

PAGE, KRUGER & HOLLAND, P.A.

ATTORNEYS AND COUNSELORS AT LAW

POST OFFICE BOX 1163
JACKSON, MISSISSIPPI 39215-1163

J. LAWSON HESTER
E-mail: lhester@pkh.net

TELEPHONE: (601) 420-0333
FACSIMILE: (601) 420-0033

10 CANEBRAKE BOULEVARD
SUITE 200
JACKSON, MISSISSIPPI 39232

January 29, 2008

Honorable Michael T. Parker
United States District Magistrate Judge
701 North Main Street, Suite 216
Hattiesburg, Mississippi 39401

RE: *State Farm Fire and Casualty Company and State Farm Mutual Automobile Insurance Company v. Jim Hood, in His Official Capacity as Attorney General of The State of Mississippi; In the United States District Court; Southern District of Mississippi, Hattiesburg Division; No. 2:07cv188DCB-MTP*

Dear Magistrate Judge Parker:

This correspondence is written in follow-up response to Mr. Barney Robinson's letter to Your Honor dated January 22, 2008. This letter also necessarily would concern that portion of Your Honor's Order of January 24, 2008 which granted State Farm's *ore tenus* motion for leave to take the evidentiary deposition of Richard Scruggs.

As Your Honor will recall, in the telephonic hearing which followed Mr. Robinson's letter and preceded Your Honor's Order, there was significant discussion held regarding the probability that Mr. Scruggs' counsel would not allow his client to testify in light of the criminal charges pending against him. Both State Farm's counsel and I, as counsel for the Attorney General, have been advised by John Kecker's firm (which represents Mr. Scruggs in his criminal defense matter) that indeed Mr. Scruggs will be advised not to answer any questions if the deposition were to be taken. Specifically, I am advised that Mr. Scruggs will object to both parties' questions on the grounds *inter alia* of the Fifth Amendment, 6th Amendment unavailability of counsel, and the fact that he has had an unreasonable time to comply with the subpoena. Mr. Kecker's firm has advised that it intends to file a motion to quash this week if State Farm unreasonably insists on moving forward with the deposition it noticed for February 1, 2008. Mr. Kecker has advised all counsel additionally that he will be the attorney representing Mr. Scruggs and that he (Mr. Kecker) is out of the country from February 1 through February 3, 2008.

The purpose of this letter is to request the Court to discuss with the parties via telephonic hearing some means to achieve State Farm's desired result (ie, a showing that Mr. Scruggs will not answer their questions) by some means short of the expensive and time-consuming, fruitless deposition they insist on taking despite the unequivocal information provided by Mr. Kecker.

Yesterday, and before writing this letter, I proposed to Mr. Robinson for State Farm that the parties should either stipulate (in an evidentiary stipulation) that Mr. Scruggs either (a) will not answer any questions from either side, either State Farm or the Attorney General, or (b) to stipulate to the specific questions each side would have asked at the deposition but which would not be answered by Mr. Scruggs - - all in lieu of incurring the expense of a deposition which is in reality to be a non-event due to the advice of Mr. Scruggs' counsel. Late yesterday State Farm declined to accept either stipulation.

In light of these developments, and just as Mr. Robinson asked of the Court via his letter, I request that the Court assist the parties in achieving some form of acceptable evidentiary result. Where I differ from Mr. Robinson's request is that I seek to achieve something short of going through the hoops of the deposition which State Farm and the Attorney General have been advised will not yield any responsive information which would benefit either side in the event that further testimony is allowed on or after February 6, 2008 when the parties reconvene in Natchez, Mississippi.

Unfortunately from a timing perspective, by the time you receive this letter I will already be in route to oral argument scheduled for tomorrow at the United States Court of Appeals for the Fifth Circuit in two matters. However, I would greatly appreciate an opportunity for the Court to discuss this issue with the parties on Thursday of this week if that should meet with the Court's approval and is not in contravention of Your Honor's existing calendar. Alternatively, my co-counsel, Danny Cupit, can be available tomorrow in my absence if that would better suit the Court and opposing counsel. I am in no way attempting to be obstructionist as regards the taking of Mr. Scruggs deposition, but the realistic eventuality that this deposition will not yield a benefit to either party is now known clearly to both sides and I would like to avoid as much unnecessary expense and burden to my client as is possible, consistent with the rights of the respective parties.

Thank you for your consideration.

Sincerely,

PAGE, KRUGER & HOLLAND, P.A.

/S/

J. Lawson Hester