

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

**GLEND A SHOWS, ET AL.,**

**PLAINTIFFS**

vs.

**CIVIL ACTION NO. 1:07cv709-WHB-LRA**

**STATE FARM MUTUAL AUTOMOBILE,  
INSURANCE COMPANY, ET AL.,**

**DEFENDANTS**

**E. A. RENFROE & COMPANY, INC.'S MEMORANDUM  
IN SUPPORT OF ITS MOTION REQUESTING THAT THE COURT  
CONSIDER WHETHER PROVOST & UMPHREY IS AN "ASSOCIATED  
FIRM" WITHIN THE MEANING OF THE COURT'S APRIL 16, 2008 ORDER**

Defendant E.A. Renfroe & Company, Inc. ("Renfroe") respectfully submits this Memorandum of Law in support of its Motion Requesting that the Court Consider Whether Provost & Umphrey is an "Associated Firm" Within the Meaning of the Court's April 16, 2008 Order. In the April 16, 2008 Order, the Court held that "all lawyers associated with [the KLG] . . . are hereby disqualified from representing any plaintiff in this case." [Dkt. 354.] Renfroe brings the following facts to the Court's attention and requests that the Court consider whether Provost & Umphrey ("Provost"), which recently appeared as lead counsel in this case, is an "associated firm" within the meaning of the Court's Order.

**ARGUMENT**

**Prior Orders**

1. On April 4, 2008, Judge Senter issued his Memorandum Opinion and Order of Disqualification granting State Farm Fire and Casualty Company's ("State Farm") and Renfroe's motions to disqualify the KLG. (*McIntosh v. State Farm Fire and Casualty Co., et al.*, Civil Action No. 1:06-cv-1080 [Dkts. 1172-73].) In its Order, the Court held:

[t]hat the [KLG] firms and any other associated counsel are hereby **DISQUALIFIED** from representing these plaintiffs or any other individuals who have claims against State Farm Fire and Casualty Company and against E. A. Renfroe & Company, Inc. for property damage sustained in Hurricane Katrina in

this case and in any other cases in the United States District Court for the Southern District of Mississippi . . . .

[Dkt. 1173] (bold original, other emphasis supplied.)

2. On April 16, 2008, this Court issued an Order disqualifying the KLG from further representation in this case. [Dkt. 354.] This Court adopted Judge Senter’s Memorandum Opinion, and held:

IT IS FURTHER ORDERED that the Barrett Law Office, P.A., Nutt & McAlister, P.L.L.C., the Lovelace Law Firm, P.A., Hesse & Butterworth, P.L.L.C., the Katrina Litigation Group, and all lawyers associated with these entities. . . are hereby disqualified from representing any plaintiff in this case.

(*Id.* at 2)(emphasis supplied). Thus, any firm that has associated with the KLG is disqualified from representing Plaintiffs in this case (as well as plaintiffs in any other Katrina cases against State Farm or Renfroe).

3. Following these Orders, two law firms, Taylor-Martino and Lumpkin & Reeves, moved the Court to clarify its disqualification Order as to whether they were “associated” law firms and therefore disqualified. In both instances, the Court held that the firms were “associated” law firms. In disqualifying the Taylor-Martino firm, the Court held:

The Order [1173] entered in the instant case refers to and includes ‘other attorneys associated as counsel for the plaintiffs by these firms’ and ‘any other associated counsel.’ The Court intentionally used broad language because it was unclear to what extent other lawyers were involved in this and other litigation who might argue, for example, that they had never entered a formal appearance on behalf of plaintiffs and, thus, are eligible to represent one or more of them. Whether appearing or not, actual participation in or connections to this or other litigation are major concerns for the Court.

[*McIntosh* Dkt. 1183]. The Court held that as an associated firm, Taylor-Martino’s “participation will create unnecessary complications and will perpetuate an appearance of impropriety.” (*Id.*)

4. On May 16, 2008, the Court also held that the Lumpkin & Reeves firm was “associated” counsel. [*McIntosh* Dkt. 1193.] The Court noted that, although Lumpkin & Reeves’ participation in the case occurred after the KLG’s unethical conduct, “they were aware or should

have known of the serious allegations made against the Scruggs Katrina Group” when they associated with the KLG. [*Id.* at 2.]

5. The Court also noted that, “while there is enough in the motion and in [Lumpkin & Reeves’] supporting materials to raise questions about Lumpkin’s association with the directly-affected disqualified counsel, *what is omitted is more telling.*” [*Id.*][Emphasis supplied].

6. On May 19, 2008, the Court also disqualified plaintiffs’ counsel in the *Qui Tam* action pending before the Court as a result of Plaintiffs’ counsels’ association with disqualified counsel (Richard Scruggs). [*U.S. ex rel. Rigsby v. State Farm* Dkt. 177.] The Court reasoned that “from the time [counsel] agreed to associate themselves with [disqualified counsel] . . . in this action they were engaged in a cooperative effort” with disqualified counsel. [*Id.* at 3-4.] The Court also held that “all of these attorneys . . . were operating under the[] rules of professional conduct, and all of these attorneys have a duty to adhere to the ethical rules that govern the conduct of members of the bar.” [*Id.* at 5.]

### **Facts Regarding the Provost Firm**

7. On May 13, 2008, Provost attorney Mr. Guy Fisher filed a Notice of Appearance and Designation for Lead Counsel to represent certain Plaintiffs in this case.

8. Provost attorneys have participated with former KLG attorneys in numerous matters, including, at least, major tobacco and asbestos litigations, as well as litigations against Bridgestone / Firestone.

9. Provost shares office space in Nashville, Tennessee with former KLG lead counsel, Don Barrett, and his law firm, the Barrett Law Office. (*Compare* Ex. A, 4/18/08 Letter from Don Barrett; Ex. B, Provost & Umphrey Office Locations.)

10. The Court instructed disqualified counsel to “send. . . a copy of [the] Order to each plaintiff in this case.” [Dkt. 354 at 3.] The Court then gave Plaintiffs “a period of forty-five (45) days in which to either retain new counsel and have such counsel file an appearance in this case, or inform the Court, in writing, of his or her intention to proceed *pro se.*” [*Id.* at 3.] The

Court did not authorize disqualified counsel to engage in both a public and private campaign with Provost or any other firm to handpick Plaintiffs' replacement attorneys.

11. Nonetheless, on April 18, 2008, two days after the KLG was disqualified from this case, Mr. Barrett, former lead-counsel of the KLG, sent a letter to the KLG's Katrina clients "urging" them to retain Provost as substitute counsel:

We are very pleased to have a recommendation for you for the *best* law firm to represent you going forward in your litigation against State Farm.

The nationally-prominent firm of Provost-Umphrey Law Firm, L.L.P., *has agreed* to take your case.

This is a wonderful development for you. Provost-Umphrey has the strength and the financial and lawyer resources to give you the *very best* representation. . . .

As a convenience to you, we have given your address to Provost-Umphrey and have requested that they send you a contract to sign, so they can begin representing you immediately.

We *urge* you to sign that contract when you receive it, and return it to Provost-Umphrey in the envelope provided. (Ex. A)(emphasis supplied).

12. Provost enthusiastically accepted this recommendation on the homepage of its website, under the heading "KATRINA VICTIMS vs. STATE FARM:"

Provost & Umphrey wants to welcome all former Clients of the Katrina Litigation Group and their litigation against, defendant, State Farm. We are honored by the recommendation and confidence of your former attorneys in Provost & Umphrey. (Ex. C, Provost Website)(emphasis original).<sup>1</sup>

13. Upon information and belief, Mr. Barrett and the KLG in fact provided the Provost firm with the home addresses of each of KLG's Katrina clients, which Provost then used to solicit certain Plaintiffs by mailing them retainer agreements with return envelopes.<sup>2</sup>

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<sup>1</sup> Provost and the KLG may have violated ethical rules barring the solicitation of Plaintiffs. Rule 7.1 of the of the Mississippi Rules of Professional Conduct (MRPC), entitled "Communications Concerning a Lawyer Services," which "precludes a lawyer from representing that he or she or his or her law firm is 'the best,' 'one of the best,' or 'one of the most experienced' in a particular field of law."

<sup>2</sup> Provost's solicitation of Plaintiffs may also have violated MRPC 7.3(b), which states that "a lawyer shall not solicit professional employment from a prospective client by written or recorded

14. The joint conduct of the KLG and Provost could be viewed as designed to capitalize on the Plaintiffs' vulnerability resulting from the KLG's disqualification, and to prevent Plaintiffs from exercising fully informed and independent decisions regarding whether and / or how they wished to proceed with their individual claims.

15. Less than a month later, Provost made headlines for "pick[ing] up ex-Scruggs clients." (Ex. D, Sun Herald Article.) This conduct could be viewed as participating in a scheme to become the KLG's handpicked successor, and Provost, by its conduct, may have shouldered itself with the KLG's ethical violations and perhaps has "associated" itself with the KLG. As was noted in the *McIntosh* Court's May 16, 2008 Order, although some of the association may have occurred after the KLG's improper conduct, Provost "[was] aware or should have known of the serious allegations made against the Scruggs Katrina Group." [*McIntosh* Dkt. 1193.]

16. Questions remain about the precise contours of Provost's affiliation with the KLG. There may exist additional facts relating to whether Provost qualifies as "associated" counsel. For example, Provost states on its website that "Provost & Umphrey has represented hurricane victims in the past resulting from both Hurricane Katrina and Rita." (Ex. C.) It is unclear whether Provost has associated with the SKG / KLG in relation to these Katrina litigations.

17. Further, both the Taylor-Martino and Lumpkin & Reeves firms stated in their motions for clarification that they participated in meetings and telephone conferences, interviewed witnesses and attended depositions in KLG Katrina litigations. The parties and the Court were made aware of virtually all of these associations only because the Taylor-Martino and Lumpkin & Reeves firms happened to disclose them in their motions for clarification. Provost has made no such disclosures or denials. Under such circumstances, Provost's appearance in this cases generates more questions than answers, and, as observed by the Court with respect to the Lumpkin firm, "what is omitted" from Provost's Notice of Appearance and

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communication or by in person or telephone contact even when not otherwise prohibited by paragraph A, if: (2) The solicitation involves coercion, duress or harassment."

Designation for Lead Counsel is perhaps “more telling” than the connections that have come to light thus far. [Dkt. 1193, at 2.] For example, it is not clear whether Provost attorneys participated in any meetings or telephone conferences with the SKG / KLG regarding Katrina cases; whether they interviewed potential witnesses; whether they attended any depositions; or whether they have otherwise been involved in any way in the SKG’s / KLG’s investigation or prosecution of Katrina claims.

18. Because there is much ambiguity surrounding Provost’s association with the KLG, Renfroe respectfully requests that the Court consider whether the Provost firm is an “associated firm” within the meaning of the Court’s disqualification Orders, and whether the Provost firm should therefore be disqualified. [Dkt. 354; *McIntosh* Dkts. 1172, 1183, 1193.]

### **CONCLUSION**

Based on the foregoing, Renfroe respectfully requests that, pursuant to the Court’s Orders of disqualification, the Court consider whether the Provost & Umphrey firm is “associated counsel” within the meaning of the Court’s Orders.

THIS, the 20<sup>th</sup> day of May, 2008.

Respectfully submitted,

**E. A. RENFROE & COMPANY, INC.,  
Defendant**

BY: s/ Erik T. Koons

Erik T. Koons  
One of its Attorneys

**OF COUNSEL:**

H. Hunter Twiford, III (MSB 8162)  
David A. Norris (MSB 100616)  
Stephen F. Schelver (MSB 101889)  
McGLINCHEY STAFFORD PLLC  
Suite 1100, City Centre South  
200 South Lamar Street (39201)  
Post Office Box 22949

Jackson, Mississippi 39225-2949  
Telephone: (601) 960-8400  
Facsimile: (601) 960-8431  
Email address: htwiford@mcglinchey.com;  
dnorris@mcglinchey.com; sschelver@mcglinchey.com

and

Christine Lipsey (pro hac vice)  
McGLINCHEY STAFFORD PLLC  
14th Floor, One American Place  
Baton Rouge, LA 70825  
Telephone: (225) 383-9000  
Facsimile: (225) 343-3076  
Email address: clipsey@mcglinchey.com

and

James F. Hibey (pro hac vice)  
Joseph Walker (pro hac vice)  
Catherine Jean Serafin (pro hac vice)  
Erik T. Koons (pro hac vice)  
HOWREY LLP  
1299 Pennsylvania Avenue, N. W.  
Washington, DC 20004-2402  
Telephone: (202) 783-0800  
Facsimile: (202) 383-6610  
Email address: hibeyj@howrey.com;  
walkerj@howrey.com; serafinc@howrey.com  
koonse@howrey.com

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

**Harry R. Allen** - hallen@achalaw.com; ascafide@achalaw.com;  
sblackledge@achalaw.com

**Don John W. Barrett** - [dbarrett@barrettlawoffice.com](mailto:dbarrett@barrettlawoffice.com);  
[lmims@barrettlawoffice.com](mailto:lmims@barrettlawoffice.com)

**Stephen W. Dummer**- sdummer@achalaw.com

**Guy Gladstone Fisher**- kbriggs@provostumphrey.com

**Mary E. McAlister** – mcalister@davidnutt.com; paralegals@davidnut.com

**Margaret Puckett McArthur** - mmcarthur@achalaw.com

**Michael Clark McCabe , Jr.** - mmccabe@achalaw.com; [kmabou@achalaw.com](mailto:kmabou@achalaw.com)

**Sherrie L. Moore**- smoore@achalaw.com

**Tina L. Nicholson**- tnicholson@merlinlawgroup.com

**David Neil McCarty** - dmccarty@davidnutt.com; paralegals@davidnutt.com

**Sherrie L. Moore** - smoore@achalaw.com; vkelly@achalaw.com;  
ascafide@achalaw.com; sblackledge@achalaw.com;  
mthomassie@achalaw.com; cnickoles@achalaw.com

**Hal S. Spragins** - sspragins@hickmanlaw.com; lawrencetucker@hickmanlaw.com;  
glewis@hickmanlaw.com; mwheeler@hickmanlaw.com;  
dsmith@hickmanlaw.com; thill@hickmanlaw.com;  
dcoleman@hickmanlaw.com; tparker@hickmanlaw.com;  
vburns@hickmanlaw.com

**Derek A. Wyatt** - dwyatt@davidnutt.com; paralegals@davidnutt.com;  
mcalister@davidnutt.com

and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants:

NONE

THIS, the 20<sup>th</sup> day of May, 2008.

\_\_\_\_\_  
s/ Erik. T. Koons

Erik T. Koons