



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

STATE FARM FIRE AND CASUALTY
COMPANY and STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY

PLAINTIFFS

v.

CIVIL ACTION NO. 2:07cv188 KS-MTP

JIM HOOD, IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL OF THE STATE
OF MISSISSIPPI

DEFENDANT

DEFENDANT'S MOTION FOR RECUSAL

Defendant, Jim Hood in his Official Capacity as Attorney General of the State of Mississippi, respectfully submits this Motion for Recusal requesting that the Court recuse itself from further consideration of any matters in this civil action, and in support thereof, states as follows:

1. The rule for federal judges regarding recusal is set forth by statute in 28 U.S.C. § 455. This statute states in relevant part:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

* * *

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

* * *

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

* * *

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest

28 U.S.C. § 455.

2. As an initial matter, § 455(b)(4) appears to be squarely on point with this proceeding. The Court disclosed to the parties that he had claims arising out of Hurricane Katrina for his homes in both Hattiesburg and McComb with the Plaintiff insurance companies and is a policyholder in one or both of the Plaintiffs. Section 455(b)(4) specifically addresses situation where a judge or applicable member of his family is a policyholder in a mutual insurance company, such as the Plaintiffs. In this case, the rule creates a near *per se* basis for recusal with the only question remaining to be resolved of whether the litigation *could* substantially affect the value.

3. Notably, in these cases, it is not the value of the proprietary interest held by virtue of the judge's status as a policyholder nor the appearance of impropriety that may arise. As the Supreme Court has noted, "§ 455(b)(4) requires disqualification no matter how insubstantial the financial interest and regardless of whether or not the interest actually creates an appearance of impropriety." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860, 108 S.Ct.

2194, 2203 (1988).

4. At least one court considering similar recusal questions involving policy ownership has granted an order of recusal. In *Hartman v. State Farm Mut. Auto. Ins. Co.*, 817 F.Supp. 1566, 1566 -1567 (S.D. Fla.1993), the court addressed recusal in a declaratory action involving claims that “certain changes in the defendants' policies and procedures . . . [were] unlawful.” The basis for recusal was that the presiding judge had “a proprietary interest as a policyholder” in “one” of the defendants. *Id.* There, the court held:

Thus, the undersigned must recuse himself if the outcome of the proceeding could “substantially affect” the value of his interest. In this case, the plaintiff seeks a declaration by the Court as to company practices which could have substantial economic effects on the defendant insurance companies. It appears, therefore, that the outcome of this action could substantially affect the value of the undersigned's interest in one of the defendants. Consequently, the undersigned finds that it is necessary in the interests of justice to recuse himself from presiding over the above-styled case.

Id.

5. Here, the issue involves claims handling procedures relating to the largest natural disaster to ever hit the United States that are and/or have been the subject of both civil actions and criminal investigations. The stakes for State Farm in this litigation are even more serious and wide ranging than those in *Hartman*, and accordingly, recusal under § 455(b)(4) is appropriate. State Farm alleges, *inter alia*, that the criminal investigation is an attempt to coerce State Farm into settling a “large number of civil actions” filed by the Scruggs Katrina Group. See First Amended Complaint at ¶ 29. These pending insurance claims and “civil actions” number in the hundreds. The financial exposure of State Farm from these civil actions filed by Scruggs is immense, with previous claims resulting in multi-million dollar judgments against

State Farm or high-dollar confidential settlements. Under State Farm's theory, relief from this Court would save State Farm from very expensive settlements in hundreds of civil claims. The civil liability issue alone will, if State Farm loses, subject it to substantial economic losses.

6. Moreover, the stakes for State Farm extend beyond potential millions of dollars in civil liability. State Farm seeks from this Court an order prohibiting any criminal investigation of "State Farm's handling of Hurricane Katrina claims" and prohibiting the institution of criminal charges against "State Farm or any of its current or former employees, directors, engineers, agents, counsel or adjusters concerning the handling of Hurricane Katrina related claims." *See* First Amended Complaint at Prayer for Relief. A criminal investigation and indictment, not to mention conviction, of State Farm, its directors, or other employees would have a substantial financial on State Farm. In sum, it cannot be reasonably argued that the result of this litigation will have an insubstantial economic effect on State Farm. Clearly the stakes are high; otherwise, the Plaintiffs would have not brought this action in federal court making the serious allegations against the Attorney General and other prominent and long-standing members of the Mississippi Bar.

7. Additionally, § 455(a) requires recusal of "[a]ny justice, judge, or magistrate judge of the United States . . . in any proceeding in which his impartiality might reasonably be questioned." Applying this standard the Fifth Circuit has held:

In order to determine whether a court's impartiality is reasonably in question, the objective inquiry is whether a well-informed, thoughtful and objective observer would question the court's impartiality." *Trust Co. v. N.N.P.*, 104 F.3d 1478, 1491 (5th Cir.1997). The purpose of § 455(a) is to avoid even an appearance of partiality. *United States v. Jordan*, 49 F.3d 152, 155 (5th Cir.1995).

Stated otherwise, the Fifth Circuit has held that “a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street.” *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980).

8. Given that the purpose of recusal is to “avoid even the appearance of partiality”, Attorney General Hood respectfully submits that this case calls for a recusal. The Court here is a policyholder of State Farm and had claims that were presumably handled to the Court’s satisfaction. The claims handling, and related activities, of the Plaintiffs are at the essence of matters surrounding the criminal investigation and numerous lawsuits that have been filed against the Plaintiff. The Attorney General respectfully suggest that for the Court to hear this matter, given his personal involvement with the Plaintiffs would cause the “average person on the street” to call into question the impartiality of the Court.

9. Moreover, it is common knowledge in this State and especially within the legal community that Judge Senter is handling Katrina matters in the Southern District of Mississippi. *Hood v. Mississippi Farm Bureau Ins. Co.*, 2006 WL 3802170 (S.D.Miss. 2006) (It is well known that my docket is comprised of all Hurricane Katrina insurance litigation in federal court.) Likewise, it is a matter of public record that State Farm has moved to recuse Judge Senter from cases in which State Farm was a defendant involving Katrina matters. *Guice v. State Farm Fire & Cas. Co.*, 2007 WL 601446 (S.D. Miss 2007). In *Guice*, State Farm sought the recusal of Judge Senter on the basis that Judge Roper and other district court employees had claims against State Farm. State Farm obviously believed and represented to the Court that the existent of these claims was such that a third party might reasonably question the impartiality of Judge Senter. Judge Senter resolved the controversy by ruling that Judge Roper and the other employees would

not be included in any future class that was certified. However, if, as State Farm urged to Judge Senter, the existence of claims by a non-presiding judge would cause an appearance of impartiality, it is even more clear here that where the Presiding Judge is a policyholder who had claims, the appearance of impartiality is evident.

10. Moreover, the instant case which involved Katrina matters was not filed in the Southern Division where the grand jury proceedings that form the basis for Plaintiffs' claims is pending. Likewise the case was not filed in the Jackson Division where the Defendant, Attorney General, resides both officially and individually, and the city in which Plaintiffs' attorneys are located. Instead the action was filed in Hattiesburg which is nearly ninety miles from any of the participants or parties in this lawsuit. This seemingly strange choice of venue only adds to the appearance of impropriety. The Plaintiffs' have previously attempted unsuccessfully to recuse Judge Senter and instead brought this action in Hattiesburg where the high probability was they would not obtain Judge Senter but would instead obtain the Court as judge on this case. These actions coupled together give an appearance of impropriety and would certainly give the "average person" cause to question the locations of this suit and the selection of the presiding Judge.

11. For the foregoing reasons, Attorney General Hood respectfully requests that the Court recuse itself from this matter.

WHEREFORE, PREMISES CONSIDERED, Defendant, Jim Hood in his Official Capacity as Attorney General of the State of Mississippi respectfully requests that his Motion be granted and that the Court recuse itself from any further consideration of any matters in this Civil Action.

This the 21st day of September, 2007

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**



s/ Harold Pizzetta

Harold Pizzetta, MSB #99867

SPECIAL ASSISTANT ATTORNEY GENERAL

Civil Litigation Division
Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3680
Facsimile: (601) 359-2003

CERTIFICATE OF SERVICE

I, Harrold Pizzetta, Special Assistant Attorney General of the State of Mississippi, do hereby certify that on September 21, 2007, and due to the this case being under seal and unavailable on the ECF System, I electronically filed the foregoing with the Honorable Keith Starrett, District Judge, via email, with email notification of such filing to the following:

Robert C. Galloway
Butler Snow O'Mara Stevens and Cannada, PLLC
P.O. Drawer 4248
Gulfport, MS 39502
email: bob.galloway@butlersnow.com

Jeffrey A. Walker
Butler Snow O'Mara Stevens and Cannada, PLLC
P.O. Box 22567
Jackson, MS 39225-2567
email: jeff.walker@butlersnow.com


s/ Harold Pizzetta