IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.
CORI RIGSBY and KERRI RIGSBY — RELATORS/COUNTER-DEFENDANTS

v. — CASE NO. 1:06cv433-LTS-RHW

STATE FARM MUTUAL INSURANCE CO.
DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS ENGINEERING CORP.;
EXPONENT, INC.; HAAG ENGINEERING CO.;
JADE ENGINEERING; RIMKUS CONSULTING GROUP INC.;
STRUCTURES GROUP; E.A. RENFROE, INC.;
JANA RENFROE; GENE RENFROE; and
ALEXIS KING — DEFENDANTS

STATE FARM'S BENCH MEMORANDUM RE: "KNOWINGLY FALSE" CLAIMS

The Rigsbys cannot maintain their *qui tam* action because, as a matter of law, State Farm did not "knowingly" present to the government a "false or fraudulent claim for payment or approval" with respect to the McIntosh property, as expressly required to establish liability under the False Claims Act ("FCA"). 31 U.S.C. § 3729(a)(1); *United States ex rel. Taylor-Vick v. Smith*, 513 F.3d 228, 231 (5th Cir. 2008). The Fifth Circuit has made clear that a defendant does not submit a "knowingly false or fraudulent" claim to the government if the claim for payment is reasonable – that is, if the claim is based on legitimate grounds. *See United States ex rel. Riley v. St. Lukes Episcopal Hosp.*, 355 F.3d 370, 376 (5th Cir. 2004). The evidence before this Court, including the dispositive admissions of the Rigsbys as well as the admissions of the McIntoshes, establishes that the adjustment of the McIntosh flood claim was reasonable as a matter of law and, thus, it cannot give rise to liability under the FCA.

I. CLAIMS WITH A REASONABLE BASIS ARE NEITHER "KNOWING" NOR "FALSE"

To sustain their claim, the Rigsbys must establish that State Farm "knowingly present[ed], or caus[ed] to be presented ... a false or fraudulent claim." 31 U.S.C. 3729(a)(1). Indeed, the Fifth Circuit has affirmed summary judgment dismissing *qui tam* actions for failure to establish this scienter element,

explaining that "to show a violation of the FCA, the evidence must demonstrate guilty knowledge of a purpose on the part of the defendant to cheat the Government." *Taylor-Vick*, 513 F.3d at 231 (internal citations and quotations omitted).

A claim to payment from the government is not "knowingly" false when it is reasonable. By its terms, the FCA's definition of "knowingly" – *i.e.*, acting with "actual knowledge of the information," "in deliberate ignorance of the truth or falsity of the information," or "in reckless disregard of the truth or falsity of the information," 31 U.S.C. § 3729(b) – is incompatible with reasonableness. Moreover, because "knowingly" is not satisfied by "mere negligence or even gross negligence," *United States ex rel. Farmer v. City of Houston*, 523 F.3d 333, 338 (5th Cir. 2008),[1] *cert. denied*, 129 S. Ct. 570 (2008), it necessarily follows that the "knowingly" standard cannot be satisfied by reasonable actions.

For instance, in *United States ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency*, 530 F.3d 980 (D.C. Cir. 2008), the relator filed a *qui tam* suit alleging that the defendant bilked the federal government out of millions of dollars by submitting excessive claims under a mortgage subsidy program for developers of low-income rental property. *Id.* at 981-82. The relator argued that the defendant violated the terms of the mortgage notes by refinancing the subsidized mortgages at lower rates and continuing to charge the federal government as if the higher rates applied. *Id.* The D.C. Circuit found that the relator's interpretation of the mortgage agreement as prohibiting the defendant from pocketing the savings was "plausible." *Id.* at 983. Yet the court affirmed the district court's dismissal of the *qui tam* claim because the relator could not show that the defendant acted "knowingly."

> On the evidence here, both [defendant's] and [relator's] interpretations are plausible. We need not decide which has the better reading, however, because the FCA requires that defendants make false claims "knowingly" by (1) having actual knowledge, (2) acting in deliberate ignorance, or (3) acting in reckless disregard. *See* 31 U.S.C. § 3729(b). To successfully oppose summary judgment, [relator] must show that a reasonable factfinder,

[1] *Accord United States ex rel. Burlbaw v. Orenduff*, 548 F.3d 931, 949 (10th Cir. 2008); *United States ex rel. Ali v. Daniel, Mann, Johnson & Mendenhall*, 355 F.3d 1140, 1150 (9th Cir. 2004); *United States ex rel. Quirk v. Madonna Towers, Inc.*, 278 F.3d 765, 767 (8th Cir. 2002).

> drawing all "justifiable inferences" from the evidence in [relator's] favor could find [defendant] at least recklessly disregarded the falsity of its claims.

Id. (citation omitted). The D.C. Circuit concluded that the FCA claim was properly dismissed because the relator "never explain[ed] why [defendant's] interpretation of the mortgage notes was unreasonable, much less why its interpretation constituted reckless disregard." *Id.*

The Fifth Circuit has similarly recognized that a claim is not "false or fraudulent" under § 3729 where there is a reasonable dispute over its validity. "Where there are legitimate grounds for disagreement over the scope of the contractual or regulatory provision, and the claimant's actions are in good faith, the claimant cannot be said to have knowingly presented a false claim." *United States v. Southland Mgmt. Corp.*, 326 F.3d 669, 684 (5th Cir. 2003) (en banc) (Jones, J., specially concurring); *see also United States ex rel. Haight v. Catholic Healthcare West*, 2007 WL 2330790, at *2-3 (D. Ariz. Aug. 14, 2007) (dismissing *qui tam* suit on summary judgment for failure to prove that claims were false). As the Ninth Circuit succinctly explained, "[b]ad math is no fraud. ... Proof of one's mistake[] is not evidence that one is a cheat ... [and] the common failings of engineers and other scientists are not culpable under the Act." *Wang v. FMC Corp.*, 975 F.2d 1412, 1420-21 (9th Cir. 1992).

II. AT MINIMUM, A REASONABLE BASIS EXISTED FOR THE MCINTOSH FLOOD PAYMENTS

The unvarnished record in this case proves conclusively that, at bare minimum, a reasonable basis existed for paying the flood claim on the McIntosh property. In fact, the McIntoshes have affirmatively stated to this Court – under Fed. R. Civ. P. 11 – that "a reasonable basis" existed for the payment of the policy limits on their flood claim, that "the majority of the damage to the McIntosh dwelling was caused by flooding," and that their home "sustained flood damage of at least $250,000 to the structure and $100,000 to its contents." Motion for Dismissal with Prejudice, *McIntosh v. State Farm Fire & Cas. Co.*, No. 1:06-cv-1080-LTS-RHW (S.D. Miss. Sept. 7, 2008) [1312], ¶¶ 2 & 3.[2]

[2] Under Fed. R. Evid. 201, this Court takes judicial notice of the filings submitted to the Court in *McIntosh*.

Cori Rigsby admits that, in reviewing photographs of the McIntosh home, there was "clearly" flood damage and that she has "never disputed that" there was flood damage. (Ex. A, C. Rigsby Dep. in *McIntosh*, Nov. 19, 2007, at 327:19-328:20.) Her sworn admissions also establish that payments under a flood policy for damages below the flood line are not only reasonable, but are also proper.

Q. You were sophisticated and trained as an adjuster to identify flood damage, weren't you?

A. Yes.

…

Q. But in some cases, you certainly could clearly identify flood damage?

A. Yes.

…

A. … ***Obviously if you have a few missing shingles and then you have a flood line of four feet in the house, you can tell that the flood caused the damage for the four feet and the wind blew the shingles off.*** You don't need an engineer for that.

Q. Right. Because you can see the water line?

A. Right.

…

Q. And as a flood adjuster, you were experienced and accustomed to handing out checks when you saw four feet of water having formally been in a house, weren't you?

A. I was accustomed to paying flood claims.

Q. Right. ***And you didn't think there was anything unfair or unreasonable about giving a policyholder a check on their flood policy when you could see a clear water line like that, did you?***

A. ***No, I did not.***

Q. And as you sit here today, you're not suggesting that your position's changed on that, are you?

A. No. ***I believe we owe for flood damage if there was flood damage.***

([300-9] at 321:17-19, 322:8-323:6, 323:22-324:13.)

Kerri Rigsby's actions and sworn admissions similarly show that the adjustment of the McIntosh flood claim was in all respects reasonable. Kerri Rigsby inspected the McIntosh property, managed the adjustment of the flood claim, measured a five-foot, two inch interior water line, and approved payment of the flood policy limits. *See* ([91-7] at 131:12-20, 133:1-6, 139:13-23, 140:9-15; 283:4-7.)

> Q. And when you made the payment or agreed or authorized your subordinate, who was working – primarily working the claim, to request authority for $250,000, you thought there was at least that much flood damage to the home, didn't you?
>
> A. Was ***a lot of damage*** to that home.
>
> ….
>
> A. It was a large home. It was insured for a lot of money, and I – yeah, I believe ***I thought there was $250,000 worth of flood damage to that home***.
>
> ….
>
> A. [T]here was ***severe damage*** to the home.
>
> ….
>
> Q. The third bullet point [in the October 20, 2005 report], which states that the damage to the first floor walls and floors appears to be predominantly caused by rising water from storm surge and waves, was that consistent with what you saw when you went out to the McIntosh home?
>
> A. ***Yes***.

(*Id.* at 139:9-140:8, 142:7-13.)

Kerri Rigsby also admits that in all her years as an adjuster in the aftermath of multiple hurricanes, she has "***never*** gone to a house that ... had four feet of water and said, no, that's not flood, that's wind." (Ex. B, K. Rigsby Dep. in *McIntosh*, May 1, 2007, at 395:9-15). Indeed, she admits that the presence of a water line "pretty much tells you if it flooded." (*Id.* at 115:1-6.)

Kerri Rigsby further admits that based on her inspection of the McIntosh property and consistent with FEMA's guidelines, she believed that it was appropriate to pay the limits on the flood policy. (*Id.* at 268:22-269:12.) She also admits that she never knowingly allowed an adjuster working under her to make a payment for flood damage, under a flood policy, when the damage that was being paid for was

not flood damage," (*id.* at 152:25-153:10), and that when she had inspected a property she would not have authorized an adjuster to categorize something as flood damage if she knew that it was wind damage. (*Id.* at 153:19-23.)

In light of these sworn admissions, there is no principled means of arguing that there was not a reasonable basis for the payments made on the McIntosh flood claim. Even if the Rigsbys could somehow show that the adjustment of the McIntosh claim was incorrect (which it was not), State Farm cannot be held liable under the FCA because there are "legitimate grounds for disagreement." *See Southland Mgmt. Corp.*, 326 F.3d at 684 (Jones, J., specially concurring). Where, as here, the claim at issue depends on a judgment about which "reasonable minds may differ," liability under the FCA is precluded. *See Haight*, 2007 WL 2330790, at *4; *see also Wang*, 975 F.2d at 1420-21. Moreover, Kerri Rigsby, who supervised the adjustment of the McIntosh flood claim and approved the payment of flood policy limits, has sworn that she lacked actual knowledge of any false claim – thus defeating the requisite scienter element under the FCA by her dispositive admission. The evidence in this case thus demonstrates that, at absolute minimum, there was a reasonable basis for paying the McIntoshes the limits of their flood insurance policy, thereby precluding liability under the FCA.

III. KATRINA CASES CONFIRM THERE WAS A REASONABLE BASIS FOR THE FLOOD PAYMENTS

Case law addressing the requirements for imposing punitive damages in Hurricane Katrina further confirms that the adjustment of the McIntosh flood claim was reasonable, thus precluding liability under the FCA. Under Mississippi law, bad faith punitive damages cannot be imposed if the insurer had a "'reasonable arguable basis to deny the claim.'" *Windmon v. Marhsall*, 926 So. 2d 867, 872 (Miss. 2006). A reasonable arguable basis is "'one in support of which there is some credible evidence,'" *Tipton v. Nationwide Mut. Fire Ins. Co.*, 381 F. Supp. 2d 572, 579 (S.D. Miss. 2004), and the insurer "'need only show that it had reasonable justifications, either in fact or in law ….'" *Broussard v. State Farm Fire & Cas. Co.*, 523 F.3d 618, 628 (5th Cir. 2008) (citation omitted).

This "reasonable justifications" test is analogous to the FCA's "reasonable basis" standard for establishing a knowingly false claim. The "reasonable arguable basis" standard further parallels the standard for false claims under 31 U.S.C. § 3729 in that "simple negligence" is insufficient to trigger liability. *Bryant v. The Prime Ins. Syndicate*, 2009 WL 982792, at *7 (S.D. Miss. Apr. 13, 2009).

Notably, whether an insurer has a reasonable arguable basis for denying a claim "'is an issue of law for the court.'" *Broussard*, 523 F.3d at 628 (citation omitted). In *Broussard*, the Fifth Circuit held that State Farm had a reasonable arguable basis for its flood determination as a matter of law, simply "based on the observations of its adjuster regarding the position of the debris line and the condition of trees on and surrounding the property." *Id.* So, too, here. State Farm cannot be held liable under the FCA, because the adjustment of the McIntosh flood claim was supported by abundant "credible evidence," demonstrating a reasonable arguable basis as a matter of law. The reasonableness of the adjustment of the McIntosh flood claim is at least as evident as it was in *Broussard*. Among other things, the decision to pay the McIntoshes the limits on their flood policy is confirmed by, among other things, the Rigsbys' sworn admissions indicating that the McIntosh flood payments were proper, the McIntoshes' certified representations to this Court that the flood payments were reasonable and correct, and testimonial and documentary evidence of a five-foot interior water line and ten-foot exterior water line – which Kerri Rigsby herself admitted indicated water damage to the premises. (Ex. A at 389:15-21; *see also* [268-1]; [268-2].) This abundant evidence establishes, as a matter of law, that there was a reasonable arguable basis for the McIntosh flood payments.

IV. CONCLUSION

Because the McIntosh flood payments were not "knowingly" false, because a reasonable arguable basis for those payments exists, and because there is no legally sufficient evidence of the requisite scienter element under the FCA, no liability exists under the FCA.

This the 21st day of May, 2009.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

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CERTIFICATE OF SERVICE

I, E. Barney Robinson III, one of the attorneys for State Farm Fire and Casualty Company, 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:

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This the 21st day of May, 2009.

s/ Benjamin M. Watson (MSB # 100078)
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Jackson 3962888v.2

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

THOMAS C. AND PAMELA McINTOSH,
Plaintiffs,

VERSUS CIVIL ACTION NO: 1:06-cv-1080-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY; AND FORENSIC ANALYSIS & ENGINEERING CORP.,
Defendants.

VOLUME II
VIDEOTAPED DEPOSITION OF CORI RIGSBY

Taken at the Scruggs Law Firm, 4836 Main Street, Moss Point, Mississippi, on Monday, November 19, 2007, beginning at 9:11 a.m.

REPORTED BY:

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Q. And it's going to be confusing?
A. Yes.
Q. And it's going to be kind of a mess?
A. Yes.
Q. And that's exactly what happened?
A. Yes.
Q. And you had already been doing claims adjusting for how many years by the time you were assigned to Katrina in '05?
A. I think it was about seven.
Q. And you had done tornados losses?
A. Yes, sir.
Q. Hurricanes losses?
A. Yes, sir.
Q. Hail storm losses?
A. Yes.
Q. You were sophisticated and trained as an adjuster to identify flood damage, weren't you?
A. Yes.
Q. And wind damage?
A. Yes.
Q. Did you believe that you needed an engineer to tell you how to identify flood versus wind damage?
A. Well, now, I didn't adjust claims in

this storm. I was a manager. And in some cases, possibly you do need an engineer to tell you when there's overlapping damage. In some cases, you don't. There's not a yes or no answer to that question.

Q. So maybe yes, maybe no?

A. Right.

Q. But in some cases, you certainly could clearly identify flood damage?

A. Yes.

Q. And what kind of things would you look for in order to make that decision?

A. To clearly identify flood damage when that's the only damage or to clearly identify it when there's wind and flood damage to the property?

Q. However you want to answer.

A. Well --

MR. BACKSTROM:

Objection, vague. You can answer.

THE WITNESS:

Obviously if you have a few missing shingles and then you have a water line of four feet in the house, you can tell that the flood caused the damage for the four feet and the wind

blew the shingles off. You don't need an engineer for that.

MR. ROBIE:

Q. Right. Because you can see the water line?

A. Right.

Q. And it's your experience that high water in a house typically destroys the drywall?

A. Yes.

Q. Takes out the cabinets?

A. Takes out is a strong word. If you have slow rising water and then it dissipates, it ruins the cabinets.

Q. Right.

A. And it ruins the drywall.

Q. Right. It just delaminates everything?

A. Yes.

Q. It all comes apart, right?

A. If the water's in there long enough.

Q. Right.

A. Yes.

Q. And as a flood adjuster, you were experienced and accustomed to handing out checks when you saw four feet of water having formally been in a house, weren't you?

A. I was accustomed to paying flood claims, yes.

Q. Right. And you didn't think there was anything unfair or unreasonable about giving a policyholder a check on their flood policy when you could see a clear water line like that, did you?

A. No, I did not.

Q. And as you sit here today, you're not suggesting that your position's changed on that, are you?

A. No. I believe we owe for flood damage if there was flood damage.

Q. Right. And so if you -- I think your sister testified in Marion that the McIntosh house clearly had flood damage. Have you ever been in that property?

A. I have not.

Q. Have you ever talked to the McIntoshes?

A. I have not.

Q. Have you ever talked to Brian Ford?

A. I have not.

Q. You never had any communication with him at all?

A. No.

A. Most of the engineer reports arrived bound in some form.

MR. ROBIE:

Q. My question is: Do you know how these were assembled?

A. I do not.

Q. You've never seen the originals of these, have you?

A. I have not.

Q. Once she showed you a copy --

A. Let me back up. I apologize. I might have.

Q. Okay.

A. Lecky King reviewed all the engineering reports on her desk in their original format, and I looked through original engineer reports with her on her desk. So I have seen engineer reports in their original format.

Q. I'm asking specifically about the two McIntosh reports. You've never seen the originals of either of those, have you?

A. It's -- I believe that I saw the original McIntosh report on Lecky's desk, not with the sticky note on it.

Q. Which one did you see?

A. The October 12th McIntosh report.
Q. This one that is placed in front of you?
A. Yes.
Q. But it was before it had a sticky note put on it?
A. Yes.
Q. And why do you believe you saw that?
A. Lecky and I were having a discussion. She was going through the engineer reports. And she flipped over to the pictures in this one and she said, look at this, what do you think caused the damage.
Q. And what did you tell her?
A. And I don't remember exactly my wording, wind and water, but it looked -- it was obvious to me there was some water damage to this property.
Q. Clearly that house had some flood damage, right?
A. Clearly. And that's -- I've never disputed that.
Q. Right.
A. And she said, the engineer must have a relative that lives on this street. And she picked up the report and she gave it to Lisa Wachter, who was sitting in front of her. And

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

THOMAS C. AND PAMELA McINTOSH,
Plaintiffs,

VERSUS CIVIL ACTION NO: 1:06-cv-1080-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY; AND FORENSIC ANALYSIS & ENGINEERING CORP.,
Defendants.

VIDEOTAPED DEPOSITION OF KERRI RIGSBY

Taken at the First Federal Savings and Loans Bank, 903 Jackson Avenue, Pascagoula, Mississippi, on Monday, April 30, and Tuesday, May 1, 2007, beginning at 9:22 a.m.

REPORTED BY:

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AND

flood.

Q. For NFIP purposes?

A. For NFIP purposes. So things have to be set up just right for it to be considered flood and there to be coverage.

Q. Okay. So there has to be a general condition of flooding?

A. Correct, general condition of flooding.

Q. And plus also flooding in that particular property that you're looking at?

A. Correct.

Q. Okay. Other than a water line, what do you look for, if anything?

A. To see if it flooded?

Q. Uh-huh.

A. Other than the water line, that pretty much tells you if it flooded.

Q. All right. What if you don't have a water line?

A. That's more difficult, and that's happened. You just -- you go a lot by what the policyholder -- you know, if they were there, they will be able to tell you exactly where the water was.

Q. Okay.

A. You look at air-conditioning units, condenser coils outside. You look at the exterior and try to find some type -- but I have been to homes where the water was so clean, you could hardly tell. Sometimes you have to pull the baseboards off to see if water got behind there.

So you kind of have to investigate a little bit if there is no water line. And you try to be safe. If there was water in the house, you want to go up four feet if it's above the baseboard because you don't want any mold. And

water wicks up, gets in the insulation.

Q. Excuse me. When you say "go up four feet," that's if there is some water in the house, you want to go up that high to replace it?

A. Absolutely.

Q. For repair purposes?

A. For repair purposes.

Q. If you had a water line at four feet in a house or five feet in a house and no other damage, would you go higher than the four or five feet?

A. Absolutely.

Q. How high would you go?

A. Eight.

Q. Eight feet?

A. Yes.

Q. So you want to stay at least four feet above where the known water line got to?

A. Well, if it's not -- if it was five feet, I'd still go eight feet.

Q. Okay.

A. If it was six feet, I'd still go eight feet.

Q. Okay.

A. So it doesn't have to be four feet. You

just want to make -- it's a common -- the way

was not being paid for flood damage?
A. Make a payment -- say that again.
Q. Have you ever knowingly allowed an

adjuster working under you to make a payment for flood damage when the damage that was being paid for was not flood damage?
A. I believe when we paid the flood damage we all believed we were paying, we thought it was great getting money into people's hands. So I don't -- I don't ever think I thought at the time you're paying for something you shouldn't be paying for. Looking back now, I feel that way. But at the time, no, I did not feel that way.
Q. Okay. I'm not sure of whether that answered my question. Well, let me put it this way: With respect to claims where you, personally, went on to look at the scene, if you had seen something that had told you when you were at the scene that there was no flood damage, would you have authorized payment?
A. No.
Q. Okay. If you went to the scene and an adjuster was claiming there to be flood damage when you knew that it was wind damage, would you have authorized them to categorize it as that?
A. No, no.
Q. Was that, in fact, one of your job responsibilities, to oversee that part of the

adjusting process as a manager?
A. Yes. We were there to -- yes, yes.

26, 101?

MR. WEBB:

Right. And, quite frankly, although the paragraph is long, what I'm going to refer to is the last complete sentence in that paragraph.

MR. SCRUGGS:

Okay.

MR. WEBB:

Q. Are you up with me, Ms. Rigsby?

A. I'm going to read the whole paragraph.

Q. Oh, okay.

A. Okay. Go ahead.

Q. The last sentence in that paragraph, if I read it correctly, is an allegation that had Renfroe revealed to the policyholder the existence of the October 12th, 2005 report, defendant State Farm would not have had a basis to issue what is referred to there as a bad faith denial of claims, insurance claim. Did I read that correctly?

A. You read it correctly.

Q. Okay. You do know that the entire claim for wind damage was not denied, don't you?

A. Yes.

Q. Okay. You knew at the time that you went with Mr. Perry out there that y'all were paying something on wind, correct?

A. Correct.

Q. And that you were going ahead, based on the calculations made consistent with FEMA's guidelines, that you were going to pay the limits on the flood policy?

A. Correct.
Q. Okay. Did your investigation on site that day confirm that the payment under the flood policy was an appropriate payment?
MR. HAWLEY:
I'm sorry. Did you say appropriate or inappropriate?
MR. WEBB:
Appropriate, excuse me.
A. I felt it was appropriate. I was -- the payment was appropriate based on the guidelines we had been given, yes.
MR. WEBB:
Q. The FEMA guidelines?
A. All directives we had been given from State Farm. We based that assessment on what -- the directives we had been given.
Q. All right. What specific directives are you talking about?
A. The directives that we were given by Lecky King, whom, when she gave the directives, did not say, this is from FEMA, this is from this, this is from that. We just got directives. And I'm assuming they were from FEMA. So, you know, I can't separate exactly what directive came from

Lecky and what came from FEMA. She just told us what she wanted us to do.
Q. Tell me what specific directives, though. Not where they came from, but what the directives were.

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A. No. I'm just saying if we had just gone by this report, paying the flood would have not been accurate.

Q. Oh, you're talking about Exhibit 14?

A. Right. I'm talking about Exhibit 14. If we had just gone by this, then there would have been a huge error, and we would have had to pay that money back.

Q. But you testified yesterday that, to your knowledge, as I recall it, you had never been involved in a file where you had allowed that to occur?

A. I've never gone to a house that flooded and said -- that had four feet of water and said, no, that's not flood, that's wind. But when a house is destroyed with wind and water, that's why you hire the experts to come in and determine what is what.

Q. Okay.

A. But I believe you asked me yesterday if I see water on the floor, I don't call it wind. I -- if it was only flood, it was only flood, so, yeah.

Q. Okay. I understand.

A. Okay.

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Q. And let me change the subject, if I may. You have testified over a course of about a day and a half here about your, what I understand to be, concerns that you had during the Katrina involvement that you had, correct?