

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

PLAINTIFF

v.

CASE No. 3:07cr192-NBB-SAA

RICHARD F. "DICKIE" SCRUGGS, ET AL.

DEFENDANT

**MOTION TO INTERVENE FOR PURPOSE OF OPPOSING STATE FARM FIRE
AND CASUALTY COMPANY'S MOTION FOR RETURN OF PROPERTY**

SLF, Inc., successor to the former Scruggs Law Firm, P.A. ("SLF, Inc."), through counsel, files this Motion to Intervene for Purpose of Opposing State Farm Fire and Casualty Company's ("State Farm") Motion For Return of Property. The Motion is a fishing expedition, seeking to view information previously held by the Scruggs Law Firm, P.A, and by Mr. Scruggs, whether or not such information ever belonged to State Farm. Scruggs Law Firm, P.A., is no longer a practicing law firm, but SLF, Inc., should be given the opportunity to assert the interests of the predecessor entity.

SLF, Inc., is a successor company to Scruggs Law Firm, P.A., but is a regular commercial corporation. Exhibit "A," Depo. of R. Deloach, 7/28/10, at p. 22:12 - 22:15. SLF, Inc., is owned by Richard Scruggs, who currently resides at FCI Ashland, Kentucky. *Id.* at p. 22:23. SLF, Inc., does not and cannot engage in the practice of law. SLF, Inc., attaches an exhibit submitted by State Farm in a separate discovery dispute showing amendment and restatement of Articles of Incorporation for The Scruggs Law Firm, P.A, and establishing SLF, Inc., which would not "engage in the rendering of professional legal services to or on behalf of any person or entity." *See* Exhibit "B," pp. 1 - 5 of exhibit excerpted from Dkt #18-2, submitted by State Farm in Case 1:10-mc-00164-HHK-JMF (D.D.C. 4/16/10). In view of the above, and of State Farm's statement that the information it seeks derives from a search covering premises that included the former Scruggs Law Firm, P.A., SLF, Inc., asks to intervene to address the following points.

State Farm acknowledges that the USAO does not recall that documents sought under State Farm's motion were seized by the Government. Nevertheless, it asks that State Farm, "*through its employees and attorneys, be permitted to assist the United States in its search among the items seized* for documents and information that are proprietary to State Farm upon whatever terms and restrictions the Court and the USAO find appropriate and that State Farm be allowed to inform the Court of any other documents found that are proprietary to State Farm and ask for their return." Mot. at pp. 4-5. In particular, State Farm seeks return of an original copy of an engineering report to which a "sticky note" was purportedly affixed. State Farm's request for "return" of the document—and for authority to rummage through the government's files and inventory—should be denied for three reasons.

First, as a threshold matter State Farm lacks standing to bring this Rule 41(g) motion. Federal Rule of Criminal Procedure 41(g) provides that "[a] person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property . . ." To qualify as a "person aggrieved" by the search, the moving party must demonstrate an ownership interest in the property requested. *See United States v. Banks*, 465 F.2d 1235, 1239-40 (5th Cir. 1972). In the analogous setting of forfeiture actions, the Fifth Circuit has held that "the claimant must come forth with *some* evidence of his ownership interest in order to establish standing," and that "a bare assertion of ownership of the *res*, without more, is inadequate to prove an ownership interest sufficient to establish standing." *United States v. \$38, 570 in U.S. Currency*, 950 F.2d 1108, 1112 (5th Cir. 1992). The same reasoning applies in a Rule 41(g) motion. *See United States v. Williams*, 245 F.3d 790 (5th Cir. 2000) (holding that a movant's "bare assertion of ownership, without more, is inadequate to prove an ownership interest sufficient to establish

standing” in a Rule 41 motion for return of seized property). Accordingly, State Farm must do more than baldly assert that it owns the document in question and point to other wholly unidentified State Farm property that the Government may or may not have seized in its search. *See* Mot. at p. 3, 5.

In addition, State Farm has failed to satisfy the “irreducible constitutional minimum of standing” required to pursue this claim. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The Fifth Circuit has articulated the following constitutional requirements for standing: (1) injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) “it must be likely, *as opposed to merely speculative*, that a favorable decision will redress the plaintiff’s injury.” *S. Christian Leadership Conference v. Sup. Ct. of State of La.*, 252 F.3d 781, 788 (5th Cir. 2001) (emphasis added). State Farm has not and cannot satisfy the third standing requirement. State Farm admits in its motion that it has no idea whether the “sticky note” document it seeks was seized by the Government or whether the Government currently has it in its files. All State Farm asserts is that “if the original report and ‘sticky note’ were seized,” then they “are likely still in the possession of federal authorities,” and that if granted access to the Government’s files, State Farm “possibly could identify” the report and other unidentified items allegedly belonging to State Farm. Mot. at p. 3. This hardly satisfies constitutional standing requirements.

Second, the Search Warrant executed against the Scruggs Law Firm did not grant the Government any authority to search for the “sticky note” document State Farm seeks; therefore, the Government would not have seized it even if it had seen the document in question.¹ The Warrant

¹Although the affidavit(s) in support of the Warrant was filed under seal, SLF, Inc., believes the Warrant itself was not, as it may be found in court records in prior motions filed in this case. However, out of an abundance of caution, SLF, Inc., does not attach a copy of the Warrant to this Motion.

allowed the government to seize only specified categories of potential evidence. Thus, the government had neither authority to search for the original “sticky note” document State Farm seeks, nor authority to seize it if it had existed.

Third, State Farm offers nothing beyond sheer speculation that the Scruggs Law Firm may ever have possessed the “sticky note” document to begin with. Indeed, to support its request to review every document seized by the Government from a direct litigation opponent of State Farm’s when the Warrant was executed against the Scruggs Law Firm, State Farm claims one “justification”: that former Scruggs secretary Elizabeth Jones, whose deposition State Farm took three days before the close of discovery in the underlying *Qui Tam* litigation, testified that she remembered seeing an “original engineering report and ‘sticky note’ in a file in the [Scruggs Law] office.” Mot. At 2. However, State Farm cites only part of Ms. Jones’ testimony, and even this part, inaccurately.

In fact, Ms. Jones never testified that she saw the original Forensic Analysis report; she testified that she saw “an” original sticky note, but did not know what it said. Toward the end of her deposition she clarified what she recalled, in a passage not cited by State Farm:

BY MR. DAVIDSON [Attorney for Relators]:

Q. I'd like to ask a few. Also on this Exhibit 7 that we were just talking about with the sticky note, you said that you don't remember how it came to be in the possession of the Scruggs Law Firm; is that right?

A. That's correct.

Q. Do you know if when this report came in the possession of the Scruggs Law Firm if it had a sticky note on it at that time or not?

A. I do not remember.

Q. Did you guys use sticky notes regularly to help you keep track of things?

A. I did personally.

Q. Yeah, I do the same, you put a sticky note on a piece of paper if you --

A. Correct.

Q. -- wanted to write a note. What other people in the office do the same thing?

A. Probably the assistants.

Q. Do you know if the sticky note that you saw on Exhibit 7 was put on by someone in the office?

A. I do not.

Q. You don't know who put it on?

A. I do not.

Q. And you said you remembered seeing a sticky note on a report like this one. Do you remember what the note said?

A. I do not.

Q. So do you know for sure if the note you saw is the same thing that's Xeroxed on this?

A. I do not.

Q. You just remember --

A. I cannot be 100 percent.

Q. You just remember seeing some sticky note on some report that looked like this one?

A. Correct.

Q. And sticky notes were often used around the office?

A. Yes.

Q. So it wouldn't have been unusual for a sticky note to have been put on a report like this one?

A. Correct.

MR. DAVIDSON: Those are all my questions.

By Mr. WATSON [Attorney for State Farm]

Q. And what is it that makes you remember the original sticky note on the Brian Ford report?

A. I just remember a sticky note being on the document.

Q. In about the same location as the --

A. It was just in the middle of the page.

Q. Was it about the same size?

A. I cannot recall the size.

Q. Did you ever take the time to read what was on the sticky note?

A. No.

Q. But it did have writing on it?

A. Yes.

Q. Do you know of anyone else in the office who put the sticky note on there?

A. I do not.

MR. WATSON: That's all the questions I have.

Exhibit "C," E. Jones Depo. at pp. 63:6 - 64:24; 65:19 - 66:10.

Further, State Farm does not fully explain its need for the original report or sticky note, and that need is clouded by State Farm's prior pleadings in the *Qui Tam* suit. For example, in the early stages of the *Qui Tam* litigation State Farm admitted that the Forensic Analysis Report was within its files, and its employee wrote the sticky note attached to the Report. The McIntoshes pled as

follows in their First Amended Complaint:

36. This October 12 report later appeared within State Farm's own files with a "sticky" note affixed to the first page, the note saying "Put in Wind file – DO NOT pay Bill DO NOT discuss." (Emphasis in original). See Exhibit "C." [Forensic Analysis Report with copy of "sticky note".] Upon information and belief, this statement was written by [State Farm "Team Manager" for State Farm's Mississippi Gulf Coast Catastrophe Office]] Lecky King.

Exhibit "D," First Amended Complaint, *McIntosh v. State Farm Fire & Casualty Co., et al.*, 1:06-cv-01080-LTS-RHW (S.D. Miss.) (Doc. #194) at p. 9. Despite denials of many of the McIntoshes' allegations and equivocations regarding others, State Farm plainly admitted this allegation, writing:

XXXVI.

That this Defendant admits the allegations contained in paragraph XXXVI of the First Amended Complaint.

Exhibit "E," Separate Answer to First Amended Complaint, *McIntosh v. State Farm Fire & Casualty Co., et al.*, 1:06-cv-01080-LTS-RHW (S.D. Miss.) (Doc. # 256) at p. 8. State Farm now plays "gotcha" with the memory of a non-party, former assistant to Mr. Scruggs. The effort by State Farm to peer into documents of which it has no need, or a "need" justified only by its interpretation of a single non-party witness's testimony years after she ceased working for a former law firm, should be rejected.

Conclusion

State Farm's motion amounts to a transparent attempt to fish through property and files previously held by the Scruggs Law Firm, and Mr. Scruggs. The request is unsupported by law, and based on only the thinnest of factual arguments. Allowing State Farm access to inventories or documents seized from the former Scruggs Law Firm raises serious privilege issues. Indeed, after federal law enforcement authorities searched the former Scruggs Law Firm offices, the Government used a "taint team" to review the evidence it seized so as not to violate any attorney client, work

product, or other applicable privileges. To allow State Farm—a former litigation adversary—the access it seeks would only magnify these concerns.

SLF, Inc., should be allowed to intervene for the purpose of raising the concerns stated herein, and the Court should deny State Farm’s Motion in its entirety. However, if the Court entertains any part of the request for relief, it should allow only the Government to search for only the original Forensic Analysis Report with the original “sticky note” that State Farm alleges justifies this most intrusive glimpse into its former litigation adversary’s inventory of files, documents, or electronic information.

THIS, the 27th day of July, 2010.

/s/ Pope S. Mallette
POPE S. MALLETTE (MB NO. 9836)
J. CAL MAYO, JR. (MB NO. 8492)
PAUL B. WATKINS (MB NO. 102348)
Attorneys for SLF, Inc.

OF COUNSEL:

MAYO MALLETTE PLLC
2094 Old Taylor Road
5 University Office Park
Post Office Box 1456
Oxford, Mississippi 38655
Telephone: (662) 236-0055

CERTIFICATE OF SERVICE

I, Pope S. Mallette, attorney for SLF, Inc., do certify that I have electronically filed the foregoing document with the Clerk of the Court using the ECF system, who forwarded a copy of same to the following:

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Ralph Dean
UNITED STATES ATTORNEY'S OFFICE
Northern District of Mississippi
900 Jefferson Avenue
Oxford, MS 38655-3608
bob.norman@usdoj.gov
ralph.dean@usdoj.gov
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(E) james.tucker@butlersnow.com
(E) jeff.walker@butlersnow.com
(E) amanda.barbour@butlersnow.com

This the 27th day of July, 2010.

/s/ Pope S. Mallette
POPE S. MALLETTTE

1 Q. Okay. So SLF means Scruggs Law Firm.

2 A. Well, it's just a name that the attorney used
3 to register it. He created the name. I didn't create
4 the name.

5 MR. MAYO: That's the registered name.

6 It's filed that way. It's not an abbreviation.

7 In the filing, it is filed as SLF, Inc.

8 BY MR. WALKER:

9 Q. I understand that, and I've seen that, but is
10 it your understanding that the SLF stands for Scruggs
11 Law Firm?

12 A. The best answer I can give you is that SLF is
13 a successor to the business of Scruggs Law Firm, but it
14 is a regular commercial corporation. And that is the
15 name that the attorney chose.

16 And for identifi- -- ease of identification,
17 that it succeeded the business of the Scruggs Law Firm.
18 I can't tell you any more than that.

19 Q. Who is that attorney that selected the name?

20 A. Bill Painter, who is with Baker Donelson in
21 Jackson.

22 Q. Who owns the -- who owns SLF, Inc.?

23 A. Richard Scruggs.

24 Q. Are there any other persons with an equity or
25 other interest in SLF, Inc.?

**BAKER
DONELSON**
BEARMAN, CALDWELL
& BERKOWITZ, PC

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TANYA W. WASSER
Direct Dial: 601.973.3601
Direct Fax: 601.974.9909
E-Mail Address: twasser@bakerdonelson.com

October 6, 2008

VIA HAND DELIVERY

Honorable Delbert Hosemann
Secretary of State
Corporate Division
202 North Congress Street, Suite 601
Jackson, Mississippi 39201

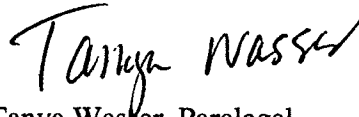
Re: The Scruggs Law firm, P.A.
Dear Sirs:

Enclosed is the original and one copy of Articles of Amendment for the above noted entity. Our firm check number 27943 in the amount of \$50.00 is enclosed for the filing fee.

Please file the original and return the copy stamped received with our runner. Your continuing assistance and cooperation in this matter is greatly appreciated.

Sincerely yours,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.



Tanya Wasser, Paralegal

:TW
cc: William S. Painter, Esq.
Encl.

865 127 OCT-6 08

JM TWW 626813 v1
2138989-000001 10/6/2008

Exhibit 26

Business ID: 697844
Date Filed: 10/06/2008 05:00 PM
C. Delbert Hosemann, Jr.
Secretary of State

F0012 - Page 1 of 3

OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
P.O. BOX 136, JACKSON, MS 39205-0136 (601) 359-1333
Articles of Amendment



The undersigned persons, pursuant to Section 79-4-10.06 (if a profit corporation) or Section 79-11-305 (if a nonprofit corporation) of the Mississippi Code of 1972, hereby execute the following document and set forth:

1. Type of Corporation

Profit Nonprofit

2. Name of Corporation

The Scruggs Law Firm, P.A.

3. The future effective date is (Complete if applicable)

4. Set forth the text of each amendment adopted. (Attach page)

5. If an amendment for a business corporation provides for an exchange, reclassification, or cancellation of issued shares, set forth the provisions for implementing the amendment if they are not contained in the amendment itself. (Attach page)

6. The amendment(s) was (were) adopted on

September 17, 2008 Date(s)

FOR PROFIT CORPORATION (Check the appropriate box)

Adopted by the incorporators directors without shareholder action and shareholder action was not required.

FOR NONPROFIT CORPORATION (Check the appropriate box)

Adopted by the incorporators board of directors without member action and member action was not required.

FOR PROFIT CORPORATION

7. If the amendment was approved by shareholders

(a) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and the number of votes of each voting group indisputably represented at the meeting were

Designation	No. of outstanding shares	No. of votes entitled to be cast	No. of votes indisputably represented
Common	1,000	1,000	1,000

865127 OCT-68



--	--	--	--

(b) EITHER

(i) the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment was

Voting group	Total no. of votes cast FOR	Total no. of votes cast AGAINST

OR

(ii) the total number of undisputed votes cast for the amendment by each voting group was

Voting group	Total no. of undisputed votes cast FOR the plan
Common	1,000

and the number of votes cast for the amendment by each voting group was sufficient for approval by that voting group.

FOR NONPROFIT CORPORATION

8. If the amendment was approved by the members

(a) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and the number of votes of each class indisputably represented at the meeting were

Designation	No. of memberships outstanding	No. of votes entitled to be cast	No. of votes indisputably represented

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OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
P.O. BOX 136, JACKSON, MS 39205-0136 (601) 359-1333
Articles of Amendment



(b) EITHER

(i) the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment was

Voting class	Total no. of votes cast FOR	Total no. of votes cast AGAINST
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

OR

(ii) the total number of undisputed votes cast for the amendment by each class was

Voting class	Total no. of undisputed votes cast FOR the amendment
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

and the number of votes cast for the amendment by each voting group was sufficient for approval by that voting group.

By: Signature

Richard F. Scruggs

(Please keep writing within blocks)

Printed Name

Richard F. Scruggs

Title

President

865127 OCT-68

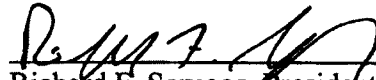
**AMENDED AND RESTATED
ARTICLES OF INCORPORATION**

THE SCRUGGS LAW FIRM, P.A.

The undersigned persons, pursuant to Section 79-4-10.07 of the Mississippi Code of 1972, hereby execute the following Amended and Restated Articles of Incorporation which consolidate all amendments into a single document as herein set forth:

1. The name of the corporation is SLF, Inc.
2. The purpose for which the corporation is organized is to engage in any activity which a business corporation may engage in under the Business Corporation Act of the State of Mississippi.
3. From and after the effective date of these Amended and Restated Articles of Incorporation, the corporation shall not engage in the rendering of professional legal services to or on behalf of any person or entity. For these purposes the ongoing collection of legal fees and costs advanced with respect to legal services performed prior to the effective date of these Amended and Restated Articles of Incorporation, and the payment of amounts due and owing attorneys, law firms, and other persons under co-counsel agreements or other arrangements with respect to such matters, shall not be deemed to be providing legal services.

DATED: September 17, 2008.


 Richard F. Scruggs, President

865127 OCT-6 08

Transcript of:

Elizabeth Jones

Date: June 29, 2010

Case: United States of America ex rel.

v.

State Farm Fire & Casualty

Phone: 1-866-337-6778
Fax: 410-268-7006
Email: corbinandhook@corbinandhook.com
Internet: www.corbinandhook.com



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1 the original sticky note is today?

2 A. I do not.

3 MR. WATSON: That's all the questions I have.

4

5 EXAMINATION BY MR. DAVIDSON

6 BY MR. DAVIDSON:

7 Q. I'd like to ask a few. Also on this
8 Exhibit 7 that we were just talking about with the
9 sticky note, you said that you don't remember how it
10 came to be in the possession of the Scruggs Law Firm;
11 is that right?

12 A. That's correct.

13 Q. Do you know if when this report came in the
14 possession of the Scruggs Law Firm if it had a sticky
15 note on it at that time or not?

16 A. I do not remember.

17 Q. Did you guys use sticky notes regularly to
18 help you keep track of things?

19 A. I did personally.

20 Q. Yeah, I do the same, you put a sticky note on
21 a piece of paper if you --

22 A. Correct.

23 Q. -- wanted to write a note. What other people
24 in the office do the same thing?

25 A. Probably the assistants.

1 Q. Do you know if the sticky note that you saw
2 on Exhibit 7 was put on by someone in the office?

3 A. I do not.

4 Q. You don't know who put it on?

5 A. I do not.

6 Q. And you said you remembered seeing a sticky
7 note on a report like this one. Do you remember what
8 the note said?

9 A. I do not.

10 Q. So do you know for sure if the note you saw
11 is the same thing that's Xeroxed on this?

12 A. I do not.

13 Q. You just remember --

14 A. I cannot be 100 percent.

15 Q. You just remember seeing some sticky note on
16 some report that looked like this one?

17 A. Correct.

18 Q. And sticky notes were often used around the
19 office?

20 A. Yes.

21 Q. So it wouldn't have been unusual for a sticky
22 note to have been put on a report like this one?

23 A. Correct.

24 MR. DAVIDSON: Those are all my questions.

25 FURTHER EXAMINATION BY MR. WATSON

1 BY MR. WATSON:

2 Q. Just a couple follow up questions. In some
3 of your testimony today there have been things that
4 you have not remembered, but in respect to the Brian
5 Ford report you specifically remember an original
6 sticky note on there; is that correct?

7 A. I remember it, yes.

8 MR. DAVIDSON: Objection.

9 BY MR. WATSON:

10 Q. And that original sticky note had writing on
11 it, did it not?

12 A. Correct.

13 Q. I believe you just told Mr. Davidson you
14 don't recall what that writing said; is that right?

15 A. No.

16 Q. You didn't put that sticky note on the Brian
17 Ford report, did you?

18 A. No.

19 Q. And what is it that makes you remember the
20 original sticky note on the Brian Ford report?

21 A. I just remember a sticky note being on the
22 document.

23 Q. In about the same location as the --

24 A. It was just in the middle of the page.

25 Q. Was it about the same size?

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

THOMAS C. and PAMELA McINTOSH

PLAINTIFFS

v.

CIVIL ACTION NO.: 1:06-cv-1080-LTS-RHW

**STATE FARM FIRE & CASUALTY COMPANY,
FORENSIC ANALYSIS & ENGINEERING CORPORATION,
and E.A. RENFROE & COMPANY, INC.
and DOES 1 THROUGH 10**

DEFENDANTS

FIRST AMENDED COMPLAINT
JURY TRIAL REQUESTED

COME NOW, Thomas C. and Pamela McIntosh and (“Plaintiffs”), by and through counsel, and file this First Amended Complaint against Defendants State Farm Fire & Casualty Company (“State Farm”), Forensic Analysis & Engineering Corporation (“Forensic”), E.A. Renfroe & Company, Inc. (“Renfroe”) and Does 1 through 10 allege as follows:

I.
PARTIES

1. At all times material herein, Plaintiffs were adult resident citizens of Harrison County, Mississippi, residing at 2558 South Shore Drive, Biloxi, Mississippi 39532.

2. Defendant State Farm Fire and Casualty Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at One State Farm Plaza, Bloomington, Illinois, 71701-0001, and which may be served with process by service on its agent for service of process, Mr. William E. Penna, 1080 River Oaks Drive, Suite B-100, Flowood, Mississippi 39232-7644 or on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Miss. Code Ann. § 83-21-1.

3. Defendant Forensic Analysis & Engineering Corporation is a corporation organized and existing under the laws of the state of North Carolina, with its principal office and place of business located at 3401 Atlantic Ave, Suite 101, Raleigh, North Carolina 27604, and which may be served with process by service on its agent for service of process in the State of Mississippi. In the alternative, Forensic may be served with process via United States certified mail pursuant to Fed. R. Civ. P. 4

4. Defendant E.A. Renfroe & Company, Inc., (“Renfroe”) is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business located at 2 Chase Corporate Drive, Suite 250, Birmingham, Alabama, 35244. Defendant, Renfroe, may be served with process by service on its agent for service of process CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, MS 39232.

5. Defendants John Does 1-10 are entities affiliated with Defendants and/or have acted in concert with Defendants and whose identities are currently unknown. All allegations and claims asserted herein against Defendants are incorporated herein by reference against John Does 1-10. Said John Does, when their identities are known, will be identified by name and joined in this action, if necessary, pursuant to the Federal Rules of Civil Procedure.

II.

SUBJECT MATTER AND PERSONAL JURISDICTION

6.. This Court has jurisdiction over the subject matter and Defendants in this case pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Defendants State Farm and Forensic and the amount in controversy exceeds \$75,000.00.

III.
VENUE

7. Venue in this cause is proper in this Court pursuant to 28 U.S.C. § 1391, because this suit respects real and personal property located exclusively in Harrison County, Mississippi and the conduct, acts and/or omissions upon which this cause of action is based occurred in substantial part in Harrison County, Mississippi, which is completely within the United States District Court for the Southern District of Mississippi, Southern Division.

IV.
FACTS

8. Plaintiffs resided at 2558 South Shore Drive, Biloxi, MS at all relevant times herein.

9. Plaintiffs purchased from State Farm a standard “Homeowner’s Policy” FP-7955 (“subject policy”), naming them as the insureds. The subject policy insured: the dwelling at 2558 South Shore Drive, (“insured residence”) for \$619,600; the dwelling extension up to \$61,960; the personal property therein for \$464,700; and loss of use for actual loss sustained. The subject policy was in effect on August 29, 2005. A representative copy of the subject policy is attached hereto as Exhibit “A.”

10. The State Farm policy expressly states on its cover: “Homeowners Policy This is one of the broadest forms available today and provides you with outstanding value for your insurance dollars.” State Farm knew that Plaintiff, like many other residents on the Mississippi Gulf Coast, purchased the policy for protection from accidental direct physical loss from hurricanes.

11. The subject policy provides “all risk” coverage for all “accidental direct physical loss” to Plaintiffs’ “Dwelling” and “Dwelling Extension” unless the proximate and efficient cause of the loss is one that is expressly excluded by the policy, stating as follows:

SECTION I-LOSSES INSURED

COVERAGE A - DWELLING

We insure for accidental direct physical loss to the property described in Coverage A, except as provided in SECTION I - LOSSES NOT INSURED.

12. This broad “all risk” coverage includes coverage for loss proximately and efficiently caused by hurricane wind as well as for *objects* driven by the hurricane wind.

13. The subject policy also provides coverage for “accidental direct physical loss” to Plaintiffs’ “Personal Property” proximately and efficiently caused by hurricane wind, stating as follows:

COVERAGE B - PERSONAL PROPERTY

We insure for accidental direct physical loss to property described in Coverage B caused by the following perils, except as provided in SECTION I - LOSSES NOT INSURED:

2. **Windstorm or hail.** This peril does not include loss to property contained in a building caused by rain, snow, sleet, sand or dust. This limitation does not apply when the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

14. In the late 1990's, State Farm informed the Plaintiffs that a mandatory modification of the policy raising the deductible for hurricane-caused losses was being imposed. State Farm subjected Plaintiffs and other policyholders to more risk of loss from hurricanes through the “Hurricane Deductible Endorsement” (“Hurricane Deductible”), or, in the alternative, charged him an increased premium to ensure insurance coverage for any and all damage to his insured dwelling and other property caused by a hurricane.

15. During the time Plaintiffs' policy was in effect, State Farm requested and received premium rate increases and/or retained risk (deductible) increases for Plaintiffs' policy from the Mississippi Department of Insurance. Said increases were justified by State Farm by the hurricane risks associated with Coastal properties. Defendant utilized hurricane-specific experience ratings and computer model projections of hurricane losses to corroborate its demands for such rate increases.

16. For such coverage, Plaintiffs agreed and paid State Farm an annual premium of \$6,611. Plaintiffs also agreed to pay a \$500 deductible to ensure insurance coverage for any and all damage to the insured residence caused by a hurricane, including all damage proximately and efficiently caused by hurricane wind.

17. Plaintiffs, whose residence was near on the Gulf of Mexico, purchased the subject policy from State Farm for one of the primary purposes of insuring against any property damage that could proximately and efficiently result from hurricanes impacting the Mississippi Gulf Coast from the Gulf of Mexico.

18. On August 29, 2005, within the subject policy period, the insured "Dwelling" and the "Personal Property" therein were significant damaged by Hurricane Katrina, a Category (4) Hurricane with wind gusts in excess of 140 miles per hour. The area where the insured property was located also sustained tornadoes, microbursts, mesocyclones, and other convective activity. These events caused an "accidental direct physical loss" covered under the subject policy.

19. The "accidental direct physical loss" sustained by Plaintiffs to the insured property was proximately and efficiently caused by hurricane wind, tornadoes, microbursts, mesocyclones,

and/or convective activity and occurred in the absence and/or independent of water, thereby triggering full coverage for all Plaintiffs' hurricane losses.

20. Hurricane Katrina's devastating and catastrophic hurricane winds, tornadoes, microbursts, and mesocyclones occurred 4-6 hours before the peak hurricane storm surge, and destroyed Plaintiffs' property prior to the arrival of storm surge from Hurricane Katrina.

21. Almost immediately thereafter, and in accordance with the subject policy provisions, Plaintiffs notified State Farm of the covered loss and performed all obligations imposed on them by the policy.

22. However, State Farm failed to fairly, adequately, and sufficiently investigate and adjust Plaintiffs' claims for hurricane damage caused by Hurricane Katrina.

23. Instead, State Farm embarked on a calculated course of conduct designed to deny the Plaintiffs' claims.

24. State Farm engaged Defendants Forensic and Renfroe in order to assist it in wrongfully denying Plaintiffs' hurricane claims.

25. On September 13, 2005, State Farm promulgated a so-called "Wind Water Claim Handling Protocol" for Katrina claims like Plaintiffs on the Mississippi Gulf Coast. In this document, State Farm directed its claims personnel and adjusters that "Where wind acts concurrently with flooding to cause damage to the insured property, coverage only exists under flood coverage, if available."

26. On September 28, 2005, after an alleged inspection of the insured property and a conversation with Plaintiffs, State Farm sent an unsigned letter to Plaintiffs wherein it acknowledged that: "The damage to your property may have been caused by wind and water. We are continuing

to investigate that portion of your loss caused by wind". (See Exhibit "B" to Complaint). State Farm then estimated the "portion of [Plaintiffs] loss clearly caused by wind in the amount of \$36,228.37" and enclosed a check for that amount.

27. However in the same letter, State Farm, despite its acknowledgment that Plaintiffs' insured residence was damaged by wind and that it had not yet completed its investigation or determined how much damage was caused by wind, arbitrarily and without a legitimate or arguable reason in fact or law denied the remainder of Plaintiffs' claim for hurricane damage under the policy, stating as follows: "Based on the site visit and other facts, our investigation showed that some of your property was damaged as a result of storm surge, wave wash and flood. Unfortunately, that damage to your property is not covered under the policy identified above."

28. Neither State Farm, nor Forensic, nor Renfroe, fairly, adequately or sufficient investigated or adjusted Plaintiffs' claims for hurricane damage caused by Hurricane Katrina. Instead, State Farm, with full knowledge and substantial assistance of Renfroe and Forensic embarked on a calculated and coordinated course of bad faith and corporate misconduct designed to avoid properly adjusting and sufficiently paying claims of the Plaintiffs.

29. After Hurricane Katrina, State Farm assigned Renfroe to perform adjusting services for it on Plaintiffs' home and homes of many other State Farm insureds. E.A. Renfroe assigned an adjuster to the Plaintiffs' claim. That adjuster and another Renfroe employee conducted an initial inspection of the damage to the Plaintiffs' home. Said Renfroe employees wrongfully characterized the vast majority of the damage to the Plaintiffs' home as flood damage and therefore failed to pay significant benefits under the State Farm homeowner's policy when they knew that said damage was

caused by wind. Said Renfroe employees also ordered an engineering report to justify their decision to deny the claim.

30. On October 4, 2005, a week after first denying Plaintiffs' claim under the homeowners policy, State Farm, based on Renfroe's request for an engineering report, retained Forensic to provide an engineering investigation and evaluation of the reported damage to Plaintiffs' home. In response, Forensic performed a field investigation on October 7, 2005. The stated purpose of that investigation was "to determine if the damage to the front wall of the residence was caused by wind, flood water or a combination of both." See October 12, 2005 Forensic report to State Farm, Attached hereto as Exhibit "C."

31. In the CONCLUSIONS section of that report Forensic stated:

- The roof, door, carport, and window damage was caused by wind and wind driven debris.
- It is FAEC's (Forensic's) opinion that the interior damage of the structure is primarily the result of the failure of the windows, walls and doors due to wind.

32. The October 12, 2005 Forensic report was signed by Robert K. Kochan and "Brian Ford" a "Senior Principal Structural Engineer." (Emphasis added.)

33. However, State Farm did not approve of this Engineering Report because it directly contradicted both: (1) its corporate policy of denying all claims like Plaintiffs', as exemplified by State Farm's September 13, 2005 "Wind Water Protocol"; and (2) its arbitrary, incomplete, and erroneous September 28, 2005 denial letter which falsely asserted that all Plaintiffs' damage, save \$36, 288.77, was caused by storm surge. State Farm also did not approve the October 12, 2005 Engineering Report because it implicated full coverage under the Plaintiffs' homeowners policy, which State Farm was financially responsible.

34. Despite the conclusions in the October 12, 2005 engineering report that hurricane wind, which is covered under the State Farm homeowners policy, caused Plaintiffs' damages, State Farm refused to pay Plaintiffs for their damages under the homeowners' policy. Instead, State Farm and its employees and agents acting within the scope of their employment and consistent with State Farm's fraudulent Katrina claims handling practices, undertook a fraudulent, illegal, tortious, and unethical course of conduct to conceal the favorable conclusions of the October 12 engineering report from the Plaintiffs and to defraud them out of money they were entitled to under their homeowners policy.

35. Shortly after State Farm received the October 12 report, Lecky King, the "Team Manager" for State Farm's Mississippi Gulf Coast Catastrophe Office, ordered her assistant Lisa Wachter to coerce Forensic into changing the conclusions in October 12 report to conclude that the Plaintiffs' damage was caused by "flood," which State Farm contends is not covered under the Plaintiffs' homeowners' policy. In fact, King ordered Wachter to tell Forensic that State Farm would not pay its bill for services until Forensic's report on Plaintiffs property was changed.

36. This October 12 report later appeared within State Farm's own files with a "sticky" note affixed to the first page, the note saying "Put in Wind file-DO NOT Pay Bill DO NOT discuss." (Emphasis in original). See Exhibit "C." Upon information and belief, this statement was written by Lecky King.

37. A mere eight days after the original Forensic report, on October 20, 2005, Forensic issued a second report on the Plaintiffs' home. The report was issued to the same

representative of State Farm who had received the initial report. See Exhibit “D,” October 20, 2005 Forensic report to State Farm.

38. The report noted the date of the initial assignment, October 4, 2005 and noted an alleged new field investigation of October 18, 2005 but said nothing about the prior report or prior field investigation. In addition, this report falsely stated that the Mr. McIntosh was present during this alleged second inspection.

39. The October 20, 2005 report contained CONCLUSIONS as well, this time stating, *inter alia*:

- ... Damage to the second story floor and first floor ceilings was predominantly caused by wind and intruding rainwater.
- The damage to the first floor walls and floors appears to be predominately caused by rising water from the storm surge and waves.

40. The October 20, 2005 Forensic report was signed by “John B. Kelly” a “Principal Structural Engineer” and “Robert K. Kochan” a “Principal Technical Consultant.”

41. On October 30, 2005, State Farm, relying on the October 20, 2005 report, again denied Plaintiffs’ claim under the subject policy, claiming that all of Plaintiffs’ damages other than the \$36,228.37 it previously paid “was a result of flood, surface water, waves and/or tidal water”.

42. State Farm only paid Plaintiffs \$36,228.37 for their damage to their structure and contents despite their losses of full policy limits of over one million dollars. Moreover, State Farm only paid Plaintiffs \$6,073.00 for additional living expenses and \$750 for rental loss despite the fact that Plaintiffs’ losses in this regard were substantially more.

43. After State Farm received and relied upon the October 20, 2005 Forensic report, the October 12, 2005 report came into the possession of a Renfroe employee even though the file had been closed.

44. The Renfroe employee showed the report to his supervisor, also a Renfroe employee, and both clearly understood that the October 12, 2005 report with the sticky note attached, was an effort to defraud the Plaintiffs out of covered damages under their homeowner's policy.

45. One of the Renfroe employees took the report to Lecky King, her supervisor, to question Ms. King about it. Ms. King provided no explanation for the report. Ms. King later acknowledged that she had a number of engineering reports similar to that one, that she had to "send back" because the information contained in them was too favorable to policyholders.

46. The Renfroe employees who received a copy of the October 12, 2005 report with the sticky note attached never informed the Plaintiffs of the existence of that report and never informed the Plaintiffs their claims had not been properly adjusted. Rather, the Renfroe employees consciously chose to hide the existence of that report from the policyholders and thereby defraud them into receiving an inadequate adjustment of their claim.

47. At no time have the Plaintiffs been informed by State Farm, Forensic or Renfroe that there were two different engineering reports analyzing their claim with each report bearing different dates, signatures and conclusions. In fact, State Farm never even provided Plaintiffs a copy of the October 20 report until Mr. McIntosh asked for a copy. Months after their second denial on October 30, Mr. McIntosh asked State Farm for a copy of the October 20 report. State Farm first told Mr. McIntosh that it was not complete and was never finished. State Farm later told McIntosh that they "found" the October 20 report and sent that report, but only that report, to Plaintiffs.

48. However, State Farm was aware of the fact that there were two different engineering reports from Forensic on October 20, 2005 because State Farm commissioned Forensic to do the second report.

49. State Farm was again made aware of the existence of the October 12 report by ABC news on August 15, 2006. On that date, ABC's Brian Ross interviewed State Farm attorney Wayne Drinkwater and presented him with the first page of the original October 12 report. This is also evidenced by State Farm's own statement on their website responding to the ABC 20/20 episode, which aired on August 25, 2006. In the statement, State Farm admits that "ABC's Brian Ross shared documents... with attorney Wayne Drinkwater, who represents State Farm in Mississippi." Mr. Drinkwater claimed in the interview to know nothing about the October 12 report.

50. However, on August 17, 2006, State Farm lawyer Tamara Rennick called Mr. McIntosh to allegedly inquire about his claim, this despite the fact that State Farm had shown absolutely no interest in Plaintiffs or their claim since the date of their denial. During this conversation, Mr. McIntosh informed Ms. Rennick that the Mississippi Attorney General had informed him that there were two different engineering reports to State Farm regarding his property. Ms. Rennick, despite State Farm's prior knowledge, failed to mention or provide anything about two engineering reports to Mr. McIntosh. Instead, she requested that Mr. McIntosh meet with a lawyer retained by State Farm, Peter Barrett of the Butler, Snow, O'Mara, Stevens & Cannada law firm. Her subsequent email to Mr. McIntosh confirming his agreement to meet with Mr. Barrett falsely and misleadingly noted that the transmission was an "ATTORNEY CLIENT COMMUNICATION/ATTORNEY WORK PRODUCT," although neither Mr. Barrett nor Ms. Rennick were Plaintiffs' lawyers and did not represent Plaintiffs in any manner whatsoever.

51. On August 18, 2006, Mr. McIntosh received a call from Peter Barrett who requested that Mr. McIntosh meet with him “as soon as possible.” Mr. McIntosh agreed to meet with Mr. Barrett on the following Monday, August 21, 2006.

52. On August 21, 2006, two lawyers from the Butler Snow law firm, J. Kennedy Turner, III and Peter H. Barrett, acting as agents for State Farm, met with Mr. McIntosh. Mr. Barrett asked Mr. McIntosh many questions about whether or not he was satisfied with the way in which State Farm had settled his claims. After that Mr. Barrett told Mr. McIntosh that he was going to give him some “confidential” information that he preferred to remain confidential but Mr. McIntosh could do whatever he wanted with said information. Barrett then explained that there were individuals within State Farm that had “stolen” documents and that one of the stolen documents related to the McIntosh’s claim.

53. Mr. McIntosh again relayed to the State Farm representatives that the Attorney General’s office had told Mr. McIntosh of the existence of two different engineering reports. Mr. Barrett revealed that there were two reports, but produced to Mr. McIntosh only two versions of the October 20th report. Mr. Barrett then falsely and fraudulently represented to Mr. McIntosh that State Farm was trying to “go paperless” and that one was the “file copy” and the other was the scanned image of the “file copy.” After reviewing those reports with Mr. McIntosh, Mr. Barrett also mentioned to Mr. McIntosh that he may hear something about or there would be some discussion of a “post-it note” but that post-it notes can be moved or stuck to anything and sometimes don’t mean what they say. Mr. Barrett was clearly aware of the “post-it note” found on the October 12 Forensic report which stated “Put in Wind file - DO NOT Pay Bill DO NOT discuss.” He did not,

however, reveal the content of that “post-it note” to Mr. McIntosh nor did he reveal the existence of the October 12 Forensic report.

54. Mr. Barrett, still without advising Mr. McIntosh of the October 12 report or providing him a copy, then attempted to have Mr. McIntosh sign a statement Mr. Barrett prepared which stated that Mr. McIntosh was satisfied with State Farm’s settlement of his claim. Mr. McIntosh advised Mr. Barrett that the statement incorrectly stated that Mr. McIntosh was “happy” with his settlement. Mr. McIntosh advised Mr. Barrett, based on the information he had at the time, that he was only “satisfied” with the handling of his claim. Mr. Barrett allowed the statement to be changed accordingly. Mr. McIntosh, without the benefit of the October 12 report, signed the document along with Mr. Barrett and Mr. Turner. Mr. McIntosh only signed the statement out of fear that if he did not cooperate his insurability would be jeopardized. See Exhibit “E”.

55. Mr. McIntosh fully relied upon the representations made by the State Farm lawyers that Forensic did not produce more than one engineering report, the October 20 report, and that the conclusions were the same in both reports.

56. State Farm then sent ABC a copy of this false and fraudulently induced “statement” in an attempt to get ABC not to publish or air on television the story it was doing on State Farm’s handling of the Plaintiffs’ and others’ Katrina claims. ABC, based on the fact State Farm had failed to provide Plaintiffs a copy of the October 12 report prior to obtaining the statement, refused to alter the story or show Mr. McIntosh’s alleged “statement” on the 20/20 episode.

57. State Farm then falsely and fraudulently posted the fraudulently induced statement on its website in response to the ABC 20/20 episode on the matter, falsely and fraudulently representing that the ABC episode was inaccurate and that Plaintiffs were satisfied with their

adjustment. These misrepresentations were made despite the fact that State Farm had still not advised Plaintiffs of the October 12 report or provide them with a copy. Upon information and belief, are false representations about Plaintiffs' statement are still on State Farm's website.

58. After the August 21, 2006 meeting between State Farm's lawyers and Mr. McIntosh, State Farm was again made aware of the fact that there was an October 12th report from Forensic when, on August 25, 2006, ABC producer Joe Rhee provided said report to them before the airing of the 20/20 program that night.

59. Even after that, on August 31, 2006, Terry Blaylock, State Farm's Claims Section Manager and the top State Farm claims official in Mississippi, called Mr. McIntosh for the alleged purpose of inquiring about his claim. In that conversation, Mr. Blaylock failed to reveal that there were two separate reports from Forensic with separate conclusions in each. Rather, he simply noted that there were two reports and told Mr. McIntosh that State Farm was performing an investigation, the result of which State Farm would share with Mr. McIntosh once the investigation was complete. In this conversation, he also asked Mr. McIntosh if he wanted his claim reviewed and noted that additional monies could be available to the McIntoshes as a result of that process. Mr. McIntosh related that he needed to understand the two engineering reports. In response to that inquiry Mr. Blalock did not address the issue of the two reports but simply noted to Mr. McIntosh that the results of the investigation would be made available to him. Mr. Blalock told Mr. McIntosh he would get back to him within a week. To date, neither Blalock nor any other State Farm representative has revealed any additional information to Mr. McIntosh about the two Forensic reports.

60. It was only after Mr. McIntosh executed his statement (Exhibit "E") that he understood that there was an October 12th report with different conclusions from the October 20th

report. Mr. McIntosh discovered this through his own efforts and not from any of his conversations or contacts with State Farm representatives. To this day, State Farm has not informed the Plaintiffs that there were two engineering reports with different conclusions. To this day, State Farm has even represented to the public at large that the Plaintiffs are “satisfied with its payment and the way the claims were handled by State Farm.”

COUNT ONE

NEGLIGENCE AND/OR GROSS NEGLIGENCE OF STATE FARM

61. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in the preceding paragraphs in this Complaint.

62. State Farm had a duty under Mississippi law and pursuant to the policy of insurance it issued, to fully, fairly, adequately and correctly investigate and adjust Plaintiffs’ loss and claim for hurricane damages.

63. State Farm breached that duty in the following non-exclusive particulars:

- (1) by denying Plaintiffs’ loss without conducting a complete, adequate, full, and fair investigation and adjustment of Plaintiffs’ claim for damage under the policy;
- (2) by denying Plaintiffs’ claims without knowing what caused the loss or undertaking an appropriate effort to find out;
- (3) by failing to pay Plaintiffs for their hurricane loss;
- (4) by failing to accept Forensic’s October 12, 2005 report simply because it found that the cause of the loss was covered loss under the State Farm policy;

- (5) by failing to pay Forensic for its October 12, 2005 report until Forensic issued a second report offering the opinion that the cause of the loss was not a covered loss under the State Farm policy;
- (6) by failing to inform Plaintiffs of the existence of the October 12, 2005 Forensic report at any time prior to or after the resolution of Plaintiffs' claims;
- (7) by actively misleading Plaintiffs regarding the existence October 12, 2005 Forensic report and not revealing its existence despite prior knowledge of it;
- (8) by arbitrarily denying Plaintiffs' loss under the anti-concurrent cause clause and its "wind water protocol;"
- (9) by denying Plaintiffs claim for hurricane losses even though such losses were covered under the policy issued by State Farm.

64. Such conduct as alleged above constitutes negligence, gross negligence, and/or reckless disregard for Plaintiffs' rights as a State Farm insured.

65. State Farm's negligent, grossly negligent, and/or reckless adjustment proximately caused Plaintiffs economic and non-economic damages.

COUNT TWO
BREACH OF CONTRACT AGAINST STATE FARM

66. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in this Complaint.

67. Plaintiffs entered into an insurance contract with State Farm in which they contracted for, purchased, and were entitled to receive full insurance coverage under the subject policy for all

“accidental direct physical loss” to the insured dwelling, dwelling extension, contents of dwelling and loss of use.

68. Plaintiffs’ insured property was significantly damaged by Hurricane Katrina. The overwhelming meteorological and physical evidence at the scene established that insured property was proximately and efficiently damaged by hurricane wind, and other convective activity prior to the arrival of any storm surge associated with Hurricane Katrina.

69. State Farm breached the subject policy, in the following non-exclusive particulars:

- (1) by denying Plaintiffs’ loss without conducting a complete, adequate, full, and fair investigation and adjustment of Plaintiffs’ claim for damage under the policy;
- (2) by denying Plaintiffs’ claims without knowing what caused the loss or undertaking an appropriate effort to find out;
- (3) by failing to pay Plaintiffs for their hurricane loss;
- (4) by failing to accept Forensic’s October 12, 2005 report simply because it found that the cause of the loss was covered loss under the State Farm policy;
- (5) by failing to pay Forensic for its October 12, 2005 report until Forensic issued a second report offering the opinion that the cause of the loss was not a covered loss under the State Farm policy;
- (6) by failing to inform Plaintiffs of the existence of the October 12, 2005 Forensic report at any time prior to or after the resolution of Plaintiffs’ claims;

- (7) by actively misleading Plaintiffs regarding the existence October 12, 2005 Forensic report and not revealing its existence;
- (8) by arbitrarily denying Plaintiffs' loss under the anti-concurrent cause clause and its "wind water protocol;"
- (9) by denying Plaintiffs' claim for hurricane losses even though such losses were covered under the policy issued by State Farm.

COUNT THREE
BAD FAITH BREACH OF CONTRACT

70. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in this Complaint.

71. State Farm's actions as set forth above constitute the independent tort of bad faith refusal to pay an insurance claim in that Defendant State Farm denied a timely-reported and covered insurance claim without legitimate or arguable reason for doing so. Specifically, all losses for which Hurricane Katrina was the efficient proximate cause were covered under the State Farm policy of the Plaintiffs, and full coverage was owing under Mississippi law. State Farm was fully aware of Mississippi law as it pertained to hurricane-related property damage and disregarded it nonetheless.

72. In denying Plaintiffs' claim Defendant State Farm relied on confusing and/or intentionally ambiguous policy exclusions in order to defeat the reasonable expectations of the Plaintiffs that their property would be covered by insurance for damages caused by a hurricane.

73. Defendant State Farm, after receiving a report from an engineering firm retained to inspect properties damaged by Hurricane Katrina, refused to accept the report when it demonstrated that coverage was available to Plaintiffs under their State Farm insurance policy.

74. Upon information and belief, Defendant State Farm ordered Defendant Forensic to prepare a second report that reached the conclusion that Plaintiffs' loss was excluded because the damages to Plaintiffs' property were caused by storm surge, and waves and not by the effect of wind.

75. Upon receipt of the second engineering report prepared (October 20, 2005) by Defendant Forensic, Defendant State Farm issued a denial of Plaintiffs' claim.

76. Defendant State Farm's denial of Plaintiffs' claim was issued notwithstanding the fact that Defendant State Farm knew that the subject loss was caused by the force of hurricane winds, as set forth in the October 12 report prepared by Defendant Forensic. Defendant State Farm ignored the conclusions of the October 12 report because said conclusions supported the fact that coverage existed under the terms of Plaintiffs' State Farm policy.

77. Only upon receipt of the fraudulent October 20, 2005 report from Defendant Forensic, which provided a basis for denial of the claim, did Defendant State Farm make a final coverage decision on Plaintiffs' claim. Defendant State Farm's actions show that it believes that it should be able to pick and choose which proof it relies upon in evaluating the validity of a claim. Defendant State Farm will only accept reports from engineering firms that support a denial of coverage. Such actions were in bad faith and are actionable under Mississippi law.

78. At all material times, Defendant State Farm owed to Plaintiffs as policyholders, claimants and insureds under the Policy, non-delegable, express and implied duties, to at all times and in all things, act in good faith and with fair dealing toward the insured. Along with the implied duty of good faith and fair dealing, Defendant State Farm owed at all times a duty to: (1) meet the reasonable expectations of the Plaintiffs as State Farm policyholders; (2) investigate the claim with the interest of the insureds in mind and keeping the insureds informed every step of

the way; and (3) give as much if not more consideration to the financial interests of the insureds, than they gave to their own financial interests.

79. Defendant State Farm breached the aforementioned duties, including the overarching duty to exercise good faith and fair dealing with Plaintiffs as policyholders, claimants and insureds in the following, non-exclusive particulars, *inter alia*:

- (1) tortiously and in bad faith failing to follow and apply the Defendant's underwriting guidelines in the marketing, underwriting, sale, issuance and delivery of the subject policy to Plaintiffs;
- (2) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, failing to conduct a prompt, fair and thorough investigation of the Hurricane Katrina claim of Plaintiffs;
- (3) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, failing to make a realistic evaluation of the subject claim and/or to realistically assess, adjust and pay for all losses caused by the covered windstorm;
- (4) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, failing to promptly pay covered claims incurred as a result of the Plaintiffs' claim;
- (5) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, divesting the insureds of the use and benefit of dwelling and personal property coverage, purchased, paid for, and in effect at the time of the Plaintiffs' claim;

- (6) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, divesting the insureds of the use and benefit of additional living expense coverage, purchased, paid for, and in effect at the time of Plaintiffs' insurance claim;
- (7) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, divesting the insureds of the use and benefit of property damage coverage for other structures, purchased, paid for, and in effect at the time of Plaintiffs' insurance claim;
- (8) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, ignoring reports of its retained experts for the purpose of denying Plaintiffs' legitimate claim for coverage due to Hurricane Katrina;
- (9) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, manipulating proof developed by a selected agent of Defendant State Farm and a retained expert of Defendant State Farm in order to reach a result-driven conclusion to deny Plaintiffs' claim without regard to physical facts;
- (10) Regardless of whether Defendant State Farm's actions as described above and ultimate denial of Plaintiffs' claim were unsupported by legitimate or arguable reason in fact or law, Defendant State Farm's misconduct is insufficient to constitute the "lying exception" applicable under Mississippi bad faith law;
- (11) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, failing to advise Plaintiffs of a valid reason why their insurance claim was denied;

- (12) tortiously and in bad faith, and through a pattern and practice of systemic, institutional claim denial, after formally denying coverage for payable claims, exploiting the stress and financial hardship of wrongful claim denial to finesse an attempted buy-out, settlement and release of the insureds' payable claim for a minute and fractional percentage of actual claim value.
- (13) as to Defendant Forensic, tortiously and in bad faith altering and/or changing their expert reports and intentionally manipulating proof of physical facts surrounding Plaintiffs' losses, all for the purpose of joining with, aiding and abetting Defendant State Farm in the systematic denial of all such claims for losses caused by Hurricane Katrina.

80. Defendant State Farm's breach of the duty to exercise good faith and fair dealing was the direct and proximate cause of actual damages sustained by Plaintiffs.

81. As a result of Defendant State Farm's breach of the duty to exercise good faith and fair dealing, bad faith denial of coverage, and Forensic's and Renfroe's aiding and abetting State Farm's conduct in that regard, the Plaintiffs are entitled to a judgment against Defendants State Farm and Forensic for actual, compensatory, consequential, bad faith and punitive damages in excess of the jurisdictional limit of this Court, plus court costs, and pre- and post-judgment interest at the legally allowable limit.

COUNT FOUR
FRAUD

82. All previous allegations of this Complaint are incorporated as if fully set forth herein.

83. Defendant State Farm committed fraud by knowingly misrepresenting to Plaintiffs on numerous occasions that State Farm had not received the October 12 report by Forensic as set forth herein.

84. Defendant State Farm committed fraud by concealing the October 12 report from Plaintiffs. Plaintiffs only were able to obtain the October 12 report through their own efforts.

85. Defendant State Farm committed fraud by concealing the conclusions of the October 12 report from Plaintiffs.

86. Defendant State Farm committed fraud by seeking to have the conclusions of the October 12 report altered for the sole purpose of denying insurance coverage to Plaintiffs.

87. Defendant State Farm committed fraud by accomplishing the alteration of the October 12 report by inducing Defendant Forensic to issue a new report on October 20, 2005 attributing the subject loss to waves and storm surge, purportedly non-covered events.

88. Defendant State Farm committed fraud by denying the claim of Plaintiffs when Defendant State Farm knew that coverage existed under the subject policy.

89. The misrepresentations made by Defendants State Farm and Forensic were material to the actions taken by Plaintiffs.

90. The facts as set forth herein clearly indicate that Defendant State Farm had an intention that its misrepresentations be acted upon, and said misrepresentations were acted upon by Plaintiffs throughout the claims process.

91. Plaintiffs were ignorant of the falsity of Defendant State Farm's representations.

92. Plaintiffs relied on the truth of Defendant State Farm's representations. Plaintiffs had a right to rely on the representations because Defendant State Farm went to great lengths to convince

Plaintiffs that Defendant State Farm was conducting the claims process in a good faith manner and properly investigating their claim.

93. Plaintiffs suffered consequent and proximate injury as a result of the fraud of Defendant State Farm and Defendant Forensic. As set forth above, Plaintiffs have suffered significant financial losses as a result of the fraud of Defendant State Farm and Forensic.

COUNT FIVE
FORENSIC'S AIDING AND ABETTING OF THE FRAUDULENT
ACTIONS OF DEFENDANT STATE FARM

94. All allegations of this Complaint are incorporated as if fully set forth herein.

95. Defendant Forensic aided and abetted Defendant State Farm in its wrongful and fraudulent denial of Plaintiffs' insurance claim by preparing and submitting the fraudulent October 20, 2005 engineering report that was used as Defendant State Farm's basis to issue a denial of coverage under the subject policy.

96. Without Forensic's October 20, 2005 report Defendant State Farm would not have had the basis to issue a bad-faith denial of Plaintiffs' insurance claim without the engineering opinions of these Defendants.

97. Forensic knew that their October 12 report was an accurate representation of the cause of the subject loss. Despite this knowledge, Defendants altered their report at the urging of Defendant State Farm in order to allow Defendant State Farm to fraudulently deny coverage to Plaintiffs.

98. The above actions of both Defendants occurred concurrently to deny legitimate insurance claims, including Plaintiffs' claim, without legitimate or arguable reason in fact or law. Such actions violate not only the duty of good faith and fair dealing, but were so grossly negligent

and committed in reckless disregard of the rights of Plaintiffs that they violate Mississippi statutory law and constitute negligence *per se*.

99. The object of the coordinated actions between Forensic and Defendant State Farm, to deny legitimate claims of coverage, was in violation of both the criminal statutes of the State of Mississippi and the positive duties placed on Defendants by Mississippi substantive law.

COUNT SIX
RENFROE'S KNOWING AND WILLING AIDING AND ABETTING THE ACTIONS
OF DEFENDANT STATE FARM AND FORENSIC AND CONCERTED ACTS
ENGAGED IN BY BOTH DEFENDANTS TO DENY COVERAGE

100. All allegations of this Complaint are incorporated as if fully set forth herein.

101. Defendant Renfroe, who derives virtually all of its business from Defendant State Farm and by whom Renfroe is directed, aided and abetted State Farm in its wrongful denial of Plaintiffs' insurance claim by knowing of Forensic's initial engineering report that State Farm did not review or consider in its decision to deny the claims to Plaintiffs and by knowing that State Farm deliberately withheld from the knowledge of the Plaintiffs in an effort to avoid making an adequate payment under their homeowner's coverage. Had Renfroe revealed to the policyholder the existence of the October 12, 2005 report, Defendant State Farm would not have had the basis to issue a bad faith denial of Plaintiffs' insurance claim.

102. Renfroe knew that the October 20, 2005 report was an inaccurate representation of the cause of the subject loss. Renfroe also knew that that October 12th report was not being relied upon but instead was being replaced by the October 20, 2005 report simply because the October 20, 2005 report was more favorable to State Farm and less favorable to the policyholder.

103. The above actions of both State Farm and Renfroe were in furtherance of the actions of State Farm and Forensic's efforts to deny legitimate insurance claims, including Plaintiffs' claims,

without legitimate or arguable reason in fact or in law. Such actions violate not only the duty of good faith and fair dealing, but were so grossly negligent and committed in reckless disregard of the rights of the Plaintiffs that they violated Mississippi statutory law and constitute negligence *per se*. Moreover, these actions properly subject these Defendants to bad faith and punitive damages.

104. The object of the actions of Renfroe and State Farm, to deny legitimate claims of coverage, was in violation of both criminal statutes of the State of Mississippi and positive duties placed on Defendants by Mississippi substantive law.

COUNT SEVEN
NEGLIGENT PERFORMANCE OF RENFROE'S UNDERTAKING
OF DUTY OF UNDIVIDED LOYALTY TO PLAINTIFFS

105. Defendant Renfroe and all of its employees operate pursuant to a "Code of Conduct" written and promulgated by Renfroe. At all times material hereto, Renfroe has required all of its employees to sign said "Code of Conduct." The "Code of Conduct" requires all Renfroe employees to recognize that they have an undivided duty of loyalty to Renfroe's "clients, and their customers." The "Code of Conduct" provides in the pertinent part:

RENFROE expects employees to conduct the business of RENFROE in an ethical and legal manner, and to recognize that in all their transactions and at all times they have a duty of undivided loyalty to RENFROE, our clients, and their customers. These obligations demand positive action by all employees to protect those interests and to avoid situations where their self-interests actually or even appear to conflict with the interests of RENFROE, our clients and their customers. (emphasis added)

106. Renfroe's "client" in this case is, of course, State Farm.

107. State Farm's "customers" are, of course, Plaintiffs herein.

108. Renfroe's employees' actions and/or omissions in failing to alert Plaintiffs herein to State Farm's and Forensic's actions and omissions, when they knew that said actions were taken to

avoid paying legitimate insurance claims, constitute a breach of the self-imposed duty of loyalty that Renfroe owed the Plaintiffs. Renfroe's employees' failure to inform of the requirement of "positive action" by Renfroe employees to avoid situations that appear to conflict with the interests of persons such as Plaintiffs.

109. These failures to adhere to its own "Code of Conduct" subject Renfroe to liability because Renfroe has failed to perform a duty it chose to impose on itself and its employees and its failure to perform has led to damages herein. Had Renfroe followed its own "Code of Conduct" Renfroe employees would have notified Plaintiffs of the actions of the other Defendants and the fraud, breach of contract, negligence and/or gross negligence, bad faith denial would not have occurred.

V.

PRAYER FOR RELIEF

110. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in the preceding paragraphs of this Complaint.

111. As a direct and proximate result of State Farm's, Forensic's and Renfroe's negligence, gross negligence, reckless disregard for Plaintiffs' rights as a State Farm insured, breach of contract, breach of duty of good faith and fair dealing, bad faith and tortious breach of contract without a legitimate or arguable reason in fact or law, Plaintiffs are entitled to the following relief:

- (A) Payment for all contractual benefits for all coverages afforded to Plaintiffs under the subject State Farm policies for damage to their insured residences and personal contents caused by Hurricane Katrina, with interest on all amounts due Plaintiffs under their policies;

- (B) With respect to “Additional Living Expenses” benefits owing under the policies, Defendant should be ordered to immediately pay all such benefits retroactive to August 29, 2005, with interest on all past-due amounts, and pay such benefits prospectively to the limits of coverage or until the insured is no longer entitled to them;
- (C) Pre-judgment and post-judgment interest on the amounts owing to Plaintiffs in contractual or policy benefits with interest, retroactive to August 29, 2005;
- (D) Compensatory damages for economic and non-economic damages suffered by Plaintiffs as a proximate result on the denial of coverage. Plaintiffs are entitled on his contract claims to consequential damages, including but not limited to the amounts Plaintiffs expended or lost in trying to subsist without insurance benefits since August 29, 2005.
- (E) Extra-contractual damages for State Farm’s, Forensic’s and Renfroe’s tortious, malicious, wilful, wanton, reckless, grossly negligent, and bad faith conduct, which arose to the level of an independent tort.
- (F) Punitive and exemplary damages for State Farm’s, Forensic’s and Renfroe’s tortious, malicious, wilful, wanton, reckless, grossly negligent, and bad faith conduct which arose to the level of an independent tort.
- (G) An Order estopping State Farm from now inspecting the insured property or determining the cause of loss based on its denial and post-denial conduct.
- (H) Any and all other relief the court may find appropriate .

Respectfully submitted this 31st day of May 2007.

THOMAS C. and PAMELA McINTOSH
PLAINTIFFS

By: 
SIDNEY A. BACKSTROM, Ms Bar #99890

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I have this date served via Electronic and U.S. Mail, a true and correct copy of the above and foregoing to:

H. Benjamin Mullen
John A. Banahan
BRYAN, NELSON, SCHROEDER, CASTIGLIOLA & BANAHAN, PLLC
Post Office Drawer 1529
1103 Jackson Avenue
Pascagoula, MS 39568-1529
Email: ben1@bnsch.com
Email: john@bnsch.com

Larry G. Canada
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH
701 Poydras Street, Suite 4040
New Orleans, LA 70139
Email: lcanada@gitbs.com

This the 31st day of May 2007.



SIDNEY A. BACKSTROM



HOMEOWNERS

PROPERTY-CASUALTY



MEMORANDUM
CHRIS

FP-7855
(8/88)

10/10/00
USA

This policy is one of the broadest forms available today, and provides you with outstanding value for your insurance dollars. However, we want to point out that every policy contains limitations and exclusions. Please read your policy carefully, especially "Losses Not Insured" and all exclusions.

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FP-7935
 (8/96)

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HOMEOWNERS POLICY

DECLARATIONS CONTINUED

We agree to provide the insurance described in this policy:

- 1. based on your payment of premium for the coverages you choose;
- 2. based on your compliance with all applicable provisions of this policy; and
- 3. in reliance on your statements in these Declarations.

You agree, by acceptance of this policy, that:

- 1. you will pay premiums when due and comply with the provisions of the policy;
- 2. the statements in these Declarations are your statements and are true;

DEFINITIONS

Your and your mean the named insured shown in the Declarations. Your spouse is included if a resident of your household. We, us and our mean the Company shown in the Declarations.

Certain words and phrases are defined as follows:

1. "bodily injury" means physical injury, sickness, or disease to a person. This includes required care, loss of services and death resulting therefrom.

Bodily injury does not include:

- a. any of the following which are communicable: disease, bacteria, parasite virus, or other organism, any of which are transmitted by any insured to any other person;
- b. the exposure to any such disease, bacteria, parasite, virus, or other organism by any insured to any other person; or
- c. emotional distress, mental anguish, humiliation, mental distress, mental injury, or any similar injury, unless it arises out of actual physical injury to some person.

3. we insure you on the basis your statements are true; and

4. this policy contains all of the agreements between you and us and any of our agents.

Unless otherwise indicated in the application, you state that during the three years preceding the time of your application for this insurance your Loss History and Insurance History are as follows:

- 1. Loss History: you have not had any losses, insured or not; and
- 2. Insurance History: you have not had any insurer or agency cancel or refuse to issue or renew similar insurance to you or any household member.

2. "business" means a trade, profession or occupation. This includes farming.

3. "Declarations" means the policy, Declarations, any amended Declarations, the most recent renewal notice or certificate, an Evidence of Insurance form or any endorsement changing any of these.

4. "Insured" means you and, if residents of your household:

- a. your relatives; and
 - b. any other person under the age of 21 who is in the care of a person described above.
- Under Section II, "Insured" also means:
- c. with respect to animals or watercraft to which this policy applies, the person or organization legally responsible for them. However, the animal or watercraft must be owned by you or a person included in 4.a. or 4.b. A person or organization using or having custody of these animals or watercraft in the course of a business, or without permission of the owner, is not an insured; and

d. with respect to any vehicle to which this policy applies, any person while engaged in your employment or the employment of a person included in 4.a. or 4.b.

5. "Insured location" means:

- a. the residence premises;
- b. the part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire while this policy is in effect for your use as a residence;
- c. any premises used by you in connection with the premises included in 5.a. or 5.b.

d. any part of a premises not owned by an insured but where an insured is temporarily residing;

e. land owned by or rented to an insured in which a one or two family dwelling is being constructed as a residence for an insured;

f. individual or family cemetery plots or burial vaults owned by an insured;

g. any part of a premises occasionally rented to an insured for other than business purposes;

h. vacant land owned by or rented to an insured. This does not include farm land; and

i. farm land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations.

6. "motor vehicle," when used in Section II of this policy, means:

a. a motorized land vehicle designed for travel on public roads or subject to motor vehicle registration. A motorized land vehicle in dead storage on an insured location is not a motor vehicle;

b. a trailer or semi-trailer designed for travel on public roads and subject to motor vehicle registration. A boat, camp, home or utility trailer not being towed by

or carried on a vehicle included in 5.a. is not a motor vehicle;

c. a motorized golf cart, snowmobile, motorized bicycle, motorized bicycle, all-terrain vehicle or any other similar type equipment owned by an insured and designed or used for recreational or utility purposes off public roads, while off an insured location. A motorized golf cart while used for golfing purposes is not a motor vehicle; and

d. any vehicle while being towed by or carried on a vehicle included in 5.a., 5.b., or 5.c.

7. "occurrence," when used in Section II of this policy, means an accident, including exposure to conditions, which results in:

- a. bodily injury; or
- b. property damage;

during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one occurrence.

8. "property damage" means physical damage to or destruction of tangible property, including loss of use of this property. Theft or conversion of property by any insured is not property damage.

9. "residence employee" means an employee of an insured who performs duties, including household or domestic services, in connection with the maintenance or use of the residence premises. This includes employees who perform similar duties elsewhere for you. This does not include employees while performing duties in connection with the business of an insured.

10. "residence premises" means:

a. the one-, two-, three or four-family dwelling, other structures and grounds; or

b. that part of any other building; where you reside and which is shown in the Declarations.

SECTION I COVERAGES

COVERPAGE A - DWELLING

1. Dwelling. We cover the dwelling used principally as a private residence on the residence premises shown in the Declaration...

- a. structures attached to the dwelling
b. materials and supplies located on or adjacent to the residence premises for use in the construction, alteration or repair of the dwelling or other structures on the residence premises.
c. foundation, floor slab and loadings supporting the dwelling; and
d. wall-to-wall carpeting attached to the dwelling.

2. Dwelling Extension. We cover other structures on the residence premises, separated from the dwelling by clear space...

- a. not permanently attached to, or otherwise forming a part of, the ready
b. used in whole or in part for business purposes; or
c. held for rent for a period of 30 days or more...

3. Property Not Covered. We do not cover:
a. land, including the land necessary to support any Coverage A property;
b. any costs required to replace, rebuild, stabilize, or otherwise restore the land; or
c. the costs of repair techniques designed to compensate for or prevent land instability to any property, whether or not insured under Coverage A.

COVERPAGE B - PERSONAL PROPERTY

1. Property Covered. We cover personal property owned or used by an insured while it is anywhere in the world. This includes structures not permanently attached to or otherwise forming a part of the ready...

otherwise forming a part of the ready. At your request, we will cover personal property owned by others while the property is on the part of the residence premises occupied exclusively by an insured. At your request, we will also cover personal property owned by a guest or a residence employee, while the property is in any other residence occupied by an insured.

We cover personal property, whether situated at an insured residence, other than the residence B limit, which ever is greater. The limitation does not apply to personal property in a newly acquired principal residence for the first 60 days after you start moving the property there. If the residence premises is a newly acquired principal residence, personal property in your immediate past principal residence is not subject to this limitation for the first 90 days after the inception of this policy.

Special Limits of Liability. These limits do not increase the Coverage B limit. The special limit for each of the following categories is the total limit for each loss for all property in that category:

- a. \$200 on money, coins and medals, including any of them that are a part of a collection, and bank notes;
b. \$1,000 on property used or intended for use in a business, including merchandise held as samples or for display for selling, and while on the residence premises, this coverage is limited to \$250 on such property away from the residence premises.
c. \$1,000 on electronic data processing system equipment or the recording or storage media used with that equipment is not included under this coverage;
d. \$1,000 on securities, checks, cashier's checks, travelers checks, money orders and other negotiable instruments, accounts, debentures, evidences of debt, letters of credit, notes other than bank notes, manuals, passports and tickets;
e. \$1,000 on trailers not used with watercraft;
f. \$1,000 on watercraft of all types and outboard motors, including their trailers, furnishings and equipment.

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1. \$2,500 on stamps, trading cards and comic books, including any of these that are a part of a collection;

g. \$2,500 on loss by theft of silverware and cutlery;
h. \$2,500 for loss by theft of silverware and cutlery;
i. \$5,000 on electronic data processing system equipment and the recording or storage media used with that equipment. There is no coverage for the equipment or media while located away from the residence premises, except when said equipment or media are removed from the residence premises for the purpose of repair, servicing or temporary use. An insured's business equipment and records are covered while they discontinue away from home, regardless of the amount of the loss.

1. \$5,000 on any one article and \$10,000 in the aggregate for loss by theft or any other cause (except wall-to-wall carpet), tapestry, wall-hanging or other similar article.

2. Property Not Covered. We do not cover:

- a. articles separately described and specifically insured in this or any other insurance;
b. animals, birds or fish;
c. any engine, motor, propelled vehicle or machine, including the parts, designed for movement on land. We do cover those not licensed for use on public highways which are:
(1) used solely to service the insured location; or
(2) designed for assisting the handicapped;
d. devices or instruments for the recording or reproduction of sound permanently attached to an engine or motor-propelled vehicle. We do not cover tapes, wires, records or other mediums that may be used with these devices or instruments while in the vehicle;
e. aircraft and parts;
f. property of rooming, boarding, transient and other residents not related to an insured. We do cover property of roomers, boarders and other residents related to an insured;
g. property regularly-rented or held for rental to others by an insured. This exclusion does not apply to

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property of an insured in a sleeping room rented to others by an insured;
h. property-rented or held for rental to others away from the residence premises;
i. any citizens' band radios, radio, telephones, radio transceivers, video transmitters, radar or laser detectors, antennas and other similar equipment permanently attached to an engine or motor-propelled vehicle.

books of account, abstracts, drawings, card index systems and other records. This exclusion does not apply to any recording or storage media for electronic data processing. We will cover the cost of blank books, cards, printer blank material plus the cost of labor you incur for transcribing or copying such records, drawings, etc., and equally on the current rental market. recording or storage media for electronic data processing that cannot be replaced with other of like kind and quality on the current rental market.

COVERPAGE C - LOSS OF USE

1. Additional Living Expense. When a Loss Insured causes the residence premises to become uninhabitable, we will cover the necessary increase in cost you incur to maintain your standard of living for up to 24 months or our benefit is limited to insured costs for the shortest of: (a) the time required to repair or replace the premises; (b) the time required for your household to settle elsewhere; or (c) 24 months. This coverage is not reduced by the explanation of this policy.

2. Fair Rental Value. When a Loss Insured causes that part of the residence premises rented to others or held for rental by you to become uninhabitable, we will cover its fair rental value. Payment shall be for the shortest time required to repair or replace the part of the premises rented to others or held for rental, but not to exceed 12 months. This period of time is not limited by explanation of this policy. Fair rental value shall include any expense that does not constitute a part of the residence premises rented to others or held for rental, but is unavoidable.

3. Prohibited Use. When a civil authority prohibits your use of the residence premises because of direct damage to a neighboring premises by a Loss Insured, we will cover any resulting Additional Living Expense and Fair Rental

Value. Coverage is for a period not exceeding two weeks, while use is prohibited. We do not cover loss or expense due to cancellation of a lease or agreement.

SECTION 7 - ADDITIONAL COVERAGES.

The following Additional Coverages are subject to all the terms, provisions, exclusions and conditions of this policy.

1. Debris Removal. We will pay the reasonable expenses you incur in the removal of debris of covered property damaged by a loss insured under this coverage. This expense is included in the limit applying to the damaged property.

When the amount payable for the property damage plus the debris removal exceeds the limit for the damaged property, an additional 5% of that limit is available for debris removal expense. This additional amount of insurance does not apply to Additional Coverages, Item 3, Trees, Shrubs and Other Plants.

We will also pay up to \$500 in the aggregate for death loss to cover the reasonable expenses you incur to have the removal of tree debris from the residence premises when the tree has caused a loss insured by Coverage A property.

2. Temporary, Repair, or Replacement. If damage is caused by a loss insured by this policy, we will pay the reasonable and necessary cost you incur for temporary, repair, or replacement property to protect the property from further damage or loss. This coverage does not increase the limit applying to the property being repaired.

3. Trees, Shrubs and Other Plants. We cover outdoor trees, shrubs, plants or lawns, on the residence premises, for direct loss caused by the following: fire or lightning, explosion, riot or civil commotion, aircraft, vehicles (not owned or operated by a resident of the residence premises), vandalism or malicious mischief or theft.

The limit for this coverage, including the removal of debris, shall not exceed 5% of the amount shown in the Declarations for COVERAGE A - DWELLING. We will not pay more than \$500 for any one outdoor tree, shrub or plant, including debris removal expense. This coverage may increase, but limit, otherwise applicable. We do not cover property grown for business purposes.

4. Fire Department Service Charge. We will pay up to \$500 for your liability assumed by contract or agreement for the department charges. This means charges incurred when the fire department is called to save or protect covered property from a loss insured. No deductible applies to this coverage. This coverage may increase the limit otherwise applicable.

5. Power Interruption. We cover accidental direct physical loss caused directly or indirectly by a collapse of temporary structure which results from power interruption that occurs at the residence premises. The power interruption must be caused by a loss insured occurring at the residence premises. The power lines of the residence premises must remain energized. This coverage does not increase the limit applying to the damaged property.

6. Credit Card, Bank, Fund, Transfer Card, Forgery and Counterfeit Money. We will pay the actual cash value of the legal obligation of an insured to pay because of the theft or unauthorized use of credit cards and bank fund transfer cards issued to or tendered in an insured's name. If an insured has not complied with all reasonable conditions under which the cards are issued, we do not cover use by an insured or anyone else.

(1) loss in an insured through acceptance in good faith of counterfeit United States or Canadian paper currency.

(2) loss of an insured through acceptance in good faith of counterfeit United States or Canadian paper currency.

No deductible applies to this coverage. We will not pay more than the limit stated above for forgery or alteration committed by any one person. This limit applies when the forgery or alteration involves one or more instruments in the same loss.

b. We do not cover loss arising out of business pursuits or dishonesty of an insured.

c. Defense. (1) We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend claims or suits ends when

the amount we pay for the loss equals our limit of liability.

(2) If claim is made on a suit brought against an insured for liability under the Credit Card or Bank Fund Transfer Card coverage, we will provide a defense. This defense is at our expense for counsel of your choice.

(3) We have the option to defend at our expense an insured or an insured's heir, agent, any suit for the enforcement of payment under the foregoing coverage.

7. Power Interruption. We cover accidental direct physical loss caused directly or indirectly by a collapse of temporary structure which results from power interruption that occurs at the residence premises. The power interruption must be caused by a loss insured occurring at the residence premises. The power lines of the residence premises must remain energized. This coverage does not increase the limit applying to the damaged property.

8. Refrigerated Products. Coverage B is extended to cover the contents of deep freeze or refrigerated units on mechanical failure. It includes failure of power failure or mechanical failure. It is known to you, all reasonable means must be used to protect the property insured from further damage of this coverage is void. Power failure or mechanical failure shall not include:

- a. removal of a plug from an electrical outlet, or turning off an electrical switch unless caused by a loss insured.

This coverage does not increase the limit applying to the damaged property.

9. Arson Reward. We will pay \$1,000 for information which leads to an arson conviction in connection with a fire loss to property covered by this policy. This coverage may increase the limit otherwise applicable. However, the \$1,000 limit shall not be increased regardless of the number of persons providing information.

10. Volcanic Action. We cover direct physical loss to a covered building or covered property contained in a building resulting from the eruption of a volcano when the loss is directly and immediately caused by:

- a. volcanic blast or air-borne shock waves; ash, dust or particulate matter; or lava flow.

We will also pay for the removal of that ash, dust or particulate matter which has caused direct physical loss to a covered building or covered property contained in a building.

One or more volcanic eruptions that occur within a 72-hour period shall be considered one volcanic eruption.

This coverage does not increase the limit applying to the damaged property.

11. Collapse. We insure only direct physical loss to covered property involving the sudden, entire collapse of a building or any part of a building.

Collapse means actually fallen down or fallen into pieces. It does not include settling, cracking, sinking, bulging, expansion, sagging or bowing.

The collapse must be directly and immediately caused only by one or more of the following:

- a. perils described in SECTION 1 - LOSSES INSURED, COVERAGE B - PERSONAL PROPERTY. These perils apply to covered buildings and personal property of loss insured by this Additional Coverage;
- b. hidden decay of a supporting or weight-bearing structural member of the building;
- c. hidden insect or vermin damage to structural member of the building;
- d. weight of contents, equipment, animals or people;
- e. weight of ice, snow, sleet or rain which collects on a roof; or
- f. use of defective material or methods in the construction (including, but not limited to, the building, if the collapse occurs during the course of the construction of the building).

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, line, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under Items b., c., d., e. and f., unless the

loss is the direct and immediate cause of the collapse of the building.
This coverage does not increase the limit applying to the damaged property.

12. Locks. We will pay the reasonable expenses you incur to re-key locks on exterior doors of the dwelling located on the residence premises when the keys to those locks are a part of a covered theft loss.

No deductible applies to this coverage.

INFLATION COVERAGE - This coverage is subject to the limits of liability shown in the Declarations for Coverage A, Coverage B and, where applicable, Coverage D with the

SECTION I - LOSSES INSURED

COVERAGE A - DWELLING
We insure for accidental direct physical loss to the property described in Coverage A, except as provided in SECTION I - LOSSES NOT INSURED.

COVERAGE B - PERSONAL PROPERTY
We insure for accidental direct physical loss to property described in Coverage B caused by the following perils, except as provided in SECTION I - LOSSES NOT INSURED:

- 1. Fire or lightning.
- 2. Windstorm or hail. This peril does not include loss to property contained in a building caused by rain, snow, sleet, sand or dust. This limitation does not apply when the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.
- 3. Explosion.
- 4. Riot or civil commotion.
- 5. Aircraft, including self-propelled missiles and space-craft.

increased at the same rate as the increase in the Inflation Coverage Index shown in the Declarations.

To find the limits on a given date:

- 1. divide the index on that date by the index as of the effective date of this Inflation Coverage provision; then
- 2. multiply the resulting factor by the limits of liability for Coverage A, Coverage B and, where applicable, Coverage D separately.

The limits of liability will not be reduced to less than the amounts shown in the Declarations.

If during the term of this policy the Coverage A limit of liability is triggered at your request, the effective date of this Inflation Coverage provision is changed to coincide with the effective date of such triggering.

SECTION I - LOSSES INSURED

6. Vehicles meaning impact by a vehicle.

7. Smoke, meaning sudden and accidental damage from smoke.

This peril does not include loss caused by smoke from agricultural smoking or industrial operations.

8. Vandalism or theft, meaning theft, meaning only willful and malicious damage to or destruction of property.

9. Theft, including attempted theft and loss of property from a known location when it is probable that the property has been stolen.

This peril does not include:

- a. loss of a precious or semi-precious stone from its setting;
- b. loss caused by theft:
 - (1) regularly residing at the insured location; Property of a student whose an insured's covered while located at a residence away from home, if the theft is committed by a person who is not an insured;
 - (2) in or to a dwelling under construction or of materials and supplies for use in the construction until the dwelling is completed and occupied; or

(c) from the part of a residence premises rented to others;

(a) caused by a tenant, employee of the tenant's household, or the tenant's employees;

(b) of money bank notes, bullion, gold, gold-worn, silver, silverware, jewelry, plate, num, coins and medals;

(c) of securities, checks, cashier's checks, traveler's checks, money orders and other negotiable instruments, acquisition, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports, tickets and stamps;

(d) of jewelry, watches, fur garments and garments lined with fur, precious and semi-precious stones;

c. loss caused by theft that occurs away from the residence premises of:

- (1) property while at any other residence owned, rented to, or occupied by an insured, except while an insured is temporarily residing there; Property of a student who is an insured is covered while at a residence away from home;
- (2) watercraft of all types, including their furnishings, equipment and outboard motors; or
- (3) trailers and campers designed to be pulled by or carried on a vehicle.

If the residence premises is a newly acquired principal residence, property in the immediate past principal residence shall not be considered property away from the residence premises for the first 30 days after the inception of this policy.

10. Falling objects: This peril does not include loss to property contained in a building unless the roof or exterior wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. Weight of ice, snow or sleet which causes damage to property contained in a building.

12. Sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or from within a household appliance.

This peril does not include loss:

a. to the system or appliance from which the water or steam escaped;

b. caused by or resulting from freezing;

c. caused by or resulting from water or sewage from outside the residence premises plumbing system that enters through sewers, or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area;

d. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or rot or dry rot.

13. Sudden and accidental hearing, cracking, burning or bulging of a steam or hot water heating system, or air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

This peril does not include loss:

- a. caused by or resulting from freezing; or
- b. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or rot or dry rot.

14. Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance.

This peril does not include loss on the residence premises while the dwelling is vacant, unoccupied, or being constructed, unless you have used reasonable care to:

- a. maintain heat in the building; or
- b. shut off the water supply and drain the system and appliances of water.

15. Sudden and accidental damage to electrical appliances, devices, fixtures and wiring from an increase or decrease of electrical current. We will pay up to \$1,000 under this part for each damaged item described above.

SECTION I - LOSSES NOT INSURED

1. We do not insure for any loss to the property described in Coverage A which consists of, or is directly and immediately caused by, one or more of the perils listed in Items a. through h. below, regardless of whether the loss occurs suddenly or gradually, however isolated or widespread damage is, unless the loss is the result of a combination of these:

- a. collapse, except as specifically provided in SECTION I - ADDITIONAL COVERAGES, Collapse;
- b. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion only applies while the dwelling is vacant, unoccupied or being constructed. This exclusion does not apply if you have used reasonable care to:

 - (1) maintain heat in the building; or
 - (2) shut off the water supply and drain the system and appliances of water;
 - c. freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a swimming pool, hot tub or spa, including their filtration and circulation systems, large, paved, patio, foundation, retaining wall, bulkhead, pier, wharf or dock;
 - d. theft in or to a dwelling under construction, or of materials and supplies for use in the construction, until the dwelling is completed and occupied;
 - e. vandalism or malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

16. Breakage of glass, meaning damage to personal property caused by breakage of glass which is a part of a building on the residence premises. There is no coverage for loss or damage to the glass.

1. continuous or repeated seepage or leakage of water or steam from or

- (1) heating, air conditioning or automatic fire protective (fire sprinkler) system;
- (2) household appliance; or

(3) plumbing system, including from, within or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings or floors,

which occurs over a period of time. All loss to covered property is caused by water or steam not otherwise excluded. We will cover the cost of leaving out and replacing any part of the building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water or steam escaped.

9. wear, tear, marring, scratching, deterioration, inherent vice, latent defect or mechanical breakdown;

h. corrosion, electrolysis or rust;

i. mold, fungus or wet or dry rot;

j. contamination;

k. sprays, fumes from agricultural smudging or industrial operations;

l. seeping, cracking, shrinking, bulging, or expansion of pavements, paths, foundation, walls, floors, roofs or ceilings;

m. birds, vermin, rodents, insects, or domestic animals. We do cover the breakage of glass or safety glazing material which is a part of a building, when caused by birds, vermin, rodents, insects or domestic animals; or

11. pressure from or presence of fire, shrub or plant roots.

However, we do insure for any resulting loss (item 10) a, through m, unless the resulting loss is itself a loss. Not insured by this Section.

2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, however isolated, or widespread; damage, arises from natural or elemental forces, or occurs as a result of any combination of these:

a. Ordinance of Law, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure;

b. Earth Movement, meaning the sinking, rising, shifting, expanding or contracting of earth, all whether combined with water or not. Earth movement includes but is not limited to earthquake, landslide, mudflow, mudslide, sinkhole, subsidence, erosion or movement resulting from improper, completion, site selection or any other external force. Earth movement also includes volcanic explosion or lava flow, except as specifically provided in SECTION I - ADDITIONAL COVERAGES, Volcanic Action.

However, we do insure for any direct loss by fire resulting from earth movement, provided the resulting fire loss is itself a loss insured.

c. Water Damage, meaning:

(1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not;

(2) water or sewage from outside the residence premises plumbing system that enters through sewers or drains; or water which enters into and overflows from within a sump pump, sump pump well, or any other system designed to remove

subsurface water which is drained from the foundation area; or

(3) water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

However, we do insure for any direct loss by fire, explosion or their resulting from water damage, provided the resulting loss is itself a loss insured.

d. Neglect, meaning neglect of the insured to use all reasonable means to save and preserve property at any time, the time of a loss, or when property is endangered;

e. War, including any undeclared war, civil insurrection, rebellion, revolution, warfare act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.

f. Nuclear Hazard, meaning any nuclear reaction, radiating, or radioactive contamination, all whether controlled or uncontrolled; or however, caused, or any consequence of any of these. Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion or smoke.

However, we do insure for any direct loss by fire resulting from the nuclear hazard, provided the resulting fire loss is itself a loss insured.

3. We do not insure under any coverage for any loss consisting of one or more of the items below. Further, we do not insure for loss described in paragraphs 1. and 2. immediately above, regardless of whether one or more of the following: (a) directly or indirectly cause, contribute to or aggravate the loss; or (b) occur before, at the same time, or after the loss or any other cause of the loss:

a. conduct, act, failure to act, or decision of any person, group, organization, or governmental body, whether intentional, wrongful, negligent, or without fault;

- b. defect, weakness, inadequacy, fault or misstatement
- (1) planning, zoning, development, siting, siting
- (2) design, specifications, workmanship, construction, grading, compaction
- (3) materials used in construction or repair or
- (4) maintenance.

SECTION I - LOSS SETTLEMENT

Only the Loss Settlement provisions shown in the Declarations apply. We will settle covered property losses according to the following:

COVERAGE A - DWELLING

1. A1 - Replacement Cost Loss Settlement - Similar Construction.

- a. We will pay the cost to repair or replace with similar construction and for the same use on the premises shown in the Declarations the damaged part of the property covered under SECTION I - COVERAGES, COVERAGE A - DWELLING, except for wood fences, subject to the following:
 - (1) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost for repair or replace the damaged part of the property.
 - (2) when the repair or replacement is actually completed, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less.
 - (3) to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed, and

- of any property (including land, structures, or improvements of any kind) whether on or off the residence premises; or
 - c. weather conditions.
- However, we do insure for any resulting loss from a; b; and c. Unless the resulting loss is itself a Loss Not Insured by this Section:

- (4) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option D - Building Ordinance or Law Coverage.

b. Wood Fences. We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - DWELLING EXTENSION.

2. A2 - Replacement Cost Loss Settlement - Common Construction.

- a. We will pay the cost to repair or replace with common construction and for the same use on the premises shown in the Declarations, the damaged part of the property covered under SECTION I - COVERAGES, COVERAGE A - DWELLING, except for wood fences, subject to the following:
 - (1) we will pay only for repair or replacement of the damaged part of the property with common construction techniques and materials commonly used by the building trades in standard new construction. We will not pay the cost to repair or replace obsolete, antique or custom construction with the kind and quality.
 - (2) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or

- replace the damaged part of the property as described in a.(1) above.
- (3) when the repair or replacement is actually completed as described in a.(1) above, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less.

- (4) to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed, and

- (5) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option D - Building Ordinance or Law Coverage.

b. Wood Fences. We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - DWELLING-EXTENSION.

COVERAGE B - PERSONAL PROPERTY.

1. B1 - Limited Replacement Cost Loss Settlement.

- a. We will pay the cost to repair or replace property covered under SECTION I - COVERAGES COVERAGE B - PERSONAL PROPERTY, except for property listed in Item 2, below, subject to the following:
 - (1) until repair or replacement is completed, we will pay only the cost to repair or replace less depreciation.
 - (2) after repair or replacement is completed, we will pay the difference between the cost to repair or replace less depreciation and the cost you have

- actually and necessarily spent to repair or replace the property; and
- (3) if property is not repaired or replaced within two years after the date of loss, we will pay only the cost to repair or replace less depreciation.

- b. We will pay market value at the time of loss for:
 - (1) antiques, fine arts, paintings, jewelry and similar articles which by their inherent nature cannot be replaced with new articles;
 - (2) articles whose age or history contribute substantially to their value, including, but not limited to, memorabilia, souvenirs and collectors items; and
 - (3) property not useful for its intended purpose.

However, we will not pay an amount exceeding the smallest of the following for items a. and b. above:

- (1) our cost to replace at the time of loss;
- (2) the full cost of repair;
- (3) any special limit of liability described in the policy; or
- (4) any applicable Coverage B limit of liability.

2. B2 - Depreciated Loss Settlement.

- a. We will pay the cost to repair or replace less depreciation at the time of loss for property covered under SECTION I - COVERAGES COVERAGE B - PERSONAL PROPERTY, except for property listed in Item 2, below.
 - (1) we will pay market value at the time of loss for:
 - (1) antiques, fine arts, paintings, jewelry and similar articles which by their inherent nature cannot be replaced with new articles;
 - (2) articles whose age or history contribute substantially to their value, including, but not limited to, memorabilia, souvenirs and collectors items; and
 - (3) property not useful for its intended purpose.

However, we will not pay an amount exceeding the smallest of the following for items a. and b. above:

- (1) our cost to replace at the time of loss;
- (2) the full cost of repair;

SECTION 1 - CONDITIONS

1. Insurable Interest and Limit of Liability: Even if more than one person has an insurable interest in the property covered, we shall not be liable:

- a. to the insured for an amount greater than the insured's interest; or
 - b. for more than the applicable limit of liability.
2. Your Duties After Loss: After a loss to which this insurance may apply, you shall see that the following duties are performed:
- a. give immediate notice to us or our agent. Also notify the police if the loss is caused by theft. Also notify the credit card company or bank if the loss involves a credit card or bank fund transfer card.
 - b. protect the property from further damage or loss, make reasonable and necessary temporary repairs required to protect the property, keep an accurate record of repair expenditures;
 - c. prepare an inventory of damaged or stolen personal property. Show in detail the quantity, description, age, replacement cost and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;
 - d. as often as we reasonably require:
 - (1) exhibit the damaged property;
 - (2) provide us with records and documents we request and permit us to make copies;
 - (3) submit to and subscribe, while not in the presence of any other insured:
 - (a) statements; and
 - (b) examinations under oath; and
- (3) any special limit of liability described in the policy; or
 - (4) any applicable Coverage B limit of liability.
3. Loss to a Pair or Set: In case of loss to a pair or set, we may elect to:
- a. repair or replace any part to restore the pair or set to the value before the loss; or
 - b. pay the difference between the depreciated value of the property before and after the loss.
4. Appraisal: If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent impartial umpire. If the two appraisers are unable to agree upon an umpire within 5 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.
5. Other Insurance: If a loss covered by this policy is also covered by other insurance, we will pay only our share of the loss. Our share is the proportion of the loss that the applicable limit under this policy bears to the total amount of insurance covering the loss.
6. Suit Against Us: No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.
7. Our Option: We may repair or replace any part of the property damaged or stolen with similar property. Any property we pay for or replace becomes our property.
8. Loss Payment: We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:
- a. reach agreement with you;
 - b. there is an entry of a final judgment; or
 - c. there is a filing of an appraisal award with us.
9. Abandonment of Property: We need not accept any property abandoned by an insured.

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10. Mortgage Clause: The word "mortgage" includes trust

- a. a mortgage is named in this policy, any loss payable under Coverage A shall be paid to the mortgagee and you, as interests appear. If more than one mortgage is named, the order of payment shall be the same as the order of precedence of the mortgages.
- b. if we deny your claim, that denial shall not apply to a valid claim of the mortgagee, if the mortgagee:
 - (1) notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
 - (2) pays on demand any premium due under this policy; if you have not paid the premium, and
 - (3) submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.
- c. If this policy is cancelled by us, the mortgagee shall be notified at least 10 days before the date cancellation takes effect. Proof of mailing shall be proof of notice.
 - d. If we pay the mortgagee for any loss and deny payment to you:
 - (1) we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
 - (2) at our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we shall receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.
 - e. Subrogation shall not impair the right of the mortgagee to recover the full amount of the mortgage's claim.
- 11. No Benefit to Bailor: We will not recognize an assignment or grant coverage for the benefit of a person or organization holding, storing or transporting property for

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12. Intentional Acts: If you or any person insured under this policy causes or procures a loss to property covered

SECTION II - LIABILITY COVERAGES

COVERAGE L - PERSONAL LIABILITY

If a claim is made or a suit is brought against an insured for damages because of bodily injury or property damage to which this coverage applies, caused by an occurrence, we will:

- 1. pay up to our limit of liability for the damages for which the insured is legally liable; and
2. provide a defense, at our expense, by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages to settle, settlement or satisfy a judgment resulting from the occurrence, equals our limit of liability.

COVERAGE M - MEDICAL PAYMENTS TO OTHERS

We will pay the necessary medical expenses incurred or medically protracted within three years from the date of an accident causing bodily injury. Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, prosthetic, nursing, prosthetic devices and funeral services. This coverage applies only:

- 1. to a person on the insured location with the permission of an insured;
2. to a person off the insured location, if the bodily injury:
a. arises out of a condition on the insured location or travels immediately adjoining;
b. is caused by the activities of an insured;
c. is caused by a residence employee in the course of reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, prosthetic, nursing, prosthetic devices and funeral services;
d. is caused by an animal owned by or in the care of an insured; or
3. to a residence employee if the occurrence causing bodily injury occurs off the insured location and arises

under this policy for the purpose of obtaining insurance benefits, then this policy is void and we will not pay you or any other insured for this loss.

SECTION II - ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

- 1. Claim Expenses: We pay:
a. expenses you incur and costs taxed against an insured in suits we defend;
b. premiums or bonds required in suits we defend, but not for bond amounts greater than the Coverage L limit. We are not obligated to apply for or furnish any bond;
c. reasonable expenses an insured incurs at our request. This includes actual loss of earnings (but not less of other income) up to \$100 per day for aiding in the investigation or defense of claims or suits;
d. prejudgment interest awarded against the insured on that part of the judgment we pay; and
e. interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.
2. First Aid Expenses: We will pay expenses for first aid to others incurred by an insured for bodily injury covered under this policy. We will not pay for first aid to you or any other insured.
3. Damage to Property of Others:
a. We will pay for property damage to property of others caused by an insured.
b. We will not pay more than the smallest of the following amounts:
(1) replacement cost at the time of loss;
(2) full cost of repair; or
(3) \$500 in any one occurrence.
c. We will not pay for property damage:
(1) if insurance is otherwise provided for this policy;
(2) caused intentionally by an insured who is 13 years of age or older;
(3) to property other than a rented golf cart, owned by or rented to an insured, a tenant of an insured, or a resident in your household; or
(4) when the dwelling on the residence premises is a two, three or four-family dwelling and you occupy one part and rent or hold for rental the other part of the dwelling.

SECTION II - EXCLUSIONS

- 1. Coverage L and Coverage M do not apply to:
a. bodily injury or property damage:
(1) which is either expected or contemplated by the insured; or
(2) which is the result of willful and malicious acts of the insured;
b. bodily injury or property damage arising out of business pursuits of any insured, or the rental or holding for rental of any part of any premises by any insured. This exclusion does not apply:
(1) to activities which are ordinarily incident to non-business pursuits;
(2) with respect to Coverage L to the occasional or part-time business pursuits of an insured who is under 19 years of age;
(3) to the rental or holding for rental of a residence of yours:
(a) on an occasional basis for the exclusive use as a residence;
(b) in part, unless intended for use as a residence by more than two domestic boarders; or
(c) in part, as an office, school, studio, or private garage;
(4) when the dwelling on the residence premises is a two, three or four-family dwelling and you occupy one part and rent or hold for rental the other part of the dwelling.
2. bodily injury or property damage arising out of the rendering or failing to render professional services;
a. bodily injury or property damage arising out of the rendering or failing to render professional services;
b. bodily injury or property damage arising out of any premises currently owned or rented to any insured which is not an insured location. This exclusion does not apply to bodily injury to a residence employee arising out of any of the course of the residence employee's employment by an insured;
c. bodily injury or property damage arising out of the ownership, maintenance, use, handling or unloading of:
(1) an aircraft;
(2) a motor vehicle owned or operated by or rented or loaned to any insured; or
(3) a watercraft;
d. bodily injury or property damage arising out of premises owned, owned or rented to any insured, if it has been or is being operated by a person who is more than 50 horsepower;
e. bodily injury or property damage arising out of a sailing vessel, with or without auxiliary power, 26 feet or more in overall length;
(4) arising out of:
(a) business pursuits;
(b) any act or omission in connection with a premises an insured owns, rents or controls, other than the insured location; or
(c) the ownership, maintenance, or use of a motor vehicle, aircraft, or watercraft, including board or similar type watercraft.
(5) to farm land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations;
(6) bodily injury or property damage arising out of the ownership, maintenance, use, handling or unloading of:
(a) a motor vehicle owned or operated by or rented or loaned to any insured; or
(b) a watercraft;
(7) a sailing vessel, with or without auxiliary power, 26 feet or more in overall length;
(8) arising out of:
(a) business pursuits;
(b) any act or omission in connection with a premises an insured owns, rents or controls, other than the insured location; or
(c) the ownership, maintenance, or use of a motor vehicle, aircraft, or watercraft, including board or similar type watercraft.

- (c) powered by one or more outboard motors with more than 25 total horsepower owned by any insured;
 - (d) designated as an airboat, air cushion, or similar type of craft; or
 - (e) owned by any insured which is a personal watercraft using a water jet pump powered by an internal combustion engine as the primary source of propulsion.
- The exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured. Exclusion 4.1(3) does not apply while the watercraft is on the residence premises.
- 1. bodily injury or property damage arising out of:
 - (1) the enthusiasm by any insured to any person;
 - (2) the supervision by any insured of any person;
 - (3) any liability statutorily imposed on any insured; or
 - (4) any liability assumed through an unwritten or written agreement by any insured;
 - g. bodily injury or property damage caused, directly or indirectly by war, including undeclared war, or any warlike act including destruction or seizure or use for a military purpose, or any consequence of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental;
 - h. bodily injury to you or any insured within the meaning of part a. or b. of the definition of insured.
- This exclusion also applies to any claim made or suit brought against you or any insured to share damages with or repay someone else who may be obligated to pay damages because of the bodily injury sustained by you or any insured within the meaning of part a. or b. of the definition of insured.
- i. any claim made or suit brought against any insured by:

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- (1) any person who is in the care of any insured because of child care services provided by or at the direction of:
 - (a) any insured;
 - (b) any employee of any insured; or
 - (c) any other person actually or apparently acting on behalf of any insured; or
 - (2) any person who makes a claim because of bodily injury to any person who is in the care of any insured because of child care services provided by or at the direction of:
 - (a) any insured;
 - (b) any employee of any insured; or
 - (c) any other person actually or apparently acting on behalf of any insured.
- This exclusion does not apply to the occasional child care services provided by any insured, or to the part-time child care services provided by any insured who is under 19 years of age, or
- f. bodily injury or property damage arising out of an insured's participation in, or preparation or practice for any, prearranged or organized race, speed or demolition contest, or similar competition involving a motorized land vehicle or motorized watercraft. This exclusion does not apply to a sailing vessel less than 26 feet in overall length with or without auxiliary power.
- 2. Coverage L does not apply to:
 - a. liability:
 - (1) for your share of any loss assessment charged against all members of an association of property owners; or
 - (2) assumed under any unwritten contract or agreement or by contract or agreement in connection with a business of the insured;
 - b. property damage to property currently owned by any insured;
 - c. property damage to property rented to, occupied or used by or in the care of any insured. This exclusion

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- does not apply to property damage caused by fire, smoke or explosion;
- d. bodily injury to a person eligible to receive any benefits required to be provided, or voluntarily provided by an insured under a workers' compensation, non-occupational disability, or occupational disease law;
- e. bodily injury or property damage (a) to which an insured under this policy is also an insured under a nuclear energy liability policy of which the insured has for its termination upon exhaustion of the limit of liability. A nuclear energy liability policy is a policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors;

SECTION II - CONDITIONS

- 1. Limit of Liability. The Coverage L limit is shown in the Declarations. This is our limit for all damages from each occurrence regardless of the number of insureds, claims made or persons injured.
- The Coverage M limit is shown in the Declarations. This is our limit for all medical expense for bodily injury to one person as the result of one accident.
- 2. Severability of Insurance. This insurance applies separately to each insured. This condition shall not increase our limit of liability for any one occurrence.
- 3. Duties After Loss. In case of an accident or occurrence, the insured shall perform the following duties that apply. You shall cooperate with us in seeing that these duties are performed:
 - a. give written notice to us or our agent as soon as practicable, which sets forth:
 - (1) the identity of this policy and insured;
 - (2) reasonably available information on the time, place and circumstances of the accident or occurrence; and;
 - b. to a person eligible to receive any benefits required to be provided or voluntarily provided under any workers' compensation, non-occupational disability or occupational disease law;
 - c. from our legal representative or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these;
 - d. to a person other than a residence employee of an insured, regularly residing on any part of the insured (local) business;
- 4. Coverage M does not apply to bodily injury:
 - a. to a residence employee if it occurs off the insured location and does not arise out of or in the course of the residence employee's employment by an insured;
 - b. to a person eligible to receive any benefits required to be provided or voluntarily provided under any workers' compensation, non-occupational disability or occupational disease law;
 - c. from our legal representative or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these;
 - d. to a person other than a residence employee of an insured, regularly residing on any part of the insured (local) business;
- 5. Duties After Loss. In case of an accident or occurrence, the insured shall perform the following duties that apply. You shall cooperate with us in seeing that these duties are performed:
 - (1) making settlement;
 - (2) the employment of any, firm, or organization or indemnity against a person or organization who may be liable to an insured;
 - (3) the conduct of suits and attend hearings and trials; and
 - (4) securing and giving attendance and obtaining the attendance of witnesses;
 - d. under the coverage - Damage to Property of Others, exhibit the damaged property if within the insured's control, and
 - e. the insured shall not, except at the insured's own cost, voluntarily make payments, assume obligations or incur expenses, which does not apply to expense for first aid to others at the time of the bodily injury.

- 4. Duties of an Injured Person - Coverage M: The injured person, or, when appropriate, someone acting on behalf of that person, shall:
 - a. give us written proof of claim, under oath. If required, as soon as practicable;
 - b. execute authorization to allow us to obtain copies of medical reports and hospital and
 - c. submit to physical examination by a physician selected by us when and as often as we reasonably require;
- 5. Payment of Claim - Coverage M: Payment under this coverage is not an admission of liability by an insured or us.

SECTION I AND SECTION II - CONDITIONS

- 1. Policy Period. This policy applies only for loss under Section I or bodily injury or property damage under Section II which occurs during the period this policy is in effect.
- 2. Consentment or Fraud. This policy is void as to you and any other insured. If you or any other insured under this policy has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance, whether before or after a loss.
- 3. Liberalization Clause. If we adopt any revision which would broaden coverage under this policy without additional premium, within 60 days prior to or during the period this policy is in effect, the broadened coverage will immediately apply to this policy.
- 4. Waiver or Change of Policy Provisions: A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for appropriate or examination shall not waive any of our rights.
- 5. Cancellation:
 - a. You may cancel this policy at any time by notifying us in writing of the date cancellation is to take effect. We may waive the requirement, that the notice be in writing by confirming the date and time of cancellation to you in writing.

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- 6. Suit Against Us: No action shall be brought against us unless there has been compliance with the policy provisions.
 - No one shall have the right to join us as a party to an action against an insured. Further, no action with respect to Coverage L shall be brought against us until the obligation of the insured has been determined by final judgment, settlement, or agreement signed by us.
 - 7. Bankruptcy of an Insured. Bankruptcy or insolvency of an insured shall not relieve us of our obligation under this policy.
 - 8. Other Insurance - Coverage L: This insurance is excess over any other valid and collectible insurance except insurance which specifically covers an excess over the limits of liability that apply on this policy.

SECTION II - CONDITIONS

- (1) We may cancel this policy only for the reasons stated in this condition. We will notify you in writing of the date cancellation takes effect. This cancellation notice may be delivered to you or mailed to you at your mailing address shown in the Declarations. Proof of mailing shall be sufficient proof of notice.
 - (a) When you have not paid the premium, we may cancel at any time by notifying you at least 10 days before the date cancellation takes effect. This condition applies whether the premium is payable to us or our agent or under any finance or credit plan.
 - (2) When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason. We may cancel by notifying you at least 10 days before the date cancellation takes effect.
 - (3) When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:
 - (a) if there has been a material misrepresentation of fact which, if known to us, would have caused us not to issue this policy; or

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- (b) if the risk has changed substantially since the policy was issued; or
 - We may amend the date cancellation takes effect, 30 days before the date cancellation takes effect.
 - (4) When this policy is written for a period longer than one year, we may cancel for any reason at any time, 30 days before the date cancellation takes effect.
 - c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded. When you request cancellation, the return premium will be based on our rates for such cancellation. The return premium may be less than a full pro rata refund. When we cancel, the return premium will be pro rata.
 - d. The return premium may not be refunded with the notice of cancellation or when the policy is returned to us. In such cases, we will refund it within a reasonable time after the date cancellation takes effect.
 - 6. Nonrenewal. We may elect not to renew this policy. If we elect not to renew, a written notice will be delivered to you, or mailed to you at your mailing address shown in the Declarations. The notice will be mailed or delivered at least 30 days before the expiration date of this policy. Proof of mailing shall be sufficient proof of notice.
 - 7. Assignment. Assignment of this policy shall not be valid unless we give our written consent.
 - 8. Subrogation. An insured may waive in writing before a loss all rights of recovery against any person. If not

OPTIONAL POLICY PROVISIONS

- 1. Section I - Coverage A: or
 - Each Optional Policy Provision applies only as shown in the Declarations and is subject to all the terms, provisions, exclusions and conditions of this policy.
 - Option A1 - Additional Insured: The definition of Insured is extended to include the person or organization shown in the Declarations as an Additional Insured or whose name is on file with us. Coverage is with respect to:
 - 1. Section I - Coverage A: or

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- waived, we may require an assignment of rights of recovery for a loss for the extent that payment is made by us. If an assignment is sought an insured shall:
 - a. sign and deliver all related papers;
 - b. cooperate with us in a reasonable manner; and
 - c. do nothing after a loss which prejudices such rights.
- Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.
- 9. Death. If any person shown in the Declarations or the schedule is the insured, the beneficiary, or the spouse, the legal representative of the deceased, we insure the legal representative of the deceased. This condition applies only with respect to the premises and property of the deceased covered under this policy at the time of death.
 - b. Insured includes:
 - (1) any member of your household who is an insured at the time of your death, but only while a resident of the residence premises; and
 - (2) with respect to your property, the person having power to dispose of the property until your death, including a legal representative, and continuation of a legal representative.
- 10. Conformity to State Law. When a policy provision is in conflict with the applicable law of the State in which this policy is issued, the law of the State will apply.

OPTIONAL POLICY PROVISIONS

- 2. Section II - Coverage L and M: and only with respect to the residence premises. This coverage does not apply to bodily injury to an employee arising out of or in the course of the employer's employment by the person or organization shown in the Declarations.
- This option applies only with respect to the location shown in the Declarations.
 - Option 9B - Business Property: The COVERAGE B - PERSONAL PROPERTY-SPECIAL LIMITS of Liability, Item b., for property used or intended for use in a business,

Including merchandise held as samples or for sale or for delivery after sale; its changed as follows:

The \$1,000 limit is replaced with the amount shown in the Declarations for this option.

Option BU - Business Pursuits. SECTION II - EXCLUSIONS, Item 1.b. is modified as follows:

1. Section II coverage applies to the business pursuits of an insured who is:
 - a. clerical, office, employee, salesperson, collector, messenger or
 - b. teacher (except college, university and professional athletic coaches), school principal or school administrator.
- while acting within the scope of the above listed occupations.

2. However, no coverage is provided:

- a. for bodily injury or property damage arising out of a business owned or financially controlled by the insured or by a partnership of which the insured is a partner or member.
- b. for bodily injury or property damage arising out of the operation of, or failure of, a professional service of any nature (other than teaching or school administration). This exclusion includes but is not limited to:
 - (1) computer programming, architectural, engineering or industrial design services
 - (2) medical, surgical, dental or other services or treatment conducive to the health of persons or animals; and
 - (3) beauty or barber services or treatment.
- c. for bodily injury to a fellow employee of the insured injured in the course of employment; or
- d. when the insured is a member of the faculty or teaching staff of a school or college.

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(a) draft or saddle animals, including vehicles for use with them; or

(b) aircraft, motor vehicles, recreational motor vehicles or watercraft, balloons, airships or personal watercraft which use a water jet pump powered by an internal combustion engine, as the primary source of propulsion.

owned, or operated, or hired by, or for the insured or employer of the insured or used by the insured for the purpose of instruction in the use thereof; or

(2) aircraft, balloons or motor vehicles to a pupil attending out of corporal punishment administered by or at the direction of the insured.

Option FA - Firearms. Firearms are insured for accidental direct physical loss or damage.

The limits for this option are shown in the Declarations. The first amount is the limit for any one article; the second amount is the aggregate limit for each loss.

The following additional provisions apply:

1. We cannot insure for any loss to the property described in this option which consists of, or directly and immediately caused by, one or more of the following:
 - a. mechanical breakdown, wear and tear, gradual deterioration;
 - b. insects or vermin;
 - c. any process of refinishing, removing, or repairing;
 - d. dampness or atmosphere or extremes of temperatures;
 - e. inherent defect or faulty manufacture;
 - f. rust, fouling or explosion of firearms;
 - g. breakage, marling, scratching, tearing or denting unless caused by fire, lightning or accident to conveyances; or
- h. liability of an insured's employees or persons in whom the insured property may be entrusted or rented.

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2. our limit for loss by any Coverage B part except theft is the limit shown in the Declarations for Coverage B, plus the aggregate limit;

3. our limits for loss by theft are those shown in the Declarations for this option. These limits apply whether of the Coverage B theft limit and

4. our limits for loss by any covered part except those in Items 2 and 3 are those shown in the Declarations: Option HC - Home Computer. The COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability, Item 1, for electronic data processing system equipment and the recording or storage media used with that equipment are extended to the amounts shown in the Declarations for this option.

Option ID - Increased Dwelling Limit. We will settle losses to damaged building structures covered under COVERAGE A - DWELLING according to the SECTION II - LOSS SETTLEMENT provision shown in the Declarations. If the amount you actually and necessarily spend to repair or replace damaged building structures exceeds the applicable limit of liability shown in the Declarations, we will pay the additional amount(s) not to exceed:

1. the Option ID limit of liability shown in the Declarations to repair or replace the Dwelling; or
2. 10% of the Option ID limit of liability to repair or replace building structures covered under COVERAGE A - DWELLING, Dwelling Extension.

Report increased values. You must notify us within 90 days of the start of any new building structure costing \$5,000 or more, or any additions to or remodeling of building structures which increase their values by \$5,000 or more. You must pay any additional premium due for the increased value. We will not pay more than the applicable limit of liability shown in the Declarations, if you fail to notify us of the increased value within 90 days.

Option IO - Incidental Business. The coverage provided by this option applies only to that incidental business occupation which is with us.

1. COVERAGE A - DWELLING, Dwelling Extension, item 2b, is deleted.
2. COVERAGE B - PERSONAL PROPERTY is extended to include equipment, supplies and furnishings usual and

incidental to this business occupancy. This Optional Policy Provision does not include electronic data processing system equipment or the recording or storage media used with that equipment or merchandise held as samples for sale or for delivery after sale.

The Option IO limits are shown in the Declarations. The first limit applies to property on the residence premises. The second limit applies to property while off the residence premises. These limits are in addition to the COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability on property used or intended for use in a business.

3. Under Section II, the residence premises is not considered business property because an insured occupies a part of it as an incidental business. Section II - EXCLUSIONS, Item 1.b. of Coverage L and Coverage M is replaced with the following:

- a. bodily injury or property damage arising out of business pursuits of an insured or the rental or holding for rental of any part of any premises by an insured. This exclusion does not apply:
 - (1) to activities which are incidental to non-business pursuits or to business pursuits of an insured which are necessary or incidental to the use of the residence premises as an incidental business;
 - (2) with respect to Coverage L, to the occasional or part-time business pursuits of an insured who is under 19 years of age;
 - (3) to the rental or holding for rental of a residence of yours;

- (a), on an occasional basis, for exclusive use as a residence;
- (b), in part, unless intended for use as a residence by more than two roomers or boarders; or
- (c), in part, as an incidental business or private garage.

(4) when the dwelling on the residence premises is a two family dwelling and you occupy

one part and rent or hold for rental the other part or (5) to farm, range, (wildlife, hunting), game or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations.

- 5. This insurance does not apply to:
 - a. bodily injury to an employee of an Insured arising out of the residence premises described in the business other than a residence in which the employee is engaged in the employee's employment by an Insured;
 - b. bodily injury to a pupil arising out of corporal punishment administered by or at the direction of the Insured;
 - c. liability arising out of any acts, errors or omissions of an Insured, or any other person for whose acts an Insured is liable, arising from the preparation or approval of data, plans, designs, opinions, reports, programs, specifications, supervisory instructions or engineering services in the conduct of an Insured's incidental business involving data processing, computer consulting or computer programming; or
 - d. any claim made or suit brought against any Insured by:
 - (1) any person who is in the care of any Insured because of child care services provided by or at the direction of:
 - (a) any Insured;
 - (b) any employee of any Insured; or
 - (c) any other person actually or apparently acting on behalf of any Insured; or
 - (2) any person who makes a claim because of bodily injury or any person who is in the care of any Insured because of child care services provided by or at the direction of:
 - (a) any Insured;

(b) any employee of any Insured; or (c) any other person actually or apparently acting on behalf of any Insured. Coverage M does not apply to any person indicated in (1) and (2) above.

This exclusion does not apply to the occasional child care services provided by any Insured or the part-time child care services provided by any Insured who is under 19 years of age. Option J - Jewelry and Furs, Jewelry, watches, fur garments and gemstones (including wild) in precious and semi-precious stones, gold, other than goldwyping, silver, other than silverware and platinum, are insured for accidental direct physical loss or damage. The limits for this option are shown in the Declarations. The first amount is the limit for any one article; the second amount is the aggregate limit for each loss.

The following additional provisions apply:

1. We do not insure for any loss to the property described in this option, either consisting of, or directly or indirectly caused by, one or more of the following:
 - a. mechanical breakdown, wear and tear, gradual deterioration;
 - b. insects or vermin;
 - c. inherent vice; or
 - d. seizure or destination under quarantine or customs regulations.
2. Our limit for loss by any Coverage B part except theft is the limit shown in the Declarations for Coverage B, plus the aggregate limit.
3. Our limits for loss by theft are those shown in the Declarations for this option; and
4. Our limits for loss by any covered part except those in Items 2, and 3, are those shown in the Declarations for this option.

Option OL - Building Ordinance or Law Coverage Provided.

The total limit of insurance provided by this Building Ordinance or Law provision will not exceed an amount equal to the Option OL percentage shown in the Declarations of the Coverage A limit shown in the Declarations at the time of the loss, as adjusted by the inflation coverage provisions of the policy. This is an additional amount of insurance and applies only to the dwelling.

2. Damaged Portions of Dwelling.

When the dwelling covered under COVERAGE A - DWELLING is damaged by a loss insured we will pay for the increased cost to repair or rebuild the physically damaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same loss insured and the requirement is in effect at the time the loss insured occurs.

3. Undamaged Portions of Damaged Dwelling.

When the dwelling covered under COVERAGE A - DWELLING is damaged by a Loss Insured we will also pay for:

- a. the cost to demolish and clear the site of the undamaged portions of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs; and
- b. loss to the undamaged portion of the dwelling caused by enforcement of any ordinance or law if:
 - (1) the enforcement is directly caused by the same Loss Insured;
 - (2) the enforcement requires the demolition of portions of the same dwelling not damaged by the same Loss Insured;
 - (3) the ordinance or law regulates the construction or repair of the dwelling, or establishes zoning or

and use requirements at the described premises; and (d) the ordinance or law is in force at the time of the occurrence of the same Loss Insured; or

c. the legally required changes to the undamaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

4. Building Ordinance or Law Coverage Limitations.

- 2. We will not pay for any increased cost of construction under this coverage:
 - (1) until the dwelling is actually repaired or replaced at the same or another premises in the same general vicinity and the requirement is in effect at the time the repairs or replacement are made as soon as reasonably possible after the loss, not to exceed two years.
- b. We will not pay more for loss to the undamaged portion of the dwelling caused by the enforcement of any ordinance or law than:
 - (1) the depreciated value of the undamaged portion of the dwelling, if the dwelling is not repaired or replaced;
 - (2) the amount you actually spend to replace the undamaged portion of the dwelling if the dwelling is repaired or replaced.
- c. We will not pay more under this coverage than the amount you actually spend:
 - (1) for the increased cost to repair or rebuild the dwelling at the same or another premises in the same general vicinity if relocation is required by ordinance or law; and
 - (2) to demolish and clear the site of the undamaged portions of the dwelling caused by enforcement of building, zoning or land use ordinance or law.

We will never pay for more than a dwelling of the same height, floor area and style on the same or similar premises as the dwelling, subject to the limit provided in paragraph 1. Coverage Provided of this option.

Option 5G - Silverware and Goldware. The COVER- AGE B - PERSONAL PROPERTY, Special Limits of Liability, Item h, for theft of silverware and goldware is increased to be the amount shown in the Declarations for this option.

IN WITNESS WHEREOF, this Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois.

John M. Burman

Secretary

Edward J. Rumi Jr.

President

The Board of Directors, in accordance with Article VI(c) of this Company's Articles of Incorporation, may from time to time distribute equitably to the holders of the participating policies issued by said Company such sums out of its earnings as in its judgment are proper.

State Farm Insurance Companies



STATE FARM INSURANCE COMPANIES
1900 E. Pass Road
Gulfport, MS 39507
Fax: (228) 604 4695

September 28, 2005

Pamela and Thomas McIntosh
2558 S Shore Dr
Biloxi, MS 39532-3010

RE: Claim Number: 24-Z178-602
Policy Number: 24-BX-4847-7
Date of Loss: August 29, 2005

Dear Mr. and Mrs. McIntosh:

This follows our visit to your property when we discussed the damage to your residence.

The damage to your property may have been caused by wind and water. We are continuing to investigate that portion of your loss caused by wind.

Enclosed please find an estimate for that damage and a draft in payment for that portion of your loss clearly caused by wind in the amount of \$36,228.37

Based on the site visit and other facts, our investigation showed that some of your property was damaged as a result of storm surge, wave wash and flood. Unfortunately, that damage to your property is not covered under the policy identified above.

Please see the following relevant policy language.

Section I – Losses not insured

2. We do not insure any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:
 - a. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure.
 - b. **Earth Movement**, meaning the sinking, rising, shifting, expanding or contracting of earth, all whether combined with water or not. Earth movement includes but is not limited to earthquake, landslide, mudflow, mudslide, sinkhole, subsidence, erosion

HOME OFFICE: BLOOMINGTON, ILLINOIS 61710-1001

EXHIBIT

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or movement resulting from improper compaction, site selection or any other external forces. Earth movement also includes volcanic explosion or lava flow, except as specifically provided in SECTION I – ADDITIONAL COVERAGES, volcanic action.

c. Water Damage, meaning:

- (1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not;
- (2) water from outside the plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area; or
- (3) natural water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

However, we do insure for any direct loss by fire, explosion or theft resulting from water damage, provided the resulting loss is itself a Loss Insured.

State Farm Insurance does not intend to waive any policy defenses, in addition to those quoted above and reserves its right to assert additional policy defenses at any time.

If you have additional information you would like us to consider that you have not previously submitted, or if you desire any explanation of this letter, please contact me.

Sincerely,

Claim Representative



October 12, 2005

State Farm Insurance
Mr. Cody Perry, Claims Adjuster
1909 East Pass Rd.
Gulfport, MS 39507

Re: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Date of Loss: 8-29-2005
SF Claim No. 24-Z178-602/24-BX-4847-7
FAEC Case No: 530-0088-05-25

Dear Mr. Perry,

Forensic Analysis & Engineering (FAEC) is pleased to provide the following report of our engineering investigation and evaluation of the reported damage to the residence located at 2558 S. Shore Drive in Biloxi, MS.

We initially received this assignment on October 4, 2005. FAEC performed a field investigation of the subject insured residence on October 7, 2005. We were assigned to the dining room area of the residence.

This site

is located

on the waterfront of Biloxi, MS. The residence was in the path of a hurricane when it was damaged.

FAEC conducted a damage combination on site.

Put in Wind file - DO NOT Pay Bills DO NOT discuss

this matter.

of Biloxi, MS. The residence was in the path of a hurricane when it was damaged.

if the damage was caused by a hurricane. During our inspection, we observed the following:

SITE OBSERVATIONS

The following are the observations made during FAEC's inspection of the structure:

- The home has a north-south orientation with the front of the house facing east to South Shore Dr. The home is on a waterfront lot on the Tchautacabouffa River.

FORENSIC ANALYSIS & ENGINEERING CORPORATION

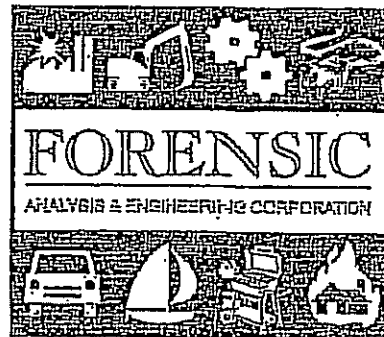
ESTABLISHED 1966

FORENSIC ENGINEERING, PRODUCT DEFECT ANALYSIS & ACCIDENT INVESTIGATIONS

5301 Capital Blvd., Suite A - Raleigh, North Carolina 27616-2956

E-MAIL: FORENSIC@FORENSIC-ANALYSIS.COM WEBSITE: WWW.FORENSIC-ANALYSIS.COM
Telephone: (919) 872-8788 (919) 994-2505 Facsimile: (919) 872-8660

EXHIBIT



October 12, 2005

State Farm Insurance
Mr. Cody Perry, Claims Adjuster
1909 East Pass Rd.
Gulfport, MS 39507

Re: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
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Dear Mr. Perry,

Forensic Analysis & Engineering (FAEC) is pleased to provide the following report of our engineering investigation and evaluation of the reported damage to the residence located at 2558 S. Shore Drive in Biloxi, MS.

We initially received this assignment on October 4, 2005. FAEC performed a field investigation of the subject insured residence on October 7, 2005. In this assignment we were tasked to inspect the damage to the left front wall from the front porch to the dining area and determine if it was from wind, water or both.

This summary report is being submitted in fulfillment of our assignment in this matter.

BACKGROUND

On the morning of August 29, 2005, the Mississippi coast, including the city of Biloxi, was impacted by Hurricane Katrina, which was classified as a Category-4 hurricane when it made landfall.

FAEC performed a field investigation of the subject residence to determine if the damage to the front wall of the residence was caused by wind, floodwater or a combination of both. Mr. McIntosh was present during FAEC's inspection. During our on site examination of the subject damage, FAEC was able to complete our inspection.

SITE OBSERVATIONS

The following are the observations made during FAEC's inspection of the structure:

- The home has a north-south orientation with the front of the house facing east to South Shore Dr. The home is on a waterfront lot on the Tchaucabouffa River.

FORENSIC ANALYSIS & ENGINEERING CORPORATION

ESTABLISHED 1966

FORENSIC ENGINEERING, PRODUCT DEFECT ANALYSIS & ACCIDENT INVESTIGATIONS

5301 Capital Blvd., Suite A - Raleigh, North Carolina 27616-2956

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Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-602/24-BX-4847-7
FAEC File No.: 530-0088-05-25

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- The first floor elevation is approximately 20-21 feet. The watermark line in the house is approximately five and one-half feet above the main floor interior flooring.
- The roof was damaged at the peak and right front sections. Ceilings were damaged.
- The doors and windows were all missing.
- All debris had been cleaned out of the house.
- According to Mr. McIntosh, a neighbor - Mr. Mike Church - reported that houses were blown apart and debris was thrown into the McIntosh house at approximately 8 AM and the floodwater began rising at 11 AM.
- The lower front right corner of the house wall was missing – approximately three studs.
- The back porch had a wooden deck and arbor destroyed.
- An outdoor metal storage shed was missing.
- The detached carport originally had nine columns. Several of these were found severely damaged.
- Large oak trees were felled in a northwesterly direction. Limbs of a live oak tree in the backyard of the subject residence had fallen.
- Observations of the area are consistent with the findings of this property. There were numerous tall tree failures in the northwesterly direction.

CONCLUSIONS

Based upon the information that has been presented to FAEC and evidence gleaned during our inspection, FORENSIC ANALYSIS & ENGINEERING CORPORATION has made the following conclusion concerning the damage to the structure.

- The tree failures in the northwesterly direction are the result of the winds out of the southeast from the approaching hurricane.
- The roof, door, carport, and window damage was caused by wind and wind driven debris.



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-602/24-BX-4847-7
FAEC File No.: 530-0088-05-25

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- It is FAEC's opinion that the interior damage of the structure is primarily the result of the failure of the windows, walls, and doors due to wind.

The conclusions and opinions presented in this report are based on the results of FAEC's field investigation of the subject residence, as well as our analysis of the available wind and localized water level data and upon all of the other associated information that we have gathered during the course of our investigation efforts to date. If additional information or facts become available which materially affect these stated conclusions and opinions, then, FAEC reserves the right to amend or change its opinions and conclusions as needed.

It has been our pleasure to perform this structural engineering analysis for you. We trust that our efforts will meet with your approval and that this report meets its intended purpose. Please call if you have any questions concerning this report or if I or any of FORENSIC ANALYSIS & ENGINEERING CORPORATION'S staff can be of further support.

Respectfully submitted,
FORENSIC ANALYSIS & ENGINEERING CORPORATION

Brian Ford, P.E.
Senior Principal Structural Engineer
Mississippi P.E. License No. 08770

As it is the practice of FAEC to emphasize and ensure the technical quality of its work through peer review, the content of this report has been reviewed by the undersigned to ensure that all stated conclusions and supporting facts are technically consistent and meet the requirements of current engineering and scientific principles.

FORENSIC ANALYSIS & ENGINEERING CORPORATION

Robert K. Kochan, ME, DABFET, FACFEI
Principal Technical Consultant



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-Z178-602/24-BX-4847-7
FAEC File No.: 530-0088-05-25

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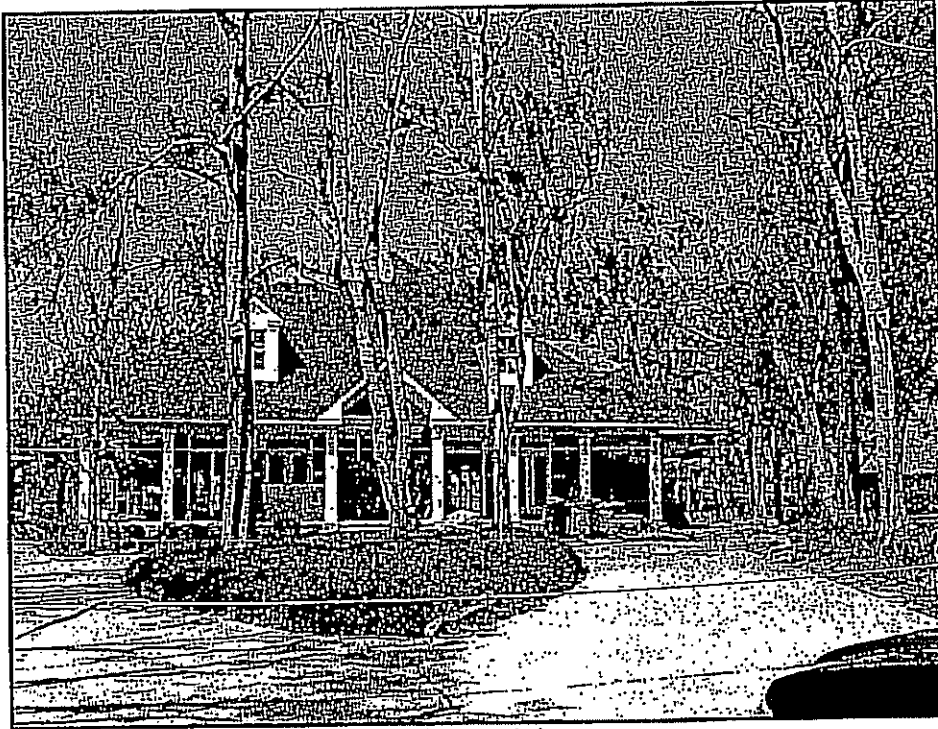
PHOTOGRAPHIC APPENDIX

- Photograph Number 1 - Front View of remains of residence located at 2558 S. Shore Dr., Biloxi, MS
- Photograph Number 2 - View of roof damage to right front of residence
- Photograph Number 3 - View of damage to back side of residence
- Photograph Number 4 - View of damage to corner of residence
- Photograph Number 5 - View of damage to the carport columns
- Photograph Number 6 - View interior damage to residence



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Photograph 1



Photograph 2



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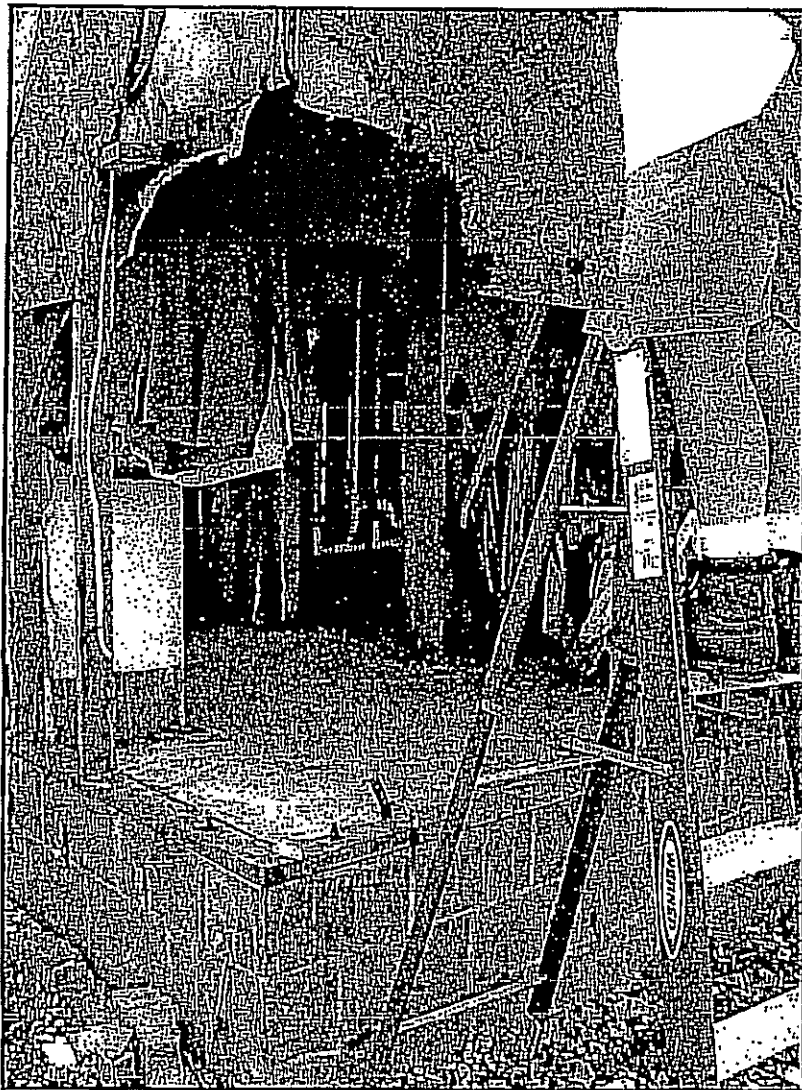


Photograph 3



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Photograph 4



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Photograph 5



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Photograph 6



October 20, 2005

State Farm Insurance
Mr. Cody Perry, Claims Adjuster
1909 East Pass Rd.
Gulfport, MS 39507

Re: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Date of Loss: 8-29-2005
SF Claim No. 24-Z178-602/24-BX-4847-7
FAEC Case No: 530-0088-05-25

Dear Mr. Perry,

Forensic Analysis & Engineering (FAEC) is pleased to provide the following report of our engineering investigation and evaluation of the reported damage to the residence located at 2558 S. Shore Drive in Biloxi, MS.

We initially received this assignment on October 4, 2005. FAEC performed a field investigation of the subject insured residence on October 18, 2005. In this assignment we were tasked to inspect the damage to the left front wall from the front porch to the dining area and determine if it was from wind, water or both.

This summary report is being submitted in fulfillment of our assignment in this matter.

BACKGROUND

On the morning of August 29, 2005, the Mississippi coast, including the city of Biloxi, was impacted by Hurricane Katrina, which was classified as a Category-4 hurricane when it made landfall.

FAEC performed a field investigation of the subject residence to determine if the damage to the front wall of the residence was caused by wind, floodwater or a combination of both. Mr. McIntosh was present during FAEC's inspection. During our on site examination of the subject damage, FAEC was able to complete our inspection.

SITE OBSERVATIONS

The following are observations made during FAEC's inspection of the structure:

- The home is oriented so that the front faces east towards S. Shore Dr. The back yard abuts Big Lake at the south end of the Tchoutacabouffa River.

FORENSIC ANALYSIS & ENGINEERING CORPORATION

ESTABLISHED 1966

FORENSIC ENGINEERING, PRODUCT DEFECT ANALYSIS & ACCIDENT INVESTIGATIONS

5301 Capital Blvd., Suite A - Raleigh, North Carolina 27616-2956

E-MAIL: FORENSIC@FORENSIC-ANALYSIS.com WEBSITE: WWW.FORENSIC-ANALYSIS.com

Telephone: (919) 872-8788

EXHIBIT

Facsimile: (919) 872-8660



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
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- There appears to be roof damage to the peak, north side and the southwest ridge area. The extent of this damage was not discernable as those areas had "Blue Roof" tarps covering them.
- The damage on the second floor consists primarily of floor damage.
- The damage to the first floor is extensive and includes floor, wall and ceiling damage.
- A witness, Mr. Craig Robertson, who is the owner's yardman, was at the site doing clean up work. He stated that prior to the storm he assisted in placing protective measures over the windows for the owners. He stated that shortly after the storm, he was at the house and had found that some of the upstairs doors, which led out to a balcony, had blown open and allowed water to enter the second floor which damaged the floor and ceiling below. Observations were consistent with his statement.
- There were abrasion marks on a decorative column and the inside of French doors that lead from the dining room of the first floor out to the front porch. When Mr. Robertson was questioned on the cause of these, he was unsure, but stated that there was a brick wall on the south end of that room that had blown into the house and there was lumber in that room after the storm. He also commented that part of a neighbor's roof from across the cul-de-sac was in front of the carport, which was immediately south of the subject residence and outside of the mentioned brick wall. He mentioned that another part of that roof was in front of the north end of the porch. Observations of the exterior porch columns, which also show signs of abrasion for a distance of about 4 ft. above the porch floor. This again is consistent with part of a roof structure rubbing against the columns while being carried by water. At the point where it was said that the debris stopped (north end of porch) several trees showed abrasion marks similar to the porch columns.
- The first floor elevation is estimated to be between 15 and 20 feet. Exact information was not available.
- Mr. Mindy Briscoe, the neighbor to the north of the subject house, stated that he had about 2-feet of water in his house. His floor elevation appears to be about 2 ft. higher than the subject house which would indicate that the water level in the subject house approached 4 ft above the first floor. An observation of light debris in nearby trees was consistent with this estimate of water level.
- The windows and doors at the back or west side of the house were not present. Their condition after the storm was not determined.



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
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- Observations of nearby properties indicate significant damage and there were numerous tree failures in the northwesterly direction.

CONCLUSIONS

Based on the information that has been presented to FAEC and evidence gleaned during our inspection, FORENSIC ANALYSIS & ENGINEERING CORPORATION has made the following conclusions concerning the damage to the structure:

- The tree failures in the northwesterly direction are the result of the winds out of the southeast from the approaching hurricane.
- There appears to have been damage to the structure by wind as evidenced by missing shingles on parts of the roof structure. Damage to the second story floor and first floor ceilings was predominately caused by wind and intruding rainwater.
- The damage to the first floor walls and floors appears to be predominately caused by rising water from the storm surge and waves.

House plans were not made available as to the construction of the left corner wall (entry from porch to the dining room). This corner has two walls. The east wall remains with French doors to the porch. The south wall was stated to be brick and it is unknown if doors were in that wall. The east doors would receive some protection from floating debris by the porch columns. It is understood that some lumber came in through the south wall into the dining room and that the bricks had fallen into the room. It is the opinion of FAEC that the damage to this wall was predominately due to waterborne debris hitting the wall.

The conclusions and opinions presented in this report are based on the results of FAEC's field investigation of the subject residence, as well as our analysis of the available wind and localized water level data and upon all of the other associated information that we have gathered during the course of our investigation efforts to date. If additional information or facts become available which materially affect these stated conclusions and opinions, then, FAEC reserves the right to amend or change its opinions and conclusions as needed.



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Insured: Thomas & Pamela McIntosh
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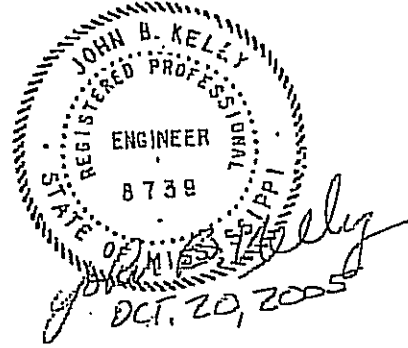
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It has been our pleasure to perform this structural engineering analysis for you. We trust that our efforts will meet with your approval and that this report meets its intended purpose. Please call if you have any questions concerning this report or if I or any of FORENSIC ANALYSIS & ENGINEERING CORPORATION'S staff can be of further support.

Respectfully submitted,
FORENSIC ANALYSIS & ENGINEERING CORPORATION

John B. Kelly

John B. Kelly, P.E.
Principal Structural Engineer



As it is the practice of FAEC to emphasize and ensure the technical quality of its work through peer review, the content of this report has been reviewed by the undersigned to ensure that all stated conclusions and supporting facts are technically consistent and meet the requirements of current engineering and scientific principles.

FORENSIC ANALYSIS & ENGINEERING CORPORATION

Robert K. Kochan, President

Robert K. Kochan, ME, DABFET, FACFEI
Principal Technical Consultant



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
Claim/Policy No.: 24-2178-602/24-BX-4847-7
FAEG File No.: 530-0088-05-25

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PHOTOGRAPHIC APPENDIX

- Photograph Number 1 - Front View of remains of residence located at 2558 S. Shore Dr., Biloxi, MS

- Photograph Number 2 - View of the rear of the house and carport

- Photograph Number 3 - View of abrasion marks in dining room

- Photograph Number 4 - View of abrasion marks in dining room

- Photograph Number 5 - View of bare floor on second story

- Photograph Number 6 - View ceiling damage on the first floor

- Photograph Number 7 - View of damage to front corner of residence

- Photograph Number 8 - View of abrasions to front porch columns

- Photograph Number 9 - View of abrasions on trees at the north end of the porch

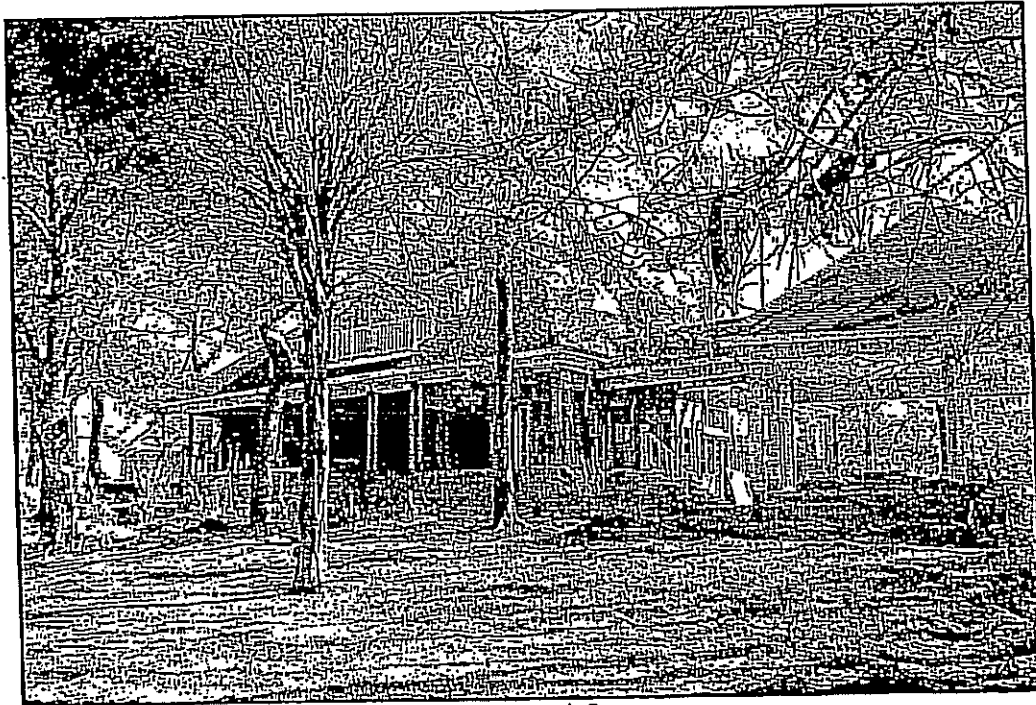


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Photograph 1

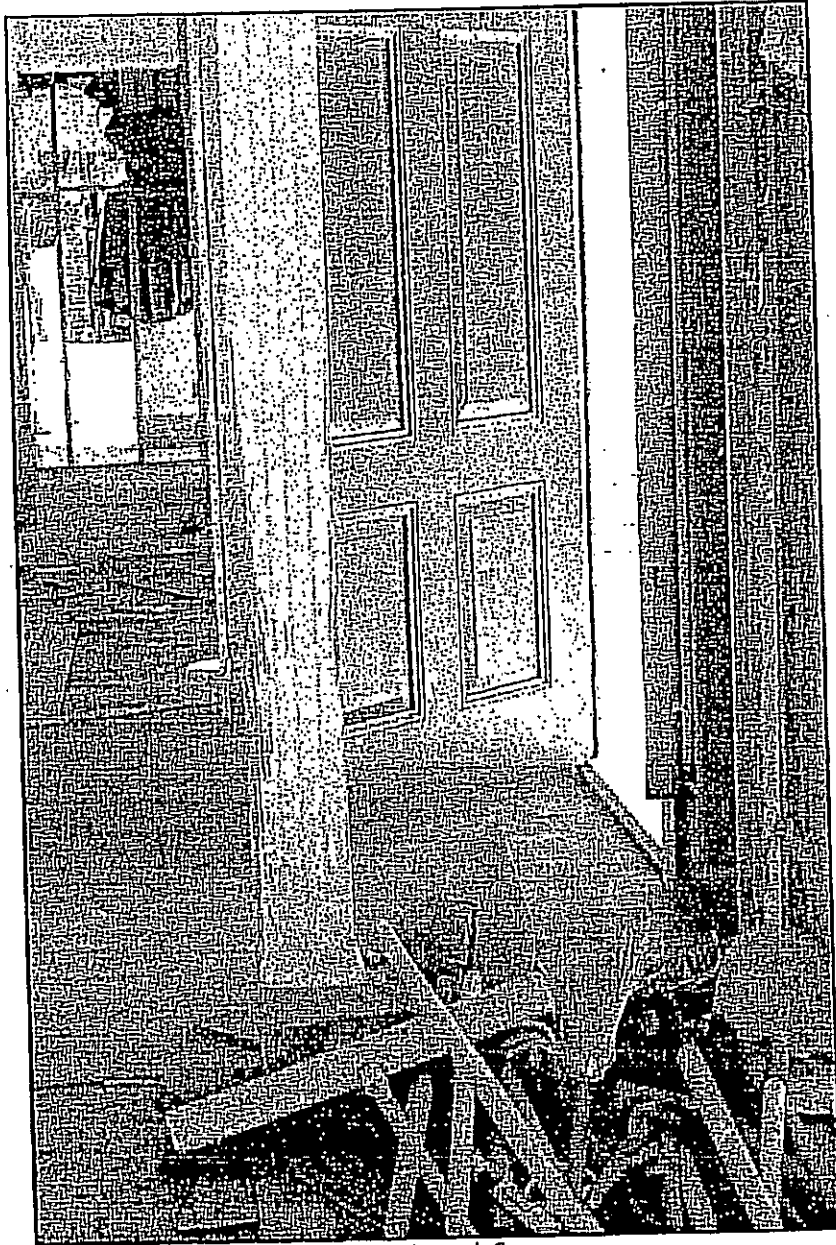


Photograph 2



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McIntosh
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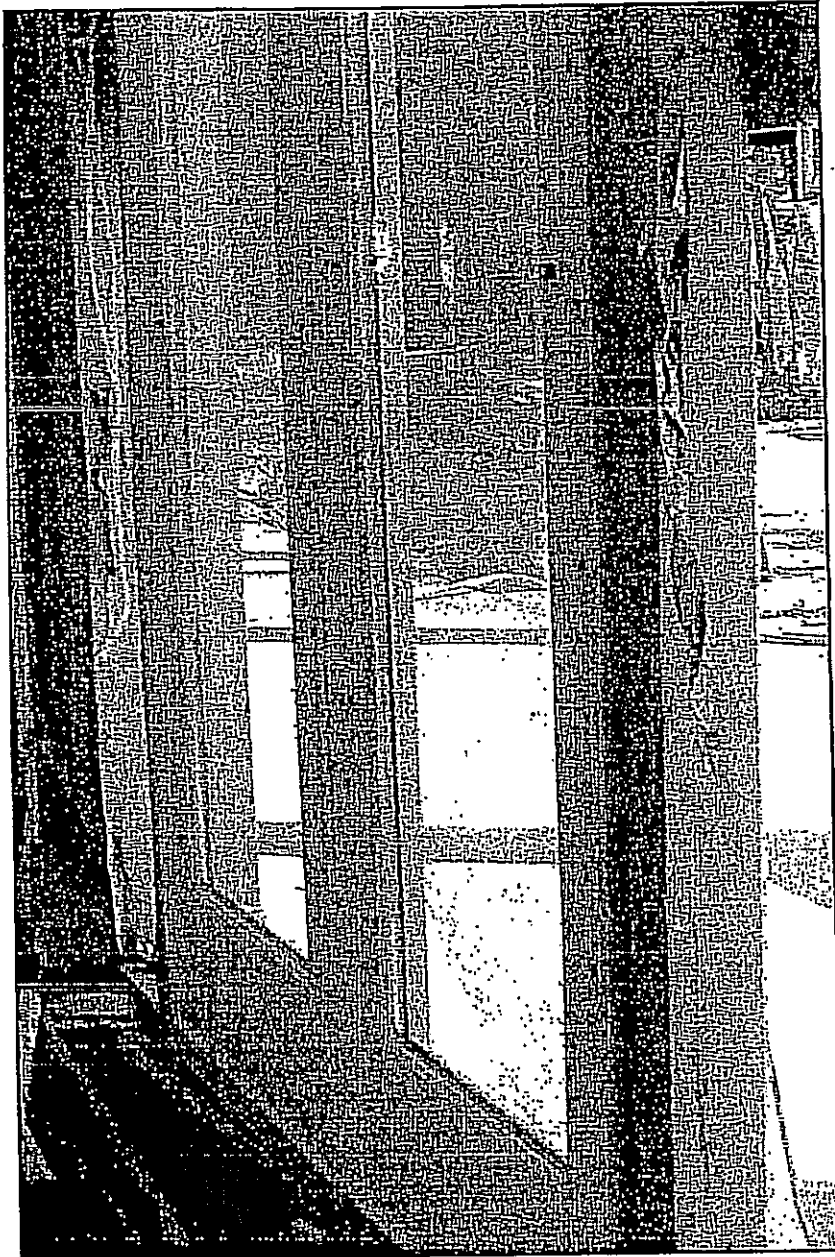


Photograph 3



Title: Hurricane Damage Assessment Investigation
Insured: Thomas & Pamela McInosh
Claim/Policy No.: 24-Z178-602/24-BX-4847-7
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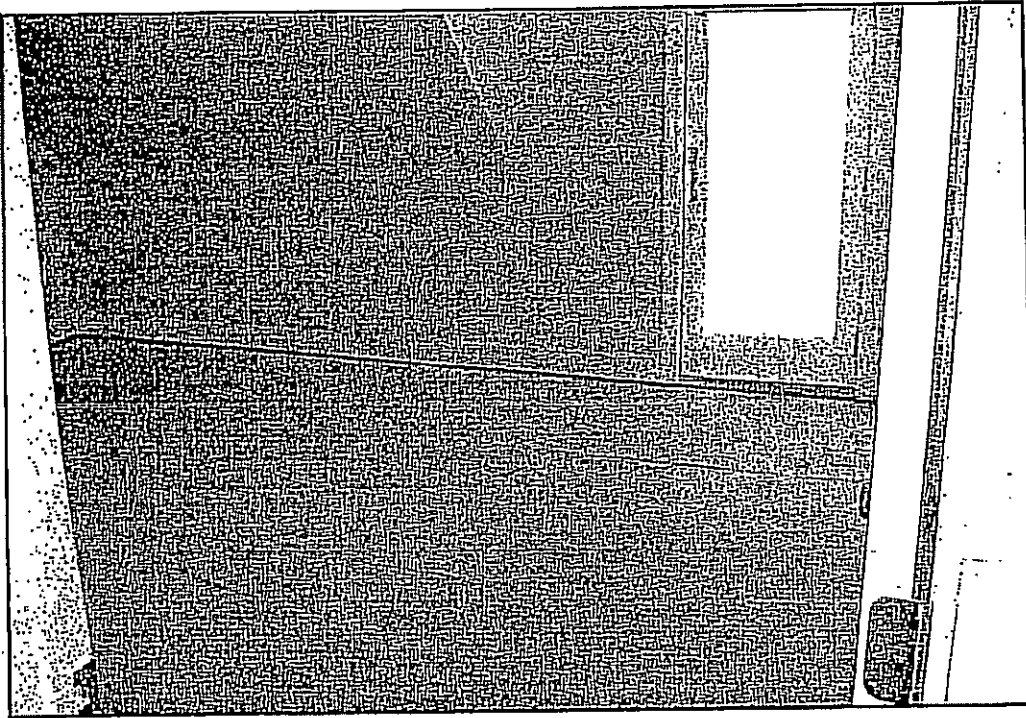


Photograph 4

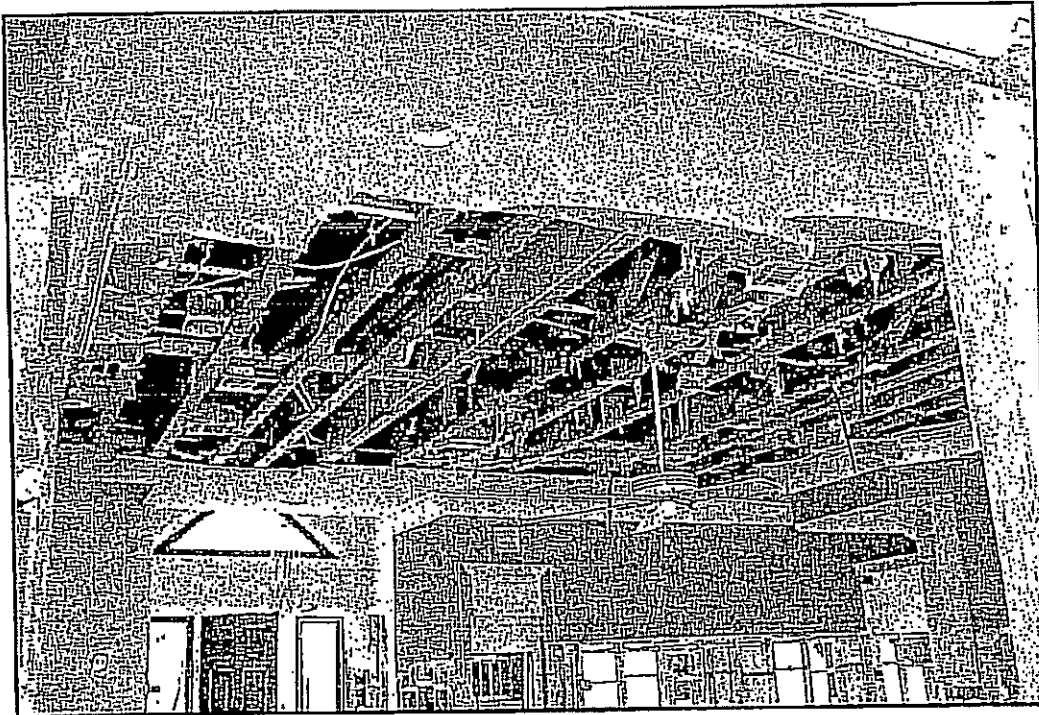


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Photograph 5



Photograph 6



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Photograph 7



Photograph 8



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Photograph 9

1

21 August 2006 :

I am Thomas C. Medintosh. My home at 2558 South Shore Drive, Biloxi, MS. was destroyed by flood/damage and wind ~~from~~ as a result of Hurricane Katrina. The date of the destruction was on or about August 29, 2005.

I have settled my claims not only on my home but also claims under policies that covered some rental property all of which was insured by State Farm. All claims were paid according to the policies in effect and I am satisfied that the adjustments and payment under these State Farm policies was done correctly. ~~and by my State Farm agent.~~

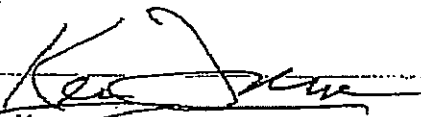
I have been advised that parties other than State Farm have possession of copies of my State Farm engineering reports. I did not give anyone a copy of my report or authorize anyone to release my report to any third party, including but not limited to any member or organization in the medical industry (ABC news, the Sun-Herald, CBS news, Associated Press or any other news reporting organization). I consider anyone in possession of a copy of my report to be committing a violation of my privacy and any broadcast of any information regarding my State Farm insurance ~~history~~

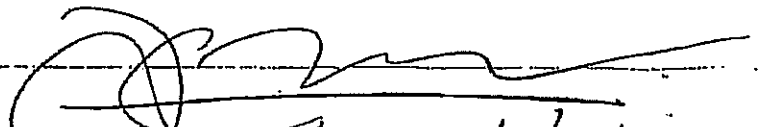
Handwritten initials and a circled 'S' in the left margin.

PHB


It has been to be Aggravating how to inform and
invasion of my privacy
I authorize State Farm to advise media
outlets such as ABC news and any other
outlet having possession of my report of my
concern for my privacy; and to advise
any such outlet that I have no dispute
with State Farm and my insurance issues
relating to the adjustment or payment of my
claims by State Farm.

I wish to advise that I do not now have
any dispute with State Farm or anyone else
regarding my insurance claims; I do not wish to
be party any such dispute; I do not have
any stake in the outcome of any litigation
and I wish to be party to no stated
holder in such dispute or litigation, but
another way; I wish to be left alone.


Ken Turner
Witness


Thomas C. McIntosh

Date: August 21, 2006

PHB 

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

THOMAS C. & PAMELA MCINTOSH

PLAINTIFFS

VERSUS

1:06-cv-1080-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY,
FORENSIC ANALYSIS & ENGINEERING CORP., and
E. A. RENFROE & COMPANY, INC., and DOES
1 THROUGH 10

DEFENDANTS

SEPARATE ANSWER TO FIRST AMENDED COMPLAINT

Jury Trial Demanded

COMES NOW the Defendant, STATE FARM FIRE AND CASUALTY COMPANY (hereinafter "State Farm"), by and through its counsel of record and files this its Separate Answer to the First Amended Complaint exhibited against it and for cause would show unto the Court as follows, to-wit:

First Defense

The First Amended Complaint fails to state a cause upon which relief can be granted.

Second Defense

This Defendant hereby incorporates and pleads any and all defenses listed in Rule 12(b) of the Federal Rules of Civil Procedure that may be applicable to this Cause and reserves its right to raise any objections and defenses therein stated.

Third Defense

This Defendant answers the First Amended Complaint paragraph by paragraph as follows:

I.

That this Defendant admits the allegations contained in Paragraph I of the First Amended Complaint.

II.

That this Defendant admits the allegations contained in Paragraph II of the First Amended Complaint.

III.

That this Defendant is without knowledge sufficient to either admit or deny the allegations contained in Paragraph III of the First Amended Complaint and for want of same, denies same and demands strict proof thereof.

IV.

That this Defendant admits the allegations contained in Paragraph IV of the First Amended Complaint.

V.

That this Defendant denies the allegations contained in Paragraph V of the First Amended Complaint.

VI.

That this Defendant admits the allegations contained in Paragraph VI of the First Amended Complaint.

VII.

That this Defendant admits the allegations contained in Paragraph VII of the First Amended Complaint.

VIII.

That this Defendant admits the allegations contained in Paragraph VIII of the First Amended Complaint.

IX.

That this Defendant admits the allegations contained in Paragraph IX of the First Amended Complaint.

X.

That this Defendant would show that the wording on the cover of the State Farm homeowners insurance policy speaks for itself. This Defendant is without knowledge sufficient to either admit or deny the remaining allegations contained in Paragraph X of the First Amended Complaint and for want of same, denies same and demands strict proof thereof.

XI.

That this Defendant would show that the language of the subject homeowners insurance policy speaks for itself and would further show that the quoted language contained in Paragraph XI of the First Amended Complaint accurately sets forth part of Section I-Losses Insured, Coverage A-Dwelling of the subject policy.

XII.

That this Defendant would show that the terms of the subject homeowners insurance policy speak for themselves. This Defendant denies the remaining allegations contained in Paragraph XII of the First Amended Complaint.

XIII.

That this Defendant would show that the language of the subject homeowners

insurance policy speaks for itself and would further show that the quoted language contained in Paragraph XIII of the First Amended Complaint accurately sets forth part of Section I-Losses Insured, Coverage B-Personal Property of the subject policy. This Defendant denies the remaining allegations contained in Paragraph XIII of the First Amended Complaint.

XIV.

That this Defendant admits the allegations contained in Paragraph XIV of the First Amended Complaint.

XV.

That this Defendant admits the allegations contained in Paragraph XV of the First Amended Complaint.

XVI.

That this Defendant admits that the Plaintiffs were and are bound by the terms of the policy including endorsements, that their annual premium was \$6,611.00, and that they had a \$500.00 deductible for all perils. This Defendant denies the remaining allegations contained in Paragraph XVI of the First Amended Complaint.

XVII.

That this Defendant is without knowledge sufficient to either admit or deny the allegations contained in Paragraph XVII of the First Amended Complaint and for want of same, denies same and demands strict proof thereof.

XVIII.

That this Defendant admits that on August 29, 2005, during the effective coverage period of the subject homeowners insurance policy, the Plaintiffs' dwelling

and personal property sustained damage from Hurricane Katrina, but reserves its right to contest the extent, nature, and cause of said damage. This Defendant denies the remaining allegations contained in Paragraph XVIII of the First Amended Complaint.

XIX.

That this Defendant admits that on August 29, 2005, during the effective coverage period of the subject homeowners insurance policy, the Plaintiffs' dwelling and personal property sustained damage from Hurricane Katrina, but reserves its right to contest the extent, nature, and cause of said damage. This Defendant denies the remaining allegations contained in Paragraph XIX of the First Amended Complaint.

XX.

That this Defendant admits that on August 29, 2005, during the effective coverage period of the subject homeowners insurance policy, the Plaintiffs' dwelling and personal property sustained damage from Hurricane Katrina, but reserves its right to contest the extent, nature, and cause of said damage. This Defendant denies the remaining allegations contained in Paragraph XX of the First Amended Complaint.

XXI.

That this Defendant admits that the Plaintiffs timely notified this Defendant of their losses following Hurricane Katrina. This Defendant denies the remaining allegations contained in Paragraph XXI of the First Amended Complaint.

XXII.

That this Defendant denies the allegations contained in Paragraph XXII of the First Amended Complaint.

XXIII.

That this Defendant denies the allegations contained in Paragraph XXIII of the First Amended Complaint.

XXIV.

That this Defendant denies the allegations contained in Paragraph XXIV of the First Amended Complaint.

XXV.

That this Defendant would show that the terms of the "Wind Water Claim Handling Protocol" document referenced in Paragraph XXV of the First Amended Complaint speak for themselves. This Defendant denies the remaining allegations contained in Paragraph XXV of the First Amended Complaint.

XXVI.

That this Defendant would show that it in fact did conduct an inspection of the Plaintiffs' property and that it did send to the Plaintiffs the letter attached as Exhibit "B" to the First Amended Complaint. This Defendant further admits that it estimated the covered portion of the Plaintiffs' loss at \$36,228.37 and tendered a check to the Plaintiffs in that amount. This Defendant denies the remaining allegations contained in Paragraph XXVI of the First Amended Complaint.

XXVII.

That this Defendant would show that the letter attached to the First Amended Complaint as Exhibit "B" speaks for itself. This Defendant denies the remaining allegations contained in Paragraph XXVII of the First Amended Complaint.

XXVIII.

That this Defendant denies the allegations contained in Paragraph XXVIII of the First Amended Complaint.

XXIX.

That this Defendant admits that it assigned adjusting services for Plaintiffs' home to the Defendant, E. A. Renfroe & Company, Inc. (hereinafter "Renfroe"), that the Renfroe adjustor conducted an investigation into the Plaintiffs' loss, and that an engineer was requested. This Defendant denies the remaining allegations contained in Paragraph XXIX of the First Amended Complaint.

XXX.

That this Defendant admits that it retained Forensic Analysis & Engineering Corporation (hereinafter "Forensic") to further investigate the Plaintiffs' loss. This Defendant would show that the terms of Forensic's report speak for themselves. This Defendant denies the remaining allegations contained in Paragraph XXV of the First Amended Complaint.

XXXI.

That this Defendant would show that the terms of the Forensic report speak for themselves. This Defendant denies the remaining allegations contained in Paragraph XXXI of the First Amended Complaint.

XXXII.

That this Defendant admits the allegations contained in Paragraph XXXII of the First Amended Complaint.

XXXIII.

That this Defendant denies the allegations contained in Paragraph XXXIII of the First Amended Complaint.

XXXIV.

That this Defendant denies the allegations contained in Paragraph XXXIV of the First Amended Complaint.

XXXV.

That this Defendant denies the allegations contained in Paragraph XXXV of the First Amended Complaint.

XXXVI.

That this Defendant admits the allegations contained in Paragraph XXXVI of the First Amended Complaint.

XXXVII.

That this Defendant admits the allegations contained in Paragraph XXXVII of the First Amended Complaint.

XXXVIII.

That this Defendant would show that the Forensic report dated October 20, 2005, speaks for itself. This Defendant denies the remaining allegations contained in Paragraph XXXVIII of the First Amended Complaint.

XXXIX.

That this Defendant would show that the terms of the Forensic report issued on October 20, 2005, speak for themselves. This Defendant admits the remaining allegations contained Paragraph XXXIX of the First Amended Complaint.

XL.

That this Defendant admits the allegations contained in Paragraph XL of the First Amended Complaint.

XLI.

That this Defendant denies the allegations contained in Paragraph XLI of the First Amended Complaint.

XLII.

That this Defendant admits to the amounts of the benefits it paid to the Plaintiffs for their losses following Hurricane Katrina as set forth in Paragraph XLII of the First Amended Complaint. This Defendant denies the remaining allegations contained in Paragraph XLII of the First Amended Complaint.

XLIII.

That this Defendant is without knowledge sufficient to either admit or deny the allegations contained in Paragraph XLIII of the First Amended Complaint and for want of same, denies same and demands strict proof thereof. This Defendant would further show that, upon information and belief, if in fact the "Renfroe employee" referenced in this Paragraph was either Kerri Rigsby or Cori Rigsby, then the manner in which the report was obtained by said employee was via an act of theft or similar illegal act.

XLIV.

That this Defendant denies the allegations contained in Paragraph XLIV of the First Amended Complaint.

XLV.

That this Defendant denies the allegations contained in Paragraph XLV of the

First Amended Complaint.

XLVI.

That this Defendant is without knowledge sufficient to either admit or deny the allegations contained in Paragraph XLVI of the First Amended Complaint, and for want of same, denies same, and demands strict proof thereof.

XLVII.

That this Defendant denies the allegations contained in Paragraph XLVII of the First Amended Complaint.

XLVIII.

That this Defendant denies the allegations contained in Paragraph XLVIII of the First Amended Complaint. This Defendant did not “commission” any reports.

XLIX.

That this Defendant would show that the referenced ABC News and/or 20/20 report speaks for itself. This Defendant is without knowledge sufficient to either admit or deny the remaining allegations contained in Paragraph XLIX of the First Amended Complaint and for want of same, denies same and demands strict proof thereof.

L.

That this Defendant admits that Tamarra Rennick made contact with Mr. McIntosh and had a conversation with him. That to the extent that Paragraph L implies or states any wrongful conduct on the part of any State Farm employee or representative, same is denied. This Defendant denies the remaining allegations contained in Paragraph L of the First Amended Complaint.

LI.

That this Defendant admits that Peter Barrett made contact with Mr. McIntosh and spoke with him. That to the extent that Paragraph LI implies or states any wrongful conduct on the part of any State Farm employee or representative, same is denied. This Defendant denies the remaining allegations contained in Paragraph LI of the First Amended Complaint.

LII.

That this Defendant admits that Peter Barrett and J. Kennedy Turner met with Mr. McIntosh and had a conversation with him. That to the extent that Paragraph LII implies or states any wrongful conduct on the part of any State Farm employee or representative, same is denied. This Defendant denies the remaining allegations contained in Paragraph LII of the First Amended Complaint.

LIII.

That this Defendant admits that Mr. McIntosh had a conversation with attorneys Barrett and Turner. That to the extent that Paragraph LIII implies or states any wrongful conduct on the part of any State Farm employee or representative, same is denied. This Defendant denies the remaining allegations contained in Paragraph LIII of the First Amended Complaint.

LIV.

That this Defendant admits that Mr. McIntosh signed a statement regarding the handling of his claim for damages allegedly resulting from Hurricane Katrina. That to the extent that Paragraph LIV implies or states any wrongful conduct on the part of any

State Farm employee or representative, same is denied. This Defendant denies the remaining allegations contained in Paragraph LIV of the First Amended Complaint.

LV.

That this Defendant is without knowledge sufficient to either admit or deny the allegations contained in Paragraph LV of the First Amended Complaint and for want of same, denies same and demands strict proof thereof.

LVI.

That this Defendant denies the allegations contained in Paragraph LVI of the First Amended Complaint.

LVII.

That this Defendant denies the allegations contained in Paragraph LVII of the First Amended Complaint.

LVIII.

That this Defendant denies the allegations contained in Paragraph LVIII of the First Amended Complaint.

LIX.

That this Defendant admits that Terry Blalock made contact with Mr. McIntosh. To the extent that Paragraph LIX implies or states any wrongdoing on the party of any State Farm employee or representative, same is denied. This Defendant further denies the remaining allegations contained in Paragraph LIX of the first Amended Complaint.

LX.

That this Defendant is without knowledge sufficient to either admit or deny the allegations contained in Paragraph LX of the First Amended Complaint and for want of

same, denies same and demands strict proof thereof.

LXI.

That this Defendant denies the allegations contained in Paragraph LXI of the First Amended Complaint.

LXII.

That this Defendant admits the allegations contained in Paragraph LXII of the First Amended Complaint.

LXIII.

That this Defendant denies the allegations contained in Paragraph LXIII of the First Amended Complaint, including, but not limited to, subparagraphs (1) through (9), inclusive.

LXIV.

That this Defendant denies the allegations contained in Paragraph LXIV of the First Amended Complaint.

LXV.

That this Defendant denies the allegations contained in Paragraph LXV of the First Amended Complaint.

LXVI.

That this Defendant denies the allegations contained in Paragraph LXVI of the First Amended Complaint.

LXVII.

That this Defendant admits that the Plaintiffs entered a contract with this

Defendant and that the terms of the contract speak for themselves. This Defendant denies the remaining allegations contained in Paragraph LXVII of the First Amended Complaint.

LXVIII.

That this Defendant admits that the Plaintiffs' insured property was damaged by Hurricane Katrina, but it reserves the right to contest the extent, nature, and cause of the damage. This Defendant denies the remaining allegations contained in Paragraph LXVIII of the First Amended Complaint.

LXIX.

That this Defendant denies the allegations contained in Paragraph LXIX of the First Amended Complaint, including, but not limited to, subparagraphs (1) through (9).

LXX.

That this Defendant denies the allegations contained in Paragraph LXX of the First Amended Complaint.

LXXI.

That this Defendant denies the allegations contained in Paragraph LXXI of the First Amended Complaint.

LXXII.

That this Defendant denies the allegations contained in Paragraph LXXII of the First Amended Complaint.

LXXIII.

That this Defendant denies the allegations contained in Paragraph LXXIII of the First Amended Complaint.

LXXIV.

That this Defendant denies the allegations contained in Paragraph LXXIV of the First Amended Complaint.

LXXV.

That this Defendant denies the allegations contained in Paragraph LXXV of the First Amended Complaint.

LXXVI.

That this Defendant denies the allegations contained in Paragraph LXXVI of the First Amended Complaint.

LXXVII.

That this Defendant denies the allegations contained in Paragraph LXXVII of the First Amended Complaint.

LXXVIII.

That this Defendant admits that it had a duty to deal with the Plaintiffs fairly and in good faith. However, this Defendant denies the remaining allegations contained in Paragraph LXXVIII of the First Amended Complaint as they are worded.

LXXIX.

That this Defendant denies the allegations contained in Paragraph LXXIX of the First Amended Complaint, including, but not limited to, subparagraphs (1) through (13), inclusive.

LXXX.

That this Defendant denies the allegations contained in Paragraph LXXX of the First Amended Complaint.

LXXXI.

That this Defendant denies the allegations contained in Paragraph LXXXI of the First Amended Complaint.

LXXXII.

That this Defendant denies the allegations contained in Paragraph LXXXII of the First Amended Complaint.

LXXXIII.

That this Defendant denies the allegations contained in Paragraph LXXXIII of the First Amended Complaint.

LXXXIV.

That this Defendant denies the allegations contained in Paragraph LXXXIV of the First Amended Complaint.

LXXXV.

That this Defendant denies the allegations contained in Paragraph LXXXV of the First Amended Complaint.

LXXXVI.

That this Defendant denies the allegations contained in Paragraph LXXXVI of the First Amended Complaint.

LXXXVII.

That this Defendant denies the allegations contained in Paragraph LXXXVII of the First Amended Complaint.

LXXXVIII.

That this Defendant denies the allegations contained in Paragraph LXXXVIII of

the First Amended Complaint.

LXXXIX.

That this Defendant denies the allegations contained in Paragraph LXXXIX of the First Amended Complaint.

XC.

That this Defendant denies the allegations contained in Paragraph XC of the First Amended Complaint.

XCI.

That this Defendant is without knowledge sufficient to either admit or deny the allegations contained in Paragraph XCI of the First Amended Complaint and for want of same, denies same and demands strict proof thereof.

XCII.

That this Defendant denies the allegations contained in Paragraph XCII of the First Amended Complaint.

XCIII.

That this Defendant denies the allegations contained in Paragraph XCIII of the First Amended Complaint.

XCIV.

That this Defendant denies the allegations contained in Paragraph XCIV of the First Amended Complaint.

XCV.

That this Defendant denies the allegations contained in Paragraph XCV of the First Amended Complaint.

XCVI.

That this Defendant denies the allegations contained in Paragraph XCVI of the First Amended Complaint.

XCVII.

That this Defendant denies the allegations contained in Paragraph XCVII of the First Amended Complaint.

XCVIII.

That this Defendant denies the allegations contained in Paragraph XCVIII of the First Amended Complaint.

XCIX.

That this Defendant denies the allegations contained in Paragraph XCIX of the First Amended Complaint.

C.

That this Defendant denies the allegations contained in Paragraph C of the First Amended Complaint.

CI.

That this Defendant denies the allegations contained in Paragraph CI of the First Amended Complaint.

CII.

That this Defendant denies the allegations contained in Paragraph CII of the First Amended Complaint.

CIII.

That this Defendant denies the allegations contained in Paragraph CIII of the

First Amended Complaint.

CIV.

That this Defendant denies the allegations contained in Paragraph CIV of the First Amended Complaint.

CV.

That upon information and belief, this Defendant admits the allegations contained in Paragraph CV of the First Amended Complaint.

CVI.

That upon information and belief, this Defendant admits the allegations contained in Paragraph CVI of the First Amended Complaint.

CVII.

That upon information and belief, this Defendant admits the allegations contained in Paragraph CVII of the First Amended Complaint to the extent that the Plaintiffs are two of the customers of this Defendant.

CVIII.

That this Defendant denies the allegations contained in Paragraph CVIII of the First Amended Complaint.

CIX.

That this Defendant denies the allegations contained in Paragraph CIX of the First Amended Complaint.

CX.

That this Defendant denies the allegations contained in Paragraph CX of the First Amended Complaint.

CXI.

That this Defendant denies the allegations contained in Paragraph CXI of the First Amended Complaint, including, but not limited to, subparagraphs (A) through (H), inclusive.

Fourth Defense

This Defendant denies that the Plaintiffs are entitled to a judgment against it in any sum whatsoever.

Fifth Defense

This Defendant reserves the right to assert any further or additional defenses that may be developed during the course of discovery in this matter.

Sixth Defense

This Defendant is not guilty of bad faith in its dealings with the Plaintiffs.

Seventh Defense

This Defendant avers that the Plaintiffs have not been damaged as a result of any alleged wrongdoing on its part.

Eighth Defense

This Defendant denies it has been guilty of any conduct, which entitles Plaintiffs to recover punitive damages.

Ninth Defense

This Defendant avers that the First Amended Complaint fails to state a claim upon which punitive damages may be awarded to the Plaintiffs.

Tenth Defense

This Defendant affirmatively pleads that the Plaintiffs are not entitled to recover

extra-contractual damages, punitive or otherwise, and that there is no basis for such a claim.

Eleventh Defense

This Defendant affirmatively pleads any award of punitive or exemplary damages or extra-contractual damages of any type, whether compensatory or otherwise, is precluded because State Farm clearly had at a minimum, legitimate and arguable reasons for its conduct and decisions in this case.

Twelfth Defense

This Defendant avers that any award of punitive damages to Plaintiffs in this case will be violative of the constitutional safeguards provided to State Farm under the Constitution of the State of Mississippi.

Thirteenth Defense

This Defendant avers that any award of punitive damages to Plaintiffs in this case will be violative of the constitutional safeguards provided to them under the Constitution of the United States of America.

Fourteenth Defense

This Defendant avers that any award of punitive damages to Plaintiffs in this case will be violative of the Constitutional safeguards provided to them under the due process clause of the Fourteenth Amendment to the Constitution of the United States in that the determination of punitive damages under Mississippi Law is vague, is not based upon any objective standards, is in fact, standardless, and is not rationally related to legitimate governmental interests.

Fifteenth Defense

This Defendant avers that any award of punitive damages to Plaintiffs in this case will be violative of the procedural safeguards provided to them under the Sixth Amendment to the Constitution of the United States in that punitive damages are penal in nature and consequently, it is entitled to the same procedural safeguards accorded to criminal defendants.

Sixteenth Defense

This Defendant affirmatively pleads that every element of the Plaintiffs' claims for punitive damages must be proved beyond a reasonable doubt because without such proof, said claim would violate their due process rights under the Fifth and Fourteenth Amendments to the United States Constitution and under Article 3, Section 14 of the Mississippi Constitution.

Seventeenth Defense

Plaintiffs' claim for punitive damages violates Article I, and the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution of the United States on the following grounds:

- A. It is a violation of the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against civil defendants upon the plaintiff satisfying a burden of proof which is less than a "beyond a reasonable doubt" burden of proof required in criminal cases;
- B. The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution;
- C. The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against

defendants, which thereby violates the due process clause of the Fourteenth Amendment of the United States Constitution;

D. The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages, which thereby violates the due process clause of the Fourteenth Amendment of the United States Constitution;

E. The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and, thus, violate the equal protection clause of the Fourteenth Amendment of the United States Constitution;

F. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the due process clause of the Fifth and Fourteenth Amendments and the equal protection clause of the Fourteenth Amendment of the United States Constitution;

G. The procedures pursuant to which punitive damages are awarded violate the dormant visions of the commerce clause of the United States Constitution, Article I, Section 8. Non-resident defendants are assessed punitive damages by Mississippi courts on a disparate and unequal basis in violation of the commerce clause, and the dormant provisions related thereto, of the United States Constitution.

Eighteenth Defense

Plaintiffs' claim for punitive damages violates the due process clause of Article 3, Section 14 of the Constitution of Mississippi on the following grounds:

A. It is a violation of the due process clause to impose punitive damages, which are penal in nature upon civil defendants upon the plaintiffs satisfying a burden of proof less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

B. The procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against the defendant;

C. The procedures pursuant to which punitive damages are awarded are unconstitutionally vague and not rationally related to legitimate governmental interests;

D. The procedures pursuant to which punitive damages are awarded fail

to provide specific standards for the amount of the award of punitive damages;

E. The award of the punitive damages in this action constitutes a deprivation of property without due process of law; and

F. It is a violation of the due process clause to impose punitive damages against the defendant which are penal in nature, yet compels a defendant to disclose potentially incriminating documents and evidence.

Nineteenth Defense

The award of punitive damages to the Plaintiffs in this action would constitute a deprivation of property without due process of law required under the Fifth and Fourteenth Amendments of the United States Constitution.

Twentieth Defense

The award of punitive damages against this Defendant in this action would violate the prohibition against laws that impair the obligations of contracts in violation of Article One, Section 22 of the Constitution of Mississippi.

Twenty-first Defense

The award of punitive damages against this Defendant in this action would violate the due process clause of the United States Constitution, in accordance with the decisions of the United States Supreme Court in Phillip Morris USA v. Williams, 549 U.S. ____, 127 S.Ct. 1057, __ L.Ed.2d ____ (2007), BMW v. Gore, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), Cooper Ind. Inc v Leatherman Tool Group, Inc., 532 U.S. 424, 121 Sup. Ct. 1678, 149L.Ed..2D 674 (2001), State Farm Mutual Automobile Insurance Company v. Campbell, 538 US 408, 123 S.Ct. 1513 (2003), on the following grounds:

A. It is a violation of this Defendant's right to due process to impose punitive damages to deter future misconduct, where less drastic remedies

could achieve this goal;

B. It is a violation of due process to subject this Defendant to punitive damages without providing this defendant fair notice of the conduct that will subject it to punishment and the severity of the penalty that may be imposed;

C. It is a violation of due process to punish this defendant with the intent of changing its lawful conduct in other states; and

D. It is a violation of this Defendant's right to due process to impose punitive damages which are grossly excessive.

Twenty-second Defense

This Defendant affirmatively pleads that the Plaintiffs have failed to satisfy conditions precedent and/or conditions subsequent to coverage arising out of any and all insurance agreements in effect between State Farm and the Plaintiffs at the time of the Plaintiffs' alleged loss and/or claims.

Twenty-third Defense

This Defendant affirmatively pleads that some of the Plaintiffs' claims are either not covered or excluded from coverage under any applicable State Farm policy.

Twenty-fourth Defense

That by way of avoidance and Affirmative Defense, this Defendant would show that the Plaintiffs have failed to plead fraud with sufficient particularity in violation of Rule 9(b) of the Federal Rules of Civil Procedure, and as such, any claims pertaining thereto should be dismissed.

Twenty-fifth Defense

That by way of avoidance and Affirmative Defense, the Defendant would show that the Plaintiffs have failed to join Bancorp South which is the mortgagee on the subject property and which is a necessary party within the meaning of Rule 19 of the Federal Rules of Civil Procedure.

AND NOW having fully answered the First Amended Complaint exhibited against it paragraph by paragraph, and having set forth its Affirmative Defenses, the Defendant respectfully requests that the First Amended Complaint of the Plaintiffs be dismissed with prejudice and with all costs to the Plaintiffs.

Respectfully submitted,

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

BY: /s/ H. Benjamin Mullen

H. BENJAMIN MULLEN

CERTIFICATE OF SERVICE

I, **H. BENJAMIN MULLEN**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have this date electronically filed the foregoing Separate Answer to First Amended Complaint with the Clerk of Court using the ECF system which sent notification of such filing to the following and further that I this day mailed, postage prepaid, a true and correct copy of the foregoing Separate Answer to First Amended Complaint to:

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DATED, this the 20th day of June, 2007.

/s/ H. Benjamin Mullen

H. BENJAMIN MULLEN

H. BENJAMIN MULLEN (9077)
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