

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

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THOMAS C. and PAMELA McINTOSH,	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 1:06-CV-
	:	1080-LTS-RHW
- against -	:	
	:	
STATE FARM FIRE & CASUALTY CO. and	:	
FORENSIC ANALYSIS & ENGINEERING	:	
CO., et al.,	:	
	:	
Defendants.	:	

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**DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY’S
RESPONSE TO NON-PARTY LUMPKIN & REEVES, PLLC’S
MOTION FOR CLARIFICATION OF DISQUALIFICATION ORDER**

Defendant State Farm Fire and Casualty Company respectfully files this Response to the Motion for Clarification of Disqualification Order filed by Lumpkin & Reeves. (Dkt. 1188.)

While it is evident that Lumpkin & Reeves are familiar with this Court’s April 4, 2008 Opinion and Order disqualifying the “Katrina Litigation Group [‘KLG’] and Associated Counsel” (Dkt. 1172, 1173), it is unclear whether they are familiar with this Court’s April 16, 2008 Order (Dkt. 1183). The April 16 Order explained the reasons this Court’s April 4 Order deliberately employed expansive language to exclude “other attorneys associated as counsel for plaintiffs by these firms” and “any other associated counsel” and further explained that the lack of a formal appearance was of no moment.

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 litigations are major concerns for the Court.

April 16 Order at 1. This Court went on to make clear that *Shows v. State Farm and Casualty Co.*, which is currently pending before Judge Barbour (and was formerly pending before this Honorable Court), is just such an “other litigation” included within the ambit of this Court’s disqualification order. *See id.* at 2.

By their own admission – and despite their erroneous assertion that they “had never been associated by KLG in any case encompassed by the Court’s April 4th Order,” Mot. (Dkt. 1188) at 3, ¶ 7 – Lumpkin & Reeves concedes that, with the KLG, they appeared at “a deposition of one of KLG’s clients” in the *Shows* matter. Mot. at 2, ¶ 5; *see also* Ex. 1 at 1:19-21, 5:6 (noting appearance on behalf of plaintiff Barbara Nugent). Further, notwithstanding their characterization of it, their involvement at that deposition went beyond merely “observing” it. *See* Mot. at 2, ¶ 5. During the course of that deposition, a discovery dispute concerning potentially improper and unethical client solicitation by the KLG was raised before the Court, during which Lumpkin & Reeves affirmatively appeared and participated in presenting the issue to Court personnel. *See* Ex. 1 at 158:25-159:1, 167:7-11, 167:24-168:1. Thus, the categorical assertion that Lumpkin & Reeves has not “performed any legal services on any KLG cases encompassed by this Court’s Order,” Mot. at 3, ¶ 7, is not true. By definition, the lawyers at the Lumpkin & Reeves firm are “attorneys associated as counsel for the plaintiffs by [the KLG]” and are “other associated counsel.” Consequently, they are subject to this Court’s disqualification order.

Yet, despite their attempts to soft-pedal them, it has now been revealed that Lumpkin & Reeves’ involvement concededly goes beyond just their (disqualifying) appearance on behalf of the KLG plaintiffs in Katrina-related litigation against State Farm. After State Farm filed its disqualification motion on January 3, 2008 (Dkt. 966, 968), Lumpkin & Reeves admits to having been approached in January 2008 by the KLG in an effort to provide “association” in these cases. Mot. at 2, ¶ 4. Lumpkin & Reeves further admits to having thereafter engaged in repeated conversations or meetings with

various members of the KLG, specifically “to discuss their potential role with regard to these matters and to assess the status of these cases” Mot. at 2, ¶ 6. The precise scope of those discussions has not been disclosed, but it is reasonable to infer that they were sufficiently robust to allow Lumpkin & Reeves to decide to become associated with the KLG on its non-State Farm cases, while passing on the opportunity to become further associated on the cases involving State Farm.

Thus, while “Lumpkin & Reeves committed to work on non-State Farm cases” as associated counsel with the KLG, *id.*, that association does nothing to detract from the fact that their further participation and association in the KLG’s State Farm cases was also actively sought and discussed with the KLG. Equally important, those discussions – which took place over the course of several months, *see* Mot. at 2, ¶¶ 4-6 – did not occur “until after Defendants submitted their Motion for Disqualification to this Court (which resulted in the Court’s April 4th Order) and well after the Scruggs firm had already been disqualified.” Mot. at 3, ¶ 8.

These admissions demonstrate conclusively that, prior to the disqualification order, the KLG was actively engaged in discussions with Lumpkin & Reeves to assume a larger role in these cases. Lumpkin & Reeves went into those discussions with their eyes wide open and knew or should have known that, given the pendency of the disqualification motion before this Court, those activities could lead to their vicarious disqualification as well. As a result of those discussions, Lumpkin & Reeves appeared at a deposition in *Shows*, engaged in the presentation of a discovery dispute to Court personnel in *Shows*, and became associated with the KLG in an undisclosed number of non-State Farm cases.

The fact that Lumpkin & Reeves now professes a lack of knowledge as to the *particulars* of the disqualifying offenses is of no legal significance. *See, e.g.*, Mot. at 3, ¶ 8. Those offenses were amply detailed in the papers on file publicly in this Court’s docket. Moreover, those offenses were, as Lumpkin & Reeves admittedly knew, also discussed in “general comments in the legal community or ... in newspapers or on television.” Mot. at 3, ¶ 8. Thus, Lumpkin & Reeves knew or should have known

that the KLG had violated the ethical rules by, among other things, paying the Rigsbys – who were material witnesses in the case – sham “consulting fees” of \$150,000 per year.

Recognizing that their firm falls squarely within the purview of the disqualification order, Lumpkin & Reeves is now apparently asking the Court to craft an exception that would allow them to represent former KLG clients in Katrina-related coverage cases against State Farm. As with Taylor-Martino, this Court should decline to craft an exception to its intentionally broad disqualification order for Lumpkin & Reeves. The record evidence makes clear that Lumpkin & Reeves are “other attorneys associated as counsel for the plaintiffs” and are “other associated counsel.” As such, they are disqualified.

Moreover, any counsel with such admitted ties to the KLG as its prior associated counsel (here, on both State Farm and non-State Farm cases) has an inherent and disabling conflict of interest. As several commentators have observed, the KLG’s highly unethical acts have exposed its constituent law firms to potential lawsuits for legal malpractice by their former clients. Indeed, the KLG lawyers filed the *Shows* case and the 178 individual cases after State Farm had filed its disqualification motion in *McIntosh*. At that point, the KLG lawyers were on notice that State Farm intended to seek disqualification. Yet the KLG lawyers knowingly put their clients at risk that they would have to obtain new counsel in the midst of their cases, which is exactly what has come to pass. Under these circumstances, any action that would merely replace the KLG with a previously associated firm that is merely shifting their energies from the KLG’s non-State Farm cases to the KLG’s former State Farm cases (while the KLG does the opposite) would only heighten public suspicion and could be seen as an improper attempt to mitigate such malpractice liability. The public could legitimately question whether Lumpkin & Reeves – or any other firm associated with the KLG – was providing former KLG clients with disinterested legal advice, or whether it was beholden to its KLG colleagues.

CONCLUSION

For the foregoing reasons, State Farm respectfully requests that this Court deny Lumpkin & Reeves' motion.

Dated: May 5, 2008

Respectfully submitted,

/s/ John A. Banahan

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*Attorneys for State Farm Fire and
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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 on this date electronically filed the foregoing document with the Clerk of Court using the ECF system, which sent notification of such filing to all counsel of record:

DATED, this the 5th day of May, 2008.

/s/ John A. Banahan
JOHN A. BANAHAN

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1 VIDEOGRAPHER: The time on the record is now
2 10:12 a.m. I'll ask the attorneys to please
3 announce their appearances for the record.

4 MS. McALISTER: I'm Meg McAlister, counsel
5 for the Plaintiff.

6 MR. LUMPKIN: Mark Lumpkin for the Plaintiff.

7 MS. BISHOP: Katherine Bishop for State Farm
8 Fire and Casualty.

9 MR. DUMMER: Stephen Dummer with Allen, Cobb,
10 Hood & Atkinson for State Farm Mutual.

11 MR. WALKER: Joseph Walker for E.A. Renfro
12 and Company.

13 VIDEOGRAPHER: Thank you. I will ask the
14 court reporter to please swear in the witness.

15 BARBARA NUGENT,
16 having been produced and first duly sworn, testified as
17 follows:

18 - - -

19 EXAMINATION

20 BY MS. BISHOP:

21 Q. Good morning, Mrs. Nugent. As you know, I
22 introduced myself earlier. My name is Katherine, and I
23 am here on behalf of State Farm Fire and Casualty in
24 regards to a lawsuit that you have filed regarding a
25 homeowners claim. Now, we're here -- I'm here to take

1 MR. DUMMER: Okay. Denise Kimball. And
2 we're requesting guidance on Civil Number
3 1:07CV709 styled Glenda Shows versus State Farm
4 Mutual Auto, et al.

5 MS. KIMBALL: Okay. And I'm sorry, tell me
6 your name again. Stephen --

7 MR. DUMMER: Stephen Dummer, D-U-M-M-E-R.

8 MS. KIMBALL: Okay. And who do you
9 represent? I don't see it on the document.

10 MR. DUMMER: State Farm Mutual. And with
11 me --

12 MS. KIMBALL: Oh, I see. It just goes on and
13 on. Yeah. Okay. State Farm.

14 MR. DUMMER: All right. And we have five
15 counsel present.

16 MS. KIMBALL: Okay.

17 MR. WALKER: On behalf of E.A. Renfro and
18 Company, my name is Joseph Walker.

19 MS. KIMBALL: Okay.

20 MS. BISHOP: On behalf of State Farm Fire and
21 Casualty, Katherine Bishop with a "K."

22 MS. McALISTER: Denise, this is Meg
23 McAlister. I'm one of the counselors for the
24 Plaintiffs.

25 MR. LUMPKIN: And Mark Lumpkin also on behalf

1 of the Plaintiffs.

2 MS. KIMBALL: Okay. And let's see, this is a
3 long docket sheet. This is a RICO action. Who is
4 the deponent?

5 MR. DUMMER: Barbara Nugent.

6 MS. KIMBALL: Is she a witness or a party?

7 MR. DUMMER: She is a party.

8 MS. KIMBALL: Okay. One of the Plaintiffs?

9 MR. DUMMER: Yes.

10 MS. KIMBALL: Okay. All right. And what is
11 the issue?

12 MR. DUMMER: The Defense counsel has
13 requested information from the deponent about
14 when first she was contacted or how I guess the --
15 how she came to enlist the services of Scruggs
16 Katrina Group. Plaintiff's counsel has instructed
17 deponent to not answer any questions in this line
18 as a violation in her opinion work product and
19 attorney/client privilege. It is Defense
20 counsel's position that if the Katrina Litigation
21 Group or Scruggs Katrina Group, however you want
22 to term that back in the day, contacted her that
23 that would not be encapsulated under the
24 attorney/client privilege. Especially any
25 correspondence which was used to solicit I guess

1 when they were actually retained is a key
2 importance. And whether or not the Nugent's went
3 to Scruggs or Scruggs came to them, clearly would
4 help establish that time line and is clearly
5 relevant to the complaint which is filed against
6 State Farm.

7 MR. LUMPKIN: Denise, Mark Lumpkin here. And
8 that question was asked and there was no objection
9 to that. Specifically it was asked when did you
10 first contact an attorney so that's another
11 non-issue.

12 MR. DUMMER: Denise, the deponent stated
13 Spring -- sometime Spring of 2000. That really is
14 -- that encompasses three to five months. I don't
15 think that that is clear. And I think that would
16 be entirely non-responsive and the Plaintiff's
17 counsel instruction to not answer any further
18 questions when we requested more specificity, I
19 think is clearly on point here.

20 MS. KIMBALL: Okay. Y'all hold on just a
21 moment, please.

22 MR. DUMMER: Sure.

23 (Pause.)

24 THE COURT: I've got Steve, Joseph,
25 Katherine, Meg, and Mark. Is that right?

1 MR. DUMMER: Yes, Your Honor.

2 THE COURT: Well, great. And I will confess
3 to you obviously I don't know a lot about this.
4 Denise has kind of briefed me. She said one of
5 the contentions is whether or not to answer your
6 question regarding when the Plaintiff was
7 contacted or was -- hired the attorneys; is that
8 correct.

9 MS. McALISTER: Judge Sumner, this is Meg
10 McAlister.

11 THE COURT: Hey, Meg.

12 MS. McALISTER: One of the attorneys for the
13 Plaintiffs. No, sir. My client answered that
14 question. She stated that she retained counsel in
15 the Spring of 2007. I don't believe she's better
16 able as she sits here right now to pin down that
17 date.

18 THE COURT: Okay.

19 MR. DUMMER: Your Honor, it is our contention
20 that whether or not -- I'm sorry, this is Stephen
21 Dummer, Your Honor.

22 THE COURT: Thanks. Okay, Steve.

23 MR. DUMMER: Anyway, Your Honor. It is our
24 contention that first if the deponent is not
25 better able to nail down when she was retained for