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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2007 OCT 12 PM 3:07

LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

JUDY KODRIN AND MICHAEL KODRIN

* CIVIL ACTION 06-8180
* JUDGE BARBIER

VERSUS

* SECTION "J" 5
* MAGISTRATE CHASEZ

STATE FARM INSURANCE CO., ET AL

PRETRIAL ORDER

1. The Pretrial Conference will be held on October 12, 2007 at 10:00 a.m.

2. Counsel:

Plaintiffs:

John W. Redmann, La. Bar No. 19984
Margaret E. Madere, La. Bar No. 28666
LAW OFFICE OF JOHN W. REDMANN, L.L.C.
5407 MacArthur Boulevard
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Telephone: (504) 433-5550
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Appearing on behalf of Plaintiffs, Michael and Judy Kodrin

Defendant:

William Ryan Acomb, La. Bar No. 16780
Michelle Trowbridge, La. Bar No. 390974
PORTEOUS, HAINKEL, JOHNSON & SARPY
704 Carondelet Street
New Orleans, LA 70130-3774
Telephone: (504) 581-3838
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Appearing on behalf of Defendant, State Farm Fire and Casualty Company

___ Fee _____
___ Process _____
 Dktd _____
___ CtRmDep _____
___ Doc. No _____

3. Parties:

Plaintiffs:

Michael and Judy Kodrin, 144 Superior Drive Raceland, Louisiana 70394

Defendant:

The defendant is State Farm Fire and Casualty Company ("State Farm"), a foreign insurance company authorized to conduct and conducting business in the State of Louisiana with its principal place of business in Bloomington, Illinois.

Defendant, State Farm Fire & Casualty Company is the homeowner's insurer of Michael and Judy Kodrin for the property located at 177 Holiday Drive Port Sulphur, Louisiana.

4. Jurisdiction:

Subject matter jurisdiction is based on diversity of citizenship pursuant to 28 U.S.C. § 1332. At the time suit was filed on August 25, 2006 and at all pertinent times, the Kodrins were citizens of the State of Louisiana and State Farm was a citizen of the State of Illinois. The amount in controversy exceeds the sum of seventy-five thousand (\$75,000.00) dollars, exclusive of interest and costs. This lawsuit was filed in the 25th Judicial District Court for the Parish of Plaquemines. State Farm timely removed this case on October 16, 2006. On November 9, 2006, plaintiffs filed a motion to remand. On January 23, 2007, this Court denied the plaintiffs' motion to remand and dismissed Brian R. Bubrig Insurance Agency, Inc.

5. Pending or contemplated motions:

Plaintiffs: Plaintiffs have filed or contemplate the following motions:

- a. Motion for Summary Judgment concerning the Burden of Proof set to be heard on the briefs on October 17, 2007;

b. Motion to Compel set to be heard before Judge Chasez on October 24, 2007, expedited hearing has been requested;

c. Contemplated Motions in Limine

Defendant objects to Plaintiffs' Motion to Compel as untimely and objects to the contemplated Motions as untimely and not properly identified.

Defendant: Defendant has filed or contemplates the following motions:

a. Motion to extend deadlines to exchange Expert reports submitted on briefs on October 3, 2007 as to W. Gardiner, Plaintiffs do not object to the addition of Barry Keim;

b. Motion for Summary Judgment concerning the Burden of Proof set to be heard on the briefs on October 17, 2007;

c. Motion for Summary Judgment concerning the applicability of 22:658 set to be heard on the briefs on October 17, 2007;

d. Motion for Summary Judgment concerning the Offset of Flood Payments set to be heard on the briefs on October 17, 2007.

e. Defendants will file a Motion to extend deadlines to exchange expert reports in order to allow for the October 4, 2007 supplemental report of James Danner

f. Defendant withdraws its previously filed Motion in Limine regarding the opinion of Neil B. Hall. Plaintiffs do not object to this withdrawal.

Plaintiffs object to all Defendant's Motions and Contemplated Motions except where specified in subsections a and f.

6. Brief Summary of Material Facts:

Plaintiffs:

Plaintiffs, Michael and Judy Kodrin owned a home at 177 Holiday Drive, Port Sulphur Louisiana. The home was Ms. Kodrin's childhood home and was gifted to her in an act of donation from her mother and her siblings. Mr. and Mrs. Kodrin had the property insured through State Farm for both Flood and Homeowner's coverages. Both policies were in full force and effect at the time of the loss.

Hurricane Katrina ravaged the Gulf Coast on August 29, 2005 and left the Kodrin home a pile of rubble. The roof was approximately 1000 yards away and nothing of the home remained except the rear steps and the mailbox.

The Kodrins first contacts State Farm concerning their loss on August 31, 2005. No steps were taken to evaluate Plaintiffs' claims until sometime between October 16, 2005 and October 20, 2005 when an adjuster, Patrick Kaminski came to the property. In front of Mr. Kodrin and a family friend, Henry Bellows, Mr. Kaminski stated that loss appeared to have been caused principally by the hurricane's winds and that he would "write it up" that way.

Thereafter, State Farm refused to make any payment whatsoever under Plaintiffs' homeowner's policy.

State Farm later hired an expert, James Danner, who went to the property and issued a report on December 2, 2005. Mr. Danner inspected the property on the day after the parish cleared the land. Mr. Danner's report states his conclusion is "There were structures in the area that received wind damage, but there was no evidence available to indicate that the insured's residence was damaged by wind prior to being destroyed by the storm surge and moving

waters.”

State Farm received this report and has refused to make any payment under *Plaintiffs’ homeowner’s policy*.

Plaintiffs hired an engineer, Neil Hall, who determined that the home was more likely than not an economic total loss prior to the arrival of the flood waters. In his deposition, Mr. Hall went so far as to state that he did not think it was even reasonably possible to explain the destruction of the Kodrin home by the flood waters.

Plaintiffs and State Farm both hired estimators who agree that the Replacement Cost Value of the home is higher than the combined policy limits of the Kodrins’ homeowner’s and flood policies.

State Farm continues to refuse to pay any sum under Plaintiffs’ homeowner’s policy, this despite their own adjuster, Patrick Kaminski’s recent deposition testimony that (presuming 12 feet of flood waters as stated by Barry Keim and Neil Hall) wind damage must have damaged at least one of the Kodrins’ neighbor’s roof, and his admission that, in fact, there was really know way for him to know if wind damaged the Kodrins’ home prior to the arrival of the flood waters.

Plaintiffs provided State Farm with a detailed contents list on October 20, 2005 through the adjuster Patrick Kaminski. State Farm was provided adequate documentation to substantiate Plaintiffs’ claims for contents loss under their homeowner’s policy.

State Farm continued to refuse any payment under the *Plaintiffs’ homeowner’s policy*.

Plaintiffs compiled an itemization of costs that they incurred as a result of living outside of their home due to the loss of their home. They did not provide this list to State Farm as State Farm had repeatedly and consistently refused to pay any sum under their homeowner’s policy.

Plaintiffs have since provided State Farm with this information.

Plaintiffs have been caused a great deal of mental pain and anguish resulting from the loss of their home, the displacement from their friends, family and community as well as the extended arduous battle with State Farm to receive benefits clearly due them under their contract and the law of Louisiana.

Property Damage: David Dye has valued the damage caused to the Property at \$341,745.59. State Farm has not paid the Kodrins any sum under their homeowner's coverage. The Kodrins received \$56,800.00 for flood coverage to the structure. Reducing the Replacement Cost Value by the flood payment, Plaintiffs request their policy limits of \$116,886.00.

Contents Damage: The Kodrins prepared a list of their contents valued at \$125,396.66. State Farm has not paid any sum for contents under the homeowner's coverage. The Kodrins received \$19,200.00 for flood coverage for their contents. Reducing the Contents Value by the flood payment, Plaintiffs request their policy limits of \$79,695.00.

Additional Living Expenses: The Kodrins have compiled a list of their living expenses incurred as a result of the loss of their home. The Kodrins have not been paid any sum for their additional living expenses. The policy limits are "actual costs." Plaintiffs request \$10,505.79.

Bad Faith: The Kodrins have been forced to retain an attorney with a forty percent contingency fee. Plaintiffs would also be able to collect twice the value of their claim in addition to attorneys fees. Plaintiffs' "naked" demand (contractual damages) under the policy for property, contents, and ALE is \$207,086.79. Plaintiffs seek general damages in the amount a jury deems reasonable for mental anguish. The double damage penalty (two times general and special damages). Plaintiffs also seek attorneys fees.

Plaintiffs reserve the right to submit alternative damages calculations before trial.

Defendant:

This is a Hurricane Katrina homeowners insurance dispute arising out of damage caused to the property located at 177 Holiday Drive, Port Sulphur, Louisiana.

The plaintiffs' house was donated to Judy Kodrin by her mother and siblings. Judy Kodrin's parents purchased from Freeport Sulphur in the 1960s and moved to Holiday Drive where it was placed on cinder block piers. Sometime later, the parents added a brick façade and an attached garage. The plaintiffs' house was a single family, single story, wood framed structure with brick facade situated on a raised cinder block pier on top of a chain wall strip foundation. There was a concrete slab supporting the garage building attached to the southwest corner of the residence.

The plaintiffs' home was completely destroyed by flood waters. Only the foundation slabs and steps remained on the property.

The plaintiffs had flood insurance. Plaintiffs made a claim under their flood policy issued by State Farm for the damage to their home caused by Hurricane Katrina. The flood policy provided \$56,800.00 in dwelling coverage and \$19,200.00 in personal property coverage. In September 2005, State Farm paid the plaintiffs an advance under their flood policy in the amount of \$2,500.00. In December 2005, State Farm paid the plaintiffs \$73,500.00, the remaining flood policy limits, for the damage to their dwelling and personal property.

The property was insured by State Farm under a Homeowners Policy which does not provide coverage for damage caused by flood waters. State Farm provided homeowners

insurance to the plaintiffs in the amount of \$106,260.00 in dwelling coverage; \$10,626.00 in dwelling extension coverage; \$79,695.00 in personal property coverage; and actual loss sustained in loss of use coverage. The policy has a two (2%) hurricane deductible. Appraiser Ed Gardiner did a pre-Katrina assessment and opined the structure was worth \$110,000 market value.

The claim was initially reported to State Farm on or about August 31, 2005 via internet. On September 6, 2005, State Farm paid the plaintiffs an advance under their flood policy. On September 27, 2005, the plaintiffs refused to settle their flood claim over the phone as they believed their home was damaged by a tornado. On October 20, 2005, adjuster Patrick Kaminski inspected the plaintiffs' home. State Farm had Jim Danner, an expert engineer, re-inspect the plaintiffs' property on November 26, 2005. Based upon his inspection, Mr. Danner issued a report dated December 2, 2005 in which Danner opined that there was no evidence to indicate that the plaintiffs' home was damaged by wind prior to being destroyed by the storm surge and moving waters. Danner determined that the surrounding area indicated that structures with similar floor elevations were also heavily damaged or destroyed by moving waters. Contrary to the plaintiffs' allegations, there was no evidence that the area received tornado type wind loading. Adjuster Shagg Peterson took additional photographs of the property on November 26, 2005. Based upon the inspections and Danner's expert report, State Farm denied the plaintiffs' homeowners claim on the grounds the damage to the plaintiffs' home was caused by flood waters, an excluded peril under the homeowners policy.

On December 8, 2005 State Farm's Shagg Peterson spoke to the plaintiffs and explained the loss settlement for both the homeowners and the flood claims and State Farm paid the

plaintiffs \$73,500.00, the remaining flood policy limits. The plaintiffs did not provide any proof of loss that their home was allegedly destroyed by wind. Plaintiffs accepted their full flood policy limits.

Barry Keim, an expert climatologist, has opined that the maximum sustained wind were probably near 98 mph with potential higher gusts, perhaps as high as 120-125 mph.

On July 12, 2007 the plaintiffs' attorney provided Rule 26 initial disclosures including a report prepared by Neil Hall dated July 12, 2007, in which Hall alleges that the plaintiffs' property was destroyed by wind.

State Farm obtained an additional report from Jim Danner dated October 4, 2007 in which Danner reviewed the additional information provided to State Farm, including Hall's report and Keim's report, and Danner re-affirmed his opinion that the property was damaged by flood.

State Farm did not violate any duties set out in the Louisiana bad faith statutes and did not act arbitrarily and capriciously. The plaintiffs damage to their property was caused by flooding, an excluded peril under the homeowners policy. State Farm's expert engineering reports clearly demonstrate that the cause of damage to the house was due to flood water, not wind.

7. Uncontested Material Facts:

- a. Judy Kodrin is the sole registered owner of the property located at 177 Holiday Drive, Port Sulphur, Louisiana.
- b. Plaintiffs entered into a contract with State Farm known as a homeowner's policy with Policy Number 18-CH-7692-3 which was in full force and effect on August 29, 2005 for

the property located at 177 Holiday Drive, Port Sulphur, Louisiana.

- c. The State Farm homeowner's policy provides limits of \$106,260.00, for dwelling, \$10,626.00, for other structures, \$79,695.00 for personal contents, and alternative living expenses at the actual loss sustained.
- d. State Farm's adjuster, Patrick Kaminski inspected the premises sometime between October 16, 2005 and October 20, 2005.
- e. State Farm issued flood policy, number 98-D6-8432-0, to plaintiffs which had the following coverages: \$56,800.00 in dwelling coverage and \$19,200.00 in personal property coverage.
- f. The plaintiffs were paid their flood policy limits for the damage to their property caused by Hurricane Katrina.
- g. The replacement cost of the insured property exceeds the combined homeowner's and flood policy limits for the structure.
- h. The property located at 177 Holiday Drive, Port Sulphur, Louisiana was subjected to flooding.

8. Contested issues of fact:

- a. Plaintiffs and defendant incorporate by reference all contested issues of law stated in Section 9 below to the extent such issues are deemed to be issues of fact and all issues of fact inherent in issues of law.
- b. Whether Defendant breached the insurance policy.
- c. Whether State Farm timely adjusted Plaintiffs' claim.
- d. Whether State Farm misrepresented the relevant policy.

- e. Whether State Farm has paid all amounts owed under policy no. 18-CH-7692-3.
- f. Whether State Farm made timely payments.
- g. The amount of the Plaintiffs' covered losses under their homeowners insurance policy.
- h. Whether any untimely payment was due to conduct considered arbitrary, capricious, or without probable cause.
- i. Whether the plaintiffs have incurred a loss covered under the homeowners policy.

Plaintiffs' homeowners policy excludes coverage for any loss which would not have occurred in the absence of one or more of the following 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:

* * *

b. **Earth Movement**, meaning the sinking, rising, shifting, expanding or improper compaction, site selection or any other external force. Earth movement also includes volcanic explosion or lava flow, except as specifically defined 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 sewerage from outside the residence premises or

plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, some well, or any other system designed to remove subsurface water which is drained and from the foundation area; or

- (3) Water below the surface of the ground, including the water which exerts a 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.

* * *

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 unsoundness in:
 - 1. planning, zoning, development, surveying, siting;
 - 2. design, specifications, workmanship, construction, grading, compaction;
 - 3. materials used in construction or repair; or
 - 4. maintenance;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 items a, b, and c unless the resulting loss is itself a Loss Not Insured by this section.

- j. Whether satisfactory proof of loss has been provided, and if so, the date it was provided to State Farm.

- k. Whether the plaintiffs sustained an accidental total physical loss of their home as a result of Hurricane Katrina.
- l. Whether wind damaged or destroyed the insured property, and to what extent.
- m. The replacement value of the damaged contents.
- n. The applicability of a depreciation rate for the damaged property under the homeowner's policy, if any.
- o. The value of the Kodrins' additional living expenses.
- p. Whether the Kodrins sustained mental anguish and inconvenience due to State Farm's bad faith, and to what extent.
- q. Whether the plaintiffs suffered general and special damages as a result of State Farm's alleged bad faith breach of the insurance contract.
- r. Whether Defendant acted in bad faith.
- s. Whether Defendant's conduct in adjusting the claim was bad faith.
- t. Whether State Farm breached its duties owed to the plaintiffs in violation of La R.S. 22:658.
- u. Whether State Farm breached its duties owed to the plaintiffs in violation of La R.S. 22:1220.
- v. Whether plaintiffs are entitled to any statutory penalties.
- w. Whether the plaintiffs should be awarded penalties assessed against State Farm in the amount not to exceed two (2) times the damages sustained or five thousand dollars (\$5,000.00) whichever is greater, pursuant to La R.S. 22:1220.
- x. The amount of penalties, if any, to be assessed against State Farm pursuant to La. R.S.

22:1220 (C).

- y. Whether State Farm's conduct violated La C.C. Art. 1997, and if so, whether plaintiffs are entitled to any damages.
- z. Whether the plaintiffs' property located at 177 Holiday Drive, Port Sulphur, Louisiana was subjected to winds sufficient to move it off its piers during Hurricane Katrina.
- aa. Whether the pressure on the plaintiffs' property was caused by flood water which was greater than the pressure caused by the hurricane winds.
- bb. Whether Hurricane Katrina produced any tornadoes in the vicinity of 177 Holiday Drive, Port Sulphur, Louisiana.
- cc. Whether the building located at 177 Holiday Drive, Port Sulphur, Louisiana was subjected to and experienced winds sufficient to move it off its piers.
- dd. Whether the plaintiffs sustained an accidental total physical loss of their home as a result of Hurricane Katrina.
- ee. Whether the plaintiffs sustained an accidental total physical loss of their property located at 177 Holiday Drive as a result of a covered loss under their homeowners policy.
- ff. The amount, if any, of the plaintiffs' covered losses under their homeowners insurance policy.
- gg. The amount due, if any, from State Farm to the plaintiffs under their homeowners insurance policy.
- hh. Whether the plaintiffs' property was damaged and moved from its foundation by the flood waters.
- ii. Whether the plaintiffs are owed any payment for covered damages or losses under their

homeowners policy.

- jj. Whether plaintiffs suffered a total loss as defined by La R.S. 22:695, and if so, whether State Farm is liable to plaintiffs.
- kk. Whether the wind data relied upon by plaintiffs' expert, Neil Hall, is unreliable.
- ll. Whether the data relied upon by defendant's expert, James Danner, is reliable.
- mm. Whether the data relied upon by defendant's expert, Barry Keim, is reliable.
- nn. On October 20, 2005 plaintiffs submitted a contents list to State Farm for the first time.
- oo. The property located at 177 Holiday Drive, Port Sulphur, Louisiana was subjected to a minimum of 98 mph sustained winds with three second gusts up to 125 mph.
- pp. The peak winds occurred at the 177 Holiday Drive, Port Sulphur, Louisiana property from 4:00 a.m. through 6:00 a.m. on August 29, 2005.
- qq. The levees in the area of 177 Holiday Drive, Port Sulphur, Louisiana began to over top at approximately 6:00 a.m.
- rr. The homeowner's policy offered a separate policy coverage in the amount of \$5,000.00 for jewelry and furs.
- ss. Whether the attached garage qualifies under the dwelling extension coverage.
- tt. On October 9, 2007, Plaintiffs submitted any documents verifying any additional living expenses.

9. Contested Issues of Law:

- a. Plaintiffs and defendant incorporated by reference all contested issues of fact stated in Section 8 above to the extent such issues are deemed to be issues of law and all issues inherent in issues of fact.

- b. Whether Plaintiffs' loss was covered under the policy, and to what extent.
- c. Whether Plaintiffs are entitled to costs, penalties, general damages, and attorneys' fees pursuant to La.R.S. 22:658 and/or La.R.S. 22:1220.
- d. Whether the amendments to La.R.S. 22:658 and/or La.R.S. 22:1220 approved by the legislature in 2006 apply to this case.
- e. Whether Defendant breached the insurance policy.
- f. Whether Defendant acted in bad faith.
- g. All issues of law implicit in the facts and pleadings of this matter.
- h. Whether State Farm's conduct in handling plaintiffs' claim is considered arbitrary, capricious, or without probable cause so as to entitle plaintiffs to damages under La. R.S. 22:658 and/or La. R.S. 22:1220.
- i. What version of La. R.S. 12:658 and/or La. R.S. 22:1220 applies to this particular claim
- j. Whether State Farm is liable to the plaintiffs for its alleged breach of contract and violations of La R.S. 22:658, 22:1220, and 22:695.
- k. Whether State Farm is liable to the plaintiffs for general and special damages for its alleged bad faith breach of the insurance contract.
- l. Whether the plaintiffs have a cause of action against State Farm under La R.S. 22:1220.
- m. Whether the "Valued Policy Law," La R.S. 22:695, applies and whether plaintiffs are entitled to policy limits.
- n. Whether plaintiffs have stated a cause of action that would entitle them to attorneys' fees or 50% penalties under newly revised La R.S. 22:658, which became effective August 15, 2006.

- o. Whether State Farm is liable to plaintiffs for any monies under their homeowners policy.
- p. Whether State Farm's conduct violated La C.C. Art. 1997, and if so, whether plaintiffs are entitled to any damages.
- q. Whether Plaintiffs are entitled to Actual Cash Value or Replacement Cost Value under their State Farm homeowner's policy.
- r. Whether the plaintiffs have a claim for the dwelling extension for the attached garage.

10. Exhibits:

Joint:

- a. A certified copy of State Farm Homeowners Insurance Policy 18-CH-7692-3.
- b. The entire homeowner's claims file, bates stamped HO-0001 - HO-0120.
- c. The entire flood claims file, bates stamped FL-0001 - FL-0138.
- d. The entire homeowner's claims file for April 2005 claim bates stamped *Prior Claim File-0001 - Prior Claim File-0083*.

Plaintiffs:

Without objection:

- a. Homeowners Insurance Policy 18-CH-7692-3 Declarations Sheet.
- b. Photographs taken of plaintiff's property and the surrounding area by Mr. Kodrin approximately September 12, 2005.
- c. Any and all exhibits and/or attachments referenced and/or relied upon in the Building Damage Assessment report prepared by Expert, Neil Hall.
- d. A list of damaged contents and their value.

- e. Defendant's initial disclosures.
- f. Defendant's discovery written responses.
- g. Defendant's discovery production of documents.
- h. Any and all documents listed or used by any other party.

With objection:

- i. List of Plaintiffs' Additional Living Expenses compiled by Plaintiffs.
- j. Photos of the property taken by Michael Kodrin approximately October 3, 2007.
- k. State Farm Claims Handling Manual.
- l. State Farm Induction Training Materials.
- m. All documents attached to the deposition of Michael Kodrin.
- n. All documents attached to the deposition of Judy Kodrin.
- o. All documents attached to the deposition of Neil Hall.
- p. All documents attached to the deposition of Patrick Kaminski.
- q. Building Damage Assessment report prepared by Expert, Neil Hall.

Plaintiffs reserve the right to amend its exhibit list prior to trial. Specifically, Plaintiffs reserve their right to add any and all documents produced as a result of Plaintiffs' Motion to Compel.

Plaintiffs submit that they filed their witness and exhibit list in accordance with the Court's prior order.

On October 9, 2007 plaintiffs provided defendants with all exhibits listed herein with the exception of the documents attached to the depositions of Michael Kodrin, Judy Kodrin, Neil Hall and Patrick Kaminski as these documents have not yet been received from the Court

Reporters. Plaintiffs will identify these documents immediately upon receipt.

Defendant objects to the following exhibits from Plaintiffs:

Defendant objects to the Additional Living Expenses (i) and the Photographs taken by Michael Kodrin on October 3, 2007 (j) as not timely identified and produced.

Defendant objects to the State Farm Claims Handling Manual (k) and the State Farm Induction Training Materials (l) as not timely identified and produced. Defendant also objects to their authenticity and relevance.

Defendant further objects to the use of documents attached to the depositions of Michael Kodrin (m), Judy Kodrin (n), Neil Hall (o) or Patrick Kaminski(p) as these documents are not properly identified herein.

Defendant objects to the admissibility of the Building Damage Assessment of Neil Hall (q) as he will be present and live at trial. Defendant concedes that should the trial proceed beyond a causation determination phase that the report may at that time be admissible.

Defendants:

Without Objection:

- a. Photographs of the property located at 177 Holiday Drive, Port Sulphur, Louisiana, 70083, taken by State Farm adjusters.
- b. Any and all documentation of the SBA loan submission by Michael Kodrin and Judy Kodrin, including the application provided by Plaintiffs in their discovery responses or contained within the claims file.
- c. State Farm Flood Policy issued to Judy and Michael Kodrin.
- d. Correspondence between State Farm and plaintiffs.

- e. Weather report prepared by Barry Keim.
- f. Interrogatories and Request for Production of Documents to Plaintiffs and plaintiffs' responses to discovery.
- g. State Farm underwriting documents for the flood policy.
- h. State Farm underwriting documents for the homeowner's policy.
- i. Plaintiffs' initial disclosures.
- j. The Petition for Damages.
- k. Any and all documents listed or used by any other party.

With Objection:

- l. December 2, 2005 report prepared by Jim Danner, Denson Engineers, Inc.
- m. Photographs referenced in the December 2, 2005 report prepared by Jim Danner, Denson Engineers, Inc.
- n. October 4, 2007 report prepared by Jim Danner, Denson Engineers, Inc.
- o. October 9, 2007 report prepared by Jim Danner, Denson Engineers, Inc.
- p. Payments by Flood Insurance to Michael Kodrin and Judy Kodrin.
- q. Appraisal prepared by W. Ed Gardiner of Murphy Appraisal Service.
- r. Any and all documentation of the SBA loan submission by Michael Kodrin and Judy Kodrin, including the application, other than those documents that were provided by Plaintiffs in their discovery responses or contained within the claims file.

Defendant reserves the right to amend its exhibit list prior to trial. Defendant submits that it filed its witness and exhibit list in accordance with the Court's prior order.

On October 9, 2007, defendant represented that Plaintiffs had been previously provided copies of the above exhibits prior to the meeting of counsel, with the exception of Jim Danner's 2005 photographs and Jim Danner's October 9, 2007 report which were both provided on October 9, 2007. Specifically, as to SBA documentation, State Farm represented that the only documentation that they were referring to in subsection b would be contained within the claims file and/or provided by the Plaintiffs in discovery responses.

Plaintiffs object to the following exhibits from Defendant:

- a. Plaintiff objects to the admissibility of the Reports of James Danner as he will be present and live at trial. Plaintiffs concede that should the trial proceed beyond a causation determination phase that the report may at that time be admissible.
- b. Photographs taken by James Danner of Denson Engineers, Inc. and referenced in his December 2, 2005. These photographs were not timely produced to Plaintiffs during discovery.
- c. The October 4, 2007 report of James Danner as this report was requested, prepared and exchanged well past the deadlines for the exchange of expert reports.
- d. The October 9, 2007 report of James Danner as this report was requested, prepared and exchanged well past the deadlines for the exchange of expert reports.
- e. Payments by Flood Insurance to Michael Kodrin and Judy Kodrin. For the reasons addressed in Plaintiff's Opposition to Defendant's Motion for Summary Judgment as to Offset or Credit. Information regarding these payments are irrelevant and inadmissible.
- f. Appraisal prepared by W. Ed Gardiner of Murphy Appraisal Service. This exhibit is being offered to show the Pre-Katrina Market Value of the property. This is irrelevant

and in no way offers assistance to the Judge or Jury.

- g. Any SBA materials that were not contained within the claims file and/or provided by Plaintiffs in response to discovery requests as any such documents were not produced or provided timely.

11.

a. Deposition testimony to be offered into evidence:

Plaintiffs:

At this time, Plaintiffs do not anticipate introducing deposition testimony in lieu of live testimony; however, Plaintiffs reserve their rights to introduce deposition testimony for any witness outside of the subpoena power or for impeachment.

Defendant:

At this time, Defendant does not anticipate introducing deposition testimony in lieu of live testimony; however, Defendant reserves their rights to introduce deposition testimony for any witness outside of the subpoena power or for impeachment.

12. Demonstrative Aids:

Plaintiffs:

Plaintiffs anticipate using enlargements of one or more of the above exhibits, sketches, photographs, plans, and diagrams of the insured property, a damages chart, a time line, charts and graphs regarding hurricane wind and water data and stock news and government footage of Katrina's effects and damages.

Defendant:

Defendant may provide a chart or graphs regarding hurricane wind and water data, and photographs.

The parties have not exchanged these demonstrative aids as of October 9, 2007 however, the parties agree that if any such objects will be used at trial they will be submitted to opposing counsel at least three working days prior to trial (by October 30, 2007) and, if there is then opposition to their use, the dispute will be submitted to the Court at least one day prior to trial (by November 2, 2007), except the Defendant objects to the use stock news and government footage of Katrina's effects and damages.

13. Witnesses:

Plaintiffs:

Plaintiffs will call the following in the absence of reasonable notice to opposing counsel to the contrary:

- a) Neil B. Hall, Ph.D.: 1923 CORPORATE SQUARE DR. SUITE A & B SLIDELL, LA 70458: an expert in structural/forensic engineering, Mr. Hall will testify as to his inspection and observations of the property, the building construction and damage, including a determination that structural damages were done by wind before water.
- b) Judy Kodrin: 144 Superior Dr. Raceland La 70394: The Plaintiff will testify as to her interactions with various representatives of State Farm, the condition of her home pre and post loss and her damages.
- c) Michael Kodrin: 144 Superior Dr. Raceland La 70394: The Plaintiff will testify as to his interactions with various representatives of State Farm, the condition of his home pre and post loss and his damages.

- d) Michael DesJardins Claim Representative State Farm Fire & Casualty Co., 6660 Riverside Drive, Metairie, La 70003: as to his actions taken on behalf of State Farm in the adjustment of the Kodrins' claims, any training or instruction provided to its adjusters in connection with Hurricane Katrina.
- e) Patrick Kaminski: 6888 So. Ivy, Apt. 10-07, Sentenall, Colorado: as to his actions taken on behalf of State Farm in the adjustment of the Kodrins' claims, any training or instruction provided to its adjusters in connection with Hurricane Katrina.
- f) James Danner, Denson Engineers, Inc.: 2030 Dickory Avenue, Suite 104, NOLA 70123: as to his observations and actions taken on behalf of State Farm in evaluating the Kodrins' claims.
- g) Brian R. Bubrig: 30931 Hwy 23 Buras, Louisiana 70041: as to the Kodrins' coverage, payment history and claims history with State Farm.
- h) Henry Bellows: 30 OAK ALLEY BLVD. MARRERO, LA 70072: as to conversations and actions of Patrick Kaminski while Kaminski conducted a site evaluation of the Kodrin property.
- i) Frank Boyd: Catastrophe Team Mgr., One State Farm Plaza, A2, Bloomington, Il 61710: as to his actions taken on behalf of State Farm in the adjustment of the Kodrins' claims, any training or instruction provided to its adjusters in connection with Hurricane Katrina.
- j) Corporate Representative of State Farm: as to actions taken in the adjustment of the Kodrins' claims, any operating protocols used in connection with adjusting Hurricane Katrina claims in Louisiana, and training or instruction provided to State Farm adjusters in connection with Hurricane Katrina claims in Louisiana.

k) any and all witnesses listed or called by the defendant.

Defendant objects to the following witnesses by Plaintiffs:

1. Henry Bellows was not identified in written discovery nor his address disclosed until October 9, 2007, in compilation of this Pre Trial Order and after the discovery deadline.
2. Corporate Representative of State Farm was not properly identified by plaintiff.

Defendants:

- a) Michael DesJardins, Claim Representative State Farm Fire & Casualty Co., 6660 Riverside Drive, Metairie, La 70003; will testify as a representative of State Farm and as to the claims handling.
- b) Shagg Peterson, Eberl's Claim Service, Inc., 7276 W. Mansfield Ave, Lakewood, Co 80235; an independent adjuster will testify regarding his claims handling, inspection and photographs.
- c) Patrick Kaminski, 6888 So. Ivy, Apt. 10-07, Sentenall, Colorado; an independent adjuster will testify regarding his claims handling, inspection and photographs.
- d) James R. Danner, Jr., Denson Engineers, Inc., 2030 Dickory Avenue, Suite 104, NOLA 70123; an expert structural engineer will testify regarding his inspections and opinions regarding the cause of loss/damage to the property in question.
- e) Barry Keim, Dept. of Geography & Anthropology, 227 Howe-Russell, Geoscience Complex, Louisiana State University Baton Rouge, La 70803; an expert climatologist who will testify regarding the weather conditions associated with Hurricane Katrina, including wind velocity and flooding.
- f) W. Ed Gardiner, Murphy Appraisal Services, 19411 Helenberg Rd, Covington, La

70433; an expert in property appraisal will testify regarding the pre-Katrina value of the property.

g) Frank Boyd, Catastrophe Team Mgr., One State Farm Plaza, A2, Bloomington, Il 61710; will testify regarding his claims handling.

h) Brian R. Bubrig, 130 Colony Rd., Belle Chasse, La 70037; a State Farm insurance agent who was the Kodrin's agent will testify regarding the Kodrin's insurance policies.

i) any and all witnesses listed or called by the plaintiffs.

Plaintiffs object to the following witnesses by Defendant:

a) W. Ed Gardiner. Defendant offers this witness to testify to the pre-Katrina market value of Plaintiffs' home. This testimony is irrelevant to the issues at hand and offers no assistance to either Judge or Jury.

The witness lists were filed in accordance with prior court orders. No other witness shall be allowed unless agreeable to all parties and their addition does not affect the trial date. This restriction will not apply to rebuttal witnesses or documents whose necessity cannot be reasonably anticipated.

Expert reports have been exchanged. There is an outstanding motion concerning the report of W. Ed Gardiner. Additionally, Plaintiffs object to the October 4, 2007 report of James Danner as this report was created after the deadline for exchanging expert reports. As this report was not timely, Plaintiffs ask that it be excluded.

14. All factual matters in this case will be tried before a jury.

Proposed jury instructions, special jury interrogatories, trial memoranda and any special questions that the Court is asked to put to prospective jurors on voir dire shall be delivered to the

Court and opposing counsel not later than five working days prior to the trial date, unless specific leave to the contrary is granted by the Court.

15. Damages:

The issue of liability will not be tried separately from that of quantum.

16. Other Matters:

Plaintiffs:

The following matters are important issues to be decided at the pre-trial or before the commencement of trial:

- a) Calculation of bad faith damages and penalties under La. Rev. Stat. 1220 and 658. The calculation of these bad faith damages and penalties and the effect of the 2006 amendments on these statutes materially affects the outcome of this case and whatever settlement possibilities there may be. Plaintiffs submit that briefing on these issues within seven days from the date of the pre-trial conference would assist greatly.
- b) All issues addressed in the Motions already before the Court.

Defendant:

- a) The application of any penalty statutes and potential damages that may be awarded, if any. Defendants request the opportunity to submit a Pre-Trial Brief on this issue.
- b) Defendant suggests that the order of the trial should proceed with the issue of causation (i.e. Wind versus Water) first to be determined prior to proceeding with other issues as necessary.

17.

Trial shall commence on November 5, 2007 at ~~8:00~~ ^{8:30 a.m.} a.m. The parties expect the trial to

last 4-5 days including Jury selection.

18.

This pre-trial order has been formulated after conference at which counsel for the respective parties have appeared in person. Reasonable opportunity has been afforded counsel for corrections, or additions, prior to signing. Hereafter, this order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.

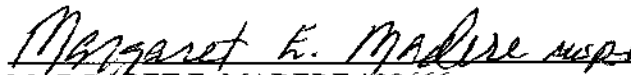
9.

The possibility of settlement of this case was considered.

RESPECTFULLY SUBMITTED FOR THE PLAINTIFFS:



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RESPECTFULLY SUBMITTED FOR THE DEFENDANT:

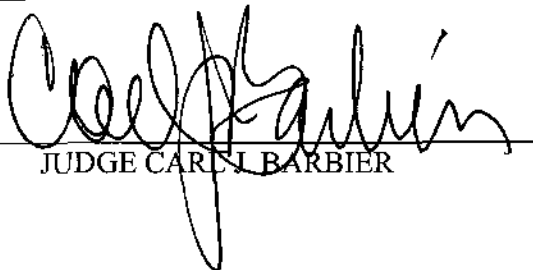


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APPROVED THIS 12th DAY OF October, 2007 at New Orleans, Louisiana.



JUDGE CARL J. BARBIER