

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

RICHARD TEJEDOR

PLAINTIFF

vs.

CIVIL ACTION NO. 1:05-cv-00679-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANTS

PRETRIAL ORDER

1. Choose [by a $\sqrt{\quad}$ mark] one of the following paragraphs, as is appropriate to the action:

A pretrial conference was held

Date: December 12, 2006 Time: 1:30 p.m.

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 Suite 100 Post Office Box 1115 Oxford, MS 38655	(662) 234-8074

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 Change Venue
Defendant's Motion to Strike Expert Testimony of James Slider
Defendant's Motion for Evidentiary Hearing
Defendant's Motion to File Court Records Under Seal
Defendant's Motion in Limine Regarding Bifurcation
Defendant's Motion in Limine Regarding Department of Insurance Bulletins
Defendant's Motion in Limine Regarding Legal Interpretations
Defendant's Motion in Limine Regarding Change of Venue - Uncontested
Defendant's Motion in Limine Regarding Punitive Damages
Defendant's Motion in Limine Regarding Criminal Investigations - Uncontested
Defendant's Motion in Limine Regarding Out of State Conduct - Uncontested

8. The parties accept the following concise summaries of the ultimate facts as claimed by:

By Plaintiff:

1. On August 29, 2005, Hurricane Katrina completely destroyed Richard Tejedor's home and personal property located at 2004-13 West Beach Boulevard, Long Beach, Mississippi, leaving only a slab.
2. The Tejedor home and personal property were insured for certain losses under an insurance policy issued by State Farm Fire and Casualty.
3. The amount of the dwelling coverage was \$264,680.00 and the amount of the contents coverage was \$198,510.00.
4. The value of the dwelling equaled or exceeded the amount of the dwelling coverage.
5. The value of the contents was in excess of \$400,000.00.
6. The Tejedor home and contents were also insured under a flood policy through Farm Bureau.
7. Richard Tejedor made an insurance claim for the dwelling and contents coverage under the flood policy and the State Farm homeowner's policy.
8. The flood policy paid Richard Tejedor the maximum coverage of \$200,000.00 on the home and \$80,000.00 on the contents.
9. Richard Tejedor made a claim under the State Farm homeowner's policy for full dwelling and contents coverage.
10. State Farm denied all of the homeowner's claim.
11. The State Farm homeowner's insurance policy covered accidental direct physical loss to the dwelling, unless excluded, and covered wind storm

damage to the personal property, unless excluded.

12. Hurricane Katrina caused direct physical loss to the dwelling and contents.
13. State Farm denied all of the Tejedor homeowner's claim because State Farm said it had determined all the damage was caused by flood, which was excluded.
14. The flood damage for which the flood insurance paid was covered under the flood policy.
15. The greater damage was caused by the wind.
16. Since some of the damage was caused by flood and some by wind, Richard Tejedor is entitled to recover \$64,680.00 homeowner's dwelling coverage and \$198,510.00 homeowner's contents coverage.
17. State Farm's denial of the homeowner's claim was clearly contrary to the insurance policy.
18. 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.
19. State Farm's procedure resulted in no payment under homeowner's coverage in any slab case.
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.

22. Richard Tejedor is entitled to recover, in addition to the full amount of his claim (\$263,190.00), his attorney's fees and punitive damages.

By Defendant:

This action was filed by the Plaintiff against Philip Harvey and State Farm Fire & Casualty Company; although, Phil Harvey has already been dismissed from the suit. The Plaintiff alleges that Hurricane Katrina caused damage to his insured residence and that State Farm denied claims for these damages. The insured alleges that he performed all of his obligations and satisfied all the conditions of the policy and that State Farm's denial was made in bad faith. The Plaintiff argues that State Farm's denial of coverage entitles him to damages equal to the benefits due under the terms of his homeowner's insurance policy, \$50,000.00 in mental and emotional distress, and \$5,000,000.00 in punitive damages. In the Plaintiff's deposition, he testified he had an NFIP flood policy with Mississippi Farm Bureau in the amount of \$200,000.00 for the dwelling and \$80,000.00 for contents. This is less than the maximum limits available on a federal flood policy as he could have purchased \$250,000.00 for the dwelling and \$100,000.00 for contents. The Plaintiff's home was a complete loss and only a slab remained. The Plaintiff had a homeowners policy with State Farm Fire and Casualty Company and had \$264,680.00 in dwelling limits; \$26,468.00 dwelling extension limits and \$198,510.00 in contents limits. The insured also had \$5,000.00 in jewelry and fur coverage. State Farm paid the Plaintiff \$2,500.00 for Additional Living Expenses.

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 that 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 home 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.

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

1. The Plaintiff, Richard Tejedor, purchased a homeowners insurance policy with State Farm Policy No. 24-CW-8145-1, which was in effect the date of Hurricane Katrina with dwelling policy limits of \$264,680.00, a dwelling extension of \$26,468.00, contents limits of \$198,510.00 and \$5,000.00 in jewelry and fur limits.
2. The Plaintiff's home was destroyed during Hurricane Katrina, leaving only a slab.
3. The value of the dwelling equaled or exceeded the amount of the dwelling limits.
4. The value of the contents was in excess of the limits amount.
5. The Tejedor home and contents were also insured under a flood policy through Farm Bureau.
6. Richard Tejedor made an insurance claim for the dwelling and contents limits under the flood policy and the State Farm homeowner's policy.
7. The flood policy paid Richard Tejedor the maximum coverage of \$200,000.00 on the home and \$80,000.00 on the contents.
8. The amount in dispute is the difference between the value of Plaintiff's home

and contents on August 29, 2005 and the amount which has been paid under the flood policy, not to exceed the homeowner policy limits.

9. Richard Tejedor made a claim under the State Farm homeowner's policy for full dwelling and contents limits.
 10. State Farm denied all of the homeowner's claim.
 11. The State Farm homeowner's insurance policy covered accidental direct physical loss to the dwelling, unless excluded, and covered wind storm damage to the personal property, unless excluded.
 12. Hurricane Katrina caused direct physical loss to the dwelling and contents.
 13. State Farm denied all of the Tejedor homeowner's claim because State Farm said it had determined all the damage was caused by flood, which was excluded.
 14. The flood damage for which the flood insurance paid was covered under the flood policy.
10. The following facts are contested:
- By Plaintiff:
- a. whether and, if so, the amount of actual and punitive damages Plaintiffs are 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 Richard Tejedor is entitled to recover \$60,000.00 homeowner's dwelling

coverage and \$115,000.00 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 Richard Tejedor is entitled to recover, in addition to the full amount of his claim (\$263,190.00), his attorney's fees and punitive damages.
- k. Therefore the maximum recoverable amount is \$64,680.00 on the dwelling and \$198,510.00 on the contents.

By Defendant:

- a. Whether the Plaintiff's home was completely destroyed by wind as claimed by Plaintiffs.
- b. The extent of wind damage, if any, to the Plaintiff's home prior to destruction by water.
- c. Whether the Plaintiff has admitted the destruction of his house by flood on

the basis of the claim submitted under his federal flood policy for which he received \$280,000.00 in federal funds.

- d. Whether the Plaintiff has admitted the value of his home to be the policy limits under his policy with State Farm.

11. The contested issues of law are as follows:

By Plaintiff: None allegedly

By Defendant:

- a. Whether each element of Plaintiffs' 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.
- b. 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.
- c. 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.

- d. 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.
- e. 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.
- f. 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 invidiously 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.

- g. 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.
- h. 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.
- i. 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.

- j. 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.
- k. 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.
- l. 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 Plaintiffs' actual compensatory damages as well as criminal sanctions that could be imposed for comparable misconduct.
- m. 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.
- n. Whether the Plaintiffs may recover any extra-contractual or punitive damages without establishing their right to such damages by clear and convincing evidence.

- o. Whether the Plaintiffs may recover any extra contractual or punitive damages without establishing their right to such damages beyond a reasonable doubt.
- p. Whether each element of Plaintiffs' 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.
- q. Whether the Plaintiff can claim flood contents damage on a federal policy and receive federal treasury funds and then try to suggest they were not damaged by flood.
- r. Whether the Plaintiffs are entitled to any punitive, exemplary, or extra-contractual damages pursuant to Mississippi Code Annotated Section 11-1-65.

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
- P-2 The Denial Letter
- P-3 The Claim File
- P-4 IRS Contents Claim
- P-5 James T. Slider Report
- P-6 Slider Resume
- P-7 Slider Photographs (ex. 1 to Slider Report)

- P-8 Hurricane Katrina Wind Speed Map (ex. 2 to Slider Report)
- P-9 Tropical Cyclone Report (ex. 3 to Slider Report)
- P-10 Hindcast of Hurricane Katrina (ex. 4 to Slider Report)
- P-11 The Wind/Water Protocol
- P-12 Number 75-20 Claim Practices: Water Damage Losses
- P-13 Number 75-104 Claim Practices: Claim Interpretation-Losses Not Insured
- P-14 George Dale Memo
- P-15 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:

Defendant objects to Plaintiffs' exhibits P-14 and P-15. Each of the aforementioned exhibits are irrelevant, hearsay, and their probative value is substantially outweighed by the danger of unfair prejudice to Defendant, State Farm. Defendants objects to P-5 on the grounds of hearsay.

b. To be offered by the **Defendant**, State Farm Fire & Casualty Company:

- D-1 State Farm Insurance Policy 24-CW-8145-1
- D-2 State Farm claim file
- D-3 Expert report of Kurtis Gurley

- D-4 Kurtis Gurley's resume
- D-5 Supplemental expert report of Kurtis Gurley
- D-6 Expert report of Robert Dean
- D-7 Robert Dean's resume
- D-8 Documents provided by Plaintiffs, such as: surveys, appraisals, home plans, etc.
- D-9 USGS aerial photograph depicting post Katrina damage
- D-10 USGS aerial photograph depicting Tejedor neighborhood pre Katrina (The Defendant intends to supplement another photo 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 Tejedor neighborhood property plot information
- D-14 Aerial photograph depicting Tejedor property plot
- D-15 Aerial photograph depicting FEMA surge lines
- D-16 Aerial photographs zoomed to show Tejedor property damage
- D-17 Photographs from the State Farm claim file (40 in number)
- D-18 Kevin Abraham video
- D-19 John Lestrade video
- D-20 A Storm Chaser's Story video
- D-21 Battle at the Beachfront video
- D-22 Video shot at Pass Christian Library
- D-23 Chart of Hurricane Categories (Saffir-Simpson scale)
- D-24 Diagram depicting Hurricane Katrina track
- D-25 Diagram depicting storm surge at Tejedor property

D-26 Chart depicting storm surge levels at Tejedor property

D-27 Diagram depicting high water marks in MS

D-28 Diagram depicting surge damage vs. wind damage

D-29 Chart of events of August 29, 2005 at Tejedor property

D-30 Farm Bureau Flood File

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

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-5 Hearsay

D-6 Hearsay

D-8 These items listed in their exhibits have not been provided to Plaintiffs' attorneys who must object in the absence of having an opportunity to review them.

D-9, D-10, D-11, D-12, D-13, D-14, D-15, D-16, D-18, D-19, D-20, D-21, D-22, D-23, D-24, D-25, D-26, D-27, D-28, D-29 and D-30. These exhibits were not provided in discovery; authenticity; relevance; hearsay; Rule 403.

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:

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>
Richard Tejedor	√		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. Rep. At Trial	✓	Fact/Liab Damages	

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

May testify by deposition:

<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>
Terry Blalock * State Farm 30(b)(6)		✓	Fact/Liab Damages		
Marsha Slaughter * 30(b)(6) Rep.		✓	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:

<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>
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
Larry Carol		✓	Fact/Liab/Damages		1756 Popp's Ferry Road Biloxi, MS 39532 (228)385-3100
Tip Pupua		✓	Fact/Liab/Damages		1756 Popp's Ferry Road Biloxi, MS 39532 (228)385-3100
Terry Blalock		✓	Fact/Liab/Damages		1080 River Oaks Drive Suite B100 Flowood, MS 39232
Kevin Abraham		✓	Fact/Liab		
John Lestrade		✓	Fact/Liab		
Scott McPartland		✓	Fact/Liab		
Dave Lewison		✓	Fact/Liab		
Jim Edds		✓	Fact/Liab		

Mike Theiss ✓ Fact/Liab

May testify by deposition

<u>Name</u>	<u>Will Call</u>	<u>May Call</u>	<u>Fact/Liability Expert Damages</u>	<u>Business Address & Tel. No.</u>
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Terry Blalock		✓	Fact/Liab/Damages	
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*portions of deposition 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.

- 16. This ✓ is is not a jury case.
- 17. Counsel suggest the following additional matters to aid in the disposition of this civil action:
- 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

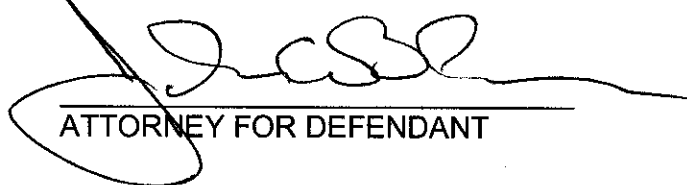
of the court to prevent manifest injustice.

ORDERED, this the 13th day of Jan, 2006.


UNITED STATES DISTRICT JUDGE


ATTORNEY FOR PLAINTIFF


ATTORNEY FOR PLAINTIFF


ATTORNEY FOR DEFENDANT