



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

EDWARD E. GEMMILL

PLAINTIFF

v.

CIVIL ACTION NO. 1:05-cv-00692-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

PRETRIAL ORDER

1. Choose [by a \checkmark mark] one of the following paragraphs, as is appropriate to the action:

A pretrial conference was held

Date:

Time:

United States Courthouse at: The Dan M. Russell, Jr. Federal Building,
2012 15th Street, Courtroom 506
Gulfport, Mississippi

before the following judicial officer: Senior U. S. District Judge L. T. Senter, Jr.

2. The following counsel appeared:

- a. For the Plaintiff:

Name	Address	Telephone
Jack L. Denton, Esq.	Morgan Square 955 Howard Avenue Post Office Box 1204 Biloxi, MS 39533	(228) 374-8722
William C. Walker, Jr., Esq.	299 South 9 th Street	(662) 234-8074

Suite 100
Post Office Box 1115
Oxford, MS 38655

b. For the Defendant:

Name	Address	Telephone
Scott Corlew, Esq. John A. Banahan, Esq.	Post Office Drawer 1529 Pascagoula, MS 39568-1529	(228) 762-6631

3. The pleadings are amended to conform with this pretrial order.
4. The following claims, including claims stated in the complaint, have been filed:
Plaintiff's claim against Defendant for breach of insurance contract and bad faith.
5. The basis for the court's jurisdiction is: 28 U.S.C. § 1332(a) (diversity of citizenship between the parties and an amount in controversy in excess of \$75,000.00 exclusive of interest and costs).
6. There is the following jurisdictional question:
NONE.
7. The following motions remain pending:

Defendant's Motion to Recuse Law Clerk.
 Defendant's Motion for Jury Procedures.
 Defendant's Motion for Continuance.

*DEFENDANT'S MOTION TO
 SUPPLEMENT BROWNS AFFIDAVIT
 AND CHANGE OF VENUE
 JTB*

8. The parties submit the following concise summaries of the ultimate facts as claimed by:
 By Plaintiff:

1. On August 29, 2005, during Hurricane Katrina completely destroyed Edward Gemmill's home and personal property located at 663 Watersview Drive, Biloxi, Mississippi, leaving only a slab.

2. The Gemmill home and personal property were insured for certain losses under a homeowner's insurance policy issued by State Farm Fire and Casualty.
3. The amount of the dwelling coverage was \$142,773.00, the dwelling extension was \$14,277.00, and the amount of the contents coverage was \$107,080.00.
4. The value of the dwelling and dwelling extension equaled or exceeded the amount of the dwelling and dwelling extension coverages; the dwelling actual cash value was \$217,813.00.
5. The value of the contents equaled or exceeded the amount of the contents coverage.
6. The Gemmill home was also insured under a flood policy issued by State Farm.
7. Edward Gemmill made an insurance claim for the full dwelling dwelling extension, and contents coverage under the State Farm homeowner's policy and for full dwelling coverage under the State Farm flood policy.
8. The flood policy paid Edward Gemmill the maximum coverage of \$128,100.00 on the home; there was no contents coverage under the flood policy.
9. State Farm denied all of the homeowner's claim.
10. The State Farm homeowner's insurance policy covered accidental direct physical loss to the dwelling and dwelling extension, unless excluded, and covered wind storm damage to the personal property, unless excluded.
11. Events during Hurricane Katrina, a windstorm, caused direct physical loss

to the dwelling, dwelling extension, and contents.

12. State Farm denied all of the Gemmill homeowner's claim because State Farm said it had determined all the damage was caused by flood, which was excluded.
13. The flood damage for which the flood insurance paid was covered under the flood policy.
14. The greater damage was caused by the wind.
15. Since some of the damage was caused by flood and some by wind, Edward Gemmill is entitled to recover \$89,713.00 under homeowner's dwelling coverage, \$14,277.00 under homeowner's dwelling extension coverage, and \$107,080.00 under homeowner's contents coverage.
16. State Farm's denial of the homeowner's claim was clearly contrary to the insurance policy.
17. State Farm set up and used a procedure which resulted in the denial of all homeowner's claims if there was evidence of surge unless there was, remaining on the slab, independent windstorm damage to separate portions of the property.
18. State Farm's procedure resulted in no payment under homeowner's coverage in any slab case
19. State Farm also set up and utilized a procedure to deny homeowner's claims when a flood policy, underwritten by the federal government, could be used to provide some benefits.
20. State Farm compounded its bad faith by relying on the "concurrent cause" language in its policy, clearly contrary to Mississippi law, and by falsely

stating that it has not done so.

21. State Farm has continued to this day to refuse to pay any of the homeowner's claim even though State Farm has hired an engineer who admits that at least some of the damage was not caused by flood, State Farm taking the position that it can put the burden of proof as to the separation of water from wind on the insured in spite of the burden being placed upon State Farm to prove the water damage exclusion entitled it to refrain from paying any sum under the homeowner's claim.
22. Edward Gemmill is entitled to recover, in addition to the full amount of his claim (\$211,070.00), punitive damages up to \$5,000,000.00.

By Defendant:

This Complaint was filed by Edward E. Gemmill against State Farm Fire and Casualty Company. It alleges that State Farm failed to disclose that hurricane deductible does not imply hurricane coverage nor did it disclose its present undisclosed intention to not pay for a covered wind loss or storm surge even though that term is not listed in the so called flood exclusion. The Plaintiff argues that he justifiably relied on these non-disclosures and as a result should have coverage equal to his benefits under the homeowners policy. He claims \$50,000.00 in damages for emotional distress and \$5,000,000.00 in punitive damages and coverage up to the amount of his homeowners policy.

The Plaintiff had a homeowners policy no. 24-10-3961-1 with State Farm Fire and Casualty Company. The policy had structural limits of \$142,773.00; with dwelling extension coverage of \$14,277.00; contents coverage of \$107,080.00 and \$2,500.00 in jewelry and fur limits. The Plaintiff also had a flood insurance policy which was written

through State Farm in the amount \$128,100.00 with no contents coverage. The Plaintiff was paid \$128,100.00 in damages under the flood policy. The Plaintiff was also paid \$27,720.74 under the homeowner's policy.

The Defendant's experts, Bob Dean and Kurt Gurley, have determined that the destruction of Plaintiff's home was caused by flood, surface water and/or tidal water which is specifically excluded under the Plaintiff's homeowner's policy. State Farm was unable to conclude there was any wind damage during its investigation of the claim. The investigation revealed the property was destroyed by flood and tidal surge. Since filing of the suit and in response to the Plaintiff's claim that the destruction of the house was due to the forces of wind, State Farm has attempted to determine if there could have been wind damage prior to the destruction of the house. This is the primary issue for the jury in this case.

The Plaintiff's expert has contended that the home was completely destroyed by wind prior to the onset of tidal surge or flooding. State Farm's initial investigation and review of these claims indicate that the house was destroyed by water rather than wind.

9. The following facts are established by the pleadings, by stipulation, or by admission:

1. The Plaintiff, Edward Gemmill, purchased a homeowner's insurance policy with State Farm Policy No. 24-10-3961-1, which was in effect the date of Hurricane Katrina with dwelling policy limits of \$142,773.00, a dwelling extension of \$14,277.00, and contents limits of \$107,080.00.
2. The Plaintiff's home was destroyed by events during Hurricane Katrina.
3. The Gemmill home was also insured under a flood policy through State Farm.

4. Edward Gemmill made an insurance claim for the dwelling and contents limits under the homeowner's policy and for dwelling limits under the flood policy.
5. The flood policy paid Edward Gemmill the maximum coverage of \$128,000.00 on the home; there was no contents coverage under the flood policy.
6. Edward Gemmill made a claim under the State Farm homeowner's policy for full dwelling, dwelling extension, and contents limits.
7. Events associated with Hurricane Katrina, caused direct physical loss to the dwelling and contents.
8. The flood damage for which the flood insurance paid was covered under the flood policy.
9. The following facts are contested:

By Plaintiff:

- a. whether and, if so, the amount of actual and punitive damages Plaintiff is entitled to recover.
- b. whether the flood damage for which the flood insurance paid was covered under the flood policy.
- c. whether the greater damage was caused by the wind.
- d. since some of the damage was caused by flood and some by wind, whether Edward Gemmill is entitled to recover \$89,713.00 under homeowner's dwelling coverage, \$14,277.00 under homeowner's dwelling extension coverage, and \$107,080.00 under homeowner's contents

coverage.

- e. whether State Farm's denial of the homeowner's claim was clearly contrary to the insurance policy.
- f. whether State Farm set up and used a procedure which resulted in the denial of all homeowner's claims if there was evidence of surge unless there was, remaining on the slab, discernible wind damage.
- g. whether State Farm's procedure resulted in no payment under homeowner's coverage in any slab case.
- h. whether State Farm has continued to this day to refuse to pay any of the homeowner's claim even though State Farm has hired an engineer who admits that at least some of the damage was not caused by flood.
- i. whether State Farm compounded its bad faith by relying on the "concurrent cause" language in its policy, clearly contrary to Mississippi law, and by falsely stating that it has not done so.
- j. whether State Farm also set up and utilized a procedure to deny homeowner's claims when a flood policy, underwritten by the federal government, could be used to provide some benefits.
- k. whether State Farm has continued to this day to refuse to pay any of the homeowner's claim even though State Farm has hired an engineer who admits that at least some of the damage was not caused by flood, State Farm taking the position that it can put the burden of proof as to the separation of water from wind on the insured in spite of the burden being placed upon State Farm to prove the water damage exclusion entitled it to refrain from paying any sum under the homeowner's claim.

- l.** whether Edward Gemmill is entitled to recover, in addition to the full amount of his claim (\$211,070.00), punitive damages up to \$5,000,000.00.
- m.** The value of the dwelling and dwelling extension equaled or exceeded the amount of the dwelling limits; the dwelling actual cash value was \$217,813.00.
- n.** The value of the contents was in excess of the limits amount.
- o.** The amount in dispute is the difference between the value of Plaintiff's dwelling, dwelling extension, and contents on August 29, 2005 and the amount which has been paid under the flood policy, not to exceed the homeowner policy limits.
- p.** State Farm denied all of the homeowner's claim.
- q.** The State Farm homeowner's insurance policy covered accidental direct physical loss to the dwelling and dwelling extension, unless excluded, and covered wind storm damage to the personal property unless excluded.
- r.** State Farm denied all of the Gemmill homeowner's claim because State Farm said it had determined all the damage was caused by flood, which was excluded under the homeowner's policy.

By Defendant:

- a.** Whether the Plaintiffs' home was completely destroyed by wind as claimed by Plaintiffs or by water as claimed by Defendant.
- b.** The extent of, if any, wind damage to the Plaintiffs' home prior to destruction by water.
- c.** The Plaintiff's home was destroyed during Hurricane Katrina, leaving only

a slab. The value of the dwelling, which is in dispute, was no greater than the amount of the dwelling coverage. The value of the contents is also in dispute.

- d. The Plaintiff made an insurance claim for the full dwelling and contents coverage under both the homeowners and flood insurance policies.
- e. Whether the contents were destroyed by a covered peril or excluded water.

11. The contested issues of law are as follows:

By Plaintiff: None.

By Defendant:

- a. Whether the Plaintiff has the burden under the terms of the policy of insurance of proving that any contents damaged during Hurricane Katrina were damaged as a result of a named peril, namely wind.
- b. Whether the Plaintiff has the duty under the terms and conditions of policy of insurance to establish the extent of damages claimed under the policy.
- c. Whether each element of Plaintiff's claim for punitive, exemplary or non-punitive extra contractual damages, including the amount of such damages, must be proven by clear and convincing evidence as required by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and by Article III, Section 14 of the Constitution of the State of Mississippi.
- d. Whether any award of punitive exemplary or non-punitive extra contractual damages assessed against State Farm must have a pre-determined upper

limit, either as a maximum multiple of compensatory damages or an absolute maximum amount, to protect State Farm's due process rights as guaranteed by the Fourteenth Amendment of the United States Constitution and by Article III, Section 14 of the Constitution of the State of Mississippi.

- e. Whether any award of punitive, exemplary or non-punitive extra contractual damages assessed against State Farm must have a pre-determined upper limit, either as a maximum multiple of compensatory damages or an absolute maximum amount, to protect State Farm from an excessive award in violation of the excessive fines clause of the Eighth Amendment to the United States Constitution and Article III, Section 28 of the Constitution of the State of Mississippi.
- f. Whether any award of punitive, exemplary or non-punitive extra contractual damages may be assessed against State Farm without the jury being first clearly and uniformly instructed as to the elements required and the amount of verdict appropriate so as to protect State Farm's due process and equal protection rights as guaranteed by the Fourteenth Amendment to the United States Constitution and by Article III, Section 14, of the Constitution of the State of Mississippi.
- g. Whether any award of punitive, exemplary or non-punitive extra contractual damages may be assessed against State Farm without the jury being first instructed regarding the applicable principles of deterrence and punishment and the necessary relationship between the Plaintiffs' actual damages and punitive damages so as to protect State Farm's due

process and equal protection rights as guaranteed by the Fourteenth Amendment to the United States Constitution and by Article III, Section 14 of the Constitution of the State of Mississippi.

- h.** Whether any award of punitive, exemplary or non-punitive extra contractual damages may be assessed against State Farm without first prohibiting the jury from awarding any such damages in whole or in part on the basis of individually discriminatory characteristic, including State Farm's corporate status so as to protect State Farm's due process and equal protection rights as guaranteed by the Fourteenth Amendment to the United States Constitution and by Article III, Section 14 of the Constitution of the State of Mississippi.
- i.** Whether any award of punitive, exemplary or non-punitive extra contractual damages may be assessed against State Farm because the standards for determining liability for such damages as well as the amount of such damages are vague, imprecise, inconsistent and arbitrary and are not defined with sufficient clarity to give advance notice to State Farm or any other potential defendant of the prohibited conduct or mental state making an award of punitive damages possible.
- j.** Whether any award of punitive, exemplary or non-punitive extra contractual damages may be assessed against State Farm without there being trial and appellate court review on the basis of uniform and objective standards so as to protect State Farm's due process and equal protection rights as guaranteed by the Fourteenth Amendment to the United States Constitution and by Article III, Section 14 of the Constitution of the State of

Mississippi.

- k. Whether any award of punitive, exemplary or non-punitive extra contractual damages may be assessed against State Farm without affording State Farm protections similar to those afforded to criminal defendants including, but not limited to, the protection against unreasonable searches and seizures, double jeopardy, or impermissible multiple punishments and compelled self-incrimination, the right to confront adverse witnesses, the right to compulsory process for favorable witnesses, the right to the effective assistance of counsel and to a unanimous verdict of a twelve-person jury on every element of an award of punitive damages so as to protect State Farm's due process and equal protection rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and provided by Article 3, Sections 14, 22, 23, 26 and 31 of the Mississippi Constitution.
- l. Whether any award of punitive, exemplary or non-punitive extra contractual damages may be assessed against State Farm without requiring a bifurcated trial as to all punitive damages issues so as protect State Farm's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 3, Section 14 of the Constitution of the State of Mississippi.
- m. Whether any award of punitive, exemplary or non-punitive extra contractual damages which is based in whole or in part on State Farm's net worth, wealth, or value of assets would deny State Farm's right to equal protection guaranteed by the Fifth and Fourteenth Amendments to

the United States Constitution and by Article 3 Section 14 of the Mississippi Constitution.

- n. Whether any award of punitive, exemplary or non-punitive extra contractual damages may be assessed against State Farm which is not rationally proportional to the Plaintiff's actual compensatory damages as well as criminal sanctions that could be imposed for comparable misconduct.
- o. Whether any award of punitive, exemplary or non-punitive extra contractual damages may be assessed against State Farm because State Farm clearly had, at a minimum, legitimate and arguable reasons for its conduct and decisions in this case.
- p. Whether the Plaintiff may recover any extra-contractual or punitive damages without establishing their right to such damages by clear and convincing evidence.
- q. Whether the Plaintiff may recover any extra contractual or punitive damages without establishing their right to such damages beyond a reasonable doubt.
- r. Whether each element of Plaintiff's claim for punitive, exemplary or non-punitive extra-contractual damages must be shown beyond a reasonable doubt as required under the Fourteenth Amendment to the United States Constitution and under Article III, Section 14 of the Constitution of the State of Mississippi.
- s. Whether or not in a bifurcated trial with issue of liability and damages under the contract being phase 1 and punitive damages, if any, being

phase 2 there should be no evidence in the first phase introduced as to how or why the company made a decision to deny the claim, including the wind water claim handling protocol or any other particular document used or reason for denial in the first phase, those issues being deferred until phase 2 on punitive damages, if any.

12. The following is a list and brief description of all exhibits (except exhibits to be used for impeachment purposes only) to be offered in evidence by the parties. Each exhibit has been marked for identification and examined by counsel.

A. To be Offered by the Plaintiff:

P-1 The Insurance Policy and Declaration Page (To be provided by Defendant)

P-2 The Denial Letters of September 30, 2005 and December 12, 2005

P-3 The Claim File

P-4 Contents Claim

P-5 James T. Slider Report with Exhibits

P-6 Slider Resume

P-7 The Wind/Water Claims Handling Protocol

P-8 Number 75-20 Claim Practices: Water Damage Losses

P-9 Number 75-104 Claim Practices: Claim Interpretation-Losses Not Insured

P-10 First Four Pages of Annual Statement.

Plaintiff reserves the right to introduce into evidence any exhibits listed by Defendant.

The authenticity and admissibility in evidence of the preceding exhibits are

stipulated. If the authenticity and/or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specific ground(s) for the objection(s).

Exhibits Objected to by the Defendant:

- P-3 Relevance; Authenticity
- P-5 Authentication; hearsay
- P-6 Authentication; hearsay
- P-10 Relevance; Violates U.S. Supreme Court Precedence

Defendant objects to Plaintiff's exhibits P-7 through P-10, on the grounds that the aforementioned exhibits are irrelevant in phase 1 of the trial and the probative value is substantially outweighed by the danger of unfair prejudice. Also there is not evidence from which the issue of punitive damages should be submitted to the jury to justify introduction of these exhibits.

B. To be offered by the Defendant, State Farm Fire & Casualty Company:
Defendant reserves the right to introduce into evidence any exhibits listed by Plaintiff.

- D-1 State Farm Insurance Policy 24-103961-1
- D-2 State Farm claim file
- D-3 Expert report of Kurtis Gurley
- D-4 Supplemental expert report of Kurtis Gurley
- D-5 Kurtis Gurley's resume
- D-6 Expert report of Robert Dean
- D-7 Supplemental expert report of Robert Dean
- D-8 Robert Dean's resume

- D-9 USGS aerial photograph depicting post Katrina damage
- D-10 USGS aerial photograph depicting Gemmill neighborhood pre Katrina (the Defendant intends to supplement another photograph taken closer in time to Hurricane Katrina)
- D-11 USGS aerial photograph depicting topographical map
- D-12 USGS aerial photograph depicting topographical lines map
- D-13 Aerial photograph depicting Gemmill neighborhood property plot information
- D-14 Aerial photograph depicting Gemmill property plot
- D-15 Aerial photograph depicting FEMA surge lines
- D-16 Aerial photographs zoomed to show Gemmill property damage (2 in number)
- D-17 Kevin Abraham video
- D-18 John Lestrade video
- D-19 A Storm Chaser's Story video
- D-20 Battle at the Beachfront video
- D-21 Pass Christian library video

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity and/or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specific ground(s) for the objection(s).

Exhibits Objected to by the Plaintiff:

- D-3 Hearsay
- D-4 Hearsay
- D-5 Hearsay

D-6 Hearsay

D-7 Hearsay; Not Timely Produced

D-8 Hearsay

D-17 Authentication; Hearsay, Relevance

D-18 Authentication; Hearsay, Relevance

D-19 Authentication; Hearsay, Relevance

D-20 Authentication; Hearsay, Relevance

D-21 Authentication; Hearsay, Relevance

- 13.** The following is a list and brief description of charts, graphs, models, schematic diagrams, and similar objects which will be used in opening statements or closing arguments, but which will not be offered in evidence:

a. By Plaintiff:

Objections, if any, to use of the preceding objects are as follows:

Enlargements of any Exhibits listed.

By Defendant:

b. By Defendant:

Enlargements of any Exhibits listed.

Objections, if any, to use of the preceding objects are as follows:

By Plaintiff:

See objections to Exhibits.

If any other objects are to be used by any party, such objects will be submitted to opposing counsel at least three days prior to trial. If there is then any objection to use of the objects, the dispute will be submitted to the court at least one day prior to trial.

14. The following is a list of witnesses Plaintiff anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements have been made with the trial judge prior to commencement of trial. The listing of a WILL CALL witness constitutes a professional representation, upon which opposing counsel may rely, that the witness will be present at trial, absent reasonable written notice to counsel to the contrary.

May testify live:

<u>Name</u>	<u>Will Call</u>	<u>May Call</u>	<u>Fact/Liability Expert Damages</u>	<u>Residence Address & Tel. No.</u>	<u>Business Address & Tel. No.</u>
Edward Gemmill	√		Fact/Liab Damages		
William Prince		√	Fact/Liab Damages	671 Watersview Dr Biloxi, MS 39532	
Lisa Gemmill		√	Fact/Liab Damages		
Terry Blalock		√	Fact/Liab Damages		
Tim Slider		√	Expert/Liab Damages		720 East Park Blvd Ste 110

Plano, TX 75074

214-563-1149

State Farm Corp.	√	Fact/Liab
Rep. At Trial		Damages

Plaintiff reserves the right to call any witness listed by any other party.

May testify by deposition:

	√	√	Fact/Liability	Residence	Business
	Will	May	Expert	Address &	Address &
<u>Name</u>	<u>Call</u>	<u>Call</u>	<u>Damages</u>	<u>Tel. No.</u>	<u>Tel. No.</u>
Terry Blalock *		√	Fact/Liab		
State Farm 30(b)(6)			Damages		
William Prince		√	Fact/Liab		
			Damages		

*portions of depositions may be used

State whether the entire deposition, or only portions, will be used. Counsel shall confer, no later than twenty days before the commencement of trial, to resolve all controversies concerning all depositions (videotaped or otherwise). All controversies not resolved by the parties shall be submitted to the trial judge not later than ten days prior to trial. All objections not submitted within that time are waived.

15. The following is a list of witnesses Defendant anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed

witnesses must be present to testify when called by a party unless specific arrangements have been made with the trial judge prior to commencement of trial. The listing of a WILL CALL witness constitutes a professional representation, upon which opposing counsel may rely; that the witness will be present at trial, absent reasonable written notice to counsel to the contrary.

May testify live:

Name	✓Will Call	✓May Call	Fact Liability Expert Damages	Address & Tel. No.	Address & Tel.
Kurt Gurley		✓	Expert/Liab/Damages	P.O. Box 116580 Gainesville, FL 32611 (352) 392-9537	
Robert Dean		✓	Expert/Liab/Damages	P.O. Box 116580 Gainesville, FL 32611 (352) 392-9537	
Doyse McReynolds		✓	Fact/Liab/Damages	1756 Popps Ferry Rd Biloxi, MS 39532 (228) 385-3100	
Christie Greer		✓	Fact/Liab/Damages	1756 Popps Ferry Rd Biloxi, MS 39532 (228) 385-3100	
Kevin Abraham		✓	Fact/Liab		
John Lestrade		✓	Fact/Liab		
Scott McPartland		✓	Fact/Liab		
Dave Lewison		✓	Fact/Liab		
Jim Edds		✓	Fact/Liab		

May testify by deposition:

Terry Blalock	✓	Fact/Liab/Damages	1080 River Oaks Drive, Suite B100 Flowood, MS 39232
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State whether the entire deposition, or only portions, will be used. Counsel shall

confer, no later than twenty days before the commencement of trial, to resolve all controversies concerning all depositions (videotaped or otherwise). All controversies not resolved by the parties shall be submitted to the trial judge not later than ten days prior to trial. All objections not submitted within that time are waived.

16. This is is not a jury case.
17. Counsel suggest the following additional matters to aid in the disposition of this civil action: None.
18. Counsel estimates the length of the trial will be 3 days.
19. As stated in paragraph 1, this pretrial order has been formulated (a) at a pretrial conference before the United States District Court Judge, notice of which was duly served on all parties, and at which the parties attended as is stated above, or (b) the final pretrial conference having been dispensed with by the Magistrate Judge, as a result of conferences between the parties. Reasonable opportunity has been afforded for corrections or additions prior to signing. This order will control the course of the trial, as provided by Rule 16, Federal Rules of Civil Procedure, and it may not be amended except by consent of the parties and the court, or by order of the court to prevent manifest injustice.

ORDERED, this the 22nd day of February, 2007.


UNITED STATES DISTRICT JUDGE

Wm C Wall
ATTORNEY FOR PLAINTIFF

ATTORNEY FOR PLAINTIFF

SC (Scott Corlew) f
ATTORNEY FOR DEFENDANT