

Barney Robinson

From: John Keker [JKeker@KVN.com]
Sent: Friday, January 25, 2008 7:42 PM
To: Barney Robinson; HPIZZ@ago.state.ms.us; MWOOD@ago.state.ms.us; DECUPIT@aol.com; cgp@pgrwlaw.com; bliston@listonlancaster.com; lhester@pagekruger.com; JRobie@romalaw.com; mcalister@davidnutt.com; Bob Galloway; Jeff Walker; jrobie@romalaw.com
Subject: FW: State Farm v. Hood - Richard F. Scruggs Subpoena

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I am in receipt of the deposition subpoena that you issued today to Dickie Scruggs in connection with *State Farm v. Hood*. I am writing to notify you that Mr. Scruggs will not attend the deposition that you have unilaterally scheduled at the Scruggs Law Firm in Oxford for next Friday, February 1. It is my understanding from counsel with knowledge of the January 23, 2008 telephonic hearing that Magistrate Parker conditioned State Farm's leave to take Mr. Scruggs's deposition on our consent to the deposition and on Mr. Scruggs's non-assertion of his Fifth Amendment privilege against self-incrimination. This explains why the Court's order does not provide State Farm with leave to subpoena Mr. Scruggs. As Magistrate Parker anticipated during the hearing, Mr. Scruggs does not consent to State Farm's deposition in this case, and he will assert his Fifth Amendment privilege against self-incrimination, if he is compelled to testify. This deposition cannot be permitted to proceed for many reasons. Not only is the issuance of a deposition subpoena upon one-week's notice unreasonable and unfair, but, as you already know, I am not available on February 1 for the deposition. Given the criminal cases pending against Mr. Scruggs in Mississippi and Alabama, proceeding with this deposition next Friday jeopardizes Mr. Scruggs's Fifth and Sixth Amendment rights as well as the attorney-client privilege and the work-product protection. I urge you to withdraw your subpoenas and to seek a clarification of Magistrate Parker's order before you make any attempt to compel Mr. Scruggs to appear for a deposition in this case.

Should you wish to discuss this issue further, please do not hesitate to contact me or Travis LeBlanc at 415-391-5400.

Very truly yours,

John Keker

Attachments: 2647631_1.pdf
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Exhibit B

Barney Robinson

From: John Keke [JKeker@KVN.com]
Sent: Sunday, January 27, 2008 4:46 PM
To: Barney Robinson
Cc: HPIZZ@ago.state.ms.us; MWOOD@ago.state.ms.us; DECUPIT@aol.com; cgp@pgrwlaw.com; bliston@listonlancaster.com; lhester@pagekruger.com; JRobie@romalaw.com; mcalister@davidnutt.com; Bob Galloway; Jeff Walker; Ken Turner; Travis LeBlanc; Brook Dooley; Jan Little
Subject: Re: State Farm v. Hood - Richard F. Scruggs Subpoena

Barney, thank you for your response.

It appears to me that you and AG Hood's lawyers need to get a very significant difference in understanding of MJ Parker's order straightened out, and I trust you will go together to MJ Parker and do that. As for me, I will be out of the country on Feb 1 (and until late Feb 3). As Mr Scruggs lead lawyer, I will be the one advising him not to answer any of your questions, so I must say it seems to me that we are disagreeing about nothing that matters to State Farm.

We don't know each other, but I am sure you, like me, are a lawyer who hates to waste time posturing over things that don't really make any difference to the case. Dick Scruggs will not answer State Farm's questions at a deposition in the near future, and I am sure you understand why I won't let him. So why are we fussing about it?.

Best regards,

John Keke

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From: Barney Robinson <Barney.Robinson@butlersnow.com>

To: John Keke

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Sent: Sat Jan 26 18:35:54 2008

Subject: RE: State Farm v. Hood - Richard F. Scruggs Subpoena

John:

I'm writing in response to your e-mail of January 25, 2008 at 7:42 p.m. In response to your inquiry, please be advised of State Farm's positions on the following points:

(1) As you know, Local Rule 37.2 of the Northern and Southern Districts of Mississippi provides in pertinent that "[t]he filing of a motion . . . to limit or quash a deposition does not operate as a stay of the deposition. It is incumbent upon the party seeking the protection of the court to obtain a ruling on the motion prior to the scheduled deposition." As a result, Mr. Scruggs must attend the deposition absent a contrary (and prior) order of the Court.

You have my assurance that we will cooperate with Mr. Scruggs' counsel in expediting a hearing on any motion to quash or limit that may be filed.

(2) Unfortunately, it appears that you have been terribly misinformed - presumably by Attorney General Hood's lawyer, as nobody other than he, the Judge and State Farm lawyers were on the call - as to Magistrate Judge Parker's statements concerning Mr. Scruggs' deposition. Magistrate Judge Parker made no statements conditioning Mr. Scruggs' deposition on his (or his counsel's) consent.

(3) As to the scheduling of Mr. Scruggs' deposition, Judge Bramlette scheduled the hearing for which Mr. Scruggs' testimony is sought on February 6, 2008. We noticed Mr. Scruggs' deposition for February 1, 2008, immediately after issuance (on January 24, 2008) of Judge Bramlette's order setting the hearing. Mr. Scruggs' lawyers have had as much notice as State Farm's lawyers of the date that the deposition will be needed in Court.

Mr. Scruggs has many lawyers and we are confident that at least one of them can be present for the deposition. Nevertheless, if February 1 is simply impossible for your firm or the other firms of lawyers representing Mr. Scruggs, we are willing to have the deposition on February 2, which would be the latest practicable date in order to have the deposition completed, transcribed and video-indexed in time for the hearing on February 6.

1/30/2008

(4) Regarding your concerns that Mr. Scruggs might have objections or invoke his Fifth Amendment right not to incriminate himself, please note that whatever concerns you and Mr. Scruggs have may be addressed on a question-by-question basis. Further, any instructions not to answer can be taken up immediately with the Court if necessary.

Please let me know if we have any other matters to discuss.

Very truly yours,

E. Barney Robinson III
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Direct: (601) 985-4525
Fax: (601) 985-4500

barney.robinson@butlersnow.com

210 East Capitol Street,
17th Floor
Jackson, MS 39201 P.O. Box 22567
Jackson, MS 39225-2567

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From: Bob Galloway
Sent: Sunday, January 27, 2008 7:41 PM
To: 'John Kecker'; Barney Robinson
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Subject: RE: State Farm v. Hood - Richard F. Scruggs Subpoena

Mr. Kecker, I have been asked to respond to your message during Barney's temporary unavailability. Our position remains as stated in Barney's e-mail to you of yesterday evening.

Cordially,

Bob Galloway

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17th Floor
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