

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

MICHAEL PAYMENT, M.D.,

PLAINTIFF

VS.

**CIVIL ACTION NO.
1:07CV01003-LTS-RHW**

STATE FARM FIRE & CASUALTY COMPANY

DEFENDANT

**STATE FARM FIRE AND CASUALTY COMPANY'S MOTION *IN LIMINE* NO. 3:
LIMITING TESTIMONY OR EVIDENCE RELATING TO INSURANCE DEPARTMENT
BULLETINS AND RELATED CORRESPONDENCE**

State Farm Fire and Casualty Company ("State Farm") respectfully moves *in limine* for an order limiting any evidence, testimony, or argument relating or referring to any bulletins issued by the Mississippi Department of Insurance ("MDI") relating to the adjustment of Hurricane Katrina claims and correspondence between the Department and State Farm on the same subject.¹

State Farm anticipates that Plaintiff may attempt to introduce evidence of or refer to the fact that in the wake of Hurricane Katrina, the MDI issued certain bulletins relating to the MDI's views as to insurers' handling of Hurricane Katrina claims and insurers' obligations under their homeowners insurance policies. In connection with similar motions in other Hurricane Katrina cases, this Court has ruled that the MDI bulletins and related correspondence are generally inadmissible. For example, in *Huynh v. State Farm Fire & Casualty Co.*, this Court held:

[T]he MDI bulletins and related correspondence are not admissible unless State Farm responded to them in one manner and acted in another, or unless State Farm raises reliance on the MDI bulletins for other purposes.

No. 1:06CV1061-LTS-RHW, 2008 WL 80759, at *1 (S.D. Miss. Jan. 7, 2008).

As explained below, the MDI bulletins and related correspondence are not admissible under any circumstances on Plaintiff's breach of contract claims and may be admitted on Plaintiff's extra-

¹ No separate memorandum in support is filed with this motion as the motion speaks for itself, and all relevant authorities are cited herein.

contractual and punitive damages claims solely for impeachment purposes.² As set forth in State Farm's motion *in limine* relating to the interpretation of insurance policy provisions or principles of Mississippi law,³ any claim handling guidelines or procedures that State Farm may have used in adjusting or handling Plaintiff's claim have no relevance to whether Plaintiff's loss is covered under the terms of State Farm's homeowners policy and, if so, the extent of the covered damages. The same is true of any documents or correspondence in which State Farm or the MDI may have described or referred to such guidelines or procedures. Rather, all such documents are relevant, if at all, only to the manner in which State Farm made its decision to deny Plaintiff's insurance claim. Accordingly, they may be admitted (if at all) only on the questions of extra-contractual or punitive damages.

The Supreme Court of Mississippi has unambiguously held that Mississippi law does not permit the jury to hear allegations or evidence regarding any alleged mishandling of an insurance claim before deciding whether the plaintiff is entitled to coverage. *Hartford Underwriters Ins. Co. v. Williams*, 936 So. 2d 888, 897 (Miss. 2006) (trial court's erroneous failure to bifurcate trial gave plaintiff "the benefit of introducing evidence of the manner in which [the insurer] handled her claim instead of focusing on the simple issue of whether [the insurer] breached the parties' insurance contract."). In *Hartford*, the Supreme Court reversed and ordered a new trial because "testimony regarding the close issue of fault most likely was confused with testimony concerning the issue of how [the insurer] investigated fault." *Id.* Because "the jury was allowed to consider evidence as to the way [the insurer] conducted its investigation of the accident and ultimately ignored the needs of its insured," a new trial was necessary as a matter of law. *Id.*; see also *Bridges v. Enter. Prods. Co.*, No. 3:05cv786-WHB-LRA, 2007 WL 571074, at *3 (S.D. Miss. Feb. 20, 2007) (excluding evidence relevant only to punitive damages from liability and compensatory damages portion of trial); *Beck v. Koppers, Inc.*, Nos. 3:03CV60-P-D,

² State Farm has also filed Motion *in Limine* No. 1 for Phased Trial.

³ See State Farm's Motion *In Limine* No. 7 To Preclude Testimony or Evidence Relating to Interpretation of Insurance Policy Provisions or Principles of Mississippi Law.

3:04CV160-P-D, 2006 WL 2228876, at *1 (N.D. Miss. Apr. 3, 2006) (noting that "the court will not admit evidence during the first stage of the trial that is only relevant to punitive damages."); *Bradfield v. Schwartz*, 936 So.2d 931, 938 (Miss. 2006) ("If punitive damages are indeed to be awarded within the limitations prescribed by [the punitive damages] statute, then evidence which does not pertain to compensating the plaintiff but only pertains to proof that a punitive damages award is appropriate, should not be heard until liability has been determined.").

By contrast, as this Court has noted, if the evidence shows that State Farm "responded to [the MDI bulletins and related correspondence] in one manner and acted in another," or if State Farm "raises reliance on the MDI bulletins for other purposes," such evidence would be admissible for impeachment purposes during trial, if any, of extra-contractual or punitive damages. *Huynh*, 2008 WL 80759, at *1.

WHEREFORE, State Farm respectfully requests that the Court exclude evidence of the MDI bulletins and related correspondence except for purposes of impeachment on the issues of extra-contractual or punitive damages.

Dated: December 5th, 2008

Respectfully submitted,

s/ John A. Banahan

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CERTIFICATE OF SERVICE

I, **JOHN A. BANAHAN**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have this date electronically filed the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record.

DATED, this the 5th day of December, 2008.

s/ John A. Banahan
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