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January 14, 2015

VIA ELECTRONIC CASE FILING
Lyle W. Cayce
Clerk of Court
United States Court of Appeals
Fifth Circuit
F. Edward Herbert Building
600 S. Maestri Place
New Orleans, Louisiana 70130-3408

Re: *United States ex rel. Cori Rigsby and Kerry Rigsby v. State Farm Fire & Casualty Co.*, No. 14-60160 (5th Cir.)

Dear Mr. Cayce:

United States v. Bollinger Shipyards, Inc., No. 13-31301 (5th Cir. Dec. 23, 2014), identified in the Rigsbys' January 9, 2015, Rule 28(j) letter, supports neither their position that the jury verdict is sustained by evidence of guilty knowledge under Rule 50, nor their claim for expanded discovery. To the extent *Bollinger*'s analysis of allegations under Rule 12(b)(6) applies in the present post-trial posture, factual comparison reveals a lack of evidence supporting guilty knowledge because State Farm did not—and could not—know of potential falsity of the McIntosh flood claim until ***after*** the claim was paid.

Bollinger found adequate allegations of guilty knowledge because, *inter alia*, the defendant repeatedly calculated values to obtain a favorable result, reporting only "the highest one to the United States." Slip Op. at 13. Because these calculations were completed ***before*** defendant submitted the claims, the defendant could have done so knowingly (at least under a "reckless disregard" theory). In contrast, here, any purported "hiding and swapping of engineering reports" did not occur until at least ten days ***after*** the McIntosh claim was paid, and it involved different actors and a different insurance policy. *See* State Farm Reply Br. at 10-12. Unlike *Bollinger*, there is no possible nexus between the putative guilty knowledge at the time the flood claim was paid and State Farm's subsequent treatment of engineering reports.

E. BARNEY ROBINSON III
601.985.4525
barney.robinson@butlersnow.com

Post Office Box 6010
Ridgeland, MS 39158-6010

Suite 1400
1020 Highland Colony Parkway
Ridgeland, MS 39157

T 601.948.5711 • F 601.985.4500 • www.butlersnow.com

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Further, *Bollinger* reversed the 12(b)(6) dismissal because defendant's email expressed concern about submitting unfavorable results, indicating falsified figures. Slip Op. at 12-13. Nothing in this record indicates such falsification. The purported "hit the limits" instruction is irrelevant because the ***first*** XactTotal estimate of the McIntosh house greatly exceeded policy limits. *See* State Farm Br. at 53-54.

Moreover, on appeal the Rigsbys repeatedly mischaracterize the district court's denial of discovery for non-existent claims as a "dismissal" of their complaint under Rule 9(b). Because there was no such dismissal—judgment was entered in their favor—nothing in *Bollinger*, which concerned the actual dismissal of a complaint, is relevant here.

Distinct in its facts and posture, *Bollinger* does not affect the outcome of this case.

Respectfully submitted,

BUTLER SNOW LLP

E. Barney Robinson III

EBR3:ebr3
cc: C. Maison Heidelberg (all via CM/ECF)
Ginny Y. Kennedy
August J. Matteis Jr.
William E. Copley
Derek Y. Sugimura
Timothy M. Belknap
Samuel Lynn Murray
Stephen R. Graben