

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

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

Plaintiff,

vs.

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

Defendant.

Northern District of Mississippi – Western  
Division Case No. 3:08cv11-MPM

Southern District of Mississippi  
Hattiesburg Division  
Case No. 2:07cv188-DCB-MTP

**NON-PARTY RICHARD F. SCRUGGS’S OPPOSITION TO  
STATE FARM’S EMERGENCY MOTION TO CLARIFY**

Non-party-Petitioner Richard F. Scruggs opposes State Farm’s Emergency Motion to Clarify. First and foremost, the Court has clearly stated that the deposition should commence prior to 5:00 p.m. on Monday. Nothing about the Court’s Order was unclear or in need of clarification. Counsel for State Farm has been informed (several times), and by now should understand, that Mr. Scruggs’s assertion of privilege means he will not answer any questions at this deposition. Whatever time the deposition consumes will be the result of the question, the statement of privilege, and Mr. Scruggs’s statement that he will follow his lawyer’s advice. If State Farm’s counsel wishes to prolong that process, it can be for no other reason than harassment. If the Court is inclined to enter an order at this time, this Court should order that once Mr. Scruggs has asserted his privileges in response to the first question, that State Farm counsel lists all of its questions at once, and permit Mr. Scruggs to refuse to answer them all at once. That process cannot possibly take more than one hour.

Counsel for State Farm also know that Mr. Scruggs's lead lawyer and undersigned counsel will not be in Oxford at 8:00 a.m. Monday morning, and Mr. Scruggs objects to any proceeding on such short notice in their absence. State Farm's counsel's behavior has become harassing and burdensome. In support of this Opposition, Mr. Scruggs further states as follows:

**A. State Farm's Emergency Motion to Clarify should be denied because the Court's orders are clear that Mr. Scruggs is to submit to the deposition "prior to 5 p.m." on Monday, February, 4, 2008.**

1. After the conclusion of a lengthy hearing, on Friday, February 1, 2008, the Court explicitly ordered Mr. "Scruggs submit to deposition under seal by State Farm at some point prior to 5 p.m. on Monday, February 4, 2008." Order, D.E. 8 at 4. The Court's written order was consistent with its oral ruling at the end of Friday's hearing that Mr. Scruggs submit to the deposition prior to 5:00 p.m. on Monday, two days prior to Judge Bramlette's hearing on the Attorney General's motion to dismiss the underlying case for lack of subject-matter jurisdiction. With respect to the scheduling of the deposition, the Court instructed counsel at the hearing to "work that out," but to "do it by five o'clock p.m. Monday." 2/1/08 Hearing Tr. 71:8-19. Further, after the Court ordered that Mr. Scruggs submit to State Farm's deposition by 5:00 p.m. on Monday, the Court explicitly inquired of all counsel whether this order was clear. State Farm's counsel, Barney Robinson, replied, "Yes, sir, Your Honor." *Id.* at 71:20. At that time, State Farm did not voice any objection to proceeding with the deposition prior to 5:00 p.m. on Monday, February 4th, nor, despite seeking clarification, does State Farm now appear to be confused by the Court's order. As State Farm writes in its Motion to Clarify, "[i]t is State Farm's understanding that . . . the Court desires that the deposition *commence* -(i.e., "Scruggs submit") - by 5:00 p.m. on Monday, February 4." S.F. Mot. to Clarify, D.E. 15 at 8. The Court's

Order was clear, there is nothing that needs to be clarified, and the Motion should be denied for this reason alone.

2. On Saturday morning, State Farm filed with this Court a “Notice to Take Deposition” unilaterally setting Mr. Scruggs’s deposition for 8:00 a.m. on Monday, February 4. State Farm did not serve this deposition notice upon Mr. Scruggs’s counsel, John W. Kecker or Travis LeBlanc. State Farm also did not modify its prior subpoena or issue a new subpoena to Mr. Scruggs, who is a non-party to the underlying action, and can be compelled to attend a deposition only by subpoena. *See Fed. R. Civ. P. 34(c), 45.* Thus, not only is a deposition notice improper to secure a non-party’s appearance at a deposition, but State Farm is incorrect to assert that, “[u]nless and until Mr. Scruggs secures an Order of this Court stating that he does not have to attend at that time, he must appear *as directed in the Notice.*” S.F. Motion to Clarify, D.E. 15 at 6 (emphasis added). If the Court had wanted to Order the deposition for 8 a.m. Monday, or to give State Farm the power to unilaterally set the time and place without any consideration as to Mr. Scruggs, his counsel, and the Attorney General’s counsel, the Court could have done so. Instead, the Court ruled just the opposite: “I’m not going to worry about -- I’m not concerned, really, about when you gentlemen take it. I would hope you could work that out.” Tr. at 71:8-10.

3. At 1:51 p.m. C.S.T. on Saturday, February 1, Mr. Scruggs’s counsel Travis LeBlanc notified State Farm that Mr. Scruggs and his attorneys could appear for the deposition at 3 p.m. on Monday, February 4, but would not be available before that time on Monday. Mr. Kecker, the lead attorney representing Mr. Scruggs, further emailed Mr. Robinson explaining that, on Monday morning he will “undergo a minor operation that requires full anesthetic at 6:30 am, and (I trust) be able to advise Dick Scruggs . . . by 1 pm my time, 3 pm yours.” Despite knowing

the reason why Mr. Scruggs's deposition could not proceed at 8:00 a.m., State Farm has filed this Emergency Motion seeking to compel Mr. Scruggs's deposition at 8:00 a.m. on Monday, February 4th.

4. None of Mr. Scruggs's counsel are available at 8:00 a.m. on Monday. As noted above, Mr. Kecker will be commencing a medical procedure. Travis LeBlanc will be traveling by airplane back to Mississippi. Also, Mr. Scruggs's local counsel, Christopher Robertson, will be en route to the Gulf Coast to prepare for a trial that he has this week in the Southern District of Mississippi. Mr. Scruggs's rationale for proceeding at 3 p.m. on Monday is reasonable and fully complies with this Court's clear oral and written orders. The Motion to Clarify should be denied.

**B. Mr. Scruggs is not required to sit for State Farm's deposition in perpetuity.**

1. State Farm has previously represented to Mr. Scruggs's counsel that the deposition would only take a couple hours. Mr. Robinson similarly represented to the Court in Friday's hearing that, "I don't believe it'll take very long." *Id.* at 70:8. Indeed, Mr. Robinson offered to take Mr. Scruggs's deposition Friday afternoon, after the hearing ended at 3:37 p.m. *Id.* at 70:3, 72:3.

2. Despite the representations to the Court and Mr. Scruggs's counsel that the deposition would not "take very long," in its Motion to Clarify, State Farm does an about-face and states for the first time that Mr. Scruggs's deposition is not limited by any time constraints. Further, State Farm now makes the unreasonable request that Mr. Scruggs "must appear until the natural conclusion of his deposition; that is – until State Farm has fully completed its

examination of Mr. Scruggs, *whatever hour that might be.*” S.F. Mot. to Clarify, D.E. 15 at 8 (emphasis added).

3. There is no good basis or authority for State Farm’s request for an indeterminate deposition of Mr. Scruggs. Counsel for Mr. Scruggs have never indicated or intimated to State Farm that they would unilaterally end the deposition by 5:00 p.m., nor do they have any intention of doing so. However, should State Farm endeavor to harass Mr. Scruggs during the deposition or unnecessarily prolong his deposition in bad faith, counsel for Mr. Scruggs will end the deposition. No witness should be compelled to submit to a harassing or bad-faith deposition.

**C. Given State Farm’s conduct this weekend, it now appears that State Farm is using the deposition process to harass Mr. Scruggs.**

1. At Friday’s hearing, the Court indicated that Mr. Scruggs’s deposition should be sealed because the Court was “respectful of the fact that the deponent should enjoy all the protections that are necessary in this case at this time; and that being the Court’s awareness of other proceedings going on that I don’t have - - I don’t wish to affect.” 2/1/08 Hearing Tr. at 68:23-69:2. The Court also strongly indicated to all counsel present that it did not want any of the contents of Mr. Scruggs’s deposition made public. *Id.* at 69:9-23.

2. Although the deposition has yet to take place, State Farm’s actions in continuing to litigate this matter are having the potential effect of prejudicing the jury pool in the criminal case that is currently pending before Judge Biggers. It is apparent to counsel for Mr. Scruggs that rather than develop their case on the merits, State Farm seeks to make this deposition a spectacle, embarrassment, and needlessly burdensome on Mr. Scruggs. It is further apparent that State Farm’s actions prejudice Mr. Scruggs in the local jury pool and undermine the spirit of the

Court's order that Mr. Scruggs's deposition proceed under seal and out of the public forum. Accordingly, Mr. Scruggs respectfully requests that the Court order that when Mr. Scruggs asserts his privileges in response to the first deposition question, that State Farm counsel state all of its questions at once, and permit Mr. Scruggs to refuse to answer them all at once.

Respectfully submitted,

February 3, 2008.

/S/ CHRISTOPHER T. ROBERTSON  
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*Counsel for Petitioner Richard F. Scruggs*

**CERTIFICATE OF SERVICE**

I, Christopher T. Robertson, one of the attorneys for Petitioner Richard F. Scruggs, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System to:

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I have also sent a copy of this document by electronic mail to the following persons, who represent Defendant Jim Hood, in his official capacity as Attorney General:

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