

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

**DANIEL B. O'KEEFE,  
CELESTE A. FOSTER O'KEEFE,  
AND THE DANCEL GROUP, INC.**

**PLAINTIFFS**

**VS.**

**CAUSE NO. 1:08cv600-HSO-LRA**

**STATE FARM FIRE & CASUALTY  
COMPANY and MARSHALL J. ELEUTERIUS and  
JOHN AND JANE DOES A, B, C, D, E, F, G and H**

**DEFENDANTS**

**PLAINTIFFS' REBUTTAL TO STATE FARM FIRE AND  
CASUALTY'S [106] SUPPLEMENT TO MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS' MOTION [85] FOR LEAVE TO AMEND**

COME NOW THE PLAINTIFFS, Danny and Celeste O'Keefe, and the Dancel Group, by and through undersigned counsel, and file their Rebuttal to State Farm Fire's Supplement to Memorandum in Opposition to Plaintiffs' Motion for Leave to Amend, as follows:

1. Once again, State Farm Fire is citing an opinion that is distinguishable from the case at bar in an attempt to avoid justice. As set forth in Plaintiffs' [85] Motion, and [101] Rebuttal, State Farm Fire's continuing assertion that Plaintiffs have not set forth a specific, actionable claim against State Farm Mutual is simply false. Plaintiffs' proposed Amended Complaint sets forth viable claims against State Farm Mutual under Mississippi law, which claims are supported by undisputed facts, not mere assertions. As set forth in the referenced pleadings, the claims of the Plaintiffs herein are much more akin to the claims in *Guice*, where this Court GRANTED a Motion to Amend to add State Farm Mutual as a co-defendant (even after the deadline for filing amended pleadings had passed), than the claims of the plaintiffs in the cases where this Court has refused to allow State Farm Mutual to be made and/or stay a Defendant.

2. State Farm's "Supplemental Evidence" adds nothing of substance or merit to its argument, and does not change the fact that Plaintiffs are attempting to pursue valid claims against a party that directly participated in the torts committed against these Plaintiffs. For the reasons set forth in Plaintiffs' [85] Motion and [101] Rebuttal, Plaintiffs' Motion to Amend should be granted.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request the Court enter an Order Granting Plaintiffs' Motion for Leave to Amend, and granting any and all additional relief in favor of the Plaintiffs deemed appropriate by this Honorable Court.

Respectfully submitted, this the 22<sup>nd</sup> day of May, 2009.

**DANIEL B. O'KEEFE, CELESTE A. FOSTER  
O'KEEFE, INDIVIDUALLY AND D/B/A THE  
DANCEL GROUP, INC.; AND THE DANCEL  
GROUP, INC.  
PLAINTIFFS**

By: /s/ Christopher C. Van Cleave  
CHRISTOPHER C. VAN CLEAVE (MSB #10796)

CLYDE H. GUNN, III (MSB #5074)  
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**CERTIFICATE OF SERVICE**

I, undersigned counsel of record, hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the EFC system which sent notification of such filing to the following:

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**Attorneys for State Farm Fire & Casualty Company  
And Marshall J. Eleuterius**

Respectfully submitted, this the 22<sup>nd</sup> day of May, 2009.

By: */s/ Christopher C. Van Cleave*

CHRISTOPHER C. VAN CLEAVE (MSB #10796)