

TAB C

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**INQUIRY INTO INSURANCE CLAIMS PAYMENT PROCESSES
IN THE GULF COAST AFTER THE 2005 HURRICANE**

FEBRUARY 28, 2007

**TESTIMONY OF JIM HOOD
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Hurricane Katrina: What about the wind?

Introduction and Summary

Mr. Chairman and members of the Subcommittee:

I am Jim Hood, Attorney General for the State of Mississippi. I appreciate the opportunity to testify before the Subcommittee today on the insurance industry's response to Hurricane Katrina.

Hurricane Katrina slammed into the Mississippi Gulf Coast on August 29, 2005. Eighteen months later, thousands of residents remain displaced or homeless, not as is commonly believed, as a result of their failure to buy flood insurance, but because the wind policies they purchased were not honored. Those Mississippians who did purchase flood insurance soon learned that while flood claims were paid relatively quickly, courtesy of the federal government, claims against privately-written wind policies were denied with little or no explanation and apparently erratic or nonexistent investigation. The long-term consequences for an already overburdened National Flood Insurance Program and for a private insurer pretending that Katrina was a windless hurricane remain to be seen. The Mississippi Attorney General's Office is indebted to the residents of the Gulf Coast who have given generously of their time and information to assist in the investigation of the man-made aspects of this disaster.

This report will focus on the following topics:

- I:** The efforts made by the Mississippi Attorney General's Office to protect the citizens of Mississippi from apparent civil and criminal fraud; the obstacles encountered as part of these efforts; and analysis of the mechanisms available in Mississippi to protect both policyholders and the National Flood Insurance Program from future abuse by insurance providers;
- II:** A sampling of the pre-textual and legal tactics used by State Farm to avoid responsibility for wind damage caused by Hurricane Katrina; and
- III:** Concerns for the continued economic viability of coastal regions and the insurance industry.

I. Protective measures

A. The Attorney General's challenge of the anti-concurrent causation clause. Less than a month after the storm, a civil action was brought in Hinds County Chancery Court by the Mississippi Attorney General's Office (hereinafter "MSAG's Office") against five named insurance provider¹; the action sought to make the insurance companies honor their policies and pay for damage caused by Hurricane Katrina, including storm surge, consistent with long-standing Mississippi law on proximate causation and contract interpretation. The MSAG's Office asked the Court to prohibit insurance companies from enforcing the ambiguous and misleading anti-concurrent causation clauses and water damage exclusions to unlawfully deny claims. Examples of anti-concurrent causation clauses used by Allstate, Nationwide and State Farm are attached as Exhibits A, B and C, and are discussed in detail below.

The proximate cause of an injury is that cause which in natural and continuous sequence is unbroken by any intermediate, controlling, and self sufficient cause that produces the injury and without which the result would not have occurred. Mississippi follows the doctrine of efficient proximate cause, which provides that if the proximate cause of a loss is a covered peril under a policy of insurance, the existence of or contribution by a non-governed peril does not bar coverage. If the nearest efficient cause of the loss is not a peril which is insured against, recovery may nevertheless be had if the dominant cause is a risk or peril that is insured against.

The Defendants promptly removed the matter to federal court, where it languished until its remand on March 8, 2006. Defendants filed a motion to reconsider, which was denied on December 26, 2006, and only then, after a fifteen month delay, was the matter sent back to the Hinds County Chancery Court. On January 23, 2007, a Settlement Agreement with State Farm only was filed with the Hinds County Chancery Court. The proposed settlement was intended to resolve the MSAG's civil suit against State Farm, and included language requiring State Farm "to establish an administrative procedure to reevaluate claims of State Farm policyholders in Hancock, Harrison, and Jackson Counties who had residential or commercial policies in effect on August 29, 2005, ... [that] will establish an orderly, fair and prompt resolution of claims ... based upon criteria and guidelines approved by the United States District Court for the Southern District of Mississippi."

On January 26, 2007, the U.S. District Court denied preliminary approval of State Farm's proposed class settlement. State Farm's failure to establish an acceptable procedure for the reevaluation of claims as described above violates its Settlement Agreement with the MSAG's Office. As a result, the MSAG's Office has petitioned the U.S. District Court to enforce the state court Settlement Agreement and to allow the MSAG to either intervene in the federal action or participate in a hearing on the matter. At the time of this writing, the Court has not issued a response to these requests.

B. Launching the criminal investigation into the conduct of State Farm and its

selected vendors for adjusting and engineering services

1. Citizen complaints. After the storm, the MSAG's Office continued to field and investigate complaints from policyholders, and a pattern soon emerged. Some policyholders were frustrated that their property damage was inspected by one adjuster after another, with each adjuster offering contradictory and/or incomplete information about coverage and the assessment of the cause(s) of damage. Most complaints were directed at State Farm, which at the time seemed explainable by the fact that State Farm was the largest residential insurer in Mississippi. Residents began receiving denial letters from State Farm informing them that, "based on our investigation" coverage was denied; however, neither the State Farm agents nor members of the State Farm Catastrophe Team (hereinafter "CAT team") were willing and/or able to explain to policyholders what steps were taken in the investigation of their claim(s). Some policyholders were informed over the telephone that an engineering report or weather data had been used to exclude coverage, but they were not allowed to see the reports or data or to learn of the exact contents or persons responsible for creating them. The MSAG's Office announced publicly on March 20, 2006, that a formal criminal investigation would be conducted to determine whether or not any violations of Mississippi law had been committed by insurance providers handling Hurricane Katrina claims.

In certain instances, mistakes were made and policyholders ended up with copies of the engineering reports that State Farm never intended for them to see. For example, Rimkus Engineering, an engineering firm based in Houston, Texas that supplied engineering services for State Farm in the assessment of Hurricane Katrina claims was confronted with allegations from several of its engineers. Those engineers disavowed the signatures on the engineering reports purporting to be their own and further denied that they in any way authorized secretaries or other administrative staff within Rimkus to sign on their behalf.

Rimkus responded to these allegations by posting a rebuttal on its web site, claiming falsely that it had been assured by the Mississippi Attorney General's Office that it was not a target in any criminal investigations. My office had given Rimkus no such assurance. For its part, State Farm continued to rely on Rimkus' engineering services and continued to award them jobs despite the allegations. Many homeowners were, not surprisingly, concerned that State Farm had decided their claim based on a Rimkus report that may or may not have been signed by the engineer. However, State Farm would not share with homeowners whether or not their home damage had been inspected by an engineer at all, and if so, by whom and with what result.

2. Keeping engineers on a short leash. Rimkus was not the only provider of engineering services to State Farm following the storm; at least nine other engineering firms were used. Some were verbally promised work loads of up to 1,000 cases, although the number of jobs eventually received was much lower because State Farm ultimately stopped ordering engineering reports in all but a very few cases. Considerable investment was required of engineering firms that wanted to participate in this work, e.g. hiring additional staff, arranging for adequate housing, establishing a work space and securing a communications set-up to do the

work, etc. No good businessperson would undertake this level of investment in order to perform fifty inspections at an average of \$2500 per job.

One might expect the standards of performance of the engineers under these circumstances to have been explicitly set forth in writing, but we found no evidence of this practice. Rather, the ability of an engineering firm to continue receiving Katrina cases from State Farm seems to have been most closely correlated with the extent to which their conclusions could be used to deny or at least minimize coverage. The unspoken guarantee was that as long as Lecky King, a State Farm CAT Coordinator who reviewed all engineering reports, was pleased with the report, the firm would continue to receive job assignments.

C. The McIntosh case. A particularly egregious and outrageous scenario resulted from State Farm's response to the claim of Thomas and Pamela McIntosh, residents of Biloxi, Mississippi. The couple had purchased a Homeowners policy with a hurricane deductible, and this coverage was in effect at the time Hurricane Katrina devastated their home. Their dwelling was insured for \$619,6000, and their personal property was insured for \$464,700. The McIntosh family filed suit against State Farm, and their trial is scheduled to take place in December of 2007.

It is unclear what degree of "investigation," if any, was done of the damage to the McIntosh home prior to the issuance of a denial letter dated September 28, 2005. The unsigned denial letter informed Mr. and Mrs. McIntosh that "damage to your property may have been caused by wind and water. We are continuing to investigate that portion of your loss caused by wind." [See Exhibit D.] However, a check for wind damage for approximately \$36,000 was enclosed with the denial letter. The letter also claimed that "[b]ased on the site visit and other facts, our investigation showed that some of your property was damaged as a result of storm surge, wave wash and flood. Unfortunately, that damage to your property is not covered under the policy identified above."

This practice by State Farm of 1) making coverage decisions and/or 2) assigning a dollar amount to a particular cause of damage 3) without making an assessment of the total amount of damage regardless of cause and 4) without a determination of the proportion of damage attributable to the various causes involved was used extensively in the handling of Hurricane Katrina claims. As discussed in more detail in the following section, this expensive practice has proven to be burdensome for the NFIP and nightmarish for homeowners.

Although the conclusive language used in the McIntosh's denial letter suggests that any further investigation would be little more than a pretext, an engineer from Forensic Analysis & Engineering Corporation (hereinafter "FAEC") was nonetheless dispatched to inspect the damage in October 2005. FAEC's first report was dated October 12, 2005, and concluded that wind and wind-driven debris damaged the roof, door, carport and window of the McIntosh home and that interior structural damage was also caused primarily by wind. Clearly, this professional opinion showed that far more than \$36,000 of the total damage was due to wind. This report, according to sources, was found in a State Farm CAT office with what appears to be a self-adhesive note

reading “put in wind file–do not pay bill–do not discuss.” [See Exhibit G.]

At the urging of State Farm, FAEC issued a second report on the McIntosh property, this one dated October 20, 2005. This second report failed to mention the conclusions from the first report or even to acknowledge its existence. While the first report recognized the significant damage cause by wind, the second report concluded that this same damage was attributable to water. It also claimed erroneously that Mr. McIntosh had been present for the second site inspection. A second denial of coverage letter was sent to Mr. and Mrs. McIntosh from State Farm.

Shortly thereafter, Mr. McIntosh requested a copy of his engineering report from State Farm. He was told the engineering report was never finished. Then State Farm claimed to have found the report and sent him a copy of the second report, with nothing to indicate to him or his wife that a prior engineering inspection concluded they were entitled to payment on their claims.

The fraudulent conduct in the McIntosh case cannot be placed solely on the shoulders of the State Farm CAT team. State Farm's in-house counsel clearly should have known about the concealment of the first engineering report from the policyholders. On August 15, 2006, Brian Ross of ABC News brought the existence of a prior report to the attention of one of State Farm's local counsel Wayne Drinkwater of the firm Bradley, Arant, Rose & White as part of an investigation for the *20/20* broadcast program. Mr. Drinkwater claimed to have no knowledge of that report's existence. Two days later, Tamara Rennick, an in-house attorney for State Farm, contacted Mr. McIntosh about his claim. Mr. McIntosh mentioned the two engineering reports done to assess his damage. Without responding to that point, Ms. Rennick arranged for Mr. McIntosh to meet with another local counsel for State Farm, Peter Barrett of the firm Butler, Snow, O'Mara, Stevens & Cannada.

On August 21, 2006, Mr. McIntosh met with Mr. Barrett and also J. Kennedy Turner, III of the same firm to discuss his claim. Mr. Barrett explained that due to State Farm's efforts to achieve a paperless office two engineering reports did in fact exist, but that this was merely a misunderstanding in that one copy was paper and the second copy was the scanned image of the paper file copy. He did not mention that two substantively different versions of the reports existed and that the first version would have entitled the policyholders to payment. Mr. Barrett prepared a statement for Mr. McIntosh's signature; the statement attested to the policyholder's satisfaction with the way his claim was handled by State Farm. Mr. McIntosh was concerned at the impact refusal would have on his ability to obtain coverage in the future and, based on the partial information presented to him by State Farm, signed the document. [See Exhibit F.]

D. Mechanisms in place to protect Mississippi policyholders and the obstacles to relief.

The invitation of the Oversight and Investigations Subcommittee inquired as to whether Mississippi has adequate measures in place to ensure that policyholders receive proper payment of claims. The available avenues for relief have not proven to be effective in practice; in fact, the obstacles Mississippians encountered are not unique to this state and would likely be

problematic for other states affected by natural or terrorist disasters.

The following mechanisms were in place at the time Hurricane Katrina struck:

1. The Mississippi Department of Insurance. The Mississippi Department of Insurance accepts complaints from consumers. If the Commissioner is not responsive to their complaints, the only remedy citizens have is to vote against him or her in the next election cycle.

The mediation process encouraged by the current Mississippi Insurance Commissioner George Dale is of questionable success. This is best evidenced by the complaints our office has received from homeowners offered approximately ten cents on the dollar for the value of their unpaid claims, as well as the fact that, even in mediation, State Farm continued to conceal the existence of multiple engineering reports for some claims.

On February 16, 2007, the MSAG's Office proposed legislation to require State Farm to continue writing new homeowners and commercial property policies in the State of Mississippi. We attempted to work with Governor Haley Barbour and Commissioner Dale to model a response after the legislation passed in Florida last month that requires insurance companies selling automobile coverage in the state to also sell homeowners and commercial policies statewide if they sell those policies in other states. As of this writing, neither Governor Barbour nor Commissioner Dale has taken any action on this proposal.

The office of the Mississippi Insurance Commissioner has inherent limitations; it is not designed to filter out and punish abuses in the application of federal programs, such as the National Flood Insurance Program (NFIP). Whether insurance commissioners in other states have the statutory authority and, if so, the practical ability to adapt their offices to undertake this sort of task following a catastrophe is questionable, as is the merit of having fifty different applications of federal programs. One of the benefits of a federal program such as the NFIP ought to be consistency of results for citizens, regardless of the state in which they reside.

2. The statewide prosecuting authority of the MSAG's Office. Reports of suspected insurance fraud are referred to the MSAG's Office by the Mississippi Insurance Commissioner, other law enforcement agencies, investigators working for private insurance providers and citizens. However, while criminal investigation and prosecution are appropriate responses to crimes against the public, the criminal justice system is not designed to enforce the proper payment of claims.

a. Our ability to reach beyond state lines is limited. In this case, the court system in Jackson County, Mississippi, already devastated by the storm and operating its clerk's office from fairgrounds until December of 2006, was responsible for the costs of bringing in out-of-state witnesses pursuant to the criminal investigation into State Farm's conduct. The District Attorney for Jackson County, Tony Lawrence, had to adjust his already heavy case load to accommodate the additional demands the Attorney General's criminal investigation placed on his office. Since State Farm used employees and vendors from all over the country to process

Hurricane Katrina claims, the MSAG's Office had to seek cooperation from the prosecuting authorities in the jurisdictions in which witnesses for the investigation could be found. In one instance, a jurisdiction refused to cooperate with these efforts, thereby allowing a State Farm employee who worked with the State Farm CAT team on Katrina claims to be able to avoid having to appear in Mississippi to be accountable to the citizens of Mississippiⁱⁱ.

As our criminal investigation progressed, we realized that some of the documented conduct may not constitute a violation of Mississippi state law, but that federal criminal charges may be appropriate. Business practices observable in the handling of Hurricane Katrina claims that have caused problems for State Farm reaching as far back as the Northridge earthquakes in California in 1994 and the rash of tornadoes in Oklahoma in 1999 raised our concerns that State Farm's response to disasters was part of a disturbing business model that could be applied in other states in future disasters.

Attorney Jeff Marr of Oklahoma City, Oklahoma, who has represented hundreds of homeowners in their claims against State Farm arising out of the 1999 Oklahoma tornadoes, has engaged in six years of vigorous discovery and litigation with State Farm and has learned that State Farm purchased a business model from the McKinsey Consulting Group and named it the Advancing Claims Excellence Program (ACE)ⁱⁱⁱ. Ostensibly, the model was designed to promote cost efficiency and quality assurance. Substantively, the model represented a decisive shift in State Farm's views concerning the claims assessment process.

State Farm's once consumer-friendly approach to handling claims by fairly assessing the nature and degree of damages and the resulting obligations or exclusions from the policy language was redirected into a strategy to reduce "indemnity shortfall," or the overpayment of claims. A 1995 State Farm newsletter announced that ACE "has the potential of taking a billion dollars of cost out of our system every year!" Those costs seem to be taken out of the pockets of policyholders and the NFIP.

Although the program has been defended as a legitimate effort to promote quality customer service, State Farm issued a memo in 1997 directing its employees to send all ACE documents to company headquarters because "we anticipate Advancing Claims Excellence may be an issue in future lawsuits." Ordinarily, an employer would be expected to encourage its employees to familiarize themselves with the company's goals and objectives. Legitimate training and policy materials have no need to be kept from the employees who are expected to follow them.

The MSAG's Office is not empowered to bring criminal charges on behalf of the federal government. Full Congressional investigation or at a minimum an investigation by the Department of Justice is needed to completely expose the national implications of State Farm's conduct in this disaster. The MSAG's Office pledges its full support and cooperation in any such efforts.

b. **E.A. Renfroe.** Another example of the problem State Farm's use of out-of-

state employees and vendors poses for a state criminal investigation is illustrated by an active lawsuit in Alabama between E.A. Renfroe, an adjusting services firm based in Birmingham and two of its former employees, Cori Rigsby Moran and Kerri Rigsby, two sisters who worked with the State Farm CAT team in Katrina. (See generally *E.A. Renfroe & Company, Inc. v. Cori Rigsby Moran and Kerri Rigsby*, CV-06-WMA-17520S, U.S. District Court, N.D. Alabama, Southern Div.) Renfroe is an adjusting services firm based in Birmingham, Alabama that receives approximately 75% of its revenue from State Farm.

Cori and Kerri Rigsby, two sisters employed by E.A. Renfroe, were working with the State Farm CAT team during Hurricane Katrina and became concerned by the apparently fraudulent nature of some of the conduct they observed. They decided to make copies of documents they believed would be of assistance to law enforcement inquiries into the matter. Copies of these documents were provided to both the Mississippi Attorney General's Office and the U.S. Attorney's Office in Jackson.

Renfroe, without disproving the substance of the alleged wrongdoings, has since sued these cooperating witnesses for violating an employee confidentiality agreement and the Alabama Trade Secrets Act and is currently attempting to have them found in criminal contempt for refusing to return the documents. Renfroe argues that, under the terms of the confidentiality agreement, any concerns of illegal or unethical conduct must be brought to the attention of Mr. Renfroe, one of the two shareholders in the corporation. (The other shareholder is his wife.) Renfroe insists that it has no gripe with the fact that the documents were turned over to law enforcement agencies, but has tried repeatedly to get custody of the documents despite the concerns of the MSAG's Office that this would allow Renfroe to see documents intended for the grand jury during an ongoing criminal investigation.

The documents at issue consisted of electronic documents reduced to paper copies, so neither State Farm nor E.A. Renfroe were deprived in any way of documents they needed to process homeowner claims. E.A. Renfroe's proprietary interests in the documents are not entirely clear, since State Farm maintains custody of the information used and generated by the adjusters they hire from E.A. Renfroe. As part of this litigation, E.A. Renfroe had to issue a subpoena to State Farm in order to provide the Court with a sample of an E.A. Renfroe Katrina file. State Farm policyholders whose claims were adjusted by E.A. Renfroe understandably have legitimate questions concerning the ability of these purported independent professionals to exercise independent and objective judgment when those same adjusters do not seem to maintain independent files.

The MSAG's Office briefly intervened in the case to urge the presiding judge, the Honorable Judge William M. Acker Jr., to deny E.A. Renfroe's demand for the return of the documents until the criminal probe into State Farm's conduct could be completed. The MSAG's Office as a matter of policy makes concerted efforts to shield cooperating witnesses in any case from retaliation at the hands of persons or entities under investigation. As the top law enforcement agency for the state, the MSAG's Office would be remiss to ignore strong and reliable evidence

suggesting that criminal acts have been committed against the citizens of our state. We have never allowed subjects of criminal investigations to pick and choose the sources we use against them. Judge Acker was urged to consider the destructive impact such a decision would have on the ability of this or any other office to effectively investigate white collar crime.

To illustrate, in a street crime investigation, the Government's evidence may be a crack rock, shotgun, taped confession or medical report. White collar investigations, on the other hand, are by their very nature rooted in and driven almost exclusively by documents. Enron, HealthSouth and WorldCom were undone by criminal prosecutions based in part on their own documents; in fact, it is difficult to envision a set of facts in which the documents that serve as evidence in a white collar crime prosecution would not be in some way the property of the defendant at some time. The probative value of documents is premised on identifying the owner of those documents.

To date Judge Acker has denied any sort of relief either to the Rigsby sisters or the Mississippi Attorney General's Office. Thus as a practical matter, an employee confidentiality agreement between private citizens in a neighboring state may be interpreted in a way that guts the investigative powers of a grand jury in a sister state.

3. Civil action brought on behalf of the people of Mississippi by the MSAG's Office.

The civil lawsuit filed by our office that the Defendants removed to federal court and was rightfully and completely remanded to state court in December 2006, but during the time the case remained idle pending remand, neither the Defendants, nor the policyholders, were able to benefit from the clarification of the application of the anti-concurrent causation clauses and water exclusions at issue in the litigation.

4. Mississippi law. Mississippi law on contracts should also have offered basic protections to policyholders, but catastrophe survivors are often unable or unwilling to undertake slow, expensive litigation against an insurance company with vastly greater resources. At the time of this writing, approximately 30,000 Mississippians are living in trailers provided by the taxpayers through FEMA. Most if not all would have preferred to receive, within a timely fashion, the contractual benefits upon which they relied to begin rebuilding their homes and lives. Litigation is, for most, a last resort.

State Farm's use of outside adjusters and engineers allowed the insurer to ignore the duty of good faith and fair dealing it would ordinarily owe policyholders under long-standing Mississippi law. Policyholders were not in a contractual relationship with these adjusters and engineers and so could not sue for breach of contract if they had any objections to the way in which these services were performed. Also, the lack of a contractual relationship was used as a justification to keep the adjusters' conclusions and engineering reports out of policyholders' reach.

Following the Mississippi Supreme Court's 2004 decision in *Mangialardi*, state joinder law has been interpreted much more restrictively, making the ability to join even two properly related

claims together substantially more difficult. Now policyholders forced to litigate also face the prospect of absorbing the costs of hiring experts to testify in each and every case. Since the affected citizens have just survived what hopefully will be the most traumatic experience of their lives and lost most if not all of their possessions and assets, they are frequently unable to pay legal retainers for representation. As a result, contingency fee arrangements are often the only way for these citizens to achieve access to the courts. The insurance industry, because of its inherently stronger bargaining position and favorable cash flow advantage, will always be better suited to participate in litigation under these circumstances than is an individual policyholder. Entangling policyholders in tedious litigation does not achieve recovery for the Mississippi Gulf Coast.

II. Tactics used by State Farm to pretend Katrina was a windless hurricane

A. The false dichotomy of “wind versus water.” The most generic definition of a hurricane is a “tropical cyclone.” Thus the event of a hurricane is defined by the combination of wind and water. Part of the challenge of keeping the NFIP and private insurers viable is untangling our understanding of the two forces that occur naturally together in a hurricane and either imposing a somewhat artificial division in order to allocate risk and assess damages or developing a unified approach that accurately reflects the reality of the destruction a hurricane can cause.

Much of the controversy following Katrina has been reduced to a question of “wind versus water.” This simplification itself is a reflection of the insurance industry’s approach to claims and has little or nothing to do with the actual experience of a hurricane. It is easy enough to neatly sort out which policyholders have purchased wind coverage, flood coverage or both. Looking at a concrete slab that used to be a family home and determining with any reasonable degree of certainty that 50% of the damage was caused by wind and 50% was caused by water is a tall order, not to be undertaken lightly by under-qualified adjusters and/or rookie, or even seasoned, engineers. Individual lawsuits filed since Katrina have inevitably featured a battle of weather experts, but the actual decisions regarding causation of damage were not made on site by professional weather experts. Soliciting the advice of adjusters and engineers to determine whether a home was destroyed by “wind or water” makes any ensuing “investigation” more closely correlated with the availability of coverage rather than the factual findings of damage.

Damage should be assessed first, then the availability of coverage. Reversing this order turns the entire premise of insurance on its head. In our investigation we found evidence that E.A. Renfroe adjusters working for State Farm were dispatched to damage sites and instructed to determine whether the damage could be categorized as a slab, “popsicle stick,” or “cabana.” “Popsicle stick” is industry slang for a foundation with support pilings intact; a “cabana” is industry slang for a structure that maintains some degree of post and lintel support but is otherwise a skeleton due to water washing through. Not much effort beyond riding past the property in a car and looking out the window would seem to be required to make this determination, but the fees for this adjusting “service” were passed along to the NFIP. Adjusters

were instructed that if they found the property to be in one of these three conditions, they were to request that an engineering inspection be ordered to provide additional guidance in assessing the damage. This subsumes that the adjusters were not considered qualified or sufficient to make a final determination as to the cause of damage. However, many of these adjusters at this stage, without the benefit of an engineering report and often without the benefit of proper flood training and certification themselves, would go ahead and recommend maximum payment of flood coverage and contents coverage through the NFIP.

B. An illustration. So, to illustrate, a home is insured by State Farm under a homeowner's policy for \$500,000 for structural damage and \$250,000 for contents; in addition the homeowner purchases \$250,000 of protection against structural damage due to flood and \$100,000 for contents due to flood pursuant to NFIP policies. An adjuster visits the damage, determines that maximum coverage is available under the NFIP and advises the homeowner that further investigation will be needed to assess the extent of wind damage.

In doing so, the adjusters are making a decision about the ratio of damage attributable to wind and that attributable to water, but the ratio is not based on the actual damage. It is based on the availability of coverage. In the McIntosh case, the policyholders received a denial letter at this stage. Even though that denial letter referenced the need for further investigation, the decision to deny coverage had already been made according to the plain meaning of the letter. Clearly State Farm is willing to spend the NFIP's own money with only nominal investigation, but is much more deliberate and hesitant to spend its own.

To continue the illustration, an engineer may then visit the property and submit a report of damage to State Farm. Even though the report was requested in order to assist the adjuster's evaluation, the reports were not given to adjusters. The reports were not given to the claim representatives or even openly circulated within the CAT offices. Records of whether and when engineering reports had been ordered and received were only accessible to a limited number of CAT employees, and the reports themselves were reviewed by only a handful of people.

C. Discretion in the interpretation and use of engineering reports. With notable exceptions, as in the McIntosh case, the conclusions in these engineering reports were not always sufficiently clear-cut to be easily classified as "wind" or "water" reports. The conclusions typically included descriptions of damage and ascribed some to wind, some to water, but numerical proportions were not assigned to each cause. If the engineer was not able to do that, the ability of a CAT employee to do so is dubious; yet that is exactly the sort of determination that needed to be made in order to properly assess the availability of coverage. To the extent that such a determination was not possible, particularly in slab cases, Mississippi law construes ambiguity against the insurer. Citing an engineering report as support for denial of coverage then refusing to let the homeowner see the report does not inspire much confidence in the integrity of this process. This has been a common complaint received by the MSAG's office.

Equally disturbing are the instances in which an engineering report was not used to deny the

claim. For example, reports were received and ignored; reports were received then subjected to “peer review” (which typically amounted to soliciting an opinion from a second engineering firm without mentioning the previous inspection and report); reports were requested then canceled; reports were ordered then canceled after the property inspection but before the report was done; or reports were requested then canceled then reordered.

One excuse given for this seeming lack of organization has been that the sheer volume of claims and the overwhelming devastation from Katrina was more than anyone anticipated. No one would argue against the horrific scale of this disaster. But the State Farm CAT team featured its most highly trained and experienced employees and vendors, people who worked disasters as a way of life. Given the expenses of this “confusion,” State Farm might have been expected to use its existing information network to keep all CAT employees, agents and vendors informed about the status of engineering reports that were delaying decisions on claims. State Farm did not earn its position as the country’s largest insurer by making costly mistakes. **The “mistakes” and irregularities in the Katrina claims process share a common denominator; they all facilitated State Farm’s practice of denying wind coverage expressly included in its homeowners’ policies.**

D. Haag Engineering. Haag Engineering has worked several disasters for State Farm and depends on them for approximately 75-80% of their work. Haag Engineers were hired by State Farm to evaluate Katrina damage and were on the scene, doing inspections and writing reports prior to the issuance of Haag’s “Hurricane Katrina Storm Damage Survey” issued in October 2005. Certain other engineering firms were relieved of their duties after the issuance of Haag’s Survey with the explanation that, with that weather data in hand, coverage decisions could be made without the assistance of engineers. The issuance of the report did not alleviate the need for all engineering services however.

If State Farm, based on its experience with catastrophes knew weather data was forthcoming and that it would be conclusive on the causation of damage, their decision to incur the costs of using adjusters and engineers in advance of receiving such weather data does not make sense. In other words, if weather data could close a claim, why use expensive contractors whose opinions are not actually needed? Further, weather data was freely available from various governmental agencies; a legitimate reason to commission Haag to collect weather data is not self evident.

Haag’s weather collection efforts should also not be described as “independent.” Collecting weather data that could then be used to support conclusions in engineering reports that would result in additional job assignments from State Farm just adds another level of bias to the process, i.e., Haag had a vested interest in both the weather conclusions and the conclusions in their engineering reports.

E. No real investigation was done by State Farm.

The flaws in each step of this supposed “investigation” of a claim cannot be remedied by

arguing that no one part of the investigation was the sole basis for denying coverage. If each part is inherently deficient, the cumulative effect of them can be no better. As our investigation has shown, the efforts to ignore the role of wind in Katrina's devastation did not stop with adjusters, engineers and weather data. Legal gymnastics in the form of a wind/water protocol and the anti-concurrent causation clauses were also employed to deny coverage.

F. Legal gymnastics

1. Anti-concurrent causation clauses. Policy exclusions should be understandable to the agents selling the policies, the customers buying them, and the personnel interpreting them when a claim is made. The so-called "anti-concurrent causation clauses" and the water exclusions featured in Homeowners policies that became disputed after Katrina are excessively convoluted and confusing. Members of the Subcommittee are urged to review Exhibits A, B and C for the comprehensibility of these provisions.

In August of 2006, the Honorable Judge L.T. Senter Jr. of the U.S. District Court for the Southern District of Mississippi, Southern Division found Nationwide's anti-concurrent causation clause to be unacceptably vague in the Leonard case, pointing out that "[t]his reading of the policy would mean that an insured whose dwelling lost its roof in high winds and at the same time suffered an incursion of even an inch of water could recover nothing under his Nationwide policy..._I do not believe this is a reasonable interpretation of the policy." An honest and realistic assessment of whether this language is likely to be applied consistently and fairly by employees and vendors with varying degrees of training and experience working under challenging circumstances, yields little certainty.

State Farm may have recognized this problem. A wind/water protocol issued September 13, 2005, instructed CAT workers, in under three pages, how to make coverage decisions. The protocol was prefaced with this explanation:

Because of the combination of wind and water damages many homes sustained from Hurricane Katrina, the following materials have been developed and are intended for use as a guide for handling various wind and/or water claims in Louisiana, Mississippi and Alabama.

[See Exhibit E.]

Surely homeowners policies issued by State Farm already contemplated that in a hurricane, a combination of wind and water damages could and would occur. The wind/water protocol was not available for policyholders' review, but it was, by its language, designed to evaluate their right to coverage. In other words, the protocol constitutes a unilateral change in the insurance contract.

However, the anti-concurrent causation clause was maintained by the protocol. The second page of the protocol features the following language:

Damage to Property Caused by Flood Waters with available Flood Policy

Where wind acts concurrently with flooding to cause damage to the insured property, coverage for the loss exists only under flood coverage, if available...

Stated differently, the protocol dictates that if damage is caused by both wind and water, the policyholder only gets paid if they have a flood policy. If they have a wind policy, they get nothing. Thus, the anti-concurrent causation clause is applied to deny claims of policyholders who have no flood insurance, and is used to shift the burden to the federal government through the NFIP.

The insurance industry is quick to cite the need for predictability as a reason to exit the Mississippi market, but policyholders deserve predictability too. At the very least, their rights should be interpreted under the policies they sign, not protocols developed after the storm.

III. Concerns for the continued economic viability of coastal regions and the insurance industry

A. Doing business with State Farm, the “good neighbor.” With over 130 million Americans living in coastal counties in 2003^{iv} and the inevitability of future natural disasters, the continued viability of the NFIP is jeopardized if private insurers use federal flood policies as a form of corporate welfare to avoid or reduce liability. How can anyone properly assess whether or not an insurance company can reasonably be expected to continue to do business in coastal areas without getting to the truth of how much a private insurer actually owed, how much of that they paid, and how much was improperly passed on to the NFIP? How can anyone determine whether or not rate increases are appropriate without that information?

If private insurers are not financially able to cover the losses under the policies they write and remain solvent, then issues of market saturation and adequate reserve levels must be re-examined. The time to determine that a market is saturated is not after a disaster hits. If the premiums charged in Mississippi were not enough to cover the policies, then perhaps the inquiry should be into whether or not State Farm's actuaries anticipated implementing this scheme to maximize coverage under the NFIP when they recommended the rates in effect when Katrina hit.

According to recent press releases by State Farm, they have “handled” about 84,000 claims and paid out “over one billion dollars” in Katrina claims in Mississippi, excluding all payments made through the NFIP. [See Exhibit H.] That roughly averages out to less than \$12,000 per claim and covers claims from an undisclosed number of Mississippi's eighty-two counties. The “duty to remain solvent,” frequently trotted out as an explanation by State Farm employees, is not a moral obligation or the obligation of a “good neighbor,” but is legally required. However, claimants in this disaster should not be denied coverage in the interests of keeping State Farm

flush with cash for the claimants in the next disaster.

Since the storm, State Farm has threatened to stop “doing business” in the state, and on February 14, 2007, announced its intention to make good on that threat. However, accepting premiums is not the same thing as “doing business” in a state. If a State Farm insurance policy is nothing more than a meaningless security blanket, then Mississippians do not benefit from having them stay in the state to collect premiums.

The last time a hurricane of this magnitude directly hit the Mississippi Gulf Coast was Hurricane Camille in 1969. Since then, policyholders have faithfully paid their premiums every year, and until 2005, the insurance companies got the benefit of the bargain. In 2005, thirty-six years later, Mississippians needed the benefit of the bargain they made with State Farm. State Farm has responded to the disaster by taking their premium dollars and leaving the state. They do not have to concern themselves with customer satisfaction because they do not intend to retain customers who actually try to invoke the protection they have paid for. State Farm will just find new customers, who will again pay their premiums with the expectation of protection.

Fundamentally, the insurance industry is about the assessment and allocation of risk. The gambling industry is also about risk. Part of what separates the two is the duty of good faith and fair dealing that, by Mississippi law, is required of the insurance industry in an effort to equalize the inherent imbalance of power between a large business and an individual who has experienced an illness, death in the family, fire, tornado, hurricane or other costs and losses for which they seek coverage.

Another distinction between the insurance industry and the gambling industry is the protection of a contract. A policyholders' rights, under an insurance contract, should not be determined without regard to the degree and type of damage or by reference to a wind/water protocol to which policyholders never agreed. A “reasonable investigation” of damage should be an actual analysis of damage done by objective professionals, not a foregone conclusion dictated by the availability of coverage.

If these duties are not observed in the insurance industry, then it is not much different from the gambling industry. A policyholder who pays premiums in good faith should have a more predictable and favorable result than a person who just drops a quarter into a slot machine at the casino. Without some changes in the insurance industry, insurance is just such a gamble.

B. Predictability. State Farm has cited the lack of predictability in the Mississippi insurance market as a reason to drop policyholders. However, some of the consequences State Farm has encountered in our state are not entirely unforeseeable. For instance, no one should be surprised that denying coverage with the explanation that hurricane winds caused no damage generates controversy. The type of misleading conduct alleged in the McIntosh case is practically guaranteed to produce outrage and litigation costs. Offering homeowners who voluntarily participate in mediation ten cents on the dollar for their claims and refusing to let them see the

engineering reports done on their property is another fairly certain way to provoke public outcry and backlash. Interpreting policies according to external, undisclosed documents and inconsistently applying contractual provisions is an invitation to trouble. We can also predict that if the insurance industry cannot concede any wrongdoing in the handling of Katrina, that the next group of policyholders affected by a disaster can expect the same treatment, as can the NFIP and FEMA.

CONCLUSION

The insurance industry cannot operate as a charity and remain solvent, but it is not unreasonable to require them to be accountable members of the business community. The need for timely, meaningful accountability of this industry is urgent. State Farm's publicity experts have done an outstanding job of spinning this situation as the protestations of Katrina victims who did not buy flood coverage and now want someone-State Farm, the federal government, anyone-to pay for their flood damage. The MS AG's Office is hopeful that our investigation will show that, in fact, State Farm pretended that Hurricane Katrina caused no wind damage, and that policyholders fully insured against wind were wronged by the various tactics employed to deny their claims. Our citizens do not want sympathy or handouts. They just want to be paid for the wind damage under wind policies. The MS AG's Office urges Congress to fully investigate this matter and pledge our full assistance and cooperation in any such efforts.

Thank you for holding this hearing and for inviting me to testify. I would be pleased to answer any questions.

Endnotes

- i.** The suit, styled *Jim Hood v. Miss. Farm Bureau Ins. Co. et al*, named Mississippi Farm Bureau Insurance Company, State Farm Fire & Casualty Company, Allstate Property & Casualty Company, United Services Automobile Association, Nationwide Mutual Insurance Company, and “A” through “Z” entities to be named pursuant to Mississippi Rule of Civil Procedure 9(h)
- ii.** The MSAG is grateful for the assistance of the following prosecutors in this investigation: The Honorable Melvin C. Wilson, Davis County Attorney, Utah; the Honorable Michael Harson, Lafayette Parish District Attorney, Louisiana; the Honorable Liz Sruz, Maricopa County Attorney’s Office, Arizona; the Honorable George S. Webb, III, Commonwealth Attorney for Madison County, Virginia; the Honorable Christopher E. Connolly, District for the 11th Judicial District, Alabama, the Honorable William L. Gibbons, District Attorney General, Memphis and Shelby County District Attorney’s Office, Tennessee; the Honorable Amy Klobuchar, Hennepin County Attorney, Minnesota; the Honorable Dianna Wheeler, Commonwealth Attorney for Orange County, Virginia; the Honorable Bill Cox, Hamilton County District Attorney General.
- iii.** Allstate’s purchase of a similar program is discussed in *From Good Hands to Boxing Gloves* by David Berardinelli. Allstate has been in defiance since 2004 of an order from a New Mexico state court ordering them to disclose copies of PowerPoint slides prepared for them by the McKinsey Group. Since this business model was sold as a product to more than one customer, claims of attorney-client privilege are not properly raised.
- iv.** The National Oceanic and Atmospheric Administration (NOAA) stated in a March 1, 2005 report that an estimated 153 million people (53% of the population of the United States) lived in coastal counties in 2003; a figure that is only expected to rise in the coming years.

JIM HOOD

Attorney General of Mississippi

Attorney General Jim Hood is a progressive leader who believes prevention is the best way to tackle crime. He is a strong proponent of victims' rights. One of his first acts as Attorney General was the establishment of a Crime Prevention and Victims' Services Division.

Under General Hood's direction, his office has launched initiatives to prevent workplace and school violence. Since the start of Youth Patrols, a groundbreaking partnership with MS CrimeStoppers and the MS Department of Education Safe & Orderly School program, approximately 70 patrols have been launched in high schools and middle schools across the State to improve school safety.

One of his most recent accomplishments is the establishment of a Domestic Violence Unit as a resource for law enforcement, prosecutors, judges and all other individuals or entities having legal duties related to domestic violence victims. The unit also provides services to domestic violence victims within the state.

Other notable services created by Attorney General Hood and focused on helping victims are the Child Support Unit which tackles the most serious offenses of deadbeat parents across the state. The Medicaid Fraud Unit boasts the establishment of the "Friendly Nursing Home Visitors Program" to make sure senior citizens are being properly cared for in the state's nursing homes.

Attorney General Hood is proud to have established through the Cyber Crime Center, a Cyber Crime Task Force whose members include the U.S. Attorney's Office of the Southern District of Mississippi, the F.B.I., U.S. Customs and U.S. Postal Inspectors. The Mississippi Cyber Crime Center is featured as a model cyber crime center for the nation through the University of Mississippi's National Center for Justice and the Rule of Law (NCJRL) program.

General Hood pioneered the establishment of an Identity Theft Unit. The office has published an identity theft prevention pamphlet and an identity theft victim's manual and passport. The office saw the successful push for tougher penalties for identity theft and the tighter penalties for home repair fraud.

Hurricane Katrina created a huge workload for the Consumer Division of the Attorney General's Office and investigators continue to work hundreds of cases of price gouging and home repair fraud. Part of the prevention efforts of the office include education and training to senior citizens and community groups on scams and identity theft.

On the personal side, Jim received his J.D. from the University of Mississippi in December 1988. He was educated in the public schools of Chickasaw County. He is a fifth generation Mississippian and an avid outdoorsman and hunter. Jim and his wife, Debbie, have three children – Rebecca, 12, Matthew, 9, and Annabelle Leigh, 3.

Exhibit List

- Exhibit A:** Anti-Concurrent Causation Language taken from Allstate Property and Casualty Insurance Company Deluxe Homeowners Policy
- Exhibit B:** Anti-Concurrent Causation Language taken from Nationwide Mutual Insurance Company Homeowner Policy
- Exhibit C:** Anti-Concurrent Causation Language taken from State Farm Fire and Casualty Company Homeowner Policy
- Exhibit D:** State Farm Notice of Denial Issued to the McIntosh Family September 28, 2005
- Exhibit E:** State Farm Wind/Water Claim Handling Protocol (Followed by a Transcript of the Exhibit)
- Exhibit F:** Handwritten Statement in Response to ABC 20/20 Report, Prepared by State Farm Counsel and Signed by Thomas C. McIntosh (Followed by a Transcript of the Exhibit)
- Exhibit G:** McIntosh Engineering Report Dated October 12, 2005
- Exhibit H:** State Farm Announcement Regarding Suspension of New Policies in Mississippi

Taken from Allstate Property and Casualty Insurance Company Deluxe Homeowners Policy, *Elmer and Alexa Buente v. Allstate Insurance Company et al*, Civil Action 1:05CV712 LTS-JMR, U.S. District Court, S.D. Miss., Judge Senter's Memorandum Opinion, March 24, 2006.

With respect to the insured dwelling (Section I, Coverage A) and other structures (Section I, Coverage B):

Losses We Do Not Cover...

We do not cover loss to the [insured] property consisting of or caused by:

1. Flood, including but not limited to surface water, waves, tidal water, or overflow of any body of water, or spray from any of these, whether or not driven by wind.

4. Water or any other substance on or below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or flows, seeps or leaks through any part of the residence premises.

21. Weather conditions that contribute in any way with a cause of loss excluded in this section to produce a loss.

23. We do not cover loss to property...when:
 - a) there are two or more causes of loss to the covered property; and
 - b) the predominant cause(s) of loss is (are) excluded under Losses We Do Not Cover, items 1 through 22 above.

With respect to personal property (Section I, Coverage C, Personal Property Protection):

Losses We do Not Cover...

We do not cover loss to [insured personal] property caused by or consisting of:

1. Flood, including, but not limited to surface water, waves, tidal water or overflow of any body of water, or spray from any of these, whether or not driven by wind.

4. Water or any other substance on or below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or flows, seeps or leaks through any part of the residence premises.

13. Weather conditions that contribute in any way with a cause of loss excluded in this section to produce a loss.

15. We do not cover loss to [insured personal] property when:
 - a) there are two or more causes of loss to the covered property; and
 - b) the predominant cause(s) of loss is (are) excluded under Losses We Do Not Cover items 1 through 14 above.

**MISSISSIPPI
ATTORNEY
GENERAL**

EXHIBIT A

Taken from Nationwide homeowners insurance policy, *Paul Leonard and Julie Leonard v. Nationwide Mutual Insurance Company*, Civil Action No.1:05 CV475 LTS-RHW, U.S. District Court, S.D. Miss., Judge Senter's Memorandum Opinion, August 15, 2006

Section 1, Property Coverages

Coverage A-Dwelling

Coverage B- Other Structures

Coverage C- Personal Property

Property Exclusions, Section 1

1. We do not cover loss to any property resulting directly or indirectly from any of the following. Such a loss is excluded even if another peril or event contributed concurrently or in any sequence to cause the loss.

b) Water or damage caused by water-borne material. Loss resulting from water or water-borne material damage described below is not covered even if other perils contributed, directly or indirectly to cause the loss. Water and water-borne material damage means:

(1) flood, surface water, waves, tidal waves, overflow of a body of water, spray from these, whether or not driven by wind.

n) Windstorm or hail to any

(1) structure, other than a building, including the supports and screens, with a roof-like covering of cloth, metal, plastic or fiberglass, whether or not the structure is attached to a building.

(2) screens, including their supports, around a pool, patio or other areas.

(3) property lines and similar walls, including seawalls, greenhouses, hothouses, slathouses, trellis, pergolas, cabanas and outdoor equipment used to service the residence premises.

(4) structure, including property in or on the structure, which is in whole or part, in or over water.

2. We do not cover loss to any property resulting directly or indirectly from the following if another excluded peril contributes to the loss:

c) Weather conditions, if contributing in any way with an exclusion listed in paragraph 1 of this Section.

**MISSISSIPPI
ATTORNEY
GENERAL**

EXHIBIT B

Taken from State Farm homeowners policy, *John Tuepker and Claire Tuepker v. State Farm Fire & Casualty Company*, Civil Action No. 1:05CV559 LTS-JMR, Judge Senter's Memorandum Opinion, May 24, 2006

Section I, Losses Insured
Coverage A–Dwelling
Coverage B–Personal Property

Section I –Losses Not Insured

1. We do not insure for any loss to the property described in Coverage A which consists of, or is directly and immediately caused by, one or more of the perils listed in items a. through n. below, regardless of whether the loss occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

a. collapse, except as specifically provided in Section I Additional Coverages, Collapse.

2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following events. We do not insure for such loss regardless of: a) the cause of the excluded event; or b) other causes of the excluded event; or c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

c. Water Damage, meaning:

(1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water; or spray from any of these, all whether driven by wind or not;

3. We do not insure under any coverage for any loss consisting of one or more of the items listed below. Further, we do not insure for loss described in paragraphs 1 and 2. immediately above regardless of whether one or more of the following: a) directly or indirectly cause, contribute to or aggravate the loss; or b) occur before, at the same time, or after the loss or any other cause of the loss:

c. weather conditions.

However, we do insure for any resulting loss from items a., b., and c. unless the resulting loss is itself a Loss Not Insured by this Section.

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GENERAL**

EXHIBIT C

State Farm Insurance Companies



September 28, 2005

STATE FARM INSURANCE COMPANIES
1900 E. Park Road
Golfport, MS 39607
Tel. (228) 804-4686

Pamela and Thomas McIntosh
2658 S Shore Dr
Biloxi, MS 39532-3010

RE: Claim Number: 24-Z178-602
Policy Number: 24-BX-4847-7
Date of Loss: August 29, 2005

Dear Mr. and Mrs. McIntosh:

This follows our visit to your property when we discussed the damage to your residence.

The damage to your property may have been caused by wind and water. We are continuing to investigate that portion of your loss caused by wind.

Enclosed please find an estimate for that damage and a draft in payment for that portion of your loss clearly caused by wind in the amount of \$36,228.37

Based on the site visit and other facts, our investigation showed that some of your property was damaged as a result of storm surge, wave wash and flood. Unfortunately, that damage to your property is not covered under the policy identified above.

Please see the following relevant policy language.

Section I - Losses not insured

2. We do not insure any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:
 - a. Ordinance or Law, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure.
 - b. Earth Movement, meaning the sinking, rising, shifting, expanding or contracting of earth, all whether combined with water or not. Earth movement includes but is not limited to earthquake, landslide, mudflow, mudslide, sinkhole, subsidence, erosion

HOME OFFICE: BLOOMINGTON, ILLINOIS 61710-1001

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ATTORNEY
GENERAL

EXHIBIT D

or movement resulting from improper compaction, site selection or any other external forces. Earth movement also includes volcanic explosion or lava flow, except as specifically provided in SECTION I - ADDITIONAL COVERAGES, volcanic action.

c. Water Damage, meaning:

- (1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not;
- (2) water from outside the plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area; or
- (3) natural water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

However, we do insure for any direct loss by fire, explosion or theft resulting from water damage, provided the resulting loss is itself a Loss Insured.

State Farm Insurance does not intend to waive any policy defenses, in addition to those quoted above and reserves its right to assert additional policy defenses at any time.

If you have additional information you would like us to consider that you have not previously submitted, or if you desire any explanation of this letter, please contact me.

Sincerely,

Claim Representative

Date: September 13, 2005
To: State Farm Claim Associates handling CAT FL in the Central and Southern Zones
From: Property and Casualty Claim Consulting Services
Subject: Wind/Water Claim Handling Protocol

.....ACTION REQUIRED.....

Summary
Because of the combination of wind and water damages many homes sustained from Hurricane Katrina, the following materials have been developed and are intended for use as a guide for handling various wind and/or water claims in Louisiana, Mississippi and Alabama.

Action
The protocol below outlines the process that should be used for determination of coverage in those locations.

Protocol Detail
Each claim should be handled on its merits. A cautious investigation should be conducted and appropriate claim file documentation is required. Any available information should be considered in making a coverage determination. This information will include, but is not limited to:

- Evidence gathered at the on site inspection. This includes documentation of physical evidence such as water lines, an examination of the debris, and an analysis of the physical damage to the structure.
- Evidence gathered at neighboring locations.
- Data obtained from reports describing damage to the area.
- Information from witnesses and policyholders.
- Input from experts that may be retained to provide guidance.

The damage to insured properties will fall into the following categories and should be handled as detailed below:

- Damage to the property was caused by windstorm.
- Damage to separate portions of the property can be attributed to either windstorm or excluded water.
- Damage to the property was caused by excluded water with no available coverage.
- Damage to the property was caused by flood waters covered by an available flood policy.

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EXHIBIT E

Damage Caused by Windstorm

When the investigation indicates that the damage was caused by windstorm, the claim will be handled under the applicable provisions of the involved property policy. Consideration should be given to determine if a hurricane deductible or a windstorm or hail exclusion endorsement is involved and the claim handled accordingly.

Damage to Separate Portions with Distinguishable Wind or Excluded Water

Each type of damage should be documented in the claim file. The claim representative should calculate the separate damage attributable to each part and handle the adjustment accordingly. In those cases where the policyholder has policies for both a windstorm and a flood, payments should be issued under the applicable policy.

Damage Caused by Excluded Water

When the investigation indicates that the damage was caused by excluded water and the claim investigation does not reveal independent windstorm damage to separate portions of the property, there is no coverage available under the homeowners policy pursuant to the following language in Section 7 Losses Not Insured:

"2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result to any combination of these:

a. Water Damage, meaning:

- (1) Flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not . . ."

Other Losses Not Insured may be applicable, including 2.c.(2) & (3), 5.(a), (b) & (c).

Damage to Property Caused by Flood Waters with available Flood Policy

Where wind acts concurrently with flooding to cause damage to the insured property, coverage for the loss exists only under flood coverage, if available. The flood damage claim should be handled consistent with the terms of the flood policy providing coverage as outlined in Operation Guide 71-02.

Claims where the causation investigation is ongoing

Payment can be made under a reservation of rights for ALE or Loss of Income under the property policy until the final coverage decision is made. The policyholder should be advised in writing that:

- The investigation is ongoing.
- No coverage decision has been made.
- In the event it is determined that there is no covered damage, no further payment will be made on ALE or Loss of Income.
- They may undertake an independent investigation.

All claims in this category must be reviewed by the Claim Team Manager before a final decision is made. Management should be involved in any claim where it is deemed necessary to retain an expert to assist in the determination of causation.

For More Information
Any question on this protocol should be directed to your Claim Team Manager.

- Q. P & C Claims Executive**
- Southern Zone Executive & Claim Managers**
- Central Zone Executive & Claim Managers**
- P & C Claims Directors and Consultants**
- Catastrophe Services Claim Managers**
- Catastrophe Services Section & Team Managers**
- Zone Section Managers**

Transcript of Exhibit E

Date: September 13, 2005
To: State Farm Claim Associates handling CAT FL in the Central and Southern Zones
From: Property and Casualty Claim Consulting Services
Subject: Wind/Water Claim Handling Protocol

Action Required

Summary

Because of the combination of wind and water damages many homes sustained from Hurricane Katrina, the following materials have been developed and are intended for use as a guide for handling various wind and/or water claims in Louisiana, Mississippi and Alabama.

Action

The protocol below outlines the process that should be used for determination of coverage in those locations.

Protocol Detail

Each claim should be handled on its merits. A causation investigation should be conducted and appropriate claim file documentation is required. Any available information should be considered in making a coverage determination. This information will include, but is not limited to:

- Evidence gathered at the on site inspection. This includes documentation of physical evidence such as water lines, an examination of the debris, and an analysis of the physical damage to the structure.
- Evidence gathered at neighboring locations.
- Information from witnesses and policyholders.
- Input from experts that may be retained to provide guidance.

The damage to insured properties will fall into the following categories and should be handled as detailed below:

- Damage to the property was caused by windstorm.
- Damage to separate portions of the property can be attributed to either windstorm or excluded water.
- Damage to the property was caused by excluded water; with no available coverage.
- Damage to the property was caused by flood waters; covered by an available flood policy.

Damage Caused by Windstorm

When the investigation indicates that the damage was caused by windstorm, the claim will be handled under the applicable provisions of the involved property policy. Consideration should be given to determine if a hurricane deductible or a windstorm hail exclusion endorsement is involved

and the claim handled accordingly.

Damage to Separate Portions with Distinguishable Wind and Excluded Water

Each type of damage should be documented in the claim file. The claim representative should calculate the separate damage attributable to each peril and handle the adjustment accordingly. In those cases where the policyholder has policies for both a windstorm and a flood, payments should be issued under the applicable policy.

Damage Caused by Excluded Water

When the investigation indicates that the damage was caused by excluded water and the claim investigation does not reveal independent windstorm damage to separate portions of the property, there is no coverage available under the homeowners policy pursuant to the following language in Section 1 Losses Not Insured:

“2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or © whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result to any combination of these:

c. Water Damage, meaning:

(1) flood, surface water, waves, tidal water, tsunami, selche, overflow of a body of water, or spray from any of these, all whether driven by wind or not...”

Other Losses Not Insured may be applicable, including 2.c.(2) & (3), 3.(a), (b) & ©.

Damage to Property Caused by Flood Waters with available Flood Policy

Where wind acts concurrently with flooding to cause damage to the insured property, coverage for the loss exists only under flood coverage, if available. The flood damage claim should be handled consistent with the terms of the flood policy providing coverage as outlined in Operation Guide 71-06.

Claims where the causation investigation is ongoing

Payment can be made under a reservation of rights for ALE or Loss of income under the property policy until the final coverage decision is made. The policyholder should be advised in writing that:

- The investigation is ongoing.
- No coverage decision has been made.
- In the event it is determined that there is no covered damage, no further payment will be made on ALE or Loss of Income.
- They may undertake an independent investigation.

All claims in this category must be reviewed by the Claim Team Manager before a final decision is made. Management should be involved in any claim where it is deemed necessary to retain an expert to assist in the determination of causation.

For More Information

Any question on this protocol should be directed to your Claim Team Manager.

- C. P & C Claims Executive
 - Southern Zone Executive & Claim Managers
 - Central Zone Executive & Claim Managers
 - P & C Claims Directors and Consultants
 - Catastrophe Services Claim Managers
 - Catastrophe Services Section & Team Managers
 - Zone Section Managers

(11)

(1)

21 August 2006 :

I am Thomas G. McDintock. My home at 2558 South Shore Drive, Biloxi, MS. was destroyed by flood/damage and wind ~~force~~ as a result of Hurricane Katrina. The date of the destruction was on or about August 29, 2005.

I have settled my claims not only on my home but also claims under policies that covered some rental property all of which were insured by State Farm. All claims were paid according to the policies in effect and I am satisfied that the adjustments and payment under these State Farm policies was done correctly. ~~and by my attorney~~

I have been advised that parties other than State Farm have possession of copies of my State Farm engineering reports. I will not give anyone a copy of my report or authorize anyone to release my report to any third party, including but not limited to any member or organization in the medical industry (ABC news, The Sun-Herald, CBS news, Associated Press, any other news reporting organization). I consider anyone in possession of a copy of my report to be committing a violation of my privacy and any broadcast of any information regarding my State Farm insurance ~~claim~~

(11)


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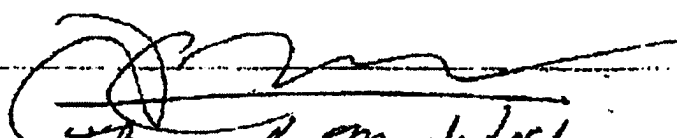
EXHIBIT F

(PHB)
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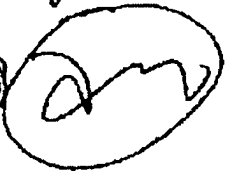
I have a claim to be Aggravating from the aforementioned
invasion of my privacy
I authorized State Farm to advise media
outlets such as ABC news and any other
outlet having possession of my report of my
concern for my privacy; and to advise
any such outlet that I have no dispute
with State Farm over my insurance issues
relating to the adjustment or payment of my
claim by State Farm.

I wish to advise that I do not now have
any dispute with State Farm or anyone else
regarding my insurance claims; I do not wish to
be party to any such dispute; I do not have
any standing to sue or be sued in any litigation
and I wish to be party to no state
proceeding in such dispute or litigation, but
another way: I wish to be left alone.


Ken Turner
Witness


Thomas C. McInloch

Date: August 21, 2006

(PHB) 

Transcript of Exhibit F

Initial: PAB

21 August 2006:

I am Thomas C. McIntosh. My home at 2558 South Shore Drive, Biloxi, MS. was destroyed by Flood/Surge and wind as a result of Hurricane Katrina. The date of the destruction was on or about August 29, 2005.

I have settled my claim not only on my home but also claims under policies that concerned some rental property all of which was insured by State Farm. All claims were paid according to the policies in effect and I am satisfied that the adjustment and payment under these State Farm policies was done correctly.

I have been advised that parties other than State Farm are in possession of copies of my State Farm engineering report. I did not give any one a copy of my report or authorize any one to relate my report to any third party including but not limited to any number of organizations in the media industry (ABC news, the Sun-Herald, CBS news, Associated Press) or any other news reporting organization. I consider anyone in possession of a copy of my report to be committing a violation of my privacy and any broadcast of any information regarding my State Farm insurance transactions to be aggravating the aforementioned Invasion of my privacy.

I authorize State Farm to advise media outlets such as ABC news and any other outlet having possession of my report of my concern for my privacy; and to advise such outlet that I have no dispute with State Farm over my insurance issues relating to the adjustment or payment of my claims by State Farm.

I wish to advise that I do not now have any dispute with State Farm or anyone else regarding my insurance claims; I do not want to be part of any such dispute; I do not have any stake in the outcome of any litigation nor do I wish to be party to or stake-holder in such dispute or litigation. Put another way: I wish to be left alone.

Signature
Ken Turner
Witness

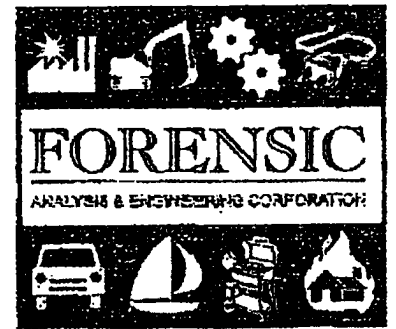
Signature
Thomas C. McIntosh

Dated: August 21, 2006

Initials: PAB & PM

October 12, 2005

State Farm Insurance
Mr. Cody Perry, Claims Adjuster
1909 East Pass Rd.
Gulfport, MS 39507



Re: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Date of Loss: 8-29-2005
SF Claim No. 24-Z178-602/24-BX-4847-7
FAEC Case No: 530-0088-05-25

Dear Mr. Perry,

Forensic Analysis & Engineering (FAEC) is pleased to provide the following report of our engineering investigation and evaluation of the reported damage to the residence located at 2558 S. Shore Drive in Biloxi, MS.

We initially received this assignment on October 4, 2005. FAEC performed a field investigation of the subject insured residence on October 4, 2005. We were assigned to the site by the insurance company. We were assigned to the site by the insurance company. We were assigned to the site by the insurance company.

This site

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SITE OBSERVATIONS

The following are the observations made during FAEC's inspection of the structure:

- The home has a north-south orientation with the front of the house facing east to South Shore Dr. The home is on a waterfront lot on the Tchautacabouffa River.

FORENSIC ANALYSIS & ENGINEERING CORPORATION

ESTABLISHED 1986

FORENSIC ENGINEERING, PRODUCT DEFECT ANALYSIS & ACCIDENT INVESTIGATIONS

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E-MAIL: FORENSIC@FORENSIC-ANALYSIS.COM
Telephone: (919) 872-8788

MISSISSIPPI ATTORNEY GENERAL
www.FORENSIC-ANALYSIS.com
Facsimile: (919) 872-8660

EXHIBIT G

Put in Wind file - DO NOT Pay Bill DO NOT discuss



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-002/24-BX-4847-7
FAEC File No.: 563-0065-05-25

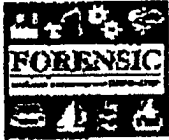
Page 2

- The first floor elevation is approximately 20-21 feet. The watermark line in the house is approximately five and one-half feet above the main floor interior flooring.
- The roof was damaged at the peak and right front sections. Ceilings were damaged.
- The doors and windows were all missing.
- All debris had been cleaned out of the house.
- According to Mr. McIntosh, a neighbor - Mr. Mike Church - reported that houses were blown apart and debris was thrown into the McIntosh house at approximately 8 AM and the floodwater began rising at 11 AM.
- The lower front right corner of the house wall was missing - approximately three studs.
- The back porch had a wooden deck and arbor destroyed.
- An outdoor metal storage shed was missing.
- The detached carport originally had nine columns. Several of these were found severely damaged.
- Large oak trees were felled in a northwesterly direction. Limbs of a live oak tree in the backyard of the subject residence had fallen.
- Observations of the area are consistent with the findings of this property. There were numerous tall tree failures in the northwesterly direction.

CONCLUSIONS

Based upon the information that has been presented to FAEC and evidence gleaned during our inspection, FORENSIC ANALYSIS & ENGINEERING CORPORATION has made the following conclusion concerning the damage to the structure.

- The tree failures in the northwesterly direction are the result of the winds out of the southeast from the approaching hurricane.
- The roof, door, carport, and window damage was caused by wind and wind driven debris.



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-2178-802/24-EX-4847-7
FAEC File No.: 630-0050-05-2b

Page 3

- It is FAEC's opinion that the interior damage of the structure is primarily the result of the failure of the windows, walls, and doors due to wind.

The conclusions and opinions presented in this report are based on the results of FAEC's field investigation of the subject residence, as well as our analysis of the available wind and localized water level data and upon all of the other associated information that we have gathered during the course of our investigation efforts to date. If additional information or facts become available which materially affect these stated conclusions and opinions, then, FAEC reserves the right to amend or change its opinions and conclusions as needed.

It has been our pleasure to perform this structural engineering analysis for you. We trust that our efforts will meet with your approval and that this report meets its intended purpose. Please call if you have any questions concerning this report or if any of FORENSIC ANALYSIS & ENGINEERING CORPORATION'S staff can be of further support.

Respectfully submitted,
FORENSIC ANALYSIS & ENGINEERING CORPORATION

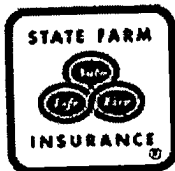
Brian Ford, P.E.
Senior Principal Structural Engineer
Mississippi P.E. License No. 08770

As it is the practice of FAEC to emphasize and ensure the technical quality of its work through peer review, the content of this report has been reviewed by the undersigned to ensure that all stated conclusions and supporting facts are technically consistent and meet the requirements of current engineering and scientific principles.

FORENSIC ANALYSIS & ENGINEERING CORPORATION

Robert K. Kochan, ME, DABFET, FACFEI
Principal Technical Consultant

Text Size: **A A A**



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State Farm® Announces It Will Suspend Writing Homeowners and Commercial Policies in Mississippi

Uncertainty in State Legal and Business Environments Cited as Reason -

JACKSON, MS – Feb. 14, 2007 – Citing uncertainties in the Mississippi legal and business environments, State Farm Senior Vice President Bob Trippel yesterday advised Mississippi's Commissioner of Insurance George Dale that State Farm Fire and Casualty Company will suspend writing new homeowners and commercial property insurance in the state of Mississippi.

"We came to this decision reluctantly. But it is no longer prudent for us to take on additional risk in a legal and business environment that is becoming more unpredictable. When there's more certainty, we will reassess the situation," said Trippel.

State Farm actually grew its business in Mississippi in 2006, writing over 29,000 new homeowners policies and more than 76,000 new auto policies. State Farm currently insures 30.3% of the homeowners market in Mississippi (according to 2005 data from A.M. Best).

"We will continue to serve our existing policyholders, write new auto insurance policies and market our financial services products as long as market conditions allow, but the current legal and business environments with regard to homeowners and commercial insurance are becoming untenable," he said.

The company stated that criticisms about how it handled Hurricane Katrina claims have complicated matters. The company is concerned that provisions in its insurance policies are being reinterpreted after the fact to provide for coverages that were not contemplated when the policies were written. To date, State Farm has handled over 84,000 non-auto property claims in Mississippi as a result of Hurricane Katrina, and has already paid in excess of \$1 billion in damages, excluding those payments made under the National Flood Insurance Program. Fewer than two percent of all State Farm claims associated with Hurricane Katrina have not been settled.

About State Farm

State Farm® is the largest retail insurer in Mississippi. It insures more cars than any other insurer in North America and is the leading U.S. home insurer. State Farm's 17,000 agents and 68,000 employees serve over 74 million auto, fire, life and health policies in the United States and Canada, and more than 1.8 million bank accounts. State Farm Mutual Automobile Insurance Company is the parent of the State Farm family of companies.

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EXHIBIT H

2/26/20

State Farm is ranked No. 22 on the Fortune 500 list of largest companies.

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