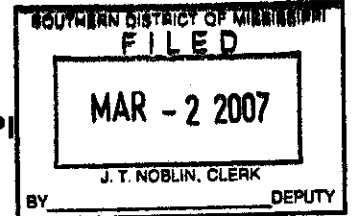


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION



**MICHAEL WILLIAMS and  
MICHELLE WILLIAMS**

**PLAINTIFFS**

v.

**CIVIL ACTION NO. 1:06-cv-00055-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	(228) 374-8722



Lane, Ocean Springs, Mississippi, leaving only a slab.

2. The Williams's property was insured for certain losses under a rental dwelling insurance policy issued by State Farm Fire and Casualty.
3. The amount of the dwelling coverage was \$40,000.00, the dwelling extension was \$4,000.00, and the amount of the contents coverage was \$2,000.00.
4. The value of the dwelling and dwelling extension equaled or exceeded the amount of the dwelling and dwelling extension coverages.
5. The value of the contents equaled or exceeded the amount of the contents coverage.
6. The Williams made an insurance claim for the full dwelling, dwelling extension, and contents coverage under the State Farm policy.
7. State Farm denied all of the Williams's claim.
8. The State Farm 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.
9. Hurricane Katrina, a windstorm, caused direct physical loss to the dwelling, dwelling extension, and contents.
10. State Farm denied all of the Williams's claim because State Farm said it had determined all the damage was caused by flood, which was excluded.
11. State Farm's denial of the Williams's claim was clearly contrary to the insurance policy.
12. State Farm set up and used a procedure which resulted in the denial of all Katrina claims if there was evidence of surge unless there was, remaining

on the slab, independent windstorm damage to separate portions of the property.

13. State Farm's procedure resulted in no payment in any slab case.
14. 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.
15. State Farm has continued to this day to refuse to pay any of the Williams's claim even though State Farm hired no engineer, 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 Williams's claim.
16. The Williams are entitled to recover, in addition to the full amount of their claim (\$46,000.00), punitive damages up to \$5,000,000.00.

By Defendant:

The instant action was filed by the Plaintiffs, Michael and Michelle Williams, on December 21, 2005. The Complaint alleges that Hurricane Katrina caused damages to the Plaintiffs' house; that the Plaintiffs' performed all their duties under the policy; that State Farm's denial is contrary to the facts, policy, and Mississippi Law and made in bad faith; that State Farm's denial was in bad faith and damaged the Plaintiffs, and entitles them to damages in the amount of the face value of the homeowners policy, \$50,000.00 in emotional damages, and \$5,000,000.00 in punitive damages.

The Plaintiffs did not have a flood policy but had a rental dwelling policy with State Farm Fire & Casualty Company with dwelling limits of \$40,880.00, dwelling

extension limits of \$4,000.00, contents limits of \$2,000.00, and loss of rents based on the actual amount thereof.

The Defendant's adjustor, Roy Sather, inspected the site of the Williamses' rental dwelling on October 6, 2005. The investigation revealed the property was destroyed by flood and tidal surge that occurred during Hurricane Katrina. The Williamses agree that water was a factor in the destruction of their house, but also contend that wind contributed to the destruction. 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 Plaintiffs purchased a rental dwelling insurance policy with State Farm Policy No. 99-CS-9994-2, which was in effect the date of Hurricane Katrina with dwelling policy limits of \$40,000.00, dwelling extension of \$4,000.00 and contents limits of \$2,000.00.
2. The Plaintiffs' insured property was destroyed by events during Hurricane Katrina.
3. The Williams made a claim under the State Farm policy for full dwelling, dwelling extension, and contents limits.
4. State Farm denied all of the Williams's claim.
5. Events during Hurricane Katrina-caused direct physical loss to the dwelling and contents

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 State Farm's denial of the Williams's claim was clearly contrary to the insurance policy.
  - c. whether State Farm set up and used a procedure which resulted in the denial of all Katrina claims if there was evidence of surge unless there was, remaining on the slab, discernible wind damage.
  - d. whether State Farm's procedure resulted in no payment under insurance coverage in any slab case.
  - e. whether State Farm has continued to this day to refuse to pay any of the Williams's claim even though State Farm did not hire an engineer.
  - f. 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.
  - g. whether State Farm has continued to this day to refuse to pay any of the Williams's claim even though State Farm did not hire an engineer, 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 policy.
  - h. whether the Williams are entitled to recover, in addition to the full amount of their claim (\$46,000.00), punitive damages up to \$5,000,000.00.
  - i. The State Farm insurance policy covered accidental direct physical loss to the dwelling and dwelling extension, unless excluded.

- j. State Farm denied all of the Williamses' claim because State Farm said it had determined all the damage was caused by flood, which was excluded under the policy.
- k. The value of the dwelling and dwelling extension equaled or exceeded the amount of the respective limits.
- l. The value of the contents was in excess of the limits amount.

By Defendant:

- a. Whether the Plaintiffs' home was completely destroyed by wind as claimed by Plaintiffs or water as claimed by the Defendant.
- b. The extent to which, if any, wind damaged the Plaintiffs' house prior to destruction by water.
- c. Whether the Plaintiffs' contents were destroyed by a covered peril.
- d. The value of the Plaintiffs' contents loss destroyed by a covered peril.

11. The contested issues of law are as follows:

By Plaintiff: None.

By Defendant:

- a. Whether the Plaintiffs have 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 Plaintiffs have 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 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.

- 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 Plaintiffs' 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 Plaintiffs may recover any extra-contractual or punitive damages without establishing their right to such damages by clear and convincing evidence.
- q.** Whether the Plaintiffs may recover any extra contractual or punitive damages without establishing their right to such damages beyond a reasonable doubt.

- r. 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.
  - s. Whether the Plaintiffs are entitled to punitive, exemplary, or extra-contractual damages pursuant to Miss. Code Ann. §11-1-65.
  - t. 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
    - P-2 The Denial Letter
    - P-3 The Claim File
    - P-4 The Wind/Water Protocol
    - P-5 Number 75-20 Claim Practices: Water Damage Losses

- P-6 Number 75-104 Claim Practices: Claim Interpretation-Losses Not Insured
- P-7 First Four Pages of Annual Statement
- P-8 Copies of Color Photographs

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 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:

- D-1 State Farm Insurance Policy Number 99-CS-9994-2.
- D-2 State Farm Claim File.
- D-3 Color photographs from Claim File.
- D-4 FEMA Flood Recovery Map showing elevation of Plaintiffs' property.
- D-5 FEMA Flood Recovery Map showing surge/flood level measurements at location of Plaintiffs' property.

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:

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 &amp; Tel. No.</u>	<u>Business Address &amp; Tel. No.</u>
Michael Williams	√		Fact/Liab Damages		
Michelle Williams	√		Fact/Liab Damages		
Terry Blalock		√	Fact/Liab Damages		
State Farm Corp. Rep. At Trial		√	Fact/Liab Damages		
Marsha Slaughter		√	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 &amp; Tel. No.</u>	<u>Business Address &amp; Tel. No.</u>
Terry Blalock * State Farm 30(b)(6)		√	Fact/Liab Damages		
Marsha Slaughter * State Farm 30(b)(6)		√	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 &amp; Tel. No.</u>	<u>Business Address &amp; Tel. No.</u>
Marsha Slaughter 30(b)(6)	✓	✓	Fact/Liability		
Roy Sather		✓	Fact/Liability		

Defendant reserves the right to call any witnesses listed by the Plaintiff.

May testify by deposition:

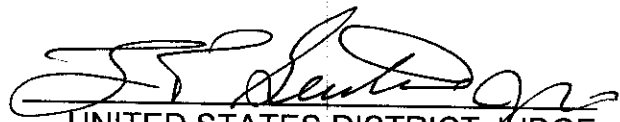
<u>Name</u>	<u>Will Call</u>	<u>May Call</u>	<u>Fact/Liability Expert Damages</u>	<u>Business Address &amp; Tel. No.</u>
Terry Blalock 30(b)(6)		✓	Fact/Liability	

\*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.

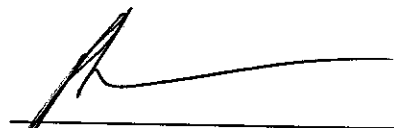
16. This  is  is not a jury case.
17. Counsel suggest the following additional matters to aid in the disposition of this civil action: None.
18. Counsel estimates the length of the trial will be 3 days.
19. As stated in paragraph 1, this pretrial order has been formulated (a) at a pretrial conference 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 22<sup>nd</sup> day of February, 2007.

  
UNITED STATES DISTRICT JUDGE

Wm. C. Walby  
ATTORNEY FOR PLAINTIFFS

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ATTORNEY FOR PLAINTIFFS

  
ATTORNEY FOR DEFENDANT

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ATTORNEY FOR DEFENDANT