

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

**THOMAS C. & PAMELA MCINTOSH**

**PLAINTIFFS**

**VERSUS**

**1:06-CV-1080-LTS-RHW**

**STATE FARM FIRE AND CASUALTY COMPANY  
and E. A. RENFROE & COMPANY, INC., et al**

**DEFENDANTS**

**EMERGENCY MOTION TO COMPEL  
DEPOSITIONS OF CORI RIGSBY AND KERRI RIGSBY**

COMES NOW, the Defendant, State Farm Fire and Casualty Company (State Farm) and files this, its Emergency Motion to Compel Depositions of Cori Rigsby and Kerri Rigsby and for cause would show unto this Court as follows, to-wit:

**I.**

On May 23, 2008, this Court entered its Order [Doc. 1196] granting State Farm's motion to compel Cori Rigsby and Kerri Rigsby (hereinafter "the Rigsbys") to each submit to one additional hour of depositions with the caveat that State Farm may best be served by waiting until issues regarding Cori Rigsby's computer were resolved. [Doc. 1196 at 2.]

**II.**

On Monday, August 4, 2008, State Farm finally received a copy of a disk containing information retrieved from Cori Rigsby's computer. Yet, on July 23, 2008, in anticipation of receipt of that disk, counsel for State Farm had already begun to inquire about possible deposition dates for the Rigsbys. See Exhibit "A" attached hereto.

### III.

On July 23, 2008, following the initial inquiry regarding deposition dates, counsel for the Rigsbys responded by requesting potential dates from State Farm's counsel. See Exhibit "B" attached hereto.

### IV.

On August 4, 2008, counsel for State Farm provided the following dates for the depositions to the Rigsbys' counsel via email: August 7, 11-13, 18-22, 25-29, and September 2-4. See Exhibit "C" attached hereto. These dates were sufficiently in advance of the trial of this case, which is set to occur in this Court's October trial term, so that (i) the depositions can be completed before State Farm files a further motion for summary judgment, which it recently sought leave to do and in which it noted that it was seeking to complete the Rigsbys' depositions so that it could present the strongest record [Doc. 1249 at ¶¶ 6, 9, 15, 18]; and (ii) any issues or objections pertaining to the depositions or its documents could be addressed in a timely manner and not cause any further delays in this case.

### V.

On August 6, 2008 – there having been no response to the August 4 email – counsel for State Farm sent a follow-up email to the Rigsbys' counsel. See Exhibit "D" attached hereto. On August 6, 2008, counsel for the Rigsbys responded that he had been out of town but that he would provide dates that same day or the next day. See Exhibit "E" attached hereto. Yet, counsel for the Rigsbys did not provide any dates until Monday, August 11, 2008. See Exhibit "F" attached hereto. The dates provided by the Rigsbys' counsel

attached hereto. The dates provided by the Rigsbys' counsel were September 30, October 1, 2, and 3.

Clearly, since this Court's October trial term begins on October 6, 2008, those dates were unacceptable and unworkable. Coming just days before the current trial setting, they frustrate State Farm's ability to complete these depositions and use them on its anticipated motion for summary judgment. They would also come at a time when all counsel will likely be preoccupied preparing for any trial of this matter, rather than taking discovery which should have been completed long before then.

## VI.

On August 11, 2008, counsel for State Farm responded to counsel for the Rigsbys that the dates provided were not acceptable and proposed the remaining dates previously submitted, those being at that time August 18-22, 25-29, and September 2-4. See Exhibit "G" attached hereto. On that same date, counsel for the Rigsbys' advised that he was unavailable on any of those dates and proposed the week of September 22, 2008. Counsel for State Farm again responded that this was too close to trial and sought an explanation as to what the problem was. On August 12, 2008, counsel for the Rigsbys' emailed State Farm's counsel and stated that he would be in trial on August 25, 2008 and would be in "full prep mode" for the two week period prior to that date. The full email dialogue of these events is contained on Exhibit "H" attached hereto. Moreover, there are certainly other lawyers in the offices of counsel for the Rigsbys who are perfectly capable of presenting the Rigsbys for their depositions.

## VII.

In order to obtain any meaningful use of the depositions of the Rigsbys as ordered by this Court on May 23, 2008, these depositions must occur as a matter of necessity in the time frame provided by counsel for State Farm initially to counsel for the Rigsbys. The remaining dates available during that period are August 18-22, 25-29, and September 2-4. The Rigsbys have succeeded in consistently delaying State Farm's ability to conduct these depositions in a timely and meaningful manner by continuing to assert various objections to document production and other matters, most of which have been overruled by this Court time and again.

## VIII.

Because of the emergency nature of this motion given the evident time constraints, State Farm respectfully requests permission to waive the requirement of a good faith certificate, particularly since the depositions have already been ordered and the evidence of the efforts of counsel for State Farm and the Rigsbys are attached herewith.

## IX.

For all the foregoing reasons, this Court should order the Rigsbys to sit for depositions during the following period: August 18-22, 25-29, or September 2-4.

WHEREFORE, PREMISES CONSIDERED, the Defendant, STATE FARM FIRE AND CASUALTY COMPANY, respectfully moves this Court enter an order directing the Rigsbys to

be available for depositions during the periods of August 18-22, 25-29, or September 2-4.

Respectfully submitted,

BRYAN, NELSON, SCHROEDER,  
CASTIGLIOLA & BANAHAN, PLLC  
Attorneys for Defendant, STATE FARM FIRE AND  
CASUALTY COMPANY

BY: /s/ H. Benjamin Mullen  
H. BENJAMIN MULLEN

**CERTIFICATE OF SERVICE**

I, **H. BENJAMIN MULLEN**, one of the attorneys for the Defendant, **STATE FARM FIRE AND CASUALTY COMPANY**, do hereby certify that I have this date electronically filed the foregoing Emergency Motion to Compel Depositions of Cori Rigsby and Kerri Rigsby with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record.

DATED, this the 13<sup>th</sup> day of August, 2008.

/s/ H. Benjamin Mullen  
H. BENJAMIN MULLEN

**H. BENJAMIN MULLEN (9077)**  
**JOHN A. BANAHAN (1731)**  
BRYAN, NELSON, SCHROEDER,  
CASTIGLIOLA & BANAHAN, PLLC  
Post Office Drawer 1529  
Pascagoula, MS 39568-1529  
Tel.: (228)762-6631  
Fax: (228)769-6392  
Email: [ben@bns cb.com](mailto:ben@bns cb.com)  
[john@bns cb.com](mailto:john@bns cb.com)

**Ben Mullen**

**From:** Ben Mullen  
**Sent:** Wednesday, July 23, 2008 11:10 AM  
**To:** Bob Battle; Harlan Winn  
**Cc:** John Banahan; dwebb@webbsanders.com; 'Roehelle Morgan'; Matthew E. Perkins; jrobie@romalaw.com; Layna Lassiter  
**Subject:** McIntosh v. State Farm--Cori Rigsby and Kerri Rigsby  
**Importance:** High

Bob,

We would like to schedule the depositions of the Rigsby sisters. Can you provide us with some potential dates?  
Thanks.

Ben

H. Benjamin Mullen, Esq.  
BRYAN, NELSON, SCHROEDER,  
CASTIGLIOLA & BANAHAN, PLLC  
Post Office Drawer 1529  
1103 Jackson Avenue  
Pascagoula, MS 39568-1529  
Tel.: 228.762.6631  
Fax: 228.769.6392

**Exhibit "A"**  
**Page 1 of 1**

**Ben Mullen**

**From:** Ben Mullen  
**Sent:** Wednesday, July 23, 2008 4:39 PM  
**To:** 'Harlan Winn'; Bob Battle  
**Cc:** John Banahan; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; jrobie@romalaw.com; Layna Lassiter  
**Subject:** RE: McIntosh v. State Farm--Cori Rigsby and Kerri Rigsby  
**Importance:** High  
**Attachments:** Order re Kerri and Cori Rigsby compelled to produce documents.pdf

Harlan,

I'm checking on dates with my group. Regarding documents, prior to the depositions, we would request compliance with the attached Order. Specifically, we never received Cori's 2006 tax return which I'm sure has been prepared by now, nor have we received the income information through May 30, 2007, (in whatever form it exists including 2007 tax returns) as set forth in Request Number 1 of the subpoenas served on the Rigsbys and addressed by this order. Thank you in advance for your attention to this.

Ben

H. Benjamin Mullen, Esq.  
BRYAN, NELSON, SCHROEDER,  
CASTIGLIOLA & BANAHAN, PLLC  
Post Office Drawer 1529  
1103 Jackson Avenue  
Pascagoula, MS 39568-1529  
Tel.: 228.762.6631  
Fax: 228.769.6392

---

**From:** Harlan Winn [mailto:HWinn@bfgwc.com]  
**Sent:** Wednesday, July 23, 2008 11:55 AM  
**To:** Ben Mullen; Bob Battle  
**Cc:** John Banahan; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; jrobie@romalaw.com; Layna Lassiter  
**Subject:** RE: McIntosh v. State Farm--Cori Rigsby and Kerri Rigsby

Ben,

I'll check on it. Do you have a time frame in mind?

Harlan Winn

**From:** Ben Mullen [mailto:ben@bnsbc.com]  
**Sent:** Wednesday, July 23, 2008 11:10 AM  
**To:** Bob Battle; Harlan Winn  
**Cc:** John Banahan; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; jrobie@romalaw.com; Layna Lassiter  
**Subject:** McIntosh v. State Farm--Cori Rigsby and Kerri Rigsby  
**Importance:** High

Bob,

We would like to schedule the depositions of the Rigsby sisters. Can you provide us with some potential dates?

8/13/2008

**Exhibit "B"**  
**Page 1 of 2**

Thanks.

Ben

H. Benjamin Mullen, Esq.  
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Tel.: 228.762.6631  
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**Ben Mullen**

**From:** Ben Mullen  
**Sent:** Monday, August 04, 2008 11:57 AM  
**To:** 'Harlan Winn'; Bob Battle  
**Cc:** John Banahan; 'Dan Webb'; James Robie; Matthew E. Perkins; Layna Lassiter; Roechelle Morgan  
**Subject:** Rigsby Depositions  
**Importance:** High

Harlan and Bob,

I have the following dates available to take the depositions of Cori and Kerri Rigsby:

August 7

August 11-13

August 18-22

August 25-29

Sept 2, 3, 4

Please let me know as soon as possible which dates work best for you and your clients. Thanks.

Ben

H. Benjamin Mullen, Esq.  
BRYAN, NELSON, SCHROEDER,  
CASTIGLIOLA & BANAHAN, PLLC  
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Tel.: 228.762.6631  
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**Exhibit "C"**  
**Page 1 of 1**

**Ben Mullen**

**From:** Ben Mullen  
**Sent:** Wednesday, August 06, 2008 11:06 AM  
**To:** 'Harlan Winn'; Bob Battle  
**Cc:** John Banahan; 'James Robie'; 'dwebb@webbsanders.com'; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter  
**Subject:** Rigsby Depositions  
**Importance:** High

Harlan and Bob,

Any word on potential deposition dates? Please let me know. Thanks.

Ben

H. Benjamin Mullen, Esq.  
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Fax: 228.769.6392

**Exhibit "D"**  
**Page 1 of 1**

**Ben Mullen**

**From:** Harlan Winn [HWinn@bfgwc.com]  
**Sent:** Wednesday, August 06, 2008 1:30 PM  
**To:** Ben Mullen; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter  
**Subject:** RE: Rigsby Depositions

I've been out of town. bob just left town. I will take a look at this and get back with you today or tomorrow.

Harlan Winn

**From:** Ben Mullen [mailto:ben@bnsqb.com]  
**Sent:** Wednesday, August 06, 2008 11:06 AM  
**To:** Harlan Winn; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter  
**Subject:** Rigsby Depositions  
**Importance:** High

Harlan and Bob,

Any word on potential deposition dates? Please let me know. Thanks.

Ben

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BRYAN, NELSON, SCHROEDER,  
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Fax: 228.769.6392

**Exhibit "E"**  
**Page 1 of 1**

**Ben Mullen**

**From:** Harlan Winn [HWinn@bfgwc.com]  
**Sent:** Monday, August 11, 2008 9:54 AM  
**To:** Ben Mullen; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter; Amy Lavender Rodgers  
**Subject:** RE: Rigsby Depositions

Ben, the Rigsbys can be available on Sept 30, Oct 1, 2 or 3.

Harlan Winn

**From:** Ben Mullen [mailto:ben@bnsch.com]  
**Sent:** Wednesday, August 06, 2008 2:09 PM  
**To:** Harlan Winn; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter  
**Subject:** RE: Rigsby Depositions

Thanks, Harlan.

H. Benjamin Mullen, Esq.  
BRYAN, NELSON, SCHROEDER,  
CASTIGLIOLA & BANAHAN, PLLC  
Post Office Drawer 1529  
1103 Jackson Avenue  
Pascagoula, MS 39568-1529  
Tel.: 228.762.6631  
Fax: 228.769.6392

**From:** Harlan Winn [mailto:HWinn@bfgwc.com]  
**Sent:** Wednesday, August 06, 2008 1:30 PM  
**To:** Ben Mullen; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter  
**Subject:** RE: Rigsby Depositions

I've been out of town. bob just left town. I will take a look at this and get back with you today or tomorrow.

Harlan Winn

**From:** Ben Mullen [mailto:ben@bnsch.com]  
**Sent:** Wednesday, August 06, 2008 11:06 AM  
**To:** Harlan Winn; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter  
**Subject:** Rigsby Depositions  
**Importance:** High

Harlan and Bob,

Any word on potential deposition dates? Please let me know. Thanks.

Ben

**Exhibit " F "**  
**Page 1 of 2**

H. Benjamin Mullen, Esq.  
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**Ben Mullen**

**From:** Ben Mullen  
**Sent:** Monday, August 11, 2008 3:52 PM  
**To:** 'Harlan Winn'; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter; Amy Lavender Rodgers; 'Twiford, H. Hunter'; Lipsey, Christine; Hibey, Jim  
**Subject:** RE: Rigsby Depositions  
**Importance:** High

Harlan,

The dates you provided are too close to the scheduled trial set to begin in the October 6, 2008, term. Please provide me with dates which are reasonably well in advance of that trial date and more consistent with the following:

August 18-22  
August 25-29  
Sept 2, 3, 4

Please let me hear from you by noon tomorrow, August 12, 2008. As you know, the Rigsbys are under Court order to provide deposition testimony as set forth in the Court's order dated May 23, 2008 [Doc. 1196]. Additionally, we have had to wait an inordinately long time to receive court ordered documents and computer materials from the Rigsbys. We would like to avoid seeking further Court intervention, but we will do so if we do not have deposition dates for Cori and Kerri Rigsby agreed upon in the time frame contained in this email during the dates set forth herein.

Thanks.

Ben Mullen

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**To:** Ben Mullen; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter; Amy Lavender Rodgers  
**Subject:** RE: Rigsby Depositions

Ben, the Rigsbys can be available on Sept 30, Oct 1, 2 or 3.

Harlan Winn

**Exhibit "G"**  
**Page 1 of 2**

8/13/2008

**From:** Ben Mullen [mailto:ben@bnsch.com]  
**Sent:** Wednesday, August 06, 2008 2:09 PM  
**To:** Harlan Winn; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter  
**Subject:** RE: Rigsby Depositions

Thanks, Harlan.

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**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter  
**Subject:** RE: Rigsby Depositions

I've been out of town. bob just left town. I will take a look at this and get back with you today or tomorrow.

Harlan Winn

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**To:** Harlan Winn; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter  
**Subject:** Rigsby Depositions  
**Importance:** High

Harlan and Bob,

Any word on potential deposition dates? Please let me know. Thanks.

Ben

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8/13/2008

## Ben Mullen

---

**From:** Harlan Winn [HWinn@bfgwc.com]  
**Sent:** Tuesday, August 12, 2008 12:05 PM  
**To:** Harlan Winn; Ben Mullen; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter; Amy Lavender Rodgers; Twiford, H. Hunter; Lipsey, Christine; Hibey, Jim  
**Subject:** RE: Rigsby Depositions

**Follow Up Flag:** Follow up  
**Flag Status:** Red

do you have any other ideas or suggestions?

Harlan Winn

-----Original Message-----

**From:** Harlan Winn  
**Sent:** Tuesday, August 12, 2008 7:18 AM  
**To:** Ben Mullen; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter; Amy Lavender Rodgers; Twiford, H. Hunter; Lipsey, Christine; Hibey, Jim  
**Subject:** RE: Rigsby Depositions

I've got a trial on 8/25 that will take most of two weeks. I am in full prep mode at the moment.

harlan

---

**From:** Ben Mullen [ben@bnsch.com]  
**Sent:** Monday, August 11, 2008 4:49 PM  
**To:** Harlan Winn; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter; Amy Lavender Rodgers; Twiford, H. Hunter; Lipsey, Christine; Hibey, Jim  
**Subject:** RE: Rigsby Depositions

Harlan,

That week is really no better for us. We have to have sufficient time in advance of trial to review the depositions and deal with any further objections or other matters which may arise during the depositions. May I ask what the problem is with dates between now and the first week in September? Please let me know.

Thanks.

Ben

H. Benjamin Mullen, Esq.  
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**From:** Harlan Winn [mailto:HWinn@bfgwc.com]  
**Sent:** Monday, August 11, 2008 4:41 PM  
**To:** Ben Mullen; Bob Battle  
**Cc:** John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E.

**Exhibit "H"**  
**Page 1 of 3**

Perkins; Layna Lassiter; Amy Lavender Rodgers; Twiford, H. Hunter; Lipsey, Christine; Hibey, Jim  
Subject: RE: Rigsby Depositions

Ben, I can not do it on those dates. What about the week of Sept 22? (I have not asked the Rigsbys about this date, but thought I'd check with you first.)

Harlan Winn  
From: Ben Mullen [mailto:ben@bnsch.com]  
Sent: Monday, August 11, 2008 3:52 PM  
To: Harlan Winn; Bob Battle  
Cc: John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter; Amy Lavender Rodgers; Twiford, H. Hunter; Lipsey, Christine; Hibey, Jim  
Subject: RE: Rigsby Depositions  
Importance: High

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August 25-29  
Sept 2, 3, 4

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Ben Mullen

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Subject: RE: Rigsby Depositions

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H. Benjamin Mullen, Esq.  
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Cc: John Banahan; James Robie; dwebb@webbsanders.com; Roechelle Morgan; Matthew E. Perkins; Layna Lassiter  
Subject: RE: Rigsby Depositions

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Subject: Rigsby Depositions  
Importance: High

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Ben

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