

## STATE FARM QUI TAM SUIT OVER FLOOD CLAIMS SURVIVES

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Law360, New York (August 12, 2009) -- A federal judge has refused to throw out a False Claims Act suit brought by two relators accusing State Farm Fire & Casualty Co. of inflating and overpaying flood damage claims — for which State Farm is reimbursed by the federal government — to offset claims for wind damage.

However, the judge granted State Farm summary judgment on the relators' claim that the insurer terminated them in violation of the FCA's whistleblower provision.

Judge L.T. Senter Jr. of the U.S. District Court for the Southern District of Mississippi ruled on 10 motions Monday, including two dismissal bids and a summary judgment motion from State Farm. The motions to dismiss were denied, but the summary judgment bid was granted.

"We look forward to proving in court what we've said all along: that plaintiffs' allegations are baseless, and that State Farm was a proper steward of federal funds paid out through the National Flood Insurance Program," State Farm spokesman Phil Supple told Law360 on Wednesday.

State Farm said that State Farm Mutual Insurance Co. does not exist, and that the proper name for the State Farm defendant in this action is State Farm Fire & Casualty Co., though the case caption says State Farm Mutual Insurance.

State Farm sought summary judgment on Cori and Kerri Rigsby's claim that they were discharged in violation of the FCA's anti-retaliation provision. The Rigsbys — who are sisters — worked for E.A. Renfroe & Co. Inc., an independent contractor for State Farm.

The Rigsbys, who adjusted and mediated claims for State Farm policyholders in the aftermath of Hurricane Katrina, said that State Farm ran afoul of the FCA's whistleblower clause when it discharged them from Renfroe.

The FCA protects employees who are discharged because of "lawful" acts, but the Rigsbys violated state and federal law by stealing and copying documents, and illegally accessing State Farm computers, the insurer argued.

Also, the Rigsbys were employed by Renfroe, not State Farm, the summary judgment motion said.

Judge Senter said that there was no evidence in the record to indicate that State Farm had the authority to terminate the relators, and that he had been unable to find any FCA case in which a party other than a whistleblower's direct employer had been found liable under the law's anti-retaliation provision.

State Farm and fellow defendant Haag Engineering Co. wanted the case dismissed for lack of subject matter jurisdiction. Unless at least one of the relators was the "original source" of the allegations in their amended complaint with the meaning of the FCA, the court would have no jurisdiction, Judge Senter explained.

Kerri Rigsby, whom the court characterized as an experienced insurance adjuster, had the direct and independent knowledge required by the statute, and qualified as an original source of information on which the FCA claim was based, the judge said.

Cori Rigsby lacked direct knowledge of the specific flood insurance claim at issue in the case — the McIntosh claim — but at this juncture in the case, that did not disqualify her from being one of the relators, he added.

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The court also shot down State Farm's other dismissal motion, finding that the relators had stated a claim on which relief could be granted.

The relators had established a specific instance that would, if proven, establish an FCA violation, Judge Senter said, adding that the McIntosh claim was alleged to be just one instance of a broad and pervasive conspiracy.

According to the Rigsbys, the defendants presented a false and fraudulent claim for some of the \$250,000 in flood insurance benefits paid to Thomas and Pamela McIntosh for flood damage to their house.

The \$250,000 figure was too much, and the difference between that total and the actual amount of flood damage sustained constitutes a false and fraudulent claim to the federal government, they claim.

State Farm gets reimbursed for flood damage claims, while wind damage claims come out of the company's pocket, according to the opinion.

Attorneys for the plaintiffs were not immediately available to discuss the case.

The plaintiffs are represented by Gilbert Oshinsky LLP and Maison Heidelberg PA.

State Farm is represented by [Butler Snow](#) O'Mara Stevens & Cannada PLLC.

The case is Rigsby et al. v. State Farm Mutual Insurance Co. et al., case number 06-433, in the U.S. District Court for the Southern District of Mississippi.