

**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. 1:06-cv-433-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

**RELATORS' REPLY IN SUPPORT OF THEIR
MOTION FOR EXPEDITED DOCUMENT REQUESTS
RELATED TO DEFENDANTS' PENDING DISPOSITIVE MOTIONS**

Cori and Kerri Rigsby (the "Relators" or the "Rigsbys"), respectfully submit this Reply in Support of their Motion for Expedited Document Requests related to Defendant's Pending Dispositive Motions, docket entry [212]. For the reasons stated below, the Relators respectfully request that this Court grant their motion and allow them to propound expedited document requests on defendant State Farm Mutual Insurance Company ("State Farm").

State Farm's Response Memorandum severely complicates a simple request made by the Relators pursuant to this Court's August 6, 2008 Order. Because of prior circumstances

regarding former counsel, undersigned counsel must now promptly respond to a host of dispositive motions that have been pending for months. The Court set a briefing schedule, however, that expressly included the opportunity to request discovery prior to responding to the motions. Because State Farm has challenged the jurisdiction of the Court to hear this *qui tam* action, undersigned counsel respectfully submit that they should have access at least to all documents disclosed to the government by their clients.¹

State Farm has strenuously objected to undersigned counsel having access to the very documents that (1) the Relators turned over to the government; and (2) State Farm obtained in a single, discrete production in connection with the *Renfro* action. As set forth below, State Farm's arguments are meritless.

1. The Documents are Relevant to Determine “Original Sources” Under the False Claims Act.

In the first set of dispositive motions, the defendants primarily argue that the Court has no jurisdiction over this action because (1) the alleged fraud was publicly disclosed prior to this lawsuit, (2) the Relators based their claim on the public disclosures, and (3) the Relators are not original sources of the information on which their allegations are based. To the extent the Court needs to reach the original source inquiry,² Relators and their counsel, before opposing State

¹ The Relators also sought underwriting files that correspond with the claims files turned over to the government because, based on Relators' direct and personal knowledge of the fraud committed by State Farm, Relators are confident that those files will confirm many of their allegations. However, given the lack of time between this filing and the deadline for responding to the first dispositive motions, and in the interests of reaching the merits more expeditiously, the Relators hereby withdraw that request until after resolution of the pending motions.

² The Relators submit that the Court need not reach the “original source” inquiry because the allegations and transactions at issue were not publicly disclosed. Moreover, even if they were publicly disclosed, this action was not based on any public disclosure. The Relators will set forth in full the bases for their position in their opposition to State Farm's motion to dismiss, which is currently due September 1, 2008. Because September 1 is a federal holiday, the Relators intend to file their opposition on September 2 unless the Court grants an extension before then.

Farm's motion, should at least have access to all of the documents that the Relators produced to the government. State Farm, however, argues that the documents sought by the Relators are irrelevant because only documents disclosed to the government prior to the filing of the initial complaint are relevant to the original source inquiry. As set forth below, State Farm's argument is unsupported by the facts or the law.

First, State Farm admits, though quite subtly, that not all of the documents sought by the Relators were disclosed to the government *after* the filing of the initial complaint. Rather, State Farm reveals that only "the bulk of these 'false claims documents' are none other than the 'data dump' documents." *See* State Farm Response Mem. (docket entry [217] at 2-3). While State Farm then refers to the Relators' request as the "data dump" documents, State Farm's initial reference to a broader set of documents suggests that some documents that would be responsive to the Relators' expedited request were in fact produced prior to the filing of the initial complaint. Accordingly, even under State Farm's legal position, the Relators clearly are an original source with respect to any such documents.

In any event, the Relators are original sources of all the information they provided to the federal government at least through December 2006, including the "data dump" documents. Indeed, State Farm's legal position -- that the "original source" material is forever frozen at the time of the filing of the initial complaint -- is inconsistent with Supreme Court precedent. *See Rockwell Corp. v. United States*, --- U.S. ---, 127 S. Ct. 1397, 1409 (2007). In *Rockwell*, the Supreme Court looked to the relator's *amended* complaint, as further amended by the final pretrial order, to evaluate whether the relator qualified as an original source. *Id.* The Court explained that "when a plaintiff files a complaint in federal court and then voluntarily amends the complaint, the courts look to the amended complaint to determine jurisdiction." *Id.* (internal

citations omitted). Accordingly, this Court should evaluate the Relators' status as an original source based on all disclosures to the government made before the filing of the amended complaint. It is undisputed that the Relators disclosed the False Claim Documents, including the data dump documents, before filing the amended complaint.

Opinions from several circuit courts of appeals provide insight on the reasons for the *Rockwell* holding . The False Claims Act is intended to “encourage private individuals who are aware of fraud against the government to bring such information forward at the *earliest possible time* and . . . discourage persons with relevant information from remaining silent.” *United States v. Bank of Farmington*, 166 F.3d 853, 867 (7th Cir. 1999) (italics in original) (quoting *United States ex rel Barth v. Ridgedale Elec., Inc.*, 44 F.3d 699, 704 (8th Cir. 1995)). Adopting State Farm’s position would stifle the very activities the False Claims Act is designed to “encourage.” *Id.* Under the False Claims Act, the Relators were not only entitled but encouraged to provide supplemental material to the government after they filed their initial complaint.³

But for the unusual circumstances of this case, the Relators and their counsel would have access to all documents that were disclosed to the government. As State Farm has raised the issue of whether the Relators are original sources, State Farm cannot legitimately contend that

³ Indeed, the two cases cited by State Farm stand only for the proposition that a relator cannot be an original source if he or she intentionally withholds information from the government. *See In re Natural Gas Royalties Qui Tam Litigation*, 467 F. Supp. 2d 1117, 1146 (D. Wyo. 2006) (“If Relator Grynberg had significant information on which his *qui tam* allegations are based that he did not voluntarily provide to the government, then Grynberg failed to meet the jurisdictional requirements of an original source.”) (internal citation omitted); *United States ex rel. King v. Hillcrest Health Ctr.*, 246 F.3d 1271, 1281 (10th Cir. 2001) (“the relator’s decision to withhold from his voluntary disclosure to the government, his identity and that of the potential defendants, kept him from meeting the jurisdictional requirements of an original source”). The Relators did not intentionally withhold any information in this case, but rather disclosed everything they knew to the government.

the Relators and their counsel should not be able to use all documents disclosed to the government to respond to the dispositive motions.

2. The Relators Have Direct and Independent Knowledge of the Documents Contained in the False Claims Documents

The Relators are true whistleblowers. They are insiders who personally witnessed the events that form the basis of their complaint and the alleged fraud at issue. State Farm's weak attempt to paint them as outsiders with no knowledge independent of public sources must fail.

The Relators' knowledge of State Farm's fraud is "direct and independent" because their allegations are based on what they saw, heard and recovered when they were claims adjusters. *See United States ex rel. Farmer v. City of Houston*, No. 03-cv-3713, 2005 WL 1155111 at *4-5 (S.D. Tex. May 5, 2005) (where "entire investigation began as a result of [relator's] independent knowledge" of fraud, she was original source of information unearthed during investigation). For example, the Relators (1) saw and heard Lecky King order adjusters to submit false claims; (2) were instructed by Lecky King to "hit the limits" when adjusting flood damage claims; (3) saw and recovered inconsistent engineering reports; and (4) supervised adjusters when the adjusters incorrectly attributed damage to flood rather than wind. The knowledge the Relators obtained while working for State Farm and E.A. Renfroe is direct and independent. *See Wang v. FMC Corp.*, 975 F.2d 1412, 1417 (9th Cir. 1992) (Relator had direct knowledge of "transmission problems because he worked (however briefly) on trying to fix them.")⁴

⁴ State Farm's argument and its reliance on *United States ex rel. Fried v. West I.S.D.* ("*Fried*") are misplaced. 527 F.3d 439, 443 (5th Cir. May 9, 2008). In *Fried*, the relator "merely received information about a program that had been publicly disclosed and hotly debated." *Id.* The Fifth Circuit held that such information was "not the type of direct or independent knowledge contemplated by the False Claims Act." *Id.*

3. The Relators' Discovery Requests are Ordinary and Reasonably Tailored

The discovery requested by the Relators is not, contrary to State Farm's allegation, "extraordinary." Admittedly, it is unusual that a relator would need to obtain through discovery documents that were disclosed to the government. But that is the situation here, and it does not change the fact that the False Claims Documents are certainly relevant to the pending motions to dismiss. State Farm does not, and cannot, assert any valid reason that relevant, non-privileged documents in its possession would be exempt from discovery.

Finally, State Farm argues that the Rigsbys' requests for the False Claims Documents are inadequate because State Farm might not be able to ascertain exactly which documents are covered by the requests. The Relators tried to make their request as simple and clear as possible by mirroring the words of Judge Acker's preliminary injunction. To make this even simpler for State Farm, however, the Relators are willing to streamline their request even further to the following: the set of documents that State Farm received pursuant to Judge Acker's July 1, 2008 order (docket entry [369]).

This request now consists of nothing more than whatever discrete set of documents State Farm in fact received. Accordingly, State Farm can no longer argue regarding the scope of the request.

THIS the 29th Day of August.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Maison Heidelberg, attorney for Cori Rigsby and Kerri Rigsby, 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 29th day of August, 2008

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