

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

THOMAS C. and PAMELA McINTOSH

PLAINTIFFS

VERSUS

1:06-CV-1080-LTS-RHW

**STATE FARM FIRE & CASUALTY COMPANY,
FORENSIC ANALYSIS & ENGINEERING
CORPORATION, AND E. A. RENFRO E &
COMPANY, INC.**

DEFENDANTS

**STATE FARM'S RESPONSE TO PLAINTIFFS' MOTION *IN LIMINE* [DOC. 1295]
REGARDING STOLEN DOCUMENTS OR THE DISQUALIFICATION OF PLAINTIFFS'
FORMER COUNSEL**

State Farm Fire and Casualty Company respectfully submits this response to Plaintiffs' motion *in limine* to preclude any testimony, reference, or mention of stolen documents or the disqualification of Plaintiffs' former counsel [Doc. 1295]. State Farm does not take issue with excluding affirmative references to the disqualification of Plaintiffs' former counsel. As to the other prong of their motion, Plaintiffs have affirmatively asserted that "what happened to certain documents," such as the October 12, 2005 engineering report, "has no bearing on the matter." Doc. 1295 at 2.

As a threshold matter, under this Court's April 4, 2008 Order, "any documents supplied by the Rigbsby 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." Doc. 1173 at 1 (emphasis in original). Not only has this Court recognized that "the Rigbsby sisters gave Richard Scruggs the October 12, 2005 engineering report which ... had a sticky note still attached," Doc. 1194 at 2, but recent evidence also strongly indicates that the Rigbsbys stole the original October 12, 2005 report. Dana Lee, a co-worker and friend of the Rigbsbys, testified that in January 2006 Kerri Rigbsby showed her the report with a sticky note still attached, which

Ms. Lee lifted, flipped over, and examined its back, making clear that this was the original and not a copy made by the Rigsbys. Doc. 1249-1 at 52-55; 87-88. Unless Plaintiffs can meet their burden of demonstrating “that the documents were obtained through ordinary methods of discovery,” Doc. 1173 at 1, they cannot introduce them at trial.

Moreover, even if Plaintiffs could satisfy their burden, then as Plaintiffs affirmatively assert in their motion, “what happened to certain documents ... has no bearing on the matter.” Doc. 1295 at 2. Thus, in Plaintiffs’ view, “what happened to certain documents,” such as the October 12, 2005 report, such as whether it was distributed, “has no bearing on the matter.” In light of their affirmative assertion to this Court, such subjects should not be raised by Plaintiffs at trial. Holding Plaintiffs to their word should be a sufficient predicate for this Court to grant them the relief they seek in this motion.

Against this background, and as a protective reservation of rights only, in the event Plaintiffs nonetheless somehow raise the issue, despite their affirmative representation to the contrary, then State Farm should be entitled to remedial action, such as presenting the above evidence of “what happened to [such] documents.” *See* Fed. R. Evid. 401; U.S. Const. amend. V, XIV, § 1.

Dated: September 5, 2008

Respectfully submitted,

/s/ John A. Banahan

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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 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 5th day of September, 2008.

/s/ John A. Banahan
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