

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. 1:06cv433-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

**STATE FARM FIRE AND CASUALTY COMPANY'S RESPONSE
IN OPPOSITION TO "MOTION FOR LEAVE TO EXPLORE
REPRESENTATION OF RELATORS IN UNITED STATES OF AMERICA EX REL.
CORI RIGSBY AND KERRI RIGSBY V. STATE FARM INS. CO., ET AL."**

Defendant/Counter-Plaintiff State Farm Fire and Casualty Company ("State Farm") respectfully submits this Response in Opposition to the "Motion for Leave to Explore Representation of Relators in United States of America *ex rel.* Cori Rigsby and Kerri Rigsby v. State Farm Ins. Co., et al." ("Motion for Leave") [181], in *Dorothy G. Alford v. State Farm Fire and Casualty Company*; in the United States District Court for the Southern District of Mississippi, Southern Division; No. 1:07cv814-LTS-RHW ("*Alford*")¹ and [193-2] in *United States of America ex rel. Cori Rigsby, and Kerri Rigsby, Relators v. State Farm Mutual Insurance Co., et al.*; United States District Court for the Southern District of Mississippi,

¹ As explained in State Farm's Notice (FCA [193]), the Motion for Leave actually seeks relief on behalf of the law firm of Provost Umphrey, not the Party Dorothy Alford – and further relates to the False Claims Action, not the *Alford* suit. Regardless, for reasons stated in the Motion for Leave, Provost Umphrey filed it in *Alford*, as opposed to in the False Claims Action. State Farm filed its Notice (FCA [193]), in part to place the Motion for Leave into the record in the False Claims Action – the actual suit to which it relates. State Farm submits this document both in the False Claims Action and in *Alford*, so as to ensure continuity of the record.

Southern Division; No. 1:06cv433-LTS-RHW (“False Claims Action” or FCA). State Farm would show:

1. To be clear, State Farm is not seeking to prevent the Rigsbys from retaining *appropriate* new counsel in the False Claims Action. In fact, upon receipt of Provost Umphrey’s Motion for Leave, State Farm promptly informed the Court that it did not oppose extending the Rigsbys’ deadline to retain new counsel. (FCA Notice [193].)

2. Nonetheless, while State Farm wants an expeditious and final end to the False Claims Action, it must subordinate that priority when faced with motions that seek to undermine the important protections this Court provided in its *McIntosh* disqualification order. Provost Umphrey’s Motion for Leave is just such a motion.

3. In summary, Provost Umphrey’s Motion for Leave should be denied for two central reasons:

- **Subversion of the *McIntosh* Order.** Allowing Provost Umphrey to consult with – and potentially represent – the Rigsbys in the False Claims Action would enable Counsel to subvert the careful wall constructed by this Court’s disqualification order in *McIntosh*.
- **Creation of Nonwaivable and Irreconcilable Conflicts 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, Provost Umphrey has a nonwaivable conflict of interest that should preclude it from representing the Rigsbys and State Farm policyholder litigation clients simultaneously.

4. Finally, and only because Provost Umphrey has interjected the issue – and therefore must believe it relevant – State Farm responds to the suggestion that the Rigsbys were unaware of the wrongful nature of their and their former counsel’s actions. As demonstrated below in Section III, both testimony and judicial findings contradict Provost Umphrey’s suggestion of the Rigsbys’ innocence.

5. For the stated purpose of exploring potential representation of the Rigsbys, Provost Umphrey seeks permission to “meet with the Rigsby Sisters to discuss their claims and expectations; review the existing litigation file and the status of the litigation with their former counsel and the status of court filings.” (*Alford* [181] & FCA [193-2] at ¶ 6.) However, in its *McIntosh* Disqualification Order, this Court did more than merely disqualify the SKG and its associated counsel. The Court also ordered “[t]hat Cori and Kerri Rigsby are hereby **DISQUALIFIED** as witnesses in any actions now pending on this Court’s docket against State Farm or Renfroe in which the Scruggs Katrina Group or the Katrina Litigation Group has represented the plaintiffs” (*McIntosh*² [1173] at 1.)

6. The Court further ordered “[t]hat any documents supplied by the Rigsby sisters to the Scruggs Katrina Group or the Katrina Litigation Group or its associates shall be **EXCLUDED** from evidence unless the plaintiffs can show that the documents were obtained through ordinary methods of discovery.” (*Id.*) The Court did so “to assure that the judicial process in these cases could proceed free of the effect of Scruggs’s misconduct.” (FCA [177] at 3.)

7. Allowing Provost Umphrey access to witnesses, documents and information tainted by Scruggs and the Rigsbys’ misconduct would effectively permit an end-run around this Court’s *McIntosh* Order, a conclusion apparent from Provost Umphrey’s strenuous and careful denials. For example, in seeking to represent these former clients of SKG, Provost Umphrey takes pains to contend that its attorneys have “never interviewed any witnesses for or with KLG, never attended any depositions for or with KLG, and never had any contact with KLG

² *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire & Casualty Co., et al.*; in the United States District Court for the Southern District of Mississippi, Southern Division, no. 1:06cv1080-LTS-RHW.

whatsoever about anything related to Katrina litigation.”³ Yet having implicitly acknowledged that such would be problematic, Provost Umphrey seeks permission to intentionally immerse himself in such taint by interviewing – (and potentially representing) – the very witnesses whose conduct led to the *McIntosh* disqualification order in the first place.

8. Regardless of Provost Umphrey’s intentions, its attorneys would inevitably employ knowledge gained from their interviews of the Rigsbys or their review of the files of the Rigsbys’ former qui tam counsel in policyholder litigation where they represent former SKG clients. In fact, because the use of such information would likely not be explicit, it would be nearly impossible to police and prevent.

9. By its prior orders in *McIntosh* and other actions, this Court has erected a wall to shield the policyholder litigation from the taint of the Rigsbys’ and their former attorneys’ misconduct. As Judge Acker has observed, “Scruggs was the alter ego of the Rigsbys, and the Rigsbys were the alter egos of Scruggs. They could not have been any more closely ‘identified’ without obtaining a marriage license. They were in bed together.”⁴ Permitting Provost Umphrey – who is current counsel for many State Farm policyholders – to associate with the Rigsbys and represent them in the False Claims Action would have the effect of constructively letting Scruggs and his associated counsel back in. The ethical wall so carefully constructed by this Court would be compromised.

10. Representation of the Rigsbys in the False Claims Action would require Provost Umphrey to advance positions and legal theories that are necessarily inconsistent with positions

³ See (*Alford* [164] at 15.)

⁴ ([338] in *E.A. Renfroe & Co., Inc. v. Cori Rigsby Moran and Kerri Rigsby*; in the United States District Court for the Northern District of Alabama, Southern Division, no. 2:06cv1752-WMA.)

taken by their current clients in policyholder litigation – in fact, those positions would be directly adverse to those of their current policyholder litigation clients. The fundamental premise of the Rigsbys’ False Claims Action is that State Farm “made a corporate decision to misdirect and misallocate claims from those of hurricane coverage (which a company would be required to pay. . .) to flood claims that could be submitted and paid directly from the United States Treasury.” (FCA [16] at ¶ 56.) The Rigsbys further allege that State Farm directed engineers “to show flood damage whenever and wherever there was any amount of water damage” (*id.* at ¶ 59), and told adjusters to “‘hit limits’ when adjusting flood claims” so as to shift responsibility to the government for payment of the claim. (*Id.* at ¶ 60.)

11. As demonstrated in State Farm’s False Claims Action Motion to Dismiss (FCA [92] at 15-18), the allegations of the Rigsbys’ Amended Complaint lack any factual basis. Regardless, any allegedly false claim would have necessarily been made on behalf of a policyholder – and it was a policyholder who accepted and retained the benefits of any payment under the National Flood Insurance Program (“NFIP”). In addition, some courts have held that cashing a government check with knowledge of lack of entitlement to the funds can itself constitute submission of a false claim to the government. In representing the Rigsbys, therefore, Provost Umphrey would be placed in the position of arguing that their policyholder clients who have accepted NFIP payments have wrongfully retained government funds.⁵

12. This conflict is illustrated by the McIntosh claim, one of “two specific instances” where the Rigsbys allege that “State Farm has engaged in reallocation of claims from wind

⁵ Provost Umphrey may challenge State Farm’s standing to raise any issues of conflict. Initially, the Fifth Circuit has held that parties other than aggrieved clients have standing to raise conflict issues because attorneys are authorized to report any ethical violations. Further, the Fifth Circuit has recognized that standing was not limited to the attorney’s client where, as here, the conflict was open and obvious.

damage to flood damage.” (FCA [16] at ¶ 65.) The Rigsbys claim that State Farm rejected an initial engineering report on the property that found wind damage and commissioned a second report that found flood damage. (*Id.* at ¶¶ 65-82.)

13. State Farm policyholders stand in a very different position than the Rigsbys. Indeed, this Court has recognized that a policyholder cannot retain the benefits of flood insurance payments and, at the same time, allege that such payments were made for wind damage. Accordingly, this Court has held that the McIntosh “plaintiffs’ receipt of flood insurance benefits constitutes a judicial admission that flood damage occurred and precludes the plaintiffs’ denying that at least the amount of damage represented by the flood insurance payment was caused by flooding.” (*McIntosh* [1180] at 3.)

14. The two positions are irreconcilable. It cannot be that, in one case, flood insurance payments were paid for wind damage and, in the other case, the same flood insurance payments were paid for flood damage.

15. Provost Umphrey currently represents policyholders who are similarly situated to the McIntoshes; that is, they accepted NFIP flood payments. For counsel to represent both the Rigsbys and recipients of NFIP funds would violate the fundamental duty of loyalty owed by attorneys to their clients.⁶

16. The duty of loyalty finds expression in several rules governing attorney conduct. For example, Mississippi Rule of Professional Conduct 1.7 prohibits attorneys from representing one client when such representation will be directly adverse to another client, or where the representation of one client may be materially limited by the attorney’s responsibilities to

⁶ In this regard, whether the motive involved is in good or bad faith does not matter, as breach of the duty
(*cont’d*)

another client. The rationales for Rule 1.7 include avoiding the potential for intentional or inadvertent use of one client's confidential information on behalf of another under circumstances making the fact of such use difficult to detect, avoiding situations that may severely try a client's faith in the lawyer's loyalty to the client's interests, and providing the court with "assurance that its own processes [will] not be compromised by less than vigorous advocacy, delayed by a necessary change of counsel in the course of proceeding, or later reversed because a litigant was inadequately represented." See Restatement (Third) of Law Governing Lawyers § 128 cmt. b (2000).

17. Where current clients are involved, the rules governing attorney behavior are even more stringent than those involving successive clients – and do not depend upon the conveyance of client confidences, but merely on the existence of adversity.

18. In addition, a lawyer should not put himself in a position where he cannot zealously advance the interest of one client because of how it might impact another.

19. The law is clear – the issue is not one of degree of adversity. In fact, some conflicts are so fundamental and irreconcilable that they cannot be cured even with client waiver.

As the Comments to Rule 1.7 explain:

In some cases a client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client, and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent.

Id.; see also ABA Model R. Prof'l Conduct 1.7, cmt. 29 (observing that in some cases the risks

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of loyalty does not depend on the attorney's motives.

those adverse interests cannot be reconciled “is so great that multiple representation is plainly impossible”). Indeed, the Supreme Court has held that district courts can reject conflict waivers not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses.

20. Here, it is inconceivable that a client could give knowing and meaningful consent to a representation where their attorneys would be forced to advance allegations that could implicate them in an alleged fraud on the government. No disinterested lawyer would conclude that a client should agree to adverse representation under such circumstances. As a result, the irreconcilable and nonwaviable conflict of interest that would result from Provost Umphrey’s representation of the Rigsbys is alone sufficient reason to deny the Motion for Leave.

21. Provost Umphrey’s Motion for Leave is premised in part on Counsel’s conclusion that this Court “did not find that the Rigsby sisters themselves engaged in improper conduct.” (*Alford* [181] at ¶ 4.) As explained below, Counsel overstate this Court’s finding.

22. State Farm is at a loss as to how – even if correct – this interpretation of this Court’s order disqualifying the Rigsbys’ former counsel is relevant to the Motion for Leave. Regardless, because Provost Umphrey believes it somehow relevant and because State Farm believes the Rigsbys’ awareness of – indeed, personal complicity in – their and their former counsel’s misconduct is beyond legitimate dispute, State Farm will briefly address this point so as not to leave it unchallenged in the record.

23. In its order disqualifying the Rigsbys’ former counsel, the Court did state that the Rigsbys, as non-lawyers, may not have been aware of the ethical implications of the payments from Scruggs. (*FCA* [177] at 5.) However, it did not hold that they had engaged in no improper

conduct. In fact, in *McIntosh*, while the Court found that the improper payments to the Rigsbys were sufficient, in-and-of-themselves, to warrant disqualification, it also noted that “the other ethical misconduct alleged by State Farm and Renfroe are substantial.” (*McIntosh* [1172] at 2.)

24. Further, in a separate order, this Court noted:

At least by February 2006, the Rigsbys began copying and/or taking State Farm documents and giving them to Richard Scruggs. While still employed by Renfroe/State Farm, the Rigsbys continued to secretly provide State Farm documents to Scruggs. This conduct continued until June 2006, culminating in what has become known as the “data dump” weekend in early June when the Rigsbys and some of their friends copied thousands of confidential State Farm documents which they also turned over to Scruggs.”

(*McIntosh* [911] at 2.);⁷ *see also* (*McIntosh* [1213] (Walker, M.J.) at 4) (“This Court will not enter a protective order to preclude State Farm from discovering the State Farm documents Rigsby[s] stole”).

25. The fact that the Rigsbys were not unwitting participants in their attorneys’ misconduct is made even more patent by recent testimony from two of their E.A. Renfroe former co-workers: Dana Lee and Tammy Hardison. Ms. Lee and Ms. Hardison worked for E.A. Renfroe as, respectively, an adjustor’s assistant and catastrophe adjustor. (Lee Dp. at 9, 11, ex. A to Resp.; Hardison Dp. at 7, ex. B to Resp.) In addition to working with the Rigsbys at Renfroe, they lived near Kerri Rigsby and socialized with the Rigsbys. (Lee Dp. at 19, 37; Hardison Dp. at 10, 16, 26.) Following Hurricane Katrina, they were deployed to Mississippi to work on Katrina claims, at the same office as the Rigsbys. (Lee Dp. at 35-37, Hardison Dp. at 26.)

⁷ The Rigsbys have admitted that they stole thousands of State Farm’s confidential documents – guided in part by a list of Scruggs’s clients – and turned them over to Scruggs for use in his civil litigation against State Farm. (Deposition of Cori Rigsby in *E.A. Renfroe & Co., Inc. v. Cori Rigsby Moran and Kerri Rigsby*; in the United States District Court for the Northern District of Alabama, Southern Division, no. 2:06cv1752-WMA (January 14, 2008) at (cont’d)

26. The testimony of Ms. Lee and Ms. Hardison reveals not only the falsity of the Rigsbys' allegations in the False Claims Action,⁸ but also the improper conduct in which the Rigsbys have engaged for the purpose of bolstering their unsupported allegations. For example, the Rigsbys have accused State Farm of improperly destroying documents. (FCA [16] at ¶¶ 78-80.) While they admit that they have no actual evidence of documents being destroyed (*id.* at ¶ 78), they allege that the first McIntosh engineering report, the one with a sticky note, "never became a part of the permanent record of the McIntosh claim." (*Id.* ¶ 69.) In their evidentiary disclosure, the Rigsbys repeat their unsubstantiated allegation that State Farm shredded documents, and give as an example, the McIntosh engineering report with the sticky note. (FCA [103-15] at 8-10.)

27. Indeed, Kerri Rigsby has testified that she "believes" that the original McIntosh engineering report was "shredded" (while simultaneously admitting she has no knowledge that it was), and that she only took a copy of that report, not the original.

Q. Okay. When you say you don't know, does that mean you can't name one document specifically that you would assert was shredded that relates to any of the clients of Mr. Scruggs, that you're aware of, represents?

A. The only – the only document that I believe was shredded that I know of – and I know we have two copies here, but I think when they went back in this file, the McIntosh file, the original report was gone. I don't know if it was shredded or not. Other than that, no.

Q. Okay. Other than your belief that you don't know to be true?

A. It was gone. It may not have been shredded.

Q. And your testimony under oath is you didn't take it, right?

A. I took a copy of it. I made a copy and put it back.

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91, FCA [96-16] at 2.)

⁸ When Ms. Lee and Ms. Hardison saw the "20/20" report with the Rigsbys, they both found their allegations ridiculous and made-up. Based upon Ms. Lee's and Ms. Hardison's own experiences adjusting Katrina claims for State Farm, there was no truth to the allegations. (Lee Dp. at 40-41; Hardison Dp. at 29-30.)

(Ex. C to Resp., K. Rigsby Dp., in *McIntosh*, 5/01/07, at 430.)

28. Yet Ms. Lee's recent testimony reveals that the real reason the original McIntosh engineering report could not be found in the claim file is because Kerri Rigby took it – a fact the Rigsbys obviously know but have chosen to conceal to date. Sometime in January, 2006, when Ms. Lee was at Kerri Rigsby's house, Ms. Rigsby showed her a claim file with an engineering report that had a yellow sticky note on it. (Lee Dp. at 52-54.) Ms. Lee's testimony makes clear that this was the original report and not a copy made by Ms. Rigsby:

Q. Okay. And what, if anything, did she show you, and what, if anything, did she say?

A. She showed me a claim file. And I believe it was an engineer report that was in the file that had a sticky note on it that said something to the effect of, you know, put in file, do not – or do not discuss, put in file, do not pay. Or something like that.

Q. Okay. And why was she showing that? Did she represent to you why she was showing it to you?

A. She didn't really say. She just said, well, what do you think about that? And I said, not much. I mean, what do you – what is it? You know. And she said, well, what do you think about the note? And I looked – flipped it over and looked at the underside and I said, well, I don't know who wrote it. They didn't sign it. There is no initials, you know. I said, but I don't think that's unusual for a sticky note like that to be in the file.

....

Q. Yeah. And you say you lifted up the sticky note. So it was not a Xerox copy?

A. Huh-uh (negative response).

Q. I mean, it was the original sticky?

A. It was the note, yeah.

Q. Okay. And you lifted it up to look for –

A. I was just seeing if there was anything on the other side.

Q. Okay. And do you recall the color of the sticky note?

A. It was yellow.

Q. Yeah. Okay. And you say it was on top of an engineering report?

A. I believe so, yeah.

(Lee Dp. at 52-55.)

29. Ms. Lee's and Ms. Hardison's testimony also makes clear that the Rigsbys' association with Dickie Scruggs and the unlawful activities they engaged in on his behalf were not motivated by altruistic goals, but rather a desire for money and fame. Sometime in March 2006, the Rigsbys told Ms. Lee that they were going to work for Dickie Scruggs by providing him with documents about his clients. (Lee Dp. at 59-60.) They tried to convince Ms. Lee and Ms. Hardison to assist them, saying: "You'll be heroes. We are going to get a book deal. We're going to make a movie. . . . We're going to be famous." (Lee Dp. at 63.)

30. In fact, Ms. Lee and Ms. Hardison testified that they were at Cori Rigsby's house in December 2005 and observed the Rigsbys watching the movie "The Insider," a film based upon Scruggs' exploits in the tobacco litigation. While watching "The Insider," the Rigsbys were discussing who was going to play each of them in their future movie. (Lee Dp. at 71-72; Hardison Dp. at 40-41.)

31. It is simply inconceivable that the Rigsbys were unaware that their activities were wrongful and unlawful. Indeed, it now appears that Cori Rigsby was initially a reluctant participant. (Lee Dp. at 59-60; Hardison Dp. at 36-37.) The fact that she had to be convinced by her sister and mother to join forces with Scruggs evidences her awareness that what she was being asked to do was improper.⁹

⁹ In contrast, Kerri and her mother appear to have immediately enjoyed the "cloak and dagger" aspect of Scruggs' underhanded methods. (Hardison Dp. at 43-44.) For example, Ms. Lee and Ms. Hardison saw Kerri Rigsby again in May, 2006, when they traveled to Pensacola for Memorial Day weekend. (Lee Dp. at 77-78.) Ms. Rigsby told Ms. Lee that she could only stay for a couple of hours because she had received a call from Scruggs and had to take her computer to a hacker for Dickie. (Lee Dp. at 79; Hardison Dp. at 46-47.)

WHEREFORE, PREMISES CONSIDERED, for all the foregoing reasons, State Farm respectfully submits that Provost Umphrey's Motion for Leave should be denied.

This the 28th day of July, 2008.

Respectfully submitted,

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PRO HAC VICE

CERTIFICATE OF SERVICE

I, E. Barney Robinson III, one of the attorneys for State Farm Fire and Casualty Company, 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:

Cori Rigsby
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THIS the 28th day of July, 2008.

s/ E. Barney Robinson III (MSB #09432)
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Jackson 3139705v.1