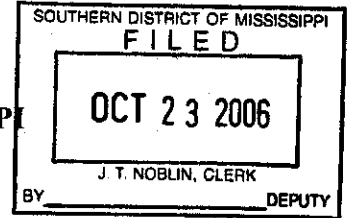


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



THOMAS C. and PAMELA McINTOSH

PLAINTIFFS

v.

CIVIL ACTION NO.: 1:06cv1090 LJS RHW

STATE FARM FIRE & CASUALTY COMPANY and
FORENSIC ANALYSIS & ENGINEERING CORPORATION

DEFENDANTS

COMPLAINT
JURY TRIAL REQUESTED

COME NOW, Thomas C. and Pamela McIntosh and (“Plaintiffs”), by and through counsel, and file this Complaint against Defendants State Farm Fire & Casualty Company (“State Farm”), Forensic Analysis & Engineering Corporation (“Forensic”), and allege as follows:

I.
PARTIES

1. At all times material herein, Plaintiffs were adult resident citizens of Harrison County, Mississippi, residing at 2558 South Shore Drive, Biloxi, Mississippi 39532.

2. Defendant State Farm Fire and Casualty Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at One State Farm Plaza, Bloomington, Illinois, 71701-0001, and which may be served with process by service on its agent for service of process, Mr. William E. Penna, 1080 River Oaks Drive, Suite B-100, Flowood, Mississippi 39232-7644 or on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Miss. Code Ann. § 83-21-1.

3. Defendant Forensic Analysis & Engineering Corporation is a corporation organized and existing under the laws of the state of North Carolina, with its principal office and place of

business located at 3401 Atlantic Ave, Suite 101, Raleigh, North Carolina 27604, and which may be served with process by service on its agent for service of process in the State of Mississippi. In the alternative, Forensic may be served with process via United States certified mail pursuant to Fed. R. Civ. P. 4

II.
SUBJECT MATTER AND PERSONAL JURISDICTION

4. This Court has jurisdiction over the subject matter and Defendants in this case pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Defendants State Farm and Forensic and the amount in controversy exceeds \$75,000.00.

III.
VENUE

5. Venue in this cause is proper in this Court pursuant to 28 U.S.C. § 1391, because this suit respects real and personal property located exclusively in Harrison County, Mississippi and the conduct, acts and/or omissions upon which this cause of action is based occurred in substantial part in Harrison County, Mississippi, which is completely within the United States District Court for the Southern District of Mississippi, Southern Division.

IV.
FACTS

6. Plaintiffs resided at 2558 South Shore Drive, Biloxi, MS at all relevant times herein.

7. Plaintiffs purchased from State Farm a standard "Homeowner's Policy" FP-7955 ("subject policy"), naming them as the insureds. The subject policy insured: the dwelling at 2558 South Shore Drive, ("insured residence") for \$619,600; the dwelling extension up to \$61,960; the personal property therein for \$464,700; and loss of use for actual loss sustained. The subject policy

was in effect on August 29, 2005. A representative copy of the subject policy is attached hereto as Exhibit "A."

8. The State Farm policy expressly states on its cover: "Homeowners Policy This is one of the broadest forms available today and provides you with outstanding value for your insurance dollars." State Farm knew that Plaintiff, like many other residents on the Mississippi Gulf Coast, purchased the policy for protection from accidental direct physical loss from hurricanes.

9. The subject policy provides "all risk" coverage for all "accidental direct physical loss" to Plaintiffs' "Dwelling" and "Dwelling Extension" unless the proximate and efficient cause of the loss is one that is expressly excluded by the policy, stating as follows:

SECTION I-LOSSES INSURED

COVERAGE A - DWELLING

We insure for accidental direct physical loss to the property described in Coverage A, except as provided in SECTION I - LOSSES NOT INSURED.

10. This broad "all risk" coverage includes coverage for loss proximately and efficiently caused by hurricane wind as well as for *objects* driven by the hurricane wind.

11. The subject policy also provides coverage for "accidental direct physical loss" to Plaintiffs' "Personal Property" proximately and efficiently caused by hurricane wind, stating as follows:

COVERAGE B - PERSONAL PROPERTY

We insure for accidental direct physical loss to property described in Coverage B caused by the following perils, except as provided in SECTION I - LOSSES NOT INSURED:

2. **Windstorm or hail.** This peril does not include loss to property contained in a building caused by rain, snow, sleet, sand or dust. This limitation does not apply when the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

12. In the late 1990's, State Farm informed the Plaintiffs that a mandatory modification of the policy raising the deductible for hurricane-caused losses was being imposed. State Farm subjected Plaintiffs and other policyholders to more risk of loss from hurricanes through the "Hurricane Deductible Endorsement" ("Hurricane Deductible"), or, in the alternative, charged him an increased premium to ensure insurance coverage for any and all damage to his insured dwelling and other property caused by a hurricane.

13. During the time Plaintiffs' policy was in effect, State Farm requested and received premium rate increases and/or retained risk (deductible) increases for Plaintiffs' policy from the Mississippi Department of Insurance. Said increases were justified by State Farm by the hurricane risks associated with Coastal properties. Defendant utilized hurricane-specific experience ratings and computer model projections of hurricane losses to corroborate its demands for such rate increases.

14. For such coverage, Plaintiffs agreed and paid State Farm an annual premium of \$6,611. Plaintiffs also agreed to pay a \$500 deductible to ensure insurance coverage for any and all damage to the insured residence caused by a hurricane, including all damage proximately and efficiently caused by hurricane wind.

15. Plaintiffs, whose residence was near on the Gulf of Mexico, purchased the subject policy from State Farm for one of the primary purposes of insuring against any property damage that

could proximately and efficiently result from hurricanes impacting the Mississippi Gulf Coast from the Gulf of Mexico.

16. On August 29, 2005, within the subject policy period, the insured "Dwelling" and the "Personal Property" therein were significant damaged by Hurricane Katrina, a Category (4) Hurricane with wind gusts in excess of 140 miles per hour. The area where the insured property was located also sustained tornadoes, microbursts, mesocyclones, and other convective activity. These events caused an "accidental direct physical loss" covered under the subject policy.

17. The "accidental direct physical loss" sustained by Plaintiffs to the insured property was proximately and efficiently caused by hurricane wind, tornadoes, microbursts, mesocyclones, and/or convective activity and occurred in the absence and/or independent of water, thereby triggering full coverage for all Plaintiffs' hurricane losses.

18. Hurricane Katrina's devastating and catastrophic hurricane winds, tornadoes, microbursts, and mesocyclones occurred 4-6 hours before the peak hurricane storm surge, and significantly damaged Plaintiffs' property prior to the arrival of storm surge from Hurricane Katrina.

19. Almost immediately thereafter, and in accordance with the subject policy provisions, Plaintiffs notified State Farm of the covered loss and performed all obligations imposed on them by the policy.

20. However, State Farm failed to fairly, adequately, and sufficiently investigate and adjust Plaintiffs' claims for hurricane damage caused by Hurricane Katrina.

21. Instead, State Farm embarked on a calculated course of conduct designed to deny the Plaintiffs' claims.

22. On September 13, 2005, State Farm promulgated a so-called "Wind Water Claim Handling Protocol" for Katrina claims like Plaintiffs on the Mississippi Gulf Coast. In this document, State Farm directed its claims personnel and adjusters that "Where wind acts concurrently with flooding to cause damage to the insured property, coverage only exists under flood coverage, if available."

23. On September 28, 2005, after an alleged inspection of the insured property and a conversation with Plaintiffs, State Farm sent an unsigned letter to Plaintiffs wherein it acknowledged that: "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". (See Exhibit "B" to Complaint). State Farm then estimated the "portion of [Plaintiffs] loss clearly caused by wind in the amount of \$36,228.37" and enclosed a check for that amount.

24. However in the same letter, State Farm, despite its acknowledgment that Plaintiffs' insured residence was damaged by wind and that it had not yet completed its investigation or determined how much damage was caused by wind, arbitrarily and without a legitimate or arguable reason in fact or law denied the remainder of Plaintiffs' claim for hurricane damage under the policy, stating as follows: "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."

25. On October 4, 2005, a week after first denying Plaintiffs' claim under the homeowners policy, State Farm retained Forensic to provide an engineering investigation and evaluation of the reported damage to Plaintiffs' home. In response Forensic performed a field investigation on October 7, 2005. The stated purpose of that investigation was "to determine if

the damage to the front wall of the residence was caused by wind, flood water or a combination of both.” See October 12, 2005 Forensic report to State Farm, Attached hereto as Exhibit “C.”

26. In the CONCLUSIONS section of that report Forensic stated:

- The roof, door, carport, and window damage was caused by wind and wind driven debris.
- It is FAEC’s (Forensic’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.

27. The October 12, 2005 Forensic report was signed by Robert K. Kochan and “Brian Ford” a “Senior Principal Structural Engineer.” (Emphasis added.)

28. However, State Farm did not approve of this Engineering Report because it directly contradicted both: (1) its corporate policy of denying all claims like Plaintiffs’, as exemplified by State Farm’s September 13, 2005 “Wind Water Protocol”; and (2) its arbitrary, incomplete, and erroneous September 28, 2005 denial letter which falsely asserted that all Plaintiffs’ damage, save \$36, 288.77, was caused by storm surge. State Farm also did not approve the October 12, 2005 Engineering Report because it implicated full coverage under the Plaintiffs’ homeowners policy, which State Farm was financially responsible.

29. Despite the conclusions in the October 12, 2005 engineering report that hurricane wind, which is covered under the State Farm homeowners policy, caused Plaintiffs’ damages, State Farm refused to pay Plaintiffs for their damages under the homeowners’ policy. Instead, State Farm and its employees and agents acting within the scope of their employment and consistent with State Farm’s fraudulent Katrina claims handling practices, undertook a fraudulent, illegal, tortious, and unethical course of conduct to conceal the favorable conclusions

of the October 12 engineering report from the Plaintiffs and to defraud them out of money they were entitled to under their homeowners policy.

30. Shortly after State Farm received the October 12 report, Lecky King, the "Team Manager" for State Farm's Mississippi Gulf Coast Catastrophe Office, ordered her assistant Lisa Wachter to coerce Forensic into changing the conclusions in October 12 report to conclude that the Plaintiffs' damage was caused by "flood", which State Farm contends is not covered under the Plaintiffs' homeowners' policy. In fact, King ordered Wachter to tell Forensic that State Farm would not pay its bill for services until Forensic's report on Plaintiffs property was changed.

31. This October 12 report later appeared within State Farm's own files with a "sticky" note affixed to the first page, the note saying "Put in Wind file-DO NOT Pay Bill DO NOT discuss." (Emphasis in original). See Exhibit "C." Upon information and belief, this statement was written by Lecky King.

32. A mere eight days after the original Forensic report, on October 20, 2005, Forensic issued a second report on the Plaintiffs' home. The report was issued to the same representative of State Farm who had received the initial report. See Exhibit "D," October 20, 2005 Forensic report to State Farm.

33. The report noted the date of the initial assignment, October 4, 2005 and noted an alleged new field investigation of October 18, 2005 but said nothing about the prior report or prior field investigation. In addition, this report falsely stated that the Mr. McIntosh was present during this alleged second inspection.

34. The October 20, 2005 report contained CONCLUSIONS as well, this time stating, *inter alia*:

- ... Damage to the second story floor and first floor ceilings was predominantly caused by wind and intruding rainwater.
- The damage to the first floor walls and floors appears to be predominately caused by rising water from the storm surge and waves.

35. The October 20, 2005 Forensic report was signed by “John B. Kelly” a “Principal Structural Engineer” and “Robert K. Kochan” a “Principal Technical Consultant.”

36. On October 30, 2005, State Farm, relying on the October 20, 2005 report, again denied Plaintiffs’ claim under the subject policy, claiming that all of Plaintiffs’ damages other than the \$36,228.37 it previously paid “was a result of flood, surface water, waves and/or tidal water”.

37. State Farm only paid Plaintiffs \$36,228.37 for their damage to their structure and contents despite their losses of full policy limits of over one million dollars. Moreover, State Farm only paid Plaintiffs \$6,073.00 for additional living expenses and \$750 for rental loss despite the fact that Plaintiffs’ losses in this regard were substantially more.

38. At no time have the Plaintiffs been informed by State Farm that there were two different engineering reports analyzing their claim with each report bearing different dates, signatures and conclusions. In fact, State Farm never even provided Plaintiffs a copy of the October 20 report until Mr. McIntosh asked for a copy. Months after their second denial on October 30, Mr. McIntosh asked State Farm for a copy of the October 20 report. State Farm first told Mr. McIntosh that it was not complete and was never finished. State Farm later told McIntosh that they “found” the October 20 report and sent that report, but only that report, to Plaintiffs.

39. However, State Farm was aware of the fact that there were two different engineering reports from Forensic on October 20, 2005 because State Farm commissioned Forensic to do the second report.

40. State Farm was again made aware of the existence of the October 12 report by ABC news on August 15, 2006. On that date, ABC's Brian Ross interviewed State Farm attorney Wayne Drinkwater and presented him with the first page of the original October 12 report. This is also evidenced by State Farm's own statement on their website responding to the ABC 20/20 episode, which aired on August 25, 2006. In the statement, State Farm admits that "ABC's Brian Ross shared documents... with attorney Wayne Drinkwater, who represents State Farm in Mississippi." Mr. Drinkwater claimed in the interview to know nothing about the October 12 report.

41. However, on August 17, 2006, State Farm lawyer Tamara Rennick called Mr. McIntosh to allegedly inquire about his claim, this despite the fact that State Farm had shown absolutely no interest in Plaintiffs or their claim since the date of their denial. During this conversation, Mr. McIntosh informed Ms. Rennick that the Mississippi Attorney General had informed him that there were two different engineering reports to State Farm regarding his property. Ms. Rennick, despite State Farm's prior knowledge, failed to mention or provide anything about two engineering reports to Mr. McIntosh. Instead, she requested that Mr. McIntosh meet with a lawyer retained by State Farm, Peter Barrett of the Butler, Snow, O'Mara, Stevens & Cannada law firm. Her subsequent email to Mr. McIntosh confirming his agreement to meet with Mr. Barrett falsely and misleadingly noted that the transmission was an "ATTORNEY CLIENT COMMUNICATION/ATTORNEY WORK PRODUCT," although neither Mr. Barrett nor Ms. Rennick were Plaintiffs' lawyers and did not represent Plaintiffs in any manner whatsoever.

42. On August 18, 2006, Mr. McIntosh received a call from Peter Barrett who requested that Mr. McIntosh meet with him "as soon as possible." Mr. McIntosh agreed to meet with Mr. Barrett on the following Monday, August 21, 2006.

43. On August 21, 2006, two lawyers from the Butler Snow law firm, J. Kennedy Turner, III and Peter H. Barrett, met with Mr. McIntosh. Mr. Barrett asked Mr. McIntosh many questions about whether or not he was satisfied with the way in which State Farm had settled his claims. After that Mr. Barrett told Mr. McIntosh that he was going to give him some "confidential" information that he preferred to remain confidential but Mr. McIntosh could do whatever he wanted with said information. Barrett then explained that there were individuals within State Farm that had "stolen" documents and that one of the stolen documents related to the McIntosh's claim.

44. Mr. McIntosh again relayed to the State Farm representatives that the Attorney General's office had told Mr. McIntosh of the existence of two different engineering reports. Mr. Barrett revealed that there were two reports, but produced to Mr. McIntosh only two versions of the October 20th report. Mr. Barrett then falsely and fraudulently represented to Mr. McIntosh that State Farm was trying to "go paperless" and that one was the "file copy" and the other was the scanned image of the "file copy." After reviewing those reports with Mr. McIntosh, Mr. Barrett also mentioned to Mr. McIntosh that he may hear something about or there would be some discussion of a "post-it note" but that post-it notes can be moved or stuck to anything and sometimes don't mean what they say. Mr. Barrett was clearly aware of the "post-it note" found on the October 12 Forensic report which stated "Put in Wind file - DO NOT Pay Bill DO NOT discuss." He did not, however, reveal the content of that "post-it note" to Mr. McIntosh nor did he reveal the existence of the October 12 Forensic report.

45. Mr. Barrett, still without advising Mr. McIntosh of the October 12 report or providing him a copy, then attempted to have Mr. McIntosh sign a statement Mr. Barrett prepared which stated that Mr. McIntosh was satisfied with State Farm's settlement of his claim. Mr. McIntosh advised Mr. Barrett that the statement incorrectly stated that Mr. McIntosh was "happy" with his settlement. Mr. McIntosh advised Mr. Barrett, based on the information he had at the time, that he was only "satisfied" with the handling of his claim. Mr. Barrett allowed the statement to be changed accordingly. Mr. McIntosh, without the benefit of the October 12 report, signed the document along with Mr. Barrett and Mr. Turner. Mr. McIntosh only signed the statement out of fear that if he did not cooperate his insurability would be jeopardized. See Exhibit "E".

46. Mr. McIntosh fully relied upon the representations made by the State Farm lawyers that Forensic did not produce more than one engineering report, the October 20 report, and that the conclusions were the same in both reports.

47. State Farm then sent ABC a copy of this false and fraudulently induced "statement" in an attempt to get ABC not to publish or air on television the story it was doing on State Farm's handling of the Plaintiffs' and others' Katrina claims. ABC, based on the fact State Farm had failed to provide Plaintiffs a copy of the October 12 report prior to obtaining the statement, refused to alter the story or show Mr. McIntosh's alleged "statement" on the 20/20 episode.

48. State Farm then falsely and fraudulently posted the fraudulently induced statement on its website in response to the ABC 20/20 episode on the matter, falsely and fraudulently representing that the ABC episode was inaccurate and that Plaintiffs were satisfied with their adjustment. These misrepresentations were made despite the fact that State Farm had still not

advised Plaintiffs of the October 12 report or provide them with a copy. Upon information and belief, are false representations about Plaintiffs' statement are still on State Farm's website.

49. After the August 21, 2006 meeting between State Farm's lawyers and Mr. McIntosh, State Farm was again made aware of the fact that there was an October 12th report from Forensic when, on August 25, 2006, ABC producer Joe Rhee provided said report to them before the airing of the 20/20 program that night.

50. Even after that, on August 31, 2006, Terry Blaylock, State Farm's Claims Section Manager and the top State Farm claims official in Mississippi, called Mr. McIntosh for the alleged purpose of inquiring about his claim. In that conversation, Mr. Blaylock failed to reveal that there were two separate reports from Forensic with separate conclusions in each. Rather, he simply noted that there were two reports and told Mr. McIntosh that State Farm was performing an investigation, the result of which State Farm would share with Mr. McIntosh once the investigation was complete. In this conversation, he also asked Mr. McIntosh if he wanted his claim reviewed and noted that additional monies could be available to the McIntoshes as a result of that process. Mr. McIntosh related that he needed to understand the two engineering reports. In response to that inquiry Mr. Blalock did not address the issue of the two reports but simply noted to Mr. McIntosh that the results of the investigation would be made available to him. Mr. Blalock told Mr. McIntosh he would get back to him within a week. To date, neither Blalock nor any other State Farm representative has revealed any additional information to Mr. McIntosh about the two Forensic reports.

51. It was only after Mr. McIntosh executed his statement (Exhibit "E") that he understood that there was an October 12th report with different conclusions from the October 20th report. Mr. McIntosh discovered this through his own efforts and not from any of his conversations

or contacts with State Farm representatives. To this day, State Farm has not informed the Plaintiffs that there were two engineering reports with different conclusions. To this day, State Farm has even represented to the public at large that the Plaintiffs are “satisfied with its payment and the way the claims were handled by State Farm.”

COUNT ONE

NEGLIGENCE AND/OR GROSS NEGLIGENCE OF STATE FARM

52. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in the preceding paragraphs in this Complaint.

53. State Farm had a duty under Mississippi law and pursuant to the policy of insurance it issued, to fully, fairly, adequately and correctly investigate and adjust Plaintiffs’ loss and claim for hurricane damages.

54. State Farm breached that duty in the following non-exclusive particulars:

- (1) by denying Plaintiffs’ loss without conducting a complete, adequate, full, and fair investigation and adjustment of Plaintiffs’ claim for damage under the policy;
- (2) by denying Plaintiffs’ claims without knowing what caused the loss or undertaking an appropriate effort to find out;
- (3) by failing to pay Plaintiffs for their hurricane loss;
- (4) by failing to accept Forensic’s October 12, 2005 report simply because it found that the cause of the loss was covered loss under the State Farm policy;

- (5) by failing to pay Forensic for its October 12, 2005 report until Forensic issued a second report offering the opinion that the cause of the loss was not a covered loss under the State Farm policy;
- (6) by failing to inform Plaintiffs of the existence of the October 12, 2005 Forensic report at any time prior to or after the resolution of Plaintiffs' claims;
- (7) by actively misleading Plaintiffs regarding the existence October 12, 2005 Forensic report and not revealing its existence despite prior knowledge of it;
- (8) by arbitrarily denying Plaintiffs' loss under the anti-concurrent cause clause and its "wind water protocol;"
- (9) by denying Plaintiffs claim for hurricane losses even though such losses were covered under the policy issued by State Farm.

55. Such conduct as alleged above constitutes negligence, gross negligence, and/or reckless disregard for Plaintiffs' rights as a State Farm insured.

56. State Farm's negligent, grossly negligent, and/or reckless adjustment proximately caused Plaintiffs economic and non-economic damages.

COUNT TWO
BREACH OF CONTRACT AGAINST STATE FARM

57. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in preceding paragraphs of this Complaint.

58. Plaintiffs entered into an insurance contract with State Farm in which they contracted for, purchased, and were entitled to receive full insurance coverage under the subject policy for all

“accidental direct physical loss” to the insured dwelling, dwelling extension, contents of dwelling and loss of use.

59. Plaintiffs’ insured property was significantly damaged by Hurricane Katrina. The overwhelming meteorological and physical evidence at the scene established that insured property was proximately and efficiently damaged by hurricane wind, and other convective activity prior to the arrival of any storm surge associated with Hurricane Katrina.

60. State Farm breached the subject policy, in the following non-exclusive particulars:

- (1) by denying Plaintiffs’ loss without conducting a complete, adequate, full, and fair investigation and adjustment of Plaintiffs’ claim for damage under the policy;
- (2) by denying Plaintiffs’ claims without knowing what caused the loss or undertaking an appropriate effort to find out;
- (3) by failing to pay Plaintiffs for their hurricane loss;
- (4) by failing to accept Forensic’s October 12, 2005 report simply because it found that the cause of the loss was covered loss under the State Farm policy;
- (5) by failing to pay Forensic for its October 12, 2005 report until Forensic issued a second report offering the opinion that the cause of the loss was not a covered loss under the State Farm policy;
- (6) by failing to inform Plaintiffs of the existence of the October 12, 2005 Forensic report at any time prior to or after the resolution of Plaintiffs’ claims;

- (7) by actively misleading Plaintiffs regarding the existence October 12, 2005 Forensic report and not revealing its existence;
- (8) by arbitrarily denying Plaintiffs' loss under the anti-concurrent cause clause and its "wind water protocol;"
- (9) by denying Plaintiffs' claim for hurricane losses even though such losses were covered under the policy issued by State Farm.

COUNT THREE
BAD FAITH BREACH OF CONTRACT

61. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in the preceding paragraphs of this Complaint.

62. State Farm's actions as set forth above constitute the independent tort of bad faith refusal to pay an insurance claim in that Defendant State Farm denied a timely-reported and covered insurance claim without legitimate or arguable reason for doing so. Specifically, all losses for which Hurricane Katrina was the efficient proximate cause were covered under the State Farm policy of the Plaintiffs, and full coverage was owing under Mississippi law. State Farm was fully aware of Mississippi law as it pertained to hurricane-related property damage and disregarded it nonetheless.

63. In denying Plaintiffs' claim Defendant State Farm relied on confusing and/or intentionally ambiguous policy exclusions in order to defeat the reasonable expectations of the Plaintiffs that their property would be covered by insurance for damages caused by a hurricane.

64. Defendant State Farm, after receiving a report from an engineering firm retained to inspect properties damaged by Hurricane Katrina, refused to accept the report when it demonstrated that coverage was available to Plaintiffs under their State Farm insurance policy.

65. Upon information and belief, Defendant State Farm ordered Defendant Forensic to prepare a second report that reached the conclusion that Plaintiffs' loss was excluded because the damages to Plaintiffs' property were caused by storm surge, and waves and not by the effect of wind.

66. Upon receipt of the second engineering report prepared (October 20, 2005) by Defendant Forensic, Defendant State Farm issued a denial of Plaintiffs' claim.

67. Defendant State Farm's denial of Plaintiffs' claim was issued notwithstanding the fact that Defendant State Farm knew that the subject loss was caused by the force of hurricane winds, as set forth in the October 12 report prepared by Defendant Forensic. Defendant State Farm ignored the conclusions of the October 12 report because said conclusions supported the fact that coverage existed under the terms of Plaintiffs' State Farm policy.

68. Only upon receipt of the fraudulent October 20, 2005 report from Defendant Forensic, which provided a basis for denial of the claim, did Defendant State Farm make a final coverage decision on Plaintiffs' claim. Defendant State Farm's actions show that it believes that it should be able to pick and choose which proof it relies upon in evaluating the validity of a claim. Defendant State Farm will only accept reports from engineering firms that support a denial of coverage. Such actions were in bad faith and are actionable under Mississippi law.

69. At all material times, Defendant State Farm owed to Plaintiffs as policyholders, claimants and insureds under the Policy, non-delegable, express and implied duties, to at all times and in all things, act in good faith and with fair dealing toward the insured. Along with the implied duty of good faith and fair dealing, Defendant State Farm owed at all times a duty to: (1) meet the reasonable expectations of the Plaintiffs as State Farm policyholders; (2) investigate the claim with the interest of the insureds in mind and keeping the insureds informed every step of

the way; and (3) give as much if not more consideration to the financial interests of the insureds, than they gave to their own financial interests.

70. Defendant State Farm breached the aforementioned duties, including the overarching duty to exercise good faith and fair dealing with Plaintiffs as policyholders, claimants and insureds in the following, non-exclusive particulars, *inter alia*:

- (1) tortiously and in bad faith failing to follow and apply the Defendant's underwriting guidelines in the marketing, underwriting, sale, issuance and delivery of the subject policy to Plaintiffs;
- (2) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, failing to conduct a prompt, fair and thorough investigation of the Hurricane Katrina claim of Plaintiffs;
- (3) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, failing to make a realistic evaluation of the subject claim and/or to realistically assess, adjust and pay for all losses caused by the covered windstorm;
- (4) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, failing to promptly pay covered claims incurred as a result of the Plaintiffs' claim;
- (5) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, divesting the insureds of the use and benefit of dwelling and personal property coverage, purchased, paid for, and in effect at the time of the Plaintiffs' claim;

- (6) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, divesting the insureds of the use and benefit of additional living expense coverage, purchased, paid for, and in effect at the time of Plaintiffs' insurance claim;
- (7) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, divesting the insureds of the use and benefit of property damage coverage for other structures, purchased, paid for, and in effect at the time of Plaintiffs' insurance claim;
- (8) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, ignoring reports of its retained experts for the purpose of denying Plaintiffs' legitimate claim for coverage due to Hurricane Katrina;
- (9) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, manipulating proof developed by a selected agent of Defendant State Farm and a retained expert of Defendant State Farm in order to reach a result-driven conclusion to deny Plaintiffs' claim without regard to physical facts;
- (10) Regardless of whether Defendant State Farm's actions as described above and ultimate denial of Plaintiffs' claim were unsupported by legitimate or arguable reason in fact or law, Defendant State Farm's misconduct is insufficient to constitute the "lying exception" applicable under Mississippi bad faith law;
- (11) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, failing to advise Plaintiffs of a valid reason why their insurance claim was denied;

- (12) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, after formally denying coverage for payable claims, utilizing the stress and financial hardship of wrongful claim denial to finesse an attempted buy-out, settlement and release of the insureds' payable claim for a minute and fractional percentage of actual claim value.
- (13) as to Defendant Forensic, tortiously and in bad faith altering and/or changing their expert reports and intentionally manipulating proof of physical facts surrounding Plaintiffs' losses, all for the purpose of joining with, aiding and abetting Defendant State Farm in the systematic denial of all claims for losses caused by Hurricane Katrina.

71. Defendant State Farm's breach of the duty to exercise good faith and fair dealing was the direct and proximate cause of actual damages sustained by Plaintiffs.

72. As a result of Defendant State Farm's breach of the duty to exercise good faith and fair dealing, bad faith denial of coverage, and Forensic's aiding and abetting State Farm's conduct in that regard, the Plaintiffs are entitled to a judgment against Defendants State Farm and Forensic for actual, compensatory, consequential, bad faith and punitive damages in excess of the jurisdictional limit of this Court, plus court costs, and pre- and post- judgment interest at the legally allowable limit.

COUNT FOUR **FRAUD**

73. All previous allegations of this Complaint are incorporated as if fully set forth herein.

74. Defendant State Farm committed fraud by knowingly misrepresenting to Plaintiffs on numerous occasions that State Farm had not received the October 12 report by Forensic.

75. Defendant State Farm committed fraud by concealing the October 12 report from Plaintiffs. Plaintiffs only were able to obtain the October 12 report through their own efforts.

76. Defendant State Farm committed fraud by concealing the conclusions of the October 12 report from Plaintiffs.

77. Defendant State Farm committed fraud by seeking to have the conclusions of the October 12 report altered for the sole purpose of denying insurance coverage to Plaintiffs.

78. Defendant State Farm committed fraud by accomplishing the alteration of the October 12 report by inducing Defendant Forensic to issue a new report on October 20, 2005 attributing the subject loss to waves and storm surge, purportedly non-covered events.

79. Defendant State Farm committed fraud by denying the claim of Plaintiffs when Defendant State Farm knew that coverage existed under the subject policy.

80. The misrepresentations made by Defendants State Farm and Forensic were material to the actions taken by Plaintiffs.

81. The facts as set forth herein clearly indicate that Defendant State Farm had an intention that its misrepresentations be acted upon, and said misrepresentations were acted upon by Plaintiffs throughout the claims process.

82. Plaintiffs were ignorant of the falsity of Defendant State Farm's representations.

83. Plaintiffs relied on the truth of Defendant State Farm's representations. Plaintiffs had a right to rely on the representations because Defendant State Farm went to great lengths to convince Plaintiffs that Defendant State Farm was conducting the claims process in a good faith manner and properly investigating their claim.

84. Plaintiffs suffered consequent and proximate injury as a result of the fraud of Defendant State Farm and Defendant Forensic. As set forth above, Plaintiffs have suffered significant financial losses as a result of the fraud of Defendant State Farm and Forensic.

COUNT FIVE
AIDING AND ABETTING FRAUDULENT ACTIONS OF DEFENDANT
STATE FARM, CIVIL CONSPIRACY ENGAGED IN BY BOTH DEFENDANTS
TO DENY COVERAGE

85. All previous allegations of this Complaint are incorporated as if fully set forth herein.

86. Defendant Forensic aided and abetted Defendant State Farm in its wrongful and fraudulent denial of Plaintiffs' insurance claim by preparing and submitting the fraudulent October 20, 2005 engineering report that was used as Defendant State Farm's basis to issue a denial of coverage under the subject policy.

87. Without Forensic's October 20, 2005 report Defendant State Farm would not have had the basis to issue a bad-faith denial of Plaintiffs' insurance claim without the engineering opinions of these Defendants.

88. Forensic knew that their October 12 report was an accurate representation of the cause of the subject loss. Despite this knowledge, Defendants altered their report at the urging of Defendant State Farm in order to allow Defendant State Farm to fraudulently deny coverage to Plaintiffs.

89. The above actions of both Defendants were in furtherance of a civil conspiracy to deny legitimate insurance claims, including Plaintiffs' claim, without legitimate or arguable reason in fact or law. Such actions violate not only the duty of good faith and fair dealing, but were so grossly negligent and committed in reckless disregard of the rights of Plaintiffs that they violate Mississippi statutory law and constitute negligence *per se*.

90. The object of the conspiracy between Forensic and Defendant State Farm, to deny legitimate claims of coverage, was in violation of both the criminal statutes of the State of Mississippi and the positive duties placed on Defendants by Mississippi substantive law.

V.
PRAYER FOR RELIEF

91. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in the preceding paragraphs of this Complaint.

92. As a direct and proximate result of State Farm's and Forensic's negligence, gross negligence, reckless disregard for Plaintiffs' rights as a State Farm insured, breach of contract, breach of duty of good faith and fair dealing, bad faith and tortious breach of contract without a legitimate or arguable reason in fact or law, Plaintiffs are entitled to the following relief:

- (A) Payment for all contractual benefits for all coverages afforded to Plaintiffs under the subject State Farm policies for damage to their insured residences and personal contents caused by Hurricane Katrina, with interest on all amounts due Plaintiffs under their policies;
- (B) With respect to "Additional Living Expenses" benefits owing under the policies, Defendant should be ordered to immediately pay all such benefits retroactive to August 29, 2005, with interest on all past-due amounts, and pay such benefits prospectively to the limits of coverage or until the insured is no longer entitled to them;
- (C) Pre-judgment and post-judgment interest on the amounts owing to Plaintiffs in contractual or policy benefits with interest, retroactive to August 29, 2005;
- (D) Compensatory damages for economic and non-economic damages suffered by Plaintiffs as a proximate result on the denial of coverage. Plaintiffs are entitled on

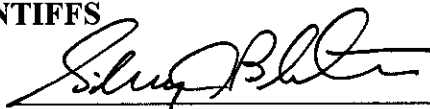
his contract claims to consequential damages, including but not limited to the amounts Plaintiffs expended or lost in trying to subsist without insurance benefits since August 29, 2005.

- (E) Extra-contractual damages for State Farm's and Forensic's tortious, malicious, wilful, wanton, reckless, grossly negligent, and bad faith conduct, which arose to the level of an independent tort.
- (F) Punitive and exemplary damages for State Farm's and Forensic's tortious, malicious, wilful, wanton, reckless, grossly negligent, and bad faith conduct which arose to the level of an independent tort.
- (G) An Order estopping State Farm from now inspecting the insured property or determining the cause of loss based on its denial and post-denial conduct.
- (H) Any and all other relief the court may find appropriate .

Respectfully submitted this 20th day of October 2006.

THOMAS C. and PAMELA McINTOSH
PLAINTIFFS

By:



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HOMEOWNERS POLICY



MCARDOSH, PRY &
CARRIS

FP-7955
(8/96)

PRINTED
IN
U.S.A.

This policy is one of the broadest forms available today, and provides you with outstanding value for your insurance dollars. However, we want to point out that every policy contains limitations and exclusions. Please read your policy carefully, especially "Losses Not Insured" and all exclusions.

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**HOMEOWNERS POLICY
DECLARATIONS CONTINUED**

We agree to provide the insurance described in this policy:

1. based on your payment of premium for the coverages you choose;
2. based on your compliance with all applicable provisions of this policy; and
3. in reliance on your statements in these **Declarations**.

You agree, by acceptance of this policy, that:

1. you will pay premiums when due and comply with the provisions of the policy;
2. the statements in these **Declarations** are your statements and are true;

DEFINITIONS

"You" and "your" mean the "named insured" shown in the **Declarations**. Your spouse is included if a resident of your household. "We," "us" and "our" mean the Company shown in the **Declarations**.

Certain words and phrases are defined as follows:

1. "bodily injury" means physical injury, sickness, or disease to a person. This includes required care, loss of services and death resulting therefrom.

Bodily injury does not include:

- a. any of the following which are communicable: disease, bacteria, parasite, virus, or other organism, any of which are transmitted by any insured to any other person;
- b. the exposure to any such disease, bacteria, parasite, virus, or other organism by any insured to any other person; or
- c. emotional distress, mental anguish, humiliation, mental distress, mental injury, or any similar injury unless it arises out of actual physical injury to some person.

3. we insure you on the basis your statements are true; and
 4. this policy contains all of the agreements between you and us and any of our agents.
- Unless otherwise indicated in the application, you state that during the three years preceding the time of your application for this insurance your Loss History and Insurance History are as follows:

1. Loss History: you have not had any losses, insured or not; and
2. Insurance History: you have not had any insurer or agency cancel or refuse to issue or renew similar insurance to you or any household member.

2. "business" means a trade, profession or occupation. This includes farming.

3. "Declarations" means the policy **Declarations**, any amended **Declarations**, the most recent renewal notice or certificate, an Evidence of Insurance form or any endorsement changing any of these.

4. "insured" means you and, if residents of your household:
 - a. your relatives; and
 - b. any other person under the age of 21 who is in the care of a person described above.

Under Section II, "insured" also means:

- c. with respect to animals or watercraft to which this policy applies, the person or organization legally responsible for them. However, the animal or watercraft must be owned by you or a person included in 4.a. or 4.b. A person or organization using or having custody of these animals or watercraft in the course of a **business**, or without permission of the owner, is not an insured; and

- d. with respect to any vehicle to which this policy applies, any person while engaged in your employment or the employment of a person included in 4.a. or 4.b.

5. "insured location" means:

- a. the residence premises;
- b. the part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire while this policy is in effect for your use as a residence;
- c. any premises used by you in connection with the premises included in 5.a. or 5.b.;

- d. any part of a premises not owned by an insured but where an insured is temporarily residing;
- e. land owned by or rented to an insured on which a one or two family dwelling is being constructed as a residence for an insured;

- f. individual or family cemetery plots or burial vaults owned by an insured;
- g. any part of a premises occasionally rented to an insured for other than business purposes;

- h. vacant land owned by or rented to an insured. This does not include farm land; and
- i. farm land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations.

6. "motor vehicle", when used in Section II of this policy, means:

- a. a motorized land vehicle designed for travel on public roads or subject to motor vehicle registration. A motorized land vehicle in dead storage on an insured location is not a motor vehicle;
- b. a trailer or semi-trailer designed for travel on public roads and subject to motor vehicle registration. A boat, camp, home or utility trailer not being towed by

or carried on a vehicle included in 6.a. is not a motor vehicle.

- c. a motorized golf cart, snowmobile, motorized bicycle, motorized tricycle, all-terrain vehicle or any other similar type equipment owned by an insured and designed or used for recreational or utility purposes off public roads, while off an insured location. A motorized golf cart while used for golfing purposes is not a motor vehicle; and

- d. any vehicle while being towed by or carried on a vehicle included in 6.a., 6.b. or 6.c.

7. "occurrence" when used in Section II of this policy, means an accident, including exposure to conditions, which results in:

- a. bodily injury; or
- b. property damage;

during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one occurrence.

8. "property damage" means physical damage to or destruction of tangible property, including loss of use of this property. Theft or conversion of property by any insured is not property damage.

9. "residence employee" means an employee of an insured who performs duties, including household or domestic services, in connection with the maintenance or use of the residence premises. This includes employees who perform similar duties elsewhere for you. This does not include employees while performing duties in connection with the business of an insured.

10. "residence premises" means:

- a. the one, two, three or four-family dwelling, other structures and grounds; or
- b. that part of any other building, where you reside and which is shown in the **Declarations**.

SECTION 1 | COVERAGES

COVERAGE A - DWELLING

1. **Dwelling.** We cover the dwelling used principally as a private residence on the residence premises shown in the Declarations.

Dwelling includes:

- structures attached to the dwelling;
- materials and supplies located on or adjacent to the residence premises for use in the construction, alteration or repair of the dwelling or other structures on the residence premises;
- foundation, floor slab and footings supporting the dwelling; and
- wall-to-wall carpeting attached to the dwelling.

2. **Dwelling Extension.** We cover other structures on the residence premises, separated from the dwelling by clear space. Structures connected to the dwelling by only a fence, utility line, or similar connection are considered to be other structures.

We do not cover other structures:

- not permanently attached to or otherwise forming a part of the realty;
- used in whole or in part for business purposes; or
- rented or held for rental to a person not a tenant of the dwelling, unless used solely as a private garage.

3. **Property Not Covered.** We do not cover:

- land, including the land necessary to support any Coverage A property;
- any costs required to replace, rebuild, stabilize, or otherwise restore the land; or
- the costs of repair techniques designed to compensate for or prevent land instability to any property, whether or not insured under Coverage A.

COVERAGE B - PERSONAL PROPERTY

1. **Property Covered.** We cover personal property owned or used by an insured while it is anywhere in the world. This includes structures not permanently attached to or

otherwise forming a part of the realty. At your request, we will cover personal property owned by others while the property is on the part of the residence premises occupied exclusively by an insured. At your request, we will also cover personal property owned by a guest or a residence employee, while the property is in any other residence occupied by an insured.

We cover personal property usually situated at an insured's residence, other than the residence premises, for up to \$1,000 or 10% of the Coverage B limit, whichever is greater. This limitation does not apply to personal property in a newly acquired principal residence for the first 30 days after you start moving the property there. If the residence premises is a newly acquired principal residence, personal property in your immediate past principal residence is not subject to this limitation for the first 30 days after the inception of this policy.

Special Limits of Liability. These limits do not increase the Coverage B limit. The special limit for each of the following categories is the total limit for each loss for all property in that category.

- \$200 on money, coins and medals, including any of these that are a part of a collection, and bank notes;
- \$1,000 on property used or intended for use in a business, including merchandise held as samples or for sale or for delivery after sale, while on the residence premises. This coverage is limited to \$250 on such property away from the residence premises;
- Electronic data processing system equipment or the recording or storage media used with that equipment is not included under this coverage;
- \$1,000 on securities, checks, cashier's checks, traveler's checks, money orders and other negotiable instruments, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports and tickets;
- \$1,000 on watercraft of all types and outboard motors, including their trailers, furnishings and equipment;
- \$1,000 on trailers not used with watercraft.

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f. \$2,500 on stamps, trading cards and comic books, including any of these that are a part of a collection;

g. \$2,500 for loss by theft of firearms;

h. \$2,500 for loss by theft of silverware and goldware;

i. \$5,000 on electronic data processing system equipment and the recording or storage media used with that equipment. There is no coverage for said equipment or media while located away from the residence premises except when said equipment or media are removed from the residence premises for the purpose of repair, servicing or temporary use. An insured student's equipment and media are covered while at a residence away from home, and:

1. \$5,000 on any one article and \$10,000 in the aggregate for loss by theft of any "bag, carrier (except wall-to-wall carpet), tapestry, wall-hanging or other similar article.

2. **Property Not Covered.** We do not cover:

- articles separately described and specifically insured in this or any other insurance;
- animals, birds or fish;
- any engine or motor propelled vehicle or machine, including the parts, designed for movement on land. We do cover those not licensed for use on public highways which are:
 - used solely to service the insured location, or
 - designed for assisting the handicapped;
- devices or instruments for the recording or reproduction of sound permanently attached to an engine or motor propelled vehicle. We do not cover tapes, wires, records or other mediums that may be used with these devices or instruments while in the vehicle;
- aircraft and parts;
- property of roomers, boarders, tenants and other residents not related to an insured. We do cover property of roomers, boarders and other residents related to an insured;
- property regularly rented or held for rental to others by an insured. This exclusion does not apply to

property of an insured in a sleeping room rented to others by an insured.

h. property rented or held for rental to others away from the residence premises;

i. any citizens band radios, radio telephones, radio transceivers, radio transmitters, radar or laser detectors, antennas and other similar equipment permanently attached to an engine or motor propelled vehicle;

f. books of account, abstracts, drawings, card index systems and other records. This exclusion does not apply to any recording or storage media for electronic data processing. We will cover the cost of blank books, cards or other blank material plus the cost of labor you incur for transcribing or copying such records; or

k. recording or storage media for electronic data processing that cannot be replaced with other of like kind and quality on the current retail market.

COVERAGE C - LOSS OF USE

1. **Additional Living Expense.** When a Loss Insured causes the residence premises to become uninhabitable, we will cover the necessary increase in cost you incur to maintain your standard of living for up to 24 months. Our payment is limited to incurred costs for the shortest of: (a) the time required to repair or replace the premises; (b) the time required for your household to settle elsewhere; or (c) 24 months. This coverage is not reduced by the expiration of this policy.

2. **Fair Rental Value.** When a Loss Insured causes that part of the residence premises rented to others or held for rental by you to become uninhabitable, we will cover its fair rental value. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental, but not to exceed 12 months. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expense that does not continue while that part of the residence premises is rented or held for rental is uninhabitable.

3. **Prohibited Use.** When a civil authority prohibits your use of the residence premises because of direct damage to a neighboring premises by a Loss Insured, we will cover any resulting Additional Living Expense and Fair Rental

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Value. Coverage is for a period not exceeding two weeks while use is prohibited.

We do not cover loss or expense due to cancellation of a lease or agreement.

SECTION I - ADDITIONAL COVERAGES

The following Additional Coverages are subject to all the terms, provisions, exclusions and conditions of this policy.

1. Debris Removal. We will pay the reasonable expenses you incur in the removal of debris of covered property damaged by a Loss Insured. This expense is included in the limit applying to the damaged property.

When the amount payable for the property damage plus the debris removal exceeds the limit for the damaged property, an additional 5% of that limit is available for debris removal expense. This additional amount of insurance does not apply to Additional Coverage, Item 3, Trees, Shrubs and Other Plants.

We will also pay up to \$500 in the aggregate for each loss to cover the reasonable expenses you incur in the removal of tree debris from the residence premises when the tree has caused a Loss Insured to Coverage A property.

2. Temporary Repairs. If damage is caused by a Loss Insured, we will pay the reasonable and necessary cost you incur for temporary repairs to covered property to protect the property from further immediate damage or loss. This coverage does not increase the limit applying to the property being repaired.

3. Trees, Shrubs and Other Plants. We cover outdoor trees, shrubs, plants or lawns, on the residence premises, for direct loss caused by the following: fire or lightning, explosion, riot or civil commotion, aircraft, vehicles (not owned or operated by a resident of the residence premises), vandalism or malicious mischief or theft.

The limit for this coverage, including the removal of debris, shall not exceed 5% of the amount shown in the Declarations for COVERAGE A - DWELLING. We will not pay more than \$500 for any one outdoor tree, shrub or plant, including debris removal expense. This coverage may increase the limit otherwise applicable. We do not cover property grown for business purposes.

4. Fire Department Service Charge. We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges. This means charges incurred when the fire department is called to save or protect covered property from a Loss Insured. No deductible applies to this coverage. This coverage may increase the limit otherwise applicable.

5. Property Removed. Covered property, while being removed from a premises endangered by a Loss Insured, is covered for any accidental direct physical loss. This coverage also applies to the property for up to 30 days while removed. We will also pay for reasonable expenses incurred by you for the removal and return of the covered property. This coverage does not increase the limit applying to the property being removed.

6. Credit Card, Bank Fund Transfer Card, Forgery and Counterfeit Money.

a. We will pay up to \$1,000 for:

(1) the legal obligation of an insured to pay because of the theft or unauthorized use of credit cards and bank fund transfer cards issued to or registered in an insured's name. If an insured has not complied with all terms and conditions under which the cards are issued, we do not cover use by an insured or anyone else;

(2) loss to an insured caused by forgery or alteration of any check or negotiable instrument; and

(3) loss to an insured through acceptance in good faith of counterfeit United States or Canadian paper currency.

No deductible applies to this coverage.

We will not pay more than the limit stated above for forgery or alteration committed by any one person. This limit applies when the forgery or alteration involves one or more instruments in the same loss.

b. We do not cover loss arising out of business pursuits or dishonesty of an insured.

c. Defense:

(1) We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend claims or suits ends when

the amount we pay for the loss equals our limit of liability.

(2) If claim is made of a suit is brought against an insured for liability under the Credit Card or Bank Fund Transfer Card coverage, we will provide a defense. This defense is at our expense by counsel of our choice.

(3) We have the option to defend at our expense an insured or an insured's bank against any suit for the enforcement of payment under the Forgery coverage.

7. Power Interruption. We cover accidental direct physical loss caused directly or indirectly by a change of temperature which results from power interruption that takes place on the residence premises. The power interruption must be caused by a Loss Insured occurring on the residence premises. The power lines off the residence premises must remain energized. This coverage does not increase the limit applying to the damaged property.

8. Refrigerated Products. Coverage B is extended to cover the contents of deep freeze or refrigerated units on the residence premises for loss due to power failure or mechanical failure. If mechanical failure or power failure is known to you, all reasonable means must be used to protect the property insured from further damage or this coverage is void. Power failure or mechanical failure shall not include:

- a. removal of a plug from an electrical outlet; or
- b. turning off an electrical switch unless caused by a Loss Insured.

This coverage does not increase the limit applying to the damaged property.

9. Arson Reward. We will pay \$1,000 for information which leads to an arson conviction in connection with a fire loss to property covered by this policy. This coverage may increase the limit otherwise applicable. However, the \$1,000 limit shall not be increased regardless of the number of persons providing information.

10. Volcanic Action. We cover direct physical loss to a covered building or covered property contained in a building resulting from the eruption of a volcano when the loss is directly and immediately caused by:

- a. volcanic blast or airborne shock waves;
- b. ash, dust or particulate matter; or
- c. lava flow.

We will also pay for the removal of that ash, dust or particulate matter which has caused direct physical loss to a covered building or covered property contained in a building.

One or more volcanic eruptions that occur within a 72-hour period shall be considered one volcanic eruption. This coverage does not increase the limit applying to the damaged property.

11. Collapse. We insure only for direct physical loss to covered property involving the sudden, entire collapse of a building or any part of a building.

Collapse means actually fallen down or fallen into pieces. It does not include settling, cracking, shrinking, bulging, expansion, sagging or bowing.

The collapse must be directly and immediately caused only by one or more of the following:

- a. perils described in SECTION I - LOSSES INSURED, COVERAGE B - PERSONAL PROPERTY. These perils apply to covered building and personal property for loss insured by this Additional Coverage;
 - b. hidden decay of a supporting or weight-bearing structural member of the building;
 - c. hidden insect or vermin damage to a structural member of the building;
 - d. weight of contents, equipment, animals or people;
 - e. weight of ice, snow, steel or rain which collects on a roof; or
 - f. use of defective material or methods in the construction (includes remodeling or renovation) of the building, if the collapse occurs during the course of the construction of the building.
- Loss to an awning, fence, patio, pavement swimming pool, underground pipe, flue, drain cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b., c., d., e. and f. unless the

loss is the direct and immediate cause of the collapse of the building.

This coverage does not increase the limit applying to the damaged property.

12. **Locks.** We will pay the reasonable expenses you incur to re-key locks on exterior doors of the dwelling located on the residence premises, when the keys to those locks are a part of a covered theft loss.

No deductible applies to this coverage.

INFLATION COVERAGE

The limits of liability shown in the Declarations for Coverage A, Coverage B and, when applicable, Option ID will be

SECTION I - LOSSES INSURED

COVERAGE A - DWELLING

We insure for accidental direct physical loss to the property described in Coverage A, except as provided in SECTION I - LOSSES NOT INSURED.

COVERAGE B - PERSONAL PROPERTY

We insure for accidental direct physical loss to property described in Coverage B caused by the following perils, except as provided in SECTION I - LOSSES NOT INSURED:

1. **Fire or lightning.**
2. **Windstorm or hail.** This peril does not include loss to property contained in a building caused by rain, snow, sleet, sand or dust. This limitation does not apply when the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.
3. **Explosion.**
4. **Riot or civil commotion.**
5. **Aircraft,** including self-propelled missiles and space-craft.

increased at the same rate as the increase in the Inflation Coverage Index shown in the Declarations.

To find the limits on a given date:

1. divide the index on that date by the index as of the effective date of this Inflation Coverage provision, then
2. multiply the resulting factor by the limits of liability for Coverage A, Coverage B and Option ID separately.

The limits of liability will not be reduced to less than the amounts shown in the Declarations.

If during the term of this policy the Coverage A limit of liability is changed at your request, the effective date of this Inflation Coverage provision is changed to coincide with the effective date of such change.

6. Vehicles, meaning impact by a vehicle.

7. **Smoke,** meaning sudden and accidental damage from smoke.

This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. **Vandalism or malicious mischief,** meaning only willful and malicious damage to or destruction of property.

9. **Theft,** including attempted theft and loss of property from a known location when it is probable that the property has been stolen.

This peril does not include:

- a. loss of a precious or semi-precious stone from its setting;
- b. loss caused by theft:
 - (1) committed by an insured or by any other person regularly residing on the insured location. Property of a student who is an insured is covered while located at a residence away from home, if the theft is committed by a person who is not an insured.
 - (2) in or to a dwelling under construction or of materials and supplies for use in the construction until the dwelling is completed and occupied; or

(3) from the part of a residence premises rented to others.

(a) caused by a tenant, members of the tenant's household, or the tenant's employees;

(b) of money, bank notes, bullion, gold, goldware, silver, silverware, jewelry, plate, num, coins and medals;

(c) of securities, checks, cashier's checks, traveler's checks, money orders and other negotiable instruments, acquits, deeds, evidences of debt, letters, of credit, notes other than bank notes, manuscripts, passports, tickets and stamps; or

(d) of jewelry, watches, fur garments and garments trimmed with fur, precious and semi-precious stones;

c. loss caused by theft that occurs away from the residence premises of:

(1) property while at any other residence owned, rented to, or occupied by an insured, except while an insured is temporarily residing there. Property of a student who is an insured is covered while at a residence away from home;

(2) watercraft of all types, including their furnishings, equipment and outboard motors; or

(3) trailers and campers designed to be pulled by or carried on a vehicle.

If the residence premises is a newly acquired principal residence, property in the immediate past principal residence shall not be considered property away from the residence premises for the first 30 days after the inception of this policy.

10. **Falling objects:** This peril does not include loss to property contained in a building unless the roof or an exterior wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. **Weight of ice, snow or sleet** which causes damage to property contained in a building.

12. **Sudden and accidental discharge or overflow of water or steam** from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or from within a household appliance:

This peril does not include loss:

a. to the system or appliance from which the water or steam escaped;

b. caused by or resulting from freezing;

c. caused by or resulting from water or sewage from outside the residence premises, 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

d. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot.

13. **Sudden and accidental tearing asunder, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.**

This peril does not include loss:

a. caused by or resulting from freezing; or

b. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot.

14. **Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance.**

This peril does not include loss on the residence premises while the dwelling is vacant, unoccupied or being constructed, unless you have used reasonable care to:

- a. maintain heat in the building; or
- b. shut off the water supply and drain the system and appliances of water.

15. Sudden and accidental damage to electrical appliances, devices, fixtures and wiring from an increase or decrease of artificially generated electrical current. We will pay up to \$1,000 under this peril for each damaged item described above.

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 2, 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;
- b. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion only applies while the dwelling is vacant, unoccupied or being constructed. This exclusion does not apply if you have used reasonable care to:
 - (1) maintain heat in the building; or
 - (2) shut off the water supply and drain the system and appliances of water;
- c. freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a swimming pool, hot tub or spa, including their filtration and circulation systems, fence, pavement, patio, foundation, retaining wall, bulkhead pier, wharf or dock;
- d. theft in or to a dwelling under construction, or of materials and supplies for use in the construction, until the dwelling is completed and occupied;
- e. vandalism or malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

16. Breakage of glass, meaning damage to personal property caused by breakage of glass which is a part of a building on the residence premises. There is no coverage for loss or damage to the glass.

- f. continuous or repeated seepage or leakage of water or steam from a:
 - (1) heating, air conditioning or automatic fire protective sprinkler system;
 - (2) household appliance; or
 - (3) plumbing system, including from, within or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings or floors;which occurs over a period of time. If loss to covered property is caused by water or steam not otherwise excluded, we will cover the cost of tearing out and replacing any part of the building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water or steam escaped.
- g. wear, tear, marring, scratching, deterioration, inherent vice, latent defect or mechanical breakdown;
- h. corrosion, electrolysis or rust;
- i. mold, fungus or wet or dry rot;
- j. contamination;
- k. smog, smoke from agricultural smudging or industrial operations;
- l. settling, cracking, shrinking, bulging or expansion of pavements, patios, foundation, walls, floors, roofs or ceilings;
- m. birds, vermin, rodents, insects, or domestic animals. We do cover the breakage of glass or safety glazing material which is a part of a building when caused by birds, vermin, rodents, insects or domestic animals; or

n. pressure from or presence of tree, shrub or plant roots.

However, we do insure for any resulting loss from Items 2, through m, unless the resulting loss is itself a Loss Not Insured by this Section.

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 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 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. However, we do insure for any direct loss by fire resulting from earth movement, provided the resulting fire loss is itself a Loss Insured;
- 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 or sewage from outside the residence premises 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) 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.

d. Neglect, meaning neglect of the insured to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered.

e. War, including any undeclared war, civil war, insurrection, rebellion, revolution, warfare act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warfare act even if accidental.

f. Nuclear Hazard, meaning any nuclear reaction, radiation, radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these. Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion or smoke.

However, we do insure for any direct loss by fire resulting from the nuclear hazard, provided the resulting fire loss is itself a Loss Insured.

3. We do not insure under any coverage for any loss consisting of one or more of the items 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:

- a. conduct, act, failure to act, or decision of any person, group, organization or governmental body whether intentional, wrongful, negligent, or without fault;

b. defect, weakness, inadequacy, fault or unsoundness in:

- (1) planning, zoning, development, surveying, staking;
- (2) design, specifications, workmanship, construction, grading, compaction;
- (3) materials used in construction or repair; or
- (4) maintenance.

SECTION I - LOSS SETTLEMENT

Only the Loss Settlement provisions shown in the Declarations apply. We will settle covered property losses according to the following:

COVERAGE A - DWELLING

1. A1 - Replacement Cost Loss Settlement - Similar Construction.

a. We will pay the cost to repair or replace with similar construction and for the same use on the premises shown in the Declarations, the damaged part of the property covered under SECTION I - COVERAGES, COVERAGE A - DWELLING, except for wood fences, subject to the following:

- (1) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or replace the damaged part of the property;
- (2) when the repair or replacement is actually completed, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less;
- (3) to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed; and

of any property (including land, structures, or improvements of any kind) whether on or off the residence premises; or

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.

2. A2 - Replacement Cost Loss Settlement - Common Construction.

(4) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option OL - Building Ordinance or Law Coverage.

b. Wood Fences. We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - DWELLING EXTENSION.

a. We will pay the cost to repair or replace with common construction and for the same use on the premises shown in the Declarations, the damaged part of the property covered under SECTION I - COVERAGES, COVERAGE A - DWELLING, except for wood fences, subject to the following:

- (1) we will pay only for repair or replacement of the damaged part of the property with common construction techniques and materials commonly used by the building trades in standard new construction. We will not pay the cost to repair or replace obsolete, antique or custom construction with like kind and quality;
- (2) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or

replace the damaged part of the property as described in a. (1) above;

(3) when the repair or replacement is actually completed as described in a. (1) above, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less;

(4) to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed; and

(5) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option OL - Building Ordinance or Law Coverage.

b. Wood Fences. We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - DWELLING EXTENSION.

COVERAGE B - PERSONAL PROPERTY

1. B1 - Limited Replacement Cost Loss Settlement.

a. We will pay the cost to repair or replace property covered under SECTION I - COVERAGES, COVERAGE B - PERSONAL PROPERTY, except for property listed in item b. below, subject to the following:

- (1) until repair or replacement is completed, we will pay only the cost to repair or replace less depreciation;
- (2) after repair or replacement is completed, we will pay the difference between the cost to repair or replace less depreciation and the cost you have

actually and necessarily spent to repair or replace the property; and

(3) if property is not repaired or replaced within two years after the date of loss, we will pay only the cost to repair or replace less depreciation.

b. We will pay market value at the time of loss for:

- (1) antiques, fine arts, paintings, statuary and similar articles which by their inherent nature cannot be replaced with new articles;
- (2) articles whose age or history contribute substantially to their value including, but not limited to, memorabilia, souvenirs and collectors items; and
- (3) property not useful for its intended purpose.

However, we will not pay an amount exceeding the smallest of the following for items a. and b. above:

- (1) our cost to replace at the time of loss;
- (2) the full cost of repair;
- (3) any special limit of liability described in the policy; or
- (4) any applicable Coverage B limit of liability.

2. B2 - Depreciated Loss Settlement.

a. We will pay the cost to repair or replace less depreciation at the time of loss for property covered under SECTION I - COVERAGES, COVERAGE B - PERSONAL PROPERTY, except for property listed in item b. below.

b. We will pay market value at the time of loss for:

- (1) antiques, fine arts, paintings, statuary and similar articles which by their inherent nature cannot be replaced with new articles;
- (2) articles whose age or history contribute substantially to their value including, but not limited to, memorabilia, souvenirs and collectors items; and
- (3) property not useful for its intended purpose.

However, we will not pay an amount exceeding the smallest of the following for items a. and b. above:

- (1) our cost to replace at the time of loss;
- (2) the full cost of repair;

SECTION 1 - CONDITIONS

1. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we shall not be liable:
 - a. to the insured for an amount greater than the insured's interest; or
 - b. for more than the applicable limit of liability.
 2. **Your Duties After Loss.** After a loss to which this insurance may apply, you shall see that the following duties are performed:
 - a. give immediate notice to us or our agent. Also notify the police if the loss is caused by theft. Also notify the credit card company or bank if the loss involves a credit card or bank fund transfer card.
 - b. protect the property from further damage or loss, make reasonable and necessary temporary repairs required to protect the property, keep an accurate record of repair expenditures;
 - c. prepare an inventory of damaged or stolen personal property. Show in detail the quantity, description, age, replacement cost and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;
 - d. as often as we reasonably require:
 - (1) exhibit the damaged property;
 - (2) provide us with records and documents we request and permit us to make copies;
 - (3) submit to and subscribe, while not in the presence of any other insured:
 - (a) statements; and
 - (b) examinations under oath; and
 - (3) any special limit of liability described in the policy; or
 - (4) any applicable Coverage B limit of liability.
 - (4) produce employees, members of the insured's household or others for examination under oath to the extent it is within the insured's power to do so; and
 - e. submit to us, within 60 days after the loss, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - (1) the time and cause of loss;
 - (2) interest of the insured and all others in the property involved and all encumbrances on the property;
 - (3) other insurance which may cover the loss;
 - (4) changes in title or occupancy of the property during the term of this policy;
 - (5) specifications of any damaged building and detailed estimates for repair of the damage;
 - (6) an inventory of damaged or stolen personal property described in 2.c.;
 - (7) receipts for additional living expenses incurred and records supporting the fair rental value loss; and
 - (8) evidence or affidavit supporting a claim under the Credit Card, Bank Fund Transfer Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.
3. **Loss to a Pair or Set.** In case of loss to a pair or set, we may elect to:
 - a. repair or replace any part to restore the pair or set to its value before the loss; or
 - b. pay the difference between the depreciated value of the property before and after the loss.

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4. **Appraisal.** If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.
5. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only our share of the loss. Our share is the proportion of the loss that the applicable limit under this policy bears to the total amount of insurance covering the loss.
6. **Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.
7. **Our Option.** We may repair or replace any part of the property damaged or stolen with similar property. Any property we pay for or replace becomes our property.
8. **Loss Payment.** We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:
 - a. reach agreement with you;
 - b. there is an entry of a final judgment; or
 - c. there is a filing of an appraisal award with us.
9. **Abandonment of Property.** We need not accept any property abandoned by an insured.

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10. **Mortgage Clause.** The word "mortgagee" includes trustee.
 - a. If a mortgagee is named in this policy, any loss payable under Coverage A shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order of precedence of the mortgages.
 - b. If we deny your claim, that denial shall not apply to a valid claim of the mortgagee, if the mortgagee:
 - (1) notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
 - (2) pays on demand any premium due under this policy; if you have not paid the premium; and
 - (3) submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.
 - c. If this policy is cancelled by us, the mortgagee shall be notified at least 10 days before the date cancellation takes effect. Proof of mailing shall be proof of notice.
 - d. If we pay the mortgagee for any loss and deny payment to you:
 - (1) we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
 - (2) at our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we shall receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.
 - e. Subrogation shall not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.
 11. **No Benefit to Bailee.** We will not recognize an assignment or grant coverage for the benefit of a person or organization holding, storing or transporting property for

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a fee. This applies regardless of any other provision of this policy.

12. **Intentional Acts.** If you or any person insured under this policy causes or procures a loss to property covered

SECTION II - LIABILITY COVERAGES

COVERAGE L - PERSONAL LIABILITY

If a claim is made or a suit is brought against an insured for damages because of **bodily injury** or **property damage** to which this coverage applies, caused by an occurrence, we will:

1. pay up to our limit of liability for the damages for which the insured is legally liable; and
2. provide a defense at our expense by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages to effect settlement or satisfy a judgment resulting from the occurrence, equals our limit of liability.

COVERAGE M - MEDICAL PAYMENTS TO OTHERS

We will pay the necessary medical expenses incurred or medically debilitated within three years from the date of an accident causing **bodily injury**. Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage applies only:

1. to a person on the insured location with the permission of an insured;
2. to a person off the insured location, if the **bodily injury**:
 - a. arises out of a condition on the insured location or the ways immediately adjoining;
 - b. is caused by the activities of an insured;
 - c. is caused by a residence employee in the course of the residence employee's employment by an insured; or
 - d. is caused by an animal owned by or in the care of an insured; or
3. to a residence employee if the occurrence causing **bodily injury** occurs off the insured location and arises

under this policy for the purpose of obtaining insurance benefits; then this policy is void and we will not pay you or any other insured for this loss.

out of or in the course of the residence employee's employment by an insured.

SECTION II - ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

1. **Claim Expenses.** We pay:
 - a. expenses we incur and costs taxed against an insured in suits we defend;
 - b. premiums on bonds required in suits we defend, but not for bond amounts greater than the Coverage L limit. We are not obligated to apply for or furnish any bond;
 - c. reasonable expenses an insured incurs at our request. This includes actual loss of earnings (but not loss of other income) up to \$100 per day for aiding us in the investigation or defense of claims or suits;
 - d. pre-judgment interest awarded against the insured on that part of the judgment we pay; and
 - e. interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.
2. **First Aid Expenses.** We will pay expenses for first aid to others incurred by an insured for **bodily injury** covered under this policy. We will not pay for first aid to you or any other insured.
3. **Damage to Property of Others.**
 - a. We will pay for **property damage** to property of others caused by an insured.
 - b. We will not pay more than the smallest of the following amounts:
 - (1) replacement cost at the time of loss;
 - (2) full cost of repair; or

- (3) \$500 in any one occurrence;
- (4) We will not pay for **property damage**:

- (1) if insurance is otherwise provided in this policy;
- (2) caused intentionally by an insured who is 13 years of age or older;
- (3) to property, other than a rented golf cart, owned by or rented to an insured, a tenant of an insured, or a resident in your household; or

SECTION II - EXCLUSIONS

1. Coverage L and Coverage M do not apply to:
 - a. **bodily injury or property damage**:
 - (1) which is either expected or intended by the insured; or
 - (2) which is the result of willful and malicious acts of the insured;
 - b. **bodily injury or property damage** arising out of business pursuits of any insured, or the rental or holding for rental of any part of any premises by any insured. This exclusion does not apply:
 - (1) to activities which are ordinarily incident to non-business pursuits;
 - (2) with respect to Coverage L to the occasional or part-time business pursuits of an insured who is under 19 years of age;
 - (3) to the rental or holding for rental of a residence of yours;
 - (a) on an occasional basis for the exclusive use as a residence;
 - (b) in part, unless intended for use as a residence by more than two roomers or boarders; or
 - (c) in part, as an office, school, studio or private garage;
 - (4) when the dwelling on the residence premises is a two, three or four-family dwelling and you oc-
- (4) arising out of:
 - (a) business pursuits;
 - (b) any act or omission in connection with a premises an insured owns, rents or controls, other than the insured location; or
 - (c) the ownership, maintenance, or use of a motor vehicle, aircraft, or watercraft, including at-hold, air cushion, personal watercraft, sail board or similar type watercraft.
- c. **bodily injury or property damage** arising out of the rendering or failing to render professional services;
- d. **bodily injury or property damage** arising out of any premises currently owned or rented to any insured which is not an insured location. This exclusion does not apply to **bodily injury** to a residence employee arising out of and in the course of the residence employee's employment by an insured;
- e. **bodily injury or property damage** arising out of the ownership, maintenance, use, loading or unloading of:
 - (1) an aircraft;
 - (2) a motor vehicle owned or operated by or rented or loaned to any insured; or
 - (3) a watercraft;
 - (a) owned by or rented to any insured, if it has inboard or inboard-outdrive motor power of more than 50 horsepower;
 - (b) owned by or rented to any insured, if it is a sailing vessel, with or without auxiliary power, 26 feet or more in overall length;

- (c) powered by one or more outboard motors with more than 25 total horsepower owned by any insured;
 - (d) designated as an airboat, air cushion, or similar type of craft; or
 - (e) owned by any insured which is a personal watercraft using a waterjet pump powered by an internal combustion engine as the primary source of propulsion.
- This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured. Exclusion e.(3) does not apply while the watercraft is on the residence premises.
- f. **Bodily injury or property damage arising out of:**
 - (1) the enticement by any insured to any person;
 - (2) the supervision by any insured of any person;
 - (3) any liability statutorily imposed on any insured, or
 - (4) any liability assumed through an unwritten or written agreement by any insured;
- with regard to the ownership, maintenance or use of any aircraft, watercraft, or motor vehicle which is not covered under Section II of this policy.
- g. **Bodily injury or property damage** caused, directly or indirectly by war, including undeclared war, or any warlike act including destruction or seizure or use for a military purpose, or any consequence of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.
 - h. **Bodily injury to you or any insured** within the meaning of part a. or b. of the definition of insured.
- This exclusion also applies to any claim made or suit brought against you or any insured to share damages with or repay someone else who may be obligated to pay damages because of the bodily injury sustained by you or any insured within the meaning of part a. or b. of the definition of insured;
- i. any claim made or suit brought against any insured by:

- (1) any person who is in the care of any insured because of child care services provided by or at the direction of:
 - (a) any insured;
 - (b) any employee of any insured; or
 - (c) any other person actually or apparently acting on behalf of any insured; or
 - (2) any person who makes a claim because of bodily injury to any person who is in the care of any insured because of child care services provided by or at the direction of:
 - (a) any insured;
 - (b) any employee of any insured; or
 - (c) any other person actually or apparently acting on behalf of any insured.
- This exclusion does not apply to the occasional child care services provided by any insured, or to the part-time child care services provided by any insured who is under 19 years of age; or
- j. **Bodily injury or property damage** arising out of an insured's participation in, or preparation or practice for any prearranged or organized race, speed or demolition contest, or similar competition involving a motorized land vehicle or motorized watercraft. This exclusion does not apply to a sailing vessel less than 26 feet in overall length with or without auxiliary power.
- 2. Coverage L does not apply to:
 - a. liability:
 - (1) for your share of any loss assessment charged against all members of an association of property owners; or
 - (2) assumed under any unwritten contract or agreement, or by contract or agreement in connection with a business of the insured;
 - b. property damage to property currently owned by any insured;
 - c. property damage to property rented to, occupied or used by or in the care of any insured. This exclusion

- does not apply to property damage caused by fire, smoke or explosion;
- d. **Bodily injury** to a person eligible to receive any benefits required to be provided or voluntarily provided by an insured under a workers' compensation, non-occupational disability or occupational disease law;
- e. **Bodily injury or property damage** for which an insured under this policy is also an insured under a nuclear energy liability policy or would be an insured but for its termination upon exhaustion of its limit of liability. A nuclear energy liability policy is a policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors.

SECTION II - CONDITIONS

- 1. **Limit of Liability.** The Coverage L limit is shown in the Declarations. This is our limit for all damages from each occurrence regardless of the number of insureds, claims made or persons injured.
- The Coverage M limit is shown in the Declarations. This is our limit for all medical expenses for bodily injury to one person as the result of one accident.
- 2. **Severability of insurance.** This insurance applies separately to each insured. This condition shall not increase our limit of liability for any one occurrence.
- 3. **Duties After Loss.** In case of an accident or occurrence, the insured shall perform the following duties that apply. You shall cooperate with us in seeing that these duties are performed:
 - a. give written notice to us or our agent as soon as practicable, which sets forth:
 - (1) the identity of this policy and insured;
 - (2) reasonably available information on the time, place and circumstances of the accident or occurrence; and

- 3. Coverage M does not apply to bodily injury:
 - a. to a residence employee if it occurs off the insured location and does not arise out of or in the course of the residence employee's employment by an insured;
 - b. to a person eligible to receive any benefits required to be provided or voluntarily provided under any workers' compensation, non-occupational disability or occupational disease law;
 - c. from nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these;
 - d. to a person other than a residence employee of an insured, regularly residing on any part of the insured location;
- (3) names and addresses of any claimants and available witnesses;
- b. immediately forward to us every notice, demand, summons or other process relating to the accident or occurrence;
- c. at our request, assist in:
 - (1) making settlement;
 - (2) the enforcement of any right of contribution or indemnity against a person or organization who may be liable to an insured;
 - (3) the conduct of suits and attend hearings and trials; and
 - (4) securing and giving evidence and obtaining the attendance of witnesses;
- d. under the coverage - Damage to Property of Others, exhibit the damaged property if within the insured's control; and
- e. the insured shall not, except at the insured's own cost, voluntarily make payments, assume obligations or incur expenses. This does not apply to expense for first aid to others at the time of the bodily injury.

4. **Duties of an Injured Person - Coverage M.** The injured person, or, when appropriate, someone acting on behalf of that person, shall:
 - a. give us written proof of claim, under oath if required, as soon as practicable;
 - b. execute authorization to allow us to obtain copies of medical reports and records; and
 - c. submit to physical examination by a physician selected by us when and as often as we reasonably require.
5. **Payment of Claim - Coverage M.** Payment under this coverage is not an admission of liability by an insured or us.

SECTION I AND SECTION II - CONDITIONS

1. **Policy Period.** This policy applies only to loss under Section I or bodily injury or property damage under Section II which occurs during the period this policy is in effect.
2. **Concealment or Fraud.** This policy is void as to you and any other insured, if you or any other insured under this policy has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance, whether before or after a loss.
3. **Liberalization Clause.** If we adopt any revision which would broaden coverage under this policy without additional premium, within 60 days prior to or during the period this policy is in effect, the broadened coverage will immediately apply to this policy.
4. **Waiver or Change of Policy Provisions.** A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination shall not waive any of our rights.
5. **Cancellation**
 - a. You may cancel this policy at any time by notifying us in writing of the date cancellation is to take effect. We may waive the requirement that the notice be in writing by confirming the date and time of cancellation to you in writing.
 - b. We may cancel this policy only for the reasons stated in this condition. We will notify you in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations. Proof of mailing shall be sufficient proof of notice.
 - (1) When you have not paid the premium, we may cancel at any time by notifying you at least 10 days before the date cancellation takes effect. This condition applies whether the premium is payable to us or our agent or under any finance or credit plan.
 - (2) When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason. We may cancel by notifying you at least 10 days before the date cancellation takes effect.
 - (3) When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:
 - (a) if there has been a material misrepresentation of fact which, if known to us, would have caused us not to issue this policy; or

6. **Suit Against Us.** No action shall be brought against us unless there has been compliance with the policy provisions.

No one shall have the right to join us as a party to an action against an insured. Further, no action with respect to Coverage I shall be brought against us until the obligation of the insured has been determined by final judgment or agreement signed by us.
7. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an insured shall not relieve us of our obligation under this policy.
8. **Other Insurance - Coverage L.** This insurance is excess over any other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

OPTIONAL POLICY PROVISIONS

- (b) if the risk has changed substantially since the policy was issued.

We may cancel this policy by notifying you at least 30 days before the date cancellation takes effect.

 - (4) When this policy is written for a period longer than one year, we may cancel for any reason at any time. We may cancel by notifying you at least 30 days before the date cancellation takes effect.
- c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded. When you request cancellation, the return premium will be based on our rules for such cancellation. The return premium may be less than a full pro rata refund. When we cancel, the return premium will be pro rata.
- d. The return premium may not be refunded with the notice of cancellation or when the policy is returned to us. In such cases, we will refund it within a reasonable time after the date cancellation takes effect.
6. **Nonrenewal.** We may elect not to renew this policy. If we elect not to renew, a written notice will be delivered to you, or mailed to you at your mailing address shown in the Declarations. The notice will be mailed or delivered at least 30 days before the expiration date of this policy. Proof of mailing shall be sufficient proof of notice.
7. **Assignment.** Assignment of this policy shall not be valid unless we give our written consent.
8. **Subrogation.** An insured may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an insured shall:

 - a. sign and deliver all related papers;
 - b. cooperate with us in a reasonable manner; and
 - c. do nothing after a loss to prejudice such rights.

Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.
9. **Death.** If any person shown in the Declarations or the spouse, if a resident of the same household, dies:
 - a. we insure the legal representative of the deceased. This condition applies only with respect to the premises and property of the deceased covered under this policy at the time of death;
 - b. insured includes:
 - (1) any member of your household who is an insured at the time of your death; and only while a resident of the residence premises; and
 - (2) with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.
10. **Conformity to State Law.** When a policy provision is in conflict with the applicable law of the State in which this policy is issued, the law of the State will apply.

OPTIONAL POLICY PROVISIONS

- Each Optional Policy Provision applies only as shown in the Declarations and is subject to all the terms, provisions, exclusions and conditions of this policy.
 - Option A1 - Additional Insured:** The definition of insured is extended to include the person or organization shown in the Declarations as an Additional Insured or whose name is on file with us. Coverage is with respect to:
 1. Section I - Coverage A, or
 2. Section II - Coverages L and M but only with respect to the residence premises. This coverage does not apply to bodily injury to an employee arising out of or in the course of the employee's employment by the person or organization.
- This option applies only with respect to the location shown in the Declarations.

- Option BP - Business Property.** The COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability, item b., for property used or intended for use in a business.

including merchandise held as samples or for sale or for delivery after sale, is changed as follows:

The \$1,000 limit is replaced with the amount shown in the Declarations for this option.

Option BU - Business Pursuits SECTION II - EXCLUSIONS, item 1.b. is modified as follows:

1. Section II coverage applies to the business pursuits of an insured who is a:
 - a. clerical office employee, salesperson, collector, messenger, or
 - b. teacher (except college, university and professional athletic coaches), school principal or school administrator.
2. However, no coverage is provided:
 - a. for bodily injury or property damage arising out of a business owned or financially controlled by the insured or by a partnership of which the insured is a partner or member,
 - b. for bodily injury or property damage arising out of the rendering of, or failure to render, professional services of any nature (other than teaching or school administration). This exclusion includes but is not limited to:
 - (1) computer programming, architectural, engineering or industrial design services;
 - (2) medical, surgical, dental or other services or treatment conducive to the health of persons or animals; and
 - (3) beauty or barber services or treatment.
 - c. for bodily injury to a fellow employee of the insured injured in the course of employment; or
 - d. when the insured is a member of the faculty or teaching staff of a school or college;
 - (1) for bodily injury or property damage arising out of the maintenance, use, loading or unloading of:

(a) draft or saddle animals, including vehicles for use with them; or

(b) aircraft, motor vehicles, recreational motor vehicles or watercraft, airports, air cushions or personal watercraft which use a water jet pump powered by an internal combustion engine as the primary source of propulsion;

owned or operated, or hired by or for the insured or employer of the insured, or used by the insured for the purpose of instruction in the use thereof; or

(2) under Coverage M for bodily injury to a pupil arising out of corporal punishment administered by or at the direction of the insured.

Option FA - Firearms: Firearms are insured for accidental direct physical loss or damage.

The limits for this option are shown in the Declarations. The first amount is the limit for any one article; the second amount is the aggregate limit for each loss.

The following additional provisions apply:

1. we do not insure for any loss to the property described in this option either consisting of, or directly and immediately caused by, one or more of the following:
 - a. mechanical breakdown, wear and tear, gradual deterioration;
 - b. insects or vermin;
 - c. any process of refinishing, renovating, or repairing;
 - d. dampness of atmosphere or extremes of temperatures;
 - e. inherent defect or faulty manufacture;
 - f. rust, fouling or explosion of firearms;
 - g. breakage, marring, scratching, tearing or denting unless caused by fire, thieves or accidents to conveyances; or
 - h. infidelity of an insured's employees or persons to whom the insured property may be entrusted or rented.

2. our limit for loss by any Coverage B perti except that is the limit shown in the Declarations for Coverage B, plus the aggregate limit.

3. our limits for loss by theft are those shown in the Declarations for this option. These limits apply in lieu of the Coverage B theft limit; and

4. our limits for loss by any covered perit except those in items 2. and 3. are those shown in the Declarations.

Option HC - Home Computer. The COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability, item i., for electronic data processing system equipment and the recording or storage media used with that equipment is increased to be the amount shown in the Declarations for this option.

Option ID - Increased Dwelling Limit. We will settle losses to damaged building structures covered under COVERAGE A - DWELLING according to the SECTION II - LOSS SETTLEMENT provision shown in the Declarations.

If the amount you actually and necessarily spend to repair or replace damaged building structures exceeds the applicable limit of liability shown in the Declarations, we will pay the additional amounts not to exceed:

1. the Option ID limit of liability shown in the Declarations to repair or replace the Dwelling; or
2. 10% of the Option ID limit of liability to repair or replace building structures covered under COVERAGE A - DWELLING, Dwelling Extension.

Report Increased Values. You must notify us within 90 days of the start of any new building structure costing \$5,000 or more; or any additions to or remodeling of building structures which increase their values by \$5,000 or more. You must pay any additional premium due for the increased value. We will not pay more than the applicable limit of liability shown in the Declarations, if you fail to notify us of the increased value within 90 days.

Option IO - Incidental Business. The coverage provided by this option applies only to that incidental business occurrence on the with us:

1. COVERAGE A - DWELLING, Dwelling Extension, item 2.b. is deleted.
2. COVERAGE B - PERSONAL PROPERTY is extended to include equipment, supplies and furnishings usual and

incidental to this business occupancy. This Optional Policy Provision does not include electronic data processing system equipment or the recording or storage media used with that equipment or merchandise held as samples or for sale or for delivery after sale.

The Option IO limits are shown in the Declarations. The first limit applies to property on the residence premises. The second limit applies to property while off the residence premises. These limits apply in addition to the COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability on property used or intended for use in a business.

3. Under Section II, the residence premises is not considered business property because an insured occupies a part of it as an incidental business.

SECTION II - EXCLUSIONS, item 1.b. of Coverage L and Coverage M is replaced with the following:

- a. bodily injury or property damage arising out of business pursuits of an insured or the rental or holding for rental of any part of any premises by an insured. This exclusion does not apply:
 - (1) to activities which are ordinarily incident to non-business pursuits or to business pursuits of an insured which are necessary or incidental to the use of the residence premises as an incidental business;
 - (2) with respect to Coverage L to the occasional who is under 19 years of age;
 - (3) to the rental or holding for rental of a residence of yours;
 - (a) on an occasional basis for exclusive use as a residence;
 - (b) in part, unless intended for use as a residence by more than two roomers or boarders; or
 - (c) in part, as an incidental business or private garage;
- (4) when the dwelling on the residence premises is a two family dwelling and you occupy

one part and rent or hold for rental the other part or parts.

(5) to farm, land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations.

5. This insurance does not apply to:

- a. bodily injury to an employee of an insured arising out of the residence premises as an incidental business other than to a residence-employee while engaged in the employee's employment by an insured;
- b. bodily injury to a pupil arising out of corporal punishment administered by or at the direction of the insured;
- c. liability arising out of any acts, errors or omissions of an insured, or any other person for whose acts an insured is liable, resulting from the preparation or approval of data, plans, designs, opinions, reports, programs, specifications, supervisory inspections or engineering services in the conduct of an insured's incidental business involving data processing, computer consulting or computer programming; or
- d. any claim made or suit brought against any insured by:
 - (1) any person who is in the care of any insured because of child care services provided by or at the direction of:
 - (a) any insured;
 - (b) any employee of any insured; or
 - (c) any other person actually or apparently acting on behalf of any insured; or
 - (2) any person who makes a claim because of bodily injury to any person who is in the care of any insured because of child care services provided by or at the direction of:
 - (a) any insured;

(b) any employee of any insured; or
(c) any other person actually or apparently acting on behalf of any insured.

Coverage M does not apply to any person indicated in (1) and (2) above.

This exclusion does not apply to the occasional child care services provided by any insured, or to the part-time child care services provided by any insured who is under 19 years of age.

Option JF - Jewelry and Furs. Jewelry, watches, fur garments and garments trimmed with fur, precious and semi-precious stones, gold other than goldware, silver other than silverware and platinum are insured for accidental direct physical loss or damage.

The limits for this option are shown in the Declarations. The first amount is the limit for any one article; the second amount is the aggregate limit for each loss.

The following additional provisions apply:

1. We do not insure for any loss to the property described in this option either consisting of, or directly and immediately caused by, one or more of the following:
 - a. mechanical breakdown, wear and tear, gradual deterioration;
 - b. insects or vermin;
 - c. inherent vice; or
 - d. seizure or destruction under quarantine or customs regulations;
2. our limit for loss by any Coverage B peril except that is the limit shown in the Declarations for Coverage B, plus the aggregate limit;
3. our limits for loss by theft are those shown in the Declarations for this option; and
4. our limits for loss by any covered peril except those in items 2 and 3, are those shown in the Declarations for this option.

Option OL - Building Ordinance or Law

1. Coverage Provided.

The total limit of insurance provided by this Building Ordinance or Law provision will not exceed an amount equal to the Option OL percentage shown in the Declarations of the Coverage A limit shown in the Declarations at the time of the loss, as adjusted by the inflation coverage provisions of the policy. This is an additional amount of insurance and applies only to the dwelling.

2. Damaged Portions of Dwelling.

When the dwelling covered under **COVERAGE A - DWELLING** is damaged by a Loss Insured, we will pay for the increased cost to repair or rebuild the physically damaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

3. Undamaged Portions of Damaged Dwelling.

When the dwelling covered under **COVERAGE A - DWELLING** is damaged by a Loss Insured we will also pay for:

- a. the cost to demolish and clear the site of the undamaged portions of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs; and
- b. loss to the undamaged portion of the dwelling caused by enforcement of any ordinance or law if:
 - (1) the enforcement is directly caused by the same Loss Insured;
 - (2) the enforcement requires the demolition of portions of the same dwelling not damaged by the same Loss Insured;
 - (3) the ordinance or law regulates the construction or repair of the dwelling; or establishes zoning or

land use requirements at the described premises;

(4) the ordinance or law is in force at the time of the occurrence of the same Loss Insured; or

c. the legally required changes to the undamaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

4. Building Ordinance or Law Coverage Limitations.

- a. We will not pay for any increased cost of construction under this coverage:
 - (1) until the dwelling is actually repaired or replaced at the same or another premises in the same general vicinity; and
 - (2) unless the repairs or replacement are made as soon as reasonably possible after the loss, not to exceed two years.
- b. We will not pay more for loss to the undamaged portion of the dwelling caused by the enforcement of any ordinance or law than:
 - (1) the depreciated value of the undamaged portion of the dwelling, if the dwelling is not repaired or replaced;
 - (2) the amount you actually spend to replace the undamaged portion of the dwelling if the dwelling is repaired or replaced.
- c. We will not pay more under this coverage than the amount you actually spend:
 - (1) for the increased cost to repair or rebuild the dwelling at the same or another premises in the same general vicinity if relocation is required by ordinance or law; and
 - (2) to demolish and clear the site of the undamaged portions of the dwelling caused by enforcement of building, zoning or land use ordinance or law.

We will never pay for more than a dwelling of the same height, floor area and style on the same or similar premises as the dwelling, subject to the limit provided in paragraph 1. Coverage Provided of this option.

Option SG - Silverware and Goldware Theft. The COVER-
AGE B - PERSONAL PROPERTY, Special Limits of Li-
ability, item h., for theft of silverware and goldware is
increased to be the amount shown in the Declarations for
this option.

IN WITNESS WHEREOF, this Company has caused this policy to be signed by its President and Secretary at Bloomington,
Illinois.

Tim M. Bunker

Secretary

Edward J. Rival Jr.

President

The Board of Directors, in accordance with Article VII(c) of this Company's Articles of Incorporation, may from time to time distribute equitably to the holders of the participating policies issued by said Company such sums out of its earnings as in its judgment are proper.

State Farm Insurance Companies



September 28, 2005

STATE FARM INSURANCE COMPANIES
1900 E. Pass Road
Gulfport, MS 39507
Fax: (228) 604 4695

Pamela and Thomas McIntosh
2558 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 617 10-1001

EXHIBIT

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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.

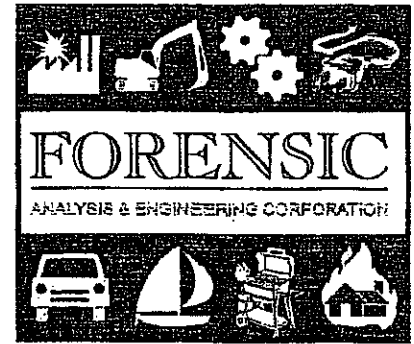
If you have additional information you would like us to consider that you have not previously submitted, or if you desire any explanation of this letter, please contact me.

Sincerely,

Claim Representative

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 7, 2005. ~~Assignment~~ assignment
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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 1966

FORENSIC ENGINEERING, PRODUCT DEFECT ANALYSIS & ACCIDENT INVESTIGATIONS

5301 Capital Blvd., Suite A - Raleigh, North Carolina 27616-2956

E-MAIL: FORENSIC @ FORENSIC-ANALYSIS.com WEBSITE: WWW.FORENSIC-ANALYSIS.com
Telephone: (919) 872-8788 (900) 224-3595 Facsimile: (919) 872-8660

EXHIBIT

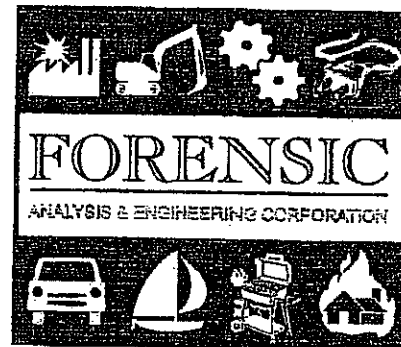
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October 12, 2005



State Farm Insurance
Mr. Cody Perry, Claims Adjuster
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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 7, 2005. In this assignment we were tasked to inspect the damage to the left front wall from the front porch to the dining area and determine if it was from wind, water or both.

This summary report is being submitted in fulfillment of our assignment in this matter.

BACKGROUND

On the morning of August 29, 2005, the Mississippi coast, including the city of Biloxi, was impacted by Hurricane Katrina, which was classified as a Category-4 hurricane when it made landfall.

FAEC performed a field investigation of the subject residence to determine if the damage to the front wall of the residence was caused by wind, floodwater or a combination of both. Mr. McIntosh was present during FAEC's inspection. During our on site examination of the subject damage, FAEC was able to complete our inspection.

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 1966

FORENSIC ENGINEERING, PRODUCT DEFECT ANALYSIS & ACCIDENT INVESTIGATIONS

5301 Capital Blvd., Suite A - Raleigh, North Carolina 27616-2956

E-MAIL: FORENSIC@FORENSIC-ANALYSIS.com WEBSITE: www.FORENSIC-ANALYSIS.com

Telephone: (919) 872-8788

(800) 224-3595

Facsimile: (919) 872-8660



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-602/24-BX-4847-7
FAEC File No.: 530-0088-05-25

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-Z178-602/24-BX-4847-7
FAEC File No.: 530-0088-05-25

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- 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 I or 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



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-602/24-BX-4847-7
FAEC File No.: 530-0088-05-25

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PHOTOGRAPHIC APPENDIX

- Photograph Number 1 - Front View of remains of residence located at 2558 S. Shore Dr., Biloxi, MS
- Photograph Number 2 - View of roof damage to right front of residence
- Photograph Number 3 - View of damage to back side of residence
- Photograph Number 4 - View of damage to corner of residence
- Photograph Number 5 - View of damage to the carport columns
- Photograph Number 6 - View interior damage to residence



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-602/24-BX-4847-7
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Photograph 1



Photograph 2



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-602/24-BX-4847-7
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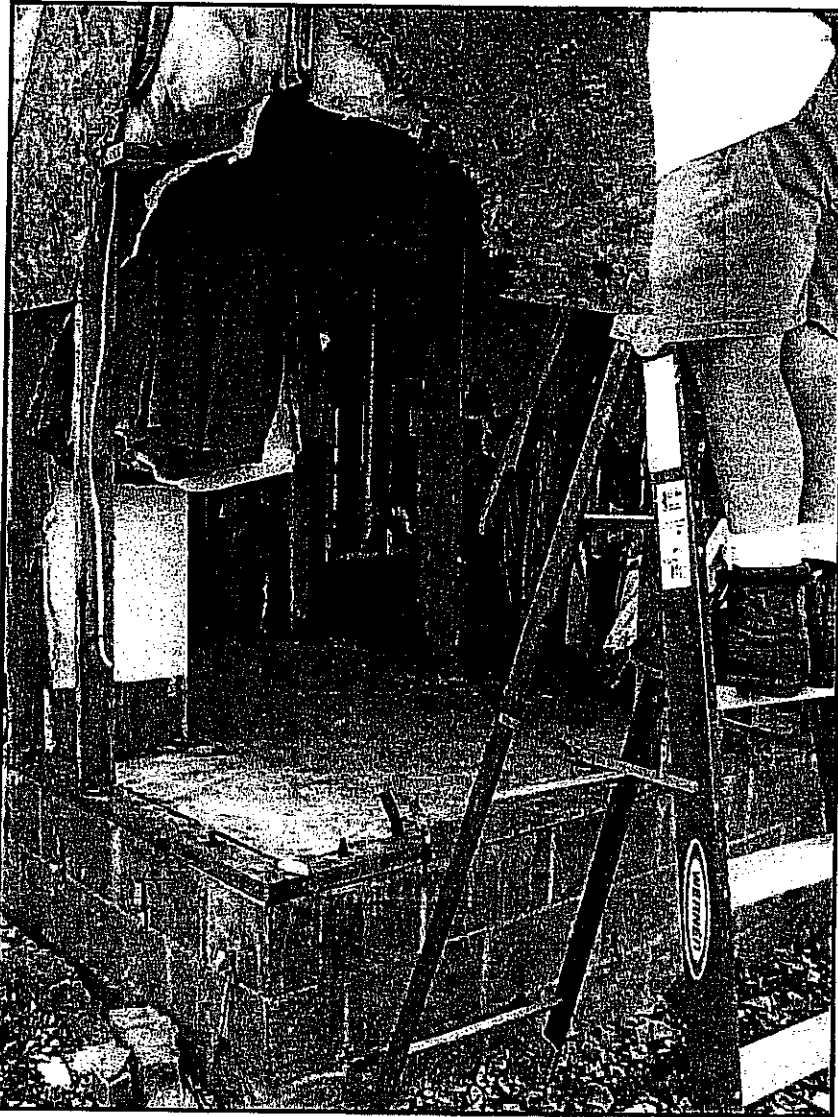


Photograph 3



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-502/24-BX-4847-7
FAEC File No.: 530-008-05-25

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Photograph 4



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-602/24-BX-4847-7
FAEC File No.: 530-008-05-25

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Photograph 5



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-602/24-BX-4847-7
FAEC File No.: 530-008-05-25

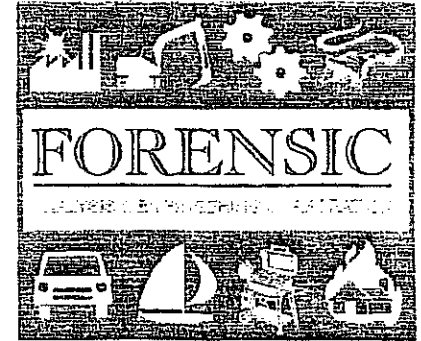
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Photograph 6

October 20, 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 18, 2005. In this assignment we were tasked to inspect the damage to the left front wall from the front porch to the dining area and determine if it was from wind, water or both.

This summary report is being submitted in fulfillment of our assignment in this matter.

BACKGROUND

On the morning of August 29, 2005, the Mississippi coast, including the city of Biloxi, was impacted by Hurricane Katrina, which was classified as a Category-4 hurricane when it made landfall.

FAEC performed a field investigation of the subject residence to determine if the damage to the front wall of the residence was caused by wind, floodwater or a combination of both. Mr. McIntosh was present during FAEC's inspection. During our on site examination of the subject damage, FAEC was able to complete our inspection.

SITE OBSERVATIONS

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

- The home is oriented so that the front faces east towards S. Shore Dr. The back yard abuts Big Lake at the south end of the Tchoutacabouffa River.

FORENSIC ANALYSIS & ENGINEERING CORPORATION

ESTABLISHED 1966

FORENSIC ENGINEERING, PRODUCT DEFECT ANALYSIS & ACCIDENT INVESTIGATIONS

5301 Capital Blvd., Suite A - Raleigh, North Carolina 27616-2956

E-MAIL: FORENSIC @ FORENSIC-ANALYSIS.com WEBSITE: www.FORENSIC-ANALYSIS.com

Telephone: (919) 872-8788

EXHIBIT

Facsimile: (919) 872-8660



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- There appears to be roof damage to the peak, north side and the southwest ridge area. The extent of this damage was not discernable as those areas had "Blue Roof" tarps covering them.
- The damage on the second floor consists primarily of floor damage.
- The damage to the first floor is extensive and includes floor, wall and ceiling damage.
- A witness, Mr. Craig Robertson, who is the owner's yardman, was at the site doing clean up work. He stated that prior to the storm he assisted in placing protective measures over the windows for the owners. He stated that shortly after the storm, he was at the house and had found that some of the upstairs doors, which led out to a balcony, had blown open and allowed water to enter the second floor which damaged the floor and ceiling below. Observations were consistent with his statement.
- There were abrasion marks on a decorative column and the inside of French doors that lead from the dining room of the first floor out to the front porch. When Mr. Robertson was questioned on the cause of these, he was unsure, but stated that there was a brick wall on the south end of that room that had blown into the house and there was lumber in that room after the storm. He also commented that part of a neighbor's roof from across the cul-de-sac was in front of the carport, which was immediately south of the subject residence and outside of the mentioned brick wall. He mentioned that another part of that roof was in front of the north end of the porch. Observations of the exterior porch columns, which also show signs of abrasion for a distance of about 4 ft. above the porch floor. This again is consistent with part of a roof structure rubbing against the columns while being carried by water. At the point where it was said that the debris stopped (north end of porch) several trees showed abrasion marks similar to the porch columns.
- The first floor elevation is estimated to be between 15 and 20 feet. Exact information was not available.
- Mr. Mindy Briscoe, the neighbor to the north of the subject house, stated that he had about 2-feet of water in his house. His floor elevation appears to be about 2 ft. higher than the subject house which would indicate that the water level in the subject house approached 4 ft above the first floor. An observation of light debris in nearby trees was consistent with this estimate of water level.
- The windows and doors at the back or west side of the house were not present. Their condition after the storm was not determined.



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- Observations of nearby properties indicate significant damage and there were numerous tree failures in the northwesterly direction.

CONCLUSIONS

Based on the information that has been presented to FAEC and evidence gleaned during our inspection, FORENSIC ANALYSIS & ENGINEERING CORPORATION has made the following conclusions 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.
- There appears to have been damage to the structure by wind as evidenced by missing shingles on parts of the roof structure. Damage to the second story floor and first floor ceilings was predominately caused by wind and intruding rainwater.
- The damage to the first floor walls and floors appears to be predominately caused by rising water from the storm surge and waves.

House plans were not made available as to the construction of the left corner wall (entry from porch to the dining room). This corner has two walls. The east wall remains with French doors to the porch. The south wall was stated to be brick and it is unknown if doors were in that wall. The east doors would receive some protection from floating debris by the porch columns. It is understood that some lumber came in through the south wall into the dining room and that the bricks had fallen into the room. It is the opinion of FAEC that the damage to this wall was predominately due to waterborne debris hitting the wall.

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.



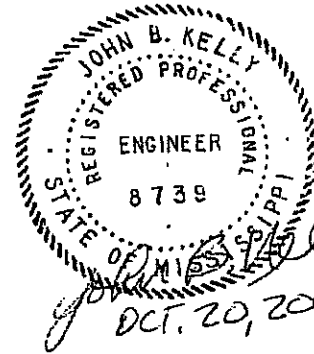
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It has been our pleasure to perform this structural engineering analysis for you. We trust that our efforts will meet with your approval and that this report meets its intended purpose. Please call if you have any questions concerning this report or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

Respectfully submitted,
FORENSIC ANALYSIS & ENGINEERING CORPORATION

John B. Kelly
John B. Kelly, P.E.
Principal Structural Engineer



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



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PHOTOGRAPHIC APPENDIX

- Photograph Number 1 - Front View of remains of residence located at 2558 S. Shore Dr., Biloxi, MS

- Photograph Number 2 - View of the rear of the house and carport

- Photograph Number 3 - View of abrasion marks in dining room

- Photograph Number 4 - View of abrasion marks in dining room

- Photograph Number 5 - View of bare floor on second story

- Photograph Number 6 - View ceiling damage on the first floor

- Photograph Number 7 - View of damage to front corner of residence

- Photograph Number 8 - View of abrasions to front porch columns

- Photograph Number 9 - View of abrasions on trees at the north end of the porch



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Photograph 1

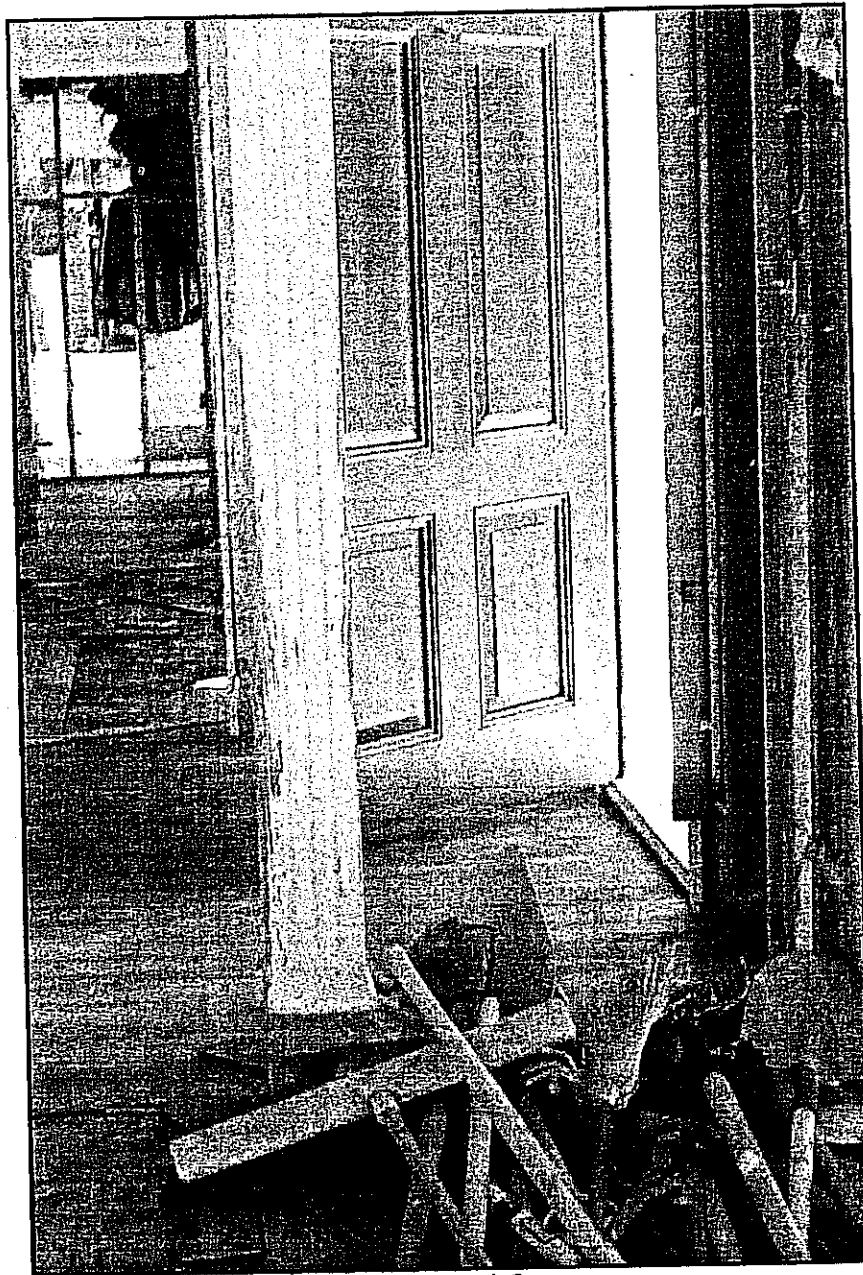


Photograph 2



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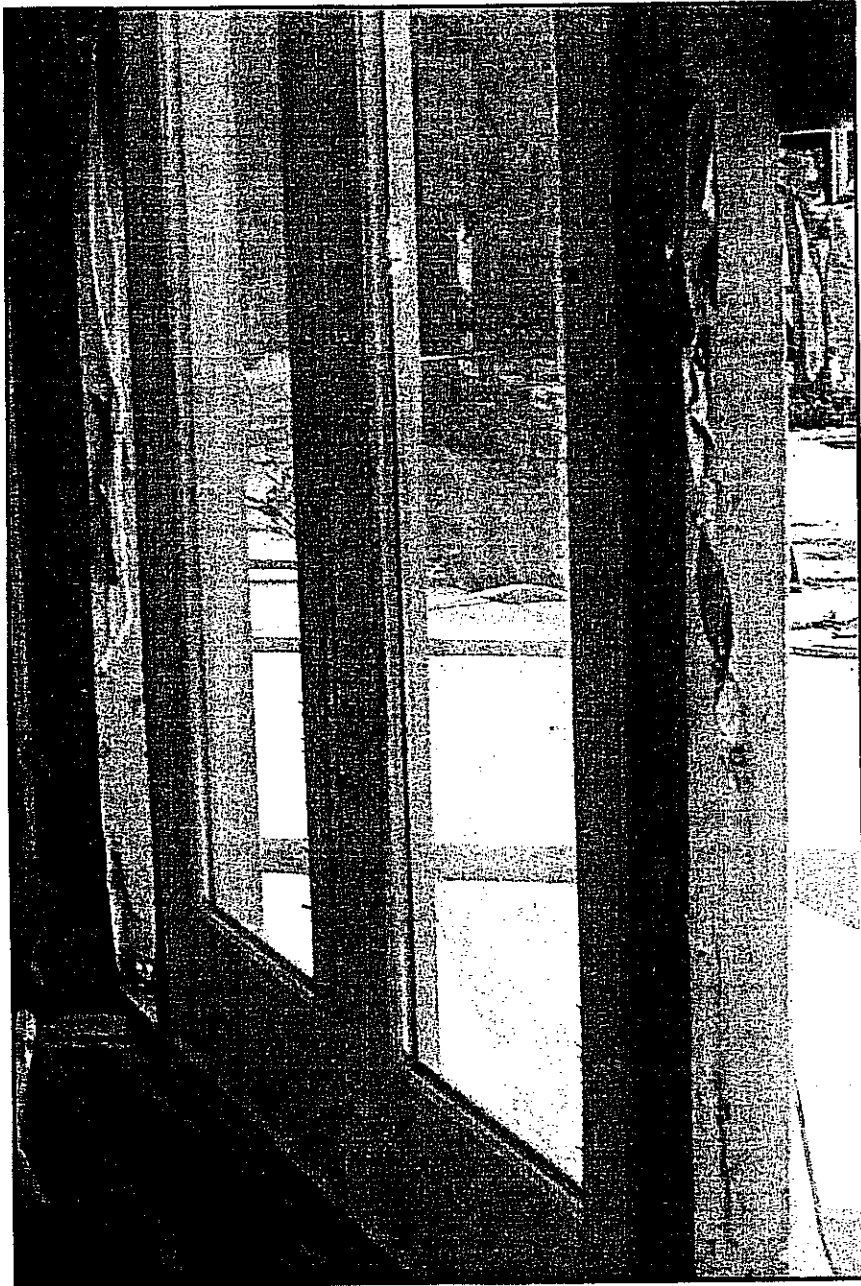


Photograph 3



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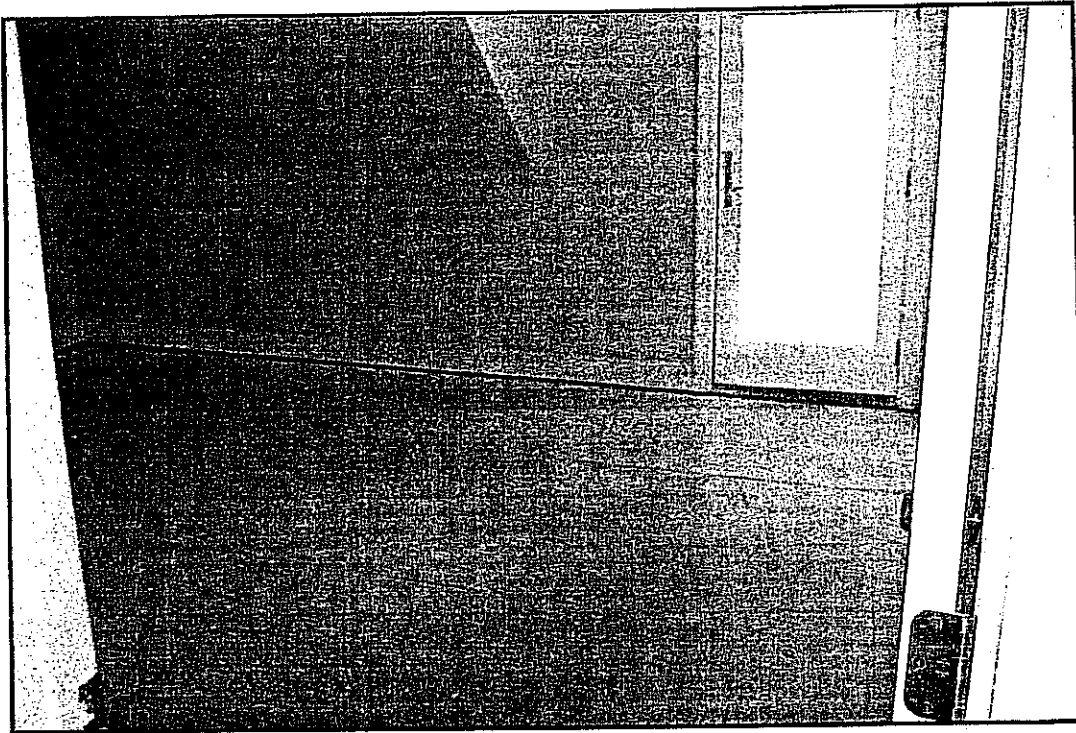


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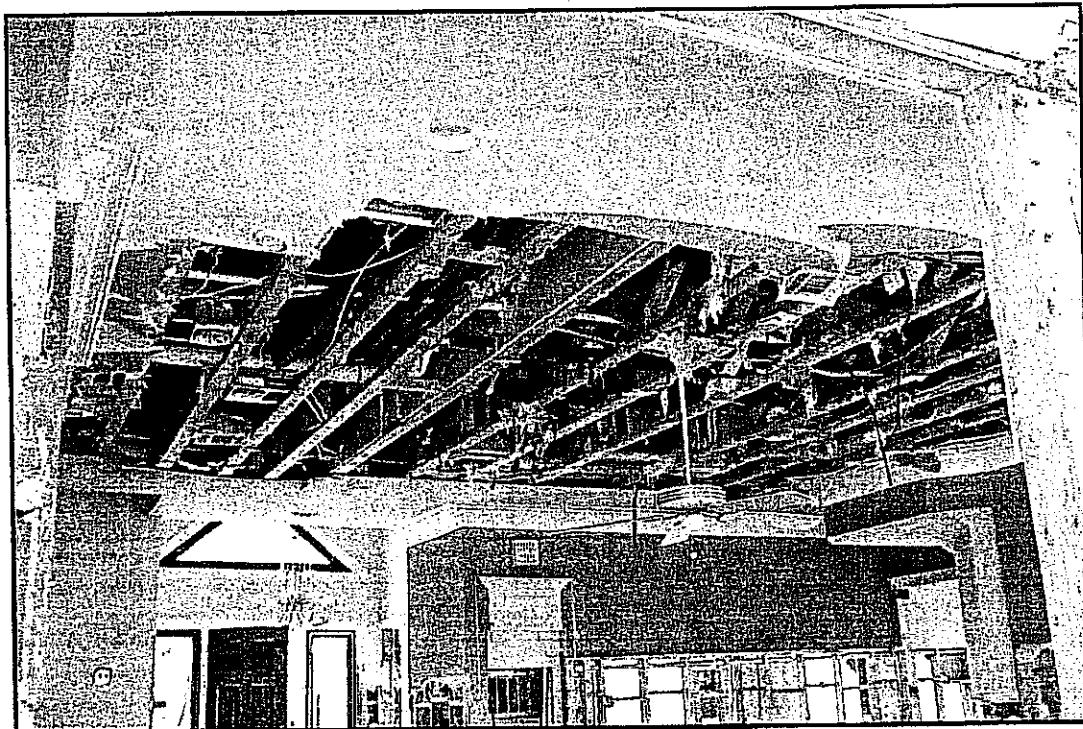


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Photograph 5

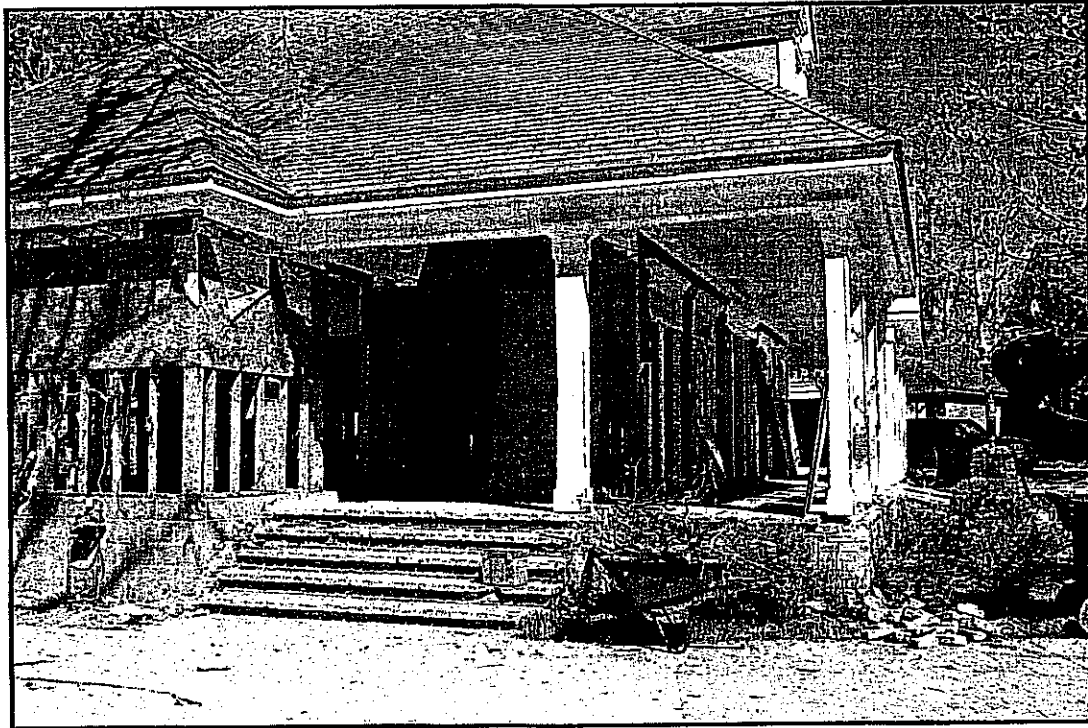


Photograph 6



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Photograph 7

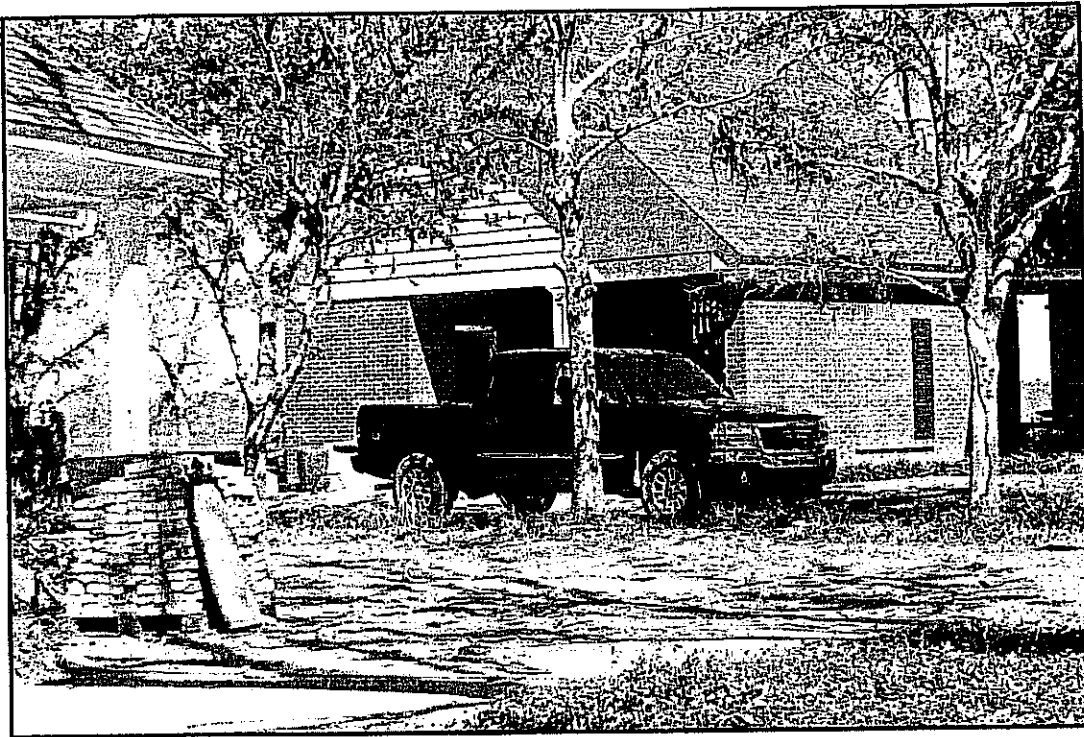


Photograph 8



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Claim/Policy No.: 24-2178-602/24-BX-4847-7
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Photograph 9

(P)(P)

(1)

21 August 2006 :

I am Thomas G. Mcintosh. My home at 2558 South Shore Drive, Biloxi, MS. was destroyed by flood/surge and wind ~~of~~ 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 covered some rental property all of which was insured by State Farm. All claims were paid according to the policies in effect and I am ~~is~~ satisfied that the adjustment and payment under three State Farm policies was done correctly. ~~and by my State Farm~~

I have been advised that parties other than State Farm have possession of copies of my State Farm engineering reports. I did not give anyone a copy of my report or authorize anyone to release my report to any third party, in writing but not limit to any member or organization 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 ~~claim~~


(P)(P)

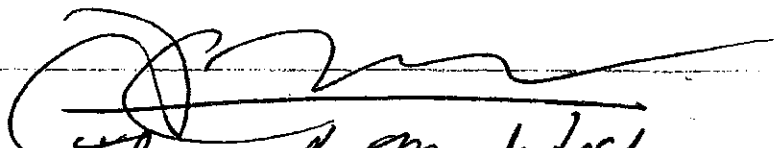
PHB

I have written to be Aggravating how ~~of~~ ^{of} informational
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
any 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 wish to
be party any such dispute; I do not have
any stake in the out come of any litigation
and I wish to be party to no stated
holder in such dispute or litigation. Put
another way I wish to be left alone.


Ken Turner
Witness


Thomas C. McIntosh

Dated: August 21, 2006

PHB 

CIVIL COVER SHEET

1.00010900 LTS RTW

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
THOMAS C. and PAMELA McINTOSH
(b) County of Residence of First Listed Plaintiff Harrison County, MS
(c) Attorney's (Firm Name, Address, and Telephone Number)
Scruggs Law Firm, P.O. Box 1136, Oxford, MS (662)281-1212

DEFENDANTS
State Farm Fire & Casualty Company and FORENSIC ANALYSIS & ENGINEERING CORPORATION
County of Residence of First Listed Defendant SOUTHERN DISTRICT OF MISSISSIPPI
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)
BY J. T. NOBLIN, CLERK DEPUTY

FILED
OCT 23 2006
J. T. NOBLIN, CLERK
DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF DEF
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE LTS (Judge Senter) DOCKET NUMBER 1:05cv559

DATE 10/20/2006 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY
RECEIPT # B024944 MOUNT \$350.00 APPLYING IFP JUDGE MAG. JUDGE