

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

JUDY M. GUICE

PLAINTIFF

VS.

CIVIL ACTION NO. 1:06cv1-LTS-RHW

STATE FARM FIRE AND CASUALTY
COMPANY, ET AL.

DEFENDANTS

MOTION TO DISQUALIFY LAW CLERK

COME NOW, Defendants State Farm Fire and Casualty Company ("State Farm Fire") and State Farm Mutual Automobile Insurance Company ("State Farm Mutual") (collectively "State Farm"), by and through their counsel of record, and submit this motion to disqualify the Court's Law Clerk, Jerry Read, from any further participation in the instant action. Defendants would show unto this Court the following, to-wit:

I.

In August 2006, while acting as this Court's law clerk, Jerry Read and his wife filed a *pro se* complaint against their homeowners insurer, Allstate Insurance Co., regarding Allstate's handling of the Reads' Hurricane Katrina claim. In their complaint, the Reads asserted that Allstate had acted in bad faith by failing to pay for property damage caused by wind and rain and by various other acts of alleged misconduct in its handling of Hurricane Katrina claims in general and the Reads' claim in particular. The Reads sought both actual (contract) damages and punitive damages.

II.

Allstate's answer to the *Read* complaint alleged that the Reads' loss was due primarily to flooding and asserted as affirmative defenses the policy's flood and "weather conditions" exclusions, as well as special "causation" language in the policy.

III.

The *Read* action was settled by the payment of a sum "satisfactory" to the Reads, and a Final Judgment of Dismissal with Prejudice was entered on January 17, 2007.

IV.

During the entire period the *Read* lawsuit was pending, Mr. Read was this Court's law clerk in *Broussard v. State Farm Fire and Casualty Co.*, Civil Action No. 1:06cv6, in which the plaintiffs allege that State Farm Fire committed bad faith in the handling of their Hurricane Katrina claim. Among the key issues in that lawsuit were (and are) the proper interpretation of the water damage exclusion and the applicability of the anti-concurrent cause language in State Farm Fire's policy, and the proper allocation of the burden of proof.

V.

Less than one week before the *Read* action settled, this Court directed a verdict for the *Broussard* plaintiffs on their breach of contract claim and awarded them full policy limits. The Court also allowed the issue of punitive damages to go to the jury, which awarded the plaintiffs \$2.5 million in punitive damages (later reduced by the Court to \$1 million). Both the JMOL and the Court's conclusion that State Farm lacked an arguable reason for its claim denial were based in large measure on the Court's interpretation of the parties' pretrial stipulations and the purported effect of those stipulations on the allocation of the burden of proof, especially with regard to the Broussards' claim for damage to their personal property. According to the Court, "[t]he parties have stipulated that the plaintiffs sustained a loss of the contents of their dwelling *as a result of Hurricane Katrina, a windstorm*" (emphasis added) and, thus, the Broussards had met their threshold burden of proof. In fact, the stipulation said nothing at all about "windstorm," nor did it state that the Broussards' property was damaged "as a result" of

Hurricane Katrina. Nonetheless, Mr. Read affirmatively sought to suggest that the Broussards had met their burden by interjecting that "Katrina was a windstorm" and that "[i]t says windstorm in the [State Farm Fire] policy."

VI.

Pursuant to 28 U.S.C. § 455(a), a judge must disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." Law clerks are subject to the proscriptions of section 455, as well as to the equivalent provisions of the Code of Conduct for Judicial Employees. The test for determining whether a judge (and thus a law clerk) should disqualify himself under section 455(a) is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal is sought would entertain a significant doubt about the judge's (or clerk's) impartiality.

VII.

The circumstances here cast grave doubt on Mr. Read's impartiality. Mr. Read's complaint asserts that he was subjected to bad faith and unfair claims handling by his own insurer based on many of the same contentions that are at issue in this lawsuit. As a *pro se* litigant, he directly formulated and advocated legal positions contrary to State Farm's positions on issues that will be of critical importance in this case. These facts, coupled with evidence of Mr. Read's active participation in prior key rulings adverse to State Farm, would lead an objective, disinterested person to question Mr. Read's impartiality and therefore mandate his disqualification.

VIII.

In addition to the Memorandum of Law in Support of Motion to Disqualify Law Clerk filed concurrently with this Motion, State Farm relies upon the following Exhibits attached to the

Motion:

- A. Complaint, *Read v. Allstate Insurance Co.*, United States District Court, Southern District of Mississippi (Southern Division), Civil Action No. 1:06cv894-BAF;
- B. Civil docket sheet, *Read v. Allstate Insurance Co.*;
- C. Order of Recusal, dated September 12, 2006, *Read v. Allstate Insurance Co.*;
- D. Defendant Allstate Insurance Company's Answer and Defenses to Complaint, *Read v. Allstate Insurance Co.*;
- E. Final Judgment of Dismissal with Prejudice, *Read v. Allstate Insurance Co.*; and
- F. Trial transcript excerpts, *Broussard v. State Farm Fire and Casualty Co.*, United States District Court, Southern District of Mississippi (Southern Division), Civil Action No. 1:06cv6.

WHEREFORE, PREMISES CONSIDERED, State Farm prays that Jerry Read be immediately disqualified.

This the 22nd day of February, 2007.

Respectfully submitted,

s/ William N. Reed
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CERTIFICATE OF SERVICE

I, William N. Reed, one of the attorneys for State Farm Fire and Casualty Company and State Farm Mutual Automobile Insurance Company, do hereby certify that I have this day filed the foregoing document via the Court's ECF System and that I have also served a copy upon the following counsel for the parties in the manner shown below and via the Court's ECF System:

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This the 22nd day of February, 2007.

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