

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

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

RELATORS/COUNTER-DEFENDANTS

v.

CASE NO. 1:06cv433-LTS-RHW

STATE FARM MUTUAL INSURANCE COMPANY DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS ENGINEERING CORPORATION;
HAAG ENGINEERING CO.; and ALEXIS KING

DEFENDANTS

**DEFENDANT/COUNTER-PLAINTIFF
STATE FARM FIRE AND CASUALTY COMPANY'S
SUPPLEMENTAL EXPERT DISCLOSURE**

Pursuant to Fed. R. Civ. P. 26(a)(2) and the Court's Text Only Order dated March 24, 2010, Defendant/Counter-plaintiff State Farm Fire and Casualty Company, incorrectly named in the First Amended Complaint as "State Farm Mutual Insurance Company" ("State Farm"), submits this supplemental expert disclosure for Gerry Waytowich. A copy of Mr. Waytowich's report is attached hereto as Exhibit 1.

This the 10th day of May, 2010.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY,
INCORRECTLY NAMED AS "STATE FARM MUTUAL
INSURANCE COMPANY"

/s/ Benjamin M. Watson

Robert C. Galloway (MSB # 4388)

Jeffrey A. Walker (MSB # 6879)

E. Barney Robinson III (MSB # 09432)

Benjamin M. Watson (MSB # 100078)

Amanda B. Barbour (MSB # 99119)

ITS ATTORNEYS

OF COUNSEL:

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC

Post Office Box 6010

Ridgeland, Mississippi 39158

(P) (601) 948-5711

(F) (601) 985-4500

(E) bob.galloway@butlersnow.com

(E) jeff.walker@butlersnow.com

(E) barney.robinson@butlersnow.com

(E) ben.watson@butlersnow.com

(E) amanda.barbour@butlersnow.com

Michael B. Beers (ASB-4992-S80M)

BEERS, ANDERSON, JACKSON, PATTY & FAWAL, P.C.

Post Office Box 1988

Suite 100

250 Commerce Street (36104)

Montgomery, Alabama 36102

(P) (334) 834-5311

(F) (334) 834-5362

(E) mbeers@beersanderson.com

PRO HAC VICE

James R. Robie (CA State Bar # 67303)

Robie & Matthai

Suite 1500

Biltmore Tower

500 South Grand Avenue

Los Angeles, California 90071

(P) (213) 706-8000

(F) (213) 706-9913

(E) jrobie@romalaw.com

PRO HAC VICE

CERTIFICATE OF SERVICE

I, Benjamin M. Watson, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following via the means directed by the Court's CM/ECF System:

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

Scott D. Gilbert
August J. Matteis, Jr.
Craig J. Litherland
Benjamin R. Davidson
GILBERT LLP
11 New York Avenue, NW
Suite 700
Washington, DC 20005
gilberts@gotofirm.com
matteisa@gotofirm.com
litherlandc@gotofirm.com
davidsonb@gotofirm.com

COUNSEL FOR CORI RIGSBY AND KERRI RIGSBY

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

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

ATTORNEYS FOR THE UNITED STATES

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

ATTORNEYS FOR HAAG ENGINEERING CO.

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

ATTORNEYS FOR FORENSIC ANALYSIS ENGINEERING CORPORATION

THIS the 10th day of May, 2010.

s/ Benjamin M. Watson
Benjamin M. Watson

Dated: May 10, 2010
RE: Rigsby v. State Farm Insurance
By: Gerry Waytowich

As requested, I am providing my evaluation of State Farm's adjustment and payment of the flood claim as a Write Your Own (WYO) carrier for the damage relative to the McIntosh home located at 2558 South Shore Dr., Biloxi, MS 39532. This report is based on the materials provided to me, my education, training, and experience including my knowledge of FEMA/NFIP rules, regulations, and guidelines.

1. *Professional Experience and Qualifications.* I was employed with Computer Science Corporation (CSC), the Bureau and Statistical Agent (Bureau) for the National Flood Insurance Program (NFIP) for approximately eight years. During that time, I trained and certified flood adjusters pursuant to FEMA's and NFIP's guidelines using educational presentations that I developed. These presentations instructed adjusters on how to adjust flood-damaged structures pursuant to FEMA'S Adjuster Claims Manual and Standard Flood Insurance Policies (Dwelling, General Property, and Residential Condominium Building Association Policy) and included FEMA's interpretations of these policies.

While employed with CSC as a General Adjuster for the Bureau, I performed reinspections of the Single Adjuster Program and set up claims coordinating offices. The Single Adjuster Program allowed one adjuster to handle the wind and flood claims in accordance with the NFIP and State regulations. Various states have established a Single Adjuster Program and have a Memorandum of Understanding with the NFIP for their programs, which has become an industry standard for WYOs handling flood claims in catastrophic situations.

In my capacity as a General Adjuster for the Bureau, I also performed routine reinspections of WYO carriers servicing the NFIP. I audited random flood claim files for coverage issues (including claims using XactTotal) and proper documentation which included photographs of the covered damages, accuracy of measurements, pricing, payments, and the insured's satisfaction as to the claims process.

During the Hurricane Katrina event, I was the Claims Manager responsible for the operations of five Flood Response Offices located in Beaumont, Texas; Hammond, Louisiana; Mobile, Alabama; Pensacola, Florida; and Marathon, Florida. I was also responsible for the 15 Disaster Analysts working out of these five locations, three of which were specifically assigned to the State of Mississippi. These Analysts performed routine reinspections, special assists, and congressional inquiries and were under specific direction to determine if adjusters were pushing wind damage to water. There were no findings of flood paying for wind damage.

While I am no longer employed with CSC, I remain actively involved with training and certifying flood adjusters for WYO carriers.

A copy of my current *curriculum vitae* is attached hereto as Exhibit A.

2. *Prior Testimony.* During the previous four (4) years, I have not testified as an expert witness at trial or by deposition.

RE: Rigsby v. State Farm Insurance

May 10, 2010

Page 2 of 3

3. *Compensation.* I am not receiving any compensation for my testimony in this matter, other than reimbursement for my reasonable travel expenses.
4. *Expedited Processes for Catastrophic Hurricane Events.*

Federal Regulation 44 CFR 62.23 permits WYO companies to “adjust claims in accordance with general Company standards, guided by the NFIP Claims manuals.” The NFIP Adjuster Claims Manual, Page II-5 requires Companies to prepare repair estimates on a “room-by room, unit-cost basis, clearly indicating room dimensions and units costs, except when the building has been completely destroyed.” [Emphasis Added.] When a building is a total loss or “completely destroyed”, the NFIP allows the Company to use “value determination by a standard insurance industry method, such as Marshall-Swift, Boeckh, etc.” In my experience with catastrophic hurricane events like Katrina, Ivan, and Dennis, when the flood damage exceeds coverage limits, the property is deemed completely destroyed and XactTotal is appropriate and encouraged.

Federal Regulation 44 CFR 62.23 further states that the “responsibility for providing a proper adjustment for combined wind and water claims is to be conducted by listing in concert with the Single Adjuster provisions. . .” Due to the volume of flood claims resulting from a catastrophic hurricane event such as Katrina, had it not been for the use of single adjusters and XactTotal processes, flood claims would not have been paid in an expedited manner.

As a General Adjuster for the Bureau, I recommended the use of single adjusters to help expedite these catastrophic flood claims. Subsequently, one of FEMA’s requests was to evaluate the expedited flood claims process, which developed into the three part W-5054 memorandum.

I reviewed the process at State Farm’s catastrophe operations in Dallas, Texas. After my review and recommendations to FEMA, the process was implemented accordingly.

5. *State Farm’s McIntosh Claim.* I was provided and reviewed the following documents relevant to the McIntosh Flood Claim File:

- A) McVadon Enterprises’ flood estimate;
- B) State Farms flood claim file number: 24-Z494-638R (“SF Flood File”);
- C) Jenkins Engineering Reports dated April 20, 2009 and March 1, 2010 (Supplemental);
- D) Photographs from the McIntosh homeowners claim file; and
- E) Gary Dailey of Cornerstone Construction’s Report.

After reviewing these documents, it is my opinion that:

- A) The McIntosh flood claim was a relatively easy claim to adjust;
- B) The SF Flood File was properly documented in accordance with FEMA’s and NFIP’s requirements and would have met the requirements I would have looked for during a reinspection;

RE: Rigsby v. State Farm Insurance

May 10, 2010

Page 3 of 3

- C) The documents show total damages caused by the 5' of interior flooding and based on the Adjuster Claims Manual and certification presentation instructing adjusters to perform a Marshall Swift or similar square-foot evaluation of the damaged structure (XactTotal) was correct in calculating the cost to repair exceeding policy limits without performing a "stick built" estimate of flood damages;
- D) The photographs show extensive damage to the lower portion of the home which is consistent with damage from flood surges;
- E) State Farm's use of a single adjuster and XactTotal in adjusting this claim was proper and in accordance with FEMA's and NFIP's guidelines, manuals, and policies;
- F) Due to the severity of flood damage to the McIntosh home, State Farm did not need to perform a line by line estimate to document loss due to flood in excess of \$250,000.00;
- G) State Farm addressed wind damages in a separate estimate. I did not find any indication in the documentation of overlapping payments of wind vs. flood damages; and
- H) The McVadon Enterprises' flood estimate included the following items that would not have coverage:

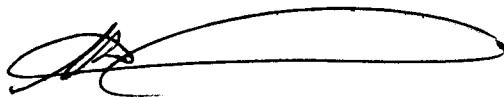
Deck/Arbor	\$ 3,000.00
Landscaping	\$15,000.00
Plumbing/Septic	\$31,797.48
Total	\$49,797.48

Therefore: \$444,489.78
 < \$49,797.48 >
 \$394,692.30
 \$ 78,938.46 (contractor's fee 20%)

The remaining items listed on McVadon's estimate total \$473,630.76 and the total loss still exceeds the policy limits of \$250,000.00 attributed to flood damages.

6. *Conclusion.* After reviewing the SF Flood File as if I was performing a reinspection, I find that: the file was properly documented and the contents of the file, taken as a whole, would easily justify a payment of \$250,000.00; the payment was proper; and State Farm's use of XactTotal to adjust this claim was acceptable, appropriate, and done in accordance with FEMA's guidelines, including W-5054.

Sincerely,



Gerry Waytowich

Exhibit "A"**GERALD B. WAYTOWICH**

11515 Casa Marina Way #303

Tampa, Florida 33635

813-814-4296

Experienced professional with extensive insurance adjusting and construction experience. Including, but not limited to commercial liability, homeowners, N.F.I.P., F.J.U.A., and catastrophe. Adaptable, self-motivated hands on professional. Innovative problem solver with excellent interpersonal communication skills. Consumer oriented with technical knowledge. Accomplished in the areas of:

- Commercial Adjusting
- Homeowner's Adjusting
- Structural Design
- Arson Investigation
- Fraud Investigation
- National Flood Insurance Program
- Catastrophe (Flood/Wind)

PROFESSIONAL ACCOMPLISHMENTS

- Florida Windstorm Underwriting Association Certified Adjuster/Examiner for AYO's
- Adjusters License held in Texas and South Carolina
- Currently hold a Flood Certification #1197029 (copy attached)
- State of Florida Building Contractor's License CBC 005960
- Elected Associate of the Quarter in 1998 from over 600 employees at Insurance Management Solutions Group
- Detected and uncovered several arson cases. Was awarded the Associate of the Month for my cooperation with the State Attorney's office, State Fire Marshall and F.D.L.E. Upon conclusion of the case, numerous arrests and the collapse of a very large insurance fraud ring occurred.
- Assisted in developing S.I.U. Program (Special Investigation Unit) at Banker's Insurance Company.
- Computer Experience: Xactimate; ASA 400, Microsoft Windows, Excel Spreadsheet, Power Point. Simsol.
- Supervised off site cat offices for Insurance Management Solutions Group in 1999 in North Carolina, South Carolina, and Florida.
- Headed the Hurricane Isabel task force as directed by FEMA, 2004.
- Was instrumental in overseeing 5 flood response offices during the 2005 hurricane season for Computer Science Corporation.

- Developed and presented the NFIP Adjuster's presentations for flood adjuster certification from 2000 through 2009 for the Federal Emergency Management Agency through out the country and Puerto Rico.

PROFESSIONAL EXPERIENCE

BINTECH PARTNERS, INC. 04/08-PRESENT
ST. PETERSBURG, FLORIDA

Current position as Flood Claims Manager responsible for daily operations of the flood claims department. Training of staff adjusters in the NFIP flood program as related to Bankers Insurance Group WYO program. Also, assisting H2O Partners, Inc. (new NFIP training contractor) with the current flood adjuster training for the NFIP, throughout the country. Performed approximately 11 2009 NFIP Adjusters Presentations with H2O Partners, Inc in 2009.

COMPUTER SCEINCE CORPORATION 06/00 – 4/08
LANHAM, MD

From 2000 to 2005 was a general adjuster for CSC. Was instrumental in assisting with the developing of CSC procedures for technology and the general adjuster workplace, including overseeing the Hurricane Isabel task force as directed by FEMA.

From 2005 to 2006, was promoted to Claims Supervisor over the general adjusters, and then to the last held position as Claims Manager over 9 general adjusters, in 2006 till leaving CSC. Duties include that of day to day operations, re-assigning reinspections, hands on working with FEMA officials establishing procedures and coverage issues, overseeing and developing NFIP yearly presentations, dealing with Write Your Own insurance company officials in determining coverages and other issues related to NFIP. Was instrumental in overseeing 5 flood response offices during the 2005 hurricane season with 15 Disaster Analyst assigned to the various flood response offices as temporary general adjusters.

While at CSC, assisted FEMA and Next Gen establish the procedures for the claims reinspection portion of the NFIP program being developed for the new NFIP-IT section.

INSURANCE MANAGEMENT SOLUTIONS GROUP 3/98 TO 6/00
ST. PETERSBURG, FLORIDA

Current position when leaving was that of Field Operations Supervisor. Duties included all aspects of handling catastrophe flood, earthquake and other natural disasters. Setting up of remote cat offices, dealing with independent adjusters, attorneys, government officials, and agents. Supervising clerical staff and field reinspections. When not in a catastrophe, was assigned in house activities to do quality review of files, continuing education of associates, along with implementing various procedures.

**BANKERS INSURANCE GROUP
ST. PETERSBURG, FLORIDA**

2/93 – 3/98

Technical representative in the property division, handling claims from \$500,000 upward to \$1,000,000. Dealing with highly technical and detailed claims involving commercial and homeowner's policies including F.R.P.C.J.U.A. and N.F.I.P. Negotiated on a daily basis with owners, attorneys, contractors, sub-contractors, engineers and other government agencies. Also responsible for the education and development of associates in understanding construction industry and methods.

**RICHARD J. O'BRIEN ADJUSTMENT CO., LTD.
FT. LAUDERDALE, FLORIDA**

6/92 – 2/93

Took position with Richard J. O'Brien Adjustment Co., Ltd. with the understanding and agreement to operate and manage an office in the Tampa Bay area. During my association with the O'Brien firm, I handled property, casualty, liability and automobile claims. During Hurricane Andrew, worked as technical advisor to the numerous field adjusters.

**INSURANCE CLAIMS MANAGEMENT CORP.
MIAMI, FLORIDA**

6/87 – 6/92

Owned and operated Independent Adjusting Firm with four employees. Handling commercial, liability and homeowners' claims. Handled investigations, written scope of damages, obtain proof of loss, settlement of claims and full adjustment to completion. Dealt with insured, attorneys, public adjusters, insurance companies, etc. In 1988 worked Hurricane Hugo catastrophe.

**GERALD B. WAYTOWICH, SELF EMPLOYED
MIAMI, FLORIDA**

6/84-6/90

Self employed building contractor doing repairs and renovations for fire and water damages for The Insurance Company of Florida. Handled estimating of Scope of damages with insurance adjusters, negotiating authorizations with insured, scheduling of sub contractors, and pricing of jobs through completion.

**ALC CONTRACTING INC.
WEST PALM BEACH, FLORIDA**

5/79 – 6/84

General Manager for company with responsibility of estimating, job costs, dealing with unions and general contractors, negotiating contracts, material purchasing, etc. Also, responsible for field organization, production and payroll. Projects were in excess of \$1 million dollars and were completed on time and within budget.

GBW ENTERPRISES, INC.
MIAMI, FLORIDA

12/70 – 5/79

Took control of family owned construction business after father's death in 1970. Build speculation and custom homes, apartments, additions and remodeled commercial stores. Handled all aspects of day-to-day operations, both in the field and office. Supervised six full time employees.

EDUCATION

Miami Dade Junior College, Miami, Florida
International Association of Arson Investigation Seminar
AIC Property DDI Management Training

REFERENCES

UPON REQUEST