

IN THE CIRCUIT COURT OF HANCOCK COUNTY, MISSISSIPPI

PATRICIA NILSON
and ROBERT NILSON

PLAINTIFFS

V.

FILED ON NO. 07-0250

NATIONWIDE MUTUAL INSURANCE CO., JUL 06 2007
WILLIAM G. HEWES, III,
Individually and as Agent of NATIONWIDE
MUTUAL INSURANCE CO.,
and JOHN DOES 1-10

PAMELA THOMAS METZLER
CIRCUIT CLERK, HANCOCK CO.
BY [Signature] D.C.

DEFENDANTS

ORIGINAL COMPLAINT AND DEMAND FOR JURY TRIAL

COME NOW the Plaintiffs Patricia Nilson & Robert Nilson, through undersigned counsel, and file this Complaint against Nationwide Mutual Insurance Company, William G. Hewes, III, Individually and as an agent of Nationwide Mutual Insurance Company, and John Does 1-10. As grounds for this Complaint, the Plaintiffs state as follows:

I. PARTIES

1. The Plaintiff Patricia Nilson is an adult resident citizen of Hancock County, Mississippi, whose residential address is 69265 Diamondhead Dr. E, Diamondhead, MS 39525. The Plaintiff is the named insured under the policy or policies of insurance that are the subject of this Complaint. The Plaintiff suffered the total loss of her property located at 137 Mapunapuna Drive, Diamondhead, MS 39525, during Hurricane Katrina, which struck the Mississippi Gulf Coast on August 29, 2005.
2. The Plaintiff Robert Nilson is an adult resident citizen of Hancock County, Mississippi, whose residential address is 69265 Diamondhead Dr. E, Diamondhead, Ms 39525. The Plaintiff is the named insured under the policy or policies of insurance that are the subject of this Complaint. The Plaintiff suffered the total loss of his property located at 137 Mapunapuna Drive, Diamondhead, MS 39525, during Hurricane Katrina, which struck the Mississippi Gulf Coast on August 29, 2005.

EXHIBIT
"A"

3. The Defendant Nationwide Mutual Insurance Company (hereafter Nationwide) is an insurance company with its corporate headquarters located at One Nationwide Plaza, Columbus, OH 43216. Nationwide Mutual Insurance Company is licensed to do business in the State of Mississippi and conducts substantial business herein. Nationwide Mutual Insurance Company may be served with process of this Court via service on its registered agent, CT Corporation System of Mississippi at 645 Lakeland East Drive, Suite 101, Flowood, Mississippi, 39232 or on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Miss. Code Ann. 83-21-1. In the alternative, Nationwide Mutual Insurance Company may be served by process of this Court via United States Certified Mail pursuant to Miss. R. Civ. P. 4.

4. Defendant William G. Hewes, III is an insurance agent for Nationwide Insurance and Nationwide Mutual. The Defendant may be served 10027 Central Avenue, #C, D'Iberville, MS 39540 or wherever he may be found.

5. Defendants John Does 1-10 are those persons, agents, adjusters, employees, and/or representatives of Defendants Nationwide Mutual and Agent William G. Hewes, III whose conduct as described herein caused or contributed to the damages of the Plaintiffs, all of whose names and legal identities are unknown to the Plaintiffs at this time, but will be substituted by amendment when ascertained, individually and jointly.

6. Hereinafter, unless specifically noted otherwise, the designation of the Defendant Nationwide shall represent collectively, all Defendants, including Nationwide Mutual Insurance Company, Agent William G. Hewes, III, and John Does 1-10.

II. JURISDICTION AND VENUE

7. This action arises out of the tortious breach by Defendants of their contract to pay insurance

benefits due to the Plaintiff under the subject insurance policies.

8. This Court has subject matter jurisdiction over this cause of action pursuant to applicable Mississippi statutory law.

9. Venue is proper in the Circuit Court of Hancock County, Mississippi pursuant to Miss. Code Ann. §11 -11-3. The acts and omissions giving rise to the Plaintiff's cause of action occurred in Hancock County, Mississippi, and the subject property is located in Hancock County, Mississippi.

10. Plaintiffs' claims are brought solely under Mississippi law. Plaintiffs state that they do not bring any federal claims and disclaim any and all claims under any federal laws, statutes or regulations.

III. ACTS OF AGENTS FOR DEFENDANTS

11. Wherever it is alleged in this Complaint that Defendant Nationwide did any act or thing or failed to do any act or thing, it is meant also that the officers, agents or employees of Defendant Nationwide respectively performed, participated in, or failed to perform such acts or things while in the course and scope of their employment or agency relationship with Defendant Nationwide. To reiterate, wherever the Complaint refers to "Defendant", it applies specifically to Nationwide, Agent Hewes, their agents and employees, both individually and collectively .

IV. FACTS

12. Prior to August 29, 2005, the Plaintiffs purchased real estate located at 137 Mapunapuna Drive, Diamondhead, Mississippi, 39525. Situated upon and a part of this real estate was their dwelling and extensions.

13. Prior to August 29, 2005, the Plaintiffs consulted the office of Defendant Hewes regarding the protection of their home and lifestyle. Though Plaintiffs' agent was Defendant William G.

Hewes, III, they primarily dealt with Defendant Hewes' office staff.

14. Plaintiffs purchased multiple insurance policies from Defendant Hewes. Said policies included the subject policy Nationwide Homeowners policy 63 23 MP 667106 along with Flood policy 63 23 727653. A copy of the subject homeowners' policy is attached hereto as Exhibits "A". Said policies were bound, effective and kept current through August 29, 2005. (See Exhibits "B" for subject policy's declaration page)

15. The subject policy provided coverage for damage to Plaintiffs home at 137 Mapunapuna Drive, Diamondhead, Mississippi, 39525, as described in the declarations page (See Exhibit "B.") Plaintiffs were told they were purchasing the "golden" policy, the best policy Nationwide had that would give them full replacement cost and would automatically increase each year to keep up with the value of their home. Plaintiffs purchased their flood policy at the same time and were given to understand that the flood policy would be handled in the same manner as the homeowners' policy.

16. Plaintiffs contacted the Defendant Hewes' office approximately once a year when they began to receive notices from their mortgage company that their flood insurance policy benefit amounts were insufficient for their needs. (See Exhibit C) Defendant Hewes and staff assured Plaintiffs that was incorrect and, upon information and belief, even sent documentation to the mortgage company, Washington Mutual, confirming that Plaintiffs' were fully covered for any event.

17. At all times, the Plaintiffs paid the insurance premiums on all policies, including the Subject Policy, in a timely fashion and manner.

18. Plaintiffs, whose residence was in close proximity to Bay of St. Louis and the Gulf of Mexico, purchased the insurance policies from Defendants Hewes and Nationwide for one of the express and primary purposes of insuring against any property damage that could possibly result

from hurricanes impacting the Mississippi Gulf Coast, including any and all damage proximately, efficiently, and often caused by hurricane, wind, rain, and storm surge proximately caused by hurricanes.

19. Defendant Hewes, through his staff, represented to Plaintiffs that the policies purchased through his office would provide to Plaintiffs the full coverage they had requested.

20. In selling the Subject Policy to Plaintiffs and subsequently collecting premiums under the Subject Policy, Nationwide and its agent William G. Hewes, III, expressly represented to Plaintiffs that they would have full and comprehensive coverage for any and all hurricane damage, including any and all damage proximately, efficiently, and typically caused by hurricane wind and storm surge proximately caused by hurricanes.

21. The subject policy, through its rider entitled "Hurricane Coverage and Deductible Provision Endorsement," purported to provide full and comprehensive coverage for all loss or damage caused by the peril of windstorm during a hurricane.

22. Based on the representations of hurricane coverage made by Nationwide and Agent William G. Hewes, III, and the express policy provisions, the Plaintiffs had the reasonable expectation that the subject policy would provide full and comprehensive coverage for all hurricane damage to the insured residence and relied entirely upon the Defendants' representations made as to the contract for insurance. The declaration page relative to the Subject policy included under Forms and Endorsements Made Part of Policy the Nationwide identification of H-6107, Hurricane Coverage and Deductible Provision, which further encouraged Plaintiffs to expect that they would be covered in the event of hurricane damage.

23. Plaintiffs' Nationwide policies were in force on August 29, 2005, when Hurricane Katrina

struck the Mississippi Gulf Coast.

24. According to the terms of the subject policies, the Plaintiffs reasonably believed that losses caused by the wind and water action of a hurricane were covered by the terms of the combined policies. The Plaintiffs relied upon the representations of one or more of the Defendants when the policies, including the subject policy, was purchased, issued and delivered by Defendant Nationwide and Defendant Agent Hewes.

25. On August 29, 2005, within the policy coverage period of the subject policies, Plaintiffs' home suffered a **total loss** as a result of Hurricane Katrina.

26. As required under the subject policy, Plaintiffs provided timely notice to Defendant Nationwide and Defendant Agent Robinson as well as AIG of the loss suffered as a result of Hurricane Katrina.

27. Nationwide paid Plaintiffs \$142,800.00 benefits contained in their flood policy under the coverage for their dwelling, along with \$60,800.00 for their contents loss. Plaintiffs accepted said payments as they represented the policy limits of their flood policy but they were in no way made whole.

28. Plaintiffs then turned to their Nationwide homeowners policy and hurricane endorsement, the Subject Policy, as their home had been destroyed by hurricane wind which they understood to be covered under the terms of their policy.

29. In a letter dated October 6, 2005, Nationwide informed Plaintiffs that questions existed regarding coverage under their homeowners' policy and the claim would be investigated. (Exhibit D)

30. Subsequently, Nationwide retained National Forensic Consultants, Inc. (hereinafter NFC) to

inspect Plaintiffs' property and prepare a report regarding the causation of their damages. In NFC's report of February 7, 2007, attached hereto as Exhibit "E", engineer Ronald P. Bittler, P.E. states that the "structural damage was caused by a combination of wind and water." He then qualifies his evaluation:

The following observations indicate that the structural damages were flood related:

- High lateral surge forces in the direction of the superstructure collapse exceeded the structural design and capacity of the residence.
- Tree bark damage to the northwest of the subject residence was consistent with damage due to waterborne debris.
- Structural damages to surrounding residences were consistent with a combination of storm surge and wind damage.

The following observations indicate that the structural damages were wind related:

- High lateral wind forces in the direction of the collapse exceeded the structural design and capacity of the residence.
- Tree damage near the subject residence was consistent with wind damage.
- Structural damages to surrounding residences were consistent with a combination of storm surge and wind damage.
- Timber pile foundation remained in good physical condition

Engineer Bittler, *retained by Nationwide*, then concludes that "the wind and flood forces worked in conjunction as a one-two punch to cause the superstructure to be catastrophically destroyed. This residence was not constructed to and did not have the capacity to adequately withstand either of the two forces associated with the storm event (wind forces or water forces). Both of these two natural forces worked in concert to completely destroy the building."

31. Though Nationwide's own engineer concluded that Plaintiffs' property was destroyed by a combination of wind and water, Plaintiffs received denial letters dated March 18, 2006, and March

21, 2006, informing them that Nationwide did not intend to honor any coverage provided by their homeowners' policy. (See Exhibits "F" and "G")

32. . . Indeed, Plaintiffs received nothing from their homeowners' policy. Nationwide did not pay for any damages to Plaintiffs' dwelling, other structures, personal property, or additional living expenses. Defendant Nationwide also did not pay any of the additional coverages imbedded within the policy, including but not limited to loss of landscaping, loss of refrigerated goods, etc.

33. Nationwide's position, notwithstanding their own engineer's report, continues to be that the entire damage to Plaintiffs' home was caused by water and therefore coverage was denied under their homeowners policy and hurricane endorsement.

34. Nationwide's claim position directly contradicts Mississippi insurance law, which mandates full insurance coverage if the hurricane winds were the efficient proximate cause of the loss. It is uncontroverted that hurricane wind is covered under the subject policy. The H-6107 Hurricane endorsement was placed as part of the Plaintiffs' homeowners' policy. Plaintiffs' policy premium was increased to cover the hurricane endorsement. Regarding hurricanes, the endorsement added to the subject policy states:

Coverage under this policy includes loss or damage caused by the peril of windstorm during a hurricane. It includes damage to a building's interior or property inside a building, caused directly by rain, snow, sleet, hail, sand or dust if direct force of the windstorm first damages the building causing an opening through which the above enters and causes damage.

35. In the case of the Plaintiffs, the engineer retained by Nationwide has investigated and confirmed that Plaintiffs' home was destroyed by a combination of hurricane wind and water. Plaintiffs have been compensated for a portion of their losses from their flood policy. It is their

expectation that defendant Nationwide is obligated to compensate them (promptly) for the balance of their losses.

36. Nationwide is merely attempting to evade its coverage obligations to the Plaintiffs under the subject policy by wrongfully characterizing all damage as flood, in order to avoid paying Plaintiffs claim.

37. Defendant Nationwide should not be allowed to collect years of payment obligations for nothing. Defendant Hewes should not be allowed to sell a hurricane endorsement which does not cover hurricane damages. The Plaintiffs are entitled to full coverage under the subject policy for damage caused by Hurricane Katrina, injunctive relief, specific performance of the Contract, indemnity, unjust enrichment, reformation and other such equitable relief.

38. If the Defendants are allowed to evade coverage under the policy, then the policy marketed and sold to the Plaintiffs by Defendant Nationwide and Defendant Agent Hewes was worthless. The Plaintiffs suffered damage caused by a foreseen peril, specifically endorsed by the H-6107 endorsement. Nevertheless, Nationwide continues to deny the Plaintiffs' claims.

V. CAUSES OF ACTION

COUNT 1: NEGLIGENCE AND GROSS NEGLIGENCE OF NATIONWIDE

39. Plaintiffs re-allege each of the foregoing paragraphs as if fully set out herein.

40. Among other things, in the following non-exclusive particulars, the Defendants acted with negligence, gross negligence, willful disregard and/or malice. Nationwide failed to monitor the actions of its officers, employees and/or agents; negligently failed to pay Plaintiffs' for a covered claim; negligently failed to train its insurance agents and/or adjusters to properly handle the insurance needs of their customers; negligently failed to properly follow and/or apply industry

standards as well as their own corporate rules, regulations, policies and procedures in adjusting and honoring Plaintiffs' claim; negligently failed to explain the subject insurance policy to the Plaintiffs; and negligently failed to properly follow and/or apply industry standards as to the inspection, evaluation and adjustment of Plaintiffs' claim reported under the subject policy.

41. The negligence of Defendants, as described above, has proximately caused Plaintiffs' damages set forth in this Complaint.

**COUNT 2: NEGLIGENCE, GROSS NEGLIGENCE AND
FAILURE TO PROCURE OF DEFENDANT AGENT HEWES**

42. Plaintiffs re-allege each of the foregoing paragraphs as if fully set forth herein.

43. Defendant Agent Hewes, as Plaintiffs' insurance agent and based on his expertise in the field of property insurance, had a duty to the Plaintiffs in the following particulars: procure for Plaintiffs insurance that covered their properties for damage caused by hurricanes; fully advise Plaintiffs on what contingencies their policies covered and what contingencies were not covered; fully advise Plaintiffs on additional insurance that they needed to insure their property against damage caused by hurricanes.

44. Defendant Agent Hewes breached the above-stated duties in failing to advise the Plaintiffs that the "flood" exclusion in the Nationwide policy purchased by the Plaintiffs allegedly- according to Nationwide- would not cover the type of damage which naturally occurs during a hurricane such as the one that struck the Mississippi Gulf Coast on August 29, 2005.

45. Defendant Agent Hewes breach was reckless and wanton inasmuch as the Plaintiffs provided actual notice from the Plaintiffs' mortgage company that the flood insurance coverage was insufficient.

46. Defendant Agent Hewes breached the above stated duties in failing to advise the Plaintiffs that the purported Hurricane Deductible would not—contrary to its stated and implied direction—provide coverage in the event of a hurricane, according to Defendants' self-serving wrongful interpretation of ambiguous so-called "flood" exclusions.

47. Defendant Agent Hewes breached the above-stated duties in failing to recommend or procure for Plaintiffs' insurance that would provide full and comprehensive coverage for the property damage caused by Hurricane Katrina.

48. Defendant Agent Hewes's negligence and/or gross negligence, as described above, has proximately caused Plaintiffs' damages set forth in this Complaint.

COUNT 3: BREACH OF FIDUCIARY DUTY

49. The Plaintiffs re-allege each of the foregoing paragraphs as if fully set forth herein.

50. By virtue of the dependency of Plaintiffs on the superior knowledge of Defendants and the fact that the Plaintiffs placed their confidence and trust in Defendants to properly handle their insurance matters, there existed a confidential and fiduciary relationship between Plaintiffs and Defendants.

51. Defendants were aware of the Plaintiffs' reliance upon them to truthfully and completely advise them concerning their insurance matters.

52. Defendants breached their fiduciary duty owed to the Plaintiffs in that they misrepresented the terms of the insurance policy which they induced the Plaintiffs to purchase and refused to honor the terms of the policy marketed, sold, issued and delivered to Plaintiffs. The Plaintiffs were under the reasonable belief, created by Defendant Agent Hewes in the role of agent for Defendant Nationwide, that the purchase of hurricane coverage was sufficient to cover any losses to their home

and additional properties for losses suffered during a hurricane.

53. Defendants breached their fiduciary duty in declining to examine the documents presented to Defendants by Plaintiffs regarding the need to increase the coverage provided by their flood insurance policy.

54. The Defendants breach of fiduciary duty, as described above, has proximately caused Plaintiffs' damages set forth in this Complaint.

COUNT 4: BREACH OF CONTRACT

55. The Plaintiffs re-allege each of the foregoing paragraphs as if fully set out herein.

56. The Plaintiffs entered into an insurance contract with the Defendants in which they contracted for, purchased, and were entitled to receive full insurance coverage, including hurricane coverage, under the subject policies for the damage to the insured property.

57. The Defendants breached the subject policy by denying insurance coverage for the damage to Plaintiffs' insured real property.

58. The alleged policy exclusions for water and "flood" damage expressly contradict other policy provisions in Plaintiffs' policy which provide full coverage for all damage proximately caused by Hurricane Katrina.

59. The policy and these exclusions are, therefore, ambiguous, and any ambiguity in an insurance contract is construed strictly against the drafter under Mississippi Law, thus resulting in coverage for all Plaintiffs' damages as a matter of law.

60. Therefore, the terms of the subject policy are so ambiguous as to be illusory and Defendant's use of these contradictory terms was the proximate cause of Defendant's breach of their insurance agreement with the Plaintiffs.

61. Additionally, to the extent it may be shown that "storm surge" caused the damage to the Plaintiffs' property, "storm surge" is not an excluded peril. Therefore, the Defendants' denial of insurance coverage constitutes a known and willful misrepresentation of the terms of the insurance contract and breach of the policy.

62. Additionally, no event excluded by the policy has been demonstrated to be the cause of the damage to Plaintiffs' properties. Defendant Nationwide has not and cannot bear its burden to demonstrate that an excluded peril was the cause of the damage to Defendants' properties. Rather, Defendant Nationwide merely made a decision to conserve financial resources by denying the Plaintiffs' rightful claims under their Nationwide policy. Because Nationwide cannot rely upon any policy exclusion to refuse to pay the hurricane damage to Plaintiffs' properties, Defendant Nationwide's refusal to compensate the Plaintiffs for such damage is a breach of the insurance contracts formed between the parties.

63. Defendant Nationwide's breaches of contract have proximately caused substantial damage to Plaintiffs.

COUNT 5: BAD FAITH REFUSAL TO PAY

64. The Plaintiffs re-allege each of the foregoing paragraphs as if fully set out herein.

65. The acts and omissions of the Defendants amounted to the tort of bad faith denial of an insurance claim in that the Defendants denied a timely reported and covered insurance claim without legitimate or arguable reason for doing so.

66. The Defendants relied on inapplicable, confusing and ambiguous policy exclusions that defeated the reasonable expectation of the Plaintiffs that their properties would be covered by insurance for damages caused by a hurricane.

67. Defendant Nationwide failed to adequately and fairly inspect and adjust Plaintiffs' loss.

68. Defendant Nationwide misrepresented that the insurance policies sold to the Plaintiffs, including the hurricane deductible feature in said policies, would provide full coverage for any and all damage caused by a hurricane. Defendants made these representations with the intent of inducing the Plaintiffs to purchase insurance products, leading to Defendants' financial gain.

69. Defendants acted with negligence, gross negligence, willful disregard and/or malice in refusing to pay the claim submitted by the Plaintiffs. Such conduct rises to the level of an independent tort, entitling the Plaintiffs to an award of punitive damages.

**COUNT 6: NEGLIGENT AND/OR INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS**

70. The Plaintiffs hereby adopt and incorporate by reference all preceding paragraphs.

71. The acts and omissions of the Defendants amounted to the tort of negligent and/or intentional infliction of emotional distress, in that, among other things, the Defendants knew that their actions in wrongfully and maliciously denying coverage to the Plaintiffs placed them under enormous financial and emotional stress, resulting in further damage and personal injury. The Plaintiffs have lost their home as a result of one of the deadliest and most destructive hurricanes ever to strike the United States. Defendants' refusal to compensate the Plaintiffs for their loss greatly increased Plaintiffs' emotional anguish, leading to adverse physical manifestations resulting from emotional stress.

72. Defendant's negligent and/or intentional infliction of emotional distress has proximately caused substantial damage to Plaintiffs.

COUNT 7: FRAUDULENT MISREPRESENTATION AND/OR OMISSION

73. The Plaintiffs hereby adopt and incorporate by reference all preceding paragraphs.

74. Alternatively, the Defendants made the above-described false, misleading and deceptive representations to the Plaintiffs and/or omitted to state material facts in connection with obtaining insurance on behalf of the Plaintiffs, in the following respects, among others:

- a. At the time the Defendants obtained insurance on behalf of the Plaintiffs, the Defendants failed to inform the Plaintiffs that while the insurance contract clearly purported to cover hurricane damages, it nevertheless, according to Defendants' interpretation, specifically excluded a major component of a hurricane, to wit "storm surge."
- b. The Defendants failed to advise the Plaintiffs that under the terms of the insurance contract the included hurricane coverage was illusory insofar as the excluded "flood" peril, according to Defendants' interpretation, rendered the hurricane coverage without any value or effect;
- c. The Defendants failed to advise the Plaintiffs that the insurance sold was wholly inadequate in the event that a hurricane, which necessarily includes both destructive wind and potentially destructive water or "storm surge" forces, caused damage to the Plaintiffs' property; and
- d. The Defendants failed to disclose the other material facts mentioned above.

75. The fraudulent misrepresentations, omissions and concealment by the Defendants were known and deliberate and were purposely designed to deceive the Plaintiffs, leading the Plaintiffs to believe that the Defendants were obtaining and furnishing adequate insurance coverage for them

at a fair price, and that there was no need for the Plaintiffs to seek additional insurance or to take any further action.

76. At the time the Defendants sold insurance to the Plaintiffs, the Plaintiffs were unaware of the fact that the insurance obtained and furnished by the Defendants was, according to Defendants' interpretation, inadequate and of no value in the event of damages caused by a hurricane. These facts were fraudulently concealed by the Defendants.

77. The misrepresentations, concealment and omissions by the Defendants were material in that the Plaintiffs would not have purchased the insurance or alternatively would have purchased additional insurance absent the deceptive and misleading statements and omissions of material facts by the Defendants.

78. The Plaintiffs reasonably believed that the Defendants had accurately and adequately disclosed all material facts and acted in their best interests with respect to the procurement of insurance.

79. As a direct and proximate result of the Defendants' fraudulent misrepresentations, concealment and omissions, the Plaintiffs have been proximately damaged in an amount to be shown at trial.

80. The Defendants' fraudulent conduct was willful, wanton and malicious, thereby entitling the Plaintiffs to the recovery of punitive damages against the Defendants.

COUNT 8: NEGLIGENT MISREPRESENTATION AND/OR OMISSION

81. The Plaintiffs hereby adopt and incorporate by reference all preceding paragraphs.

82. Alternatively, the Defendants made the above-described misrepresentations to the Plaintiffs and/or omitted to state material facts in connection with obtaining insurance on behalf of the

Plaintiffs, in the following respects, among others:

- a. At the time the Defendants obtained insurance on behalf of the Plaintiffs, the Defendants failed to inform the Plaintiffs that while the insurance contract, clearly purported to cover hurricane damages, it nevertheless, according to the Defendants' interpretation, specifically excluded a major component of a hurricane, to wit, "storm surge."
- b. The Defendants failed to advise the Plaintiffs that under the terms of the insurance contract the included hurricane coverage was illusory insofar as the excluded "flood" peril rendered the hurricane coverage without any value or effect;
- c. The Defendants failed to advise the Plaintiffs that the insurance purportedly obtained on their behalf was wholly inadequate in the event that a hurricane, which necessarily includes both destructive and potentially destructive water or "storm surge" forces, caused damage to the Plaintiffs' property; and
- d. The Defendants failed to disclose the other material facts mentioned above.

83. The negligent misrepresentations, omissions and concealment by the Defendants, who held themselves out to have special knowledge on the needs and coverages necessary to provide the Plaintiffs with protection and indemnity in the event of a known peril were known and deliberate and were purposely designed to deceive the Plaintiffs into believing that the Defendants were obtaining and furnishing adequate insurance coverage for them at a fair price, and that there was no need for the Plaintiffs to seek additional insurance or to take any further action.

84. At the time the Defendants obtained insurance on behalf of the Plaintiffs, the Plaintiffs were unaware of the fact that the insurance obtained and furnished by the Defendants was inadequate,

according to Defendants' interpretation, and of no value in the event of damages caused by a hurricane. These facts were negligently concealed by the Defendants.

85. The misrepresentations, concealment and omissions by the Defendants were material in that the Plaintiffs would not have purchased the insurance or alternatively would have purchased additional insurance absent the deceptive and misleading statements and omissions of material facts by the Defendants. The Plaintiffs reasonably believed that the Defendants had accurately and adequately disclosed all material facts and acted in their best interests with respect to the procurement of insurance.

86. As a direct and proximate result of the Defendants' fraudulent misrepresentations, concealment and omissions, the Plaintiffs have been proximately damaged in an amount to be shown at trial.

87. The Defendants' negligent conduct is proximate cause of the injuries sustained by the Plaintiffs.

COUNT 9: ESTOPPEL AND DETRIMENTAL RELIANCE

88. The Plaintiffs re-allege and incorporate each and every preceding paragraph as if fully set forth herein.

89. The Plaintiffs reasonably relied to their detriment on the misrepresentations concerning material facts made by the Defendants, and the concealment of material facts by the Defendants as set out in the foregoing paragraphs.

90. Under the doctrines of detrimental reliance, equitable estoppel, and promissory estoppel, the defendants are liable to the Plaintiffs for their resulting damages. Further, the Defendants should be estopped from asserting any contractual and/or limitations defenses to the causes of action stated

herein.

**COUNT 10: NEGLIGENCE, GROSSLY NEGLIGENCE AND WANTON
FAILURE TO MONITOR AND TRAIN AGENTS**

91. The Plaintiffs re-allege and incorporate each and every preceding paragraph as if fully set forth herein.

92. The Defendant Nationwide was grossly negligent and/or wanton in failing to monitor the actions of their officers, employees, and/or agents. The Defendants further negligently and/or wantonly failed to train their insurance agents and/or adjusters to properly handle the insurance needs of their customers, and they negligently and/or wantonly failed to properly follow and/or apply their own corporate rules, regulations, policies and procedures, as well as industry standards generally.

93. As a proximate consequence of the Defendants' conduct, the Plaintiffs have suffered damages in an amount to be proven at trial, and is entitled to actual and punitive damages from the Defendants.

COUNT 11: ACTION FOR DECLARATORY RELIEF

94. The Plaintiffs re-allege each of the foregoing paragraphs as if fully set out herein.

95. The Plaintiffs request that this Court declare that coverage exists under the subject policies and issue an order compelling Defendant Nationwide to pay the amounts owing under the policies.

96. This relief is necessary because Defendant Nationwide has wrongfully refused to provide the contractually-mandated amount of coverage for Plaintiffs' claims despite the fact that the law of the State of Mississippi mandates that coverage shall be provided.

97. As noted, Defendant Nationwide denied Plaintiffs' claim because, it argues, the damages leading to the claim were caused by the action of water, and not by the force of wind. Nationwide's

position is incorrect and contradictory. The Plaintiffs' policy included a hurricane deductible for said properties and the Plaintiffs paid the contractual premium for said policies. Despite the fact that the Plaintiffs expressly contracted to pay an additional deductible in the event of hurricane damage, Defendant Nationwide has wrongfully denied coverage for all damage caused by the storm surge of Hurricane Katrina. Nationwide's position is clearly untenable, in breach of policy and violates Mississippi law. The company cannot be allowed to sell an insurance policy that, on the one hand, provides coverage for all damage caused by a hurricane and, on the other hand, according to Defendants, excludes damages allegedly caused by a hurricane storm surge. This is a classic bait and switch to the policyholder. Therefore, this Court should enter a declaratory judgment that Defendant Nationwide is contractually required to provide full insurance coverage to the Plaintiffs.

98. Additionally and/or alternatively, Nationwide wrongfully denies coverage on the subject policy under the ambiguous "concurrent cause" exclusion, which states:

We do cover loss to any property resulting directly or indirectly from any of the following. Such a loss is excluded even if another peril or event contributed concurrently or in any sequence to cause the loss. Exhibit "A".

99. This clause has been judicially determined to be ambiguous and unenforceable. Nationwide's position and reliance on the "concurrent clause exclusion" violates Mississippi law and public policy.

COUNT 12: MISS. CODE ANN. 83-13-5

100. The Plaintiffs re-allege each of the foregoing paragraphs as if fully set out herein.

101. Mississippi's "Valued Property Statute", Miss. Code Ann. 83-13-5, has long provided that the "measure of damages shall be the amount for which the building and structures were insured"

when a building or structure is totally destroyed by fire.

102. Recently, the Florida Supreme Court held that the Florida valued property statute required insurers to pay the face amount of the insurance policy upon a determination that a total loss caused by any covered peril had occurred. See Mierzwa v. Florida Windstorm Underwriting Association, 877 So.2d 774 (Fla. 2004).

103. Although the Mississippi Supreme Court has not chosen to extend the Mississippi Valued Property Statute beyond the context of a fire loss, the Plaintiffs allege that it would be in the best interest of the public policy of the State of Mississippi to extend the reach of the Valued Property Statute from fire coverage to other types of coverage provided by homeowners insurance policies.

104. Thousands of citizens of the State of Mississippi are now without homes, and without a realistic prospect of rebuilding their homes, because of the damage caused by Hurricane Katrina and the refusal of insurance companies, including Defendant Nationwide, to pay damages that they are contractually obligated to pay. Defendant Nationwide and its fellow insurance companies rely upon esoteric and confusing policy exclusions to trick Mississippi citizens like the Plaintiffs into paying for insurance coverage Nationwide never intended to honor.

105. An extension of the Valued Property Statute to require Defendant Nationwide to pay the face amount of Plaintiffs' insurance policies upon a determination that a total loss caused by any covered peril had occurred would be in the best interest of the public policy of the State of Mississippi.

COUNT 13: DECLARATION OF INSURANCE COVERAGE

106. The Plaintiffs re-allege each of the foregoing paragraphs as if fully set out herein.

107. Plaintiffs seek a Declaratory Judgment pursuant to Mississippi Rule of Civil Procedure 57 for the purposes of determining a question of actual controversy between the parties concerning their

rights, obligations, and coverages under the subject policy.

108. Based on the representations made by Nationwide and Agent Hewes, the express subject policy coverage provisions, and the "Hurricane Deductible," the Plaintiffs are entitled to full insurance coverage under the subject policy for all damage to the insured property and loss of use caused by Hurricane Katrina, whether it be by hurricane winds, storm surge or both.

109. The Plaintiffs therefore seek a declaration that the subject policy provides full insurance coverage for all damages to their insured residence, property, and loss of use caused by Hurricane Katrina.

110. The Plaintiffs also seek 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.

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

112. Further, Plaintiffs seek a declaration that the "flood" exclusion is not legally enforceable because it is ambiguous.

113. Nationwide's coverage position is contrary to the express coverage terms of the subject policy. In addition, the "flood" exclusion is not applicable to Plaintiffs' loss.

COUNT 14: INDEMNITY

114. The Plaintiffs re-allege each of the foregoing paragraphs as if fully set out herein.

115. Nationwide is obligated under the subject policy and its representations to provide full insurance coverage to Plaintiffs for all damage to the insured residence, property and loss of use caused by Hurricane Katrina.

116. However, Nationwide has denied Plaintiffs' insurance coverage and has refused to pay them for their covered loss.

117. As a direct and proximate result of Nationwide's denial, Plaintiffs have been and will continue to be forced to pay a substantial amount of money out of their own pocket 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.

118. The money that Plaintiffs are now obligated to pay is money that Nationwide in all fairness and equity should pay under the subject policy or otherwise. Plaintiffs are therefore entitled to indemnity from Nationwide 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.

119. However, despite realizing substantial premiums from Plaintiffs, Nationwide has withheld the insurance proceeds owed to Plaintiffs for hurricane damage to their insured property.

120. In addition, by classifying Hurricane Katrina and the damage to Plaintiffs' residence and property as "flood," Nationwide has wrongfully realized insurance premiums and withheld insurance proceeds to which Plaintiffs are entitled.

121. Nationwide has therefore been unjustly enriched at Plaintiffs' expense.

122. Plaintiffs have suffered injury as a proximate result of Nationwide's unjust enrichment. Plaintiffs have been and will continue to be forced to pay for costs and living expenses that should in equity and good conscience be borne by Nationwide under the subject policy.

123. As a proximate result of Nationwide's false and fraudulent representations and refusal to

provide full insurance coverage under the subject policy for the damage to Plaintiffs' insured residence and property caused by Hurricane Katrina, Nationwide is in possession of premiums, insurance proceeds, and other monies that it in equity and in good conscience should not be entitled to retain.

124. Plaintiffs are therefore entitled to damages resulting from Nationwide's unjust enrichment, including the imposition of a Constructive Trust on all premiums Plaintiffs paid to Nationwide and on the insurance proceeds wrongfully held by Nationwide under their subject homeowner's policy.

**COUNT 15: REFORMATION OF INSURANCE CONTRACT
BASED ON EQUITABLE FRAUD**

125. The Plaintiffs re-allege each of the foregoing paragraphs as if fully set out herein.

126. Additionally and/or alternatively, the Plaintiffs procured insurance through Nationwide and Agent Hewes and have religiously paid premiums every year to Defendants. Nationwide 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 Sound of the Gulf of Mexico. Nationwide knew or should have known the types of risks against which Plaintiff needed property insurance, especially risks relating to hurricanes, which commonly form and/or appear in the Gulf of Mexico.

127. Similarly, in marketing, selling, and issuing subject policy, Nationwide 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.

128. Nationwide held itself out of the public and to Plaintiffs as experts in insurance matters.

Therefore, Plaintiffs placed complete confidence in Nationwide 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. Nationwide should have known that Plaintiffs were relying on it to provide adequate insurance coverage and that Plaintiffs were relatively unschooled in insurance matters.

129. Based on Nationwide'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.

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

131. Through unilateral mistake in combination with actual or equitable fraud by Nationwide, according to Defendants, the subject policy does not embody the insurance contract entered into by and between Plaintiffs and Nationwide, insomuch as Nationwide 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.

132. Furthermore, through inequitable conduct on the part of Nationwide, the subject policy does not embody the insurance contract entered into by and between Plaintiffs and Nationwide, insomuch as Nationwide has taken the position that the subject policy does not provide full insurance coverage for damage to Plaintiffs' insurance residence and property caused by Hurricane Katrina, as described herein.

133. Plaintiffs have no adequate remedy at law, but allege that they are entitled in equity to a reformation of the subject policy, marked Exhibit "A" to Complaint, 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 Nationwide that Plaintiffs' residence and property would be fully insured for damage caused by hurricanes.

134. 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 16: SPECIFIC PERFORMANCE

135. The Plaintiffs re-allege each of the foregoing paragraphs as if fully set out herein.

136. The Plaintiffs contracted for and paid valuable consideration for coverage in the amounts shown on the declarations page of insurance contract drafted by the Defendant Nationwide. Said coverage specifically covers all direct accidental loss to the covered property with the exception of those losses excluded under Section I-Property Exclusions.

137. Section I-Property Exclusions does not exclude loss caused by water damage from hurricane storm surge.

138. Therefore the Plaintiffs are entitled to specific performance of the insurance contract.

COUNT 17: PUNITIVE DAMAGES

139. The Plaintiffs re-allege and incorporate each of the foregoing paragraphs as if fully set out herein.

140. It is believed and therefore averred that Defendant, Nationwide, through their policies, staff, subsidiaries, agents, adjusters, and employees knowingly, willingly and in reckless disregard of the

rights of the insureds, Robert and Patricia Nilson, did knowingly, arbitrarily, willfully and wrongfully deny the claims of the Plaintiffs, Robert and Patricia Nilson, without any legitimate and arguable reason, and in a reckless, willful and malicious manner.

141. The actions of the Defendants were so egregious, callous, malicious, and grossly negligent, as to infer intentional indifference and reckless disregard to the rights, both contractually and otherwise, of the Plaintiffs, Robert and Patricia Nilson. The actions of the Defendants were reprehensible and entitle the plaintiff to punitive damages to punish the defendants from undertaking such actions again and deter others in the same or similar positions from undertaking such wrongful actions.

142. Furthermore, the actions of the Defendants exhibit and intentional act against the Plaintiffs, so as to justify an award of punitive damages under Miss. Code Ann. §11-1-65. Additionally, the Defendants conduct was so grossly negligent and was attended by circumstances of intentional and grossly negligent concealment of material facts, malice and willful and wanton misconduct with a reckless and callous disregard for the rights of the Plaintiffs and the public in general. The Defendants conduct in this case is part of a widespread and long established pattern and practice calculated to cheat insureds such as the Plaintiffs for the Defendants own gain.

143. The Plaintiffs are entitled to punitive damages based upon the reprehensible actions of the Defendants in failing to perform its duties under the contract and the fiduciary duty owed to the Plaintiffs, although confronted with opportunity to correct the wrongful conduct of the Defendants. Furthermore the actions of the Defendants exhibited such callous disregard for the well being of the Plaintiffs, and other citizens of the State of Mississippi, similarly situated as to evidence intentional wrongdoing and the Plaintiffs are entitled to recover punitive damages as a deterrent to other similar

businesses/corporations located within the State of Mississippi for the protection of citizens rights and livelihood in the state of Mississippi.

VI. DEMAND FOR JURY TRIAL

144. The Plaintiffs respectfully demand a trial by jury on all issues of fact presented by this Complaint.

PRAAYER FOR RELIEF

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

- 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 damage to Plaintiffs' insured residence and property caused by "storm surge" is not excluded under the subject policy;
- c. A Declaration by this Court that the subject policy's "flood" exclusion is not applicable and ambiguous;
- d. An Injunction enjoining and/or equitably estopping Nationwide from denying coverage for damage to Plaintiffs' insured residence and property caused by storm surge;
- e. An Injunction enjoining and/or equitably estopping Nationwide from utilizing the "flood" exclusion to exclude coverage for damage to Plaintiffs' insured residence and property;

- f. Specific Performance of the subject policy;
- g. Indemnity;
- h. A Constructive Trust on insurance proceeds owed to Plaintiffs for the hurricane damage to their insured residence and property wrongfully held by Nationwide and insurance premiums paid by Plaintiffs for coverage under the subject policy;
- i. Reformation of the subject policy to reflect and embody the parties true intention concerning insurance coverage based on Nationwide's inequitable conduct, equitable fraud, and fraud;
- j. Attorneys' fees and expenses;
- k. Court costs and expenses;
- l. Prejudgment and post-judgment interests; and
- m. Expedited consideration of this matter;
- n. Contractual damages;
- o. Monetary damages;
- p. Emotional distress damages;
- q. Punitive damages; and
- r. Any and all other legal and equitable relief deemed appropriate by the Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that upon a trial of these causes, judgment will be entered against Nationwide for all full insurance coverage for the damage to Plaintiffs' insured residence and property caused by Hurricane Katrina, an injunction, specific performance of the subject policy indemnity, and other such equitable remedies and relief prayed for herein.

Respectfully submitted this the 6th day of July 2007.

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