

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

**THOMAS C. and PAMELA McINTOSH**

**PLAINTIFFS**

**VERSUS**

**1:06-CV-1080-LTS-RHW**

**STATE FARM FIRE & CASUALTY COMPANY,  
FORENSIC ANALYSIS & ENGINEERING  
CORPORATION, AND E.A. RENFRO E &  
COMPANY, INC.**

**DEFENDANTS**

**STATE FARM'S MOTION TO ENFORCE THIS COURT'S APRIL 14, 2008 ORDER [1180]  
AND EXCLUDE THE TESTIMONY OF PLAINTIFFS' EXPERT WITNESS RALPH SINNO  
OR, IN THE ALTERNATIVE, TO LIMIT HIS TESTIMONY**

State Farm Fire and Casualty Company respectfully submits this motion to exclude the testimony of Plaintiffs' expert witness R. Ralph Sinno (who has opined that *all* of the damage to Plaintiffs' house was caused by wind) or, in the alternative, to limit the balance of his testimony, if any, to that otherwise properly disclosed pursuant to Federal Rule of Civil Procedure 26(a)(2)(b).<sup>1</sup>

In its April 14, 2008 Order [Doc. 1180], this Court granted State Farm's "Motion in Limine No. 11: To Preclude Plaintiffs From Introducing Testimony or Evidence That The Damage To Their Home Was Caused Entirely By Wind" [Doc. 1014]. In that motion, State Farm noted that Plaintiffs received full policy limits under their flood insurance policy in the amounts of \$250,000 for flood damage to their dwelling and \$100,000 for flood damage to their contents. *See* Doc. 1014 at 2. In granting State Farm's motion, this Court held that "the plaintiffs' receipt of flood insurance benefits constitutes a judicial admission that flood damage occurred and precludes the plaintiffs' denying that at least the amount of

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<sup>1</sup> In the interests of judicial economy, State Farm respectfully requests that this Court waive the requirement of filing a separate brief inasmuch as all authority and arguments in support of this motion are set forth herein.

damage represented by the flood insurance payment was caused by flooding.” *See* Doc. 1180 at 3. The law provides that a judicial admission is “conclusive” and “binding on the party making [it].” *Martinez v. Bally’s La., Inc.*, 244 F.3d 474, 476-77 (5th Cir. 2001) (citation omitted). It “has the effect of withdrawing a fact from contention” and may not be “controverted or explained by the party who made it.” *Id.*

Notwithstanding Plaintiffs’ acceptance of flood payments and their corresponding judicial admission, Plaintiffs’ structural engineering expert Ralph Sinno opines that **all** of the damage to Plaintiffs’ house was caused by wind:

Most of **the damage** you see from pictures, I – I would suspect about 99 percent is really – 99 percent, I would say that **is wind damage**, no question about it. The water did only washout. **The word “damage” should not be used with the water at all in this case.**

Deposition of R. Sinno at 78:4-8 (Ex. A). Likewise, in his report, Dr. Sinno opines that there is “no justification whatsoever for the water surge to be blamed to have caused **any** structural damage to the wall framing and the envelope of the house.” Report of R. Ralph Sinno at 19 (Ex. B) (emphasis added).

Dr. Sinno’s opinion, as expressed in his Rule 26 report and deposition, is that wind was the cause of **all** of the damage to Plaintiffs’ home. Yet, this opinion is flatly inconsistent with Plaintiffs’ judicial admission and impermissible under the Court’s ruling. *See* Doc. 1180 at 3. Indeed, State Farm previously and specifically referred to Dr. Sinno’s report and testimony in its motion [Doc. 1014 at 2] and its reply in support of the motion [Doc. 1101 at 4-5], which this Court granted [Doc. 1180 at 3]. His testimony that wind was the cause of **all** of the damage to Plaintiffs’ house must be excluded.

This Court has previously granted similar relief in other Katrina matters. For example, in *Dickinson v. Nationwide Mutual Fire Insurance Co.*, this Court held that plaintiffs were estopped from denying that their home had experienced some storm surge flooding because of their application for a flood damage grant, and precluded their expert witness from testifying that the home was completely destroyed by wind. *See Dickinson*, No. 06cv198-LTS-RHW, 2008 WL 2568140, at \*1 (S.D. Miss. June 24, 2008). Likewise, in another Katrina case where plaintiffs accepted flood policy benefits for damage

to their destroyed home, *Fowler v. State Farm Fire & Casualty Co.*, the court “prohibited [plaintiffs] from mentioning, submitting evidence, or eliciting testimony, in the form of expert opinions or otherwise, to the effect that Plaintiffs’ property was completely destroyed by the force of wind.” See *Fowler*, No. 06cv489-HSO-RHW, Order at 16-17 (S.D. Miss. July 25, 2008) [Doc. 372]. A similar ruling is warranted here.

**CONCLUSION**

Pursuant to this Court’s April 14, 2008 Order [Doc. 1180], Dr. Sinno should be precluded from testifying at trial entirely because his opinion is irreconcilable with the Plaintiffs’ conclusive judicial admission of flood damage. In the alternative, this Court should limit the balance of his testimony, if any, to that otherwise properly disclosed pursuant to Federal Rule of Civil Procedure 26(a)(2)(b).

Dated: August 26, 2008

Respectfully submitted,

*/s/ John A. Banahan*  
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**CERTIFICATE OF SERVICE**

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

DATED, this the 2<sup>nd</sup> day of September, 2008.

/s/ John A. Banahan  
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