

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

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

PLAINTIFFS

VS.

Civil Action No. 1:08cv600 HSO-LRA

**STATE FARM FIRE AND CASUALTY
COMPANY and MARSHALL J. ELEUTERIUS**

DEFENDANTS

**PLAINTIFFS' APPLICATION FOR REVIEW OF THE
UNITED STATES MAGISTRATE JUDGE'S [280] ORDER DENYING
PLAINTIFFS' [189] MOTION TO COMPEL DEPOSITONS**

COME NOW the Plaintiffs, pursuant to Rule 72(a) of the Federal Rules of Civil Procedure; Rule 72.1(A) of the Uniform Local Rules of the United States District Courts for the Northern District of Mississippi and the Southern District of Mississippi, and 28 U.S.C. § 636(b)(1)(A), and submit herewith their Application for Review of the United States Magistrate Judge's [280] *Order Denying Plaintiffs' [189] Motion to Compel Depositions*, and, in support thereof, show the following:

1. Plaintiffs respectfully request that the Honorable District Court Judge vacate, reverse and/or modify the findings and rulings in the United States Magistrate Judge's [280] *Order denying Plaintiffs' [189] Motion to Compel Depositions*¹ of State Farm employees Juan Guevara and Dan Carrigan because the factual findings upon which they are based and legal conclusions therein are clearly erroneous, and/or because the rulings therein are clearly erroneous or contrary to the law.

2. Plaintiffs are filing this Application for Review and Objection in a timely manner, within

¹ The subject [189] Motion was actually filed as a *Motion to Compel Depositions*, or, *In the Alternative, Motion to Remand*, with the alternative *Motion to Remand* separately filed docket entry [190]. During the telephonic conference where the subject Motion was argued, however, Plaintiffs agreed to withdraw their *Motion to Remand* pending a final ruling on the subject motion to compel depositions – this withdrawal is reflected in the Court's August 24, 2009 Minute Entry and in the Plaintiffs' [202] *Notice of Withdrawal*.

ten (10) days of service of the subject [280] Order, excluding intervening weekends and holidays and adding three days for mailing pursuant to the Federal Rules. For the Court's convenience, a copy of the Magistrate Judge's [280] Order is attached as "Exhibit 1".

3. Plaintiffs incorporate the following pleadings as if fully set forth herein:

a. Defendants' September 11, 2008 [1] Notice of Removal (Attached as "Appendix A" to the Court's courtesy copy of this pleading, for the Court's convenience)

b. Plaintiffs' October 13, 2008 [33] Motion to Remand (Attached as "Appendix B" to the Court's courtesy copy of this pleading, for the Court's convenience)

c. Plaintiffs' October 13, 2008 [34] Memorandum in Support of Motion to Remand (Attached as "Appendix C" to the Court's courtesy copy of this pleading, for the Court's convenience)

d. Court's January 13, 2009 [52] Order Denying Plaintiffs' Motion to Remand (Attached as "Appendix D" to the Court's courtesy copy of this pleading, for the Court's convenience)

e. Plaintiffs' August 21, 2009, [189] Motion to Compel Depositions, or in the Alternative Motion to Remand including exhibits (Attached as "Cumulative Appendix E" to the Court's courtesy copy of this pleading, for the Court's convenience)

f. State Farm's September 4, 2009 [217] Response in Opposition to Plaintiffs' [189] Motion to Compel Depositions, including exhibits (Attached as "Cumulative Appendix F" to the Court's courtesy copy of this pleading, for the Court's convenience)

g. Court's October 13, 2009 [280] Order denying Plaintiffs [189] Motion to Compel Depositions (Attached as "Appendix G" to the Court's courtesy copy of this pleading, for the Court's convenience)

4. Plaintiffs are not objecting to all of the findings and rulings in the subject [280] Order.

This pleading will address the findings / rulings in the subject [280] *Order* that the Plaintiffs contend are clearly erroneous and/or contrary to law, which are limited to those findings and rulings denying Plaintiffs' [189] Motion to Compel the depositions of Dan Carrigan and Juan Guevara.

I. Introduction and Factual History

5. The trial of this case is currently set for the Court's April 5, 2010 Trial Calendar. This case involves claims by the Plaintiffs regarding multiple insurance policies, including claims related to

the Plaintiffs' home and business, each of which was insured under State Farm issued insurance policies. This Application for Review is being made because the subject [280] *Order* effectively forecloses Plaintiffs' ability to conduct essential discovery regarding the precise claims this Court judicially determined provide this Court with subject matter jurisdiction in this cause. Pursuant to Counsel for Plaintiffs' understanding of Federal Rule of Civil Procedure 72(a), the filing of this Motion is necessary to preserve the issues addressed herein for appeal in the event the Court does not grant the relief requested herein.

6. This case was removed to this Court from the Circuit Court of Jackson County, Mississippi, on September 11, 2008. (See [1] *Notice of Removal*, App. "A"). State Farm's sole and only basis upon which it claimed that jurisdiction exists in the United States District Court was that the Plaintiffs were allegedly asserting claims regarding the administration of the NFIP, and that this claim created a federal question allegedly providing original and exclusive jurisdiction in the United States District Court.² Plaintiffs strongly disagreed with the State Farm and filed their [33] *Motion to Remand* on October 13, 2008, showing that Plaintiffs' claims were not claims made under any federal law, but rather claims that would show that State Farm, acting independently of the Federal Government and as part of an institutional scheme to deny and/or limit exposure on homeowner's claims like the Plaintiffs', manipulated, applied and/or misapplied guidelines for adjusting and paying the Plaintiffs' NFIP claim administered through State Farm as a WYO carrier, in a fashion designed to avoid State Farm's burdens under its own homeowner's policy, avoid its duty to fully investigate and/or prove the cause of Plaintiffs' losses, and impermissibly shift State Farm's responsibility to compensate the Plaintiffs for their losses to the federal

² Plaintiffs note that there appear to be persuasive Federal Court cases from other jurisdictions finding concurrent State Court jurisdiction over claims relating to the administration of an NFIP policy. See *Burrell v. Turner Corp. of Oklahoma, Inc.*, 431 F. Supp. 1018 (N. D. Okla., 1977); *Mason v. NFIP*, 431 F. Supp 1021 (N. D. Okla., 1977); *Harper v. NFIA*, 494 F. Supp. 1021 (W. D. Pa.1980).

government through. (See [33] *Motion to Remand*, App. “B”). On January 13, 2009, this Court ruled contrary to the position of the Plaintiffs’, holding:

Original and exclusive federal question jurisdiction exists over those *claims related to the administration of NFIP AND the adjustment of the Plaintiffs’ SFIP, including their breach of contract and fraud claims.*

See [52] *Order* at pg. 10, first ¶, App. “D”. (emphasis added).

7. Pursuant to this Court’s judicial determination that Plaintiffs asserted colorable federal law claims; and this Court’s determination that the claims made by the Plaintiffs convey original and exclusive jurisdiction to this Court under 28 U.S.C. § 1446(b), Counsel for Plaintiffs began their quest to schedule the depositions of State Farm employees Juan Guevara and Dan Carrigan, the employees responsible for establishing and implementing the Katrina specific guidelines and other procedures under which State Farm administered and manipulated payments under the NFIP policies for which it was the WYO carrier, including the Plaintiffs’. On March 13, 2009, Counsel for Plaintiffs attempted to confirm dates for the depositions of Mr. Guevara and Mr. Carrigan with Counsel for the Defendants. (See “App. E,” [189] *Motion to Compel*, “Exhibit 1”). Counsel for State Farm did not respond to Plaintiffs’ request; and on April 30, 2009, Counsel for Plaintiffs again wrote a letter to Counsel for Defendants requesting the depositions of Mr. Guevara and Mr. Carrigan. (See “App. E,” [189] *Motion to Compel*, “Exhibit 2”). Without replying to Plaintiffs’ repeated requests for deposition dates, counsel for State Farm declared on May 18, 2009 that Mr. Guevara and Mr. Carrigan would not be made available for deposition. (See “App. E,” [189] *Motion to Compel*, “Exhibit 3”). After Defendants refused to make arrangements for the depositions of Mr. Guevara and Mr. Carrigan, Plaintiffs filed the [189] *Motion to Compel* on August 21, 2009.

8. The Court heard limited argument on the Plaintiffs’ [189] *Motion* [with consent of both parties], through an off the Record telephone conference conducted on August 24, 2009, though

Defendants had not yet filed a written Response to Plaintiffs' [189] Motion, as reflected in the Court's Minute Entry Order of that date. State Farm filed a written [217] *Response to Plaintiffs' [189] Motion* on September 4, 2009. Therein, State Farm's only excuse for failing to provide deposition dates for Mr. Guevara and Mr. Carrigan was the Defendants' argument that Plaintiffs are not entitled to these depositions solely because this Court has not allowed depositions of other State Farm employees that were requested in other cases – regardless of the actual claims and defenses in this action. Defendants presented no evidence in their response that the requested deposition should not occur or that discovery should be limited pursuant to Fed. R. Civ. P. 26(b)(2)(C).

9. The Court heard off the Record argument of the parties on Plaintiffs' [189] Motion in a telephonic conference held on September 14, 2009, as reflected in the Court's Minute Entry of that date. The Court entered its [280] Order denying Plaintiffs' [189] Motion on October 13, 2009, noting therein that the Court's Order was made in regard to the September 14, 2009 Hearing, of which no Record was made as noted above. Therein, the Court found and ruled, in pertinent part:

Plaintiffs requested the Court to compel the deposition of Juan Guevara and Dan Carrigan. The Court finds that this issue has been considered by other judges in other Katrina-related cases, and relief was denied. The undersigned finds no material distinction in these rulings, and the motion to compel depositions [#189] is denied.

See "Ex. 1"[280] Order, pg. 1-2.

10. Plaintiffs will show that the findings and rulings in the subject [280] *Order* denying Plaintiffs' [189] *Motion to Compel* the Depositions of Mr. Guevara and Mr. Carrigan are clearly erroneous, because the Order does not consider or acknowledge the claims and defenses that are at issue in this case – and effectively finds that the claims on which this Court staked its Jurisdiction are not colorable. The [280] Order's finding that there is no material distinction between this case and the prior Katrina cases cited by State Farm is also clearly erroneous, because there *is* a material

distinction between those cases and the case at bar. Specifically, the cases cited by State Farm are cases that were either initially filed in Federal Court, and/or that were removed to Federal Court based upon the existence of diversity jurisdiction. In *this case*, the Court found the existence of Federal Question jurisdiction, based upon the Court's Judicial determination that the Plaintiffs have asserted colorable claims regarding State Farm's administration of the NFIP, and related adjustment of the Plaintiffs' SFIP, which Plaintiffs alleged was manipulated and misapplied by State Farm as part of an institutional scheme to wrongfully deny Plaintiffs' homeowner's claims, as set forth above. No Judicial determination of the Jurisdiction establishing existence of such claims occurred in the "other Katrina-related" cases on which the Magistrate Judge appears to have relied. Plaintiffs further respectfully submit that the subject [280] Order is clearly erroneous because it has the effect of prohibiting the Plaintiffs from conducting essential discovery into the very claims on which this Court staked its jurisdiction; and is therefore tantamount to a ruling on a dispositive motion dismissing the claims of the Plaintiffs related to State Farm's alleged manipulation and misapplication of the NFIP guidelines, which ruling would be outside the statutory authority of the Magistrate Judge pursuant to the Federal Magistrate Act, 28 U.S.C. § 631 et. seq..

II. General Law Governing Scope of Discovery

11. Plaintiffs respectfully submit that the subject [280] *Order* is clearly erroneous because it does not address any issues related to whether, nor does it find that Plaintiffs' request for depositions of Messrs. Guevara and Carrigan is outside the scope of discovery pursuant to the claims asserted in *this* cause. The [280] Order does not contain an analysis of whether, nor does it rule discovery should be limited by F.R.C.P. 26(b)(2)(C). Rather, the [280] Order only states that the Court has not allowed this type of discovery in *other* "Katrina-related cases", and thus will not allow same in the case at bar. As demonstrated herein, however, and in the underlying pleadings,

the claims in this case are *materially* different from those other “Katrina-related cases” apparently referenced by the Court, because this case involves the Judicially determined existence of federal claims related to the manner in which State Farm handled the administration of NFIP policies – on which this Court solely staked its jurisdiction.

12. The sole issue addressed by the subject [280] Order is the scope of discovery to which Plaintiffs are entitled under Fed. R. Civ. P. 26(b)(1) regarding the claims this Court Judicially determined are being made by the Plaintiffs. The Supreme Court holds discovery rules must be broadly interpreted, finding “[m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession.” *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947) (67 S.Ct. at 388) (emphasis added). **“Relevance” is broadly and liberally construed for discovery purposes.** *Coughlin v. Lee*, 946 F.2d 1152, 1159 (5th Cir. 1991); *Dunbar v. United States*, 502 F.2d 506, 509-10 (5th Cir. 1974) (emphasis added).

13. Fed.R.Civ.P. 26(b)(1) provides:

(b) Discovery Scope and Limits . . .

Parties may obtain **discovery regarding any nonprivileged matter that is relevant to any party's claim or defense** - including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.

(emphasis added). Federal Courts must focus on the relation of the information sought in discovery to the claims actually alleged in the parties’ pleadings:

The 2000 amendments to Fed.R.Civ.P. 26 narrowed the scope of discoverable material, limiting discovery as of right to matters relevant to the claim or defense of any party. (citations omitted) “Prior to the 2000 amendments, the parties were entitled to discovery of any information that was not privileged so long as it was relevant to the ‘subject matter involved in the pending action.’ ” 6 James Wm. Moore, *Moore's Fed. Practice* § 26.41[2][a] at 26-109 (3d ed.2003) (quoting Fed.R.Civ.P. 26(b)(1) (1983)). **Under the current standard, a court should “focus on the specific claim or defense alleged in the pleadings.”** *Id.* (citing Fed.R.Civ.P. 26(b)(1) advisory committee note (2000 amend.)). However, a particular fact need not “be alleged in a pleading for a party to be entitled to discovery of information concerning that fact.” *Id.* at 26-110. The fact must, however, be

“germane to a specific claim or defense asserted in the pleadings for information concerning [the fact] to be a proper subject of discovery.” *Id.*

System Fuels, Inc. vs. U.S., 73 Fed.Cl 206, 215 (Fed.Cl 2006) (emphasis added). The United States Court of Federal Claims analogized the plaintiff’s relevancy objection to a motion to strike a defense under RCFC 12(f), and found that, although the Court had doubts about the viability of the Government’s related defense, the requested discovery (deposition) should be allowed because “at this juncture, prior to trial of the merits, the court has an insufficient context to evaluate the government’s proposed defense, and accordingly that defense will not now be ruled invalid as a matter of law.” *Id.* at 215-216.

14. In insurance litigation in particular, the insurer’s **intent** and interpretation of its policies **may be revealed by discovery of the drafting history** of the policy language [or in this case the Katrina specific NFIP administration procedures utilized by State Farm, which, on information and belief, were drafted and implemented under the direction of Messrs. Guevara and Carrigan]. *Leksi v. Federal Ins. Co.*, 129 F.R.D. 99, 104-05 (D. N.J. 1989) (emphasis added); *Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 106-07 (D. N.J. 1990).

15. The Federal Rules of Civil Procedure specifically address circumstances under which the Court may limit the discovery sought by a party. Fed. R. Civ. P. 26(b)(2)(C) states:

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

The subject [280] Order does not make any of the findings necessary for protection under Fed. R. Civ. P. 26(b)(2)(C).

16. The depositions which the Plaintiffs are being denied the right to take are directly related to the express claims and defenses made by the parties in this case – **specifically the sole claim on which this Court based its Jurisdiction.** Plaintiffs have sought the Court’s assistance in resolving State Farm’s refusal to produce these “relevant” witnesses for deposition. (see Fed R. Civ. P. 26(b)(1)). Plaintiffs will show that the “comparison” seemingly relied upon by the Magistrate Judge was clearly erroneous as applied to the claims made by the Plaintiffs, specifically the judicially determined claim on which this Court staked its Jurisdiction.

III. [280] Order’s Findings Are Clearly Erroneous and/or Contrary to Law

17. The subject [280] Order’s deference to the opinions of other judges in “other Katrina-related cases” for the purposes of supporting the discovery ruling in this case is contrary to law, which requires discovery be viewed in light of its relation to the claims and defenses pled in the parties’ pleadings. See F.R.C.P. 26(b)(1). This Court specifically determined that the Plaintiffs pled *"claims related to the administration of NFIP AND the adjustment of the Plaintiffs’ SFIP, including their breach of contract and fraud claims."* (See [52] *Order Denying Plaintiffs Motion to Remand*, App “D”) The subject [280] Order erroneously foreclosed the Plaintiffs' ability to conduct necessary discovery regarding the sole claims which this Court staked its Jurisdiction. There will be a gross miscarriage of justice, including a violation of the Plaintiffs’ Constitutionally guaranteed right to due process of the law, if the Plaintiffs are not permitted to conduct necessary discovery directly related to the sole claims on which this Court based its Jurisdiction.

A. The "Other Katrina-Related Cases" Are Distinguishable From This Cause

18. The subject [280] Order relies solely upon the results of other cases to support the conclusion that the Plaintiffs are not entitled to depositions of material witnesses on the facts

underlying the claims on which this Court based its Jurisdiction. The [280] Order effectively states that since other judges have foreclosed discovery in other cases, discovery should be prohibited in this case as well. Such a determination is clearly erroneous.

19. First, the cases on which the [280] Order seemingly relies (referring to the cases cited in State Farm's Response) are distinguishable. Two of the cases (*Lagasse v. State Farm* and *Gagne v. State Farm*) were originally filed in the United States District Court based upon diversity of citizenship jurisdiction. (See Civil Cover Sheet, *Lagasse*, 1:06cv761 attached as "Exhibit 2"; and Civil Cover Sheet, *Gagne*, 1:06cv711 attached as "Exhibit 3"). The third case (*Marion v. State Farm*) was removed to the United State District Court based on diversity of citizenship. (See Notice of Removal, *Marion*, 1:06cv969 attached as "Exhibit 4")³ What is important in this case is that the Court judicially determined that the Plaintiffs' claims in this action present federal questions, based on State Farm's administration of the NIFP for the purposes of responding to Hurricane Katrina claims, and that these claims provide the sole basis for this Court's Jurisdiction. There was no finding of diversity jurisdiction in the case at bar – because there is none. The subject [280] Order is clearly erroneous, because its findings that there is no material distinction between the subject case and the cases referenced above is contrary to the undisputed facts in the Record, and because it does not address Plaintiffs' right to conduct the subject depositions in light of the specific claims on which this case based its Jurisdiction, as mandated by Fed.R.Civ.P. 26(b)(1). Plaintiffs respectfully request this Court vacate and reverse the denial of Plaintiffs' Motion to Compel the depositions of Mr. Guevara and Mr. Carrigan, and instruct the Magistrate Judge to enter an Order Granting Plaintiffs [189] Motion to Compel.

20. Second, the subject [280] Order is clearly erroneous because it does not include findings

³ It is also important to note that *Lagasse*, *Gagne*, and *Marion* were all cases that resolved prior to trial. Plaintiffs would assert that in each of those cases, State Farm made the decision not to risk trial and resolve those matters due to the information discovered regarding the claims of each of the respective plaintiffs during the discovery process.

related to necessary inquiries to determine the permissible scope of discovery set forth by Fed.R.Civ.P. 26(b)(1), which entitles the Plaintiffs to conduct discovery regarding any non-privileged matter related to the claims and defenses in this action. There is no discussion in the [280] Order about the claims on which this Court solely based its Jurisdiction, **nor is there any finding that the discovery sought by the Plaintiffs is not related to those claims.** Rather, the [280] Order Denies the discovery sought by the Plaintiffs based entirely on rulings in other “Katrina-related cases” – which cases did not involve Judicial determinations that Plaintiffs were asserting colorable claims related to State Farm’s administration of the NFIP. Indeed, no finding that the discovery sought by the Plaintiffs is not related to the claims on which this Court based its Jurisdiction *could* be reasonably made by the Court, as the undisputed evidence in the Record reveals that Messrs. Guevara and Carrigan have unique, material knowledge related to that subject matter. The scope of discovery as adopted by the Federal Rules of Civil Procedure dictates that the Court cannot find, on one hand, that the Plaintiffs have asserted a colorable claim that conveys jurisdiction to this Court; and then summarily foreclose the Plaintiffs’ ability to conduct the discovery necessary to develop that very claim. The subject [280] Order does just that, however, in light of the Court’s articulation of the basis for its Jurisdiction in its [52] *Order Denying Remand*. As such, the subject [280] Order is clearly erroneous, and must be overturned.

B. No Findings Were Made To Support Limiting Plaintiffs’ Discovery Under Rule 26(b)(2)(C)

21. The subject [280] Order is also clearly erroneous and contrary to law because it incorporates no findings that would support limiting Plaintiffs’ discovery under Fed.R.Civ.P. 26(b)(2)(C). Under Fed.R.Civ.P. 26(b)(2)(C), the Court can limit discovery in three (3) enumerated circumstances: (1) discovery sought is unreasonably cumulative and can be obtained through more convenient means; (2) party seeking discover has had ample opportunity to obtain information; or (3) the burden or expense of the proposed discovery outweighs its likely benefit,

when considering the needs of the case, the amount in controversy, the parties' resources the importance of the issues, and the importance of the discovery in resolving these issues.

22. First, State Farm made no showing in response to Plaintiffs' [189] Motion, and the Court made no finding that the "discovery sought is unreasonably cumulative and can be obtained through more convenient means". Rather, the evidence is undisputable that depositions of Mr. Guevara and Mr. Carrigan would not be unreasonably cumulative, and that the discovery sought therein could not be easily obtained from other means, because the evidence in the Record (which includes material emails to and from Messrs. Carrigan and Guevara about the subject matter of the claims on which this Court staked its Jurisdiction) demonstrates these witnesses have unique and material knowledge about State Farm's Katrina specific (and modified from previous catastrophes) administration of NFIP policies (including the Plaintiffs').

23. Second, State Farm made no showing in response to Plaintiffs' Motion, and the Court made no finding that the Plaintiffs "have had ample opportunity to obtain information". Indeed, the facts are undisputable that the Plaintiffs have not been afforded any opportunity in this case to discover any information possessed by Mr. Guevara or Mr. Carrigan – or about the subject matter of the claims on which this Court based its Jurisdiction. Plaintiffs have been seeking this discovery in this Court, however, since at least March, 2009.

24. Third, State Farm made no showing in response to Plaintiffs' Motion, and the Court made no finding that the "the burden or expense of the proposed discovery outweighs its likely benefit, when considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues, and the importance of the discovery in resolving these issues". It should be noted that, at the time of the filing of this Application, State Farm has taken and/or scheduled and/or attempted to schedule a total of nineteen (19) depositions in this cause, while the Plaintiffs have scheduled and/or attempted to schedule only nine (9) depositions - including the two (2)

depositions which are the subject of the [280] Order. Indeed, the facts are undisputable that the burden and expense of taking the depositions of these two (2) fact witnesses is not outweighed by their likely benefit when considering the needs of the case, the amount in controversy, the parties resources, the importance of the issues, and the importance of the sought discovery in resolving these issues. As the Plaintiffs have shown throughout this Application, the Plaintiffs are seeking discovery regarding the sole claims on which this Court staked its Jurisdiction. The need exists that the Plaintiffs be able to conduct discovery depositions of Messrs. Guevara and Carrigan regarding their claims. The Plaintiffs have no other recourse in which to attempt to obtain information regarding their claims other than to conduct discovery, including the depositions of Mr. Guevara and Mr. Carrigan. These depositions are essential the to Plaintiffs' prosecution of their existing claims. The amount in controversy in this case is substantial. The undisputed facts demonstrate that the Plaintiffs have suffered uncompensated losses to their home and personal property, alone, in excess of \$ 600,000.00. Additionally, the Court can take Judicial Notice that the resources of the Plaintiffs are much less that those of the State Farm, which it one of the largest insurance companies in the world. Notwithstanding this disparity, the Plaintiffs are capable of continuing to stomach the burden and expenses of this litigation, and State Farm failed to present the Court with any evidence suggesting an undue financial burden would result from the Plaintiffs being allowed to conduct the subject depositions.

25. *Had* the factors discussed above been considered by the Honorable Magistrate, each would have weighed heavily in favor of GRANTING Plaintiffs' [189] Motion to Compel. The subject [280] Order is clearly erroneous because it makes no findings, and because there is no evidence in the Record that would support any findings that the depositions sought by the Plaintiffs should be limited pursuant to Fed.R.Civ.P. 26(b)(2)(C)(iii). Plaintiffs respectfully request this Court vacate and reverse the [280] Order denying Plaintiffs [189] Motion to Compel Depositions.

C. The Subject [280] Order is Tantamount to Ruling on a Dispositive Motion Contrary to the Federal Magistrate Act, 28 U.S.C. § 636

26. The subject [280] Order is also clearly erroneous and contrary to the law because it is tantamount to a judgment on the pleadings and an order dismissing the claims of the Plaintiffs for failure to state a claim. The Magistrate Judge is not statutorily authorized to enter such an order dismissing the claims of the Plaintiffs.

27. The Federal Magistrate Act of 1979, 28 U.S.C. § 636 (b)(1)(A), states in pertinent part:

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, **except** a motion for injunctive relief, **for judgment on the pleadings**, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, **to dismiss for failure to state a claim upon which relief can be granted**, and to involuntarily dismiss an action. **A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.**

28 U.S.C. §636 (b)(1)(A) (emphasis added).

28. The subject [280] Order has the effect of entering a judgment on the pleadings regarding the very (and sole) claims on which this Court staked its Jurisdiction. By foreclosing the Plaintiffs' ability to conduct necessary, material discovery into these claims – which ruling must be supported by a finding that the discovery sought is not related to any colorable claims asserted by the Plaintiffs in light of Fed.R.Civ.P. 26(b)(1) and the absolute lack of evidence supporting Rule 26(b)(2)(C)(iii) relief, the subject [280] Order in effect renders judgment that the Plaintiffs' pleadings present no colorable claim for which relief may be granted. In light of this Court's Judicial Determination that the Plaintiffs' claims related to State Farm's administration of the NFIP **do** assert colorable claims, and the fact that the subject depositions are directly and materially related to those claims, the Court's [280] Order summarily denying the Plaintiffs the ability to conduct necessary discovery thereon violates, in addition to Fed. R. Civ. P. 26(b)(1), the statutory mandate prohibiting a Magistrate Judge from dismissing a claim for failure to state a claim for

which relief may be granted.

29. In light of (1) the fact that the subject [280] Order stands in direct conflict with this Court's Judicial determination that the Plaintiffs are asserting colorable claims related to State Farm's alleged manipulation in the administration of the NFIP, and Plaintiffs' related claims for fraud and breach of contract; and (2) the fact that the Court articulated those claims as the sole basis for its Jurisdiction, and (3) the fact that the subject [280] Order amounts to an Order dismissing the claims on which this Court based its Jurisdiction for alleged failure to state a claims on which relief can be granted, the endorsement of which would be a violation of 28 U.S.C. §636 (b)(1)(A), Plaintiffs respectfully request this Court reverse the [280] Order Denying Plaintiffs' [189] Motion to Compel Depositions.

CONCLUSION

30. Plaintiffs have shown that the subject [280] Order is clearly erroneous and contrary to law for at least four independent reasons: (1) findings of fact contrary to facts in the Record; (2) findings and rulings inconsistent with and not supported by Fed.R.Civ.P. 26(b)(1); (3) findings and rulings inconsistent with Fed.R.Civ.P. 26(b)(2)(C)(iii), and (4) the ruling effectively violates 28 U.S.C. §636 (b)(1)(A). Plaintiffs respectfully submit that each of these reasons independently support the relief sought herein, and that collectively they mandate such relief. Plaintiffs respectfully request this Court vacate and reverse the subject [280] Order denying Plaintiff's [189] Motion to Compel Depositions, and Order that Messrs. Guevara and Carrigan be made available for deposition forthwith.

31. Plaintiffs request they be excused from filing a separate Memorandum in light of the concise facts and argument asserted herein.

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request this Court Reverse the Magistrate Judge's [280] Order denying Plaintiffs' [189] Motion to Compel

Depositions of Juan Guevara and Dan Carrigan, and Order that State Farm make those witnesses available for deposition forthwith. Plaintiffs further request any additional relief deemed appropriate by this Court.

Respectfully submitted, this the 28th day of October, 2009.

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

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CHRISTOPHER C. VAN CLEAVE

/s/ David N. Harris, Jr.
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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:

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This the 28th day of October, 2009.

/s/ Christopher C. Van Cleave
CHRISTOPHER C. VAN CLEAVE

/s/ David N. Harris, Jr.
DAVID N. HARRIS, JR.

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

DANIEL B. O'KEEFE, ET AL

PLAINTIFFS

VS.

CIVIL ACTION NO. 1:08cv600-HSO-LRA

STATE FARM FIRE AND CASUALTY COMPANY AND
MARSHALL J. ELEUTERIUS

DEFENDANTS

ORDER

This cause came before the Court for telephonic hearing on September 14, 2009, on Plaintiffs' Motion to Compel Depositions, or, in the Alternative, Motion to Remand [document number 189]; Plaintiffs' Motion to Quash Subpoenas Duces Tecum [document number 196]; Plaintiffs' Motion to Quash [166-2] Subpoena Duces Tecum [document number 197]; and, Plaintiffs' Motion to Quash [169-2] Subpoena Duces Tecum [document number 198]. Also before the Court was Defendants' Motion to Amend the Prior Order [document number 232] regarding the dates for depositions.

Some of the issues contained in these motions were settled by the parties, and these agreements are incorporated in that Order [#251] entered September 25, 2009. These include the Island Center for Women subpoena [165-3]; the Tony Chance and Fountain Group subpoena [165-8, 9]; and, the McQuire Design and Fritz Construction subpoena. The Court has considered the remaining issues set forth in the pleadings, as well as the argument of counsel and the authorities cited, and finds that Plaintiffs' motions are not well advised, and relief will be denied as to the remaining issues contained therein.

Plaintiffs requested the Court to compel the depositions of Juan Guevara and Dan Carrigan. The Court finds that this issue has been considered by other judges in other

EXHIBIT 1

Katrina-related cases, and relief was denied. The undersigned finds no material distinction in these rulings, and the motion to compel the depositions [#189] is denied.

Plaintiff sought to quash subpoenas to William F. Buell Inc. [165-2] and Weddings and Event Videographers Association [165-5]. Subject to the limitations Defendant voluntarily made [set forth on page 5, document 228], the motion to quash is denied. The motion to quash the subpoena [166-2] regarding other loans applied for by Plaintiffs is likewise denied.

Defendants have requested that the deadlines regarding depositions be amended, and Plaintiffs do not object. That request is hereby granted, and depositions shall be taken according to the dates set forth in the motion.

IT IS, THEREFORE, ORDERED that Plaintiffs' Motion to Compel [#189] and Plaintiffs' Motions to Quash [#196, 197, 198] are HEREBY DENIED, subject to the Order [#251] previously entered by the Court. Defendants' motion to amend the Court's prior Order [#232] is HEREBY GRANTED.

SO ORDERED, this the 13th day of October, 2009.

/s/ Linda R. Anderson
UNITED STATES MAGISTRATE JUDGE

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

1:07cv761 LTS-RAL

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 DAVID LAGASSE AND LAURIE LAGASSE

(b) County of Residence of First Listed Plaintiff Harrison
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Derek A. Wyatt, Nutt & McAlister, P.L.L.C., 605 Crescent Blvd., Suite 200, Ridgeland, MS 39157; (601) 898-7302

DEFENDANTS
 STATE FARM FIRE & CASUALTY CO., STATE FARM MUTUAL AUTOMOBILE INS. CO., & JOHN DOES 1 - 10

County of Residence of First Listed Defendant: Harrison
 (IN U.S. PLAINTIFF CASES, FILED)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

IN THE DISTRICT OF MISSISSIPPI
 JUN 20 2007
 BY J. T. WILSON, CLERK DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Nation	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PROPERTY DAMAGE	LABOR/EMPLOYMENT	INSURANCE	OTHER REMEDIES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inv. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 830 Eminent Domain <input type="checkbox"/> 835 Eminent Domain HUMAN RIGHTS <input type="checkbox"/> 861 HIA (1395R) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRESENCE PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Jurisdiction

2 Removed from State Court

3 Remanded from New State Court

4 Reinstated or Recaptured

5 Transferred from another district (appellate)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions) JUDGE _____ DOCKET NUMBER _____

DATE: 06/20/2007

SIGNATURE OF ATTORNEY OF RECORD: [Signature]

RECEIPT # 8026347 AMOUNT \$350.00 APPLYING IFF _____ FEE _____ MAG. JUDGE _____

EXHIBIT 2

1:06cv 711GRHW

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Robert R. Gagné

(b) County of Residence of First Listed Plaintiff Harrison
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Donald J. Rafferty & Jesse B. Hearin, III (228) 493-1836
1101 E. Second Street, Pass Christian, MS 39571

DEFENDANTS
State Farm Fire and Casualty Company, et al

County of Residence of First Listed Defendant McClellan, IL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JUL 21 2006
J. T. NOBLIN, CLERK
DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only)

Citizen of This State 1

Citizen of Another State 2

Citizen or Subject of a Foreign Country 3

Incorporated or Principal Place of Business In This State 4

Incorporated and Principal Place of Business In Another State 5

Foreign Nation 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input checked="" type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input checked="" type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1331, 28 U.S.C. § 1337, 28 U.S.C. § 1985

Brief description of cause:
Breach of Contract, Unfair and deceptive practices of State Farm, bad faith, etc.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

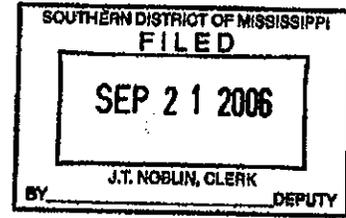
JUDGE The Honorable Louis Guirola, Jr. DOCKET NUMBER 1:06cv1

DATE 07/21/2006 SIGNATURE OF ATTORNEY OF RECORD Donald Rafferty

FOR OFFICE USE ONLY

RECEIPT # B024346 AMOUNT \$350.00 APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

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



MELISSA AND ANDREW MARION

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:06CV919LGRHW

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

DEFENDANTS

NOTICE OF REMOVAL

**TO: Honorable Judges of the United States District Court
for the Southern District of Mississippi, Southern Division**

Comes now your Petitioner, **STATE FARM FIRE AND CASUALTY COMPANY**,
and respectfully shows unto this Honorable Court as follows:

I.

On August 4, 2006, an action was filed by the Plaintiffs, Melissa and Andrew Marion, in the Circuit Court of Jackson County, Mississippi, entitled: Melissa and Andrew Marion, Plaintiffs, versus State Farm Fire and Casualty Company; and John and Jane Does A, B, C, D, E, F, G, and H, Defendants, Cause No. 2006-00,224(3). The summons and Complaint were served upon the Defendant, State Farm Fire and Casualty Company on August 24, 2006. Attached hereto and made a part hereof and marked as Exhibit "A" are true and correct copies of all process and pleadings purportedly served upon this Defendant.

II.

In this lawsuit, the Plaintiffs seek damages for what they allege to be a breach of duty under the subject policy of insurance, pattern and practice of deceptive conduct by

State Farm in failing to honor its commitment to the Plaintiffs for damages plaintiffs' home received as a result of Hurricane Katrina that occurred on August 29, 2005, in the State of Mississippi.

III.

The Plaintiffs are and were at the time of the commencement of this action resident citizens of Jackson County, Mississippi.

IV.

The Defendant is organized under and pursuant to the laws of the State of Illinois, and not Mississippi, having its principle place of business at One State Farm Plaza, Bloomington, IL 61710-0001.

V.

The amount in controversy in this case exceeds \$75,000.00, exclusive of interests and costs due to Plaintiffs' open ended claim for punitive damages, actual damages, costs and attorney's fees.

VI.

Jurisdiction in this case is founded upon the provisions of 28 USCA §§ 1332 and 1441, Diversity of Citizenship and Amount in Controversy.

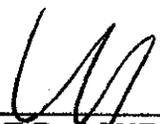
VII.

Petitioner represents that promptly upon the filing of this Notice of Removal as provided by 28 USCA § 1446(d), it shall give written notice thereof to the Plaintiffs and shall file a copy of the Notice with the Clerk of the Circuit Court of Jackson County, Mississippi, wherein this action is now pending.

WHEREFORE, Defendant prays that the above mentioned action now pending in the Circuit Court of Jackson County, Mississippi, be removed therefrom to this Court.

Respectfully submitted,

**BRYAN, NELSON, SCHROEDER,
CASTIGLIOLA & BANAHAN, PLLC**
Attorneys for Defendant
STATE FARM FIRE & CASUALTY COMPANY

BY: 
ERNEST R. SCHROEDER (6562)
JOHN A. BANAHAN (1761)

CERTIFICATE OF SERVICE

I, **ERNEST R. SCHROEDER**, attorney for the Defendant, **STATE FARM FIRE AND CASUALTY COMPANY**, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Notice of Removal to Christopher C. Van Cleave, Post Office Drawer 1916, Biloxi, Mississippi 39533.

THIS the 20th day of September, 2006.


ERNEST R. SCHROEDER (#6562)

**BRYAN, NELSON, SCHROEDER,
CASTIGLIOLA & BANAHAN, PLLC**
Attorneys at Law
1103 Jackson Avenue
Post Office Drawer 1529
Pascagoula, MS 39568-1529
Tele: (228) 762-6631
Fax: (228) 769-6392

JS 44 (Rev. 11/04)

Case 1:06-cv-00969-LTS-RHW CIVIL COVER SHEET Filed 09/21/2006 Page 12 of 16 RHW

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I. (a) PLAINTIFFS
Melissa and Andrew Marion

(b) County of Residence of First Listed Plaintiff Jackson County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Christopher C. Van Cleave (228) 432-7826
Post Office Drawer 1916, Biloxi, MS 39533

DEFENDANTS
State Farm Fire & Casualty Company

County of Residence of First Listed Defendant Bloomington, IL
(IN U.S. PLAINTIFF CASES, COUNTY OF RESIDENCE OF MISSISSIPPI)
NOTE: IN LAND CONDEMNATION CASES, USE THE COUNTY OF THE LAND INVOLVED.

Attorneys (If Known)
Ernest R. Schroeder (228) 762-6631
Post Office Drawer 1529, Pascagoula, MS 39568-1529

FILED
SEP 21 2006
CLERK OF DISTRICT COURT
DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
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<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 480 Consumer Credit
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<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 496 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 810 Securities/Commodities/Exchange
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<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 890 Other Statutory Actions
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<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment				<input type="checkbox"/> 892 Economic Stabilization Act
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<input type="checkbox"/> 245 Tort Product Liability					<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

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4 Reinstated or Reopened

5 Transferred from another district (specify)

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7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USCA Section 1332 and 1441

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 9-20-06 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # 24764 AMOUNT 350.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____