

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

THOMAS C. AND PAMELA MCINTOSH

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:06cv1080-LTS-RHW

STATE FARM FIRE AND CAS. CO., ET AL.

DEFENDANTS

**PLAINTIFFS' EVIDENCE OF
OUT-OF-STATE CONDUCT**

COME NOW the Plaintiffs and pursuant to this Court's Order of April 23, 2008, declare that the following evidence of out-of-state conduct may be introduced at trial. True and correct copies of the referenced documents are attached hereto as Exhibits.

Documents

Exhibit 1. Jury Verdict for Watkins on Their Individual Claims, in Civil Action No. CJ-2000-303, In the District Court of Grady County, State of Oklahoma.

Exhibit 2. Jury Verdict on Class Questions, in Civil Action No. CJ-2000-303, In the District Court of Grady County, State of Oklahoma.

Exhibit 3. Stage Two Verdict Form for Watkins, in Civil Action No. CJ-2000-303, In the District Court of Grady County, State of Oklahoma.

Exhibit 4. Deposition of Edward B. Rust, Jr., in Civil Action No. CJ-2000-303, In the District Court of Grady County, State of Oklahoma.

Exhibit 5. Deposition of Vincent J. Trosino in Civil Action No. CJ-2000-303, In the District Court of Grady County, State of Oklahoma.

Exhibit 6. Deposition of Susan Q. Hood, Vols. I & II, in Civil Action No. CJ-2000-303, In the District Court of Grady County, State of Oklahoma.

Exhibit 7. Deposition of Robert Trippel, in Civil Action No. CJ-2000-303, In the District Court of Grady County, State of Oklahoma.

Exhibit 8. Deposition of Tyrone Smith, in Civil Action No. CJ-2000-303, In the District Court of Grady County, State of Oklahoma.

Exhibit 9. Court's Findings, Conclusion and Order Regarding Punitive Damages and Evidentiary Rulings, Civil Action No. 890905231, In the Third Judicial District Court of Salt Lake County, State of Utah.

Exhibit 10. State Farm Lloyds v. Nicolau, 951S.W.2d 444 (1997).

Exhibit 11. First Party Seminar Documents.

Exhibit 12. Affidavit of Steve Strzelec.

Witnesses

1. Tim Ryles. Mr. Ryles is expected to testify regarding State Farm's conduct toward its insureds in Oklahoma following widespread tornado damage in that state in 1999. An Oklahoma jury determined that State Farm "recklessly disregarded" its duty to act fairly in adjusting claims, and acted maliciously in hiring Haag Engineering to evaluate the damage. The evidence in that case proved that, in numerous cases, Haag Engineering intentionally undervalued the tornado damage or attributed the damage to other factors, such as faulty construction. Haag Engineering also submitted "draft reports" to State Farm for approval before issuing the final engineering report, ensuring that State Farm was obtaining the desired opinion. The jury determined that State Farm intentionally and maliciously hired Haag with the knowledge that the engineering firm

would cooperate with State Farm to produce engineering reports that were favorable to State Farm rather than its insureds.

Mr. Ryles is expected to testify regarding State Farm's conduct toward an insured in Texas. In the case of Nicolau v. State Farm, 951 S.W.2d 444 (Tex. 1997), the jury determined that, when State Farm hired Haag Engineering to determine whether a plumbing leak had contributed to foundation problems, State Farm knew that Haag consistently rendered opinions favorable to State Farm in approximately eighty to ninety similar cases. In fact, the evidence showed that the only two Haag engineers who had ever issued opinions favorable to the insureds on foundation issues had never again worked for State Farm. The evidence indicated that State Farm retained Haag with the expectation of receiving a favorable engineering report, and that State Farm relied on the report as a pretext for the denial of the claim.

Mr. Ryles is expected to testify that the Nicolau verdict put State Farm on notice that its claims department had a problem with obtaining objective engineering reports. Likewise, after the Watkins verdict, State Farm was again on notice that its claims department was obtaining engineering reports slanted to favor State Farm. However, State Farm took no action to correct the problem or to ensure that the engineers it hired were issuing objective, fact-based opinions.

Mr. Ryles may offer other testimony consistent with his reports or prior testimony in this case.

2. Steve Strzelec. Mr. Strzelec is expected to offer testimony consistent with his Affidavit, attached hereto.

Respectfully submitted this the 23rd day of May, 2008.

THOMAS C. AND PAMELA MCINTOSH

By Their Attorney

/s/ Tina L. Nicholson

TINA L. NICHOLSON, MS BAR NO. 99643

CERTIFICATE OF SERVICE

I hereby certify that I have this date electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

This the 23rd day of May, 2008.

/s/ Tina L. Nicholson

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