

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

GEORGE AND CRISTINA FOWLER
VERSUS
STATE FARM FIRE & CASUALTY
COMPANY, EDWARD B. RUST, JR. HAAG
ENGINEERING, AND STEVE SAUCIER

* CIVIL ACTION
*
* NO.
*
* JUDGE
*
* SECTION

1:06cv489 LG-RHW

* * * * *

COMPLAINT

NOW COME George and Cristina Fowler (“Plaintiffs”) by and through undersigned counsel, and file this Complaint against defendants State Farm Fire & Casualty Company (“State Farm”), Edward B. Rust, Jr., Haag Engineering and Steve Saucier, and allege as follows:

I.

PARTIES

1.

Plaintiffs, George and Cristina Fowler, both of full age of majority, are residents of Orleans Parish, Louisiana, residing at 6045 Camp Street, New Orleans, Louisiana.

2.

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

3.

Defendant Edward B. Rust, Jr. is President and Chief Executive Officer of State Farm Fire & Casualty Company, and upon information and belief, is a resident of the State of Illinois. As such, he made the decisions which are the subject of this lawsuit. Edward B. Rust, Jr., as President and CEO of State Farm, in an effort to enrich himself by reducing State Farm's actual losses, opted to arbitrarily and capriciously deny valid claims to State Farm policyholders injured by Hurricane Katrina.

4.

Defendant Steve Saucier, upon information and belief, is a resident of the State of Mississippi whose place of business is located at 130 Davis Avenue, Pass Christian, Mississippi 39571, who acted on behalf of State Farm.

5.

Defendant Haag Engineering Co. is a Texas company whose place of business is 2455 McIver Lane, Carrollton, Texas 75006.

II.

SUBJECT MATTER AND PERSONAL JURISDICTION

6.

This court has jurisdiction in this matter pursuant to 28 U.S.C. §1332 as there is complete diversity of citizenship between Plaintiffs and defendants and the amount in controversy exceeds \$75,000.00.

III.

VENUE

7.

Venue in this cause is proper in this court pursuant to 28 U.S.C. §1391(a), as the real and personal property that is the subject of this suit is located in Hancock County, Mississippi and the conducts, acts and/or omissions upon which this cause of action is based occurred in Hancock County, Mississippi, which is within the jurisdiction of the United States District Court for the Southern District of Mississippi, Southern Division.

IV.

FACTS

8.

Plaintiffs are residents of New Orleans, Louisiana and have had a vacation home in Pass Christian, Mississippi for approximately 14 years. During that entire time, they paid ever increasing homeowners and flood insurance premiums to State Farm.

9.

Plaintiff purchased a "homeowners policy" from State Farm naming George and Cristina Fowler as the insureds. The policy insures Plaintiffs' dwelling at 224 Sunset Drive, Pass Christian, Mississippi 39571-2038, Plaintiffs' personal property, and Plaintiffs' loss of use of the property due to an actual loss sustained. Plaintiffs received a cover note, which is the only evidence of insurance provided by State Farm regarding hurricanes.

10.

Plaintiffs have loyally paid an annual premium to State Farm 14 years in exchange for the comfort and security that State Farm would provide them full protection from any property damage or loss, particularly a loss by hurricane which was obviously foreseeable, considering the location of Plaintiffs' home.

11.

Plaintiffs also agreed to an additional "hurricane deductible endorsement" which provided for a higher deductible in exchange for protecting the Plaintiffs' property from any and all damage due to a hurricane.

12.

On more than one occasion, Plaintiffs requested through their agent, Steve Saucier, and directly to State Farm, that any and all adjustments be made to their policies to insure that their property was fully protected from any damage or loss that may occur. Plaintiffs also directly requested maximum homeowners and flood coverage on more than one occasion. Mr. Saucier told the Plaintiffs that they had "full" hurricane coverage. Mr. Saucier also falsely represented that no more insurance coverage

was available to the Plaintiffs. The Plaintiffs have since discovered that more insurance was available to protect their home.

13.

The insurance was underwritten, sold, marketed, and issued to Plaintiffs entirely and solely by State Farm, by and through Steve Saucier.

14.

Plaintiffs' homeowners policy expressly and/or impliedly covered any loss to the property due to hurricane, as evidenced by the "hurricane deductible endorsement," which by its own terms applies to "direct physical loss or damage to covered property caused by wind, wind gusts, hail, rain, tornadoes, or cyclones caused by or resulting from a hurricane." The "hurricane deductible endorsement" defines a hurricane as "a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service." By the terms of the policy, the duration of the hurricane includes the time period beginning at the time a hurricane watch or hurricane warning is issued for any part of Mississippi, continues for the time period during which the hurricane conditions exist anywhere in Mississippi, and ends 24 hours following the termination of the last hurricane watch or hurricane warning for any part of Mississippi.

15.

Plaintiffs reasonably relied upon both expressed and implied representations made by State Farm and Steve Saucier, that Plaintiffs' homeowners' policy would fully cover any and all property losses due to a hurricane.

16.

On August 29, 2005, Plaintiffs' residence was completely destroyed by wind, wind gusts and/or tornadoes caused by "Hurricane Katrina," not "Flood Katrina." Hurricane Katrina made landfall as a Category 3 hurricane at the mouth of the Pearl River in Mississippi, approximately 20 miles from Plaintiffs' home. The strongest winds were recorded at or near the Plaintiffs' home. Plaintiffs' home was destroyed as a result thereof, as only the slab and some pilings remain of the Plaintiffs' home.

17.

After the hurricane, in an effort to collect for their loss, Plaintiffs tried to reach Steve Saucier multiple times without success. Other offices of State Farm also did not respond. Numerous phone calls were not returned. The enthusiasm displayed in collecting the premiums was not evident in connection with paying the claim. State Farm and its president, Edward B. Rust, Jr. had decided not to pay this claim and deliberately chose to delay their response in order to discourage the Plaintiffs from attempting to recover.

18.

Plaintiffs notified State Farm of their loss almost immediately thereafter.

19.

Finally, State Farm sent an adjuster. In a meeting at the site of Plaintiffs' former home on September 26, 2005, State Farm offered the full amount of Plaintiffs' flood policy. At this meeting, Ms. Dian Carpenter, an adjuster sent by State Farm, admitted that she did not know whether the home was destroyed by flood or tidal surge, obviously under instructions from State Farm, yet she would give Plaintiffs the flood money.

20.

State Farm, who knew perfectly well that the Plaintiffs' home was destroyed by Hurricane Katrina, had made a policy decision at the uppermost levels of the company, specifically including Edward B. Rust, Jr., to falsely claim that all of the destruction to residences along the Mississippi Gulf Coast would not be covered in State Farm's homeowner policies. The Defendants' plan was simple and transparent, let the United States Government flood policy pay for the destruction, hope that poor people, who cannot afford a lawyer accept the flood policy money, and State Farm would get off without paying anything. They would fight those who could afford a lawyer.

21.

The Plaintiffs initially declined the flood money, fearing that it was a trap set by State Farm to prevent collection under the homeowners. Ultimately, Ms. Carpenter and others at State Farm confirmed that acceptance of the flood money would not prejudice the homeowners' claim in any way. The principal floors of the Plaintiffs' home, those located on pilings on the second and third floors, were destroyed by wind.

22.

Regarding the flood claim, in a worksheet completed by Ms. Carpenter on September 26, 2005, Ms. Carpenter estimated the replacement cost of the Plaintiffs' home at \$160,060.08. In that worksheet, Ms. Carpenter estimated that the Plaintiffs' home was 2600 square feet. Therefore, she assigned the rebuilding cost at an impossible \$61 per square foot. Further, Ms. Carpenter issued this worksheet with no architectural drawings, no plans, and consequently no idea of the actual size, layout,

or cost of the Plaintiffs' home. That amounts to a frivolous estimate of the cost of rebuilding the Plaintiffs' home and is further proof of State Farm's bad faith.

23.

In a letter to Edward B. Rust, Jr. dated September 27, 2005, the Plaintiffs reported the reprehensible conduct of State Farm and its employees to Edward B. Rust, Jr.. In that letter, the Plaintiffs demanded that Edward B. Rust, Jr. put a stop to that behavior. Edward B. Rust, Jr. simply chose not to respond to the Plaintiffs' letter or any subsequent letter. Obviously, Edward B. Rust, Jr. felt that he was too important to deal with his policyholders.

24.

In a letter to the Plaintiffs dated October 4, 2005, Brenda Emmons of State Farm reported that water damage is "excluded" from the Plaintiffs' homeowners' policy. Therein, she copied language from an insurance policy which the Plaintiffs had never before seen. That language was not a part of the coverage the Plaintiffs purchased. Rather, it was language attempted to be used after the hurricane to the Plaintiffs' insurance.

25.

In a letter dated October 6, 2005 (Attached as Exhibit 1), State Farm admitted that Plaintiffs' home suffered wind damage, yet they continued to only offer money under Plaintiffs' flood policy. This removes any doubt that State Farm's plan was to pay claims out of money from the federal government rather than their own pockets, even when they **knew** the home had suffered wind damage. Further, it offers proof that State Farm did not adjust Plaintiffs' claim with good faith.

26.

Even if Plaintiffs' main home was destroyed by water, which Plaintiffs expressly deny, State Farm's position that water is excluded from coverage under Plaintiffs' homeowners' policy is frivolous. The lack of merit of this position is evidence by State Farm's own decision to include a "hurricane deductible endorsement" in Plaintiffs' policy. In fact, prior to Katrina, State Farm paid claims to the Plaintiffs under their homeowners' policy for water damage, thereby estopping them from now claiming that the Plaintiffs' homeowners policy does not cover water damage.

27.

In a letter dated December 2, 2005, State Farm issued an additional letter to Plaintiffs indicating their belief that the damage to Plaintiffs' home was caused by waves and tidal surge. This time, State Farm based their decision upon "discussions, site inspection, investigation, and the findings of Haag Engineering." A review of Haag Engineering's flimsy report on the Plaintiffs' residence, attached as Exhibit 2, reveals that State Farm's entire position is based upon scrape marks on a girder. Haag Engineering's report, amazingly, attributes these scrape marks to "wave action" where floor joists had "abraded them." The report could have been written by a fifth grader and is devoid of facts, or engineering analysis. This report was made under instructions from State Farm.

28.

Seeing as Jim Wiethorn and Timothy Marshall, the authors of the Haag Engineering report, were not at the Plaintiffs' residence when Hurricane Katrina hit, their presumption that scrape marks on a piece of wood indicate wave action is ridiculous, obviously persuaded by the position of the company (State Farm) that paid Haag Engineering to inspect Plaintiffs' residence.

29.

There could be any number of causes of the scrape marks, including a much more likely cause, wind. An examination of Plaintiffs' home and the debris field by its own structural engineer proves wind was certainly the cause of the destruction of Plaintiffs' home. It is obvious that despite a thinly veiled attempt to appear to be examining the facts, State Farm had no real intention to do so. Their so called analysis was a sham to get them to a bargaining position.

30.

The Plaintiffs had the renowned structural engineer, Ivan Mandich, inspect the site. Mr. Mandich concluded, without hesitation, that winds destroyed the Plaintiffs' principal floors. He submitted a documented, analytical report, which was sent to State Farm by the Plaintiffs asking for a reconsideration of their claim.

31.

A Mr. Mark Drain, allegedly from "the President's office" (Edward B. Rust, Jr.), called and advised Mr. Fowler that they were going to "stick to" the Haag report and reject Mr. Mandich's report. No explanation was given. Mr. Fowler asked Mr. Drain to advise Edward B. Rust, Jr. that his behavior and that of State Farm was reprehensible and causing injury to many good people.

32.

Discussions with other State Farm policy holders in the area of the Plaintiffs' residence and along the Mississippi Gulf Coast, as well as lawsuits filed by other aggrieved State Farm policy holders in the area, confirmed State Farm's bad faith. They also have not been able to collect insurance money under their homeowners' policies, regardless of the facts of their particular situation. It is impossible that

Hurricane Katrina, a Category 3 hurricane when it struck the Mississippi Gulf Coast, did not cause wind damage to an overwhelming majority of the homes in the area where it made landfall. Yet, State Farm has taken this stance obviously hoping their insureds will be satisfied with the government flood money.

33.

By calling the causes of the damage from Hurricane Katrina a "flood" instead of "hurricane," State Farm is attempting to save billions of dollars to the detriment of its policyholders. This is because flood policies generally provide less coverage than homeowners' policies, and because flood policies are underwritten by the federal government and therefore are not paid by State Farm.

34.

State Farm should not be allowed to take advantage of its policyholders by falsely claiming that the damage in the Mississippi Gulf Coast area was caused by flood. State Farm has no proof that this actually occurred. Hurricane Katrina caused the damages to the Plaintiffs' home and to the others. Therefore, Plaintiffs are entitled to full coverage for the damage to their home caused by Hurricane Katrina, injunctive relief, specific performance of the contract, indemnity, unjust enrichment, punitive damages, penalties, attorney's fees, and other such equitable relief.

COUNT I

BREACH OF INSURANCE CONTRACT AS TO STATE FARM

35.

Plaintiffs hereby adopt by reference and incorporate herein each and every allegation set forth in Paragraphs 1 through 34 of the Complaint.

36.

State Farm entered into an insurance contract with the Plaintiffs to provide homeowners coverage. The policy contained a Hurricane Deductible Endorsement and provided full coverage to the Plaintiffs for any loss to their home caused by a hurricane.

37.

Hurricane Katrina made landfall approximately 20 miles from Plaintiffs home. Associated winds and/or tornadoes completely destroyed the Fowlers home.

38.

Plaintiffs upheld their portion of the contract by loyally paying premiums for over a decade. State Farm breached the contract of insurance it entered into with the Fowlers and refuses to pay any money on the homeowners' policy.

39.

Plaintiffs have consequently suffered significant financial damages for which they hereby seek reimbursement.

COUNT II

FRAUD AS TO STATE FARM, EDWARD B. RUST, JR. AND HAAG ENGINEERING CO.

40.

Plaintiffs hereby adopt by reference and incorporate herein each and every allegation set forth in Paragraphs 1 through 39 of the Complaint.

41.

State Farm, and its president and CEO, Edward B. Rust, Jr., represented to the Plaintiffs that they had full coverage for any loss to their home resulting from a hurricane.

42.

Once it was apparent that there were a significant number of claims due to Hurricane Katrina, State Farm, Edward B. Rust, Jr. and Haag Engineering Co. proceeded, as usual, to arbitrarily declare claims "flood claims" and therefore limit the coverage of their customers and pay those claims, at least in part, out of money from the United States Government. They also hoped to discourage Plaintiffs from pursuing their claim and hope that the United States Government would step in and resolve their claims.

43.

Haag Engineering Co. is a company that works under the influence of State Farm and Edward B. Rust, Jr. in order to deprive policyholders, including Plaintiffs, of their rights.

44.

In this case they conspired with State Farm and Edward B. Rust, Jr. to issue a bogus, fraudulent unsubstantiated report dated November 14, 2005, claiming that the Plaintiffs' home was destroyed by wave action when they knew otherwise.

45.

Haag Engineering Co. has been reported in the news, including CNN, and found in courts of law as working with State Farm to issue false reports favorable to State Farm to the detriment of policyholders, such as Plaintiffs.

46.

The above-described fraud, committed by State Farm, Edward B. Rust, Jr. and Haag Engineering Co. has resulted and will continue to result in harm to the Plaintiffs and countless other policyholders along the Gulf Coast.

47.

As a result of the fraudulent policy decisions and representations made by State Farm, Edward B. Rust, Jr. and Haag Engineering Co., Plaintiffs have not been paid under their homeowners' policy and have suffered damages.

COUNT III

BREACH OF FIDUCIARY DUTY AND MISREPRESENTATION AS TO HAAG ENGINEERING, CO.

48.

Plaintiffs hereby adopt by reference and incorporate herein each and every allegation set forth in Paragraphs 1 through 47 of the Complaint.

49.

Haag Engineering Co. owed a fiduciary duty to Plaintiffs as policyholders under the State Farm policy which they breached and for which they are liable in damages. Haag Engineering misrepresented the cause of the loss for which they are liable in damages.

COUNT IV

**CONVERSION AS TO STATE FARM, EDWARD B. RUST, JR.
AND STEVE SAUCIER**

50.

Plaintiffs hereby adopt by reference and incorporate herein each and every allegation set forth in Paragraphs 1 through 49 of the Complaint.

51.

The Defendants are in possession of and unlawfully exercising control of monies which are rightfully owned by Plaintiffs. Specifically, under the homeowners' policy issued by State Farm to Plaintiffs, the Defendants must compensate Plaintiffs for the loss of their insured residence. The Defendants have refused to turn over the money it owes to Plaintiffs and have stated that they do not intend to do so in the future.

52.

The Defendants have made a policy decision that State Farm will not turn over the money unlawfully held by State Farm and owed to Plaintiffs. This action amounts to the Defendants committing conversion.

COUNT V

DECLARATION OF INSURANCE COVERAGE

53.

Plaintiffs hereby adopt by reference and incorporate herein each and every allegation set forth in Paragraphs 1 through 52 of the Complaint.

54.

Pursuant to Federal Rule of Civil Procedure 57, Plaintiffs seek a declaratory judgment for purposes of determining a question of actual controversy between the parties concerning their rights, obligations and coverages under the subject policy.

55.

Based upon the representations made by State Farm, the express subject policy coverage provisions, the "hurricane deductible," the complete lack of proof that flood was a cause of the damage to the Plaintiffs' residence, and the fact that wind was the cause of the damage to the Plaintiffs' residence, Plaintiffs are entitled to full insurance coverage under their homeowners policy for all damage to the insured property and loss of use caused by Hurricane Katrina. This is true, whether the damage be by hurricane winds, tornadoes, storm surge caused by hurricane winds, or all of the above.

56.

Plaintiffs seek a declaration that their homeowners policy provides full insurance coverage for all damage to their insured residence, property, and loss of use caused by Hurricane Katrina.

57.

Plaintiffs also seek a declaration that State Farm may not presume that where there is no proof of how a house was destroyed, that it was destroyed by the means most beneficial to State Farm and most harmful to its policyholders and the federal government.

58.

Plaintiffs also seek a declaration that any damage to their insured residence and property that was caused by Hurricane Katrina's "storm surge" is not excluded under the subject policy.

59.

Plaintiffs also seek a declaration that the homeowner policy "flood exclusion" does not exclude coverage for any damage to Plaintiffs' insured residence and property caused by Hurricane Katrina.

COUNT VI

**SPECIFIC PERFORMANCE OF INSURANCE CONTRACT
AS TO STATE FARM**

60.

Plaintiffs adopt by reference and incorporate herein each and every allegation set forth in Paragraphs 1 through 59 of the Complaint.

61.

State Farm entered into the subject contract of insurance with the Plaintiffs wherein it clearly and expressly agreed to provide insurance coverage for physical loss to property and loss of use proximately and officially caused by a hurricane. Plaintiffs in turn have paid State Farm substantial premiums for many years and even agreed to a "hurricane deductible" in consideration for the agreed upon hurricane coverage.

62.

Plaintiffs have suffered total destruction of their insured residence and property as a result of the winds and/or tornadoes caused by Hurricane Katrina, or alternatively by Hurricane Katrina's storm surge, and have consequently been denied use of their residence.

63.

Plaintiffs performed their end of the insurance contract consistently and loyally and are accordingly now entitled to specific performance of the insurance contract. The court should therefore require State Farm to specifically perform such agreement.

COUNT VII

UNJUST ENRICHMENT/CONSTRUCTIVE TRUST AS TO STATE FARM, EDWARD B. RUST, JR. AND STEVE SAUCIER

64.

Plaintiffs adopt by reference and incorporate herein each and every allegation set forth in Paragraphs 1 through 63 of the Complaint.

65.

In marketing, selling, and issuing the subject policy to Plaintiffs, State Farm, Edward B. Rust, Jr. and Steve Saucier represented and agreed to obtain and provide Plaintiffs with full coverage for all property damage and loss of use typically caused by a hurricane, including damage proximately caused by hurricane winds, tornadoes, and/or storm surge. These representations and contractual obligations are evidenced by the homeowner policy's coverage provisions and "hurricane deductible."

66.

Plaintiffs have paid State Farm substantial monetary premiums for an extended period of time for such "hurricane" coverage. As a result, State Farm, Edward B. Rust, Jr. and Steve Saucier made money.

67.

Despite realizing substantial premiums from Plaintiffs, State Farm, Edward B. Rust, Jr. and Steve Saucier have wrongfully withheld the insurance proceeds owed to Plaintiffs under the homeowners' policy for the hurricane damage to their insured property.

68.

Additionally, by classifying the damage to Plaintiffs' property by Hurricane Katrina as "flood damage," State Farm, Edward B. Rust, Jr. and Steve Saucier have wrongfully realized insurance premiums and withheld insurance proceeds that the Plaintiffs are entitled to, to the detriment of both Plaintiffs and the federal government.

68.

State Farm, Edward B. Rust, Jr. and Steve Saucier have therefore been unjustly enriched at Plaintiffs' expense.

70.

Plaintiffs have suffered substantial injury as a proximate result of their unjust enrichment. Plaintiffs have been and will continue to be forced to pay substantial costs that should be borne by State Farm, Edward B. Rust, Jr. and Steve Saucier under the subject policy.

71.

As a proximate result of State Farm, Edward B. Rust, Jr. and Steve Saucier's false and fraudulent representations and refusal to honor the homeowners policy which they subscribed to, State Farm is in possession of premiums, insurance proceeds, and other monies that in equity, they should not be entitled to retain.

72.

Plaintiffs are therefore entitled to damages resulting from their unjust enrichment, including the imposition of a constructive trust on all premiums Plaintiffs paid to State Farm and on the insureds' proceeds wrongfully held by State Farm under the subject homeowners' policy as well as on all moneys made by Edward B. Rust, Jr. and Steve Saucier.

COUNT VIII

INJUNCTION/EQUITABLE ESTOPPEL AS TO STATE FARM

73.

Plaintiffs adopt by reference and incorporate herein each and every allegation set forth in Paragraphs 1 through 72 of the Complaint.

74.

Defendants represented to Plaintiffs that they would have full insurance coverage for any and all property damage and loss of use proximately and efficiently caused by a hurricane, whether it be by hurricane winds, "storm surge" proximately caused by hurricanes, or both.

75.

The subject policy also purports to provide full insurance coverage for all property damage proximately caused by a hurricane, whether it be by hurricane winds, "storm surge" proximately caused by hurricanes, or both. The subject policy does not exclude damage caused by "storm surge."

76.

Hurricane Katrina completely destroyed the Plaintiffs' insured property.

77.

However, State Farm is now of the position that the subject policy's "flood" exclusion excludes insurance coverage for the wind and/or storm surge damage to Plaintiffs insured property proximately caused by Hurricane Katrina

78.

State Farm's coverage position is contrary to the express terms of the subject policy, the "Hurricane Deductible Endorsement," and State Farm's previous actions of paying water damage claims to the Plaintiffs under their homeowners' policy in 1996. Additionally, the "flood exclusion" is not applicable to Plaintiffs' loss.

79.

As a result, Plaintiffs have suffered and will continue to suffer substantial and irreparable injury if State Farm continues to rely on the "flood" exclusion or the separate "flood" policy to deny them full insurance coverage for their loss under their homeowners' policy

80.

Therefore, Plaintiffs respectfully seek a preliminary and/or permanent injunction enjoining State Farm from refusing to pay the full amount of the Plaintiffs' property damage, loss of contents, and loss of use under their homeowners' policy.

81.

Plaintiffs also seek a preliminary and/or permanent injunction enjoining State Farm from rewriting the subject policy to exclude damages caused by "storm surge." Plaintiffs also seek an Order

that State Farm be enjoined and/or equitably estopped from refusing to cover damage caused by “storm surge.”

82.

Plaintiffs further seek a preliminary and/or permanent injunction enjoining State Farm from relying on the inapplicable and ambiguous “flood” exclusion to defeat insurance coverage for Plaintiffs under the subject policy. State Farm should also be equitably estopped from utilizing the “flood” exclusion to deny Plaintiffs’ insurance coverage for their insured property under the policy.

COUNT IX

INDEMNITY

83.

Plaintiffs adopt by reference and incorporate herein each and every allegation set forth in Paragraphs 1 through 82 of the Complaint.

84.

State Farm is obligated under the subject policy and by its representation to provide full insurance coverage to Plaintiffs for all damage to the insured property and loss of use caused by Hurricane Katrina.

85.

However, State Farm has denied Plaintiffs’ insurance coverage and has refused to pay them for their covered loss.

86.

As a direct and proximate result of State Farm's denial, Plaintiffs have been and will continue to be forced to pay a substantial amount of money out of their own pockets for their loss of use of the insured residence. Plaintiffs will also be required to pay hundreds of thousands of dollars to rebuild and/or replace destroyed property. This will consequently require Plaintiffs to incur additional debt.

87.

The money that Plaintiffs are now obligated to pay is money that State Farm in all fairness and equity should pay under the subject policy or otherwise. Plaintiffs are therefore entitled to indemnity from State Farm for all sums they have expended and will be required to expend, as well as debt they will be required to incur in order to repair, refurbish, and/or replace their insured residence and property.

COUNT X

REFORMATION OF INSURANCE CONTRACT BASED ON EQUITABLE FRAUD

88.

Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1 - 87 of the Complaint.

89.

Plaintiffs procured insurance through State Farm, Edward B. Rust, Jr. and Steve Saucier and have paid premiums every year to Defendants. State Farm was thoroughly familiar with the physical location of Plaintiffs' property, and more specifically, was familiar with the close proximity of Plaintiffs' property to the Mississippi Gulf Coast. State Farm knew or should have known the types of risks

against which Plaintiffs needed property insurance, especially risks relating to hurricanes, which commonly form and/or appear in the Gulf of Mexico.

90.

Similarly, in marketing, selling, and issuing the subject policy, State Farm knew or should have known of the importance of hurricane coverage to Plaintiffs and represented to Plaintiffs that the subject policy would provide full and comprehensive coverage for any and all property damage that could be caused by a hurricane, including damage proximately caused by hurricane wind and storm surge damage proximately caused by hurricanes.

91.

State Farm held itself out to the public and to Plaintiffs as “Good Neighbors” who were experts in insurance matters. Therefore, Plaintiffs placed complete confidence in State Farm and relied upon it exclusively to formulate an insurance program sufficient to protect Plaintiffs from risks to their property, such as damage caused by hurricanes. State Farm should have known that Plaintiffs were relying on it to provide adequate insurance coverage.

92.

Based on State Farm’s representations concerning the subject policy coverages, Plaintiffs agreed to purchase the subject policy in reasonable and justifiable reliance that the subject policy would provide full and comprehensive hurricane coverage.

93.

However, State Farm has now refused to provide Plaintiffs with full insurance coverage for the damage to their insured residence and property caused by Hurricane Katrina.

94.

Through unilateral mistake, in combination with actual or equitable fraud by State Farm, the subject policy does not embody the insurance contract entered into by and between Plaintiffs and State Farm, insomuch as State Farm has taken the position that the subject policy does not provide full insurance coverage for damage to Plaintiffs' insured residence and property caused by Hurricane Katrina, as described herein.

95.

Plaintiffs have no adequate remedy at law, but are entitled in equity to a reformation of the subject policy so as to expressly insure Plaintiffs for property damage caused by Hurricane Katrina. Plaintiffs allege that they are entitled to have the subject policy reformed to conform with the agreement between Plaintiffs and State Farm that Plaintiffs' home and property would be fully insured for damage caused by hurricanes.

96.

Plaintiffs therefore request that the Court exercise its equitable powers and reform, rectify, correct, and/or amend the subject policy to reflect the parties' true intentions that the subject policy provide full insurance coverage to Plaintiffs for the hurricane wind and storm surge damage caused by Hurricane Katrina.

COUNT XXI

**MISREPRESENTATION, NEGLIGENCE AND BREACH OF CONTRACT
CLAIM AGAINST STEVE SAUCIER**

97.

Plaintiffs hereby adopt by reference and incorporate herein each and every allegation set forth in paragraphs 1 through 96 of the Complaint.

98.

Steve Saucier misrepresented the insurance coverage available to Plaintiffs from State Farm and the market which resulted in the Plaintiffs suffering damages for which he is responsible.

99

Steve Saucier was negligent in carrying out his responsibilities to Plaintiffs as an insurance agent, broker or employee of State Farm which resulted in damages to the Plaintiffs for which he is responsible.

100.

Steve Saucier breached his contractual obligations to Plaintiffs which resulted in damages to the Plaintiffs for which he is responsible.

REMEDIES

101.

Plaintiffs hereby adopt by reference and incorporate herein each and every allegation set forth in Paragraphs 1 through 98 of the Complaint.

Plaintiffs are entitled to full insurance coverage under their homeowners' policy for the damage to their insured residence and property caused by Hurricane Katrina and other such equitable relief set forth in the Complaint, including, but not limited to:

- A. A declaration by this court that the subject policy provides full insurance coverage for the damage caused by Hurricane Katrina to Plaintiffs' insured residence and contents, as well as loss of use;
- B. A declaration by this court that any damages to Plaintiffs' insured residence and property caused by "storm surge" is not excluded under the subject policy;
- C. A declaration by this court that State Farm may not simply presume that all damage to Plaintiffs' home was caused by flood or storm surge while offering no proof of such;
- D. A declaration by this Court that the subject policy's "flood" exclusion is ambiguous and not applicable;
- E. An injunction enjoining and/or equitably estopping State Farm from denying coverage to Plaintiffs' insured home and property caused by Hurricane Katrina;
- F. An Injunction enjoining and/or equitably estopping State Farm from utilizing the "flood" exclusion to exclude coverage for damage to Plaintiffs' insured home and property;
- G. Specific performance of the subject policy;
- H. Indemnity;

- I. A constructive trust on insurance proceeds owed to Plaintiffs for the hurricane damage to their insured residence and property wrongfully held by State Farm and insurance premiums paid by Plaintiffs for coverage under the subject policy;
- J. Reformation of the subject policy to reflect and embody the parties' true intentions concerning insurance coverage based on State Farm's inequitable conduct, equitable fraud, and fraud;
- K. Damages suffered by Plaintiffs;
- L. Punitive damages pursuant to Mississippi Code ann. §11-1-65 as a result of defendants' actual malice, gross negligence, willful, wanton and reckless disregard for its policyholders, and fraud committed upon its policyholders and the federal government;
- M. Attorney's fees and expenses;
- N. Court costs and expenses;
- O. Pre-judgment and post-judgment interest; and
- P. Any and all other equitable relief deemed appropriate by the court.

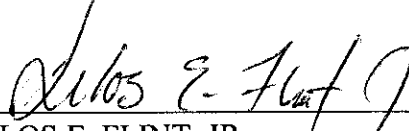
103.

Plaintiffs request a trial by jury.

WHEREFORE, Plaintiffs respectfully request that upon a trial of this cause, judgment will be entered against the Defendants for full insurance coverage for the damages to Plaintiffs' insured residence and property caused by Hurricane Katrina, an injunction, specific performance of the

homeowners policy, punitive damages, attorneys' fees and other such equitable remedies and relief prayed for herein.

Respectfully submitted,



DELOS E. FLINT, JR.
(MS Bar 30016) (LA Bar 5616)
ROBERT R. JOHNSTON (LA Bar 22442)
FOWLER, RODRIGUEZ & CHALOS, L.L.P.
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Attorneys for Plaintiffs

PLEASE SERVE

State Farm Fire & Casualty Co.
through agent for service of process:
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Flowood, Mississippi 39232 or
through the Mississippi Insurance Commissioner
P. O. Box 70
Jackson, Mississippi 39205

Edward B. Rust, Jr.
State Farm Fire & Casualty Co.
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Bloomington, IL 71701

Steve Saucier
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Pass Christian, Mississippi 39571

Haag Engineering Company
2455 Melver Lane
Carrollton, Texas 75006

CIVIL COVER SHEET

1:06 PM 489 LG-RHW

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

I. (a) PLAINTIFFS

GEORGE AND CRISTINA FOWLER

DEFENDANTS

STATE FARM FIRE & CASUALTY COMPANY, EDWARD B. RUST, JR., HANB ENGINEERING, & STEVE SAUCIER

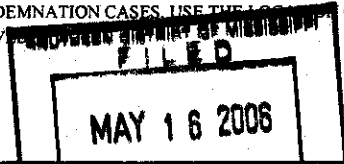
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number) FOWLER, RODRIGUEZ & CHALDS, L.L.P. 400 PONDRAIS ST., 30th FLOOR, N.O. LA. 70130 504-523-6600



II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF BY, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE, SIGNATURE OF ATTORNEY OF RECORD

5-15-06, DELOS E. FLINT, JR.

FOR OFFICE USE ONLY: RECEIPT# 5013990, AMOUNT \$350.00, APPLYING IFF, JUDGE, MAG. JUDGE

State Farm Insurance Companies



October 6, 2005

STATE FARM INSURANCE COMPANIES
1909 East Pass Road C-10
Gulfport, MS 39507

George & Cristina Fowler
201 Saint Charles Ave, Fl 36
New Orleans, LA 70170-1000

RE: Claim Number: 24-Z456-262
Policy Number: 24-19-6444-6
Insured Location: 224 Sunset, Pass Christian, MS
Date of Loss: August 29, 2005

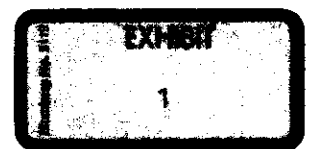
Dear Mr. & Mrs. Fowler:

This letter is a follow-up to our inspection of your property on September 26, 2005. The inspection revealed that your property sustained damage from wind and water. As we discussed on that date, there is a question of the extent of damage that was caused by wind. The remainder of the damage that is still in question will require additional investigation before a final determination can be made. We will inform you as soon as we have completed our investigation.

Unfortunately, as we discussed, the water damage is specifically excluded under your policy. The applicable policy language of your Homeowner's policy, FP7955 reads as follows:

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.
 - 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 **residence premises** plumbing system that enters through sewers or drains, or water which enters into and overflows from



within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area; or

- (3) water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

However, we do insure for any direct loss by fire, explosion or theft resulting from water damage, provided the resulting loss is itself a Loss Insured.

As noted in the policy language above, flood, surface water, waves, et. al., are specifically excluded from coverage, whether driven by wind or not. We will be unable to assist you with any portion of your loss that was damaged as a result of these perils.

State Farm Insurance does not intend, by this letter, to waive any policy defenses in addition to those stated above, and reserves its right to assert such 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,



Dian Carpenter
Claim Representative
State Farm Insurance
(866) 787-8676 X5274

CC Agent Saucier #1334-24

George Fowler Residence
Structural Inspection
Hurricane Katrina
224 Sunset
Pass Christian, Mississippi 39571
State Farm File: 24-Z456-262
Haag File: 1057646-239/120

State Farm Insurance Company
1909 East Pass Road
Gulfport, Mississippi 39507
Attention: Ms. Dian Carpenter

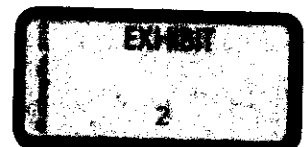


November 14, 2005

Jim D. Wiethorn
Jim D. Wiethorn, P.E.

11-21-05

Date Signed



PHOTOGRAPH

Dallas, Texas
November 14, 2005

State Farm Insurance Company
1909 East Pass Road
Gulfport, Mississippi 39507

Attention: Ms. Dian Carpenter

Re: George Fowler Residence
Structural Inspection
Hurricane Katrina
224 Sunset
Pass Christian, Mississippi 39571
State Farm File: 24-Z456-262
Haag File: 1057646-239/120

Complying with your instructions, we inspected the site of the Fowler residence to determine the causes and extent of damage from Hurricane Katrina. Our inspection was conducted on November 8, 2005. This compendium report presents an overview of our inspection, specific conclusions, and pertinent supporting data. Should you require additional detailed information, an expanded report with additional photographs and in-depth discussion can be prepared.

This engineering report has been written to the addressee for your sole use and purpose and is not for the use of any other person, firm, or corporation. Haag Engineering Co. and its agents and employees do not have and do disclaim any contractual relationship with, or duty or obligation to, any party other than the addressee of this report and the principals for whom the addressee is acting. Only the engineers who signed this document have the authority to change its contents and then only in writing to you. This report addresses our inspection and information reviewed to date. We reserve the right to amend our conclusions should any subsequent information or data warrant such a change.

DESCRIPTION

The Fowler residence was a large, wood-framed, single-family dwelling elevated on timber pilings. Pilings were 8 x 8 inches in cross section and extended 6 feet 9 inches to the bases of the girders. Pilings were poured in place concrete slab foundation set on grade. Floor girders beneath the home were wooden 2 x 12s that were set into notches and bolted to the tops of the pilings. A large deck extended from the back of the house and faced a canal that opened into St. Louis Bay. Some of the floor girders beneath the rear patio deck were only nailed to the pilings. Floor joists were toe-nailed to the tops of the girders making the second floor elevation about nine feet above the slab. The house

was rectangular in plan with the long dimension oriented northeast/southwest; the front of the house faced southwest. Exterior walls were clad with vinyl siding installed over oriented strand board (OSB) siding.

WEATHER DATA

Weather information has been gathered from a number of sources including the National Weather Service, National Hurricane Center, National Ocean Service, National Buoy Data Center, Texas Tech University, and the Florida Coastal Monitoring Program. Hurricane Katrina struck southeast Louisiana during the early morning hours on August 29, 2005, as a Category 4 hurricane on the Saffir-Simpson scale. The eye made landfall in Plaquemines Parish, Louisiana, just south of the town of Buras with sustained winds of around 140 MPH at 6:10 AM. The strongest winds were associated with the east eyewall which passed to the east of New Orleans. As Katrina moved northward, dry air was entrained into the circulation and wind speeds decreased substantially. Meanwhile, the storm surge increased rapidly along the Mississippi coast in advance of the hurricane hours in advance of the eyewall.

Hurricane Katrina made a second landfall at the mouth of the Pearl River between Louisiana and Mississippi around 10 AM. as a Category 3 hurricane on the Saffir-Simpson scale with winds of around 120 MPH at 33 feet in open terrain. The west eyewall passed over Slidell, Louisiana, whereas the east eyewall and strongest winds occurred at Waveland and Bay St. Louis, Mississippi. A record storm surge occurred to the east of the eye with at 31 feet in Waveland, 27 feet in Bay St. Louis, and 25 feet in Pass Christian resulting in catastrophic damage to low lying coastal buildings as well as inland flooding. The storm surge preceded and accompanied the strongest winds. The peak storm surge coincided with the peak wind.

OBSERVATIONS/CONCLUSIONS

Based on our inspection, we made the following observations and reached the following conclusions:

1. The house was removed from the site above the level of the floor girders including all framing and contents. However, all pilings remained intact and undamaged. Some girders had broken away from their bolted connections. Close examination revealed that bolts that secured the girders were bent and/or pieces of the girders remained around the bolts. Two girders were lifted several inches at the south corner and one girder along the northwest side of the home had been completely flipped over. This indicated to us that the home was subjected to tremendous low-level forces (both lateral and uplift). Close examination revealed scrape marks on the girders where floor joists had abraded them. These scrape marks

were created by cyclic (up and down) movements of the floor joists due to wave action. Floor joists eventually were lifted from the tops of the girders and the home collapsed into the water and broke apart. Some of the nails that secured the floor joists remained on top of the girders.

2. Examination of the surroundings revealed adjacent homes also were removed from their pilings except for one home to the southwest. This three-story home remained intact on its pilings. Our examination of this home (Heurtin residence) revealed that storm surge had gutted the second story removing some of the wood-framed walls. However, the third story was left intact. We measured the storm surge height in this home at between 15 and 17 feet above the concrete slab. Floor joists on this home were secured to the girders with metal hangers, a stronger connection than toe-nailing. Driving around the area, we observed wind damage to some of the roof coverings and homes with vinyl siding, but little in the way of any structural damage from wind. Some pine trees were downed to the west indicating there were strong winds at this location from east-to-west. However, most trees remained upright without debris above the surge line.
3. In conclusion, the Fowler residence was destroyed by Hurricane Katrina's storm surge. The floor of the home was lifted from the girders, and the home broke apart. Some wind damage could have occurred to the roof covering and vinyl siding prior to its destruction by storm surge based on the level of wind damage to surviving homes in the area. However, we could find no evidence that such wind damage occurred to this home since storm surge had removed the debris offsite.

Respectfully submitted,

HAAG ENGINEERING CO.



11-21-05

Handwritten signature of Jim D. Wiethorn in black ink.

Jim D. Wiethorn, P.E.
Mississippi License 11945

Handwritten signature of Timothy P. Marshall in black ink.

Timothy P. Marshall, P.E.
Texas License 65970
Meteorologist

JDW/TPM:gjg

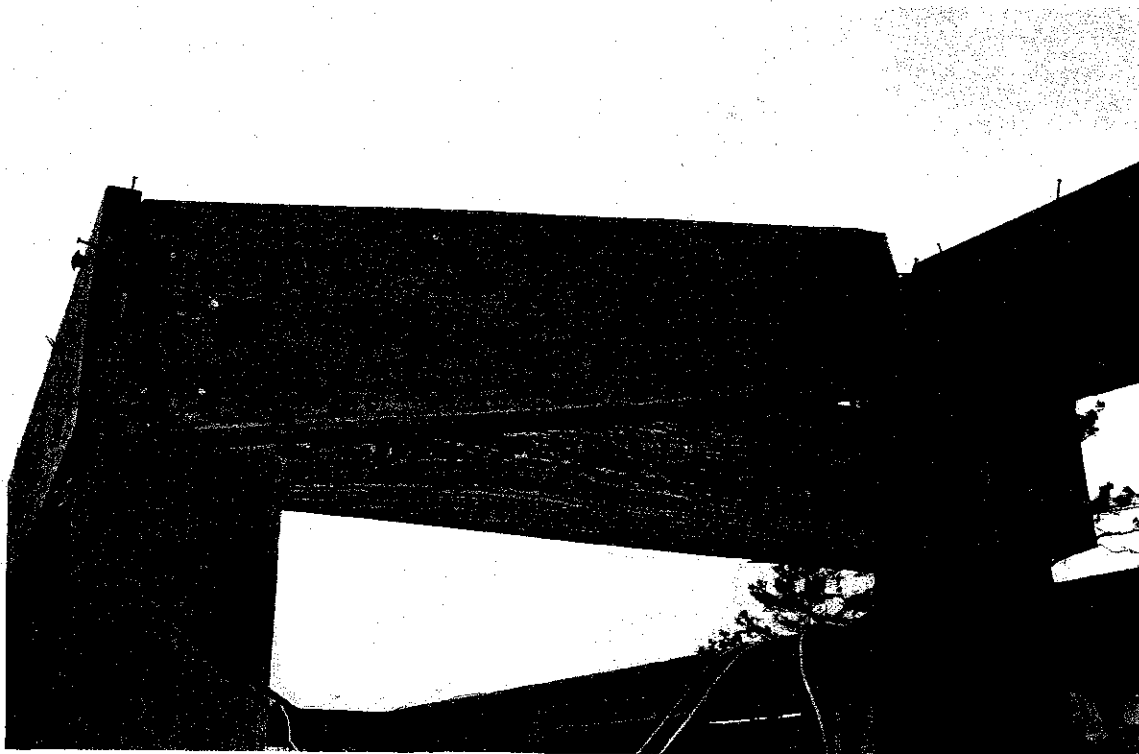
HAAG
ENGINEERING CO.



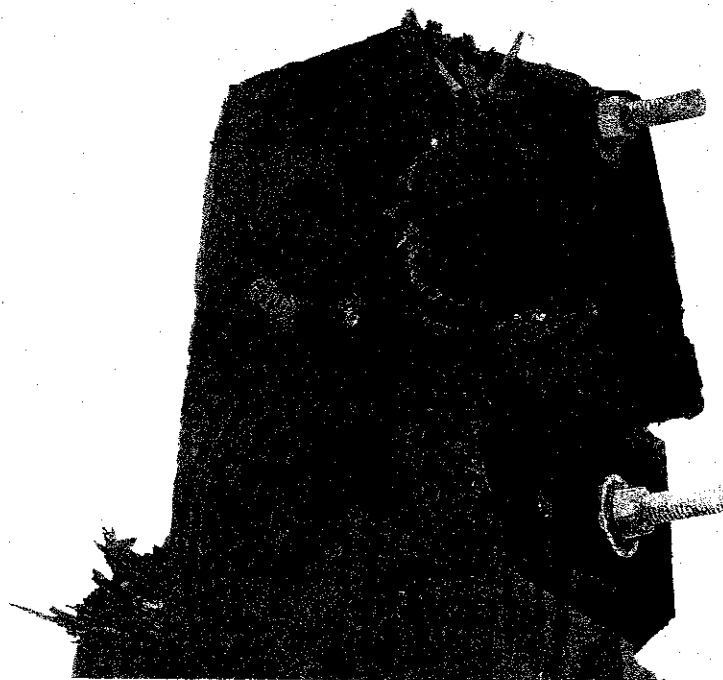
1. Southwest (front) elevation view of the Fowler residence.



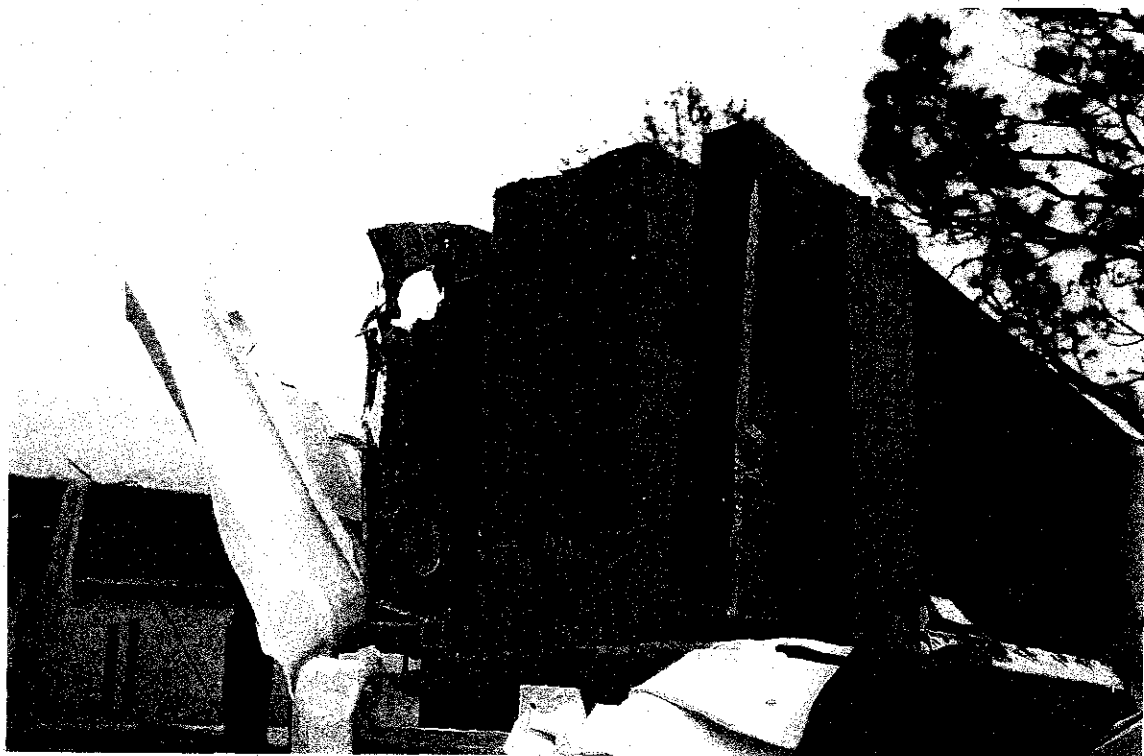
2. Rear elevation view of house.



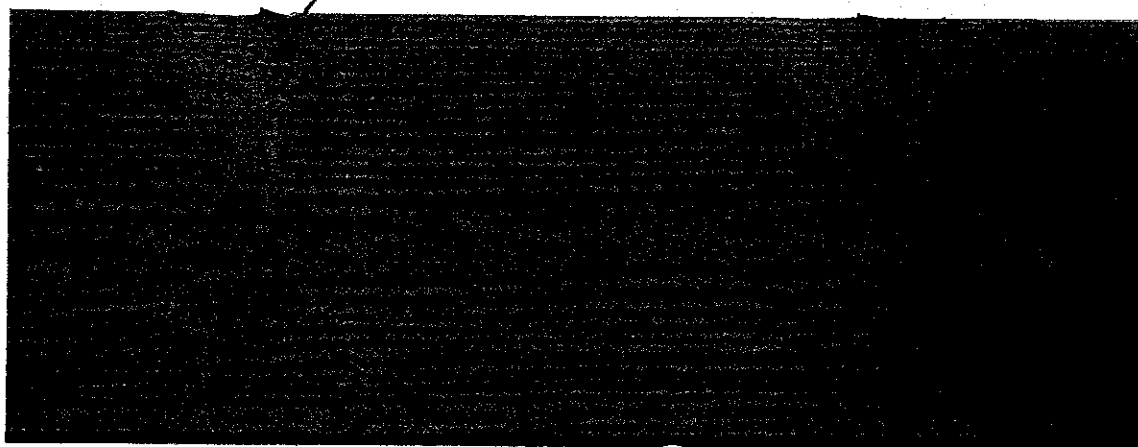
3. Uplift of floor girder.



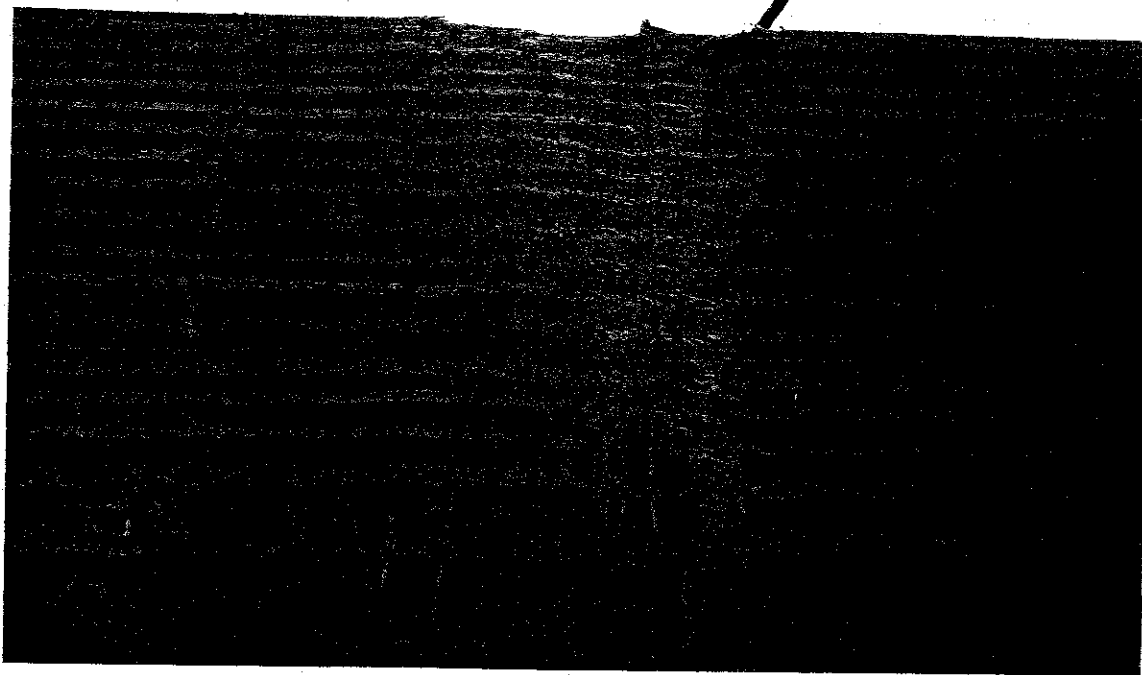
4. Broken girder connection.



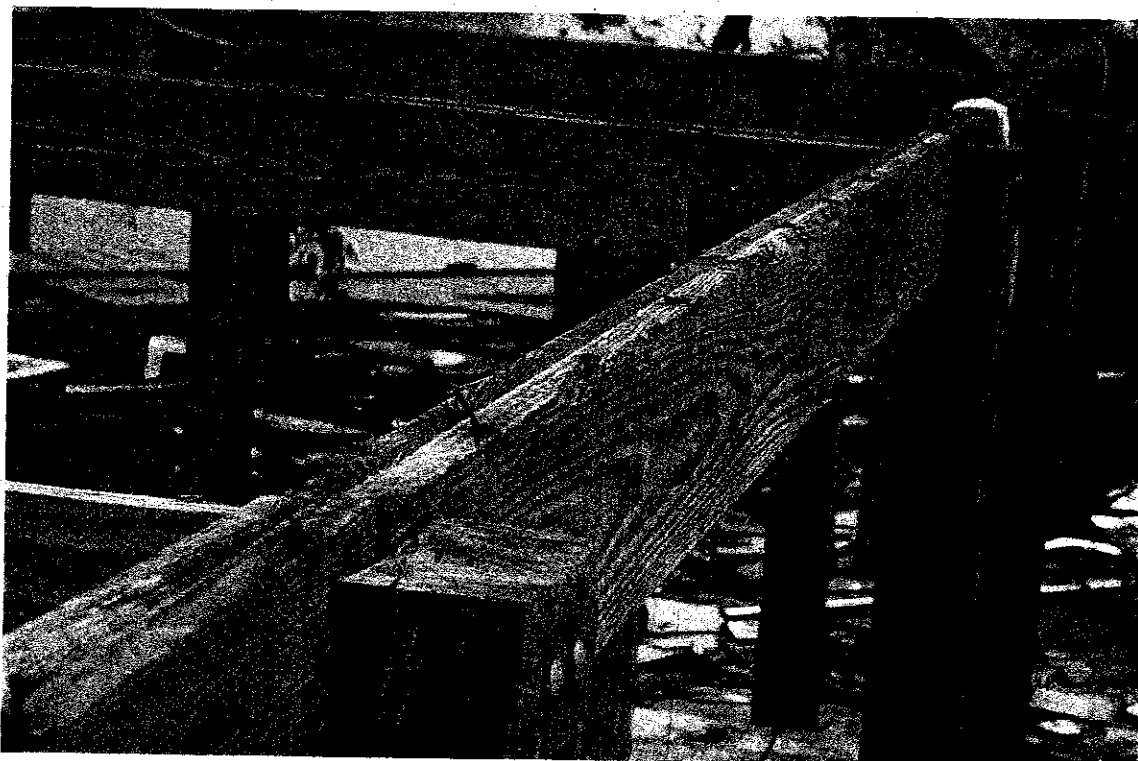
5. Bolts broke out of piling.



6. Scrape marks on girder from butt end of floor joists (missing).



7. Closer view of scrape marks on girder. Such marks indicated the floor joists were moving up and down due to wave action.



8. Nails remaining on top of girders. These nails had secured the floor joists.