

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

REGINALD EDWIN BOSSIER

PLAINTIFF

VERSUS

CAUSE NO. 1:08-cv-408-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

**MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING “ACCIDENTAL DIRECT PHYSICAL LOSS”**

COMES NOW the Plaintiff, by and through counsel of record, and files this his Memorandum in Support of Motion for Partial Summary Judgment Regarding “Accidental Direct Physical Loss” and for cause therefore would show unto the Court the following, to-wit:

I.

FACTS

1.

Plaintiff’s home was substantially destroyed by Hurricane Katrina, to the extent that demolition was required.

2.

At the time of the loss, Plaintiff was insured by State Farm under a policy covering “accidental direct physical loss” to the dwelling and totaling \$409,452.00.

(Exhibit 1 to at pp. 41-42).¹

¹This amount includes Option ID and inflation factor additions.

3.

The Hurricane Katrina loss to the home constitutes an “accidental direct physical loss” and all is covered unless State Farm can prove the applicability of a valid exclusion as to any part.

4.

The undamaged portion of Plaintiff’s home which was required to be demolished likewise constitutes an “accidental direct physical loss” shifting the burden to State Farm to prove the applicability of a valid exclusion.

5.

Plaintiff’s contents were insured, according to State Farm, for a maximum amount of \$255,907.00. (Exhibit 1 at p. 45).²

6.

The policy covers personal property loss caused by a “windstorm.”

7.

All of Plaintiff’s personal property is covered unless State Farm can prove the applicability of a valid exclusion.

8.

While issues of fact exist concerning the applicability of a valid exclusion, no genuine issue of material fact exists on the question of whether Plaintiff’s damage constitutes an “accidental direct physical loss” caused by a “windstorm.”

²This amount includes Option ID and inflation factor additions.

9.

Plaintiff is entitled to partial summary judgment on Plaintiff's claims of coverage for all Hurricane Katrina losses, including demolition of the undamaged portion of the building, leaving only the remaining issue of the applicability of a valid exclusion to be tried.

II.

LAW

10.

There is no dispute but that damage caused by Hurricane Katrina constitutes an "accidental direct physical loss" covered by the policy unless excluded. Similarly, this Honorable Court's prior opinions, as well as State Farm's training materials, make clear that Hurricane Katrina was a "windstorm" for which coverage is extended to personal property. (See Plaintiff's Motion for Partial Summary Judgment on the Issue of Windstorm at ECF 79).

11.

In addition, the undamaged portions of Plaintiff's home which were required to be demolished also sustained an "accidental direct physical loss" covered under the policy. *See, Ross v. Metropolitan Property & Casualty Co.*, slip op. 2008 WL 4793800 (S.D. Miss. 2008).

12.

Plaintiff is entitled to partial summary judgment declaring that Plaintiff's losses are covered by the subject policy of insurance, thereby shifting the burden

of proving the applicability of a valid exclusion to any portion of Plaintiff's loss to Defendant.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays this Honorable Court will enter partial summary judgment declaring that Plaintiff's damage from Hurricane Katrina constitutes an accidental direct physical loss covered by the policy, that demolition of the undamaged portion of Plaintiff's dwelling constitutes an accidental direct physical loss covered by the policy, and that Plaintiff's loss of personal property constitutes a loss caused by "windstorm." Other issues would remain to be tried, including whether State Farm can meet its burden of proving the applicability of a valid exclusion as to any portion of Plaintiff's loss, punitive damages, and other damages issues. Plaintiff prays for such other and further relief as may be deemed appropriate.

THIS the 7th day of August, 2009.

Respectfully submitted,

REGINALD EDWIN BOSSIER

BY: */s/ Judy M. Guice*

JUDY M. GUICE (#5057)

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CERTIFICATE OF SERVICE

I, Judy M. Guice, counsel for Plaintiff, do hereby certify that I have this day electronically filed the foregoing with the Clerk of this Court using the ECF system which sent notification of such filing to the following:

H. Benjamin Mullen, Esquire
John A. Banahan, Esquire
Bryan, Nelson, Schroeder, Castigliola & Banahan, PLLC
P. O. Drawer 1529
Pascagoula, MS 39568

This the 7th day of August, 2009.

s/Judy M. Guice
JUDY M. GUICE (MSB #5057)