



TRIAL LAWYER MISCONDUCT ALLEGED IN KATRINA-RELATED LAWSUITS

by
Adam Botzenhart

With insurers facing hundreds of lawsuits in the wake of Hurricane Katrina, legal drama in Mississippi and the courts of other affected states has been inevitable. The media has been regularly reporting on the outcomes of insurance coverage litigation and decisions by insurers to settle claims rather than undergo protracted legal battles. One rapidly growing drama which has received far less attention, but which could have a much greater impact on the conduct of civil litigation, involves the professional and ethical conduct of plaintiffs' lawyer Richard Scruggs. A number of developments, including one judge's call for a criminal scrutiny for his conduct, bear close monitoring.

The Scruggs Law Firm filed a class action lawsuit against State Farm Insurance Company in May of 2006, alleging that State Farm had wrongfully denied claims relating to damage from hurricane Katrina's storm surge. *McIntosh v. State Farm Fire & Casualty*, Civil No. 1:06-CV-1080-LTS-RHW (S.D. Miss.). Throughout 2006, Scruggs had collected approximately 15,000 pages of internal State Farm documents, including e-mails and engineering reports. The documents had been covertly copied by Corri and Kerri Rigsby, employees of E.A. Renfroe & Company, Inc., an insurance services company contracted by State Farm. According to news accounts, the documents were delivered to both Scruggs and Mississippi Attorney General Jim Hood. In February 2006, the sisters retained Scruggs as their lawyer and in July they became paid "litigation consultants" for the Scruggs Katrina Group with an annual salaries of \$150,000.

After learning of the documents, Renfroe filed a breach of employment contract complaint against the Rigsbys on September 1, 2006 in the U.S. District Court for the Northern District of Alabama. U.S. District Court Judge William Acker found that the Rigsbys had violated their employment agreements and issued a preliminary injunction which required both the Rigsbys and Scruggs to return to Renfroe the purloined documents. Scruggs, instead, sent the documents to Attorney General Hood as part of what the *Wall Street Journal* has described as a "tag-team mugging," *Contempt in Mississippi*, WALL ST. J., June 19, 2007, at A16. Judge Acker, clearly agitated by the affair, wrote in his June 15 opinion, "His brazen disregard of the court's preliminary injunction is precisely the type of conduct that criminal contempt sanctions were designed to address." *E.A. Renfroe & Co. v. Moran*, Civ. Action No. 06-AR-1752-S (N.D. Ala. June 15, 2007), slip op. at 20. He concluded the opinion, caustically stating, "...the court will formally request that an attorney for the government prosecute Scruggs's contempt. If the government declines the request, the court will appoint another attorney to prosecute the contempt." *Id.* at 25.

On June 18, State Farm filed a motion to disqualify Scruggs and the Scruggs Katrina Group from the aforementioned class action. In their motion State Farm alleges, among other things, that Scruggs violated Mississippi's Rules of Professional Conduct by: 1) engaging in unauthorized *ex parte* communications with represented parties; 2) using methods to obtain evidence that violates the legal rights of a third party; 3) hiring the Rigsby sisters, whom Scruggs has repeatedly described as material witnesses and whose testimony he intends to use against State Farm; 4) concurrently representing the

Rigsbys and the class action plaintiffs; and 5) representing a party in a proceeding in which he is likely to be called as a witness.

State Farm attached an affidavit to its motion from legal ethics scholar Charles W. Wolfram which stated, "Mr. Scruggs blatantly, seriously, and repeatedly departed from the standard of conduct that would be followed by a lawyer of ordinary care and prudence" and that "Mr. Scruggs's course of conduct warrants his disqualification from further participation" in the case.

By letter dated June 26, 2007, the U.S. Attorneys office in the Northern District of Alabama declined prosecution of Scruggs. *U.S. Attorney Declines Judge's Request to Prosecute Lawyer for Contempt in Katrina Dispute*, Associated Press, July 27, 2007, viewed at <http://www.law.com/jsp/article.jsp?id=1185440795536>. It is unclear whether Judge Acker will, as stated in his opinion, "appoint another attorney to prosecute the contempt." There has been no determination of Scruggs's fate in the Katrina class action. In recent years, federal and state judges and prosecutors have taken a more aggressive approach to policing lawyer misconduct and protecting the integrity of the administration of justice. Observers of this legal drama could soon learn whether this encouraging trend will continue.

Adam Botzenhart was an Institute for Humane Studies Fellow at the Washington Legal Foundation's Legal Studies Division during the summer of 2007.

About WLF and the COUNSEL'S ADVISORY

The Washington Legal Foundation (WLF) is the nation's largest non-profit, free enterprise public interest law and policy center. WLF litigates *and* publishes in order to advocate legal policies that promote economic growth, job creation, and the civil liberties of business. As a 501(c)(3) tax exempt organization, WLF relies upon the charitable support of individuals, businesses, associations, and foundations to fund its programs.

This COUNSEL'S ADVISORY is one of WLF's seven publication formats. Its purpose is to inform the free enterprise community about a development in the legal policy world that can be favorably influenced by the immediate involvement of legal experts and business and community leaders.

For more information on the Washington Legal Foundation, please contact Daniel J. Popeo, Chairman, at (202) 588-0302.

**Washington Legal Foundation
on the World Wide Web:**

<http://www.wlf.org>