

**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' RESPONSE TO STATE FARM'S MEMORANDUM TO THIS COURT

August J. Matteis, Jr. (admitted *pro hac vice*)
Craig J. Litherland (admitted *pro hac vice*)
Benjamin Davidson (admitted *pro hac vice*)
GILBERT OSHINSKY LLP
1100 New York Avenue NW
Suite 700
Washington, DC 20005
Phone No. (202) 772-2200
Fax No. (202) 772-3333

C. Maison Heidelberg MB #9559
Ginny Y. Kennedy MB #102199
MAISON HEIDELBERG P.A.
795 Woodlands Parkway, Suite 220
Ridgeland, Mississippi 39157
Phone No. (601) 351-3333
Fax No. (601) 956-2900

Attorneys for Kerri Rigsby and Cori Rigsby

In its April 6, 2009 Order, this Court offered Relators Kerri Rigsby and Cori Rigsby (“Relators”) an opportunity to respond State Farm’s Response and Memorandum to its prior order, docket entries [268 and 269], in which State Farm objected to the depositions of Alexis “Lecky” King (“King”), Brian Ford (“Ford”), Jack Kelly (“Kelly”), and three eyewitnesses to the effects of Hurricane Katrina on the McIntosh home. Relators respectfully submit that State Farm’s response provides no basis to doubt the necessity and relevance of those depositions.

A. State Farm Has Failed to Offer Any Reasonable Rebuttal To the Need for Depositions of Eyewitnesses Such as Ron Mucha, Linda Mucha, and Mike Church

In its February 12, 2009 Order, treating all dispositive motions as summary judgment motions, this Court explained that “[t]he merits of this action depend on evidence that the defendants, acting in concert, systematically submitted false flood insurance claims to the United States.” [261] at 1. As the Court noted, the Relators have alleged that the defendants submitted false claims by “exaggerating the extent of the flood damage where both types of policies were in force on the same property.” *Id.* at 2. The Court acknowledged that “in most cases, the question is how much wind damage had occurred by the time the storm surge reached the insured property.” *Id.*

In their Summary of Reasons for Discovery (“Discovery Request”) the Relators explained that Ron Mucha, Linda Mucha, and Mike Church are eye witnesses to the damage caused to the McIntosh home during Hurricane Katrina. Discovery Request, [267] at 1. In light of the key issue of how much wind damage preceded and storm surge, information possessed by eye witnesses to the storm forces that damaged the McIntosh property is obviously relevant.

State Farm’s Response makes untenable contentions when it argues that the depositions of Ron Mucha, Linda Mucha, and Mike Church are not warranted. First, State Farm contends

that “the Rigsbys do not assert... that the Muchas witnessed any damage, whether by wind or water, to the McIntosh property.” Response, [267] at 10. That assertion is incorrect. The Rigsbys explained that Dr. Ralph Sinno’s report cited the Muchas as providing an eye witness account that confirms “wide spread structural failures before the water surge” and describes “intense winds on the early morning of August 29.” Discovery Request, [267] at 2. The Muchas are eye witnesses to the damage sustained by the McIntosh house, and this establishes their relevance.¹

Similarly, State Farm’s Response makes a mystifying argument that Mike Church’s deposition is not warranted. State Farm suggests that even if Church witnessed debris being thrown into the McIntosh house at approximately 8 AM before the floodwater began rising at 11 AM, that statement “does not demonstrate that he possesses relevant and essential information.” Response, [269] at 10. Church’s testimony demonstrates that the McIntosh home was subjected to substantial winds and was damaged by wind-driven debris before the storm surge arrived. This obviously bears on the critical factual issue before the Court.²

Ron Mucha, Linda Mucha, and Mike Church can all testify to the damage the McIntosh home sustained from wind and wind-driven debris before the storm surge arrived. All this evidence is relevant to the central question of whether the wind damage that preceded any flooding caused the loss of value to the McIntosh home.

¹ State Farm’s contention that the Rigsbys should be required to explain exactly what the Muchas witnessed *before* being allowed to take their deposition ignores the purpose of discovery.

² State Farm also argues that Brian Ford’s citation of Church’s statement is “hearsay” and it conjectures that Church could not have seen what he reportedly saw. Response, [269] at 10. Yet, State Farm opposes the very procedure that would allow Church to clarify his statement on the record.

B. Lecky King Should Be Deposed Because She is the Central Figure in State Farm's Fraud

The Relators have previously described State Farm's fraud and Lecky King's roll in that fraud. *See, e.g.*, Realtors' Opposition to Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, [223] at 5-10. Supported by the false conclusions of the Haag report, King directed appraisers to order blanket engineering reports, she pressured engineers to change unfavorable conclusions, and she selectively cancelled orders for engineering reports. *Id.* The adjustment of the McIntosh claim provides just one example of this broad fraudulent scheme.

State Farm now takes the position in its Response that Lecky King "was *not* one of the individuals who supervised the McIntosh flood claim, she was *not* involved in the adjustment or payment of the McIntosh flood claim, and she has *no* firsthand knowledge of the damage to the McIntosh property." Response, [269] at 6 (emphasis in original). State Farm points out that the McIntosh flood policy limits were paid and the flood claim was closed before State Farm ordered Brian Ford's engineering report. Response, [269] at 6-7. State Farm contends that even if King did pressure Ford to change his report, it would not be relevant because King was not involved in the adjustment or payment of the McIntosh *flood* claim. Response, [269] at 7.

Whether or not King was involved directly in the adjustment of the McIntosh flood claim, she was the individual dictating the standards and methodology for the adjusters who did adjust the claim. And it is these standards and methodology that created the false claims as to the McIntosh house, and presumably, other houses. Even if Lecky King has no firsthand knowledge of the damage to the McIntosh property, that would raise more questions than it answers. For example, why was Lecky King pressuring Brian Ford to change his report describing the damage to the McIntosh house if she had no firsthand knowledge of that damage.

Further, State Farm is attempting to isolate its conduct in adjusting the McIntoshes' flood claim from its conduct in adjusting the McIntoshes' wind claim, but legally, those are not separate events. If Lecky King had accepted Brian Ford's conclusion that the interior damage to the McIntosh house was primarily due to wind and authorized payment under the McIntoshes' homeowner policy for interior damage to the house, State Farm would have been required to revisit its payments under the McIntosh flood policy and make sure that the same damage was not being paid for under both policies. And if State Farm had determined that the initial payment made by the government under the McIntoshes' flood policy included payment for damage that was caused by wind, State Farm would have been required to reimburse the government for that payment. Accordingly, even if Lecky King was not involved in the initial payment of the McIntoshes' flood policy, her conduct in adjusting the McIntoshes' wind policy is no less relevant to the question of whether the federal government was defrauded.³

C. Brian Ford and Jack Kelly Should Be Deposed Because Their Prior Depositions Did Not Address All Necessary Issues and State Farm Itself Has Argued That the Prior Depositions Were Not Taken By Qualified Counsel

State Farm argues that Brian Ford and Jack Kelly should not be deposed because they have already been deposed by members of the Scruggs Katrina Group when they were representing the McIntoshes, and the Rigsbys were fully represented in those depositions because their interest in Ford and Kelly "is largely co-extensive with those of the plaintiffs in *McIntosh*." Response, [269] at 8.

³ State Farm's argument that the Relators should not be allowed to depose Brian Ford and Jack Kelly because they "were not involved in the investigation and payment of the McIntosh *flood* claim" is wrong for the same reason. Response, [269] at 7. (emphasis added)

Less than a year ago, State Farm took the opposite position when it argued that if Provost Umphrey were allowed to represent the Rigsbys it would create a “nonwaivable and irreconcilable conflict of interest” because “the positions taken by the Rigsbys in the False Claims Action are necessarily and irreconcilably inconsistent with the interests of Provost Umphrey’s policyholder litigation clients.” State Farm’s Memorandum in Opposition to Motion for Leave to Explore Representation of Relators, docket entry [196] at 2. By State Farm’s own argument then, the Scruggs Katrina Group could not have adequately represented both the Relators and their policyholder clients when they deposed Ford and Kelly.⁴

The Rigsbys agree that their interests could not have been adequately represented in Ford and Kelly’s previous depositions because their interests are in some significant respects adverse to the interests of individual policyholders. The McIntoshes’ legal interest was to maximize payments under both their homeowner’s policy and their flood policy for the damage their house sustained. The Rigsbys’ legal interest, as representatives of the United States government, is to determine whether State Farm correctly attributed the damage in the McIntosh house to wind or flood. This interest was not represented at Ford and Kelly’s previous deposition. For example, Ford and Kelly were not shown expert reports addressing the height of the water in the McIntosh home, and they were not asked about the “wicking” effect of sheetrock on water (which would produce a waterline on the walls of five and a half feet, even where the water itself never reached more than three feet in depth). The Relators should be allowed to have independent counsel depose Ford and Kelly.

⁴ Indeed, this Court already has noted that “it is difficult to determine at any stage of the proceedings exactly what roles the Scruggses were playing” in the prosecution of the *qui tam* and policyholder claims. Order, *McIntosh v. State Farm Fire & Cas. Co., et al.*, No. 1:06-cv-1080, docket entry [988] (S.D. Miss. Jan. 8, 2008).

D. Request for In-Person Pre-Hearing Conference

The Relators agree with State Farm that an in-person pre-hearing conference similar to a pre-trial conference would be helpful in order to discuss the presentation of evidence and the exchange of witness and exhibit lists.

E. Conclusion

The Relators have identified seven witnesses with information directly and obviously relevant to the allegations of State Farm's fraud on the McIntosh claim. State Farm's objections to those depositions range from the false to the frivolous and should be rejected. Accordingly, Relators again respectfully request leave of the Court to depose Alexis "Lecky" King, Brian Ford, Jack Kelly, Craig Robertson, Mike Church, and Ron and Linda Mucha.

THIS the 8th of April, 2009

Respectfully submitted,

/s/ C. Maison Heidelberg
C. MAISON HEIDELBERG, MB #9559
GINNY Y. KENNEDY, MB #102199

OF COUNSEL:

MAISON HEIDELBERG P.A.
795 Woodlands Parkway, Suite 220
Ridgeland, Mississippi 39157
Phone No. (601) 351-3333
Fax No. (601) 956-2900

August J. Matteis, Jr. (admitted *pro hac vice*)
Craig J. Litherland (admitted *pro hac vice*)
Benjamin Davidson (admitted *pro hac vice*)
GILBERT OSHINSKY LLP
1100 New York Avenue NW, Suite 700
Washington, DC 20005
Phone No. (202) 772-2200
Fax No. (202) 772-3333

Attorneys for Kerri Rigsby and Cori Rigsby

CERTIFICATE OF SERVICE

I, C. 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:

Dunn O. Lampton, Esq.
UNITED STATES ATTORNEY
FOR MISSISSIPPI
188 East Capitol Street, Suite 500
Jackson, MS 39201

Felicia Adams, Esq.
ASSISTANT U.S. ATTORNEY
188 East Capitol Street, Suite 500
Jackson, MS 39201

Joyce R. Branda, Esq.
Patricia R. Davis, Esq.
Jay D. Majors, Esq.
UNITED STATES DEPARTMENT OF JUSTICE
Commercial Litigation Branch
Civil Division
601 D Street, NW
Washington, DC 20004

H. Hunter Twiford, III, Esq.
MCGLINCHEY STAFFORD
P. O. Drawer 22949
Jackson, MS 39225
(p) 601-960-8400

Beth C. McClain, Esq.
John T. Boese, Esq.
FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON, LLP
1001 Pennsylvania Avenue, N.W., Suite 800
Washington, DC 20004
ATTORNEYS FOR E. A. RENFROE, INC.,
GENE RENFROE, AND JANA RENFROE

Larry G. Canada, Esq.
Kathryn Breard Platt, Esq.
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH
701 Poydras Street, Suite 4040
New Orleans, LA 70139
(p) 504-525-6802
ATTORNEYS FOR HAAG ENGINEERING CO.

Robert C. Galloway, Esq.
Emerson Barney Robinson, III, Esq.
Jeffrey A. Walker, Esq.
BUTLER, SNOW, O'MARA,
STEVENS & CANNADA, PLLC
P.O. Box 22567
Jackson, MS 39225
(p) 601-948-5711

Michael B. Beers, Esq.
BEERS, ANDERSON, JACKSON,
PATTY & FALWAL, PC
250 Commerce Street, Suite 100
Montgomery, AL 36104
(p) 334-834-5311
ATTORNEYS FOR STATE FARM MUTUAL
INSURANCE COMPANY

Robert D. Gholson
GHOLSON BURSON ENTREKIN & ORR, P.A.
55 North 5th Avenue
P.O. Box 1289
Laurel, MS 39441-1289
ATTORNEYS FOR FORENSIC ANALYSIS
ENGINEERING CORPORATION

/s/ C. Maison Heidelberg