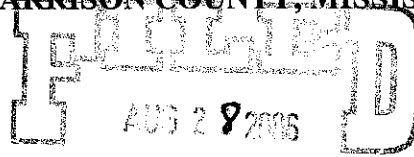


IN THE FIRST JUDICIAL DISTRICT OF HARRISON COUNTY, MISSISSIPPI

DANIEL B. O'KEEFE,  
CELESTE A. FOSTER O'KEEFE,  
and THE DANCEL GROUP, INC.



By *Cathy Reynolds* D.C. **PLAINTIFFS**

VS.

CIVIL ACTION NO. A 2461-2006-307

STATE FARM FIRE & CASUALTY  
COMPANY; ST. PAUL TRAVELERS COMPANIES,  
INC.; and MARSHALL J. ELEUTERIUS

**DEFENDANTS**

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**COMPLAINT**  
[TRIAL BY JURY REQUESTED]

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Daniel B. O'Keefe, Celeste A. Foster O'Keefe, and the Dancel Group, Inc. ("Mr. and Mrs. O'Keefe" and/or "Dancel") file this Complaint against State Farm Fire & Casualty Company, St. Paul Travelers Companies, Inc., and Marshall J. Eleuterius. The grounds are:

**I. PARTIES**

1. Mr. and Mrs. O'Keefe are adult resident citizens of Jackson County, Mississippi, residing at 12804 Cambridge Boulevard, Ocean Springs, Mississippi 39564. Prior to Hurricane Katrina, they were adult resident citizens of Jackson County, Mississippi, residing at 12901 Hanover Drive, Ocean Springs, Mississippi 39564.

2. The Dancel Group, Inc. formerly known as Dancel Visual Communications, Inc., is a Mississippi corporation with its principal place of business located in Harrison County, Mississippi. Dancel is located at 10265 Rodriguez Street, D'Iberville, Mississippi 39540.

3. The Defendant State Farm Fire & Casualty Company ("State Farm") is an Illinois corporation, organized and existing in and by virtue of the laws of the State of Illinois, with its principal offices located in Bloomington, Illinois. State Farm can be served with process through the Mississippi Insurance Commissioner and through its registered agent, William E. Pina, 1080 River Oaks Drive, Suite B-100, Flowood, Mississippi 39232-8744.

4. The Defendant Mr. Marshall J. Eleuterius is an agent for State Farm. Mr. Eleuterius, individually, and as an employee/agent of State Farm Insurance can be served with process at 414 Security Square, Gulfport, Mississippi 39057.

5. St. Paul Travelers, Inc. ("St. Paul Travelers") is a Minnesota corporation with its principal offices located at 385 Washington Street, St. Paul, Minnesota 55102 (651.310.7911). St. Paul Travelers can be served with process through the Mississippi Insurance Commissioner and upon its registered agent by service at its local St. Paul Travelers office located at 1080 River Oaks Drive, Suite B-200, Flowood, Mississippi 39232.

## **II. JURISDICTION AND VENUE**

7. Jurisdiction is proper in the First Judicial District of the Harrison County Circuit Court. The amount in controversy exceeds the minimal jurisdictional limits. The insurance policies subject to this litigation were issued in Harrison County, Mississippi. A substantial part of the events giving rise to the claims involved in this litigation occurred in this district. The venue is also proper in this court.

## **III. INSURANCE POLICIES**

8. The following insurance policies provided coverage to Mr. and Mrs. O'Keefe and/or Dancel, all of which are subject to this litigation:

- State Farm Policy No. 98-33-7526-2 covering Dancel's property and operations in New Orleans, Louisiana;
- State Farm Business Policy No. 99-B5-9935-5. covering Dancel's property and operations in D'Iberville, Mississippi; and
- St. Paul Travelers Policy No. BK02129597 covering Dancel's equipment and operations in D'Iberville, Mississippi.

#### **IV. HURRICANE KATRINA**

9. On August 24, 2005, Hurricane Katrina formed in the Atlantic Ocean as a tropical depression. The windstorm moved northwest through the Bahamas and gathered strength while moving over the Gulf Stream on August 25, 2005. Katrina became a hurricane a few hours before making landfall in the United States in the vicinity of Dade and Broward Counties in Florida. The storm passed through Florida and into the Gulf of Mexico. It was fueled by high water temperature. On August 28, 2005, Katrina went through a period of rapid intensification, and reached a Category 5 status as the storm approached the mouth of the Mississippi River. Katrina's winds reached a peak intensity of 175 miles per hour with a barometric pressure of 902 mb, one of the lowest barometric pressures ever recorded. In addition to the intensity of the wind activity, Katrina was categorized by its massive size. The Mississippi Gulf Coast was in the northeast quadrant, or the most dangerous area of this historic storm. On August 29, 2005, Hurricane Katrina made landfall on the Mississippi Gulf Coast with catastrophic winds in excess of 125 miles per hour. The property located on the Mississippi Gulf Coast, including the property which is the subject of this litigation, were hit by hurricane-force winds for several

hours which resulted in massive wind damage across the entire Gulf Coast of Louisiana, Mississippi, and Alabama.

10. Hurricane Katrina was the most extensive and costly natural windstorm disaster in the history of the United States. On the Mississippi Gulf Coast over 262,000 homes and business structures were destroyed. An additional estimated 77,0000 homes and structures suffered extensive damage. Tens of thousands of Mississippi residents were left homeless and displaced, including Mr. and Mrs. O'Keefe.

#### **V. DANCEL HISTORY**

11. Dancel was formed in 1984, by Daniel O'Keefe and Celeste Foster O'Keefe. Initially, the company was located in New Orleans, Louisiana. All operations of Dancel were originally conducted out of the New Orleans' location. In 1995, Dancel opened an office in D'Iberville, Harrison County, Mississippi. At that time, all insurance coverage of Dancel was provided by State Farm Insurance Company and its agent, Steve Barrios in New Orleans, Louisiana. As Dancel began its Mississippi operations, Mrs. O'Keefe contacted Mr. Barrios and asked that he provide coverage for the Mississippi business. Mr. Barrios indicated that he was unable to provide coverage in Mississippi, but he would have a local agent contact her. Subsequently, Mr. Eleuterius contacted Mrs. O'Keefe. Between 1995 and August 29, 2005, Mr. Eleuterius provided Mr. and Mrs. O'Keefe and/or Dancel with all insurance coverage except for the policy issued by St. Paul Travelers. At all times associated with this Complaint, Mr. Eleuterius was responsible for providing advice and assistance regarding applicable and necessary coverages, and renewing coverage. Mr. and Mrs. O'Keefe and/or Dancel relied on Mr. Eleuterius to provide professional advice regarding coverage.

## VI. STATE FARM HOMEOWNERS' INSURANCE CONTRACT

12. On August 29, 2005, Mr. and Mrs. O'Keefe's residence located at 12901 Hanover Drive, Ocean Springs, Mississippi 39564 was insured by a policy of insurance issued by State Farm. The insurance contract was Policy No. 24-CD-9277-6. Mrs. O'Keefe is not in possession of a copy of this policy although she has requested a copy from State Farm on multiple occasions. State Farm has failed or refused to provide a copy of the policy. Under the terms and conditions of the State Farm homeowners' policy, State Farm insured Mr. and Mrs. O'Keefe for loss of the dwelling and for loss of personal property, as well as other benefits referenced in the contract of insurance. Mr. Eleuterius was consulted regarding coverage on Mr. and Mrs. O'Keefe's principal dwelling. Mr. Eleuterius instructed Mr. and Mrs. O'Keefe to purchase State Farm Homeowners' policy, as well as federal flood insurance policy. Mr. and Mrs. O'Keefe followed Mr. Eleuterius' advise. At that time, Mr. Eleuterius indicated to Mrs. O'Keefe, that there was no need to purchase additional flood insurance, despite its availability, based on the fact that the wind coverage under the policy would be in addition to the flood coverage, and would pick-up where the flood coverage ended. Subsequent to the losses discussed below, Mr. Eleuterius confirmed these representations and warranties to Mrs. O'Keefe.

13. On August 29, 2005, Mr. and Mrs. O'Keefe and/or Dancel were covered by business insurance contracts issued by Defendant State Farm. The insurance contracts were issued under policy numbers: 98-33-7526-2 and 99-B5-9935-5. The business insurance contract provided Mr. and Mrs. O'Keefe and/or Dancel with coverage for risk or perils including business interruption coverage. State Farm agreed to pay Mr. and Mrs. O'Keefe and/or Dancel for loss of income, as

well as other benefits referenced in the insurance contract. A copy of the business interruption contract policy for the New Orleans' location is attached as Exhibit "A." The State Farm business policy issued for the Mississippi location is identical to the Louisiana policy.

14. Business coverage policy 98-33-7526-2 was issued through State Farm's agent Mr. Barrios and covered business operations in New Orleans, Louisiana. Initially following Hurricane Katrina, State Farm indicated to Mr. and Mrs. O'Keefe and Dancel, that the policy provided interruption business coverage, but that coverage was limited as a result of the mandatory evacuation. State Farm initially indicated that Mr. and Mrs. O'Keefe and/or Dancel could expect to receive payment under this policy of insurance.

15. After the events of Hurricane Katrina, State Farm indicated that the policy (99-B5-9935-5) on Mr. and Mrs. O'Keefe and/or Dancel's operations in Harrison County, Mississippi did not provide for business interruption coverage. Mr. and Mrs. O'Keefe and/or Dancel subsequently informed State Farm that State Farm was providing such business interruption coverage under Policy No. 98-33-7526-2. Caught in 'the horns of its own dilemma,' State Farm subsequently declared that no coverage existed under either Policy No. 98-33-7526-2 or 99-B5-9935-5.

#### **VII. ST. PAUL TRAVELERS EQUIPMENT AND BUSINESS INTERRUPTION COVERAGE**

16. On August 29, 2005, Mr. and Mrs. O'Keefe and/or Dancel were insured against damage to their equipment and business interruption coverage under a policy of insurance issued by Defendant St. Paul Travelers. The insurance contract was issued under Policy No. BK02129597. A copy of Policy No. BK02129597 is attached as Exhibit "B." Under the terms

and conditions of this policy, St. Paul Travelers agreed to pay Mr. and Mrs. O'Keefe and/or Dancel for losses to their business property and for business interruption, as well as other benefits referenced in the contract of insurance.

17. Following Hurricane Katrina, St. Paul Travelers indicated to Mr. and Mrs. O'Keefe and/or Dancel that they would receive payment for the equipment losses and business interruption. However, St. Paul Travelers subsequently reneged on these assurances, and declined to provide appropriate coverage and/or payment of for all losses.

### **VIII. PROXIMATE CAUSE**

18. The hurricane force winds spawned by Hurricane Katrina, when the storm struck the Mississippi Gulf Coast on August 29, 2005, set in motion an unbroken sequence between the risk and perils insured by State Farm and St. Paul Travelers, and the ultimate losses suffered by Mr. and Mrs. O'Keefe and/or Dancel. The hurricane force winds associated with Hurricane Katrina were the proximate cause and/or a contributing proximate cause of Mr. and Mrs. O'Keefe and/or Dancel's losses. Under the insurance contracts entered into between the parties, State Farm, agent Mr. Eleuterius, and/or St. Paul Travelers are liable for the entire loss suffered by Mr. and Mrs. O'Keefe and/or Dancel even if the last step in the sequence of events may have been storm surge.

### **IX. BREACH OF CONTRACT AND FRAUD BY STATE FARM**

19. As a direct and proximate result of the windstorm associated with Hurricane Katrina, Mr. and Mrs. O'Keefe and/or Dancel sustained covered losses. The losses were timely reported to State Farm. State Farm initiated the claims process, but ultimately advised Mr. and Mrs. O'Keefe and/or Dancel that State Farm would not be responsible for the losses associated with

Hurricane Katrina, despite the fact that their dwelling, personal property, and business interruption were insured by State Farm for hurricane-related damages.

20. State Farm breached its obligations under the policies of insurance listed above, as well as other contracts. State Farm also engaged in a scheme to make the claims and adjusting process difficult and confusing. Such actions constitute fraud and/or bad faith.

21. State Farm entered into the subject contracts of insurance with Mr. and Mrs. O'Keefe and/or Dancel and clearly and expressly agreed to provide insurance coverage for the Plaintiffs' dwelling, personal property, and business losses. The Plaintiffs have suffered total destruction of their residential dwelling; a total loss of their personal property; as well as a substantial interruption of their business. Mr. and Mrs. O'Keefe and/or Dancel have suffered damages that were insured under the subject contracts of insurance. Under the insurance contracts, State Farm is obligated for all damages sustained by Mr. and Mrs. O'Keefe and/or Dancel to the dwelling; for the loss of personal property; and for the loss of their business and/or business interruption. . Mr. and Mrs. O'Keefe and/or Dancel are entitled to a specific performance of the contract and indemnification from State Farm for all losses they have suffered, including consequential losses occasioned by State Farm's wrongful breach of the contracts existing between the parties.

#### **X. BREACH OF CONTRACT - ST. PAUL TRAVELERS**

22. As a direct and proximate result of the windstorm associated with Hurricane Katrina, Mr. and Mrs. O'Keefe and/or Dancel sustained covered losses of business equipment and business interruption. Mr. and Mrs. O'Keefe and/or Dancel's business property was either totally destroyed, lost, or substantially damaged. The losses were timely reported to St. Paul Travelers. St. Paul Travelers initiated the claims process, but ultimately advised Mr. and Mrs. O'Keefe



and/or Dancel that St. Paul Travelers would not be responsible for some of the losses associated with Hurricane Katrina, despite the fact that business property and business interruption were insured by St. Paul Travelers for hurricane-related damages.

23. Mr. and Mrs. O'Keefe and/or Dancel submit that St. Paul Travelers breached its obligations under the policies of insurance listed above.

24. St. Paul Travelers entered into the subject contract of insurance with Mr. and Mrs. O'Keefe and/or Dancel and clearly and expressly agreed to provide insurance coverage for the Plaintiffs' business and any losses associated therewith. The Plaintiffs have suffered a substantial interruption of their business. Mr. and Mrs. O'Keefe and/or Dancel have suffered damages that were insured under the subject contracts of insurance. Under the insurance contracts, St. Paul Travelers is obligated for all damages sustained by Mr. and Mrs. O'Keefe and/or Dancel for the loss of their business and/or business interruption. Mr. and Mrs. O'Keefe and/or Dancel are entitled to a specific performance of the contract and indemnification from St. Paul Travelers for all losses they have suffered, including consequential losses occasioned by St. Paul Travelers' wrongful breach of the contracts existing between the parties.

**XI. ERRORS, OMISSIONS, AND NEGLIGENCE OF MARSHALL J. ELEUTERIUS**

25. Since 1995 Mr. and Mrs. O'Keefe and/or Dancel have relied on Mr. Eleuterius to provide them with adequate and appropriate insurance coverage for all perils and/or risks associated to both their dwelling and their business operations. Mr. and Mrs. O'Keefe and/or Dancel trusted and relied on Mr. Eleuterius to provide competent and professional information regarding their insurance coverages, and to either insure they had been provided all relevant and accurate information pertaining to their coverages, as well as the limits and/or limitations of their

coverage. Mr. Eleuterius breached the duties and obligations owed to Mr. and Mrs. O'Keefe and/or Dancel and was negligent in his failure to provide adequate coverage in the event of a hurricane, windstorm, and/or storm surge. Specifically, and without limitation, Mr. Eleuterius was negligent in the following respects:

- a. He failed to provide appropriate coverage for Mr. and Mrs. O'Keefe's dwelling;
- b. He failed to provide or inform Mr. and Mrs. O'Keefe that additional flood coverage was available;
- c. He represented and assured Mr. and Mrs. O'Keefe that their personal property was adequately insured based on the fact that their homeowners' policy would pay in addition to or on top of applicable flood coverage for any losses sustained;
- d. He failed to offer or provide appropriate and adequate flood insurance for the 10265 Rodriguez Street operations;
- e. Based on State Farm's denial of business interruption coverage, he failed to provide adequate and complete coverage regarding the business operations; and
- f. Multiple other breaches of the applicable standard of care and/or negligence, as will be identified during discovery.

## **XII. INTENTIONAL ACTS/BAD FAITH**

25. At present, Mr. and Mrs. O'Keefe and/or Dancel do not know the full extent of State Farm and St. Paul Travelers' handling of their claims. Mr. and Mrs. O'Keefe and/or Dancel assert that State Farm and St. Paul Travelers engaged in a scheme to deny or limit coverage and payments under policies of insurance. State Farm and St. Paul's actions amount to fraud, concealment, and/or bad faith conduct toward an insured.

### **XIII. ACTUAL ENTITLEMENT TO FULL INSURANCE COVERAGE**

26. Mr. and Mrs. O'Keefe and/or Dancel are entitled to full insurance coverage under the subject contracts for damages sustained to the dwelling, personal property, and to the business equipment and/or business losses under the contracts of insurance issued by State Farm and/or St. Paul Travelers. Mr. and Mrs. O'Keefe and/or Dancel are entitled to actual damages to cover the loss of their dwelling, actual damages for the loss of their personal property, actual damages for the loss of their business equipment, and loss of business and/or business interruption, and all other damages that be covered under the contracts of insurance, as may later be identified.

### **XIV. CONSEQUENTIAL DAMAGES**

28. As a direct and proximate result of St. Farm's and St. Paul Travelers' breach of contract and as a result of the negligence of Mr. Eleuterius, Mr. and Mrs. O'Keefe and/or Dancel have and will continue to suffer consequential damages including attorneys' fees, expert witness fees, and other costs occasioned by the Defendants' breach of contract, and/or Mr. Eleuterius' negligence, for which Mr. and Mrs. O'Keefe and/or Dancel should be reimbursed.

### **XV. OTHER RELIEF - PUNITIVE DAMAGES**

29. Mr. and Mrs. O'Keefe and Dancel pray for other relief as the Court deems appropriate, including, but not limited to an award of punitive damages. State Farm and St. Paul Travelers' denial of Mr. and Mrs. O'Keefe and/or Dancel's claims were unreasonable, and therefore in bad faith. Due to State Farm and St. Paul Travelers' bad faith denial of the claims, Mr. and Mrs. O'Keefe and/or Dancel are entitled to recover punitive damages.

## **XV. REMEDIES**

30. Mr. and Mrs. O'Keefe and/or Dancel are entitled to full insurance coverage under the contracts of insurance with State Farm and/or St. Paul Travelers. Mr. and Mrs. O'Keefe and/or Dancel are entitled to the relief set forth in this Complaint, including, but not limited to:

- a. Loss of dwelling in the amount of \$288,000, in accordance with the contract of insurance issued by State Farm;
- b. Loss of personal property in the amount of \$250,000, in accordance with the contract of insurance issued by State Farm;
- c. Loss of business income and/or business interruption, in the amount of \$300,000 from both State Farm and St. Paul Travelers;
- d. Loss of business equipment in the amount of \$120,000 from St. Paul Travelers;
- e. Consequential damages associated with State Farm and St. Paul Travelers' breach of contract, including, but not limited to attorneys' fees, and costs of litigation;
- f. If deemed appropriate by the Court, punitive damages in a sum to be determined by the trier of fact;
- g. Prejudgment interest and post-judgment interest; and
- h. Any and all other legal relief as deemed appropriate by the Court.

**ACCORDINGLY**, Daniel B. O'Keefe and Celeste A. Foster O'Keefe, and the Dancel Group, Inc. request that upon a trial of this case a Judgment will be entered against State Farm Fire and Casualty Insurance Company, Mr. Eleuterius, and St. Paul Travelers Companies, Inc. for full insurance coverage for the damages to their dwelling, personal property, business

property, loss of business and/or interruption, and all other relief, including consequential damages and remedies.

DATED: August 28, 2006.

Respectfully submitted,

**DANIEL B. O'KEEFE, CELESTE A. FOSTER  
O'KEEFE, and DANCEL GROUP, INC.**

By:   
One of Their Attorneys

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