

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

STATE FARM FIRE AND CASUALTY
COMPANY AND STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY

PLAINTIFFS

VS.

CIVIL NO. 2:07CV188BP

JIM HOOD, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

DEFENDANT

SETTLEMENT CONFERENCE

BEFORE THE HONORABLE DAVID C. BRAMLETTE
UNITED STATES DISTRICT JUDGE
FEBRUARY 6TH, 2008
NATCHEZ, MISSISSIPPI

REPORTED BY: MARY VIRGINIA "Gina" MORRIS, RMR, CRR
Mississippi CSR #1253

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APPEARANCES:

FOR THE PLAINTIFFS: MR. E. BARNEY ROBINSON III
MR. ROBERT E. GALLOWAY
MR. JEFFREY A. WALKER
MR. J. KENNEDY TURNER III
MR. JAMES R. ROBIE
MS. SHEILA BIRNBAUM

FOR THE DEFENDANT: MR. J. LAWSON HESTER
MR. DANNY CUPIT
MR. WILLIAM LISTON

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1 THE COURT: All right. We'll go on the record now and
2 let it be understood and let the record indicate that we think
3 we have an amicable resolution of this case. We will not be
4 sure until that resolution is dictated into the record and
5 agreed to by both sides.

6 If in the event we run into a difficulty and there is
7 no agreement, then this record will be destroyed and not
8 available to anyone, not even you and not to the court. In
9 other words, Ms. Morris, you will just simply destroy it.
10 Now, let's go off the record and let me get some idea from you
11 as to how it should be dictated into the record.

12 (OFF-RECORD DISCUSSION)

13 THE COURT: We're now on the record. We're going to
14 hear from Mr. Hester who represents the attorney general.

15 MR. HESTER: May it please the court, your Honor, our
16 understanding of what is on the table as far as a proposed
17 settlement is --

18 THE COURT: Let me state the first part of that and
19 see if I say it right. That is, the agreement of January 23,
20 '07, the court will find to be a standalone agreement which is
21 enforceable and unambiguous. Then go ahead with that, sir.

22 MR. HESTER: The agreement cannot be used by either
23 side as either res judicata or collateral estoppel or have any
24 other estoppel-type effect in another court, nor can a ruling
25 from another court be used by either side as collateral

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1 estoppel in this court as regards the letter agreement of
2 January 23, 2007.

3 Secondly, that there would be a settlement agreement
4 under seal and that the court would find based upon the
5 settlement agreement and based upon evidence and documents
6 received in camera that this case is dismissed.

7 Third, that the subpoena being the August 23rd, 2007,
8 subpoena from the grand jury sought by the Attorney General's
9 Office would be withdrawn.

10 THE COURT: And that's in the settlement agreement
11 which is in camera.

12 MR. HESTER: Yes, sir.

13 THE COURT: Which is under seal. I'm sorry.

14 MR. HESTER: Yes, sir. All would be under seal. Yes,
15 sir. That subpoena as referenced of August 23, 2007, would be
16 withdrawn based upon the documents and information received in
17 evidence. This court, being the U.S. District Court for the
18 Southern District of Mississippi, would retain jurisdiction to
19 enforce and conduct any necessary hearings relative to the
20 settlement agreement; and should any future investigations
21 arise that the Office of the Attorney General should desire to
22 pursue or commence against State Farm, either State Farm entity
23 in this case, arising from the handling of any Katrina claims,
24 that those investigations would first -- as a mandatory
25 condition, must first be submitted to the U.S. District Court

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1 for the Southern District of Mississippi with both parties,
2 that being State Farm and the Attorney General's Office, having
3 an opportunity to be heard as to whether or not that is,
4 indeed, outside the scope of the January 23, 2007, letter
5 agreement.

6 And the final term being that each side would bear its
7 own costs, including attorneys' fees and all expenses in this
8 case.

9 THE COURT: All right. Now, has Mr. Hester stated it
10 correctly? Let me ask you all.

11 MR. ROBINSON: The only thing I heard that caused me a
12 little pause -- and it may just be a matter of wording -- is in
13 the basic --

14 THE COURT: Let's go off the record and then I'll give
15 them a chance to comment on the record.

16 (OFF-RECORD DISCUSSION)

17 THE COURT: Now, let the record show that we're back
18 on the record and that there is some clarification pointed out
19 by State Farm and through its attorney, Mr. Robinson. And
20 Mr. Hester is going to state into the record that
21 clarification. Okay.

22 MR. HESTER: The clarification that both sides I
23 believe are in agreement on is that the first provision which
24 we were discussing as the agreement of January 23, 2007, is,
25 indeed, the letter written by Attorney General Hood to

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1 Mr. James Tucker at Butler, Snow Law Firm as counsel for State
2 Farm. And the agreement is that that letter is the agreement
3 that stands alone and cannot be used by either side in state
4 court or any other proceeding, has no collateral estoppel or
5 preclusive effect. And, likewise, if the state court -- or no
6 other court could come back and attempt to undo the binding
7 effect of the January 23, 2007, letter agreement from the
8 attorney general to Mr. Tucker. Is that --

9 MR. ROBINSON: I think we're thinking the same thing,
10 but that's not quite what I would have said.

11 THE COURT: Let's go off the record.

12 (OFF-RECORD DISCUSSION)

13 THE COURT: Back on the record. There's some further
14 clarification of this last issue. Mr. Robinson for and on
15 behalf of his client State Farm is going to state what he
16 understands the agreement to be. And then I'm going to ask
17 Mr. Hester for and on behalf of General Hood if he understands
18 that to be the agreement. All right. Go ahead, Mr. Robinson.

19 MR. ROBINSON: Thank you, your Honor. On the one
20 issue that I had commented about off the record, and that was
21 the issue about the mutual no-collateral-use provision, my
22 clarification point was that as I understand the proposed
23 agreement, State Farm would not be permitted to use the court's
24 sealed finding that the January 23, 2007, agreement is
25 standalone, unambiguous and enforceable collaterally against

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1 the attorney general in any other action; but, conversely, the
2 attorney general would not be allowed to use any finding, order
3 or judgment from a different proceeding collaterally in this
4 action in an attempt to vitiate or escape from the
5 settlement.

6 THE COURT: All right. Now, hold on just a minute.
7 Now, let's stop right there. Go off the record.

8 (OFF-RECORD DISCUSSION)

9 THE COURT: We're back on the record.

10 MR. ROBINSON: Okay. Your Honor, my correction is --
11 I think I misspoke when I referred to the sealed portion of the
12 settlement agreement. I was referring to the no-collateral-use
13 provision being a sealed portion, not the finding that the
14 January 23, 2007, agreement is standalone, unambiguous and
15 enforceable.

16 And Mr. Hester also I believe said that in return for
17 such a provision in the sealed portion of the agreement, his
18 client would want the right to move to have that unsealed in
19 the event that State Farm engaged in conduct that he believed
20 justified such a motion.

21 THE COURT: Does that suit you all right, sir?

22 MR. ROBINSON: I think it does. Does it, Mr. Jackson?

23 MR. JACKSON: Yes, sir.

24 THE COURT: All right. Good. Then you're done with
25 what you were going to say.

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1 MR. ROBINSON: Yes, sir.

2 THE COURT: All right. You may have a seat, sir.

3 MR. ROBINSON: Thank you.

4 THE COURT: All right. Who's next?

5 MR. WALKER: He got mine, Judge.

6 THE COURT: He got you. Ms. Birnbaum, tell me what
7 you're going to say before we go on the record.

8 (OFF-RECORD DISCUSSION)

9 THE COURT: Let's go on the record and you may say so,
10 ma'am.

11 MS. BIRNBAUM: When Mr. Hester referred to future
12 investigations involving State Farm entities would have to come
13 back to this court, he was referring to all of the people and
14 entities that are named in the January 23, '07, agreement, as
15 being included in the term "State Farm."

16 MR. HESTER: That is correct.

17 THE COURT: Satisfied by Mr. Hester and he so
18 acknowledges that. Mr. Galloway. Let's go off the record.

19 (OFF-RECORD DISCUSSION)

20 THE COURT: Back on the record. We're going now to
21 the Honorable Bob Galloway who's going to make a further
22 addition to the agreement which all sides have agreed to.

23 MR. GALLOWAY: In addition to the requirement that
24 before any future investigation of State Farm and the other
25 entities that are named in the January 23, 2007, letter

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1 agreement could be pursued, that the attorney general had to
2 come to this court and seek permission to pursue such proposed
3 new agreement -- I mean investigation, and State Farm would
4 have an opportunity to be noticed and have its side of that
5 heard, as well as the attorney general's; that such proposed
6 new investigation could not be pursued unless this court
7 entered an order finding that the proposed new investigation is
8 not covered by the January 23, 2007, letter agreement.

9 THE COURT: All right. Now, lastly, someone mentioned
10 cost and fees. Who's going to talk about that?

11 MR. HESTER: Yes, sir. I'll do that again if I may.

12 THE COURT: All right, sir.

13 MR. HESTER: Your Honor, as part of the settlement, it
14 is agreed, as I understand it, as part of the proposed terms
15 that each side, being the plaintiffs State Farm, both State
16 Farm entities, as well as the Attorney General's Office, State
17 of Mississippi, will each bear their own respective attorneys'
18 fees, costs, expenses and all other such related fees or costs
19 relating to this litigation without limitation.

20 And, finally, your Honor, the instant civil action in
21 which we're before the court will be dismissed by order of this
22 court with prejudice.

23 THE COURT: All right, sir. Now let's go off the
24 record.

25 (OFF-RECORD DISCUSSION)

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1 MR. HESTER: As previously stated, your Honor, it was
2 agreed that this court would retain jurisdiction to enforce the
3 terms of the settlement agreement.

4 MR. WALKER: Thank you, your Honor.

5 THE COURT: You're welcome. Off the record.

6 (OFF-RECORD DISCUSSION)

7 THE COURT: What we're talking about now is the order
8 that the court is going to sign in this case. And I'm going to
9 be sure that both sides agree to the verbiage of it.
10 Mr. Galloway, let's take another shot at it.

11 MR. GALLOWAY: The body of it, the substance of it
12 will say that:

13 One: The court finds that the January 23, 2007,
14 letter agreement is a standalone agreement, unambiguous and
15 enforceable.

16 Second: That the parties have entered into an
17 agreement which the court is placing under seal.

18 Three: That the case is dismissed with prejudice with
19 the court retaining jurisdiction to enforce the sealed
20 agreement; and,

21 Four: That each party will bear its own costs and
22 expenses, including attorneys' fees.

23 THE COURT: Acceptable to you, Mr. Hester?

24 MR. HESTER: It is, your Honor. I would like to
25 propose one additional term.

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1 THE COURT: Let's go off the record and see if we
2 agree on it.

3 (OFF-RECORD DISCUSSION)

4 THE COURT: We're going back on the record and this is
5 going to be --

6 MR. GALLOWAY: Let Lawson state it as an addendum to
7 what I proposed.

8 THE COURT: Mr. Hester is going to state an addition.
9 This will be the next number in the numbered things that were
10 named earlier by Mr. Galloway that will go in the order to be
11 signed by the court and to be a public record.

12 MR. HESTER: The order of dismissal would further
13 recite that in entering the order the court has taken into
14 consideration all testimony which was given in open court, the
15 documents received in evidence, as well as all documents and
16 matters, including testimony received in camera in this matter.

17 THE COURT: All right. Off the record now.

18 (OFF-RECORD DISCUSSION)

19 THE COURT: All right. Mr. Hood, you're going to be
20 approached by the media and we want to know what you're going
21 to say. And you've already said it off the record. There's a
22 request that it be on the record. And go ahead and say that,
23 sir.

24 MR. HOOD: Yes, your Honor. In order to protect the
25 seal, certainly, the only comment would be that the case was

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1 dismissed. And, of course, they'll ask me about the criminal
2 case; and I would not make any comment, which is always what
3 I'm bound ethically to do, is not make any comment about the
4 criminal case, say, "I can't comment about that."

5 THE COURT: And, Ms. Birnhaum, what would you say in
6 the event State Farm is asked about it?

7 MS. BIRNBAUM: State Farm would say that the case was
8 settled and resolved and will not divulge anything that is in
9 the sealed agreement and may comment what is on the public
10 record, but nothing that is sealed.

11 THE COURT: All right. 10:00 in the morning we'll see
12 you. I do want to say both to General Hood and -- I'll say
13 this to you first. You've been represented by very good
14 counsel. You can see that.

15 MR. HOOD: Thank you.

16 THE COURT: And when you have good lawyers here,
17 you're able to resolve these very, very difficult and touchy
18 issues.

19 And I say the same to you, Mr. Jackson, over there.
20 Are you listening to me? You've been represented by excellent
21 lawyers as well. I commend all lawyers in this case for your
22 hard work, for your respect for each other and your respect for
23 the court. This is a difficult case and it's one that should
24 have been resolved. It has been resolved and I thank you for
25 it.

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1 (CONCLUSION OF CONFERENCE 2-6-08)

2 (ADDENDUM TO SETTLEMENT CONFERENCE HELD 2-7-08 WITH

3 BARNEY ROBINSON, LAWSON HESTER AND ROBERT GALLOWAY)

4 (CONFERENCE HELD IN CHAMBERS)

5 THE COURT: Let the record show that we're in chambers
6 once again, the morning following yesterday evening's session
7 wherein the parties dictated into the record a settlement.
8 There is one addendum to the settlement which is going to be
9 announced by the parties. We'll stay on the record and let either
10 side do that.

11 MR. ROBINSON: Okay. Your Honor, Barney Robinson for
12 the plaintiffs. As I understand it, the addendum is that State
13 Farm's counsel are authorized to contact these six specific
14 lawyers: Bob Allen, Grady Tollison, Joe Hollomon, Luke Dove,
15 Joel Dillard, Patrick Finnegan, which I believe to be spelled
16 F-I-N-N-E-G-A-N --

17 MR. GALLOWAY: I think that's right.

18 MR. ROBINSON: -- all of whom represent one or more
19 persons who are covered by the January 23, 2007, agreement, and
20 to inform those lawyers that if they wish, they may contact the
21 court in confidence and request such assurance -- excuse me.
22 Let me back up -- unequivocally subject themselves and their
23 client to the jurisdiction of the court for purposes of the
24 court's ability to enforce the confidentiality of the
25 settlement agreement and to keep it under seal, and having done

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1 so, then request of the district judge such assurances as the
2 district judge is willing to give them on the subject of
3 whether their clients are in any further potential jeopardy as
4 a result of the former investigation of the Mississippi
5 Attorney General.

6 THE COURT: And the district judge has advised that
7 the information he will provide them will be verbal
8 communication as opposed to a writing.

9 MR. ROBINSON: Yes, sir.

10 MR. HESTER: Yes, your Honor. And in addition to
11 that, on behalf of -- again, Lawson Hester on behalf of the
12 attorney general for the State of Mississippi. It was further
13 agreed that the listed attorneys would bind themselves and
14 their clients to make no publication or repetition of anything
15 that they might learn from the court relative to the settlement
16 and there would be no public dissemination whatsoever of the
17 matters which Judge Bramlette might deem appropriate to reveal
18 to counsel.

19 And I'd like it understood on the record too that by
20 this limited disclosure from the court, that this in no way is
21 intended to operate as a waiver or to vitiate in any way the
22 seal which has been agreed to and put in place by the parties
23 and now by the court and to be kept under seal and binding on
24 all parties.

25 THE COURT: Does that sound all right to all sides?

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1 MR. GALLOWAY: I assume --

2 THE COURT: Let's go off the record a minute.

3 (OFF-RECORD DISCUSSION)

4 THE COURT: Mr. Galloway, we're going back on the
5 record. Mr. Galloway has a statement which essentially has
6 been agreed to that he's going to add to what Mr. Robinson and
7 Mr. Hester have already said.

8 MR. GALLOWAY: The six named lawyers, if they contact
9 Judge Bramlette and are given advice by Judge Bramlette as to
10 the -- not the details, but the application of the settlement
11 to their clients, these six lawyers are then authorized to tell
12 their clients in layman's terms, not repeating the advice given
13 to them by Judge Bramlette, but in layman's terms that they're
14 no longer in jeopardy from the state investigation that was
15 evidenced by the August 23rd, 2007, subpoena.

16 These lawyers are specifically to tell their clients
17 also that this advice is confidential, that they're subject to
18 the jurisdiction of the court and are not to make public any of
19 that information.

20 THE COURT: All right. Everybody agrees to that. Let
21 the record so indicate. Very well.

22 (CONCLUSION OF HEARING IN CHAMBERS)

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CERTIFICATE OF REPORTER

I, MARY VIRGINIA MORRIS, Official Court Reporter,
United States District Court, Southern District of
Mississippi, do hereby certify that the above and foregoing
pages contain a full, true and correct transcript of the
proceedings had in the aforementioned case at the time and
place indicated, which proceedings were recorded by me to
the best of my skill and ability.

I certify that the transcript fees and format
comply with those prescribed by the Court and Judicial
Conference of the United States.

This the 7th day of February, 2007.


M. VIRGINIA "Gina" MORRIS, RMR, CRR