

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	}	
	}	
-vs-	}	2:07-cr-325
	}	
RICHARD F. SCRUGGS	}	
THE SCRUGGS LAW FIRM, P.A.	}	
	}	

APPENDIX

OUTLINE OF KNOWN FACTS

1. Cori and Kerri Rigsby (hereinafter Rigsbys) were employees of E. A. Renfroe and Company, Inc. (Renfroe), a Birmingham based company that provided catastrophe insurance adjusting services to State Farm and other carriers. After Katrina struck the Gulf Coast in August 2005, they were assigned to State Farm duties on the Mississippi Gulf Coast.

2. As a condition to their employment and assignment, the Rigsbys signed Employment Agreements and Codes of Conduct, as well as State Farm Access Agreements, that prohibited misappropriating, disclosing, or using confidential policy holder claims information with third parties. As a part of the Rigsbys duties, they were

issued State Farm laptops, confidential passwords to State Farm databases, and access to State Farm's claims offices.

3. In the Fall of 2005, Rigsbys wrongfully, and in violation of their aforesaid obligations, copied confidential claims documents. In February 2006, Rigsbys met with Scruggs, and at this secret meeting, gave him the wrongfully acquired documents. At the same meeting they "hired" him as their attorney; thereafter invoking the privilege to shield their conversations.

4. At all times since that February 2006 meeting, and continuing until the present, Scruggs has been the Rigsbys' attorney regarding any and all legal matters. During his testimony in Open Court, Scruggs acknowledged that the scope of his attorney-client relationship with Rigsbys was related to the *Renfroe v. Rigsbys* suit. The Rigsby sisters have acknowledged this broad scope of Scruggs' representation of them; their attorney-client relationship includes any matter related to the purloined documents, whether or not Scruggs actually filed a formal appearance as counsel of record for Rigsbys in *Renfroe v. Rigsby*.

5. In February, Rigsbys authorized Scruggs to use the wrongfully obtained documents to further his pending civil litigation and future civil litigation against State Farm. Indeed, on April 28, 2006, Scruggs filed a qui tam lawsuit under seal styled *United States of America Ex Rel Cori Rigsby and Kerri Rigsby v. State Farm Fire and Casualty Company, et al.*, case number 1:06 cv 433, US District Court, Southern

District of Mississippi, seeking millions of dollars of attorneys' fees for Scruggs and millions of dollars of so called "whistle blower" fees for Rigsbys.¹

6. In addition to other previously filed Katrina lawsuits against State Farm, on May 9, 2006, Scruggs filed *McFarland v. State Farm Fire & Casualty*, Civil Action No. 1:06-cv-466, US District Court, Southern District of Mississippi, on behalf of four hundred seventy-six plaintiffs, and seeking Class Action certification on behalf of thousands of additional policy holders.

Scruggs also filed *Woullard, et al. v. State Farm Fire & Casualty Co.*, Civil Action No. 1:06-cv-01057 LTS-RHW, U. S. District Court, Southern District of Mississippi on October 16, 2006, seeking class action certification of all claims not yet in litigation.

7. While Scruggs was their attorney in their suit against State Farm, as well as while Scruggs represented plaintiffs in other cases against State Farm, the Rigsbys, during the weekend of June 3-5, 2006, while at home and using their State Farm laptops and confidential codes, wrongfully downloaded and photocopied approximately

¹ On May 29, 2007, Scruggs filed a motion to unseal this qui tam case, arguing that a similar unsealed action in Louisiana was trying to "hijack" their case, and arguing that allowing his firm to proceed with discovery in *Ex Rel Rigsby*, would not prejudice the ongoing criminal investigation of State Farm. Case 1:06 CV 00433-LTS-RHW (Doc 17). The United States Magistrate granted a motion to unseal Scruggs' case. That case includes an amended complaint, which states that **on December 8, 2006, Scruggs made a supplemental disclosure of information or documents to the government.** (Doc 16) *This is the same date of Judge Acker's December 8, 2006 Order.*

5,000-15,000 State Farm claims documents. In their court testimony, the Rigsbys denied that anyone other than their friends knew that they were planning on doing this surreptitious “data dump” that weekend, referring to friends enlisted to help them do the copying over the weekend. Nevertheless, on Monday morning following the weekend’s activity, the Rigsbys supposedly called the U. S. Attorney’s office in Jackson and the Mississippi Attorney General’s office, *who the very same day* (and without any prior notice), each sent someone to retrieve one set each of the approximately 5,000 downloaded documents.

Contrary to their assertion under oath, the Rigsbys’ answer in *Renfro*² indicate that they gave the documents to the Mississippi Attorney General and the United States Attorney for the Southern District of Mississippi, pursuant to advice of their counsel, to-wit: Scruggs.

Contrary to his clients’ written version of events, in his testimony, Scruggs denied any involvement with these deliveries to law enforcement officials.³

8. Not later than July 1, 2006, the Rigsbys went to work for Scruggs as “consultants” at annual salaries of \$150,000 each, with no set hours and for the purpose of aiding the Scruggs Katrina Groups’ litigation. The Rigsbys admitted to funneling the

² Case 2:06 cv-01752 WMA doc 14, pp. 6-7 filed 10/22/06.

³ Case 2:06 CV 01752 WMA doc 130, p. 166 filed 05/02/07 [the March 19-20, 2007 hearing].

third and final set of the big June “data dump” batch of documents to Scruggs in about July, 2006. These documents (provided to Scruggs and previously to “law enforcement officials” at supposedly Scruggs’ advice), included secretly copied engineering reports from the file cabinets at State Farm’s Biloxi Claims Office that the Rigsbys had access to while secretly being represented by Scruggs and during their continuation of work with State Farm as Renfroe employees.

Although Scruggs did not testify to this at the hearing before Judge Acker, and his briefs do not reference it, Scruggs recently filed a letter in the *McIntosh v. State Farm* case, Civil Action No. 1:06-cv-1080 in the U.S. District Court of the Southern District of Mississippi filed on October 20, 2006, dated July 16, 2007 from Attorney General Jim Hood to Alice Martin, U.S. Attorney for the Northern District of Alabama. In that letter, Attorney General Hood states that Scruggs was his “confidential informant” in his investigation of State Farm and urged the U.S. Attorney not to prosecute Scruggs. The aforesaid letter was filed by Scruggs in response to a State Farm motion to disqualify Scruggs for multiple alleged ethical violations.⁴

9. In August 2006, Rigsbys authorized Scruggs to provide some of the wrongfully obtained documents to ABC News’ 20/20 program, which actually aired

⁴ Citing Mississippi Rule of Professional Conduct 4.2 prohibiting attorneys from Ex Parte communications with represented parties (i.e., State Farm); MRPC 4.4 prohibiting use of methods of obtaining evidence that violates the legal rights of a third party (i.e., Renfroe); MRPC 8.4 prohibiting dishonest or deceitful conduct prejudicial to administration of justice; as well as MRPC 1.7, MRPC 3.7 and Canon 9 of Model Code of Professional Responsibility.

on August 25, 2006, featuring both of the Rigsbys and Scruggs and purloined documents on national television. Scruggs used the wrongfully obtained documents in a pleading filed in *McFarland v. State Farm*, supra, on September 26, 2006 and in the *McIntosh v. State Farm*, supra, cases. Advertisements featuring one of the Rigsby sisters have appeared on television and on the Scruggs' website, urging State Farm policy holders to seek legal advice and not give in to "big insurance."

10. Scruggs selected and paid fees of attorneys with the Birmingham firm of White Arnold Andrews and Dowd that represented the Rigsbys in the *Renfro v. Rigsby* suit. Presumably he selected and is now paying the replacement Birmingham firm Battle Fleenor Green Winn & Clemmer, LLP, as well as the Washington, D.C. firm, Zuckerman, Spaeder LLP, that entered appearances for the Rigsbys shortly after the August 24, 2007 Order of the 11th Circuit affirming Judge Acker's December 8, 2006 Injunctive Order.

11. After December 8, 2006 Preliminary Injunction, the Rigsbys' attorneys took an immediate appeal after filing an unsuccessful Motion to Stay. This appeal was filed even though the Rigsbys themselves had no documents to return, having given theirs to their attorney, Scruggs. Indeed, Scruggs filed a Motion to Quash the Preliminary Injunction on January 11, 2007, separate and apart from the Rigsbys pleadings. (Case 2:06cv-01752 WMA doc 79). Scruggs also filed a motion to file an

untimely Amicus brief with the 11th Circuit in support of the Rigsbys' appeal, which was denied by the Appellate Court.

12. The Court conducted hearings in October and November 2006 before the December 8, 2006 Memorandum Opinion and Preliminary Injunction (the Injunction or Injunctive Order) was entered. That Order, the basis of this criminal contempt prosecution, states in part as follows:

Preliminary Injunction

In accordance with the above finding of fact and conclusion of law, and in compliance with Rule 65(d), F.R.Civ.P., the application of plaintiff, E. A. Renfroe & Company, Inc., for a preliminary injunction is GRANTED, and Defendants, Cori Rigsby Moran and Kerri Rigsby, and their agents, servants, employees, attorneys, and other person in active concert or participation with them who receive actual notice of this order by personal service or otherwise (**with the express exception of law enforcement officials**) are hereby MANDATORILY ENJOINED to deliver forthwith to counsel for plaintiff all documents, whether originals or copies, of each document and tangible thing, in any form or medium, that either of defendants or anyone acting in conjunction with or at the request or instruction of either of them, downloaded, copied took or transferred from the premises, files, records or systems of Renfroe or of any of its clients, including, but not limited to State Farm Insurance Company and which refer or relate to any insurance claims involving damages caused or alleged to have been caused by Hurricane Katrina in the State of Mississippi.

Defendants and their agents, servants, employees, attorneys, and other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, are further ENJOINED not to further disclose, use or misappropriate any material described in the preceding paragraph unless to law enforcement officials at their request.

This preliminary injunction shall become effective upon the posting by plaintiff of an injunction bond in the amount of Fifty Thousand Dollars (\$50,000), to assure the payment of such costs and damages as may be suffered by defendants or entities found to have been wrongfully enjoined. The said bond shall be in a form, and with a corporate surety, approved by the Clerk.

Protective Order

Because the documents and information in the possession or control of Defendants and/or their agents are, or may be, relevant to the ongoing criminal investigation by the Attorney General of Mississippi, the court finds that there is a compelling interest in protecting the use and disclosures of those certain documents and information to anyone except those needing the information for the criminal investigation or for the preparation of the above-entitled case for trial. Therefore, plaintiff's counsel shall not disclose to any entity, including E. A. Renfroe & Company, any of the material delivered to them pursuant to this mandatory injunction without first obtaining the express written approval of this court after an *in camera* inspection by the court. All documents shall be kept by plaintiffs' counsel under lock and key. No copies shall be made and the contents thereof shall not be revealed to anyone except Jack E. Held, Barbara Ellis Stanley and J. Rushton McClees, plaintiffs' counsel who have formally appeared. The material shall be for their eyes only unless and until express authorization of the court is sought and obtained.

Prior to the entry of this December 8, 2006 Injunctive Order, it was known from the prior testimony and briefs, that the Rigsbys had given their only copies of the purloined documents to Scruggs, and previously to the Mississippi Attorney General. Judge Acker's Order directed the return of the documents to Renfroe's counsel forthwith. His Order to return the documents was directed to the Rigsbys, and their attorneys, and those persons acting in active concert or participation with them –

including the Scruggs Defendants. The evidence is expected to be that it was Scruggs who defied the Court, even when his clients/employees reportedly requested him to return the documents as ordered by the Court.

Judge Acker's Order did not order the Mississippi Attorney General or the United States Attorney General to return the documents, nor did it order the Rigsbys to retrieve documents that they had previously given to "law enforcement officials." A separate paragraph of the December 8, 2006 Injunctive Order, indicated that the Rigsbys were not prohibited from otherwise cooperating with law enforcement officials' investigation, such as testifying about the documents before a Grand Jury, a matter which the Rigsbys were purportedly concerned about.

Renfroe's counsel were ordered to keep the documents in their offices and not to disclose the documents to anyone.

13. Scruggs received a copy of the December 8, 2006 Injunctive Order on the afternoon of Friday, December 8, 2006. That very same evening, Scruggs, despite his contention that he was not subject to the Order, personally called Jim Hood, Attorney General of Mississippi, to discuss a plan of action in response to Judge Ackers' Order. At least one more conversation took place between Scruggs and Hood that weekend. It was decided that the Attorney General's office would send a letter to Scruggs requesting that Scruggs send his copy of the documents (which the AG already had a copy of) to the AG rather than delivering them to Renfroe's counsel as the Order

required. Renfroe posted the required bond on Monday morning, December 11, 2006 at 9:43. Scruggs received notification of the bond posting that same day.

14. December 12, 2006, Courtney Schloemer of the Mississippi Attorney General's office, e-mailed a letter to Scruggs which stated as follows:

“The moral of the story I take from Judge Acker's court is that ownership and custody of the documents can be asserted by either State Farm or Renfroe, or both, depending on which circumstances are the most favorable to them. I am not comfortable that the protective measures put in place by the Court will be effective in keeping these documents out of the grasp of State Farm. I would appreciate if you would provide us with your copy of the documents from Cori and Kerri, and we can return them to you at a time when our investigation is not in jeopardy by the possibility of disclosure of those documents to the wrong party.

Please contact me with any questions or concerns you have about this request at 601.359.3814. Thank you and have a Merry Christmas.” (Ex. 9 to March 19, 2007 hearing.)

Scruggs testified that he ordered his office in Moss Point, Mississippi to ship the boxes of documents to the Attorney General “forthwith” and before he received any letter from the Attorney General's office (hearing transcript pages 202-204).

A few hours after this e-mail letter arrived at Scruggs' office, Scruggs acknowledged that Schloemer sent another e-mail letter indicating her first letter was hasty and suggesting that Scruggs was supposed to obtain permission from the Court before sending the documents to the Attorney General's office. *Id.* at p. 204.⁵ Scruggs

⁵ A copy of the second letter to Scruggs has been requested from Ms. Schloemer.

testified that he had already told his office in Moss Point to Fed Ex the boxes, and there was no apparent effort to retrieve them or direct the AG's office to return them when the boxes arrived the next day. Likewise, Scruggs testified that the Rigsbys through attorney Greg Hawley (White Andrews firm) requested that he comply with Judge Acker's Order by returning the documents to Renfroe's counsel, but that it was too late because he had ordered his office to Fed Ex the documents forthwith. (*Id.* at pp. 207-208). However, Scruggs also testified that during a conversation with Greg Hawley between December 8 and December 12, that Scruggs did not tell Hawley about his discussion with the Attorney General of Mississippi or the plan to ship the documents to that office (*Id.* at pp. 229-230).

15. On December 8, 2006, the same day as Judge Acker's Injunctive Order, Scruggs filed a Supplemental Evidentiary Disclosure to the government in the aforesaid qui tam case, the first and only supplemental disclosure of documents since the original filing which took place before the June 3-5 "data dump". This was only revealed when the unsealed case showed an amended complaint filed on May 22, 2007, adding Renfroe and its additional owners as named defendants.⁶

⁶ Scruggs had previously filed on January 26, 2007, (but later dismissed) a suit styled *Cori Rigsby and Kerri Rigsby v. Gene Renfroe and Jana Renfroe, Individually*, 1:07 cv 75 LTS RHW, United States District Court, Southern District of Mississippi, alleging retaliatory discharge and other alleged wrongdoings against the owners of E. A. Renfroe and Company.

16. Scruggs overruled Judge Acker's decision and testified that he had "no doubt" that Renfroe's lawyers would violate Judge Acker's Protective Order, regarding non-disclosure of the documents which Scruggs was required to return to them, thereby deciding on defiance of the Court's Injunctive Order. Scruggs did not know nor attempt to learn about Jack Held, Rushton McClees, or Barbara Stanley, the highly respected attorneys who represent Renfroe.

Q. Well, you thought that if Judge Acker's injunction went into place there on that Friday night, December the 8th, that counsel for Renfroe would violate that order and make those records available to Renfroe and/or State Farm?

A. Did I believe that?

Q. Yes.

A. I had no doubt that they would.

Q. That they would.

A. Yes.

Q. You had no doubt that my law firm would turn the records over to Renfroe and State Farm in violation of Judge Acker's order. Is that your testimony?

A. I had no doubt – I don't know your law firm. I met you today for the very first time and Ms. Stanley as well. I had no knowledge of what you might or might not do. You represented Renfroe, and I didn't know what you would do. I did not trust what you might do or what your obligations were to your client, Renfroe, and their obligations to State Farm. And I did not trust it at that time. (Doc. 130, p. 198)

17. During the December 2006 and January 2007 time period, Scruggs was negotiating settlement of his class action lawsuit against State Farm, which purportedly would include the return to State Farm or Renfroe, the wrongfully taken documents by the Rigsbys and the dismissal of *Renfroe v. Rigsbys*. On January 23, 2007, Scruggs executed and announced a large class action settlement agreement with State Farm in *Woullard*, supra. However, United States District Judge Senter, subsequently refused to approve the settlement which Scruggs had negotiated for all claims that were not yet in litigation, finding that there was no evidence that the minimum \$10,000,000 and maximum \$20,000,000 attorneys fees in the agreement had been justified or earned, and that the settlement was not in the best interest of the class.⁷ Scruggs went on to settle the individual hundreds of plaintiffs in his cases, although not the Class Action, presumably and reportedly obtaining millions of dollars in fees. Subsequent to Scruggs' announcement of the large settlement with State Farm on January 23, 2007, Scruggs made an about face and requested the return of the Rigsbys/Scruggs documents from Attorney General Hood, to whom Scruggs had Fed Ex'd them on December 12, 2006, whose office mailed the documents to Rigsbys' Birmingham lawyers who in turn submitted them to Renfroe's lawyers. This was also subsequent

⁷ "In the absence of substantially more information than I now have before me, I am unable to say even preliminarily, that the proposed settlement establishes a procedure that is fair, just, balanced or reasonable." /S/ L. T. Senter, Jr., Senior Judge (January 26, 2007).

to Renfroe's motion to hold Scruggs in contempt of court dated January 5, 2007 (Doc. 68-1).

18. March 23, 2007, Scruggs wrote a letter to Attorney General Hood's office requesting a copy of all the documents which the Rigsbys had previously given to Attorney General Hood. Scruggs' present and previous listings in Martindale-Hubbell boast a close relationship with the Office of the Attorney General with the State of Mississippi related to civil litigation. Scruggs was hired by the predecessor of Jim Hood, the present Attorney General of Mississippi, Michael Moore, in connection with the Class Action lawsuit against the tobacco industry, which resulted in a Two Hundred Forty-Eight Billion Dollar master settlement agreement in 1998 and a reportedly approximate \$1,000,000,000 fee to Scruggs. According to the Mississippi Secretary of State's office, documents reveal that Scruggs has donated Forty-Four Thousand Dollars to the campaign of Attorney General Jim Hood in direct cash payments. This does not include any contributions to any PACS which may provide support for Attorney General Hood's campaign.

19. On January 11, 2007, in response to the Court's Preliminary Injunction, Scruggs filed a response indicating that he was excused from complying with the Court's Order. Scruggs alleged that the injunction was null and void as to him personally and reserving his objection to in personam jurisdiction.

On February 20, 2007, Scruggs filed a Response to Show Cause Order, stating that Scruggs had studied the transcript of October 5, 2006 Injunction hearing wherein Renfroe's counsel, Barbara Stanley indicated that it would not be a violation of the employment agreements for the Rigsbys to have provided copies of documents to the Attorney General of Mississippi in June of 2006 following the "data dump", if they did so at the request of a government investigator. Scruggs then pretends that "thus by stipulation of Renfroe, the named Defendants (and presumably anyone accused of acting on their behalf) were free to deliver any documents or any information derived therefrom, to law enforcement" (Doc 92-1 at pp. 15-16). As Judge Acker found, this is no basis for noncompliance with the Court's December 8, 2006 Order, which did not deal with returning documents previously given to the Attorney General. It does show Scruggs purportedly scrutinizing the transcripts of the *Renfroe v. Rigsby* hearings to try and justify his purposeful decision on December 12, 2006. Scruggs incongruously argues that Renfroe acquiesced to this speedy December 12 shipment to the Attorney General (*Id.*).

20. In Scruggs' Response to Show Cause Order dated February 2, 2006 (Doc. 92-1), Scruggs states that "today, the Attorney General returned to the named Defendants the State Farm documents previously received from Scruggs." (*Id.* at p. 3). This belated action does not obviate the wrongful action taken eight weeks earlier. On January 26, 2007, Don Barnett, a lead member of the Scruggs Katrina Group,

reportedly offered to give another set of the documents back to Renfroe as a part of a proposed settlement agreement. (Doc. 91, p. 2 filed 1/31/07)

21. When a small number of the documents were mistakenly transmitted by Renfroe's counsel to one of the Renfroe owners, the mistake was immediately caught and the documents were returned without any review of the documents by unauthorized persons. This matter was immediately brought to the attention of the Court by Renfroe's counsel, without any harm being done. Indeed, neither Scruggs nor the Rigsbys have provided any facts of any harm or that the matter was not appropriately corrected immediately. Scruggs' reference to this honest, corrected mistake is a red herring. Further, as Judge Acker determined, there was no reasonable basis for law enforcement to be concerned that a return of the documents would jeopardize the Grand Jury when the Rigsbys testified. That too, is a red herring.

22. When the Rigsbys were sued, they did not assert in their answer that they no longer possessed the documents nor did they raise this as a defense at that time. Only after the Injunction was issued did the Rigsbys disclaim possession or control over the documents. It was also only then that Scruggs claimed that he was not subject to the Injunction and thus free to do whatever he chose to do with the documents. This maneuver also appears to be a part of the sham designed to avoid compliance while supposedly protecting both Scruggs and the Rigsbys from liability for contempt of court.