

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

THOMAS C. and PAMELA McINTOSH

PLAINTIFFS

V.

NO. 1:06cv1080-LTS-RHW

STATE FARM FIRE & CASUALTY COMPANY,
FORENSIC ANALYSIS & ENGINEERING CORPORATION,
and E. A. RENFROE & COMPANY, INC. and
DOES 1 THROUGH 10

DEFENDANTS

**MOTION OF NON-PARTIES RICHARD F. SCRUGGS AND D. ZACHARY
SCRUGGS FOR STAY OF MAGISTRATE JUDGE'S ORDER [Docket No. 1194]
AND REQUEST FOR EXPEDITED CONSIDERATION**

Non-parties Richard F. Scruggs and D. Zachary Scruggs (“the Scruggses”) request this Court to stay those portions of its Order of May 15, 2008 [Docket No. 1194] (“the Order”) requiring the Scruggses to produce certain documents by May 30, 2008. Because of the short time frame involved, the Scruggses request expedited consideration of this Motion. In support of their Motion, the Scruggses state as follows:

1. In its Order, the Court noted that State Farm had informed the Court as to the remaining discovery it seeks to obtain from the Scruggses. Order, at 8-9. Apparently in response to a request by the Court, State Farm sent a letter to the Court dated May 9, 2008 detailing the remaining discovery it wished to have from the Scruggses (attached as Exhibit “A”).

2. It appears that the Scruggses’ new counsel, who entered appearances in late March, were inadvertently omitted from a distribution list in the office of State Farm’s counsel (*See* e-mail exchange between Mullen, Watkins, attached as Exhibit “B”), and the Scruggses did not receive a copy of the letter until May 27, 2008. Because they were not aware of the communications between

counsel for State Farm and the Court, the Scruggses were not aware that the Court would consider any further briefing or argument as to the relevance of the document requests.

3. Because they did not have an opportunity to present the Court with updated arguments as to the relevance of State Farm's remaining requests and because the Court did not consider certain of the Scruggses' arguments, the Scruggses are today filing an Objection to the Order.

4. Without a stay, the Scruggses may be required to comply with the Order before the Court hears and resolves their Objection.

5. The Scruggses will be prejudiced and unduly burdened by having to complete an exhaustive document search while the Court considers their Objection.

6. The Scruggses will be severely prejudiced if they are forced to produce any responsive documents while their Objection is being considered because their constitutional privileges may be waived upon such production.

7. State Farm will suffer no prejudice if the Scruggses are granted an additional fifteen days from the date of the Court's ruling on their Objection to produce documents, if such production is still required by the Court.

WHEREFORE, PREMISES CONSIDERED, non-parties Richard F. Scruggs and D. Zachary Scruggs respectfully request this Court to stay the effect of its May 15 Order to the extent that it compels the production of certain documents by the Scruggses by May 30, 2008, pending resolution of the Scruggses' Objection by the District Judge. The Scruggses seek such other relief as the Court deems appropriate.

THIS, the 28th day of May, 2008.

Respectfully submitted,

RICHARD F. SCRUGGS AND ZACHARY SCRUGGS

Paul B. Watkins, Jr.

J. CAL MAYO, JR. (MB NO. 8492)

POPE S. MALLETTE (MB NO. 9836)

PAUL B. WATKINS, JR. (MB NO. 102348)

ATTORNEYS FOR RICHARD F. SCRUGGS

AND ZACHARY SCRUGGS

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, Paul B. Watkins, Jr., one of the attorneys for non-parties Richard F. Scruggs and D. Zachary Scruggs, hereby certify that I have this date electronically filed the foregoing document with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

THIS, the 28th day of May, 2008.

Paul B. Watkins, Jr.

PAUL B. WATKINS, JR.

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May 9, 2008

The Honorable Robert H. Walker
United States Magistrate Judge for the
Southern District of Mississippi
2012 15th Street, Suite 672
Gulfport, Mississippi 39501

Re: Civ. No. 1:06-cv-01080-LTS-RHW
McIntosh, et al. v. State Farm Fire & Casualty Company,
et al.

Dear Judge Walker:

In follow-up to this Court's request of May 1, 2008, regarding outstanding discovery matters, and on behalf of State Farm Fire & Casualty Company, below is a pared-down list of outstanding matters in pending discovery motions concerning the Scruggses and the Rigsbys that State Farm believes still require decision from the Court.

For purposes of context, in general, these items of discovery are crucial because Plaintiffs' bad faith claim for punitive and extra-contractual damages remains pending. As the Court observed in its December 11, 2007 order (Doc. 911), the "original engineering report on the McIntosh property has become a critical point in this litigation, as it appears to be the linchpin of Plaintiffs' bad faith claims." *Id.* at 2. The Court further noted that "one might reasonably infer that Scruggs was the source of [Joe] Rhee's information [*i.e.*, the October 12, 2005 engineer report with the sticky note] regarding the McIntosh claim," *id.* at 3, and that "Defendants

understandably desire to question Richard and/or Zach Scruggs about the report . . . the circumstances surrounding the receipt of such documents and the chain of custody of the documents after the Scruggses received them. . . . The Court is of the opinion that Defendants should be allowed to pursue this information from the Scruggses.” *Id.* at 4. The December 11 order was subsequently affirmed by Judge Senter in his January 9, 2007 Order (Doc. 988), noting “[t]his is why the Scruggses’ depositions are appropriate – to ferret through this forest of relationships, especially in terms of the timing of the various conduct and activity.” *Id.* at 2.

With respect to Richard and Zach Scruggs and Cori and Kerri Rigsby, we need decisions issued on the pending motions concerning the following discovery, as these documents and testimony continue to be crucial to State Farm’s defense of Plaintiffs’ bad faith claims.

Motions re: Written Discovery from Richard Scruggs and Zachary Scruggs [Docs. 1075, 1051, 1072, 1083, 1086, 1110, 1111, and any other related papers.]

As the Court is aware, the Scruggses have not complied in any manner with State Farm’s outstanding subpoenas *duces tecum*. Given the remaining issues in the case, State Farm requests that the Court compel the response to the following subpoena requests:

- 1) Scruggs Subpoenas Request No. 1: The original October 12, 2005 engineer report purported to be prepared by Forensic Analysis & Engineering Company regarding the McIntosh property at 2558 S. Shore Drive, Biloxi, Mississippi.
- 2) Scruggs Subpoenas Request No. 2: The original sticky note on the October 12, 2005 engineer report
- 3) Scruggs Subpoenas Request No. 5: All documents concerning the American Broadcast Company, including without limitation ABC News, 20/20, and Joe Rhee, pertaining to State Farm and Hurricane Katrina.
- 4) Scruggs Subpoenas Request No. 9: All documents concerning any communications between “you” and Brian Ford, including without limitation any proposed or actual employment, reimbursement, indemnity, and/or compensation.
- 5) Scruggs Subpoenas Request No. 10: All documents concerning communications between “you” and any State Farm employee who worked on any Hurricane Katrina claim.

- 6) Scruggs Subpoenas Request No. 11: All documents concerning any communications between “you” and any person affiliated with or employed by any media outlet pertaining to or arising out of Hurricane Katrina, including without limitation any documents provided by you.
- 7) Scruggs Subpoenas Request No. 17: All documents there were represented to “you” to have been taken from, removed from, copied from, forwarded from, or downloaded from, directly or indirectly, any State Farm office or State Farm computer system, including, without limitation emails, pertaining to or arising out of Hurricane Katrina.
- 8) Scruggs Subpoenas Request No. 23: All documents picked up or otherwise retrieved by Richard Scruggs from a highly placed source at State Farm on a trip to Bloomington, Illinois, which Richard Scruggs referenced in a March 30, 2006 interview.
- 9) Scruggs Subpoenas Request No. 25: All documents concerning any financial interest that “you” have in this matter or any other State Farm-related Hurricane Katrina matter following you withdrawal as counsel of record.

Motions re: Deposition Testimony of Cori Rigsby and Kerri Rigsby [Docs. 945, 946, 992, 1085, and 115, and any other related papers.]

State Farm’s motions to compel further testimony from Cori and Kerri Rigsby regarding their meetings with Richard Scruggs that were held in the presence of third parties also remain outstanding. As stated in State Farm’s Motion to Compel Cori and Kerri Rigsby to Answer Deposition Questions (Doc. 945) and supporting papers (Docs. 946 at 10-11, 992 at 6-8, 1085 and 1115), the Rigsbys have repeatedly refused to answer questions regarding their meetings with the Scruggses, as well as issues surrounding the chain-of-custody concerning the documents they admittedly stole from State Farm, despite the fact that these meetings were not privileged and were admittedly held in the presence of third-parties, *i.e.*, Dr. and Mrs. Lobrano, thus effecting a waiver of any privilege that might otherwise have attached. Discovery of these non-privileged meetings and related matters is reasonably calculated to lead to discovery of admissible evidence and State Farm is still in need of this testimony to properly support their defenses to Plaintiffs’ bad faith claims.

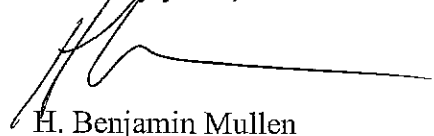
Motions re: Written Discovery from Cori Rigsby and Kerri Rigsby [Docs. 969, 970, 1050, 1147, 1148, 1156, and any other related papers.]

The Rigsbys have not produced crucial documents despite this Court's order to do so. In particular, State Farm seeks the production of the Rigsbys' calendars and their "journal of questionable happenings," that came to light in the *qui tam* action as well as in deposition testimony of Cori Rigsby (*see* Docs. 969, 970 at 2, 5-8, 1050). State Farm's motion to compel documents from the Rigsbys to the extent it seeks these documents are reasonably calculated to lead to the discovery of admissible evidence that will further support State Farm's defense against the bad faith claims.

Finally, State Farm requests that the Cori Rigsby's Motion to Permanently Delete All Copies of the Lists of Files Recovered From Cori Rigsby's Computer (Docs. 1147, 1148) be denied outright or denied as moot. While these lists were originally distributed to counsel on or about February 12, 2008, the Court indicated that that they not be further distributed among counsel nor used by them, pending the filing and decision on Rigsby's motion. These lists currently represent the only information that has ever been recovered from Cori Rigsby's computer and may contain vital clues to discoverable material and information that is reasonably calculated to lead to the discovery of admissible evidence. State Farm requests that the Court deny the motion and permit the use of these materials immediately.

With kindest regards, I remain,

Sincerely yours,

A handwritten signature in black ink, appearing to read "H. Benjamin Mullen", with a long horizontal flourish extending to the right.

H. Benjamin Mullen

For the Firm

cc: All Counsel of Record

Paul Watkins

From: Ben Mullen [ben@bnsch.com]
Sent: Tuesday, May 27, 2008 12:10 PM
To: Paul Watkins
Cc: dwebb@webbsanders.com; RRM@webbsanders.com; Pope Mallette; Cal Mayo; John Banahan; Layna Lassiter
Subject: RE: [SPAM - Keyword Check] - McIntosh v. State Farm -- Document Requests - Found word(s) farm in the subject
Importance: High

Yes, I see now. I've got you on my list.

You are correct, there were no other requests from the Court. I don't see anything else you have missed correspondence-wise as things have been rather slow since you entered your appearance. However, I'll be sure you are cc'd on any future correspondence with the Court.

Ben

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From: Paul Watkins [mailto:pwatkins@mayomallette.com]
Sent: Tuesday, May 27, 2008 12:05 PM
To: Ben Mullen
Cc: dwebb@webbsanders.com; RRM@webbsanders.com; Pope Mallette; Cal Mayo; John Banahan
Subject: RE: [SPAM - Keyword Check] - McIntosh v. State Farm -- Document Requests - Found word(s) farm in the subject

Ben

Pope Mallette, Cal Mayo, and I represent Dick and Zach Scruggs. We entered our appearances on March 27 (Docket 1168-1170). Since then, we've received correspondence from other counsel, for example, Webb Sanders.

I understand that attendance at the status conference (held on April 21, it looks like) was limited by the Court to counsel for Plaintiffs, State Farm, and Renfro. I didn't see anything about the document requests on the docket, but wanted to confirm that the Court didn't send any further request in writing.

Please add us to your correspondence list for the future and provide us with copies of anything we've missed from your office.

Thanks.

Paul

From: Ben Mullen [mailto:ben@bnsch.com]
Sent: Tuesday, May 27, 2008 11:35 AM

Exhibit "B"

5/28/2008

To: Paul Watkins

Cc: dwebb@webbsanders.com; RRM@webbsanders.com; Pope Mallette; Cal Mayo; John Banahan

Subject: RE: [SPAM - Keyword Check] - McIntosh v. State Farm -- Document Requests - Found word(s) farm in the subject

Importance: High

Paul,

Who do you represent? I do not see you or anyone from your office on my list of counsel in McIntosh (although there have been a lot of attorneys flowing in and out of this case). Anyway, I believe Judge Walker requested the letter in a status teleconference between us, plaintiffs' counsel, and Renfro's counsel, if memory serves me correctly. I know we had a meeting with Plaintiffs' counsel on this matter prior to the letter but after that status conference to see if we could narrow the issues in this regard.

Will you be entering an appearance in this case? If so, let me know, and we'll get you on the list. Thanks.

Ben

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From: Paul Watkins [mailto:pwatkins@mayomallette.com]

Sent: Tuesday, May 27, 2008 11:22 AM

To: Ben Mullen

Cc: dwebb@webbsanders.com; RRM@webbsanders.com; Pope Mallette; Cal Mayo; John Banahan

Subject: RE: [SPAM - Keyword Check] - McIntosh v. State Farm -- Document Requests - Found word(s) farm in the subject

Ben

Thanks for your quick response. Nobody in my office received this letter. Do your records show that it was sent to us?

Also, your letter makes reference to the Court's request of May 1. How was the Court's request made? If it was in writing, I would appreciate a copy of that, as well.

Thanks.

Paul

From: Ben Mullen [mailto:ben@bnsch.com]

Sent: Tuesday, May 27, 2008 11:08 AM

To: Paul Watkins; John Banahan

Cc: dwebb@webbsanders.com; RRM@webbsanders.com; Pope Mallette; Cal Mayo

Subject: RE: [SPAM - Keyword Check] - McIntosh v. State Farm -- Document Requests - Found word(s) farm in the subject

Importance: High

Paul,

Please see the attached letter. Thanks.

5/28/2008

Ben

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From: Paul Watkins [mailto:pwatkins@MAYOMALLETTE.com]
Sent: Tuesday, May 27, 2008 10:59 AM
To: John Banahan
Cc: Ben Mullen; dwebb@webbsanders.com; RRM@webbsanders.com; Pope Mallette; Cal Mayo
Subject: [SPAM - Keyword Check] - McIntosh v. State Farm -- Document Requests - Found word(s) farm in the subject

John:

Judge Walker's Order of May 15 notes that State Farm requested the Court to rule upon nine of its original document requests. If that request was made in writing, I would appreciate a copy of State Farm's correspondence with the Court. Thanks in advance for your time.

Paul Watkins

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