

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

**UNITED STATES OF AMERICA EX
REL. CORI RIGSBY AND KERRY RIGSBY**

RELATORS

VERSUS

CIVIL ACTION NO. 1:06CV00433-LTS-RHW

**STATE FARM INSURANCE COMPANY,
FORENSIC ANALYSIS & ENGINEERING CORPORATION,
and HAAG ENGINEERING CO.**

DEFENDANTS

MOTION TO DISMISS FORENSIC ANALYSIS & ENGINEERING CORPORATION

Comes now Forensic Analysis & Engineering Corporation (“FAEC”), by and through its attorneys of record, and files its Motion to Dismiss FAEC. Said motion is based on the facts as set out below:

By Settlement Agreement dated May 28, 2010, and extended by agreement dated July 6, 2010, FAEC and Relators agreed to dismiss FAEC from the present action, with prejudice, under certain terms and conditions as set forth in said Settlement Agreement.¹ Of import to the present motion, the Second Paragraph 1 of the Settlement Agreement states the following:

Conditions Precedent: This agreement is contingent upon the satisfaction of the Conditions Precedent described in this paragraph. If the Conditions Precedent have not been satisfied within forty-five (45) days of the date of this agreement, or such extension of such period to which the parties may agree in a writing signed by all the parties, the remaining terms of this agreement shall be ineffective and shall be null and void. Satisfaction of the Conditions Precedent shall be accomplished by (a) the United States government affirmatively consenting to the terms of this Agreement and consenting to the dismissal of Forensic as described in Paragraph 2 below or (b) the Court with jurisdiction over the Suit entering an order acknowledging that the government has not objected to the Agreement after reasonable notice and granting dismissal of Forensic as described in Paragraph 2 below. In order to facilitate the government’s consideration of possible consent to the Agreement, Forensic agrees to promptly provide the government with financial and other information as the government shall reasonably request. The Relators will use their reasonable best efforts to

¹ True and correct copies of the Settlement Agreement and extension are attached hereto collectively as Exhibit “A”.

obtain satisfaction of the Conditions Precedent within the time permitted by this paragraph.

The United States Government was given notice of the pending Settlement Agreement at least by June 3, 2010.² As of the date of the drafting of this motion the government has not lodged any objection to, requested any information from FAEC regarding, or affirmatively consented to the Settlement Agreement. Pursuant to part (b) of the paragraph quoted above, FAEC respectfully requests this Court to enter an Order acknowledging that the United States government has not objected to the Settlement Agreement after reasonable notice and granting the dismissal of FAEC.

Due to the brevity and nature of the issues presented herein, FAEC requests the Court waive the requirement for a memorandum of authorities in support of their motion pursuant to the Uniform Local Rule 7.2(D).

FAEC would further request such other relief as this Court deems necessary.

This the 15th day of July, 2010.

Respectfully submitted,

BY: **s/Robert D. Gholson**

OF COUNSEL:

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Daniel D. Wallace, MS Bar No. 100659
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Attorneys for Forensic Analysis & Engineering Corporation

² See Email correspondence dated June 3, 2010 advising that the United States Government had been given notice of the Settlement Agreement Attached hereto as Exhibit "B".

CERTIFICATE OF SERVICE

I hereby certify that on July 15th, 2010, I electronically filed the foregoing with the clerk of the Court using the ECF system, which sent notification of such filing to the following:

Cecil Maison Heidelberg, Esquire
Virginia R. Kennedy, Esquire
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Ridgeland, MS 39157
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Email: ginny@heidelbergpa.com

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Email: gilberts@gotofirm.com
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Email: davidsonb@gotofirm.com
Email: litherlandc@gotofirm.com

ATTORNEYS FOR RELATORS/COUNTER-DEFENDANTS

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Civil Division
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ATTORNEYS FOR HAAG ENGINEERING CO.

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Raleigh, North Carolina 27604
rkkochan@forsenic-analysis.com

**PRESIDENT OF FORENSIC ANALYSIS & ENGINEERING
CORPORATION**

s/Robert D. Gholson

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made this 21st day of May 2010 between Co. Rigsby, Kerri Rigsby ("Rigsbys" or "Relators") and Forensic Analysis & Engineering Co. ("Forensic") (collectively the "Parties").

1. WHEREAS on April 26, 2006, Relators brought suit in the United States District Court for the Southern District of Mississippi, styled *U.S. ex rel. Rigsby v. State Farm Fire Mutual Ins. Co.*, (Case No. 1:06-cv-433 (the "Suit"), by filing a complaint under the False Claims Act, alleging in part that Forensic conspired with Haag Engineering Co. ("Haag") and State Farm Mutual Insurance Co. ("State Farm") to submit false flood insurance claims to the federal government following Hurricane Katrina;

2. WHEREAS the Relators allege that as part of that conspiracy, State Farm instructed its adjusters that because Hurricane Katrina was a water storm, they should assume that the damage to homes they inspected was caused by flood rather than storm winds, that insurance coverage for the damage they inspected would be available only under homeowners' Standard Flood Insurance Policies ("flood policy"), which were underwritten by the National Flood Insurance Program and for which the federal government was financially liable, and that coverage under State Farm's home owner policies would only be used in cases of unmistakable wind damage;

3. WHEREAS the Relators allege that Forensic furthered the conspiracy by drafting engineering reports that concluded the predominant damage to homes sustained by Hurricane Katrina was due to flood when Forensic knew or should have known that the damage was in fact caused in whole or in large part by wind;

4. WHEREAS the Relators further allege that Forensic reissued an engineering report related to Thomas and Pamela McIntoshes' home, changing the conclusion of the report so that the report concluded that the predominate cause of the damage to the McIntoshes' home was flood rather than wind, and that Forensic reissued its report on the McIntoshes home at the urging of State Farm;

5. WHEREAS the Relators further allege that Forensic reissued a number of additional engineering reports with changed conclusions at the request of State Farm and in furtherance of the conspiracy to inflate claims under flood policies;

6. WHEREAS the Relators further allege that Forensic understood that its reissued engineering reports would be used by State Farm to inflate claims under flood policies and thereby shift the financial responsibility for paying insurance claims from State Farm and to the federal government;

7. WHEREAS the Relators further allege that the reissued Forensic reports were used by State Farm to justify submitting false and overinflated claims for payment to the federal government for flood policy proceeds, that State Farm did in fact submit such false claims to the federal government, and that the federal government made payments based on these false claims;



8. WHEREAS Forensic admits that it understood State Farm's financial interests in having engineering reports submitted by Forensic that attributed the cause of storm damage to flood rather than storm winds;

9. WHEREAS Forensic admits that it believed State Farm would not continue employing Forensic unless Forensic agreed with State Farm's assessment that the properties where secondary reports were requested were damaged predominately by water instead of wind and focused on any possible evidence of flood damage to support that finding;

10. WHEREAS Forensic admits that at State Farm's request, Forensic sent a second professional engineer to re-evaluate 19 loss sites, and Forensic admits that it changed the conclusions in those 19 reports based on the second engineer's inspection and after the initial reports were already sent to State Farm;

11. WHEREAS Forensic admits that it was asked not to perform a thorough structural evaluation or cost appraisal of the amount of damage identified at a given site, and Forensic agreed to follow State Farm's instructions to describe only the predominant cause of damage to a home when attributing that damage to wind or flood;

12. WHEREAS Forensic admits that for certain properties it submitted subsequent reports that did not reference the existence of the initial report and that such a practice allowed State Farm to have the option of either removing and replacing the initial report in its file if it so chose;

13. WHEREAS Forensic contends and has provided documentation supporting its contention that its current financial condition makes it highly unlikely that Forensic would be able to pay any material judgment amount that could be awarded against it in the Suit nor does it have any means of funding from applicable insurance coverage; and

14. WHEREAS Relators have reviewed certain financial information provided by Forensic and Relators believe that there is a very substantial risk that Forensic would not be financially able to pay any material judgment amount that might be awarded against Forensic and that the costs of continued efforts by Forensic to defend itself in the Suit could further erode Forensic's ability to pay any meaningful liability to the government.

15. WHEREAS Forensic answered the Relators complaint against it and denied the allegations of wrongdoing.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Conditions Precedent:** This Agreement is contingent upon the satisfaction of the Conditions Precedent described in this paragraph. If the Conditions Precedent have not been satisfied within forty-five (45) days of the date of this agreement, or such extension of such period to which the parties may agree in a writing signed by all the parties, the remaining terms of this Agreement shall be ineffective and shall be null and void. Satisfaction of the Conditions Precedent shall be accomplished by (a) the United States government affirmatively consenting to

the terms of this Agreement, Relators hereby acknowledge that they have read and understand the terms of this Agreement and are voluntarily entering into this Agreement. Relators acknowledge that they have read and understand the terms of this Agreement and are voluntarily entering into this Agreement. Relators acknowledge that they have read and understand the terms of this Agreement and are voluntarily entering into this Agreement.

and consenting to the dismissal of Forensic as described in Paragraph 2 below or (b) the Court with jurisdiction over the Suit entering an order of dismissal of Forensic as described in Paragraph 2 below. In order to facilitate the execution of the Agreement, Forensic agrees to promptly provide the government with financial and other information as the government shall reasonably request. The Relators will use their reasonable best efforts to obtain satisfaction of the Conditions Precedent within the time permitted by this paragraph.

2. **Dismissal:** Promptly after the satisfaction of the Conditions Precedent, the Relators will file appropriate pleading to obtain a dismissal of all claims in the Suit against Forensic with prejudice.

Promptly after the satisfaction of the Conditions Precedent, the Relators will file appropriate pleading to obtain a dismissal of all claims in the Suit against Forensic with prejudice.

3. **Settlement Payment:** Forensic agrees that as consideration for this Agreement, it will make payment to the United States government in the amount of \$50,000 related to all of the properties that generated flood policy claims with respect to which Forensic revised engineering report conclusions for which Forensic issued engineering reports that emphasized any indications of flood damage or the exclusion of wind as the possible cause of damages. This amount will be due and payable to the United States government as follows: (a) \$5,000 to be paid one hundred (100) days after dismissal of Forensic from the Suit; (b) \$10,000 to be paid one year after the date on which the first payment in (a) above is due; (c) \$15,000 to be paid two years after the date on which the first payment in (a) above is due; and (d) \$20,000 to be paid three years after the date on which the first payment in (a) above is due.

Settlement Payment: Forensic agrees that as consideration for this Agreement, it will make payment to the United States government in the amount of \$50,000 related to all of the properties that generated flood policy claims with respect to which Forensic revised engineering report conclusions for which Forensic issued engineering reports that emphasized any indications of flood damage or the exclusion of wind as the possible cause of damages. This amount will be due and payable to the United States government as follows: (a) \$5,000 to be paid one hundred (100) days after dismissal of Forensic from the Suit; (b) \$10,000 to be paid one year after the date on which the first payment in (a) above is due; (c) \$15,000 to be paid two years after the date on which the first payment in (a) above is due; and (d) \$20,000 to be paid three years after the date on which the first payment in (a) above is due.

4. **Access to Documents:** Forensic will, immediately upon the execution of this Agreement, provide Relators all documents (a) relating to its employment by State Farm for the purpose of assessing damages resulting from Hurricane Katrina, including complete copies of its files for the 19 properties identified in GBEO-Forensic 138 where Forensic revised its engineering reports after the reports were first provided to State Farm, (b) all communications with State Farm or any other parties to the Suit related to its employment by State Farm as described above, Hurricane Katrina, or the Suit and no such document shall be withheld based on a claim of privilege or that belongs to Forensic, except for confidential and/or privileged communications between Forensic and its current attorneys, Gholson Burson Entekin & Orr, PLLC. In the event a valid claim of privilege is asserted, Relators will not return to Forensic and make no use of all documents that are the subject of the claim. In this regard, Relators agree that no privilege shall be waived or lost as a result of the temporary possession of such documents by Relators hereunder, and Forensic does not waive any right to object to the use of any such documents in this Suit for any reason, including relevance.

Access to Documents: Forensic will, immediately upon the execution of this Agreement, provide Relators all documents (a) relating to its employment by State Farm for the purpose of assessing damages resulting from Hurricane Katrina, including complete copies of its files for the 19 properties identified in GBEO-Forensic 138 where Forensic revised its engineering reports after the reports were first provided to State Farm, (b) all communications with State Farm or any other parties to the Suit related to its employment by State Farm as described above, Hurricane Katrina, or the Suit and no such document shall be withheld based on a claim of privilege or that belongs to Forensic, except for confidential and/or privileged communications between Forensic and its current attorneys, Gholson Burson Entekin & Orr, PLLC. In the event a valid claim of privilege is asserted, Relators will not return to Forensic and make no use of all documents that are the subject of the claim. In this regard, Relators agree that no privilege shall be waived or lost as a result of the temporary possession of such documents by Relators hereunder, and Forensic does not waive any right to object to the use of any such documents in this Suit for any reason, including relevance.

5. **Trial Cooperation:** Forensic will, if requested by the Relators, make its employees available to testify at trial in the Suit and shall, commencing immediately upon the execution of this Agreement, answer reasonable questions to assist the Relators' preparations for trial in the Suit and shall, commencing immediately upon the execution of this Agreement, answer reasonable questions to assist the Relators' preparations for trial in the Suit and shall, commencing immediately upon the execution of this Agreement, answer reasonable questions to assist the Relators' preparations for trial in the Suit.

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should such cooperation require travel or other expenses, Forensic shall be entitled to reasonable reimbursement for such expenses pursuant to the allowances of applicable law.

6. **Specific Performance:** Notwithstanding any other provision of this Agreement to the contrary, the Parties acknowledge that a breach by any Party of its obligations above will cause irreparable harm to the non-breaching Party, and such harm cannot be compensated adequately by money damages alone. Accordingly, the non-breaching Party shall be entitled to seek specific performance of the obligations of any breaching Party at any time after the Agreement is executed.

7. **Miscellaneous:**

- a. **Execution in Counter-Part:** This Agreement may be executed in counterparts, all of which, when taken together, shall constitute a single instrument.
- b. **Construction:** This Agreement was reviewed and approved by attorneys for all of the Parties and it is the intent of the Parties that there shall not be a presumption or construction against any Party. No Party shall be deemed to be the drafter of this Agreement or of any particular provision of the Agreement.
- c. **Entire Agreement:** This Agreement is the entire agreement between the Parties. The Agreement may not be amended or modified other than by written agreement to and signed by the Parties.
- d. **Jurisdiction:** The United States District Court for the Southern District of Mississippi shall retain jurisdiction of the Suit to enforce the terms of the Agreement.

by: Cori Rigsby
dated: 5-27-10

by: Kerri Rigsby
dated: 5/27/2010

Forensic Analysis & Engineering Company

by: _____

dated: _____

should such cooperation require travel or other expenses, Forensic shall be entitled to reasonable reimbursement for such expenses pursuant to the allowances of applicable law.

6. **Specific Performance:** Notwithstanding any other provision of this Agreement to the contrary, the Parties acknowledge that a breach by any Party of its obligations above will cause irreparable harm to the non-breaching Party, and such harm cannot be compensated adequately by money damages alone. Accordingly, the non-breaching Party shall be entitled to seek specific performance of the obligations of any breaching Party at any time after the Agreement is executed.

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- d. **Jurisdiction:** The United States District Court for the Southern District of Mississippi shall retain jurisdiction of the Suit to enforce the terms of the Agreement.

Cori Rigsby

by: _____

dated: _____

Kerri Rigsby

by: _____

dated: _____

Forensic Analysis & Engineering Company

by: Rahim K. Kochan, President

dated: May 27, 2010

AGREEMENT FOR EXTENSION OF DEADLINE

THIS AGREEMENT ("Agreement") is made this ___ day of ____, 2010 between Cori Rigby, Kerri Rigby ("Rigbys" or "Relators") and Forensic Analysis & Engineering Co. ("Forensic") (collectively the "Parties").

WHEREAS the Parties have entered into a settlement agreement ("Agreement"); and

WHEREAS, the Agreement contained certain conditions precedent to be satisfied within forty-five (45) days of the date of the Agreement; and

WHEREAS, the Agreement provided that the Parties may agree for an extension of the time period for satisfaction of the conditions precedent;

NOW THEREFORE, the Parties do hereby agree that the time period for the satisfaction of the conditions precedent under the Agreement is extended for an additional period of thirty (30) days.

CORI RIGSBY

By: _____

Dated: _____

KERRI RIGSBY

By: Kerri Rigby

Dated: 7-6-2010

FORENSIC ANALYSIS & ENGINEERING COMPANY

By: Robert K. Kocher, President

Dated: 7/6/10

AGREEMENT FOR EXTENSION OF DEADLINE

THIS AGREEMENT ("Agreement") is made this 7 day of July, 2010 between Cori Rigby, Kerri Rigby ("Rigsbys" or "Relators") and Forensic Analysis & Engineering Co. ("Forensic") (collectively the "Parties").

WHEREAS the Parties have entered into a settlement agreement ("Agreement"); and

WHEREAS, the Agreement contained certain conditions precedent to be satisfied within forty-five (45) days of the date of the Agreement; and

WHEREAS, the Agreement provided that the Parties may agree for an extension of the time period for satisfaction of the conditions precedent;

NOW THEREFORE, the Parties do hereby agree that the time period for the satisfaction of the conditions precedent under the Agreement is extended for an additional period of thirty (30) days.

CORI RIGSBY

By: Cori Rigby
Dated: 7/7/10

KERRI RIGSBY

By: _____
Dated: _____

FORENSIC ANALYSIS & ENGINEERING COMPANY

By: Robert K. Kocher, President
Dated: 7/6/10

Lynn Patrick

From: Maison Heidelberg [mheidelberg@heidelbergharmon.com]
Sent: Thursday, June 03, 2010 12:53 PM
To: Dan Wallace
Subject: Re: Rigsby

It has been disclosed to govt and SF

I am in depts today

On Jun 3, 2010, at 12:49 PM, "Dan Wallace" <Wallace@gbeolaw.com> wrote:

Hi Maison,

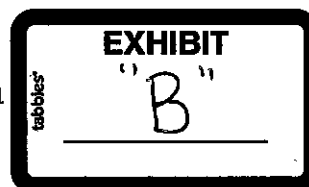
I trust you got my message and were able to speak with Bob Kochan. I wanted to also check on the status of disclosure of settlement to the government and/or court? Any word?

Thanks,

Dan

<image001.png>

Daniel D. Wallace
535 North 5th Avenue
P.O. Box 1289
Laurel, MS 39441
(601) 649-4440
(601) 649-4441 (fax)
wallace@gbeolaw.com



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IRS Circular 230 Notice

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