

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

THOMAS C. AND PAMELA )  
MCINTOSH, )  
 ) No. 1:06-cv-1080-LTS-RHW  
Plaintiffs, )  
 )  
v. )  
 )  
STATE FARM FIRE AND )  
CASUALTY COMPANY, )  
FORENSIC ANALYSIS & )  
ENGINEERING CORP., *et al.*, )

Defendants.

**DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY’S  
MOTION TO EXCLUDE TESTIMONY OF PATRICK J. FITZPATRICK**

Defendant State Farm Fire and Casualty Company (“State Farm”) moves pursuant to Federal Rules of Evidence 104, 402, 403, 702, and 703 to exclude the testimony of Plaintiffs’ expert Patrick J. Fitzpatrick from the trial of this action. Dr. Fitzpatrick offers opinions about probable wind speeds and surge/wave conditions at McIntosh property during Hurricane Katrina; however, he did not apply any reliable methodology to reach those opinions. Dr. Fitzpatrick reached his conclusions concerning wind velocity at the McIntosh property by manipulating H\*Wind data—based on actual measurements of surface winds—

using conversion factors of his own devising, which exceed the standard factors developed through scientific studies and employed by scientists in the field. Furthermore, in estimating wave activity atop the storm surge, Dr. Fitzpatrick did not use available computer modeling technology or manual calculations using standard equations—both accepted by the scientific community as reliable methods of estimating wave height—but simply made a subjective judgment concerning the wave height in the vicinity of the McIntosh residence. Dr. Fitzpatrick’s opinions do not satisfy the standard for expert opinions set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). For these reasons, as discussed in detail in State Farm’s memorandum in support of this motion, filed simultaneously herewith, Dr. Fitzpatrick’s testimony should be excluded from the trial of this action pursuant to Federal Rules of Evidence 104(a), 402, 403, 702, and 703.

**RESPECTFULLY SUBMITTED**, this the 9<sup>th</sup> day of November, 2007.

**BRYAN, NELSON, SCHROEDER, CASTIGLIOLA &  
BANAHAH**

**Post Office Drawer 1529**

**1103 Jackson Avenue**

**Pascagoula, MS 39568-1529**

**Telephone: (228)762-6631**

**JOHN A. BANAHAH, ESQ. (MSB# 1731)**

**HARRY BENJAMIN MULLEN, ESQ. (MSB# 9077)**

**MATTHEW E. PERKINS, ESQ. (MSB# 102353)**

**WEBB, SANDERS, & WILLIAMS, P.L.L.C.**

**363 NORTH BROADWAY**

**POST OFFICE BOX 496  
TUPELO, MISSISSIPPI 38802  
Telephone: (662) 844-2137  
DAN W. WEBB, MSB # 7051  
ROECHELLE R. MORGAN, MSB # 100621**

**By: /s/ Dan W. Webb  
DAN W. WEBB**

**CERTIFICATE OF SERVICE**

I, Dan W. Webb, hereby certify that on November 9, 2007, I electronically filed the foregoing *Defendant State Farm Fire and Casualty Company's Motion to Exclude Testimony of Patrick J. Fitzpatrick* with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

**Sidney A. Backstrom, Esquire  
Zach Scruggs, Esquire  
Richard F. Scruggs, Esquire  
Benjamin H. McGee, III, Esquire  
THE SCRUGGS LAW FIRM, P.A.  
Post Office Box 1136  
Oxford, MS 38655**

**Harlan F. Winn, III, Esquire  
BATTLE FLEENOR GREEN WINN & CLEMMER LLP  
505 N. 20th Street  
Suite 1150  
Birmingham, AL 35203**

**Larry Canada, Esquire  
Katherine Breard, Esquire  
GALLOWAY, JOHNSON, et al.  
701 Poydras Street, Suite 4040  
New Orleans, LA 70139**

**David A. Norris, Esquire  
H. Hunter Twiford, III., Esq.  
Christine Lipsey, Esquire  
MCGLINCHEY, STAFFORD  
P.O. Drawer 22949  
Jackson, MS 39225**

**Marshall H. Smith, Jr.  
BARRETT LAW OFFICES  
P.O. Box 987  
Lexington, MS 39095**

**Dewitt M. Lovelace, Esquire  
LOVELACE LAW FIRM, P.A.  
36474 Emerald Coast Parkway, Suite 4202  
Destin, FL 32541**

**Derek A. Wyatt, Esquire  
NUTT & MCALISTER, PLLC  
605 Crescent Blvd., Suite 200  
Ridgeland, MS 39157**

**Mary E. McAlister, Esq.  
NUTT & MCALISTER, PLLC  
605 Crescent Blvd., Suite 200  
Ridgeland, MS 39157**

**Michael C. Moore, Esquire  
MIKE MOORE LAW FIRM, LLC  
10 Canebrake Blvd.  
Flowood, MS 39232**

**George Shaddock, Esquire  
707 Watts Avenue  
Pascagoula, MS 39567**

**Michael R. Smith, Esq.  
William W. Taylor, III., Esq.  
ZUCKERMAN, SPAEDER  
1800 M Street, NW, Suite 1000  
Washington, DC 20036-5802**

**THIS, the 9<sup>th</sup> day of November, 2007.**

**/s/ Dan W. Webb  
DAN W. WEBB**