

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

THOMAS C. and PAMELA McINTOSH

PLAINTIFFS

V.

NO. 1:06cv1080-LTS-RHW

STATE FARM FIRE & CASUALTY COMPANY,  
FORENSIC ANALYSIS & ENGINEERING CORPORATION,  
and E. A. RENFROE & COMPANY, INC. and  
DOES 1 THROUGH 10

DEFENDANTS

**MOTION OF NON-PARTIES RICHARD F. SCRUGGS AND  
D. ZACHARY SCRUGGS FOR PROTECTIVE ORDER**

NOW COME non-parties Richard F. Scruggs and D. Zachary Scruggs (“the Scruggses”), and request this Court to issue a protective order pursuant to Fed. R. Civ. P. 26(c)(2). In support of their Motion, the Scruggses state as follows:

1. The Scruggses previously served as counsel to Plaintiffs Thomas and Pamela McIntosh. The Scruggses also previously represented the Rigsby sisters in various related matters in which defendants State Farm and Renfroe were parties. The Scruggses also employed the Rigsby sisters as litigation consultants in this matter.

2. Pursuant to the Court’s Orders on May 15, 2008 [Doc. 1194] and June 20, 2008 [Doc. 1211], the Scruggses were deposed, and their depositions were videographically recorded, on July 21, 2008 (D. Zachary Scruggs), and July 22, 2008 (Richard F. Scruggs).

3. During the course of their depositions, the Scruggses invoked their Fifth Amendment rights. As the Court is aware, the Scruggses were recently the subjects of a federal criminal indictment arising out of litigation against State Farm. Both Scruggses pleaded guilty in that matter and have been sentenced, but the United States Attorney’s office has publicly stated that Richard Scruggs’s plea will not end its investigation. Separately, in the matter of *Renfroe v. Rigsby*, Judge

William M. Acker, Jr. appointed independent prosecutors to charge Richard Scruggs and the Scruggs Law Firm with criminal conduct arising out of the Scruggses' relationship with the Rigsby sisters and their handling of State Farm and Renfroe documents obtained from the Rigsbys. While the specific charges have been dismissed, the *Renfroe* case is still pending before Judge Acker.

4. In addition, without divulging specific questions or testimony from the depositions on July 21 and July 22, counsel for Defendants State Farm Fire & Casualty Company ("State Farm") and Renfroe and Company Inc. ("Renfroe") alleged activity of a criminal nature against both of the Scruggses. Furthermore, in the related *qui tam* action, State Farm has made pointed allegations of criminal conduct regarding the Scruggses' relationship with the Rigsbys.

5. At each of their depositions, counsel for the Scruggses requested that the depositions be sealed, just as the Court sealed the depositions of non-party witnesses affiliated with State Farm who either invoked their Fifth Amendment privileges, or who reasonably anticipated that they would invoke their Fifth Amendment privileges. *See* Motion for Protective Order (seeking to seal depositions of both Lisa Wachter and Alexis "Lecky" King) [Doc. 342], Motion to Seal Deposition of Alexis King [339], and Motion to Seal Deposition of Lisa Wachter [340], dated August 8, 2008.

6. Counsel for Defendants Renfroe and for State Farm would not agree to allow the depositions to be sealed. However, the parties agreed that the Scruggses would bring the instant Motion by today's date and that the parties would not disclose either deposition until after a ruling by this Court on the instant Motion.

7. Good cause exists to seal the Scruggses' depositions. Frequent media reports in and out of Mississippi have provided public details of this civil litigation, and the allegations of criminal conduct that have been directed at the Scruggses.

8. The dissemination of the Scruggses' deposition testimony may seriously prejudice their Fifth Amendment right against self-incrimination in any future criminal proceedings by unfairly portraying them as asserting a constitutional privilege to conceal misconduct and by undermining the presumption of innocence.

9. As counsel for Lecky King and Lisa Wachter (State Farm employees) wrote in seeking to seal those depositions,

[N]o legitimate legal purpose would be served by disclosing the videotape of these clients asserting their Fifth Amendment privilege, which is their right under the United States Constitution. However, such a disclosure would adversely affect these deponents and cause irreparable harm both to their reputations, should they not be charged with any criminal wrongdoing in this matter and by the same token in trying to select a fair and impartial jury should they be charged with some criminal wrongdoing.

Motion for Protective Order (August 8, 2007) [Doc. 342].

10. In the case of Ms. King and Ms. Wachter, this Court found "the invocation of the Fifth Amendment privilege against self-incrimination by the deponent(s) sufficient to warrant sealing the depositions and prohibit dissemination of the depositions." Order (August 9, 2007) [Doc. 343].

The Court sealed Ms. King's and Ms. Wachter's depositions in advance based on the mere possibility that they might invoke their Fifth Amendment rights. In this case, as noted above, the Scruggses actually asserted their Fifth Amendment privileges.

WHEREFORE, PREMISES CONSIDERED, non-parties Richard F. Scruggs and D. Zachary Scruggs respectfully request this Court to enter a protective order, sealing their depositions in this case, taken on July 21 and July 22, 2008, and prohibiting dissemination thereof.<sup>1</sup>

THIS, the 25th day of July, 2008.

Respectfully submitted,

RICHARD F. SCRUGGS AND ZACHARY SCRUGGS

*Paul B. Watkins, Jr.*

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J. CAL MAYO, JR. (MB NO. 8492)  
POPE S. MALLETTE (MB NO. 9836)  
PAUL B. WATKINS, JR. (MB NO. 102348)

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<sup>1</sup>The Scruggses reserve the right, once the Court has ruled upon this Motion, to seek further relief regarding specific issues that arose in the deposition related to the use of certain documents.

**CERTIFICATE OF SERVICE**

I, Paul B. Watkins, Jr., one of the attorneys for non-parties Richard F. Scruggs and D. Zachary Scruggs, hereby certify that I have this date electronically filed the foregoing document with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

THIS, the 25th day of July, 2008.

Paul B. Watkins, Jr.  
PAUL B. WATKINS, JR.