

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

GLEND A SHOWS, et al.

Plaintiffs,

CAUSE NO.: 1:07-CV-709-WHB-LRA

- vs. -

STATE FARM FIRE AND CASUALTY CO., et al.

Defendants.

**DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO COMPEL COMPLI-
ANCE WITH ORDER OF DISQUALIFICATION AND OBJECTION TO THE NOTICES
OF APPEARANCE OF PROVOST UMPHREY LAW FIRM, L.L.P.**

Defendant State Farm Fire and Casualty Company (“State Farm”) respectfully files this Memorandum of Law in Support of its Motion to Compel Compliance with the Court’s Order of Disqualification [354], and Objection to the Notices of Appearance of Provost Umphrey Law Firm, L.L.P. (“Provost Umphrey”) [363, 366].¹ As grounds for its motion and objection, State Farm states as follows:

¹ Provost Umphrey has entered appearances on behalf of: Glenda Shows; Stephen P. Thompson and Patricia B. Thompson; Estate of Alfred Pepperman, Deceased, David Pepperman, Executor; Craig Faron Troub and Marion Troub; Ted Thomas and Donna Thomas; Jeffrey Pickich; Ronald E. Nugent and Barbara P. Nugent; Charles J. Linkey and Joyce A. Linkey; Walton Jones and Penny Jones; Wayne Harbour; Paul Gloyer and Constance Gloyer; Alan Lipski; Sherrod Willette and Mary Willette; and Chet Carter.

INTRODUCTION

On April 16, 2008, this Court entered an Order stating that: (i) counsel associated with the Katrina Litigation Group (“KLG”), including Don Barrett and his law firm; *and* (ii) “all lawyers associated with these entities . . . are hereby disqualified from representing any plaintiff in this case.” [354 at 2.] “Disqualified” means that counsel were “render[ed] unqualified or unfit . . . [and] *deprive[d] of legal rights, powers, or privileges*”² to represent their former clients. Indeed, the only action that disqualified counsel were authorized to take was to mail a copy of the Court’s Opinion and Order to their former clients. [354 at 2.]

The apparent intent of the Court’s Order was to permit former KLG clients to make a fully informed and independent decision regarding how they wished to proceed with their individual claims, including whether they wished to retain new counsel and, if so, who that new counsel should be. However, the recent and troubling developments detailed below strongly indicate that at least one member of the KLG team – the Barrett Law Office (“Barrett”) – has purposely sought to circumvent the letter and spirit of this Court’s Order by funneling former KLG clients to its handpicked successor in this and other cases,³ Provost Umphrey.

While State Farm takes no pleasure in having to file this motion, the record further establishes that Provost Umphrey must be disqualified from this case. In its disqualification Order,

² THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2006) (emphasis added).

³ Provost Umphrey has indicated that it is representing over 150 former KLG clients. In addition to the Plaintiffs in this case, Provost Umphrey represents many individual clients in cases pending before Judge Senter. State Farm has filed a disqualification motion in one such action, *Alford v. State Farm Fire & Casualty Co.*, Civil Action No. 1:07-cv-814 LTS RHW (S.D. Miss.), which the court has indicated it will treat as dispositive of all the cases pending before Judge Senter.

this Court specifically incorporated by reference “the reasons set forth” in Judge Senter’s disqualification Order and Memorandum in *McIntosh v. State Farm*, Civil Action No. 1:06-cv-1080-LTS-RHW (S.D. Miss.) [*McIntosh* 1172, 1173]. These Orders, as well as two subsequent Orders issued by Judge Senter addressing the scope of the *McIntosh* disqualification Order, make clear that Provost Umphrey falls squarely within the definition of “other attorneys associated as counsel for the plaintiffs by” KLG lawyers. [*McIntosh* 1183, 1193.] Provost Umphrey knew or should have known that Barrett’s mass substitution scheme contravened this Court’s disqualification Order and the ethical rules. Yet Provost Umphrey knowingly chose to associate itself with the KLG and Barrett, and worked hand in hand with them to sign up as many former KLG clients as possible. At an absolute minimum, Counsel’s blatant disregard for this Court’s Order mandates disqualification of Provost Umphrey from this case.

ARGUMENT AND AUTHORITIES

1. THE DISQUALIFICATION ORDERS

On April 4, 2008, Judge Senter issued his Memorandum Opinion and Order of Disqualification granting State Farm Fire and Casualty Company’s (“State Farm”) and Renfroe’s motions to disqualify the KLG. [*McIntosh* 1172, 1173.] In its Order, the court held:

[t]hat the [KLG] firms *and any other associated counsel* are hereby **DISQUALIFIED** from representing these plaintiffs or any other individuals who have claims against State Farm Fire and Casualty Company and against E. A. Renfroe & Company, Inc. for property damage sustained in Hurricane Katrina in this case and in any other cases in the United States District Court for the Southern District of Mississippi

[*McIntosh* 1173] (first emphasis added).

On April 16, 2008, this Court issued an Order disqualifying the KLG from further representation in this case. [354.] This Court adopted Judge Senter's Memorandum Opinion, and held:

IT IS FURTHER ORDERED that the Barrett Law Office, P.A., Nutt & McAlister, P.L.L.C., the Lovelace Law Firm, P.A., Hesse & Butterworth, P.L.L.C., the Katrina Litigation Group, **and all lawyers associated with these entities** . . . are hereby disqualified from representing any plaintiff in this case.

(*Id.* at 2) (emphasis added). Thus, any firm that has associated with the KLG is disqualified from representing Plaintiffs in this case (as well as plaintiffs in any other Katrina cases against State Farm or Renfroe).

Following these Orders, two law firms, Taylor Martino, P.C. ("Taylor-Martino") and Lumpkin & Reeves, PLLC ("Lumpkin") requested that Judge Senter clarify the Court's disqualification Order as to whether they were "associated" law firms and therefore disqualified. In both instances, Judge Senter held that the firms were "associated" law firms. In disqualifying Taylor-Martino, the court held:

The Order [1173] entered in the instant case refers to and includes "other attorneys associated as counsel for the plaintiffs by these firms" and "any other associated counsel." The Court intentionally used broad language because it was unclear to what extent other lawyers were involved in this and other litigation who might argue, for example, that they had never entered a formal appearance on behalf of plaintiffs and, thus, are eligible to represent one or more of them. Whether appearing or not, actual participation in or connections to this or other litigation are major concerns for the Court.

[*McIntosh* 1183.] The court further explained that as an associate firm, Taylor-Martino's "participation will create unnecessary complications and will perpetuate an appearance of impropriety." [*Id.*]

On May 16, 2008, Judge Senter similarly held that Lumpkin was “associated” counsel and therefore disqualified. [*McIntosh* 1193.] The court noted that although Lumpkin’s participation in the case occurred after the KLG’s unethical conduct, “they were aware or should have known of the serious allegations made against the Scruggs Katrina Group” when they associated with the KLG. [*Id.* at 2.]

Finally, on May 19, 2008, Judge Senter disqualified relators’ counsel in a “*qui tam*” action brought pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3732. [*United States ex rel. Rigsby v. State Farm*, Civ. A. No. 1:06-cv-433-LTS-RHW, Dkt. 177.] The court reasoned that “from the time [counsel] agreed to associate themselves with [The Scruggs Law Firm] . . . in this action they were engaged in a cooperative effort” with disqualified counsel. [*Id.* at 3-4.] The court also held that “all of these attorneys . . . were operating under the[] rules of professional conduct, and all of these attorneys have a duty to adhere to the ethical rules that govern the conduct of members of the bar.” [*Id.* at 5.]

2. THE KLG/BARRETT MASS SUBSTITUTION SCHEME VIOLATES THIS COURT’S DISQUALIFICATION ORDER

As noted above, Judge Senter’s April 4, 2008 Order disqualified the KLG firms “and any other associated counsel” from representing parties who have claims against State Farm for property damage sustained in Hurricane Katrina. [*McIntosh* 1173 at 2-3.] The court further directed the disqualified attorneys to mail each client affected by the ruling a copy of the Disqualification Order and Memorandum Opinion. [*Id.* at 2.] This Court expressly adopted the April 4 Order and directed an identical mailing to former clients [354].

On April 7, 2008, Mary “Meg” McAlister sent the court-mandated letter to the former clients on behalf of the KLG, enclosing a copy of the *McIntosh* Order and Memorandum. The letter further advised the former clients to “get a new lawyer” and invited them to call if “they ha[d] any questions.” (April 7, 2008 Letter from M. McAlister to former clients, Ex. 1.) Once the letter was sent, disqualified counsel had no legitimate reason to initiate contact with their former clients; the letter properly made clear that it was up to the former clients or their newly retained counsel to contact the KLG for any assistance they might need in transitioning the cases.

Notwithstanding, on April 18, 2008 – two full weeks after Judge Senter’s disqualification Order, eleven days after the court-ordered notice had been sent, and two days after this Court’s disqualification Order was issued – the KLG/Barrett sent their former clients a *second* letter. This second letter identified the recipient as a “client” of the KLG and Barrett, with Don Barrett listed as “lead counsel.” It went on to state that: (i) the KLG/Barrett have already negotiated a retention agreement with Provost Umphrey on their “clients” behalf; (ii) “Provost Umphrey has agreed to take your case on the same fee basis [as with the KLG];” and (iii) the KLG/Barrett have given the “clients” “address[es] to Provost Umphrey and [have] requested that they send you a contract to sign, so they can begin representing you immediately.” Finally, the KLG and Barrett opined that “[t]his is a wonderful development for you” and went on to “urge” the former clients “to sign the contract[s] when you receive them.” (April 18, 2008 Letter from the KLG/Barrett (“KLG/Barrett letter”), Ex. 2.)

The KLG/Barrett mass substitution scheme plainly violates both this Court’s disqualification Order and the Mississippi Rules of Professional Conduct (“MRPC”). As disqualified counsel, the KLG, including Barrett, were stripped of *all* “legal rights, powers, or privileges” to negotiate

contracts on behalf of their former clients or to advise them “to sign the contract[s]” with Provost Umphrey. Yet they did so anyway. Moreover, Barrett’s suggestion to the former clients that it retained the power to negotiate a retention agreement on their behalf was, at best, highly misleading, and a clear violation of MRPC 8.4(c) (“It is professional misconduct for a lawyer to . . . engage in conduct involving . . . misrepresentation.”).

Tellingly, Barrett’s former KLG partners recognized immediately that this mass substitution scheme contravened Judge Senter’s disqualification Order. Just days before the KLG/Barrett sent their improper solicitation letter to the former clients, David H. Nutt sent a letter to Judge Senter and to this Court to make clear that his law firm, Nutt & McAlister, P.L.L.C., had withdrawn from the KLG, wanted no part in any referral scheme, and renounced any claims to attorneys’ fees:

Nutt & McAlister has not referred any of the referenced former clients to any counsel and does not seek recovery of any work performed by our firm on behalf of the former clients.

(April 14, 2008 Letter from D. Nutt to the Honorable L. T. Senter Jr., et al. (emphasis added), Ex. 3.) One does not have to read too closely between the lines to recognize that Mr. Nutt took the unusual step of writing to the Court to make clear that Nutt & McAlister had not “referred any . . . former clients to any counsel” or sought a financial benefit from their prior representations because this was precisely what the KLG and Barrett were doing at the time. In light of the unmistakable implications made in Mr. Nutt’s letter to this Court, in its response to this motion, Provost Umphrey should be expected to make a full, complete, and unequivocal disclosure of any and all financial arrangements, express or implied, that have been made with the KLG or Barrett in connection with the Katrina litigation.

Indeed, there are ample indicia that the KLG/Barrett's recommendation is simply a sham to circumvent the Court's disqualification Order. As a threshold matter, it is curious that the KLG/Barrett would recommend a Texas-based law firm whose website describes its lawyers as "Texas Personal Injury Trial Lawyers" as "the best law firm to represent" the KLG's former clients in insurance coverage cases in Mississippi. Notably, it appears that only one of the nearly fifty Provost Umphrey attorneys happens to be admitted to practice in Mississippi and he works in Provost Umphrey's main offices in Beaumont, Texas. *None* of Provost Umphrey's "satellite" offices are in Mississippi.

In fact, Provost Umphrey's office in Nashville, Tennessee, and Barrett occupy the very same office space, right down to the same suite Suite 380 which recent media reports indicate that Provost Umphrey subleases from Barrett.⁴ Upon information and belief, beyond merely occupying the same suite, Provost Umphrey and Barrett also share common staff, including, without limitation, office and telephone receptionists. It defies credulity that the disqualification issues swirling around Barrett's involvement in the SKG/KLG were not discussed between and among the legal staff at Barrett and Provost Umphrey, not only when those issues had already been resolved by this Court, but also when they were pending before this Court.⁵

⁴ Provost Umphrey and the Barrett Law Office are both located at One Burton Hills Boulevard, Suite 380. *Compare* April 18, 2008 Letter (Ex. 2) with <http://www.provostumphrey.com/CM/Locations/Nashville.asp> (last visited May 13, 2008); *see also* Anita Lee, *Texas Firm Picks Up Ex-Scruggs Clients*, SUN HERALD (MISSISSIPPI), May 10, 2008, available at <http://www.sunherald.com/201/story/550643.html>.

⁵ Provost Umphrey and Don Barrett also have a long history of working on cases together. *See, e.g.*, Brenda Sapino Jeffreys, "Judge Approves \$149 Million Firestone Tire Settlement," *Texas Lawyer* (Mar. 22, 2004), available at <http://www.law.com/jsp/article.jsp?id=1079640446435> ("[Don] Barrett says he
(continued...)

In short, the KLG/Barrett mass substitution scheme does not merely trivialize the Court's disqualification Order, it ignores it completely. Despite the fact that the Order unambiguously divested the KLG/Barrett of *all* legal rights, powers, or privileges to negotiate contracts on behalf of their former clients or to advise them "to sign the contract[s]" with Provost Umphrey, the KLG/Barrett did so anyway. Such brazen disregard for this Court's authority and the rule of law should not be countenanced.⁶

3. PROVOST UMPHREY MUST BE DISQUALIFIED

1. Provost Umphrey Is Disqualified under *McIntosh* and *Shows I*

Provost Umphrey's active participation in the KLG/Barrett mass substitution scheme is more than sufficient to qualify it as "other associated counsel" as the term is used in the disqualification Orders. On April 21, 2008, three days after the KLG/Barrett letter went out, Provost Umphrey sent a letter of its own to former KLG clients. (See April 21, 2008 Letter from Guy G. Fisher to former KLG clients, Ex. 4.) The Provost Umphrey letter states: "Don Barrett requested that we pursue this matter on behalf of you and others" and indicates as if it were a *fait accompli* that Provost

(...continued)

negotiated the settlement with assistance from lawyers from several firms, including Provost Umphrey of Beaumont."); *Thomas v. L.G. Elecs. U.S.A., Inc.*, No. 03:07-0444, 2007 WL 4293043 (M.D. Tenn. Dec. 6, 2007) (serving as co-counsel for plaintiff in dismissed class action suit).

⁶ State Farm believes that the record in this case is more than sufficient to warrant Provost Umphrey's disqualification from this and other Katrina-related cases. However, in the interest of filing this motion at the earliest practicable time, State Farm has not taken any discovery on these issues. If the Court is not satisfied that the current record supports disqualification, State Farm respectfully requests that the Court stay the proceedings and afford State Farm the opportunity to conduct discovery regarding the relationship between Don Barrett and other present and former SKG/KLG attorneys and Provost Umphrey.

Umphrey has already “accepted this obligation.” The letter further indicates that if the former clients do not execute and return the enclosed contract right away, then their claims against State Farm may be compromised:

As a result of the disqualification entered by Judges Senter and Barbour, you have until May 13, 2008 to obtain new legal counsel to represent you in this matter. The failure to do so may result in prejudice to your existing claim or any future claim you may have resulting from the Hurricane Katrina disaster. Provost*Umphrey is prepared to respond to your needs upon the execution and return of the enclosed contract. After consultation with your former attorneys, the enclosed contract provides for the same terms and conditions as your previous contract, including the 33 1/3 % contingency fee and treatment of expenses.

(*Id.* (emphasis in original).) The letter concludes by encouraging the recipient to contact Provost Umphrey by phone, and by directing the recipient to the firm’s website.

Judge Senter’s recent Order disqualifying Lumpkin [*McIntosh* 1193] established that these activities are more than sufficient to warrant disqualification. In the Lumpkin Order, the court held that disqualification was mandated under *McIntosh* because Lumpkin engaged in certain activities to assist the KLG lawyers after State Farm’s disqualification motion was filed in *McIntosh* and in this case. The court explained that these disqualification motions put Lumpkin on notice of “serious allegations made against the Scruggs Katrina Group” [*McIntosh* 1193]. Here, the Court had already entered its disqualification Order when Provost Umphrey’s attorneys worked with the KLG and Barrett to sign up as many former KLG clients as possible. Clearly, if Lumpkin was disqualified because it became associated with the KLG attorneys while State Farm’s disqualification motion was pending, then Provost Umphrey’s knowing decision to associate itself with the KLG/Barrett *after the Court issued its disqualification Order* is far more egregious and warrants disqualification.

2. Provost Umphrey Suffers a Disabling Conflict of Interest

Provost Umphrey must further be disqualified because it has a disabling conflict of interest with representing the former KLG/Barrett clients in this action. As several commentators have observed, the KLG's highly unethical acts have exposed its constituent law firms to potential lawsuits by its former clients for legal malpractice, fraud, and breach of fiduciary duty.⁷ Indeed, the KLG lawyers filed almost two hundred cases after State Farm filed its disqualification motion in *McIntosh*. At that point, the KLG lawyers were on notice that State Farm intended to seek disqualification. Yet they knowingly put their clients at risk of having to obtain new counsel in the midst of their cases, which is exactly what has come to pass.

The KLG's former clients are entitled to retain counsel who can explore possible suits against the KLG member firms including Barrett. Provost Umphrey, however, is not in a position to give disinterested advice on this topic because it is indebted to Barrett for bringing these numerous clients to the firm. This presents a disabling conflict under MRPC 1.7(b), which provides that "a lawyer *shall* not represent a client if the representation *may* be materially limited by the lawyer's responsibilities to . . . a third person, or by [his or her] own interests." MRPC 1.7(b) (emphasis added).

To be sure, the Rules permit a client to waive this conflict in certain instances. But the *sine qua non* of waiver is "informed consent after consultation." MRPC 1.7(b)(2). "The consultation

⁷ See, e.g., Tom Freeland, *Judge Senter disqualifies Katrina Group lawyers, excludes Rigsby documents, and bars Rigsbys as witnesses* (Apr. 4, 2008) (noting that the SKG's former clients potentially "have really spectacular malpractice claims against" their former lawyers), available at <http://www.folo.us/2008/04/04/judge-senter-disqualifies-katrina-group-lawyers-excludes-rigsby-documents-and-bars-rigsbys-as-witnesses/>.

shall include explanation of the implications of the representation and the advantage and risks involved.” *Id.* As the KLG’s own ethics expert recognized:

Informed decisionmaking by a client, including whether to consent to a conflicted representation, presupposes that the lawyer has provided an “adequate” level of information and explanation. The adequacy of any communication depends on many factors, including the complexity of the situation giving rise to the conflict, the sophistication of the affected clients, the extent of the risk of harm to client interests, and any special circumstances of which clients would be unaware without explanation. A lawyer who is in good faith trying to alert clients to risks that they should consider seriously will err on the side of more rather than less disclosure, and making fuller rather than more superficial explanations.

1 Geoffrey C. Hazard Jr. & W. William Hodes, *THE LAW OF LAWYERING* § 11.22 (3d ed. 2001).

Of course, in this case neither Barrett nor Provost Umphrey disclosed *any* information that would be required to obtain informed consent under MRPC 1.7. In fact, there is substantial doubt that informed consent is even practicable in a situation such as this. *See, e.g., State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 737 (Mo. 2004) (holding that class counsel’s agreement not to sue certain potential defendants raised disabling conflict of interest, and doubting that such a conflict could be waived where informed consent would have to be obtained for each of the 650 class members).

3. Provost Umphrey Has Committed Numerous Violations of the Ethical Rules

Provost Umphrey’s April 21, 2008 letter raises a host of other ethical issues. As Provost Umphrey itself recognized, the letter constitutes a lawyer solicitation as the term is used in MRPC 7.3. In fact, the envelope containing the letter and the retention agreements bears the legend:

This solicitation material is being provided to you at the request of the Barrett Law Firm.

(Ex. 4 (emphasis in original).)

The ethical rules governing attorney solicitation make clear that “any solicitation which contains information which is false or misleading within the meaning of Rule 7.1 . . . is prohibited.” MRPC 7.3, cmt. MRPC 7.1, in turn, bars any solicitation that “[c]ontains a material misrepresentation of fact or law *or omits a fact necessary to make the statement considered as a whole not materially misleading.*” MRPC 7.1(a) (emphasis added).

The Provost Umphrey letter violates this rule for multiple reasons. The first sentence of the letter states: “[W]e write you today at the request of your former attorneys the Barrett Law Firm, Lovelace Law Firm and the *Nutt Law Firm.*” (Ex. 4 (emphasis added).) This statement is false. Mr. Nutt’s letter which was written a week before Provost Umphrey’s solicitation letter specifically states that his law firm “has *not* referred any of the referenced former clients to any counsel.” (Ex. 3 (emphasis added).)

More fundamentally, the unmistakable tone of the letter is that the mass substitution is a done deal with Provost Umphrey having “accepted this obligation” with just the formality of signing the retention agreement remaining. The letter further urges that a former client’s to sign the agreement immediately and warns that the “failure to [obtain replacement counsel] may result in prejudice to [its] existing claim or any future claim.” This statement is, at best, highly misleading. The *McIntosh* disqualification Order clearly states that any dismissal that might occur because a plaintiff fails to timely notify the Court of its retention of new counsel or its intent to proceed *pro se* would be “*without prejudice.*” [*McIntosh* 1173 at 2 (emphasis added).] This is precisely the type of misleading “coercion” that the Rules deplore. MRPC 7.3, cmt.

For instance, *In re Lutheran Brotherhood Variable Insurance Products Co.*, No. 99-MD-1309PAMJGL, 2002 WL 1205695, at *2 (D. Minn. May 31, 2002), the court considered a similar

case, in which an attorney solicited potential clients through the mail and misrepresented the court's holdings. Not only did the court require that the attorney submit to it for prior approval any future solicitations relating to that litigation, *see id.* at *3, it also prohibited the attorney and his associates from representing anyone who responded to the misleading mailing, *see id.* at *4. The attorney, the court held, "must not be permitted to profit from misrepresentations about this Court and its rulings." *Id.* at *4. The same is true in this case.

Further, as discussed above, the Provost Umphrey letter fails to disclose the fact that the firm is not in a position to give disinterested advice on possible legal action against the KLG/Barrett because it is indebted to the KLG/Barrett for bringing these numerous clients to the firm. Rather, it encourages the recipients to sign and return the contracts as quickly as possible or risk "prejudice to your existing claim or any future claim."

CONCLUSION

State Farm respectfully requests that this Court compel compliance with the Court's disqualification Order [354] by ordering, at a minimum, that: (i) Barrett cease and desist from any future solicitations of former KLG clients; and (ii) Provost Umphrey be disqualified from this case. State Farm further requests that the Court require any substitute attorneys to provide full disclosure to the Court of any past relationship with the SKG/KLG (which would lead to automatic disqualification) and to disclose any arrangement, written or otherwise, that could lead to the sharing of any fees with the KLG (which would also require disqualification).

DATED: MAY 22, 2008

RESPECTFULLY SUBMITTED,

STATE FARM FIRE AND CASUALTY
COMPANY

HICKMAN, GOZA & SPRAGINS, PLLC
ATTORNEYS AT LAW
POST OFFICE DRAWER 668
OXFORD, MS 38655-0668
(662) 234-4000

BY: /s/ H. SCOT SPRAGINS
 H. SCOT SPRAGINS, MSB # 7748

CERTIFICATE OF SERVICE

I, **H. SCOT SPRAGINS**, ONE OF THE ATTORNEYS FOR THE DEFENDANT, **STATE FARM FIRE & CASUALTY COMPANY**, DO HEREBY CERTIFY THAT I HAVE ON THIS DATE ELECTRONICALLY FILED THE FOREGOING DOCUMENT WITH THE CLERK OF COURT USING THE ECF SYSTEM WHICH SENT NOTIFICATION OF SUCH FILING TO ALL COUNSEL OF RECORD.

DATED: MAY 22, 2008

/s/ H. SCOT SPRAGINS

H. SCOT SPRAGINS

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KATRINA LITIGATION GROUP

A Venture Group Comprised of Legal Professionals

Nutz & McAlister, P.L.L.C.
Lovelace Law Firm, P.A.

Barrett Law Office, P.A.
Hesse and Butterworth, P.L.L.C.

CONFIDENTIAL AND PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

April 7, 2008



Re: Hurricane Katrina Insurance Litigation against State Farm Fire & Casualty Insurance Company, State Farm Mutual Automobile Insurance Company, et al.

Dear [Redacted]

We enclose a copy of a memorandum opinion and order rendered on April 4, 2008, in *McIntosh v. State Farm Fire & Casualty Insurance Company, et al.* This order disqualifies us, former co-counsel with the Scruggs Law Firm, from representing you further in your case.

We are greatly disappointed because we have worked hard on behalf of you and all our State Farm-insured clients, and pledge that we will work with your new lawyers to get them up to speed quickly regarding your claim.

Under the terms of the order, you have 45 days from April 4, 2008, to obtain new counsel, or to inform the Court of your intention to proceed pro se (that is, to represent yourself without an attorney). We think it is better for you to get a new lawyer, and not to represent yourself.

If you fail to so act within this 45 day period, your case may be dismissed without prejudice. That means that you could later file your case again, but only within the 3-year statute of limitations which may expire as soon as August 28, 2008. You should consult your new attorney about this as soon as possible.

We have been honored to represent you, thank you for the trust you placed in us, and regret our inability to continue our representation.

IF YOU HAVE ANY QUESTIONS ABOUT THIS LETTER OR WHAT YOU SHOULD DO, PLEASE CALL US TOLL-FREE AT 866-404-6888.

Sincerely,

KATRINA LITIGATION GROUP.

Mary E. McAlister

Mary E. McAlister

Enclosure

685 Concord Boulevard, Suite 200
Ridgeland, Mississippi 39157

Toll-Free Number: 1-866-404-6888
Facsimile: 601-898-7304

Exhibit "1"

BARRETT LAW OFFICE
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

LEXINGTON OFFICE
404 Court Square North
P.O. Box 987
Lexington, Mississippi 39095
Telephone (662) 834-2376
Facsimile (662) 834-2628

NASHVILLE OFFICE
One Burton Hills Blvd
Suite 380
Nashville, Tennessee 37215
Telephone (615) 665-9990
Facsimile (615) 665-9998

Don Barrett*
E-mail: dbarrett@barrettlawoffice.com

*Admitted only in Mississippi

Reply to the Lexington Office

April 18, 2008



Dear Client:

We are very pleased to have a recommendation for you for the best law firm to represent you going forward in your litigation against State Farm.

The nationally-prominent firm of Provost-Umphrey Law Firm, L.L.P., has agreed to take your case.

This is a wonderful development for you. Provost-Umphrey has the strength and the financial and lawyer resources to give you the very best representation.

Mr. Walter Umphrey, the senior partner at Provost-Umphrey, has personally assured us that he will direct this litigation himself, and that his firm will vigorously prosecute your case.

Provost-Umphrey has agreed to take your case on the same fee basis as you had with our group.

As a convenience to you, we have given your address to Provost-Umphrey and have requested that they send you a contract to sign, so they can begin representing you immediately.

We urge you to sign that contract when you receive it, and return it to Provost-Umphrey in the envelope provided.

If you have questions, and want to talk to us about it, please call us at 866-404-6888.

If you would like to talk to Provost-Umphrey directly, you may call them toll-free at (888) 835-6009. You may also view their website at www.provostumphrey.com.

Sincerely,

KATRINA LITIGATION GROUP

Don Barrett
Don Barrett
Lead Counsel

Exhibit "2"

NUTT & MCALISTER, P.L.L.C.

David H. Nutt
Derek A. Wyatt

Mary E. McAlister*
David Neil McCarty
*also licensed in Louisiana

April 14, 2008

VIA U. S. MAIL and EMAIL

Honorable L. T. Senter, Jr.
United States District Judge
Southern District of Mississippi
2012 15th Street, Suite 514
Gulfport, Mississippi 39501

Re: *McIntosh v. State Farm, et al.*, Civil Action No. 1:06cv1080 LTS RHW
State Farm 178 cases, Civil Action Nos. 1:07cv710–1:07cv813 LTS RHW
Shows v. State Farm, et al., Civil Action No. 1:07cv 709 LTS RHW

Dear Judge Senter:

The law firm of Nutt & McAlister, P.L.L.C., its staff attorneys, Derek Wyatt and David McCarty, terminated their involvement in Katrina Litigation Group effective April 8, 2008, and notified co-counsel of our decision. We have complied with the Court's April 4th Disqualification Order and furnished the Order and Memorandum Opinion to all SKG/KLG clients referenced above.

Nutt & McAlister has not referred any of the referenced former clients to any counsel and does not seek recovery of any attorney fee for any work performed by our firm on behalf of the former clients.

We are copying Judges Barbour and Anderson on this letter as we have construed the April 4th Disqualification Order as applying to *Shows v. State Farm, et al.*

Please let us know if the Court has any questions.

Sincerely yours,

NUTT & McALISTER, P.L.L.C.


David H. Nutt

Honorable L. T. Senter, Jr.
April 14, 2008
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Cc: Honorable William H. Barbour
Magistrate Judge Linda Anderson
Magistrate Judge Robert H. Walker
Scot Spragins
Harry Allen
Hunter Twiford
Don Barrett
Dewitt Lovelace
Zach Butterworth

PROVOST ★ UMPHREY

Law Firm, L. L. P.

Guy G. Fisher
ATTORNEY AT LAW

Phone: (409) 835-6000
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April 21, 2008

RE: Katrina Litigation

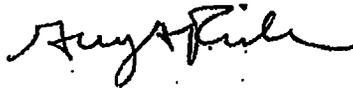
Dear [REDACTED]

It is with great humility and appreciation that we write you today at the request of your former attorneys the Barrett Law Firm, Lovelace Law Firm and the Nutt Law Firm. We were deeply honored when Don Barrett requested that we pursue this matter on behalf of you and others. Since 1969, Provost★Umphrey has earned the trust of our clients by representing *people*, not insurance companies, with integrity, commitment and the search for justice. We made our reputation as trial lawyers in the early development of asbestos and silica litigation and gained national prominence by representing the State of Texas against the tobacco industry. Provost★Umphrey has had the privilege of representing clients along the Gulf Coast from Texas to Florida in diverse mass tort litigation including asbestos, silica, toxic releases, pharmaceutical and insurance bad-faith litigation. Provost★Umphrey has specific experience representing hurricane victims and their claims against the insurance industry. We want to assure each of the Katrina victims of our intentions to represent you both individually and collectively to the utmost of our ability. Provost★Umphrey would not have accepted this obligation without committing its financial, intellectual and physical resources along with lawyers and staff.

As a result of the disqualification entered by Judges Senter and Barbour, you have until May 13, 2008 to obtain new legal counsel to represent you in this matter. The failure to do so may result in prejudice to your existing claim or any future claim you may have resulting from the Hurricane Katrina disaster. Provost★Umphrey is prepared to respond to your needs upon the execution and return of the enclosed contract. After consultation with your former attorneys, the enclosed contract provides for the same terms and conditions as your previous contract, including the 33^{1/3} % contingency fee and treatment of expenses. As in all contingency matters, if we are unable to obtain a successful recovery to your satisfaction and acceptance, you owe nothing to Provost★Umphrey for our time or amounts spent on your behalf.

We look forward to representing you in this important litigation and encourage you to contact us at 1-800-289-0101 or 1-800-835-6009 (Gay McCoy). You may also obtain more information about our firm and its unique history in American litigation at www.provostumphrey.com

Sincerely yours,



Guy G. Fisher
Mississippi Bar #101291

Exhibit "4"

ATTORNEY & CLIENT CONTRACT AND AUTHORITY TO REPRESENT

1. _____, hereinafter called "Client" whether one or more, hereby appoints and employs ProvostUmphrey Law Firm, L.L.P. hereinafter called "Law Firm," a partnership acting by and through any of its partners and/or associates, and having its principal address as P.O. Box 4905, Beaumont, Texas and having its offices at 490 Park Street, Beaumont, Texas to represent me (us) in my (our) claim for damages against my (our) insurance carrier(s) and/or its agents, or any other persons who may be responsible for damages in connection with Hurricane Katrina and/or my insurance carrier's failure to adequately pay my (our) claims related thereto.

2. No fees shall be payable unless a recovery is obtained. Client hereby agrees to pay the Law Firm,, as its compensation thirty-three and one third percent (33 ¹/₃%) of any settlement, verdict or recovery obtained in our case for their legal services. Client understands that attorneys' fees will be calculated based on the gross amount of settlement, verdict or recovery less any written offer of settlement or money received by Client from Client's insurance company or agent prior to the original initiation of this litigation. The expenses, which have been advanced on behalf of Client, will be deducted from the net proceeds payable to the Client after deduction of the attorney's fees. In the event of a collection of an award of attorney's fees in excess of the percentage stated above, the Law Firm shall receive the larger amount in fee, if applicable.

IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEY NOTHING FOR SERVICES RENDERED.

3. Client agrees that any attorney in the Law Firm or any attorney associated by the Law Firm is authorized to work on and try our case but at no additional fee to Client.

4. Client empowers the Law Firm to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's claim, including hiring investigators and expert witnesses and filing any legal action necessary. Client agrees and understands that a limited number of suits against various insurance companies have been filed to seek court interpretation of the language in the insurance policies. The policies involved in those suits are the same as or similar to Client's policy (ies). Client understands and agrees that the Law Firm may not file suit for Client while those suits are pending.

5. The Law Firm will not settle or compromise Client's claim without prior consent of the Client and Client will not settle their claim without prior notification to the Law Firm.

6. The Law Firm may withdraw from this agreement and from any further representation of Client upon written notice to Client if, after investigation, the Law Firm in its sole discretion believes that Client's claims lack sufficient merit or value.

7. Client understands and agrees that The Firm may handle this case as a part of a group of cases similarly situated for purposes of settlement and/or trial and that some settlement offers may be made to such groups in the aggregate to be allocated or prorated among each member of the group. Client authorizes the Law Firm to enter into such aggregate settlement negotiations and to disclose the amount of our proposed settlement, the nature of our damages, and other factors relevant to evaluation of settlement values to other clients whose cases are included in the aggregate of cases. Client understands that, despite any such joint settlement negotiations, Client is free to reject any settlement offer after consultation, including disclosure of the existence and

nature of all the claims involved and of the nature and extent of the participation of each person in the settlement. It is understood that Client's individual right to control settlement decisions may be superseded by applicable state or federal rules. Client also understands that certain common expenses will be incurred in a joint effort to handle all cases. Client authorizes the Law Firm to prorate expenses among all the cases in the settlement group.

8. Client acknowledges that Client has retained the Law Firm for the sole purposes expressly stated in this contract. Client understands that the Law Firm, its partners, associates or other representatives make no representations, express or implied to perform any legal services or provide any legal opinions, on any matter not expressly addressed in this contract. This Agreement contains the entire agreement between the parties concerning the terms of this employment and the Law Firm cannot make any guarantees concerning the ultimate outcome of Client claim, assure any desired result, or predict when Client's claim will be resolved, and it is agreed that no such promises, inducements or similar representation not expressed herein have been made or relied upon.

This the _____ day of _____, 2008.

Client's Signature

Client's Signature

Client's Printed Name

Client's Printed Name

Current Mailing Address

Current Mailing Address

Current City/State/Zip

Current City/State/Zip

Social Security Number

Social Security Number

Date of Birth

Date of Birth

Policy Number: _____

Insured (name as on policy) _____

Insured Property Address: _____

APPROVED & AGREED by PROVOST & UMPHREY:

By: _____

Guy Fisher - Mississippi Bar #101291

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LAW FIRM, L. L. P.
P.O. BOX 4995 • BEAUMONT, TEXAS 77704

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