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**

VS **CIVIL ACTION NO. 1:06-cv-00433-LTS-RHW**

STATE FARM MUTUAL INSURANCE COMPANY, NATIONWIDE INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, USAA INSURANCE COMPANY, FORENSIC ANALYSIS ENGINEERING CORPORATION; EXPONENT FAILURE ANALYSIS, HAAG ENGINEERING CO., JADE ENGINEERING, RIMKUS CONSULTING GROUP INC., STRUCTURES GROUP, E. A. RENFROE, INC., JANA RENFROE, GENE RENFROE and ALEXIS KING **DEFENDANTS**

DEFENDANT E. A. RENFROE & COMPANY, INC.'S RESPONSE TO [206] "MOTION FOR CLARIFICATION OF THIS COURT'S APRIL 4, 2008 ORDER IN *McINTOSH*"

COMES NOW the Defendant, E. A. RENFROE & COMPANY, INC. ("Renfroe") (which, together with Jana Renfroe and Gene Renfroe, individually,[1] are sometimes collectively referred to as the "Renfroe Defendants"), and files its *Response to "Motion for Clarification of this Court's April 4, 2008 Order in* McIntosh*."*

1. Relators have filed a motion for "clarification" of the Court's April 4, 2008 order [Docket No. 1173] in *McIntosh v. State Farm Fire & Casualty Co.*, No. 1:06cv1080-LTS-RHW (S.D. Miss.) (hereinafter "*McIntosh* Order") ostensibly "to clarify" that the order "does not preclude the Relators from testifying in this case." Mot. [Docket No. 206] at 4. Confoundingly,

[1] The Defendants Jana Renfroe and Gene Renfroe (the "Renfroe Individuals") have challenged and continue to challenge the Court's jurisdiction over them in their individual capacities, and, therefore, do not appear for purposes of this response.

Relators profess the need to clarify and "confirm" their reading of an order that, in the next breath, they declare "quite clearly does not preclude the Rigsbys from testifying in this False Claims Act case." *Id.* at 1. Relators never explain why they would need clarification of an order they believe to be "quite clear[]," a position almost as preposterous as Relators' assertion that the *McIntosh* Order does not disqualify them as witnesses in this case.

2. The terms of the *McIntosh* Order are as clear as day. That Order unequivocally disqualified the Rigsby sisters as witnesses in *this* case, and it needs no clarification or further explanation. The Court should deny this motion.[2]

3. In the *McIntosh* Order, this Court ordered, in relevant part:

> That Cori and Kerri Rigsby are hereby **DISQUALIFIED** as witnesses in any actions now pending on this Court's docket against State Farm or Renfroe in which the Scruggs Katrina Group or the Katrina Litigation Group has represented the plaintiffs[.]

McIntosh Order at 1 (emphasis in original).

4. Each of the above required elements of the *McIntosh* Order are met in this case: The Court disqualified (1) Cori and Kerri Rigsby (Relators in this case) as witnesses (2) "in any actions now pending on this Court's docket" (which would include this False Claims Act case, which has been pending on this Court's docket since April 26, 2006) (3) "against State Farm or Renfroe" (both State Farm and Renfroe are named defendants in this False Claims Act case) and (4) "in which the Scruggs Katrina Group or the Katrina Litigation Group has represented the plaintiffs" (Richard Scruggs and his associated attorneys represented Relators in this case before they were all disqualified). There is nothing more that needs "clarification."

[2] Defendant State Farm Fire and Casualty Company ("State Farm") has filed a response [Docket No. 211] asserting that Relators' motion should be denied because it seeks an advisory opinion. Although this may be another basis for denying Relators' motion, Renfroe respectfully submits that the issue is sufficiently ripe to be decided by the Court now. *See* Mem. Op. [Docket No. 172], *Alford v. State Farm Fire & Cas. Co.*, No. 1:07cv814-LTS-RHW (S.D. Miss.) at 3 (noting instances where parties have "sought and received clarification" of the *McIntosh* Order from this Court).

5. Despite this clarity, Relators nevertheless have tried to conjure some measure of uncertainty about the *McIntosh* Order from their reading of a few subsequent orders of this Court. Relators rely on a few snippets from these subsequent orders to create the impression that the Court has somehow, *sub silencio*, concluded that the disqualification of the Rigsby sisters as witnesses should not apply to *this* case. Renfroe respectfully submits nothing could be further from the truth. The passages Relators have cut and pasted into their Motion do not alter the clear language in the *McIntosh* Order. Nor is there any basis for the Court to take up Relators' implicit invitation to abandon part of the sanction and remedy fashioned by the Court in the *McIntosh* Order for all of the cases that had been or could be tainted by the misconduct of Relators and their attorneys.

6. The main thrust of Relators' argument is that "the disqualifications in the *McIntosh* Order do not appear to apply in this case" (Mot. [Docket 206] at 2) based on their contorted reading of this Court's May 19, 2008 Memorandum Opinion [Docket No. 177[3]] (the "May 19 Opinion"), which disqualified Relators' counsel, Bartimus, Frickleton, Robertson & Gorny, PC and Bartle, Marcus & Graves, PC, from further participation in this case. Specifically, Relators draw two conclusions from the May 19 Opinion: (1) the *McIntosh* Order *only* disqualified attorneys associated with Scruggs from further participation in the property damage cases against State Farm and Renfroe pending before this Court and (2) the McIntosh Order disqualified the Rigsby sisters as witnesses *only* in "these individual" (read: the aforementioned property damage) cases. *See* Mot. [Docket No. 206] at 2.

7. This is all nonsense. *First*, this Court in the May 19 Opinion *disqualified* Relators' False Claims Act attorneys, on the authority of the *McIntosh* Order, simply because "the role of current counsel was that of attorney for the Rigsby sisters in this particular False

[3] Relators incorrectly identify this Memorandum Opinion in their motion as Docket No. "[780]."

Claims Act case." *See* Mem. Op. [Docket No. 177] at 5. Thus, this Court's disqualification of Relators' *qui tam* attorneys -- without any reference to or reliance on any role those attorneys had to any property damage cases -- is totally irreconcilable with the notion that only attorneys representing plaintiffs in the property damage cases were disqualified under the *McIntosh* Order. If the *McIntosh* Order's disqualifications only applied to *property damage* cases, there would have been no basis for the Court to disqualify Relators' previous False Claims Act attorneys -- who were not part of Scruggs's joint ventures -- from representing Relators in this False Claims Act case.

8. *Second*, the Court's reference to "these individual cases" was an obvious shorthand reference -- and nothing more -- to a few representative cases previously identified in the text of the May 19 Opinion. In the course of explaining that Scruggs and his associated counsel, including the Scruggs Katrina Group, had been disqualified from representing plaintiffs with claims against State Farm or Renfroe, this Court identified the *McIntosh* case and *Shows v. State Farm Fire & Casualty Co.*, No. 1:07cv709-WHB-LBA (S.D. Miss.) (Barbour, J.). Later in that same paragraph, the Court once again referenced "these cases" and then "these individual cases." Mem. Op. [Docket No. 177] at 3. These shorthand references obviously were not meant to identify *all* cases (there are many, including this case) to which the *McIntosh* Order's disqualifications apply.

9. What is more, Relators' singular reliance on the May 19 Opinion fails to account for what the Court said in its June 19, 2008 Opinion and Order [Docket No. 190] denying Relators' motion to reconsider the disqualification of their former False Claims Act attorneys. In that reconsideration order, this Court specifically rebuffed an attempt to distinguish the property damage cases from this False Claims Act case for purposes of the disqualifications in the

McIntosh Order. Calling it a "distinction without a difference," this Court rejected the argument from Relators' former lawyers that the Court should distinguish the payments Relators received for their "work" on Scruggs's other State Farm cases from Relators' "work" on this False Claims Act case. Op. and Order [Docket No. 190] at 3. As this Court explained, "[t]his distinction might have at least some validity if it were not for the fact that the very same testimony is relevant to all of these cases." *Id.* Indeed, the Court explained, "[s]ince this same testimony (concerning State Farm's post-Katrina claims handling practices) supports both the False Claims Act case and all the other State Farm cases Scruggs was handling, I cannot see how the payments Scruggs made in connection with that testimony can logically or validly be allocated to one set of cases and not the other." *Id.* at 2. Rather, "the simple fact is that Scruggs was paying substantial sums to individuals who were both material witnesses in the State Farm/Katrina litigation and clients and key witnesses in this False Claims Act case, and all of these cases are directly tied to the Rigsby sisters' knowledge of State Farm's post-Katrina conduct." *Id.* at 4. Thus, the Court had every reason to disqualify the Rigsby sisters from being witnesses in this case, as well as the property damage cases, given that "these payments were connected to the subject matter at issue in the False Claims Act case." *Id.* at 3.

10. Relators also seize upon the following passage from the Court's May 19 Opinion to suggest that, perhaps, they are not culpable at all in the whole sordid affair with Scruggs: "'From the point of view of the Rigsby sisters, I see no evidence that at the time they made their arrangement with Scruggs they were aware of the ethical implications of such an agreement.'" Mot. [Docket No. 206] at 3 (quoting Mem. Op. [Docket No. 177] at 5). It is clear from the context of this passage, however, that the Court was referencing the Rigsbys' knowledge of "ethical implications" in terms of the rules of professional responsibility applicable to attorneys.

See Mem. Op. [Docket No. 177] at 5 ("The Rigsby sisters are not attorneys, and they are not bound by the rules of professional conduct that apply to Scruggs, the other members of the SKG, or the current attorneys."). It should be no surprise that, as non-lawyers, the Rigsby sisters might not have been aware of the implications under the legal ethics rules of their sham consulting arrangement with Scruggs. Their knowledge (or lack thereof) of legal ethics rules, however, has little to do with whether this Court's disqualification of the Rigsbys applies to this case. And, of course, this statement about what the Rigsbys may have known "at the time they made their arrangement" says nothing about what the Rigsbys knew of the ethical implications of their sham arrangement *thereafter*.

11. It would appear that Relators, in a larger sense, are trying to portray themselves as innocents. Although Scruggs has been the focus of a significant portion of the court filings here and in other cases, the Rigsby sisters' involvement and complicity in Scruggs's wrongdoing cannot be overlooked. Indeed, the entire premise of the *McIntosh* Order is that Relators were implicitly and directly involved with Scruggs's underhanded and unscrupulous litigation tactics.

12. Needless to say, Relators are decidedly *not* innocent victims here. They are, among other things, the very same people who, for months, clandestinely stole thousands of documents from Renfroe and State Farm and fed them to Scruggs, and the evidence shows they were involved with Scruggs in the breach of the *qui tam* seal in this case.[4] But, even if they were nothing more than the victims of their own attorneys/employers here, they still must live with their disqualification as witnesses, a sanction this Court imposed "to minimize the potential pernicious influence of Scruggs' payments and to assure, to the extent possible, that the Court

[4] Defendant State Farm has recently filed with the Court an Attachment (Docket No. [203]) to its *Motion to Dismiss* (Docket No. [98]) setting forth newly discovered evidence of violations of the seal in this case. *See also State Farm's Memorandum of Authorities in Support of Its Motion to Dismiss the Amended Complaint* (Docket No. [99]) at 23-26.

can reach the merits of this case free of the controversy surrounding the Relators' financial arrangement with Scruggs and his associated counsel." Mem. Op. and Order [Docket No. 210] at 1; *see* Mem. Op. [Docket No. 177] at 3 (explaining that the Court's rationale for disqualifying Scruggs and his associated counsel also applied to the disqualification of the Rigsby sisters as witnesses). The law has long been clear that, under our system of representative litigation, even "innocent" clients cannot avoid the consequences of the misconduct of their attorneys. *E.g.*, *Link v. Wabash R.R. Co.*, 370 U.S. 626, 633-34 (1962). There is no reason in law or fact to excuse the Rigsbys from their disqualification as witnesses in this False Claims Act case. To the contrary, allowing the Rigsby sisters to serve as witnesses in this case, as in the other cases subject to the disqualification order, would be to "visit[] the sins of [the Rigsbys' lawyers] upon the defendant[s]." *Id*. at 634 n.20.

13. Relators also rely on a passage in the recent scheduling order [Docket No. 205] entered by this Court on August 6, 2008 to question further the meaning of the *McIntosh* Order. In this recent scheduling order, the Court noted that it already has copies of all the deposition testimony given by Relators and that "this testimony may be designated by any party" by providing appropriate identifying information "without filing deposition excerpts from these depositions as exhibits." Scheduling Order [Docket No. 205] at 2.

14. Relators read this passage to mean that the Court did not mean for the *McIntosh* Order to disqualify Relators as witnesses in this case. This reference to the Rigsby depositions is clearly nothing more than a part of the larger instruction to reduce the number of documents unnecessarily filed with the Court. If the scheduling order can be read, despite the *McIntosh* Order, to contemplate Relators being free to cite their own deposition testimony in future filings

with the Court, this may just be an inadvertent consequence of the Court trying to limit the deluge of filings with the clerk.

15. Finally, Relators invoke a salutary purpose of the *qui tam* provisions of the False Claims Act -- to "encourage those with knowledge of fraud to come forward." Mot. [Docket No. 206] at 3 (quoting *Robertson v. Bell Helicopter Textron, Inc.*, 32 F.3d 948, 951 (5th Cir. 1994)). The general purpose of the False Claims Act, however, has nothing to do with the disqualification of Relators as witnesses in this case. This overarching goal of the False Claims Act is not a general get-out-of-jail-free card that would trump any appropriate sanction imposed by a court for unethical and improper litigation conduct on the part of *qui tam* attorneys or their clients.

16. If Relators are suggesting that they should not be disqualified as witnesses here because they have brought this case on behalf of the United States, Relators are likewise wrong. Nothing in the False Claims Act remotely relieves *qui tam* relators (who, it should be noted, stand to receive up to 30% of any recovery obtained in this case, *see* 31 U.S.C. § 3730(d)) or their counsel from the usual standard of conduct applicable to all litigants before this Court. *See* Mem. Op. [Docket No. 177] at 3 ("The nature of this case does not, in my opinion, change the standard of conduct required of the attorneys."). The Court should reject Relators' misguided attempt to use their status as *qui tam* relators in this case to avoid the consequences of their misconduct. Besides, Relators have already "come forward" and presented their "knowledge of fraud" (such as it is) to the Government, so the purpose of encouraging Relators to come forward has already been fulfilled here.

WHEREFORE, and for the foregoing reasons, E. A. Renfroe & Company, Inc. respectfully requests that the Court enter an Order denying the Motion for Clarification and

reaffirming that, as ordered previously by this Court, the Rigsby sisters are disqualified as witnesses in this case.

THIS, the 22nd day of August, 2008.

Respectfully submitted,

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

BY: s/ H. Hunter Twiford, III
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CERTIFICATE OF SERVICE

I, the undersigned H. Hunter Twiford, III, McGlinchey Stafford PLLC, 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:

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

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THIS, the 22nd day of August, 2008.

s/ H. Hunter Twiford, III
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