

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

----- x

THOMAS C. and PAMELA McINTOSH,	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 1:06-CV- 1080-LTS-RHW
	:	
- against -	:	
	:	
STATE FARM FIRE & CASUALTY CO. and	:	
FORENSIC ANALYSIS & ENGINEERING	:	
CO., et al.,	:	
	:	
Defendants.	:	

----- x

STATE FARM’S MOTION FOR LEAVE TO FILE MOTION FOR SUMMARY JUDGMENT

State Farm Fire and Casualty Company respectfully moves this Court, pursuant to Federal Rule of Civil Procedure 16(b), for leave to file a motion for summary judgment. In support of this motion, State Farm states as follows:¹

1. As set forth more fully below, good cause and substantial justification exist to grant State Farm leave to file a motion for summary judgment past the prior dispositive motion deadline of November 9, 2007. First, there have been a number of significant legal and factual developments that warrant granting leave for the filing of a summary judgment motion. Second, ample time is available for briefing and ruling on the motion. Third, granting State Farm leave would be fully consistent with meeting a major objective of Rule 56: “One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims” and “it should be interpreted in a way that allows it to accomplish this purpose.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

¹ In the interests of judicial economy, State Farm respectfully requests that this Court waive the requirement of filing a separate brief inasmuch as all authority and arguments in support of this motion are set forth herein.

2. When this Court previously ordered dispositive motions to be filed by November 9, 2007, the trial date was set for February 25, 2008. Responses to motions for summary judgment were due on December 10, 2007, and replies on December 21, 2007, allowing the Court ample time to rule on such motions before trial. By November 9, 2007, State Farm filed its motion for summary judgment against Plaintiffs' fraud claims, which this Court subsequently granted [1185]. Several key factual and legal developments have occurred since the initial summary judgment motion deadline of November 9, 2007.

3. In December 2007, the Court ruled that the Rigsbys and the Scruggses remained subject to broad discovery [911, 919]. That discovery – which has been the subject of several motions – still remains to be completed, despite diligent and on-going efforts by State Farm and the Court to enable that to happen. On January 16, 2008, Plaintiffs were granted their motion to continue the trial [1049], which this Court subsequently set for October 6, 2008 [Text-Only Order dated Apr. 21, 2008].

4. On April 4, 2008, this Court disqualified Plaintiffs' predecessor counsel. In the same Order, this Court also disqualified the Rigsbys, whose testimony and documents were the linchpin in Plaintiffs' case [1173]. With regard to the Rigsbys, this Court stated, "That Cori and Kerri Rigsby are hereby **DISQUALIFIED** as witnesses ...; and that any documents supplied by the Rigsby sisters to the Scruggs Katrina Group or the Katrina Litigation Group or its associates shall be **EXCLUDED** from evidence unless the plaintiffs can show that the documents were obtained through ordinary methods of discovery." *Id.* (emphasis in original). Without such testimony or documents, Plaintiffs cannot submit admissible evidence sufficient to establish the essential elements of their remaining claims.

5. On April 7, 2008, the Fifth Circuit issued an important decision in the Hurricane Katrina litigation, *Broussard v. State Farm Fire & Casualty Co.*, 523 F.3d 618 (5th Cir. 2008), clarifying important legal issues and thus providing State Farm with further grounds for seeking summary judgment that were not available prior to the November 9, 2007, dispositive motion date. Among other things, *Broussard* held that State Farm's water damage exclusion, anti-concurrent causation clause, and

Hurricane Deductible were enforceable, and that extra-contractual and punitive damages were not available if State Farm conducted a reasonably thorough investigation into the cause of an insured's loss and then denied the insured's claim based on a determination that their home was destroyed by storm surge. *Id.* at 627-30. Thus, *Broussard* significantly affected the legal grounds available to State Farm for being able to seek summary judgment on the claims remaining in this case.

6. On June 2, 2008, in its response to the Scruggses' objections to Magistrate Judge Walker's order compelling the Scruggses to produce their documents (that ruling being a pre-requisite to the taking of their depositions [988 at 3]), State Farm noted its intent to file a further motion for summary judgment and that it desired the completion of the outstanding discovery from the Scruggses and the Rigsbys in order to present the strongest record on its motion.

In light of recent legal rulings, State Farm believes it has good grounds to seek partial summary judgment as to Plaintiffs' bad faith and extracontractual damages claims. In order to present the strongest record in support of such a motion, State Farm would like to file such a motion following its completion of the outstanding discovery from the Scruggses and the Rigsbys, in accordance with this Court's prior discovery orders, and sufficiently in advance of trial to allow this Court adequate time to address that motion.

[1202 at n.1].

7. Following this Court's June 20, 2008 Opinion and Order overruling the Scruggses' objections [1211, 1212], which afforded the Scruggses 15 days to produce such documents, they were then deposed on July 21 and 22, 2008. At their depositions, the Scruggses stonewalled, refusing to answer any questions beyond their names. *See* [1239 at ¶ 1; 1240 at ¶ 1]. The Scruggses' objections were frequently joined in by Plaintiffs. *See* [1239 at ¶ 7; 1240 at ¶ 7]. Given the impending incarceration of the Scruggses, and the attendant delays and complications associated with taking the depositions in prison, especially with respect to newly-incarcerated felons who are in the process of being assigned and oriented to the federal penitentiary system, State Farm filed motions to compel and requested expedited briefing to allow the depositions to be taken before the Scruggses were remanded to

prison, rather than adding needless delay to the completion of this discovery and the ultimate resolution of this matter. *See* [1239 at ¶ 9; 1240 at ¶ 9].

8. Yet, despite knowing State Farm’s stated intent to file a summary judgment motion and its need for the outstanding discovery in connection therewith, Plaintiffs opposed any expedited briefing on State Farm’s emergency motions to compel the Scruggses. Plaintiffs told the Court the Scruggses’ impending incarceration did not create an emergent situation, that there was “absolutely no need for haste or emergency rulings at this time and that all parties should have a reasonable opportunity to respond,” that the Scruggses “will be readily accessible for the foreseeable future,” and that “State Farm’s motion should be placed on the regular briefing schedule” [1242-3 at 1-2.] Plaintiffs’ position prevailed inasmuch as no expedited briefing was ordered by the Court and Richard Scruggs is already in prison with Zach Scruggs set to be remanded in a matter of days. Given Plaintiffs’ assertions of ample time to complete this discovery, coupled with the knowledge that State Farm seeks to complete such discovery prior to filing a motion for summary judgment, Plaintiffs should not be heard to contend that there is not or will not be ample time for such motion practice.

9. As to the outstanding discovery from the Rigsbys, the Court previously suggested that their depositions be postponed until the issues surrounding the documents from Cori Rigsby’s “crashed” computer were resolved. *See* [1196 at 2]; *see also* [1213 at 1]. Earlier this week, State Farm finally received a disk containing certain documents forensically harvested from the Rigsby’s “crashed” hard drive and is now in the process of scheduling dates to complete the depositions of the Rigsbys and is addressing other outstanding issues.

10. Federal Rule of Civil Procedure 16(b)(4) vests this Court with the authority to modify a scheduling order for good cause, including dates for the filing of dispositive motions. *See, e.g., Kirkland v. Marriott Int’l, Inc.*, 416 F. Supp. 2d 480, 482 (E.D. La. 2006); Rule 16 advisory committee’s notes (1983). Indeed, in *Spiller v. Ella Smithers Geriatric Ctr.*, 919 F.2d 339, 343 (5th Cir. 1990), the Fifth

Circuit held that it was proper for the district court to grant a summary judgment motion that was filed after the court-ordered deadline. Moreover, Rule 56 imposes no time constraints on the filing of a motion for summary judgment so long as it is at least twenty days after the commencement of the action. Fed. R. Civ. P. 56(a). “Rule 56’s purpose” is “to avoid useless trials” where “one of the parties is entitled to judgment as a matter of law.” *Utility Control Corp. v. Prince William Constr. Co.*, 558 F.2d 716, 719 (4th Cir. 1977). As Judge Schwarzer, a former director of the Federal Judicial Center and a prolific author on federal practice, has noted, “Even where a scheduling order has been made, if no prejudice results and Rule 56 procedural requirements are satisfied, tardy motions for summary judgment may be considered.” William W. Schwarzer, et al., *California Practice Guide: Federal Civil Procedure Before Trial* ¶ 14:69 (The Rutter Group 2007). In short, the law recognizes that it is preferable for courts to address the merits of a summary judgment motion after a prior motion deadline has passed than not at all. *See Lexicon, Inc. v. Safeco Ins. Co. of American, Inc.*, 436 F.3d 662, 670 n.6 (6th Cir. 2006).

11. In the Fifth Circuit, district courts are guided by a four-factor test when determining, among other things, whether good cause exists to allow filing of a motion beyond the deadline set in a scheduling order. The four factors are: (1) the explanation, if any; (2) the importance of the proposed motion; (3) the potential prejudice to the opposing party of allowing the motion to be filed; and (4) the availability of a continuance to cure such prejudice. *See, e.g., Sw. Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003). While all four factors need not be satisfied, here all of the factors weigh heavily in favor of allowing State Farm leave to file the motion.

12. First, as set forth above, State Farm has substantial justification for seeking to file a further motion for summary judgment. This Court’s recent orders disqualifying the Scruggses and the Rigsbys as well as their pilfered documents, the Fifth Circuit’s ruling in *Broussard*, and discovery from the Scruggses and the Rigsbys as well as that which is still outstanding (especially as it relates to the fate

of the “original [October 12, 2005] engineering report,” which as the Court previously recognized “appears to be the linchpin of Plaintiffs’ bad faith claims” [911 at 3-4]), all give, or are expected to give, State Farm a strong legal and factual basis for a further summary judgment motion, which will ultimately seek to dispose of all remaining issues.

13. Indeed, though the Rigsbys and the Scruggses have repeatedly sworn that they never took possession of the original October 12, 2005 engineering report but rather only had copies, explosive new testimony taken in another matter on July 18, 2008, from Dana Lee, a former co-worker of the Rigsbys who socialized with them and lived near Kerri Rigsby, *see* Lee Dep., Ex. A, at 9, 11, 19, 37, calls the Rigsbys’ and Scruggses’ testimony about having “only copies” into stark question. Sometime in January 2006, when Ms. Lee was at Kerri Rigsby’s house, Ms. Rigsby showed her a claim file with an engineering report that had a yellow sticky note on it. *See* Lee Dep., Ex. A, at 52-53. Ms. Lee’s testimony, which describes the manner in which she lifted a yellow sticky note, flipped it over, and examined its back, makes clear that this was the original report and not a copy made by Ms. Rigsby.

Q. Okay. And what, if anything, did she show you, and what, if anything, did she say?

A. She showed me a claim file. And I believe it was an engineer report that was in the file that had a sticky note on it that said something to the effect of, you know, put in file, do not – or do not discuss, put in file, do not pay. Or something like that.

Q. Okay. And why was she showing that? Did she represent to you why she was showing it to you?

A. She didn't really say. She just said, well, what do you think about that? And I said, not much. I mean, what do you – what is it? You know. And she said, well, what do you think about the note? And I looked – flipped it over and looked at the underside and I said, well, I don't know who wrote it. They didn't sign it. There is no initials, you know. I said, but I don't think that's unusual for a sticky note like that to be in the file.

...

Q. Yeah. And you say you lifted up the sticky note. So it was not a Xerox copy?

A. Huh-uh (negative response).

Q. I mean, it was the original sticky?

A. It was the note, yeah.

Q. Okay. And you lifted it up to look for –

A. I was just seeing if there was anything on the other side.

Q. Okay. And do you recall the color of the sticky note?

A. It was yellow.

Q. Yeah. Okay. And you say it was on top of an engineering report?

A. I believe so, yeah.

Lee Dep., Ex. A, at 52-55; *see also id.* at 87-88 (confirming it was the original sticky note on the McIntosh engineering report).

14. When the Scruggses were confronted with this testimony and questions about the original report at their depositions on July 21 and 22, 2008, they asserted the Fifth Amendment and refused to answer the questions. For example, Richard Scruggs refused to answer these questions and others:

Q. Did [the Rigsbys] show you, at their home, a copy of the Forensic October 12, 2005 report with the original sticky note attached?

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

Q. Have they told you, Mr. Scruggs, that they showed a copy of that October 12, 2005 report, with the original sticky note attached, to some of their friends?

[ATTORNEY OBJECTIONS]

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

Q. Have they shared with you, Mr. Scruggs, that they even allowed some of their friends to take the original sticky note off the document?

[ATTORNEY OBJECTIONS]

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

R. Scruggs Dep., Ex. B, at 62-64. So, too, Zach Scruggs refused to answer these questions and others:

Q. How many times have you seen that original report, the October 12, 2005 Forensic Engineering report relating to the McIntosh property?

[ATTORNEY OBJECTIONS]

A. Based on the advice and instruction of my counsel, I respectfully decline to answer based upon my privilege against self-incrimination under the Fifth Amendment and the Mississippi Constitution.

...

Q. How many times have you seen the October 12, 2005 Forensic Engineering original report with sticky note?

[ATTORNEY OBJECTIONS]

A. Based on the advice and instruction of my counsel, I respectfully decline to answer based upon my privilege against self-incrimination under the Fifth Amendment and the Mississippi Constitution.

...

Q. You did tell the Attorney General of the State of Mississippi and/or his deputies that the State could subpoena the original October 12, 2005 Forensic Engineering Analysis report on the McIntosh property knowing full well that State Farm could never produce it because your clients, Kerri and Cori Rigsby, had stolen it from State Farm?

[ATTORNEY OBJECTIONS]

A. Based on the advice and instruction of my counsel, I respectfully decline to answer based upon my privilege against self-incrimination under the Fifth Amendment and the Mississippi Constitution.

Z. Scruggs Dep., Ex. C, at 16-17, 21-25. State Farm's pending emergency motions to compel the Scruggses seek answers to these questions as well as all of the others they refused to answer, *i.e.*, all questions other than their names. *See* [1239, 1240, 1242].

15. Even if the Court should determine that summary judgment on all issues cannot be granted as a matter of law, then State Farm believes that, in the alternative, it will have strong grounds for partial summary judgment on at least the bad faith and extracontractual duty claims. All of the key developments discussed herein occurred after the prior dispositive motion deadline, precluding any reasonable possibility of filing this motion before that time. Indeed, some of these developments, such as discovery from the Scruggses and Rigsbys, are still ongoing almost nine months later.

16. Second, the importance of summary judgment as a means of narrowing claims at trial or avoiding an unnecessary trial has long been recognized. "Summary judgment procedure is properly

regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *Celotex*, 477 U.S. at 327 (quoting Fed. R. Civ. P. 1). “One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims,” *id.* at 323, and it is designed to “promote the expeditious disposition of cases, and avoid unnecessary trials when no genuine issues of fact have been raised.” 10A Charles Alan Wright et al., *Federal Practice and Procedure* at § 2712. Further, it is beyond serious dispute that allowing State Farm’s motion, even after the prior dispositive motion cutoff, would be in the interests of judicial economy. *See, e.g., Thomas v. Kroger Co.*, 24 F.3d 147, 149 (11th Cir. 1994) (quoting *Matia v. Carpet Transport, Inc.*, 888 F.2d 118, 119 (11th Cir.1989)). Even if this Court should determine that it can only grant partial summary judgment to the bad faith and extracontractual damages claims, then at most the only issue likely to be before the Court for trial is whether, in a partial loss, non-slab case such as this one, enough money was paid to Plaintiffs for wind damage since Plaintiffs’ wind claim was never denied, but rather they were actually paid more than \$36,000 for wind damage.

17. Third, Plaintiffs cannot show any *unfair* prejudice that would result from allowing State Farm to file its motion. There is no surprise to the parties since Plaintiffs have long known of State Farm’s intent to move for summary judgment [1202 n.1.]. Neither can Plaintiffs claim prejudice from any potential delay of the trial given their opposition to submit to expedited briefing despite the urgency of completing the Scruggses’ depositions before their remand to prison. *See* [1242-3 at 1-2]. Plaintiffs’ willingness to engage in full-scale discovery motion practice coupled with their assertions of ample time to do so eviscerates any argument they may make about any supposed lack of time. While delay in completing such discovery seems to be their objective, that delay has arisen over State Farm’s efforts to avoid it. *See, e.g.,* [1242 at 1-2]. There should be adequate time for Plaintiffs to respond to the motion and for the Court to issue its decision before trial. To the extent the stonewalling on the completion of

meaningful discovery from the Scruggses continues, and thus further delays State Farm's ability to marshal the strongest possible record on its dispositive motion, then it effectively cedes control over the scheduling and sequencing in the favor of the Scruggses and Plaintiffs, thus standing normal procedure – *i.e.*, completion of discovery first and filing of motions for summary judgment second – on its head. State Farm strongly desires to complete the outstanding discovery with dispatch but, of course, does not possess the power to unilaterally control the timing of its completion.

18. Therefore, State Farm requests that the Scheduling Order be amended to allow it to file its motion for summary judgment or in the alternative for partial summary judgment within 7 days after the completion of the Rigbys and Scruggs depositions. In the alternative, State Farm asks that the Scheduling Order be amended and that the Court allow said motion to be filed within such shorter time as the Court deems appropriate and for all of the foregoing reasons, State Farm respectfully requests this Court to grant the within motion in all respects.

Dated: August 7, 2008

Respectfully submitted,

/s/ John A. Banahan
John A. Banahan (MSB #1761)
H. Benjamin Mullen (MSB #9077)
BRYAN, NELSON, SCHROEDER,
CASTIGLIOLA & BANAHAN
4105 Hospital Road, Suite 102-B
Pascagoula, Mississippi 39567
(228) 762-6631

Dan W. Webb (MSB #7051)
Roehelle R. Morgan (MSB #100621)
WEBB, SANDERS & WILLIAMS, PLLC
363 N. Broadway Street
Tupelo, Mississippi 38802-0496
(662) 844-2137
*Attorneys for State Farm Fire and
Casualty Company*

CERTIFICATE OF SERVICE

I, **JOHN A. BANAHAH**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have on this date electronically filed the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record:

DATED, this the 7th day of August, 2008.

/s/ John A. Banahan
JOHN A. BANAHAH

H. BENJAMIN MULLEN (9077)
JOHN A. BANAHAH (1731)
BRYAN, NELSON, SCHROEDER,
CASTIGLIOLA & BANAHAH, PLLC
Post Office Drawer 1529
Pascagoula, MS 39568-1529
Tel.: (228)762-6631
Fax: (228)769-6392

1 IN THE CIRCUIT COURT OF MOBILE COUNTY ALABAMA

2 JOHN AND LOIS THORNTON)

3)
4 Plaintiffs,)

5 VS.) NO. CV-06-900071-SHS

6)

7 STATE FARM FIRE AND)

8 CASUALTY COMPANY, ET AL)

9 Defendants.)

10 AND

11 KENNETH MORRIS, ET AL)

12)
13 Plaintiffs,)

14 VS.) NO. CV-06-900007-RHS

15)

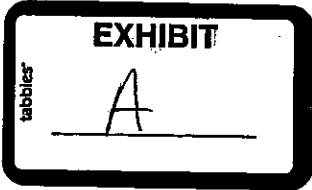
16 GEORGE JONES, ET AL)

17 Defendants.)

18 DEPOSITION
19 OF
20 DANA LEE

21 JULY 18, 2008

22 ALPHA REPORTING CORPORATION
23 205 East Main Street
Jackson, Tennessee 38301
731-424-9995
www.alphareporting.com



1 with them prior to --

2 A. I worked for ServiceMaster from
3 June of 2000 until like October of 2004.

4 Q. Okay. What position did you serve
5 with them during that period of time?

6 A. It was a similar position. I was
7 the manager of treasury services.

8 Q. Okay.

9 A. I had a little bit of different
10 capacity.

11 Q. Okay. After you left them in 2004
12 what was your source of employment?

13 A. I went to work for E.A. Renfro.

14 Q. Okay. In what capacity did you go
15 to work for E.A. Renfro?

16 A. I was an adjustor's assistant
17 working with Tammy Hardison.

18 Q. Okay. E.A. Renfro is an
19 independent adjusting company; is that
20 correct?

21 A. Correct.

22 Q. Okay. Had you ever worked with
23 them before?

1 Q. And I assume that Ms. Hardison was
2 an adjustor for E.A. Renfro?

3 A. That's correct.

4 Q. She was an independent adjustor for
5 E.A. Renfro?

6 A. Right.

7 Q. Okay. And basically what type of
8 adjusting would Ms. Hardison do to which you
9 assisted? Would it be catastrophe-type
10 adjusting?

11 A. That's right.

12 Q. Okay. And did you work as an
13 assistant for Ms. Hardison on various
14 catastrophes that she would be called out on
15 on behalf --

16 A. Yes.

17 Q. -- of E.A. Renfro?

18 A. Yes.

19 Q. Okay. You served in this position
20 for -- from 2004 to when?

21 A. Until sometime in March of 2006.

22 Q. Okay. As an independent
23 adjustor -- Ms. Hardison as an independent

1 these sites --

2 A. Yes.

3 Q. -- as well? Okay. Did you observe
4 any of these adjustors or other independent
5 adjustors adjusting them any different than
6 the way you and Ms. Hardison adjusted?

7 A. No.

8 Q. As far as the philosophy and the
9 treatment of the policyholders?

10 A. No.

11 Q. Okay. In any of these catastrophes
12 were Kerri Rigsby or her sister Cori Moran
13 working these catastrophes as well, if you
14 know?

15 A. In Maitland, no.

16 Q. No? Okay. How do you know Kerri
17 Rigsby and Cori Moran?

18 A. I know Kerri, she was my former
19 next door neighbor.

20 Q. Okay.

21 A. She lived here in Memphis.

22 Q. Okay. How long ago was that?

23 A. I met her in December of '95.

1 Q. And you worked closely in the same
2 area as Cori and Kerri?

3 A. That's right.

4 Q. Okay. How long were you and Tammy
5 deployed to Mississippi working Katrina?
6 You started in the very first of September
7 of 2005. Give me a time line as to when
8 y'all --

9 A. Around the end of March of '06.

10 Q. End of March of '06, to the best of
11 your memory?

12 A. Uh-huh (positive response).

13 Q. Okay. And you worked basically the
14 same area during that period of time?

15 A. That's right.

16 Q. Okay. During that period of time
17 did you continue to not only work closely
18 with and in the same area as Cori and Kerri,
19 but also socialize with Cori and Kerri
20 during that period of time?

21 A. Yes.

22 Q. Okay. After you left in March or
23 around March of 2006, where did you and

1 very specific, but -- I believe -- I want to
2 say we were at her house and she had brought
3 the claim file home with her.

4 Q. So you were off the site location
5 of State Farm --

6 A. That's correct.

7 Q. -- is that correct? Okay. And you
8 believe you were at Kerri's house --

9 A. Right.

10 Q. -- as opposed to your RV or --

11 A. Or Cori's.

12 Q. -- or Cori's?

13 A. Uh-huh (positive response).

14 Q. Okay. And what, if anything, did
15 she show you, and what, if anything, did she
16 say?

17 A. She showed me a claim file. And I
18 believe it was an engineer report that was
19 in the file that had a sticky note on it
20 that said something to the effect of, you
21 know, put in file, do not -- or do not
22 discuss, put in file, do not pay. Or
23 something like that.

1 Q. Okay. And why was she showing
2 that? Did she represent to you why she was
3 showing it to you?

4 A. She didn't really say. She just
5 said, well, what do you think about that?
6 And I said, not much. I mean, what do you
7 -- what is it? You know. And she said,
8 well, what do you think about the note? And
9 I looked -- flipped it over and looked at
10 the underside and I said, well, I don't know
11 who wrote it. They didn't sign it. There
12 is no initials, you know. I said, but I
13 don't think that's unusual for a sticky note
14 like that to be in the file.

15 Q. Okay. And did she make any comment
16 after your response as to who wrote the note
17 or what it was about or what her problems
18 were with it?

19 A. Well, she was saying that she
20 thought Lecky wrote it.

21 Q. Okay.

22 A. And I said, well, I don't know what
23 Lecky -- I don't know if she did or not. I

1 said, she didn't sign it. I said, but again
2 I didn't think it was unusual -- I didn't
3 think that that looked unethical or like
4 somebody -- fraudulent, somebody was trying
5 to hide anything or do anything unusual.

6 Q. Did you get the impression that's
7 what she was showing it to you for --

8 A. Yes.

9 Q. -- that she thought it was --

10 A. Yes.

11 Q. -- improper?

12 A. And I said, well, for all I know
13 you wrote the note and stuck it on there.

14 Q. Okay.

15 A. And she said, well, why would you
16 say that? And I said, because it's just a
17 sticky note.

18 Q. Yeah. And you say you lifted up
19 the sticky note. So it was not a Xerox
20 copy?

21 A. Huh-uh (negative response).

22 Q. I mean, it was the original sticky?

23 A. It was the note, yeah.

1 Q. Okay. And you lifted it up to look
2 for --

3 A. I was just seeing if there was
4 anything on the other side.

5 Q. Okay. And do you recall the color
6 of the sticky note?

7 A. It was yellow.

8 Q. Yeah. Okay. And you say it was on
9 top of an engineering report?

10 A. I believe so, yeah.

11 Q. Okay. Were you familiar with that
12 claim or were you involved in that claim in
13 any way?

14 A. No, not at all.

15 Q. Okay. Do you know if she was?

16 A. I don't know.

17 Q. Okay. Did she make any other
18 comments about that report, that sticky
19 note, or what she thought was wrong about
20 it?

21 A. Well, she was just saying don't you
22 think that's unusual? Don't you think that,
23 you know, that looks suspicious? And I

1 A. Yes.

2 Q. Nothing changed as far as their
3 policies or practices or --

4 A. Not that I was aware of.

5 Q. -- philosophy that you were aware
6 of?

7 A. No.

8 MR. BEERS: Let's take a quick
9 break. Let me review my notes and see where
10 we are.

11 (WHEREUPON, A SHORT BREAK WAS
12 TAKEN AND THE PROCEEDINGS
13 CONTINUED AS FOLLOWS:)

14 BY MR. BEERS:

15 Q. Ms. Lee, I just want to show you
16 State Farm Exhibit 1, a collective exhibit,
17 and ask you to take a look at that.

18 (WHEREUPON, THE ABOVE-REFERRED
19 TO DOCUMENT WAS MARKED AS EXHIBIT NO. 1 TO
20 THE TESTIMONY OF THE WITNESS AND IS ATTACHED
21 HERETO.)

22 A. Yeah, this -- it appears to be a
23 copy of the document that Kerri had shown

1 me --

2 Q. With the original --

3 A. -- with the sticky note, yeah.

4 Q. With the original sticky note?

5 A. Uh-huh (positive response).

6 Q. And does that appear to be a copy

7 of that sticky note that you looked at --

8 A. It does.

9 Q. -- and picked up and looked on the
10 back side?

11 A. It does.

12 Q. Okay. Just want to make sure we're
13 talking about the same sticky note. Okay.

14 MR. BEERS: At this time that's
15 all I have.

16 EXAMINATION

17 BY MR. FAFATAS:

18 Q. Ms. Lee, my name is Robert Fafatas.
19 You and I met briefly before we started the
20 deposition this morning. I represent a
21 company called Rimkus Consulting Group as
22 well as two individuals, one named Scott
23 Cameron and Thomas Heifner.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

THOMAS C. and PAMELA McINTOSH,
Plaintiffs,

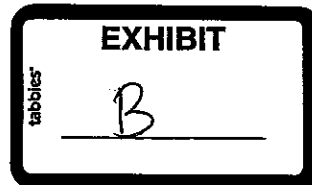
VERSUS NO. 1:06-cv-1080-LTS-RHW

STATE FARM FIRE & CASUALTY COMPANY,
FORENSIC ANALYSIS & ENGINEERING CORPORATION
and E.A. RENFROE & COMPANY, INC.,
Defendants.

VIDEOTAPED DEPOSITION OF RICHARD F. SCRUGGS

Taken at the Scruggs Law Firm, 120A
Courthouse Square, Oxford, Mississippi,
on Tuesday, July 22, 2008, beginning
at 9:45 a.m.

JOB NO. 14754



Page 62

1 to represent the Rigsbys in an appellate
2 matter currently pending in the Fourth
3 Circuit. Are you still paying the bills for
4 that work?
5 MR. MALLETTE:
6 Object to the form.
7 A. I respectfully decline to answer
8 based on my Fifth Amendment privilege.
9 MR. ROBIE:
10 Q. Have you notified the Rigsbys that
11 you will not pay for those services?
12 MR. MALLETTE:
13 I object to the form. I object on
14 attorney/client privilege and work product
15 grounds.
16 A. I respectfully decline to answer
17 based on my Fifth Amendment privilege.
18 MR. ROBIE:
19 Q. Did you attend a holiday party at
20 the Rigsbys' house in the year 2005?
21 A. I respectfully decline to answer
22 based on my Fifth Amendment privilege.
23 Q. Did they show you, at their home, a
24 copy of the Forensic October 12, 2005 report
25 with the original sticky note attached?

Page 63

1 A. I respectfully decline to answer
2 based on my Fifth Amendment privilege.
3 Q. Have they told you, Mr. Scruggs,
4 that they showed a copy of that October 12,
5 2005 report, with the original sticky note
6 attached, to some of their friends?
7 MR. MALLETTE:
8 I object on attorney/client
9 privilege and work product grounds.
10 MS. NICHOLSON:
11 And I object to the form.
12 MR. ROBIE:
13 I'm sorry. I didn't hear your
14 objection.
15 MS. NICHOLSON:
16 I object to the form.
17 A. I respectfully decline to answer
18 based on my Fifth Amendment privilege.
19 MR. ROBIE:
20 Q. Have they shared with you, Mr.
21 Scruggs, that they even allowed some of
22 their friends to take the original sticky
23 note off the document?
24 MR. MALLETTE:
25 I object on attorney/client

Page 64

1 privilege and work product grounds.
2 MS. NICHOLSON:
3 And I object to the form.
4 A. I respectfully decline to answer
5 based on my Fifth Amendment privilege.
6 MR. MALLETTE:
7 And I object as to form, as well.
8 MR. ROBIE:
9 Q. Do you know where the document with
10 the original sticky note can be found today?
11 MR. MALLETTE:
12 I object to the form.
13 A. I respectfully decline to answer
14 based on my Fifth Amendment privilege.
15 MR. ROBIE:
16 Can we take a short break?
17 MR. MALLETTE:
18 Sure.
19 (Off the record.)
20 MR. ROBIE:
21 Q. Did you attend a meeting in Dallas,
22 Texas with the Rigsbys and other members of
23 the Scruggs Katrina Group in order to plan
24 Katrina litigation?
25 MR. MALLETTE:

Page 65

1 Object as to Work Product Doctrine.
2 MS. NICHOLSON:
3 Join.
4 A. I respectfully decline to answer
5 based on my Fifth Amendment privilege.
6 MR. ROBIE:
7 Q. Have the Rigsbys ever flown on your
8 plane?
9 A. I respectfully decline to answer
10 based on my Fifth Amendment privilege.
11 Q. Has either one of them ever flown on
12 your plane?
13 A. I respectfully decline to answer
14 based on my Fifth Amendment privilege.
15 Q. Have any of the expenses of the
16 Rigsbys been paid by the Nutt, McAlister
17 firm?
18 A. I respectfully decline to answer
19 based on my Fifth Amendment privilege.
20 Q. Has any part of the consulting fee
21 agreement of \$150,000 per year, per person,
22 been paid in part by the Nutt, McAlister
23 firm?
24 A. I respectfully decline to answer
25 based on my Fifth Amendment privilege.

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF MISSISSIPPI
3 SOUTHERN DIVISION
4

5 THOMAS C. and PAMELA McINTOSH,
6 Plaintiffs,
7

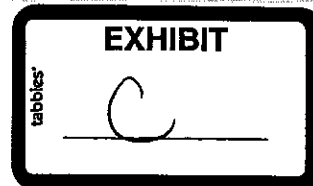
8 VERSUS NO. 1:06-cv-1080-LTS-RHW
9

10 STATE FARM FIRE & CASUALTY COMPANY,
11 FORENSIC ANALYSIS & ENGINEERING CORPORATION
12 and E.A. RENFROE & COMPANY, INC.,
13 Defendants.
14
15
16

17 VIDEOTAPED DEPOSITION OF ZACH SCRUGGS
18

19 Taken at the Scruggs Law Firm, 120A
20 Courthouse Square, Oxford, Mississippi,
21 on Monday, July 21, 2008, beginning
22 at 9:30 a.m.

23 JOB NO. 14754
24
25



Page 14

1 Is that your proposed Exhibit 1?
 2 MR. ROBIE:
 3 Yes, it is. We'll mark it and give
 4 it to the court reporter.
 5 (Exhibit 1 was marked.)
 6 MR. ROBIE:
 7 Q. This document requests you to
 8 produce here today the originals of any
 9 documents which were previously produced in
 10 response to our Request for Production.
 11 Have you brought any original documents?
 12 A. Based on the advice and instruction
 13 of my counsel, I respectfully decline to
 14 answer, based upon my privilege against
 15 self-incrimination under the Fifth Amendment
 16 and the Mississippi Constitution.
 17 MR. MALLETTTE:
 18 And I also note our objection, which
 19 was provided in writing to Mr. Mullen,
 20 counsel for State Farm, that we objected to
 21 the requirement of bringing additional
 22 documents of those already produced.
 23 MR. ROBIE:
 24 Q. Did you bring the original October
 25 12, 2005 Forensic Analysis engineering

Page 15

1 report on the McIntosh property with the
 2 original sticky note attached?
 3 MR. MALLETTTE:
 4 Object to the form.
 5 MS. NICHOLSON:
 6 Object to the form.
 7 A. Based on the advice and instruction
 8 of my counsel, I respectfully decline to
 9 answer based upon my privilege against
 10 self-incrimination under the Fifth Amendment
 11 and the Mississippi Constitution.
 12 MR. ROBIE:
 13 Q. Isn't it a fact that your clients,
 14 your then clients, Kerri and Cori Rigsby,
 15 stole that document from State Farm?
 16 MR. MALLETTTE:
 17 Object to the form.
 18 MS. NICHOLSON:
 19 Join.
 20 MR. MALLETTTE:
 21 And instruct not to answer on
 22 attorney/client privilege grounds.
 23 A. Based on advice and instruction from
 24 my counsel, I respectfully decline to answer
 25 based upon my privilege against

Page 16

1 self-incrimination under the Fifth Amendment
 2 and the Mississippi Constitution and the
 3 objection that my counsel just raised.
 4 MR. ROBIE:
 5 Q. Kerri and Cori Rigsby have testified
 6 that by Halloween of 2005 they stole the
 7 original October 12, 2005 Forensic
 8 Engineering report on the McIntosh property
 9 from State Farm's records. Isn't it a fact
 10 they gave you that document after they took
 11 it from State Farm?
 12 MR. MALLETTTE:
 13 Object to the form.
 14 MS. NICHOLSON:
 15 Object to the form.
 16 A. Based on the advice and instruction
 17 of my counsel, I respectfully decline to
 18 answer based upon my privilege against
 19 self-incrimination under the Fifth Amendment
 20 and the Mississippi Constitution.
 21 MR. ROBIE:
 22 Q. How many times have you seen that
 23 original report, the October 12, 2005
 24 Forensic Engineering report relating to the
 25 McIntosh property?

Page 17

1 MR. MALLETTTE:
 2 Object to the form.
 3 MS. NICHOLSON:
 4 Object to the form.
 5 A. Based on the advice and instruction
 6 of my counsel, I respectfully decline to
 7 answer based upon my privilege against
 8 self-incrimination under the Fifth Amendment
 9 and the Mississippi Constitution.
 10 MR. ROBIE:
 11 Q. When did you first meet with Kerri
 12 and Cori Rigsby?
 13 A. Based on the advice and instruction
 14 of my counsel, I respectfully decline to
 15 answer based upon my privilege against
 16 self-incrimination under the Fifth Amendment
 17 and Mississippi Constitution.
 18 Q. Did you attend a meeting at the
 19 Mississippi Department of Insurance with
 20 your father in December of 2005?
 21 A. Based on the advice and instruction
 22 of my counsel, I respectfully decline to
 23 answer based upon my privilege against
 24 self-incrimination under the Fifth Amendment
 25 and Mississippi Constitution.

Page 18

1 MR. MALLETTE:
2 And I object to the question on
3 attorney/client and work product grounds.
4 MS. NICHOLSON:
5 Join.
6 MR. ROBIE:
7 I'm not sure I know which attorney
8 work product or attorney/client privilege
9 you are asserting. Who's the attorney and
10 who's the client?
11 MR. MALLETTE:
12 I'm not sure. In January '05, I
13 don't know what the predicate for your
14 question is.
15 MR. ROBIE:
16 If I said January '05, I meant --
17 let me restate it.
18 Q. Lee Harrell, of the Mississippi
19 Department of Insurance, has testified that
20 he met with your father at the department in
21 December of 2005. Did you attend that
22 meeting?
23 A. Based on the advice and instruction
24 of my counsel, I respectfully decline to
25 answer based upon my privilege against

Page 19

1 self-incrimination under the Fifth Amendment
2 and the Mississippi Constitution.
3 Q. Mr. Harrell has further testified
4 that during the course of that meeting, Dick
5 Scruggs informed him that he was working
6 with two insiders at State Farm who were
7 furnishing him information. Isn't it a fact
8 that you were present at that meeting and
9 heard him make that statement?
10 A. Based on the advice and instruction
11 of my counsel, I respectfully decline to
12 answer based upon my privilege against
13 self-incrimination under the Fifth Amendment
14 and the Mississippi Constitution.
15 Q. Other than Kerri and Cori Rigsby,
16 are there any other State Farm insiders that
17 have ever worked with you, your father, the
18 SKG or the Scruggs law group on Hurricane
19 Katrina litigation?
20 MR. MALLETTE:
21 I object on work product grounds.
22 MS. NICHOLSON:
23 And I object. Join to the extent it
24 involved the McIntosh case.
25 A. Based on the advice and instruction

Page 20

1 of my counsel, I respectfully decline to
2 answer based upon my privilege against
3 self-incrimination under the Fifth Amendment
4 and the Mississippi Constitution.
5 Q. In fact, the only State Farm
6 insiders who have ever worked with your firm
7 on the McIntosh case are Kerri and Cori
8 Rigsby; isn't that a fact?
9 MR. MALLETTE:
10 Object to the form.
11 MS. NICHOLSON:
12 And, also, I assert the work product
13 and attorney/client privilege.
14 A. Based on the advice and instruction
15 of my counsel, I respectfully decline to
16 answer based upon my privilege against
17 self-incrimination under the Fifth Amendment
18 and the Mississippi Constitution.
19 MR. ROBIE:
20 Just so I have a clear
21 understanding, Ms. Nicholson, whose work
22 product and what attorney/client privilege
23 are you protecting?
24 MS. NICHOLSON:
25 To the extent he was acting as the

Page 21

1 McIntosh's attorney during that and in the
2 McIntosh case, to that extent, that's the
3 work product I'm asserting.
4 MR. ROBIE:
5 Q. How many times have you seen the
6 October 12, 2005 Forensic Engineering
7 original report with sticky note?
8 MR. MALLETTE:
9 Is that the question?
10 MR. ROBIE:
11 Yes.
12 Q. How many times have you seen that
13 report?
14 MR. MALLETTE:
15 Object to the form.
16 MS. NICHOLSON:
17 Object to the form.
18 A. Based on the advice and instruction
19 of my counsel, I respectfully decline to
20 answer based upon my privilege against
21 self-incrimination under the Fifth Amendment
22 and the Mississippi Constitution.
23 MR. ROBIE:
24 Q. Did you tell the Attorney General of
25 the State of Mississippi that he could

Page 22

1 subpoena that record, namely, the October
 2 12, 2005 Forensic Engineering report from
 3 State Farm knowing full well that State Farm
 4 could never produce it because your clients,
 5 the Rigsbys, had stolen it?
 6 MR. MALLETTTE:
 7 Object to the form.
 8 MS. NICHOLSON:
 9 Object to the form.
 10 A. Based on the advice and instruction
 11 of my counsel, I respectfully decline to
 12 answer based upon my privilege against
 13 self-incrimination under the Fifth Amendment
 14 and the Mississippi Constitution.
 15 MR. ROBIE:
 16 Q. In fact, that's exactly what
 17 occurred, isn't it, Mr. Scruggs?
 18 MR. MALLETTTE:
 19 Object to the form.
 20 MS. NICHOLSON:
 21 Object to the form.
 22 A. Based on the advice and instruction
 23 of my counsel, I respectfully decline to
 24 answer based upon my privilege against
 25 self-incrimination under the Fifth Amendment

Page 23

1 and the Mississippi Constitution.
 2 MR. ROBIE:
 3 Q. You did tell the Attorney General of
 4 the State of Mississippi and/or his deputies
 5 that the State could subpoena the original
 6 October 12, 2005 Forensic Engineering
 7 Analysis report on the McIntosh property
 8 knowing full well that State Farm could
 9 never produce it because your clients, Kerri
 10 and Cori Rigsby, had stolen it from State
 11 Farm?
 12 MR. MALLETTTE:
 13 Object to the form.
 14 MS. NICHOLSON:
 15 Object to the form.
 16 A. Based on the advice and instruction
 17 of my counsel, I respectfully decline to
 18 answer based upon my privilege against
 19 self-incrimination under the Fifth Amendment
 20 and the Mississippi Constitution.
 21 MR. ROBIE:
 22 Q. Did you also tell reporters that
 23 State Farm had destroyed the October 12,
 24 2005 Forensic Engineering report on the
 25 McIntosh property knowing that, in fact, it

Page 24

1 had been stolen from State Farm and that the
 2 company didn't have it?
 3 MR. MALLETTTE:
 4 Object to the form.
 5 MS. NICHOLSON:
 6 Object to the form.
 7 A. Based on the advice and instruction
 8 of my counsel, I respectfully decline to
 9 answer based upon my privilege against
 10 self-incrimination under the Fifth Amendment
 11 and the Mississippi Constitution.
 12 MR. ROBIE:
 13 Q. Isn't it a fact, Mr. Scruggs, that
 14 you initiated a strategy to urge the law
 15 enforcement officers of Mississippi and the
 16 press to pursue a claim of fraud against
 17 State Farm because your clients had stolen
 18 the original October 12 Forensic Engineering
 19 report and you knew that State Farm could
 20 never produce it?
 21 MR. MALLETTTE:
 22 Object to the form and object to
 23 Work Product Doctrine invasion.
 24 MS. NICHOLSON:
 25 Join.

Page 25

1 A. Based on the advice and instruction
 2 of my counsel, I respectfully decline to
 3 answer that question based upon my privilege
 4 against self-incrimination, based on the
 5 Fifth Amendment and the Mississippi
 6 Constitution.
 7 MR. ROBIE:
 8 Q. How many conversations did you have
 9 with Brian Ford, the author of the October
 10 12, 2005 Forensic Engineering report?
 11 MS. NICHOLSON:
 12 Object to the form. Also, object on
 13 the work product and attorney/client
 14 privilege.
 15 MR. MALLETTTE:
 16 Object to the form.
 17 A. Based on the advice and instruction
 18 of my counsel, I respectfully decline to
 19 answer based upon my privilege against
 20 self-incrimination under the Fifth Amendment
 21 and Mississippi Constitution.
 22 MR. ROBIE:
 23 Q. Were you a member of the SKG?
 24 A. Based on the advice and instruction
 25 of my counsel, I respectfully decline to