

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

**D. NEIL HARRIS AND ASSOCIATES, P.A. and  
D. NEIL HARRIS, SR., INDIVIDUALLY AND D/B/A  
D. NEIL HARRIS AND ASSOCIATES, P.A.**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO. 1:08cv1489 HSO-MTP**

**STATE FARM FIRE AND CASUALTY COMPANY;  
STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY; AND JOHN AND JANE DOES  
A, B, C, D, E, F, G and H**

**DEFENDANTS**

**MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL/AMENDED REPORT OF EXPERT WITNESS**

COME NOW the Plaintiffs, D. Neil Harris, Sr., Individually and D. Neil Harris and Associates, P.A., by and through undersigned counsel, and file herewith their Motion for Leave to File Supplemental/Amended Report of Expert Witness (See proposed Second Amended Designation of Expert Witnesses attached as Exhibit 1) in this matter and in support thereof would show the Court as follows:

1. Plaintiffs' filed their Designation of Expert Witnesses and Amended Designation of Expert Witnesses on June 24, 2009 pursuant to the Court's Text Order on June 8, 2009. Defendant filed its Designation of Expert Witnesses on July 24, 2009. Trial is currently scheduled during the three week calendar for March 8, 2010.

2. The Plaintiffs are seeking leave to file the Supplemental/Amended Report of Plaintiffs' Expert, James Koerber. Mr. Koerber has reviewed Defendant's expert report of Joseph E. Hines and has prepared a rebuttal to the report. The deposition of Mr. Koerber is currently set for Friday, September

11, 2008 and Plaintiffs are submitting the Supplemental/Amended Report to counsel for the Defendants concurrently with this motion.

3. Plaintiffs respectfully submit that a Supplemental/Amended Report is necessary to address the opinions and conclusions set forth in the Defendant's economic expert's report. Defendant will not suffer any prejudice as a result of allowing Plaintiffs to submit this Supplemental/Amended Report as it is being provided to defense counsel prior to the taking of Mr. Koerber (Plaintiffs' expert) deposition. Plaintiffs respectfully submit the interests of Justice will be served by granting this motion and that it is being filed in good faith.

4. By correspondence of September 9, 2009, Plaintiffs have asked counsel for the Defendant whether they will voluntarily consent to Plaintiffs being given leave to file the Supplemental/Amended report of Mr. Koeber. (See Correspondence as Exhibit 2). At the time of this filing, Plaintiffs have not had a response.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for an Order granting Plaintiffs' Motion for Leave to File Supplemental/Amended Expert Report in conformity with the Second Amended Designation of Expert Witnesses, attached as Exhibit 1. Plaintiffs further pray for any and all additional relief deemed appropriate by this Honorable Court.

RESPECTFULLY SUBMITTED, this the 9<sup>th</sup> day of September, 2009.

D. NEIL HARRIS & ASSOCIATES, P.A.  
D. NEIL HARRIS, INDIVIDUALLY AND D/B/A  
D. NEIL HARRIS & ASSOCIATES, PLAINTIFFS

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

CLYDE H. GUNN, III (MSB #5074)  
CHRISTOPHER C. VAN CLEAVE (MSB #10796)  
W. CORBAN GUN (MSB #101752)  
DAVID N. HARRIS, JR. (MSB #100790)  
CORBAN, GUNN & VAN CLEAVE, P.L.L.C.  
P. O. Drawer 1916  
Biloxi, MS 39533-1916  
Telephone: (228) 432-7826  
Facsimile: (228) 456-0998  
Email: [christopher@cgvclaw.com](mailto:christopher@cgvclaw.com)

**CERTIFICATE OF SERVICE**

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

H. Scot Spragins, Esquire  
Goodloe T. Lewis, Esquire  
Hickman, Goza & Spragins, PLLC  
P. O. Drawer 668  
Oxford, MS 38655-0668

This the 9<sup>th</sup> day of September, 2009.

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

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
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A, B, C, D, E, F, G and H** **DEFENDANTS**

**PLAINTIFFS' SECOND AMENDED DESIGNATION OF EXPERTS**

COME NOW the Plaintiffs, D. Neil Harris and Associates, P.A. and D. Neil Harris, Sr., Individually and d/b/a D. Neil Harris and Associates, by and through undersigned counsel, and file this their Second Amended Designation of Experts, pursuant to the Rule 26(2)(A) of the Uniform Local Rules, as follows:

James A. Koerber, C.P.A./A.B.V, C.V.A., C.F.E., C.F.F.  
The Koerber Company, P.A.  
P. O. Box 18170  
Hattiesburg, MS 39404  
601-583-1000

Mr. Koerber is designated as an expert witness in the fields of Certified Public Accounting, Accredited Business Valuation, Certified Valuation Analyst, Certified Fraud Examiner and Certified Financial Forensics. Mr. Koerber's written report was previously provided to counsel opposite in Plaintiffs' Amended Designation of Expert Witnesses, which included a description of his qualifications; publications; list of cases; fee schedule; and opinions and bases for opinions. Mr. Koerber's Supplemental/Amended Report (Bates No. Koerber000058 – Koerber000145), which addresses and rebuts the opinions and conclusions in the report of Defendant's expert Joseph Hines, has this day been

electronically served on counsel opposite. Mr. Koerber may supplement the report as additional documents and facts are available.

Mr. Koerber is expected to give testimony and expert analysis regarding the improper manner in which State Farm calculated the Plaintiffs' "loss of income", as defined and set forth in the subject State Farm business policy; and the proper method of calculating, and the proper value and amount of, the Plaintiffs' "loss of income", as defined and set forth in the subject State Farm business policy, suffered as a result of Hurricane Katrina; and other opinions consistent with his report and Supplemental/Amended Report.

The Plaintiffs reserve the right to amend or supplement this Designation with after-acquired information. The Plaintiffs reserve the right to designate rebuttal experts under Fed.R.Civ.P. 26(a)(2)(C), or as the Court permits; and to call and offer the opinions of experts designated by any other party. Plaintiffs also reserve the right to offer these opinions, and supplemented and/or additional opinions from the experts designated herein at the trial of this matter, pursuant to a subsequent designation entered pursuant to the Scheduling Order(s) entered by this Honorable Court.

Plaintiffs reserve the right to offer testimony from any experts designated by any party to this litigation, and to call rebuttal experts, where appropriate. Moreover, Plaintiffs reserve the right to supplement or amend this designation, in accordance with the Federal Rules of Civil Procedure and the Uniform Rules; as well as applicable Orders from the Court.

RESPECTFULLY SUBMITTED, this the \_\_\_\_\_ day of September, 2009.

D. NEIL HARRIS & ASSOCIATES , P.A.  
D. NEIL HARRIS, INDIVIDUALLY AND D/B/A  
D. NEIL HARRIS & ASSOCIATES, PLAINTIFFS

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

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

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

H. Scot Spragins, Esquire  
Hickman, Goza & Spragins, PLLC  
P. O. Drawer 668  
Oxford, MS 38655-0668

This the \_\_\_\_\_ day of September, 2009.

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

**From:** Sandy Johnson  
**To:** "sspragins@hickmanlaw.com"; "glewis@hickmanlaw.com";  
**cc:** Christopher Van Cleave; "Michelle Wheeler";  
**Subject:** Harris v. State Farm  
**Date:** Wednesday, September 09, 2009 2:21:00 PM  
**Attachments:** counsel.ltr 09 09 09.pdf  
amd rpt of Koerber (Prt 1).pdf  
amd rpt of Koerber (Prt 2).pdf

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Dear Counsel:

Please see attached correspondence from Mr. Van Cleave, along with Dr. Koerber's Amended Report.

If you have any questions, please contact me.

**Sandy Johnson, Secretary to  
Christopher C. Van Cleave  
Corban, Gunn & Van Cleave  
Post Office Drawer 1916  
Biloxi, MS 39533-1916  
(228) 432-7826 (off)  
(228) 456-0998 (fax)**

EXHIBIT 2



LAW OFFICES  
**CORBAN, GUNN & VAN CLEAVE**

LAWRENCE C. CORBAN, JR.  
CLYDE H. GUNN, III  
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September 9, 2009

H. Scot Spragins, Esquire  
Goodloe T. Lewis, Esquire  
Hickman, Goza & Spragins, PLLC  
Post Office Drawer 668  
Oxford, MS 38655-0668

RE: D. NEIL HARRIS AND ASSOCIATES, ET AL. V. STATE FARM FIRE AND  
CASUALTY COMPANY, ET AL.  
CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI  
CAUSE NO. 2008-00,443(1)

Dear Counsel:

Attached please find a copy of Mr. Koerber's Supplemental/Amended Report in the above referenced matter. This report was prepared in order to address and rebut the conclusions and opinions set forth in Mr. Hines' report prepared on behalf of the Defendant. Plaintiffs are providing you with this report in advance of Mr. Koerber's deposition in order that you may be prepared to address his Supplemental/Amended findings.

To ensure the Court's procedural requirements are complied with, Plaintiffs are filing a Motion for Leave to File Supplemental/Amended Report today. We would appreciate your consent to this Motion and will be happy to accommodate any similar, reasonable request by the Defendant.

Should you have any questions please do not hesitate to contact this office.

Very truly yours,

*/s/ Christopher C. Van Cleave*

Christopher C. Van Cleave

CCVC/sjj  
Enclosure