

**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 [844] FOR RECONSIDERATION OF THIS COURT'S NOVEMBER 18, 2010,  
OPINION & ORDER RE: DAVID J. FAVRE, SR.**

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 18, 2010, Opinion & Order Re: David J. Favre, Sr. [844], and supporting memorandum [845] (the "Motion").

**I. PRELIMINARY STATEMENT**

State Farm is displeased with the Court's November 18, 2010 Order (the "Order") regarding the testimony of Mr. David Favre. State Farm therefore requests that the Court reconsider the issue and reverse its ruling. They present no new evidence and no new arguments; they simply disagree with that ruling and want the Court to reverse itself. However, the Court's Order was and is correct. Accordingly, State Farm's motion should be denied.

**II. ARGUMENT**

Reconsideration of a judgment "is an extraordinary remedy that should be used sparingly." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004). Although the Federal Rules of Civil Procedure do not provide for a motion for reconsideration as such,

*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).

**A. Motions to Reconsider Are Disfavored.**

The extraordinary remedy of reconsideration "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). It is impossible, though, to read State Farm's Motion as anything else.

A motion to alter or amend the Court's ruling must show: "(1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or prevent manifest injustice." *Emamian v. United States Dept. of Homeland Security*, Case No. SA-06-CA-0789-RF, 2007 WL 3047213 at \*1 (W.D. Tex. October 11, 2007). State Farm has demonstrated *none* of these things. It presents no new facts and no new legal authority. It is "simply unwilling to accept" the Court's Order. *Dickinson*, Case No. 1:06CV198 LTS-RHW, 2008 WL 1913957 at \*4.<sup>1</sup>

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<sup>1</sup> The authority that State Farm cites in its attempt to convince the Court that its Motion is warranted deals with the reconsideration of a dispositive motion. *See Hall v. Newmarket Corp.*, Case No. 5:09-cv-41 (DCB)(JMR), No. 5:09-cv-41, 2010 WL 3883428 (S.D. Miss. September 29, 2010) (granting reconsideration of the court's denial of a motion to dismiss). The denial of a motion in limine does not rise to a level that calls for such an extraordinary remedy.

**B. The Court Already Rejected In Their Entirety the Arguments That State Farm Again is Raising.**

In its Motion, State Farm rests entirely on two claims: that “Mr. McVadon’s Report and Testimony are Clear Evidence of the Actual Repair Costs to Restore the McIntosh Home to Its Pre-Storm Condition” and “The McVadon Report Demonstrates that the McIntosh Claim Was Not Objectively False and Renders the Favre Report Irrelevant.” Mot. at 2 and 4. But in its prior motion to exclude, State Farm had argued that “[t]he law instructs that actual repair costs trump estimated repair costs” and “Mr. Favre’s Estimate is Superseded by Actual Repair Costs.” State Farm’s Reply in Support of Its Renewal and Supplementation of Its Motion ([300], [301], [334], and [706]) to Exclude the Rigsbys’ Expert Witness David J. Favre [746] (“State Farm’s Prior Reply”) at 2 and 9. The Court properly rejected that argument in its entirety. *See* Mem. Op. [821].

Thus, State Farm offers nothing new and no reason for reconsideration here. Indeed, State Farm’s Prior Reply dwelt at length on the supposed importance and preclusive effect of the McVadon report. But as Relators noted in their Opposition to State Farm’s Renewal and Supplementation of Its Motion to Exclude Testimony of David J. Favre, [727], which is incorporated here by reference, McVadon’s report made no attempt to measure flood damage or assign a value to flood damage. *Id.* at 5-7. In fact, McVadon admitted under oath that he never considered the possibility that wind was the primary cause of damage and made no attempt to account for it. *See id.* Thus, the McVadon report was and is irrelevant to any analysis of the cost to repair flood damage, and the Court properly disregarded it in rejecting State Farm’s efforts to rely upon it. State Farm’s Motion now offers no reason to reconsider that decision.

**III. CONCLUSION**

For all the foregoing reasons State Farm’s motion 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

litherlandc@gotofirm.com

davidsonb@gotofirm.com

sugimurad@gotofirm.com

martinezm@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

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