

**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 MOTION TO  
AMEND ANSWER TO FIRST AMENDED COMPLAINT  
TO ASSERT ADDITIONAL AFFIRMATIVE DEFENSE**

Cori and Kerri Rigsby ("Relators" or "Rigsbys"), through undersigned counsel, respectfully submit this response to State Farm Mutual Insurance Company's ("State Farm") Motion to Amend Answer to First Amended Complaint ("Motion to Amend"). State Farm's Motion to Amend should be denied because the motion is futile.

Generally, leave to amend pleadings should be "freely given when justice so requires." Fed. R. Civ. P. 15(a). However, "leave to amend is not automatic," and leave can be properly

denied “when amendment would be futile.” *Avatar Exploration, Inc. v. Chevron, U.S.A., Inc.*, 933 F.2d 314, 320-21 (5th Cir. 1991) (internal citation omitted).

State Farm seeks leave to amend its answer to assert an affirmative defense that the Relators have released all claims against State Farm by virtue of the settlement agreement they reached in *E.A. Renfroe & Company, Inc. v. Moran*, No. 2:06-cv-1752 (the “*Renfroe Settlement*”) (attached as Exhibit A to State Farm’s Motion). But State Farm was not a party to the *Renfroe Settlement*. Nothing in the *Renfroe Settlement* binds, releases, or in any way affects State Farm or the Relators’ claims against State Farm. Moreover, consent of the United States government is required to release *qui tam* claims, the *Renfroe Settlement* could not have released State Farm absent the government’s consent on the record; no such consent has been given.

Accordingly, because the *Renfroe Settlement* has no effect on State Farm, State Farm’s Motion should be denied because it is futile and frivolous. *See Avatar Exploration*, 933 F.2d at 320-21.

THIS the 1st day of June, 2009.

Respectfully submitted,

/s/ C. Maison Heidelberg

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**CERTIFICATE OF SERVICE**

I, Maison Heidelberg 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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