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In Wake of Katrina, High-Stakes Legal Storm

L.A. Lawyer Calls Insurer's Problems From Hurricane His Diciest Court Fight

By Jason W. Armstrong
Daily Journal Staff Writer

In 30 years defending State Farm Insurance Co., James R. Robie has battled a lot of high-stakes, big-money lawsuits filed by disgruntled claimants. Among major cases, the L.A.-based insurance defense partner with Robie & Matthai successfully argued several years ago that State Farm should not have to pay a Simi Valley homeowner's association \$16 million for damage from the 1994 Northridge earthquake.

Robie got another Northridge quake-related suit thrown out last year, persuading a jury that the Illinois-based insurance giant shouldn't be on the hook for \$20 million worth of repairs for a group of Westlake Village residents' damaged homes.

But Robie said he's now entrenched in the diciest, most-eye-brow-raising legal fight he's ever waged on behalf of State Farm.

It's a brawl that started with suits claiming the insurer wasn't adequately covering massive damage claims from Hurricane Katrina. The imbroglio has widened and intensified, Robie said, to include State Farm's assertion in a lawsuit that Mississippi's state attorney general launched a criminal investigation of the insurance company as a strong-arm tactic to make it settle policyholder claims from the disaster that wiped out wide swaths of the Gulf Coast two years ago.

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"I've never encountered a situation like this, and I don't think anything similar has happened in American history. The AG is saying, 'We're going to tie you up with criminal grand-jury investigations ... unless you pay money to the plaintiffs in the tort case,'" James R. Robie said of the position of State Farm, his client.

ceedings, to which he's been shuttling back and forth for months.

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Robie has been engaged in courtroom dogfights on behalf of insurers for much of his career.

A lot of his work in the past dozen years has focused on defending State Farm and other insurers in suits related to the Northridge earthquake.

He's argued in a lengthy roster of published cases, including *Community Assisting Recovery Inc. v. Aegis Security Insurance Co.*, 92 Cal.App.4th 886 (2001). He persuaded an appellate panel to uphold the dismissal of a case in which a corporation advocating for quake victims said that several insurance

companies were illegally adjusting loss claims on the basis of replacement cost less depreciation, rather than on fair market value.

Although he said he's used to unpredictable insurance disputes, Robie said he's never seen the likes of the legal morass he's encountering in Mississippi—a scenario full of dramatic twists and turns involving some of the biggest legal names in the nation.

It started with battles in the state and the surrounding Gulf Coast over insurance payouts in the months after Hurricane Katrina, which struck in August 2005 and stands as one of the five deadliest hurricanes in U.S. history.

In late 2005 and early 2006, court records say, two sisters who worked for a Birmingham, Ala.-based company that handles claims for State Farm

photocopied several thousand pages of documents they said showed State Farm illegally categorized many coverage requests as "flood claims," rather than wind-related damage to avoid paying them.

Generally, the federal government, not insurers, handles flood claims through the National Flood Insurance Program. Most insurers pay for wind-centered claims.

While still working at the company, E.A. Renfroe & Co., the sisters, Cory and Kerri Rigsby, gave the documents to civil lawyer Richard "Dickie" Scruggs, a Mississippi lawyer who secured a \$368 billion settlement in the 1990s Big Tobacco litigation.

Scruggs and other lawyers, working under the moniker Scruggs Katrina Group, have represented

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hundreds of claimants in cases against State Farm and other insurers.

The Rigsbys also handed copies of the company paperwork to Mississippi Attorney General Jim Hood, a close friend of Scruggs'.

After giving the documents to Scruggs and Hood, the sisters left Renfroe and went to work for Scruggs as paid consultants.

Based on the Rigsbys' information, Scruggs sued State Farm, Renfroe and several other insurers in federal court on behalf of the sisters. He filed the case under the qui tam provisions of the False Claims Act, in which the Rigsbys served as whistle-blowers to the alleged fraud. Contentions included an argument that the insurer was making the federal government pay for damage it should cover.

Robie and the Jackson, Miss.-based firm of Butler Snow are co-counsel for State Farm in the case.

In January, as State Farm fought a Hood civil suit challenging its claim-acceptance policies and with the attorney general conducting a criminal probe of the insurer based in part on records seized by the Rigsbys, State Farm agreed to settle with Hood and Scruggs.

The insurer agreed to reopen 35,000 policyholder claims and pay off all other suits filed by Scruggs. It also paid \$5 million to cover Hood's investigation costs. For his part, Hood signed a paper agreeing to end his probe and "not bring criminal charges against State Farm or any of its employees."

"This would have meant all the Katrina litigation was over for State Farm," Robie said.

However, a federal judge, L.T. Senter Jr., tossed out the portion of the settlement encompassing the agreement to pay \$50 million to the 35,000 policyholders, finding it didn't comply with federal rules. The rest of the settlement remained intact.

With the collapse of that portion of the agreement, Hood filed suit against State Farm, arguing that the fact the class settlement didn't happen constituted a breach of contract.

Scruggs didn't file the class action on behalf of the 35,000 policyholders.

However, Robie said, State Farm later went into "active mediation" with the Department of Insurance and has paid out \$50 million to resolve disputes for those claimants.

Hood also reopened his criminal probe of the insurer. State Farm sued the attorney general, asking the court to halt the investigation.

Robie also represents State Farm in that case, along with Butler Snow.

The complaint said Hood breached his contract in the settlement by going against his written "nonprosecution agreement."

The complaint also accused the attorney general of violating ethics in working closely with the trial bar to try to use the criminal investigation as a way to force more claim settlements.

And the complaint said Hood breached ethics by working with the Rigsby sisters get access to the company's in-house records.

That, the complaint said, entailed "warrantless searches and seizures of State Farm property."

The State Farm complaint also accuses former Mississippi Attorney General Mike Moore of "acting as an agent" of Hood in compiling

information for the criminal investigation. The complaint says Moore has worked as a private lawyer for policyholders suing State Farm.

Moore could not be reached.

In a written response to the suit, Hood called it "frivolous" and "presented merely for the purpose of harassment." He also contended State Farm turned to a federal judge to avoid a subpoena of its records.

However, in a deposition in State Farm's suit against Hood, Lee Harrell, Mississippi's deputy insurance commissioner, contended Hood said earlier this year before the proposed settlement, "If they don't settle with us, I'm going to indict them all, from [State Farm Chairman and CEO] Ed Rust down."

Hood has denied making the comment.

Meanwhile, things were heating up for the Rigsby sisters. When Renfroe discovered the sisters were whistle-blowers on Scruggs' False Claims suit against State Farm and the company, it sued them in federal court, saying they breached their employment contract by transferring the documents and violated the Alabama Trade Secrets Act.

The suit also demanded a return of the records they copied. In late 2006, a federal judge ordered Scruggs to return the files to Renfroe. Instead, media reports show, Scruggs gave them to Hood, duplicating much of the information the attorney general had gotten from the Rigsby sisters.

Scruggs has said he gave them to Hood believing the judge's order didn't apply to law enforcement.

In June, U.S. District Judge William Acker in

Alabama ruled that Scruggs violated the court order in handing Hood the copies. The judge also said that Hood and Scruggs had teamed to "bully" State Farm in an effort to make the company settle claims.

Acker, court records show, recommended that the U.S. attorney's office prosecute Scruggs for contempt. Federal prosecutors declined to prosecute.

So Acker assembled a trio of special prosecutors to bring the contempt charge against Scruggs.

He is scheduled to be arraigned on the charge Tuesday.

Scruggs, who could not be reached, has denied wrongdoing.

Like Robie, David P. Rossmiller, a Portland, Ore.-based insurance lawyer who has tracked the Mississippi litigation, said he's never "seen anything" like the range of disputes involving State Farm on the Gulf Coast.

Rossmiller, a partner with Dunn Carney Allen Higgins & Tongue, regularly blogs online about the State Farm litigation and other insurance cases around the country.

"What you have here is a state where a really ambitious attorney general is close friends with Dickie Scruggs, and it happens to be a state that has a reputation for beating insurance companies over the head. All that has resulted in a confluence of so many different types of cases and litigation," Rossmiller said.

"You could write a screenplay and still not tell the story. Nobody would believe this," Rossmiller said. "It's more fantastic than a John Grisham novel."