

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

THOMAS C. and PAMELA McINTOSH

PLAINTIFFS

vs.

**CIVIL ACTION NO. 1:06cv1080-LTS-
RHW**

**STATE FARM FIRE & CASUALTY
COMPANY, FORENSIC ANALYSIS &
ENGINEERING CORPORATION, and E. A.
RENFROE & COMPANY, INC. and DOES 1
THROUGH 10**

DEFENDANTS

**DEFENDANT E. A. RENFROE & COMPANY, INC.'S JOINDER IN
DEFENDANT STATE FARM'S MOTIONS TO COMPEL THE TESTIMONY OF
RICHARD AND ZACHARY SCRUGGS OR, IN THE ALTERNATIVE, MOTION
TO COMPEL SUCH TESTIMONY**

Defendant E. A. Renfroe & Company, Inc. ("Renfroe") hereby joins in defendant State Farm Fire & Casualty Company's ("State Farm") Motions to Compel the testimony of Richard Scruggs [Doc. 1239] and Zachary Scruggs [Doc. 1240] or, in the alternative, hereby moves to compel the testimony of Messrs. Scruggs.

With respect to State Farm's Motions to Compel, Messrs. Scruggs have filed a Response [Doc. 1262] that elevates form over substance, further wastes the parties' and the Court's time, and appears -- at best -- to be an attempt to circumvent this Court's ruling denying them leave to file a 60-page response to State Farm's Motions to Compel. [08/14/08 Text Only Order]. The lead argument in their opposition to State Farm's Motions is that State Farm supposedly lacks standing to compel responses to questions asked by Renfroe. Response at 9 [Doc. 1262]. Even if that was correct (and it is not¹), it is obviously an argument asserted merely to delay the day of

¹ In support of their argument, Messrs. Scruggs cite to *Payne v. Exxon Corp.*, 121 F.3d 503 (9th Cir. 1997), a case that based its holding on an outdated formulation of Federal Rule 37 that allowed only "the discovering party" to move to compel a discovery response. By contrast, under the amended and most recent Federal Rule 37(a)(3)(B), "a party seeking discovery may move for an order compelling" a discovery response. This revision

reckoning (by requiring Renfroe to file its own motion to compel and “start the clock” over again) and / or to submit the additional pages they sought from this Court to respond to State Farm’s Motions (in response to Renfroe’s motion). The fact is that Renfroe wants answers to the questions it posed for the same reasons outlined in State Farm’s Motions, and Messrs. Scruggs have no different or additional reasons for asserting a blanket Fifth Amendment privilege or any other supposed objection in response to Renfroe’s questions than they did with respect to State Farm’s questions.

Time is growing short. Rather than burden the Court with repetitive briefs,² Renfroe hereby joins in State Farm’s Motions to Compel, or moves pursuant to Local Rule 7.2(h) and F.R.C.P. 30(d), 37(a), and 45(d) for an immediate Order compelling Messrs. Scruggs to answer all questions they previously refused to answer, re-allotting seven hours each to take the depositions, directing the deponents to reappear for their depositions immediately, directing Messrs. Scruggs to make the document certifications requested in State Farm’s Motions, and awarding Renfroe its reasonable fees and expenses.

is consistent with Federal Rule 26(b)(1), which allows parties to “obtain discovery regarding any nonprivileged matter that is relevant to *any* party’s claim or defense.” (emphasis added.)

² Renfroe had hoped that State Farm’s Motions to Compel would have resolved the issue of the Scruggs’ depositions without requiring Renfroe to weigh in on the issues and to expand the record further in this case. By raising a standing argument with respect to Renfroe’s deposition questions, the Scruggses have required Renfroe to state the positions articulated herein.

Renfroe has attempted to resolve the issues herein with the Scruggs' counsel, Pope S. Mallette, but through no fault of counsel for the Scruggses or Renfroe, the issues have not been resolved.

THIS, the 18th day of August, 2008.

Respectfully submitted,

**E. A. RENFROE & COMPANY, INC.,
Defendant**

BY:

/s/ James F. Hibey
One of its Attorneys

OF COUNSEL:

H. Hunter Twiford, III (MSB 8162)
David A. Norris (MSB 100616)
Stephen F. Schelver (MSB 101889)
McGLINCHEY STAFFORD PLLC
Suite 1100, City Centre South
200 South Lamar Street (39201)
Post Office Box 22949
Jackson, Mississippi 39225-2949
Telephone: (601) 960-8400
Facsimile: (601) 960-8431
Email address: htwiford@mcglinchey.com;
dnorris@mcglinchey.com; sschelver@mcglinchey.com

and

Christine Lipsey (pro hac vice)
McGLINCHEY STAFFORD PLLC
14th Floor, One American Place
Baton Rouge, LA 70825
Telephone: (225) 383-9000
Facsimile: (225) 343-3076
Email address: clipsey@mcglinchey.com

and

James F. Hibey (pro hac vice)
Joseph Walker (pro hac vice)

Catherine Jean Serafin (pro hac vice)
HOWREY LLP
1299 Pennsylvania Avenue, N. W.
Washington, DC 20004-2402
Telephone: (202) 783-0800
Facsimile: (202) 383-6610
Email address: hibeyj@howrey.com;
walkerj@howrey.com; serafinc@howrey.com

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

Amy K. Averill - PHV amy.averill@sablaw.com
Cameron M. Abel cameron@tollisonlaw.com
Christopher T. Conte ctc@helmsinglaw.com, lds@helmsinglaw.com
Dan W. Webb dwebb@webbsanders.com, ddutcher@webbsanders.com,
jsr@webbsanders.com, kbw@webbsanders.com,
lfc@webbsanders.com, lma@webbsanders.com,
mks@webbsanders.com, rrm@webbsanders.com,
rtucker@webbsanders.com, sew@webbsanders.com
Drew McLemore Martin drewmartinlaw@gmail.com
George S. Shaddock georghaddock@yahoo.com, mls.lawfirm@yahoo.com
Grady F. Tollison, Jr grady@tollisonlaw.com, becky@tollisonlaw.com
Harlan F. Winn, III hwinn@bfgwc.com, arodgers@bfgwc.com, lspice@bfgwc.com
Harry Benjamin Mullen ben@bnsbc.com, lawshark66@i-55.com, layna@bnsbc.com
Henry F. Laird, Jr hlaird@watkinsludlam.com, ldavis@watkinsludlam.com
J. Cal Mayo, Jr cmayo@mayomallette.com, kware@mayomallette.com,
mdsmith@mayomallette.com
James R. Robie - PHV jrobie@romalaw.com, aweiglein@romalaw.com,
bdanziger@romalaw.com, dweinman@romalaw.com,
jnittel@romalaw.com
John A. Banahan john@bnsbc.com, layna@bnsbc.com
John W. Bonds - PHV, Jr john.bonds@sablaw.com
Joseph M. Hollomon joehollomonlaw@yahoo.com, jhollomon@att.net
Kathryn Breard Platt kbreard@gjtbs.com
Larry G. Canada lcanada@gjtbs.com, msoleto@gjtbs.com
Luke Dove bethbailey1@aol.com, ldove81743@aol.com
Maria Candace Burnette cburnette@mcglinchey.com
Matthew E. Perkins perkins@bnsbc.com, layna@bnsbc.com, pam@bnsbc.com,
perkins.bnsbc@gmail.com
Norma Carr Ruff ncr@webbsanders.com, csb@webbsanders.com,
ddutcher@webbsanders.com, lma@webbsanders.com,
rtucker@webbsanders.com, sew@webbsanders.com
Patrick C. Finnegan - PHV pcf@helmsinglaw.com, lrb@helmsinglaw.com
Paul B. Watkins, Jr pwatkins@mayomallette.com, kware@mayomallette.com
Pope S. Mallette pmallette@mayomallette.com, cking@mayomallette.com,
pwatkins@mayomallette.com
Richard F. Scruggs dickscruggs@scruggsfirm.com
Robert E. Battle - PHV rbattle@bfgwc.com, arodgers@bfgwc.com,
lspice@bfgwc.com
Roehelle R. Morgan RRM@webbsanders.com, ddutcher@webbsanders.com,
jsr@webbsanders.com, lma@webbsanders.com,

mks@webbsanders.com, rtucker@webbsanders.com,
sew@webbsanders.com

Thomas M. Byrne - PHV tom.byrne@sablaw.com, jennifer.wagner@sablaw.com

Tina L. Nicholson tnicholson@merlinlawgroup.com, lcraft@merlinlawgroup.com,
snailling@merlinlawgroup.com, tamaro@merlinlawgroup.com

Valerie Sanders - PHV valerie.sanders@sablaw.com

William E. Whitfield , III mtownsley@bryantdukes.com, whitbill@aol.com

William F. Merlin , Jr wmerlin@merlinlawgroup.com,
kkowal@merlinlawgroup.com

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

NONE

THIS, the 18th day of August, 2008.

BY:

/s/ James F. Hibey

James F. Hibey