

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

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THOMAS C. and PAMELA McINTOSH,	:	
		Plaintiffs,
		CIVIL ACTION NO. 1:06-CV-1080-LTS-RHW
- against -	:	
STATE FARM FIRE & CASUALTY CO. and	:	
FORENSIC ANALYSIS & ENGINEERING	:	
CO., et al.,	:	
		Defendants.

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**MOTION FOR DISMISSAL WITH PREJUDICE OF
EXTRA-CONTRACTUAL AND PUNITIVE DAMAGES CLAIMS**

COME NOW the Plaintiffs, Thomas C. and Pamela McIntosh, by and through their counsel of record, and pursuant to Federal Rule of Civil Procedure 41(a)(2), who hereby move this Honorable Court for an Order dismissing all claims for extra-contractual damages, including but not limited to punitive and emotional distress damages, with prejudice. As ground for this motion, Plaintiffs would show as follows:¹

1. On October 23, 2006, Plaintiffs Thomas C. and Pamela McIntosh filed the instant action against State Farm Fire and Casualty Company (“State Farm”) and Forensic Analysis & Engineering Corporation (“Forensic”). On May 31, 2007, Plaintiffs filed an Amended Complaint adding E. A. Renfroe & Company, Inc. (“Renfroe”) as a defendant. The Amended Complaint alleges breach of Plaintiffs’ homeowners insurance contract, negligence, bad faith,

¹ Plaintiffs respectfully request that this Court waive the requirement of filing a separate brief in conjunction with the instant motion, as all authorities and arguments are cited herein.

fraud,² intentional/negligent infliction of emotional distress, and concerted action to avoid paying insurance claim. [Dkt. 193.] The Amended Complaint seeks, *inter alia*: (i) “[c]ompensatory damages for economic and non-economic damages suffered by Plaintiffs as a proximate result of the denial of coverage”; (ii) “[e]xtra-contractual damages”; and (iii) “[p]unitive and exemplary damages.” (Am. Compl. ¶ 111, D-F.). On August 26, 2008, the Court granted Plaintiffs’ Motion [Dkt. 1251] and dismissed all claims against Forensic with prejudice. [Dkt. 1287.]

2. After engaging in extensive discovery, the Plaintiffs have determined the following:

- (a) the McIntosh dwelling was damaged as a result of Hurricane Katrina;
- (b) the majority of the damage to the McIntosh dwelling was caused by flooding;
- (c) the McIntosh dwelling sustained flood damage of at least \$250,000 to the structure and \$100,000 to its contents;
- (d) State Farm promptly and properly paid Plaintiffs the full policy limits of their flood insurance policy; and
- (e) State Farm promptly tendered payment to Plaintiffs for wind damage covered under their homeowners insurance policy prior to the time that the dwelling was inspected by an engineer.

3. In light these facts, Plaintiffs have concluded that: (i) State Farm had a reasonable basis for taking the position it did regarding coverage under Plaintiffs’ homeowners policy; (ii) there is no credible evidence that State Farm engaged in bad faith with respect to the

² By Order dated April 21, 2008, this Court granted State Farm’s Motion for Partial Summary Judgment and dismissed Plaintiffs’ fraud claim with prejudice. [Dkt. 1186.]

adjustment of Plaintiffs' claims under their homeowners policy; (iii) there is no credible evidence of any other conduct that can arguably give rise to punitive damages. Therefore, Plaintiffs have determined that any and all claims seeking extra-contractual damages, including but not limited to punitive and emotional distress damages, should be dismissed with prejudice.

4. Plaintiffs have consulted with State Farm and Renfroe, who do not object to this motion. The parties have also agreed that all parties will bear their own costs and attorneys fees.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court enter an Order dismissing all claims for extra-contractual damages, including but not limited to punitive and emotional distress damages, with prejudice.

DATED: September 7, 2008

**THOMAS C. and PAMELA MCINTOSH,
PLAINTIFFS**

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