

IN THE CIRCUIT COURT FOR HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

FILED

APR 21 2015

BARBARA DUNN, CIRCUIT CLERK
BY _____ D.C.

STATE OF MISSISSIPPI ex rel. JIM HOOD, Attorney
General for the State of Mississippi,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY COMPANY,

Defendant.

Case No. 15-221

COMPLAINT

Plaintiff, the State of Mississippi (“Mississippi”), by its Attorney General, Jim Hood, alleges the following against Defendant State Farm Fire and Casualty Company (“State Farm”):

NATURE OF THE ACTION

1. More than nine years have passed since Hurricane Katrina (“Katrina”) struck the Gulf Coast and inflicted unfathomable damage on the people and properties of Mississippi. Katrina’s devastating presence still can be observed today in the form of vacant foundations of blown-down homes that were never rebuilt, unfinished infrastructure, and other government projects that remain unfunded.

2. State Farm, the country’s largest property and casualty insurer and the one that insured the greatest number of Mississippians at the time of the storm, failed to shoulder its rightful and lawful share of the tremendous losses caused by Katrina and maneuvered itself to record profits the very next year. State Farm’s good fortune was not fortuitous.

3. State Farm avoided its Katrina-related obligations by engaging in a scheme to mischaracterize wind damage as flood damage in order to minimize its liabilities under thousands of property and casualty insurance policies that it issued to Mississippi homeowners.

Many lawsuits and news articles have addressed the effects of State Farm's fraudulent loss-shifting scheme. For example, a federal district court affirmed a jury verdict finding State Farm liable for defrauding the federal government by shifting wind losses onto flood insurance policies backed by the National Flood Insurance Program ("NFIP"). Rule 54(b) Final Judgment, *United States ex rel. Rigsby v. State Farm Fire & Cas. Co.*, No. 1:06-cv-433-HSO-RHW (S.D. Miss. Feb. 21, 2014), ECF No. 1129.

4. Mississippi brings this action because State Farm's scheme also caused hundreds of millions of dollars of losses to Mississippi. State Farm collected premiums from thousands of Mississippians prior to Katrina for homeowner insurance policies that covered hurricane damage caused by wind. As a Write-Your-Own ("WYO") carrier under the NFIP, State Farm also issued and adjusted flood insurance policies on behalf of the federal government that covered hurricane damage caused by flooding. Mississippi established the Homeowner Assistance Program ("HAP") after Katrina to supplement insurance proceeds for Mississippians who suffered hurricane damage that either was not covered under either type of insurance policy or that exceeded their policy limits.

5. State Farm was legally obligated to pay claims properly under the insurance policies that they issued to homeowners so that Mississippi would not have to pay for damage that was the insurers' responsibility. Yet State Farm breached those obligations through a series of false statements and other improper acts designed to understate systematically its own liability for Katrina wind damage. State Farm thereby foisted upon Mississippi the burden of paying for wind damage that State Farm was obligated to pay under homeowner insurance policies that it had issued to Mississippians.

6. State Farm essentially converted a program designed to help Mississippians recovering from Katrina into a subsidy for itself.

7. As part of its scheme to foist its liability for wind damage onto Mississippi through HAP, State Farm:

- a) Falsely instructed its claims adjusters that all major Katrina damage was caused by flooding;
- b) Commissioned and distributed to its adjusters and third-party engineering firms a fraudulent report stating that Katrina's floodwaters, unlike those of every other hurricane ever observed, preceded Katrina's winds;
- c) Commissioned and distributed to its adjusters and engineering firms a fraudulent report stating that Katrina produced Category 4 flooding but only Category 1 winds;
- d) Instructed its adjusters to adjust claims based only on the square footage of its policyholders' homes, rather than performing federally-required "line-by-line" estimates to determine the extent to which wind and flood damaged the homes;
- e) Created fake records to give the false impression that it was performing those required "line-by-line" estimates;
- f) Coerced engineering firms retained to assist with State Farm's claims assessments to change reports that identified wind as the primary cause of damage to its policyholders' homes;

- g) Fired engineering firms and demanded that individual engineers be fired if they found that wind was the primary cause of damage to its policyholders' homes;
- h) Instructed adjusters and engineering firms to disregard eyewitness accounts of wind damage;
- i) Issued blanket denials of claims for wind damage without adjusting those claims to determine whether wind or flood had caused structural damage to its policyholders' homes;
- j) Delayed paying certain homeowner claims until after Mississippi had distributed HAP funds to those homeowners; and
- k) Improperly deducted HAP payments from the amount that it owed under its homeowner policies, thus treating its own liability as secondary to HAP rather than primary.

8. Working under the incorrect belief that State Farm was acting in good faith when it adjusted homeowner claims, Mississippi paid approximately 6,810 of State Farm's Mississippi policyholders five times more for Katrina-related damage than State Farm itself paid those same policyholders. Specifically, Mississippi distributed approximately \$2,032,195,741.00 to homeowners through HAP, of which State Farm policyholders received approximately \$522,147,171.63, an average of \$76,673.59 per policyholder. State Farm, by contrast, reported to HAP that it paid those same policyholders approximately \$98,679,382.00, an average of only \$14,494.62 per policyholder. Indeed, State Farm reported that it made no insurance payments at all to hundreds of those policyholders.

9. In light of the devastating damage that Katrina's winds caused, State Farm should have paid a substantial portion of the amount that Mississippi ultimately paid to State Farm's policyholders through HAP.

10. Mississippi brings this case under state law and not to assert any federal cause of action.

PARTIES

11. Plaintiff Mississippi is a political and governmental body constituted under the Constitution and laws of Mississippi. Jim Hood is the duly-elected and present Attorney General for Mississippi. As such, he is the chief legal officer and advisor for Mississippi, and he has the power to bring this lawsuit on Mississippi's behalf. Miss. Code Ann. § 7-5-1. This suit concerns matters of statewide interest, as State Farm has caused Mississippi to make payments to homeowners living in multiple counties that Mississippi should not have had to make and deprived Mississippi of funds that it could have used for other purposes.

12. Defendant State Farm is a corporation organized under the laws of the State of Illinois, with its corporate headquarters and principal place of business located at One State Farm Plaza, Bloomington, Illinois 71701-0001.

JURISDICTION

13. This Court has jurisdiction over the subject matter of this action pursuant to Article VI, Section 156 of the Mississippi Constitution of 1890 and Miss. Code Ann. § 9-7-81, as the amount in controversy exceeds \$200 and the subject matter is not exclusively cognizable in some other court.

14. This Court has personal jurisdiction over defendant State Farm. As a foreign insurer, State Farm was required to appoint Mississippi's Commissioner of Insurance as its agent for service of process as a condition of receiving a license for doing business in Mississippi

under Miss. Code Ann. § 83-21-1(c). State Farm also has designated John Langcuster, 1107 Highland Colony Parkway, Suite 219, Ridgeland, Mississippi 39157, as its agent for service of process pursuant to Miss. Code Ann. § 83-5-11. State Farm also has subjected itself to personal jurisdiction in Mississippi under Miss. Code Ann. § 83-5-7 by issuing contracts for insurance to Mississippi citizens covering property located in Mississippi.

VENUE

15. This Court is the proper venue pursuant to Miss. Code Ann. § 11-11-3(1)(a)(i), as substantial alleged acts and omissions occurred in Hinds County, where Mississippi administered HAP, communicated with State Farm, issued the payments that are the subject of this action, and suffered the resulting injuries. This Court also is the proper venue under Miss. Code Ann. § 11-11-3(1)(1)(b), as State Farm's principal place of business is not located in Mississippi.

FACTUAL BACKGROUND

I. The Damage of Hurricane Katrina

16. Katrina made landfall near the cities of Bay St. Louis and Waveland, Mississippi, on August 29, 2005. It became the costliest natural disaster in United States history.

17. Katrina exerted devastating winds over 120 miles per hour, causing massive destruction to homes along Mississippi's Gulf Coast and farther inland.

18. Katrina caused approximately \$125 billion in property damage in Mississippi, damaged or destroyed more than 65,000 homes in Mississippi, and left approximately 44 million cubic yards of debris across southern Mississippi.

II. The Mississippi Homeowner Assistance Program

19. Mississippi considered the repair and replacement of housing a top priority in rebuilding its Gulf Coast region. Mississippi, recognizing the need to provide swift relief to

Mississippi homeowners after Katrina, established HAP to provide financial assistance to those whose homes had suffered hurricane damage.

20. The Mississippi Development Authority (“MDA”), the agency responsible for overseeing many of Mississippi’s Katrina recovery efforts, allocated approximately \$3 billion to the newly-created HAP, the bulk of which constituted direct payments to Mississippi homeowners affected by Katrina. The MDA assigned other funds to public infrastructure, economic development, and other projects, but the enormous devastation that Katrina inflicted and the overall limitations of Mississippi’s resources left certain recovery programs unfunded or underfunded.

21. Mississippi formed HAP specifically to make one-time cash payments that would “fill[] the insurance gap” by compensating homeowners for losses not covered by their insurance policies.

A. The “Insurance Gap”

22. Katrina, like many hurricanes, caused damage both through high-speed winds and storm surge, *i.e.*, water pushed toward the shore by the force of the storm. Storm surge arrives as the hurricane’s eye makes landfall, while hurricane-force winds typically precede the storm surge by six or seven hours and can remain destructive as far as 175 miles inland.

23. Mississippians had two primary forms of insurance available to protect against those perils: (1) homeowner insurance provided by private insurance companies like State Farm; and (2) flood insurance, which the federal government ultimately provides through the NFIP.

24. Private homeowner insurance policies, including those that State Farm issued, typically covered wind damage but excluded flood damage from coverage. Mississippians needed to purchase separate flood insurance policies to obtain coverage for such damage.

25. Because State Farm and other insurers historically have declined to issue flood insurance or have charged extremely high premiums for it, the federal government underwrites all or nearly all flood insurance policies issued in the United States through the NFIP. The federal government ultimately provides this coverage, but private insurance companies participating in the NFIP's WYO program issue flood insurance policies, collect premiums, and adjust and pay flood claims on the government's behalf. *See* discussion *infra* Part III (discussing the WYO program in further detail).

26. State Farm participated in the NFIP as a WYO carrier at the time of Katrina.

27. The Federal Emergency Management Agency ("FEMA") designates Special Flood Hazard Areas ("flood zones") nationwide. FEMA defines those zones as the areas with at least a one percent chance of being inundated by a flood in any given year, which FEMA refers to alternately as 100-year flood zones.

28. Mortgage lenders typically require homeowners living within flood zones to purchase flood insurance. Homeowners with no mortgages and those living outside those zones may choose whether to purchase it.

29. Approximately 31,000 Mississippi homes located outside the pre-Katrina flood zones suffered at least some degree of flood damage from Katrina, and insurers, including State Farm, adjusted many of those homeowners' claims to reflect substantial flood damage. Many of those homeowners had chosen to forego flood insurance because of their location outside the flood zones, which FEMA redrew after the storm.

30. Insurers, including State Farm, routinely adjusted claims by homeowners both inside and outside the pre-Katrina flood zones to reflect flood losses greater than the federally-

mandated limits of the homeowners' flood policies, which are set by federal regulation at no more than \$250,000 for all single-family homes.

31. Because homeowner policies excluded flood damage, Mississippians, particularly those with no flood insurance, suffered significant uncompensated losses for property damage where private insurance adjusters attributed those losses to flood damage.

B. The Three Phases of HAP Payments

32. The MDA made three primary types of HAP grants to Mississippi homeowners. Phase I grants paid up to \$150,000 to those who maintained homeowner insurance on a primary residence in Hancock, Harrison, Jackson, or Pearl River Counties as of August 29, 2005. The program applied only to those whose homes suffered at least some flood damage and were located either outside a flood zone or, if inside a flood zone, above the elevation that FEMA had designated at risk in that area.

33. Phase II grants paid up to \$100,000 to those who maintained a primary residence in Hancock, Harrison, Jackson, or Pearl River Counties as of August 29, 2005. Phase II applicants could reside either inside or outside of a flood zone but had to have a household income of no more than 120% of the median for their area.

34. Recipients of Phase I grants also could apply for Phase II grants if they had additional uncompensated losses that their Phase I grant did not cover fully.

35. The MDA required all HAP recipients to attach restrictive covenants to their properties as a condition for receiving their grants. Phase III targeted homeowners who had sold their homes by the time HAP began and could not obtain the new owners' consent for those restrictive covenants. Phase III applicants who had purchased new residences elsewhere in Hancock, Harrison, Jackson, or Pearl River Counties would receive 70% of the grant that they otherwise would have received under Phase I or II, provided that they executed HAP covenants

on their new homes. Those who no longer resided in those counties would receive 50% of the grant that they otherwise would have received under Phase I or II.

C. Calculation of HAP Homeowner Grants to Avoid Duplicate Benefits

36. The MDA established a starting point for calculating the HAP grants that Mississippi paid based upon the insured value of an applicant's home and the amount of damage that it had sustained from Katrina. The grants compensated homeowners for all otherwise uncompensated structural damage to their homes—as opposed to the contents of the homes—whether from wind, flood, or other perils.

37. The MDA obtained this data from the applicants themselves, their insurers, and MDA contractors, who conducted interviews and inspections of the damage to each applicant's home. The MDA also considered independent damage assessments conducted by the federal Small Business Administration (“SBA”) where available.

38. The MDA computed each eligible applicant's final HAP grant amount by subtracting the value of any insurance or grant payments that the applicant had received for damage to the home's structure (as opposed to its contents or for other purposes). Those deductions included primarily amounts paid on homeowner and flood insurance policies, which the MDA confirmed directly with the applicants' insurers. The agency also deducted any payments from other government agencies, such as FEMA or the SBA. If, after making those deductions, the final HAP grant amount exceeded the maximum amount allowed for a particular HAP program—\$150,000 for Phase I and \$100,000 for Phase II—the MDA paid the maximum amount.

39. Mississippi verified these deductions, including with State Farm and other insurers, to ensure that HAP payments did not duplicate other benefits provided to claimants for structural damage to their homes, but rather provided relief only for uncompensated losses.

40. Any payments by insurance companies on their policyholders' claims therefore reduced the amount of uncompensated loss that Mississippi would have to cover through HAP, as State Farm knew. Each dollar that an insurer inappropriately refused to pay, inversely, increased the amount that Mississippi had to pay to homeowners.

41. State Farm often waited to pay claims or to make supplemental claims payments until after its policyholders had received HAP grants.

42. To ensure that HAP funds did not duplicate those later insurer payments, each HAP recipient signed a standardized agreement subrogating to the MDA certain rights to recover subsequent payments owed by the claimants' insurers.

D. State Farm's Active Role in HAP

43. The MDA evaluated and reasonably relied specifically upon claims data submitted by State Farm and other insurance companies to evaluate HAP applicants' eligibility and to calculate their grant amounts.

44. The MDA requested information about individual HAP applicants from State Farm on a regular basis. Those requests sought verification of the applicants' status as policyholders, the amounts of their homeowner and/or flood policy limits, and the amounts that State Farm had paid for claims on those policies after Katrina.

45. The MDA developed a standard procedure for exchanging this data with most of the dozens of insurers that had insured HAP applicants. To handle the especially large amount of data that it shared with the MDA, however, State Farm established a unique procedure for providing information to the MDA through a File Transfer Protocol ("FTP") website, a secure network used to exchange electronic files.

46. MDA staff periodically uploaded to this FTP site spreadsheets identifying State Farm policyholders who had filed HAP applications and then notified State Farm database

managers of the uploads via email. MDA employees followed up with State Farm on each information request every other week until receiving a response containing the applicants' policy and claims data.

47. State Farm and MDA employees communicated formally and informally to discuss homeowners' HAP claims. In many instances, State Farm knowingly adjusted homeowners' insurance claims concurrently with the MDA's consideration of their HAP applications.

48. The MDA reasonably relied upon the data that State Farm provided specifically to verify the amounts that State Farm's policyholders had received on insurance claims so that it could reduce those applicants' HAP grants accordingly. The MDA reasonably relied upon State Farm to adjust and pay those claims fairly and honestly, since Mississippi intended HAP funds to compensate only those losses genuinely not covered by insurance.

49. State Farm knew and understood that the MDA reasonably relied upon State Farm's data and claims assessments to calculate the value of individual homeowners' HAP grants. State Farm knew also that the MDA would increase a HAP grant in direct proportion to the amount of damage that State Farm refused to cover.

III. The Relationship Between HAP and Private Insurance

50. At the time of Katrina, State Farm was a private insurer that issued homeowner policies that covered wind damage and a WYO insurer that participated in the NFIP, as established in 42 U.S.C. §§ 4001–4130. As a WYO insurer, State Farm issued flood policies, collected premiums, adjusted flood claims, and paid those flood claims with government money. The applicable federal regulations required that those flood policies conform to FEMA's Standard Flood Insurance Policy ("SFIP") set forth in 44 C.F.R. Pt. 61, App. A(1), which in general provides coverage for flood damage and excludes coverage for wind damage.

51. Unlike a private homeowner policy, which generally can provide coverage for the full value of a policyholder's home, flood coverage under an SFIP is subject to a limit of \$250,000 pursuant to 44 C.F.R. § 61.6.

52. State Farm and other WYO insurers commonly issued both a homeowner policy and an SFIP to the same homeowner. When Katrina damaged homes, the governing regulations, 44 C.F.R. Pt. 62, App. A(II)(C), §§ 62.21 and 62.23(d), (e), and (i)(2), permitted State Farm to deploy its own claims adjusters to those homes to determine simultaneously its own liability for wind damage and the government's liability for flood damage.

53. When Katrina damaged a home for which State Farm had issued both a homeowner policy and an SFIP, therefore, State Farm paid for wind damage covered under its homeowner policy from its own funds but paid for any flood damage covered by the SFIP from government funds.

54. State Farm, therefore, had a financial incentive to understate both the total hurricane damage to a home and the extent to which wind caused that damage. State Farm frequently acted improperly on that incentive by understating its wind liability. Doing so foisted liability onto HAP for losses that State Farm was obligated to pay, both in cases where those losses exceeded the limits of a homeowner's SFIP and especially where the homeowner had no flood insurance at all.

55. Mississippi was the payer of last resort under HAP, and under the terms of the program, Mississippi could not pay a homeowner for damage covered by an applicable SFIP or a homeowner policy issued by State Farm or another private insurer.

56. Under HAP, Mississippi had no discretion to withhold a grant from a qualifying Mississippian who had Katrina losses that were not covered by private insurance.

57. As a result, when State Farm underpaid for wind damage under its homeowner policies, HAP ultimately paid for many of those losses. State Farm knew that Mississippi ultimately would bear those losses under HAP, as it communicated regularly with HAP administrators about it and Mississippi's payments to homeowners.

IV. State Farm's Improper Shifting of Liability to HAP

58. State Farm engaged in a series of improper and/or fraudulent acts to understate its own liability for Katrina wind damage.

A. State Farm Prejudiced Its Adjusters.

59. Shortly after Katrina struck, State Farm set up a temporary "storm catastrophe office" in Gulfport, Mississippi. Alexis "Lecky" King, State Farm's Catastrophe Coordinator, supervised that office.

60. Lecky King was in charge of State Farm's handling of Katrina claims that involved flood and wind damage. She trained State Farm's claims adjusters, led State Farm's response to Katrina, and was known as State Farm's "flood guru."

61. Lecky King convened a meeting of State Farm's adjusters in the Gulfport office and instructed them that Katrina's wind "wasn't that strong" and that they "are not going to see a lot of wind damage." She told them further that "if you see substantial damage, it will be from water." State Farm's trainers reiterated this instruction to the company's adjusters.

62. Contrary to Lecky King's instruction to State Farm's adjusters, Katrina's winds were strong enough to cause devastating structural damage and destroyed numerous homes in Mississippi.

63. State Farm instructed its adjusters that it was company policy to deny wind damage claims by every policyholder in a general geographic area.

64. State Farm mandated that if water touched a home, the adjuster must deny the homeowner's wind damage claim categorically, with the possible exception of obvious, minor wind damage to shingles on the roof.

65. Ms. King and other State Farm officials also commissioned Haag Engineering Company ("Haag") to prepare a report (the "Haag Report") that concluded falsely that Katrina's flood waters preceded its hurricane-force winds. State Farm distributed the Haag Report to its adjusters and to other engineering firms that it retained to evaluate Katrina damage to Mississippians' homes.

66. Katrina's devastating winds arrived hours before any flood water, contrary to the Haag Report's conclusion.

67. State Farm knew that the Haag Report was false when it orchestrated the report's creation and disseminated it to its adjusters and to the engineering firms it retained.

68. Prior to Katrina, State Farm's adjusters prepared "line-by-line" estimates to document, room-by-room and item-by-item, the exact extent to which flood or wind each caused damage to a home. For Katrina damage, State Farm instructed its adjusters in many cases not to perform a line-by-line estimate to facilitate its desire to minimize and understate its liability for wind damage.

69. State Farm told its adjusters that they should assume that Katrina damage was flood damage and that State Farm later would send an engineer to determine what damage was caused by wind versus flood.

70. State Farm instructed its adjusters not to try to determine whether Katrina's wind or flood caused structural damage to a home.

71. Instead of instructing its adjusters to perform line-by-line estimates of both flood and wind damage, State Farm instructed its adjusters to use a program called XacTotal for many properties, which merely estimates the total value of a home based on its square footage and build quality. XacTotal does not document damage to a home, much less whether that damage was caused by flood or wind.

72. State Farm used XacTotal whenever damage to a home appeared to exceed its insured value. Apart from obvious, minor wind damage, such as shingles blown off a roof, State Farm adjusters used XacTotal and assumed that all major Katrina damage was flood damage.

73. State Farm's failure to perform line-by-line estimates on houses covered by SFIPs and that were still standing violated governing FEMA Directive W-5054, which allowed claims adjusters to take such shortcuts only for houses that had standing water in them for an extended period—a description that applied to no houses in Mississippi after Katrina—or that had been washed off their foundations entirely.

74. State Farm systematically created false records to hide its failure to perform line-by-line estimates. Specifically, State Farm used its XacTotal program to generate fake line-by-line estimates that purported to catalog storm damage for certain homes, including itemized, but entirely fictitious, costs for items such as gravel, stud walls, framing lumber, brick veneer, synthetic stucco, gutters, vinyl windows, wiring, and even light bulbs and fixtures. Every entry on those printouts was a fabricated value for an imaginary item that was not based on the adjusters' inspections of the homes.

B. State Farm Used Different Replacement Costs to Assess Damage for Flood and Wind.

75. State Farm used different rates for wind claims and flood claims to determine the repair and replacement value of parts of homes damaged by Katrina. For example, when a State

Farm adjuster determined the cost to replace drywall on a flood claim, he or she used a higher price per square foot than when the adjuster was determining the cost under a homeowner policy for wind damage.

C. State Farm Coerced Engineers and Engineering Firms to Conclude that Flood Was the Predominant Cause of Katrina Damage to Mississippi Homes.

76. State Farm adjusters were not engineers and needed engineers' expertise to determine whether wind or flood caused structural damage to homes.

77. State Farm instructed its adjusters to find wind damage only if it was obvious and distinguishable, such as shingles missing from a roof. State Farm also instructed its adjusters that they did not need to investigate structural damage because State Farm would later send an engineer to analyze that damage.

78. State Farm coerced engineering firms that it hired to investigate structural damage to Mississippians' homes to change their reports to identify flood rather than wind as the primary cause of Katrina damage. State Farm cancelled assignments to engineering firms that concluded instead that Katrina's winds were the predominant cause of damage to homes and refused to pay those firms' invoices in retaliation.

79. State Farm began receiving reports from engineering firms in October 2005. It shortly thereafter began cancelling assignments to engineering firms that identified wind as the predominant cause of Katrina damage to homes in Mississippi.

80. Lecky King commented to one of State Farm's adjusters at the time that "these engineers must be related to the policyholders. They are coming back and saying wind." Referencing a stack of reports on her desk, she stated, "All of these reports have to go back. They all say wind."

1. State Farm Cancelled All Assignments to Dreux A. Seghers, P.E., LLC, After that Engineering Firm Submitted Reports Identifying Wind as the Primary Cause of Loss.

81. After receiving reports from the engineering firm Dreux A. Seghers, P.E., LLC, that had concluded that wind rather than flood was the primary cause of Katrina damage to homes in Mississippi, State Farm official David L. Haddock called Dreux Seghers and advised him that all engineer assignments to his firm were being cancelled and that he should not continue with any pending inspections. This blanket cancellation was memorialized in an email from Mr. Haddock to Larry Kahn, Rhett Taylor, Lecky King, Sandy Schmidt, Rick D. Moore, Richard E. Serviss, Ben Rogers, and John Deganhart on October 9, 2005.

2. State Farm Coerced Forensic Analysis & Engineering Corporation to Rewrite Reports and to Declare that Flood Was the Primary Cause of Katrina Damage to Mississippi Homes.

82. State Farm used its power to cancel engineering assignments to coerce Forensic Analysis & Engineering Corporation (“Forensic”) to provide it with engineering reports that understated wind damage to homes in Mississippi and that falsely attributed damage to flood water.

83. State Farm employee Mark Wilcox provided weather data to Robert Kochan, the President of Forensic, that State Farm wanted Forensic to use in its engineering analyses. That weather data reflected the impossible falsehood that Katrina was a Category 1 wind storm but a Category 4 or 5 wave storm. Mr. Wilcox was “quite skeptical of the data” but nevertheless conveyed to Mr. Kochan that the data would be the insurance industry’s “hook” to call almost all Katrina damage water-related.

84. State Farm also provided to Forensic the Haag Report, which falsely concluded that Katrina’s storm surge preceded its damaging winds.

85. State Farm's coercion of Forensic began immediately after it received the first two reports that Forensic produced.

86. After Forensic submitted two reports finding that wind was the predominant cause of Katrina damage to two homes in Mississippi, Lecky King called Forensic to berate its engineers and cancel all engineering assignments to the company.

87. One of the reports that prompted Ms. King's call involved a home in Biloxi, Mississippi (the "Biloxi Home"). The other report addressed a home in Waveland, Mississippi (the "Waveland Home").¹

a. State Farm Coerced Forensic to Change Its Determination of the Primary Cause of Loss to the Biloxi Home.

88. When State Farm first retained Forensic to analyze whether wind or flood was the predominant cause of Katrina damage to the Biloxi Home, it assigned Brian Ford, a structural engineer with thirty-five years of experience, to conduct that analysis. Mr. Ford examined the property, spoke with eyewitnesses in the neighborhood, and authored a report (the "Ford Biloxi Home Report") concluding that wind, not flood, was the primary cause of damage to the Biloxi Home.

89. Mr. Kochan, Forensic's President and CEO, peer reviewed the Ford Biloxi Home Report for accuracy.

90. Lecky King personally reviewed and maintained possession and control of the engineering reports that State Farm received, including the Ford Biloxi Home Report. That report was among the first engineering reports that she reviewed. Ms. King called Forensic on

¹ Mississippi has omitted the street addresses and owners of these homes and others referenced below to avoid improper disclosure of personal information as required by Section 9(A) of the Administrative Procedures for Mississippi Electronic Courts. Mississippi can furnish a reference list of the personal information omitted here at the Court's request or can file under seal an alternate version of this Complaint containing the omitted personal information.

October 17, 2005, to discuss the Ford Biloxi Home Report as well as the report that a different Forensic engineer, Emmanuel “Mannie” Mannon, had prepared that concluded that wind was the primary cause of damage to the Waveland Home.

91. Lecky King spoke first with Forensic employee Adam Sammis. She told him that the damage “was obviously water” and that Forensic’s “engineers obviously could not tell the difference between wind and water and [their] reports where [sic] wrong.” Mr. Sammis then told Ms. King that “the engineer on this file [for the Biloxi Home] is Brian Ford, and he is here, would you like to talk to him,” and she responded that she would.

92. Lecky King told Mr. Ford to look at the Ford Biloxi Home Report and stated that “[t]his just can’t be wind.” When Mr. Ford told her that eyewitnesses reported that the house next door had blown apart before the flood waters rose, she responded, “Hell, these people are desperate. They will say anything.”

93. Lecky King herself has testified that her conversation with Brian Ford concluded when he told her:

he was going to stand on his decision on this one. And at that point, I thanked him for all the work he had done for State Farm and told him we would no longer need his services.

94. On the same day, Lecky King told Adam Sammis that she was pulling all engineering work from Forensic. Ms. King confirmed that blanket termination in writing, instructing Forensic to “send all information gathered from these inspections to me.”

95. Shortly after Lecky King terminated all State Farm assignments to Forensic, Forensic’s president, Robert Kochan, called to request a meeting with her. Mr. Kochan traveled from North Carolina to Mississippi to meet with her the next day. His goal was to “get back into the working fold of State Farm’s investigations.”

96. During that meeting on October 18, 2005, Lecky King told Robert Kochan that “Hurricane Katrina in the Biloxi area was a water event.” Mr. Kochan asked that Forensic be permitted to “reinspect” the Biloxi Home with a different engineer. Ms. King responded that Forensic “needed to verify all of the work that [it] had provided to date,” not just the analysis of the Biloxi Home. Mr. Kochan acquiesced.

97. Robert Kochan also agreed with Lecky King that “eyewitness statements are no longer to be relied upon in the development of our [Forensic’s] opinions.” Ms. King then returned to Mr. Kochan the original Ford Biloxi Home Report and Forensic’s invoices “as if they had never been presented to State Farm in the first place.” Mr. Kochan accepted those documents to ensure that Forensic “got back in the good graces” of, and could continue doing business with, State Farm.

98. After his discussion with Lecky King, Robert Kochan wrote to his team to tell them that he had “convinced her to give us another opportunity . . . to earn their respect back by reworking the two contested reports.” He directed that “eye witness statements are no longer to be relied upon in the development of our opinions.” He fired Brian Ford two or three days later. Robert Kochan told Brian Ford that Forensic was terminating Mr. Ford’s employment based on “discussions with State Farm.”

99. Robert Kochan’s announcement that Forensic was back in business with State Farm provoked an impassioned objection from one of Forensic’s engineers, Randy Down. Mr. Down raised “a serious concern about the ethics of this whole matter.” He pointed out that Lecky King was not qualified to dictate conclusions to professional engineers. He stated, “I really question the ethics of someone who wants to fire us simply because our conclusions don’t match hers.” He advocated that Forensic “needed to find a more rational and ethical client to be

dealing with.” He noted that State Farm “had already contradicted themselves regarding the reports” in seeking to manipulate results. Mr. Down stated further that he could “see now why other firms are bowing out” of State Farm’s Katrina work.

100. Despite Randy Down’s objections, Forensic conducted the “reinspection” of the Biloxi Home that State Farm wanted. Forensic assigned the reinspection to Jack Kelly and told him not to perform a wind load analysis, not to rely upon eyewitness statements, and not to inspect most of the home for structural damage.

101. Jack Kelly had never performed a storm damage assessment prior to Katrina.

102. Jack Kelly revised the Ford Biloxi Home Report to create a new report (the “Kelly Biloxi Home Report”) concluding that flood, rather than wind, was the primary cause of damage to the Biloxi Home. Other than the conclusion, most of the text of the Kelly Biloxi Home Report remained unchanged from the Ford Biloxi Home Report, and entire paragraphs were identical. The Kelly Biloxi Home Report made no reference to the Ford Biloxi Home Report or any prior inconsistent findings.

103. Robert Kochan, who peer reviewed and signed the Ford Biloxi Home Report, also peer reviewed and signed the Kelly Biloxi Home Report.

104. On April 8, 2013, a jury empaneled by the United States District Court for the Southern District of Mississippi concluded unanimously after a two-week trial that Katrina’s winds—not flood—rendered the Biloxi Home a total loss in *United States ex rel. Rigsby v. State Farm Fire & Casualty Co.*, No. 1:06-cv-433-HSO-RHW (S.D. Miss. Apr. 8, 2013), ECF No.

1092.

b. State Farm Coerced Forensic to Change Its Determination of the Primary Cause of Loss to the Waveland Home.

105. Forensic performed a similar “reinspection” of the Waveland Home under pressure from State Farm. Forensic originally assigned Emmanuel “Mannie” Mannon to conduct the engineering analysis, and Mr. Mannon authored a report (the “Mannon Waveland Home Report”) in which he concluded that wind was the primary cause of damage to the Waveland Home.

106. Robert Kochan agreed that Forensic would “reinspect” the Waveland Home as one of his concessions when he met with Lecky King on October 18, 2005, to get back in State Farm’s “good graces.” As with the Biloxi Home, Mr. Kochan assigned Jack Kelly to perform the “reinspection.”

107. State Farm expressed concern to Forensic about the negative impression that conflicting engineering reports in their files could create. Jack Kelly spoke with David Haddock of State Farm about this concern with respect to the Waveland Home “reinspection.” Mr. Kelly memorialized that conversation in a February 1, 2006, email to Robert Kochan, Nellie Williams, Randy Down, and William Forbes, in which he stated: “[s]ince the report he [Mr. Haddock] is holding has not been seen outside of SF, he is mailing that original back to me and the new report will replace it.”

108. Jack Kelly then authored a second report about the Waveland Home (the “Kelly Waveland Home Report”) that identified flood as the primary cause of damage to that home. The Kelly Waveland Home Report repeated verbatim most of the Mannon Waveland Home Report, except for the conclusion.

109. Forensic’s analysis of the Waveland Home was based in part on the false weather data that State Farm provided. For example, an early draft report referenced a “tidal water

surge” “preceding” Katrina’s damaging winds. Robert Kochan has testified that Forensic used the false Haag Report that State Farm provided as a “reference point.”

110. Mannie Mannon suffered the same fate as Brian Ford. Forensic fired him after Robert Kochan’s meeting with Lecky King.

c. State Farm Coerced Forensic to Change Numerous Other Engineering Reports.

111. State Farm’s coercion caused Forensic to change the results of numerous other reports that concluded that Katrina’s wind rather than flood was the primary cause of damage to a home. Those reports covered multiple properties in Biloxi, Kiln, Long Beach, Ocean Springs, Pascagoula, Pass Christian, and Waveland, Mississippi.

112. Robert Kochan also personally prepared, as the primary author and engineer, a second report for another Biloxi, Mississippi home, even though he had peer reviewed Brian Ford’s first report on that property. Like the revised reports that Jack Kelly prepared, Mr. Kochan’s second report found that flood was the primary cause of damage to the home, contrary to Mr. Ford’s earlier conclusion that wind was the primary cause of damage to that home.

113. Jack Kelly and Robert Kochan coordinated with State Farm employees, including Mark Wilcox and David Haddock, to replace other Forensic engineering reports that had designated wind as the primary cause of damage to homes in Mississippi with new reports by Mr. Kelly that identified flood as the primary cause of damage to those homes.

114. State Farm suggested to Forensic that it could swap out reports if State Farm had not yet disclosed those reports externally. As a result of that suggestion, Forensic provided to State Farm replacement reports identifying flood as the primary cause of damage and took back the prior reports that had identified wind as the primary cause of damage.

115. In at least some instances, Forensic provided State Farm with “draft” reports prior to sending State Farm a “final” report for its file.

116. In at least some instances, State Farm sent Mark Wilcox or another senior employee to supervise a site inspection by a Forensic engineer, usually Jack Kelly.

117. In at least some instances, State Farm informed Forensic of State Farm’s determination of the predominant cause of damage to a home in Mississippi before Forensic prepared an engineering report for that home.

118. None of Jack Kelly’s second reports referenced the existence of a prior report, much less disclosed that a Forensic engineer previously had found that wind was the primary cause of Katrina damage to the home.

119. State Farm never questioned a Forensic report that found flood was the primary cause of Katrina damage to a home in Mississippi, nor did Forensic ever conduct a “reinspection” of such a report.

120. Since Katrina, State Farm has retained Jack Kelley as a paid testifying expert witness in court cases against State Farm involving whether it properly adjusted and paid claims arising under its homeowner policies.

3. State Farm Coerced Rimkus Consulting Group, Inc., to Forge and Replace Reports.

121. State Farm exerted similar pressure upon, and manipulated the results produced by, Rimkus Consulting Group, Inc. (“Rimkus”), another engineering firm that State Farm retained purportedly to analyze whether Katrina’s wind or flood was the primary cause of damage to homes in Mississippi.

122. For example, State Farm retained Rimkus to analyze whether Katrina’s wind or flood was the primary cause of damage to a home in Diamondhead, Mississippi (the

“Diamondhead (Rimkus) Home”). Rimkus assigned structural engineer James Overstreet to assess damage to the home and determine the primary cause of damage.

123. James Overstreet authored an engineering report dated February 4, 2006, that attributed “50% of the Dwelling Loss due to wind and 50% of the Dwelling loss due to Storm Surge.”

124. Under pressure from State Farm, Rimkus employees Thomas Heifner and Gary Bell created a second report dated February 22, 2006, that concluded that “rising water and wave action of storm surge” destroyed the home. At Messrs. Heifner’s and Bell’s direction, Rimkus forged James Overstreet’s signature on the second report without his knowledge or permission. Rimkus then sent that second report with Mr. Overstreet’s forged signature to State Farm. A federal judge concluded later that Mr. Overstreet had not signed the second report and, in a separate case involving identical facts, stated that “it is readily apparent that the same person did not write both [reports].”

125. State Farm denied the claim that the owners of the Diamondhead (Rimkus) Home made under their homeowner policy for Katrina wind damage to the home.

4. State Farm Coerced Exponent, Inc., to Revise and Replace Reports.

126. State Farm exerted similar pressure upon, and manipulated the results produced by, Exponent, Inc. (“Exponent”), another engineering firm that State Farm retained purportedly to analyze whether Katrina’s winds or flood was the primary cause of damage to homes in Mississippi.

127. For example, State Farm retained Exponent to analyze whether Katrina’s wind or flood was the primary cause of damage to another home in Diamondhead, Mississippi (the “Diamondhead (Exponent) Home”). Exponent assigned structural engineer Calvin Thomas to assess damage to the home and determine the primary cause of damage.

128. Calvin Thomas examined the home and prepared a handwritten draft report dated October 6, 2005, that concluded that “wind caused the catastrophic failure” of the home and that “all of the homes in this area experienced a similar catastrophic failure.”

129. Exponent sent the draft report to Mark Wilcox at State Farm on or around October 19, 2005. Mr. Wilcox forwarded the draft report to David Haddock and Sandy Schmidt. David Haddock in turn forwarded the draft report to Lecky King.

130. David Haddock issued a notice to Exponent on November 11, 2005, cancelling State Farm’s engagement of Exponent. The cancellation notice stated, “If you have already inspected this loss, do not write the report.”

131. That same day, November 11, 2005, Kirk Angelle, a State Farm Team Manager, sent a letter to the owner of the Diamondhead (Exponent) Home denying the owner’s claim under his homeowner policy. In the letter, State Farm stated:

Our investigation is now complete and we have determined that the damage to the [sic] your dwelling, dwelling extension, and personal property as defined in the policy was a result of flood, surface water, waves and/or tidal water. Damages resulting from these causes of loss are not covered by your policy. Since your policy does not provide coverage for this type of loss, we are unable to assist you in payment for these damages.

132. Despite State Farm’s cancellation of the engineering assignment to Exponent and denial of the claim under the State Farm homeowner policy, Exponent prepared a second report for State Farm dated November 30, 2005, that concluded that the Diamondhead (Exponent) Home “was destroyed by storm surge flooding” and that “storm surge flooding obliterated any evidence of wind damage to the building.” John Oстераas and Calvin Thomas signed the second report on Exponent’s behalf.

133. The second Exponent report makes no mention of Mr. Thomas’s first report or his prior conclusion that “wind caused the catastrophic failure” of the home. Indeed, the second

Exponent report affirmatively states that it is based on Mr. Thomas' one and only visit to the home on October 6, 2005, from which Mr. Thomas concluded that Katrina's winds destroyed the home.

D. State Farm Issued a Blanket Cancellation of Mississippi Policyholder Claims for Wind Damage.

134. In late October 2005, Lecky King and David Haddock began issuing blanket cancellations of assignments to the engineering firms that State Farm had retained. They instructed the firms not to write a report even if they already had inspected the property in question. State Farm then issued a blanket denial of all outstanding wind claims under its homeowner policies that were pending confirmation by an engineer.

135. Prior to the blanket denial, Lecky King wrote an email on September 21, 2005, to David Randel, Rick Moore, and John Deganhart stating that she was up late into the night worried about wind claims and engineering issues and came up with a thought that might be a solution. Ms. King proposed that State Farm not send engineers to inspect homes. She advocated instead that State Farm should just deny all wind claims and tell the policyholders that if they disagree with State Farm's determination that they can hire their own expert and send the report to State Farm.

136. After State Farm received numerous engineering reports identifying wind rather than flood as the primary cause of Katrina damage to homes in Mississippi, State Farm implemented Ms. King's plan. It cancelled all outstanding engineering assignments and issued letters to its Mississippi policyholders denying coverage under their homeowner policies.

137. State Farm adjuster Stephen Burke testified that Rick Moore and Lecky King conducted meetings in early October 2005 in which they informed him and other adjusters that "as to wind damage," they should "just say no."

138. State Farm's cancellation of all engineering assignments and prejudicial instructions to its adjusters meant that it denied wind claims without any legitimate analysis of whether wind caused structural damage to its policyholders' homes.

139. State Farm's improper blanket cancellation of outstanding wind claims by Mississippi policyholders wrongfully denied coverage for Hurricane Katrina damage, leaving those homeowners with significant increased uncompensated losses that Mississippi was forced to pay through HAP. State Farm, rather than Mississippi, should have paid for those losses.

E. State Farm Abused HAP to Subordinate Improperly Its Own Liability to Mississippi's Liability.

140. Once Mississippi began issuing HAP grants and communicating with State Farm about the program, State Farm began manipulating its claims adjustments to make Mississippi a payer of first, rather than last, resort.

141. For example, State Farm intentionally delayed making certain payments due under its homeowner policies for Katrina wind damage until after Mississippi issued HAP grants to policyholders so that State Farm could improperly deduct the amounts of the HAP grants from its insurance payments to the policyholders.

V. State Farm's Scheme Caused Mississippi to Pay HAP Grants for Damage that State Farm Should Have Covered.

142. State Farm systematically pressured both its claims adjusters and third-party engineering firms to mischaracterize wind damage as flood damage, understated homeowners' repair and replacement costs for wind damage claims, and issued unsupported blanket denials of claims for wind damage.

143. These actions, among others, wrongly and dramatically reduced State Farm's payments under Mississippians' homeowner policies and left them with far greater uncompensated losses than they should have had. Mississippi then paid those homeowners

significantly more money in HAP grants to cover their uncompensated losses than it should have had to pay.

144. State Farm provided homeowner insurance to approximately 6,810 Mississippians who received HAP payments. Mississippi, reasonably believing that State Farm was acting in good faith, paid those State Farm policyholders a total of approximately \$522,147,171.63 in HAP grants to cover the losses for structural damage to those Mississippians' homes not paid by State Farm, an average of \$76,673.59 per policyholder. State Farm reported to HAP that it paid those same policyholders only approximately \$98,679,382.00, an average of only \$14,494.62 per policyholder. Indeed, State Farm reported that it made no insurance payment at all to hundreds of those policyholders.

145. Had State Farm fulfilled its obligations to those policyholders properly, however, it would have paid a significant portion of this liability, and Mississippi would have paid far less. By mischaracterizing wind damage as flood damage, State Farm therefore foisted its financial responsibility for those policyholders onto Mississippi.

146. The following paragraphs describe some examples of homeowners whose claims State Farm underpaid or mischaracterized, causing Mississippi to make larger HAP payments than it otherwise would have made.²

HAP Recipient 1

147. HAP Recipient 1 owned a house in Ocean Springs, Mississippi, that suffered significant damage from Katrina. State Farm insured that house for approximately \$159,170.00 and administered a \$100,000.00 flood policy on behalf of the government.

² Mississippi has omitted these homeowners' names and street addresses, referring to them instead as HAP Recipients 1 through 12, to avoid improper disclosure of their personal information as required by Section 9(A) of the Administrative Procedures for Mississippi Electronic Courts. Mississippi can furnish a reference list of the personal information omitted here at the Court's request or can file under seal an alternate version of this Complaint containing the omitted personal information.

148. HAP Recipient 1's house experienced winds exceeding 120 miles per hour during Katrina, with particularly strong winds impacting the house for more than three hours between approximately 8:30 a.m. and 12:15 p.m. on August 29, 2005. Winds of that speed will cause devastating damage, and those devastating winds preceded the arrival of any floodwater in HAP Recipient 1's house.

149. State Farm nevertheless paid HAP Recipient 1 only \$12,922.00 under his homeowner policy and authorized a \$100,000.00 payment under his flood policy, maxing out the limits on that policy. Those payments left HAP Recipient 1 with substantial uncompensated losses for the significant wind damage that his home sustained during Katrina. The MDA issued a HAP grant of \$101,956.65 to mitigate those losses.

150. State Farm failed to pay fully for damage covered by HAP Recipient 1's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for his wind damage claims properly.

HAP Recipient 2

151. HAP Recipient 2 owned a house in Biloxi, Mississippi, that suffered significant damage from Katrina. State Farm insured that house for approximately \$220,000.00 and administered a \$91,500.00 flood policy on behalf of the government.

152. HAP Recipient 2's house experienced winds exceeding 130 miles per hour during Katrina, with particularly strong winds impacting the house for more than three hours between approximately 7:45 a.m. and 11:30 a.m. on August 29, 2005. Winds of that speed will cause devastating damage, and those devastating winds preceded the arrival of any floodwater in HAP Recipient 2's house.

153. State Farm nevertheless made no payment to HAP Recipient 2 under his homeowner policy and authorized a payment of \$91,500.00 under his flood policy, maxing out the limits of that flood policy. That payment left HAP Recipient 2 with substantial uncompensated losses for the significant wind damage that his home sustained during Katrina. The MDA issued a HAP grant of \$116,400.00 to mitigate those losses.

154. State Farm failed to pay for damage covered by HAP Recipient 2's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for his wind damage claims properly.

HAP Recipient 3

155. HAP Recipient 3 owned a house in Ocean Springs, Mississippi, that suffered significant damage from Katrina. State Farm insured that house for approximately \$90,407.00, and HAP Recipient 3 had no separate flood insurance policy.

156. HAP Recipient 3's house experienced winds exceeding 125 miles per hour during Katrina, with particularly strong winds impacting the house for more than four hours between approximately 8:30 a.m. and 12:45 p.m. on August 29, 2005. Winds of that speed will cause devastating damage, and those devastating winds preceded the arrival of any floodwater in HAP Recipient 3's house.

157. State Farm nevertheless made no payment to HAP Recipient 3 under her homeowner policy, leaving her with no insurance compensation for the significant wind damage that her home sustained during Katrina. The MDA issued a HAP grant of \$102,562.00 to mitigate those losses.

158. State Farm failed to pay for damage covered by HAP Recipient 3's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for her wind damage claims properly.

HAP Recipient 4

159. HAP Recipient 4 owned a house in Gulfport, Mississippi, that was totally destroyed by Katrina. State Farm insured that house for approximately \$107,030.00, and HAP Recipient 4 had no separate flood insurance policy.

160. HAP Recipient 4's house experienced winds exceeding 135 miles per hour during Katrina, with particularly strong winds impacting the house for more than four hours between approximately 7 a.m. and 11:45 a.m. on August 29, 2005. Winds of that speed will cause devastating damage. Floodwater, by contrast, did not reach HAP Recipient 4's house until after approximately 9 a.m., more than two hours after the arrival of Katrina's devastating winds.

161. State Farm nevertheless made no payment to HAP Recipient 4 under his homeowner policy, leaving him with no insurance compensation for the significant wind damage that his home sustained during Katrina. The MDA issued a HAP grant of \$133,990.50 to mitigate those losses.

162. State Farm failed to pay for damage covered by HAP Recipient 4's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for his wind damage claims properly.

HAP Recipient 5

163. HAP Recipient 5 owned a house in Waveland, Mississippi, that was totally destroyed by Katrina. State Farm insured that house for approximately \$164,400.00, and HAP Recipient 5 had no separate flood insurance policy.

164. HAP Recipient 5's house experienced winds exceeding 130 miles per hour during Katrina, with particularly strong winds impacting the house for more than an hour between approximately 6:30 a.m. and 8 a.m. on August 29, 2005. Winds of that speed will cause devastating damage, and those devastating winds preceded the arrival of any floodwater in the HAP Recipient 5's house. Forensic's initial report for State Farm about this property stated that "the primary cause of damage to the property has been due to hurricane force wind coming from the southeast."

165. State Farm nevertheless paid HAP Recipient 5 only \$42,763.00 under his homeowner policy, leaving him with substantial uncompensated losses for the significant wind damage that his home sustained during Katrina. The MDA issued a HAP grant of \$150,000 to mitigate those losses.

166. State Farm failed to pay fully for damage covered by HAP Recipient 5's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for his wind damage claims properly.

HAP Recipient 6

167. HAP Recipient 6 owned a home in Biloxi, Mississippi, that suffered significant damage from Katrina. State Farm insured that house for approximately \$719,290.00 and administered a \$250,000.00 flood policy on behalf of the government.

168. HAP Recipient 6's house experienced winds exceeding 135 miles per hour during Katrina, with particularly strong winds impacting the house for four hours between approximately 8 a.m. and noon on August 29, 2005. Winds of that speed will cause devastating damage, and State Farm's own experts admitted in prior litigation that such winds were strong enough to cause structural damage or even to blow down a house. Forensic's initial report for

State Farm about this property stated that “the interior damage of the structure is primarily the result of the failure of the windows, walls, and doors due to wind.” Those devastating winds preceded the arrival of any floodwater in HAP Recipient 6’s house by hours.

169. State Farm nevertheless paid HAP Recipient 6 only \$36,228.00 under her homeowner policy and authorized a \$250,000.00 payment under her flood policy, maxing out the limits on that flood policy. Those payments left HAP Recipient 6 with substantial uncompensated losses for the significant wind damage that her home sustained during Katrina. The MDA issued a HAP grant of \$111,898.65 to mitigate those losses.

170. A jury found that Katrina’s winds had destroyed HAP Recipient 6’s house completely and that State Farm had fraudulently mischaracterized that damage as caused by flood to avoid financial responsibility for HAP Recipient 6’s losses.

171. State Farm’s proven fraudulent conduct with respect to HAP Recipient 6’s claim has cost Mississippi \$111,898.65 in HAP grants. Mississippi would not have paid any of that money had State Farm adjusted and paid for HAP Recipient 6’s claim truthfully as wind damage.

HAP Recipient 7

172. HAP Recipient 7 owned a house in Biloxi, Mississippi, that suffered significant damage from Katrina. State Farm insured the house for approximately \$220,000.00, and HAP Recipient 7 had no separate flood insurance policy.

173. HAP Recipient 7’s house experienced winds exceeding 135 miles per hour during Katrina, with particularly strong winds impacting the house for four hours between approximately 8 a.m. and noon on August 29, 2005. Winds of that speed will cause devastating damage. Forensic’s initial report for State Farm about this property also identified wind as the

primary cause of damage to the house. Those devastating winds preceded the arrival of any floodwater in HAP Recipient 7's house.

174. State Farm nevertheless paid HAP Recipient 7 only \$927.00 under his homeowner policy, leaving him with substantial uncompensated losses for the significant wind damage that his home sustained during Katrina. The MDA issued a HAP grant of \$150,000.00 to mitigate those losses.

175. State Farm failed to pay fully for damage covered by HAP Recipient 7's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for his wind damage claims properly.

HAP Recipient 8

176. HAP Recipient 8 owned a house in Biloxi, Mississippi, that suffered significant damage from Katrina. State Farm insured that house for approximately \$135,850.00, and HAP Recipient 8 had no separate flood insurance policy.

177. HAP Recipient 8's house experienced winds exceeding 130 miles per hour during Katrina, with particularly strong winds impacting the house for more than four hours between approximately 7:15 a.m. and 11:45 a.m. on August 29, 2005. Winds of that speed will cause devastating damage, and those devastating winds preceded the arrival of any floodwater in HAP Recipient 8's house.

178. State Farm nevertheless made no payment to HAP Recipient 8 under his homeowner policy, leaving him with no insurance compensation for the significant wind damage that his home sustained during Katrina. The MDA issued a HAP grant of \$117,756.00 to mitigate those losses.

179. State Farm failed to pay for damage covered by HAP Recipient 8's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for his wind damage claims properly.

HAP Recipient 9

180. HAP Recipient 9 owned a house in Ocean Springs, Mississippi, that was totally destroyed by Katrina. State Farm insured that house for approximately \$154,000, and HAP Recipient 9 had no separate flood insurance policy.

181. HAP Recipient 9's house experienced winds exceeding 135 miles per hour during Katrina, with particularly strong winds impacting the house for five hours between approximately 7:15 a.m. and 12:15 p.m. on August 29, 2015. Winds of that speed will cause devastating damage. Floodwater, by contrast, did not reach HAP Recipient 9's house until after 9:30 a.m., approximately two hours after the arrival of Katrina's devastating winds.

182. State Farm nevertheless made no payment to HAP Recipient 9 under her homeowner policy, leaving her with no insurance compensation for the significant wind damage that her home sustained during Katrina. The MDA issued a HAP grant of \$150,000.00 to mitigate those losses.

183. State Farm failed to pay for damage covered by HAP Recipient 9's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for her wind damage claims properly.

HAP Recipient 10

184. HAP Recipient 10 owned a house in Gulfport, Mississippi, that suffered significant damage from Katrina. State Farm insured that house for approximately \$345,730.00 and administered a \$200,000.00 flood insurance policy on behalf of the government.

185. HAP Recipient 10's house experienced winds exceeding 125 miles per hour during Katrina, with particularly strong winds impacting the house for more than four hours between approximately 7 a.m. and 11:15 a.m. Winds of that speed will cause devastating damage, and those devastating winds preceded the arrival of any floodwater in HAP Recipient 10's house.

186. State Farm nevertheless paid HAP Recipient 10 only \$20,209.00 under his homeowner policy and authorized an \$86,345.00 payment under his flood policy. Those payments left HAP Recipient 10 with substantial uncompensated losses for the significant wind damage that his home sustained during Katrina. The MDA issued a HAP grant of \$93,608.05 to mitigate those losses.

187. State Farm failed to pay fully for damage covered by HAP Recipient 10's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for his wind damage claims properly.

HAP Recipient 11

188. HAP Recipient 11 owned a house in Diamondhead, Mississippi, that suffered significant damage from Katrina. State Farm insured that house for approximately \$667,480.00 and administered a \$250,000.00 flood insurance policy on behalf of the government.

189. HAP Recipient 11's house experienced winds exceeding 115 miles per hour during Katrina. Winds of that speed will cause devastating damage, and those devastating winds preceded the arrival of any floodwater in HAP Recipient 11's house by hours.

190. State Farm nevertheless paid HAP Recipient 11 only \$4,574.00 under his homeowner policy and authorized a \$17,397.00 payment under his flood policy. Those payments left HAP Recipient 11 with substantial uncompensated losses for the significant wind

damage that his home sustained during Katrina. The MDA issued a HAP grant of \$150,000.00 to mitigate those losses.

191. State Farm failed to pay fully for damage covered by HAP Recipient 11's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for his wind damage claims properly.

HAP Recipient 12

192. HAP Recipient 12 owned a house in Long Beach, Mississippi, that was totally destroyed by Katrina. State Farm insured that house for approximately \$131,560.00 and administered a \$75,000 flood policy on behalf of the government.

193. HAP Recipient 12's house experienced winds exceeding 155 miles per hour during Katrina, with particularly strong winds impacting the house for more than five hours between approximately 6:30 a.m. and noon on August 29, 2005. Winds of that speed will cause devastating damage, and those devastating winds preceded the arrival of any floodwater in HAP Recipient 12's house.

194. State Farm nevertheless made no payment to HAP Recipient 12 under her homeowner policy and authorized a payment of \$75,000.00 under her flood policy, maxing out the limits of that flood policy. That payment left HAP Recipient 12 with substantial uncompensated losses for the significant wind damage that the home sustained during Katrina. The MDA issued a HAP grant of \$123,973.00 to mitigate those losses.

195. State Farm failed to pay for damage covered by HAP Recipient 12's homeowner policy, causing Mississippi to issue a larger HAP grant than it otherwise would have made had State Farm adjusted and paid for HAP Recipient 12's wind damage claims properly.

CAUSES OF ACTION

**COUNT I
Fraud**

196. Mississippi repeats and realleges each and every allegation contained in each of the paragraphs above as if set forth fully herein.

197. State Farm made numerous misrepresentations of material fact both directly to Mississippi and to those homeowners who have subrogated their claims to Mississippi. State Farm made those statements with knowledge or belief that such misrepresentations were false or at a minimum with reckless indifference to the truth.

198. As discussed above in great detail, State Farm intentionally misled Mississippi, and its own policyholders who subrogated their claims to Mississippi, by mischaracterizing wind damage as flood damage. State Farm misrepresented the amounts of wind and flood damage that Katrina inflicted upon its policyholders' homes in Mississippi. State Farm knew that those misrepresentations were false.

199. State Farm also knowingly or recklessly understated to its policyholders and Mississippi the insurance proceeds due under its homeowner policies for Katrina wind damage.

200. State Farm's misrepresentations were material to Mississippi's calculation and distribution of HAP grants to State Farm policyholders. Had State Farm forthrightly and accurately disclosed the extent of Katrina wind damage to its policyholders' homes and the full extent of its obligation to pay insurance proceeds under its homeowner policies for that damage, Mississippi either would not have issued HAP grants or would have issued smaller grants to those State Farm policyholders.

201. State Farm knowingly manipulated its data, documents, procedures, claims adjusters, engineers, and engineering firms to produce results that minimized and understated

both Katrina wind damage and State Farm's liability for that damage under homeowner policies it issued to policyholders in Mississippi.

202. State Farm denied and significantly undervalued claims for Katrina wind damage under its homeowner policies without having performed a good-faith claims adjustment, through either a claims adjuster or a retained engineering firm, and knowing that it lacked a good-faith factual basis for its denial or low valuation of those claims.

203. State Farm knew and intended that MDA staff would reasonably rely on its misrepresentations to determine the amount of uninsured losses to State Farm policyholders in Mississippi and to set the amount of the HAP grants issued to those policyholders. State Farm benefited substantially and illicitly from HAP, because HAP grants ameliorated the financial pain to State Farm policyholders caused by State Farm's wrongful denial or underpayment of claims for wind damage under its homeowner policies. State Farm in effect converted a program designed to help Mississippians who were devastated financially by Katrina into a subsidy for itself.

204. Mississippi was unaware that State Farm had misrepresented the actual amount of wind and flood damage to HAP applicants' homes and thus the extent to which State Farm owed insurance proceeds to those policyholders under homeowner policies. Mississippi was entitled to rely, and did in fact rely, on State Farm's false representations when calculating HAP grants to State Farm's policyholders in Mississippi.

205. As a proximate result of Mississippi's reasonable reliance upon State Farm's misrepresentations, Mississippi overpaid hundreds of millions of dollars to State Farm policyholders in Mississippi through HAP for Katrina damage that State Farm should have paid.

206. In addition to suffering direct harm from State Farm's fraud, Mississippi is contractually and equitably subrogated to the fraud claims of State Farm policyholders who received HAP grants. Those homeowners signed subrogation agreements, as referenced above in Paragraph 42, and Mississippi paid them for losses that State Farm legally, equitably, and in good conscience should have paid instead.

COUNT II
Negligent Misrepresentation

207. Mississippi repeats and realleges each and every allegation contained in each of the paragraphs above as if set forth fully herein.

208. State Farm had a duty to make a reasonably prompt investigation of all facts relevant to its policyholders' claims under its homeowner policies for Katrina damage and, after an adequate investigation and a realistic evaluation of the claim, to tell the plain truth.

209. State Farm denied or significantly undervalued claims for Katrina wind damage under its homeowner policies without having performed a good-faith claims adjustment and knowing that it lacked a good-faith factual basis for its denial or low valuation of those claims.

210. State Farm made numerous misrepresentations of material fact both directly to Mississippi and to its policyholders who have subrogated their claims to Mississippi. At a minimum, State Farm failed to exercise reasonable due diligence as to the truth of those statements.

211. As discussed above in great detail, State Farm misstated both to its policyholders and to Mississippi the extent to which Katrina's winds rather than flood damaged its policyholders' homes, as well as the policyholders' entitlement to proceeds under State Farm homeowner policies for those damages.

212. State Farm knew and intended that MDA staff would reasonably rely on the information it provided to assess the amount of HAP applicants' uninsured losses and to set the amount of their HAP grants.

213. The MDA did, in fact, reasonably rely on State Farm's overstatements of HAP applicants' uninsured liabilities, causing it to pay far more in HAP grants than it otherwise would have paid.

214. As a result of Mississippi's reasonable reliance upon State Farm's misrepresentations, Mississippi overpaid hundreds of millions of dollars to State Farm policyholders in Mississippi through HAP for Katrina damage that State Farm should have paid.

215. In addition to suffering direct harm from State Farm's misrepresentations, Mississippi is contractually and equitably subrogated to the negligent misrepresentation claims of State Farm policyholders who received HAP grants. Those homeowners signed subrogation agreements, as referenced above in Paragraph 42, and Mississippi paid for losses that State Farm legally, equitably, and in good conscience should have paid instead.

COUNT III Negligence

216. Mississippi repeats and realleges each and every allegation contained in each of the paragraphs above as if set forth fully herein.

217. State Farm owed a duty both to its policyholders and to Mississippi to adjust their wind and flood insurance claims accurately and honestly.

218. State Farm breached that duty by failing to take reasonable steps to adjust those insurance claims accurately and truthfully.

219. State Farm denied and underpaid its policyholders' claims for Katrina wind damage without performing adequate—or in many cases any—claim adjustments to determine the extent to which wind rather than flood caused structural damage to policyholders' homes.

220. That breach of its duty caused State Farm's policyholders to suffer greater uncompensated losses than they should have incurred, and accordingly caused Mississippi to overpay those policyholders for such losses with HAP grants.

221. As a result of State Farm's failure to adjust its policyholders' claims for Katrina wind damage with due care, Mississippi overpaid hundreds of millions of dollars to State Farm policyholders in Mississippi through HAP for Katrina damage that State Farm should have paid.

222. In addition to suffering direct harm from State Farm's negligence, Mississippi is contractually and equitably subrogated to the negligence claims of State Farm policyholders who received HAP grants. Those homeowners signed subrogation agreements, as referenced above in Paragraph 42, and Mississippi paid them for losses that State Farm legally, equitably, and in good conscience should have paid instead.

COUNT IV Breach of Contract

223. Mississippi repeats and realleges each and every allegation contained in each of the paragraphs above as if set forth fully herein.

224. State Farm entered into contracts for homeowner insurance with approximately 6,810 Mississippians to whom Mississippi later issued HAP grants.

225. After Katrina, those homeowners subrogated their claims for structural damage under those policies to Mississippi as a condition of their HAP grant applications. Additionally and in the alternative, those homeowners' claims are equitably subrogated to Mississippi, which paid debts to those policyholders that State Farm should have paid.

226. Mississippi and its subrogors have satisfied all obligations applicable to them under those homeowner policies.

227. State Farm was obligated under the homeowner policies it issued to adjust its policyholders' claims for Katrina wind damage promptly, honestly, and accurately, and to pay those policyholders the proceeds of their homeowner policies by paying fully for all covered Katrina wind damage.

228. State Farm breached homeowner policies it issued to Mississippians by failing to adjust its policyholders' claims for Katrina wind damage honestly and accurately, and by failing to fully and fairly pay its policyholders proceeds due under their homeowner policies for that damage.

229. As a result of State Farm's breaches, its Mississippi policyholders were wrongly deprived of the insurance coverage and financial protection for which they had bargained and paid State Farm premiums.

COUNT V
Bad Faith Breach of Contract

230. Mississippi repeats and realleges each and every allegation contained in each of the paragraphs above as if set forth fully herein.

231. State Farm's insurance contracts with its policyholders contain implied covenants of good faith and fair dealing.

232. State Farm breached those obligations by denying or limiting its policyholders' coverage for wind damage without an arguable or legitimate reason. State Farm acted willfully, maliciously, and/or with gross and reckless disregard for its policyholders' rights in denying and limiting their coverage.

233. State Farm knowingly manipulated its data, documents, procedures, claims adjusters, engineers, and engineering firms to produce results that minimized and understated both Katrina wind damage and State Farm's liability for that damage under homeowner policies it issued to policyholders in Mississippi.

234. State Farm denied and significantly undervalued claims for Katrina wind damage under its homeowner policies without having performed a good faith claims adjustment, through either a claims adjuster or a retained engineering firm, and knowing that it lacked a good-faith factual basis for its denial or low valuation of those claims.

235. State Farm's policyholders who received HAP grants have contractually and/or equitably subrogated their claims for State Farm's bad faith breaches of their homeowner policies to Mississippi. Those homeowners signed subrogation agreements, as referenced above in Paragraph 42, and Mississippi paid them for losses that State Farm legally, equitably, and in good conscience should have paid instead.

COUNT VI
Breach of Fiduciary Duty

236. Mississippi repeats and realleges each and every allegation contained in each of the paragraphs above as if set forth fully herein.

237. State Farm owed a fiduciary duty to its policyholders to adjust their homeowner insurance claims honestly and accurately.

238. State Farm breached that fiduciary duty. For example, State Farm knowingly manipulated its data, documents, procedures, claims adjusters, engineers, and engineering firms to produce results that minimized and understated both Katrina wind damage and State Farm's liability for that damage under homeowner policies it issued to policyholders in Mississippi.

239. State Farm also denied and significantly undervalued claims for Katrina wind damage under its homeowner policies without having performed a good faith claims adjustment, through either a claims adjuster or a retained engineering firm, and knowing that it lacked a good faith factual basis for its denial or low valuation of those claims.

240. State Farm's policyholders who received HAP grants have contractually and/or equitably subrogated their claims for State Farm's breaches of its fiduciary duty to Mississippi. Those homeowners signed subrogation agreements, as referenced above in Paragraph 42, and Mississippi paid them for losses that State Farm legally, equitably, and in good conscience should have paid instead. State Farm's breaches of its fiduciary duties further caused direct and proximate harm to Mississippi, which paid for much of the loss that State Farm unjustly refused to compensate.

COUNT VII
Unjust Enrichment

241. Mississippi repeats and realleges each and every allegation contained in each of the paragraphs above as if set forth fully herein.

242. State Farm currently holds money—proceeds of homeowner policies that State Farm owed to Mississippi policyholders for Katrina wind damage that it wrongly did not pay—that in equity and good conscience belongs to Mississippi.

243. By mischaracterizing the nature of Katrina damage and failing to pay its policyholders' insurance claims honestly and properly, State Farm wrongly left its policyholders with uncompensated losses.

244. Because State Farm did not pay for those losses as it should have done, Mississippi was required to pay State Farm policyholders more than it should have paid in HAP grants.

245. State Farm has enriched itself unjustly at Mississippi's expense by causing Mississippi to pay purportedly "uninsured" losses for State Farm policyholders that State Farm itself should have paid as losses covered under State Farm's homeowner policies.

246. By wrongfully denying and intentionally undervaluing Katrina wind claims under its homeowner policies, State Farm in effect converted HAP from a program designed to protect Mississippians into a subsidy for State Farm.

COUNT VIII
Common Law Indemnity

247. Mississippi repeats and realleges each and every allegation contained in each of the paragraphs above as if set forth fully herein.

248. Mississippi made payments to Mississippi homeowners pursuant to the requirements of HAP to compensate those homeowners specifically for the uninsured losses that they suffered from Katrina.

249. By mischaracterizing and overstating those uninsured losses, State Farm has avoided paying for damages that are its financial responsibility and that Mississippi actually has paid. Mississippi is entitled to indemnification for those damages that it paid but that State Farm ultimately should have paid.

JURY DEMAND

250. Mississippi demands a jury trial.

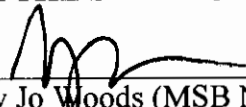
PRAYER FOR RELIEF

WHEREFORE, Mississippi prays for judgment against State Farm awarding:

1. Compensatory and punitive damages in an amount to be determined, together with interest, costs, and attorneys' fees; and
2. Such other relief as the Court may deem just and proper.

DATED this 21st day of April, 2015.

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