

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

**FRANK ANTHONY and  
CLARE ANTHONY**

**PLAINTIFFS**

**V.**

**CIVIL ACTION NO. 1:08 cv 300 LTS-RHW**

**STATE FARM FIRE AND CASUALTY CO.,  
ROCKY ELEUTERIUS, Individually, and as Agent of  
STATE FARM FIRE AND CASUALTY CO.,  
and JOHN DOES 1-10**

**DEFENDANTS**

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS'  
MOTION TO EXCLUDE EXPERT TESTIMONY OF NEIL B. HALL**

COME NOW the Plaintiffs, by and through undersigned counsel, and respectfully submit this Response in Opposition to Defendants' Motion to Exclude Expert Testimony of Neil B. Hall. Plaintiffs' expert Neil B. Hall, a licensed architect and engineer hired by the Plaintiffs to determine the extent of damage caused by wind and flood to the Plaintiffs' residence, fully complies with the requirements applicable to expert witnesses and accordingly, no basis exists to exclude his testimony. In support thereof, Plaintiffs would show as follows:

**Complete Compliance with Federal Rule of Evidence 702 and the *Daubert* Requirements**

1. Federal Rule of Evidence 702 provides that, "a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case."

2. The United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, interpreted Rule 702 as a requirement that the trial judge ensure, "that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on

scientifically valid principles will satisfy those demands.”<sup>1</sup>

3. At the outset, the trial judge must determine whether the expert is proposing to testify to: “(1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue.”<sup>2</sup>

Factors the judge may consider to determine compliance include: 1) whether a theory or technique can be tested, 2) whether the theory or technique has been subjected to peer review and publication, 3) the known or potential rate of error, 4) the existence and maintenance of standards controlling the technique’s operation, and 5) “general acceptance”.<sup>3</sup>

4. The Fifth Circuit has also considered the *Daubert* considerations and cautioned that “while exercising its role as a gate-keeper, a trial court must take care not to transform a *Daubert* hearing into a trial on the merits.”<sup>4</sup>

5. Neil Hall’s extensive credential rebut Defendants’ assertion that he is unqualified to testify concerning the cause of damage to Plaintiffs’ property. See Defendants’ Memorandum at page 6. Neil Hall is in fact a licensed as engineer in Minnesota and Texas, and licensed in Florida and Pennsylvania as an architect. See Hall’s deposition, attached as Exhibit “A”. He is also a member of the American Institute of Architects and the American Society of Civil Engineers. See Hall’s Report, attached as Exhibit “B”.

6. Dr. Hall has also published in the area of which he is testifying, thereby subjecting himself to peer review of the methodology he invoked to analyze the damage to property such as the Plaintiffs’. See his article, “Differentiating Between Wind and Flood Damage in Hurricane Katrina,” attached as Exhibit “C”. This article specifically presented and explained Hall’s use of the Enhanced

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<sup>1</sup>*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 at 597 (USSC 1993).

<sup>2</sup>*Id.* At 591.

<sup>3</sup>*Id.* at 593-594.

<sup>4</sup>*Pipitone v. Biomatrix, Inc.*, 288 F.3d 239 (5<sup>th</sup> Cir. 2002).

Fujita scale to identify damage causation subsequent to a hurricane. See Exhibit “C” at page 10.

7. Dr. Hall’s methodology is scientifically valid. Dr. Hall considered his personal observations and analyzed available data including the low current velocity, absence of wave activity, and lack of flood-initiated collapse to neighboring structures and applied his extensive knowledge and experience to reach his conclusion that wind economically totaled the upper level of Plaintiffs’ residence and its contents. See Exhibit “B” at page 4. This methodology invoked by Dr. Hall has been subject to peer review by virtue of his publication cited above and presentations of the same. See Exhibit “C”.

8. Defendants also make hay of the fact that Neil Hall is not a meteorologist. See Defendants’ Memorandum at page 6. Yet the District Court for the Eastern District of Louisiana has specifically considered and accepted Dr. Hall’s use of weather data: it found that no basis existed to exclude Dr. Hall’s opinions based on the weather data because Hall was not offered as a meteorologist and Hall reviewed but did not create or re-create the weather data.<sup>5</sup> Dr. Hall used the data in a manner consistent with the role of a design professional and forensic engineer.

9. Dr. Hall’s expertise has also been recognized by Defendant State Farm who now seeks to exclude Dr. Hall’s testimony. Dr. Hall has been retained three to four *hundred* times to give a building damage assessment for State Farm. See Deposition of Neil Hall in *Remel v. State Farm*, attached as Exhibit “D”.

10. In addition to Neil Hall’s expertise in the area of identifying causation of damage to a structure, he also conducted a thorough analysis of Plaintiffs’ specific claim. Dr. Hall reached his opinion based on an analysis of weather conditions, physical data collected at the site location, interviews, review of photographs of the property before and after Katrina, and Dr. Hall’s own

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<sup>5</sup>*Webster v. State Farm Fire and Casualty Insurance Co.*, 2008 WL 2123753 (E.D.La. 2008)

extensive knowledge, training, and experience. See Exhibit “B” and Exhibit “A” at pages 72, 93. Specifically, Dr. Hall personally visited the Plaintiffs’ site, interviewed Plaintiffs’ grandson, and relied upon weather data prepared by an expert meteorologist who considered weather conditions on the Plaintiffs’ property during Katrina. See Exhibit “A” at pages 20, 21, 93.

11. Defendants also claim that Neil Hall “simply attributes damage to the roof and elevated level to wind, but provides no analysis of how the damage observed reflects damage from wind, rather than water.” See Defendants’ Memorandum at page 19. This assertion is inconsistent with Hall’s deposition testimony where he testified:

[I]t looks like three ways water got into the attic, wind driven. One was where the plywood came off. Two, is that where the metal came off the asphalt shingles somewhat are damaged, whether or not they are damaged water is going to drive under the shingles now that the metal is gone. Third, the gable ends are missing, so water came in at the gable ends. Exhibit “A” at page 63.

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When you get down to the sheathing board behind that I think it is pulled by a combination of wind on the outside and wind pushing from inside. I don’t think that occurred due to flood because if you look at a close up of it in 225, the lower portion of the siding remains. If it was flood, it would have kicked out at the bottom. Exhibit “A” at page 78.

Of course these are not the only analyses in Hall’s testimony but clearly rebut Defendants’ assertion that Hall failed to analyze the basis for finding wind damage occurred.

12. Defendants also attempt to characterize Hall’s conclusions regarding the cause of damage to Plaintiffs’ property as a finding that Plaintiffs did not experience flood damage. See Defendants’ Memorandum at page 4. Yet Neil Hall’s conclusion was actually that wind and wind-driven rain caused the elevated portion of the building and its contents to suffer a total economic loss before the arrival of the storm surge. See Exhibit “B” at page 4. Hall explained the term total economic loss in his deposition, testifying that this means “repair is greater than 50 percent of the value of the building structure.” See Exhibit “A” at page 73. In fact, Hall specifically stated in his report that,

“[f]lood more likely than wind collapsed the break-away walls at ground level and damaged the interior at ground level.” See Exhibit “B” at page 4.

13. For these reasons, Dr. Hall’s opinion is helpful to the trier of fact. It provides an opinion grounded in scientific knowledge that wind economically totaled the Plaintiffs’ structures prior to storm surge an opinion that rebuts the basis for Defendant State Farm’s adjustment of the Plaintiffs’ claim.

14. Finally, no court has ever excluded Dr. Hall’s testimony in this area, recognizing his extensive experience, education, reliable methodology, and analysis of available data. See Exhibit “A”.

15. Indeed, this Court, in considering the testimony of Dr. Hall in this very context declined to exclude his expert testimony. *Stevens v. State Farm Fire and Casualty Company*, Civil Action No. 1:06cv175 LTS-RHW (S.D. Miss July 5, 2007); 2007 WL 4570611.

**WHEREFORE**, Defendant’s motion should be denied in its entirety. Dr. Hall easily satisfies the requirements of Rule 702 and the United States Supreme Court in *Daubert* through his use of a methodology which has been subject to peer review through publication and presentations, his analysis of available data including a visit to the property at issue and interview of the Plaintiffs’ grandson, his use of weather data prepared by a meteorologist based on conditions at the Plaintiffs’ home during Hurricane Katrina, his explanation of how he derives his opinion from analysis of the available data and finally, his extensive education and experience.

Respectfully submitted, this the 9<sup>th</sup> day of July, 2009,

PLAINTIFFS, FRANK ANTHONY and  
CLARE ANTHONY

s/ Rose M. Hurder  
BY: ROSE M. HURDER, ESQ.

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**CERTIFICATE OF SERVICE**

I, Edward Gibson, do hereby certify that I have this day caused to be served via U.S. First Class Mail, postage prepaid, a true and correct copy of the above and foregoing *Plaintiffs' Response to Defendant's Motion to Exclude Expert Neil B. Hall* upon counsel of record and other interested persons as indicated below:

H. Scot Spragins  
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P.O. Box 668  
Oxford, MS 38655-066818

SO CERTIFIED, this the 9<sup>th</sup> day of July, 2009.

s/ Rose M. Hurder  
ROSE M. HURDER