

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

STATE FARM FIRE AND CASUALTY  
COMPANY and STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY

PLAINTIFFS

v.

CIVIL ACTION NO. 2:07cv188DCB-MTP

JIM HOOD, IN HIS OFFICIAL CAPACITY AS  
ATTORNEY GENERAL OF THE STATE OF  
MISSISSIPPI

DEFENDANT

**STATE FARM'S RESPONSE TO ATTORNEY GENERAL HOOD'S  
MOTION FOR CLARIFICATION OF NOVEMBER 2, 2007 ORDER**

Plaintiffs State Farm Fire and Casualty Company and State Farm Mutual Automobile Insurance Company (collectively "State Farm") submit this Response to the Attorney General's Motion for Clarification of November 2, 2007 Order. (11/05/07 Mtn., docket no. 71.)

1. By his so-called motion for clarification, Attorney General Hood seeks not only to avoid this Court's November 2, 2007 order directing him to appear tomorrow for the second day of testimony, but also to greatly limit the subject matter of his testimony. However, Attorney General Hood is both the Defendant in this Action and a critical, first-hand witness of the transactions at issue in this litigation.

2. Attorney General Hood negotiated the January 23, 2007 Agreement that is one of the grounds on which State Farm seeks an injunction of the Attorney General's unlawful and unconstitutional investigation of State Farm.

3. Moreover, it is important to emphasize that State Farm's claims are not limited to enforcement of the Agreement. State Farm has alleged that Attorney General has conspired with private attorneys pursuing civil litigation against State Farm (members of the Scruggs Katrina Group) to use the threat of criminal investigation to pressure State Farm to settle lawsuits and to coerce State Farm into bringing about the dismissal of a lawsuit filed by E.A. Renfroe and Company ("Renfroe"). Attorney General Hood has not shown that there is anyone in his office that can testify to his dealings with the Scruggs Katrina Group. Indeed, the fact that Attorney

General Hood seeks to avoid being questioned about such matters altogether is extremely telling. If Attorney General Hood's dealings with the Scruggs Katrina Group have been above-board, he should not hesitate to appear before this Court to answer questions.

4. Attorney General Hood previously avoided having to respond to the subpoena that was lawfully served upon him by representing to the Court that two representatives of his office, Ed Snyder and Scott Johnson, would be able to fully testify about certain matters. On November 1, 2007, Ed Snyder testified in this Action. Yet Mr. Snyder was unable to answer numerous questions that were put to him.

5. Initially, Mr. Snyder was not even aware that he had been offered as a witness in place of Attorney General Hood. (Nov. 1, 2007 Hr'g Tr. at 69:13-18, ex. A.)

6. Mr. Snyder also displayed a lack of knowledge about several key issues. For example, when asked "were you aware in the hearing that was conducted on April 11th that General Hood told the Court that with regard to the documents that he was seeking from State Farm under the subpoena duces tecum, 'We know a lot of what they are going to produce, and we are just going to see if they actually give us what is written on them and stuck to them and so forth. So I have had this for a good long time, this information. And there is nothing in the civil case that I can do,'" Mr. Snyder responded: "I have no knowledge of that." (Nov. 1, 2007 Hr'g Tr. at 68:18-69:2.) This question relates directly to State Farm's claim that Attorney General Hood has conspired with others to violate State Farm's Fourth Amendment rights. (Am. Cmpl. at ¶¶ 50-64.)

7. Although he "understood" that the Kerri and Cori Rigsby (the "Rigsby Sisters") had been introduced to Attorney General Hood by Richard Scruggs, Mr. Snyder claimed to lack any other knowledge about Attorney General Hood's dealings with the Rigsby Sisters. (Nov. 1, 2007 Hr'g Tr. at 69:19-79:14.) Significantly, when asked if anyone at the Attorney General's office admonished the Rigsby Sisters not to bring stolen documents to the Attorney General, Mr. Snyder responded: "I have no knowledge." (*Id.* at 76:5.) To explain his lack of knowledge, Mr. Snyder testified that "you've got to understand, under that contract, I am a part-time employee. I

consult on matters that are brought to me to address specifically. I cannot -- I can work so many hours a year. And I could not get involved in this case full-time." (*Id.* at 71:7-11.)

8. Again, these matters are directly relevant to State Farm's claims in this litigation. Not only does State Farm allege that, through the Rigsby Sisters, Attorney General Hood has conducted illegal searches and seizures of State Farm's files and computer records (Am. Cmpl. at ¶¶ 50-64), the litigation between Renfroe and the Rigsby Sisters (the "Renfroe Litigation") is one of the central transactions in this litigation.

9. As alleged in the First Amended Complaint, and as another federal court has specifically found, Attorney General Hood conspired with Richard Scruggs to help Scruggs violate a court order in that case, a violation for which Scruggs now faces criminal contempt charges. It is no coincidence that the very same day that the Fourth Grand Jury Subpoena was served on State Farm, State Farm's counsel received a letter from another Scruggs Katrina Group attorney using the threat of criminal indictment in an attempt to coerce settlement out of State Farm and explicitly stating "[a]ll of this happened because State Farm could not or would not call off its Renfroe dogs." (Am. Cmpl. at Ex. N.)

10. Significantly, the evidence in this case will show that, in a meeting or on a phone call in 2006, Attorney General Hood told Deputy Commissioner of Insurance David Lee Harrell that, if State Farm did not settle with him and Scruggs, he was "going to indict them all, from Ed Rust<sup>1</sup> down." (Dep. of David Lee Harrell at 340:18-24, in *McIntosh v. State Farm Fire & Cas. Co.*, No. 1:06-cv-1080-LTS-RHW (Nov. 1, 2007) (excerpts attached as Exhibit B.) State Farm is clearly entitled to question Attorney General Hood about his dealings with the Scruggs Katrina Group and his motives in resuming his criminal investigation of State Farm.

11. Mr. Snyder was also unable to answer several questions about Attorney General Hood's involvement in the Renfroe litigation. (Nov. 1, 2007 Hr'g Tr. at 91:23-102:23.) Indeed, Mr. Hester specifically objected to Mr. Snyder being questioned about documents as to which he

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<sup>1</sup> Ed Rust is the Chairman of the Board and Chief Executive Officer of State Farm Mutual Automobile Insurance Company.

had no knowledge. (*Id.* at 96:1-7.)

12. Mr. Snyder was likewise unable to testify in any meaningful way about Attorney General Hood's dealings with Scruggs, meetings between Attorney General Hood and attorneys for State Farm or former Attorney General Mike Moore's role in Attorney General Hood's criminal investigation. (*Id.* at 79:15-82:6.)

13. At the hearing on the Temporary Restraining Order, counsel for the Attorney General argued that State Farm would have to show more than a breach of contract to obtain an injunction. (Sept. 14, 2007 Hr'g Tr. at 17:23-18:5.) While State Farm maintains that the Attorney General's breach of the January 23, 2007 Agreement constitutes *per se* bad faith sufficient to warrant injunction, State Farm has also alleged that the Attorney General's criminal investigation, regardless of whether it is a different investigation or resumption of the prior investigation, is being pursued for constitutionally improper purposes, in violation of State Farm's First, Fourth, and Fourteenth Amendment rights. Attorney General Hood cannot have it both ways.

14. The Attorney General should not be permitted to contend that State Farm must prove a constitutional violation beyond breach of the Agreement, yet all the while refusing to testify about transactions directly related to the additional constitutional violations alleged by State Farm – matters as to which he has direct knowledge.

15. Regarding the January 23, 2007 Agreement, Mr. Snyder testified that he was not present when the Agreement was signed. (*Id.* at 102:20-103:1.) Mr. Snyder also testified: "The operative phrase is Hurricane Katrina claims. If it's unrelated to that and it's new, it's available to investigate." (*Id.* at 104:14-15.) Mr. Snyder attempted to distinguish the current investigation from the Attorney General's prior investigation of State Farm by saying: "The focus was not the claims of the policyholders in this new matter." (*Id.* at 110:23-24.)

16. Mr. Snyder's testimony is contrary to Attorney General Hood's representations to the United States Attorney in July 2007, where he stated: "Using those document [i.e., documents that Scruggs was required to return pursuant to an injunction issued by Judge Acker

of the Northern District of Alabama], my office has conducted an ongoing investigation into what we believe is State Farm's fraudulent conduct, *not only toward their own policyholders*, but also against the National Flood Insurance Program as well. Our investigation continues...." (Am. Cmpl. at Ex. G, Nov. 1, 2007 Hr'g at Ex. 40 (emphasis added).) This statement by Attorney General Hood, one which clearly conflicts with Mr. Snyder's testimony, is another example of why State Farm must be allowed to question Attorney General Hood and not a substitute. Indeed, Mr. Snyder was unaware that Scruggs had been acting as a "confidential informant" to the Attorney General's office, as the Attorney General represented to the U.S. Attorney. (Nov. 1, 2007 Hr'g Tr. at 119:19-120:4.)

17. Mr. Snyder knew nothing about State Farm's \$5 million payment to the Attorney General's office. (*Id.* at 105:5-14.) He testified that he had nothing to do with the second paragraph of the Agreement. (*Id.* at 106:12-106:14.)

18. Attorney General Hood has offered insufficient justification for his inability to appear on November 7, 2007, as ordered. The election will be over on November 6 and, therefore, presents no conflict with the hearing date. Attorney General Hood stated that his office has oversight responsibilities with respect to the election, but surely there are other people within the Attorney General's office who can attend to such matters.

19. This Action has been pending since September 13, 2007. Attorney General Hood has had more than enough time to familiarize himself with the transactions at issue here. He has known that he would be expected to testify since last Friday. Attorney General Hood should not need any more time to prepare to tell the truth.

20. For the reasons set forth in State Farm's Motion for Leave to Cross Examine Representatives of the Attorney General's Office Regarding Contention of "Different" Investigation, it is imperative that State Farm be allowed to fully cross-examine representatives of the Attorney General's office. For the reasons discussed above, that includes Attorney General Hood.

21. As this is an urgent and necessitous response, State Farm requests this Court to

waive Miss. Unif. Dist. Ct. R. 7.2(D)'s requirement for a separate memorandum of authorities.

WHEREFORE, PREMISES CONSIDERED, for all the foregoing reasons, the Attorney General's Motion for Clarification of November 2, 2007 Order should be denied. Attorney General Hood should be directed to appear on November 7 and State Farm should be given an opportunity to cross-examine him about all matters relevant to the instant action. State Farm also prays for such further, supplemental, alternative or different relief to which it may be justly entitled.

Respectfully submitted, this 6<sup>th</sup> day of November, 2007.

STATE FARM FIRE AND CASUALTY COMPANY and STATE  
FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,  
Plaintiffs

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**CERTIFICATE OF SERVICE**

I, E. Barney Robinson III, one of the attorneys for Plaintiffs, 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 to:

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ATTORNEYS FOR DEFENDANT JIM HOOD, IN HIS OFFICIAL CAPACITY AS  
ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI

THIS the 6<sup>th</sup> day of November, 2007.

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E. Barney Robinson III (MSB #9432)