

FILED
SEP 15 2005

**IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

EDDIE JEAN CARR, CHANCERY CLERK
BY _____ D.C.

**JIM HOOD, ATTORNEY GENERAL
FOR THE STATE OF MISSISSIPPI,
ex rel. THE STATE OF MISSISSIPPI**

PLAINTIFF

VS.

CIVIL ACTION NO.: 02005-1642

R1

**MISSISSIPPI FARM BUREAU INSURANCE,
STATE FARM FIRE AND CASUALTY COMPANY,
ALLSTATE PROPERTY AND CASUALTY
INSURANCE COMPANY, UNITED SERVICES
AUTOMOBILE ASSOCIATION, NATIONWIDE MUTUAL
INSURANCE COMPANY, and "A" THROUGH "Z"
ENTITIES (M.R.C.P. 9(h) DEFENDANTS)**

DEFENDANTS

COMPLAINT AND MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

1. This is a civil action brought by the Attorney General for the State of Mississippi on behalf of the State of Mississippi to declare void and unenforceable certain provisions contained in property casualty insurance policies written by the Defendants and issued to Mississippi residents and/or property owners in and around the Mississippi Gulf Coast seeking to exclude from coverage property loss and damage brought about by Hurricane Katrina and to enjoin the Defendants from utilizing said exclusion provisions in the adjustment of property casualty claims by their policyholders. In support of this action, the Attorney General would show:

2. Jim Hood is the duly elected and present Attorney General for the State of Mississippi and, according to law and equity, he brings this action on behalf of the State of Mississippi. Under the Mississippi Constitution of 1890 and other positive law of the State of Mississippi, including Mississippi's common law, the State is responsible for the health, safety and welfare of its citizens, and the Attorney General has the duty to protect the interests of the

general public, pursuant to Article 6, Section 173 of the Mississippi Constitution and Miss. Code Ann. § 7-5-1.

3. This civil action is founded on principles of equity and is brought under Mississippi law to promote judicial economy, and for such other relief as equitably may be obtained, for the harm thus unjustly, intentionally and wrongfully done and continuing to be done to Mississippi citizens by the various Defendants, who have been and continue to be unjustly enriched thereby at the expense of the Mississippi citizens.

4. The Defendants are certain insurance companies, with names both known and unknown, that, at all pertinent times, provided homeowners' insurance to residents and/or property owners in Mississippi.

5. At all pertinent times, the Defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that the State's citizens would be injured thereby.

II. PARTIES

Plaintiff

6. The State is a body politic governed by the Constitution and laws of the State of Mississippi, and the Attorney General is entitled to bring this action on behalf of the State pursuant to constitutional, statutory and common law. This suit concerns matters of statewide interest, in that the Defendants' refusal to meet their contractual obligations to their policyholders will impose unnecessary and excessive costs upon the state and local governments and ultimately the taxpayers of the State of Mississippi.

Defendants

7. Defendant Mississippi Farm Bureau Insurance is a corporation organized and existing under the laws of the State of Mississippi, with its principal office and place of business located at 6310 I-55 North, Jackson, Mississippi 39211, and/or at 6311 Ridgewood Road, Jackson, Mississippi, 39211, and which may be served with process by service on its agent for service of process, Jim H. Jenkins, 6310 I-55 North, Jackson, Mississippi 39211, or on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Miss. Code Ann. § 83-21-1.

8. Defendant State Farm Fire and Casualty Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at One State Farm Plaza, Bloomington, Illinois, 71701-0001, and which may be served with process by service on its agent for service of process, Mr. William E. Penna, 1080 River Oaks Drive, Suite B-100, Flowood, Mississippi 39232-7644 or on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Miss. Code Ann. § 83-21-1.

9. Defendant Allstate Property and Casualty Insurance Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 2775 Sanders Road, Northbrook, Illinois, 60062-6127, and which may be served with process by service on its agent for service of Process, CT Corporation System of Mississippi, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi, 39232, or on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Miss. Code Ann. § 83-21-1.

10. Defendant United Services Automobile Association ("USAA") is a corporation organized and existing under the laws of the State of Texas with its principal office and place of business located at 9800 Fredricksburg Road, San Antonio, Texas 78288, and which may be served with process by service on its agent for service of process Robert S. Addison, 4400 Old Canton Road, Suite 400, Jackson, Mississippi, 39211, or on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Miss. Code Ann. § 83-21-1.

11. Defendant Nationwide Mutual Insurance Company is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at One Nationwide Plaza, Columbus, Ohio 43215-2220, and which may be served with process by service on its agent for service of process CT Corporation System of Mississippi, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi, 39232, or by service on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Miss. Code Ann. § 83-21-1.

12. The defendants "A" THROUGH "Z" ENTITIES (M.R.C.P. 9(h) Defendants) are business entities, both domestic and foreign within the meaning of the Mississippi Rules of Civil Procedure, qualified to do business in the State of Mississippi, whose identities are presently unknown to the State but who may be described as certain insurers who likewise offered similar insurance all to the detriment of the citizens of the State as alleged herein.

III. JURISDICTION AND VENUE

13. This Court has jurisdiction over the subject matter, property, and parties herein pursuant to Article 6, Section 159(a) of the Mississippi Constitution and Miss. Code Ann. §§ 9-5-81, 13-3-57, and 75-24-9.

14. The Defendants listed herein, and/or their predecessors and/or their successors in interest, are either organized under the laws of (i) Mississippi or (ii) a state other than Mississippi, or (iii) are partnerships or other unincorporated associations with principal places of business both within and without Mississippi and each subject to suit under a common name, who have either obtained certificates of authority to transact business in Mississippi, or who transacted business in Mississippi without a certificate of authority, but within the contemplation of Miss. Code Ann. § 13-3-57, the Mississippi “long-arm” statute.

15. Venue is proper in the First Judicial District of Hinds County pursuant to Miss. Code Ann. §§ 11-5-1 and 75-24-9, in that some of the Defendants reside, have their principal place of business, or may be found in the First Judicial District of Hinds County, Mississippi.

16. The Defendants listed above, and/or their predecessors and successors in interest, did business in the State of Mississippi; and made contracts to be performed in whole or in part in Mississippi, which the Defendants knew would be substantially certain to cause injury to the State and to persons within the State thereby intentionally causing injury to persons within Mississippi. The principal place of business for Defendant Mississippi Farm Bureau Insurance is located in the First Judicial District of Hinds County. In addition, these acts and omissions by Defendants giving rise to these causes of action occurred in the First Judicial District of Hinds County, and the events causing injury in these causes of action occurred in the First Judicial District of Hinds County. Therefore, venue is proper under Miss. Code Ann. § 11-5-1.

IV. FACTUAL BACKGROUND

17. The Defendants, and each of them, have issued policies of insurance to residents and/or property owners of the Mississippi Gulf Coast and surrounding areas purporting to insure against property loss and damage from wind storms and hurricanes, but which contain

substantially similar provisions attempting to exclude coverage for hurricane loss and damage if the loss and/or damage included, directly or indirectly, loss or damage resulting from water, whether or not driven by wind. Defendants have realized millions of dollars in premiums from their sale of these policies.

18. The residents and/or property owners of the Mississippi Gulf Coast purchased these policies from Defendants for the primary purpose of insuring against any damage that could possibly result from hurricanes originating from the Gulf of Mexico.

19. Based on these purported policy coverages, the residents and/or property owners of the Mississippi Gulf Coast purchased these policies for the primary purpose of insuring against any and all hurricane damage and with the reasonable expectation that these policies would provide such coverage.

20. On August 29, 2005, Hurricane Katrina, a Category Four (4) Hurricane, made landfall at or around Waveland, Mississippi. Hurricane Katrina's winds damaged and/or destroyed all or substantially all of the homes and property located on the Mississippi Gulf Coast, as well as property located further inland from the immediate coastal areas.

21. Upon information and belief, Defendants are taking the position and intend to take the position in the future that these policies do not provide coverage for the damage undisputedly caused by Hurricane Katrina because of the policy exclusions which are the subject of this litigation.

22. Defendants' coverage position will therefore deprive thousands of Mississippi Gulf Coast residents and/or property owners of the insurance protection they purchased and upon which they relied.

23. Further, Defendants' coverage position will burden the State of Mississippi and its taxpayers with unnecessary public expense and lost revenue.

COUNT ONE

VIOLATION OF THE PUBLIC POLICY OF THE STATE OF MISSISSIPPI

24. The State re-alleges and incorporates herein the foregoing allegations of this Complaint and Motion for Temporary Restraining Order.

25. The Defendants issued property casualty insurance policies to residents and/or property owners of the Mississippi Gulf Coast that insure against loss and damages from hurricane wind; however these policies attempt to exclude from such coverage, any property loss resulting directly or indirectly from damage caused by water, whether or not driven by wind. These provisions attempt to exclude coverage even if other perils, such as hurricane winds, contributed to cause such loss.

26. Such exclusion provisions are void and unenforceable as violations of the public policy of the State of Mississippi in that such exclusion provisions attempt to alter, abrogate or invalidate longstanding Mississippi law and judicial precedents governing the issue of proximate causation and attempts to immunize the Defendants from contractual liability on insured perils which may be a proximate or contributing cause of loss, all in contravention of Mississippi law.

27. Moreover, these exclusions are void as against public policy because they violate and/or expressly contradict Mississippi common law, which mandates that full coverage be provided if the proximate and efficient cause of the damage (i.e., hurricane wind) is covered under the subject policy, even if other "non" covered causes also contributed to the loss.

28. Contracts, including insurance contracts, which are in contravention of Mississippi law are void and unenforceable. The exclusion provisions which are the subject of

this litigation contravene the public policy of the State of Mississippi and are not entitled to be enforced. Accordingly, the Defendants should be enjoined from relying on such exclusions to deny property loss coverage to insured victims who have suffered property casualty loss as a result of Hurricane Katrina.

COUNT TWO

UNCONSCIONABILITY

29. The State re-alleges and incorporates herein the foregoing allegations of this Complaint and Motion for Temporary Restraining Order.

30. The policies of property casualty insurance issued by the Defendants are adhesion contracts, unduly and unreasonably complex in their provisions and language and difficult to understand by the average consumer and policyholder, which resulted in a lack of knowledge in the provisions of the policies and a lack of understanding on the part of the policyholders. The policies of the Defendants which are the subject of this action were all in preprinted form, nonnegotiable and contained substantially identical exclusion provisions. These policies thereby deprived the policyholders of meaningful choice of coverage.

31. The exclusion provisions contained in these policies issued by the Defendants are unreasonably favorable to the Defendants and oppressive to the policyholder and bear no reasonable relationship to the risks and needs of the business of the Defendants, thereby rendering such exclusion provisions substantially and procedurally unconscionable and void.

COUNT THREE

**“WATER DAMAGE” AND/OR “FLOOD” EXCLUSIONS IN
THE SUBJECT POLICIES ARE AMBIGUOUS**

32. The State re-alleges and incorporates herein the foregoing allegations of this Complaint and Motion for Temporary Restraining Order.

33. These exclusions expressly contradict other policy provisions in these policies which provide full coverage for all damage proximately caused by Hurricane Katrina.

34. These exclusions are ambiguous on their face and when read in logical conjunction with other provisions of the subject policy. Under Mississippi law, any ambiguity in an insurance contract is construed in favor of the insured and against Defendants. Exclusionary clauses in insurance contracts are to be strictly construed and, furthermore, exclusionary clauses are to be construed strongly against the drafter.

COUNT FOUR

VIOLATION OF THE MISSISSIPPI CONSUMER PROTECTION ACT

35. The State re-alleges and incorporates herein the foregoing allegations of this Complaint and Motion for Temporary Restraining Order.

36. The Mississippi Consumer Protection Act prohibits unfair methods of competition affecting commerce and unfair deceptive trade practices in or affecting commerce. The Defendants' actions of selling insurance policies that attempt to exclude coverage for storm surge damage proximately caused by hurricane wind is an unfair or deceptive trade practice that violates § 75-24-5(1) of the Mississippi Consumer Protection Act. In addition, said practice violates (2) in the following particulars:

(e) Representing that . . . services have . . . characteristics, . . . uses, benefits . . . that they do not have;

. . .

(g) Representing that . . . services are of a particular standard . . . if they are of another;

. . .

- (i) Advertising . . . services with intent not to sell them as advertised;

All of these prohibited acts are accomplished by the Defendants when the Defendants sell these policies that specifically contemplate full and comprehensive hurricane coverage, but seek to exclude coverage.

COUNT FIVE

IRREPARABLE INJURY

37. The State re-alleges and incorporates herein the foregoing allegations of this Complaint and Motion for Temporary Restraining Order.

38. The Defendants have, for many years, engaged in providing insurance coverage to residents and/or property owners of the Mississippi Gulf Coast that purportedly provided insurance coverage for the type of damage caused by Hurricane Katrina. However, the Defendants are denying coverage for damage caused by Hurricane Katrina.

39. Residents and/or property owners of the Mississippi Gulf Coast are suffering and will continue to suffer immediate and irreparable harm unless injunctive relief is granted by this Court. Specifically, the Defendants are utilizing these exclusion provisions as grounds to deny and/or substantially reduce their coverage that they otherwise should pay. Further, the Defendants are forcing, attempting to force, or otherwise inducing their policyholders to accept substantially reduced payments on claims in exchange for a release from further liability. Unless this Court grants injunctive relief, the Defendants will continue to rely upon and utilize these exclusion provisions to deny and/or substantially reduce the coverage that they otherwise should pay.

40. As a condition to receiving funds for which the Defendants are liable under these policies, the Defendants through their agents and adjusters are at present utilizing forms and

other documents requiring policyholders to acknowledge and concede disputed factual issues. Such actions unjustly attempt to trigger policy exclusions regarding the causes of losses and damages to the prejudice of the policyholders. Unless enjoined by this Court, the Defendants will continue to encourage, coerce and otherwise induce their policyholders to acknowledge disputed factual issues to the benefit of the Defendants and to the prejudice of the policyholders.

41. Injunctive relief is appropriate because (i) there exists a substantial likelihood that the Plaintiff will prevail on the merits of this case; (ii) the injunction is necessary to prevent irreparable harm; (iii) the threatened harm to the Plaintiff outweighs the harm the injunction might do to the Defendants; and, (iv) the entry of such injunctive relief is consistent with the public interest.

42. Injunctive relief is appropriate because there exists an imminent threat of irreparable harm for which there is no adequate remedy at law. This remedy by permanent injunction is necessary because it is preventive in its nature, and it is not necessary to wait for the actual occurrence of the injury to Plaintiff, since the purpose for which the relief is sought would be defeated.

43. As shown by Exhibit "A," immediate and irreparable injury, loss or damage will result to the Plaintiff before this matter can be heard.

44. The Plaintiff has simultaneously with the filing of this action given notice to the Defendants by serving this Complaint and Motion for Temporary Restraining Order on their registered agents for service of process in accordance with Miss. Code Ann. § 83-21-1(d) and the Mississippi Commissioner of Insurance.

45. If such injunction enjoining the Defendants from such a practice is not granted, the citizens of Mississippi who purchase such coverage will be irreparably harmed in that they will certainly have almost no coverage for similar occurrences in the future.

WHEREFORE, PREMISES CONSIDERED, the State prays for relief and judgment against the Defendants as follows:

a. That because of the immediate and irreparable harm as set forth in this Complaint and Motion for Temporary Restraining Order that this Court grant a temporary restraining order and a preliminary and permanent injunction enjoining the Defendants and anyone acting in concert with them or on their behalf, including but not limited to, independent adjusters

(i) from attempting to have their policyholders acknowledge that their damages are the result of “water damage” and/or “flood damage” in connection with a partial adjustment of any and/or all claims arising out of damage from Hurricane Katrina, e.g. Exhibit A;

(ii) from utilizing any policy exclusions subject to this action as grounds to deny or limit insurance coverage to residents and/or property owners of the Mississippi Gulf Coast who hold policies of property casualty insurance with these Defendants; and

(iii) from utilizing such policy exclusions to compel, require, encourage or otherwise induce policyholders making claims on their policies into accepting less than the full coverage provided under their policies of insurance as settlement of their claims;

b. That a hearing on a preliminary and permanent injunction be set down for hearing at the earliest possible time and take precedence over all other matters before this Court;

c. That, after a trial on the merits, this Court issue a declaratory judgment pursuant to Rule 57 of the Mississippi Rules of Civil Procedure declaring the exclusion provisions of the property casualty insurance policies issued by Defendants to residents and/or property owners in

and around the Mississippi Gulf Coast which attempt to exclude from coverage loss or damage caused directly or indirectly by water whether or not driven by wind, to be void and unenforceable as against public policy and unconscionable;

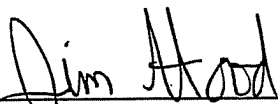
d. That this Court declare that the language of the exclusion provisions in the Defendants' policies is ambiguous and is to be strictly construed against the drafter so that coverage cannot be denied based on the subject exclusions;

e. For costs of this action;

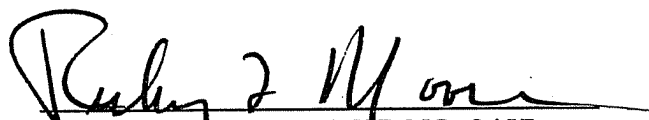
f. For such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the citizens of the State have an effective remedy; and

g. For such other and further relief, as the Court deems just and proper, to which the State may be entitled.

Respectfully submitted, this the 15th day of September, 2005,



JIM HOOD, ATTORNEY GENERAL FOR THE STATE OF
MISSISSIPPI, *EX REL.* THE STATE OF MISSISSIPPI



RICKEY T. MOORE, MSB NO. 3457
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SPECIAL ASSISTANT ATTORNEYS GENERAL

Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205
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ADVANCE PAYMENT REQUEST

Insured : Sample Claim
Policy # : 000000000
Property: 123 Water Street
Ocean Springs, MS 39564

Mailing : 123 Water Street
Ocean Springs, MS 39554

Date of Loss : 8/29/2005
Contents Advance : \$25,000.00
Building Advance : \$0.00
Contents Reserve : \$75,000.00
Building Reserve : \$175,000.00

This agreement acknowledges you have sustained a Flood loss on the above date at the above address.

Nationwide Flood Ins. Co. agrees to advance you \$25,000.00 against the final payment of your loss. It is understood, by you, that the investigation of your loss is not complete at this time. It may be established, after the investigation of your loss, that Nationwide Flood Ins. Co. has no legal obligation for payment of your claim. If it is determined your claim is not a valid claim under your insurance policy, you agree to reimburse Nationwide Flood Ins. Co. the \$25,000.00 advanced to you. Issuance of an advance payment by us is not an admission of liability on our part. Acceptance by you does not represent a satisfaction or release of all claims.

This is not a PROOF OF LOSS as required by the policy. A PROOF OF LOSS must still be submitted to the company within sixty (60) days of the date of loss, as stated in your policy. - *This Requirement has been waived by NFI*

This agreement or payment of this advance is not intended to change or modify any of the conditions, terms, provisions, or requirements contained in the policy. Any obligations or legal rights which may now or hereafter be available to you or the company are reserved.

DATE SIGNED : _____
INSURED _____
WITNESS _____

Nationwide Flood Ins. Co.

