

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

MICHAEL PAYMENT, M.D.

PLAINTIFF

V.

Civil Action No. 1:07cv1003-LTS-RHW

STATE FARM FIRE AND CASUALTY
COMPANY

DEFENDANT

**PLAINTIFF'S RESPONSE TO STATE FARM'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

_____ COMES NOW, Plaintiff, Michael Payment, M.D. ("Dr. Payment"), by and through counsel, and files his Response to State Farm Fire and Casualty Company's ("State Farm") Motion for Partial Summary Judgment, and in support thereof, would respectfully show unto this honorable Court the following, to wit:

**PROOF IN SUPPORT OF PLAINTIFF'S RESPONSE
TO STATE FARM'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

The following exhibits are offered by Plaintiff in support of his Response to State Farm's Motion for Partial Summary Judgment:

EXHIBITS:

- A. Defendant's Supplemental Answers to 2nd Set of Interrogatories Propounded by Plaintiff
- B. Excerpts from the deposition of Howard Crosby
 - also attached are the following exhibits to this deposition:
 - Exhibit # 11 - unsigned denial of coverage letter
 - Exhibit # 12 - photograph of Dr. Payment's uncle's house
 - Exhibit # 13 - photograph of Dr. Payment's house
- C. Signed Denial of Coverage Letter
- D. Excerpts from the deposition of Michael Payment
 - also attached are the following photographs used in this deposition bearing Bates Numbers:
 - 0222-HO thru 0224-HO;
 - 0233-HO thru 0234-HO;
 - 0240-HO thru 0242-HO;

0323-HO; 0327-HO thru 0333-HO;
0336-HO thru 0338-HO;
0369-HO thru 0370-HO;
0372-HO; and 0376-HO

- E. Excerpts from the deposition of Brady Hyde
- F. Excerpts from the deposition of Mark Drain
 - also attached are the following exhibits to this deposition:
 - Exhibit # 5 - excerpts from State Farm Activity Log
 - Exhibit # 6 - signed denial of coverage letter
- G. Excerpts from the deposition of Mick Bergstrom
 - also attached is the following exhibit to this deposition:
 - Exhibit # 5 - photographs of Dr. Payment's house
- H. Supplemental Report of Plaintiff's Expert, Neil Hall
- I. Report of Plaintiff's Expert, Pat Fitzpatrick
- J. Photographs of Plaintiff's Residence taken by Howard Crosby
 - bearing Bates Numbers 0485-HO thru 0487-HO

INTRODUCTION

State Farm is not entitled to summary judgment on the issue of Plaintiff's claim for punitive and extra-contractual damages. As will be discussed in more detail below, in spite of State Farm's representations to the contrary, the undisputed facts clearly show that State Farm **DID NOT** thoroughly investigate Dr. Payment's claim and that State Farm acted with gross negligence and reckless disregard for the rights of Dr. Payment. Because of this, summary judgment is not appropriate.

FACTS

The first person from State Farm with whom Dr. Payment met was Brady Hyde. Brady Hyde was the adjuster who was working this claim from the standpoint of flood insurance. (*See page 6 of State Farm's Memorandum of Law in Support of its Motion for Partial Summary Judgment.*) While walking down the driveway toward Dr. Payment's house, Hyde commented to Dr. Payment

that it looked like a tornado had come through there (*See excerpts from the deposition of Michael Payment, attached hereto as Exhibit "D," pp. 76-77.*) Although not remembering this comment, Hyde testified that there were trees blown over all down the driveway and around the house; and it certainly looked to him like there had been some strong winds in the area. (*See excerpts from the deposition of Brady Hyde, attached hereto as Exhibit "E," pp. 58 and 78-79.*) Brady Hyde's adjustment of the flood damage claim is not at issue here. His observations are only mentioned in passing because they help underscore the fact that wind damage in the area was unmistakable and should not have been ignored by the others who came out there for State Farm.

To better visualize the destruction experienced by Dr. Payment, photographs of various parts of his property and the immediate area, along with the pages from his deposition where he discusses these photographs, are part of Exhibit "D" attached hereto. These photographs show views of the driveway to Dr. Payment's house, parts of the main house, the cottage and the summerhouse. They also show trees snapped off high and blown over. Damage to Dr. Payment's uncle's house, which was nearby, and another neighbor's house are depicted as well. From these photographs it is apparent that numerous trees were blown down or snapped off up high in this area, including across Dr. Payment's driveway and on top of his cottage. It also is clear that the roof is missing from the summerhouse, but the summerhouse remains standing. Significantly, the other houses in the area remain standing as well, thus showing that a powerful storm surge was not the destructive agent in this locale. Wind was the primary culprit. For easy reference, an index of the photographs by Bates number, what they show, and the pages in Dr. Payment's deposition where he discusses them, is set forth below:

<u>Bates #</u>	<u>Description of Photograph</u>	<u>Discussed in Dr. Payment's Deposition</u>
0222-HO	Driveway	Page 188
0223-HO	Driveway	Page 187
0224-HO	<i>Duplication</i>	Page 187
0233-HO	Ed's House	Page 187
0234-HO	Ed's House	Page 186-187
0240-HO	Trees down at Ted's barbecue house	Page 185
0241-HO	Picture of Driveway looking at the pool	Page 185
0242-HO	Summerhouse and the boathouse after the storm showing the roof gone	Page 185
0323-HO	Ted's House	Page 169
0327-HO	Closeup of the trees	Page 168
0328-HO	Southern view of downed trees; viewed from direction of pool looking back at Ted's house	Page 168
0329-HO	Downed trees; viewed from direction of pool looking back at Ted's house	Page 168
0330-HO	Several pine trees; damaged wooden structure at the end of the pool that housed the pump, a small shower and storage	Page 168
0331-HO	Large pine tree down at the swimming pool	Page 168
0332-HO	Trees overlying the cottage	Page 167-168
0333-HO	Northwest corner of the house	Page 167
0336-HO	East view of the yard from the house; view of the summerhouse	Page 164
0337-HO	East view along the bayou toward the summerhouse	Page 164
0338-HO	Location of where Payment's house stood looking back at the pool; water oaks obscuring the view of the pool	Page 163
0369-HO	Ted's house from the driveway	Page 137
0370-HO	Looking down the driveway with trees crossing and broken trees on the side	Page 137
0372-HO	Trees uprooted	Page 136
0376-HO	Southwest view of property demonstrating broken trees	Page 133

The cornerstone of State Farm's motion is State Farm's representation that it had a legitimate basis for its determinations as to what damage was caused by wind and what damage was caused by water, and that its investigation of Dr. Payment's homeowners insurance claim was adequate. (*State*

Farm's Memorandum of Law, at page 2). There are two (2) prongs to this investigation. The first prong has to do with the initial investigation which was conducted by Howard Crosby. The second prong has to do with the re-inspection done by Mick Bergstrom approximately one (1) month later. These will be discussed in detail below.

Investigation of Howard Crosby

In support of State Farm's assertion that it had a legitimate basis to deny this claim and that its investigation was adequate, State Farm proudly points to the actions of the adjuster who handled this claim, Howard Crosby of E.A. Renfroe, exclaiming that Mr. Crosby examined Dr. Payment's property on October 27, 2005, **and found no wind damage.** (*State Farm's Memorandum of Law, at p. 2*) Based on this, a denial of coverage letter was sent. (*Id.; also at p. 6*).

While it is true that Mr. Crosby was assigned the task of investigating Dr. Payment's claim, and that, based on his investigation, Dr. Payment's claim was denied, **it is absolutely not true - in fact, it is undisputed, that Crosby did not thoroughly investigate this claim.**

Crosby's handling of Dr. Payment's claim is discussed in detail in his deposition. A copy of the condensed version of his deposition, pages 184-233, is attached hereto as Exhibit "B." The first thing to know about how this claim was handled is that during his "investigation" of Dr. Payment's claim, Crosby examined three (3) different houses. (*Exhibit "B," pp. 227-233.*) The first house Crosby inspected turned out to be a house belonging to Dr. Payment's uncle. (*Id.; pp.184-217; also see pp. 222-223*¹.) After inspecting this first house for about one hour, and without

¹Exhibit 12 to the Deposition of Howard Crosby was a composite exhibit consisting of many photographs which Dr. Payment submitted to State Farm for reconsideration of his claim. There is no need to attach all of those pictures, so only one page of Exhibit 12 showing the uncle's house is attached here for reference purposes. The uncle's house is also discussed by Dr. Payment in his deposition, portions of which are attached hereto as Exhibit "D," and depicted in some of the photographs that accompany that exhibit.

attempting to make any determination as to what damage below the water line on this house was caused by wind, Crosby recommended that Dr. Payment's claim be denied. (*Id.*).

Crosby then drafted a Denial of Coverage letter to go to Dr. Payment and to be signed by his Team Manager, Mark Drain ("Drain"). (*Exhibit "B," pp. 202-205.*) It cannot be emphasized enough that the initial denial of Dr. Payment's claim by State Farm by letter dated November 1, 2005, and signed by Mark Drain, was based on Crosby's "inspection" of a house which did not belong to Dr. Payment. (An unsigned version of this denial of coverage letter is attached to Howard Crosby's deposition as Exhibit 11, which is part of Exhibit "B" to this Response. The signed version of this Denial of Coverage letter is attached hereto as Exhibit "C," and it is identified and attached as Exhibit 6 to the deposition of Mark Drain, which is attached hereto as Exhibit "F.")

After recommending the denial of Dr. Payment's claim based on his inspection of the wrong house, Crosby had a conversation with Dr. Payment about the status of this claim. During this conversation, Crosby was made aware of the fact that he had indeed looked at the wrong house. (*See Exhibit "B," pp. 216-217.*) Crosby testified that he immediately called Mark Drain and explained to him that he had looked at the wrong house and that they needed to hold up on whatever was in process, i.e., the denial of coverage. (*Id.*)

Dr. Payment's recollection of this conversation with Mr. Crosby is even more striking. According to Dr. Payment, Crosby told him that he knew how high the water got and he was only going to assess damage above that water line. (*See Exhibit "D," pp. 82-84.*) This, of course, is exactly what Crosby had done when assessing the first house he looked at in conjunction with this claim, that being Dr. Payment's uncle's house. (*See Exhibit "B," pp. 184-217; also see pp. 222-223.*)

Crosby then went back down Payment Lane. This time when he went down Payment Lane, he noticed another house which he had seen before, but which now bore the address of 5012 Payment Lane, the same address as the insured property belonging to Dr. Payment. (*Exhibit "B," pp. 217-224*). Even though this second house was not in the same location as the house described by Dr. Payment as the insured property, because it bore the same address as the insured property, Crosby inspected it. (*Id.*) According to Crosby, this second house definitely had wind damage. (*Id.*) Recognizing that this second house had wind damage, Crosby photographed it, took measurements, and wrote up repair estimates. (*Id.*) Moreover, when Crosby spoke to Drain about this second house, Drain told him to submit his estimate based on his review of the house that fit the address contained in the loss notice he was investigating; i.e., Dr. Payment's, so that is what Crosby did. (*Exhibit "B," pp. 224-225*).

The next thing Crosby did on this same visit down Payment lane was to proceed further down Payment Lane to the location of the house described to him by Dr. Payment as being the insured property. This is the third house that he looked at in conjunction with Dr. Payment's claim. (*Exhibit "B," pp. 229-233; also see pp. 221-225*)². It was at this time that Crosby actually found the house belonging to Dr. Payment which was the subject of this claim. Crosby testified that he took three (3) or four (4) photographs of the roof of Dr. Payment's house.³ (*Exhibit "B," pp. 223-224*).

² Just as with Exhibit 12 to the Deposition of Howard Crosby, Exhibit 13 to Crosby's deposition is a composite exhibit. Only one page of Exhibit 13 showing Dr. Payment's house, which was the third house looked at by Crosby, is attached here for reference purposes. Other photographs of Dr. Payment's house can be found in Exhibit 5 to the deposition of Mick Bergstrom attached hereto as Exhibit "G."

³ Recently, State Farm finally identified the three (3) photographs of Dr. Payment's correct house which were taken by Crosby. (*See Defendant's Supplemental Answers to Second Set of Interrogatories Propounded by Plaintiff, attached hereto as Exhibit "A"*). Of course, Crosby also took pictures and made notes of the other houses he looked at during his investigation of Dr. Payment's claim. (*Exhibit "B," pp. 184 217; also see pp. 223 223, 224 225.*) All of these notes and photographs were submitted to State Farm by Crosby under the same claim number which was the one for Dr. Payment's claim for damages. (*Id. at pp. 227 229; also see p. 233*) Also of significance is the fact that Crosby

However, and of extreme significance in this case, **Crosby made absolutely no determinations or recommendations one way or the other with respect to how this claim should be handled relative to this third house** which did belong to Dr. Payment and which was the subject of this claim. (*Exhibit "B," pp. 226, 230-235*). In other words, Crosby made no attempt to analyze Dr. Payment's claim for damages with respect to the correct house. Nevertheless, Dr. Payment's claim was denied.⁴

Crosby's own testimony irrefutably demonstrates that **he did not thoroughly investigate Dr. Payment's claim AT ALL**. He spent most of his time looking at the wrong houses. His recommendation of a denial of coverage, and the letter itself, were based on his inspection of the wrong house. Then, when he finally found the correct house, he did not do any analysis on it whatsoever. **Everything that Mr. Crosby did relative to this claim**, including all of the photographs he took and all of the documents he generated, **laid the predicate for State Farm's denial of Dr. Payment's claim**; yet everything Crosby did, by his own testimony, shows an unequivocal lack of thoroughness in this investigation, a decided lack of certainty regarding this investigation and the complete absence of a reasonable basis to deny this claim.

Mark Drain, Crosby's State Farm Team Manager, relied on Crosby's work in investigating

made notations on the photographs which he took of these three (3) houses. (*Exhibit "B," p. 229*). Apparently it was clear from these notations that these were different houses. (*Exhibit "B," p. 229*). Nevertheless, State Farm has not provided us with any information about these relevant documents that are part of the handling of Dr. Payment's claim; and information concerning them is the subject of Plaintiff's pending Motion to Compel. The photographs identified by State Farm as having been taken by Howard Crosby are attached hereto as composite Exhibit "J."

⁴ State Farm's Supplemental Answers to Plaintiff's Second Set of Interrogatories show that the photographs taken by Crosby of Dr. Payment's house were uploaded on the State Farm computer on October 30, 2005 (*See Exhibit "A"*). This is the same day that Crosby recommended that Payment's claim be denied. Either Crosby recommended denial of this claim after photographing Payment's house, but knowing that he had not analyzed it for wind damage, or Drain, after being told by Crosby that Crosby had recommended denial on the wrong house and the denial should not be sent yet, sent the denial letter anyway. Either way the result is the same: State Farm was grossly negligent in its handling of Dr. Payment's claim.

this claim. He relied on Crosby to inspect the property, assess the site and make his recommendations concerning the claim. Drain made no independent review of Dr Payment's property himself. However, he did look at the photographs taken by Crosby, most of which apparently had to do with the wrong house. Based on all of this, the claim was denied. (*See deposition of Mark Drain, Exhibit " F," pp. 122-123.*) Significantly, Drain admitted that if this denial of coverage letter from Crosby was based on an inspection of the wrong house, then that would not be a thorough investigation of the claim. (*Id. at p. 130-131.*) Likewise, if Crosby did not look for wind damage below the water line, that would not be a thorough investigation of the claim. (*Id.*) Furthermore, if Crosby looked at Dr. Payment's house but did not evaluate it, that would not constitute a thorough investigation of Dr. Payment's claim. (*Id. at p. 132.*) Thus, even by the testimony of State Farm's Team Manager, Mark Drain, the actions of Crosby in investigating this claim **DO NOT CONSTITUTE** a thorough investigation.

Investigation of Mick Bergstrom

State Farm next asserts that one of its trainer's, Mick Bergstrom, re-inspected the property on November 21, 2005, and that Bergstrom found no wind damage either. However, Bergstrom's actions on behalf of State Farm are no better than the baseless denial of November 1, 2005. When Bergstrom went to the Payment property on November 21, 2005, he met with Dr. Payment. Dr. Payment let Bergstrom look over the property. When Bergstrom had finished, he told Dr. Payment that he felt like the damage to Dr. Payment's house was completely due to water. (*See deposition of Michael Payment, Exhibit "D," pp 85-86*). In response, Dr. Payment challenged Bergstrom's decision, and specifically showed him areas demonstrating that high winds had been in the area, such as trees snapped off up high. He also specifically showed Bergstrom areas of damage to his house

which obviously were caused by wind, such as a portion of his metal roof which was curled back⁵ and a ceiling fan that was all ripped up. (*Id.*) Even after being shown these areas of wind damage, Bergstrom refused to look any closer. He simply told Dr. Payment that this is what his report was going to say, i.e., that the whole house was damaged by water, and that Dr. Payment could just get a lawyer.⁶ (*Id.*)

Although State Farm wants this Court to believe that Bergstrom thoroughly inspected Dr. Payment's property too, that is not the case. Bergstrom certainly did not do a thorough job. The evidence clearly demonstrates that he was shown obvious areas of wind damage, but simply chose to ignore them. In fact, after these were specifically shown to him, he did not bother to look any further. He did nothing but deny the claim!

There can be no logical argument that the curled back metal roof which Dr. Payment showed Bergstrom was caused by anything other than high level winds. This was corroborated by State Farm's own experts. (*See the Report of Mark Watson, Exhibit "D" to State Farm's Motion for Partial Summary Judgment, p. 16 of 24 of the Report.*) In fact, State Farm's own experts, who did not review this claim until after this lawsuit was filed, recognized that Dr. Payment did indeed suffer wind damage based on the photographic evidence Dr. Payment provided. (*Id. at pp. 22-23 of 24.*)

Had Bergstrom been proceeding in good faith and with Dr. Payment's best interests at heart, as he should have been, the obvious presence of high winds in the area and the presence of wind damage to Dr. Payment's property should have prompted Bergstrom to look more closely at this

⁵ The curled back metal roof shown to Bergstrom by Dr. Payment can be seen on p. 65 of composite Exhibit 5 to the deposition of Mick Bergstrom, which is attached hereto as Exhibit "G," Bates # 0267 HO and 0268 HO. The curled back metal roof, along with other indications of wind damage, also are discussed by Dr. Payment in his deposition, Exhibit "D" at pp. 80 83, 181, 195.

⁶Bergstrom denied making this statement when questioned about it during his deposition.

property. To be certain, he should have sought the help of an independent engineer to examine this claim. This was available to him, but he chose not to pursue this either. (*Id. pp. 127-128.*) In short, the evidence shows that Bergstrom did not do a thorough job investigating this claim.

What Bergstrom did instead was essentially thumb his nose at Dr. Payment. In essence the message Bergstrom conveyed to Dr. Payment was: *I don't care what you show me; and I don't care what you think. My report is going to say that water was the entire cause of your damages, and if you don't like it, then you can just get yourself a lawyer.* Thus, having been denied by his insurer, and with no other options, Dr. Payment did indeed hire a lawyer.

After Dr. Payment hired a lawyer, it was eventually determined that State Farm did not have much of a claim file, including photographs and notes concerning Dr. Payment's property relative to his claim, even though the claim had been denied. Consequently, many photographs of Dr. Payment's property, both before and after Katrina, were sent to State Farm. (*See Exhibit 5 to the deposition of Mark Drain, Bates No. 0523-HO, for Activity Log entry dated 7/05/07.*) Even after receiving these photographs, State Farm denied Dr. Payment's claim again. (*Id., for Activity Log entry dated 7/06/07.*) Finally, State Farm, through another one of its adjusters, Hiram Esparza, was able to find some minor wind damage two (2) years after the claim had been submitted. (*Id., for Activity Log entries of 7/17/07 by Hiram Esparza, found on Bates # 0549-HO - 0550-HO.*) This, however, did not account for all of the wind damage that had occurred.

As further evidence of the presence of wind damage, Dr. Payment's experts also have expressed opinions that high level winds came through this area and did substantial damage to Dr. Payment's property before the flood waters rose and ruined what salvageable property was left. (*See the Supplemental Report of Plaintiff's expert, Neil Hall, attached hereto as Exhibit "H;" also see*

the Report of Plaintiff's expert, Pat Fitzpatrick, attached hereto as Exhibit "I.") While the extent of wind damage may still be at issue, the presence of wind damage is not, though it took State Farm nearly two (2) years to acknowledge that.

Regardless, the evidence clearly shows that State Farm failed to perform an adequate investigation of Dr. Payment's claim and that State Farm did not have a legitimate or arguable basis for its complete denial.

LAW AND ARGUMENT

State Farm Denied Dr. Payment's Claim Without an Arguable Basis for Doing So, Which Denial Was Grossly Negligent and Disregard for Dr. Payment's Rights as an Insured

If this Court concludes that reasonable minds could differ regarding whether State Farm acted in bad faith in the adjustment and denial of Dr. Payment's claim, then this Court must send the issue of punitive damages to the jury. *Broussard v. State Farm Fire and Casualty Co.*, 523 F.3d 618, 627 (5th Cir. 2008). Under Mississippi law, insurers have a duty "to perform a prompt and adequate investigation and make a reasonable, good faith decision based on that investigation," and may be liable for punitive damages for denying a claim in bad faith. *Broussard*, 523 F.3d at 627-28.

The now familiar standard which an insured must satisfy in order to recover on a claim of punitive damages for bad faith denial of their insurance claim is that the insured must show that the insurer denied the claim (1) without an arguable or legitimate basis, either in fact or law, and (2) with malice or gross negligence in disregard of the insured's rights. *Id* at 628; *U. S. Fid. & Guar. Co. v. Whigginton*, 964 F.2d 487, 492 (5th Cir. 1992). The question of whether State Farm had an arguable basis for denying Dr. Payment's claim is an issue of law for this Court.

It is undisputed that the E. A. Renfrow adjuster who was initially retained by State Farm to

adjust Dr. Payment's homeowner's claim, Howard Crosby, never inspected Dr. Payment's residence or made any determinations or recommendations to State Farm of whether Dr. Payment's residence sustained wind damage, which would be covered under the State Farm policy. Howard Crosby has testified unequivocally that although he inspected, photographed and made recommendations regarding two other structures, he *never* adjusted the claim for loss on the property that is the subject of this litigation. As testified to by Mr. Crosby:

Q. And what did you do with respect to the house that is depicted in Exhibit 13 [Dr. Payment's home]?

A. I did not do anything with that house at all.

Q. Nothing?

A. Nothing. I explained the circumstances to my team manager, and that is the last instructions I got.

* * * *

Q. But you made no recommendations one way or the other, is that correct?

A. That's correct.

* * * *

Q. But you made no recommendations with respect to what should happen with that claim on that house, correct?

A. That's correct, sir.

(See Exhibit "B," pp. 226, 230, 232)

It is difficult to comprehend how denial of Dr. Payment's claim could have an arguable, legitimate basis in the absence of any adjustment at all. State Farm contends that Mick Bergstrom's re-inspection of the property on November 21, 2005, constitutes an arguable basis for their denial

of Dr. Payment's claim. However, Mr. Bergstrom's "re-inspection" was nothing more than a re-affirmance of State Farm's denial, despite Dr. Payment's pointing out to him obvious wind damage to the metal roof of the first floor of the structure, snapped off trees and other evidence of damage from high winds. Mr. Bergstrom simply informed Dr. Payment that State Farm was going to continue to stand on its denial of his claim, and that Dr. Payment "could get a lawyer." (*Testimony of Dr. Payment, pp. 85-86, attached hereto as Exhibit "D."*) This can in no way be construed as a meaningful re-inspection or adjustment of Dr. Payment's claim, which undisputedly was never adjusted by the initial adjuster, Howard Crosby. Indeed, once Dr. Payment did retain counsel and filed suit, State Farm's retained experts were able to easily determine from simply reviewing photographs of the residence that Dr. Payment did have an uncompensated claim for wind damage. State Farm's admission that "subsequent investigation during the re-evaluation process uncovered credible evidence that some separate and independent wind damaged Plaintiff's property" (State Farm brief, p. 12), coupled with the undisputed fact that the first adjuster, Crosby, never inspected Dr. Payment's residence or made any recommendations at all regarding whether Dr. Payment's residence sustained wind damage prior to the storm surge, absolutely establishes that State Farm denied Dr. Payment's claim without an arguable or legitimate basis. This constitutes gross negligence. A reasonable hypothetical trier of fact could certainly find that under the facts and circumstances of this case, State Farm denied Dr. Payment's claim without an arguable basis after conducting a totally inadequate investigation which rose to the level of gross negligence.

**State Farm's Negligent Claim Investigation
Gives Rise to a Claim for Punitive Damages**

Even assuming *arguendo*, that State Farm had an arguable reason to deny Dr. Payment's

claim, this does not end the inquiry. Mississippi courts have held that insureds may recover punitive damages even though their insurer had an arguable basis for denying their claim when the insurer's behavior in handling the claim breaches an implied covenant of good faith and fair dealing and rises to the level of an independent tort. *Broussard*, 523 F.3d at 630; *Lewis v. Equity Nat'l Life Ins. Co.*, 637 So. 2d 183, 185 (Miss. 1994); *Stewart v. Gulf Guar. Life Ins. Co.*, 846 So. 2d 192, 204 (Miss. 2002). As stated by the *Broussard* Court, "[t]o qualify for punitive damages for negligent claim investigation, the level of negligence in conducting the investigation must be such that a proper investigation by the insurer would easily adduce evidence showing its defenses to be without merit." *Id.* at 630. This is in fact what did occur. Howard Crosby admittedly did not adjust Dr. Payment's claim. Next, Mr. Bergstrom simply continued to stand upon State Farm's initial denial without considering clear evidence to the contrary. However, after Dr. Payment retained a lawyer, a State Farm adjuster did find some wind damage. Then, after suit was filed, State Farm retained experts who were able to immediately determine, simply based upon photographs of Dr. Payment's residence, that the residence had sustained wind damage. Now, State Farm admits that its "subsequent investigation during the re-evaluation process uncovered credible evidence that some separate and independent wind damaged Plaintiff's property." (State Farm's brief, p. 12) Thus, proper investigation, once done by State Farm, did easily adduce evidence showing that its prior denials were without merit. Nevertheless, this was only done after Dr. Payment was forced to retain legal representation and undergo the expense of pursuing litigation to hold State Farm to its contractual duties.

Dr. Payment has established a genuine issue of material fact that State Farm was grossly negligent in its investigation of his claim, and has clearly demonstrated that once State Farm made

an attempt to properly adjust his claim, State Farm's denial was shown to be without merit, State Farm's Motion for Partial Summary Judgment should be denied.

**Summary Judgment is Not Appropriate on Dr. Payment's
Claim for Extra-Contractual Damages**

Mississippi case law provides for more than one form of damages when an insurance company has tortiously breached its contract. Two separate categories of damages are recognized. Punitive damages are available for egregious conduct (which Dr. Payment contends occurred here), and, a lesser level of damages is appropriate where an insurer lacks an arguable basis for delaying or denying a claim, but the conduct is not sufficiently egregious to justify the imposition of punitive damages. This second level of damages is an intermediate form of relief between simply receiving incidental costs of suit and punitive damages. *Essinger v. Liberty Mutual Fire Ins. Co.*, 354 F.3d 450 (5th Cir. 2008); *Fowler v. State Farm Fire and Casualty Co.*, 2008 WL 3050417 (S.D. Miss. July 25, 2008). Thus, Mississippi law recognizes that negligent conduct of an insurance company can justify recovery of expenses and attorneys fees. *Essinger*, 534 F.3d 450 at 451. State Farm's Motion for Partial Summary Judgment fails to address Dr. Payment's claim for extra-contractual damages, as opposed to punitive damages, and accordingly State Farm's Motion for Partial Summary Judgment should be denied for failure to demonstrate that it is entitled to judgment as a matter of law on this "second tier" of damages.

Dr. Payment contends that sufficient proof to support his claim for punitive damages has been demonstrated as a matter of law. However, assuming *arguendo* that this court finds to the contrary, State Farm is absolutely not entitled to summary judgment on the issue of extra-contractual damages, such as attorney's fees and other expenses, as State Farm has undeniably breached its

contract with Dr. Payment, irrespective of whether this court finds that bad faith has been established as a matter of law.

**State Farm's Motion for Partial Summary Judgment as
to Punitive Damages is Premature**

Any determination of whether Dr. Payment is entitled to punitive damages as a result of the State Farm's bad faith denial of his claim would occur only after a determination of coverage and damages in the liability phase of a trial. Mississippi law does not permit parties to recover punitive damages until they first prove they are entitled to compensatory damages. Miss. Code Ann. § 11-1-65(1)(b)-(c) Accordingly, whether Dr. Payment can prevail on his claim of punitive damages based upon State Farm's bad faith denial and negligent claim handling is an issue which is not properly before the Court at this time and should be addressed after a trial on the initial liability issue.

For these reasons, genuine issues of material facts exist as to the issues raised by State Farm in its Motion for Partial Summary Judgment, and State Farm is not entitled to a judgment as a matter of law on the issues of punitive damages and extra-contractual damages. Therefore, State Farm's Motion for Partial Summary Judgment should be denied.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Michael Payment, M.D., respectfully requests that the Court deny State Farm's Motion for Partial Summary Judgment.

RESPECTFULLY SUBMITTED, this the 31st day of October, 2008.

MICHAEL PAYMENT, M. D.

BY: s\Martin R. Jelliffe
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CERTIFICATE OF SERVICE

I, Martin R. Jelliffe, one of the attorneys for Michael Payment, M.D., hereby certify that on October 31, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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10-22

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

MICHAEL PAYMENT, M.D.

PLAINTIFF

VERSUS

1:07CV1003LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

**DEFENDANT'S SUPPLEMENTAL ANSWERS TO SECOND
SET OF INTERROGATORIES PROPOUNDED BY PLAINTIFF**

COMES NOW the Defendant, STATE FARM FIRE AND CASUALTY COMPANY,
by and through its counsel of record and files this its Answers to Second Set of Interrogatories as
follows, to-wit:

INTERROGATORY NO. 13: Please state whether State Farm still has in its possession
the documents, information and photographs generated by Howard Crosby? If your answer to this
interrogatory is no, then please explain with specificity what happened to each of these things and
when.

ANSWER NO. 13: State Farm is unable to locate the requested documents. This Defendant
is unsure of the location of the requested documents.

SUPPLEMENTAL ANSWER NO. 13: State Farm has located photographs of the
Plaintiff's residence taken by Howard Crosby, as identified through a customized search of
documents uploaded by Mr. Crosby during the time frame of his inspection of the Plaintiff's
property. The three (3) identified photographs of the Plaintiff's residence are in the previously
produced claim file as Bates stamped documents 0485- HO to 0487-HO. State Farm has no
knowledge as to the existence of any other "documents" or "information" generated by Howard
Crosby other than what is included in the previously produced claim file.

Exhibit "A"

INTERROGATORY NO. 14: Please identify any documents, e-mails, electronic transmissions or electronic images which evidence or reflect what happened to the documents, information and photographs generated by Howard Crosby during his investigation of the subject claim for damages.

ANSWER NO. 14: Activity Log entry no. 8 [Bates No. 0541-HO in the claim file previously produced], entered by Howard Crosby on October 30, 2005, reflects that photographs of the risk were uploaded. There are no other documents responsive to this Interrogatory.

SUPPLEMENTAL ANSWER NO. 14: Activity Log entry no. 8 [Bates No. 0541-HO in the claim file previously produced], entered by Howard Crosby on October 30, 2005, reflects that photographs of the risk were uploaded. Additionally, the Image List Details Report [Bates No. 0512-HO in the claim file previously produced] indicates that three (3) photographs of the risk were uploaded on October 30, 2005. The images that correspond to the October 30, 2005 upload are located at 0485- HO to 0487-HO, in the claim file that was previously produced.

Respectfully submitted,

BRYAN, NELSON, SCHROEDER,
CASTIGLIOLA & BANAHAN, PLLC
Attorneys for Defendant,

STATE FARM FIRE & CASUALTY COMPANY

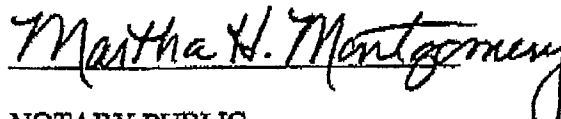
BY: 
DANNYE SMITH

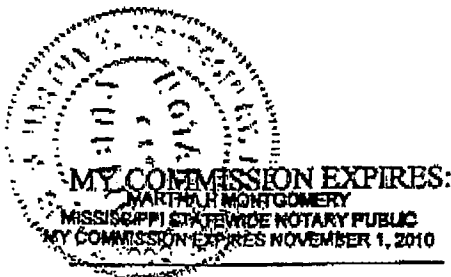
STATE OF MS
COUNTY OF Lamar

PERSONALLY APPEARED BEFORE ME, the undersigned authority, in and for the jurisdiction aforesaid, the within named, DANNYE SMITH, Team Manager, for and on behalf of STATE FARM FIRE & CASUALTY COMPANY, who after being duly sworn, states on oath that certain of the matters stated therein are not within the personal knowledge of the deponent, that the facts stated therein have been assembled by authorized employees and counsel for State Farm Fire and Casualty Company, and deponent is informed that the facts contained in the above and foregoing Answers of Defendant, State Farm, to Interrogatories are true and correct as therein stated to the best of his knowledge and belief and that he has full authority to speak on behalf of STATE FARM FIRE & CASUALTY COMPANY.


DANNYE SMITH, Team Manager

SWORN TO AND SUBSCRIBED BEFORE ME, this the 22nd day of October, 2008.


NOTARY PUBLIC




CERTIFICATE OF SERVICE

I, **MATTHEW E. PERKINS**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing **DEFENDANT'S ANSWERS TO SECOND SET OF INTERROGATORIES PROPOUNDED BY PLAINTIFF** to:

Eugene R. Naylor, Esq.
Charles H. Russell, III, Esq.
Martin R. Jelliffee, Esq.
Wise, Carter, Child, & Caraway
600 Heritage Building
401 East Capitol Street
Post Office Box 651
Jackson, MS 39205

DATED, this the 22nd day of October, 2008.



MATTHEW E. PERKINS

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

MICHAEL PAYMENT, M.D. PLAINTIFF

VS. Civil Action No. 1:07cv1003-LTS-RHW

STATE FARM FIRE AND CASUALTY
 COMPANY DEFENDANT

VOLUME 2

Continued
 DEPOSITION OF: HOWARD CROSBY

DATE: June 18, 2008

TIME: 9:30 a.m. - 4:20 p.m.

PLACE: 100 South Ashley Drive,
 Suite 1900
 Tampa, Florida

PURSUANT TO: Notice by counsel for
 Plaintiff for purposes of
 discovery, use at trial or
 such other purposes as are
 permitted under the Florida
 Rules of Civil Procedure

BEFORE: Cathleen Camacho,
 Certified Court Reporter
 Notary Public, State of
 Florida

Pages 174 - 242

EXHIBIT
"B"

ORIGINAL

1 APPEARANCES:

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12
13 I N D E X

14	DIRECT EXAMINATION BY MR. JELLIFFE	Page 177
15	CERTIFICATE OF OATH	Page 240
16	REPORTER'S CERTIFICATE	Page 241
17	ERRATA SHEET	Page 242

18
19 E X H I B I T S

20	Plaintiff's	Description	Marked
21	10	Activity Log	Page 199
22	11	Unsigned Letter Dated 11/1/05	Page 204
23			
24	12	Composite photographs	Page 208
25	13	Composite photographs	Page 209

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E X H I B I T S

Plaintiff's	Description	Marked
14	Itemized list Bates Nos. 00142-00145	Page 227
15	Bill	Page 234

<p>182</p> <p>1 someone when I was there --</p> <p>2 Q. Okay.</p> <p>3 A. -- for several reasons.</p> <p>4 Q. Okay.</p> <p>5 A. The next day I punched his address in --</p> <p>6 I had five claims. Remember, I always started with</p> <p>7 five every day.</p> <p>8 Q. Uh-huh.</p> <p>9 A. Of course some of them drifted over, but</p> <p>10 nevertheless. I left the next morning. I left and at</p> <p>11 about 9:30, my cell phone rang, and a female on the</p> <p>12 other end informed me that Mr. Payment was hung up in</p> <p>13 traffic trying to get out of New Orleans and would be</p> <p>14 unable to --</p> <p>15 Q. Okay.</p> <p>16 A. -- to meet me. And I am not sure if it</p> <p>17 was Mr. Payment was hung up in traffic or his son or</p> <p>18 sons was hung up in traffic. Whoever was supposed to</p> <p>19 meet me was hung up and was not going to make the</p> <p>20 appointment.</p> <p>21 Q. Okay.</p> <p>22 A. I proceeded down -- I will have to use</p> <p>23 some terms now that we are going to have to identify.</p> <p>24 I traveled down the hard road, meaning a</p> <p>25 road that is on my GPS, following Mr. Payment's</p>	<p>184</p> <p>1 So you were taking me through your conversations, and</p> <p>2 you were going to meet with him, that you have just</p> <p>3 been telling me --</p> <p>4 A. Okay.</p> <p>5 Q. -- and they just called, like you have</p> <p>6 just been telling me.</p> <p>7 A. Right.</p> <p>8 Q. And whoever it was was not able to meet</p> <p>9 you. So you went to the property on your own.</p> <p>10 A. That is true.</p> <p>11 Q. So finish telling me about that, please.</p> <p>12 A. Okay. The instructions were to drive to</p> <p>13 the end of the dirt road, and I would see a driveway</p> <p>14 on my left, and I would also see through the trees a</p> <p>15 two-story, wood frame, Wedgewood blue -- my color,</p> <p>16 Wedgewood blue. I don't think they gave me that</p> <p>17 color.</p> <p>18 Q. Okay.</p> <p>19 A. It was a slate blue house, and that was</p> <p>20 the address that I needed. I had no reason to doubt</p> <p>21 that. I parked my truck at the end of the road. I</p> <p>22 could see a house through the trees. I went to the</p> <p>23 house and --</p> <p>24 Q. The blue house, you are talking about?</p> <p>25 A. Yes, sir.</p>
<p>183</p> <p>1 instructions.</p> <p>2 Q. Okay. Do you remember what the name of</p> <p>3 that road was?</p> <p>4 A. I think it was Arcadia Farm Road, but I</p> <p>5 am not certain.</p> <p>6 Q. Okay.</p> <p>7 A. You must realize there are no street</p> <p>8 signs.</p> <p>9 Q. I realize.</p> <p>10 A. Okay. I followed the gentleman's</p> <p>11 instructions, and at the appropriate mile marker on my</p> <p>12 odometer, there was a dirt road off to my left --</p> <p>13 Q. Okay.</p> <p>14 A. -- which fit the description that the man</p> <p>15 had given me.</p> <p>16 Q. Okay.</p> <p>17 A. His -- have I finished answering the</p> <p>18 question yet, or am I just continuing on?</p> <p>19 Q. You are answering the question.</p> <p>20 MS. SERAFIN: Can you remind him what the</p> <p>21 question was?</p> <p>22 A. Or otherwise I am liable to give you a</p> <p>23 lecture.</p> <p>24 Q. Yeah. I want you to take me through your</p> <p>25 conversations with the insured and meeting with him.</p>	<p>185</p> <p>1 Q. Okay.</p> <p>2 A. -- to the blue house, two-story frame</p> <p>3 house, which matched the description of where I was</p> <p>4 supposed to go.</p> <p>5 Q. Okay.</p> <p>6 A. And then performed the exercises that I</p> <p>7 would normally perform when I was going to look at a</p> <p>8 claim.</p> <p>9 Q. All right. And what did you do?</p> <p>10 A. This house had been damaged by water,</p> <p>11 rising water. The first thing I did was go in --</p> <p>12 photograph the house from four different elevations.</p> <p>13 I could go all the way around this house.</p> <p>14 Q. Uh-huh.</p> <p>15 A. I then went inside the lower floor, which</p> <p>16 was completely destroyed. The structure was still</p> <p>17 standing, and it did not appear to be damaged. It was</p> <p>18 built on pilings, but the house itself was using the</p> <p>19 lower floor as a residence.</p> <p>20 Q. Okay.</p> <p>21 A. So that is one of the reasons the house</p> <p>22 was -- withstood so much.</p> <p>23 Q. Okay.</p> <p>24 A. The interior was totally -- like it had</p> <p>25 been -- it was just swished around, and it was</p>

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1 destroyed. The insulation was missing out of the
2 ceiling.

3 I claimed the stairs to the second floor,
4 and I observed a water line roughly six inches below
5 the eight-foot ceiling. That would have placed the
6 water line at a very precise place in this house. It
7 was very evident throughout the entire second floor
8 where the water line was.

9 Q. Okay.

10 A. I photographed the second floor. I then
11 went outside, and I took my ladder -- and I believe it
12 would have been the west side of the house, but I am
13 not certain. There was a second-story landing that
14 protruded out and had stairs that came down to the
15 ground.

16 It probably was where you could exit the
17 second story without going down the internal stairway.

18 Q. Uh-huh.

19 A. I did not have a two-story ladder, but I
20 did take my ladder to that landing and put it up
21 against the roof so that I could climb up and observe
22 the roof to see if there was any damage on the roof.

23 Q. Okay.

24 A. There was a -- I want to say a pine tree,
25 but it could have been a scrub oak. Whatever it was,

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1 it was a light tree, and it was leaning over and
2 sitting close to the shingles on the roof, maybe
3 touching them. But there was no damage to the
4 shingles on the roof.

5 Q. Of the second story?

6 A. Of the second story. There were no
7 shingles on the first story. The second story
8 overhung the entire house.

9 Q. Okay.

10 A. So it didn't have a crop that came out.

11 Q. And you were able to access the second
12 story interiorly -- from the inside --

13 A. Yes.

14 Q. -- up the stairway on the inside?

15 A. Yes.

16 Q. Okay.

17 A. So I photographed the roof from the
18 angles I could get from my ladder and measured the
19 house exteriorly, exterior measurements, added the
20 overhang into my scope notes.

21 I took photographs of what was an
22 outbuilding that Mr. -- that the gentleman on the
23 phone had said was his workshop.

24 Q. Uh-huh.

25 A. It would have been covered under -- if it

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1 had been covered, it would have been covered under
2 APS, appurtenant other structures, and noticed that
3 there was a tremendous collection of Snap-On Tools
4 just filling the floor of this collapsed building. It
5 wasn't a big building, but it was obviously a
6 workshop.

7 And I remember thinking what a waste.
8 Saltwater and Snap-On are not going to get along very
9 well.

10 Q. Uh-huh.

11 A. The gentleman on the phone had also
12 mentioned that there was a tractor and a generator
13 that were sitting on the property. I did not see
14 either one.

15 Q. Okay.

16 A. I photographed some general -- I am
17 sorry. I photographed a house adjacent to this house
18 to the south. I believe the house was white. And
19 even from where I stood, the house was -- the water
20 line was observable on the white outside of the house.
21 I could see that it was the same as Mr. Payment's.

22 You would expect that. It was only 50
23 yards, 100 yards away. I did not enter that property
24 because I did not have authority to enter a property
25 that is under the risk coverage.

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1 Q. Uh-huh.

2 A. I got back in my truck. I picked up my
3 next claim, and I went to do it.

4 Q. Okay. So you took photographs and made
5 scope notes of the -- of the Payment house and this
6 workshop?

7 A. Yes, sir.

8 Q. And the photographs were of the interior
9 and exterior of the Payment house?

10 A. That's correct, sir.

11 Q. And you were able to go from room to room
12 in the Payment house?

13 A. With difficulty, but I was able to get
14 there.

15 Q. Okay. And you were able to go upstairs
16 to the second floor through the interior stairway?

17 A. That's correct.

18 Q. And you were able to look on the roof.
19 Was the second story -- did it extend completely over
20 the first story, or was it only partial? You know,
21 was some of the house one story and some of it two
22 story?

23 A. No. The whole house was two story.

24 Q. The whole house was two story.

25 A. As I recall.

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1 Q. Okay. All right. So then you went on to
2 your next claim?

3 A. Yes, sir.

4 Q. And you -- all your photographs, I guess,
5 were on your digital camera?

6 A. Yes.

7 Q. Okay. And your scope notes, were they on
8 a -- did you do your notes on the computer that you
9 brought with you, or did you do it on a note pad?

10 A. Note pad.

11 Q. Note pad. So your notes were on a note
12 pad?

13 A. Yes, sir.

14 Q. Okay. And you were the only one there at
15 the time. There was -- nobody from Mr. Payment's
16 family ever made it?

17 A. No, sir.

18 Q. Okay. About how much time did you spend
19 on that occasion?

20 A. I would say I spent a minimum of an hour.

21 Q. Okay. And did you take photographs of
22 any of the landscapes surrounding the house?

23 A. That would have been included when I took
24 a picture of the workshop. The background would have
25 shown that.

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1 Q. Okay.

2 A. And when I took the overview of the
3 house -- normally, I take a picture of an overview
4 that is not necessarily an elevation --

5 Q. Uh-huh.

6 A. -- that would have covered the entire
7 area around the house.

8 Q. Okay. What did you do next with respect
9 to this claim?

10 A. When I finally got back to my trailer and
11 got to the section where I was working on that day's
12 work, I wrote a denial letter and closed my diary.

13 When I first got back in the afternoon, I
14 logged in the diary -- first I logged in I had
15 contacted Mr. -- whoever. Someone had contacted me,
16 the insured.

17 Q. Uh-huh.

18 A. The next log was that I inspected, and
19 right after that log would have been a log that said
20 recommend claim be denied and closed.

21 Q. And why did you do that?

22 A. Because it was a -- the damage was due to
23 rising water and not due to wind. And my job was to
24 inspect the house for wind damage, not water damage.

25 Q. Now, I thought you told me that when you

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1 adjusted State Farm claims you had no involvement in
2 coverage issues. That is what you told me earlier.

3 A. I was not inspecting the house with
4 regard to flood.

5 Q. Were you inspecting the house to
6 determine whether or not the claim was covered under
7 the insurance policy?

8 A. I was inspecting the house to see if
9 there was any wind damage to the house. I had only
10 wind claims to inspect.

11 Q. All right. Let's go back. Because I
12 did -- you told me earlier that the extent of what you
13 did for State Farm was to determine the damage from a
14 repair cost estimate and that you had no involvement
15 in determining whether or not there was any coverage
16 under the policy. That is what you said earlier.

17 A. (Indicating.)

18 Q. Now, why was it different on this claim?

19 MS. SERAFIN: Object to form.

20 MR. PERKINS: Object to form.

21 A. It wasn't different. I did not see any
22 flood claims. The only claims I received from State
23 Farm were wind-only claims. The policies that I --
24 the insureds that I examined did not have flood
25 coverage, to the best of my knowledge.

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1 Q. So you didn't look at the house from a
2 standpoint of trying to determine whether or not or
3 how much the cost of repair would be from flood
4 damage --

5 A. That's correct.

6 Q. -- is that what you are telling me?

7 A. Yes, sir. From the water line down, I
8 did not -- I was not concerned from an estimating
9 point of view about the condition of the house. I was
10 concerned about the condition of the house from the
11 water line up.

12 Q. Okay.

13 A. That is why I went to the trouble to see
14 if the roof had been damaged because that would have
15 been a covered issue, most likely.

16 Q. Okay. And that would be the roof on the
17 second story?

18 A. Yes, sir.

19 Q. Okay. And so you, basically, look at the
20 water line, correct?

21 A. Photographed the water line.

22 Q. Photographed the water line. And then
23 looked at the roof. Did you look at any damage above
24 the water line?

25 A. There was no damage interiorly above

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1 water line. It did not reach the second story ceiling
2 structure. It stopped just short of that.

3 Q. Okay. And did you make any attempt to
4 determine whether or not there was any wind damage to
5 any of the structure before the water line appeared?

6 A. I have no way of knowing. That is a
7 question I can't answer. I don't know what happened
8 when.

9 Q. Yeah. That is not within your area of
10 expertise?

11 A. No, sir.

12 Q. Did you ask for an engineering report to
13 come in and help make that determination?

14 A. No, sir. Because this house was
15 structurally still sound. It was just extremely
16 messed up. There was nothing in this house that an
17 engineer would have done, other than say, "You have
18 got to rebuild the walls and the ceiling and put
19 windows back in."

20 Q. Yeah. But that wasn't what I asked.

21 Did you ask an engineer to come in and
22 help you make the determination what damage below the
23 water line was caused by wind versus water?

24 A. No, sir.

25 Q. Why not?

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1 A. I never asked that -- an engineer that
2 question.

3 Q. Why not?

4 A. The only time that I was permitted to
5 request an engineer was when I thought that there was
6 structural damage to a building or structure that made
7 it unsafe or needed an engineer to determine how
8 serious the damage was.

9 Q. So you were not permitted to ask an
10 engineer to come in and help assess the damages
11 when -- to help determine whether or not there was
12 coverage; is that what you are telling me?

13 MR. PERKINS: Object to form.

14 MS. SERAFIN: Objection.

15 A. No. That is not what I am saying.

16 Q. Okay. Were you permitted to ask an
17 engineer to come in and help you determine what damage
18 was caused by wind versus what damage was caused by
19 water for purpose of coverage?

20 MS. SERAFIN: Objection.

21 A. No, sir.

22 Q. You were not permitted to do that?

23 A. I was not permitted to deal with the
24 water issue in the claim.

25 Q. But I am not talking about the water

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1 issue. I am talking about the wind issue. If what
2 you are telling me is you were asked to go out there
3 and make a determination what damage was caused by
4 wind; is that what you are telling me?

5 A. Yes, sir.

6 Q. All right. You also told me that you
7 don't have the expertise to determine whether or not
8 there was any wind damage before water damage. But
9 that that is not something that you can do. Do you
10 remember telling me that?

11 A. That's correct.

12 Q. All right. That would require an
13 engineer?

14 A. This house was not structurally damaged.

15 Q. That's not what I am talking about. I am
16 talking about an engineer to help you determine what
17 damage below the water line was caused by wind versus
18 water.

19 A. That wasn't in my scope of work.

20 Q. That wasn't something you were permitted
21 to do?

22 A. That wasn't something that I was asked to
23 do.

24 Q. Okay.

25 A. Permitted is not the proper word.

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1 Q. You weren't asked to do that. Did you
2 have authority to do that?

3 A. No, sir.

4 Q. You did not have authority to do that?

5 A. No, sir.

6 Q. Did you think that was important, to try
7 to make that determination?

8 MR. PERKINS: Object to the form.

9 MS. SERAFIN: Object to the form.

10 A. What I think about a claim is really not
11 important.

12 Q. Well, it is if you are the one making the
13 decision as to whether or not the claim is going to be
14 paid or not.

15 MS. SERAFIN: Object to form.

16 Q. Is that what you were asked to do?

17 A. No. My job was to gather the facts and
18 to present them to the insurance company. In this
19 case and all cases that I had, my fact started above
20 the water line.

21 Q. So would it be accurate to say that when
22 you went out to assess the claim, you found the water
23 line, and anything below that water line you
24 determined was not covered; would that be accurate?

25 MS. SERAFIN: Object to the form.

<p>198</p> <p>1 MR. PERKINS: Object to the form.</p> <p>2 A. The coverage issue, I do not know. I was</p> <p>3 not assigned to deal with flood.</p> <p>4 Q. All right. Well, let me rephrase the</p> <p>5 question. Would it be accurate to say, then, that</p> <p>6 when you went out to assess this claim, you determined</p> <p>7 a water line, and you didn't look any further to see</p> <p>8 whether or not any damage below the water line could</p> <p>9 have first been caused by wind?</p> <p>10 MR. PERKINS: Object to the form.</p> <p>11 MS. SERAFIN: Object to the form.</p> <p>12 Q. Would that be accurate?</p> <p>13 MS. SERAFIN: Same objection.</p> <p>14 A. No.</p> <p>15 Q. Well, what efforts did you undertake to</p> <p>16 determine what damage below the water line was caused</p> <p>17 by wind?</p> <p>18 A. There was no -- there was no activity</p> <p>19 that would have resulted in an answer to your</p> <p>20 question.</p> <p>21 Q. And what does that mean?</p> <p>22 A. My job was to assess wind damage. I did</p> <p>23 that. My job was not to deal with water damage.</p> <p>24 Q. All right. And my question is --</p> <p>25 A. I did not do that.</p>	<p>200</p> <p>1 One is on October 27, 2005, that says "Inspected this</p> <p>2 date. Discussed scope with insured."</p> <p>3 Now, did you talk to the -- did you talk</p> <p>4 to Mr. Payment or Dr. Payment, whoever it was, the</p> <p>5 insured, on that date that you inspected this</p> <p>6 property?</p> <p>7 MR. PERKINS: Object to form.</p> <p>8 Q. Your notes say you do. But --</p> <p>9 A. More than likely I did on that date.</p> <p>10 Q. All right. What do you remember about</p> <p>11 that conversation?</p> <p>12 A. I remember -- in fact, either that day or</p> <p>13 the next day I talked to him. But I think it was</p> <p>14 late. "6:33 p.m." If I put in at that time, I had</p> <p>15 probably talked to him on that day.</p> <p>16 I remember telling him that there was no</p> <p>17 tractor on the property, that I could see, and there</p> <p>18 was no generator that he said was on the property.</p> <p>19 And I remember him saying, "Well, someone has probably</p> <p>20 stolen it because they are stealing everything off the</p> <p>21 property." I remember that comment.</p> <p>22 And I remember telling him that the --</p> <p>23 all the tools were on the ground of the shed, the</p> <p>24 toolboxes had been turned upside down. And then I</p> <p>25 think -- I don't remember what I told him about the</p>
<p>199</p> <p>1 Q. And my question is what did you do to</p> <p>2 assess wind damage below the water line?</p> <p>3 A. Nothing.</p> <p>4 Q. Okay. I am going to show you a</p> <p>5 compilation of Activity Log entries. And I say</p> <p>6 compilation because -- so the record is clear on this,</p> <p>7 these are not all in consecutive Bate stamp order, but</p> <p>8 they are chronological. (Indicating.)</p> <p>9 Okay. So this is going to be a composite</p> <p>10 exhibit, and I am just going to ask you to take a look</p> <p>11 at this and just sort of read through that, if you</p> <p>12 would, please.</p> <p>13 MS. SERAFIN: Thank you.</p> <p>14 MR. PERKINS: Thank you.</p> <p>15 Q. We'll mark that for identification as 10.</p> <p>16 A. (Indicating.)</p> <p>17 Q. Most of that really doesn't pertain to</p> <p>18 your involvement, but I want to ask you a little bit</p> <p>19 about the initial parts that do. Okay?</p> <p>20 A. Okay.</p> <p>21 Q. Now, when you opened this thing up, the</p> <p>22 Activity Log, you told me you didn't see anybody's</p> <p>23 entries but your own?</p> <p>24 A. That's correct.</p> <p>25 Q. And there are only two entries by you.</p>	<p>201</p> <p>1 house.</p> <p>2 Q. Do you remember anything that he told you</p> <p>3 about the house? Anything that he had observed or how</p> <p>4 long he had been there, anything like that?</p> <p>5 A. No. No, I don't. I just have an</p> <p>6 impression of the gentleman I was talking to as being</p> <p>7 up in years and very emotional about this entire loss.</p> <p>8 And I think that is probably why I may have been</p> <p>9 somewhat guarded in what I said about the property --</p> <p>10 Q. Okay.</p> <p>11 A. -- because I believe that when I started</p> <p>12 talking about the tools and the tractor and the</p> <p>13 generator, I believe he got extremely emotional on the</p> <p>14 telephone, and I really -- I didn't want to go much</p> <p>15 deeper.</p> <p>16 Q. Okay. And was that the same gentleman</p> <p>17 that you had talked to earlier about how to get</p> <p>18 there?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 A. I called him, and he answered the phone.</p> <p>22 Q. Okay. So you didn't discuss with him</p> <p>23 anything about your intent to prepare a denial letter?</p> <p>24 MS. SERAFIN: Object to the form.</p> <p>25 MR. PERKINS: Same objection.</p>

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1 A. I can't give you an exact answer, but I
2 can tell you that I probably did not.

3 Q. Okay. Now, the next entry that you have
4 is dated October 30, so three days later. And you
5 have written there, "Prepared flood denial letter."

6 A. Yes, sir.

7 Q. Now, would that letter have been prepared
8 for your signature or for Mr. Drain's signature?

9 A. At that point in time, it would have been
10 prepared for Mr. Drain's signature. The original --
11 never mind. Mr. Drain's signature.

12 Q. Well, were you going to say something
13 about the original? Tell me what you were talking
14 about.

15 A. At the very first week or so, these
16 letters had not been prepared. They were blank at the
17 bottom. So the adjusters had to put their names in.
18 But that was corrected within days, and then the team
19 manager's name was automatically inserted.

20 Q. Are you talking about denial of claim
21 letters?

22 A. Any letters that went out.

23 Q. Any letters that went out.

24 A. Originally, they just put "Sincerely,"
25 and there was a blank.

203

1 Q. Okay. Now, I am going to show you --
2 this is an unsigned letter -- and ask you -- and it's
3 all on State Farm stationery. And forget about the
4 facts information at the top. But is that the letter
5 that you prepared? (Indicating.)

6 A. No, sir.

7 Q. Is there anything that -- as you look at
8 this letter, is there anything on here that is similar
9 to what you prepared?

10 MS. SERAFIN: Object to form.

11 A. Yes. Yes, sir. All of the language,
12 claim number, dear Mr. Payment, Section I, see water
13 damage, to the paragraph where if you have additional
14 information, sincerely. At that point my letter would
15 have ended.

16 The reason I can say that with certainty
17 is I do not know who Agent Ken Venable is, and I would
18 have not put that at the bottom of the letter.

19 Q. Okay. So everything from Mr. Michael
20 Payment down to sincerely?

21 A. Was the form letter.

22 Q. Was the form letter you prepared?

23 A. Was a form letter I copied and put
24 Mr. Payment's name and claim number in. The letter
25 was prepared by State Farm.

204

1 Q. Oh, it already existed.

2 A. It existed.

3 Q. And you just took that form denial of
4 coverage letter --

5 A. Right.

6 Q. -- and inserted the name and policy
7 number?

8 A. That's correct.

9 Q. So had there already been a determination
10 made by State Farm that, you know, these claims would
11 be denied if they exhibited flood damage?

12 MR. PERKINS: Object to the form.

13 MS. SERAFIN: Object to the form.

14 A. No. There are always claims for various
15 reasons that are denied. This is a standard denial
16 letter for ASI, for Travelers, for Kemper, for State
17 Farm. This language, loss is not insured --

18 Q. Okay.

19 A. -- is almost identical in all policies.

20 Q. Okay. Well, let's mark that unsigned
21 letter as the next exhibit, Exhibit 11.

22 And that letter would have been part of
23 the packet, then, of information that you gave to Mark
24 Drain?

25 A. That is correct.

205

1 Q. Okay. And also included in that
2 information -- in that packet of information were the
3 photographs that you took?

4 A. No, sir. They were uploaded through
5 Reflections. They were already part of State Farm's
6 server.

7 Q. Okay. So it would have simply been this
8 denial of coverage letter and your bill?

9 A. Yes, sir.

10 MR. PERKINS: Object to the form.

11 Q. And anything -- what else? The
12 photographs were already on the computer?

13 A. They were gone. So it would have been
14 the denial letter and my bill. That would have been
15 all that went in.

16 Q. Okay. And were there any notes of
17 observations, scope notes?

18 A. There were notes that I had made about
19 measurements of the house and whatnot. They would
20 have gone in with the bill and denial letter.

21 Q. Okay.

22 A. They always accompanied -- all paperwork
23 went in together.

24 Q. Okay. Did you ever see any photos of
25 this house before Hurricane Katrina?

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1 A. Yes, sir.

2 Q. When did you see those?

3 A. Approximately a month or so ago. I
4 received two CDs from either Renfroe or State Farm --
5 I do not remember which -- which contained
6 approximately 300 photographs of this property and
7 property surrounding it.

8 Q. All right. So you had not seen any
9 photographs of the house before -- before then,
10 obviously?

11 A. Before the CDs?

12 Q. Right.

13 A. No.

14 Q. Okay. Now, these photographs that you
15 got on the CD that were part of the claims file, there
16 are a lot of photographs here that don't appear to be
17 in, necessarily, any particular order. (Indicating.)

18 A. Okay.

19 Q. But I want you to go through there and
20 tell me -- that was produced by State Farm. And you
21 can take -- we can go off the record while you do
22 this. And see if you can identify which photographs
23 you took. Well, stay on the record.

24 (Witness perusing documents.)

25 Q. Have you come to any that you recognize

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1 taking?

2 A. No, sir.

3 (Witness perusing documents.)

4 Q. When you do stop, we will identify it by
5 Bates number. Okay?

6 A. Yes, sir.

7 Q. Some of these may have been provided by
8 the Payments. Are these the photographs that were
9 sent to you on that CD that we talked about earlier?

10 A. Yes, sir.

11 Q. And I believe you said you did not see
12 any of those before?

13 A. That's correct.

14 Q. Or that you did not take any of those?

15 A. That's correct.

16 Q. All right. Let's keep going, and we will
17 confirm that.

18 (Witness perusing documents.)

19 A. No, sir. I did not. No, sir.

20 Would you repeat your question, and I
21 will answer it again? I think I forgot it.

22 Q. I know. I had asked you to go through
23 this stack of black and white copies of the
24 photographs from the State Farm claims file on this
25 claim and see if you could identify any of them as

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1 being photographs that you took. Were you able to?

2 A. No, sir.

3 Q. Okay.

4 A. No, sir.

5 Q. All right. So this stack of photographs,
6 none of them were taken by you?

7 A. No, they were not.

8 Q. And are these -- these appear to be the
9 same photographs that you were provided on CD about a
10 month ago?

11 A. Yes, sir.

12 Q. None of which you had seen before?

13 A. No, sir, I had not.

14 Q. Okay. Let's mark these as Composite
15 Exhibit 12.

16 Now, Mr. Crosby, these, I believe, are
17 going to be smaller, color copies of some of the
18 photographs that are in the stack, Exhibit 12, that
19 you just looked at. But I just want you to take a
20 look at these just real quickly and ask you if you can
21 identify any of those as being photographs that you
22 took. (Indicating.)

23 (Witness perusing photographs.)

24 A. No, sir. I did not take any of those
25 photographs.

209

1 Q. Okay. All right. Let's mark those for
2 identification purposes as the next exhibit, which is
3 13, I believe.

4 MR. JELLIFFE: I have got extra copies of
5 these, if you want.

6 MS. SERAFIN: No, thank you.

7 MR. PERKINS: Are those photographs?

8 MR. JELLIFFE: Yes.

9 Q. Okay. Now, Mr. Crosby, let's take a look
10 at Exhibit 13. I know these are not photographs that
11 you took, but do these look like the structure that
12 you examined when you adjusted this claim?

13 MR. PERKINS: Due to my position, can I
14 get a copy so I can look at those? Thank you.

15 A. No, sir.

16 Q. They do not look like the structure that
17 you examined and assessed when you came out to adjust
18 this claim?

19 A. No, sir.

20 Q. All right. Mr. Crosby, let's look at the
21 Activity Log again. And I don't know where that is.
22 (Indicating.)

23 MS. SERAFIN: It's number 10.

24 Q. Yeah, it's number 10. There you go. Do
25 you see very first page, the section where it says

210

1 "Facts"?

2 A. Yes, sir.

3 Q. Do you know who input that information
4 and when?

5 A. No, sir.

6 Q. Is that anything that you would have
7 seen?

8 A. No, sir.

9 Q. Okay. Now, it appears that Brady Hyde
10 made some entries on this -- on this claim. Do you
11 know who Brady Hyde is?

12 A. No, sir.

13 Q. Have you ever talked to Brady Hyde?

14 A. No, sir.

15 Q. It also appears that Janice Chidester
16 made an entry on November -- excuse me --
17 September 11, '05. It says, "Recorded green draft
18 number and sending to owning office."

19 Do you know who Janice Chidester is?

20 A. No, sir.

21 Q. Do you know what a green draft is?

22 A. I think I do.

23 Q. What is it, as best that you know?

24 A. The adjusters were given packets of blank
25 drafts that we could use in emergency circumstances,

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1 where we could make immediate payment on the site to
2 help the people relocate or get a hotel or make
3 temporary repairs or something.

4 We had a package of drafts. All we had
5 to do was just fill out the claim, put the amount in
6 that we wanted, and sign it. I believe those were
7 green.

8 Q. Okay. Of course, you don't know what she
9 was talking about, but that is just your understanding
10 of what --

11 A. I had a package, and I believe mine were
12 green.

13 Q. Okay. Now, there is another entry,
14 someone by the name of Mick Bergstrom. Do you know
15 who Mick Bergstrom is?

16 A. No, sir.

17 Q. Had you ever -- did you ever talk to Mick
18 Bergstrom about this claim?

19 A. No, sir.

20 Q. Have you ever talked to Mark Drain about
21 this claim?

22 A. Yes, sir.

23 Q. All right. Tell me about your
24 conversations with Mark Drain.

25 A. After I finished my initial inspection

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1 and requested the denial letter -- you request it by
2 sending in a copy -- I turned in my final bill.

3 Q. Uh-huh.

4 A. I got a call from Mark Drain the next day
5 or the day after.

6 Q. Okay.

7 A. And he indicated to me that -- it's one
8 of the few times he called me, I believe. It could
9 have been an email, but I am not sure which one. I
10 think it was a call.

11 Q. Uh-huh.

12 A. He said, "In your photographs, you show a
13 tree on the roof. Isn't there any way you could have
14 at least written an estimate and given him one slope
15 of a roof?"

16 And I went back and pulled up Reflections
17 and looked at my own photographs and realized that the
18 angles that the photographs were taken did look
19 strange. So I told Mark Drain that I would go back to
20 the property and look at it again because, "I don't
21 know why, if the roof was damaged, I didn't write a
22 wind estimate for that slope of the roof."

23 Q. Then did you go back to the property?

24 A. Yes, sir. The very next day I drove back
25 to the property again, which was my second trip. I

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1 drove to the end of the road, turned left, parked my
2 truck, took one look at the house and remembered why I
3 hadn't included the tree. Because the tree had bent
4 over the roof and -- as best I can describe it, you
5 know how the canopy of a tree is very thin with leaves
6 and very small twigs?

7 Q. Uh-huh.

8 A. That part of the tree was sitting on the
9 roof. The main trunk and the structure was away from
10 the roof approximately 12 inches. That is why there
11 was no damage to the roof or shingles. The tree had
12 been pushed over, and the leaves were just resting on
13 the top of the roof.

14 Q. But the tree had been pushed over?

15 A. It had been pushed over, but it had not
16 contacted the house, except for the top of the canopy,
17 which didn't have enough weight or strength to do any
18 shingle damage.

19 Q. Why did you not enter that in the
20 activity code?

21 A. Because I was dealing directly with Mark
22 Drain at that point, and it did not require an
23 activity entry. I was talking to him. He was the
24 team manager. So in my mind, I had communicated the
25 necessary information.

<p>214</p> <p>1 Q. And did you take additional photographs?</p> <p>2 A. Yes, I did.</p> <p>3 Q. And did you send those to State Farm?</p> <p>4 A. Yes.</p> <p>5 Q. You put them on Reflections?</p> <p>6 A. Yes, sir, I did.</p> <p>7 Q. Did you ever talk to the insured again</p> <p>8 after the day of the visit and -- the notes indicate</p> <p>9 that you talked to him later that day after your</p> <p>10 visit. Did you ever talk to him again after that?</p> <p>11 A. The gentleman that called me the first</p> <p>12 time and the one I spoke to the second time, had</p> <p>13 numerous conversations with, would call me and ask me</p> <p>14 how the claim was proceeding and whatnot. That was a</p> <p>15 biweekly call.</p> <p>16 Q. Okay.</p> <p>17 A. I had no information other than the claim</p> <p>18 had been turned in.</p> <p>19 Q. Okay.</p> <p>20 A. Your question -- would you ask it again</p> <p>21 because I am not sure I answered it complete.</p> <p>22 Q. Did you have any other conversations with</p> <p>23 the insured after that initial visit and then later in</p> <p>24 the day when you talked to him about the -- about your</p> <p>25 visit?</p>	<p>216</p> <p>1 Q. Uh-huh.</p> <p>2 A. And he wanted to know what the status was</p> <p>3 of the claim. And I thought that I was talking to the</p> <p>4 insured, the original time.</p> <p>5 Q. Uh-huh.</p> <p>6 A. And Michael Payment said, "Well, I am the</p> <p>7 insured."</p> <p>8 Q. Okay.</p> <p>9 A. Okay. So he said, "Where did you go?"</p> <p>10 I said, "I followed the instructions. I</p> <p>11 went down the dirt road to the end and turned left."</p> <p>12 And he said, "No. You go to the end of</p> <p>13 the dirt road and you turn right. That is where the</p> <p>14 insured property is. That is my" -- and I thought he</p> <p>15 said "my father's house."</p> <p>16 But these photographs indicate "uncle's</p> <p>17 house." I saw that as I went by, so maybe it was</p> <p>18 "uncle" instead of "father."</p> <p>19 At any rate, Mr. Payment indicated to me</p> <p>20 that he owned all this land, and that is why it was</p> <p>21 called "Payment Lane" --</p> <p>22 Q. Uh-huh.</p> <p>23 A. -- and he had built the house.</p> <p>24 Q. Uh-huh.</p> <p>25 A. So at any rate, Michael Payment indicated</p>
<p>215</p> <p>1 A. Yes.</p> <p>2 Q. And that is to -- he asked about the</p> <p>3 status of the claim?</p> <p>4 A. Yes.</p> <p>5 Q. All right. And you don't recall any</p> <p>6 conversations, or him saying anything to you about</p> <p>7 what he experienced or saw during the storm?</p> <p>8 A. He indicated to me that he had evacuated</p> <p>9 and he had not been back to the property since the</p> <p>10 hurricane had hit.</p> <p>11 Q. Did he indicate to you or talk to you</p> <p>12 about what he saw before he evacuated?</p> <p>13 A. No, sir.</p> <p>14 Q. Do you recall anything? Nothing?</p> <p>15 A. Not from that gentleman, no, sir.</p> <p>16 Q. Okay. From anybody else?</p> <p>17 A. Yes, sir.</p> <p>18 Q. About this house?</p> <p>19 A. Yes, sir.</p> <p>20 Q. All right. What did somebody else tell</p> <p>21 about what they saw?</p> <p>22 A. I had a call two or three days, maybe</p> <p>23 two, very shortly after this Activity Log had been</p> <p>24 processed from me, from another person who represented</p> <p>25 himself as Michael Payment, Jr.</p>	<p>217</p> <p>1 to me that I had looked at the wrong house.</p> <p>2 Q. All right. Well, what did you do after</p> <p>3 that?</p> <p>4 A. I called Mark Drain and explained to Mark</p> <p>5 Drain that I may have looked at the wrong house.</p> <p>6 Q. Okay.</p> <p>7 A. And whatever was in process, we probably</p> <p>8 needed to hold up for a minute or two.</p> <p>9 Q. Okay.</p> <p>10 A. And I turned around and, for the third</p> <p>11 trip, drove out to Payment Lane.</p> <p>12 Q. Uh-huh.</p> <p>13 A. Now, I have not mentioned it before, but</p> <p>14 the photographs bear it. When you turn off the hard</p> <p>15 road to the left down Payment Lane, approximately a</p> <p>16 quarter of a mile -- an eighth to a quarter of a mile</p> <p>17 on the right-hand side is a single-story, block</p> <p>18 construction house of approximately 1,500 square feet.</p> <p>19 I passed that house each time I went in.</p> <p>20 There was no address on the house. It was obvious as</p> <p>21 I drove by that a tree had been blown through the</p> <p>22 roof, but the house was vacant. At least there was no</p> <p>23 one there.</p> <p>24 So I proceeded down the road like Mr. --</p> <p>25 like the person on the phone had told me to go. On my</p>

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1 third visit, as I turned left off the hard road and
2 started down Payment Lane, I came up on that same
3 house. This time --

4 Q. Which same house are you talking?

5 A. On the right-hand side, one-eighth to
6 one-quarter mile away from the hard road, the
7 single-story block house.

8 Q. Okay.

9 A. I came upon that house. It now had a
10 travel trailer on the east side of the house, and it
11 was obvious that there was someone there. There was
12 someone cleaning up and doing some work. There was
13 now an address. An address was posted on the front of
14 the house. That was the address that was on my loss
15 notice.

16 Q. The house that had the tree that had been
17 blown -- that had blown over on it and damaged it?

18 A. That's correct.

19 Q. Okay.

20 A. So I stopped my truck, pulled in the
21 front yard, got out. A lady came out of the travel
22 trailer. I introduced myself, told her who I worked
23 for, what my job was. I took my loss notice, and I
24 asked her if this was the proper address. And she
25 said, "Yes. This is the right address."

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1 I explained to her that I had gone down
2 the road to the left, under direction of a man on the
3 phone. And she said that was either -- and I do not
4 remember whether it was her father or father-in-law,
5 but I believe it was one of the two.

6 She said, "My" -- for the sake of this
7 conversation, let me call him father, if you would.

8 Q. Sure.

9 A. "My father is in Jackson. He is not
10 well. We are trying to keep him away from the
11 property because it will break his heart, and we
12 believe it could be medically damaging to him if he
13 came down here and saw everything the way it is.
14 Because this is all his love of his life, these
15 properties."

16 Q. Okay.

17 A. She was very emotional. She did have
18 legitimate wind damage to her house. I photographed
19 her house from all four angles. I got on her roof. I
20 measured her roof. I went inside, measured the screen
21 enclosure that was built on. It was damaged.

22 The ceiling was damaged, and I can't
23 remember what else inside. There was a breezeway that
24 was damaged by wind, blown the gutter off.

25 Q. Okay.

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1 A. And I discussed that damage with her,
2 asked her if there was anything else that she saw on
3 the outside other than what we talked about. And she
4 said, "No."

5 And I will say once again she became very
6 emotional and broke down, and I felt compelled to stay
7 there for sometime until she regained her composure
8 and was able to get back to her duties of cleaning up
9 the house.

10 Q. Okay.

11 A. I then had the quandary of getting back
12 in my truck and continuing down Payment Lane when she
13 had assured me face to face on at least three
14 occasions that I asked the question, "is this the
15 right house?" "Is this the number that is on this
16 sheet?"

17 And three times, closer than you and I,
18 are she looked at me and said, "Yes. This is that
19 house. My dad, my father, he is the one that put the
20 house addresses originally when we built these
21 houses."

22 Q. Uh-huh.

23 A. "Because it was his road, so gave them
24 numbers."

25 Those were her words. Maybe in quotes,

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1 maybe not.

2 Q. Okay.

3 A. When she had finally regained some
4 semblance of normality, I had the quandary of getting
5 in my truck and driving off down Payment Lane.
6 Because I had no reason to do that, and I -- I was
7 wrestling with how do I leave her and go down to where
8 the other Mr. Payment told me to go and turn right
9 without insulting her or doing -- or bringing her back
10 to the state of tears.

11 So what I said was, "Part of my visit out
12 here today was just to make a cursory trip all the day
13 down the road and take some additional photographs.
14 And she said, "That is fine. No problem."

15 And I got out of an uncomfortable
16 situation the easiest I could. I got back in my
17 truck.

18 Q. Okay.

19 A. Now, I spent roughly three hours there.
20 That is a long time, but that's what it took to get
21 the job done. Okay.

22 A. I got back in my truck. I drove to the
23 end of the road. And under the wall of brush, yes,
24 there was a driveway. I couldn't get in it with my
25 truck. So I had to get out of my truck and climb

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1 through the trees, which had blocked the view entirely
2 of that particular side of the driveway -- I mean of
3 the road.

4 And once I got through the trees, I saw
5 the house that is in these pictures -- (indicating.)

6 Q. Okay.

7 A. -- for the first time. It had an address
8 also on a board, painted with a spray can, exactly
9 like the house by the hard road. And by now, the
10 house on the left had a board with an address painted
11 with a spray can.

12 But neither of those addresses met my
13 loss notice, only the house by the hard road. So
14 since I was already at the property that had the wrong
15 address that I had not seen before --

16 Q. Uh-huh.

17 A. -- I photographed four shots, three or
18 four shots of the roof. Because what had happened to
19 this house, different than what happened to the house
20 on the other side of the road, is -- we will call it
21 Mr. Payment Sr.'s house -- his house still stood and
22 had water damage all on the interior.

23 Q. And that house that you talked about was
24 described in these photographs as "uncle's house"?
25 (Indicating.)

223

1 A. "Uncle's house," yes.

2 Q. All right. So on Composite Exhibit 12
3 that shows "uncle's house," that was the first house
4 you went to?

5 A. That is the first house I went to.

6 Q. Okay.

7 A. So the difference was this house had a
8 standing seam steel roof in contrast to the
9 architectural shingle roof on the uncle's house and
10 the architectural -- or the three-tab shingles on the
11 house by the hard road.

12 This house had a standing seam steel
13 roof, which is the strongest roof that is manufactured
14 today. And what had happened, apparently, was the
15 water had lifted the house up. And when the water
16 receded, the house pounded -- the roof literally
17 pounded the house down to the ground, and the roof was
18 at eye level.

19 But because it was a standing seam steel
20 roof and because there was nothing laying on it, there
21 was no damage to the roof. The roof would have
22 been -- remember, I know where the water line is from
23 the uncle's house, and I can see it in the trees.

24 The only thing I could look at was the
25 roof. So I took three or four photographs of the roof

224

1 and left and came back and contacted my team manager
2 again. And I said, "We've got three claims" -- "We
3 have got three risks, addresses, pictures, you know, I
4 need instructions."

5 Q. And what happened?

6 A. I believe that I -- I wrote the estimate
7 on the house that had the correct address and
8 recommended payment for a new roof, new screen room,
9 ceilings, crown molding, lights and whatever else was
10 up there that was damaged.

11 My estimate is somewhere in the system, I
12 am quite certain. And I turned in a fee schedule on
13 that house and turned in an amended claim to Mark
14 Drain.

15 Q. And that was the house that had the
16 address of 5012 Payment Lane?

17 A. If that is the address that is on the
18 loss notice, that is the one that had the 5012.

19 Q. And that one had wind damage?

20 A. That one did have wind damage.

21 Q. Okay.

22 A. That was approximately a half a mile away
23 from the other two houses going inland, and it was
24 only the tree that really caused the major damage.
25 The gutters and the little bit of damage that was done

225

1 in the breezeway was because it was captured -- the
2 wind captured a small area.

3 Q. Okay. And so that was the second house
4 that you looked at?

5 A. That's correct.

6 Q. And we don't have photographs of that
7 here, either, do we at all? Or do we?

8 A. Yes, sir. There are photographs.
9 They're none of mine, but there are photographs.

10 Q. None of yours?

11 A. Yes, sir.

12 Q. And then the third house that you looked
13 at is the one that is depicted in these color
14 photographs, Exhibit 13, and some of which are in
15 Exhibit 12? (Indicating.)

16 A. Yes, sir. That's correct.

17 Q. Okay. So what did you do with that?

18 A. I brought all of my information into --
19 when I turned in my second estimate, Mark Drain
20 indicated write the estimate on the address that fits
21 the loss notice. So that is what I did.

22 So I turned in my claim, and that is the
23 last that I had any contact with any of the Payments,
24 other than Mr. Payment, Sr., uncle, father, whatever
25 you want to call him, he would still call me on a

226

1 regular basis and ask me how things were going.

2 Q. Okay. So -- you had one claim for 5012
3 Payment Lane or whatever --

4 A. Yes, 5012 Payment Lane.

5 Q. Okay. And that is the subject of this
6 denial of coverage letter that we have marked --
7 (indicating.)

8 A. No, sir. No.

9 Q. That is not?

10 A. No. I wrote an estimate for payment --
11 too bad we have too many payments here.

12 I wrote an estimate for money to be
13 handed to the insured at the house by the hard road,
14 the single-story, block house that had the tree
15 through the roof.

16 Q. And what did do you with respect to the
17 house that is depicted in Exhibit 13?

18 A. I did not do anything with that house at
19 all.

20 Q. Nothing?

21 A. Nothing. I explained the circumstances
22 to my team manager, and that is the last instructions
23 I got. "Thank you." And that is the last
24 instructions I got.

25 Q. And what he told you -- "he" being Mark

227

1 Drain -- told you to do was write up the estimate on
2 the house whose address --

3 A. Fit.

4 Q. -- complies with the loss notice --

5 A. That's correct.

6 Q. -- which was 5012 Payment Lane?

7 A. First house on the right near the hard
8 road.

9 Q. Okay.

10 A. Single-story block.

11 Q. And that estimate was an estimate for
12 repair?

13 A. Yes, sir.

14 Q. Well, let me hand you this document and
15 ask you if that looks familiar to you? (Indicating.)

16 A. No, sir. Never seen this before.

17 Q. Well, this was produced to us from State
18 Farm out of this claim file, but this is not something
19 you have ever seen before?

20 A. No, sir.

21 Q. Let's mark it for identification as the
22 next exhibit, please. Okay. 14.

23 Okay. Let me make sure I understand
24 this. The letter -- the first house you looked at was
25 the house referred to as "Uncle Bob's" or the "Uncle's

228

1 house" in Exhibit 12?

2 A. Yes, sir.

3 Q. And that is the house that you -- that
4 you recommended a denial of claim and prepared a draft
5 denial of claim letter to Mr. Payment, which is marked
6 as Exhibit 11, correct?

7 A. That's correct.

8 Q. And you sent that off to Mark Drain?

9 A. That's correct.

10 Q. And after that, you don't know what
11 happened with it?

12 A. That's correct.

13 Q. Okay. When you realized that you had
14 probably not been to the right house, you called
15 Mr. Drain and told him to weight, correct, to hold up
16 on things; is that right?

17 A. To the best of my knowledge, that is what
18 I would have done.

19 Q. Okay. And you went back out to the
20 property --

21 A. The third time.

22 Q. -- the third time. And you came across
23 this first house -- well, not the first house, but the
24 second house you saw on Payment Lane, which definitely
25 had wind damage?

229

1 A. Yes, sir.

2 Q. And you told Mr. Drain about that, and it
3 had the correct address of 5012 Payment Lane?

4 A. That's correct.

5 Q. Okay. And you told Mr. Drain about that,
6 and he told you to write up an estimate?

7 A. That's correct.

8 Q. That's correct. Okay. And that is what
9 you did?

10 A. Yes, sir.

11 Q. And you also took photographs of that
12 house and that damage and put them on --

13 A. Same package of Reflections. It would
14 have gone in on the same -- I had no other claim
15 number to use.

16 Q. Okay.

17 A. So I was forced to add them to the other
18 uncle's house photos, but they were notated. Each one
19 was notated. It's a different house.

20 Q. Okay. And you then -- you also went down
21 further on Payment Lane and looked at another house
22 that was across the dirt road from uncle's house?

23 A. Correct.

24 Q. And that house is depicted in the
25 photographs that are part of Exhibit 12, but also

<p>230</p> <p>1 Exhibit 13, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And that house, you took a few</p> <p>4 photographs?</p> <p>5 A. Yes, sir.</p> <p>6 Q. But made no recommendations one way or</p> <p>7 the other; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. You simply talked to Mr. Drain and told</p> <p>10 him that you looked at three houses?</p> <p>11 A. Explained the third house.</p> <p>12 Q. Okay.</p> <p>13 A. Uploaded those photographs, also. And</p> <p>14 that is the last communication I had concerning the</p> <p>15 Payment claim, other than the fact that uncle or</p> <p>16 father would still call me every week.</p> <p>17 Q. Okay. Uh-huh.</p> <p>18 A. But I didn't have anymore communications</p> <p>19 that I know of with the gentleman from New Orleans,</p> <p>20 which probably is Michael payment, and I had no</p> <p>21 communications with the lady on the street after I</p> <p>22 left.</p> <p>23 Q. All right. And did you make any attempt</p> <p>24 to determine whether or not the house that is depicted</p> <p>25 in -- so that we are clear on this, because there are</p>	<p>232</p> <p>1 A. Yes, sir.</p> <p>2 Q. And that house, I believe you told me you</p> <p>3 could tell from the uncle's house you knew where the</p> <p>4 water line was?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And it appeared to you that the top of</p> <p>7 the house with the steel roof collapsed on the bottom</p> <p>8 part?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. But you made no recommendations</p> <p>11 with respect to what should happen with that claim on</p> <p>12 that house, correct?</p> <p>13 A. That's correct, sir.</p> <p>14 Q. Okay. And you made no determinations one</p> <p>15 way or another with respect to that claim?</p> <p>16 A. No, sir, I did not.</p> <p>17 Q. No, sir, you did not make any</p> <p>18 determinations? That was a poorly worded question.</p> <p>19 Did you make any determinations with</p> <p>20 respect to that house, the one on the first five pages</p> <p>21 of Exhibit 13, should be handled?</p> <p>22 A. I don't think I was ever -- that question</p> <p>23 was never asked me. I turned in the photographs to</p> <p>24 Mark Drain with the information that I had at that</p> <p>25 point.</p>
<p>231</p> <p>1 two houses depicted in Exhibit 12. The houses</p> <p>2 depicted on Exhibit 12 bearing Bates number --</p> <p>3 MS. SERAFIN: I think you've got 13.</p> <p>4 Q. Excuse me. Exhibit 13. My mistake.</p> <p>5 Thank you.</p> <p>6 The house that we are talking about, the</p> <p>7 third house that you saw, is the one that is shown on</p> <p>8 the first two pages of Exhibit 13; is that right?</p> <p>9 A. That appears to be correct.</p> <p>10 Q. Bearing Bates number 0257-HO and 0243-HO.</p> <p>11 And then are there are a sequence -- the next two</p> <p>12 photographs in Exhibit 13 --</p> <p>13 A. I don't know about this one.</p> <p>14 (Indicating.)</p> <p>15 Up to this point right here, we are all</p> <p>16 dealing with the same house.</p> <p>17 Q. Okay. Well, these are all -- these pages</p> <p>18 of multiple photographs, for the record, are marked</p> <p>19 59, 60, 61, 62, 63, 64 and 65.</p> <p>20 A. 66 does not -- I don't know what that is.</p> <p>21 I can't tell what that is. (Indicating.)</p> <p>22 Q. And 66 we are not sure about?</p> <p>23 A. I am not sure.</p> <p>24 Q. But 59 through 65 is the third house you</p> <p>25 looked at?</p>	<p>233</p> <p>1 Q. Okay.</p> <p>2 A. And from that point on, it was out of my</p> <p>3 hands.</p> <p>4 Q. Okay.</p> <p>5 A. I was never asked to do anything else.</p> <p>6 Q. Okay. Okay. And up until just recently,</p> <p>7 I guess in preparation for this deposition, nobody has</p> <p>8 talked to you about this claim?</p> <p>9 A. Not one person, no, sir.</p> <p>10 Q. Okay. All right. I think I am at my</p> <p>11 last document. I know everybody is excited about</p> <p>12 that.</p> <p>13 Let me show you this document, which I</p> <p>14 believe is your bill. (Indicating.)</p> <p>15 A. Yes, sir, it is.</p> <p>16 Q. Okay. And this would have been the work</p> <p>17 that you did on this claim, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. And is there any differentiation</p> <p>20 between the three houses? You were really just</p> <p>21 working on one claim, right?</p> <p>22 A. It's all one claim.</p> <p>23 Q. It's just one claim.</p> <p>24 A. There is no energy charged in this bill</p> <p>25 for the house at the end of the road on the left.</p>

234

1 There is no energy charged for the house at the end of
2 the road on the right.

3 Q. Which is the one that we said was the
4 first five pages of Exhibit 13?

5 A. That's correct.

6 Q. Okay.

7 A. This bill represents only the house by
8 the hard road, single-story, block with the tree
9 through the roof.

10 Q. Okay. Let's mark that as the last
11 exhibit or the next exhibit. I think it's 15.

12 All right, then, Mr. Crosby. When you
13 turned everything over to State Farm, over to Mark
14 Drain, and they took all your -- all your photographs
15 were on the Reflections program on the State Farm
16 computer?

17 A. Yes, sir.

18 Q. And my understanding is that they are not
19 on the computer you had?

20 A. That's correct, sir.

21 Q. Okay. And you have not seen in the stack
22 of documents, the photographs that we have looked at
23 here today, any of the photographs that you took on
24 any of these properties?

25 A. No, sir, I have not.

235

1 Q. Okay. And you did not retain any copies
2 of any documents you prepared or photographs you took
3 once you turned this claim over to State Farm; is that
4 right?

5 A. That is correct, sir.

6 Q. And to your knowledge, you did not -- you
7 did not turn anything in to anybody else at E.A.
8 Renfroe, like Kerri Rigsby? That was the only person
9 that you dealt with at E.A. Renfroe supervisor-wise,
10 right?

11 A. (Indicating.)

12 Q. You didn't turn anything over to her or
13 anybody else at E.A. Renfroe, right?

14 A. No, sir.

15 Q. And once you finished adjusting these
16 claims for State Farm, what did you do with that
17 computer?

18 A. Part of the checkout process was you go
19 to the Gulf Port office with all of the equipment that
20 that was issued to you when you first started. You go
21 through a long checkout process. You turned in the
22 computer, the cables, the printer, the camera. That's
23 all they really gave you.

24 And they ran a cursory check on all of it
25 and signed off. And then you passed your badge in,

236

1 and it was put away. And then you went out the door.

2 Q. Okay.

3 A. After it -- it was more than that. They
4 reviewed the last claim that you turned in. I turned
5 in my last claims as I was getting ready to leave, my
6 last stack.

7 Q. Okay.

8 A. And Mark Drain went over them in front of
9 me.

10 Q. Okay.

11 A. And passed offer on all. Then we started
12 the checkout process, and I left everything with State
13 Farm that State Farm had given me.

14 Q. Okay. And did you -- we talked about
15 depositions. You had only given one deposition 30
16 years ago on something unrelated. Have you testified
17 at any trials associated with any Hurricane Katrina
18 claims?

19 A. No, sir.

20 Q. Have you talked to any -- anybody like
21 Dickie Scruggs, for instance?

22 A. I hate to be ignorant, sir, but who is
23 Dickie Scruggs?

24 Q. You don't know who Dickie Scruggs is.
25 Okay. He is a lawyer that handled a lot of these

237

1 claims cases.

2 Did you have any dealings with a State
3 Farm claim representative named Hiram Esparza?

4 A. Never heard the name before.

5 Q. What about Amy Palmer?

6 A. Never heard that name.

7 Q. Shannon McCuskey?

8 A. Never heard that name before.

9 MR. JELLIFFE: Okay. We did not talk
10 about reading and signing, and I don't know
11 whether you want him to read and sign or not.

12 MS. SERAFIN: I do.

13 MR. JELLIFFE: Okay. I think that is
14 fine.

15 Okay. The court reporter, once she
16 finishes transcribing this, she will send a
17 copy of the transcribed deposition to your
18 attorney, and she'll get it to you. You get
19 an opportunity to read it over and make sure
20 everything was taken down accurately, spelled
21 accurately, that sort of thing, and make any
22 changes that are necessary. Okay?

23 THE WITNESS: Okay.

24 MR. JELLIFFE: Okay. So with that, I
25 conclude the deposition.

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CERTIFICATE OF OATH

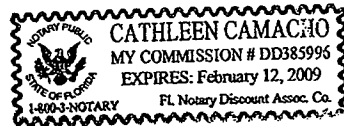
STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, the undersigned authority, hereby certify
that the witness named herein appeared before me and
was duly sworn.

Witness my hand and official seal this
28th day of June, 2008, at Tampa, Hillsborough County,
Florida.



Cathleen Camacho, Court Reporter
Notary Public - State of Florida
Commission #DD385996
Expires: 02/12/09



1 REPORTER'S CERTIFICATE

2
3 STATE OF FLORIDA4 COUNTY OF HILLSBOROUGH
5
67 I, CATHLEEN CAMACHO, Court Reporter, certify
8 that I was authorized to and did stenographically
9 report the foregoing proceedings and evidence in the
10 captioned case; that a review of the transcript was
11 requested and that the transcript is a true and
12 complete record of my stenographic notes.13 I further certify that I am not a relative,
14 employee, attorney or counsel of any of the parties,
15 nor am I a relative, employee of any of the parties'
16 attorney or counsel connected with the action, nor am
17 I financially interested in the outcome of the
18 foregoing action.19 Dated this 28th day of June, 2008 IN THE CITY
20 OF TAMPA, HILLSBOROUGH COUNTY, FLORIDA.21 
2223
24 Cathleen Camacho, Court Reporter
25

JUL. 5. 2007 4:32PM

NO. 790 P. 52-093

State Farm Insurance Companies



November 1, 2005

STATE FARM INSURANCE COMPANIES
P.O. Box 6759
D'Iberville, MS 39532-6759
Fax: (228) 369-4320

Mr. Michael Payment
5012 Payment Lane
Pass Christian, MS 39571

RE: Claim Number: 24-Z452-093
Policy Number: 24-CQ-5233-8
Date of Loss: August 29, 2005

Dear Mr. Payment:

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

Based on the site visit and other facts, our investigation showed that 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.

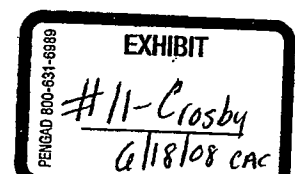
Please see the following relevant policy language.

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 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.

HOME OFFICE: BLOOMINGTON, ILLINOIS 61710-1001

0448-HO



JUL. 5. 2007 4:32PM

NO. 790 P. 6

242452-093

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,

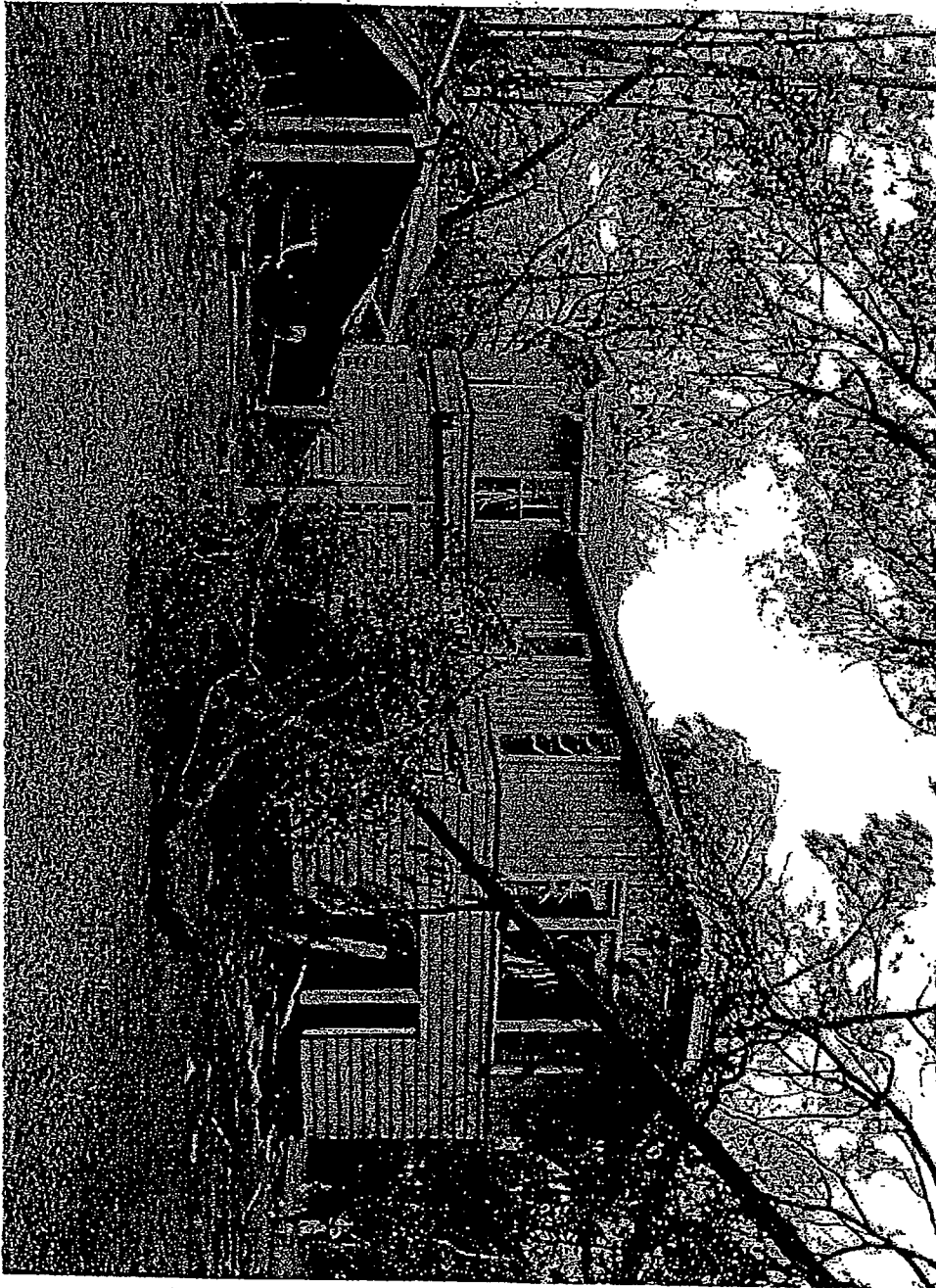
Mark K Drain
Team Manager
State Farm Insurance

Enc.

CC Agent Ken Venable
Agent Code 3079-24

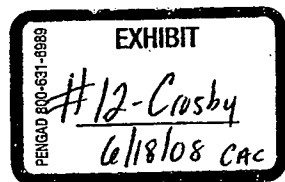
0447-HO

Uncle's House



Payment100352

0086-HO

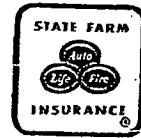


Appendix A - Damage Photos from Case Files



EXHIBIT
#13 Crosby
6/18/08 cac
PENGLD 800-631-6089

State Farm Insurance Companies



November 1, 2005

STATE FARM INSURANCE COMPANIES
P.O. Box 6759
D'Iberville, MS 39532-6759
Fax: (228) 369-4320

Mr. Michael Payment
5012 Payment Lane
Pass Christian, MS 39571

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Please see the following relevant policy language.

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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 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:

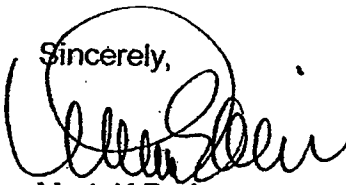
- (1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not;
- (2) water from outside the plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, 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.

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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,



Mark K Drain
Team Manager
State Farm Insurance

Enc.

CC Agent Ken Venable
Agent Code 3079-24

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

MICHAEL PAYMENT, M. D. PLAINTIFF

VERSUS NO. 1:07CV1003LTS-RHW

STATE FARM AND CASUALTY COMPANY DEFENDANT

DEPOSITION OF MICHAEL PAYMENT, M. D.

Taken at the instance of the Defendant on
Tuesday, September 9, 2008, at the offices of
Wise, Carter, Child & Caraway,
401 East Capitol Street, Jackson, Mississippi,
beginning at approximately 9:00 a.m.

APPEARANCES:

EUGENE NAYLOR, ESQUIRE

Wise, Carter, Child & Caraway
Post Office box 651
Jackson, Mississippi 39205

COUNSEL FOR THE PLAINTIFF

JOHN A. BANAHAN, ESQUIRE

Castigliola & Banahan
Post Office Drawer 1529
Pascagoula, Mississippi 39568-1529

COUNSEL FOR THE DEFENDANT

REPORTED BY:

Harvey J. Rayborn, CSR #1274

Rayborn Reporting
Post Office Box 720248
Jackson, Mississippi 39272
TEL: (601) 376-0336
FAX: (601) 376-0323
e-mail: Raybornhj@aol.com

ORIGINAL
Exhibit "D"

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1 individuals that are named: A Kay Venable, who'll
2 be here later for a deposition, I'll ask you about
3 her in detail in a minute, but Marty Hosford, Mark
4 Drain, Brady Hyde, were listed in the prediscovery
5 disclosures. What does Marty Hosford know about
6 your claims against State Farm or anything that's
7 relevant to this case that you're aware of?

8 A. I don't know him and I'm not aware of
9 anything.

10 Q. And there are things your lawyers may have
11 from --

12 A. Correct.

13 Q. -- your file, but what I'm saying is,
14 I want to know what you have personal knowledge of.
15 You have no personal knowledge of Marty Hosford?

16 A. I've never heard his name.

17 Q. About Mark Drain? Do you have any
18 personal knowledge of Mr. Drain?

19 A. He is -- I believe he's the one that sent
20 me the denial letter from State Farm.

21 Q. That would make sense. Other than
22 receiving a denial letter from him, did you have any
23 contact from him?

24 A. No.

25 Q. And Brady Hyde, a State Farm adjustor, did

1 you have any contact or --

2 A. Yes.

3 Q. -- interaction from Mr. Hyde? Tell me
4 about your interaction with Brady Hyde.

5 A. Well, Brady Hyde, after I filed my claim,
6 he -- he called me, I believe, and we set up a time
7 to meet, and it was approximately two weeks after
8 the storm. We met at my front gate and we went --
9 we went and examined the property.

10 Q. How long were you with Mr. Hyde that day,
11 approximately?

12 A. A few hours.

13 **MR. NAYLOR:** How long? I didn't hear you.

14 A. I think a few hours. Two or three.

15 Q. **(By Mr. Banahan)** And what did Mr. Hyde
16 examine or look at?

17 A. He examined the drive and the -- and
18 the -- and the house. I don't know if he examined
19 the boathouse and the summerhouse. I just don't
20 recall.

21 Q. Do you recall any conversations, any
22 specific conversations that stick out?

23 A. Yeah. Vividly.

24 Q. Tell me about that if you will.

25 A. When we met at the end of the driveway,

1 the driveway was completely covered. It was
2 impassable due to the numerous trees, and the
3 driveway is about three-quarters of a mile in
4 length, so we had to hike down the driveway,
5 climbing over trees, et cetera. We were down
6 approximately just a third of the way down the
7 driveway when he looked at me, and as he observed
8 the surroundings he said, "It looks like a tornado
9 came through here."

10 And, so, we went on down further and as we
11 were making conversation, to -- to my recollection
12 we were about two-thirds of the way down the
13 driveway, when he said to me that he could get me
14 flood -- he could get me flood coverage, but he
15 said, "I don't know what the company is going to do
16 about the wind."

17 When we got down to the house and we were
18 able to inspect it, he confirmed the fact that he
19 would be able to get me flood monies. He may have
20 taken pictures. I don't recall. I don't recall him
21 taking notes, per se. I -- I really let him do his
22 own job as I probably picked -- picked around and
23 looked at the debris.

24 Q. Okay. In the course of conversation, did
25 he give you any indication as to how long he had

1 been on the ground or if he'd been working in the
2 area, looking at any other losses or anything like
3 that?

4 A. No, I don't recall.

5 Q. Okay. Did you get any impression one way
6 or the other as to where your home was in the
7 progression of his work on the cost? For example,
8 did you get an impression as to whether or not he
9 had looked at other losses before he got to yours,
10 or --

11 A. No, I didn't.

12 Q. Do you remember anything else specifically
13 in the way of conversations you had with him other
14 than what you've just described to me? And you told
15 me about the comment he made a third of the way down
16 the drive. I assume from that you're saying from
17 Arcadian --

18 A. Arcadia.

19 Q. -- Arcadia, I'm sorry, moving towards your
20 house about a third of the way down the drive, he
21 made the comment about, "it looks like a tornado
22 came through here." And then you said about
23 two-thirds of the way down he said he thought he
24 could get you flood coverage but didn't know what
25 the company would do on wind. And then when you got

1 to the house, he confirmed that he could get you
2 flood coverage.

3 Did you ask him what he meant by that or
4 was there any further discussion to follow-up that
5 comment?

6 A. We did have a little brief -- and this is
7 talk -- this is -- as I recall, in my mind we were
8 at that point at the two-thirds down the driveway
9 when you're not yet able to see the -- the house.
10 We did speak about -- when he said, "I don't know
11 what the company is going to do about water" --
12 I mean, "about wind," I think we did have a little
13 conversation at that point, but I really don't
14 recall any specifics.

15 Q. When he said -- at any point when he said
16 he thought he could get you flood coverage either
17 walking down the drive or at the house, did you take
18 issue with that?

19 A. I think that's where I -- I'm -- I'm
20 trying to remember in that -- that point where we
21 did discuss it. I -- I thought I was trying to tell
22 him that, yes, this is going to be one of those wind
23 versus water arguments and they obviously thought
24 that there was wind damage and that he would soon
25 see it.

1 Q. Before experts looked at it, before
2 Mr. Hyde looked at it, what was your impression as
3 to what had caused the damage to your house?

4 A. My impression was that the house had been
5 destroyed by the fact that the -- that -- that up --
6 that the roof that were applied above my den and
7 that upstairs porch had been lifted by the wind and
8 allowed -- and that allowed the weakened walls of
9 the downstairs to collapse.

10 Q. And tell me how -- tell me the thought
11 process you had that led you to that conclusion?

12 A. Well, the roof that was applied on top of
13 my den was essentially a second roof. It's -- the
14 original roof was a flat roof or had very little
15 slope to it.

16 Q. You're saying the roof above your den on
17 the first floor?

18 A. On the first floor.

19 Q. All right.

20 A. It had a, if you will, a lean-to-type roof
21 that connected it to the second story new addition
22 to allow better runoff; and, so, there was a
23 potential space, not a potential, there was a space
24 created, a triangular space between the old roof and
25 the new roof. And I felt like the wind picked that

1 up and lifted it and then the walls were then
2 weakened to the point that they blew down, as -- as
3 did the columns in the front of the house when the
4 -- when the porch, downstairs porch, which was very
5 heavy, was -- was lifted up. My concern all along,
6 after the storm, not before, was that the top of the
7 house was so heavy that -- that it made it
8 vulnerable to collapse.

9 Q. Was there anything else that went into
10 your thought process that you didn't just describe
11 to me as to why you felt like the house was
12 destroyed by wind?

13 A. Well, the observation that there -- there
14 was part of the roof of the kitchen area or -- or
15 carport area in the back of the house where the --
16 where the metal was completely folded back is a good
17 term, because you could walk on it and it was -- it
18 was folded back. We were actually walking on the
19 underside of the roof. And it was, to me, obvious
20 that it had been folded back by wind as it was
21 lifted off the house. Similarly, there was portions
22 of the roof located down at my Uncle Ted's house,
23 the -- the gray house.

24 Q. The house closest to the pool?

25 A. Closest to the pool, yes. And, finally,

1 just the -- the general appearance of all the trees
2 that had been snapped surrounding the house, taking
3 all of that into consideration, I felt like this --
4 this was a tremendous wind. And, in fact, maybe it
5 was a tornado, but I felt the damage was done in
6 that regard or in that fashion.

7 Q. Is there anything else you can recall
8 about your conversations, any conversations with
9 Brady Hyde other than what you've told me about?

10 A. No, I think that's it.

11 Q. Did you ever speak with him again other
12 than the day he was out there?

13 A. I don't think so. I tried to reach him
14 again when I hadn't heard from him in a while and
15 I was told he was reassigned because of Hurricane
16 Rita.

17 Q. Did you speak to someone else at that time
18 or did some other individual contact you?

19 A. I was told that I would be contacted. And
20 I think I have a vague memory of being told that
21 I would have someone assigned to the case, yet that
22 person, whoever it was, never materialized. And
23 that Howard Crosby, who had ultimately become the
24 person to adjust it, was actually the third person.
25 I may be incorrect in that regard.

1 Q. Who do you remember, other than Brady Hyde
2 and Howard Crosby, do you remember having any direct
3 contact with anyone else?

4 A. Yes.

5 Q. Who else?

6 A. Howard Crosby was only by telephone.

7 I've never met him.

8 Q. What conversations do you recall with him?

9 A. Well, he -- he called me and said -- this
10 was in, I think, in response, if I recall correctly,
11 to my -- my inquiry to State Farm as to where do we
12 stand, because time had been going on, and he called
13 me and said that I've been out to your house and
14 I've looked at it. And as he was describing it to
15 me, I said, "You're not looking at my house. My
16 house was destroyed." He was describing Uncle Ted's
17 house, the gray house. And I said, "No, you're at
18 my Uncle Ted's house."

19 He said, "Well, where is -- where was your
20 house?" I don't think he was on the property as we
21 talked. He said, "Well, where was your house?"

22 I said, "It's on the other side of the
23 swimming pool from -- of that gray house."

24 He said, "Oh. Well, I'm going to go out
25 there tomorrow. You don't need to be there. I'm

1 going to go out there and look at that." And he
2 said, "But I know how high the water got at your
3 Uncle Ted's house. So what I'm going to do is go to
4 your house and draw a line at that site and I will
5 assess any damage I see above that height." And
6 that's the last I really ever spoke to him.

7 Q. Did you ever see a line drawn on -- or get
8 an idea of what he was talking about?

9 A. He was talking an imaginary line,
10 obviously. There was no -- there was nothing -- I'm
11 not sure if I replied to him at this point. In my
12 mind, because later I thought he's not going to see
13 anything above that line, and as he told me that,
14 I was -- I got to feeling that he was -- that he
15 would -- had made, you know, how can I put this?
16 I didn't like the tone of his message to me when he
17 told me that; as if "I know how high the water got.
18 I'm only going to assess any damage I can see above
19 that line," as if I will ignore anything else. And
20 I knew then or I felt then that he wasn't going to
21 be very friendly, if I can say that.

22 Q. Did you have any other conversations with
23 him after that?

24 A. No.

25 Q. Other than he and Brady Hyde, and I think

1 you told me you covered everything you can remember
2 about conversations with him --

3 A. Correct.

4 Q. -- did you have any other conversations
5 with anyone else at State Farm?

6 A. The only other one would be the man, and
7 I don't know -- recall his name. I had contacted
8 the insurance commissioner who, George Dale, and we
9 spoke. And he -- he -- he said, "I will try to get
10 you some wind coverage. I'll make a phone call and
11 have somebody come back out." And within a few
12 days, indeed, somebody came out and I met him there,
13 and I don't recall his name. Now, Gene has a
14 person's name and -- and it might be him. I think
15 his name was Nick something, and I don't really
16 remember.

17 Q. I think he's being deposed today in
18 Atlanta.

19 **MR. NAYLOR:** Yeah.

20 A. I don't know if he's the man I met or not.
21 He was a young fellow who came out. And after my,
22 you know, request, after the request from George
23 Dale. And he -- I left him alone as he went around
24 and made notes. He may have taken some photos as
25 well. And then when he finished, he came to me and

1 he said that he felt like the -- the damaged
2 structure was due to -- completely due to water and
3 that -- at that point I pointed to him and said --
4 I pointed to the broken trees. I pointed to the
5 folded back metal roof. I pointed to, like, the
6 ceiling fan that was all ripped up. And I said,
7 "That was done by water?" I questioned him, or
8 challenged him.

9 And he just said, "That's -- that's going
10 to be my report. You can get a lawyer."

11 Q. **(By Mr. Banahan)** Did you ever receive any
12 payment for any wind damage?

13 A. No. Stop.

14 **THE WITNESS:** Did we receive anything?

15 **MR. NAYLOR:** No.

16 Q. **(By Mr. Banahan)** Did you ever receive
17 flood payment?

18 A. Yes.

19 Q. And that was for the house, the \$250,000?

20 A. \$250,000.

21 Q. Did you question that when you received
22 it?

23 A. I did. Well, I didn't question it in
24 terms of calling up anybody and I had not -- I had
25 not contacted Wise Carter yet.

1 **MR. NAYLOR:** Yeah.

2 **THE WITNESS:** I had?

3 Q. **(By Mr. Banahan)** You don't need to tell
4 me about visiting with Gene or anything here.

5 A. I don't -- I don't recall.

6 **MR. NAYLOR:** Let me clarify, too. Because
7 Matt, in your office, did send us a portion of -- a
8 small portion of a payment, the details of which
9 I don't have right in front of me, but it was based
10 on some reconsideration by State Farm sent to us
11 without prejudice. So just to correct that,
12 I received it. He didn't receive it.

13 Q. **(By Mr. Banahan)** There's been some tender
14 of some monies after, and I recall but I don't
15 remember how much, but there was some small tender
16 made after you had an attorney. Is that the
17 consensus here?

18 A. Much after. I think at the time of our --
19 around the time that we first met that was the first
20 time I had been made aware that they had sent a
21 check and that was around the time of that --

22 Q. Mediation?

23 A. Mediation.

24 Q. All right. Then you said you
25 questioned -- I guess questioned yourself about the

1 to it, like where the carport -- and -- and I'm
2 looking out toward the bayou. There's a big oak
3 tree there in the middle, and then there's the live
4 oak beside it. Beyond it is all marsh that sort of
5 looks greenish. So this was sort of in the
6 springtime. And well beyond it you can see a pier,
7 but that's from across the bayou in the distance.

8 Q. 376?

9 A. Again, that's the southwest aspect of the
10 property demonstrating the broken trees.

11 Q. Which are similar?

12 A. Similar pictures.

13 Q. 375?

14 A. Again, broken trees. Broken pine. Yeah.
15 I'm guessing that's also just the west, southwest
16 aspect of the property.

17 Q. 374. We've got something different to
18 look at here.

19 A. This is taken from the pool looking along
20 the bayou away from our house. If you turned
21 around, you would see the pool and then my house in
22 the distance.

23 Q. Tell me, if you worked from your left to
24 right --

25 A. Yeah.

1 house, which direction is that?

2 A. That's north of his house. I think that's
3 north of his house. I don't know where the boat was
4 before the storm. I didn't -- I just don't know
5 where they had it tied up or located. Obviously,
6 they didn't have it tide up. But if memory serves
7 me, they had a -- that was just to the north of his
8 -- where we had -- future pictures may document it,
9 all of our boats were in a particular reach area and
10 I think this was just right next adjacent.

11 Q. 372. I'm going to abbreviate and just say
12 the number and you know what I mean.

13 A. I don't know. This is -- just
14 demonstrates a bunch of trees that are uprooted.
15 One -- one is -- is horizontal and I believe the
16 other one is going in a 90-degree angle that way.
17 I think this is its root structure.

18 Q. How long did it take y'all to clear
19 Payment Lane to get in and out with vehicles?

20 A. I was just double checking. This is not
21 the driveway. But it -- it -- we had a -- I think
22 -- I think it was on September 11th.

23 Q. Is that the drive?

24 A. That's the drive.

25 Q. Okay. That's what I was going to ask you.

1 Now maybe we're getting into some photographs that
2 are more current with regard to proximity to the
3 storm. This is still showing trees across Payment
4 Lane?

5 A. Yes.

6 Q. So this would have been taken sometime
7 within a couple of weeks of the storm?

8 A. Yes.

9 Q. 370 is also looking --

10 A. Looking down the driveway with all the
11 trees crossing it and the broken trees on the side.

12 Q. So that would have been taken sometime
13 between August 29th and probably around
14 September 11th?

15 A. Yes.

16 Q. 369?

17 A. This is the driveway. I mean, the
18 driveway is -- I believe this is the driveway. I'm
19 looking -- I know where I am. I'm looking at Uncle
20 Ted's house from the driveway. I'm looking north.
21 You can barely discern a structure there. That's
22 his house on the drive. I'm just looking through
23 the trees.

24 Q. Okay. And 368?

25 A. I think this is along the driveway looking

1 Q. Okay. And that's what we're looking at.
2 That's what I'm saying. I'm talking about this
3 structure in 339 was to the north and to the west of
4 where it would have been situated above the house
5 before the storm?

6 A. Yes.

7 Q. Okay. And this is part of the second
8 floor structure that had the covered porch that
9 looked out over the bayou?

10 A. Yes.

11 Q. 338?

12 A. This is a picture from where my house
13 stood looking back at the pool and there were
14 numerous trees down. Those were water oaks and
15 they're obscuring the view of the pool. This
16 structure on the left, if I recall, is the floor of
17 my porch.

18 Q. And that would be to the left?

19 A. My upstairs porch. That's the driveway
20 that you see on the left foreground. It's gravel or
21 rock.

22 Q. And the blue structure you're saying is
23 the floor to the porch, the second floor porch, and
24 that's in photograph 338?

25 A. I think so, yes.

1 Q. 337?

2 A. From the same vantage point looking more
3 to the east along the bayou. You see a glimpse of
4 the summerhouse --

5 Q. Far right?

6 A. -- without its roof.

7 Q. To the far right in the photo?

8 A. Yeah. The bayou is behind those pine
9 trees.

10 Q. 336?

11 A. Swinging even more to the east looking
12 from the house at the yard with the -- with the
13 summerhouse.

14 Q. The roof structure I'm looking at to the
15 right of the summerhouse --

16 A. Uh-huh. (Affirmative response.)

17 Q. -- is that the roof structure that was on
18 the summerhouse or were you able to tell that out
19 there?

20 A. I don't think that's a roof structure
21 you're looking at.

22 Q. Can you tell me what --

23 A. I think that's -- I think that's --
24 I think that's the boards of the -- I could be
25 wrong, of the --

1 Q. It's just picking up that blue tint that
2 the printer gave us on that copy?

3 A. I think that's just the deck. If you'll
4 notice, the deck has a tree coming out of the middle
5 of it. There's an oak tree here and there's a hole
6 in the deck for that oak tree. I think that's the
7 deck.

8 Q. I think you're right. I think it's just
9 picking up that blue.

10 A. It does look almost a -- a -- metal.

11 Q. 335? This is a different angle of the
12 second story, correct?

13 A. Right.

14 Q. And what direction are we --

15 A. We're looking west and we're seeing the
16 northeast corner of the house where you see broken
17 windows. You see the chimney collapsed. This
18 chimney was on the north aspect of the house in the
19 den. What else. There was -- I don't know what
20 happened to the roof structure that was attached to
21 this house. You see the exposed wood underneath the
22 windows that faced north.

23 Q. It had one of those a little hip roofs
24 coming off it as well, correct?

25 A. I believe it did. And I don't know where

1 A. I'm looking to the southwest. Those --
2 those -- that -- that wall faces north.

3 Q. 333?

4 A. That is the north -- the -- the northwest
5 corner of the house.

6 Q. Okay. Sorry.

7 A. Something doesn't look right here.
8 It almost looks like I'm looking at a mirror image.
9 Yeah. That was -- that was the bedroom and bath on
10 the -- on the northwest corner of the house.

11 Q. The siding on the upstairs, this portion
12 of the house, what was it?

13 A. That's the downstairs.

14 Q. Was that --

15 A. Hardy pine.

16 Q. Hardy pine. Okay. That was the existing
17 wall that remained you're pointing out?

18 A. Yes.

19 Q. That's not the second floor?

20 A. No. Right. That's the downstairs.

21 Q. The upstairs, was the construction hardy
22 board or hardy plank on that?

23 A. Yes.

24 Q. What are we looking at in 332?

25 A. I think that's the trees that are

1 overlying the cottage.

2 Q. 331?

3 A. This is just a big pine tree down at the
4 swimming pool.

5 Q. 330?

6 A. Another pine tree. Several pine trees.

7 And then the structure that's messed up is -- was --
8 it housed the pump, a small shower area and storage
9 facility that was at the end of the pool.

10 Q. And that's to the left side of the
11 photograph?

12 A. Yeah. That's the wooden structure.

13 Q. 329?

14 A. Looking from the pool back at Uncle Ted's
15 house in the distance, there is the downed trees.

16 Q. 328?

17 A. Looking also in the same direction but a
18 little to the south. To the east is that decking
19 that he had by the summer -- his -- his barbecue
20 house.

21 Q. 327?

22 A. Just the same -- same general picture with
23 a closeup of the trees. This is also --

24 Q. 326?

25 A. 326 is the old barbecue house.

1 Q. Was that his or your barbecue --

2 A. That was his.

3 Q. His barbecue house. Okay. When we get to
4 something that's Ted's, I'm not really --

5 A. Worried about it.

6 Q. Worried about it, yeah.

7 A. This is also Ted's deck.

8 Q. 325, Ted's deck. 324?

9 A. Ted's yard.

10 Q. If there's -- I don't -- if there's
11 something you want to tell me about that you feel is
12 significant to your claim, let me know. Otherwise,
13 we'll zip on through. 323?

14 A. This is Ted's house, we call the gray
15 house. Now, I would add, I think it's significant
16 in -- in -- in regards to my claim is, is that
17 you'll see two houses in this picture, both of which
18 took on, you know, the water as did mine, yet, they
19 remained standing. You know, I contend that I had
20 wind damage to hurt my -- my structure, because we
21 all were -- we all were exposed to the same water
22 and waive action.

23 But, nevertheless, in this picture --
24 which this house, by the way, is not tided down,
25 interesting enough. This is just stubs resting on

1 oak in the back of the yard and it -- it depicts
2 this one that's in the right-hand foreground. That
3 tree I don't think is still standing, but I have an
4 idea it was in the backyard.

5 Q. 270?

6 A. 270 is just more of those live oaks and
7 with the trees in the distance all chopped off.

8 Q. 269?

9 A. 269. This is a duplication of the roof
10 over the den that was removed. It's got -- it's
11 facing on the front -- it's no longer present.

12 Q. 268?

13 A. That's a duplication.

14 Q. 267?

15 A. This is a picture of the folded back
16 roofing to support that the wind did this lifting.

17 Q. 266?

18 A. This is the same area folded back. It's
19 just from a different vantage point.

20 Q. Just a closer view?

21 A. Uh-huh. (Affirmative response.)

22 Q. 265?

23 A. This is behind the house looking north at
24 the -- the -- the -- the western facing part of the
25 house.

1 neighbor's boat. And then the cottage is to the
2 right or what is left of the cottage, you know,
3 among the trees.

4 Q. 244?

5 A. This is more the same. This is the
6 carport looking towards the bayou.

7 Q. 243?

8 A. A picture from a distance looking back at
9 the house from -- from -- from just close to the
10 summerhouse, just north of the summerhouse.

11 Q. 242?

12 A. This is a picture of the summerhouse and
13 the boathouse after the storm showing that the roof
14 is gone.

15 Q. And those had screens. Those windows all
16 had screens in them before?

17 A. Yes.

18 Q. Okay. 241. Is that just showing the
19 road?

20 A. This is a picture of the driveway looking
21 at the pool.

22 Q. 240?

23 A. I believe these -- these are trees down at
24 Ted's barbecue house.

25 Q. 239?

1 A. That's his barbecue house.

2 Q. 238?

3 A. Looking through Ted's yard back to Tommy's
4 house?

5 Q. 237?

6 A. That's Ted's house.

7 Q. 236?

8 A. Tony's house with a boat.

9 Q. Wow. 235?

10 A. Now that's Ed's house. We haven't
11 introduced Ed. He's the -- he's the neighbor next
12 house up the bayou.

13 Q. Up the bayou. You can't get to it from
14 Payment Lane?

15 A. No.

16 Q. How did you get to that location?

17 A. His driveway goes out to Arcadia.

18 Q. Okay. So you just go out of yours and
19 take a left or right?

20 A. You go out of mine and take a right and
21 you go down.

22 Q. How far?

23 A. You pass Tommy's driveway and then the
24 next driveway. It's two driveways down.

25 Q. So that's 235. 234?

1 A. Also Ed's house.

2 Q. 233?

3 A. I think that's Ed's house.

4 Q. 233?

5 A. From Ed's house looking back at Tommy's.

6 Q. 231?

7 A. Tommy's house?

8 Q. 230?

9 A. Tommy's boat.

10 Q. 229?

11 A. Tommy's house.

12 Q. 228?

13 A. Tommy's house.

14 Q. 227?

15 A. Backyard at Tommy's.

16 Q. The boat didn't have weight on it, did it?

17 A. It had a bunch of diesel fuel.

18 Q. 226?

19 A. Duplication to that July 4th picture.

20 That's a duplication. 225 is a duplication.

21 Q. 224?

22 A. Is a duplication.

23 Q. 223?

24 A. That's the driveway. I think it's a

25 duplication.

1 Q. To 222?

2 A. That's the driveway.

3 Q. 221?

4 A. This is a duplication.

5 Q. 220?

6 A. Just more broken trees. I'm not sure

7 where.

8 Q. 219?

9 A. That's Ted's house.

10 Q. 218?

11 A. Duplication. This is a duplication.

12 **MR. BANAHAN:** Off the record.

13 (Off the record.)

14 (On the record.)

15 Q. **(By Mr. Banahan)** If you see a dupe, just
16 say dupe. 217?

17 A. Duplication.

18 Q. 216?

19 A. Duplication.

20 Q. 215?

21 A. Duplication.

22 Q. 214?

23 A. Duplication.

24 Q. 213?

25 A. Duplication.

1 A. Correct.

2 Q. And the area that we saw earlier where the
3 metal was rolled up or the roofing material was
4 rolled up, can you tell me about where that was?

5 A. That's on the back half of this carport.

6 Q. Okay. I can't -- the back end of the
7 carport had this metal roof on it and that's what
8 we're looking at that's bent up or curled up?

9 A. I don't -- I don't know whether -- whether
10 it was that or it was the -- part of the roof over
11 the kitchen.

12 Q. Uh-huh. (Affirmative response.)

13 A. And the utility room that's on the back of
14 the house.

15 Q. Okay. In the carport area, was there
16 decking applied underneath that structure? You know
17 the piece that came out over the carport that had a
18 metal roof on top, did it have plywood decking
19 underneath that or was it open exposed?

20 A. I don't know how he constructed it.
21 I wasn't there.

22 Q. When you looked up, what did you see?

23 A. From under the carport?

24 Q. From underneath. Uh-huh. (Affirmative
25 response.)

1 CERTIFICATE OF COURT REPORTER

2 I, Harvey J. Rayborn, Court Reporter and Notary
3 Public in and for the County of Hinds, State of
4 Mississippi, hereby certify that the foregoing 209
5 pages, and including this page, contain a true and
6 correct transcript of the above styled case, as
7 taken by me in the aforementioned matter at the time
8 and place heretofore stated, as taken by stenotype
9 and later reduced to typewritten form under my
10 supervision by means of computer-aided
11 transcription.

12 I further certify that under the authority
13 vested in me by the State of Mississippi that the
14 witness was placed under oath by me to truthfully
15 answer all questions in this matter.

16 I further certify that I am not in the employ
17 of or related to any counsel or party in this matter
18 and have no interest monetary or otherwise, in the
19 final outcome of this proceeding.

20 Witness, my signature and seal this 24th day of
21 September, 2008.

22
23 

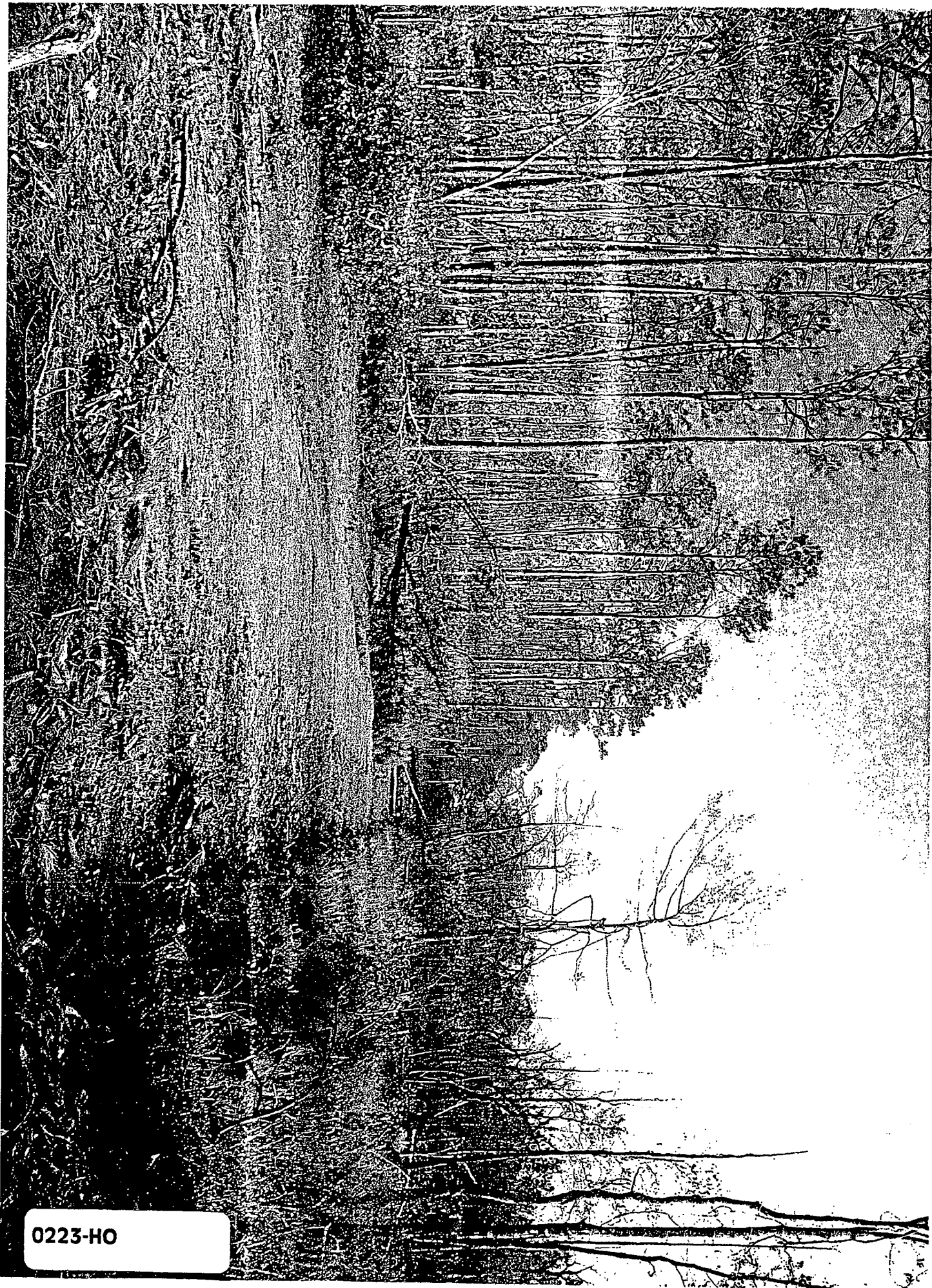
24

Harvey J. Rayborn, CSR #1274

25 My commission expires: 10/25/2008



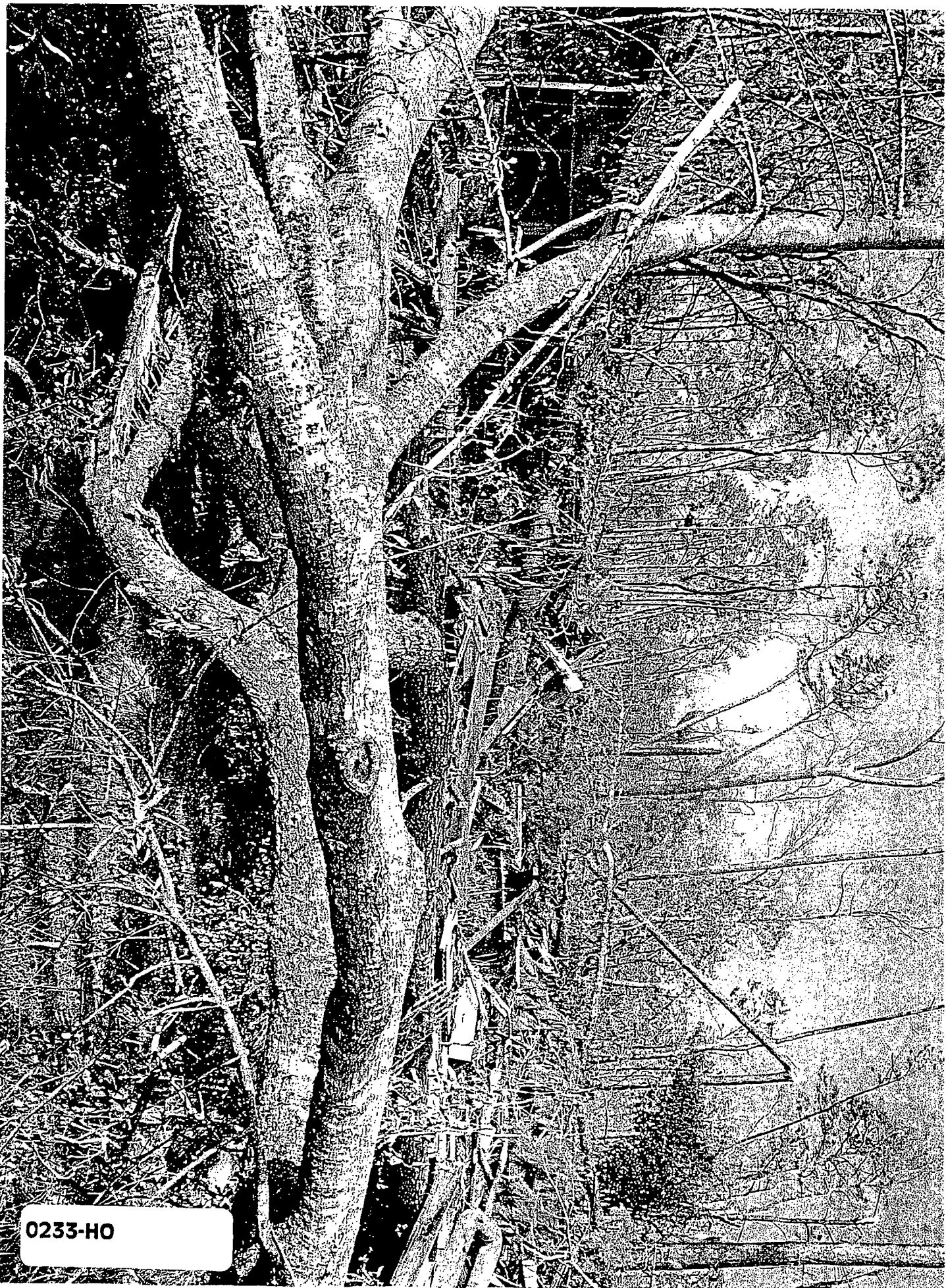
0222-HO



0223-HO



0224-HO



0233-HO



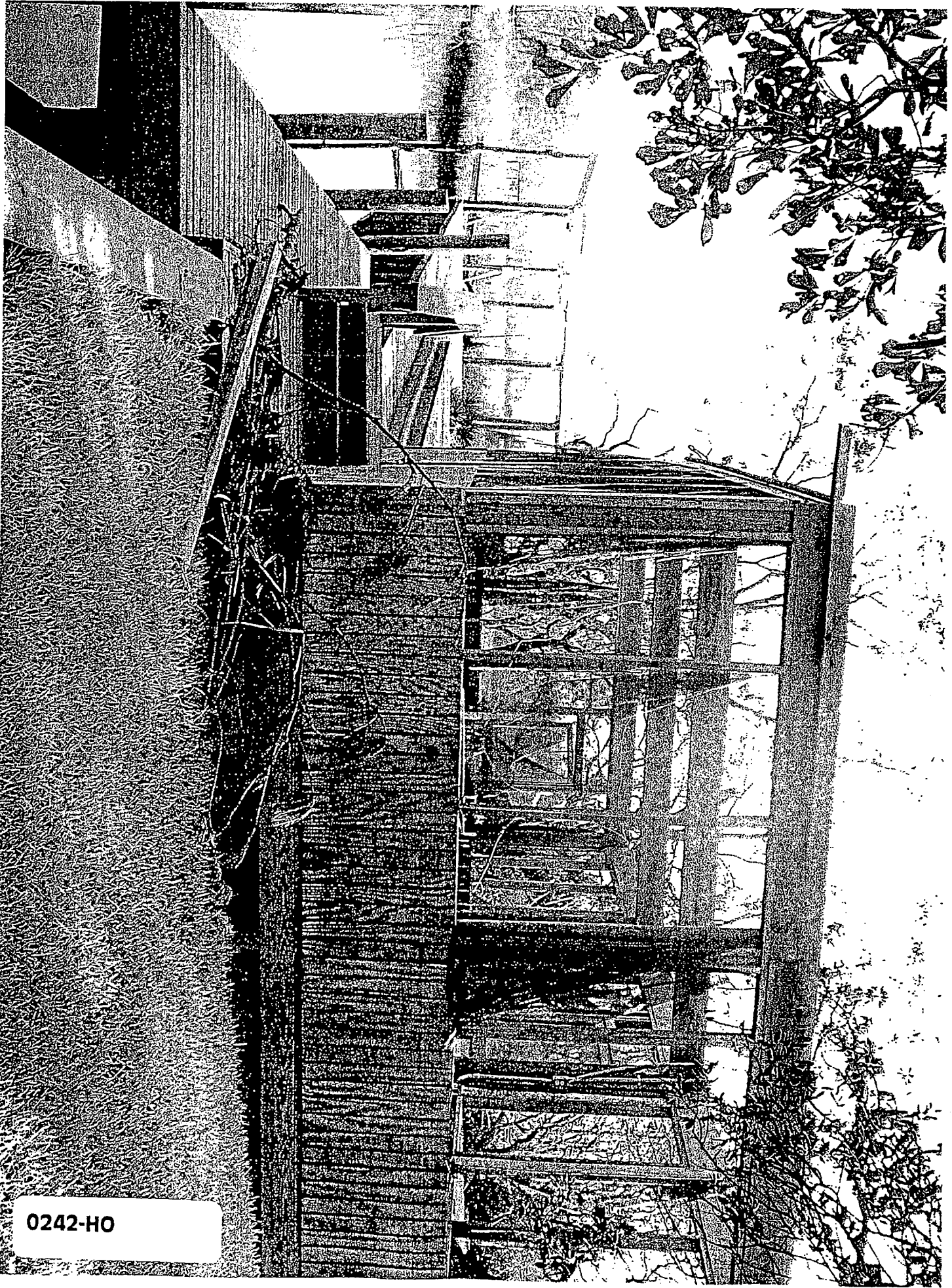
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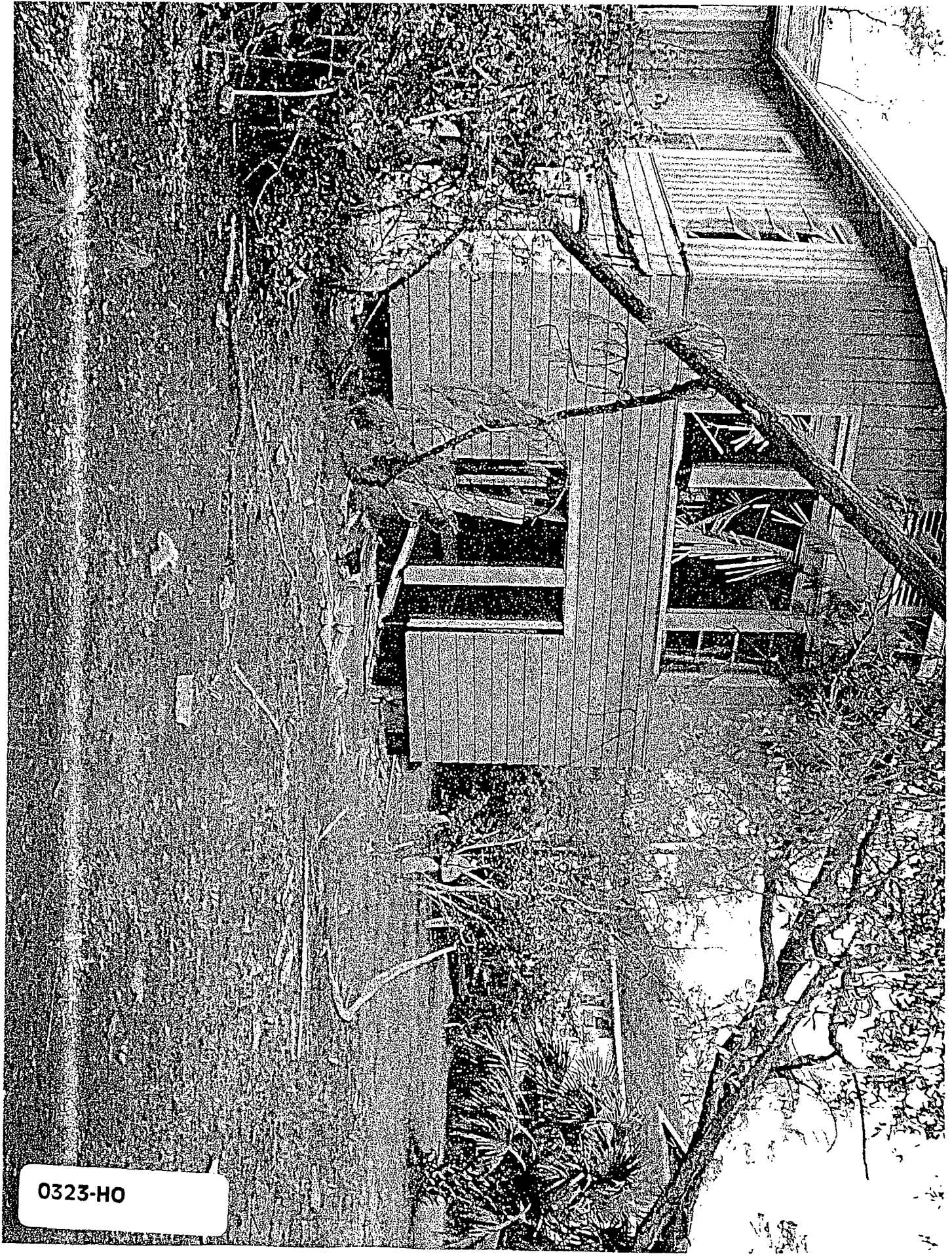
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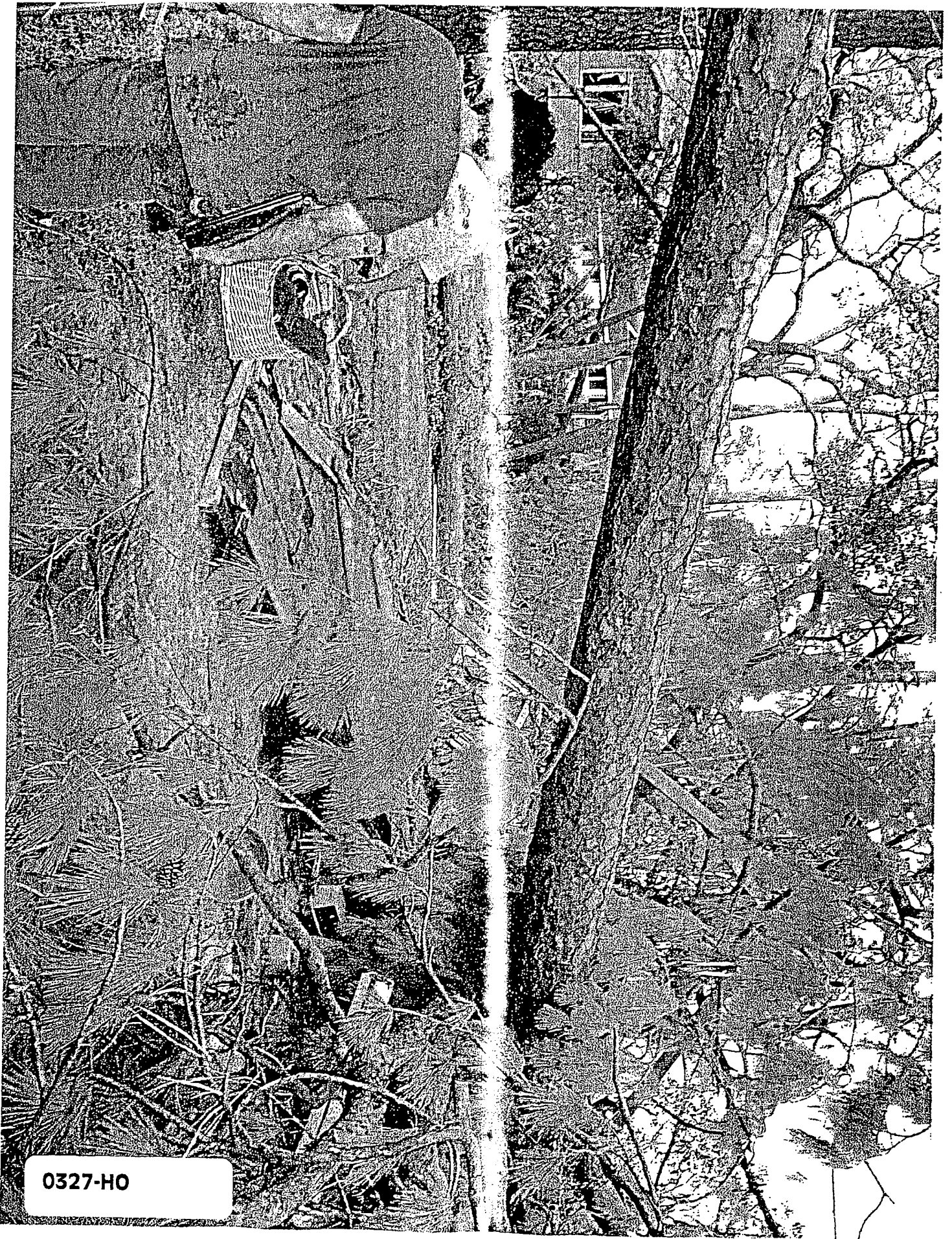
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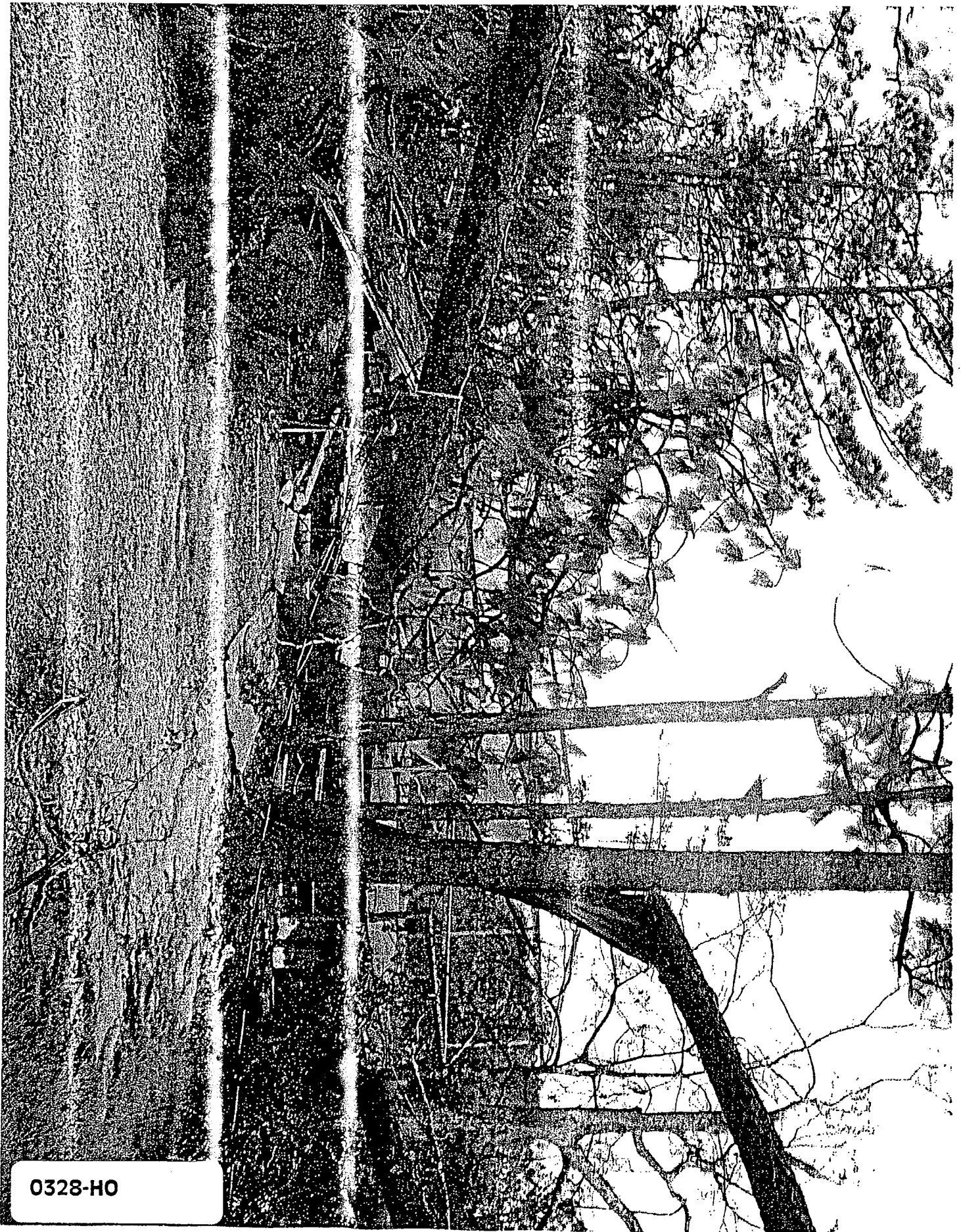
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0323-HO



0327-H0



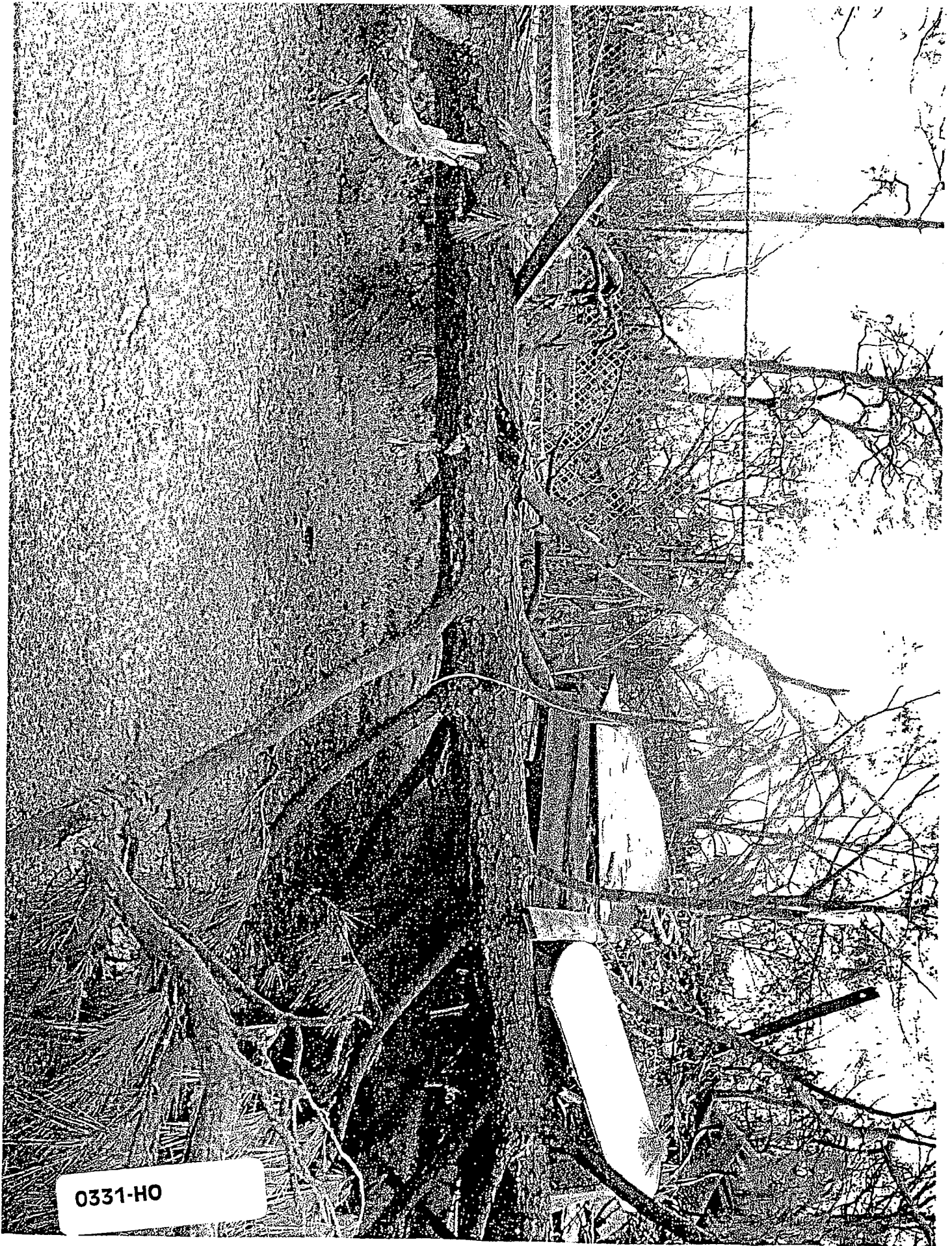
0328-H0



0329-HO



0330-H0



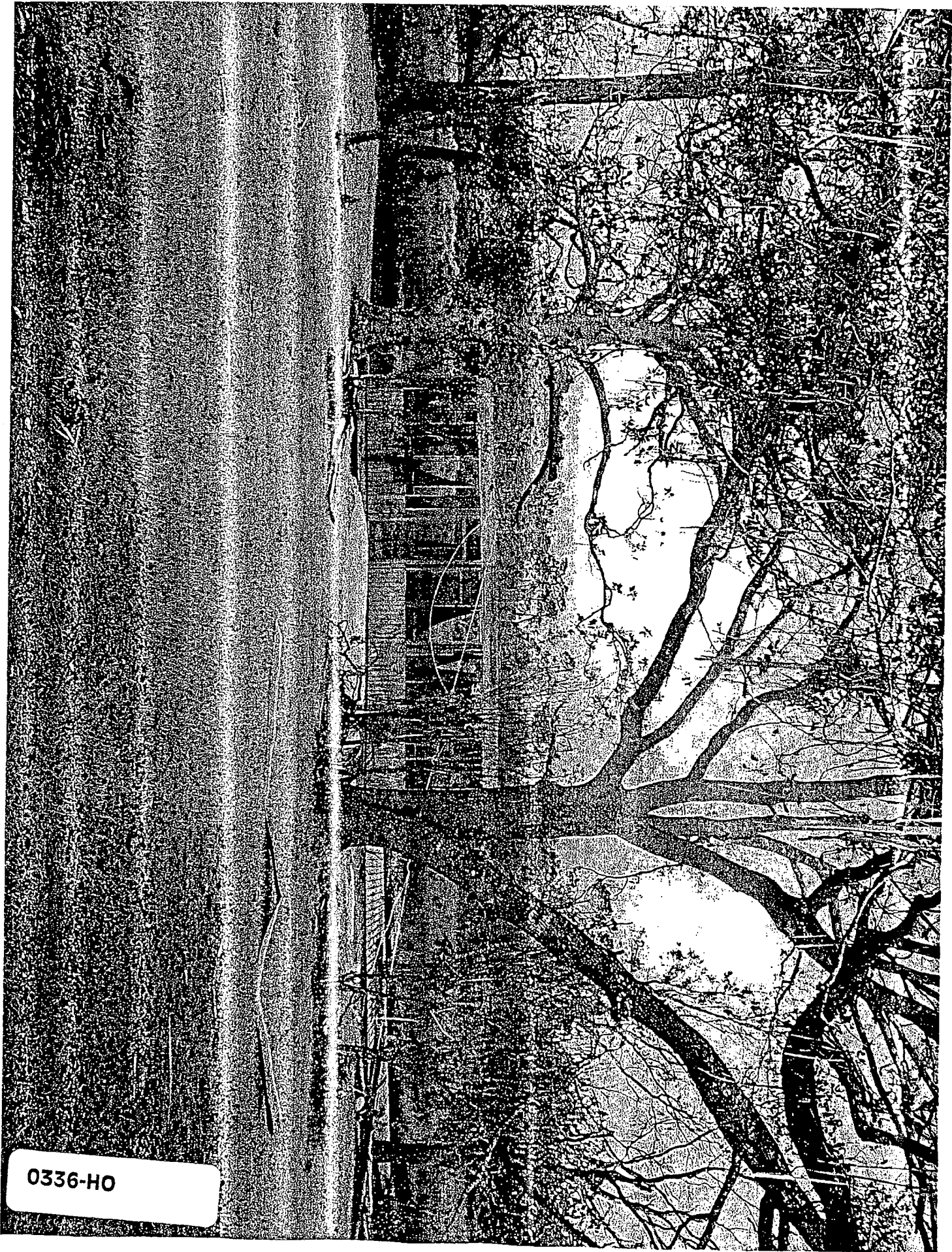
0331-H0



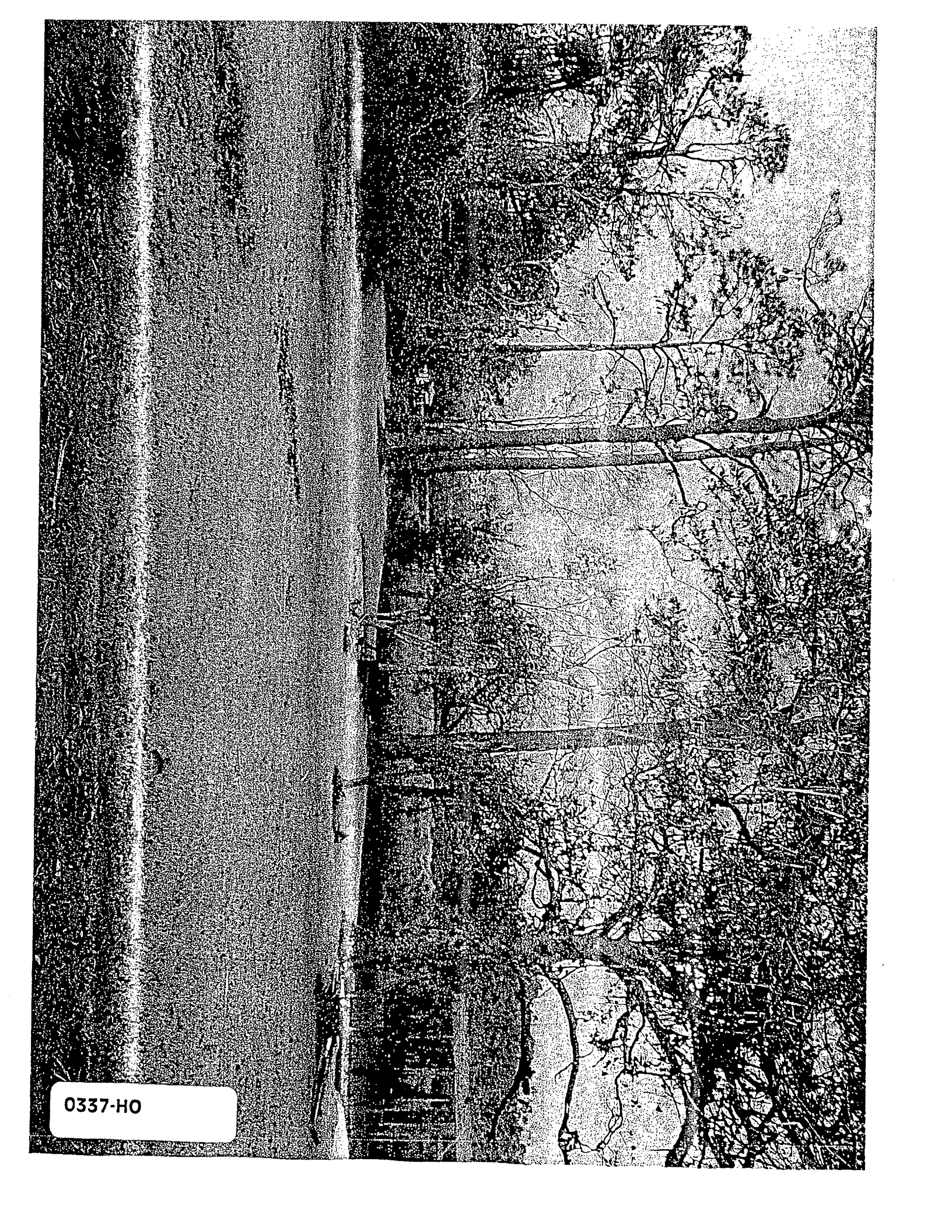
0332-HO



0333-H0



0336-HO

A black and white photograph showing a road with a white line on the left side. The road is bordered by a fence and a dense line of trees on the right. The image has a high-contrast, grainy appearance. In the bottom left corner, there is a white rectangular label with the text "0337-HO".

0337-HO

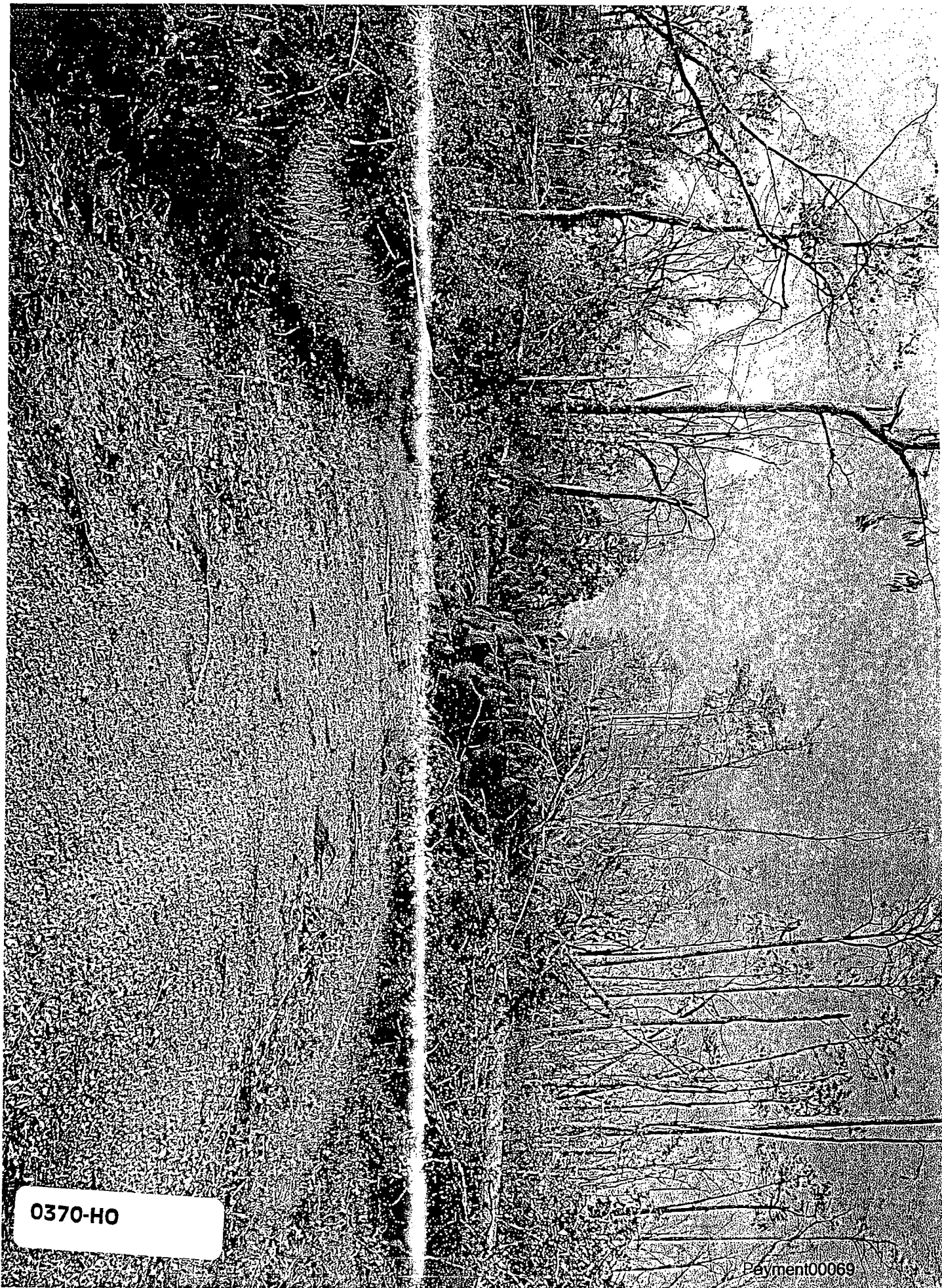


0338-HO



0369-H0

Payment00070



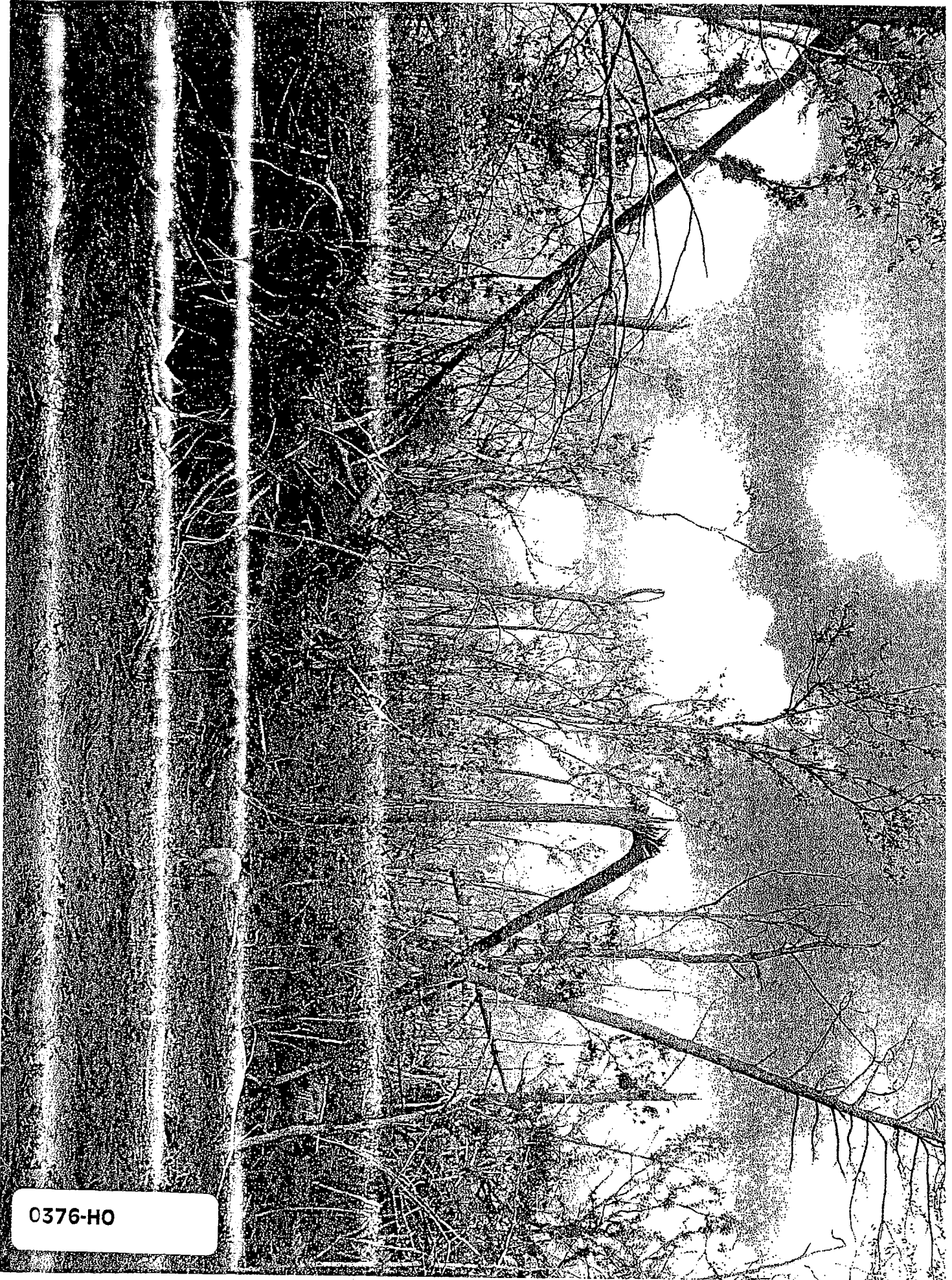
0370-H0

Payment00069



Payment00067

0372-HO



0376-H0

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

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MICHAEL PAYMENT, M. D. PLAINIFF

vs CIVIL ACTION NO. 1:07cv1003-LTS-RHW

STATE FARM FIRE AND CASUALTY
COMPANY DEFENDANT

DEPOSITION OF BRADY HYDE

Taken at the instance of the Plaintiff on
Thursday, October 2, 2008, at the offices of
McGlinchey Stafford, 200 South Lamar Street,
Suite 1100, Jackson, Mississippi,
beginning at approximately 8:30 a.m.

APPEARANCES:

MARTIN R. JELLIFFE, ESQUIRE
Wise, Carter, Child & Caraway
Post Office Box 651
Jackson, Mississippi 39205-0651

COUNSEL FOR THE PLAINTIFF

CATHERINE J. SERAFIN, ESQUIRE
Howrey, LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402

COUNSEL FOR E. A. RENFROE COMPANY

ORIGINAL

**EXHIBIT
"E"**

1 **MATTHEW E. PERKINS, ESQUIRE**
2 Castigliola & Banahan, PLLC
3 Post Office Drawer 1529
4 Pascagoula, Mississippi 39568-1529

5 COUNSEL FOR STATE FARM INSURANCE
6
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20

21 REPORTED BY:
22 **Harvey J. Rayborn, CSR #1274**
23 Rayborn Reporting
24 Post Office Box 720248
25 Jackson, Mississippi 39272
 TEL: (601) 376-0336
 FAX: (601) 376-0323
 e-mail: Raybornhj@aol.com

1. Q. To make your way --

2. A. Yes.

3. Q. -- down to the house?

4. A. Yes. Yes.

5. Q. And about how long did that take? Do you
6 remember?

7. A. I'm going to say it took a good -- a good
8 10 minutes or so. It was probably only a quarter of
9 a mile. But, you know, to -- to kind of weave your
10 way in and out of the trees and stuff, it took -- it
11 took a good 10 minutes.

12. Q. Do you remember making the comment to
13 Dr. Payment that it looked like a tornado had come
14 through there?

15. A. I don't remember that comment
16 specifically. I'm not going to say I didn't make
17 it. I -- I -- I -- I'm not going to say --
18 I just -- I don't remember.

19. Q. Okay. All right. And when you got down
20 to the property, to the actual house, you talked a
21 little bit about what you saw. Take me through how
22 you went about adjusting his flood claim.

23. A. I started off, basically did a survey of
24 the property; went, you know, just walked around it,
25 took pictures, looked at the -- the amount of

1 **MR. PERKINS:** Object to the form.

2 A. Yes, there were trees down around the
3 house. I really, you know, wasn't really looking
4 for that. I, you know -- but there were trees down
5 around the house in the area.

6 Q. **(By Mr. Jelliffe)** And in your experience
7 that shows that there had been some strong wind in
8 the area?

9 **MS. SERAFIN:** Object to the form.

10 A. Generally, yes, that could -- could be an
11 indication.

12 **MR. JELLIFFE:** Okay. I have no further
13 questions.

14 **MR. PERKINS:** No questions.

15 **MS. SERAFIN:** None here.

16 (Time Noted 10:27 a.m.)

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CERTIFICATE OF COURT REPORTER

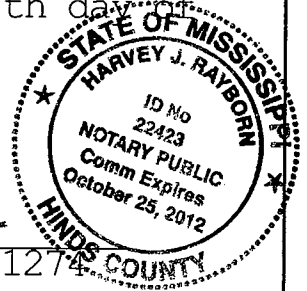
I, Harvey J. Rayborn, Court Reporter and Notary Public in and for the County of Hinds, State of Mississippi, hereby certify that the foregoing 79 pages, and including this page, contain a true and correct transcript of the above styled case, as taken by me in the aforementioned matter at the time and place heretofore stated, as taken by stenotype and later reduced to typewritten form under my supervision by means of computer-aided transcription.

I further certify that under the authority vested in me by the State of Mississippi that the witness was placed under oath by me to truthfully answer all questions in this matter.

I further certify that I am not in the employ of or related to any counsel or party in this matter and have no interest monetary or otherwise, in the final outcome of this proceeding.

Witness, my signature and seal this 8th day of October, 2008.

Harvey J. Rayborn
Harvey J. Rayborn, CSR #1274



My commission expires: 10/25/2012

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

MICHAEL PAYMENT, M.D.,)	
)	
Plaintiff,)	
)	
VS.)	CIVIL ACTION NO.
)	1:07CV1003-LTS-RHW
STATE FARM FIRE AND CASUALTY)		
COMPANY,)	
)	
Defendant.)	

ORAL DEPOSITION OF
MARK DRAIN
OCTOBER 16, 2008

ORAL DEPOSITION OF MARK DRAIN, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 16th day of October, 2008, from 9:03 a.m. to 2:07 p.m., before Kimberly Byrns Buchanan, CSR in and for the State of Texas, reported by machine shorthand, at the Grand Hyatt Hotel, 2337 South International Parkway, DFW Airport, Texas 75261, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

ORIGINAL

EXHIBIT
"F"

A P P E A R A N C E S

1
2
3 FOR THE PLAINTIFF:

4 Mr. Martin R. Jelliffe
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10 Fax: (601) 968-5519
11 E-mail: mrj@wisecarter.com

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13 FOR THE DEFENDANT:

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22
23 FOR MARK DRAIN:

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Fax: (601) 366-8408
E-mail: drewmartinlaw@gmail.com

1 Q. All right?

2 A. Okay.

3 Q. So let's kind of go through that. And -- well,
4 look through that first and identify that for me as the
5 Activity Log for this claim.

6 MR. PERKINS: Subject to your
7 representation.

8 Q. (By Mr. Jelliffe) Subject to my -- yeah.
9 Subject to the qualifications that I just now stated.

10 A. (Witness reading). Other than the last three
11 pages, it is the Activity Log.

12 Q. And the last three pages?

13 A. Well, it shows the Servicing Office and the
14 System Generated Log and the Cause of Loss, Reserves,
15 and Payments screen.

16 Q. Okay. And that's -- that pertains to this
17 claim, but it's not necessarily part of the Activity Log
18 is what you're saying. Is that right?

19 A. Yes, sir.

20 Q. Okay.

21 MR. JELLIFFE: Well, let's go ahead and
22 mark -- and mark this as the next exhibit then, please.

23 (Exhibit 5 marked)

24 Q. (By Mr. Jelliffe) Okay. Now, Mark, take a
25 look at that. And let's kind of walk me through this

1 Howard Crosby took, do you have any independent
2 recollection of seeing those photographs and what they
3 showed?

4 A. As I stated earlier, the only thing I
5 remembered about Dr. Payment's claim was white siding
6 and a metal roof. I -- for whatever reason, that sticks
7 out in my mind.

8 Q. Okay. So the answer is you don't have any?

9 A. I don't, no.

10 Q. Other than that --

11 A. Other than that one, yes, sir.

12 Q. Okay. All right. Then the next entry is
13 Number 9, and it's dated November 2, 2005, by you?

14 A. Yes, sir.

15 Q. And it says: Reviewed and sent denial letter
16 and closed?

17 A. Yes, sir.

18 Q. Okay. Now, let me hand you this document and
19 ask you if you can identify this as the denial of
20 coverage letter that you signed and sent to Dr. Payment.

21 MR. JELLIFFE: Sorry.

22 MR. MARTIN: That's all right.

23 A. Yes, sir, this is the letter.

24 Q. (By Mr. Jelliffe) All right.

25 MR. JELLIFFE: Let's mark that as the next

1 exhibit, please.

2 (Exhibit 6 marked)

3 Q. (By Mr. Jelliffe) All right. Now, I want to
4 hand you another document, which is a document produced
5 by State Farm in this case, which appears to be the same
6 letter but unsigned.

7 A. Okay.

8 Q. And just ask you to take a look at that,
9 please.

10 A. (Witness reading). Okay.

11 Q. Okay. Do you remember seeing an -- that
12 unsigned version of this letter, of the denial of
13 coverage letter?

14 A. Other than before I signed it, no.

15 Q. Okay.

16 MR. JELLIFFE: Well, let's mark it for
17 identification purposes as the next exhibit.

18 (Exhibit 7 marked)

19 Q. (By Mr. Jelliffe) Okay. Now, Mark, would
20 Exhibit 7, the unsigned letter, be the type of form
21 letter that you would get -- you as Team Manager would
22 get from a field adjuster recommending that a claim be
23 denied?

24 A. Yes, sir.

25 Q. Okay. So when we talked earlier about the form

1 Q. Correct?

2 A. Yes, sir.

3 Q. Then it goes on to say: Unfortunately, that
4 damage to your property is not covered under the policy
5 identified above.

6 A. Okay.

7 Q. And then it states the policy language upon
8 which you base that denial --

9 A. Yes.

10 Q. -- correct?

11 A. Yes, sir.

12 Q. And again, so that we're clear on this, you
13 relied on Howard Crosby to go out into the field and
14 make those assessments and recommendations, correct?

15 A. Yes.

16 Q. And to document the -- his basis for the denial
17 of that coverage, correct?

18 A. Yes, sir.

19 Q. Both in notes and in photographs, correct?

20 A. Yes, sir.

21 Q. And you made no independent review of the site
22 itself?

23 A. I did not visit the Payment site, no, sir.

24 Q. Okay. You relied on Mr. Crosby's work, and you
25 reviewed the photographs that he submitted, correct?

1 A. Yes, sir.

2 Q. Okay. And based on that, the denial was
3 issued?

4 A. Correct.

5 Q. Okay. Do you have any recollection -- and
6 going -- well, let's go back to the Activity Log.

7 A. Okay.

8 Q. It's exhibit -- whatever the exhibit number is,
9 the Activity Log. We've already discussed that you
10 entered, on November 2nd, Activity Log Number 9 --

11 A. Right.

12 Q. -- indicating that you had reviewed and sent
13 the denial letter and closed the file?

14 A. Yes, sir.

15 Q. And we've just identified the denial letter
16 that that references, correct?

17 A. Yes, sir.

18 Q. But the next log number on this Activity Log is
19 Activity Log Number 11. Do you see that?

20 A. Yes, sir.

21 Q. There is no Number 10.

22 A. There is. There's -- it's back in -- the only
23 reason I say that is we found it yesterday. But it's
24 not right here. It's back in another section for
25 whatever reason.

1 11/21 but --

2 Q. Okay.

3 A. -- on 11/23, I said that I did so --

4 Q. Okay. All right. Well, that's fair enough. I
5 understand that.

6 A. Okay.

7 Q. Do you have any independent recollection of any
8 conversations with Howard Crosby about this claim that
9 aren't referenced in the Activity Log?

10 A. No, sir -- I take that back. The only
11 conversation I remember having with Howard is that he
12 was having a hard time finding the property.

13 Q. What do you remember about that conversation?

14 A. Apparently, there's like a little compound in
15 there.

16 Q. Uh-huh.

17 A. And I think initially Howard might have went to
18 the wrong house. But I know he was having a hard time
19 finding the property.

20 Q. Okay. Do you remember him telling you that he
21 did go to the wrong house initially?

22 A. That wouldn't surprise me. I don't remember
23 that, but that wouldn't surprise me.

24 Q. Okay. Do you remember him telling you that he
25 had -- he had found out that he'd gone to the wrong

1 house and to stop what was going on, the denial, until
2 he had a chance to look at the right one?

3 A. I don't remember that, no, sir.

4 Q. Okay. And when you say you don't remember,
5 you're not -- you don't deny that it happened. You just
6 don't remember one way or the other?

7 A. I don't remember, no, sir.

8 Q. One way or the other?

9 A. The only thing I remember is he had a hard time
10 finding the house.

11 Q. Okay.

12 A. I remember that.

13 Q. Do you remember him telling you that after he
14 went back out there, he found another house that did
15 have wind damage?

16 A. No.

17 Q. You don't remember that?

18 A. No, sir.

19 Q. Do you remember him telling you about -- well,
20 do you remember any discussions with him or instructions
21 from you to him to go back out and look at -- let me --
22 let me back up.

23 The first time he went out there, the
24 first house he looked at, and he took photographs of
25 that. Do you remember telling him or asking him to go

1 back out and take another look at it because it looked
2 like it had a tree blown over on it? Do you remember
3 anything about that?

4 A. No, sir.

5 Q. Okay. And do you remember him -- anything
6 about him telling you that he found three houses out
7 there, and one of them that matched up address-wise with
8 the loss property did have wind damage?

9 A. I don't remember that. I just remember him
10 saying there was more than one property out there.

11 Q. Okay. Okay. So as we sit here today, you
12 have -- really have no independent recollection of
13 anything that Howard Crosby said to you about this
14 claim, other than what we've just discussed?

15 A. (Nodding).

16 Q. And that would be a yes?

17 A. Yes, sir.

18 Q. Okay. And whatever Mr. Crosby says about that,
19 you -- well, strike that. Never mind.

20 You don't remember Mr. Crosby telling you
21 that his initial inspection and the inspection of a
22 house upon which that denial of coverage letter was
23 based was not Dr. Payment's house?

24 MR. PERKINS: Object to the form.

25 A. No, sir, I don't remember that.

1 Q. Okay.

2 MR. JELLIFFE: We may be at a good
3 stopping point for lunch. I -- and I don't really think
4 we're going to go -- I really -- let's go off the
5 record.

6 THE REPORTER: Off the record.

7 (Break was from 11:43 a.m. to 12:46 p.m.)

8 MR. JELLIFFE: All right. We're back on.

9 Q. (By Mr. Jelliffe) All right. Mark, let me ask
10 you a couple questions about Howard Crosby. Do you
11 remember Howard?

12 A. I do.

13 Q. Do you remember looking at his qualifications
14 on that program that you had?

15 A. No.

16 Q. Okay. You don't -- so you don't remember what
17 his qualifications were?

18 A. No, sir.

19 Q. Okay. All right. Now, if Howard Crosby
20 testified that the denial of coverage letter which he
21 submitted to you on Dr. Payment's claim was based on his
22 inspection of the wrong house --

23 A. Okay.

24 Q. -- and I know that you don't remember that one
25 way or the other, correct?

1 A. Right.

2 Q. All right. If he testified to that, would you
3 agree with me that that would not be a thorough
4 investigation of Dr. Payment's claim?

5 MR. PERKINS: Object to form.

6 A. If Howard said he based his denial by looking
7 at the wrong house? Then not -- it wouldn't be. He
8 looked at the -- he looked at the wrong house.

9 Q. (By Mr. Jelliffe) Yeah.

10 A. Right.

11 Q. And if Howard Crosby testified that he didn't
12 look for wind damage below the flood waterline on a
13 property --

14 A. Okay.

15 Q. -- would you agree with me that that would not
16 be a thorough investigation of a homeowners claim for
17 damages?

18 MR. PERKINS: Object to the form.

19 A. If Howard said that, then I would agree. It
20 would not be thorough.

21 Q. (By Mr. Jelliffe) Yeah. And that wouldn't
22 meet with your expectations of what you wanted him to
23 do, would it?

24 A. Correct.

25 Q. Okay. And if Howard Crosby testified that

1 he -- and we testified earlier -- or we talked about
2 earlier how he went out there more than one time. Do
3 you remember that vaguely?

4 A. Yes, sir.

5 Q. Okay. And if he testified that he didn't do an
6 investigation of Dr. Payment's house, would you agree
7 with me that would not constitute a thorough
8 investigation of Dr. Payment's claim?

9 MR. PERKINS: Object to the form.

10 A. If he didn't look at the house that we have
11 insured, then it would not have been a thorough
12 investigation, no.

13 Q. (By Mr. Jelliffe) Or if he looked at it but
14 didn't try to evaluate it, that wouldn't be a thorough
15 investigation either, would it?

16 A. Well, I would expect him to investigate it,
17 yes.

18 Q. Okay. So the answer to my question would be
19 yes?

20 A. Repeat it one more time. I'm sorry.

21 Q. Okay. If he -- if he looked at it but didn't
22 try to evaluate the damages to Dr. Payment's house, that
23 would not constitute a thorough investigation of
24 Dr. Payment's claim, would it?

25 A. It would not.

1 STATE OF TEXAS)
COUNTY OF DALLAS)

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I, Kimberly Byrns Buchanan, Certified Shorthand Reporter in and for the State of Texas, certify that the foregoing deposition of MARK DRAIN was reported stenographically by me at the time and place indicated, said witness having been placed under oath by me, and that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither counsel for nor related to any party in this cause and am not financially interested in its outcome.

Given under my hand on this the 20th day of October, 2008.

Kimberly Buchanan

KIMBERLY BYRNS BUCHANAN

Texas CSR #7579

Expiration Date: 12/31/09

MERRILL LEGAL SOLUTIONS
Firm Registration No. 191
4144 North Central Expressway
Suite 850
Dallas, Texas 75204
(800) 966-4567

Original deposition sent to Mr. Matthew E. Perkins on _____ for signature.

FIRE

claim number
4-2452-093

ACTIVITY LOG

te time entered by office region no
9-07-05 03:26 PM Hyde, Brady x4618 ZCATBILO Al-Miss 4
called and spoke with insured. Has wind damage as well as flood damage to
risk. Structure is still standing. Has begun making list of damaged contents.
viewed coverages with Mr. Insured. He understood. Will inspect risk 9/11 @
:00.

te time entered by office region no
9-06-05 09:14 PM Hyde, Brady x4618 ZCATBILO Al-Miss 3
called insured at sister's number-Insured was not there but obtained insured
cell number of 601-503-5962. Called this number and left message for callback
insured has flood claim on residence as well.

te time entered by office region no
9-01-05 11:27 AM BARLOW, R Claims Al-Miss 1
remarks from Claims
CELL PHONE WILL NOT WORK. PLEASE TRY TO CONTACT HIM AT HIS SISTERS CELL
PHONE 601-957-9480. FLOOD # 24-RC-2252-0

SYSTEM GENERATED LOG

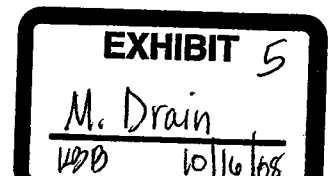
total system log entries: 1
te time office region no
9-01-05 11:27 AM ZCATBILO Al-Miss 2
initial agent acknowledgment sent for reporting agent
1-3079 VENABLE

FACTS

DE WASHED AWAYBY FLOOD WATERS. PH WILL CALL BACK ONE ALLOWED TO ENTER
CEMISES.

ROOF INFORMATION

of type roof cov code roof install date hail resistive class
ay Tile



FIRE

Claim number
24-2452-093

ACTIVITY LOG

date	time	entered by	office	region	no
0-30-05	09:06 AM	Crosby, Howard X49	ZCATGULF	Al-Miss	8
prepared flood denial letter. Up loaded photos. Please close claim					
SUMMARY OF HANDLING					
PAYMENT REQUESTED:0					
COV: A	\$0	COV: B	\$ 0	COV: C	\$0
LESS PFP	> \$	<LESS PFP	> \$	<LESS PFP	> \$
DED:		DED:		DED:	
TOTAL AUTHORITY REQUESTED	\$0				
LESS PRIOR PAYMENTS/ADVANCES	\$0				
TOTAL	\$0				
REMAINING ITEMS:					

date	time	entered by	office	region	no
0-27-05	06:33 PM	Crosby, Howard X49	ZCATGULF	Al-Miss	7
inspected this date. Discussed scope with insd.					

date	time	entered by	office	region	no
0-04-05	08:46 AM	Haddock, Terry	ZCATGULF	Al-Miss	6
insured phoned and would like an update on the status of his claim.					

date	time	entered by	office	region	no
9-11-05	02:41 PM	Chidester, Janice	REGOFF	No Texas	5
provided green draft #109571309F & sending to owning office.					

date	time	entered by	office	region	no
9-07-05	03:26 PM	Hyde, Brady x4618	ZCATBILO	Al-Miss	4
called and spoke with insured. Has wind damage as well as flood damage to risk. Structure is still standing. Has begun making list of damaged contents. Reviewed coverages with Mr. Insured. He understood. Will inspect risk 9/11 @ :00.					

date	time	entered by	office	region	no
9-06-05	09:14 PM	Hyde, Brady x4618	ZCATBILO	Al-Miss	3
called insured at sister's number-Insured was not there but obtained insured cell number of 601-503-5962. Called this number and left message for callback insured has flood claim on residence as well.					

date	time	entered by	office	region	no
9-01-05	11:27 AM	BARLOW, R	Claims	Al-Miss	1
Remarks from Claims					
CELL PHONE WILL NOT WORK. PLEASE TRY TO CONTACT HIM AT HIS SISTERS CELL PHONE 601-957-9480. FLOOD # 24-RC-2252-0					

SYSTEM GENERATED LOG

total system log entries: 12

date	time	office	region	no
9-06-07	08:21 AM	ZCATCSCU	Al-Miss	60
action selected from work queue by Jeff Rasmussen				

FIRE

date: 08-30-07

page: 12

claim number
24-2452-093

ACTIVITY LOG

date time entered by office region no
 0-30-05 09:06 AM Crosby, Howard X49 ZCATGULF Al-Miss 8
 prepared flood denial letter. Up loaded photos. Please close claim
 SUMMARY OF HANDLING
 PAYMENT REQUESTED: 0
 COV: A \$0 COV: B \$ 0 COV: C \$0
 LESS PFP> \$ <LESS PFP> \$ <LESS PFP> \$
 DED: DED:
 TOTAL AUTHORITY REQUESTED \$0
 LESS PRIOR PAYMENTS/ADVANCES \$0
 TOTAL \$0
 REMAINING ITEMS:

date time entered by office region no
 0-27-05 06:33 PM Crosby, Howard X49 ZCATGULF Al-Miss 7
 inspected this date. Discussed scope with insd.

date time entered by office region no
 0-04-05 08:46 AM Haddock, Terry ZCATGULF Al-Miss 6
 insured phoned and would like an update on the status of his claim.

date time entered by office region no
 9-11-05 02:41 PM Chidester, Janice REGOFF No Texas 5
 recorded green draft #109571309F & sending to owning office.

date time entered by office region no
 9-07-05 03:26 PM Hyde, Brady x4618 ZCATBILO Al-Miss 4
 called and spoke with insured. Has wind damage as well as flood damage to
 risk. Structure is still standing. Has begun making list of damaged contents.
 reviewed coverages with Mr. Insured. He understood. Will inspect risk 9/11 @

date time entered by office region no
 9-06-05 09:14 PM Hyde, Brady x4618 ZCATBILO Al-Miss 3
 called insured at sister's number-Insured was not there but obtained insured
 cell number of 601-503-5962. Called this number and left message for callback
 insured has flood claim on residence as well.

date time entered by office region no
 9-01-05 11:27 AM BARLOW, R Claims Al-Miss 1
 remarks from Claims
 CELL PHONE WILL NOT WORK. PLEASE TRY TO CONTACT HIM AT HIS SISTERS CELL
 PHONE 601-957-9480. FLOOD # 24-RC-2252-0

FIRE

claim number

24-2452-093

ACTIVITY LOG

date	time	entered by	office	region	no
1-29-05	12:11 PM	Drain, Mark	ZCATGULF	Al-Miss	14
to return call from insured. Returning file to closed.					
1-23-05	10:37 AM	Drain, Mark	ZCATGULF	Al-Miss	13
spoke with Insurance Commissioner George Dale on 11/21 and today regarding his claim. Explained to Commissioner Dale a trainer met with the insured on 11/21 and investigated the loss. The trainer found no evidence that wind contributed to this loss. The roof of the home is still intact and it is illogical to assume wind would move the house off it's moorings, without causing some damage to the roof. Explained the home was moved off it's moorings by flood and our denial of coverage stands as is. Commissioner Dale asked if I had explained this to the insured and I told him I had left message for the insured on his cell phone. Further explained we would certainly consider any evidence presented by the insured in the future. ended conversation.					
1-23-05	09:57 AM	Drain, Mark	ZCATGULF	Al-Miss	12
phoned insured and left message on cell phone. None of the other numbers in CCF are operable.					
1-21-05	05:49 PM	Bergstrom, Mick	ZCATGULF	Al-Miss	11
met with Mr. Payment to review damages to home. All damage appears to be from water. The second story roof structure has no wind damage to metal roof. The roof damage to the front corner appears to have been caused by the collapsing of the home and the supporting post of the front porch damaging the roof as it collapsed. Neighboring homes show heavy flood debris damage at approx 15 feet is consistent along the waterside of the home. The home directly to the west of the risk has interior water line of 5'6" on second level of home. The two homes to the east of the risk have minimal shingle damage to either roof. third story of insured home has no wind damage to siding. Walked through all evidence with Mr. Payment and explained reasoning for our denial of coverage.					
1-02-05	11:08 AM	Drain, Mark	ZCATGULF	Al-Miss	9
reviewed - sent denial letter and closed.					

DDL INS-SEC I & II
PAYMENT, MICHAEL F

COVERAGE LINES

line	flmp class	scspta	description	# REVIEWED	deductible amount	rk no	item	risk amount
001	H01W61		HOMEOWNERS	440,000	U-22000	1	2	440,000
002	JF W61		JEWELRY AND FURS S	2,500		1	2	2,500
003 @	OBVW65			440,000		1	2	440,000
004	HW W61		BACK-UP OF SEWER O	10,000		1	2	10,000

ACTIVITY LOG

date	time	entered by	office	region	no	description
total activity log entries: 8						
1-02-05	11:08 AM	Drain, Mark	ZCATGULF	Al-Miss	9	reviewed - sent denial letter and closed.
0-30-05	09:06 AM	Crosby, Howard X49	ZCATGULF	Al-Miss	8	repared flood denial letter. Up loaded photos. Please close claim SUMMARY OF HANDLING PAYMENT REQUESTED:0 OV: A \$0 COV: B \$ 0 COV: C \$0 <LESS PFP> \$ <LESS PFP> \$ <LESS PFP> \$ ED: DED: TOTAL AUTHORITY REQUESTED \$0 ESS PRIOR PAYMENTS/ADVANCES \$0 TOTAL \$0 REMAINING ITEMS:
27-05	06:33 PM	Crosby, Howard X49	ZCATGULF	Al-Miss	7	inspected this date. Discussed scope with insd.
0-04-05	08:46 AM	Haddock, Terry	ZCATGULF	Al-Miss	6	insured phoned and would like an update on the status of his claim.
9-11-05	02:41 PM	Chidester, Janice	REGOFF	No Texas	5	recorded green draft #109571309F & sending to owning office.

FIRE

date: 08-30-07

page: 11

claim number
24-2452-093

ACTIVITY LOG

date time entered by office region no
 12-15-06 10:23 AM Trevino, Armando E ZCATCSCU Al-Miss 17
 Reviewed mail queue.
 Asked Team Leader for direction.
 Pends: State Farm's response to letter from attorney.

date time entered by office region no
 1-29-05 12:11 PM Drain, Mark ZCATGULF Al-Miss 14
 o return call from insured. Returning file to closed.

date time entered by office region no
 1-23-05 10:37 AM Drain, Mark ZCATGULF Al-Miss 13
 poke with Insurance Commissioner George Dale on 11/21 and today regarding his claim. Explained to Commissioner Dale a trainer met with the insured on 11/21 and investigated the loss. The trainer found no evidence that wind contributed to this loss. The roof of the home is still intact and it is illogical to assume wind would move the house off it's moorings, without causing some damage to the roof. Explained the home was moved off it's moorings by flood and our denial of coverage stands as is. Commissioner Dale asked if I had explained this to the insured and I told him I had left a message for the insured on his cell phone. Further explained we would certainly consider any evidence presented by the insured in the future. ended conversation.

date time entered by office region no
 1-23-05 09:57 AM Drain, Mark ZCATGULF Al-Miss 12
 honed insured and left message on cell phone. None of the other numbers on CCF are operable.

date time entered by office region no
 1-21-05 05:49 PM Bergstrom, Mick ZCATGULF Al-Miss 11
 with Mr. Payment to review damages to home. All damage appears to be from roof damage to the front corner appears to have been caused by the collapsing of the home and the supporting post of the front porch damaging the roof as it collapsed. Neighboring homes show heavy flood debris damage at approx 15 feet is consistent along the waterside of the home. The home directly to the east of the risk has interior water line of 5'6" on second level of home. The two homes to the east of the risk have minimal shingle damage to either roof. third story of insured home has no wind damage to siding. Walked through all evidence with Mr. Payment and explained reasoning for our denial of coverage.

date time entered by office region no
 1-19-05 11:08 AM Drain, Mark ZCATGULF Al-Miss 9
 reviewed - sent denial letter and closed.

FIRE

claim number
24-2452-093

ACTIVITY LOG

date	time	entered by	office	region	no
3-08-06	02:45 PM	Valkner, Catherine	ZCATCSCU	Al-Miss	24

referred to ZCATBILO Al-Miss 09-810
letter of representation has been recvd. Claim is being referred to Biloxi office

date	time	entered by	office	region	no
3-07-06	02:15 PM	Sommer, Todd	ZCATCSCU	Al-Miss	22

received call from attorney. they asked if letter of representation has been recvd. Images reveal no letter of rep only the prior letter dated Feb 8-05. attorney said they will fax the letter to SF. I will reopen file and cal for follow up on letter.

date	time	entered by	office	region	no
3-01-06	07:39 AM	Cogburn, Anna M	ZCATCSCU	Al-Miss	21

continue from prior log:
: Called and left a message for the attorney explaining that the letter of representation was need.

date	time	entered by	office	region	no
3-01-06	07:38 AM	Cogburn, Anna M	ZCATCSCU	Al-Miss	20

: Reviewed claim/file. There are no new images, the letter of representation from the attorney has not arrived.
Closing claim pending letter of representation. Once letter is recieved will need to respond with a letter of acknowledgement.

date	time	entered by	office	region	no
3-22-06	02:47 PM	Hammond, Mark	ZCATCSCU	Al-Miss	19

Calendar Queue
I checked images and the signed letter of representation has not been received. I will re-calendar for one week for the letter to arrive.
Pending signed letter of representation

date	time	entered by	office	region	no
3-15-06	10:31 AM	Trevino, Armando E	ZCATCSCU	Al-Miss	18

Made contact with attorney's office. Left detailed message with Peggy for attorney.
Explained that of the 4 numbered requests in the letter we can only provide items 1 & 4. Though i explained we would need a signed letter of representation in order to assist them with any information.
Pending letter of representation from attorney in order to respond items # 1 & 4 in the imaged letter from the attorney.

date	time	entered by	office	region	no
3-15-06	10:23 AM	Trevino, Armando E	ZCATCSCU	Al-Miss	17

Reviewed mail queue.
Asked Team Leader for direction.
Pends: State Farm's response to letter from attorney.

REF
number
-7452-093

ACTIVITY LOG

date	time	entered by	office	region	no
03-08-06	02:45 PM	Valkner, Catherine	ZCATCSCU	Al-Miss	24
referred to ZCATBILO Al-Miss 09-810 letter of representation has been recvd. Claim is being referred to Biloxi office					
03-07-06	02:15 PM	Sommer, Todd	ZCATCSCU	Al-Miss	22
received call from attorney. they asked if letter of representation has been recvd. Images reveal no letter of rep only the prior letter dated Feb 8-05. attorney said they will fax the letter to SF. I will reopen file and cal for follow up on letter.					
03-01-06	07:39 AM	Cogburn, Anna M	ZCATCSCU	Al-Miss	21
continue from prior log: : Called and left a message for the attorney explaining that the letter of representation was need.					
03-01-06	07:38 AM	Cogburn, Anna M	ZCATCSCU	Al-Miss	20
: Reviewed claim/file. There are no new images, the letter of representation from the attorney has not arrived. : Closing claim pending letter of representation. Once letter is recieved will need to respond with a letter of acknowledgement.					
08-22-06	02:47 PM	Hammond, Mark	ZCATCSCU	Al-Miss	19
Calendar Queue I checked images and the signed letter of representation has not been received. I will re-calendar for one week for the letter to arrive. pending signed letter of representation					
08-15-06	10:31 AM	Trevino, Armando E	ZCATCSCU	Al-Miss	18
: Made contact with attorney's office. Left detailed message with Peggy for attorney. Explained that of the 4 numbered requests in the letter we can only provide items 1 & 4. Though i explained we would need a signed letter of presentation in order to assist them with any information. Pending letter of representation from attorney in order to respond items # & 4 in the imaged letter from the attorney.					

RE

date: 08-30-07

page: 9

number
-2452-093

ACTIVITY LOG

date 03-29-06 time 03:34 PM entered by Bourg, Michael office ZCATBILO region Al-Miss no 33
 * Received attorney's letter dated 03/14/06 requesting info on this file. Letter preceded discussion with attorney that
 * Advised T/M Mark Drain that it appears that the attorney letter was written prior to our discussion with Atty. Sam Morris in which he was advised that a Certified Copy of PH's Policy has been ordered and that all file info will be forwarded to Atty Morris as soon as Cert pol. received. Atty. Morris in agreement.
 * T/M Drain advised CR that he would still respond to attorney's latest letter dated 03-14-06.

date 03-29-06 time 03:27 PM entered by Hagman, Charlotte office ZCATBILO region Al-Miss no 32
 * R Michael Bourg no longer in Customer Service. Reassigned claim.

date 03-22-06 time 01:33 PM entered by Bourg, Michael office ZCATBILO region Al-Miss no 31
 * Ordered copy of certified policy and called Wise Carter Child & Caraway and talked to Sam Morris. Explained the oversight by this CR and gave apology. Atty Morris understood and ok.
 * Advised that Cert pol. has been ordered and that CR will process his other request as available. Understood and in agreement.

date 03-17-06 time 03:48 PM entered by Mohler, Andi office ZCATCSCU region Al-Miss no 29
 * Moved to ZCATBILO Al-Miss 09-810
 * R TM Odland moving file to Biloxi office.

date 03-17-06 time 03:44 PM entered by Odland, Peter office ZCATCSCU region Al-Miss no 28
 * Requesting review of file. Please move to field location as attorney is requesting documents from the physical file.

date 03-17-06 time 03:21 PM entered by Mohler, Andi office ZCATCSCU region Al-Miss no 27
 * Open file, letter of representation has been received and is in IMAGES.

date 03-09-06 time 08:32 AM entered by Bourg, Michael office ZCATBILO region Al-Miss no 25
 * Received physical file and found no letter of representation within file jacket
 * Returning file to close no action necessary at this time.

FIRE

claim number

4-2452-093

ACTIVITY LOG

date	time	entered by	office	region	no
3-29-06	03:34 PM	Bourg, Michael	ZCATBILO	Al-Miss	33
*		Received attorney's letter dated 03/14/06 requesting info on this file. Letter preceded discussion with attorney that			
*		Advised T/M Mark Drain that it appears that the attorney letter was written prior to our discussion with Atty. Sam Morris in which he was advised that a Certified Copy of PH's Policy has been ordered and that all file info will be forwarded to Atty Morris as soon as Cert Pol. received. Atty. Morris in agreement.			
*		T/M Drain advised CR that he would still respond to attorney's latest letter dated 03-14-06.			
3-29-06	03:27 PM	Hagman, Charlotte	ZCATBILO	Al-Miss	32
		R Michael Bourg no longer in Customer Service. Reassigned claim.			
3-22-06	01:33 PM	Bourg, Michael	ZCATBILO	Al-Miss	31
		Ordered copy of certified policy and called Wise Carter Child & Caraway and talked to Sam Morris. Explained the oversight by this CR and gave apology. Atty Morris understood and ok.			
		Advised that Cert Pol. has been ordered and that CR will process his other request as available. Understood and in agreement.			
3-17-06	03:48 PM	Mohler, Andi	ZCATCSCU	Al-Miss	29
		Moved to ZCATBILO Al-Miss 09-810			
		per TM Odland moving file to Biloxi office.			
3-17-06	03:44 PM	Odland, Peter	ZCATCSCU	Al-Miss	28
		management review of file. Please move to field location as attorney is requesting documents from the physical file.			
3-17-06	03:21 PM	Mohler, Andi	ZCATCSCU	Al-Miss	27
		reopen file, letter of representation has been received and is in IMAGES.			
3-09-06	08:32 AM	Bourg, Michael	ZCATBILO	Al-Miss	25
		Received physical file and found no letter of representation within file jacket.			
*		Returning file to close no action necessary at this time.			

FIRE

date: 08-30-07

page: 8

claim number
14-2452-093

ACTIVITY LOG

te	time	entered by	office	region	no
5-16-06	07:27 AM	Poinsette, Tara	CIUNIT	Florida	42

BA called and stated they needed something showing that the claim was denied. He stated has a copy of the denial letter. I advised that is usually all we send to the insured. Can you all assist with this?

te	time	entered by	office	region	no
5-08-06	04:37 PM	York, Garret	ZCATCSCU	Al-Miss	41

= Please disregard previous entry, CR has not provided the documentation requested due to the form that was sent does not provided for documenting the needed information. Called SBA and requested to have the correct document sent. Closing claim until documents are received.

te	time	entered by	office	region	no
5-08-06	04:24 PM	York, Garret	ZCATCSCU	Al-Miss	40

=Reviewed images, Insured entered into a loan with the small business association and will need to be included in all future payments. Added SBA to additional parties. Faxed required documents to SBA. No additional information required closing claim.

te	time	entered by	office	region	no
5-08-06	01:51 PM	Sammons, Erik	ZCATCSCU	Al-Miss	38

all from SBA requestin payment info. Advised we need signed authorization from P/H to release that info.

te	time	entered by	office	region	no
5-08-06	01:46 PM	Voiles, Cinda	CATCLMCN	Florida	37

recvd call from Theresa w/SBA disaster assistance. She wants to know what SF aid in damages on his claim. CR provided ZCATSCU phone# and claim #, and told her to call that office for further info.

te	time	entered by	office	region	no
8-25-06	08:22 AM	Macaulay, Anissa	ZCATBILO	Al-Miss	36

moved to ZCATCSCU Al-Miss 09-899

te	time	entered by	office	region	no
8-13-06	01:48 PM	Hagman, Charlotte	ZCATBILO	Al-Miss	35

no further handling at this time. Routing file to close.

te	time	entered by	office	region	no
8-05-06	01:03 PM	Hagman, Charlotte	ZCATBILO	Al-Miss	34

received Cert. Copy of Policy. Printed out photos. Dictated letter to the attorney. Mailed Cert. Copy of Policy, photos and letter to the insured.

RE

in number

4-7452-093

ACTIVITY LOG

date time entered by office region no
05-16-06 07:27 AM Poinsette, Tara CIUNIT Florida 42
SBA called and stated they needed something showing that the claim was denied. She stated has a copy of the denial letter. I advised that is usually all we send to the insured. Can you all assist with this?

date time entered by office region no
05-08-06 04:37 PM York, Garret ZCATCSCU Al-Miss 41
= Please disregard previous entry, CR has not provided the documentation requested due to the form that was sent does not provided for documenting the needed information. Called SBA and requested to have the correct document sent. Closing claim until documents are received.

date time entered by office region no
05-08-06 04:24 PM York, Garret ZCATCSCU Al-Miss 40
=Reviewed images, Insured entered into a loan with the small business association and will need to be included in all future payments. Added SBA to additional parties. Faxed required documents to SBA. No additional information required closing claim.

date time entered by office region no
05-08-06 01:51 PM Sammons, Erik ZCATCSCU Al-Miss 38
all from SBA requestin payment info. Advised we need signed authorization P/H to release that info.

date time entered by office region no
05-08-06 01:46 PM Voiles, Cinda CATCLMCN Florida 37
rvd call from Theresa w/SBA disaster assistance. She wants to know what SF aid in damages on his claim. CR provided ZCATSCU phone# and claim #, and told her to call that office for further info.

date time entered by office region no
08-25-06 08:22 AM Macaulay, Anissa ZCATBILO Al-Miss 36
moved to ZCATCSCU Al-Miss 09-899

date time entered by office region no
08-13-06 01:48 PM Hagman, Charlotte ZCATBILO Al-Miss 35
further handling at this time. Routing file to close.

date time entered by office region no
08-05-06 01:03 PM Hagman, Charlotte ZCATBILO Al-Miss 34
received Cert. Copy of Policy. Printed out photos. Dictated letter to the attorney. Mailed Cert. Copy of Policy, photos and letter to the insured.

FIRE

claim number
4-2452-093

ACTIVITY LOG

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=====
te      time      entered by      office      region      no
5-23-07 04:46 PM  McCuskey, Shannon  ZCATCSCU  Al-Miss     50
: Accepted image of letter from attorney
: Letter requests information requested from March '06 letter, Attorney
  indicates he never rec'd requested documentation.
  Log 34 indicates denial letter and certified policy were sent to attorney
  contacted Charles Russell, spoke with secretary, requested call back to
  verify documentation Charles is requesting. Advised SF has sent certified
  policy and denial letter, claim file documentation is proprietary.
  Secretary will leave message for Charles to contact me.
: Return contact from attorney/ verify specific documentation he is
  requesting.

te      time      entered by      office      region      no
5-16-06 10:25 AM  Schlegel, Bradley  ZCATCSCU  Al-Miss     48
~ Received SBA docs. #10 not yet signed in either SBA image.
~ No action at this time.
~ Closing.

te      time      entered by      office      region      no
5-25-06 02:46 PM  Melton, Dean T     ZCATCSCU  Al-Miss     45
: Received call from Attorney Samuel Morris, stating his clients had received
  contact letter from SF and was inquiring as to what was needed and why has
  he letter gone to the NI instead of the attorney. Advised I would check and
  all back. Determined letter was generated when SBA has submitted a request
  or documentation. CR attempted to contact Insured and found none of the
  contact numbers were operative. However, since contact letter was sent the
  issue with the SBA was addressed. Advised the Attorney to disregard the
  letter. He also questioned if our denial of the claim was full and final. I
  advised based on the information presented to SF we denied the claim, but if
  had additional information we would be happy to review the information and
  possibly reconsider, but only if new information was presented. He was
  agreeable.

te      time      entered by      office      region      no
5-24-06 08:00 AM  Chisley, Montrell  ZCATMETA  Mid-So      44
RECEIVED FAX FROM SBA TO VERIFY INFO.

te      time      entered by      office      region      no
5-17-06 05:43 PM  Flotte, Denise     ZCATCSCU  Al-Miss     43
: rec'd msg prior log.
: called insd. @ C 228-343-9566, was told wrong #. called H 601-927-7134, was
  told wrong # again, W 601-372-1777, was told there's no michael there.
  sending contact ltr.
: insd or SBA contact, advise we need the assignment of insurance proceeds
  form. obtain all phone #'s for insd.
=====

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RE
in number
4-2452-093

ACTIVITY LOG

date	time	entered by	office	region	no
05-23-07	04:46 PM	McCuskey, Shannon	ZCATCSCU	Al-Miss	50
A: Accepted image of letter from attorney					
C: Letter requests information requested from March '06 letter, Attorney indicates he never rec'd requested documentation. Log 34 indicates denial letter and certified policy were sent to attorney. Contacted Charles Russell, spoke with secretary, requested call back to verify documentation Charles is requesting. ADvised SF has sent certified policy and denial letter, claim file documentation is proprietary. Secretary will leave message for Charles to contact me.					
F: Return contact from attorney/ verify specific documentation he is requesting.					
08-16-06	10:25 AM	Schlegel, Bradley	ZCATCSCU	Al-Miss	48
~ Received SBA docs. #10 not yet signed in either SBA image.					
~ No action at this time.					
~ Closing.					
05-25-06	02:46 PM	Melton, Dean T	ZCATCSCU	Al-Miss	45
: Received call from Attorney Samuel Morris, stating his clients had received contact letter from SF and was inquiring as to what was needed and why has letter gone to the NI instead of the attorney. Advised I would check and call back. Determined letter was generated when SBA has submitted a request for documentation. CR attempted to contact Insured and found none of the contact numbers were operative. However, since contact letter was sent the issue with the SBA was addressed. Advised the Attorney to disregard the letter. He also questioned if our denial of the claim was full and final. I advised based on the information presented to SF we denied the claim, but if he had additional information we would be happy to review the information and possibly reconsider, but only if new information was presented. He was agreeable.					
08-24-06	08:00 AM	Chisley, Montrell	ZCATMETA	Mid-So	44
RECEIVED FAX FROM SBA TO VERIFY INFO.					
08-17-06	05:43 PM	Flotte, Denise	ZCATCSCU	Al-Miss	43
rec'd msg prior log.					
called insd. @ C 228-343-9566, was told wrong #. called H 601-927-7134, was told wrong # again, W 601-372-1777, was told ther's no michael there.					
sending contact ltr.					
insd or SBA contact, advise we need the assigment of insurance proceeds form. obtain all phone #'s for insd.					

RE

number

-2452-093

ACTIVITY LOG

date	time	entered by	office	region	no
6-02-07	08:54 AM	Sanchez, Sandy	CORPKAT	Al-Miss	56
referred to CORPDOI Al-Miss 09-555 ID REVIEW					
6-01-07	03:12 PM	McCuskey, Shannon	ZCATCSCU	Al-Miss	55
referred to CORPKAT Al-Miss 09-896 reopened for MS reevaluation					
6-01-07	02:48 PM	Towns, Steven	CORPKAT	Al-Miss	54
MISSISSIPPI KATRINA REQUEST FORM RECEIVED. MS REEVALUATION TEAM HANDLING CLAIM PER THE MISSISSIPPI DEPARTMENT OF INSURANCE AGREEMENT.*					
5-01-07	02:48 PM	Towns, Steven	CORPKAT	Al-Miss	53
referred claim to 896 and assign to XCK2, Unit K2, Team B and Section K					
8-25-07	11:32 AM	McCuskey, Shannon	ZCATCSCU	Al-Miss	52
Rec'd call from Attorney's, Charlie Russell and Gene Naylor Charlie direct phone # is 601-968-5580 Gene's phone number # is 601-968-5564 Discussed claim denial and documentation SF is allowed to release to attorney's on request. Advised Attorney's of PH's options to submit documentation that conflicts with SF's coverage determination, option for litigation and explained MS re-evaluation process. Attorney's have rec'd the denial letter and certified policy. They will contact if they have further requests or are requesting litigation. Gave 7 Katrina phone number for them to contact. Closing file pending further requests					
8-25-07	10:27 AM	Durham, Benny K	ZCATCSCU	Al-Miss	51
rcvd call from attorney, warm transferred to cr mccuskey					

RE
in number
4-2452-093

ACTIVITY LOG

date	time	entered by	office	region	no
06-02-07	08:54 AM	Sanchez, Sandy	CORPKAT	Al-Miss	56
Referred to CORPDOI Al-Miss 09-555 MID REVIEW					
06-01-07	03:12 PM	McCuskey, Shannon	ZCATCSCU	Al-Miss	55
Referred to CORPKAT Al-Miss 09-896 Reopened for MS reevaluation					
06-01-07	02:48 PM	Towns, Steven	CORPKAT	Al-Miss	54
MISSISSIPPI KATRINA REQUEST FORM RECEIVED. MS REEVALUATION TEAM HANDLING CLAIM PER THE MISSISSIPPI DEPARTMENT OF INSURANCE AGREEMENT.*					
06-01-07	02:48 PM	Towns, Steven	CORPKAT	Al-Miss	53
Refer claim to 896 and assign to XCK2, Unit K2, Team B and Section K					
05-25-07	11:32 AM	McCuskey, Shannon	ZCATCSCU	Al-Miss	52
: Rec'd call from Attorney's, Charlie Russell and Gene Naylor : Charlie direct phone # is 601-968-5580 : Gene's phone number # is 601-968-5564 - Discussed claim denial and documentation SF is allowed to release to attorney's on request. Advised Attorney's of PH's options to submit documentation that conflicts with SF's coverage determination, option for litigation and explained MS re-evaluation process. Attorney's have rec'd the denial letter and certified policy. They will contact if they have further requests or are requesting litigation. Gave 7 Katrina phone number for them to contact. Closing file pending further requests					
08-25-07	10:27 AM	Durham, Benny K	ZCATCSCU	Al-Miss	51
rcvd call from attorney, warm transferred to cr mccuskey					

REF
number
-2452-093

ACTIVITY LOG

date time entered by office region no
7-07-07 01:12 PM Singleton, Kerri A ZCATCSCU Al-Miss 64
: rec approved letter from CR McCuskey (he departed the catastrophe site today). Printed 3 copies of letter - 1 to atty, 1 to PH, and 1 to agent.
CSA instructions to send all.
eCaptured copy to file.
: n/a
: CR Singleton to follow up w/atty.
MS Reeval

date time entered by office region no
7-06-07 03:54 PM McCuskey, Shannon ZCATCSCU Al-Miss 63
: Contacted Attorney Charles Russell
: Left message indicating SF position has not changed the damage to the home was caused by storm surge, and is not a covered loss.
Tracking # for photos to paper file 791718431862
: Denial ltr approval
CR Singleton handling file.

date time entered by office region no
7-06-07 03:15 PM McCuskey, Shannon ZCATCSCU Al-Miss 62
: dictated denial letter.

date time entered by office region no
7-06-07 11:29 AM McCuskey, Shannon ZCATCSCU Al-Miss 61
: mailed photos submitted by Attorney to Biloxi to be added to paper file.

date time entered by office region no
7-05-07 05:05 PM Deloach, Maxcine ZCATBILO Al-Miss 59
: faxed entire file contents to CIOS.

date time entered by office region no
7-05-07 04:17 PM McCuskey, Shannon ZCATCSCU Al-Miss 58
: faxed denials letters and any other correspondence to attorney to cios

date time entered by office region no
7-05-07 02:38 PM McCuskey, Shannon ZCATCSCU Al-Miss 57
: Rec'd packet of information from attorney
Included in packet are photos, letter requesting re-evaluation, appraisal docs, and Mississippi Katrina Resolution Form.
Reviewing docs
Concerning Resolution form, imaging in file, and mailing to:
PO Box 1072
Gulfport, MS 39501
Review docs and respond to attorney's request.

RE
in number
4-7452-093

ACTIVITY LOG

date	time	entered by	office	region	no
07-07-07	01:12 PM	Singleton, Kerri A	ZCATCSCU	Al-Miss	64
A: rec approved letter from CR McCuskey (he departed the catastrophe site today). Printed 3 copies of letter - 1 to atty, 1 to PH, and 1 to agent. CSA instructions to send all. eCaptured copy to file.					
I: n/a					
F: CR Singleton to follow up w/atty. MS Reeval					
07-06-07	03:54 PM	McCuskey, Shannon	ZCATCSCU	Al-Miss	63
A: Contacted Attorney Charles Russell					
I: Left message indicating SF position has not changed the damage to the home was caused by storm surge, and is not a covered loss. Tracking # for photos to paper file 791718431862					
F: Denial ltr approval CR Singleton handling file.					
7-06-07	03:15 PM	McCuskey, Shannon	ZCATCSCU	Al-Miss	62
dictated denial letter.					
06-07	11:29 AM	McCuskey, Shannon	ZCATCSCU	Al-Miss	61
ailed photos submitted by Attorney to Biloxi to be added to paper file.					
7-05-07	05:05 PM	Deloach, Maxcine	ZCATBILO	Al-Miss	59
ixed entire file contents to CIOS.					
05-07	04:17 PM	McCuskey, Shannon	ZCATCSCU	Al-Miss	58
s fax denials letters and any other correspondence to attorney to cios					
05-07	02:38 PM	McCuskey, Shannon	ZCATCSCU	Al-Miss	57
Rec'd packet of information from attorney					
Included in packet are photos, letter requesting re-evaluation, appraisal docs, and Mississippi Katrina Resolution Form.					
Reviewing docs					
Concerning Resolution form, imaging in file, and mailing to: PO Box 1072 Gulfport, MS 39501					
Review docs and respond to attorney's request.					

FIRE

date: 08-30-07

page: 4

claim number

24-2452-093

ACTIVITY LOG

date time entered by office region no
 07-17-07 01:38 PM Esparza, Hiram CORPKAT Al-Miss 69
 -Reviewed claim file, policy, images, activity log, and resolution form. SF
 H/O claim issued 69: \$5,000 payment, no other payments. Mediation did not
 apply. PPIF, appraisal, and various photos were submitted. Allowed for
 additional consideration for items related to structure listed on the PPIF.
 Also allowed for additional consideration for various personal property items
 on PPIF, such as electronics, soft furniture, and upholstered items.
 -SF flood, 24-2452-106, issued limits of 17: \$250,000.
 -Re-eval recap completed and submitted to TM for review.

-Pends TM review.
 -Follow up with atty to make offer.

date time entered by office region no
 07-16-07 12:13 PM Morgan-Vernooy, Am CORPKAT Al-Miss 68
 -: Rec'd msg in log 66 - NI's atty requesting policy limits. CSCU handling
 is complete. Res form in file. After reviewing photos & logs, appears
 this may be a Team 1 claim. Rev'd w/TM Westmoreland & file being moved
 to Team 1. NOTE - ATTY ATTACHED 359 PAGES TO THE RES FORM.

date time entered by office region no
 07-16-07 12:12 PM Westmoreland, Scot CORPKAT Al-Miss 67
 moving file to team 1 for more handling.

date time entered by office region no
 07-13-07 10:22 AM Singleton, Kerri ZCATCSCU Al-Miss 66
 TTN CORPKAT TEAM 2: Please be advised that CSCU handling complete. Attorney
 as submitted letter demanding policy limits. CSCU has followed up advising
 position remains unchanged at this time.
 Please resume handling on your end. Thank!

date time entered by office region no
 07-13-07 10:13 AM Singleton, Kerri A ZCATCSCU Al-Miss 65
 : rev cal.
 : called Atty Charlie Russell to advise SF position remains unchanged
 and confirm letter sent by CR McCuskey was received.
 Mr. Russell advised letter has been received and they will be filing suit.
 : MS Reeval.
 Forwarding msg to CorpKat to advise CSCU handling complete at this time.

FIRE

claim number
24-2452-093

ACTIVITY LOG

date	time	entered by	office	region	no
07-17-07	01:38 PM	Esparza, Hiram	CORPKAT	Al-Miss	69

Reviewed claim file, policy, images, activity log, and resolution form. SF H/O claim issued 69: \$5,000 payment, no other payments. Mediation did not apply. PPIF, appraisal, and various photos were submitted. Allowed for additional consideration for items related to structure listed on the PPIF. Also allowed for additional consideration for various personal property items on PPIF, such as electronics, soft furniture, and upholstered items. SF flood, 24-2452-106, issued limits of 17: \$250,000. Re-eval recap completed and submitted to TM for review.

Pends TM review.
Follow up with atty to make offer.

date	time	entered by	office	region	no
7-16-07	12:13 PM	Morgan-Vernooy, Am	CORPKAT	Al-Miss	68

: Rec'd msg in log 66 - NI's atty requesting policy limits. CSCU handling is complete. Res form in file. After reviewing photos & logs, appears this may be a Team 1 claim. Rev'd w/TM Westmoreland & file being moved to Team 1. NOTE - ATTY ATTACHED 359 PAGES TO THE RES FORM.

date	time	entered by	office	region	no
7-16-07	12:12 PM	Westmoreland, Scot	CORPKAT	Al-Miss	67

ng file to team 1 for more handling.

date	time	entered by	office	region	no
7-13-07	10:22 AM	Singleton, Kerri	ZCATCSCU	Al-Miss	66

FTN CORPKAT TEAM 2: Please be advised that CSCU handling complete. Attorney as submitted letter demanding policy limits. CSCU has followed up advising position remains unchanged at this time. Please resume handling on your end. Thank!

date	time	entered by	office	region	no
7-13-07	10:13 AM	Singleton, Kerri A	ZCATCSCU	Al-Miss	65

rev cal.
called Atty Charlie Russell to advise SF position remains unchanged and confirm letter sent by CR McCuskey was received. Mr. Russell advised letter has been received and they will be filing suit. MS Reeval.
Forwarding msg to CorpKat to advise CSCU handling complete at this time.

TIRE

claim number

4-2452-093

ACTIVITY LOG

date time entered by office region no
 7-18-07 02:46 PM Esparza, Hiram CORPKAT Al-Miss 72
 /c from Insd Atty, Charlie Russel, explained offer. Atty advised that he
 could relay offer to Insured.

 Ends signed release, f/u with atty.

date time entered by office region no
 7-17-07 04:25 PM Esparza, Hiram CORPKAT Al-Miss 71
 Received auth. approval. Called Atty. Charles Russell (601)968-5580, left
 message to call back.

 Ends atty contact to explain offer. Send offer info to atty.

date time entered by office region no
 7-17-07 04:23 PM Esparza, Hiram CORPKAT Al-Miss 70

 PHASE 1 OFFER

LIMITS	TOOL	SF PAYMENTS	50% of Cov A:	\$220,000.00
440,000.00	154,000.00	0.00	FLOOD PAYMENTS	OFFER
330,000.00	22,011.00	0.00	250,000.00	\$154,000.00
	44,000.00	5,000.00	0.00	22,011.00
			0.00	39,000.00
			NET TOTAL:	\$215,011.00
			50% MIN. ADJ:	0.00
			ADDITIONAL CONSIDERATION	
			UNCOMPENSATED WIND DAMAGE:	25,742.00
			SETTLEMENT OFFER:	\$240,753.00

NOTE: Additional consideration breaks down as follows:
 Cov. A: \$ 6,049.00 (lighting fixtures/electrical in the ceilings)
 Cov. B: 19,693.00 (electronics/soft materials per PPIF provided)
 Total: \$25,742.00

FIRE

claim number

24-2452-093

ACTIVITY LOG

date time entered by office region no
 07-18-07 02:46 PM Esparza, Hiram CORPKAT Al-Miss 72
 P/c from Insd Atty, Charlie Russel, explained offer. Atty advised that he
 would relay offer to Insured.

 depends signed release, f/u with atty.

date time entered by office region no
 07-17-07 04:25 PM Esparza, Hiram CORPKAT Al-Miss 71
 received auth. approval. Called Atty. Charles Russell (601)968-5580, left
 message to call back.

 depends atty contact to explain offer. Send offer info to atty.

date time entered by office region no
 07-17-07 04:23 PM Esparza, Hiram CORPKAT Al-Miss 70

PHASE 1 OFFER

LIMITS	TOOL	SF PAYMENTS	50% of Cov A:	\$220,000.00
440,000.00	154,000.00	0.00	FLOOD PAYMENTS	OFFER
330,000.00	22,011.00	0.00	250,000.00	\$154,000.00
	44,000.00	5,000.00	0.00	22,011.00
			0.00	39,000.00
			NET TOTAL:	\$215,011.00
			50% MIN. ADJ:	0.00
			ADDITIONAL CONSIDERATION	
			UNCOMPENSATED WIND DAMAGE:	25,742.00
			SETTLEMENT OFFER:	\$240,753.00

=====

NOTE: Additional consideration breaks down as follows:
 Cov. A: \$ 6,049.00 (lighting fixtures/electrical in the ceilings)
 Cov. B: 19,693.00 (electronics/soft materials per PPIF provided)

 Total: \$25,742.00

FIRE

claim number

-Z452-093

SERVICING OFFICE(S)

name: Katrina Re-Eval	region: Al-Miss	fax:
address: P.O. BOX 1072 GULFPORT MS 39501		
code: 09-896	referral status/date: OPEN	06-01-07
aim rep: Team, 1		
phone:	unit: K1	team: A sec: K
ate/time assigned: 07-17-07 4:28 PM		date/time reviewed: 07-17-07 4:28 PM

SERVICING OFFICE(S)

name: MS Katrina Doi	region: Al-Miss	fax:
address:		
code: 09-555	referral status/date: CLOSED	06-02-07
aim rep:		
phone:	unit:	team: sec:
ate/time assigned:		date/time reviewed:

Insured has filed suit against State Farm.

date	time	entered by	office	region	no
08-24-07	10:57 AM	Esparza, Hiram	CORPKAT	Al-Miss	73

received call. Atty advised that he was authorized by Insured to reject and submit new demand of \$542,859.00. Atty. advised that it is negotiable but not worth moving room as he and Insured believe that they have a strong limits case and are prepared to file for lit. Explained to Insured that in MID agreement that we have included additional consideration per PPIF submitted. Explained without additional information to substantiate wind damage I would be unable to consider increasing offer. Appears Atty will be filing suit.

FIRE

claim number

24-2452-093

SYSTEM GENERATED LOG

date	time	office	region	no
05-23-07	03:46 PM	ZCATCSCU	Al-Miss	49
New claim selected from work queue by Shannon McCuskey				
08-16-06	10:23 AM	ZCATCSCU	Al-Miss	47
Incoming Correspondence selected from work queue by Bradley Schlegel				
08-16-06	10:23 AM	ZCATCSCU	Al-Miss	46
New claim selected from work queue by Bradley Schlegel				
05-08-06	04:15 PM	ZCATCSCU	Al-Miss	39
New claim selected from work queue by Garret York				
03-17-06	03:48 PM	ZCATBILO	Al-Miss	30
Referral and assignment info for servicing office ZCATBILO Al-Miss 09-810 was deleted				
Unit/Rep Id BO NVIN				
08-17-06	03:14 PM	ZCATCSCU	Al-Miss	26
Incoming Correspondence selected from work queue by Andi Mohler				
03-08-06	02:43 PM	ZCATCSCU	Al-Miss	23
Incoming Correspondence selected from work queue by Catherine Valkner				
02-15-06	09:40 AM	ZCATCSCU	Al-Miss	16
Incoming Correspondence selected from work queue by Armando Trevino				
02-12-06	05:36 AM	ZCATGULF	Al-Miss	15
Referred to ZCATGULF Al-Miss 09-800				
Referral Type Cons payment sys ref				
11-02-05	12:35 PM	ZCATGULF	Al-Miss	10
Setup Print generated manually on printer L616 by Sandy Hodge				
09-01-05	11:27 AM	ZCATBILO	Al-Miss	2
Initial agent acknowledgment sent for reporting agent				
09-3079 VENABLE				

FIRE

claim number

2452-093

CAUSE OF LOSS

Named Insured(s)

denotes forced coverage
denotes different deductible

injured:

COL/Ln	comment code		status	reserves
35/001	WN	CWP	11-02-05	0
69/001		Paid	11-02-05	0

TOTAL RESERVES

COL/Ln 35/001

	status	reserves	indemnity paid
total: CWP	11-02-05	0	0.00

Named Insured(s)	CWP	11-02-05	0	0.00
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COL/Ln 69/001

	status	reserves	indemnity paid
total: Paid	11-02-05	0	5,000.00

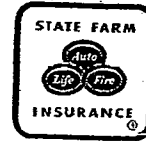
Named Insured(s)	Paid	11-02-05	0	5,000.00
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PAYMENTS

denotes consolidated payment
denotes EFT payment

payment number	payee	total amount	issued	status
109795808K	E. A. RENFROE & COMPANY	522.00	11-02-05	PAID
109571309F	MICHAEL PAYMENT	5,000.00	09-06-05	PAID

State Farm Insurance Companies



November 1, 2005

STATE FARM INSURANCE COMPANIES
P.O. Box 6759
D'Iberville, MS 39532-6759
Fax: (228) 369-4320

Mr. Michael Payment
5012 Payment Lane
Pass Christian, MS 39571

RE: Claim Number: 24-Z452-093
Policy Number: 24-CQ-5233-8
Date of Loss: August 29, 2005

Dear Mr. Payment:

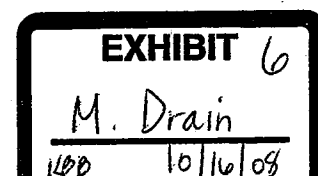
This follows our visit to your property when we discussed the damage to your residence.

Based on the site visit and other facts, our investigation showed that 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 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:

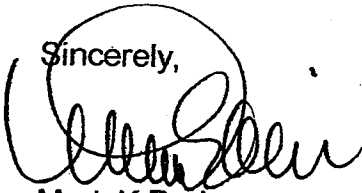
- (1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not;
- (2) water from outside the plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, 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,



Mark K Drain
Team Manager
State Farm Insurance

Enc.

CC Agent Ken Venable
Agent Code 3079-24

Original Transcript

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

MICHAEL PAYMENT, M.D.,

Plaintiff,

vs.

CIVIL ACTION

NO. 1:07CV1003-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY,

Defendants.

~~~~~

**DEPOSITION OF**

**MICHAEL ANTHONY BERGSTROM**

September 9, 2008

9:30 a.m.

Sutherland Asbill & Brennan, LLP

23rd Floor

999 Peachtree Street, N.E.

Atlanta, Georgia

Robin K. Watkins, CCR-B-1936, RPR

**BROWN & GALLO**  
LLC

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Toll Free: 877.495.0777  
Facsimile: 404.495.0766

101 Marietta Street  
2700 Centennial Tower  
Atlanta, GA 30303

**Exhibit "G"**

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APPEARANCES OF COUNSEL

On behalf of the Plaintiff

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601.968.5593  
jm@wisecarter.com

On behalf of the Witness

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Oxford, Mississippi 38655  
662.234.7070  
662.234.7095  
rschultze@tollisonlaw.com

On behalf of the Defendant State Farm Fire and  
Casualty Company

MATTHEW E. PERKINS, Esquire  
Bryan Nelson Schroeder  
Castigliola & Banahan, PLLC  
1103 Jackson Avenue  
Pascagoula, Mississippi 39568  
228.762.6631  
228.769.6392  
perkins@bnsccb.com



1 the policyholder was to thoroughly investigate  
2 the claim. Was there any discussion or  
3 training about what it took to be thorough in  
4 adjusting the claim?

5 A. I'm not sure I understand your  
6 question. Is there something in writing that  
7 states what "thorough" means?

8 Q. Something in training. How do you  
9 determine whether you've been thorough enough?

10 A. When you've reviewed all the  
11 physical evidence you can that's on that site.  
12 When you've listened to everything that the  
13 homeowner has to bring in way of knowledge to  
14 that loss.

15 Q. Being thorough is looking at all the  
16 physical evidence on the site.

17 A. Yes.

18 Q. Correct?

19 And would that include looking at  
20 physical evidence in the area as well?

21 A. Absolutely.

22 Q. And that would include talking to  
23 the policyholder about the loss and what --

24 A. Yes.

25 Q. -- his knowledge about the loss was?

1 A. Absolutely.

2 Q. And his knowledge about what  
3 occurred or what happened?

4 A. Uh-huh, yes.

5 Q. Would that also include talking to  
6 other people in the area, potential witnesses?

7 A. If necessary, absolutely. We are  
8 open to talk to anyone who has any information  
9 that may help determine cause of loss or  
10 damages.

11 Q. Anything else, in your training and  
12 also your experience, that you need to do in  
13 order to be thorough in analyzing a claim?

14 A. The key to thoroughness is to  
15 examine all the evidence. Especially the  
16 physical evidence on-site, the actual damage  
17 is the key.

18 Q. Plus the other things we talked  
19 about?

20 A. Yes, they should all be taken into  
21 consideration.

22 Q. So you finished this training, you  
23 were assigned to the State Farm office that we  
24 discussed here in Atlanta. And you were on, I  
25 believe you said, the primary team which had

1 Q. Or if the claims adjustor calls the  
2 team manager and makes a recommendation about  
3 something, that should be in the activity log.

4 A. I think I need something very  
5 specific.

6 Q. Well, about how the claim should be  
7 handled or what should be done on the claim.

8 A. I'm at a specific kind of loss for  
9 what you're looking for here.

10 Q. Well, I want to find out what types  
11 of things should be put on the activity log.

12 A. Pertinent, relevant things. You're  
13 documenting your activity. By definition, the  
14 activity log. So if you've taken some  
15 activity. If you've done something. If  
16 you've spoken to the insured. If you've  
17 created an estimate. If you made a payment.  
18 If you've set an appointment. Those are  
19 activities and they will be reflected in the  
20 log.

21 Q. Now what if you've discovered you've  
22 looked at the wrong property and you tell your  
23 claim manager that you've looked at the wrong  
24 property and to not do anything further on  
25 this claim until you have a chance to look at

1 the correct property; should that be on the  
2 activity log?

3 A. I've never had that happen to me.  
4 If I looked at the wrong property, I would  
5 probably -- I would have had a log that said  
6 inspection set for August 1st. My August 1st  
7 would be, Went to property, inspected,  
8 realized it was incorrect, phoned insured and  
9 rescheduled. I would make note of it.

10 Q. You would make note of it in the  
11 activity log. Was that a yes?

12 A. Yes, I would.

13 Q. And that's what you would expect  
14 your claims adjustors to do, too, isn't it?

15 A. I would ask them to do so.

16 Q. Okay, Mick, I want to focus on Hurricane  
17 Katrina. And what I want to ask you about is  
18 prior to when Katrina had formed out in the  
19 Gulf Coast and we knew it was going somewhere,  
20 out in the Gulf, and we knew it was going  
21 somewhere, tell me what this catastrophe  
22 services group does or did in preparation for  
23 when Katrina made landfall.

24 A. I personally was working just south  
25 of Madison, Wisconsin in several tornadoes. I



1           A.     The wind in that damage, that wind  
2     would be covered.

3           Q.     In your experience and training?

4           A.     Because it did not happen  
5     concurrently, it happened previous to the  
6     rising waters.

7           Q.     All right. But now what if it  
8     happened at the same time, if you have wind  
9     hitting at the same time flood waters hit?

10          A.     If they are working concurrently, it  
11     would not be covered.

12          Q.     So then it would be important on the  
13     State Farm claims adjustor to make a  
14     determination whether wind damage was prior to  
15     and separate from flood damage like we talked  
16     about.

17          A.     We attempt to delineate any wind  
18     damage.

19          Q.     And if you couldn't tell, if you  
20     weren't sure, that's when you were supposed to  
21     go to the team manager to see if it would be  
22     necessary to get an outside expert?

23          A.     You would review it with your  
24     management.

25          Q.     Now, in your experience, when you

1 were involved with Katrina, do you recall any  
2 claims where an outside expert was retained to  
3 help make that determination of the cause of  
4 the loss?

5 A. I know that engineers investigated  
6 many losses. Is that the answer to your  
7 question?

8 Q. Well, generally. You know that some  
9 outside experts were called in to investigate  
10 some losses.

11 A. Yes.

12 Q. The cause of the loss.

13 A. To delineate between wind versus --

14 Q. Wind and water?

15 A. Absolutely.

16 Q. Do you know whether or not there  
17 ever came a time when that stopped and claims  
18 were just denied for damages that occurred  
19 below the floodwater line?

20 A. No, this should hold true if there  
21 is a question that wasn't clearly discernible,  
22 wind versus water, and we could not make the  
23 judgment, then you would get with your  
24 management and perhaps you would have a...

25 Q. Now, on the third page of this

1 if it's damage caused by flood, we need to  
2 recognize that as flood and exclude it on a  
3 homeowner policy.

4 Q. Do you have any knowledge of any  
5 State Farm claims adjustors who adjusted  
6 claims simply by looking at the floodwater  
7 line and excluding all damage that occurred  
8 below that?

9 A. That would not be a thorough  
10 investigation.

11 Q. That would be in violation of State  
12 Farm's policies and procedures, wouldn't it,  
13 in your view?

14 MR. SCHULTZE: Again, I'm going to  
15 object to these questions because you're talking  
16 about the payment claim.

17 MR. JELLIFFE: I understand.

18 MR. PERKINS: I'm going to object to  
19 the form.

20 Q (By Mr. Jelliffe) In your training  
21 and experience, that would be a violation of  
22 the State Farm policies and procedures in  
23 conducting a thorough examination?

24 A. The way you have described that is  
25 not a thorough investigation.

1 Q. And to deny a claim without looking  
2 at the actual, the proper, you know, the  
3 correct site, would also not be a thorough  
4 investigation; isn't that true?

5 A. Of course not.

6 Q. Yes, it would be true?

7 A. I agree with what you said.

8 Q. I'm going to hand you -- I'm going  
9 to ask the court reporter to mark this as the  
10 next exhibit.

11 (WHEREUPON, marked for identification,  
12 Exhibit-4.)

13 Q (By Mr. Jelliffe) And after you've  
14 had an opportunity to look at that, let me  
15 know, please.

16 MR. SCHULTZE: Again, the same  
17 objection. He's here to testify about his  
18 dealing with the payment claim. I think this  
19 would be better handled under a 30(b)(6)  
20 deposition, but I'm just putting my objection  
21 on the record.

22 MR. PERKINS: I'll join that  
23 objection.

24 Q (By Mr. Jelliffe) Have you had a  
25 chance to look at that exhibit?

1 A. I have.

2 Q. Is that something you've seen  
3 before?

4 A. I have not seen that.

5 Q. Well, this appears to me to be a  
6 form denial of coverage letter. And what I  
7 want to ask you is, in your experience and  
8 training and dealing with Hurricane Katrina  
9 claims, do you have knowledge of other form  
10 denial of coverage-type letters?

11 A. This does not look like a form  
12 denial-type letter to me.

13 Q. This is a form evaluation of claim  
14 letter? How would you describe this letter?

15 A. I didn't write it. I've never seen  
16 it before. I could speculate if you'd like.

17 Q. Yes.

18 MR. PERKINS: I'd ask him not to  
19 speculate.

20 Q (By Mr. Jelliffe) Well, what does it  
21 look like to you?

22 A. It looks like, basically, an outline  
23 for information to be recorded from an  
24 engineering report, is what it looks like.  
25 Again, I did not write this. I have never

1 ground being soggy and moist.

2 Q. So you didn't rule out high winds  
3 when you saw the trees that were on their  
4 sides and uprooted?

5 A. No.

6 Q. But because those trees hadn't  
7 impacted the house you didn't consider that --

8 A. It's not that I didn't consider, it  
9 didn't affect the structure.

10 Q. It wasn't relevant to you in your  
11 determination?

12 MR. PERKINS: Object to the form.

13 A. I wouldn't say that either. I would  
14 say that it did not damage the house.

15 (WHEREUPON, marked for identification,  
16 Exhibit-5.)

17 MR. JELLIFFE: I'm going to let you  
18 mark that as Exhibit 5.

19 Q (By Mr. Jelliffe) I've just handed  
20 you some photographs that were taken of Dr.  
21 Payment's property after Hurricane Katrina and  
22 they have been marked as Exhibit 5.

23 Now, first thing I want to ask you  
24 is, have you seen those photographs before?

25 A. I don't know. I've seen photographs

1 MR. SCHULTZE: Object to the form.

2 MR. PERKINS: Object.

3 A. That is not true.

4 Q (By Mr. Jelliffe) You deny that?

5 A. I did not speak like that.

6 Q. Are you aware of any discussions  
7 about whether or not an engineer, an outside  
8 engineer, should be retained by State Farm to  
9 take a look at Dr. Payment's property?

10 A. I have no knowledge of an engineer  
11 on this case. I mean, at this time, I have no  
12 idea if an engineer did inspect this site.

13 Q. And I believe you already testified  
14 you don't know what happened with this  
15 property prior to when you looked at it or  
16 this claim prior to when you looked at it.

17 A. To my knowledge, I was involved with  
18 this for one day, inspected a loss, made a log  
19 note and entered my files, entered my photos  
20 in the claim. That's the beginning and end of  
21 my...

22 Q. We already established that if you  
23 had thought an engineer would have been  
24 appropriate to get, you would have gone to  
25 your team manager and asked them and then they

1 would have made that decision.

2 A. That is the protocol and that is  
3 what I would have done.

4 Q. But I take it that at the time you  
5 did not think it was necessary for an engineer  
6 to get involved to look at this claim?

7 A. Correct.

8 Q. And you don't remember any  
9 conversation with Mark Drane about this claim?

10 A. No.

11 Q. So once you entered your activity  
12 log of November 21, 2005, that was it as far  
13 as your involvement was concerned?

14 A. Yes.

15 Q. Nobody called you?

16 A. Not that I know of, no.

17 Q. Now, you testified you took  
18 photographs. Did you make any diagrams?

19 A. I don't believe so. If I had, they  
20 would be in the file, but I don't believe so.

21 Q. And you didn't take any witness  
22 statements.

23 A. No.

24 Q. So the only thing that you added to  
25 the claim file were the photographs you took.



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DEPOSITION OF MICHAEL ANTHONY BERGSTROM

September 9, 2008

DESCRIPTION OF EXHIBITS

EXHIBIT IDENTIFICATION

1 Introduction to Insurance

2 Memo to State Farm from Property  
and Casualty, 9/10/05

3 Memo to State Farm from Property  
and Casualty, 9/13/05

4 Suggested format for Written Evaluation  
of Structure

5 Color Copies of Photos

6 Activity Log

7 Policyholder Information

8 Recorded Payment

9 Created Payment

10 Image List Details Report

11 Black and White Copy of Photo

12 Black and White Copies of Photos

13 Black and White Copies of Photos

(Original exhibits attached to the  
Original transcript.)

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1 STATE OF GEORGIA:

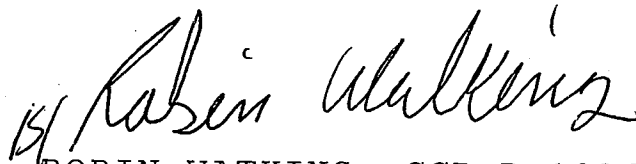
2 COUNTY OF FULTON:

3 I hereby certify that the foregoing  
4 transcript was reported, as stated in the  
5 caption, and the questions and answers  
6 thereto were reduced to typewriting under my  
7 direction; that the foregoing pages represent  
8 a true, complete, and correct transcript of  
9 the evidence given upon said hearing, and I  
10 further certify that I am not of kin or  
11 counsel to the parties in the case; am not  
12 in the employ of counsel for any of said  
13 parties; nor am I in any way interested in  
14 the result of said case.

1 Disclosure Pursuant to Article  
2 8(B) of the Rules and Regulations of the  
3 Board of Court Reporting of the Judicial  
4 Council of Georgia, I make the following  
5 disclosure:

6 I am a Georgia Certified Court  
7 Reporter, here as a representative of  
8 Brown & Gallo, L.L.C., to report the  
9 foregoing matter. Brown & Gallo, L.L.C.,  
10 is not taking this deposition under any  
11 contract that is prohibited by O.C.G.A.  
12 5-14-37 (a) and (b).

13 Brown & Gallo, L.L.C., will be  
14 charging its usual and customary rates  
15 for this transcript.

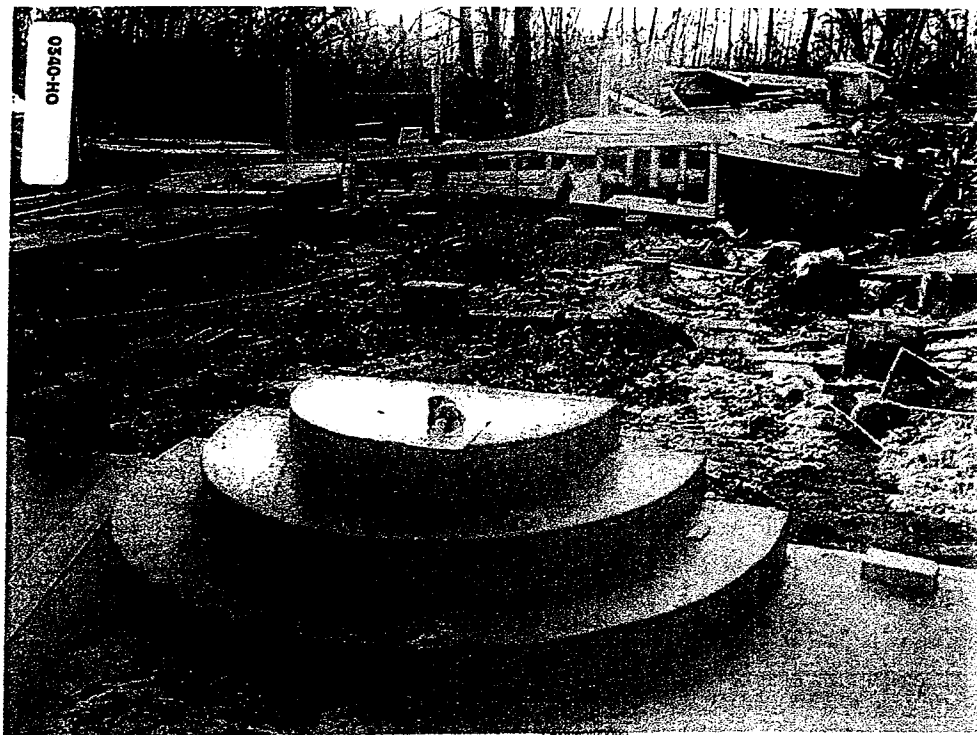
16  
17  
18   
19  
20 ROBIN WATKINS, CCR-B-1936  
21  
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24  
25

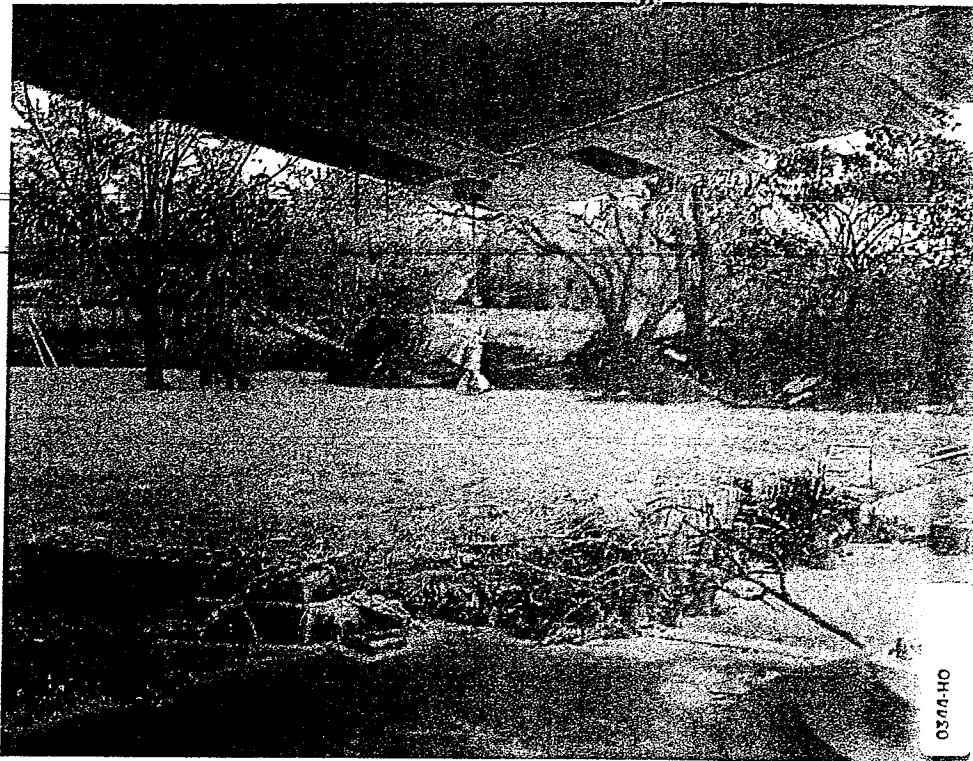
Appendix A - Damage Photos from Case Files

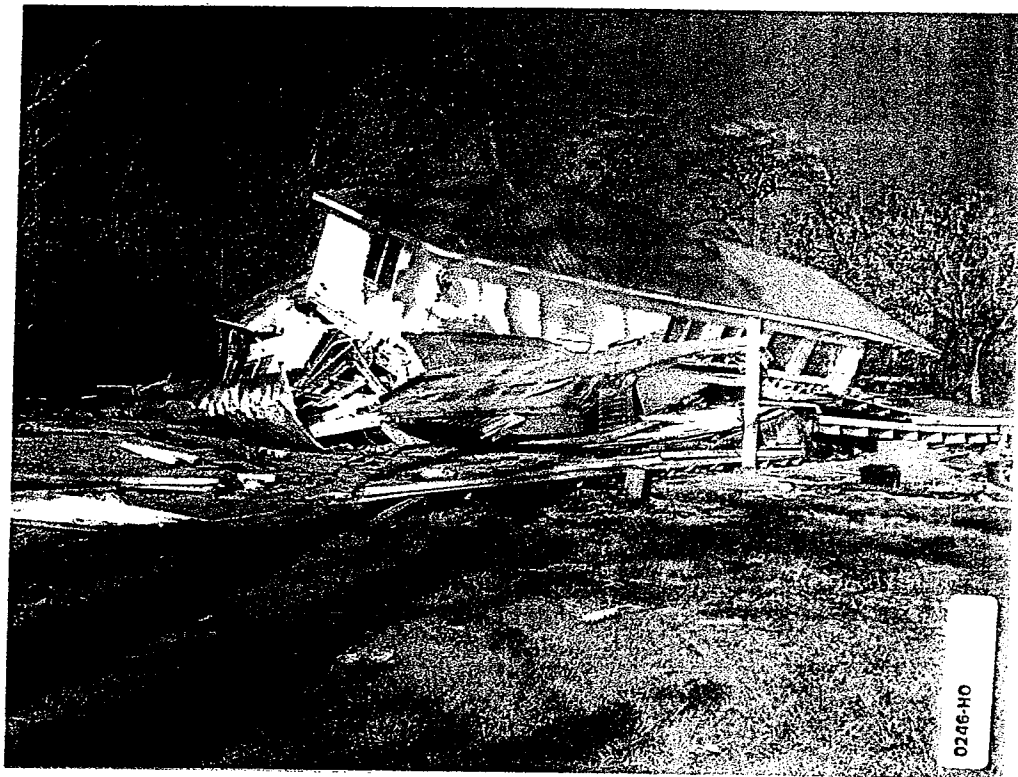
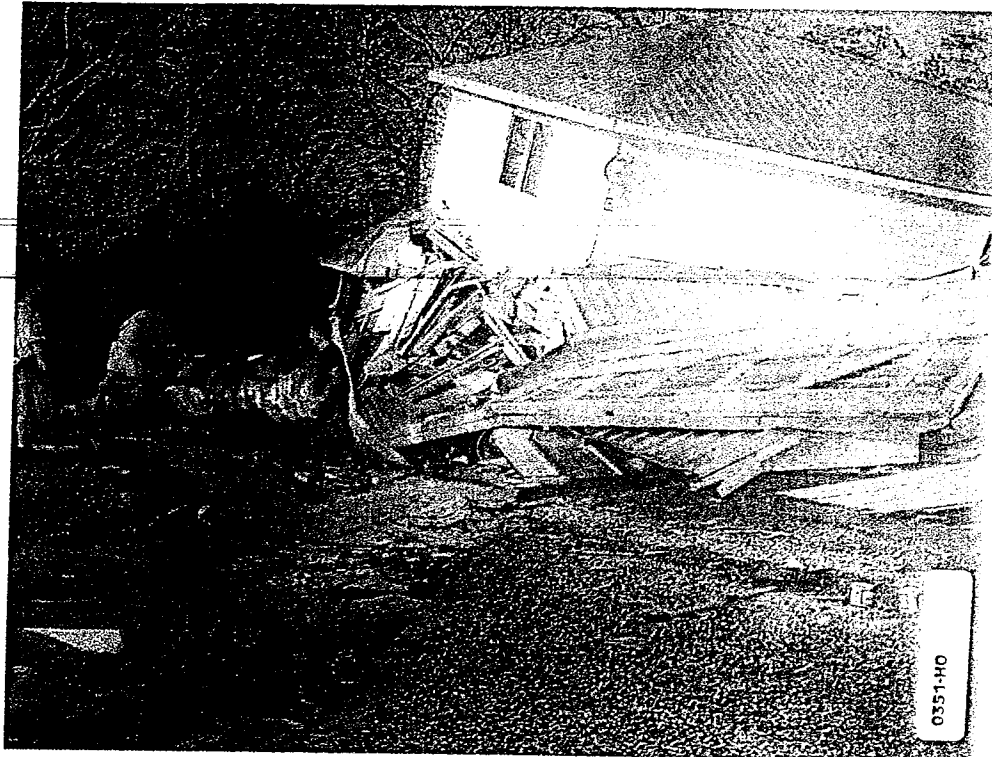


Exhibit  
9/10/08  
Benstrom  
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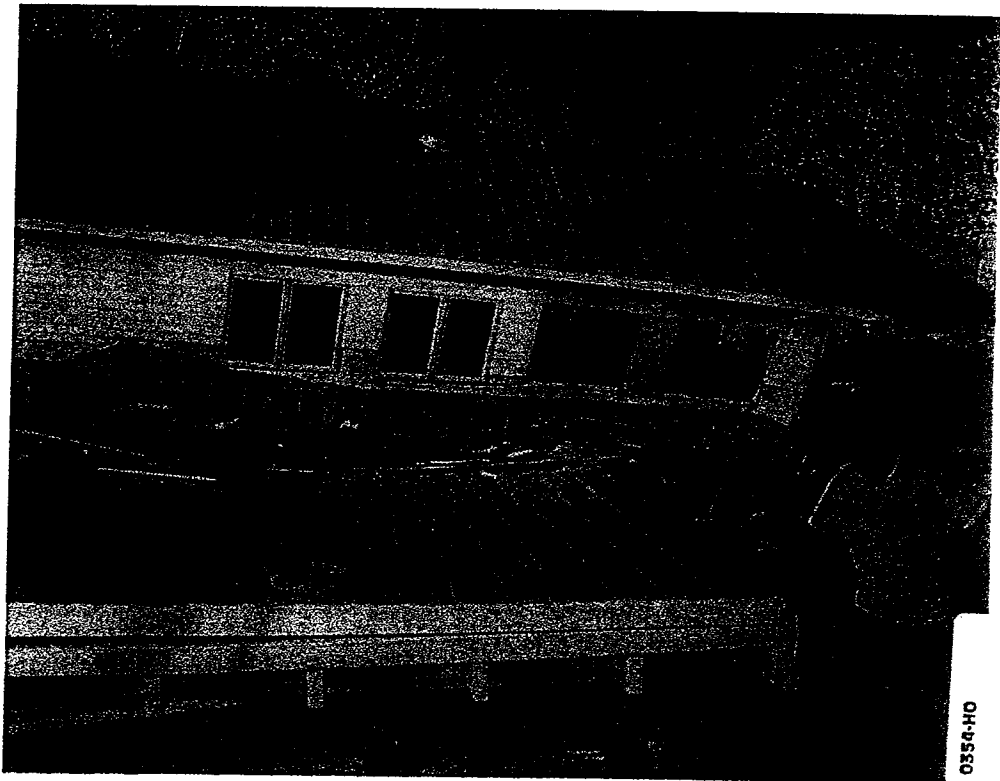
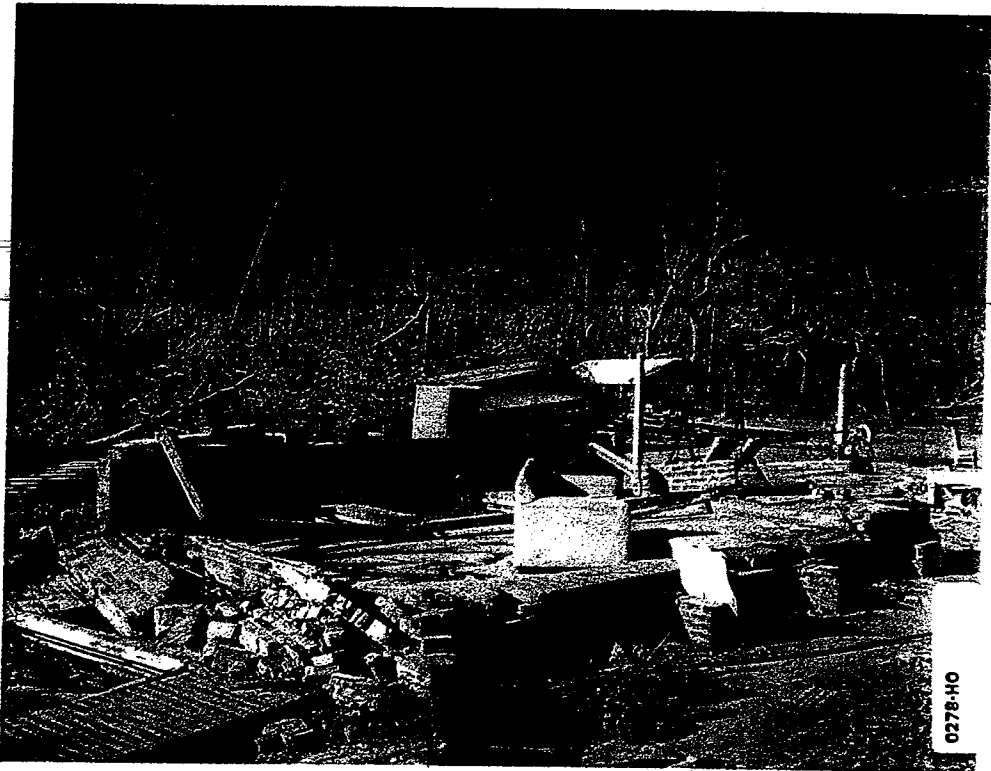




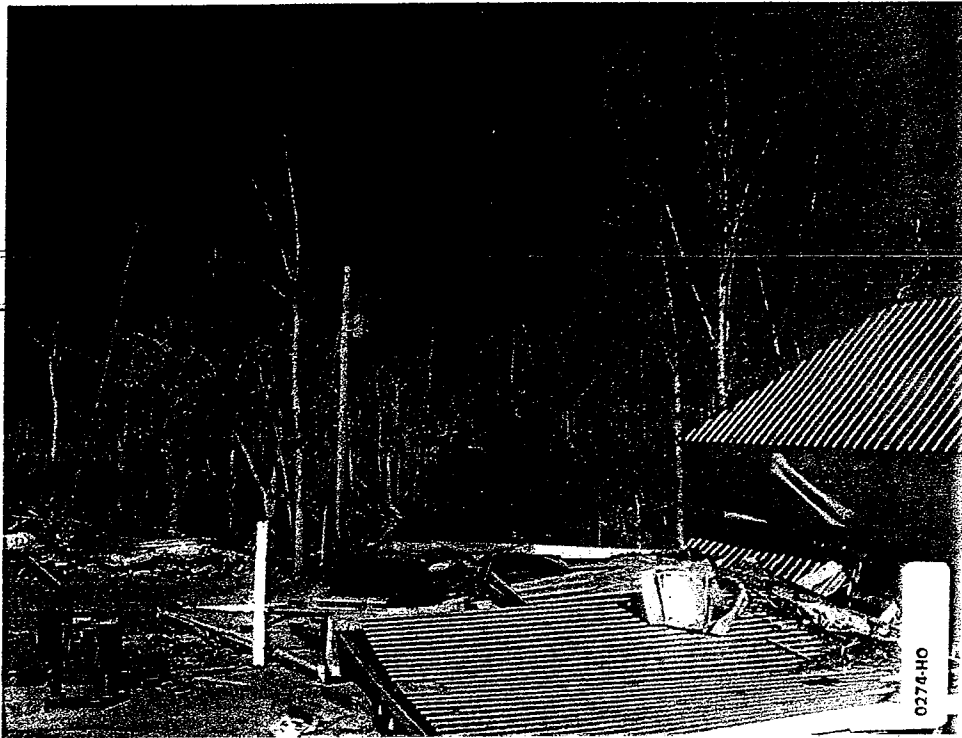




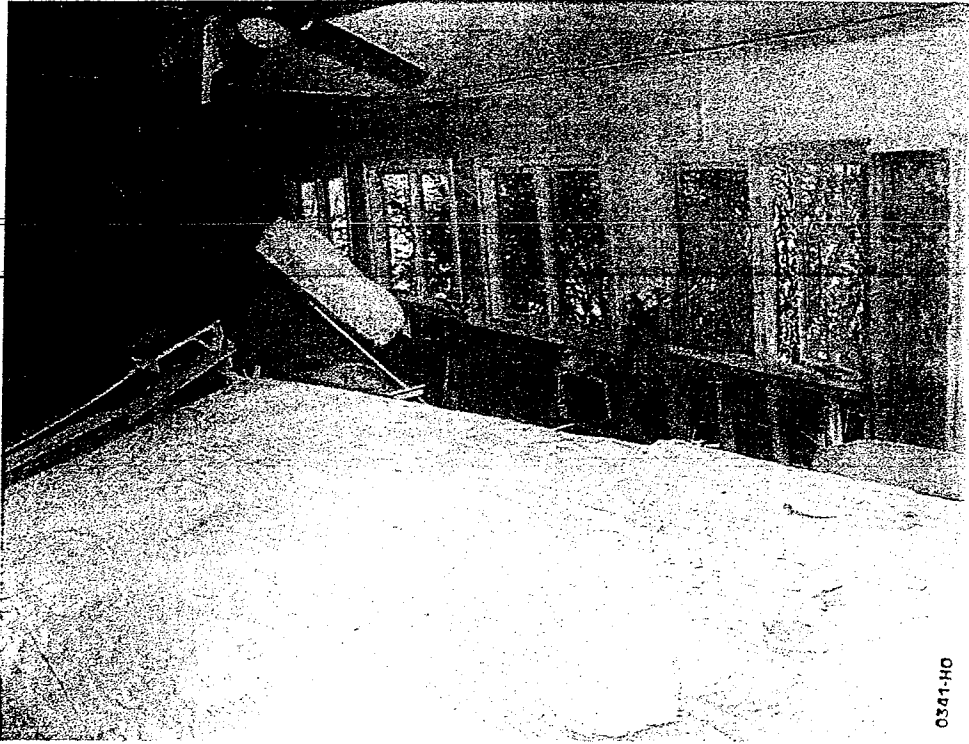












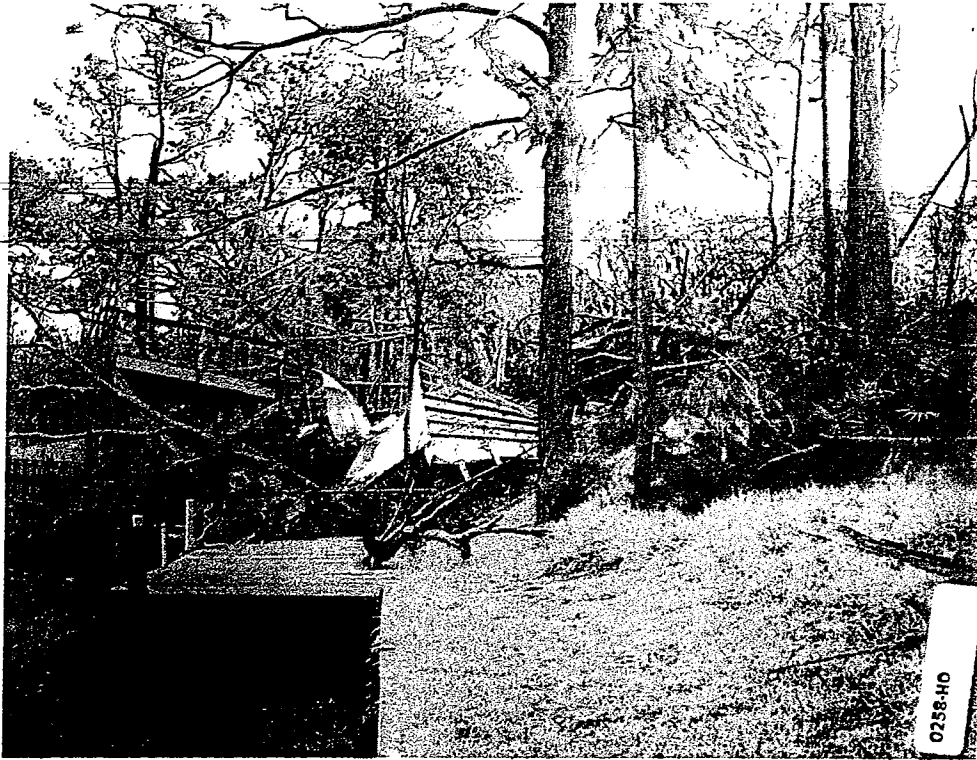
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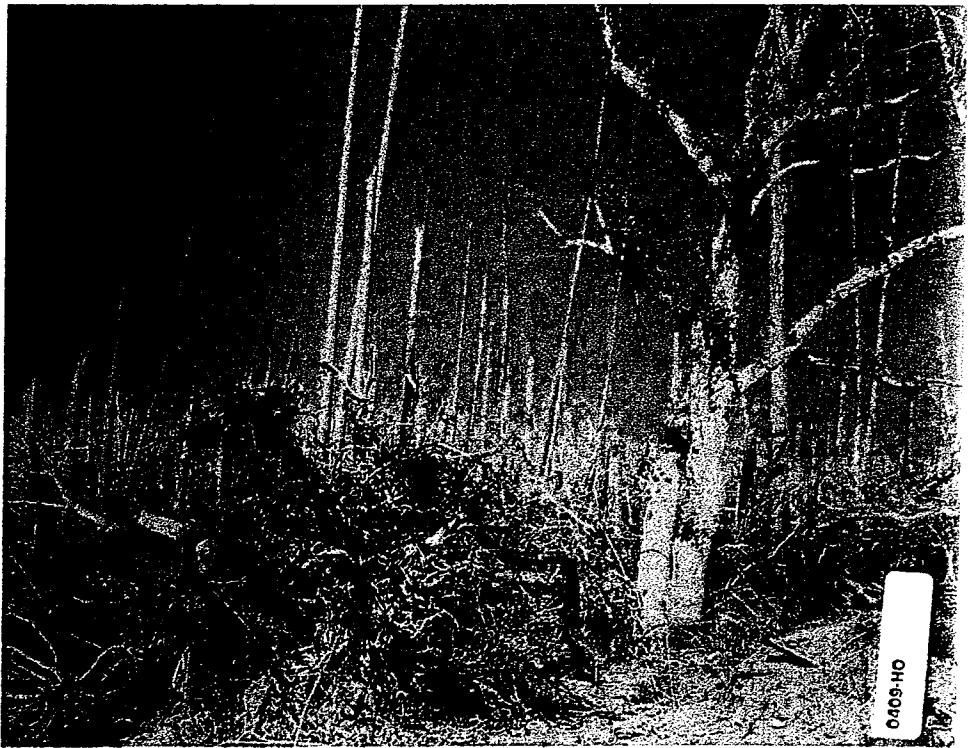
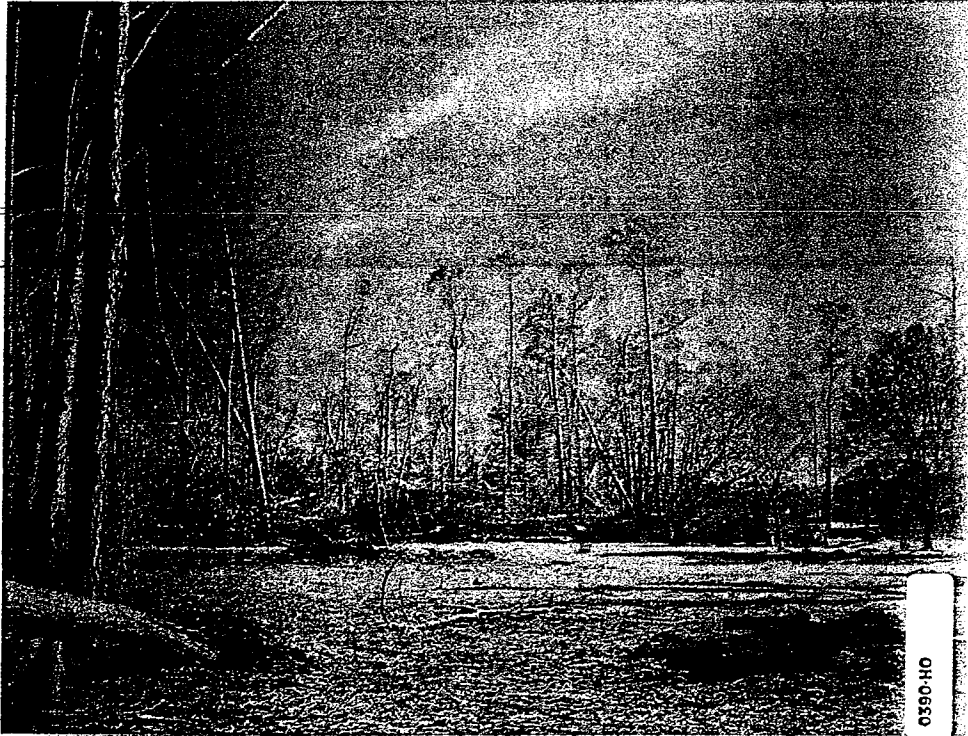












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## BUILDING DAMAGE ASSESSMENT

(Supplemental Report)

**RESIDENCE OF MICHAEL F. PAYMENT  
5012 PAYMENT LANE  
PASS CHRISTIAN, MISSISSIPPI**

**DATE OF LOSS:  
AUGUST 29, 2005  
(HURRICANE KATRINA)**

**PREPARED BY:  
NEIL B. HALL, Ph.D.  
American Institute of Architects  
American Society of Civil Engineers**

**REPORT NUMBER 80107**

**DATE OF INSPECTION:  
MARCH 16, 2008**

**DATE OF REPORT:  
MARCH 17, 2008**

**DATE OF SUPPLEMENTAL REPORT:  
OCTOBER 28, 2008**

American Institute of Architects, American Society of Civil Engineers, Roof Consultants Institute  
Indoor Air Quality Association, Exterior Design Institute, National Fire Protection Association  
Structural Engineering Institute, American Association of Wind Engineers, Architectural Engineering Institute

**Exhibit "H"**

## **DRAFT SUPPLEMENTAL REPORT**

Dr. Michael F. Payment was re-interviewed on October 6, 2008 at the property location in Pass Christian. Additionally, information received subsequent to the Initial Report was received and reviewed. The purpose of this Supplemental Report is to integrate all newly received information into the findings, discussion and conclusions of the Initial Report. Attachments in the Initial Report not included in this Supplemental Report (referred to simply as "this Report") are incorporated by this reference.

Information reviewed subsequent to the Initial Report includes:

- 1) Assessment of Wind, Rain, and Storm Surge Flooding During Hurricane Katrina by Barry D. Keim, PhD.
- 2) Analysis of Probable Cause of Damage in Hurricane Katrina to the Payment Residence by David L. Kriebel, PhD, PE.
- 3) Investigation Concerning the Cause of Damage by Dr. Forrest Masters.
- 4) Structural Analysis of the Payment Buildings by Jenkins Engineering.
- 5) Deposition of Dr. Payment, September 9, 2008.

## **INVESTIGATIVE METHODOLOGY**

The purpose of this report is to reconstruct events during Hurricane Katrina in order to determine the extent of damage caused by wind and flood. The opinions in this report are based on available evidence including analysis of weather conditions, physical data collected at the site location and the investigator's knowledge, training and experience. When available, eyewitness accounts and anecdotal evidence are considered. The report was peer reviewed for consistency of data and use of a systematic approach desirable and necessary in the analysis of building failure. Satellite images, maps and other data referenced but not included in this report remain on file in the project folder.

## **SYNOPSIS OF WEATHER CONDITIONS**

Hurricane Katrina made its third landfall at the Louisiana/Mississippi border on August 29, 2005 with sustained wind at 125 mph in the eyewall. The central pressure at landfall was 920 mb, ranking 3rd lowest on record for U.S.-landfalling storms behind Camille (909 mb) and the Labor Day hurricane that struck the Florida Keys in 1935 (892 mb).

Maximum sustained wind in the Pass Christian area has been estimated by various researchers between 125-135 mph. Maximum wind gusts for the Pass Christian area as indicated by public domain maps are 130 mph for the ARA map and 120 mph for the NOAA wind gust map (with a 15% margin of error which allows for 138 mph peak wind gusts).

Included in Attachment C (initial report) is a timeline summary of sustained winds, wind gusts and storm surge inundation specifically applicable to the Payment property at 5012 Payment Lane, Pass Christian, MS. The timeline was developed by Dr. Patrick

Fitzpatrick at the request of Mr. Payment. The timeline shows that wind gusts of 100 mph began as early as 0600 CDT. Storm surge peaked at 24.0 feet at 1100 CDT.

A Certificate of Elevation (see Attachment C, Initial Report6) indicates that the adjacent grade is 9.8-10.2 feet above sea level; the top of the bottom floor (in this case the elevated bottom floor of the 2-story structure) was at 13.2 feet above sea level.

On either side of the 2-story structure (which is supported by 3' masonry piers) are slab-on-grade additions. Assuming 10' grade, Dr. Fitzpatrick's timeline indicates that storm surge reached the slab-on-grade floors shortly before 0830 CDT at the same time that 95 mph sustained wind crossed from the east (with gusts 120-130 mph). Storm surge reached the finished floor of the 2-story building shortly after 0830 CDT.

## **DESCRIPTION OF BUILDING**

### **As stated in Initial Report:**

In an on-site interview on March 16, 2008, Mr. Payment indicated that the original home was a one-story wood-framed structure on 3' masonry piers constructed prior to 1930. The house is located generally north of Bayou Portage. The original structure was rectangular with the main axis running southeast (SE) to northwest (NW). Subsequently, a second-story was added as well as one-story den with fireplace and chimney on the east side of the two-story and a sunroom and kitchen on the west side of the two-story structure. The home was covered with metal-paneled roofing prior to Katrina; the roofing was screwed to the existing roof decks which were 1x6 tongue-and-groove planking. The front of the building (facing southeast) included four masonry columns supporting a second-story balcony. The roof over the two-story was hipped; the roof over the west sunroom was a low-sloped shed roof; the roof over the east den was a gabled roof with the gable end facing northeast.

A carport was added behind the kitchen on the west side. A bathroom addition was added at the rear of the east side. A cottage, boathouse, summer house and pool also are located on the property lot.

A "Uniform Residential Appraisal Report" was reviewed. The house consists of 9 rooms including 3 bedrooms and 3 bathrooms with 3,236 square feet of gross living area. The detached cottage consisted of 981 square foot of gross living area.

### **Additional Information from Dr. Payment Interview and Deposition:**

Dr. Payment stated the original structure may have been built in the 1800s and purchased by family members in 1930. In 2003, metal roofs were installed on the existing one-story additions. Trusses were added over the flat roof of the sun room and the den to provide additional slope. Dr. Payment asked Mr. Gene Mitchell, the roofer, to build a second story over the existing one-story original building. The rafter connections of the second story were strapped but there is no indication that a load-path connection was established

between the new second story and existing first story, making that connection the weakest connection in the building structure. At the same time, the bearing wall between the one-story and the den was removed and apparently replaced with a beam and two slender columns. The bearing wall between the one-story and the sun room was removed and apparently replaced with a beam without column support. The interior stairwell wall was cut back.

**REPORT BY DR. KEIM**

Assessment of Wind, Rain, and Storm Surge Flooding During Hurricane Katrina (May 2008) by Dr. Barry D. Keim, PhD was reviewed subsequent to the Initial Report. The following comments pertain:

- 1) Dr. Keim offers a timeline compiled from the Army Corps of Engineers IPET report (for New Orleans), “POST STORM Assessment of the Hurricane Research Division of the Atlantic Oceanographic and Meteorological Laboratory (sustained winds) and (for the time of maximum sustained wind) “other [uncited] sources”. The timeline is reproduced below.

**TIMELINE OF WIND AND STORM SURGE (KEIM)**

| Time LDT<br>(UTC)<br>29 August<br>2005 | 5012 Payment Lane, Pass Christian, Mississippi |                       |                   |       |
|----------------------------------------|------------------------------------------------|-----------------------|-------------------|-------|
|                                        | Wind Speed,<br>in knots                        | Wind Speed,<br>in mph | Wind<br>Direction | Surge |
| 0100 (0600)                            | 38                                             | 44                    | NE                |       |
| 0200 (0700)                            |                                                |                       |                   | 5     |
| 0300 (0800)                            |                                                |                       |                   |       |
| 0400 (0900)                            | 48                                             | 55                    | ENE               |       |
| 0500 (1000)                            |                                                |                       |                   | 7     |
| 0600 (1100)                            |                                                |                       |                   | 8     |
| 0700 (1200)                            | 74                                             | 85                    | E                 | 10    |
| 0800 (1300)                            |                                                |                       |                   | 10    |
| 0900 (1400)                            |                                                |                       |                   | 15    |
| 0945 (1445)                            | 89*                                            | 102*                  |                   |       |
| 1000 (1500)                            | 88                                             | 101                   | SSE               | 21    |
| 1100 (1600)                            |                                                |                       |                   | 25    |
| 1200 (1700)                            |                                                |                       |                   | 24    |
| 1300 (1800)                            | 54                                             | 62                    | SSW               |       |
| 1400 (1900)                            |                                                |                       |                   |       |
| 1500 (2000)                            |                                                |                       |                   | 14    |
| 1600 (2100)                            | 45                                             | 49                    | SW                |       |
| 1800 (2300)                            |                                                |                       |                   | 8     |

- 2) In reference to the Texas Tech towers, Dr. Keim uses the raw data reported immediately after Katrina: “At Stennis, measured data show sustained winds of only 67 mph, whereas AOML maps are closer to 97 mph. At Slidell, Texas Tech measured wind data show a 1-minute sustained wind of 69, while AOML suggests a value closer to 87 mph.” This raw data (Giammanco, Schroeder & Hirth, 2006) was corrected to Exposure C (Giammanco, Schroeder & Hirth, 2007) giving 90.1 mph sustained for Stennis (112.8 mph

3-second gust) and 78.6 mph sustained for Slidell (98.5 mph 3-second gust). Although Dr. Keim does not avail himself of this data, using other data he concludes that the maximum 1-minute sustained wind in the vicinity of 5012 Payment Lane was 102 mph, with a higher 3-second gust near 122 mph.

- 3) Dr. Keim states he has “interacted with personnel from the NWS [over the issue of tornado damage in Mississippi], and there were efforts on their behalf to investigate tornado claims, though obviously none were formally filed. Dr. Keim does not say who he spoke to at the NWS, who exactly investigated tornado claims “on behalf” of NWS personnel nor what were the preliminary findings of these (trained or untrained?) field investigators. Leaving these questions unanswered, he provides a satellite image of a 2003 tornado track in Oklahoma City and opines that “no tornado tracks like this were documented anywhere in the coastal counties of Mississippi”. Certainly not! The clarity of a tornado track (which one would expect to find in Oklahoma City) was destroyed by the large-scale pattern of tree damage and flood debris which followed.
- 4) Dr. Keim states that the ground elevation at 5012 Payment Lane was “approximately 8 feet”. A Certificate of Elevation referenced in my Initial Report indicates that the adjacent grade is 9.8-10.2 feet above sea level and the top of the bottom floor (in this case the elevated bottom floor of the 2-story structure) was located at 13.2 feet above sea level.
- 5) Dr. Keim states that “regional estimated surge” was 23-24 feet above mean sea level and the closest FEMA-measured outdoor high water mark was 24.1 feet above mean sea level. (My Initial Report assumed 24 feet above mean sea level.) Dr. Keim places initial flood inundation at 0600 LDT (which is CDT) at which time 1-minute sustained wind was “hurricane strength” (i.e. minimally 75 mph). Dr. Keim states that peak storm surge occurred at 1100 LDT according to the IPET report, but notes that the IPET estimate of surge height was higher than “a nearby measured high water mark”. What he means to say is that the IPET estimated 25 feet while the nearest water mark says 24.1 feet. Dr. Keim claims that if storm surge reached “near 24 feet” then the property (assuming an elevation of about 8 feet) was inundated with “near 16 feet of water”. Correcting for errors in ground elevation, more likely storm surge rose between 13.9-14.3 feet above the adjacent grade. Only 10.9 feet of water rose above the finished floor at the bottom level of the 2-story section.

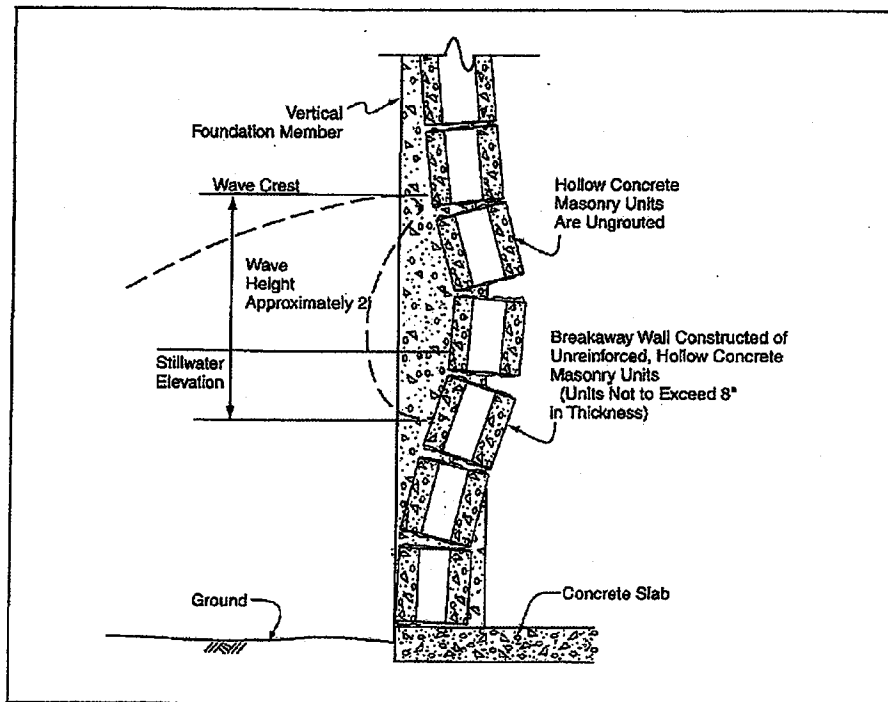
#### **REPORT BY DR. KRIEBEL**

Analysis of Probable Cause of Damage in Hurricane Katrina to the Payment Residence by David L. Kriebel, PhD, PE. was reviewed subsequent to the Initial Report. The following comments pertain:



- 1) Dr. Kriebel correctly calibrates the Elevation Certificate showing 9.8-10.2 ft NGVD to 9.9-10.3 ft NAVD88. This also places the finished floor elevation of 13.2 ft NGVD (13.3 ft NAVD88). Dr. Kriebel assumes that the second floor elevation was 23 ft and the first floor elevations at den and sun room were 12 ft.
- 2) Dr. Kriebel notes that the guest house was a one-story ranch-style home elevated roughly 2 feet above grade. He assumes that the floor elevation was located at 12 ft and the roof at about 20 ft.
- 3) Dr. Kriebel states that maximum sustained wind peaked at 104 mph and storm surge peaked at 25 ft NAVD88.
- 4) Dr. Kriebel notes that large sections of the carport roof were “peeled back or flipped over” in a direction “opposite to, or at a large angle to, the peak wind directions”. He states that the only wind directions that can explain the direction that these roof panels moved are those that occurred during the waning of the storm.
- 5) Dr. Kriebel notes that a large section of the sun room remained upright and was found a short distance (“in an up-wind direction”) southwest of the home. This is in agreement with the Hall Initial Report, but as Jenkins points out, Payment 00099 photo shows the sun room roof still attached to the main structure – that is if Jenkins is correct that the kitchen roof was gabled.
- 6) Dr. Kriebel argues that the photographs show that wind was not strong enough to cause major damages to the building envelope of the second floor because the “strongest section of the house was at the highest elevation”.
- 7) Dr. Kriebel indicates that only one window on the right side of the second floor survived intact and that “the only major window loss on the second floor occurred to the front left corner, the region that would have [been] subjected to both hurricane-strength winds and waves”.
- 8) Dr. Kriebel argues that the second floor was raised vertically by buoyancy “and then drifted as a unit on the flood waters to the north or northeast, coming to rest well off its original position”. In the next paragraph he argues that the flooring of the central section of the home also was lifted vertically off its foundation supports. Since this would have occurred before the second story could raise vertically from the first story, there is problem with the time sequence. If the first story floated, why didn't it clear the debris on the east side of the building? Why (instead) is the first story destroyed? If the first story was destroyed by waves, why didn't it collapse to the west or north, taking the second story with it? If the second story floated off the first story, how did this happen when buoyancy would have lifted both stories together? Kriebel's argument begs too many unanswered questions.

- 9) Dr. Kriebel argues that the sun room brick fell outward to the southeast “counter to the wind direction”. Anticipating the question “didn’t they also fall counter to the direction of surge?”, Dr. Kriebel argues that because “waves are cyclic and oscillatory”, they load a wall...in both the direction of wave advance and in the opposite direction”. The argument is flawed. Why didn’t this mode of failure occur at the den where even the fireplace collapsed in the direction of wind? If wave action collapsed the wall (there is reason to believe it did not) then why didn’t at least the lower portion of the brickwork collapse inward as suggested by FEMA 55 Coastal Construction Manual (see figure below). Unless Dr. Kriebel is arguing that after impacting the wall, receding waves created a negative pressure coefficient which sucked the brick outward (an argument however which can be made for wind), his argument only is valid if waves attacked the wall from both sides. There is no compelling reason to believe that waves attacking the sun room wall could have collapsed all the brick outward as seen in photographic evidence.



“Expected failure mode” of unreinforced masonry breakaway wall (FEMA 55)

- 10) Dr. Kriebel notes that “large pine trees were uprooted or snapped...tall trees have been decapitated and snapped at an elevation well above the ground level...remaining trees have been denuded and stripped of small limbs and foliage”. He then states that “it is clear that winds [north and west of the Payment home] were more violent than those to the north (*sic*) and east of the home”. (This ambiguous reference to “north” on p. 12 may not be a typo as it occurs again on p. 14). He further states that “while most downed trees fell to

the west and northwest, in the direction of the strongest winds, many trees were downed at other angles and indicate winds with high levels of direction spreading and turbulence". This is correct. What Kriebel fails to say is that the pattern of wind damage is typical of tornadic and microburst activity (the latter bringing high wind speed to surface level, notwithstanding Dr. Kriebel's final comment that snapped trees indicate "higher speeds aloft and lower speeds near ground level". Dr. Kriebel concludes that "the main home was therefore in a transition area between...two wind regimes [of different wind speed]". If true, a major characteristic of this "transition area" would be turbulent and rotational wind

- 11) Although he concedes that the cottage was located closer to the areas of more severe tree damage indicating "a higher probability of wind damage to the cottage than to the main house", he cannot "state with certainty" whether the cottage collapse was caused by wind or flood because in addition to the proximity of "localized severe winds" the cottage was "completely overtopped by the surge". Although severe wind preceded the surge, Dr. Kriebel still makes no attempt to arrive at a conclusion based – not on "certainty" – but "more likely than not".
- 12) Dr. Kriebel notes that the bayou "opens sufficiently to have allowed modest wave action to approach the home" but makes no attempt to quantify significant wave height. He argues that when surge submerged low trees an "open fetch" would have extended to the southwest allowing wind to generate waves which would have impacted the home site. Dr. Kriebel does not discuss the fact that wind-stressed waves are not only height-limited but time-limited. There was limited time after wind changed direction for ~50 mph 1-minute sustained wind to "build" wave height. Kriebel uses the Army Corps of Engineers Shore Protection Manual (1984) which is out of print. The new Corps of Engineer manual is EM 1110-2-1100 Coastal Engineering Manual (2006). The calculations which Dr. Kriebel made based on the Shore Protection Manual have not been made available for review. It is unclear if his wave height of 1-2 feet considers vegetative marsh and whether waves approaching from the southwest would have broken over the bulkhead.
- 13) Dr. Kriebel provides information such as wave frequency = 2.9 seconds. The source of this information is unclear. However, a frequency of 2.9 seconds allows for the push of only a small amount of water in front of the wave crest. As FEMA 55 points out "the duration of the wave pressures and loads [although substantial] is brief; peak pressures probably occur within 0.1 to 0.3 second after the wave breaks against the wall". Waves did not "crash" against the building, rather they involved small instantaneous loads and relatively small amounts of water.
- 14) Dr. Kriebel states that wave height  $H_{10}$  = 1.7 ft occurred at the time of peak wind (1000 CDT) and since surge rose to 22 ft [above mean sea level] at this

time, then these waves attacked the roof line of the ground floor areas (den, sun room and guest house) and the base of the second floor.

- 15) Dr. Kriebel's use of ASCE 7 must be understood in the context that ASCE 7 is a design manual inherently conservative in its application of load factors.
- 16) The argument that ground floor levels always experience wind speeds lower than at a higher building height is generally true for straight-line wind. For turbulent wind and wind delivered to a site by downburst activity this may not be true. It is also important to consider, in relation to load factors, the resistance factors of the building structure. For example, if the roof is designed to withstand lateral force generated by 130 mph wind and the unreinforced brick wall is designed only to withstand lateral force generated by 80 mph wind, the resistance factors outweigh the load factors in determining the mode of failure. In the case of the Payment residence, the ground floor walls of unreinforced masonry brick were weaker than the upper floor building envelope.
- 17) Dr. Kriebel refers to a "Kevin Abraham video" which shows a home which floated off its foundation, presumably a masonry pier foundation. The location of the home is not provided but it is assumed that the home is closer to the Mississippi Sound than the Payment residence. Dr. Kriebel uses the video to show that the house floated about 10 minutes before it stopped floating. The video also shows that (a) the house adjacent to it never floated and (b) the house that floated was not destroyed by waves. Dr. Kriebel seems to be arguing that the Payment residence was watertight (if not, the utility of the Abraham video is null). If the Payment residence was watertight and achieved buoyancy, how did waves destroy the lower story? And if waves destroyed the lower story, would not the upper story have collapsed directly on top of the lower story? And if waves did not destroy the lower story, are we to assume that they pushed the upper story to the northwest in the absence of a current velocity?
- 18) Dr. Kriebel uses charts that predict wind and wave pressures acting on the Payment residence and quotes ASCE-7 to the effect that "the magnitude of wave forces...acting against buildings or other structure can be 10 or more times higher than wind forces or other forces during design conditions. This should be readily apparent that elevating above the wet crest elevation is crucial to the survival of buildings and other structures". However, it appears that the buildings in the Abraham video survived. For that matter, practically every building in St. Bernard Parish, Louisiana (which took 8-12 feet of flood water) survived. One reason that waves did not destroy the Payment residence is because they were 0.5-1.0 feet in height (see Fitzpatrick). Another reason is that the current velocity was minimal – to the extent that Dr. Kriebel himself decides not to consider hydrodynamic load due to current velocity (see page 40).

19) Dr. Kriebel notes that “there are no direction measurements of waves acting near the Payment home during Hurricane Katrina. The IPET report predicted wave fields for the Mississippi Sound and St Louis Bay, but these do not extend to the bayous or tidal tributaries. As a result, there are no published estimates of wave heights for a setting like that at the Payment residence” (page 29). To the contrary, the IPET report does display wave field data for the bayous. However, the scale and color resolution on the IPET report (Vol IV, Figure 38) makes it difficult to grab information concerning St Louis Bay and its bayous.

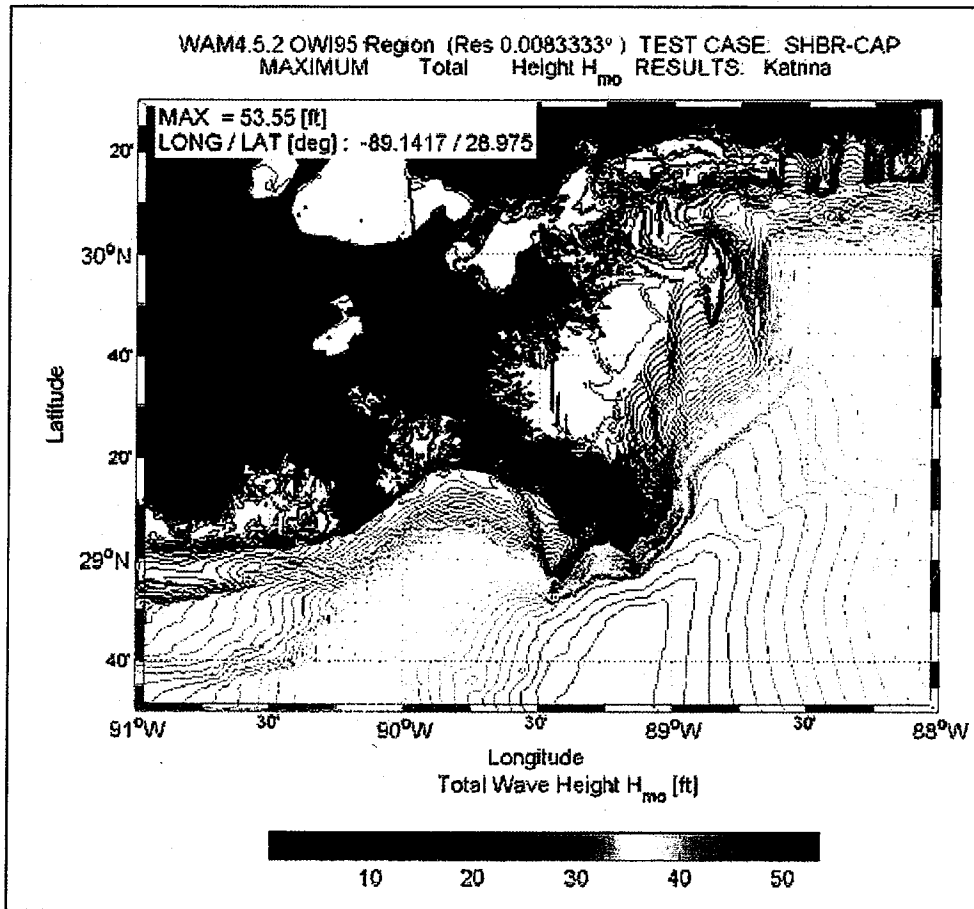


Figure 38. Color contour of the maximum wave height conditions in the region domain.

#### WAVE FIELD DATA FOR BAY ST LOUIS AS FOUND IN IPET

20) Figure 30 in the Kriebel report (below) shows a detailed prediction of wave height over time. The source of this data is unclear. Similar presentations of wave height appear in reports authored by Dr. Kriebel for the Jourdan River Estates on the south shore of St Louis Bay, in which case Dr. Kriebel relied on ADCIRC and SWAN models provided by Dr. Don Slinn from the University of Florida. For example, his analysis for the Tully Residence at 105 Edith

Drive, Bay St Louis, MS (dated September 14, 2007) states that “Detailed estimates of wind speeds, water levels, and wave conditions at the Farrell site have been provided by Professor Don Slinn from the University of Florida. Professor Slinn uses the same wind fields used in the IPET study, applies the same storm surge model used in the IPET study (ADCIRC), and applies a refined shallow water wave model (SWAN) which is similar to the models used in the IPET study. Professor Slinn provides wind speeds, water levels, and wave conditions at 15 minute intervals, in contrast to coarser the 3-hour intervals for IPET winds and 1-hour interval for IPET storm tides.” It is unclear if Slinn’s model contains information useful to the analysis of the Payment residence and if so, if this information was used by Dr. Kriebel.

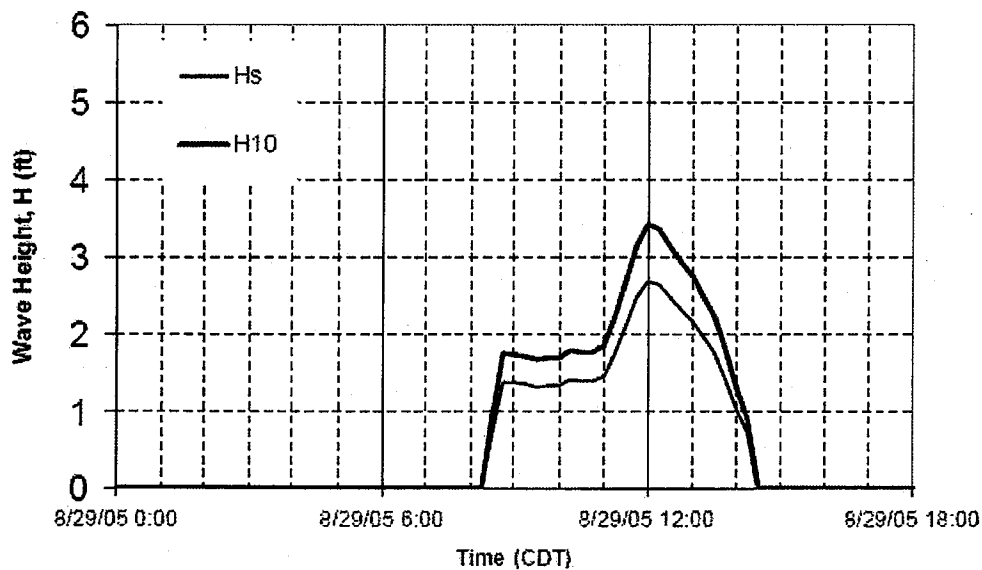


Figure 30. Predicted wave heights at Payment residence

21) On pages 44-45, Kriebel assumes for a hypothetical calculation the assumption that a 160 mph wind with 200 mph gusts is needed to cause structural collapse, because the Saffir-Simpson scale correlates structural collapse with a Category 5 wind speed. The premise is false. The following is a quote from an interview with Dr. Simpson that first appeared in NWS Mariners Log, April 1999:

“The scale as devised, expresses what the extreme conditions can be expected from a hurricane of a certain type and a certain category. It doesn't mean that everyone that a hurricane moves over, and the worst part of that hurricane, is going to receive that kind of damage or that kind of hazard. In other words, it's a study in probabilities-the probability of being hurt. And why is that? It's a great big storm, why isn't there a uniform amount of damage that you get? And if you've ever surveyed damage after a hurricane you know that one block of houses may be almost totally destroyed, and two blocks to either side there will be little damage at all. It's almost like a tornado. It's not a tornado, but what is happening is it's not a uniform bowl of pudding that's circulating around here. It's something that has lots of

streaks in it, and the streaks are made by the cumulus clouds that are embedded in this great big storm. And as these cumulus clouds circulate around, they're relatively small. Some of them are no more than a couple of kilometers across and maybe four or five kilometers long. That means that just a few blocks to one side or to the other side of where this cumulus cloud is providing the extreme wind, you have much less than the extreme, and therefore get no damage at all that's comparable on either side of it. So, there are several problems. The problem is first, expressing to the people who have to leave that it's a matter of probabilities, but if they don't believe that they're going to be in the worst sector and receive the worst damage or hazard, then they're playing Russian Roulette. They have to assume the worst and act accordingly. Others are engineers who brag about the fact that the house or building that they engineered received no damage, and another engineer whose building received a lot of damage tries to explain why it did, because he knows he engineered it right. There isn't that understanding, and it's difficult to understand that it's the difference in the hurricane, not the difference in the engineering that caused the difference in the amount of damage received."

From this interview, it is clear that Dr. Simpson had no intention for the scale to be used in the manner proposed by Dr. Kriebel.

- 22) Dr. Kriebel cites ASCE-7 to the effect that the magnitude of wave forces acting against buildings or other structures "can be 10 or more times higher than wind forces or other forces during design considerations". The operable words in this assertion are "can" and "during design considerations". For example, designers assume out of an abundance of caution that all wave forces against a building shall be breaking waves. That does not mean that during the course of a specific hydraulic event that a building will be or has been subject to breaking waves. And it does not mean that wind force can be trivialized. In testimony before the House Committee on Science (October 11, 2001) Dr. Stephen L. McCabe, Professor and Chair of the Department of Civil, Environmental & Architectural Engineering at the University of Kansas, said:

"Little is known about the structure of the wind in a hurricane and how it changes as it passes over land. ...The design wind speed and gust factors used in all building codes and standards (including ASCE-7) are based on a set of assumptions that hurricane winds have similar properties to winds from other events, which we know to be untrue".

This was said in 2001 and the Profession has made remarkable gains since then. However, the Payment residence was built long before 2001 at a time when the set of assumptions for building construction did not properly account for the actual behavior of hurricane wind.

- 23) Concerning the second story, Dr. Kriebel concedes that wind loading at the second story was more robust than suggested by wind analysis for the lower floor. Dr. Kriebel already has suggested that as water covered vegetation this opened a wider fetch. It also reduced surface roughness allowing wind speed to increase. In considering scenarios for damage to the second floor, Dr. Kriebel does not consider damage due to wind preceding the collapse. Concerning the roofs, while the metal roofs were installed at the same time, the roof/wall connections at the second story were modern connections while

the roof/wall connections at the first story were older, less wind-resistant. This important fact is not discussed in the Kriebel report.

- 24) Dr. Kriebel's entire criticism of my report is based on the assumption that the structural integrity of a building originally constructed in 1930 could resist wind loads to the same degree as assumed in his design calculations. This is not true. Also, Dr. Kriebel's hypothesis that buoyancy separated the second floor from the first floor is problematic, since he also has the first floor floating off the foundation.

## **REPORT BY DR. MASTERS**

Investigation Concerning the Cause of Damage by Dr. Forrest Masters was reviewed subsequent to the Initial Report. The following comments pertain:

- 1) Dr. Masters estimates that the subject project property experienced open terrain 125-130 mph wind gusts. As previously noted, Dr. Kriebel attacked my use of "unsubstantiated wind speeds" of 125-135 mph, although I cited Dr. Fitzpatrick with 130 mph gusts and the NOAA wind speed map with 138 mph gusts.
- 2) Dr. Masters allows for open exposure 115 mph wind gusts in advance of storm surge at 0900 CDT.
- 3) Dr. Masters conducted a survey (I assume from satellite imagery) of 490 single family homes "above the surge wrack line" and concluded that 92% of the houses had lost 0-20% of the roof covering. The problem with the analysis is that it excludes from consideration buildings "below the surge wrack line", i.e. it ignores the probability that buildings were damaged by wind before they were subsequently destroyed by storm surge. As pointed out in NOAA's Post Storm Data Acquisition Aerial Wind Mapping Mission for Hurricane Ivan (2004):

"Ivan's storm surge, and its associated damage, increased the uncertainty of the wind estimates along the coastline. Considering these uncertainties, [aerial wind mapping] analysis should be considered as only one input to a final wind analysis of Hurricane Ivan."

- 4) Regarding the use of the EF Scale as a means to estimate damage:
  - a) I am aware of the biographies of the experts who participated in the EF project. I have full respect for their opinions; however no one expert speaks for the community of wind engineers.
  - b) It should be remembered that the purpose of the EF Scale was to enhance the original Fujita Scale. The original scale -- albeit Fujita in his Memoirs amended the scale to include building damage indicators -- was first proposed by Fujita in 1971 under the title "Proposed



characterization of tornadoes *and hurricanes* by area and intensity” (Satellite and Mesometeorology Research Project Report 91, the University of Chicago, 42 pp.) [italics added]. In fact, the citation is referenced in the EF Scale report.

- c) Tim Marshall (Lessons learned from analyzing tornado damage, 1993) informs us “Damage surveys by McDonald and Marshall (1983) after tornados and Savage (1984) after hurricanes have revealed the same types of building response regardless of the phenomenon creating the wind.”
- d) Arguably one important difference between tornados and hurricanes exists. The translational velocity of a Plains tornado is 30-60 mph; a typical Plains tornado crosses a suburban property lot in 2-5 seconds. Phan and Simiu (1998) found that the 1997 Jarrell, TX tornado which wiped residences from their foundation slabs traveled slowly at 5-10 mph and concluded that the tornado was not an F5 event with tornadic winds between 261-318 mph as originally calculated but rather an F3 event with tornadic winds between 158-206 mph. From this it is concluded that wind events of longer duration result in greater damage to building structures than the same wind events of shorter duration (Marshall, 2002). Since Hurricane Katrina wind attacked most coastal residences for hours before the arrival of storm surge during which time hundreds if not thousands of debilitating wind gusts impacted the building structure, it follows that the wind speeds used in the EF-Scale (which are based on empirical observations of tornado damage) represent 3-second wind gust speeds higher than those necessary to cause equivalent building damage during a hurricane with repetitive gusts.
- e) Masters offers an additional critique that a tornado creates sudden violent loads in a few seconds while turbulent hurricane wind rides on a mean wind speed that fluctuates for hours. In a previous deposition testimony on August 22, 2008 a State Farm attorney asked me to assume that Tim Marshall had written a paper on this very subject, concluding that the EF Scale could be used for hurricane analysis if the wind speeds were changed by a factor to account for the violent rate of change of tornadoes. I replied (a) Tim Marshall has written two post-Katrina papers in which he used the EF Scale for hurricane analysis and neither one mentioned this factor, (b) I am aware of the sudden load requirement (rate of pressure change) as used in the design of nuclear power plants, it is generally ignored by ASCE-7 for residential and commercial structures because equalization generally is achieved because the interior compartments are not airtight, (c) further I am aware of the problem of rate of pressure change by virtue of training courses in Nuclear Blast design and (d) the invocation of sudden

loading for residential structures sounds remarkably like the “myth of exploding buildings” laid to rest by FEMA and accepted by most researchers and practitioners. If there is any new research on this matter, I request that such research be presented for review at this time.

- f) Dr. Masters argues that the EF Scale damage is attuned to the application of a given wind speed at a particular component on the building structure. This does not appear to be correct. For example, the residential degrees of damage discuss damage at the top of a two-story building and at the bottom of an overhead garage door in the context of the same wind speed. The sophistication that Dr. Masters wishes to apply to the EF Scale does not seem to have been embedded in the EF Scale by the experts who developed the methodology.
  - g) I note that Dr. Masters makes no specific attack that the EF Scale cannot be used in what has been called the “reverse application”, i.e. using a given wind speed to determine the degree of damage for a structure not available for investigation. I further note that HURRTRACK (a software program designed for Emergency Managers) now allows users to determine damage predictions using the EF Scale Degree of Damage indicators for residential construction as opposed to the Saffir-Simpson description of damage.
- 5) Dr. Masters attempts to correct wind gust speed for a variety of factors. It is difficult to follow his text because the graph reviewed was in black-and-white and the text refers to color lines. He points out that the area surrounding the Payment residence is not “open terrain”, but in fact as shown by Dr. Kriebel’s Figure 32 (below), wind at 0600 CDT crossed a 2,000+ ft wind fetch with water +6.8 feet above sea level. Arguably not only was this an area of Exposure C, but the reduction of drag coefficient (a water surface with little to no waves) may have approached Exposure D (in reality if not by the rules of ASCE-7). The assessment assumes straight-line wind and not turbulence or downburst activity as proposed by Dr. Fitzpatrick.

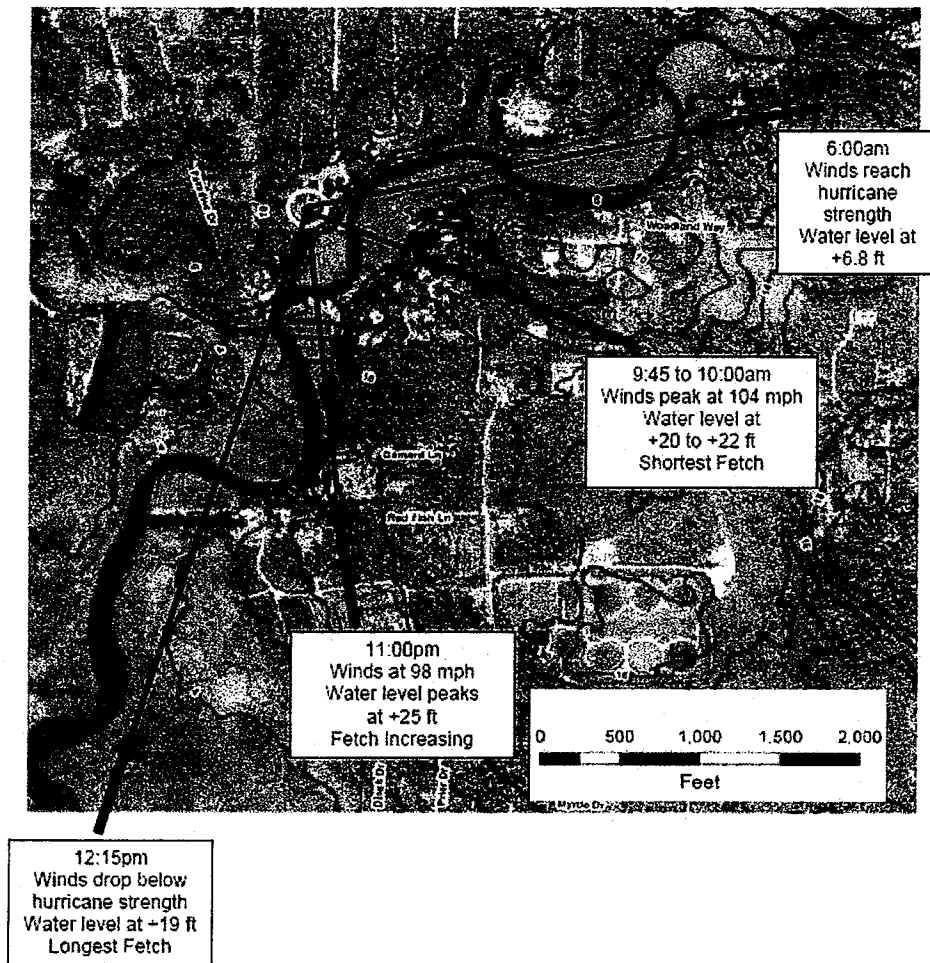


Figure 32. Timeline of wind and water level, showing wind direction and fetch for wave generation.

## REPORT BY JENKINS ENGINEERING

Structural Analysis of the Payment Buildings by Jenkins Engineering was reviewed subsequent to the Initial Report. The following comments pertain:

- 1) Jenkins incorporates wind speed information and storm surge “effects” from Dr. masters and Dr. Kriebel.
- 2) Jenkins states that the 1999 Standard Building Code “has been the predominant building code in Mississippi until recently”. This is debatable. Unincorporated Hancock County enforced NO code before Katrina. Tupelo – where Jenkins maintains its headquarters – enforced the 1997 Standard

Building Code. It has not been determined what code, if any, was enforced in unincorporated Harrison County and Pass Christian.

- 3) Commenting on my Initial Report, Jenkins notes that the home survived Camille without referencing local wind speeds and storm surge conditions.
- 4) Jenkins indicates that the den roof is located under the debris. The reference photo in the report (Figure 13) is a close-up showing no more than one rafter (which actually may be the floor joist under the second-story of the adjacent framing) and about 6 bricks. Several more bricks are seen in Jenkins Figure 14.
- 5) Photos of the east side of the two-story building were not available for review at the time of the Initial Report. Jenkins is correct that my assumption that “windows” on the east side were damaged by wind is exaggerated. There is only one broken window pane on the east side and my assumption incorrectly assumes at least two.
- 6) It was unclear, even in conversation with Dr. Payment, if the curled roof was over the kitchen or the carport. However, upon re-evaluating the photos, it appears that Jenkins is correct: the curled roof is over the carport.
- 7) Jenkins states that the metal roof I refer to a sun room roof (located southwest of the structure) actually belongs to another structure. This is interesting because Dr. Kriebel (page 11) states “a large portion of the sunroom roof remained upright and was found a short distance southwest of the home”. On this issue I originally agreed with Dr. Kriebel’s position. It is not clear which roof is which, although the hip cut on the roof section southwest of the main residence doesn’t seem to “fit” anywhere with the as-built condition. Jenkins seems to think the kitchen gable is located under a flipped portion of the carport roof (Jenkins Figure 20) although that must be surmised from the positioning of the flipped roof.
- 8) Jenkins claims I do not understand “how wind forces affect a building”, arguing that the roof must have been removed by progressive failure. However, as I will show in conclusion, the building was breached on the east side allowing wind pressurization to uplift the roof over the sun room. Figure 17 in the Jenkins report shows that if the east side of the building was breached, wind and wind-driven water would pass through the den, into the first floor of the two-story building and (since the wall between the first floor of the two-story building and the sun room had been removed during renovation) into the sun room where pressurization would uplift the roof.



**FIGURE 17**

**From Jenkins Report**

- 9) Jenkins uses the anomaly of the Abraham video to conclude that the exact same condition occurred at the Payment residence. He states that “later in the video, Mr. Abraham has retreated to the attic space and is panicking as his home and another are literally slamming into each other”. The video received by my office was video only without sound. It is unclear if this information is available on the original video or if Jenkins received other information.
- 10) Granted the home could have been lifted by buoyancy “without hydrodynamic force (from low velocity current), without waterborne debris impact, and with very little wave action” as Jenkins states. But how then does Jenkins explain (a) the collapse of the den, (b) the collapse of the lower story of the two-story building and (c) the translation of the top floor of the two story 20 feet to the northwest. If we use the Abraham video as “ground truth”, then absent the required current velocity and wave activity, the two-story Payment building should have “bobbed up and down” (like the Abraham building) until it stabilized due to flooding inside the building structure. Instead what we have with the Payment residence is a building which toppled over on top of a previously collapsed brick building. Storm surge – as seen in the Abraham video, which appears to be closer to the Mississippi Sound – does not explain the degree of damage sustained by the Payment residence. If storm surge with wave action at the coastline did not destroy the Abraham house, why should storm surge with less wave action in a bayou destroy the Payment house? Jenkins refers to a “plaintiff provided photograph” showing a house “completely intact” after it floated off its foundation. Exactly the point. The house is undamaged except for having shifted off its foundation.
- 11) The calculations performed by Jenkins appear to be from a “canned” software program (note the output for earthquake loading). The wind load calculation

simply takes a wind speed and converts it to a pressure coefficient to be used for building design. This represents an analysis of load factors. There is no analysis of resistance factors (by comparing load factors to resistance factors it can be determined if the structure could resist the loads). Jenkins alludes to “structural analyses” of the rafter connections (not provided with the report) which indicate that assuming Dr. Kriebel’s 130 mph wind gusts, the cottage gable ends would have failed. Then Jenkins recants the 130 mph wind gust quoting Kriebel to the effect that “ while [126-132 mph] wind speeds are adopted [in this report], it should be kept in mind that they are higher than any wind measurements made in Katrina near the Payment home site”. Changing the rules after loosing the game, Jenkins then tests for 110 mph and concludes that the building did not fail due to wind load after all. Jenkins did conclude that the roof framing over the screened pavilion, boathouse and open rear carport failed due to wind.

## **DESCRIPTION DAMAGE AND ANALYSIS**

### **Site Inspection Photos**

Attachment B (Initial Report) includes photos taken on March 16, 2008 consisting of photos taken of the site location and copies of photos shown by Mr. Payment. Noteworthy, the tops of trees in the tree line west of the property lot are sheared at the top and denuded of limbs and bark. Mr. Payment pointed out that most of the felled trees have been removed. During a boat ride upstream and downstream along Bayou Portage, it was noted that this tree damage only occurred immediately west of the Payment residence.

The remaining structures of the residence and cottage were removed prior to the site inspection (Photo 5). Mr. Payment was interviewed in the field at which time Photos 6-13 were taken. These photos are views of building damage.

### **File Photos**

Attachment B (Initial Report) also includes file photos provided for review. The photos include a “before Katrina” photo of the house as it faced the southeast and an additional view of the east side of the house. A “before Katrina” photo of the cottage was provided showing a wood-framed structure on short masonry piers with a gabled metal roof. Other photos show the boat house and summer house.

The photo titled “Main House After” shows that the 2 eastern masonry columns fell east while the 2 western masonry columns fell southwest. The second story of the building collapsed NNE. The metal roof over the two-story building remained intact. The columns supporting the carport roof remained erect. Other photos show that the metal roof over the sunroom was transported to the southwest and the metal roof over the kitchen (or carport – it is difficult to determine which) remained attached to the structure

which collapsed to the NNE. The metal roof itself is “curled” in a manner suggesting wind uplifted and pulled the roof off the deck.

One file photo shows the steep-sloped roof of a residential structure totally demolished by wind. Another shows the roof missing from the summer house. There is no evidence of foundation straps holding the two-story building to the masonry piers.

### **Additional Review of Photos**

With the benefit of additional information by Dr. Payment and in response to positions taken by opposing experts, the following additional review of photos is provided:

- 1) Payment 00093 shows the summer house (“screened pavilion”) roof on the ground southwest of the building structure. It probably blew off when wind traveled east-to-west, but remaining tethered to the building by electrical wires, floated to a position of rest as shown in the photo.
- 2) Payment 00094 shows a portion of a metal roof southwest of the main residence. The hip cut suggests it is part of the den roof, but it is not certain where this roof was located.
- 3) Payment 00099 shows the porch steps and in the background what appears to be the remainder of the sun room roof. Note the built-up wood frame to support the newer metal roof.
- 4) Payment 00100 shows the SE-facing 2<sup>nd</sup> story collapsed over the rubble of the den brick walls.
- 5) Payment 00104 shows the den brick walls collapsed west, which is not a direction suggesting collapse by storm surge but rather collapse by wind.
- 6) Payment 00105 shows a rafter and a strip of metal from the den buried under the collapse. The fact that the rafter is visible indicates that wind removed the metal roof before the collapse.
- 7) Payment 00106 shows the NE corner of the building; note that the gable end is blown out.
- 8) Payment 00098 shows the interior of the collapsed 2<sup>nd</sup> story. There is no water line on the raised east wall.
- 9) Payment 00110 shows breakage of softwood tree trunks. The lack of proximity to the Payment residence is only because the Payment residence was constructed in a clearing where there are no trees to exhibit such damage.
- 10) Payment 00146 shows the BEFORE photo.
- 11) Payment 00147 shows the AFTER photo.
- 12) Payment 00149 shows the BEFORE photo.
- 13) Payment 00150 shows the upstairs, kitchen and cottage.
- 14) Payment 00151 shows interior and exterior views.
- 15) Payment 00159 shows the view of the boathouse and trees felled in different directions.

- 16) Payment 00162 shows tree fall.
- 17) Payment 00173 shows the peeled back roof of the carport.
- 18) Payment 00197 shows the summerhouse.
- 19) Payment 00346 shows the den looking towards the sun room.
- 20) Payment 00236 shows the damaged carport roof.
- 21) Payment 00239 shows the interior of the 2<sup>nd</sup> floor level.
- 22) Payment 00243 shows the foundation of the two-story building and the foundation slab for the sun room.

#### **DISCUSSION (NEW INFORMATION ITALICIZED)**

1) Although the Payment residence most likely was not constructed to current code requirements for hurricane resistance, the recently installed 2-story metal roof appears to have been properly installed which is why it “rode out the storm” until the structure collapsed. The roof over the east den is missing (*except for narrow strips of metal visible in a few photos*) indicating that it was removed before the collapse (otherwise it would be seen in the photos under the collapsed two-story). From this we can assume that that gable roof over the east den was removed by wind before the two-story building collapsed. We can also assume that the building interior under this roof along with building contents were destroyed by wind and water after the roof was removed. Reasonably, the brick chimney also was destroyed by east wind *and with it portions of the brick walls at the east end of the den. Once the den was breached, the SE end of the 1<sup>st</sup> story and the sun room were attacked by wind and wind-driven rain entering at the breach.*

2) *Reasonably it can be assumed that window on the east side of the two-story building was damaged by wind allowing wind and water to enter the second story structure.*

3) *Photos of the sunroom show that all the brick collapsed outward, indicating that neither storm surge nor wind attacking from the exterior was responsible for the damage. Interior pressurization resulting from the den breach and suction caused by east wind before the rise of storm surge is the cause of damage. The metal roof over the sun room remained attached to the main building because the roof and its connections were stronger than the brick mortar. (Dr. Payment’s description of “chalkiness” is a description of efflorescence and mortar deterioration).*

4) The curled metal roof (most likely over the *carport*) on the west side of the 2-story suggests that wind did remove that particular roof structure. *The peel-back indicates that wind from the SSW (shortly after 1300 CDT) overturned the carport roof. This damage, although it occurred after the carport was inundated by flood, is damage caused by wind. Note that wind gusts at this time were lower than 80 mph and lower than wind speeds which could account for the damage (see EF Scale). It follows that some wind gusts were higher than the reported wind speed due to gustiness.*

5) Two brick columns fell southwest counter to the flow of storm surge. The best explanation for the pattern of fall is wind: wind uplifted the protruding front of the



second story, relieving the gravity load on the columns and allowing lateral force of wind to push the columns southwest. While it appears that the other two columns continued to support the 2<sup>nd</sup> story structure until the structure collapsed NNE, from the point that wind removed two columns, the integrity of the second story structure was compromised.

6) *The timeline provided by Dr. Fitzpatrick shows that wind gusts of 120 mph crossed from east before water reached the lower floor levels and 130 mph before water reached the lower floor level of the 2-story structure. This adequately explains the loss of the chimney as well as the roofs over the east den and west sunroom.*

7) The most problematic part of the analysis is the question “what force pushed the 2-story building to the NNE?” It is difficult to conclude that the sole cause is flood. Hydrostatic load alone would not have collapsed the building because water rose both outside and inside the structure, equalizing the flood load. Even if the 2-story achieved buoyancy, it would do no more than bump into the additions as suggested by the Abraham video. Hydrodynamic load is not a satisfactory answer because the current was low velocity current (with which Dr. Kriebel agrees). There was little to no wave action (Dr. Fitzpatrick allows for 0.5 foot wave activity). There is no indication of waterborne debris impacted with a force sufficient to collapse the building structure (with which Dr. Kriebel agrees).

8) *If not flood, this leaves wind. Wind attacking from SSW (the same wind gusts which apparently peeled back the carport roof and flipped a portion upside-down) could have pushed the building to the NNE. There are minimal load path connections in the 2-story building and the structural integrity had been compromised by renovations. The breach in the den may have caused additional damage, to what extent is not known but it can be inferred that the building’s resistance to attacking wind was weakened prior to the collapse.*

**ENHANCED FUJITA SCALE (REV 2)  
ONE- AND TWO-STORY RESIDENTIAL DWELLINGS**

| DOD* | Damage description                                                                                                                                                   | Exp** | LB  | UB  |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-----|-----|
| 1    | Threshold of visible damage                                                                                                                                          | 65    | 53  | 80  |
| 2    | Loss of roof covering material (<20%), gutters and/or awning; loss of vinyl or metal siding                                                                          | 79    | 65  | 97  |
| 3    | Broken glass in doors and windows                                                                                                                                    | 96    | 79  | 114 |
| 4    | Uplift of roof deck and loss of significant roof covering material (>20%); collapse of chimney; garage doors collapse inward or outward; failure of porch or carport | 97    | 81  | 116 |
| 5    | Entire house shifts off foundation                                                                                                                                   | 121   | 105 | 141 |
| 6    | Large sections of roof structure removed; most walls remain standing                                                                                                 | 122   | 104 | 142 |
| 7    | Exterior walls collapsed                                                                                                                                             | 132   | 115 | 153 |
| 8    | Most walls collapsed in bottom floor, except small interior rooms                                                                                                    | 152   | 127 | 178 |
| 9    | All walls collapsed                                                                                                                                                  | 170   | 142 | 198 |
| 10   | Destruction of engineered and/or well constructed residence; slab swept clean                                                                                        | 200   | 165 | 230 |

\* DOD is degree of damage \*\*Wind Speed values are in mph

## CONCLUSION

Damage occurring due to wind can be categorized by two events:

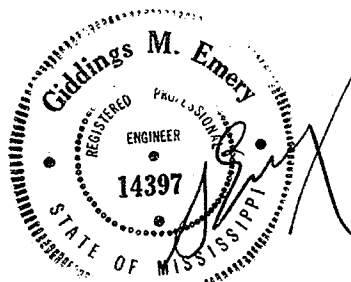
### EVENT ONE: WIND DAMAGE BEFORE THE RISE OF STORM SURGE

- 1) *Prior to the rise of storm surge, wind removed the metal roof from the one-story addition (den) on the east side of the building. Water and wind penetrating through this opening destroyed the interior and contents in the den, the SE end of the lower two-story residence and the sun room. The chimney most likely was destroyed by ENE/E wind with 80-110 mph gusts about 0630 CDT. The gable end of the den most likely was slammed by 120-130 mph wind about 0830 CDT causing the wall to collapse.*
- 2) *Prior to the rise of storm surge, overpressurization in the sun room and suction along the exterior wall collapsed the SE-facing brick wall.*
- 3) *Prior to the rise of storm surge, wind breached second-story windows (one on the NE side and all on the SE side), allowing wind and water to damage the interior.*
- 4) *Prior to the rise of storm surge, wind removed the 1-story cottage house from its foundation and destroyed the structure.*

### EVENT TWO: WIND DAMAGE AFTER THE RISE OF STORM SURGE

- 1) **After storm surge receded**, wind peeled back and overturned the carport roof. This damaged not only the carport roof, but the kitchen roof impacted by the carport roof.
- 2) **After storm surge receded**, wind pushed the 2<sup>nd</sup> story of the 2-story building to the NNE. Renovations prior to the hurricane and the probability of wind damage before the rise of storm surge had reduced the structural integrity of the building.

**END OF REPORT 80107**



Respectfully submitted,

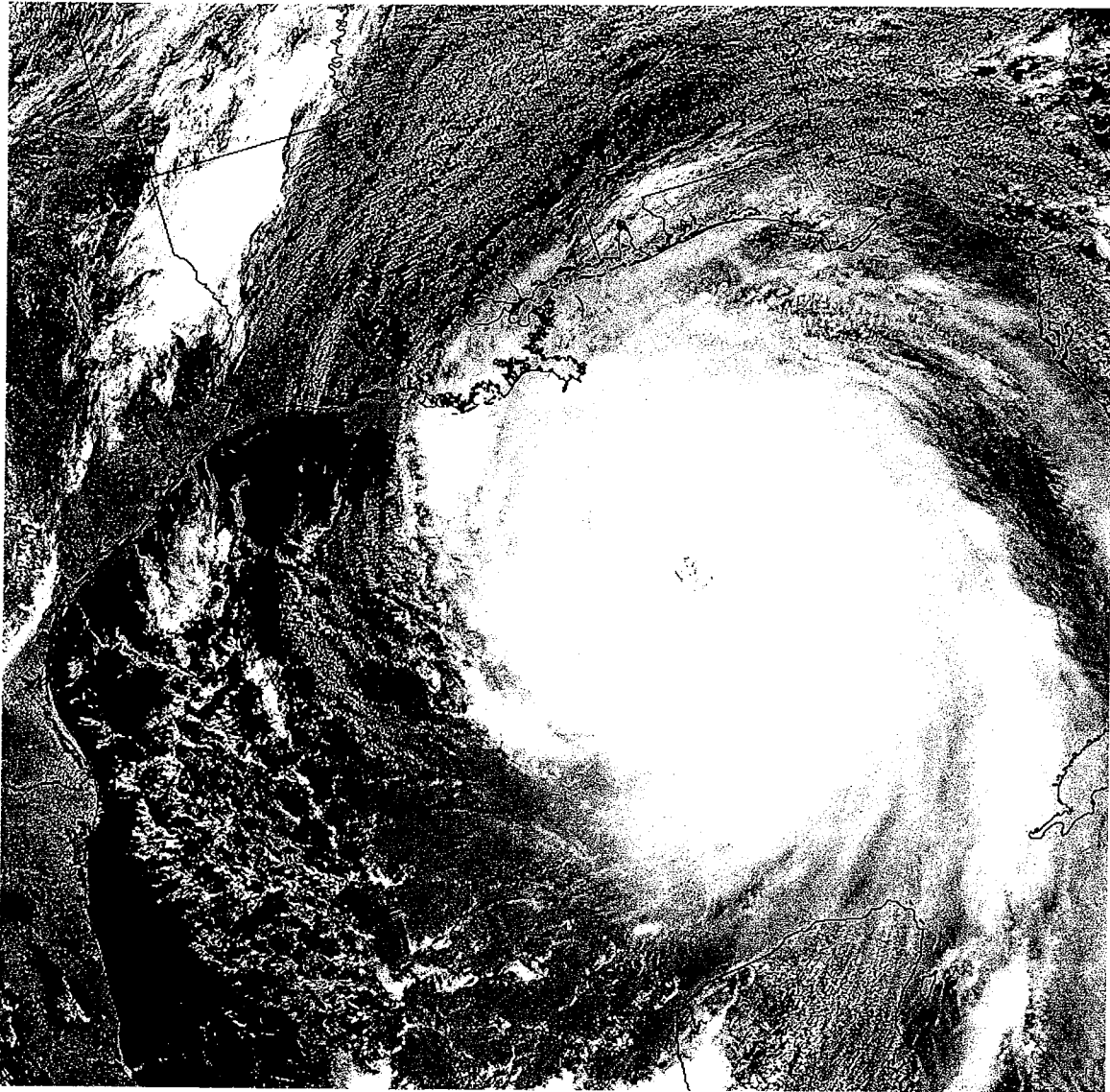
Neil B. Hall, Ph.D.  
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Reviewed by:

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# The wind and surge of Hurricane Katrina on 5012 Payment Lane, Pass Christian, MS

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Satellite image from on August 28, 2005, at 12:00 PM. Hurricane Katrina was about 200 miles from southeast Louisiana at this time as a Category 5 hurricane.

**Exhibit "I"**

This report presents information about Katrina's wind and storm surge elements at 5012 Payment Lane in Pass Christian, MS. Section 1 provides background information on the physics of the storm surge. Section 2 describes Katrina's wind field, its storm surge, and the timing of both events. Section 3 summarizes the findings.

## 1. Background on the hurricane storm surge

Accompanying a landfalling hurricane is the *storm surge*, defined as an abnormal rise of the sea along the shore generated by an intense storm such as a hurricane. The storm surge is caused primarily by the winds pushing water toward the coast and wave breaking, which propels water further inland. A secondary contribution to surge is made by the reduced barometric pressure within the storm, which causes a dome of water level higher than the surrounding ocean. However, wind and wind-generated waves are the primary contributors to storm surge. The surge rises gradually, then quickly as the storm makes landfall. Despite some ill-conceived notions, it is not like a tsunami or a wall of water, but instead a steady increase in water levels. Typically the surge peaks after landfall, with a region experiencing tropical storm- and hurricane-force winds several hours before landfall.

Factors which impact storm surge elevation include:

- *Storm size*: The larger the areal extent of tropical storm-force winds, the higher the water elevation
- *Storm central pressure*: Lower interior atmospheric pressure increases the water level. Pressure is essentially the "weight" of the atmosphere. The atmospheric pressure is much lower in the center than at the periphery of the storm. This means the weight of air pushing down on the water column is greater at the edges of the storm than it is at the storm's center. Consequently, a slight bulge, or increase, in the water surface occurs within the storm, and the magnitude of the bulge is greatest at the storm's center and decreases to near zero at the storm's periphery. This water expansion due to lower interior pressure is known as the *inverse barometer effect*. It causes water to expand 3.9 inches for every 10-mb pressure drop. Overall, this is a minor but non-negligible contribution to the storm surge (between 2-3 feet in the inner core of Katrina).
- *Storm intensity*: The maximum wind speed is the most important factor. The more intense the hurricane, the higher the water elevation.
- *Bathymetry*: As the surface currents driven by the wind reach shallow coastlines, bottom friction impedes the seaward return flow near the bottom, causing water to pile up. Shallow areas with a gradual slope will experience greater storm surges than areas with a shelf that drops off rapidly near the coast. This is because water cannot sink and flow outward to the ocean, thereby causing more water to pile up offshore when the water is shallow. Because of Louisiana and Mississippi's proximity to shallow water that gradually deepens offshore, these states are prone to high storm surges.

- *Speed of motion of the system:* Because a slow moving hurricane has a longer time to transport water onshore, slow systems are associated with higher storm surge values. Slower moving hurricanes can cause a storm surge 50-70% higher than fast moving hurricanes. Fast moving hurricanes cause the surge to “spike” over a few hours with an overall lower surge.
- *Wave setup:* Water levels can increase from onshore waves in windy conditions. Under normal conditions, waves that reach the coast break and water flows back out to the sea under the next incoming wave. In hurricane conditions, the water may not retreat in time before the next wave arrives, a situation called wave setup. This wave setup can be quite large and is most pronounced when deepwater is near the shore, because in shallow water waves break further offshore. Wind-induced surge enables waves to penetrate much further inland before they break. On the shallow Mississippi coast, this effect is minor.
- *Track angle:* Storms which make landfall perpendicular to the coastline produce larger storm surges than those which hit at an angle. Storms which make landfall at an angle have a smaller surge because some transported water experiences reflection and cross-current transport.
- *Local effects:* The shoreline trajectory can enhance or weaken the surge through trapping mechanisms.

The storm surge is always highest on the side of the eye corresponding to onshore winds, which is usually the right side of the point of landfall. Winds are also fastest in the right front quadrant because storm motion (which averages about 10 mph but varies substantially) is added to the hurricane's winds. Because winds spiral inward, the storm surge is greatest along the eyewall but high water can impact other regions as well.

The total elevated water includes three additional components - the astronomical tide, the steric effect, and ocean waves. The astronomical tide results from gravitational interactions between the earth and the moon and sun, generally producing two high and two low oceanic tides per day in most U.S. locations, but only one high and one low tide per day in Louisiana. Should the storm surge coincide with the high astronomical tide, the additional elevation will be added to the water level. However, tide ranges along the northern Gulf of Mexico are small, only contributing to one-foot of additional water at high tide, often less. Waves are another important contributor to water level. In addition to contribution of wave setup to the surge, waves can be expected on top of the surge. The final contributor is water temperature. Because warm water expands, water levels are naturally highest in the summer, known as the *steric effect*. In the Gulf of Mexico, this contributes about 0.52 feet of water in late summer.

By definition, storm surge does not include waves (other than the contribution due to wave setup). Waves will be superimposed on the storm surge. Miles offshore in deep water, the waves will be large. However, as the depth decreases toward the shore, waves are impacted by the ocean floor and slow down while their period remains constant. As a result, the wavelength decreases and the amplitude increases. Eventually the wave will

get too steep and break. New waves will be generated with less height, but as the depth continues to decrease, they will again break and reform as smaller waves. In theory locally generated shallow water wave heights can reach 73% of the water depth, but the distance traveled to reach its potential maximum height (called the fetch) is too short near the shore; because the depth keeps decreasing, wave growth becomes disrupted and the wave will break again and again. In addition, shallow water waves also lose energy due to frictional interaction with the ocean floor. Frictional loss is even greater over flooded, vegetated land. In Mississippi, in the surf zone, wave heights will reach 1-4 feet on top of the surge. Further inland, the wave height will be less than 2 feet, reducing with distance from the coast or with land elevation.

## **2. The wind and storm surge of Katrina at 5012 Payment Lane**

### *I. Katrina's windfield*

Katrina was a major hurricane when it made landfall in Pass Christian. Because it was also an unusually large hurricane, Mississippi and Louisiana were exposed to hurricane-force winds for many hours, including several hours before landfall. Katrina's hurricane-force winds extended 120 miles from the storm center, and tropical storm-force winds 230 miles outwards. Katrina also maintained a large eye, thereby providing a large areal-coverage of its most fierce winds. Satellite, National Weather Service radar, airborne radar (from the Hurricane Research Division), and dropsonde data, provide intriguing insight into the three-dimensional structure of the hurricane. Another band of strong thunderstorms from a second eyewall also impacted the region. The strong winds aloft also created a situation where potent wind gusts could occur in thunderstorms and boundary layer turbulent eddies. National Weather Service radar data indicates many tornadoes, and satellite shows mesovortices on the inner edge of the eyewall capable of extreme wind damage (similar to the damage caused by mesovortices in Hurricane Andrew). The widespread wind damage is likely due to the longevity of hurricane-force wind exposure, fierce wind gusts, tornadoes, and mesovortices. Another hurricane feature, known as boundary layer rolls which leaves localized wind streak damage, also occurred. This will be discussed in a moment.

NOAA sustained wind analysis was used to determine the winds at 5012 Payment Lane. Tropical storm-force winds began around 1:00AM August 29 on Payment Lane, with hurricane-force winds beginning 6:45AM. Peak winds occurred on Payment Lane between 9:00-9:30AM with 105 mph sustained winds associated with the inner eyewall. These winds had a generally easterly component. Land inundation began about 8:30AM at Payment Lane, but as will be discussed, it did not reach a level to seriously impact the elevated house until 9:30AM. Hurricane-force, then tropical storm-force winds continued for another few hours from a south-southwesterly direction of less but still potent intensity. In other words, Payment Lane was subject to tropical storm-force winds from conservatively 1AM to the late afternoon, and hurricane-force winds from 6:45AM to

12:30PM. The early morning winds are conservative; it's possible the sustained winds were even stronger.

Wind gusts 20-60% higher than the sustained winds frequently impacted the residence. The peak wind gust at Payment Lane is 120 to 130 mph, which is also consistent with radar and dropsonde wind data. This general area (Pass Christian) received the strongest wind gusts on the Mississippi coast. Two dropsondes were deployed near Bay St. Louis and Gulfport around 6:00AM which recorded winds of 115 mph and 119 mph at an altitude between 500 and 1000 feet, three hours before landfall (and the peak sustained winds). Downbursts associated with severe squall lines can transport these winds to the surface. The first squall line containing a radar reflectivity of between 45-50 dBZ arrived at 5:45AM, signifying when such winds gusts could be transferred downward. Microwave imagery, which is strongly attenuated by hydrometeors (suspended water and ice particles, as well as precipitation), clearly shows this squall to be a well-formed curved band which is likely an outer eyewall. This outer eyewall reached Payment Lane about 6:30AM, initiating peak wind gusts reaching 110 mph, with even stronger gusts possible in isolated regions. The inner eyewall reached Payment Lane around 9:00AM. At landfall, another dropsonde in Bay St. Louis showed winds of 155 mph at 1000 feet. This indicates that wind gusts up to 140 mph were likely in this region at this time. This report gives a conservative maximum wind gust range of 120-130 mph.

Research of high-resolution radar imagery has shown turbulent eddies manifested as organized "rolls" in hurricanes. These rolls transport fast winds aloft to the surface, resulting in localized wind streak damage. An inspection of this property revealed an unusually high percentage of trees snapped in half and/or with bark and branches removed (compared to the surrounding area). This tree damage was especially apparent northwest of the residence.

Based on this analysis, pre-landfall USGS tide gauge data, and other National Weather Service observations, a timeline can be established for the wind at 5012 Payment Lane, and is summarized in Table 2.

## *II. Timing of wind and storm surge in Katrina at Payment Lane*

Observations of Katrina's storm surge life cycle generally do not exist because all tide gauges failed in the southeast Louisiana marsh and Mississippi during the brunt of the storm. The previous few days of water levels, as well the first few hours of the storm surge, were documented. Typically, one to two days before a storm such as Katrina makes landfall, the water increases 2-3 feet, known as the *surge forerunner*. On the day of landfall, water starts to slowly increase, then rises faster as the hurricane eyewall makes landfall.

Despite the shortcomings of the gauges, they do provide a record of the wind and the surge before the eyewall comes onshore. They show unequivocally that tropical storm-

force winds arrived several hours before the surge. A sample of Mississippi and Louisiana tide gauges are shown in Table 1, indicating that winds greater than 39 mph, and approaching hurricane strength, arrived between 4 and 8 hours before surge values of 8 feet occurred, less than would flood most homes.

Table 1. Summary of wind and surge at three USGS Mississippi gauges (Ocean Springs, Mississippi Sound, and the mouth of the Pearl River). Two from Louisiana are also shown (Bay Gardene and Bayou La Loutre). Note that tropical storm-force winds occurred for several hours with surge insufficient to inundate most properties.

| <i>Wind (mph)</i> | <i>Storm surge (feet)</i> | <i>Location</i>      | <i>Time</i>      |
|-------------------|---------------------------|----------------------|------------------|
| 42                | 3.2                       | Ocean Springs        | 8/29 at 2:30AM   |
| 74                | 8.5                       | Ocean Springs        | 8/29 at 7:15AM   |
| 36                | 2.3                       | Mississippi Sound    | 8/29 at 12:00 AM |
| 53                | 5.9                       | Mississippi Sound    | 8/29/ at 4:00AM  |
| 40                | 4.4                       | Bay Gardene          | 8/28 at 5:15 PM  |
| 58                | 6.9                       | Bay Gardene          | 8/29 at 12:00AM  |
| 35                | 1.3                       | Bayou La Loutre      | 8/28 at 9PM      |
| 56                | 3.3                       | Bayou La Loutre      | 8/29 at 5AM      |
| 55                | 3.0                       | Mouth of Pearl River | 8/29 at 12:00 AM |



The gauges are not designed to withstand the eyewall region at landfall, and do not present a complete picture of the surge cycle. Since observations are lacking, three methods exist to document the storm surge: computer model simulations, post-storm high-water measurements, and eyewitness accounts. A computer model approximates time-dependent hydrodynamic equations which represent water flow n by wind and pressure fields. It can be used to explore the qualitative evolution of the storm surge, to fill in data gaps, and to explore physical relationships. High water mark surveys are conducted by government agencies (such as the National Weather Service, the Army Corps of Engineers, and the USGS), and private companies such as URS and Haag Engineering. Usually the elevations are recorded relative to vertical datum NAVD 88. They reflect either the stillwater elevation of the storm surge (areas outside the influence of breaking wave and wave runup, either far inland or inside buildings) or the stillwater elevation plus the wave runup component (areas in the wave swash zone - either breaking waves or wave runup). Stillwater elevation is recovered inside of commercial or residential structures as mud lines on walls or doors. The storm surge plus wave runup high water marks are generally found as debris or trash lines along coastal dunes, sloping terrain of the bay shoreline or the outside perimeter and exterior area of a structure. Based on the high water marks, 5012 Payment Lane experienced a 24-foot storm surge, with wave action of 0.5 feet or less superimposed on the surge.

To assess the timeline of the surge versus wind, the U.S. Army Corps of Engineers ADvanced CIRCulation (ADCIRC) hydrodynamic model is used to simulate Katrina's storm surge. ADCIRC was initially developed under the Dredging Research Program, a 6-year program funded by the Army Corps of Engineers, Office of the Chief of Engineers. The model was developed as a family of 2- and 3-dimensional finite element based codes with the capability of simulating tidal circulation and storm surge propagation over very large computational domains, while simultaneously providing high-resolution output in areas of complex shoreline and bathymetry. In addition to numerous Army Corps of Engineer applications, ADCIRC has also been used by many universities, including LSU and Notre Dame, and companies such as WorldWinds, Inc., and the URS Corporation. The latter companies have performed work for Louisiana Natural Resources Department for research on the storm surge in Mississippi River Gulf Outlet, storm surge simulations for NASA, and other applications.

The ADCIRC simulation provides a timeline of the surge evolution. East of the hurricane's onshore winds, the surge can be seen moving up the Pearl River, Jordan River, and Biloxi River at 5AM. Marsh regions near Pearlinton and Pascagoula begin to experience inundation. Islands offshore, the Louisiana marsh, as well as Dauphin Island in Alabama, are partially underwater. The surge is below 5 feet in most regions.

At 7AM and 9AM, this pattern continues, with surge values increasing along the Mississippi coast. The water elevation is below 13 feet in most regions. The land elevation is 10 feet, with portions of the house elevated to 13 feet. The surge inundated

the land around 8:30AM, and the elevated portion of the house between 9 and 9:30AM. The surge peaked 24.0 feet at 11:00AM (14.0 inundation relative to land, and 11.0 water inundation in the elevated portion of the house). This location also experienced 2.5-3 hours of wind gusts over 100 mph before inundation. Numerous eyewitness accounts and videos also support the timing assessment of the wind versus surge.

Data was output from ADCIRC every 30 minutes to a spreadsheet for 5012 Payment Lane. Based on all available data, a time series of the sustained wind speed, wind gusts, and the surge is shown in Table 2.

Table 2. Summary of sustained winds, wind gusts, and inundation from storm surge for August 29, 2005 at 5012 Payment Lane. Wave action less than 2 feet will be superimposed on the surge. Wind gusts of 100 mph likely began about 6:00AM. The land elevation is 10 feet. The elevated portion of the house is at 13 feet. The surge peaked at 24.0 feet (relative to sea level) at 11:00AM.

| <i>Time<br/>(Aug. 29)</i> | <i>Sustained<br/>wind (mph)</i> | <i>Wind<br/>gusts<br/>(mph)</i> | <i>Storm surge<br/>relative to sea<br/>level (feet)</i> | <i>Storm surge relative<br/>to land (feet)</i> | <i>Inundation in<br/>elevated portion<br/>of house (feet)</i> |
|---------------------------|---------------------------------|---------------------------------|---------------------------------------------------------|------------------------------------------------|---------------------------------------------------------------|
| 1:00AM                    | 45 (east-northeast)             | 50                              | NA                                                      | land dry                                       | house dry                                                     |
| 4:00AM                    | 55 (east-northeast)             | 70                              | NA                                                      | land dry                                       | house dry                                                     |
| 5:30AM                    | 60 (east-northeast)             | 80                              | NA                                                      | land dry                                       | house dry                                                     |
| 6:30AM                    | 70 (east-northeast)             | 110                             | NA                                                      | land dry                                       | house dry                                                     |
| 7:00AM                    | 80 (east-northeast)             | 120                             | NA                                                      | land dry                                       | house dry                                                     |
| 8:30AM                    | 95 (east)                       | 120-130                         | 12.0                                                    | 2.0                                            | elevated portion of house dry                                 |
| 9:30AM                    | 105 (east-southeast)            | 130                             | 20.0                                                    | 10.0                                           | 7.0                                                           |
| 10:00AM                   | 100 (east-southeast)            | 130                             | 22.0                                                    | 12.0                                           | 9.0                                                           |
| 11:00AM                   | 85 (southeast)                  | 100                             | 24.0                                                    | 14.0                                           | 11.0                                                          |
| 12:00PM                   | 80 (south)                      | 90                              | 23.0                                                    | 13.0                                           | 10.0                                                          |
| 1:00PM                    | 65 (south-southwest)            | 80                              | 20.0                                                    | 10.0                                           | 7.0                                                           |
| 4:00PM                    | 50 (south-southwest)            | 65                              | 12.0                                                    | 2.0                                            | elevated portion of house dry                                 |

### 3. Conclusions

The following conclusions can be stated about Hurricane Katrina's impact on 5012 Payment Lane on August 29, 2005:

- Tide gauges show tropical-storm force winds arrived several hours before significant flooding from surge
- Computer models, National Weather Service radar, reconnaissance radar, dropsondes, surface observations, tide gauge data, eyewitness accounts, newspaper reports, and video show hurricane-force winds, tropical storm-force winds, and strong wind gusts occurred hours before the surge impacted Payment Lane. The official Hurricane Research Division wind analysis concurs with this assessment. An outer eyewall contributed to strong winds and winds gusts hours before the eye (and an inner eyewall) impacted this location.
- The land at 5012 Payment Lane is 10 feet above sea levels, and portions of the house were elevated to 13 feet. The surge inundated the land around 8:30AM, and the elevated portion of the house between 9 and 9:30AM. The surge peaked 24 feet at 11:00AM (14 inundation relative to land, and 11 water inundation in the elevated portion of the house). Waves of 0.5 foot or less were superimposed on the surge.
- Tropical storm-force winds began around 1:00AM August 29 on Payment Lane, with hurricane-force winds beginning 6:45AM. Peak winds occurred on Payment Lane between 9:00-9:30AM with 105 mph sustained winds associated with the inner eyewall. These winds had a generally easterly component. The early morning winds are conservative; it's possible the sustained winds were even stronger. Hurricane-force, then tropical storm-force winds continued for another few hours from a south-southwesterly direction of less but still potent intensity. Hurricane-force winds continued until 12:30PM, and tropical-storm force until late afternoon.
- Wind gusts were 20-60% higher than the sustained winds from downbursts and turbulent eddies in association with one squall line at 6:00AM, followed briefly afterwards by an outer eyewall. Wind gusts over 100 mph began at 6:00AM. Wind gusts peaked between 120 and 130 mph. The open exposure of the structure to wind gusts along the water made this structure particularly prone to wind damage. Therefore, the structure experienced strong winds for a considerable period of time before the surge, and also experienced penetration by wind-driven rain.
- An inspection of this property revealed an unusually high percentage of trees snapped in half and/or with bark and branches removed (compared to the

surrounding area). This tree damage was especially apparent northwest of the residence. This is consistent with wind streak damage caused by boundary layer rolls seen in other hurricanes.

- In addition, radar indicates several tornadoes in the vicinity of 5012 Payment Lane. Mesovortices, known to occur in Category 3 hurricanes or stronger, are also possible.

This report is based on current data, and subject to modifications from new information.

Report prepared by Dr. Pat Fitzpatrick:

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0485-HO

Exhibit "J"



0486-H0



0487-H0