

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

UNITED STATES OF AMERICA ex rel.
CORI RIGSBY and KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE NO. 1:06cv433-LTS-RHW

STATE FARM MUTUAL INSURANCE COMPANY

DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS ENGINEERING CORPORATION;
EXPONENT, INC.; HAAG ENGINEERING CO.;
JADE ENGINEERING; RIMKUS CONSULTING GROUP INC.;
STRUCTURES GROUP; E.A. RENFROE, INC.;
JANA RENFROE; GENE RENFROE; and
ALEXIS KING

DEFENDANTS

**DEFENDANT/COUNTER-PLAINTIFF
STATE FARM FIRE AND CASUALTY COMPANY'S
MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE ALL TESTIMONY
BY THE RIGSBYS' EXPERT WITNESS DAVID J. FAVRE**

Robert C. Galloway (MSB # 4388)
Jeffrey A. Walker (MSB # 6879)
E. Barney Robinson III (MSB # 09432)
Benjamin M. Watson (MSB # 100078)

ITS ATTORNEYS

OF COUNSEL:

Michael B. Beers (ASB-4992-S80M)
BEERS, ANDERSON, JACKSON,
PATTY & FAWAL, P.C.
Post Office Box 1988
Suite 100
250 Commerce Street (36104)
Montgomery, Alabama 36102
(P)(334) 834-5311
(F)(334) 834-5362
(E) mbeers@beersanderson.com

BUTLER, SNOW, O'MARA, STEVENS
& CANNADA, PLLC
17th Floor, Regions Plaza
Post Office Box 22567
Jackson, Mississippi 39225-2567
(P)(601) 948-5711
(F)(601) 985-4500
(E) bob.galloway@butlersnow.com
(E) jeff.walker@butlersnow.com
(E) barney.robinson@butlersnow.com
(E) ben.watson@butlersnow.com

PRO HAC VICE

Defendant/Counter-Plaintiff State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as “State Farm Mutual Insurance Company” (“State Farm”), respectfully submits this memorandum in support of its motion, pursuant to Fed. R. Evid. 104(a), 702, 703, 401, 402, 403, Fed. R. Civ. P. 26(a)(2)(B), 37(c)(1), and Miss. Unif. Dist. Ct. R. 26.1(A)(2), to exclude the testimony of the Rigsbys’ expert witness, David J. Favre.

I. PRELIMINARY STATEMENT

The Rigsbys proffer the expert testimony of Mr. Favre, an adjuster, in a misguided attempt to create a genuine question of material fact in response to State Farm’s dispositive motions. Yet Mr. Favre’s opinion is incapable of doing so because it is irrelevant, inadmissible, and immaterial. “Rule 56 states that a court may consider only admissible evidence in ruling on a summary judgment motion.” *Mersch v. City of Dallas*, 207 F.3d 732, 734-35 (5th Cir. 2000). Thus, to screen out incompetent summary judgment evidence, the Court must determine the admissibility of the expert’s opinion “before reaching the question whether a fact issue exists,” *id.* – a determination that the Fifth Circuit does not disturb on appeal absent an abuse of discretion. *See, e.g., id.* at 735; *Allen v. Pa. Eng’g Corp.*, 102 F.3d 194, 196 (5th Cir. 1996); *Christophersen v. Allied-Signal Corp.*, 939 F.2d 1006, 1009 (5th Cir. 1991) (en banc).

Because no jury will be present, this Court need not make its ruling now and has the discretion to make its admissibility determination “during, rather than in advance of,” the hearing. *In re Salem*, 465 F.3d 767, 777 (7th Cir. 2006). “That is not to say that the scientific reliability requirement is lessened.” *Id.* Where, as here, an expert’s opinion is inadmissible, it “cannot be relied upon by plaintiffs to prevent summary judgment.” *Salas v. Carpenter*, 980 F.2d 299, 305 (5th Cir. 1992). So, too, where, as here, the proffered evidence is also legally “insufficient ... the court remains free ... to grant summary judgment” under Rule 56. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 596 (1993).

Mr. Favre's opinions are neither probative nor sufficient to inform whether the McIntosh flood claim submitted for payment to the National Flood Insurance Program was "knowingly" false or fraudulent, 31 U.S.C. § 3729, or more particularly per this Court's Orders, "whether the payment of the flood insurance limits in the McIntosh case was justified, as a matter of law." ([261] at 3; *see* [274] at 2.) His opinions are incapable of creating any genuine issue of material fact, particularly in light of the dispositive effect of Kerri Rigsby's sworn factual admissions that she thought there was at least \$250,000 in flood damage to the McIntosh home. ([91-7] at 139:9-140:8, 142:7-13.)

Among its other defects, Mr. Favre's opinion rests on a false premise. He adopts a "2.1 foot" water line at the McIntosh house, which drives his opinion. (Favre Rpt. [279-4] at ECF 3.) This Court has effectively rejected such a diminished flood line: "My review of the material from the McIntosh case discloses that the McIntosh home was inundated with approximately six feet of water." ([261] at 3.) Testimony by the Rigsbys and photographic evidence further refute Mr. Favre's dwarfed flood line. By adopting a private set of facts that are contrary to the facts of the case, Mr. Favre's methodology is unreliable, his opinion unhelpful, and his testimony inadmissible. "Expert evidence based on a fictitious set of facts is just as unreliable as evidence based on no research at all. Both analyses rest in pure speculation" and are inadmissible. *Guillory v. Domtar Indus., Inc.*, 95 F.3d 1320, 1331 (5th Cir. 1996).

Mr. Favre's opinion that wind forces ruptured water pipes fares no better. (Favre Rpt. [279-4] at ECF 3.) He does not undertake any study to arrive at that opinion but simply parrots the opinions of others. Yet as this Court has previously observed, based on its experience in trying several Katrina cases, "there has been no disagreement among the experts that the forces generated by storm surge flooding are far greater than the forces attributed to wind alone." ([261] at 2.) In fact, "[t]he force created by waves breaking against a vertical surface is often ten or more times higher than the force created by high winds during a storm event." (Watson Rpt. [275-5] at 15.) As noted in a published paper addressing the structural damage caused by Katrina in Mississippi – and co-authored by Patrick

Fitzpatrick, Ph.D., one of the Rigsbys' other experts – “[h]igh winds commonly damage roofs and exterior structural components, but generally pose much less of a threat to structures than storm surge and wave action, which can produce loads orders of magnitude higher, and are severe enough in many cases to destroy entire structures.” See (Christopher D. Eamon, Patrick Fitzpatrick & Dennis D. Truax, *Observations of Structural Damage Caused by Hurricane Katrina of the Mississippi Gulf Coast*, 21 J. of Performance of Constructed Facilities 117, 119 (2007) (Ex. A to Mtn.)). Mr. Favre fails to seriously consider the superior forces of storm surge and waves that pounded the walls. “Expert testimony is inadmissible if it is speculative, unsupported by sufficient facts, or contrary to the facts of the case,” *Marmo v. Tyson Fresh Meats, Inc.*, 457 F.3d 748, 757 (8th Cir. 2006), or that is “just parroting the opinion of [another] expert.” *Dura v. CTS Corp.*, 285 F.3d 609, 613 (7th Cir. 2002). Mr. Favre’s opinions suffer from all of these flaws.

“To get an accurate amount” for replacement costs, Mr. Favre says that “the invoices and any contracts that had been signed would put it to the penny.” (Favre Dep. in *Pipkins* (Ex. B to Mtn.) at 60:16-24.) Yet here he consulted none of them, which – never mind the penny – total \$946,198. See (Dailey Rpt. [275-7] at 4; *id.* [275-9] at ECF 1-12.) Instead, his opinion rests entirely on his use of Xactimate software, in which he can change prices, room sizes, quality variables, item descriptions, and other functions. Comparing his *McIntosh* report with his current report reveals that he has altered countless variables that greatly deflate his repair estimate and eliminate many expenses. He explains none of his methods and makes no attempt to validate his estimates. Indeed, he proclaims that “because of my experience, I never validate anything.” (Favre Dep. in *Bounds* (Ex. C to Mtn.) at 53:17-24.)

Nor is Mr. Favre’s opinion on conflicts of interest due to the use of a single adjuster admissible. The Rigsbys have judicially admitted that a WYO carrier must use a single adjuster, (First Am. Compl. [16] ¶ 55), and it is mandated by the Single Adjuster Rule under federal law. 44 C.F.R. pt. 62, app’x A, art. II(C). Mr. Favre has no expertise to opine on NFIP policy, nor any power to rewrite the law.

II. THRESHOLD SCRUTINY OF EXPERT TESTIMONY

This Court must fulfill a vital “gatekeeping role” that requires it to make a threshold assessment “whether the reasoning or methodology underlying the [expert] testimony is scientifically valid and of whether that reasoning and methodology properly can be applied to the facts in issue.” *Daubert*, 509 U.S. at 592-93. Throughout the evaluation, “the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.” *Id.* at 589. These “exacting standards of reliability,” *Weisgram v. Marley Co.*, 528 U.S. 440, 442 (2000), require far “more than subjective belief or unsupported speculation.” *Daubert*, 509 U.S. at 590.

Federal Rule of Evidence 702 requires a sound basis and a sound methodology, properly applied to the facts of the case, before an opinion can be admitted into evidence.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, 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.

Fed. R. Evid. 702 (emphasis added). Thus, courts must exclude expert evidence that is not “based on sufficient facts or data,” that is not “the product of reliable principles and methods,” or whose methods are not applied “reliably to the facts of the case.” *Id.* Indeed, “*any* step that renders the analysis unreliable ... renders the expert’s testimony inadmissible. ***This is true whether the step completely changes a reliable methodology or merely misapplies that methodology.***” Fed. R. Evid. 702 advisory committee’s note (2000) (quoting *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 745 (3d Cir. 1994)) (emphasis and omission in original).

Of course, an expert’s “conclusions and methodology are not entirely distinct from one another,” *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997), and the difference between an expert’s conclusions and methodology “has only limited practical import.” *In re Paoli*, 35 F.3d at 746. “When a judge disagrees with the conclusions of an expert, it will generally be because he or she thinks that there is a

mistake at some step in the investigative or reasoning process of that expert.” *Id.* As part of its gatekeeping function, the court “must examine the expert’s conclusions in order to determine whether they could reliably flow from the facts known to the expert and the methodology used.” *Oddi v. Ford Motor Co.*, 234 F.3d 136, 146 (3d Cir. 2000) (citation omitted). Upon doing so, a court may, for example, “conclude that there is simply too great an analytical gap between the data and the opinion proffered,” and properly preclude the expert’s testimony. *Joiner*, 522 U.S. at 146.

“It is axiomatic that an expert, no matter how good his credentials, is not permitted to speculate.” *Goebel v. Denver & Rio Grande W. R.R. Co.*, 215 F.3d 1083, 1088 (10th Cir. 2000). Indeed, a core rule of evidence is that “speculation is unreliable ... and is inadmissible.” *Dunn v. Sandoz Pharm. Corp.*, 275 F. Supp. 2d 672, 684 (M.D.N.C. 2003). “The courtroom is not the place for scientific guesswork, even of the inspired sort.” *Rosen v. Ciba-Geigy Corp.*, 78 F.3d 316, 319 (7th Cir. 1996). “Expert testimony is inadmissible if it is speculative, unsupported by sufficient facts, or contrary to the facts of the case.” *Marmo*, 457 F.3d at 757.

The Rigsbys, as the proponents of the expert evidence, bear the burden of showing that it is admissible. *Mathis v. Exxon Corp.*, 302 F.3d 448, 459-60 (5th Cir. 2002); *Tanner v. Westbrook*, 174 F.3d 542, 547 (5th Cir. 1999) (superseded on other grounds) (citation omitted); *see also Daubert*, 509 U.S. at 592 n.10. State Farm does **not** bear the burden of demonstrating its inadmissibility. *See Rieger v. Orlor, Inc.*, 427 F. Supp. 2d 99, 102 (D. Conn. 2006); *Soldo v. Sandoz Pharms. Corp.*, 244 F. Supp. 2d 434, 534 (W.D. Pa. 2003).

Daubert carefully distinguishes between the threshold reliability inquiry that the Rigsbys must satisfy and the role of cross-examination. “Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky **but admissible** evidence. ... These conventional devices ... are the appropriate safeguards **where** the basis of scientific testimony **meets the standards** of Rule 702.” *Daubert*, 509 U.S.

at 596 (emphasis added). As the highlighted language shows, the Rigsbys must first satisfy their burden of demonstrating that the proffered evidence is admissible. *See McLendon v. Georgia Kaolin, Co., Inc.*, 841 F. Supp. 415, 418 (M.D. Ga. 1994) (“these devices are only sufficient safeguards where the scientific testimony meets the standards of Rule 702”); *see also Peitzmeier v. Hennessy Indus., Inc.*, 97 F.3d 293, 297 (8th Cir. 1996) (“cross-examination at trial” cannot “take the place of scientific peer review”); *Porter v. Whitehall Labs.*, 791 F. Supp. 1335, 1345 & n.10 (S.D. Ind. 1992) (“an expert’s opinion must have *some* basis other than hypothesis before the opinion may have the privilege of being assailed by cross-examination”) (emphasis in original), *aff’d*, 9 F.3d 607 (7th Cir. 1993).

Even if Mr. Favre’s testimony could somehow survive this Court’s threshold scrutiny under Rule 702 (which it cannot), then it would be subject to further review and preclusion under Rule 403. “[E]xpert evidence can be both powerful and quite misleading. ... Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 ... exercises more control over experts than over lay witnesses.” *Daubert*, 509 U.S. at 595. To this end, an expert opinion’s “lack of reliable support may render it more prejudicial than probative, making it inadmissible under [Rule] 403.” *Viterbo v. Dow Chem. Co.*, 826 F.2d 420, 422 (5th Cir. 1987).

III. THE PROPOSED EXPERT TESTIMONY IS IRRELEVANT, INADMISSIBLE, AND IMMATERIAL

None of the Rigsbys’ proposed expert testimony is probative of whether the McIntosh flood claim was “knowingly” false or fraudulent, 31 U.S.C. § 3729, and it should be excluded on that ground alone. *See Fed. R. Evid.* 401, 402, & 702. Indeed, it is incapable of raising a genuine issue of material fact given Kerri Rigsby’s sworn factual admissions that she thought there was at least \$250,000 in flood damage to the McIntosh home and that the damage to the first floor walls and floors appeared to her to be predominately caused by rising water from storm surge and waves.

- Q. And when you made the payment or agreed or authorized your subordinate, who was working – primarily working the claim, to request authority for \$250,000, you thought there was at least that much flood damage to the home, didn’t you?

A. Was a lot of damage to that home.

....

A. It was a large home. It was insured for a lot of money, and I – yeah, I believe I thought there was \$250,000 worth of flood damage to that home.

....

A. [T]here was severe damage to the home.

....

Q. The third bullet point [in the October 20, 2005 report], which states that the damage to the first floor walls and floors appears to be predominantly caused by rising water from storm surge and waves, was that consistent with what you saw when you went out to the McIntosh home?

A. Yes.

([91-7] at 139:9-140:8, 142:7-13.) The dispositive effect of these sworn factual admissions cannot be negated by their proposed expert testimony, rendering it irrelevant, inadmissible, and immaterial. *See, e.g., United States ex rel. Taylorvick v. Smith*, 513 F.3d 228, 232 (5th Cir. 2008).

IV. MR. FAVRE’S OPINION RESTS ON A FACTUALLY ERRONEOUS “2.1 FEET” FLOOD LINE

Mr. Favre’s opinion rests on a factually – and fatally – false flood line. He operates from the erroneous premise that the storm surge flooding in the McIntosh house was only “2.1 feet above the McIntosh finish floor elevation.” (Favre Rpt. [279-4] at ECF 3.) But he is not free to adopt a private set of facts to form his opinion. “Expert evidence based on a fictitious set of facts is just as unreliable as evidence based on no research at all” and is inadmissible. *Guillory*, 95 F.3d at 1331.

Mr. Favre’s “2.1 feet” flood line cannot be reconciled with this Court’s observation that “[m]y review of the material from the McIntosh case discloses that the McIntosh home was inundated with approximately six feet of water.” ([261] at 3.) It is also flies in the face of the facts found by Kerri Rigsby, who had a physical role in using the tape measure to get the measurements of the McIntosh house, *see* (K. Rigsby Dep. in *McIntosh*, 5/01/07 (Ex. D to Mtn.) at 283:4-7), and has confirmed that her inspection revealed that the interior flood line was over five feet.

Q. What's it [the activity log] say?

A. Scope loss with Mr. Insured and Kerri R. Do not have wind claim. Will request for some – for same claim rep to handle both claims. A general condition of flooding existed due to tidal flow from Hurricane Katrina. This is a single family dwelling not elevated and their principal residence. ***Interior water line five feet two.*** Exterior walls damaged and interior walls are moved. ...

Q. Okay. And ***is there anything*** in that that you recall from looking back from your recollection that is ***inaccurate about the facts reflected in that statement*** in that log note?

A. ***It seems pretty factual.***

(*Id.* at 274:12-275:5.) Indeed, Kerri Rigsby testified that the water line in the house is “the first thing you would look at” because the National Flood Insurance Program requires adjusters to document “exactly how much water was in the house, and they want a tape measure on it. That’s very important to them.” (*Id.* at 113:21-114:2.) Yet Mr. Favre failed to review this testimony before using his own flood line. *See* (Favre Rpt. [279-5] at ECF 23.) Further, engineer Brian Ford confirmed that there is “no doubt” there was “five and a half feet” of water damage caused by storm surge on the main floor of the McIntoshes’ house, ([225-2] at 251:2-24, 270:22-271:14, 302:19-303:8), a factual finding presented to, but ignored by, Mr. Favre. *See* (Favre Rpt. [279-5] at ECF 23.)

Mr. Favre typically relies on the water line “to determine what would have been damaged by storm surge versus wind.” (Favre Dep. in *Hutchinson* (Ex. E to Mtn.) at 18:20-19:2.) For hundreds of Katrina claims, Mr. Favre would, as an independent adjuster, “go out and assess the flood line, and we’d write everything below the flood line as flood, everything above the flood line, damage-wise, as wind.” (Favre Dep. in *Pipkins* (Ex. B) at 45:12-46:10; *accord id.* at 68:4-7; Favre Dep. in *Kreeger* (Ex. F to Mtn.) at 33:7-34:22, 38:7-12.)

Here, he claims to rely on photographs of “foyer column rub marks” and “dry goods in the pantry” as his “determining factors” for a “2.1 feet” flood line, but omits the photographs from his report. (Favre Rpt. [279-6] at ECF 3.) We do not.



The “foyer column rub marks” rise at least two-thirds the height of the adjacent door, easily surpassing Mr. Favre’s “2.1 feet” flood line. So, too, the “dry goods in the pantry” sit well above “2.1 feet.” As Mr. Favre says, “[t]he photograph says it all.” (Favre Dep. in *Bailey* (Ex. G to Mtn.) at 19:19.)

Mr. Favre’s premise that the flood level was “2.1 feet” drives his entire opinion and flatly contradicts established fact. An opinion built on a false foundation cannot withstand this Court’s threshold review. As the Fifth Circuit has stated, “the district judge serves as a gatekeeper for expert evidence, it is an important role designed to extract evidence tainted by farce or fiction. Expert evidence based on a fictitious set of facts is just as unreliable as evidence based on no research at all. Both analyses rest in pure speculation. We find the testimony properly excluded on this ground.” *Guillory*, 95 F.3d at 1331. Indeed, expert testimony, such as Mr. Favre’s, that is “contrary to the facts of the case” is “inadmissible.” *Marmo*, 457 F.3d at 757.

V. MR. FAVRE FAILS TO ACCOUNT FOR SUFFICIENT REPAIR TO DRYWALL AND INSULATION

Based on his erroneous “2.1 feet” flood line, Mr. Favre fails to include enough feet of wall repairs to account for the high flooding in the house. Thus, remarkably, Mr. Favre allots only *four* feet of drywall and insulation, (Favre Rpt. [279-4] at ECF 4), for more than *five* feet of flooding.

According to Mr. Favre, “common sense” dictates that “you must provide a higher level of removal and or replacement” of the walls than the flood line, (Favre Rpt. [279-4] at ECF 4), and that any flooding over four feet would require replacing the entire wall. “It’s typically the way you adjust a flood claim. If it’s one inch over four or even an eighth inch over four, then you have to start giving the

whole wall up on flood.” (Favre Dep. in *Garrison* (Ex. H to Mtn.) at 17:8-15.) Likewise, as Kerri Rigsby testified, with a water line of four or more feet and with the effect of wicking, a full eight feet must be repaired. (K. Rigsby Dep. in *McIntosh*, 5/01/07 (Ex. D) at 115:14-117:3; *see also* C. Rigsby Dep. in *McIntosh*, 11/19/07 (Ex. I to Mtn.) at 323:7-21.) Mr. Favre utterly fails to account for the entire eight feet of drywall and insulation for the interior walls, improperly deflating his replacement estimate.

VI. MR. FAVRE RADICALLY CUTS HIS ESTIMATE FROM HIS MCINTOSH REPORT

“To get an accurate amount” for replacement costs, Mr. Favre says “the invoices and any contracts that had been signed would put it to the penny.” (Favre Dep. in *Pipkins* (Ex. B) at 60:16-24.) Yet he consulted none of those here. *See* (Favre Rpt. [279-5] at ECF 23.) Had he done so, he would learn that his \$131,155.89 estimate is patently dubious and unreliable compared to the actual repair and replacement cost totals of **\$946,198.66**. (*Compare* Favre Rpt. [276-5] at ECF 22, *with* Dailey Rpt. [275-7] at 4, *and id.* [275-9] at ECF 1-12.) While some of those costs are attributable to other repairs or changes, the vast majority of those actual costs were incurred to repair flood damage and reconfirm the propriety of the payment of flood policy limits.

Disregarding the amounts actually spent by the McIntoshes, Mr. Favre employs wide discretion with the Xactimate software program to craft his own figures. In doing so, he discloses no methodology or sound reasoning, if any. Nor does he take any steps to validate his methods and proclaims that “because of my experience, I never validate anything.” (Favre Dep. in *Bounds* (Ex. C) at 53:17-24.)

A comparison between his *McIntosh* report and his report here shows that he changes innumerable items with no explanation. The examples that follow below – and there are many more that remain – reveal that between Mr. Favre’s data and his conclusions lies a yawning gap across which he takes a great analytical leap. An opinion based on such a leap of logic, with no sound method to explain it, is not admissible. “[T]he existence of sufficient facts and a reliable methodology is in all instances mandatory.” *Hathaway v. Bazany*, 507 F.3d 312, 318 (5th Cir. 2007). Here, “there is simply too great an

analytical gap between the data and the opinion proffered.” *Joiner*, 522 U.S. at 146. Mr. Favre’s analytical gap shows no reliable methodology or no methodology at all.

An expert’s report must be “detailed and complete,” *Sierra Club v. Cedar Pointe Oil Co.*, 73 F.3d 546, 571 (5th Cir. 1996), setting forth “‘how’ and ‘why’ the expert reached a particular result.” *Ciomber v. Cooperative Plus, Inc.*, 527 F.3d 635, 641 (7th Cir. 2008) (citation omitted). An expert report must provide “a complete statement of all opinions the witness will express and the basis and reasons for them.” *See* Fed. R. Civ. P. 26(a)(2)(B) & 37(c)(1); Miss. Unif. Dist. Ct. R. 26.1(A)(2). Mr. Favre’s opinion falls far short of these requirements, which exist to prevent “the disclosure of ‘sketchy and vague’ expert information.” *Sierra Club*, 73 F.3d at 571. Nor can these deficiencies be cured and backfilled at a deposition or at a hearing. *See, e.g., Ciomber*, 527 F.3d at 642, *accord Williams v. Daimler Chrysler Corp.*, 2008 WL 4449558, at *5 (N.D. Miss. July 22, 2008) (quoting *Ciomber*).

A. Mr. Favre Cuts the Prices from *McIntosh* by Using Largely Pre-Katrina Values

Mr. Favre cuts many of his prices between his *McIntosh* report and his current report. The Xactimate software suggests prices using price guides and permits Mr. Favre to change the prices on his own. *See, e.g.,* (Favre Dep. in *Pipkins* (Ex. B) at 66:2-5.) He has the ability to “change ... the material or labor cost in the unit price” as he wishes. (Favre Dep. in *Hutchison* (Ex. E) at 21:13-19.) He can also “get any price guide you want and inject it into Xactimate at any given time.” (Favre Dep. in *Averette* (Ex. J to Mtn.) at 92:24-93:10.) That is exactly what he did. He picked a more expensive price guide for his *McIntosh* report and a less expensive one for this report, without explanation.

In *McIntosh*, Mr. Favre uses the price guide “MSGU4B6A,” but here he uses the price guide “MSGU5F5C.” (*Compare* Favre *McIntosh* Rpt. (Ex. K to Mtn.) at 1, *with* Favre Rpt. [279-4] at ECF 2.) In *McIntosh*, Mr. Favre’s price guide contains all post-Katrina prices, but here his price guide is largely pre-Katrina prices. Of course, prices after Katrina were “increasing ... constantly,” (Favre Dep. in *Blue*

Meadows Apts. (Ex. L) at 50:6-18), and by selecting a pre-Katrina prices, he deflates them.¹ Indeed, the prices for most items were lower here than his *McIntosh* report, including nearly all items for several rooms. (Compare, e.g., Favre *McIntosh* Rpt. (Ex. K) at 6, 19 (Foyer/Entry; Master Bedroom), with Favre Rpt. [279-5] at ECF 2, 13 (same).) For example, the foyer door is \$2,583.73 in *McIntosh* but only \$1,981.98 here. (Compare Favre *McIntosh* Rpt. at 6, with Favre Rpt. [279-5] at 2.) Mr. Favre provides no sound methodology for cutting most of the prices by using largely pre-Katrina values.

B. Mr. Favre Shrinks the Rooms from *McIntosh*

In his *McIntosh* report, Mr. Favre assigns dimensions to each room in the house, and here he shrinks them. For example, from his *McIntosh* report to his current report, he shrinks the family room floor perimeter from 87 linear feet to 78 linear feet, the “SF Walls & Ceiling” from 1408 square feet to 1336 square feet, and the ceiling perimeter from 87 linear feet to 78 linear feet, all without changing the dimensions of the room. (Compare Favre *McIntosh* Rpt. (Ex. K) at 10, with Favre Rpt. [279-5] at ECF 5.) He also shrinks the “Offset 1” floor perimeter from 23 linear feet to 14 linear feet, the walls from 184 square feet to 112 square feet, the “SF Walls & Ceiling” from 229 square feet to 157 square feet, and the ceiling perimeter from 23 linear feet to 14 linear feet, again, without changing the dimensions of the room. (Compare Favre *McIntosh* Rpt. at 10, with Favre Rpt. [279-5] at ECF 5.)

Mr. Favre also flatly shrinks the dimensions of another room. In *McIntosh*, he measures the height of “Hallway 2” at 10’, but here he measures the height at 8’. (Compare Favre *McIntosh* Rpt. (Ex. K) at 17, with Favre Rpt. [279-5] at ECF 11.) He even cuts the carport altogether. (Compare Favre *McIntosh* Rpt. at 24, with Favre Rpt. [279-5] at ECF 21.)

¹ The last two digits of the code reveal the quarter and year of the prices. (Favre Dep. in *Blue Meadows Apts.* (Ex. L to Mtn.) at 49:22-50:18.) For his report, Mr. Favre uses prices from the third quarter of 2005 (represented by “5C”), but for the *McIntosh* report, Mr. Favre uses prices for the first quarter of 2006 (represented by “6A”). (Compare Favre *McIntosh* Rpt. (Ex. K) at 1, with Favre Rpt. [279-4] at ECF 2.)

Mr. Favre does not explain any methodology, much less a reliable one, for changing the size of the McIntosh house. By doing so, he has essentially prepared an estimate for a different building. He leaves the Court to simply guess at his methodology, if any.

C. Mr. Favre Cuts the Brick Veneer, Fees, and Permits from *McIntosh*

Mr. Favre also cuts large-scale expenses from his *McIntosh* report. In *McIntosh*, he allots \$24,174.29 to replace the brick veneer on the house, but here he allots zero. (*Compare Favre McIntosh Rpt.* (Ex. K) at 2, *with Favre Rpt.* [279-5] at ECF 1.) In *McIntosh*, he allots \$15,000 for an architectural and drafting fee, but here he allots zero. (*Id.*) He even eliminates any money for construction permits. (*Compare Favre McIntosh Rpt.* at 38, *with Favre Rpt.* [279-5] at ECF 20.) He provides no explanation for any one of his cuts.

D. Mr. Favre Cuts Floor Coverings from *McIntosh*

Mr. Favre makes extensive cuts to floor coverings in the first floor, without explanation. In the master bedroom in *McIntosh*, he allots 480 square feet of carpet removal at \$0.19, 552 square feet of carpet at \$4.08, and 480 square feet of carpet padding at \$0.57. (*Favre McIntosh Rpt.* (Ex. K) at 19.) Here, he cuts all those expenses. He allots only 344 square feet of carpet removal at \$0.14, 344 square feet of carpet at \$3.82, and 344 square feet of carpet padding at \$0.47. (*Favre Rpt.* [279-5] at ECF 13.) In *McIntosh*, he also allows 15% of the carpet cost for “waste,” but here he did not. (*Compare Favre McIntosh Rpt.* at 19, *with Favre Rpt.* [279-5] at ECF 13.) He repeats his cuts to the prices and square footage of carpet and carpet padding in the master bathroom. (*Compare Favre McIntosh Rpt.* at 20, *with Favre Rpt.* [279-5] at ECF 15.) He does not allow for any carpet removal in the master bathroom, but he did in *McIntosh*. (*Id.*)

Mr. Favre also cuts tile floors from his estimate for rooms throughout the first floor. In *McIntosh*, he allocates the full cost to replace the tile floor in the study bath, but here he only allocates the cost to clean and regROUT the tile floor. (*Compare Favre McIntosh Rpt.* (Ex. K) at 8, *with Favre Rpt.* [279-5] at ECF 4.) So, too, in *McIntosh*, he allocates the full cost to replace the tile floors in the family room,

breakfast area, hallway 1, bathroom 2, kitchen, pantry, utility hallway, and utility room, but here he only pays to clean and regrout the tile floors. (*Compare Favre McIntosh Rpt.* at 11-16, 21-22, *with Favre Rpt.* [279-5] at ECF 6-11, 15-16.) He provides no explanation for any of it.

E. Mr. Favre Cuts Debris Removal Expenses from *McIntosh*

Mr. Favre cuts the resources he allocates to remove debris. In *McIntosh*, he allots 4 workers, pays them \$160 per hour, and allows 15 dumpster loads. (*Favre McIntosh Rpt.* (Ex. K) at 3.) Here, he allots 3 workers, pays them \$120 per hour, and allows 2 dumpster loads. (*Favre Rpt.* [279-5] at ECF 1.) Mr. Favre assigns all the debris removal variables himself, (*Favre Dep. in Blue Meadow Apts.* At 106:8-19), and presents no method for cutting workers, wages, and dumpster loads. When asked to explain his method for calculating debris removal expenses, he admits that he has *no* legitimate method: “I don’t know how you’d calculate that without using some kind of bogus formula. I don’t know how anybody would calculate that, actually.” (*Favre Dep. in Hutchison* (Ex. E) at 24:25-25:6.)

Mr. Favre’s allocation of only 2 dumpster loads grossly departs from his customary practice. For debris expenses, he will usually “utilize four as an average amount of dumpsters,” and “[i]f the house was not demolished,” like the *McIntosh* house, “then that would be a big factor because dumpsters would have to be utilized for all the debris. If it was a 500 square foot house, then I would say most probably so, that that number four would go down, as a general rule.” (*Favre Dep. in Bounds* (Ex. C) at 36:22-37:7, 37:18-38:6.) In any event, “[f]our dumpsters, to me, is kind of light.” (*Favre Dep. in Pipkins* (Ex. B) at 71:13-72:4.) And for a house with a brick veneer, like the *McIntosh* house, debris removal is more labor intensive and more expensive. *See* (*Favre Dep. in Breland* (Ex. M to Mtn.) at 22:7-11; *accord Favre Dep. in Bradley* (Ex. N to Mtn) at 19:24-21:1.) Here, he cuts the dumper loads from 15 loads in *McIntosh* to 2 loads using to no apparent methodology.

F. Mr. Favre Cuts Electrical Repair from *McIntosh*

Mr. Favre cuts nearly all electrical repairs to the *McIntosh* house despite the severe flood damage. In *McIntosh*, he allots \$7,955 to rewire 2,150 square feet, but here he allots zero. (*Compare Favre*

McIntosh Rpt. (Ex. K) at 3, with Favre Rpt. [279-5] at ECF 1.) Using his customary practice, he allots enough money to rewire a flooded house below the flood line “because we couldn’t take credit for everything below the flood line,” so he will “take the square footage” and “split it in half” for electrical repairs. (Favre Dep. in *Hutchison* (Ex. E) at 27:12-28:3; accord *id.* at 31:18-24.) He abandons his custom here, without explanation. The actual cost the McIntoshes spent on electrical repair is \$70,549.42. (Dailey Rpt. [275-9] at ECF 9.)

G. Mr. Favre Cuts Appliances from *McIntosh*

Mr. Favre cuts appliances from his estimate without explanation. In *McIntosh*, he accounts for 2 water heaters, but here he accounts for only 1 water heater. (Compare Favre *McIntosh* Rpt. (Ex. K) at 2, with Favre Rpt. [279-4] at ECF 5.) In *McIntosh*, he accounts for a cooktop, oven, microwave, garbage disposal, and refrigerator that were in the first-floor kitchen. (Favre *McIntosh* Rpt. at 15.) Here, he cuts them all. (Favre Rpt. [279-4] at ECF 12.) Mr. Favre routinely treats appliances as part of the structure because they “are not contents, but rather components of the house.” (Favre Dep. in *Bounds* (Ex. C) at 40:22-41:2.) “[S]ome people take the approach that a stove is part of the kitchen” and “some people say, no, it’s part of the contents,” but he has “always included it in the kitchen as part of the hard cost ... because those items tend to stay with the house.” (Favre Dep. in *Averette* (Ex. J) at 111:18-112:21; accord Favre Dep. in *Bradley* (Ex. N) at 27:1-7.) Here, he cuts appliances on the ground level following no apparent methodology.

VII. MR. FAVRE OMITTS PERSONAL PROPERTY

Mr. Favre summarily declares that “I have not assigned any NFIP flood loss to the personal property due to the inundation of the rain water and spray through the compromised building envelope due to wind.” (Favre Rpt. [279-4] at ECF 4). But Mr. Favre *never* considers contents in his estimates: “I never, ever look at the contents.” (Favre Dep. in *Bounds* (Ex. C) at 41:22-42:1; accord Favre Dep. in *Kreeger* (Ex. F) at 18:17-19.) Not only does he depart from his practice here, but he also ignores the fact that none of the McIntoshes’ second floor furnishings were damaged during Katrina and that post-

Katrina they moved their second floor furnishings to another home. (P. McIntosh Dep. in *McIntosh* (Ex. O to Mtn.) at 72:6-21, 278:12-19.) He also ignores photograph after photograph depicting first floor furnishings obliterated by flood waters. Nor does he make any effort to quantify the so-called “inundation of the rain water ... due to wind.” Mr. Favre’s assertion that the contents were damaged by rain water is contrary to the facts in the case, speculative, unfounded, and inadmissible. *See, e.g., Marmo*, 457 F.3d at 757.

VIII. MR. FAVRE CONCEALS CRITICAL STEPS IN HIS METHODOLOGY

Mr. Favre’s reliance on the Xactimate software program camouflages the broad discretion that lies within his analysis. Xactimate is not merely a tool with which he enters raw data and obtains a standardized result. To the contrary, he goes “into the program before we start doing the estimate, and we set up all the parameters, overhead, profit, tax factors,” among others. (Favre Dep. in *Averette* (Ex. J) at 77:9-16.)

Q. And I understand in your field that there is a considerable amount of judgment that goes into getting the parameters right for your particular locale to come up with the estimate you think appropriate; is that fair to say?

A. Yes, sir. I would say that’s fair.

Q. So, in other words, if you look and the box comes up, and it shows a labor cost of X, and you, based upon your experience in that particular locale, think that's either high or low, you, in turn, can manually reset that parameter, that value?

A. You can do that.

(*Id.* at 89:3-14.) Mr. Favre has the ability to “change ... the material or labor cost in the unit price” as he wishes. (Favre Dep. in *Hutchison* (Ex. D) at 21:13-19.) As shown above, he did just that.

Beyond his individual changes, Mr. Favre customarily includes a “factor” to change the amount of his estimates. “Sometimes it’s ten percent. Sometimes it’s 15 percent. Mostly 15 percent.” (Favre Dep. in *Averette* (Ex. J) at 133:23-134:1.) Even if he does not expressly include a 10% or 15% “factor,” he is “sure that – that those factors have been subconsciously put into my report.” (*Id.* at 134:18-135:12.)

Mr. Favre also exercises broad discretion over many other features of Xactimate that affect the prices in the report. He has complete discretion to change quality for construction elements, *see, e.g.*, (Favre Dep. in *Averette* (Ex. J) at 85:22-87:6), and finishes, which “are a big factor in developing an estimate for Xactimate.” (Favre Dep. in *Bounds* (Ex. C) at 16:3-12.) There are “thousands of descriptions in Xactimate.” (*Id.* at 68:3-17). He controls them all. Nor does he disclose which among the several versions of Xactimate, including an insurance version and a contractor version, he uses. *See, e.g.*, (Favre Dep. in *Bounds* at 13:23-14:3; Favre Dep. in *Averette* at 77:17-79:1.)

In sum, Mr. Favre provides no explanation or methodology for making any of his countless decisions to craft his estimate. He cannot repackage speculation in the guise of science. “[A] district judge asked to admit scientific evidence must determine whether the evidence is genuinely scientific, as distinct from being unscientific speculation offered by a genuine scientist.” *Rosen*, 78 F.3d 316 at 318 (internal citation omitted). “It is axiomatic that an expert, no matter how good his credentials, is not permitted to speculate.” *Goebel*, 215 F.3d at 1088. “The courtroom is not the place for scientific guesswork, even of the inspired sort.” *Rosen*, 78 F.3d at 319. Rather, an expert’s opinion “is admissible only if [the] data are objectively sufficient to support it.” *Perry v. Novartis Pharm. Corp.*, 564 F. Supp. 2d 452, 468 (E.D. Pa. 2008). Here, they are not. Mr. Favre’s use of the Xactimate software is simply a thin veil for his conjecture and *ipse dixit*.

IX. THE OPINIONS ABOUT BROKEN WATER PIPES ARE FLAWED ON MULTIPLE LEVELS

Revealing further fundamental flaws in his methodology, Mr. Favre initially parrots the fallacious opinion of the Rigbys’ expert engineer, R. Ralph Sinno, Ph.D., who erroneously asserts that wind broke water pipes in the McIntosh house, and then opines that such “potable water inundated” the home “long before the flood waters entered the risk.” (Favre Rpt. [279-4] at ECF 3.) Based on this opinion, Mr. Favre wrote a second estimate that omits what he says would be damage from the broken pipes. (Favre Rpt. [279-4] at ECF 3; *see id.* at ECF 5-23.) This approach is fundamentally flawed.

First, Mr. Favre did not undertake any independent analysis of the cause of water pipe damage, nor does he normally opine on the cause of damage in Katrina cases. *See, e.g.* (Favre Dep. in *Averette* at 56:15-18; *accord* Favre Dep. in *Bounds* 7:19-25.) Here, he echoes the opinions of Dr. Sinno. Expert testimony is inadmissible where the expert is “just parroting the opinion of [another] expert.” *Dura*, 285 F.3d at 613. Stated otherwise, an expert may not be the “mouthpiece of the witnesses on whose statements or opinions the expert purports to base his opinion.” *Loeffel Steel Prods., Inc. v. Delta Brands, Inc.*, 387 F. Supp. 2d 794, 808 (N.D. Ill. 2005). “An opinion which simply parrots the opinion of another does not assist the trier of fact, and thus, is inadmissible under Rule 702.” *Robinson v. Ford Motor Co.*, 967 F. Supp. 482, 487 n.2 (M.D. Ala. 1997), *aff’d*, 144 F.3d 56 (11th Cir. 1998).

Second, Mr. Favre discloses no information as to the location and scope of the broken pipes and fails to consider that water forces are the more likely cause of broken water pipes at the McIntosh house. He ignores the fact that “[t]he force created by waves breaking against a vertical surface is often ten or more times higher than the force created by high winds during a storm event.” (Watson Rpt. [275-5] at 15.) Indeed, as noted in a published paper addressing the structural damage caused by Katrina in Mississippi, co-authored by Dr. Fitzpatrick, “[h]igh winds commonly damage roofs and exterior structural components, but generally pose much less of a threat to structures than storm surge and wave action, which can produce loads orders of magnitude higher, and are severe enough in many cases to destroy entire structures.” *See* (Eamon, Fitzpatrick & Truax Rpt. (Ex. A) at 119.) Thus, water forces acting on the McIntosh home were, by an order of magnitude, more likely to have caused damage to the water pipes and gas lines than wind.

Yet an expert must rigorously evaluate and rule out potential alternative causes and not “simply pick[] the cause that is most advantageous to [plaintiff’s] claim.” *Viterbo*, 826 F.2d at 424. An expert’s failure to negate possible alternative causes of the damage “renders his methodology unreliable,”

Alexander v. Smith & Nephew, P.L.C., 98 F. Supp. 2d 1310, 1316 (N.D. Okla. 2000), and inadmissible. *Id.* Thus, Mr. Favre’s second estimate is baseless, inadmissible, and should be disregarded.

Third, Mr. Favre’s opinion is speculative and unreliable because it relies on the fallacious reasoning embodied in “the blunder of the *post hoc ergo propter hoc* fallacy.” *McClain v. Metabolife Int’l, Inc.*, 401 F.3d 1233, 1243 (11th Cir. 2005).

The *post hoc ergo propter hoc* fallacy assumes causality from temporal sequence. It literally means “after this, because of this.” It is called a fallacy because it makes an assumption based on the false inference that a temporal relationship proves a causal relationship.

Id. (citation omitted). “[T]he fallacy of *post-hoc propter-hoc* reasoning ... is as unacceptable in science as in law.” *Black v. Food Lion, Inc.*, 171 F.3d 308, 313 (5th Cir. 1999). Mr. Favre falls prey to “the fallacy of *post-hoc propter-hoc* reasoning” by concluding that because the McIntoshes reported finding broken pipes after Katrina that it must have been Katrina’s relatively moderate Category 2 winds, rather than its severe Category 5 storm surge and waves (with forces an order of magnitude higher), that caused the damage. *See* (Favre Rpt. [279-4] at ECF 3.)

X. MR. FAVRE’S OPINION ABOUT NFIP CLAIMS ADJUSTMENT WITHSTANDS NO SCRUTINY

The record and federal law undermine Mr. Favre’s opinion about how to adjust a NFIP claim. An expert whose opinion is refuted by established facts or is contrary to law is inadmissible. *See* Fed. R. Evid. 401, 402, 702. Without any qualifications to do so, Mr. Favre attempts to opine that a NFIP adjustment cannot be done alongside a homeowner claim adjustment because of “conflicts of interest” in having a single adjuster and no engineer. (Favre Rpt. [279-4] at ECF 3.) Yet the Rigbys have judicially admitted that a WYO carrier must use a single adjuster. (First Am. Compl. [16] ¶ 55.) The Rigbys’ judicial admission removed this issue from the case. They cannot revisit it through Mr. Favre.

Judicial admissions have “the effect of withdrawing a fact from contention” and may not be “controverted or explained by the party who made [them].” *Martinez v. Bally’s La., Inc.*, 244 F.3d 474, 476-77 (5th Cir. 2001) (citation omitted). Stated otherwise, having already made a judicial admission,

“judicial efficiency demands that a party not be allowed to controvert what it has already unequivocally told a court by the most formal and considered means possible.” *Soo Line R.R. v. St. Louis S.W. Ry.*, 125 F.3d 481, 483 (7th Cir. 1997). Once made, judicial admissions are not “subject to judicial scrutiny to ensure that the admissions are fully supported by the underlying record. This rule of non-inquiry promotes efficiency and judicial economy by facilitating the concession of specific issues.” *Hoodho v. Holder*, 558 F.3d 184, 191 (2d Cir. 2009) (citation omitted). The Rigsbys’ judicial admission “is conclusive in the case,” *id.* (citation omitted), and precludes Mr. Favre from opining otherwise.

Further, federal law undercuts Mr. Favre’s opinion. The Single Adjuster Rule, codified at 44 C.F.R. pt. 62, app’x A, art. II(C), provides the WYO insurer “shall agree to the adjustment of the combined flood and wind losses utilizing one adjuster.” Likewise, the NFIP *Adjuster Claims Manual*, §§ III(B)(1) & (2), explains that “the Single Adjuster Program (SAP) provides the most efficient use of adjusting resources in a catastrophic hurricane situation to improve service to the mutual policyholders of both wind damage and flood damage insurers. This measure avoids duplicate assignments of losses and better deploys the available adjuster resources in a major hurricane event.” (Available at <http://www.fema.gov/txt/nfip/2004adjmanual.txt>.) The Single Adjuster Rule make no mention of using an engineer, and Mr. Favre is without power to superimpose a new federal requirement. “Expert opinions that are contrary to law are inadmissible.” *Loeffel Steel Prods*, 387 F. Supp. 2d at 806. “They cannot be said to be scientific, to be reliable, or to be helpful to the trier of fact. Indeed, ‘it is not an expert opinion.’” *Id.* (citation omitted).

So, too, the Rigsbys’ sworn testimony undermines Mr. Favre’s opinion that a NFIP adjuster “would not in any instance” adjust a claim without an engineer. (Favre Rpt. [279-4] at ECF 3 As Cori Rigsby testified, no engineer is needed when the house remains standing and bears an interior water line, just like the McIntosh house, and that payments for the flooding should be made under the flood policy.

Q. You were sophisticated and trained as an adjuster to identify flood damage, weren't you?

A. Yes.

...

Q. But in some cases, you certainly could clearly identify flood damage?

A. Yes.

...

A. ... *Obviously if you have a few missing shingles and then you have a water line of four feet in the house, you can tell that the flood caused the damage for the four feet and the wind blew the shingles off. You don't need an engineer for that.*

Q. Right. Because you can see the water line?

A. Right.

...

Q. And as a flood adjuster, you were experienced and accustomed to handing out checks when you saw four feet of water having formally been in a house, weren't you?

A. I was accustomed to paying flood claims.

Q. Right. *And you didn't think there was anything unfair or unreasonable about giving a policyholder a check on their flood policy when you could see a clear water line like that, did you?*

A. *No, I did not.*

Q. And as you sit here today, you're not suggesting that your position's changed on that, are you?

A. No. *I believe we owe for flood damage if there was flood damage.*

(C. Rigsby Dep. in *McIntosh*, 11/19/07 (Ex. I) at 321:17-19, 322:8-323:6, 323:22-324:13.) Likewise,

Kerri Rigsby testified that locating the interior flood line was sufficient to ascertain flooding.

Q. ... Were you, in 2004, a competent flood adjuster?

A. Yes.

Q. Tell me what you would look at when you would either go to a scene as an adjuster or as a manager in a training function with another adjuster to look at to make a determination as to whether, A, there had been flood damage and, B, the extent of it?

A. Well, the first thing you would look at is the water line if the residence was still there.

Q. Okay. And why is that important, to your knowledge?

A. Well, it's important to the National Flood Insurance Program. They want to know exactly how much water was in the house, and they want a tape measure on it. That's very important to them.

Q. Okay.

A. So we are taught that's the first thing we look for.

...

Q. Okay. Other than a water line, what do you look for, if anything?

A. To see if it flooded?

Q. Uh-huh.

A. ***Other than the water line, that pretty much tells you if it flooded.***

(K. Rigsby Dep. in *McIntosh*, 5/01/07 (Ex. D) at 113:7-115:6.)

CONCLUSION

For the foregoing reasons, State Farm respectfully urges this Court to grant its motion and exclude Mr. Favre's testimony in its entirety.

This the 6th day of May, 2009.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

By: s/E. Barney Robinson III (MSB # 09432)
Robert C. Galloway (MSB # 4388)
Jeffrey A. Walker (MSB # 6879)
E. Barney Robinson III (MSB # 09432)
Benjamin M. Watson (MSB # 100078)

ITS ATTORNEYS

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC
17th Floor, Regions Plaza
Post Office Box 22567
Jackson, Mississippi 39225-2567
(P) (601) 948-5711
(F) (601) 985-4500
(E) bob.galloway@butlersnow.com
(E) jeff.walker@butlersnow.com

(E) barney.robinson@butlersnow.com
(E) ben.watson@butlersnow.com

Michael B. Beers (ASB-4992-S80M)
BEERS, ANDERSON, JACKSON, PATTY & FAWAL, P.C.
Post Office Box 1988
Suite 100
250 Commerce Street (36104)
Montgomery, Alabama 36102
(P) (334) 834-5311
(F) (334) 834-5362
(E) mbeers@beersanderson.com
PRO HAC VICE

CERTIFICATE OF SERVICE

I, E. Barney Robinson III, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System:

C. Maison Heidelberg
Ginny Y. Kennedy
MAISON HEIDELBERG P.A.
795 Woodlands Parkway, Suite 220
Ridgeland, MS 39157
(P) (601) 351-3333
(F) (601) 956-2090
(E) maison@heidlebergpa.com

August J. Matteis, Jr.
Craig J. Litherland
Benjamin R. Davidson
GILBERT OSHINSKY LLP
11 New York Avenue, NW
Suite 700
Washington, DC 20005
(E) matteisa@gotofirm.com
(E) litherlandc@gotofirm.com
(E) davidsonb@gotofirm.com

COUNSEL FOR CORI RIGSBY AND KERRI RIGSBY

Jeffrey S. Bucholtz
Joyce R. Branda
Patricia R. Davis
Jay D. Majors
UNITED STATES DEPARTMENT OF JUSTICE
Civil Division
P.O. Box 261
Ben Franklin Station
Washington, DC 20044
(P) (202) 307-0264
(F) (202) 514-0280

Stan Harris
Alfred B. Jernigan, Jr.
Felicia C. Adams
UNITED STATES ATTORNEY'S OFFICE
Southern District of Mississippi
Suite 500
188 East Capitol Street
Jackson, MS 39201
(P) (601) 965-4480
(F) (601) 965-4409

ATTORNEYS FOR THE UNITED STATES

H. Hunter Twiford III
Stephen F. Schelver
Candy Burnette
MCGLINCHEY STAFFORD, PLLC
Suite 1100, City Centre South
200 South Lamar Street (39201)
P.O. Box 22949
Jackson, MS 39225-2949
(P) (601) 960-8400
(F) (601) 960-8432

John T. Boese
Beth C. McClain
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, LLP
1001 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20004-2505
(P) (202) 639-7220

ATTORNEYS FOR DEFENDANTS E.A. RENFROE & COMPANY, INC.,
GENE RENFROE AND JANA RENFROE

Larry G. Canada
Kathryn Breard Platt
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH
701 Poydras Street
Suite 4040
New Orleans, LA 70139
(P) (504) 525-6802
(F) (504) 525-2456

ATTORNEYS FOR HAAG ENGINEERING CO.

Robert D. Gholson
Daniel D. Wallace
GHOLSON, BURSON, ENTREKIN & ORR, P.A.
535 North 5th Avenue (39440)
P.O. Box 1289
Laurel, MS 39441-1289
(P) (601) 649-4440
(F) (601) 649-4441

ATTORNEY FOR FORENSIC ANALYSIS ENGINEERING CORPORATION

This the 6th day of May, 2009.

s/ E. Barney Robinson III (MSB # 09432)
E. Barney Robinson III (MSB # 09432)