UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

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GLENDA SHOWS, et al.,	:	
Plaintiffs,	:	CIVIL ACTION NO. 1:07-CV-709-WHB-LRA
- against -	:	
STATE FARM FIRE AND CASUALTY CO. and FORENSIC ANALYSIS & ENGINEERING CO., et al.,	:	
Defendants.	:	

- x

DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISQUALIFY THE BARRETT LAW OFFICE, P.A., NUTT & MCALISTER, P.L.L.C., AND THE LOVELACE LAW FIRM, P.A.

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Defendant State Farm Fire and Casualty Company ("State Farm") respectfully submits this memorandum of law in support of its motion to disqualify the Barrett Law Office, P.A., Nutt & McAlister, P.L.L.C., the Lovelace Law Firm, P.A., and the entity now known as the Katrina Litigation Group from representing Plaintiffs Glenda Shows, et al., in this civil suit brought pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968.

INTRODUCTION

The facts upon which State Farm's Motion for Disqualification is predicated are not in dispute. In December 2005, Plaintiffs' counsel co-founded a joint venture with Richard F. Scruggs ("Scruggs") called the Scruggs Katrina Group (the "SKG") for the purpose of bringing Katrina-related insurance coverage lawsuits against State Farm and other insurers. While litigating these cases on behalf of the SKG, Scruggs admits that he forged a relationship with two State Farm "insiders," Cori and Kerri Rigsby (the "Rigsbys"). The Rigsbys are sisters who worked exclusively on State Farm matters as claims managers and adjusters at E.A. Renfroe and Co., Inc. ("Renfroe"), a company that provides insurance adjusters to insurers like State Farm following a catastrophic event. There is no dispute that while representing plaintiffs on behalf of the SKG in Katrina-related litigation against State Farm: (i) Scruggs had repeated, unauthorized *ex parte* communications with the Rigsbys; (ii) the Rigsbys admit that they surreptitiously stole thousands of State Farm's confidential documents – including documents at the heart of this lawsuit – and turned them over to Scruggs and the SKG for use in their civil litigations against State Farm; and (iii) the SKG, in turn, rewarded the Rigsbys for their cooperation by giving them an annual stipend of $150,000 each to serve as SKG "litigation consultants."

On November 28, 2007, Scruggs was indicted on six counts of conspiracy to bribe a judge. Two other SKG members, David Zachary Scruggs and Sidney A. Backstrom, were also

indicted on the same charges.[1] Scruggs's SKG partners recognized immediately that Scruggs's continued participation in these cases was untenable. On November 29, 2007, Don Barrett wrote the Court a letter explaining that Scruggs and his law firm were withdrawing from the Katrina cases and that Don Barrett would be taking over as lead counsel. After initially disputing Barrett's assertions, Scruggs apparently relented and withdrew from all of the Katrina cases being litigated by the SKG.

But the mere withdrawal of Scruggs and his law firm from the joint venture and the change of its name from the "Scruggs Katrina Group" to the "Katrina Litigation Group" (the "KLG") does not absolve the SKG members of responsibility for the highly unethical acts that they have committed in conjunction with this case. First, the SKG members unquestionably violated numerous ethical rules by hiring the Rigsbys – whom they repeatedly touted as the star fact witnesses in this and other cases against State Farm – to serve as highly compensated "litigation consultants" for the SKG. In fact, an eyewitness account of an SKG meeting held on October 6, 2006 reveals that the SKG members were acutely aware that putting the Rigsbys on the SKG's payroll would raise serious ethical issues, but decided to "take care of them" anyway.[2]

Courts addressing analogous facts have consistently condemned the practice of hiring a company's "insiders" as consultants, explaining that the practice violates state and federal analogues of Mississippi Rule of Professional Conduct ("MRPC") 4.2, which prohibits attorneys from *ex parte* communications with represented parties (in the case of a corporation, this includes its agents); MRPC 4.4, which prohibits a lawyer from using methods of obtaining evidence that violate the legal rights of a third party or the discovery rules; and MRPC 8.4,

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[1] A copy of the criminal indictment is attached hereto as Ex. 1.

[2] *See* Pl. Supp. Mem., *Jones, Funderburg, Sessums, Peterson & Lee, PLLC v. Scruggs*, Civ. A. No. L07-135 (Miss. Cir. Ct. Lafayette County filed June 27, 2007) (Ex. 2 hereto).

which prohibits an attorney from engaging in conduct involving dishonesty or deceit, or that is prejudicial to the administration of justice.

Paying a fact witness hefty "consulting" fees further violates the federal bribery statute, which makes it a felony to offer anything of value to a fact witness for her testimony (except for certain nominal witness fees expressly permitted by law). *See* 18 U.S.C. §§ 201(c)(2), (d); *Mataya v. Kingston*, 371 F.3d 353, 359 (7th Cir. 2004) (Posner, J.) ("To pay a witness, other than an expert witness, for his testimony is irregular and in fact is unlawful in federal trials . . . ."). Not surprisingly, a violation of the bribery statute constitutes an ethical breach under both MRPC 3.4(b), which provides that "[a] lawyer shall not . . . offer an inducement to a witness that is prohibited by law," and MRPC 8.4(b), which makes it "professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

Notably, the Rigsbys are not the only State Farm "insiders" that the SKG has attempted to put on its payroll. SKG attorneys – including those who are still in this case – have also offered another material fact witness, engineer Brian Ford, hefty sums to do "consulting" work for them. More particularly, Ford was formerly employed by Forensic Analysis & Engineering Corporation ("Forensic") and prepared or peer-reviewed several of the reports at issue in this lawsuit. *See, e.g.*, Compl. Exs. 72, 78, 98, 113, 114, 121, 128. Ford's name appears throughout key paragraphs as well as other exhibits in the Complaint. *See, e.g.*, *id.* ¶¶ 125-28, 134-35, 141, 164; *id.* Exs. 15, 17, 18. In fact, Plaintiffs' Complaint named Forensic as a Defendant in this case, alleging it prepared *all* of the allegedly fraudulent engineering reports at issue in this case. Plaintiffs and Forensic have subsequently reached a settlement.

The SKG further violated MRPC 4.2, 4.4, and 8.4 by illicitly using the Rigsbys to pilfer thousands of State Farm confidential documents outside of the discovery process for the SKG's

use in its cases against State Farm. These stolen documents include, among other things, engineering reports and other materials from State Farm's confidential claim files that are central to the instant case. This is no coincidence. In their deposition testimony, the Rigsbys confirmed that they deliberately targeted engineering reports during their clandestine document gathering because they suspected that such documents would assist the SKG in future litigation against State Farm.[3] Indeed, State Farm's records confirm that the Rigsbys targeted claim files belonging to each Plaintiff in the instant case.[4]

In a separate lawsuit brought against the Rigsbys by Renfroe, captioned *E.A. Renfroe & Co. v. Moran*, Case No. 2:06-cv-01752-WMA, (N.D. Ala. filed Sept. 1, 2006), a federal court in Alabama has already found the Rigsbys' and Scruggs's conduct in regard to the purloined documents to be wholly improper. *See E.A. Renfroe & Co. v. Moran*, Case No. 2:06-cv-01752-WMA, Mem. Op. and Prelim. Inj. at 10-11 (N.D. Ala. Dec. 8, 2006) (Ex. 5 hereto), *aff'd mem. per curiam*, No. 06-16561 (11th Cir. Aug. 24, 2007). There, the court determined, following extensive briefing and a hearing, that "[t]here can be no doubt that Moran[5] and Rigsby violated important and critical terms of their contracts with Renfroe when they copied State Farm's records and turned them over to Scruggs." *Id*. at 10. The *Renfroe* court issued a preliminary injunction which required Scruggs and the Rigsbys "to deliver forthwith" to Renfroe's counsel all of the pilfered documents and to stop using them. *Id.* at 13-14.

Thereafter, on June 15, 2007, the court found that there was ample evidence that Scruggs

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[3] *See* Deposition of Kerri Rigsby given in *McIntosh* on November 20, 2007 at 570:5-19, 548:8-14 ("K. Rigsby *McIntosh II* Dep."). All pertinent excepts of K. Rigsby *McIntosh II* Dep. are attached hereto as Ex. 3. Although Cori and Kerri Rigsby have not been deposed in this case, they have each testified twice in the *McIntosh* case. They have also given testimony in several other cases, which are defined below.

[4] *See infra* at 27-28; *see also* Aff. of Chris Blair and exhibits thereto (Ex. 4 hereto).

[5] Cori Rigsby was formerly known by her married name, Cori Rigsby Moran. She is now divorced and goes by her maiden name. *See* Deposition of Cori Rigsby in *McIntosh* given on May 1, 2007 at 12:21-25 (hereinafter, "C. Rigsby Dep."). All pertinent portions of C. Rigsby Dep. are attached hereto as Ex. 6.

had willfully violated the court's preliminary injunction by developing a scheme to circumvent the court's mandate to turn over the stolen documents, and referred the case for criminal prosecution. *See E.A. Renfroe & Co. v. Moran*, Case No. 2:06-cv-01752-WMA, Mem. Op. at 1-2, 25-26 (N.D. Ala. June 15, 2007) (Ex. 7 hereto). The court explained that "[Scruggs's] brazen disregard of the court's preliminary injunction is precisely the type of conduct that criminal contempt sanctions were designed to address." *Id.* at 19-20.[6]

Crucially, it is of no moment that the Rigsbys apparently interfaced primarily with Scruggs. In addition to their own independent violations of the ethical rules, all of the SKG lawyers are subject to accessorial liability under MRPC 5.1(c), which provides that "[a] lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if . . . the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved." MRPC 5.1(c). Here, there is no question that the SKG ratified Scruggs's misfeasance when its members hired the Rigsbys to serve as litigation consultants and utilized the documents they stole from State Farm in the SKG cases.

To assist the Court in evaluating the SKGs conduct in this matter, State Farm has retained Professor Charles W. Wolfram, who is a nationally-recognized expert in the field of professional responsibilities and ethics. Among his many other writings in the field, Professor Wolfram is the author of the treatise MODERN LEGAL ETHICS. He also served as Chief Reporter for the American Law Institute's RESTATEMENT OF THE LAW GOVERNING LAWYERS. After reviewing the record evidence, Professor Wolfram concluded:

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[6] *See also E.A. Renfroe & Co. v. Moran*, Case No. 2:06-cv-01752-WMA, Order at 1 (N.D. Ala. June 15, 2007) (requesting prosecution of Scruggs and Scruggs Law Firm for criminal contempt) (Ex. 8 hereto); *E.A. Renfroe & Co. v. Moran*, Case No. 2:06-cv-01752-WMA, Mem. Op. at 7 (N.D. Ala. Jan. 19, 2007) (finding sufficient evidence "to suggest that Scruggs, as defendants' agent or attorney, knowingly violated and/or permitted or helped defendants to violate this court's . . . injunction") (Ex. 9 hereto).

> In summary, it is my considered expert opinion that the KLG lawyers blatantly, seriously, and repeatedly departed from the standard of conduct that would be followed by a lawyer of ordinary care and prudence in dealing with clearly confidential and privileged information possessed by the Rigsby Sisters as former confidential agents of State Farm and Renfroe. Moreover, the KLG lawyers' inappropriate conduct in paying or offering to pay compensation to fact witnesses in this matter seriously threatens the fact-finding integrity of this proceeding and independently requires their disqualification. The KLG lawyers' entire course of conduct warrants their disqualification from further participation in this matter.

Decl. of Charles W. Wolfram ¶ 3. State Farm respectfully submits that when the conduct of the SKG is measured against the pertinent rules of professional responsibility and the case law applying those rules, the Court will conclude that Scruggs's withdrawal is insufficient to remedy the manifest ethical violations committed by the SKG in this case. Accordingly, disqualification of the SKG attorneys and their law firms is more than warranted.

FACTUAL BACKGROUND

I. THE FORMATION OF THE SKG

On December 14, 2005, the Scruggs Law Firm, the Barrett Law Office, P.A., Nutt & McAlister, P.L.L.C., and the Lovelace Law Firm, P.A., entered into a joint venture agreement to form the SKG. *See* Joint Venture Agmt. at 1 (Ex. 10 hereto).[7] Pursuant to its terms, the SKG was formed to "bring a number of lawsuits on behalf of individuals and businesses who were wrongfully denied insurance coverage for property damages arising out of Hurricane Katrina." *Id.* As Scruggs testified at the *Renfroe* contempt hearing, the SKG is a separate entity from the Scruggs Law Firm. Hr'g Tr. at 144:7-10 (all pertinent excepts of *Renfroe* contempt hearing are attached hereto as Ex. 11). The SKG holds itself out as a legal team[8] whose members work

[7] The SKG originally consisted of six firms. *See* Joint Venture Agmt. at 1. However, by the time this litigation was filed, only these four member firms remained.

[8] According to the SKG website, "[t]he Scruggs Katrina Group is a legal team consisting of Mississippi attorneys who joined together soon after Hurricane Katrina ravaged the Mississippi Gulf Coast." Scruggs Katrina Group, *About Us*, http://www.scruggskatrinagroup.com/about-us/index.php (last visited Dec. 10, 2007).

together on behalf of policyholders[9] and will share fee income. Under Mississippi law, "[w]here a joint venture exists, its members are bound by the acts of other members acting in the course and scope of the joint venture." *Braddock Law Firm, PLLC v. Becnel*, 949 So. 2d 38, 51 (Miss. Ct. App. 2006), *cert. granted*, 946 So. 2d 368 (Miss. 2006), *and cert. dismissed as improvidently granted*, No. 2004-CT-01237-SCT, 2007 Miss. LEXIS 135 (Miss. Feb. 15, 2007).

II. THE SKG'S INVOLVEMENT WITH THE RIGSBYS AND THEIR THEFT OF STATE FARM CONFIDENTIAL POLICYHOLDER INFORMATION

Cori and Kerri Rigsby began employment with Renfroe around 1998, working as independent claims representatives primarily on State Farm catastrophe assignments. When "independents" like the Rigsbys are assigned by Renfroe to work on State Farm catastrophe teams, they are issued laptop computers by State Farm which permit them access to confidential policyholder and company information.[10] To protect the confidentiality of State Farm and State Farm policyholder information, Cori and Kerri Rigsby were consistently required by both Renfroe and State Farm to sign various confidentiality agreements, which specifically state they will not "misappropriate" any confidential policyholder information.[11]

Upon independent adjusters' agreement to the confidentiality and access restrictions, State Farm issues them laptop computers and passwords for the various State Farm databases they will need to access, including State Farm's Claim Service Record ("CSR").[12] Independent adjusters like the Rigsbys are permitted routine access to the CSR as part of their duties as

[9] *See id*. ("The Scruggs group quickly filed suits against the major insurers on the Coast . . . . [T]he Scruggs group developed the case to be brought against the insurers.").

[10] Deposition of Kerri Rigsby given in *McIntosh* on Apr. 30 and May 1 2007 at 35:17-36:2, 325:16-25 (all pertinent excepts of "K. Rigsby Dep." are attached hereto as Ex. 12); C. Rigsby Dep. at 52:17-24.

[11] *See* Code of Conduct dated 1999 at 2 (Ex. 13 hereto); Code of Conduct dated 2004 at 2 (Ex. 14 hereto); Employment Agreements ¶ 6 (Exs. 15-16 hereto); Access Agreements signed by the Rigsbys (Exs. 17-20 hereto).

[12] *See* C. Rigsby Dep. at 144:3-147:21.

catastrophe team personnel.

The Rigsbys returned to Mississippi, where they are from, just a few days after Hurricane Katrina made landfall. They worked for Renfroe at the Gulfport Catastrophe Office as managers and were assigned to oversee the adjustment of State Farm's claims on the Mississippi coast from early September 2005 through June 2006.[13]

The Rigsbys testified that they began copying confidential State Farm information sometime between October 20, 2005 and October 31, 2005.[14] Kerri Rigsby has testified that she stole copies of the engineering reports and showed them to her mother, Pat Lobrano ("Lobrano").[15] According to the Rigsbys, Scruggs and Lobrano were longtime friends, and Lobrano arranged for her daughters to meet Scruggs in late February 2006.[16] Having filed his first Katrina-related lawsuit against State Farm in October 2005 (*Best v. State Farm Fire & Casualty Co.*, Case No. 1:06-cv-00074-RHW (originally filed Oct. 21, 2005, Tex. Dist. Ct.; removed to S.D. Tex., Nov. 18, 2005; transferred to S.D. Miss. Feb. 6, 2006)), it is clear that Scruggs was aware that State Farm was represented by counsel when he met with the Rigsbys in February.[17] The Rigsbys testified that at the meeting, they provided Scruggs with various State Farm documents, including the engineering reports they had copied in October.[18]

Kerri Rigsby has testified that during the February meeting with Scruggs, she told

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[13] *See* Deposition of Cori Rigsby given in *Renfroe* at 56 ("C. Rigsby *Renfroe* Dep."); Deposition of Kerri Rigsby given in *Renfroe* at 107-08 ("K. Rigsby *Renfroe* Dep."). All pertinent portions of C. Rigsby *Renfroe* Dep. and K. Rigsby *Renfroe* Dep. are attached hereto as Exs. 21 and 22 respectively.

[14] C. Rigsby *Renfroe* Dep. at 63:7-16, 69; K. Rigsby *Renfroe* Dep. at 45:3-7, 46:6-47:17.

[15] K. Rigsby *McIntosh II* Dep. at 511:14-18; K. Rigsby Dep. at 403:21-404:1.

[16] C. Rigsby Dep. at 75:10-19; K. Rigsby Dep. at 301:12-302:2.

[17] Indeed, Scruggs was no doubt also aware that the State Attorney General had filed suit against State Farm and numerous other insurance companies on September 15, 2005, under the caption *Hood v. Miss. Farm Bureau Insurance*, Civ. No. G2005-1642 (Miss. Ch. Ct. filed Sept. 15, 2005).

[18] *See* K. Rigsby *Renfroe* Dep. at 64-66; C. Rigsby *Renfroe* Dep. at 112.

Scruggs he could use the documents to further his civil litigations against State Farm.[19] Cori Rigsby has similarly testified that Scruggs had free rein to do whatever he wished with the documents.[20] Scruggs has testified that the documents were disseminated within the SKG and to other lawyers not affiliated with that group pursuing civil litigation against State Farm.[21]

During the period between February 2006 and June 5, 2006, the Rigsbys communicated regularly with Scruggs. In fact, in March 2006, the SKG gave Cori and Kerri Rigsby SKG "company" cell phones for their use.[22] The Rigsbys also began to forward internal State Farm e-mails and documents from their State Farm laptops to their respective personal e-mail accounts.[23] Cori Rigsby further testified that she permitted her lawyers to access her State Farm laptop.[24]

On May 9, 2006, the SKG filed the complaint in the case of *McFarland v. State Farm Fire & Casualty Co.*, Case No. 1:06-cv-0466-LTS-RHW (S.D. Miss. filed May 9, 2006), in the Southern Division of the Southern District of Mississippi. Some 476 plaintiffs, all of whom are State Farm policyholders, alleged bad faith denial of their claims by State Farm, including the improper use of engineering reports by State Farm.

About a month later, during the weekend of June 3-5, 2006, the Rigsbys, along with three other women (none of whom worked for Renfroe or State Farm), began an extravagantly engineered data-mining operation which they have referred to as a "data dump."[25] Kerri testified

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[19] K. Rigsby *Renfroe* Dep. at 98-101.

[20] *Renfroe* Hr'g Tr. at 115:6-7.

[21] *Id.* at 158:9-11, 160:16-24.

[22] K. Rigsby *McIntosh II* Dep. at 527-528.

[23] C. Rigsby Dep. at 45:21-46:12; K. Rigsby Dep. at 38:6-39:11, 334:12-25, 409:9-15.

[24] *See* November 19, 2007 Deposition of Cori Rigsby in *McIntosh* at 392:16-399:24 ("C. Rigsby *McIntosh II* Dep."). All pertinent excerpts of C. Rigsby *McIntosh II* Dep. are attached hereto as Ex. 23.

[25] K. Rigsby Dep. at 48:19-49:1, 308:14-309:16; C. Rigsby Dep. at 36:17-38:7.

that the purpose of the data-mining operation was to steal as many State Farm confidential documents as possible over the weekend before State Farm was aware of their actions.[26] The Rigsbys further testified that they divided up claims listed on a State Farm engineering roster and printed log entries and payment information.[27] A comparison between the list of claim files that Kerri Rigsby accessed during the data dump and a list of clients that the SKG was representing in the *McFarland* case reveals that Kerri Rigsby was also targeting the claim files of the *McFarland* plaintiffs. *See* Blair Aff., Ex. 4. Since she testified that she never saw the *McFarland* complaint, it is evident that somebody at the SKG directed which claim files the Rigsbys were to steal during the data dump weekend. *See infra* at 27-28.

Over the course of the data dump weekend, the Rigsbys printed out or copied a total of some 15,000 pages of State Farm documents and claim files, which they assembled into about nine or ten boxes.[28] After the data dump was completed, the Rigsbys made copies of the stolen documents, one set of which they gave to Scruggs.

By July 1, 2006, Kerri and Cori Rigsby had been hired by the Scruggs Law Firm as "litigation consultants."[29] By October 2006, each of the Rigsbys were being paid an annual stipend of $150,000 by the SKG, ostensibly for "consulting" services. Their own testimony confirms that they have no set office hours and come and go as they please. Indeed, Kerri Rigsby recently testified that between November 1 and November 20, she only worked about five hours for the SKG. *See* K. Rigsby *McIntosh II* Dep. at 445:5-8. Yet they are each still being paid $150,000 a year for an indefinite period. *See* C. Rigsby *McIntosh II* Dep. at 243:21-244:17.

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[26] K. Rigsby *McIntosh II* Dep. at 541:10-542:13, 573:16-574:5.

[27] C. Rigsby Dep. at 77:19-78:4; K. Rigsby Dep. at 332:23-334:5; *see also* K. Rigsby *Renfroe* Dep. at 88, 96; C. Rigsby *Renfroe* Dep. at 89.

[28] C. Rigsby *Renfroe* Dep. at 90, 92.

[29] 10/2/06 Rigsby Answer ¶ 21 (Ex. 24 hereto).

In October 2006, with the stolen documents in hand, the SKG filed a case captioned *McIntosh v. State Farm Fire & Casualty Co.*, Case No. 1:06-cv-01080-LTS-RHW (S.D. Miss. filed Oct. 23, 2006). This was the first lawsuit filed by the SKG after Hurricane Katrina that alleged a conspiracy between State Farm and outside engineering firms to alter or falsify engineering reports in order to wrongfully deny State Farm policyholders benefits under their homeowners policies.[30]

On June 20, 2007, the SKG filed the instant case, reformulating the allegations in *McIntosh* to allege a RICO conspiracy based on the supposed modification and/or falsification of outside engineering reports.[31] Although the instant suit is brought on behalf of different plaintiffs, the allegations are based on the same core allegations as in *McIntosh*, namely, a conspiracy in which State Farm and its outside engineering contractors doctored their reports to avoid paying for wind damage.[32] Both cases also rely on the same set of documents stolen from State Farm by the Rigsbys and given to Scruggs and the SKG.[33]

That the SKG is using the documents taken by the Rigsbys to obtain an unfair advantage in this litigation is undeniable. Indeed, the Rigsbys themselves have boasted – presumably with input from their counsel and employer, the SKG – that the stolen documents "will be utilized in one or more currently pending cases in Mississippi (indeed, may be the focal point of one or more cases in Mississippi)."[34] Scruggs has confirmed this in press interviews. When asked

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[30] *See, e.g.*, *McIntosh* Compl. ¶¶ 22, 24, 29-48, 63, 69, 73-77, 79, 83-88, 95-99, 101-04 (Ex. 25 hereto).

[31] *See, e.g.*, Compl. ¶¶ 69, 72-73, 79, 80, 104, 117-19, 127, 128-33, 141-42, 147.

[32] *See, e.g.*, Compl. ¶¶ 127, 128-33.

[33] *Compare McIntosh* First Am. Compl. ¶¶ 22, 24, 29-48, 63, 69, 73-77, 79, 83-88, 95-99, 101-04 (Ex. 26 hereto), *with Shows* Compl. ¶¶ 69, 72-73, 79, 80, 104, 117-19, 127, 128-33, 141-42, 147.

[34] Defendants' Motion to Transfer, filed Oct. 2, 2006 in *Renfroe v. Moran*, at 3 (Ex. 27 hereto). *See also* Opposition to Plaintiff's Expedited Motion for Limited Expedited Discovery, filed Oct. 2, 2006 in *Renfroe v. Moran*, at 2 ("In the Southern District of Mississippi, there are currently thousands of lawsuits pending against insurance

(cont'd)

whether the documents stolen by the Rigsbys had an impact on cases he is handling, Scruggs replied, "[v]ery much so."[35]

III. RENFROE'S LAWSUIT AGAINST CORI AND KERRI RIGSBY AND THE CRIMINAL CONTEMPT CHARGES AGAINST SCRUGGS

On September 1, 2006, Renfroe filed a complaint against Kerri and Cori Rigsby in the United States District Court for the Northern District of Alabama, alleging that their theft of thousands of confidential documents violated the confidentiality agreements in their employment contracts. *See* Compl. ¶¶ 7-44, *E.A. Renfroe & Co. v. Moran*, Case No. 2:06-cv-01752-WMA (N.D. Ala. filed Sept. 1, 2006) (Ex. 30). Shortly thereafter, Renfroe moved the district court to issue a preliminary injunction. Judge William M. Acker Jr. issued a preliminary injunction, finding that "[t]here can be no doubt that Moran and Rigsby violated important and critical terms of their contracts with Renfroe when they copied State Farm's records and turned them over to Scruggs." *E.A. Renfroe*, Mem. Op. and Prelim. Inj. at 10 (Ex. 5). The injunction required Scruggs and the Rigsbys "to deliver forthwith" to Renfroe's counsel all of the pilfered documents and to stop using them. *Id.* at 13-14. Judge Acker further found that the Rigsbys acted "'upon advice of counsel [presumably Scruggs],'" *id.* at 8 (alteration in original), and that "it is apparent that they are all three now engaged in a cooperative effort," *id.* at 9. Judge Acker's order has been affirmed by the Eleventh Circuit.[36]

On June 15, 2007, Judge Acker found that there was ample evidence that Scruggs

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companies involving breach of contract and/or fraud claims relating to hurricane damage. The documents that Defendants have turned over to their lawyers in Mississippi, to the FBI, and to the Mississippi Attorney General are squarely at issue in one or more of these lawsuits.") (Ex. 28 hereto).

[35] *News & Notes: Hundreds of Katrina Victims Sue Insurance Companies*, NPR radio broadcast Oct. 9, 2006 (Ex. 29 hereto).

[36] *See E.A. Renfroe & Co. v. Moran*, No. 06-16561, 2007 WL 2404719, at *1-5 (11th Cir. Aug. 24, 2007) (per curiam).

willfully violated the court's preliminary injunction by creating a pretext to give the documents to Attorney General Hood's office in order to keep them away from Renfroe's counsel. *See E.A. Renfroe & Co. v. Moran*, 508 F. Supp. 2d 986, 995-96, 998 (N.D. Ala. 2007). Judge Acker then formally requested that the United States Attorney for the Northern District of Alabama prosecute Scruggs and his law firm for criminal contempt. *Id.* The court explained that "[Scruggs's] brazen disregard of the court's preliminary injunction is precisely the type of conduct that criminal contempt sanctions were designed to address." *Id*. at 996.[37] When the United States Attorney declined to prosecute, Judge Acker appointed special prosecutors pursuant to Fed. R. Crim. P. 42(a)(2). *See E.A. Renfroe & Co.*, Case No. 2:06-cv-01752-WMA, Order at 1 (N.D. Ala. July 26, 2007) (Ex. 31 hereto).

On August 21, 2007, the special prosecutors filed a criminal contempt complaint, which charges Scruggs with violating 18 U.S.C. § 401(3). Scruggs filed a petition for a writ of mandamus seeking to derail his criminal prosecution, which the Eleventh Circuit denied.[38]

IV. THE SKG'S ATTEMPT TO PAY OFF OTHER FACT WITNESSES

The Rigsbys are not the only State Farm "insiders" that the SKG has attempted to put on its payroll. In fact, the SKG has also offered engineer Brian Ford, who worked for Forensic on numerous State Farm matters, hefty sums to do "consulting" work for them. *See* Exs. 33-34. Ford's name appears throughout key paragraphs as well as other exhibits in the Complaint. *See, e.g.*, Compl. ¶¶ 125-28, 134-35, 141, 164; *id.* Exs. 15, 17, 18, 72, 78, 98, 113, 114, 121, 128. By definition, Ford is a material fact witness in this case. Nevertheless, the SKG has offered him vast sums of money to "consult" for them.

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[37] *See also E.A. Renfroe*, Order at 1 (Ex. 8 hereto); *E.A. Renfroe*, Mem. Op. at 7 (Ex. 9 hereto) (finding sufficient evidence "to suggest that Scruggs, as defendants' agent or attorney, knowingly violated and/or permitted or helped defendants to violate this court's . . . injunction").

[38] *See E.A. Renfroe & Co. v. Moran*, No. 06-16561, slip op. at 2 (11th Cir. Aug. 31, 2007) (Ex. 32 hereto).

Specifically, on May 20, 2006, Scruggs, Derek Wyatt (formerly of the Barrett Law Office, currently with Nutt & McAlister) and their colleagues traveled to Bethelehem, Georgia, where they spent several hours meeting with Ford. *See* Ford Dep. in *McIntosh*, 211:9-213:3 (All pertinent excepts of B. Ford *McIntosh* Dep. are attached hereto as Ex. 33.); Ford-SDT-100280 (All pertinent excepts of documents produced by B. Ford are attached hereto as Ex. 34.) On May 22, 2006, Ford agreed to work for the SKG based on Scruggs's offer to provide indemnity and legal representation to Ford and his family, reimbursement of his expenses, and a monthly retainer of $10,000 for a minimum of twelve months. *See* Ford-SDT-100254. For his "participation in joining the team," Ford also sought to be compensated with a percentage share of the settlement of each case, and requested Scruggs's "suggestions in how to structure" such payments. *Id*.

On August 8, 2006, Wyatt forwarded materials to Ford in *Mullins*, a case where "State Farm refused to pay damage and . . . the house . . . was essentially without damage," Ford-SDT-100234, and which is addressed at length in the Complaint in this matter. *See* Compl. ¶¶ 174-93. Wyatt confirmed that Ford would be paid "on the consulting terms that Dick Scruggs and I discussed with you in Georgia a while back." Ford-SDT-100234.

On September 1, 2006, Ford received a call from the SKG stating that "Dickie needs me" and would be calling. Ford-SDT-100283. On September 6, Scruggs called Ford, telling him that the "SKG wants [him] on team" as a "fact witness" and "consultant," and he would "be paid for [his] services." Ford-SDT-100284. Scruggs agreed to review the terms Ford set forth in his May 22, 2006 e-mail – i.e., requesting, *inter alia*, indemnity, a monthly retainer, and a percentage share of each settlement – and said he would call the next day. *Id.* On September 7, Scruggs called Ford, telling him "yes, we want [to] go ahead" and that the SKG "can meet your wishes and expectations." Ford-SDT-100285.

More recently, on June 20, 2007, Wyatt called Ford to tell him of the filing of this RICO matter. *See* Ford-SDT-100293-94. Wyatt explained that they intended to portray Ford as a "sacrificial lamb" and that his "role" as a "witness" would be "somewhat of a victim." *Id.* On June 25, 2007, Wyatt again spoke to Ford, telling him that while the SKG could not pay him as a "fact witness," it could pay him as a "consultant," ultimately prompting Ford to ask, "Do I need to move assets?" *Id.*

V. THE TESTIMONY OF DAVID LEE HARRELL, DEPUTY COMMISSIONER OF INSURANCE

The recent testimony of the Mississippi Deputy Commissioner of Insurance David Lee Harrell confirms that the SKG never had any intention of litigating its cases against State Farm by the rules. Rather, the SKG's strategy was to obtain documents outside of the normal discovery process and assist law enforcement officials with the circumvention of the Fourth Amendment. This strategy required the SKG to resist disclosure of the documents to State Farm as long as possible so that it could make unchallenged statements in the press about "highly placed insiders" and deprive the company of any opportunity to confront the so-called evidence that it claimed to have, while at the same time using its law enforcement connections and the threat of criminal prosecution to create insuperable pressure to settle its speculative claims for high-dollar amounts.

In particular, Harrell testified that in mid-December 2005 (which was shortly after the SKG was formed), Scruggs called the Mississippi Commissioner of Insurance, George Dale, and requested a meeting.[39] On December 15, 2005, Scruggs met with Commissioner Dale and Deputy Commissioner Harrell. At that meeting, Scruggs demanded that Dale "make State Farm put up $500 million for him to administer to pay claims [to clients of the SKG]." Harrell Dep. at

[39] Deposition of David Lee Harrell given in *McIntosh* at 313:5-6 ("Harrell Dep.") (Ex. 35 hereto).

318:14-18. When asked why the Mississippi Department of Insurance should set aside or require State Farm to pay a half billion dollars for the SKG to administer as it saw fit,

> [Scruggs] said he was going to do it the same way he did in the tobacco case, that he had a couple insiders, high-ranking State Farm representatives ***working for him as insiders***, and he was going to work it the same way he and [former Mississippi AG] Mike Moore worked the tobacco case.

Harrell Dep. at 320:10-16 (emphasis added). When questioned further on this point, Harrell confirmed that Scruggs said "he had a couple of . . . insiders" and "whistle blower[s]" with knowledge of "claims files [and] engineer reports" who were "working for him" at State Farm. *Id.* at 324:13-325:24.

Scruggs further threatened "that if Commissioner Dale didn't go along with trying to make State Farm put up $500 million, . . . Scruggs was going to attempt to get Mr. Dale beat [in the upcoming election]." *Id.* at 323:9-13. When Commissioner Dale refused and "advised Mr. Scruggs that he didn't think that was legal to do that," (*id.* at 324:9-12), Scruggs did, in fact, spend $250,000 to help defeat Dale in his re-election bid.

Harrell further testified that Attorney General Jim Hood was equally adamant that State Farm reach a settlement with the SKG, threatening that "[i]f they [State Farm] don't settle with us, I'm going to indict them all, from Ed Rust [State Farm's Chairman and CEO] down." *Id.* at 340:21-22. In other words, Hood worked with the SKG and the Rigsbys to take documents from State Farm, without a warrant, for use in a criminal investigation. In return, Hood used the threat of criminal indictments as a means of coercing settlements in the SKG's civil cases.

The close working relationship between the Attorney General's office and the SKG is further evidenced by additional documents recently obtained from Brian Ford. These documents state: "[Special Assistant Attorney General Courtney Schloemer] talked to Derek [Wyatt] – they agree that a criminal conviction could help civil cases." Ford 00012 (Ex. 36 hereto). Ford further noted: "Courtney does not want Brian to be a paid consultant prior to testifying before

grand jury." *Id.*

The *Renfroe* court similarly observed that Hood and the SKG were likely working in tandem. In commenting on what possible motive Hood had to intervene in the *Renfroe* action, ostensibly on behalf of the State of Mississippi, to ensure that the court's injunction included a protective order which precluded Renfroe's attorneys from providing the documents to State Farm, Judge Acker stated:

> [E]ven if the court had not issued a protective order with the preliminary injunction, and even if Renfroe's counsel had promptly disclosed the documents to State Farm, the court does not understand how this would have jeopardized a criminal investigation of State Farm. *Unless, as Renfroe has hinted at, Scruggs and Hood teamed up to bully State Farm into civil and criminal settlements by telling State Farm that they had 15,000 inculpatory documents but not allowing State Farm to see them, the court does not see why it was worth it to Scruggs to risk contempt.*

6/15/07 *Renfroe* Order at 21-22.

In fact, Scruggs and his SKG co-venturers have not only confirmed Judge Acker's suspicions, they have bragged about such tactics. For example, Scruggs has boasted of using "every trick in the book, political, public opinion and legal" to force State Farm into resolving civil cases in which Scruggs represents State Farm policyholders, including a class action settlement reached in a case captioned *Woullard v. State Farm*, Civil Action No. 1:06-cv-01057 (S.D. Miss).[40] He specifically credited the Rigsbys with providing them with leverage to cajole State Farm into settling claims.[41]

Even prior to the *Woullard* class action settlement, on January 18, 2007, Don Barrett wrote a letter to State Farm's counsel stating that going forward with a proposed State Farm-SKG civil settlement "vastly reduces the chance that [Attorney General] Hood would go forward

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[40] Tr. of 2/28/07 Hr'g in *Dennis Woullard v. State Farm Fire & Casualty Co.* in the United States District Court for the Southern District of Mississippi, Civil Action No. 1:06-cv-1057-LTS-RHW, at 10. (Ex. 37 hereto.)

[41] *Id.* at 13.

with an indictment."[42] Similarly, in the context of an argument over how attorneys' fees from an SKG settlement with State Farm should be divided among various SKG member law firms, another SKG lawyer asserted that Scruggs's firm deserved a larger piece of the pie because "the whistleblowers came to Dick and they were the sole basis for Hood's interest which was really the 80% of why [State Farm] wanted to settle."[43] The SKG's disturbing belief that such tactics represent an appropriate way to pursue litigation continues to this day and implicates this very lawsuit. In fact, rather than being chagrined by the prospect of criminal contempt, Don Barrett actually bragged that "Judge Acker has turned out to be quite a client-recruiting agent for us." Barrett further threatened: "If State Farm or any of its employees are indicted, then the value of our cases skyrocket[s]."[44]

VI. JUDGE SENTER'S RULING REGARDING DISQUALIFICATION IN *MCINTOSH*

On June 19, 2007, State Farm filed a motion to disqualify Scruggs, his law firm, and the SKG in the *McIntosh* case. The motion was based on grounds similar to those presented in this Motion. In ruling on the motion in *McIntosh*, the district court recognized that State Farm's "motion raises very serious ethical concerns." *McIntosh v. State Farm Fire & Cas. Co.*, Case No. 1:06-cv-01080-LTS-RHW, Opinion on Motion to Disqualify at 2 (S.D. Miss. Sept. 12, 2007) (Ex. 41 hereto). Nevertheless, the court declined to address the merits of State Farm's motion, holding that it was not timely because State Farm did not "rais[e] the issue of disqualification" for "over a year." *Id*. at 3. Judge Senter's dismissal was "without prejudice to State Farm's right to pursue relief for the misconduct it has alleged in any other forum having authority to reach the

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[42] 1/18/07 Letter from Don Barrett (Ex. 38 hereto).

[43] 1/25/07 E-mail from Sidney Backstrom (Ex. 39 hereto).

[44] 8/23/07 Letter from Don Barrett to Sheila L. Birnbaum (Ex. 40 hereto).

merits of its claims." *Id.* On November 19, 2007, the Fifth Circuit denied State Farm's petition for a writ of mandamus "[w]ithout deciding the contested issue of ethics." *In re State Farm Fire & Cas. Co.*, No. 07-60771, 2007 WL 4105160, at *2 (5th Cir. Nov. 19, 2007) (per curiam).

State Farm respectfully maintains that Judge Senter's determination that State Farm's disqualification motion in *McIntosh* was not timely was reached in error. However, that is not an issue in this case as State Farm's motion is most assuredly timely. Here, at the Case Management Conference held before Magistrate Judge Anderson on November 6, 2007, State Farm made it clear to Plaintiffs' counsel and to the Court that it intended to seek disqualification of the SKG from this case. Therefore, there is no question that State Farm "rais[ed] the issue of disqualification," *McIntosh*, Opinion on Motion to Disqualify at 3, and put counsel on notice of the company's intent to seek disqualification at the very first case management conference.

Furthermore, many of the key facts that make up State Farm's motion for disqualification in this case were only uncovered by State Farm after it filed its disqualification motion in *McIntosh*. For instance, Mr. Harrell's testimony regarding the SKG's multiple improprieties was not obtained until October 31, 2007. Similarly, State Farm did not learn of the relationship between the SKG and Brian Ford until Ford responded to State Farm's document subpoena at his deposition on October 19, 2007. When State Farm sought to question Ford about these documents, the SKG circled the wagons around him and hired lawyers to file objections to prevent State Farm from doing so. However, the court recently overruled Ford's objections, and State Farm is currently attempting to schedule his deposition.[45]

[45] Indeed, additional evidence of the SKG's misfeasance is still coming to light. For instance, a recent lawsuit filed by a former paralegal at the Nutt & McAlister firm raises serious questions regarding whether attorneys at that firm made secret copies of the State Farm documents stolen by the Rigsbys in order to circumvent the *Renfroe* injunction. *See Brown v. David Nutt, P.A. et al.*, 3:01-cv-0727 HTW-LRA (S.D. Miss., filed Dec. 12, 2007), Compl. ¶¶ 29-31 (Exhibit 42 hereto). In addition, Judge Walker recently denied Plaintiffs' motion to quash the deposition of Richard F. Scruggs and Zach Scruggs in the *McIntosh* case [*McIntosh* document no. 911] (Exhibit 43 hereto). These depositions – which will undoubtedly shed light on issues germane to this motion – are currently being scheduled.

ANALYSIS

I. LEGAL STANDARD

"'[M]otions to disqualify are substantive motions affecting the rights of the parties and are determined by applying standards developed under *federal law*.'" *In re Am. Airlines, Inc.*, 972 F.2d 605, 610 (5th Cir. 1992) (citation omitted). When deciding motions to disqualify, federal courts in the Fifth Circuit look to both "state and national ethical standards" governing attorney conduct. *Id.* The United States District Courts in Mississippi have adopted the Mississippi Rules of Professional Conduct. *See* N. & S.D. Miss. Unif. Local R. 83.5. Mississippi, in turn, has adopted the American Bar Association ("ABA") Model Rules of Professional Conduct. *See United States v. Starnes*, 157 F. App'x 687, 693 (5th Cir. 2005), *cert. denied*, 127 S. Ct. 1922 (2007). Because of this uniformity, courts in Mississippi frequently rely on cases interpreting analogue rules in other jurisdictions.[46]

"A motion to disqualify counsel, such as the one now before the court, 'is the proper method for a party-litigant to bring the issues of conflict of interest or breach of ethical duties to the attention of the court.'" *Grosser-Samuels v. Jacquelin Designs Enters., Inc.*, 448 F. Supp. 2d 772, 778 (N.D. Tex. 2006) (quoting *Musicus v. Westinghouse Elec. Corp.*, 621 F.2d 742, 744 (5th Cir. 1980)). Where there are apparent ethical violations, "'any doubt is to be resolved in favor of disqualification'" in order to preserve the public trust. *MMR/Wallace Power & Indus., Inc. v. Thames Assocs.*, 764 F. Supp. 712, 718 (D. Conn. 1991) (citation omitted).

II. THE SKG VIOLATED MRPC 4.2, 4.4, 5.1(c), AND 8.4

The SKG's illicit use of "highly placed insiders" to obtain documents and information

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[46] *See, e.g.*, *Am. Airlines*, 972 F.2d at 617, 619-20; *Doe v. A Corp.*, 709 F.2d 1043, 1046-47 & nn.9-10 (5th Cir. 1983); *Owens v. First Family Fin. Servs., Inc.*, 379 F. Supp. 2d 840, 846 n.2, 850-51 & n.7 (S.D. Miss. 2005) (explaining that "particular rules of the Mississippi Code of Professional Responsibility [and] the rules of the ABA Model Code of Professional Conduct are effectively the same," and relying on out-of-state cases to determine whether a certain rule applies to non-lawyer employees of lawyers).

regarding State Farm outside of the discovery process unequivocally violated several local and national ethical rules and standards. First, MRPC 4.2 prohibits attorneys from *ex parte* communications with represented parties. As managers and adjusters for Renfroe working exclusively on State Farm matters, the Rigsbys had the authority to speak for State Farm in their claims handling and mediation/litigation duties, and thus clearly fall under the definition of "represented parties."[47] Scruggs admits that he had many unauthorized *ex parte* conversations with them over the course of several months. Courts have repeatedly recognized that flagrant violations of Rule 4.2 – such as those that have occurred in this case – mandate disqualification.[48]

Similarly, the SKG's receipt of thousands of pages of stolen documents from the Rigsbys further violated MRPC 4.4, which prohibits an attorney from "us[ing] methods of obtaining evidence that violate the legal rights of [third persons]." MRPC 4.4(a). The rights of third persons "include legal restrictions on methods of obtaining evidence from third persons." MRPC 4.4 cmt. MRPC 8.4, in pertinent part, states that "[i]t is professional misconduct for a lawyer

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[47] In the *McIntosh* case, plaintiffs argued that Rule 4.2 was inapplicable because the Rigsbys were independent claims adjusters working for Renfroe, rather than State Farm employees. This argument was expressly rejected by the court. *See McIntosh v. State Farm Fire & Cas. Co.*, Case No. 1:06-cv-01080-LTS-RHW, Order at 3 (S.D. Miss. Oct. 1, 2007) ("This Court finds . . . they [the Rigsbys] unquestionably occupied a dual-employment status in their employment by Renfroe to do work for State Farm.") (Ex. 44 hereto). It is well established that the "no contact" rule applies to "an employee *or agent* of [State Farm]." Miss. Rules of Prof'l Conduct R. 4.2 cmt. (emphasis added). Independent claims adjusters working for an insurer – like the Rigsbys – are no less the insurer's agents than internal adjusters. *See, e.g.*, *Hill v. Giuffrida*, 608 F. Supp. 648, 649 (S.D. Miss. 1985) ("[T]he adjusting company's duty is to their principal, the insurance company, and not to the insured."); *see also* ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 91-359 (1991) ("Rule [4.2] presumably covers independent contractors whose relationship with the organization may have placed them in the factual position contemplated by the Comment.").

[48] *See Weeks v. Indep. Sch. Dist. No. I-89*, 230 F.3d 1201, 1211 (10th Cir. 2000) (affirming trial court's *sua sponte* order disqualifying plaintiff's attorney for violating [Okla. Stat. tit. 5] Rule 4.2 and proscribing plaintiff from using any evidence obtained though the *ex parte* communications); *Camden v. Maryland*, 910 F. Supp. 1115, 1123 (D. Md. 1996) (disqualifying counsel for *ex parte* communication, explaining that "[t]he integrity of the justice system is at risk unless a stand is taken against conduct of the sort that occurred here"); *Faison v. Grant Thornton*, 863 F. Supp. 1204, 1216-17 (D. Nev. 1993) (disqualifying counsel for "attempt[ing] to circumvent the rules of discovery by engaging in *ex parte* communication" and ordering that plaintiff shall be "prohibited from using any information improperly obtained"); *Shelton v. Hess*, 599 F. Supp. at 906, 910-11 (S.D. Tex. 1984) (granting motion to disqualify counsel for violating rule prohibiting unauthorized *ex parte* contact with represented party).

to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] . . . engage in conduct that is prejudicial to the administration of justice." MRPC. 8.4.

The *Renfroe* court has already found that Scruggs and the Rigsbys clearly violated the legal rights of a third party – Renfroe – and "engaged in a cooperative effort" to misuse confidential information. *See E.A. Renfroe*, Opinion at 9 (Ex. 5 hereto). Indeed, the court found that "nothing could be more potentially harmful to Renfroe than a breach of the duty to keep its clients' confidential records confidential." *Id*. at 11.

The SKG's use of the Rigsbys to bypass the proper discovery channels is also a serious violation of Rule 4.4. In *Arnold v. Cargill Inc.*, No. 01-2086 (DWF/AJB), 2004 WL 2203410 (D. Minn. Sept. 24, 2004), the court disqualified plaintiffs' law firm, which cultivated a relationship with an ex-employee of the defendant in order to elicit confidential information about the defendant. *See id*. at *1-3, *14. The court held that such conduct violated both Rule 4.4 and Rule 4.2, and that disqualification was the "only remedy" that would preserve "the public trust both in the scrupulous administration of justice and in the integrity of the bar." *Id*. at *14; *see also In re Shell Oil Refinery*, 143 F.R.D. 105, 108 (finding that plaintiffs' counsel had "effectively circumvented the discovery process" by obtaining documents from employee of defendant), *amended*, 144 F.R.D. 73 (E.D. La. 1992).

Plaintiffs' lawyers will likely attempt to distance themselves from these multiple ethical violations by arguing that the Rigsbys dealt primarily with Scruggs. This argument is flawed for at least two reasons. First, in addition to their own independent violations of the ethical rules, all of the SKG joint venturers are liable as *accessories*. MRPC 5.1(c) provides that "[a] lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if . . . the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved." MRPC 5.1(c). Here, the SKG clearly ratified Scruggs's misfeasance when it hired the Rigsbys and used

the information gained through Scruggs *ex parte* conversations with them and the documents that they stole in the SKG's lawsuits against State Farm. MRPC 8.4(a) similarly provides for accessorial liability where a lawyer "violate[s] or attempt[s] to violate the rules of professional conduct . . . *or do[es] so through the acts of another.*" MRPC 8.4(a) (emphasis added).

Second, the SKG must be disqualified under settled principles of *imputed* liability. Joint venture partnerships – like the SKG – that share confidential information and hold themselves out to be "affiliated" are treated as a traditional law partnership for the purposes of the imputed disqualification rules. *See* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 123(1) (2000) (explaining that imputed disqualification rules cover "a law partnership, professional corporation, sole proprietorship, *or similar association*") (emphasis added); *Mustang Enters., Inc. v. Plug-In Storage Sys., Inc.*, 874 F. Supp. 881, 888-89 (N.D. Ill. 1995) (holding that disqualification of constituent firms in joint venture was warranted where they shared confidential information and held themselves out to be "affiliated"), *opinion supplemented by* No. 94 C 6263, 1995 WL 55226 (N.D. Ill. Feb. 8, 1995). Under the imputed disqualification rules, "all authorities agree that all members of a partnership are barred from participating in a case from which one partner is disqualified." *American Can Co. v. Citrus Feed Co.*, 436 F.2d 1125, 1128 (5th Cir. 1971). This is so because there is an "irrebuttable presumption that confidences presumably obtained by an individual lawyer will be shared with the other members of his firm." *Grosser-Samuels*, 448 F. Supp. 2d at 779; *see also* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 123, cmt. c. (2000) (explaining that "[t]he general presumption is well settled that confidences imputed to one lawyer in a firm are shared among all firm lawyers").

In this case, there is no dispute that the SKG sought and received "inside" information from the Rigsbys and used it in their cases against State Farm. This severely compromises the legal rights of State Farm in violation of Rule 4.4, and is prejudicial to the administration of

justice in violation of Rule 8.4.

III. BY HIRING THE RIGSBYS AND ATTEMPTING TO HIRE FORD AS "LITIGATION CONSULTANTS," THE SKG VIOLATED MRPC 4.2, 4.4, AND 8.4, AND CANON 9 OF THE MODEL CODE OF PROFESSIONAL RESPONSIBILITY

The SKG's ethical transgressions are compounded exponentially by the fact that they hired the Rigsbys – who are repeatedly described as material witnesses in their State Farm cases – to serve as highly paid litigation consultants. The pertinent case law universally and resoundingly condemns this practice as both violative of MRPC 4.2, 4.4, and 8.4, and inimical to Canon 9 of the Model Code of Professional Responsibility, which requires that attorneys "avoid even the appearance of impropriety." Model Code of Prof'l Responsibility Canon 9 (1980); *cf. Dresser Indus.*, 972 F.2d at 543 ("[The Fifth Circuit has] applied particularly . . . the admonition of canon 9 that lawyers should 'avoid even the appearance of impropriety.'") (citation omitted).

In fact, members of the SKG knew immediately that hiring the Rigsbys as litigation consultants for the SKG presented serious ethical issues. One such joint venturer describes an SKG meeting where the issue was raised:

> Before the meeting on Oct. 6, 2006, an agenda was prepared and circulated by Sid Backstrom that included agenda item number #3 – "The Girls." . . . *At the meeting, whether the SKG could ethically pay the sisters was raised as an issue* and Scruggs said that he had told the sisters that the SKG would "take care of them." No amount was discussed. . . . Scruggs simply stated that the sisters had taken great risk and he felt a personal obligation to them and that *Scruggs expected the group to share the expenses because he had already told Moran and Rigsby that he would "take care of them."*

Pl. Supp. Mem. at 9, *Jones, Funderburg, Sessums, Peterson & Lee, PLLC v. Scruggs*, Civ. A. No. L07-135 (Miss. Cir. Ct. Lafayette County filed June 27, 2007) (emphasis added) (Ex. 2 hereto).

Of course, the SKG could not ethically "take care of" the Rigsbys by paying them $150,000 a year each as compensation for providing Scruggs with reams of illegally obtained evidence for use in SKG cases. But it did.

In a closely analogous case, *Rentclub, Inc. v. Transamerica Rental Finance Corp.*, 811 F. Supp. 651 (M.D. Fla. 1992), *aff'd*, 43 F.3d 1439 (11th Cir. 1995), opposing counsel hired as a paid "trial consultant" a former highly placed employee, Mr. Canales, of defendant Transamerica Rental Finance Corp. ("TRFC"). *See id.* at 653. The court found this "consulting arrangement" highly improper:

> The appearance of professional impropriety resulting from the attorney-"trial consultant" relationship in this case takes two general forms. First, there is the appearance that [opposing counsel] Trenam, Simmons, through [its] payments to Canales, has induced Canales to disclose to it confidential matters relating to TRFC's managerial practices and relating to TRFC's strategies, theories and mental impressions in this and/or substantially related litigation. *An irrefutable presumption of such inducement flows from the fact that Canales, who was privy to confidential and proprietary information belonging to TRFC, is now on retainer for Trenam, Simmons.* Such inducement violates: (a) Fla. Bar Code of Prof. Cond., 4-1.6, which requires attorneys to maintain confidentiality and imposes upon attorneys a correlative duty to refrain from inducing others to disclose confidential matters; (b) Fla. Bar Code of Prof. Cond., 4-4.2, which prohibits attorneys from directly communicating with adverse parties, including employees or former employees of the corporate parties represented by counsel; and (c) Fla. Bar Code of Prof. Cond., 4-8.4(d), which prohibits attorneys from engaging in conduct that is prejudicial to the administration of justice.
>
> Second, there is the appearance that Canales is being paid for his factual testimony as opposed to his work as a "trial consultant." Such conduct violates: (a) Fla. Bar Code of Prof. Cond., 4-8.4(c), which prohibits attorneys from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and (b) Fla. Bar Code of Prof. Cond., 4-8.4(d), which prohibits attorneys from engaging in conduct that is prejudicial to the administration of justice.

Rentclub, 811 F. Supp. at 654 (emphasis added).

Similarly, in *Camden v. Maryland*, 910 F. Supp. 1115 (D. Md. 1996), lawyers at the firm Meyers, Billingsley, Rodbell and Rosenbaum ("MBRR") represented a former university employee in an age and race discrimination suit against the university. *See id.* at 1116-17. When the employee first complained to the university, the case was assigned to an internal investigator for review and informal resolution. Sometime after those efforts failed, the investigator left the university on unfriendly terms and proceeded to assist MBRR in preparing its case against the

university. The court held that by talking with the disgruntled former investigator, MBRR had clearly "breached the standard of impermissible *ex parte* contact." *Id.* at 1123-24. In ordering that MBRR be disqualified, the court explained: "[I]t is not Defendants alone who would be prejudiced if this action were left unredressed. The integrity of the justice system is at risk unless a stand is taken against conduct of the sort that occurred here." *Id.* Other cases reaching the same conclusion as *Rentclub* and *Camden* are legion.[49]

IV. THE SKG HAS VIOLATED THE FEDERAL BRIBERY STATUTE AND MRPC 3.4 AND 8.4

Paying material fact witnesses annual stipends of $150,000 for "no show" jobs is also a facial violation of the federal bribery statute, 18 U.S.C. § 201, which, *inter alia*, criminalizes the giving of something of value (other than certain enumerated costs) for or because of past or potential testimony before any court, Congress, agency or commission. *See* 18 U.S.C. §§ 201(c)(2), (d).[50] An attorney who violates the federal bribery statute is subject to revocation

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[49] *See In re Complaint of PMD Enters., Inc.*, 215 F. Supp. 2d 519, 530 (D.N.J. 2002) (attorney's hiring of opposing party's former employee, who was a fact witness in the case, warranted disqualification); *American Prot. Ins. Co. v. MGM Grand Hotel-Las Vegas, Inc.*, No. CV-LV-82-26-HDM, 1986 WL 57464, at *1, *6-7 (D. Nev. Mar. 11, 1986) (denying motion to reconsider prior order granting disqualification because attorney's participation in negotiations to hire opposing party's former employee as a trial consultant "affects both the public's view of the judicial system and the integrity of the court"); *Esser v. A.H. Robins Co.*, 537 F. Supp. 197, 203 (D. Minn. 1982) (granting law firm's motion to withdraw in lieu of disqualification, but conditioning consent to withdrawal on firm's receiving no financial remuneration where plaintiff's law firm had hired defendant's former senior claims adjuster); *United States v. SAE Civil Constr., Inc.*, No. 4:CV95-3058, 1996 WL 148521, at *5 (D. Neb. Jan. 29, 1996) (disqualifying attorneys who retained opposing party's former president as a trial consultant); *MMR/Wallace Power*, 764 F. Supp. at 714-17, 727-28 (disqualifying attorney and law firm based upon retention of the former office manager of the opposing party as a trial consultant).

[50] 18 U.S.C. § 201(c) states, in pertinent part . . .

> (2) [Whoever] directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom; . . . shall be fined under this title or imprisoned for not more than two years, or both.

18 U.S.C. § 201(c).

or suspension of his or her license to practice law. *See, e.g.*, *Disciplinary Counsel v. Blaszak*, 819 N.E. 2d 689, 694 (Ohio 2004) (license suspended for two years; citing cases where license suspended indefinitely).

In addition to criminal liability, a violation of the statute also violates MRPC 3.4(b), which provides that "[a] lawyer shall not . . . offer an inducement to a witness that is prohibited by law," MRPC 3.4(b), and MRPC 8.4(b), which makes it "professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects," MRPC 8.4(b).

As one court discussing the policy behind the federal bribery statute recently explained, the testimony of any witness with a pecuniary incentive

> is necessarily open to scrutiny and challenge. It is fair to question whether any witness would not tailor his or her testimony when that person's own financial condition could be affected by the testimony – not because the witness is a plaintiff or defendant, but because a special relationship had been created with the witness by the plaintiff or defendant by reason of the reimbursement incentive.

In re Telcar Group, Inc., 363 B.R. 345, 355 (Bankr. E.D.N.Y. 2007).

With respect to the Rigsbys, there is already ample evidence that they have tailored their testimony to comport with their financial interests. For instance, the Rigsbys have repeatedly testified that the SKG had no involvement in planning the "data dump" weekend. But the factual record provides conclusive proof that somebody at the SKG gave Kerri Rigsby a list of the SKG's clients, which she used to determine which claim files to steal. Specifically, a comparison between the list of claim files that Kerri Rigsby accessed from State Farm's CSR database during the data dump weekend and a list of clients that Scruggs was representing in the case of *McFarland v. State Farm Fire & Casualty Co.*, Case No. 1:06-cv-0466-LTS-RHW (S.D. Miss. filed May 9, 2006), reveals that, of the first 118 claim files that Kerri Rigsby accessed, 99 matched up name for name and in substantially the same sequence as the claim files listed on

what has come to be known as "*McFarland* Exhibit A" (Ex. 45 hereto), which was an exhibit to Scruggs's *McFarland* complaint listing all of the named plaintiffs. This point is well illustrated by Ex. 46, which provides a side-by-side comparison of Kerri Rigsby's CSR Access Report and Scruggs's client list. Although Kerri Rigsby apparently worked from a separate list for the next 117 claim files, she then resumed searching based on *McFarland* Exhibit A, as demonstrated by the fact that 36 of the next 39 searches are listed in the same order as on *McFarland* Exhibit A.

Kerri Rigsby (whose financial well-being is, of course, dependent on the SKG) swears that she had never seen *McFarland* Exhibit A until it was shown to her at her deposition, and denies that she was guided by it or any similar list of the SKG's clients in determining which files to access. *See* K. Rigsby Dep. at 318:9-319:12. But the fact that the 135 claim files that Kerri Rigsby accessed match, name for name and sequentially, the SKG list of clients in *McFarland* can hardly be a coincidence. To the contrary, the conclusion is inescapable that somebody at the SKG directed which claim files she accessed during the data dump weekend, and Kerri Rigsby shaded her testimony to conceal this fact.

Tellingly, when confronted in a subsequent deposition with the fact that 135 claim files matched the SKG's client list, Kerri Rigsby conceded that she did not "see how [the search sequence] could be from an engineering roster" and tried to explain away her previous false testimony by postulating that Cori Rigsby might have had a list of Scruggs's clients. *See* K. Rigsby *McIntosh II* Dep. at 568:19-572:9. But Cori continues to maintain that the only list that they used during the "data dump" was an engineering roster, even though she admits that "[c]learly they'd have to have [a list of the McFarland claim numbers]" in order to produce the sequence of claims files that the record shows were, in fact, accessed. C. Rigsby *McIntosh II* Dep. at 423:1-425:6.

The SKG's violations of 18 U.S.C. § 201(c)(2), MRPC 3.4(b), and MRPC 8.4(b) are

equally apparent with respect to Brian Ford. As noted, on June 20, 2007, SKG lawyer Derek Wyatt called Ford to retain him as a "consultant" on this case. *See* Ford-SDT-100293-94. Wyatt explained that they intended to portray Ford as a "sacrificial lamb" and that when he was called upon to testify, his "role" as a "witness" would be "somewhat of a victim." *Id.*

By using the Rigsbys to obtain unauthorized access to State Farm's computer systems, the SKG also violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030. *See, e.g.*, *Shurgard Storage Ctrs., Inc. v. Safeguard Self Storage, Inc.*, 119 F. Supp. 2d 1121, 1122-23 (W.D. Wash. 2000) (holding that employer's allegations that former employees, while still employed, misappropriated confidential information from employer's computer network and disseminated the same to a third party stated a claim under the Computer Fraud and Abuse Act).

State Farm also notes the striking parallels between the misfeasance exhibited by the SKG in this case and the allegations contained in the federal bribery indictment against Scruggs and the others. In the indictment, the government maintains that Scruggs "attempted to cover up" the fact that he was funneling $50,000 to one of his co-conspirators for use as a bribe by "falsely creating documents to show that he hired [one of his co-conspirators] to do jury selection work and preparation of jury instruction" for his law firm. *See* Scruggs Indictment, Count I, ¶ 4. Here, of course, the SKG attempted to legitimize its payments to the Rigsbys by hiring them as "consultants."

Of course, in this case, the Court is not called upon to decide the issue of the SKG's criminal liability. But this Court is charged with safeguarding the integrity of the adversarial process. Here, the SKG's pattern and practice of hiring or attempting to hire key fact witnesses to play a preordained "role" in this litigation perverts the truth-seeking process and threatens State Farm's due process right to a fair trial.

V. THE SKG HAS ABUSED THE SUBPOENA POWER AND VIOLATED MRPC 4.1(a) AND 4.4

As set forth in great detail in State Farm's Response in Opposition to Plaintiffs' Motion for Leave to File Amended Complaint [Document no. 86], much of the putative evidence that Plaintiffs seek to introduce into this case was improperly obtained by Plaintiffs' counsel, Derek Wyatt, from Nellie Williams, a former employee of Forensic. Although Wyatt had been chastised repeatedly by other courts for his egregious misuse of the subpoena power, when Wyatt ultimately deposed Ms. Williams on December 14, 2006 in another case against State Farm, he badgered and browbeat her to produce a multi-disk set of CDs, even though privilege was asserted over some of their content. *See* Ex. 47, Williams Dep. at 177:5-17 (All pertinent excerpts of N. Williams *Mullins* Dep. are attached hereto as Exhibit 47.). Though Ms. Williams was not represented by counsel in her first-ever deposition, *see id.* at 8:1-3, 153:2-3, 175:18-20, Plaintiffs' counsel repeatedly and aggressively made false threats that she would be held in contempt unless she immediately turned over those CDs in response to the subpoena:

- "You can either turn over the documents that you brought here today pursuant to this order [*i.e.*, referring to the subpoena], or you can choose to be in contempt of this order. Which do you choose?"

- "So if you choose not to do that [comply], you're choosing to be in contempt of the subpoena."

- "So as of this moment, if you are choosing to refuse to produce the information to us, you're in contempt."

Id. at 175:24-25, 176:1-2, 180:9-14, 181:3-5, 181:7-9, 181:19-20, 183:16-18. After this long exchange, Ms. Williams simply surrendered wholesale all the data she had, including data Forensic claimed was outside the scope of the subpoena. *See id.* at 184.

This conduct was inherently improper as the court recognized in *Fox Industries, Inc. v. Gurovich*, No. CV 03-5166, 2006 WL 2882580 (E.D.N.Y. Oct. 6, 2006). Instructing a non-party

witness as to the effect of a subpoena constitutes "'clear evidence' of his bad faith and vexatious behavior evincing a deliberate effort to usurp the authority of the court" and warrants the imposition of sanctions. *Id.* at *10. The court explained: "It is the court's duty to rule on the validity of subpoenas and to direct the recipients to comply or not comply, not the attorney's, and [counsel] has, simply put, usurped the authority of the court. . . . The court will not tolerate such behavior." *Id*. at *8.

The Federal Rules of Civil Procedure grant attorneys broad power to issue subpoenas as "officer[s] of [the] court." Fed. R. Civ. P. 45(a)(3). And with great power comes great "responsibility and liability for the misuse of this power." Fed. R. Civ. P. 45, Advisory Committee Note of 1991.

> The risks attached to the misuse of the subpoena power are great. Under this delegation of public power, an attorney is licensed to access, through a non-party with no interest to object, the most personal and sensitive information about a party. . . . [M]isuse of the subpoena power . . . compromises the integrity of the court's processes. . . . When the power is misused, public confidence in the integrity of the judicial process is eroded.

Spencer v. Steinman, 179 F.R.D. 484, 489 (E.D. Pa. 1998), *modified in part*, Civ. No. 96-1792, 1999 U.S. Dist. LEXIS 23387 (E.D. Pa. Feb. 25, 1999).

Wyatt flagrantly abused this subpoena power because only a court may find a witness in contempt of a subpoena. *See* Fed. R. Civ. P. 45(e). Wyatt's false representations to Ms. Williams that she was in contempt clearly violated MRPC 4.1(a), which bars an attorney from making "a false statement of material fact or law to a third person" in the course of representing a client. "Rule 4.1 has been described as imposing on an attorney the same duty of candor outside the courtroom that governs statements made to the court itself." *Ausherman v. Bank of Am. Corp.*, 212 F. Supp. 2d 435, 443 n.8 (D. Md. 2002).

Wyatt's campaign to intimidate and deceive Ms. Williams further violated MRPC 4.4(a), which prohibits using "methods of obtaining evidence" that "embarrass, delay, or burden a third

person, or . . . that violate the legal rights of such a person." *See, e.g.*, *Louisiana State Bar Assoc. v. Harrington*, 585 So. 2d 514, 520 (La. 1990) (finding violation of Rule 4.4 where lawyer threatened adverse party in a civil suit with criminal charges if she did not respond to a letter, and suspending him from practice for nine months in conjunction with other ethical violations).

VI. THE TESTIMONY OF KERRI RIGSBY AND BRIAN FORD ESTABLISHES THAT NO ALLEGED WRONGDOING ON THE PART OF STATE FARM CAN JUSTIFY THE RIGSBYS' ACTIONS AND THE SKG'S UNETHICAL CONDUCT

In the *Renfroe* and *McIntosh* actions, the SKG repeatedly claimed that its misfeasance was justified because State Farm was committing fraud. This argument is flawed for a number of reasons. First and foremost, the SKG lawyers are manifestly not free to disregard their ethical duties and the discovery rules because they believe that State Farm is acting fraudulently. Moreover, when the unvarnished facts underlying the SKG's claims are examined, it is readily apparent that the assertion that State Farm regularly procured fraudulent engineering reports to avoid paying for wind damage is a fabrication. For instance, in the *McIntosh* case, the plaintiffs alleged that State Farm defrauded them by concealing the existence of the initial engineering report pertaining to their property, dated October 12, 2005. *See McIntosh* Am. Compl. ¶ 35 (Ex. 27 hereto). The McIntoshes contend that State Farm was not happy with the October 12 report (which they claim indicated that their house was completely destroyed by wind), so State Farm demanded that Forensic issue a second, more favorable report dated October 20, 2005, which indicated wind *and flood* damaged the property. *Id.* ¶¶ 34-42.

However, the testimony of the SKG's own star witness – Kerri Rigsby – establishes conclusively that the October 20 report was not improper, let alone fraudulent. In fact, her testimony established that: (i) the second report was both more accurate and more complete than the first; (ii) it was consistent with her own conclusions based on her personal inspection of plaintiffs' house; and (iii) State Farm had good reason to be concerned with the first report's lack

of completeness. *See* Deposition of Kerri Rigsby taken in *Marion v. State Farm Fire & Casualty Co.*, Case No. 1:06-cv-00969 (S.D. Miss. filed June 21, 2006) ("K. Rigsby *Marion* Dep.").[51]

First, there is no question that Kerri Rigsby – who personally inspected the McIntoshes' property – found both "flood and wind damage." K. Rigsby *Marion* Dep. at 140:9-15. This is why a determination was made to pay the $250,000 policy limit under their flood policy – which the McIntoshes received and accepted – and also to pay for damage that could be determined to have been caused by wind. *See id.* at 132:23-133:6. But the conclusions in the October 12 report did not mention *any* flood damage to the house. *See id.* at 138:8-139:7. Kerri admits that the October 12 report, standing alone, did not support the $250,000 flood payment that she authorized and that she believed "there was $250,000 worth of flood damage to that home." K. Rigsby *Marion* Dep. at 139:9-23.

Kerri Rigsby further testified that, based on her personal involvement in the adjustment of the McIntoshes' claim, State Farm had good reason to be concerned that the October 12 report was incomplete because it failed to address all of the damage to their home. K. Rigsby *Marion* Dep. at 139:25-140:8, 143:1-9. Finally, Kerri admitted that the October 20 report did ***not*** fraudulently "alter" the conclusions of the October 12 report, as the SKG has repeatedly contended. Rather, the October 20 report is simply more fulsome than the earlier report and includes ***accurate*** additional details regarding the wind damage as well as ***accurate*** conclusions about flood damage. *See* K. Rigsby *Marion* Dep. at 141:4-142:24.

Brian Ford, who wrote the original report, similarly agrees that the supposedly fraudulent October 20 report is, in fact, more accurate and complete than the October 12 report. Ford Dep. 302:7-303:8. In fact, Ford confirmed that he agreed with all three conclusions reached in the

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[51] All pertinent portions of Kerri Rigsby's deposition testimony in the *Marion* case are attached hereto as Exhibit 48.

October 20 report. *Id.*

In short, Kerri Rigsby and Brian Ford's testimony establishes that there was no fraud involved in the handling of the McIntoshes' claim. There is similarly no merit to Plaintiffs' conclusory allegations of coerced engineering reports in this case. Therefore, Plaintiffs cannot justify the SKG's multiple violations of the ethical rules with shadowy allusions to nefarious deeds by State Farm that their own star witness disproved. If anything is clear, it is that the SKG lawyers have time and again distorted the record, exalted their own personal interest above the integrity of the judicial process (and their own clients), and wrongly accused State Farm of egregious fraudulent activity, all for personal gain.

VII. THE SERIOUS IMPROPRIETIES COMMITTED BY THE SKG WARRANT DISQUALIFICATION OF THE FIRMS

The SKG's blatant misfeasance in this case was extreme. It took place over the course of several months, involved numerous third parties, and is unprecedented in scale. Indeed, Plaintiffs' allegations in the instant case are based on many of the same illicitly obtained documents at the heart of the *McIntosh* case and numerous other cases brought against State Farm by the SKG – all arising as a result of the same scheme by the SKG to bypass discovery rules and illegally obtain State Farm documents for use against the company in litigation.

The illegally gained confidential knowledge that the SKG lawyers now possess regarding State Farm makes their continued representation of Plaintiffs in this case untenable. They may be ordered to return State Farm's documents, they may be told to cease paying the Rigsbys, but the damage is already done; the SKG firms have irreparably perverted the litigation process. *See Camden*, 910 F. Supp. at 1124 (ordering disqualification of plaintiffs' law firm: "MBRR has listened in at the legal confessional. It has gained access to confidential information that is damaging to Defendants whether or not it becomes formal evidence in the case."). Therefore, unless the SKG law firms are disqualified, "[t]he integrity of the justice system is at risk." *See*

Camden, 910 F. Supp. at 1123.

CONCLUSION

For all of the foregoing reasons, State Farm respectfully requests that the Court disqualify the Barrett Law Office, P.A., Nutt & McAlister, P.L.L.C., the Lovelace Law Firm, P.A., and the entity now known as the Katrina Litigation Group from representing Plaintiffs in this case, and to further order that Plaintiffs may not use any item obtained through their counsels' unethical activities, including, but not limited to, all documents and information obtained through the Rigsbys, as evidence against State Farm in this litigation.

Dated: December 18, 2007

RESPECTFULLY SUBMITTED,

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