

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

THOMAS C. and PAMELA McINTOSH

PLAINTIFFS

vs.

CIVIL ACTION NO.: 1:06cv1080 LTS RHW

STATE FARM FIRE & CASUALTY CO.

and FORENSIC ANALYSIS & ENGINEERING CO, et. al.

DEFENDANTS

AFFIDAVIT OF DEREK A. WYATT

STATE OF MISSISSIPPI
COUNTY OF MADISON

Derek A. Wyatt, being first sworn according to law, does depose and say:

1. My name is Derek A. Wyatt. I am a member in good standing of the Mississippi Bar Association.

2. I am over the age of 21 years and am otherwise competent to make this Affidavit.

The statements and facts contained in this Affidavit are based on my own personal knowledge.

Allegations About The Rigsbys Are Incorrect

3. I was not approached by the Rigsbys, nor did I ever have dealings with the Rigsbys any time when they worked for Renfroe.

4. I was not asked to assist the Rigsbys with their *qui tam* litigation case.

5. I have never represented the Rigsbys as their personal attorney, nor as *qui tam* counsel.

6. I never negotiated any consulting arrangement with the Rigsbys. My understanding is that any such arrangement was entered into between Richard Scruggs ("Scruggs") and the Rigsbys. My understanding is that Mr. Scruggs agreed to pay the Rigsbys amounts commensurate with their former salaries in order to be on retainer, readily available,

and to assist with insurance claim adjustment consulting as needed. SKG agreed to reimburse Mr. Scruggs for his litigation expenses, including his payments to experts and consultants, such as the Rigsbys. Scruggs never stated or otherwise indicated that the Rigsbys consulting assistance was inadequate for the compensation they received.

7. I have had little contact with the Rigsbys. My dealings with the Rigsbys occurred after they had become "former" employees of Renfroe and a time when they were not employed by any defendant in any litigation.

Allegations About The So-Called "Data Dump" Documents Are False

8. I never asked for nor received documents from the Rigsbys.

9. I never asked for nor received a set of documents referred to by the Defendants as "data dump" documents.

10. I have not reviewed the so-called "data dump" documents at Mr. Scruggs' office or anywhere else.

11. I am not aware of which documents constitute the so-called "data dump" documents.

12. To my knowledge, I do not have any so-called "data dump" documents. I have not knowingly used any "data-dump" documents in any litigation.¹

13. Mr. Wolfram's allegations of "extensive sharing" of so-called "data dump" documents over an "extensive" period of time are not applicable to me or the members of my firm.

14. When my firm was served on December 11, 2006 with the injunction issued by

¹ The documents being used in litigation are ones obtained during discovery in cases and/or that were made available to the public. If any such materials also happen to be materials that were part of the so-called "data dump," I would not know, because (as stated) I have not seen those materials, nor do I know the composition of those materials. Mr. Wolfram's comments about "extensive sharing" with KLG attorneys are false.

Judge Acker in *Renfroe v. Rigsby*, my office was not aware of having any of the so-called “data dump” documents.

15. On February 22, 2007, my office was requested by Scruggs Law Firm to again determine if it had copies of any of the so-called “data dump” documents.

16. In response to Scruggs Law Firm’s request, Meg McAlister of my firm instructed our office staff to determine if our firm had any such documents. One of my firm’s paralegals identified two documents that might be within the scope of the injunction. Those two documents were a State Farm Catastrophe Induction Manual and a list of State Farm catastrophe office personnel. My firm did not and does not now know the source of those documents, when or how those documents came into our possession, or whether those documents are included within the scope of the injunction.

17. However, out of an abundance of caution, on February 23, 2007, we transmitted via Federal Express our firm’s only hard copy of the two documents and transmitted via email an electronic copy of the two documents to the law firm of Bainbridge, Mims, Rogers & Smith, LLP. Meg McAlister of our firm instructed all paralegals to delete any and all electronic copies of those documents, saving only our transmittal email as proof of the transmittal itself.

18. On or about April 22, 2007, a number of *subpoenae duces tecum* were issued by E.A. Renfroe & Company, Inc. in *Renfroe v. Rigsby* for the so-called “data dump” documents. I am not aware of whether any such subpoena was ever validly served on me.

19. Approximately one week later, on May 1, 2007, State Farm offered copies of both the State Farm Catastrophe Induction Manual and list of State Farm catastrophe office personnel documents as exhibits to Keri Rigsby’s deposition in the above styled and numbered civil action.

20. In addition to the Catastrophe Induction Manual and personnel list, my firm also

has copies of the October 12, 2005 and October 26, 2005 site inspection reports for the McIntoshes' property submitted by Forensic Analysis & Engineering Company to State Farm and the sticky note affixed to the October 12 report, as exhibits to the Complaint filed in this action. Our office obtained its copy of said Complaint and exhibits thereto by downloading same from the ECF docket on or about the time said Complaint was filed of public record by Scruggs Law Firm.

There is No Conflict of Interest

21. I have never owed and do not now owe any representation duties to the Rigbys. My duties are to Mississippi policyholders, including Plaintiffs, who had their claims denied by these and other insurance industry defendants. Thus, I have never had a conflict of interest between the Rigbys (who are not my clients) and plaintiff policyholders (who are my clients).

The Brian Ford Allegations are Untrue

22. I met Brian Ford and engaged in discussion with him from time to time concerning his activities as a former engineer for Forensic Engineering Co. At the time I first met him, in May 2006, I believed Brian had been fired by Forensic Engineering after conducting several property inspections ordered by State Farm. I later learned that State Farm had ordered Forensic to fire Brian Ford. I have never negotiated a consulting payment arrangement with Mr. Ford nor have I ever offered to pay Mr. Ford any money for any purpose. If any discussions occurred with Brian Ford concerning consulting arrangements, such discussions were between Mr. Ford and the Scruggs Law Firm. To my knowledge, the lawyers of SKG and the KLG have never paid Brian Ford any money for testimony.

KLG is Not a Law Firm

23. SKG did not hold itself out as a law firm, but simply as a joint venture.

24. KLG does not hold itself out as a law firm, but simply as a joint venture.

Defendants' And Mr. Wolfram's Personal Attacks Are Unfounded And Offensive

25. Mr. Wolfram wrote "I understand that State Farm's disqualification motion will also be based on other recent incidents of wrongdoing on the part of the remaining KLG lawyers and law firms in this litigation. . . . If the asserted events occurred, they too would be deeply troubling, lending additional weight to a portrayal of the remaining KLG lawyers as over-the-top litigators who care little for the constraints under which lawyers should operate."

26. Mr. Wolfram's comments and insinuations – that I am an "over-the-top" litigator "who care[s] little for the constraints under which lawyers should operate" – are offensive to me and my family. I take my professional, ethical, and legal duties and obligations very seriously.

27. I have practiced law for 26 years both on the defense and plaintiffs' side of the bar. My broad based experience has included duties as court-approved co-lead counsel for thousands of plaintiffs in federal MDL litigation concerning insurance claims. I have never in my 26 years' experience as an attorney been reprimanded by the Mississippi Bar Association for any reason.

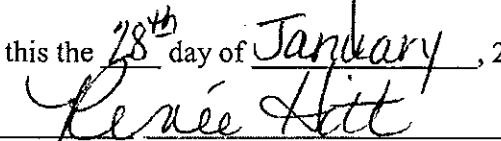
28. I have never been disqualified from any case, at any time, anywhere.

29. I have never been held in contempt.

FURTHER AFFLIANT SAYETH NOT.


DEREK A. WYATT

Sworn to and subscribed before me on this the 28th day of January, 2008.


NOTARY PUBLIC



My Commission Expires