

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JUDY M. GUICE,
Plaintiff,

VERSUS CIVIL ACTION NO. 1:06cv1 TLS-RHW

STATE FARM FIRE AND CASUALTY
COMPANY,
Defendant.

VIDEOTAPED DEPOSITION OF
STEPHAN HINKLE

Taken at the Offices of Baker, Donelson,
Bearman, Caldwell & Berkowitz, PC, 4268
I-55 North, Jackson, Mississippi, on
Tuesday, October 10, 2006, beginning at
9:00 a.m.

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1 is to be reimbursed to State Farm by the federal
2 government?

3 A. Yes. That's federal money, exactly.

4 Q. The \$800 million that was paid for what
5 you categorized as windstorm peril is paid by
6 State Farm; is that correct?

7 A. Yes.

8 MR. PHILLIPS:

9 Let's mark as Exhibit 16 a copy of the
10 September 13, 2005 Wind/Water Protocol.

11 (Exhibit 16 was marked.)

12 MR. PHILLIPS:

13 Q. Mr. Hinkle, did you author this exhibit?

14 A. I authored in conjunction with other
15 people, yes.

16 Q. All right. When did you author it?

17 A. I believe I started on it September 9th
18 or 10th.

19 Q. And you authored it in conjunction with
20 who?

21 A. The -- there were other consultants,
22 Mike Tucker, Keith Hathaway, Mike Sebald and a
23 claim director by the name of Michael Carroll
24 was also involved. And then several attorneys.

25 Q. Who were the attorneys?

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1 how it -- the final draft that went out was
2 after the changes were made by the various
3 people that looked at it, right?

4 A. Yes.

5 Q. And I see that it's got a summary,
6 because of the combination wind/water damages,
7 these have been developed and intended to be
8 used as a guide for wind and water claims in
9 Louisiana, Mississippi and Alabama. And then it
10 says, "The protocol below outlines the process
11 that should be used for determination of
12 coverage in those locations."

13 And down at the bottom, it's got the
14 four categories, which were changed a little
15 bit. One, damage to the property caused by
16 windstorm. Two, damage to separate portions of
17 the property that can be attributed to either
18 windstorm or excluded water. Do you know who
19 added the separate portions concept?

20 A. I don't remember.

21 Q. And then the next two are, Number 3,
22 damage to the property caused by water with no
23 available coverage; and 4, damage to property
24 was caused by flood waters covered by an
25 available flood policy. How did those changes

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1 come about, if you recall?

2 A. That's editing by various members of the
3 group.

4 Q. Do you know whose input that was?

5 A. No, I don't.

6 Q. Okay. Let's go over to the next page,
7 where the coverage determination factors are
8 discussed. And I want to ask specifically about
9 Section 3 and Section 4.

10 A. Okay.

11 Q. Section 3 says, "When the investigation
12 indicates that the damage was caused by excluded
13 water and the claim investigation does not
14 reveal independent windstorm damage to separate
15 portions of the policy, there is no coverage
16 available."

17 Now, the requirement of damage to
18 separate portions of the policy -- I mean, of
19 the property, separate portions of the property,
20 is that found in the State Farm contract?

21 A. No.

22 Q. Where did the requirement of damage to
23 separate portions of the property come from to
24 be included in this wind/water protocol?

25 A. I don't know. Somehow in the editing
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1 process, somebody thought that needed to be put
2 in there, but I don't know who.

3 Q. The policy doesn't require that, does
4 it?

5 A. You are correct. You are correct.

6 Q. And what about the accidental direct
7 physical loss that's a total loss, like Judy
8 Guice's, a slab case, where there's damage not
9 to a separate portion of the property, where
10 there's damage caused by wind and then the water
11 washes everything that's left away, even though
12 there's no damage to separate portions of the
13 property, the part that's covered by -- the part
14 that was caused by wind is covered under the
15 policy, isn't it?

16 MR. REED:

17 Object to the form.

18 MR. PHILLIPS:

19 You can answer.

20 A. Yes. We discussed that earlier. If
21 it's separate from the flood, it's covered.

22 Q. And under the -- so you admit, do you
23 not, that the coverage for the loss caused by
24 wind that preceded the water damage is covered?

25 A. I do.

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1 Q. And under the accidental direct physical
2 loss policy, whose burden is it to show what
3 percentage of the loss was caused by water?

4 MR. REED:

5 Object to the form.

6 MR. PHILLIPS:

7 Q. It's State Farm's, is it not?

8 MR. REED:

9 Object to the form.

10 MR. PHILLIPS:

11 Q. You can answer it.

12 A. It's our burden -- I'm not going to use
13 the word "burden." It's our function to prove
14 our exclusions.

15 Q. And to prove your exclusion, you have to
16 prove, under the terms of this policy, as
17 drafted by State Farm, you have to prove what
18 part of the loss would not have occurred in the
19 absence of water, right?

20 MR. REED:

21 Object to the form.

22 MR. PHILLIPS:

23 Q. Look at the policy. Tell me what you
24 have to prove under the State Farm policy, as
25 drafted by State Farm.

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1 A. You have to prove the exclusion that --

2 Q. It's Paragraph 2 of the exclusion, isn't
3 it?

4 A. Right. Exactly.

5 Q. So you have to prove what? You have to
6 prove that the loss --

7 A. The loss which would have not occurred
8 in the absence of water.

9 Q. And so it's State Farm's responsibility,
10 before denying coverage, to prove what part of
11 the loss would not have occurred in the absence
12 of water?

13 MR. REED:

14 Object to the form.

15 MR. PHILLIPS:

16 Q. Isn't it?

17 A. Ask that again.

18 Q. I'm having to read that policy there.

19 MR. REED:

20 Well, you didn't read from it. You
21 added words.

22 MR. PHILLIPS:

23 Okay. Well, I will read from it.

24 Q. As you just testified, it is State
25 Farm's responsibility to prove that the loss, if
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1 it wants it to be excluded, falls under the
2 terms of the exclusion as drafted by State Farm.
3 That's correct, is it not?

4 A. Yes. Yes, it is.

5 Q. Now, read for me the first sentence of
6 the exclusion to which water damage applies so
7 we will know what it is that State Farm has to
8 prove to show that it falls under the exclusion.

9 A. "We do not insure under any coverage for
10 any loss which would not have occurred in the
11 absence of water."

12 Q. All right. So it's State Farm's
13 responsibility to prove that, is it not?

14 A. Yes. Yes.

15 Q. Okay. It doesn't say that in the
16 wind/water protocol, does it?

17 A. No, it does not.

18 Q. And it didn't say that in your draft of
19 the wind/water protocol, your first draft
20 either, did it?

21 A. It doesn't say that, no.

22 Q. Okay. It's not the policyholder's
23 burden to prove what part of the loss was caused
24 by wind, is it?

25 MR. REED:

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1 Object to the form.

2 MR. PHILLIPS:

3 Q. You can answer it. It's the
4 policyholder's --

5 A. Well --

6 Q. Well, go ahead.

7 A. I don't want to get into the burden and
8 all that, but the policyholder has to
9 demonstrate a loss.

10 Q. Right. The policyholder has to
11 demonstrate an accidental direct physical loss,
12 doesn't he?

13 A. Yeah, and how much the loss is.

14 Q. That's right. And the whole loss, when
15 there's nothing there, the policyholder has
16 demonstrated, as you say -- we won't use the
17 word "burden" -- the policyholder has
18 demonstrated an accidental direct physical loss
19 for the whole kit and caboodle, has she not?

20 A. If you say it's a slab, totally
21 destroyed house, that would be true.

22 Q. And then it is State Farm's -- I won't
23 use the word "burden." State Farm's obligation,
24 let's put it that way, to demonstrate what part
25 of that loss is covered by -- what part of that

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JUDY M. GUICE

PLAINTIFF

VS.

NO. 1:06cv1-TLS-RHW

STATE FARM FIRE AND
CASUALTY COMPANY

DEFENDANT

**RESPONSES OF STATE FARM FIRE AND CASUALTY COMPANY
TO PLAINTIFF'S INTERROGATORIES**

COMES NOW State Farm Fire and Casualty Company (State Farm) and, pursuant to Rules 26 and 33, responds to Plaintiff's Interrogatories as follows:

GENERAL OBJECTION

State Farm's Responses to Plaintiff's Interrogatories have been prepared in accordance with the Federal Rules of Civil Procedure pursuant to a reasonable and duly diligent investigation and search for the documents and information requested. To the extent Plaintiff's Interrogatories purport to require more, State Farm objects on the grounds that (a) the Interrogatories seek to compel State Farm to conduct a search beyond the scope of permissible discovery contemplated by the Federal Rules of Civil Procedure and (b) compliance with the Interrogatories would impose an undue burden and expense on State Farm.

By submitting these responses, State Farm does not in any way adopt Plaintiff's characterizations or purported definitions of words and phrases contained in Plaintiff's Interrogatories. State Farm objects to those definitions to the extent that they are inconsistent with either (i) the definitions set forth by State Farm in its responses or (ii) the ordinary and customary meaning of such words and phrases, and the use of undefined terms by Plaintiff may require objection to certain Interrogatories themselves. Likewise, State Farm objects to Plaintiff's instructions and definitions to

adjusting the claim. State Farm refers Plaintiff to the previously produced homeowners and flood claims files. Persons involved include Joe Caruso and Kirk Angelle, both of whom are identified in the produced claims files and in State Farm's Initial Disclosures. Further, State Farm currently does not have access to certain employees who may have information responsive to this Interrogatory. Discovery is ongoing and State Farm has not completed its investigation of the facts relating to this litigation. State Farm reserves the right to supplement as needed.

INTERROGATORY NO. 2: Identify every person with whom Stephan Hinkle talked or corresponded whether directly by telephone, by e-mail, or otherwise, between August 24, 2005, *i.e.* 5 days before Hurricane Katrina, and September 14, 2005 concerning the development of, drafting of, contents of, policy interpretations in, or other matters regarding the September 13, 2005 Wind/Water Protocol attached as Exhibit B hereto.

RESPONSE: Subject to and without waiver of the objections previously stated, State Farm objects to this Interrogatory because it seeks information neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. State Farm also objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege. Subject to and without waiver of these objections, Mr. Hinkle communicated with the following individuals, during the period of time about which you ask, about the Wind/Water Protocol:

Keith Hathaway, State Farm Claim Consultant, Florida Zone;

Mike Tucker, State Farm Claim Consultant, Central Zone;

Terry Blalock, State Farm Claim Section Manager;

David Randel, State Farm Claim Section Manager;

Mike Sebald, State Farm Consultant;

Michael P. Carroll, P&C Claims Director;

Tim Marron, State Farm Counsel;

Kimberly Bray, State Farm Counsel;

Mark Wells, State Farm Counsel;

Tamarra Rennick, State Farm Counsel;

Isabel Vidal, State Farm Counsel; and

John Ashenfelter, State Farm Counsel.

If there are others, this Response will be supplemented.

INTERROGATORY NO. 3: Prior to August 24, 2005, (5 days before Katrina) did State Farm have any written wind/water hurricane coverage protocol document? If so, produce a copy of each pre-August 24, 2005 version.

RESPONSE: Subject to and without waiver of the objections previously stated, State Farm objects to this Interrogatory as seeking information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks materials not related to the claims procedures at issue in Mississippi at the time Plaintiffs' claim was being adjusted and because the term "wind/water hurricane coverage protocol document" has no generally accepted meaning to State Farm. State Farm further objects to this Interrogatory to the extent it seeks trade secrets or confidential, proprietary information that would cause competitive harm to State Farm if publicly disclosed. Subject to and without waiver of the stated objections, State Farm did not have a written Wind/Water Protocol as such prior to August 24, 2005.

INTERROGATORY NO. 4: In State Farm's claim file relating to the Plaintiff that has been produced in this action, there appears a document entitled "Request For Engineer" dated October 1,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JUDY M. GUICE, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

PLAINTIFF

VS.

CIVIL ACTION NO. 1:06cv1-LTS-RHW

STATE FARM FIRE AND CASUALTY
COMPANY

DEFENDANTS

**RESPONSE OF STATE FARM FIRE AND CASUALTY COMPANY
TO SUPPLEMENTAL INTERROGATORY**

COMES NOW State Farm Fire and Casualty Company ("State Farm"), pursuant to Rules 26 and 33, F.R.C.P and responds to the Plaintiff's Supplemental Interrogatory as follows:

SUPPLEMENTAL INTERROGATORY NO. 1: State the full names, residence addresses, business addresses, and the proper corporate name of the employer of each of the following individuals identified in the deposition of Stephan Hinkle: Mike Tucker, Robert Kluchin, Isabel Videl, John Clausen, Mike Carroll, Jim Burwell, Keith Hathaway, Mike Sebald, and Danny Smith.

RESPONSE: In addition to its previously stated General Objections, State Farm further objects to this Supplemental Interrogatory to the extent it is overly broad and seeks information that is neither relevant to the claims or defenses of any party, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, State Farm specifically objects to providing the residence addresses of these individuals, inasmuch as they have no connection with this litigation except as employees of State Farm. As such they have a right of privacy as to their residence information, unless they are listed in the Bloomington Telephone directory, in which case the

information is readily available to counsel for Plaintiff. Subject to and without waiver of these objections, the business addresses for the listed individuals are:

Mike Tucker
Robert Kluchin
Isabel Videl
John Clausen
Mike Carroll
Jim Burwell
Keith Hathaway
Mike Sebald
State Farm Mutual Automobile Insurance Company
One State Farm Plaza
Bloomington, Illinois 61710-0001

Dannye Smith
4 Willow Point, Suite 3
Hattiesburg, Mississippi 39402-1150

These individuals are only to be contacted through counsel for State Farm.

This the 15th day of November, 2006.

Respectfully submitted,


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AND CASUALTY COMPANY

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, Tiffanee Wade-Henderson, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the foregoing to:

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Jason L. Nabors, Esq.
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This the ^{5th}15 day of November, 2006.


TIFFANEE WADE-HENDERSON