

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

**STATE FARM FIRE AND CASUALTY COMPANY'S
RESPONSE TO
[204] "RELATORS' LOCAL RULE 7.2(h) EMERGENCY MOTION
FOR LEAVE TO OBTAIN DOCUMENTS
AND OTHER INFORMATION FROM FORMER COUNSEL"**

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 Response to [204] "Relators' Local Rule 7.2(h) Emergency Motion for Leave to Obtain Documents and Other Information from Former Counsel" ("Motion for Leave").¹ State Farm would show:

¹ In the near future, State Farm intends to move to disqualify the Rigsbys as witnesses, and perhaps further as Relators in this Action, as well as to move for the exclusion of all documents, information and Electronically Stored Information stolen by the Rigsbys and their agents – relief similar to that granted State Farm by this Court in its Order ([1173]) in *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. To be clear, nothing in this submission constitutes consent by State Farm to the Rigsbys serving as witnesses or Relators in this Action or to the use or introduction of any stolen evidence by them. Further, State Farm intends to respond separately in opposition to the Rigsbys' [206] Motion to Clarify This Court's April 4, 2008 Order in *McIntosh*. The instant document is not intended to serve as a response to docket item [206].

1. The Rigsbys imply that State Farm has somehow delayed resolution of this Action by seeking the disqualification of their former counsel. Yet it was the Rigsbys who moved to stay proceedings ([121]) until resolution of State Farm's disqualification motion, ([103]). State Farm opposed the Rigsbys' stay request, ([122 & 123]) and urged this Court to first adjudicate its motion to dismiss based on lack of subject matter jurisdiction, ([91]).

2. As stated in prior filings, State Farm has no interest in unnecessarily delaying resolution of this Action. Nonetheless, while State Farm wants an expeditious and final end to the Rigsbys' meritless claims, it must subordinate that priority when faced with motions that seek to undermine the important protections this Court provided in its *McIntosh* disqualification order and by Judge Acker in the *Renfroe* injunction. Given its virtually unlimited breadth, the Rigsbys' Motion for Leave raises such a risk.

3. For reasons explained below, State Farm opposes new counsel contacting, interacting with or communicating with any lawyers currently or formerly associated with The Scruggs Law Firm, PA, the Scruggs Katrina Group or the Katrina Litigation Group, regarding the Rigsbys or the subject matter of this Action, to the extent those contacts, interactions or communications share, reveal or transmit, in any fashion, any documents, materials, ESI or information stolen from State Farm. At least some of those lawyers are still in possession of stolen State Farm documents and information; for this and other reasons, permitting new counsel such contact with them will inevitably spread an indelible taint.

4. State Farm has similar concerns about communications between the Rigsbys' new counsel and Bartimus, Frickleton, Robertson & Gorny, PC ("Bartimus Firm") and Graves Bartle & Marcus, LLC ("Graves Firm"), as well as the Rigsbys' current and former counsel in *E.A. Renfroe & Company, Inc. v. Cori Rigsby Moran and Kerri Rigsby*; in the United States District

Court for the Northern District of Alabama, Southern Division; Civil Action No. 2:06cv1752-WMA-JEO.² Communications between new counsel and those firms would also have the untoward potential to expose new counsel to stolen documents and information.

5. For these reasons, as discussed more fully below, State Farm submits that any such contacts should be conditioned on specific terms, and strictly circumscribed, as follows:

No Communication or Transmission of Any Stolen Documents, ESI or Information.

- (1) The Rigsbys' new counsel should be prohibited from viewing, copying, discussing, requesting or accepting the communication, provision or transmission of any stolen³ documents, materials, electronically stored information ("ESI") or information from other counsel or ex-counsel, including, but not limited to the documents, materials, ESI and information that fall within the scope of Judge Acker's injunction ([60]) in *E.A. Renfroe & Company, Inc. v. Cori Rigsby Moran and Kerri Rigsby*; in the United States District Court for the Northern District of Alabama, Southern Division; Civil Action No. 2:06cv1752-WMA-JEO ("*Renfroe*"), (Ex. A to Resp.) and this Court's Order ([1173]) in *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 ("*McIntosh*"), (Ex. B to Resp.).
- (2) This restriction should apply not only to any stolen documents, materials, ESI or information itself, but also to any other media that contain or reference same in any substance – for example, interview transcripts or attorney notes.
- (3) New counsel should be required to file Affidavits or 28 U.S.C. § 1746 Declarations of record confirming complete compliance with these conditions.

Imposition of Conditions on New Counsel Analogous to Those Imposed on Provost Umphrey, LLP in Alford.

- (1) The Rigsbys' new counsel should be required to satisfy conditions analogous to the three this Court imposed on Provost Umphrey, LLP in its Opinion and Order ([171 & 172]) in *Dorothy G. Alford v. State Farm Fire and Casualty Company*; in the United States District Court for the Southern District of Mississippi, Southern Division; No. 1:07cv814-LTS-RHW ("*Alford*"), (Exs. C & D to Resp.), with respect to the Bartimus and Graves Firms, as well as The Scruggs Firm, PA, SKG

² In *Renfroe*, the Rigsbys are currently represented by Battle, Fleenor, Green, Winn & Clemmer, LLP ("Battle Firm"). In addition to the Battle Firm, they formerly were also represented by Zuckerman Spaeder, LLP ("Zuckerman Firm") and White, Arnold & Dowd, PC ("White Firm"). See (PACER counsel listing for *Renfroe*.)

³ So as to prevent any misunderstanding as to what State Farm means herein by "stolen" documents, materials, information or ESI, State Farms means any of the foregoing that were obtained by the Rigsbys or their agents by any means other than through normal civil discovery in an action in which the Rigsbys are parties.

and KLG (and their respective attorneys), as a precondition to any contact with any of the foregoing counsel.

- (2) Further, the Rigsbys' new counsel should be required to file Affidavits or 28 U.S.C. § 1746 Declarations of record confirming complete compliance with all these conditions.

6. In order to encourage compliance, the Rigsbys' new counsel should be required to send other counsel a copy of this Court's Order on the instant motion in advance of any contact, via certified mail. They should further be required to advise them that any interaction is subject to the terms of that Order.

7. Imposition of these conditions and protective restrictions on new counsel is necessary to prevent contamination of the Rigsbys' new counsel through unfettered interaction with other lawyers or ex-lawyers. Absent such provisions, the Rigsbys' new counsel – whether unintentionally or intentionally – could effect an end-run around this Court's Order in *McIntosh*, (*McIntosh* [1173]) and Judge Acker's Injunction in *Renfro*, (*Renfro* [60]).

8. The Rigsbys' motion does not merely seek permission to communicate with the Bartimus and Graves Firms. Rather, in paragraph 4 of their motion, the Rigsbys define the term "Former Counsel" to include not only the Bartimus and Graves Firms, but also David Zachary Scruggs, Richard F. Scruggs, Sidney A. Backstrom and Benjamin H. McGee III -- all of whom are or were formerly affiliated with The Scruggs Law Firm, PA. ([204] at ¶4.) Presumably, the Rigsbys are further seeking leave for their new counsel to correspond with the Battle, Zuckerman and White Firms as well, all of whom either do or did represent them in *Renfro*.

9. The Rigsbys' new counsel argue that allowing unfettered interaction with this *entire group* of former counsel would "not unfairly prejudice any party." ([204] at 1.) However, in its *McIntosh* Disqualification Order, this Court did more than merely disqualify the SKG and its associated counsel. The Court also ordered "[t]hat 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.*) The Court did so “to assure that the judicial process in these cases could proceed free of the effect of Scruggs’s misconduct.” ([177] at 3.)

10. Additionally, in *Renfroe*, Judge Acker enjoined the Rigsbys “and their agents, servants, employees, attorneys and other persons in active concert or participation with them... to deliver forthwith to counsel for [Renfroe]” the stolen documents. (*Renfroe* [60].) State Farm now has evidence that at least some of the Rigsbys’ former counsel – even as of today – have not complied with that injunction, as in *McIntosh* the Scruggses recently produced stolen State Farm documents still in the Scruggses’ possession as of last month. *See* (Sampling of Stolen E-mails Produced in *McIntosh*, ex. E to Resp, (ex. 7 to R. Scruggs’ *McIntosh* Dp., *McIntosh* [1244] at 10-24)); *see generally* (*McIntosh* [1243 – 1248].)

11. By its prior orders in *McIntosh* and other actions, this Court has erected a wall to ensure that litigation against State Farm can proceed free from the taint of the Rigsbys’ former attorneys’ misconduct. Permitting the Rigsbys’ new counsel to communicate or interact with former SKG and KLG attorneys or ex-attorneys concerning, in any fashion, documents, materials or ESI stolen from State Farm would effectively permit an end-run around this Court’s *McIntosh* Order and Judge Acker’s injunction in *Renfroe*. New counsel should therefore not be permitted to do so.

12. As mentioned above, in *McIntosh* the Scruggses recently produced stolen State Farm documents that had not been returned to Renfroe as required by Judge Acker’s injunction. Very troublingly, a number of those documents are e-mails which bear the initials “**ald**” – or, in at least one instance – “**aldewitt**.” (Sampling of Stolen E-mails Produced in *McIntosh*, ex. E to

Resp, (ex. 7 to R. Scruggs' *McIntosh* Dp., *McIntosh* [1244] at 10-24).) “**ald**” and “**aldewitt**” almost certainly are initials or monikers for Anthony L. DeWitt of the Bartimus Firm, one of the Rigsbys' former counsel in this Action. These markings strongly suggest that one or more of the Bartimus Firm lawyers had – *and may still have* – possession of stolen State Farm documents.

13. When recently questioned in his *McIntosh* deposition about these stolen “**ald**” and “**aldewitt**” State Farm documents, Richard Scruggs invoked his Fifth Amendment privilege:

MR. ROBIE:

Let me show you a document which we marked yesterday as Exhibit 5 to the Zach Scruggs deposition. We will make it Exhibit 7 here.

(Exhibit 7 was marked.)

A. The question again?

MR. ROBIE:

Q. I haven't posed one. I was just letting you look at the document. Mr. Scruggs, do you know that ALD are the initials for Anthony L. Dewitt?

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

Q. These documents which we've marked collectively as Exhibit 7 were produced to us by Kerri and Cori Rigsby at an earlier time than this last week. How did they come to have these e-mails with ALD's initials on them?

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

Q. Isn't it a fact, Mr. Scruggs, that these e-mails, which we've marked as Exhibit 7, are materials which Tony Dewitt, Anthony Dewitt uploaded from State Farm's confidential database from your trailer using Cori Rigsby's State Farm issued laptop?

....

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

(07/22/08 R. Scruggs Dp. at 96-97 [203-2]) (counsel objections omitted).

14. In light of this discovery, it is certainly possible that the Bartimus and Graves Firms have possession of stolen State Farm documents. It is also very likely, that even if they no longer have physical or electronic possession, they hold knowledge of their contents. Further, the Battle, Zuckerman and White Firms most certainly have knowledge of the content of those

stolen documents and ESI, due to their status as current or former counsel for the Rigsbys in *Renfro* – where the central issue is the Rigsbys’ theft of that State Farm property.

15. Regardless of new counsel’s intentions, they would inevitably employ poisoned knowledge gained from any unrestricted interviews of Bartimus, Graves, Battle, Zuckerman and White Firm attorneys, as well as any unrestricted review of their files. In fact, because the use of such information – fruit of a poisonous tree - would likely not be explicit, it would be nearly impossible to police and prevent.

16. For these reasons, should this Court permit new counsel to engage in any substantive contact with other attorneys discussed herein regarding the Rigsbys or this Action, the Court should – at a minimum – impose the following restrictions on such contacts:

- (1) The Rigsbys’ new counsel should be prohibited from viewing, copying, discussing, requesting or accepting the communication, provision or transmission of any stolen documents, materials, ESI or information from other counsel or ex-counsel, including, but not limited to the documents, materials, ESI and information that fall within the scope of Judge Acker’s injunction ([60]) in *Renfro* and this Court’s Order ([1173]) in *McIntosh*;
- (2) This restriction should apply not only to any stolen documents, materials, ESI or information itself, but also to any other media that contain or reference same in any substance – for example, interview transcripts or attorney notes;
- (3) The Rigsbys’ new counsel should send such counsel or ex-counsel a copy of this Court’s Order on the instant motion in advance of any contact, via certified mail and advise them that any interaction is subject to the terms of that Order; and
- (4) New Counsel should be required to file Affidavits or 28 U.S.C. § 1746 Declarations of record confirming complete compliance with these conditions, as well as their intention to maintain complete compliance indefinitely into the future.

17. In their recent filings in this Action, the Rigsbys’ new counsel have denied any association with the Bartimus and Graves Firms, as well as the former lawyers of The Scruggs Law Firm, PA., the SKG and KLG. For example, in August J. Matteis Jr.’s Motion for Admission Pro Hac Vice, he represented that:

4. Gilbert Randolph[,LLP] is not, and has never been, affiliated with any member of the Scruggs Katrina Group, the Katrina Litigation Group, Bartimus Frickleton Robertson & Gorny, Bartle Marcus & Graves, or any other attorneys who have been disqualified in litigation relating to Hurricane Katrina (“disqualified attorneys”).

5. Gilbert Randolph[,LLP] has no financial arrangement or understanding for the payment of any sums, divisions of fees, or any other arrangement for the payment of compensation with any of the disqualified attorneys.

([199] at ¶¶4-5.) He also tendered an affidavit affirming these statements. ([199] at Ex. A at ¶8.)

18. The interactions contemplated by the instant motion should not be used as a basis for providing financial remuneration to disqualified counsel. This consideration is especially important in light of the fact that, just days ago the Bartimus and Graves Firms – *on behalf of their still-clients the Rigsbys* – filed a Petition for Writ of Prohibition with the Fifth Circuit, seeking their reentry into this Action. (07/29/08 Rigsbys’ Petition for Writ of Prohibition in the 5th Circuit Court of Appeals (w/o Appendix), ex. F to Resp.)

19. As a result, any such interaction should be subject to conditions like those imposed in *Alford*,⁴ specifically, that new counsel each be required to file an Affidavit or 28 U.S.C. § 1746 Declaration of record confirming that:

1. There is and will be no agreement between new counsel and any of the disqualified attorneys (including the Bartimus and Graves Firms, SKG, KLG and/or The Scruggs Law Firm, PA or any of their attorneys) for a division of fees or any other arrangement of any kind for the payment of compensation to any of the disqualified attorneys for work performed after April 4, 2008;
2. Neither the Bartimus and Graves Firms, SKG, KLG and/or The Scruggs Law Firm, PA or any of their attorneys will participate, directly or indirectly, with new counsel in the representation of the Rigsbys; and
3. There is and will be no financial arrangement or understanding in connection with this Action between new counsel and the Bartimus and Graves Firms, SKG, KLG and/or The Scruggs Law Firm, PA or any of their attorneys for the payment of any sums other than expenses reasonably incurred before April 4, 2008, and for

⁴ ([171 & 172]) in *Dorothy G. Alford v. State Farm Fire and Casualty Company*; in the United States District Court for the Southern District of Mississippi, Southern Division; No. 1:07cv814-LTS-RHW.

services rendered before April 4, 2008, on a *quantum meruit* basis, if a right of recovery for these sums were asserted and established.

WHEREFORE, PREMISES CONSIDERED, for all the foregoing reasons, State Farm respectfully requests that any interaction with former counsel or ex-counsel for the Rigsbys be conditioned on the protective measures proposed herein.

This the 8th 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 8th day of August, 2008.

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