

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**THOMAS C. and PAMELA McINTOSH**

**PLAINTIFFS**

v.

**CIVIL ACTION NO.: 1:06-cv-1080-LTS-RHW**

**STATE FARM FIRE & CASUALTY COMPANY,  
FORENSIC ANALYSIS & ENGINEERING CORPORATION,  
and E.A. RENFROE & COMPANY, INC.**

**DEFENDANTS**

**DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S  
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO COMPEL CORI AND  
KERRI RIGSBY TO PRODUCE DOCUMENTS**

State Farm Fire and Casualty Company respectfully submits this memorandum in support of its motion to compel Cori and Kerri Rigsby to produce documents. This Court already ordered the subject documents to be produced. In defiance of this Court's Order, the Rigsbys continue to obstruct legitimate discovery.

On April 18, 2007, State Farm served subpoenas for depositions and documents on the Rigsbys. Kerri and Cori Rigsby appeared for depositions on April 30, 2007 and May 1, 2007, but did not produce any documents. On May 30, 2007, State Farm moved to compel the Rigsbys to produce the subpoenaed documents and to respond to questions which they refused to answer. On October 1, 2007, this Court granted State Farm's motion, and ordered the Rigsbys to produce documents and respond to unanswered questions. October 1, 2007 Order (Doc. 563).

On October 15, 2007, State Farm received a letter and accompanying documents from Michael Smith, Esq., of Zuckerman Spaeder, one of the Rigsbys' attorneys, in purported compliance with the Court's October 1 Order. The letter claimed there were no additional documents besides

those accompanying the letter or referenced in an attached log of documents submitted to the Court for *in camera* review, including the “Relators’ Evidentiary Disclosure” for the *qui tam* action. For example, Mr. Smith’s letter, attached hereto as Ex. A, states, “With respect to Request No. 6, Judge Walker ordered the Rigsbys to produce ‘their calendars, diaries, dayplanners, etc., which include references to their employment with Renfroe, State Farm assignments and/or employment with SKG from August 2005 to present.’ ***There are no responsive documents.***” (Emphasis added.) This statement is not true.

As demonstrated below, Cori Rigsby subsequently admitted that she has given her calendars documenting her employment activities with SKG to her attorneys. C. Rigsby Dep. 250:1-17. Further, the *qui tam* Evidentiary Disclosure document recites that the Rigsbys “have kept a journal of questionable happenings at State Farm since the inception of the Katrina event.” Relator’s Evidentiary Disclosure at 29. Yet, the Rigsbys have not produced (1) their calendars or (2) their diaries in the form of the alleged “Journal Of Questionable Happenings.”

Additionally, the letter states, “With respect to Request No. 1, Judge Walker ordered the Rigsbys to produce documents ‘with respect to their respective incomes and sources of income from July 2005 through May 30, 2007.’ ***All responsive documents have been produced.***” (Emphasis added). This statement is not true.

Kerri Rigsby testified that the SKG has paid for all of the Rigsbys’ legal fees and travel expenses concerning this case and other related litigation. Kerri Rigsby testified that the payment their legal fees and other expenses is part of their compensation for their work as “litigation consultants” for the SKG. Moreover, the Rigsbys recently submitted a brief to Judge Acker in the *Renfroe* matter in which they identified a number of written agreements concerning the payment of legal fees for the same lawyers who are representing the Rigsbys before this Court. While those

documents should have been produced in this matter, they were not. The Rigsbys also have failed to produce invoices submitted to SKG, or any cancelled checks or other documents evidencing payment of their (approximate) \$450,000 “consulting” fee.

This is the third motion to compel which State Farm has had to file to obtain compliance with the October 1, 2007 Order. First, on October 23, 2007, State Farm filed a motion to compel the Rigsbys to comply with the October 1 Order. That motion focused on documents referenced as items 5 and 6 in the Rigsbys’ privilege log. (Doc. 703). On December 14, 2007, the Court granted that motion, ordering the Rigsbys to produce the documents and overruling the Rigsbys’ objections based on various “privileges.” (Doc. 919).

Second, despite this Court’s October 1 Order requiring the Rigsbys to respond to deposition questions they refused to answer, at their reconvened depositions, the Rigsbys again refused to respond to deposition questions squarely within the Court’s order. On December 21, 2007, State Farm was forced to file another motion to compel the Rigsbys to respond to deposition questions. (Doc. 946). That motion is pending.

The Rigsbys have continually attempted to block and delay State Farm’s efforts to obtain essential discovery in this case by interposing baseless objections or by failing to meet their Court Ordered obligations and they are continuing to do so. State Farm moves this Court for another order compelling the Rigsbys to produce these documents. The Rigsbys’ willful and contumacious disregard of this Court’s rulings should be stopped.

**THIS COURT HAS ALREADY ORDERED THESE DOCUMENTS TO BE PRODUCED**

On May 30, 2007, State Farm moved this Court to compel the Rigsbys to produce subpoenaed documents. On October 1, 2007, this Court issued an order compelling the Rigsbys to produce the requested documents by October 8, 2007. October 1 Order at 7. Among the documents

this Court specifically ordered the Rigsbys to produce were documents consisting of or relating to: (1) calendars, diaries, dayplanners, etc., which include references to their employment with Renfroe, State Farm and/or SKG from August 2005 to the present; (2) their allegations of wrongdoing by State Farm; (3) their incomes and sources of income; and (4) their communications with the Scrugges and the SKG regarding their employment with the SKG. *Id.* at 4-6.

Pursuant to this Court's Order, the Rigsbys' depositions were reconvened on November 19 and 20, 2007. At their reconvened depositions, the Rigsbys continued to stonewall State Farm's attempts to discover and obtain documents the Rigsbys were ordered to produce. The Court ordered the Rigsbys to produce "their calendars, diaries, dayplanners, etc., which include references to their employment with Renfroe, State Farm assignments, and/or employment with the SKG from August 2005 to present." *Id.* at 5. At her reconvened deposition, Cori Rigsby testified that she previously printed her calendar from her computer and gave a copy of her calendar to her lawyers.

Q: No. I understand that, but to your knowledge, it's [her calendar] never been produced to the parties in this case, has it?

A: I have no – no idea.

**Q: *And that calendar that you printed out and gave to your attorney was taken from your computer and would have included your day-to-day activities pursuant to your \$150,000 a year contract with the Scruggs Katrina Group?***

**A: *It would have some of the items on there, yes.*** It wouldn't have a day-to-day diary-type thing, but more – it would be, yes, more detailed.

Q: But it would give you the ability to estimate for us how many hours you worked in any particular week based on those notes?

A: It could help me, yes.

C. Rigsby Dep. at 250:1-17, attached hereto as Ex. B. No such calendar has been produced.

Further, the recently produced Evidentiary Disclosure document for the *qui tam* action reveals another diary that the Rigsbys have not produced despite the October 1 Order. The Evidentiary Disclosure states, that the Rigsbys “have a great deal of information, and ***have kept a journal*** of questionable happenings at State Farm ***since the inception of the Katrina event.***” Relator’s Evidentiary Disclosure at 29 (emphasis added), attached hereto as Ex. C. Beyond the State Farm requests for their diaries, State Farm’s Requests No. 8 to Cori Rigsbys and No.11 to Kerri Rigsbys also seek documents supporting their allegations of wrongdoing by State Farm. In its October 1 Order, this Court held that “State Farm is entitled to know the basis for the Rigsbys’ charges of wrongdoing, and the Rigsbys are ordered to produce the requested documents within their actual or constructive possession.” October 1 Order at 5. Blatantly ignoring these unambiguous rulings, the Rigsbys’ still have not produced their journal.

Additionally, despite being ordered by this Court to produce documents “with respect to their respective incomes and sources of income from July 2005 through May 30, 2007,” the Rigsbys have not produced records of payments regarding their employment with the SKG. *See* October 1 Order at 4. The Rigsbys have not produced any invoices to SKG for payment, cancelled checks, or other documentary evidence of payment of their consultant fees.

The Rigsbys have admitted that they have not paid for any of their legal fees or expenses associated with their legal representation as witnesses in this case or others, or as defendants in the *Renfro* matter. This is because the payment of these legal fees and expenses were part of their compensation package for their consultation work for SKG, as Kerri Rigsbys freely admitted.

Q: ...Mr. Scruggs is providing legal representation for you in all of the legal affairs coming out of your involvement in these cases, isn’t he?

A: Yes.

Q: And that includes the Zuckerman firm that Mr. Taylor is with here today as

well as a firm in Alabama. Any other firms that he's also paying for you?

A: No, no.

Q: So at least at this point, he's provided three different law firms and three different contracts to represent you?

A: Yes?

Q: And that's not including the other members of the Scruggs Katrina Group who may be involved in your representation?

A: Correct.

\* \* \*

Q: How much has he paid to date for your legal representation?...

A: I do not know.

Q: Your sister said yesterday that you looked at the attorney fee bill that came in the mail.

A: I just started receiving copies of bills, so I haven't seen them up till – I started seeing them about a month ago for the first time, so I did look at one bill.

**Q: *And do you consider the reimbursement of your legal fees to be part of your compensation package at the Scruggs Katrina Group?***

**A: *Yes.***

Q: And did he also pay for your first attorney in this case...Mr. Hawley?...

A: Yes.

K. Rigsby Dep. at 481:6-483:3, attached hereto as Ex. D.

Moreover, on December 21, 2007, the Rigsbys filed a brief in the *Renfroe* action pending in the federal district court in Alabama. There the Rigsbys disclosed the existence of signed letter agreements for the payment of fees for the same lawyers who are representing the Rigsbys here.

The Rigsbys and Mr. Scruggs have confirmed that each understands and has understood since this case began that Mr. Scruggs will satisfy any liability the Rigsbys might have to pay fees, expenses or any other obligations, including satisfaction of a judgment. ***Regarding fees and expenses in this case since October***

**2006, Mr. Scruggs has caused them to be paid to the Rigsbys' attorneys by the Scruggs Law Firm or the Scruggs Katrina Group, or on its behalf by one of its member firms. On September 26, 2007, Mr. Scruggs countersigned a letter agreement dated September 13, 2007, providing the Scruggs Katrina Group's guarantee as to payment of the Rigsbys' fees and expenses in this case owed to Zuckerman Spaeder LLP. By letter dated September 24, 2007, Battle Fleenor Green Winn & Clemmer LLP confirmed to the Rigsbys that their fees and expenses in this case would be paid by the Scruggs Katrina Group and that monthly billing summaries would be sent to Mr. Scruggs. Since September 2007, Mr. Scruggs' law firm, the Scruggs Law Firm, PA, has paid the fees and expenses for both Zuckerman Spaeder LLP and Battle Fleenor Green Winn & Clemmer LLP. The Rigsbys themselves have paid no fees or expenses in connection with this case.**

Defendants' [Rigsbys] Reply to Plaintiff's Response to Defendants' Motion to Disqualify the Court, in *Renfro v. Rigsby*, No. 2:06-cv-1752-WMA (N.D. Ala. Dec. 21, 2007) (Doc. 240), at 1-2 (emphasis added), attached hereto as Ex. E. Though this Court has ordered documents regarding the Rigsbys' compensation to be produced, they have still have not produced the legal bills they have received or documentation concerning the payment of those fees.

Further, this Court ordered the Rigsbys to produce documents regarding their employment relationship with the SKG. "[T]he Rigsbys shall produce the requested documents reflecting their communications with Richard Scruggs, Zach Scruggs and SKG, respectively, from August 2005 to present regarding the Rigsbys' employment with the Scruggs Katrina Group." October 1 Order at 4. Though the Rigsbys submitted a few scraps of paper related to their employment with the SKG, they have still not produced the majority of the ordered documents, even though Kerri Rigsby testified that such documents exist.

Q: Are you paid expenses in addition to the flat salary of \$150,000 a year?

A: Yes.

Q: What kind of expenses?

A: If we had to do any kind of travel.

Q: So if you go visit your attorney in Washington, D.C., that's paid for?

A: Yes.

Q: And you seek reimbursement by sending an invoice?

A: Yes....

**Q: *And you sent an invoice here, to the Scruggs Office in Moss Point?***

**A: *Yes.***

Q: And is there any reason you haven't produced any of those?

\* \* \*

Q: The second item on this Exhibit B., reimbursement of any and all expenses, you've not given us any of the documentation of either charges or the reimbursement for those expenses, have you.

A: ...I don't think so.

Q: Have you given them to your lawyers?

A: I've given my lawyer everything that I have.

**Q: *Right. And you've given all of those expense vouchers...to Charlene here at the Scruggs Group, right?...***

**A: *Yes. Because I've been reimbursed, so someone has them.***

K. Rigsby Dep. at 445:9-446:3; 491:10-492:1. Despite this Court's October 1 Order, the Rigsbys have still not produced any invoices, or bills to SKG, or any cancelled checks, or any other evidence of payment of their salaries, and legal fees and expenses. The Rigsbys have repeatedly refused to comply with this Court's Orders, and once again, State Farm requests that this Court compel the Rigsbys to produce the materials identified above.

**STATE FARM SHOULD BE AWARDED ITS FEES AND COSTS**

Federal Rule of Civil Procedure 37 provides that if a motion to compel "is granted ... the court must after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising the conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney fees." Fed. R. Civ. P.

37(a)(5)(A). The Supreme Court has held that “Rule 37 sanctions must be applied diligently” both to penalize those whose conduct may be deemed to warrant such a sanction” and to serve as a deterrent to stifle temptation. *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 763 (1980). Since the issues raised in this motion have previously been addressed and ruled on by this Court, an award of attorney fees and costs is especially appropriate here.

**CONCLUSION**

For the foregoing reasons, State Farm respectfully requests this Court to grant the within motion in all respects. Further, State Farm reserves its right to reconvene the Rigsbys’ depositions with respect to documents that they have yet to produce.

January 3, 2008

Respectfully submitted,

*/s/ John A. Banahan*

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**CERTIFICATE OF SERVICE**

I, JOHN A. BANAHAN, one of the attorneys for the Defendant, STATE FARM FIRE & CASUALTY COMPANY, do hereby certify that I have this date electronically filed the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing to the following to:

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DATED, this the 3rd day of January, 2008.

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