

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

GLEND A SHOWS, ET AL.,

PLAINTIFFS

vs.

CIVIL ACTION NO. 1:07cv709-WHB-LRA

**STATE FARM MUTUAL AUTOMOBILE,
INSURANCE COMPANY, ET AL.,**

DEFENDANTS

**E. A. RENFROE & COMPANY, INC.'S RESPONSE TO PLAINTIFFS'
"UNOPPOSED" MOTIONS TO SEVER CLAIMS OF PLAINTIFFS ELLEN
SUMMERS, STEPHEN F. SUMMERS, AND SANDRA SIMPSON**

Defendant E.A. Renfroe & Company, Inc. ("Renfroe") respectfully submits this Response to Plaintiffs' Unopposed Motion to Sever Claims of Plaintiffs Ellen Summers and Stephen F. Summers [Dkt. 421] and Plaintiffs' Unopposed Motion to Sever Claims of Plaintiff Sandra Simpson [Dkt. 422].

1. On July 24, 2008, the Court held a case management conference during which the parties discussed, *inter alia*, the issue of severing the claims of plaintiffs Ellen Summers, Stephen F. Summers, and Sandra Simpson from the claims of the remaining plaintiffs in this action (those represented by the Provost Firm).

2. During the case management conference, counsel for Renfroe stated that it did not object to the proposed severance and would not oppose plaintiffs' motions to sever. Renfroe wants to make clear that its position is based on its understanding that the severed plaintiffs, Ellen Summers, Stephen F. Summers, and Sandra Simpson, do not intend to name Renfroe, Gene Renfroe, or Jana Renfroe as parties to their claims or to file a RICO or civil conspiracy claim. Renfroe based its position on the fact that neither it nor its principals would be parties to the new, severed cases and that, because Ellen Summers, Stephen F. Summers, and Sandra Simpson would solely be pursuing "wind versus water" claims against State Farm pursuant to their respective State Farm insurance policies, such suits would differ materially from the RICO and

other conspiracy claims asserted by the remaining plaintiffs in this action. There would, therefore, be a substantial distinction between the severing and non-severing plaintiffs' claims that justified severing the actions.

3. On July 31, 2008, plaintiffs filed their Motions to Sever the claims of Ellen Summers, Stephen F. Summers, and Sandra Simpson as "unopposed" motions. [Dkts. 421, 422]. Significantly, neither plaintiffs' Motions to Sever, nor the accompanying proposed orders, contain critical language that conditions severance (and Renfro's non-objection to their Motions) on the understanding that Ellen Summers, Stephen F. Summers, and Sandra Simpson would not sue Renfro, Gene Renfro, or Jana Renfro, and would not file a RICO or civil conspiracy claim in any subsequently-filed actions.

4. Renfro files this Response to clarify that Renfro has no opposition to Plaintiffs' Motions to Sever *provided* that severance is subject to the condition that Ellen Summers, Stephen F. Summers, and Sandra Simpson do not sue Renfro, Gene Renfro, or Jana Renfro, and do not file a RICO conspiracy or civil conspiracy claim in any subsequently-filed action relating to their Hurricane Katrina insurance claims.¹ To the extent that severance is not so conditioned, Renfro opposes Plaintiffs' Motions to Sever on the grounds noted below.

5. In support of their Motions to Sever, the moving plaintiffs posit only that, "[t]he Summers and Simpson Plaintiffs have elected to proceed with different counsel from the majority of the Plaintiffs in this suit, and, as a consequence, it is no longer convenient to prosecute these Plaintiffs' claims with the Provost Umphrey Plaintiffs' claims. The presence of separately represented Plaintiffs would complicate matters like amending the complaint. Severing the Summers and Simpson Plaintiffs' claims would allow the Plaintiffs once again to speak with one voice, thereby simplifying their prosecution of the case." [Dkts. 421, 422 at ¶ 6].

¹ Granting such a conditional severance will not redound to the detriment of any of the plaintiffs to this case. For the Summers and Simpson plaintiffs, they have until August 29, 2008 to decide against whom and on what grounds they will file a complaint, as the statute of limitations runs on that date. For the Provost plaintiffs, there is no operative complaint as yet in the case, and they will be filing their complaint pursuant to the Court's Order on August 29, 2008.

6. In the event that Ellen Summers, Stephen F. Summers, or Sandra Simpson sue Renfroe, Gene Renfroe, or Jana Renfroe, or file a RICO conspiracy or civil conspiracy claim relating to their Hurricane Katrina insurance claims, their claims would remain identical to the claims asserted by the non-severing plaintiffs. Under such circumstances, well-established law from this Court counsels strongly against severance.

7. As held by this Court, “[i]n deciding whether claims should be severed pursuant to Rule 21, this court determines (1) whether the claims arise out of the same transaction or occurrence; (2) whether the claims present some common questions of law or fact; (3) whether settlement of the claims or judicial economy would be facilitated; (4) whether prejudice would be avoided if severance were granted; and (5) whether different witnesses and documentary proof are required for separate claims.” *Baughman v. Lee County*, 554 F. Supp. 2d 652 (N.D. Miss. 2008) quoting *McFarland v. State Farm Fire & Cas. Co.*, 2006 WL 2577852 (S.D. Miss. 2006).

8. Should the severing plaintiffs bring suit against Renfroe, Gene Renfroe, or Jana Renfroe, or file a RICO or civil conspiracy claim, there can be no debate but that all five of the foregoing factors require that Plaintiffs’ Motions to Sever be denied. Under such circumstances, the severed and non-severed claims would be virtually identical -- they would: (i) “arise out of the same transaction [and] occurrence;” (ii) “present [] common questions of law [and] fact;” and (iii) rely upon the same “witnesses and documentary proof.” (Factors 1, 2 and 5 respectively.) Moreover, severance of identical claims would not “facilitate . . . judicial economy.” (Factor 3) To the contrary, granting such relief would require three separate trials for the same claims – one for the Provost plaintiffs, one for the Summers plaintiffs, and one for Sandra Simpson. As such, requiring three separate trials would be unnecessarily duplicative as well as a massive waste of resources for the Court and for the defendants. Finally, rather than avoid prejudice (Factor 4), granting severance where the severing plaintiffs brought identical claims would impose great prejudice on Renfroe. As stated, Renfroe would have to prepare for and defend three lawsuits in

place of one, which would needlessly increase both the disruption and expense of the litigation and cause substantial prejudice.

9. Plaintiffs' argument that trying some, but not all, of plaintiffs' claims in one suit "is no longer convenient" simply cannot overcome the foregoing factors, which all weigh heavily in favor of denying severance, should the severing plaintiffs sue Renfroe, Gene Renfroe, or Jana Renfroe, or file a RICO or civil conspiracy claim relating to their Hurricane Katrina insurance claims.

CONCLUSION

Based on the foregoing, Renfroe respectfully requests that the Court enter an Order in the form attached hereto as Exhibit A, granting severance of the Ellen Summers, Stephen F. Summers, and Sandra Simpson claims *provided* that Ellen Summers, Stephen F. Summers, and Sandra Simpson do not name Renfroe, Gene Renfroe, or Jana Renfroe as parties to their claims and do not file a RICO conspiracy or civil conspiracy claim.

THIS, the 19th day of August, 2008.

Respectfully submitted,

**E. A. RENFROE & COMPANY, INC.,
Defendant**

BY: s/ Erik T. Koons
One of its Attorneys

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CERTIFICATE OF SERVICE

I, the undersigned H. Hunter Twiford, III, McGlinchey Stafford PLLC, hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants:

NONE

THIS, the 19th day of August, 2008.

s/ Erik T. Koons

ERIK T. KOONS

EXHIBIT A

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FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
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GLEND A SHOWS, ET AL.,

PLAINTIFFS

vs.

**CIVIL ACTION NO. 1:07cv709-WHB-
LRA**

**STATE FARM MUTUAL AUTOMOBILE,
INSURANCE COMPANY, ET AL.,**

DEFENDANTS

**PROPOSED ORDER GRANTING PLAINTIFFS' "UNOPPOSED"
MOTIONS TO SEVER CLAIMS OF PLAINTIFFS ELLEN
SUMMERS, STEPHEN F. SUMMERS, AND SANDRA SIMPSON**

This matter coming before the Court upon Plaintiffs' "unopposed" motions to sever claims of Plaintiffs Ellen Summer, Stephen F. Summer, and Sandra Simpson [Dkts. 421-422],

IT IS ORDERED

The claims of Plaintiffs Ellen Summers, Stephen F. Summers, and Sandra Simpson are hereby severed from the other plaintiffs' claims in this matter on the condition that Plaintiffs Ellen Summers, Stephen F. Summers, and Sandra Simpson shall not sue E. A. Renfroe & Company, Inc., Gene Renfroe, or Jana Renfroe, or file a RICO conspiracy or civil conspiracy claim relating to their Hurricane Katrina insurance claims in the severed actions.

BY: s/ _____