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U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA  
2007 OCT 17 PM 3: 34  
LORETTA G. WHYTE  
CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

BRANCH CONSULTANTS, L.L.C.

CIVIL ACTION  
NO. 06-4091

VERSUS

ALLSTATE INSURANCE COMPANY, ET. AL.

SECTION M

ORDER

Before the Court is Defendants' Motions to Dismiss for Lack of Subject Matter Jurisdiction, which came for hearing on October 17, 2007, with oral argument. After consideration of the Motions, Briefs, Supplemental Briefs, arguments on both sides and the applicable law, the Court grants the Motion.

**PROCEDURAL HISTORY:**

This *qui tam* action was filed on August 2, 2006, *in camera and under seal*, by Branch Consultants, LLC, a Georgia corporation located at 52 Maple Valley Drive, Villa Rica, GA. Branch is an insurance and construction consulting firm that was retained by numerous insureds to re-examine adjustments done by the insurers' in-house adjusters and other adjuster agencies. Branch contends that it discovered numerous instances of flood-adjusting discrepancies at properties throughout southern Louisiana. It alleges that it has

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evidence of a fraudulent scheme to defraud the United States Government through a practice of grossly overstating flood damages to insured properties resulting from Hurricane Katrina, and then, based on those overstated damages, submitting claims for payment on Government-backed flood insurance policies to the National Flood Insurance Program (NFIP).

The case was unsealed by this Court on May 22, 2007; thereafter, on June 22, 2007 Branch filed an Amended Complaint. The amended complaint identifies flood adjusting discrepancies and details of structural damage at 57 properties from numerous insurance companies and adjusting companies.

On August 6, 2007, the Insurance Companies filed this Motion to Dismiss Plaintiff's First Amended Complaint alleging that this Court is without subject matter jurisdiction. Defendant State Farm Fire and Casualty Company (State Farm) filed a Supplemental Memorandum joining in the Insurance Companies' Motion to Dismiss but raising an additional ground for dismissal, alleging that under the statute State Farm has the right to elect to compel arbitration of any such dispute under the express terms of the Write Your Own (WYO) Arrangement with the government.

On that same day, a previously filed *qui tam* action in the Southern District of Mississippi was unsealed. See *United States ex rel. Rigsby v. State Farm Ins. Co.*, No 1:06 cv 433 (S.D. Miss, filed Apr. 26, 2006).

After becoming aware of the *Rigsby* case, the Insurance Companies then moved to supplement their Motion to Dismiss to argue that *Rigsby* provides another ground for dismissal under the statute, known as the "first to file bar." By Order dated August 15, 2007

this Court allowed for that supplemental memorandum, set a new briefing schedule, and set this hearing with oral argument.

**ANALYSIS:**

The Civil Actions for False Claims Statute, U.S.C. § 3730, is straight forward.

The statute and case law require that a second action alleging the same general conduct and theory of fraud is barred regardless of whether the relators allege different details, different geographic locations, or other participants in the alleged scheme.


While Branch argues that the *Rigsby* case was not particular enough to “trigger” the first-to-file bar, *Rigsby*’s facts are legally sufficient to notice the government of the alleged fraud. There is no contention that *Rigsby* was not the first filed case. Thus, the Motion has merit and should be granted.

I can think of no less acceptable scenario than one in which a District Court tends to clutch for jurisdiction that it no longer has. Our duty is to consider the law fairly and evenhandedly and to apply it in the same way.

When we have done that, and find that we are without jurisdiction, judicial restraint and ordinary courtesy require silence from that point onward.

**ACCORDINGLY**, this Court **GRANTS** Defendants’ Motions to Dismiss (#116, 144) in favor of the Southern District of Mississippi’s proceeding, and has no further comment.

New Orleans, Louisiana, this 17<sup>th</sup> day of October, 2007.

  
Peter Beer  
United States District Judge