

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

UNITED STATES OF AMERICA *ex rel.*;
CORI RIGSBY; AND KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE No. 1:06-cv-433-LTS-RHW

STATE FARM FIRE & CASUALTY
COMPANY, et al.

DEFENDANTS/COUNTER-PLAINTIFFS

**RELATORS' OPPOSITION TO STATE FARM FIRE AND CASUALTY COMPANY'S
MOTION [842] FOR RECONSIDERATION OF THIS COURT'S NOVEMBER 23, 2010,
OPINION & ORDER RE: THE BRIAN FORD REPORT**

Cori and Kerri Rigsby ("Relators" or the "Rigsbys") respectfully submit this Opposition to State Farm Fire & Casualty Company's ("State Farm") Motion for Reconsideration of This Court's November 23, 2010, Opinion & Order Re: The Brian Ford Report [842], and supporting memorandum [843] (the "Motion").

I. PRELIMINARY STATEMENT

State Farm asks this Court to revisit its Order granting in part and denying in part State Farm's motion to exclude the engineering report prepared by Mr. Brian Ford after his inspection of the McIntosh property (the "Ford Report," or the "Report"). The Court should deny State Farm's motion to reconsider for the same reasons that it denied State Farm's initial motion *in limine*. No new circumstances have arisen that would undermine the reasoning of the Court's November 23 Order and justify the extraordinary remedy of reversing a decision on a motion *in limine*. And State Farm's request remains premature; Relators have neither attempted to introduce the Ford Report, nor announced the purpose(s) for which they would do so. If and when Relators offer the Report into evidence, the Court will have a context for deciding what

should be admitted and what limiting instructions to the jury might be appropriate. Without that context, State Farm's request is necessarily based upon speculation as to what might occur at trial.

To the extent that State Farm requests that the Ford Report be admitted in its entirety, Relators have no objection.

II. ARGUMENT

Motions to alter or amend a court's judgment are generally disfavored, absent some compelling reason for change. A motion to reconsider a ruling on a motion *in limine* is especially disfavored, because such motions are by definition premature; the evidence in question has not yet been introduced, and the Court has not yet had an opportunity to evaluate the purpose for which it would be used. There are several potential uses for which the Ford Report could be admissible, even beyond the truth of the matter asserted – to demonstrate bias, for example, or to impeach the testimony of one of several potential witnesses. State Farm offered no valid reason to preclusively exclude the Ford Report in its initial motion, and it offers nothing new now.

State Farm will be able to object at the appropriate time if and when Relators seek to admit the Ford Report at trial. Until that time, there is no basis for State Farm's objections and no basis for its motion..

A. Motions to Reconsider are Disfavored.

The Federal Rules of Civil Procedure do not provide for a "motion for reconsideration." *Volland v. Principal Residential Mortgage*, Case No. 1:08CV696-LTS-RHW, 2009 WL 1658495 at *1 (S.D. Miss. June 11, 2009). Courts evaluate such motions under either Rule 59(e)'s standard "to alter or amend judgment," or Rule 60(b), which deals with motions for "relief from

judgment.” *Fowler v. State Farm Fire & Cas. Co.*, Case No. 1:06CV489-HSO-RHW, 2008 WL 3540180 at *1 (S.D. Miss. 2008). Such motions are disfavored, and reconsideration “is an extraordinary remedy that should be used sparingly.” *Templet v. HydroChem, Inc.*, 367 F.3d 473, 479 (5th Cir. 2004).

1. Motions to Reconsider Are Generally Disfavored.

Motions to reconsider “are generally disfavored.” *Voisin v. Tetra Technologies, Inc.*, Case No. 08-1302, 2010 WL 3943522 at *3 (E.D. La. October 6, 2010). Such a motion “is not a vehicle for a litigant to ask the Court to reconsider adverse decisions it is simply unwilling to accept.” *Dickinson v. Nationwide Mutual Fire Ins. Co.*, Case No. 1:06CV198 LTS-RHW, 2008 WL 1913957 at *4 (S.D. Miss. April 15, 2008). Yet that is exactly what State Farm asks the Court to do here. As in *Dickinson*, there is “no new evidence and no new arguments in support” of State Farm’s Motion. *Id.* State Farm simply seeks to relitigate a decision with which it disagrees.

2. Motions to Reconsider an Order Regarding a Motion in Limine Are Particularly Disfavored.

A motion to reconsider an order regarding a motion *in limine* faces an even stronger presumption. Such motions regard possible or likely future actions and are thus by their nature speculative. *See Fowler*, 2008 WL 3540180 at *1 (declining to reverse ruling on motion *in limine*). State Farm has failed to identify *any* prejudice it might suffer by preserving its objections until trial.

B. There Is No “Clear Error” for the Court to Remedy.

1. Relators Have Not Yet Introduced the Ford Report.

Relators have not yet attempted to introduce the Ford Report. As Relators noted in their opposition to State Farm’s motion in limine, which is incorporated here by reference, the Report would be admissible for different reasons under a variety of circumstances. For example, Relators might use the Ford Report to rebut State Farm’s contention that it challenged the “scientific information” of the Ford Report rather than the conclusion. Since Jack Kelly’s replacement report contains exactly the same “scientific information,” and is otherwise identical to the Ford Report in every significant detail other than the conclusion, the comparison of the reports would be helpful in establishing State Farm’s motive for ordering a second engineering report and its intent to defraud the federal government. That comparison does not rely on the truth of the matter asserted; instead, it uses State Farm’s treatment of the Ford Report as evidence of State Farm’s calculated decision to ignore conclusions that might have required the company to pay its homeowners’ wind claims.

Moreover, the Ford Report also might be used to rebut testimony offered by Alexis King, Jack Kelly, Robert Kochan, or any other witness testifying about the investigation of the McIntosh property. Until that testimony actually is offered, however, no party can say how the Ford Report might be used in that context or whether the Ford Report would be admissible non-hearsay.

Finally, the Ford Report is also the document that first alerted Relators to State Farm’s fraudulent scheme. As such it helps to confirm Relators’ original source standing, which has been contested by State Farm.

Thus, until such time as Relators seek to introduce the Report, it is not possible to articulate what objections, if any, State Farm might properly have as to the Report's admissibility. State Farm's attempt to preclude the issue is premature and lacks foundation, and its motion to reconsider should be denied on that basis.

**2. The Court Can Mitigate Any Potential Harm
with a Limiting Instruction.**

If Relators seek to enter the Ford Report, and if the Court admits it into evidence, and if State Farm has at that time articulated a likely harm that it might suffer from that admission, the Court can fashion an appropriate limiting instruction, directing the jury to consider the Report only for an admissible purpose. The availability of such instructions would mitigate any potential harm and serves as another reason to deny State Farm's motion now.

III. CONCLUSION

For the reasons already stated by the Court in its November 23 Order, and the reasons stated above, State Farm's motion to reconsider should be denied.

THIS the 27th day of December 2010

Respectfully submitted,

/s/ C. Maison Heidelberg
C. MAISON HEIDELBERG, MB #9559
GINNY Y. KENNEDY, MB #102199

OF COUNSEL

August J. Matteis, Jr. (*admitted pro hac vice*)
Craig J. Litherland (*admitted pro hac vice*)
Benjamin Davidson (*admitted pro hac vice*)
Derek Sugimura (*admitted pro hac vice*)
Lucian C. Martinez, Jr. (*admitted pro hac vice*)
GILBERT LLP
1100 New York Avenue NW, Suite 700
Washington, DC 20005
Phone No. (202) 772-2200
Fax No. (202) 772-3333
matteisa@gotofirm.com

Attorneys for Cori Rigsby and Kerri Rigsby
HEIDELBERG HARMON PLLC
795 Woodlands Parkway, Suite 220
Ridgeland, Mississippi 39157
Phone No. (601) 351-3333
Fax No. (601) 956-2090
mheidelberg@heidelbergharmon.com

litherlandc@gotofirm.com
davidsonb@gotofirm.com
sugimurad@gotofirm.com
martinezm@gotofirm.com

Attorneys for Kerri Rigsby and Cori Rigsby

CERTIFICATE OF SERVICE

I, C. Maison Heidelberg, attorney for Cori Rigsby and Kerri Rigsby, do hereby certify that I have this day caused the foregoing document to be filed with the Court's CM/ECF system, which will cause notice to be delivered to all counsel of record.

Don Burkhalter, Esq.
UNITED STATES ATTORNEY
FOR MISSISSIPPI
188 East Capitol Street, Suite 500
Jackson, MS 39201

Felicia Adams, Esq.
ASSISTANT U.S. ATTORNEY
188 East Capitol Street, Suite 500
Jackson, MS 39201

Joyce R. Branda, Esq.
Patricia R. Davis, Esq.
Jay D. Majors, Esq.
UNITED STATES DEPARTMENT OF JUSTICE
Commercial Litigation Branch
Civil Division
601 D Street, NW
Washington, DC 20004

Larry G. Canada, Esq.
Kathryn Breard Platt, Esq.
Galloway, Johnson, Tompkins, Burr & Smith
701 Poydras Street, Suite 4040
New Orleans, LA 70139
(p) 504-525-6802
ATTORNEYS FOR HAAG ENGINEERING CO.

Robert C. Galloway, Esq.
Emerson Barney Robinson, III, Esq.
Benjamin M. Watson, Esq.
Jeffrey A. Walker, Esq.
Amanda B. Barbour, Esq.
BUTLER, SNOW, O'MARA,
STEVENS & CANNADA, PLLC
P.O. Box 22567
Jackson, MS 39225
(p) 601-948-5711

Michael B. Beers, Esq.
BEERS, ANDERSON, JACKSON
PATTY & FALWAL, PC
250 Commerce Street, Suite 100
Montgomery, AL 36104
(p) 334-834-5311
ATTORNEYS FOR STATE FARM FIRE & CASUALTY
INSURANCE COMPANY

/s/ C. Maison Heidelberg