

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

ROBERT R. GAGNÉ

PLAINTIFF

V.

CASE NUMBER 1:06-cv-00711-LTS-RHW

**STATE FARM FIRE AND CASUALTY COMPANY
& EXPONENT, INC., ET AL.**

DEFENDANTS

**PLAINTIFF’S MOTION TO RECONSIDER RULINGS IN
PRIOR CASES ON THE EFFECT OF AN
INSURED’S CASHING CHECKS OFFERED BY STATE FARM DRAWN ON
FEDERAL FLOOD INSURANCE FUNDS**

COMES NOW, Plaintiff Robert R. Gagné, by and through counsel of record and files his Motion to Reconsider Rulings in Prior Cases on the Effect of an Insured’s Cashing Checks Offered by State Farm Drawn on Federal Flood Insurance Funds. In support of this motion, Plaintiff would show the court as follows:

1. Robert Gagné purchased both a homeowners policy and flood insurance on his home and its contents through his State Farm agent. State Farm under administer both policies including the NFIP policy.
2. When Gagné’s home was destroyed by Hurricane Katrina, he promptly contacted State Farm and reported the loss. In reporting this loss, he did not make any representations that any part of his home was destroyed or damaged by flood or by storm surge. He simply reported the loss and requested that State Farm send an adjuster out.
3. State Farm’s adjuster made a decision to pay Gagné the limits of the federal flood policy without Gagné making any statement as to how his home was destroyed by the hurricane or submitting a sworn proof of loss or a claim form stating the cause of the loss. In fact,

Gagné noted in his September 1, 2005 application to FEMA to that his home was destroyed by wind. (See Exhibit 3, FEMA Application dated 9/1/05). Before Gagné accepted the check, State Farm's adjuster told Gagné that the check was just a way to quickly get him some of the money that would be due to him under one of the policies he had purchased through State Farm without having to wait for a determination of the cause of the loss. State Farm's adjuster assured Gagné that accepting the check would not affect his claim under the State Farm homeowner's policy in any way. She represented to Gagné that once an investigation and determination of the cause of the loss had been made, the money Gagné received would be allocated to the appropriate policy by State Farm and the remaining funds due would be paid from the appropriate policy. Gagné relied on these representations in accepting the check, particularly the representation that accepting the check would not be used against him in handling his claim under his homeowner's policy. (See Exhibit 1 Gagné deposition 6/6/07, pgs. 59-69; Exhibit 2 Gagné deposition 7/21/08, pgs. 30-32 & 137-138; and Exhibit 4, Adjuster Rachael Savoy's Admission in deposition on 6/17/08, pgs. 147-148).

4. In some recent Hurricane Katrina insurance cases, this court has made statements and rulings indicating that where plaintiffs have been paid flood insurance benefits, they may be estopped from denying that their insured property was damaged by storm surge to the extent of the amount of the flood benefits paid. This court has said this estoppel is based on the fact that receipt of flood insurance benefits constitutes an admission that some damage was caused to their homes by flooding. See e.g., *Holmes v. Meritplan Ins. Co.*, Civil Action No. 1:07cv680-LTS- RHW, 2008 U.S. Dist. LEXIS 87798 (SD Miss.

October 16, 2008) and cases cited therein.

5. Gagné respectfully requests this court to reconsider its earlier rulings, at least to the extent that those rulings might be used to limit evidence Gagné may seek to introduce tending to show that his home was a total loss as a result of covered perils prior to the arrival of the storm surge. Gagné does not believe that the plaintiffs in the cases involving the prior rulings on this point have brought to the court's attention the appropriate law regarding the prerequisites for either precluding a party from taking a particular position or offering evidence in support of that position under the law concerning either judicial admissions or judicial estoppel nor have they had such compelling factual testimony including an admission by State Farm's flood adjuster.
6. In addition to the arguments made in the memorandum in support of this motion not being brought to the court's attention in the prior cases, Gagné believes that recent 5th Circuit decisions discussed in the supporting memorandum addressing judicial admissions and judicial estoppel decided after at least some of this court's decisions, and not referenced in any of the prior decisions, indicate that a reconsideration of this issue is appropriate.
7. Robert Gagné is not seeking to recover from both policies for a similar loss. He simply wants State Farm to live up to their promise to him. If a determination is made by the finder of fact that the entire home was destroyed by covered losses under his homeowner's policy, he will expect the court to direct State Farm to reimburse the NFIP program for the funds they improperly paid him prior to (by their own admission) determining causation of the loss of his property.

WHEREFORE PREMISES CONSIDERED, Plaintiff Robert Gagné requests this court to enter an order precluding State Farm from asserting that Gagné is estopped or precluded from offering evidence tending to establish prior to the arrival of the storm surge, his property suffered a total loss from covered perils. Gagné also requests this court to enter a ruling that Gagné may introduce evidence concerning the representations made by State Farm's adjustor when it delivered the check drawn on federal flood insurance funds to Gagné. Finally, Gagné requests that the finder of fact make a determination as to cause of the loss of his property and that the appropriate policies of insurance be either credited or debited with monies based upon the Court's ultimate causation determinations.

Respectfully submitted this 4th day of December, 2008.

Robert Gagné, Plaintiff

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CERTIFICATE OF SERVICE

COMES NOW the Plaintiff, Robert R. Gagné, by and through counsel, hereby certify that I filed the foregoing PLAINTIFF'S MOTION TO RECONSIDER RULINGS IN PRIOR CASES ON THE EFFECT OF AN INSURED'S CASHING CHECKS OFFERED BY STATE FARM DRAWN ON FEDERAL FLOOD INSURANCE FUNDS with the Clerk of the Court using the ECF system which will send notification of such filing to ECF participants of record.

SO NOTICED this 4th day of December, 2008.

By: /s/ Jesse B. Hearin, III
Jesse B. Hearin, III

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

ROBERT R. GAGNE,

Plaintiff,

V. CIVIL ACTION NO. 1:06-cv-00711-LTS-RHW

STATE FARM FIRE & CASUALTY COMPANY
and JOHN DOES 1 - 10,

Defendants.

DEPOSITION OF ROBERT R. GAGNE

Taken at the offices of Donald J. Rafferty,
located at 2118 - 18th Street, Gulfport,
Mississippi, on Wednesday, June 6, 2007,
beginning at 10:13 a.m.

REPORTED BY:

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1 Washington, come back, and you were living in the
2 house in Diamondhead. So you had a little bit more
3 time for it to sink in what might have happened.
4 When you met with Rachel, did you have any
5 impression or feeling about what had happened?

6 A. Why me?

7 Q. Excuse me, what?

8 A. Why me?

9 Q. Yes, sir.

10 A. I think you were asking about wind versus
11 water.

12 Q. Yes, sir.

13 A. And that wasn't a conscious thing.
14 Because of the lack of wood in the neighborhood and
15 we knew that water had been high, it was clear that
16 any wood had been carried away by the water, or may
17 have been carried away by the water. There was deep
18 gouging in one corner of the lot in my house which
19 clearly was caused by water. But in terms of cause
20 of -- there was no consciousness whatsoever. As far
21 as I was concerned, State Farm was handling it, and
22 I was in good hands.

23 Q. I understand. Well, as we sit here today,
24 do you have a -- based on all the information that
25 you've gathered and the people that you've talked

1 that all of the structure of the house was torn down
2 by wind before water arrived. Is that --

3 Q. Yes, sir, you're answering my question.
4 And you'll have to forgive me for not phrasing it
5 better.

6 I guess my point is: You did have a flood
7 policy on this property and you did -- I don't know
8 if we've discussed that. Did you collect policy
9 limits or -- or what kind of money did you get from
10 your flood policy; do you remember?

11 A. I got \$250,000 plus a hundred thousand
12 dollars for contents.

13 Q. I'm going to ask you if you agree that
14 that would be policy limits on that policy that was
15 issued you?

16 A. That was my understanding.

17 Q. So you did receive that money from --
18 based on flood damage to your home, did you not?

19 MR. HEARIN:

20 Object to the form of the question there.

21 A. I did receive that money.

22 BY MS. HARRIS:

23 Q. Do you have --

24 A. But I didn't receive it on the basis of
25 anything. I just received the money.

1 to, do you have an opinion, an impression or a
2 feeling about what happened to your house?

3 A. The house was totally destroyed by wind.
4 Subsequently, water came on the property and carried
5 away floatable debris, including things that I might
6 have been able to recover if water had not come
7 along, like some of the appliances and stuff like
8 that.

9 Q. So is it your claim then that there was no
10 water damage to your home? Are we talking about
11 water damage just to contents, things that could
12 float away?

13 A. That's a complex question.

14 Q. I'm sorry. Let me rephrase that.

15 Do you believe, is it your claim that your
16 house received damage, was totally destroyed as a
17 result of wind?

18 A. Yes.

19 Q. Is it your claim that there was no water
20 damage to your home?

21 A. It's possible that tiles were blown off
22 the roof and some rainwater came through the roof
23 before the rest of the house was destroyed. So if
24 you call that water damage, it's possible that
25 happened. I can't know that. What I am saying is

1 Q. You didn't receive it on the basis --

2 A. Let me volunteer something here. On
3 September 25th, I had a phone conversation with
4 Rachel Savoy. She called me. She said that she
5 needed a list of contents, an inventory, and that
6 she couldn't resolve that part until I did it, until
7 I prepared that, but that their intention was to pay
8 me \$250,000 and a hundred thousand dollars on my
9 flood policy.

10 And I was surprised. And I said, I don't
11 understand. Are you saying that, you know, that's
12 what I'm getting? She said, Oh, no, no, no. But we
13 won't resolve your claim until there's an
14 engineering inspection, and we get the report from
15 the engineering inspection. But we can go ahead and
16 do this right now, and then we'll resolve everything
17 later.

18 And I had specifically asked, Well, gee,
19 does accepting this money mean anything about my
20 saying what happened or what my full claim -- she
21 said, Absolutely not. This doesn't mean anything
22 except we're authorized to make these payments right
23 away. And so -- and I reminded her of that
24 conversation, what she said when inspected.

25 I said, you know, this really surprises me

1 because you said you didn't even see any sign of
2 water damage. She said, I would never say that.
3 Got very defensive.

4 So I challenged her right at that point.
5 And she said, Don't worry, this doesn't mean
6 anything, and we're not going to decide any claim
7 until we get an inspection report from the engineers
8 who are going to come out to inspect your property.
9 It was a very memorable conversation.

10 And, subsequently, I did receive checks
11 for 250,000 after submitting my inventory for a
12 hundred thousand.

13 Q. And the inventory that you submitted -- I
14 think I have that here -- this is part of the flood
15 claim materials that have been produced to you.
16 There's a Bates Number at the bottom.

17 MS. HARRIS:

18 I hope y'all have this. But -- and I can
19 certainly make it an exhibit. I have an extra copy
20 with a note to make it an exhibit.

21 MR. HEARIN:

22 We'd certainly have a copy of the attached
23 inventory, I know. And provided it to back to you
24 at some point. But, you know, whether we have a
25 letter or not, I don't know.

1 BY MS. HARRIS:

2 Q. I'll reference the Bates Numbers, and I
3 just want to see if this is the inventory. The date
4 on this, though, is October 9th, 2005.

5 A. That's correct.

6 Q. And what did we say happened on September
7 the 25th?

8 A. She asked for the inventory but told me
9 that they were going to be paying the full hundred
10 thousand and the full 250, that that was their
11 intent, but they couldn't pay the 100 until they got
12 the inventory to confirm things.

13 Q. I'm going to hand you this document -- and
14 we'll mark it. But it begins with -- it has the
15 flood Bates Number series with the claim number
16 after that. And it begins with 100119. And it
17 looks like it goes to 100140. The same thing.

18 But can you just take a look at that and
19 tell me if that's the personal inventory list that
20 you prepared based on that request?

21 A. The first part appears to be. The last
22 couple of pages are not my pages. They're State
23 Farm pages so I did not provide those.

24 Q. Do you know -- were you present when
25 that -- when those last two pages were prepared?

1 Did you see someone enter those numbers?

2 A. No.

3 Q. I didn't know how that happened.

4 A. They were subsequently provided to me, and
5 I didn't understand a word of it.

6 Q. On the ones that we can agree that you did
7 provide, are these numbers here -- like, for
8 instance, on Bates No. 100134, there's a
9 handwritten, looks like 15,498.35. Are those your
10 numbers? Did you make those totals?

11 A. No.

12 Q. So then it's your testimony that you
13 submitted these typed sheets that say, Prepared
14 October 9th, 2005, R. Gagne?

15 A. May I see this?

16 Q. You submitted those without the written
17 part?

18 A. That appears to be correct.

19 Q. Based on her request that you submit a
20 personal --

21 A. Right, contents inventory.

22 Q. -- property contents inventory sheet. So
23 you did that. And after that, you received your
24 \$100,000 contents?

25 A. Actually, I faxed that on October 9th, and

1 on October 10th the \$250,000 check arrived. So
2 that -- and then, subsequently, on October 20th, I
3 received a hundred thousand dollar check.

4 Q. Just tell me again what your understanding
5 was about why you were getting that money.

6 A. They were authorized to make those
7 payments. She said the federal government was
8 encouraging them to make those payments as quickly
9 as possible to facilitate Katrina recovery but that
10 it had no ramifications with respect to settlement
11 of my claim with State Farm. It wasn't a finding or
12 anything.

13 I even had the impression that they could
14 take that money back. But she emphasized -- she
15 didn't say that. She emphasized it had no bearing,
16 that no decisions would be made on my claim until
17 after the engineers submitted their inspection
18 report.

19 Q. So did you say you had the impression that
20 they could take that money back?

21 A. I think I read between the lines. She
22 didn't say that.

23 Q. So did you --

24 A. But I had the impression was, this doesn't
25 mean anything; we're authorized to make these

1 payments and your claim won't be settled until after
2 we see the inspection report.

3 So, basically, don't read too much into
4 this.

5 Q. Yes, sir. Did you receive any other kind
6 of assistance from FEMA or did you get a grant from
7 the Mississippi Development Authority, anything like
8 that, any other kind of monies?

9 A. I think I got about \$2,000 that FEMA was
10 distributing. That's all. I didn't apply for any
11 other things. I think it was \$2,000 that everybody
12 automatically got after FEMA took a report. I'm not
13 even sure of that amount. You probably know better
14 than I do.

15 Q. We talked about the evidence of wind
16 damage that you saw.

17 A. No, we didn't.

18 Q. Maybe we didn't. We talked about the
19 evidence of water damage to the corner of your
20 property, the gouging.

21 A. I said I saw some gouging on the property.

22 Q. I'm sorry if I -- I don't want to put
23 words in your mouth.

24 A. On the ground.

25 Q. On the ground?

1 Was there ever a time when you looked at
2 your property for the purpose of trying to determine
3 if something was wind damage?

4 A. Yes.

5 Q. When was that, the best that you can
6 recall?

7 A. The very first day that the question came
8 up was the day that State Farm's inspectors arrived.
9 State Farm sent an engineer and an architect to
10 inspect the property. And they said, Let us do our
11 job, and we'll talk to you afterwards. And then at
12 the end of the inspection, they said, Our report is
13 going to report that the property was damaged by
14 wind and water. Huh?

15 Q. Okay.

16 A. And we then spent at least 20 minutes
17 talking about that, where they said that they
18 couldn't tell how much was water, how much was wind,
19 but they felt it was caused by both.

20 I asked their recommendations, since they
21 were doing many inspections, on if I rebuilt what I
22 should do. And we spent a considerable amount of
23 time where they said build to high wind speeds.
24 They never said anything about elevating the
25 building or building to different water tolerances,

1 A. I saw some gouging of the ground of the
2 soil.

3 Q. And do you believe that was caused by
4 water?

5 A. That appeared to be caused by water.

6 Q. Well, then let's do talk about what
7 evidence of wind damage that you saw at your
8 property. Can you describe for me --

9 A. That's a very open-ended question.

10 MR. HEARIN:

11 I'm trying to figure out what time period
12 you're talking about. Are you asking him as he sits
13 here today or --

14 MS. HARRIS:

15 Sure. Absolutely.

16 BY MS. HARRIS:

17 Q. Well, we talked about when you were there
18 with Rachel and how it was a little bit overwhelming
19 for you and you weren't necessarily looking for --
20 you didn't make a conscious decision to look for
21 wind or water damage that date, right?

22 A. Correct.

23 Q. When would have been the first --

24 A. Nor am I an engineer.

25 Q. Oh, absolutely. Absolutely.

1 rather build to minimum 135, preferably 145 miles an
2 hour building standards so as to resist high winds.

3 So when they left, I got the impression
4 that they were focused on the wind damage, but I
5 didn't understand what they said about wind and
6 water. As far as I was concerned, wind and water
7 meant whether any rain got through the shingles.
8 That was the very first time the question was raised
9 in my mind.

10 Q. And so at that point then did you -- I
11 don't want to say "inspect" because I know you're
12 not an engineer. But did you start looking at your
13 property --

14 A. No.

15 Q. -- with respect to wind damage?

16 A. No.

17 Q. No?

18 A. I did exactly what State Farm said. I
19 waited for State Farm to see the report of the
20 experts. At that point, I absolutely believed I was
21 still being taken care of by State Farm and that
22 when the engineers reported the thing, that we would
23 resolve the claim. And I had no apprehension about
24 that at that stage, no reason to have any concern.

25 Q. The engineers that State Farm sent to do

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ROBERT R. GAGNE,
Plaintiff,
VERSUS NO. 1:06-CV-00711J-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY
AND JOHN DOES 1-10,
Defendants.

VIDEOTAPED DEPOSITION OF MR. ROBERT GAGNE
Taken at the offices of Merlin Law
Group, 368 Courthouse Road, Gulfport,
Mississippi, on Monday, July 21, 2008,
beginning at 10:09 a.m.

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1 APPEARANCES: (CONTINUED)

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10 BILL MILLER

11

12 REPORTED BY:

13

14 BRANDI SENSENEY, C.S.R. #1358

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Page 4

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that this deposition may be taken at the time and place hereinbefore set forth, by Brandi K. Senseney, Court Reporter and Notary Public, pursuant to the Mississippi Rules of Civil Procedure, as amended;

That the formality of READING AND SIGNING is specifically NOT WAIVED;

That all objections, except as to the form of the questions and the responsiveness of the answers, are reserved until such time as this deposition, or any part thereof, may be used or is sought to be used in evidence.

1 evasive. But my mind, at that point, was a
2 fairly positive one. State Farm was being a
3 good neighbor and they were taking care of
4 me, and they were going through the motions
5 of what they needed to do to take care of
6 me.

7 And I had not the foggiest notion
8 of the significance of whether there was
9 damage by wind or by water, because when I
10 purchased my policies, State Farm told me I
11 was completely covered by the various
12 policies I had purchased and State Farm
13 seemed to be behaving correctly, so.

14 MR. WILLIAMS:

15 Objection; responsiveness.

16 THE WITNESS:

17 State Farm seemed to-- State Farm
18 seemed to be behaving correctly. And I was
19 more concerned with, frankly, at that stage,
20 just living my life day to day under the
21 conditions and trying to help my company
22 recover and my friends recover. So I had no
23 perception at all what it meant.

24 MR. FICENEC:

25 Q. At the time of Mr. Thomas' visit,

1 did you have an understanding of why an
2 inspection was necessary?

3 A. I had a small understanding of
4 that. And may I refer to the time line to
5 make sure that I'm saying something correct?

6 Q. Sure.

7 A. My understanding came totally from
8 discussions I had with State Farm's first
9 adjuster, Rachel Savoy. Early on, Ms. Savoy
10 informed me that State Farm would be paying
11 some money on my flood policy, and I was very
12 confused by that. It seemed to contradict
13 comments she had made when she did her
14 inspection of the property.

15 And, so, I asked her what's going
16 on here, how come you're paying me flood
17 policy when you said you didn't even see any
18 signs of water damage. She said oh, it's
19 meaningless, it's just a way we're using to
20 get you money quickly, we're authorized to
21 give you money under this policy to get you
22 some money quickly, we haven't determined the
23 cause of destruction and we need an
24 engineering inspection to do that.

25 After the engineering inspection,

1 that will determine the cause of destruction
2 and, then, there will be a reconciliation of
3 the various policies you have, homeowners
4 policies versus flood policies. We can go
5 into that discussion more if you wish later.

6 But it was very clear from that
7 that at that stage State Farm had not
8 determined what the cause of the destruction
9 was and that State Farm was waiting for an
10 engineering inspection to determine the cause
11 of the destruction.

12 Based on that phone call, when the
13 Calvin Thomas inspection was scheduled, I
14 assumed that it was exactly what Ms. Savoy
15 had been telling me, that the purpose was to
16 determine the causation, of whether the
17 destruction was caused by wind or water so
18 that State Farm could then decide how the
19 various policies would go into play.

20 Q. Were you concerned that State Farm
21 might ask you to give the money you received,
22 under the flood policy, back?

23 A. Oh, Ms. Savoy made it very clear
24 that it would be reconciled and that might--
25 sure, absolutely. The-- the flood money

1 could be given back and I would get
2 homeowners instead or whatever.

3 Q. At the time of that conversation,
4 were you concerned that-- that you might not
5 be completely covered for the loss you had
6 sustained?

7 A. Excuse me, you mean the Rachel
8 Savoy conversation?

9 Q. Yes.

10 A. Not really. Again, I felt very
11 good about State Farm at that point. They
12 seemed to be on top of things, they seemed to
13 be doing the right things. You know, I asked
14 her about the flood money, you know, if I
15 accept this am I agreeing to anything; no,
16 absolutely not. Am I agreeing to a
17 settlement. I questioned to her about how
18 she calculated the value, how she said it's
19 meaningless, doesn't mean anything, we're
20 going to take care of this.

21 So they seemed to be doing all the
22 right things, you know. Again, I had been
23 sold policies that was-- so I would be fully
24 taken care of. So I had no qualms at all. I
25 was anxious to get the funds because of

1 Q. You put in here ABC?
 2 A. Yea. And I seem to recall him
 3 coming from the north, maybe it was
 4 Washington, New York or somewhere. I knew--
 5 I didn't know of him. I guess some people
 6 knew of him, but I didn't know of him as a
 7 reporter or anything.
 8 Q. I noted on your time line that you
 9 received a two hundred fifty thousand dollar
 10 flood payment from State Farm on or about
 11 October the 10th; is that correct, of 2005?
 12 A. That's what I have in my notes,
 13 correct.
 14 Q. Do you want to refer to your
 15 notes?
 16 A. It says on October 10th, quote,
 17 two hundred fifty thousand dollars for
 18 structure and flood policy received from
 19 State Farm.
 20 Q. Then on October 20th your notes
 21 indicate that you received a hundred thousand
 22 dollars on your contents coverage under your
 23 flood policy, correct?
 24 A. That's what it says.
 25 MR. HEARIN:

1 Let me take a short break, Jesse.
 2 (Off the record.)
 3 MR. WILLIAMS:
 4 Q. Mr. Gagne, Mr. Ficene asked you
 5 some questions about notes that you had kept
 6 and you referred him to some Manila folders
 7 that you had prepared, that's been stored
 8 notes and other documents that you prepared
 9 in conjunction with your claim. Do you still
 10 have those Manila folders?
 11 A. I think my attorney has
 12 everything.
 13 Q. How many of them did you have,
 14 approximately?
 15 A. Oh, it's just one big folder.
 16 Q. One big folder. Was it titled in
 17 some instance? Was it titled?
 18 A. Blank folder. Blank folder.
 19 Q. Blank folder, okay. I'm just--
 20 I'm just curious because--
 21 A. It's the environment of
 22 post-Katrina. It was a miracle to even find
 23 a folder to put things in.
 24 Q. Okay. And he asked you about the
 25 inspection that FEMA conducted and I don't

1 I'm going to object to the extent
 2 that the payment of the flood money was-- you
 3 went into his first deposition adequately.
 4 MR. WILLIAMS:
 5 Do what now?
 6 MR. HEARIN:
 7 He's been asked and answered this
 8 in the prior deposition, about the receiving
 9 of flood claims.
 10 MR. WILLIAMS:
 11 Sure. I just wanted to-- I wanted
 12 to lay a foundation for my next question
 13 before I asked this.
 14 Q. Have you repaid that money?
 15 A. No.
 16 Q. Do you have any intention to repay
 17 that money?
 18 A. The Court will tell me what to
 19 do. State Farm was supposed to tell me what
 20 to do, but State Farm lied to me and, then,
 21 didn't follow through on what they said they
 22 were going to do, so now I don't know what
 23 I'm supposed to do.
 24 MR. WILLIAMS:
 25 Objection to the responsiveness.

1 believe he asked you if you knew when the
 2 date of that inspection was?
 3 A. The answer is I don't know and I
 4 don't have it on this, which just concerns
 5 State Farm and Exponent, but I have given a
 6 copy to my counsel. I presume you received a
 7 copy of that.
 8 Q. I'm just asking your recollection
 9 about the date, if you know?
 10 A. It was in the fall of '05. I was
 11 still living in temporary housing, so I would
 12 guess it was about October of '05. But I'm
 13 just estimating here.
 14 Q. The only other thing I wanted to
 15 ask you about are three photographs which
 16 were attached as exhibits to another
 17 deposition in this particular case and ask
 18 you if you've seen those. Are you familiar
 19 with those photographs?
 20 A. There is a whole slew of
 21 photographs and I think these were included
 22 in the whole slew of photographs. This is
 23 certainly representative of the photographs
 24 I've seen of this subject, yes.
 25 Q. Are you familiar with those three



FEMA



Michael D. Brown
Under Secretary
Emergency Preparedness and Response

National Processing Service Center
P.O. Box 10055
Hyattsville, MD 20782-7055
1-800-621-FEMA (3362)
Fax No.: 1-800-827-8112

Date: 10/01/2005

FEMA Application No: 939701756

Disaster No: 1604

MR ROBERT R GAGNE
696 HIGHWAY 90
WAVELAND, MS 39576-2408

Dear Mr. Gagne:

Enclosed for your records is a copy of the Application for Disaster Assistance that you recently filed with the Federal Emergency Management Agency (FEMA), the agency that coordinates disaster assistance on behalf of the President.

Based on the information you provided during the registration interview, FEMA has identified certain disaster assistance programs that may be helpful to you. These are listed at the bottom of the Application form, item number 27. Administered by a variety of organizations, information on these and other programs can be found on the Additional Disaster Assistance Program Information Sheet, included in this mailing. You must contact these agencies directly to learn how their programs can help you.

If your home or business has been damaged by the disaster, you do not need to wait until the inspector visits the property before starting to clean up. We strongly suggest, however, that you make a list of your losses, take pictures, and keep all receipts to verify your disaster-related expenses.

Correct information

Please check the information on this form and call the FEMA Disaster Helpline at 1-800-621-FEMA (3362) (hearing/speech impaired ONLY call 1-800-462-7585) if you have any corrections. Please also make special note of your Registration ID located at the top of the form; this is your unique identifying number and you will need to refer to this number whenever you contact FEMA.

Disaster Recovery Centers/SBA Workshops

Disaster Recovery Centers may be opened to provide a central location for information on disaster assistance programs and tips on reducing damage from future disasters. To find out about the Disaster Recovery Center nearest to you, please call the FEMA Disaster Helpline at 1-800-621-FEMA (3362) (hearing/speech impaired ONLY call 1-800-462-7585). To inquire about the status of your application for assistance, you may either visit a Disaster Recovery Center or you may call the FEMA Disaster Helpline.

If you have been referred to the Small Business Administration (SBA) for a disaster loan (check item number 27 on your Application for Disaster Assistance), you may wish to visit an SBA Workshop for help in completing the loan application. The workshop locations will be announced through your local news media.

Insurance

If you have any kind of insurance, you should contact your insurance agent as soon as possible. Because insurance proceeds are generally more comprehensive than Federal disaster assistance, these benefits are usually the best means of addressing your disaster-related needs.

If you have any questions, if you need housing right away and cannot find a place to stay, or if you would like more detailed information on the available assistance programs, please call the FEMA Disaster Helpline at 1-800-621-FEMA (3362) (hearing/speech impaired ONLY call 1-800-462-7585). We want to help in any way we can.

Sincerely,

9069CL

Individuals and Households Program Officer

FEDERAL EMERGENCY MANAGEMENT AGENCY Application/Registration for Disaster Assistance		Registration ID. O.M.B. No. 3067-0009 93-9701756 Expires Feb. 28, 2003	DR No. 1604	Language Spanish
1. Name (Last, First, MI) MR. GAGNE, ROBERT R		2. Social Security Number 015-36-8794		3. Date of loss 8/29/2005
Damaged phone number (228) 255-4140		4B. Cell phone number None	4C. Current phone number (714) 906-3528	4D. Work phone number (228) 323-0752
5. Address of Damaged Property	Street Address 320 PUUNANI PL	City DIAMONDHEAD	State MS	Zip+4 39525 -3000
6. Do you own or rent your home? Own		7. Is the address listed in #5 your primary residence? Yes	8. Type of residence: House - Single/Duplex	
9. What is your current location? HANCOCK				
10. Cause of Damages: Tornado/Wind				
11. Current Mailing address 13233 WEBRE RD. BAY ST. LOUIS MS 39520				
12. Auto Damage: Yes				
13A. Was your home damaged by the disaster? Yes 13B. Personal property damaged? Yes				
13C. Was the access to your home restricted? Due to Disaster				
14. Are any of your essential utilities currently not working as a result of the disaster?				
15. Do you have any disaster-related essential needs for food, clothing or shelter? Yes				
16. Do you own or lease a working farm or ranch that was affected by the disaster? (Does not include farm home) No				
17. Do you own a business or rental property which was affected by the disaster? (Not farm damage) No				
18. Has anyone in your family lost work or become unemployed due to the disaster? (including self-employed) No				
19A. Did you have any disaster related medical expense? No Was it insured? Amount of loss?				
19B. Did you have any disaster related dental expense? No Was it insured? Amount of loss?				
19C. Did you have any disaster related funeral expense? No Was it insured?				
19D. Did you have any disaster related moving and storage expenses? No Were they covered by insurance?				
20. Other / Miscellaneous disaster related damages				
21. Names of all persons living in home at the time of disaster				
GAGNE, ROBERT R		Relationship	Social Security Number	Age
TAGLIALAVORE, TONI J		Registrant	015-36-8794	57
BARKER, JOEL A		Friend/Relative		N
BARKER, CHRISTIAN		Friend/Relative		
22. Employer/Source of income: MISSISSIPPI POLYMER TECHNOLOGIES, INC.		23. Total number of dependents claimed (including applicant): 1		24. Would you like to use the EFT option if eligible for assistance? (Electronic funds Transfer into your bank account) Yes
25. Annual pre-disaster gross income for all members of the family: \$ 165000				
27. You have been referred to the following sources for Disaster Aid. For more information, refer to the enclosed program guide as well as the disaster assistance program information sheet.				
If you have any questions or feel our information is incorrect, please call the Disaster Helpline at 1-800-621-FEMA, or for the speech or hearing impaired only, call 1-800-462-7585			28. Date of Application: 09/01/2005	29. Information taken by: INTERNET

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

ROBERT R. GAGNE

PLAINTIFF

VS

CIVIL ACTION NO. 1:06-CV-0711-S-W

STATE FARM FIRE AND
CASUALTY COMPANY, ET AL.

DEFENDANTS

THE VIDEOTAPED DEPOSITION OF
RACHAEL SAVOY

ORIGINAL

Taken on behalf of the Plaintiff, on June 17, 2008, at the offices of Copeland, Cook, Taylor & Bush, 1076 Highland Colony Pkwy, 600 Concourse, Suite 100, Red Oak Conference Room, Ridgeland, MS 39157, beginning at approximately 12:10 p.m.

Reported by: MARILYN C. REA, CSR 1059, RPR 036208

1 Q And it caused damage?

2 A That's what I couldn't determine because
3 there was nothing left to see damage on.

4 Q Do you recall a conversation with Robert
5 Gagne about the affects of accepting flood payments?

6 A Do I remember a conversation in regards
7 to the affects of who?

8 Q Of him accepting payments under the flood
9 program?

10 A Yes, sir, I do.

11 Q And what is your recollection of that
12 conversation?

13 A I believe that he had asked if he
14 accepted the flood payment did that mean that he was
15 saying that there was no wind coverage and if he
16 accepted the payment would he not get payment under
17 wind. And I told him no, that we were looking at
18 the several different causes of losses that were
19 there and that they were both being looked at. And
20 accepting payment under one cause of loss does not
21 mean that you are saying that you can't accept
22 payment under another cause of loss. Like I said,
23 there have been several other instances where you
24 have wind and hail and lightning. There can be
25 several different causes of loss, and because you

1 accept payment on one does not exclude payment on
2 another policy.

3 Q Okay. And do you recall him -- telling
4 him that accepting the payment would not affect his
5 homeowners claim in any way and that the engineers
6 would determine causation?

7 A I don't know if that is exactly what I
8 said, that it would not affect it in any way. I
9 don't know if that was my exact terminology.

10 Q But is it possible? You don't
11 specifically recall, but is it possible that you
12 said that?

13 A I don't recall it. It doesn't sound like
14 something I would say. I said it doesn't affect you
15 receiving a wind payment, it wouldn't affect a wind
16 payment. At that point, I wasn't saying that there
17 was no wind damage, I was saying there was both.

18 Q And he further testified in his
19 deposition that at one point you said to him, I do
20 not see any evidence of water damage during the
21 inspection. Do you recall that?

22 MS. RUFF: I object to that; that
23 testimony is not before us here today,
24 unless you want to read from his
25 deposition and submit his deposition as