel’s willingness to exploit it for financial gain, on August 21, 2006, Rich Matthews of the Associated Press – at the request of his fellow Associated Press reporter Michael Kunzelman - asked Mr. Scruggs to furnish them documents that would supposedly support a story Mr. Matthews had preconceived, saying:

All I need is a handful of reports for a line where I can say something like “the sisters stayed up all night printing documents like these, documents they say show state farm cheated customers out of millions of dollars.. [sic] look closely at this report filed by one engineer who says 80 percent wind damage, now look at a second report for the same house, 50 50 and finally a third one blab la bla you get the point.”

(Ex. I, E-mail, Bates no. SMPD1-000150 to 210.) The Rigsbys’ former counsel eagerly complied and Mr. Scruggs’ assistant replied in an e-mail that, “Dick told me to send you these documents and they should work. Let me know if you are looking for something different.” (*Id.*)

22. Thereafter, on March 16, 2007, the *New York Times* ran Mr. Treaster's story, "A Lawyer Like a Hurricane," *New York Times*, March 16, 2007. (Ex. C.) Not coincidentally, the story contains details matching up with allegations in the Rigsbys' sealed Evidentiary Disclosure that their then counsel had sent him on September 18, 2006. (Ex. K, E-mail, Bates nos. SMPD1-000271-305.)

23. The Rigsbys' then counsel's release of the sealed Evidentiary Disclosure was just the beginning of the Rigsbys and their lawyers' intentional and calculated violations of the seal.

24. On June 6, 2007, Mr. Scruggs' assistant e-mailed to "rey" at CBS News (believed to be Michael Rey, a Producer at CBS News)⁷ a copy of the May 22, 2007 First Amended Complaint in this Action – which was still under seal. (Ex. M, E-mail, Bates nos. SMPH1-001744-89.) The fact that the Rigsbys and their counsel knew that this activity was wrongful is further revealed from the face of the e-mail to Mr. Rey, which attempted to conceal the disclosure by stating, "THIS IS OFF THE RECORD." (*Id.*)

25. Beyond the prior repeated dissemination of the sealed Evidentiary Disclosure, no more blatant violation of the Seal Order is conceivable than this calculated and intentional release to the press of the False Claims Act pleading itself. The Rigsbys and their then counsel's disclosures were plainly made in an attempt to poison the media well in advance of the August 1, 2007 unsealing of this Action. ([25].)

26. In his recent *McIntosh* deposition, Richard Scruggs was asked about some of these unlawful disclosures. In each and every instance, he invoked his Fifth Amendment privilege:

⁷ <http://www.cbsnews.com/stories/2006/11/29/primarysource/about/main2217473.shtml>

Q. Was it your custom and habit, Mr. Scruggs, to release sealed court documents to news agencies as part of your program to prosecute litigation?

....

A. And I respectfully decline to answer based on my Fifth Amendment privilege.

MR. ROBIE:

Q. Did you seek leave of court before releasing this document to CBS?

A. I respectfully decline to answer based on my Fifth Amendment privilege.

Q. You did obtain permission from the Rigsbys, however, before releasing this to CBS News, didn't you?

....

A. And I respectfully decline to answer based on my Fifth Amendment privilege.

MR. ROBIE:

Q. In fact, they instructed you to release this document to CBS and other news sources?

....

A. And I respectfully decline to answer based on my Fifth Amendment privilege.

MR. ROBIE:

Q. ...We'll mark as Exhibit 11 a document dated August 7, 2006, which is an e-mail from Beth Jones, of the Scruggs Law Firm, to Joseph E. Rhee, R-h-e-e, of ABC News. It bears our document number Scruggs SMPD1-000387 through 424.

(Exhibit 11 was marked.)

....

Q. This is, in fact, a copy of the final evidentiary disclosure which you caused to be filed or your firm caused to be filed in the United States District Court of Mississippi for the Southern District in the qui tam litigation, isn't it?

A. I respectfully decline to answer based on my Fifth Amendment privileges.

Q. In fact, your office forwarded this to ABC News at a time when the disclosure was under seal and was not to be disclosed; isn't that a fact?

....

A. And I respectfully decline to answer based on my Fifth Amendment privilege.

....

Q. The same day, Mr. Scruggs, your assistant, Beth Jones, also sent Joe Rhee, at 2:46 p.m., some other reports, didn't she?

A. I respectfully decline to answer based on my Fifth Amendment privilege.

....

Q. Beth Jones also e-mailed to Mr. Rhee that same day a note saying – this is at 3:46 p.m. – “Mr. Scruggs wanted me to let you know that this information is not the information that is under seal.” Do you see that?

A. I respectfully decline to answer based on my Fifth Amendment privilege.

(07-22-08 R. Scruggs Dp. in *McIntosh* at 144-48 & 158-60, ex. B) (counsel objections omitted).

CONCLUSION

27. A central purpose behind the False Claims Act’s strict seal provision is protecting the defendants from damaging reputational injuries associated with possibly baseless public accusations. Here, the Rigsbys and their then attorneys purposely engaged in an elaborate media campaign specifically designed to *cause* reputational injury to State Farm. In doing so, the Rigsbys and their then counsel violated both the letter and spirit of 31 U.S.C. § 3730(b)(2) and this Court’s Seal Order.⁸ As a result, the Rigsbys have forfeited any right they may have had to bring this *qui tam* action.

WHEREFORE, PREMISES CONSIDERED, for the foregoing reasons, State Farm submits this Attachment, supplementing the evidence in support of its pending Motion to Dismiss ([98]) and renews its request that this Court dismiss the Rigsbys’ claims in this Action with prejudice as to the Rigsbys and without prejudice as to the government, based on the Rigsbys’ violation of the False Claims Act and the Seal Order. State Farm also requests such further, alternative or supplemental relief as may be appropriate in the premises.

⁸ While the Motion to Dismiss cites Rules 12(b)(6) & 9(b), the request for dismissal on this basis is primarily premised on the False Claims Act and this Court’s inherent authority to address misconduct, including the numerous violations of its Seal Order.

This the 1st day of August, 2008.

Respectfully submitted,

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PRO HAC VICE

CERTIFICATE OF SERVICE

I, E. Barney Robinson III, one of the attorneys for State Farm Fire and Casualty Company, 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 or as otherwise set forth below:

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THIS the 1st day of August, 2008.

s/ E. Barney Robinson III (MSB #09432)
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