

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

-----X

THOMAS C. and PAMELA McINTOSH,	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 1:06-CV-
	:	1080-LTS-RHW
- against -	:	
	:	
STATE FARM FIRE & CASUALTY CO. and:	:	
E. A. RENFROE & CO., INC.	:	
	:	
Defendants.	:	
	:	

-----X

**AFFIDAVIT OF H. BENJAMIN MULLEN, ESQ.**

STATE OF MISSISSIPPI    )  
                                  )  
COUNTY OF JACKSON    )

H. Benjamin Mullen, being duly sworn, deposes and says:

1. I am a member of the bar of the State of Mississippi and of this Court. I am a member of the law firm of Bryan, Nelson, Schroeder, Castigliola & Banahan, PLLC, counsel of record for State Farm Fire and Casualty Company (“State Farm”) in this matter. I have personal knowledge of the facts set forth in this affidavit.

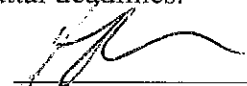
2. On Thursday, July 24, 2008, in anticipation of filing motions to compel deposition testimony of Zach Scruggs and Richard F. Scruggs, I forwarded a good faith certificate to counsel for the Scruggses with an email setting forth State Farm’s request for compliance in lieu of filing the motions to compel. See Exhibit “A” attached hereto.

3. On Friday, July 25, 2008, at 12:01 p.m., I received an email with a letter attached to it as well as a substantially altered good faith certificate from counsel for Zach Scruggs and Richard F. Scruggs. See Exhibit "B" attached hereto.

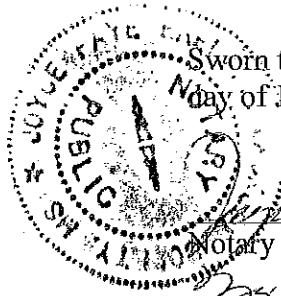
4. That based upon that correspondence and the many months of legal disputes over obtaining the deposition testimony of the Scruggses, as well as the exchanges that occurred over the course of multiple hours of each of the Scruggses' depositions, further attempts to resolve the issues involved in the motions to compel without Court intervention would be futile.

5. Neither I nor any of my co-counsel nor my client, State Farm, agree that the limitations set forth in Uniform Local District Court Rule 7.2 for responding to the motions to compel should apply because of the emergent nature of these motions to compel, vis-à-vis the impending incarceration of Zach Scruggs (August 15, 2008) and Richard F. Scruggs (August 4, 2008).

6. We are seeking expedited response and rebuttal deadlines.

  
\_\_\_\_\_  
W. Benjamin Mullen

Sworn to before me this 25<sup>th</sup>  
day of July, 2008.

  
\_\_\_\_\_  
Notary Public

*My Commission Expires  
Oct 29, 2011*

**Ben Mullen**

---

**From:** Ben Mullen  
**Sent:** Thursday, July 24, 2008 5:31 PM  
**To:** 'Paul Watkins'; Dan Webb  
**Cc:** John Banahan; jrobie@romalaw.com; Cal Mayo; tina.nicholson@yahoo.com; Chip Merlin; Lee Martin; Brook Dooley; Pope Mallette; Twiford, H. Hunter; Layna Lassiter  
**Subject:** RE: McIntosh v. State Farm  
**Importance:** High  
**Attachments:** Good Faith Certificate for Motions to Compel Testimony of the Scruggses.wpd

Paul,

In lieu of our filing motions to compel, this is State Farm's formal good faith request for your clients, Zach Scruggs and Richard Scruggs, to provide us with answers to all questions not answered at their depositions which took place on July 21 and July 22, 2008, respectively, and a certification under oath that all documents responsive to the Court's Orders have been produced and that none have been withheld on grounds of ostensible privilege or otherwise. We must have this information and agreement no later than 12:00 noon CDT on Friday, July 25, 2008. If you and your clients are unable to agree to this request by that time, please execute the attached good faith certificate and return to me by no later than noon CDT on July 25, 2008. If we do not receive either the agreement or the executed good faith certificate by noon tomorrow, we will presume that your clients will not agree and the certificate will not be signed and returned.

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

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**From:** Paul Watkins [mailto:pwatkins@MAYOMALLETTE.com]  
**Sent:** Thursday, July 24, 2008 11:51 AM  
**To:** Dan Webb  
**Cc:** John Banahan; jrobie@romalaw.com; Cal Mayo; tina.nicholson@yahoo.com; Chip Merlin; Ben Mullen; Lee Martin; Brook Dooley; Pope Mallette; Twiford, H. Hunter  
**Subject:** McIntosh v. State Farm

Dan

As we agreed on Monday and Tuesday, we will ask the Court to seal the depositions of Dick and Zach Scruggs by the end of the week. It is our understanding that all parties involved have agreed not to disclose these depositions until the Court rules on our motion to seal.

Thanks

Paul

=====

**Exhibit "A"**  
Page 1 of 4

Paul B. Watkins, Jr.  
Mayo Mallette PLLC  
5 University Office Park  
2094 Old Taylor Road  
Post Office Box 1456  
Oxford, Mississippi 38655  
Tel: (662) 236-0055  
Fax: (662) 236-0035  
[pwatkins@mayomallette.com](mailto:pwatkins@mayomallette.com)  
<http://www.mayomallette.com>

=====

This message may contain privileged material. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify me by telephone and destroy this message. Thank you.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

THOMAS C. AND PAMELA MCINTOSH

Plaintiffs

v.

CIVIL ACTION NO. 1:06-CV-01080-LTS-RHW

STATE FARM FIRE & CASUALTY CO., ET AL

Defendants

**GOOD FAITH CERTIFICATE**

All counsel certify that they have conferred in good faith to resolve the issues in question and that it is necessary to file the following motion:

Counsel further certify that:

as appropriate:

1. The motion is unopposed by all parties.

\_\_\_\_\_

2. The motion is unopposed by:

\_\_\_\_\_

3. The motion is opposed by: Counsel for Zach Scruggs and Richard Scruggs

\_\_\_\_\_

4. The parties agree that replies and rebuttals to the motion shall be submitted to the magistrate judge in accordance with the time limitations stated in Uniform Local Rule 7.2

\_\_\_\_\_

This the 24<sup>th</sup> day of July 2008.

---

Signature of Plaintiff's Attorney

---

Typed Name and Bar Number

---

Signature of Defendant's Attorney

H. BENJAMIN MULLEN—Bar No.: 9077

---

Typed Name and Bar Number

**Ben Mullen**

---

**From:** Pope Mallette [pmallette@MAYOMALLETTE.com]  
**Sent:** Friday, July 25, 2008 11:59 AM  
**To:** Ben Mullen; Paul Watkins  
**Cc:** John Banahan; jrobie@romalaw.com; Cal Mayo; tina.nicholson@yahoo.com; Lee Martin; Brook Dooley; Twiford, H. Hunter  
**Subject:** RE: McIntosh v. State Farm  
**Attachments:** 20080725115251.pdf

Ben,

Please see attached.

Pope

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**From:** Ben Mullen [mailto:ben@bnsch.com]  
**Sent:** Friday, July 25, 2008 9:36 AM  
**To:** Pope Mallette; Paul Watkins  
**Subject:** FW: McIntosh v. State Farm  
**Importance:** High

Pope,

I just saw your email from last night. Please see attached.

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:** Ben Mullen  
**Sent:** Thursday, July 24, 2008 5:31 PM  
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**Cc:** John Banahan; jrobie@romalaw.com; Cal Mayo; tina.nicholson@yahoo.com; Chip Merlin; Lee Martin; Brook Dooley; Pope Mallette; Twiford, H. Hunter; Layna Lassiter  
**Subject:** RE: McIntosh v. State Farm  
**Importance:** High

Paul,

In lieu of our filing motions to compel, this is State Farm's formal good faith request for your clients, Zach Scruggs and Richard Scruggs, to provide us with answers to all questions not answered at their depositions which took place on July 21 and July 22, 2008, respectively, and a certification under oath that all documents responsive to the Court's Orders have been produced and that none have been withheld on grounds of ostensible privilege or otherwise. We must have this information and agreement no later than 12:00 noon CDT on Friday, July 25, 2008. If you and your clients are unable to agree to this request by that time, please execute the attached good faith certificate and return to me by no later than noon CDT on July 25, 2008. If we do not receive either the

**Exhibit "B"**  
**Page 1 of 6**

7/25/2008

agreement or the executed good faith certificate by noon tomorrow, we will presume that your clients will not agree and the certificate will not be signed and returned.

Thanks.

Ben

H. Benjamin Mullen, Esq.  
BRYAN, NELSON, SCHROEDER,  
CASTIGLIOLA & BANAHAN, PLLC  
Post Office Drawer 1529  
1103 Jackson Avenue  
Pascagoula, MS 39568-1529  
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**Subject:** McIntosh v. State Farm

Dan

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Thanks

Paul

=====  
Paul B. Watkins, Jr.  
Mayo Mallette PLLC  
5 University Office Park  
2094 Old Taylor Road  
Post Office Box 1456  
Oxford, Mississippi 38655  
Tel: (662) 236-0055  
Fax: (662) 236-0035  
[pwatkins@mayomallette.com](mailto:pwatkins@mayomallette.com)  
<http://www.mayomallette.com>  
=====

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7/25/2008

# MAYO MALLETTTE

A PROFESSIONAL LIMITED LIABILITY COMPANY

ATTORNEYS AT LAW

POPE S. MALLETTTE

Writer's Email:  
pmallette@mayomallette.com

H. Benjamin Mullen, Esquire  
Bryan, Nelson, Schroeder, Castigliola & Banahan  
1103 Jackson Avenue  
Pascagoula, Mississippi 39568

*Via Email & U. S. Mail*

Re: Thomas C. and Pamela McIntosh v. State Farm Fire & Casualty Company, et al.  
No. 1:06cv1080-LTS-RHW

Dear Ben:

After I left work yesterday, I received a copy of your e-mail demanding that I certify that you and I had conferred in good faith on disputed issues, and that I provide responses to questions and a "certification" regarding the document production, by noon today. You have not made a good faith effort to resolve any issues, as you waited until after close of business the day before your unilaterally-imposed noon deadline to make your demand. Within this very limited time frame, you provide no grounds for the relief you demand, or details regarding the unspecified deficiencies you apparently contend have occurred.

To be more specific, you provide no basis for your demand that the Scruggses "provide [you] with answers to all questions not answered at their depositions. . . ." Among other things, at both depositions both your co-counsel and counsel for Renfroe repeatedly accused the Scruggses of criminal activities, repeatedly asked pointed questions about their relationships and communications with former clients, and repeatedly sought to make them disclose details of their preparation for litigation in the *McIntosh* and other cases. State Farm's and Renfroe's attorneys repeatedly implied facts not established as the foundation of their questions, and implied duties of production that exceeded the Court's orders and the operative rules of procedure. Despite the questions on Monday and Tuesday, we fail to see how any fair reading of the Orders leading up to these depositions requires the Scruggses to universally waive their constitutional rights, or to abandon their duties to their prior clients.

Further, I am not aware of any basis for your demand that the Scruggses provide "a certification under oath that all documents responsive to the Court's Orders have been produced and

**MAYO MALLETTE PLLC**

H. Benjamin Mullen, Esquire  
July 25, 2008  
Page 2

that none have been withheld on grounds of ostensible privilege or otherwise." However, if there is authority for your demand, please forward it to me for my consideration. More to the point, we have not withheld anything on privilege grounds and have produced all responsive documents after a reasonable search in response to State Farm's subpoena. If you think there are other, specific documents that you believe were not but should have been produced, please provide a list and we will consider it expeditiously.

It seems clear from your filing on Tuesday evening, before I could return to my office after the deposition of Dick Scruggs, that you have known for at least several days that you intend to file a motion to compel. As you allowed 48 hours to elapse between that filing and your demand for an immediate good-faith certification (48 hours during which the parties could have actually worked toward a resolution of the disputes), your characterization of your letter of yesterday evening as a "good faith attempt" to resolve discovery disputes rings hollow.

Nevertheless, I have modified and signed the good faith certificate, indicating more correctly where we now stand. If you submit your certificate, please submit mine as well.

I remind you of our agreement not to disclose the depositions until the Court has ruled on the Scruggses' Motion to Seal, which we expect to have filed by late this afternoon.

Cordially,

MAYO MALLETTE PLLC



Pope S. Mallette

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

THOMAS C. AND PAMELA MCINTOSH

Plaintiffs

v.

CIVIL ACTION NO. 1:06-CV-01080-LTS-RHW

STATE FARM FIRE & CASUALTY CO., ET AL

Defendants

**GOOD FAITH CERTIFICATE**

All counsel certify that they have conferred in good faith to resolve the issues in question and that it is necessary to file the following motion:

**By Attorney for Non-Parties Richard and Zachary Scruggs:** State Farm has indicated its intent to file a motion to compel testimony from the Scruggses. A version of this Certificate and an accompanying e-mail from counsel for State Farm were sent to the Scruggses' counsel after close of business on Thursday, July 24, 2008. They imposed a unilateral deadline of 12:00 p.m. on July 25, 2008, for approval of this Certificate. Counsel for the Scruggses responded with a good-faith letter before the stated deadline. The Scruggses deny that this effort, which included no explanation or authority for the relief sought through State Farm's e-mail, constituted a good-faith effort to resolve a discovery dispute. Nevertheless, the Scruggses believe it is their obligation under the Uniform Local Rules to sign and return this Certificate so that State Farm may proceed as it deems necessary.

Counsel further certify that:

as appropriate:

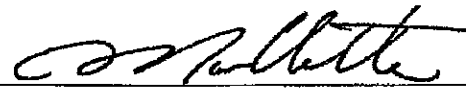
1. The motion is unopposed by all parties.

2. The motion is unopposed by:  
\_\_\_\_\_

3. The motion is opposed by: Counsel for Zach Scruggs and Richard Scruggs

4. The Scruggses agree that replies and rebuttals to the motion shall be submitted to the magistrate judge in accordance with the time limitations stated in Uniform Local Rule 7.2

This the 25<sup>th</sup> day of July 2008.



Signature of Non-Parties' Attorney

Pope S. Mallette -- MS Bar No. 9836

Typed Name and Bar Number

Signature of Defendant's Attorney

H. BENJAMIN MULLEN--Bar No.: 9077

Typed Name and Bar Number