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

Association Casualty Insurance Company; Benchmark Insurance Company; Georgia Casualty & Surety Company; and National Security Fire and Casualty Company, Plaintiffs, v. Allstate Insurance Company; Mississippi Farm Bureau Mutual Insurance Company; Nationwide Mutual Fire Insurance Company d/b/a Nationwide Insurance Companies; State Farm Fire and Casualty Company; St. Paul Travelers Companies, Defendants.	)	Case No. 2:09-CV-00024-KS-JCS

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S MOTION FOR JUDGMENT AS A MATTER OF LAW

Pursuant to Rule 50(a) of the Federal Rules of Civil Procedure, Defendant State Farm Fire and Casualty Company ("State Farm") is entitled to judgment as a matter of law on the issue of whether State Farm was appointed to membership on the Board of Directors ("the Board") of the Mississippi Windstorm Underwriting Association ("MWUA") for the years 2003 through 2005. The official records of the Commissioner of Insurance ("the Commissioner"), in the form of letters from the Commissioner to MWUA management appointing Board members, constitute the only legally competent evidence of Board membership presently before the jury, and reflect that the Commissioner appointed Sam Branch and J.D. Sparks, not State Farm, to the MWUA Board for the relevant time period, 2003 through 2005. Because State Farm was not a member

of the MWUA Board during the relevant time period, State Farm, as a matter of law, cannot be held directly liable for the Plaintiffs' claims.

Moreover, Plaintiffs have failed to submit any evidence that Sam Branch or J.D. Sparks were acting as State Farm's agents when they served on the MWUA Board. To the contrary, the evidence presented demonstrates that Mr. Branch and Mr. Sparks acted in their individual capacities with no direction or control from State Farm. Because Sam Branch and J.D. Sparks were not acting as agents for State Farm when they served on the MWUA Board, State Farm cannot, as a matter of law, be held vicariously liable for their actions.

Because Plaintiffs have failed to establish any legal or factual basis for State Farm's direct or vicarious liability in this case, their claims should be dismissed as a matter of law.

ARGUMENT

Pursuant to Federal Rule of Civil Procedure 50(a), judgment as a matter of law is appropriate "[i]f a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." Fed. R. Civ. P. 50(a) (emphasis added). *See Dixon v. Wal-Mart Stores, Inc.*, 330 F.3d 311, 313 (5th Cir. 2003). The Court must consider all evidence in the light most favorable to the opposing party and may not weigh the evidence or make credibility determinations. *Id.* at 313. Nevertheless, "[i]f the facts and inferences point so strongly and overwhelmingly in favor of the moving party that the reviewing court believes that reasonable jurors could not have arrived at a contrary verdict," then judgment as a matter of law is appropriate. *Id.* at 313-14.

I. THE EVIDENCE ADMITTED DEMONSTRATES THAT STATE FARM WAS NOT A DIRECTOR OF THE MWUA DURING 2004 AND 2005.

A. The Commissioner's Records Demonstrating Who Was Appointed to the MWUA Board Are the Only Legally Competent Evidence that May Be Considered.

The Court has admitted into evidence MWUA's Plan of Operation (Ex. D-302), as well as appointment letters issued by Commissioner Dale for the forthcoming year in the fall of 2002, 2003, and 2004. (Ex. D-99, J-48, P-290). The appointment letters unquestionably constitute official records of the Commissioner's office. The same is true of the Plan. The Legislature in Miss. Code Ann. § 83-34-13 (Rev. 1999) mandated the preparation of the Plan subject, however, to the approval of the Commissioner. In the event the directors would have failed to submit a Plan "acceptable to the commissioner," the Legislature declared that "the commissioner shall promulgate and place into effect a plan of operation." Unlike the bylaws of a private organization then, the Plan has no effect whatsoever apart from the approval of the Commissioner. Thus, both the Plan and the Commissioner's appointment letters are considered official public records, and must be construed like any other public record, meaning: (1) the court may not consider parol evidence to subtract from, vary or contradict the Commissioner's records, and (2) any ambiguity in those records must be construed against the Plaintiffs.

(1) Parol Evidence is Inadmissible to Construe Official Public Records.

The Mississippi Supreme Court has consistently adhered to the following general statement of the parol evidence rule:

> It is a general rule that parol or extrinsic evidence is not admissible to add to, subtract from, vary or contradict judicial or *official records or documents*, or written instruments which dispose of property, or are contractual in nature and which are valid, complete, unambiguous, and unaffected by accident or mistake.

Keppner v. Gulf Shores, Inc., 462 So. 2d 719, 725 (Miss. 1985) (emphasis added). The parol evidence rule precludes consideration of extrinsic evidence to vary or contradict the official record or document. *Id.*

It is a well-settled principle of Mississippi law that the minutes of a public board "import *absolute verity* and *cannot be impeached by parol evidence*." *McKenzie v. Smith*, 70 So. 2d 3, 5 (Miss. 1954) (emphasis added). Stated differently, "parol evidence is not admissible to show what action [a] board took." *Myers v. Blair*, 611 So. 2d 969, 972 (Miss. 1992); *see Smith,* 86 So. at 709 (holding it was error to permit individual members of board of supervisors to testify as to what board did, board's minutes were sole and exclusive evidence of what board did).

This principle has been extended to apply equally to official acts of state agencies, including the official records of elected public officials. *See Mississippi Gaming Comm'n v. Pennebaker*, 824 So. 2d 552, 555 (Miss. 2002) (individual members of Mississippi Gaming Commission could not speak for the Commission; rather, Commission "only speaks through the official act of memorializing its minutes") *and Cox v. Richerson*, 191 So. 99, 103 (Miss. 1939) (affirming exclusion of testimony of purchaser's agent and attorney regarding what occurred at tax sale; tax collector's deeds or instruments of conveyance, including recitals therein of the terms showing "the official action" taken by the tax collector, "cannot be varied by parol evidence").[1]

Because parol evidence is inadmissible to subtract from, vary or contradict the official public records of state agencies, the Commissioner's records are the only competent evidence to demonstrate the identity of the persons appointed as directors of MWUA. No other evidence may be considered in determining who served on the Board.

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[1] Of course, nothing prevented Plaintiffs from offering the testimony of Insurance Commissioner Dale if Plaintiffs wished to clarify any of Dale's own actions which are contained in the appointment letters. *Tupelo Redevelopment Agency v. Abernathy*, 913 So. 2d 278, 288 (Miss. 2005). Plaintiffs have failed to do so, and thus are bound by the Commissioner's official records.

(2) Any Ambiguity in the Commissioner's Records Must Be Resolved Against Plaintiffs.

The principle that parol evidence is inadmissible to construe official public records applies even when the content of official records and documents is ambiguous. *See Lange v. City of Batesville*, 972 So.2d 11, 19 (holding that the "ambiguity exception" to the parol evidence rule does not apply to trump the evidentiary exclusivity of a public board's minutes: "application of the parol evidence rule's exception for ambiguity would sit in direct contradiction to the precedents cited . . . ."). This is because any ambiguity in a public record must be resolved against the claimant:

> [I]f evidence of a board's actions is limited to its minutes any ambiguity in those minutes must be construed against the private party as its [*sic*] shouldered the responsibility to see that the contract was recorded to its specifications. Additionally any interpretation of an ambiguity must be done without the aid of parol evidence.

Id.[2]

The policy rationale underlying this principle is twofold. First, when authority has been conferred upon a board, the public is entitled to decisions "which represent the wisdom of the majority rather than the opinion or preference of some individual member." *Id.* Secondly, the public is entitled to decisions which will not be "subject to the uncertainties of the recollection of individual[s]," but rather "will be evidenced by a written memorial" to which "the public may have access to see *what was actually done*." *Id.* (emphasis added).

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[2] Similar rules apply against the party having the burden of proof with regard to the records of private organizations. In *American Tel. & Tel. Co. v. Purcell Co.*, 606 So.2d 93, 97 (Miss. 1990), the Supreme Court of Mississippi observed that "corporate records and minutes constitute the best evidence of corporate action." The Court denied relief because the plaintiff failed to show which of the many AT&T corporations had authorized the suit. *Id.,* at 98. Plaintiffs similarly failed to overcome the presumed verity of organizational records in *Maas v. Sisters of Mercy*, 99 So. 468 (Miss. 1924), and *His Way, Inc., v. McMillin*, 909 So.2d 738 (Miss. 2005).

It is true, this Court has observed from the bench, that many of the public records cases, like *Lange* itself, involve public contracts. Here, Plaintiffs essentially claim to be third-party beneficiaries of a contract between the Commissioner and State Farm. They allege that the Commissioner offered State Farm a seat on the Board and that State Farm accepted it, thereby acquiring legal duties to them that otherwise could not have existed between competitors. Before Plaintiffs can impose liability on State Farm for alleged breach of those duties, they carry the burden of proving that State Farm agreed to assume them. State Farm did not.

B. The Plan Permits the Commissioner to Appoint Individuals to the Board, Which is What the Commissioner Did During the Relevant Time Period.

As previously mentioned, the MWUA Plan of Operations and the Commissioner's appointment letters are the only legally competent evidence that may be considered in determining who the members of the MWUA Board were during the relevant time period.

Under the MWUA's Plan of Operations, the Insurance Commissioner has the absolute authority to appoint the members of the MWUA Board. Indeed, the Plan places little restriction on the Commissioner's authority to chose member representatives on the Board. "The member representatives on the board shall be appointed annually by the Commissioner of Insurance." Plan, § XI.2 (Ex. D-302).[3] The only limitation placed on his choice is found two sentences later: "Not more than one insurer in a group under the same management or ownership shall serve on the board at the same time." This sentence recognizes that the Commissioner may choose to appoint an insurer, but it forbids him from appointing two related insurers simultaneously.

[3] The Board minutes reflect that an earlier version of the Plan would have permitted members to choose their own representatives. Exhibit D-302 demonstrates that the Commissioner quickly asserted his absolute right to choose.

Nothing in the Plan, however, prevents the Commissioner from appointing individuals as representatives of the members. Indeed, the Commissioner did exactly that for the relevant time period.

The Commissioner's letters demonstrate that for the 2002-2003 term, Commissioner George Dale appointed the following *individuals* to the MWUA Board: (1) Robert P. Arnold, an employee of Mississippi Farm Bureau Mutual Insurance Company; (2) Andy Everett, an employee of St. Paul Companies; (3) Sam Branch, an employee of State Farm Fire & Casualty Company; (4) Lorrie K. Brouse, an employee of Allstate Insurance Company; (5) Robert D. Portwood, III, of Fox-Everett-Portwood, Inc.; (6) Brent Smith of the Gary Smith Agency; (7) J. Burns Smith, an employee of Nationwide Insurance; (8) David A. Treutel, Jr. of the Treutel Insurance Agency, Inc.; and (9) Christopher Boone of Stewart Sneed Hewes, Inc., as an Agent Alternate. The appointment of these individuals was confirmed during the Fifteenth Annual Membership Meeting of the MWUA on October 18, 2002. (Ex. D-151.)

Commissioner Dale appointed the same individuals for the 2003-2004 term. He notified the MWUA Manager of the appointment of these individuals on August 29, 2003. (Ex. J-48.) The appointment of these individuals to the MWUA Board was confirmed at the Sixteenth Annual Membership Meeting held on October 3, 2003. (Ex. P-202.) For the 2004-2005 term, Commissioner Dale "simply reappointed all of the present members of the above Board." (Ex. P-290.) Thus, for the relevant time period, the Board consisted of five individuals that served as member representatives and three individuals that served as agent representatives.

C. At No Time During the Relevant Time Period Was State Farm a Member of the MWUA Board.

In order to impose direct liability on State Farm for the MWUA Board's actions, Plaintiffs must prove that State Farm was a member of the MWUA Board. The mere fact that

Sam Branch and J.D. Sparks were employees of State Farm at the time they served on the MWUA Board is insufficient to demonstrate that State Farm itself was a member of the MWUA Board or that State Farm had designated Sam Branch and J.D. Sparks to serve as corporate representatives on the MWUA Board. Plaintiffs must set forth some other evidence sufficient to carry their burden of proof on this issue. Plaintiffs have failed to do so.

The Commissioner's appointment letters demonstrate that at no point during the relevant time period did the Commissioner appoint State Farm to the MWUA Board. Rather, the letters provide that two employees of State Farm, Sam Branch and J.D. Sparks, were appointed and served on the MWUA Board in their individual capacities. This is evidenced by the unambiguous language in the letters.

The letter sent to Sam Branch in 2002 appointing Mr. Branch to the MWUA Board was addressed directly to him and appointed "you" to the Board. (Ex. D-98.) No mention was made of Mr. Branch's serving as State Farm's representative on the Board. The Commissioner unequivocally and unambiguously appointed Mr. Branch, and not State Farm, as a director for 2003. In June 2004, Sam Branch was relocated to Birmingham, Alabama. (Sparks Trial Testimony Unedited Real-Time Transcript ("URTT") at 38.) State Farm subsequently *recommended*[4] that J.D. Sparks, an employee of State Farm, fill Mr. Branch's open position on the MWUA Board. (*See* Ex. J-78; Sparks URTT at 11-12 .) The Commissioner subsequently

[4] In its June 29, 2004 letter to the Commissioner, State Farm only "recommended" J.D. Sparks replace Sam Branch. (Ex. J-78.) State Farm did not "designate" J.D. Sparks to be its representative. (*See* Plan Sec. XII.2 (providing that board member that is an insurer may "designate a qualified representative and an alternate"). This is consistent with Sam Branch's testimony in which Mr. Branch testified that it was his understanding that State Farm "recommended" an MWUA Board member, which was subject to the Commissioner's approval. (Branch Dep. at 22:9-20 ("I didn't look at it as a State Farm representative on the board. . . . . They would make a recommendation, and . . .the Commissioner would have to approve that and appoint that person.").)

appointed J.D. Sparks to the MWUA Board for the 2004 to 2005 term. (Ex. D-69.) For the 2005 to 2006 term, the Commissioner's letter dated August 15, 2005, appointed J.D. Sparks as a board member, again, with no mention of J.D. Sparks serving as State Farm's representative. (Ex. D-273.)

The Commissioner's records constitute the sole and exclusive evidence of whom the Commissioner appointed to the MWUA Board. These letters on their face cannot reasonably be read to appoint State Farm, and not Sam Branch and J.D. Sparks, as members of the MWUA Board. This would be true even if this Court were to conclude that the Commissioner's letters of appointment were somehow ambiguous. Even if deemed ambiguous, the Commissioner's records nonetheless represent the only legally competent evidence presently before the jury on this issue. Thus, Plaintiffs have failed to carry their burden of proving that State Farm was a member of the MWUA Board during the relevant time period.

D. Parol Evidence Supports State Farm's Interpretation of the Commissioner's Records.

Even were the court to consider parol evidence to construe the Commissioner's records, the interpretation offered by State Farm—that Sam Branch and J.D. Sparks, not State Farm, served as members of the MWUA Board—is supported by the uncontradicted testimony of Sam Branch and J.D. Sparks. As Mr. Branch testified in his deposition, which was read into the trial record, he never attended the MWUA Board meetings as a representative of State Farm, and his membership on the Board was dependent solely upon the Commissioner's approval:

> Q. When you attended the October 2000 meeting and meetings thereafter . . .were you attending as State farm's representative to the board?
> A. No.
> Q. Ok. In what capacity were you attending?
> A. As a voting member. meetings thereafter -- we talked about the October
> ….

Q. But State Farm would choose the person who would attend the meetings in its behalf? . . .
A. They would recommend. They would make a recommendation and . . .the Commissioner would have to approve that person.

(Branch Dep. 21:11-17, 22:16-22.) J.D. Sparks similarly testified at trial that he too never acted on behalf of State Farm when he served on the MWUA Board of Directors:

Q. Now as far as your understanding went, were you the board member or was State Farm.?
A. I was the Board member.
Q. Did anyone at State Farm ever tell you how to vote?
A. No, sir.
Q. Did anybody at State Farm ever give you any direction of any sort about what to do?
A. No, sir.
Q. Did you have to report to State Farm after a board meeting as to what you had done?
A. No, sir.

(Sparks URTT at 42.) Plaintiffs made no attempts to impeach this testimony through cross-examination. (*See* Sparks URTT at 63-73 (Corlew re-cross).)

Nothing in the record contradicts Mr. Branch or Mr. Sparks's testimony that they were not acting on behalf of State Farm when they served in their capacity as MWUA Board members, their testimony supports State Farm's interpretation of the Commissioners' records. From this record, no reasonable jury could conclude that State Farm was a member of the Board. Absent a finding that State Farm was a member of the MWUA Board during the relevant time period, State Farm cannot as a matter of law be held directly liable for the MWUA Board's actions.

II. STATE FARM IS NOT VICARIOUSLY LIABLE FOR SAM BRANCH OR J.D. SPARKS'S ACTIONS TAKEN AS MWUA DIRECTORS.

For the reasons discussed above, this Court should conclude as a matter of law that the Commissioner appointed Sam Branch and J.D. Sparks, not State Farm, to the MWUA Board of Directors during the relevant time period, thus precluding any theory of State Farm's direct liability in this action. Therefore, the only plausible theory of recovery must be based on

vicarious liability. In order to impose vicarious liability, however, Plaintiffs must demonstrate that Sam Branch and J.D. Sparks were acting on behalf of State Farm, as its agents, at the time they served on the MWUA Board of Directors. Plaintiffs have failed to do so.

Under Mississippi law, agency exists when one acts under either the express or apparent authority of a principal. *Certain Underwriters at Lloyd's of London v. Pettey*, 770 So.2d 39, 45 (Miss. 2000). The burden of proof as to the existence and scope of any agency relationship rests with the party asserting it. *See*, *e.g.*, *Trinity Mission of Clinton, LLC v. Barber*, 988 So.2d 910, 916 (Miss. 2007); *Aladdin Constr. Co. v. John Hancock Life Ins. Co.*, 914 So.2d 169, 177 (Miss. 2005) (existence of agency relationship); *Booker ex rel. Certain Underwriters at Lloyds of London v. Pettey*, 770 So.2d 39, 45 (Miss. 2000); *Thorp Finance Corp. v. Tindle*, 162 So.2d 497, 500 (Miss. 1964) (existence and scope of agency relationship). Neither the fact nor scope of agency may be established through the extrajudicial statements of the purported agent, and any such out of court statements are inadmissible in evidence at trial. *See, e.g., Hamilton v. Bradford*, 502 F. Supp. 822, 830 (S.D. Miss. 1980); *Capital Assocs., Inc. v. Sally Southland, Inc.,* 529 So.2d 640, 644-45 (Miss. 1988); *Austin v. Gulf States Finance Co.*, 308 So.2d 90, 93 (Miss. 1975); *Thorp*, 162 So.2d at 501.

The Plaintiffs in this action bear the burden of proving that Sam Branch and J.D. Sparks were acting as State Farm's authorized agents if State Farm is to be held vicariously liable for their actions as MWUA directors. Plaintiffs, however, have submitted no evidence proving that

Sam Branch or J.D. Sparks had either actual or apparent authority to act on behalf of State Farm during their respective tenures on the MWUA Board.[5]

First, the record clearly reflects that neither Sam Branch nor J.D. Sparks had actual authority to act as State Farm's agents during their respective tenures on the MWUA Board. Indeed, the fact that Mr. Branch and Mr. Sparks were appointed by the Commissioner of Insurance, demonstrates that Mr. Branch and Mr. Sparks's actual authority was derived from the Commissioner and the MWUA, not from State Farm. As Mr. Branch testified in his deposition, which was read into the trial record, he never attended the MWUA Board meetings as a representative of State Farm, and his membership on the Board was dependent solely upon the Commissioner's approval. (Branch Dep. 21:11-17, 22:16-22.)

J.D. Sparks similarly testified at trial that he too never acted on behalf of State Farm when he served on the MWUA Board of Directors. Mr. Sparks testified that he not State Farm was a member of the Board, that no one at State Farm ever told him how to vote, that no one at State Farm ever gave him any direction, and that he never reported to anyone at State Farm regarding the MWUA Board meetings. (Sparks URTT at 42.) Plaintiffs made no attempts to impeach this testimony through cross-examination. (*See* Sparks URTT at 63-73 (Corlew re-cross).)

Nothing in the record contradicts Mr. Branch or Mr. Sparks's testimony that they were not acting on behalf of State Farm when they served in their capacity as MWUA Board

[5] It should be noted that Defendant State Farm does not dispute that Sam Branch and J.D. Sparks were in fact employees and agents of State Farm during the relevant time period with respect to their duties as agency field executives. That particular agency status, however, is separate and apart from whether they were acting as agents for State Farm when they served on the Board of Directors for the MWUA. There can be no doubt that Mr. Branch and Mr. Sparks's status as MWUA Board members was outside the scope of their duties as agency field executives.

members. Thus, there is no evidence from which the jury could reasonably conclude that Mr. Branch or Mr. Sparks had the actual authority to act on behalf of and therefore bind State Farm through their actions on the Board of Directors of the MWUA.

Second, Plaintiffs have presented no evidence that Sam Branch or J.D. Sparks had apparent authority to bind State Farm through their service on the MWUA Board. The Mississippi Supreme Court has consistently held that a supposed principal will be bound by its agent under the theory of apparent authority only when the party alleging authority can show "(1) acts or conduct of the principal indicating the agent's authority, (2) reasonable reliance upon those acts by a third person, and (3) a detrimental change in position by the third person as a result of that reliance." *Trinity Mission*, 988 So. 2d at 916; *Eaton v. Porter,* 645 So.2d 1323, 1325 (Miss. 1994). "Apparent authority exists when a reasonably prudent person, having knowledge of the nature and the usages of the business involved, would be justified in supposing, based on the character of the duties entrusted to the agent, that the agent has the power he is assumed to have." *Id*. S*ee also Terrain Enterprises,* 774 F.2d at 1322 (apparent authority requires good faith and reasonable reliance by a third party on the actions of the principal).

Tantamount to a finding of agency based on apparent authority is a finding that the acts or conduct of the *principal* in some way demonstrate the agent's apparent authority. As the Mississippi Supreme Court held, "Mississippi law requires that the acts or conduct indicating the agent's authority be performed by the principal, not the agent." *Trinity Mission*, 988 So. 2d at 916; *see also Terrain Enterprises, Inc. v. Western Cas. & Sur. Co.,* 774 F.2d 1320, 1322 (5th Cir. 1985) (applying Miss. law). The only evidence Plaintiffs have shown that State Farm did anything with respect to Mr. Branch or Mr. Sparks's status as MWUA Board members was to

recommend them to the Board. Recommending them to the Board, however, is insufficient to demonstrate that State Farm was holding them out as agents for the purposes of their services on the MWUA Board, especially considering their memberships were subject to the Commissioner's approval. To hold otherwise, would subject a corporation to liability based solely on the fact that its employees serve on the Boards of unrelated entities.

Plaintiffs have failed to meet their burden in proving that Sam Branch or J.D. Sparks's actions on the MWUA Board were taken *as agents of State Farm*. Indeed, Plaintiffs have presented no testimony nor introduced any documentary evidence to contradict Mr. Branch and Mr. Sparks's trial testimony that they were not acting as State Farm agents in their service on the MWUA Board of Directors. Nor have Plaintiffs submitted any admissible evidence that State Farm held Mr. Branch or Mr. Sparks out as its agents with respect to their service on the MWUA Board. Finally, Plaintiffs have failed to present any evidence that they reasonably relied upon any acts or conduct of State Farm in believing that Mr. Branch and Mr. Sparks were serving on the Board as State Farm's authorized agents, or that Plaintiffs detrimentally changed their position as a result of that reliance.

As a result, there is no evidentiary basis upon which a reasonable juror could conclude that Sam Branch or J.D. Sparks were acting as authorized agents of State Farm with respect to any actions they took as members of the MWUA Board of Directors. Consequently, Plaintiffs' vicarious liability claims must also fail and judgment in favor of State Farm on Plaintiffs' claims should be granted as a matter of law.

CONCLUSION

The Commissioner's records, which constitute the sole and exclusive evidence of whom the Commissioner appointed to the MWUA Board, unambiguously demonstrate that the

Commissioner appointed Sam Branch and J.D. Sparks in their individual capacities as members of the MWUA Board during the relevant time period. Plaintiffs have failed to introduce any evidence showing that State Farm itself was a member of the MWUA Board during the relevant time period. Therefore, State Farm cannot as a matter of law be held directly liable for the actions of the MWUA Board. Moreover, Plaintiffs have failed to introduce sufficient evidence that a reasonable juror could conclude that Sam Branch and J.D. Sparks acted as State Farm's agents when they served on the Board of the MWUA such that State Farm could be held vicariously liable for their actions. Therefore, for the foregoing reasons, State Farm respectfully requests that its motion for judgment as a matter of law be granted.

This the 16th day of March, 2009.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

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ATTORNEYS FOR STATE FARM FIRE AND CASUALTY COMPANY

CERTIFICATE OF SERVICE

I, E. Barney Robinson III, one of the attorneys for State Farm, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to all counsel of record, via the means directed by the CM/ECF system.

THIS the 16th of March, 2009.

/s/E. Barney Robinson III
E. BARNEY ROBINSON III