

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

E.A. RENFROE & CO., INC.

Plaintiff,

v.

**CORI RIGSBY and KERRI
RIGSBY,**

Defendants.

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No. 2:06-cv-1752-WMA

**RESPONSE TO COURT'S MEMORANDUM OPINION AND ORDER
DATED JANUARY 20, 2009**

In its Memorandum Opinion and Order dated January 20, 2009, the Court requested that the parties file answers to three questions. The Defendants answer the Court's questions as follows:

1. **DEFENDANTS' ANSWER TO FIRST QUESTION:**

The Defendants have been advised by counsel for Renfroe that it will respond to this question. Defendants dispute that Renfroe is entitled to any damages in the form of attorney's fees based on their breach of contract claim.

2. **DEFENDANTS' ANSWER TO SECOND QUESTION:**

The parties are willing to stipulate that the question can be submitted on briefs, documentary evidence and sworn declarations. In connection with

this stipulation, Renfroe has agreed to provide the Defendants with certain documents supporting its claim for the attorney's fees it seeks. The Defendants reserve the right to challenge Renfroe's claim; however, the parties agree that this can also be done by sworn declarations, if necessary. The parties intend to submit a stipulation that waives certain evidentiary objections, excluding relevance. Moreover, the Defendants do not waive their right to challenge the propriety of the categories of damages sought by Renfroe under Alabama contract law; causation; the reasonableness and necessity of the attorneys' fees sought; and satisfaction of burden of proof. Nonetheless, the parties are willing to submit all of these issues on paper and without a trial.

3. **DEFENDANTS' ANSWER TO THIRD QUESTION:**

The Defendants claim that Scruggs has indemnity obligations to them and they have provided Scruggs with notice of their position. Neither state law, nor due process, nor the Fed.R.Civ.P. require that the Defendants litigate their indemnity claims in the action that may give rise to the indemnity claim, and the Defendants do not waive any right to pursue such in the future. However, given that Scruggs is a non-party to this action and that he has also objected to the jurisdiction of this Court, the Defendants choose not to litigate these indemnity issues further in this Court and

preserve the right to pursue these indemnity obligations in another court, if necessary. Moreover, the indemnity obligation with respect to a judgment would only be ripe in the event of a judgment. The Defendants have contested and continue to contest that the damages sought by Renfroe for breach of contract are the type of damages that can be recovered under Alabama law. Similarly, even if the damages sought by Renfroe were the type of recoverable damages recognized by Alabama law for a breach of contract claim, which they are not, Renfroe has not and cannot meet its burden of proof. Thus, if the Defendants are correct, the indemnity issue will become moot, obviating the need to address any issues Scruggs may have with the Defendants' indemnity claim. This will allow the Defendants to conserve their limited financial resources to focus on the remaining issues regarding the merits of Renfroe's claims against them. Consequently, under the circumstances, this case can proceed without the further participation from Scruggs.

Respectfully submitted,

Harlan F. Winn, III

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Harlan F. Winn, III (ASB-7322-N73H)

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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2009 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send 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-CM/ECF participants: None

Harlan F. Winn, III

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