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LOUISIANA MISSISSIPPI NEW YORK OHIO TEXAS

May 8, 2008

Honorable Robert H. Walker  
United States Magistrate Judge  
United States District Court  
2012 15th Street, Suite 672  
Gulfport, MS 39501

Re: McIntosh v. State Farm et al.  
United States District Court for the Southern District of Mississippi  
Southern Division  
Case No.: 1:06-CV-01080-LTS-RHW

Our File No. 102007.0002

Dear Judge Walker:

As per the directions of the Court given in an informal telephonic conference among your Honor, Tina Nicholson, Merlin Law Group, new counsel for the plaintiffs in the *McIntosh* litigation, and John Banahan, Bryan Nelson, attorneys for State Farm, there was a face-to-face meeting on May 1, 2008 among Ms. Nicholson for plaintiffs, Mr. Banahan for State Farm, and me for E.A. Renfroe, Inc. at Ms. Nicholson's offices in Gulfport, at which all of the pending motions were discussed in an effort to determine whether any had been mooted, either by the prior orders entered in this case, or by new counsel's trial strategy based on the current posture of the case. While the meeting was both collegial and productive, the plaintiffs' candid assessment that they were going to make every effort to use "Exhibit C" (the "sticky note" engineering report) and the deposition excerpts of Lecky King, Lisa Wachter and Dave Randal at trial, the consensus was that all of the pending motions were therefore still ripe for determination by the Court.

The motions that Renfroe believes still require resolution are listed below:

- **State Farm's December 21, 2007 Motion to Compel Cori and Kerri Rigsby to Answer Deposition Questions [Docket No. 945].** This motion still remains at issue, and from Renfroe's perspective, the continuation of Cori and Kerri Rigsbys' depositions should be strictly limited to matters presented in the motion to compel and issues arising out of documents produced in response to rulings on other pending motions. Because this motion implicates the necessity of additional discovery, a quick resolution would likely be helpful to all parties.

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- **State Farm's January 3, 2008 Motion to Compel Cori and Kerri Rigsby to Produce Documents [Docket No. 969]**, including documents produced after completion of additional examination of Cori Rigsby's computer by forensic expert under the direction of the court's appointed Master, W. Raymond Hunter [Docket No. 1165]. Because this motion also implicates additional discovery, and because the continuing depositions of Cori Rigsby and Kerri Rigsby would likely not be resumed until the production of the requested documents, the completion and release of the ESI from the forensic examination of Ms. Rigsby's computer and the resolution of any resultant discovery issues, a quick resolution would clearly be helpful to all parties.
- **State Farm's January 11, 2008 Motion *in Limine* to Exclude Evidence of Out-of-State Conduct [Docket No. 1008], and Renfroe's Joinder in the Motion [Docket No. 1037]**. Judge Senter's April 23, 2008 *Opinion and Order* [Docket No. 1187] deferred a ruling on this motion, ordering plaintiffs to specify "by filing an appropriate declaration, all evidence (identifying all witnesses, all documents, and any other evidence they may seek to introduce) concerning out-of-state conduct it intends to offer at the trial of this action ... State Farm shall make its specific objections to each item of evidence." The Court will then decide the merits of the objections at or before the pre-trial conference. Technically, there is nothing further for the Court to rule on at this time, but we mention this motion simply to point out this item that will likely come up again at some future stage of the litigation.
- **Renfroe's January 14, 2008 Motion *in Limine* to Exclude Exhibit "C" [Docket No. 1030]**. Judge Senter has made several rulings which relate to Exhibit "C," but there has not been a specific ruling to date on Renfroe's motion *in limine* to exclude the exhibit. Judge Senter, in an April 14, 2008 text-only order [Docket No. 1180], denied without prejudice plaintiffs' motion to use "Exhibit C" [Docket No. 540]. Additionally, in the April 4, 2008 *Order of Disqualification and For the Exclusion of Evidence* [Docket No. 1173], Judge Senter excluded "any documents supplied by the Rigsby sisters to the Scruggs Katrina Group or the Katrina Litigation Group or its associates ... from evidence unless the plaintiffs can show that the documents were obtained through ordinary methods of discovery." As Renfroe's *Motion in Limine to Exclude Exhibit C* demonstrates, plaintiffs cannot show that "Exhibit C" was obtained through ordinary methods of discovery and thus, cannot be used. We believe that a clear ruling from the Court that "Exhibit C" cannot be used, which would be in keeping with the other orders entered by the Court, would be beneficial in allowing the parties to appropriately plan and develop their respective trial strategies.
- **State Farm's January 21, 2008 Motion to Compel Compliance with Scruggs' Subpoenas [Docket No. 1075], and Renfroe's related January 22, 2008 Motion to Clarify/Motion to Amend [Docket No. 1081], and related motions appearing at Docket Nos. 1051 [plaintiffs' motion to quash subpoenae duces tecum issued by State Farm and by Renfroe to Richard and Zach Scruggs], 1072 [Rigsbys' motion to**

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**quash subpoenae duces tecum issued by State Farm and by Renfroe to Richard and Zach Scruggs], 1083 [State Farm's motion to strike Scruggs' notice of compliance], 1086 [State Farm's motion to strike Rigsbys' reply brief related to motion to quash], 1110 State Farm's motion to strike plaintiffs' reply brief related to motion to quash], and 1111 [State Farm's motion to strike Scruggs' opposition to motion to compel compliance with subpoenae].** As we understand the current posture of the case, the plaintiffs want to try to use excerpts from the depositions of King, Wachter and Randal, and therefore, State Farm and Renfroe would have to proceed with the depositions of both Richard and Zach Scruggs. Because these motions would also implicate additional discovery, a quick resolution would likely benefit all parties.

All counsel believe the motions currently pending need to be addressed by the Court. If you have questions relating to Renfroe's position in any of these motions, please do not hesitate to contact me. Thank you for your cooperation and attention.

With best wishes,

Cordially yours,

MCGLINCHEY STAFFORD, PLLC

A handwritten signature in cursive script that reads "H. Hunter Twiford, III". Below the signature, the initials "H.C." are written in a smaller, simpler font.

H. Hunter Twiford, III

HHT/kc

cc: Tina Nicholson  
Chip Merlin  
William Weatherly  
John Banahan  
Ben Mullen  
Dan Webb

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