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FROM: Sheila L. Birnbaum DATE: June 8, 2007
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CITY: Jackson TELEPHONE No.: (601) 359-3828
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MESSAGE:

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June 8, 2007

Mary Jo Woods, Esq.
Special Assistant Attorney General
Office of the Attorney General
Carroll Gartin Justice Building
450 High Street
Post Office Box 220
Jackson, MS 39205-0220

RE: State Farm Fire and Casualty Company

Dear Special Assistant Attorney General Woods:

During our meeting on Wednesday, we agreed to provide additional clarification to your office regarding State Farm's compliance with its Settlement Agreement of January 23, 2007. It is our hope that by this letter and any other information we can provide, the Attorney General will reconsider his position expressed during the meeting to file suit against State Farm alleging "bad faith" breach of the Settlement Agreement.

There is no factual support for the assertion that State Farm has not complied with the Settlement Agreement. Arguments to the contrary are based upon an out-of-context reading of paragraph B of Section III. To illustrate how this is so, it may be helpful to review the history of the negotiations.

At the same time we were negotiating State Farm's Agreement with the Attorney General, we were also negotiating the proposed *Woullard* class action settlement contemplated by Section III. Representatives of the Attorney General's office and, in some cases, the Attorney General himself, were engaged in these negotiations. Throughout these negotiations, the Attorney General's representatives were provided summaries of the terms of the agreement and drafts of the proposed class action agreement. Changes were made to the *Woullard* agreement specifically

in response to comments received from the Attorney General or his representatives. Neither State Farm's Agreement with the Attorney General's office nor the *Woullard* class action settlement was finalized until agreement had been reached on the last remaining item in dispute: the minimum guarantee to so-called "slab" claimants.

Paragraphs A through F describe the material terms of the procedure that all participants in the negotiations agreed would be reflected in the agreement to be submitted to the federal court for approval. Each of the items set forth in paragraphs A through F were faithfully reflected in the *Woullard* agreement. Thus, as to paragraph B, the agreement to be submitted to the federal court had to include criteria and guidelines, and those guidelines would be subject to court approval. The *Woullard* agreement contained criteria and guidelines that were negotiated with input from the Attorney General and his representatives. The entire agreement, including the criteria and guidelines for settlement offers, was submitted to Judge Senter for his approval. This is what the Attorney General required in State Farm's Agreement with him.

All participants in the negotiations – State Farm, proposed class counsel, and Attorney General Hood – believed and publicly stated that the *Woullard* agreement was fair when it was submitted to Judge Senter. Indeed, two press releases in January from the Attorney General's office praised State Farm for reaching the *Woullard* class action settlement and encouraged other insurers to follow its example. Plaintiffs' counsel and State Farm counsel also expressed the view that the proposed agreement was good for Mississippi.

As we said on Wednesday, State Farm continues to believe that the *Woullard* settlement was fair and in the best interests of its policyholders. We were prepared to continue to seek approval from Judge Senter; however, that opportunity was taken out of State Farm's hands when the Scruggs Katrina Group unilaterally and without any notice to State Farm withdrew its motion for class certification and preliminary approval.

Section III of the Settlement Agreement did not, and could not, require State Farm to compel certification of a settlement class or approval of the proposed class action settlement. Rather, it required submission of a proposed class action settlement, with provisions consistent with paragraphs A through B, to the federal court, as detailed above. State Farm did this.

The Attorney General stated at the outset of our meeting that Paragraph B requires State Farm to now establish an evaluation process consistent with the objections provided in Judge Senter's January 26, 2007, order. This view is premised on two faulty assumptions.

Section III contemplates a class action settlement – the procedure applies only to settlement class members. Clearly, there can be no class action settlement unless a class is certified. Judge Senter declined to grant preliminary approval to the *Woullard* settlement, and he refused to certify the class. Significantly, after we submitted the *Woullard* settlement, he also refused to certify an FRCP (b)(2) class in *Guice v. State Farm Fire & Cas. Co.*, No. 1:06CV001 LTS-RHW, 2007 WL 912120 (S.D. Miss. Mar. 22, 2007). In *Guice*, Judge Senter explained “that there are as many differences between the ‘slab cases’ as there are similarities in terms of the evidence available to ascertain the cause of the destruction and damage to these properties. For this reason, I do not believe there is any procedural advantage in creating a class of State Farm ‘slab cases’ that would not be offset by the factors that will ultimately require the individual treatment of these claims.” *Guice*, 2007 WL 912120, at *1.

Second, Judge Senter’s January 26 Order identified issues that he wanted the parties to address before approving a class action. Counsel for State Farm and the class addressed the issues that were of concern to the court at the February 28, 2007 hearing. Also at this hearing, Judge Senter acknowledged that it was not appropriate for him to attempt to negotiate the terms of a class action settlement. (February 28, 2007 Transcript at 52.)

State Farm has, therefore, complied with Section III of the Settlement Agreement. State Farm has also complied with the other terms of the Settlement Agreement. For example, on January 24, 2007, State Farm made a substantial payment to the Attorney General’s office for investigative and legal expenses pursuant to Section V of the Agreement.

On April 12, 2007, I sent to you State Farm’s contract with independent adjustors, its OG 70-96 on the Use of Engineering Firms in the Handling of First Party Property Claims, and its OG 71-06, on Flood Claim Processing, including the use of engineers on flood claims (and referenced in OG 70-96), pursuant to paragraphs I.B and II.B of the Agreement. State Farm is also compiling training materials to send to you pursuant to paragraph II.B. Pursuant to paragraph A, State Farm will provide copies of non-privileged information in a policyholder’s claim files upon request from the policyholder.

State Farm is also in compliance with Section II. Again, a copy of State Farm’s guidelines on the use of engineering firms was included in my April 12 letter. State Farm has also been collecting engineering reports pursuant to paragraph II.C and will be sending them to policyholders shortly. Examples of the transmittal letters will be sent to you by separate letter.

State Farm has also complied with Section IV regarding claims practices. As to paragraph H of that Section, my April 12 letter also included a copy of Southern Zone Agency Bulletin issued by State Farm to all of its Mississippi Agents and Agency Field Leadership pursuant to Mississippi Insurance Department Regulation 2006-2.

It is apparent from this review that State Farm has complied with the terms of the Settlement Agreement. Throughout the challenging circumstances preceding and following the efforts to have *Woullard* approved for class treatment, State Farm has acted in utmost good faith. Although it had fulfilled its obligations under Section III by submitting the *Woullard* settlement to Judge Senter, State Farm went beyond those obligations after the motion for class certification and settlement approval in *Woullard* was withdrawn by the Scruggs Katrina Group. State Farm proceeded to establish a mechanism under the auspices of the Mississippi Insurance Department ("MID") for the fair resolution of its policyholders' claims to deliver funds quickly for rebuilding in the three coastal counties. The terms of this resolution process mirrored the compensation to policyholders specified in State Farm's Settlement Agreement with the Attorney General. The process was endorsed by Governor Haley Barbour as well.

The procedure agreed to with the MID not only is consistent with Section III of State Farm's Agreement with the Attorney General, but it also addresses an issue raised by Judge Senter in the *Woullard* case. One of Judge Senter's expressed concerns in *Woullard* was that class members would be required to agree to binding arbitration, at the outset of the process, to participate in the class action settlement process. This concern is obviated in the MID reevaluation process inasmuch as participation is completely voluntary. Consequently, there is no need for binding arbitration. Each policyholder who has a slab can agree to take the offer (on the same terms as included in the Attorney General's negotiations with State Farm), or they may refuse, which means they retain all of their legal remedies. For policyholders desiring arbitration, the MID offers non-binding arbitration.

The MID reevaluation process also addresses an issue raised by the Attorney General after Judge Senter entered his January 26, 2007, order, namely, extending the opt-out deadline until after State Farm had made a settlement offer. While this proposal is inconsistent with the way in which class action settlements are intended to work, the reevaluation program with the MID provides for that result. State Farm does not receive any release until a policyholder accepts its offer. No one is bound to take the offer and, if they do not, policyholders retain all their legal rights.

And, in addition to the arbitration program noted above, there is also a mediation process available to policyholders. There are, therefore, at least three

options to policyholders who want to resolve their claims without the expense of hiring a lawyer to pursue litigation or the delays and uncertainty inherent in litigation: the reevaluation program, non-binding arbitration and mediation. Policyholders can elect to participate in any of these alternatives without giving up the right to pursue litigation if no settlement results from them.

Whether a settlement class could be certified or a class action settlement approved is unknown. Certainly, it could not happen without significant delay at this point. Even if parties could agree to a new class action settlement with different terms, and if the district court approved it, there would almost certainly be appeals. As a result, payments to class members (policyholders) would be delayed for at least a year and possibly longer.

The fact that Judge Senter had objections, including that *Woullard* may not meet the criteria for certification of a class under the Federal Rules, was not contemplated by anyone. State Farm proceeded in good faith to seek approval; it responded fully to the Judge's questions, inquiries, and objections. We understand that Attorney General Hood suggests that State Farm should have agreed to negotiate a different arrangement with trial lawyers serving as special assistant AGs; however, State Farm's Agreement with the Attorney General did not require such negotiations and there is no guarantee they would have been successful.

As noted in our meeting, we have made significant progress with the MID resolution. Written notice has been given to policyholders, and the response has been encouraging, especially in light of the negative advertising paid for by the Scruggs Katrina Group. Slab owners need only to return a resolution form to receive an offer. The amounts that slab claimants will receive are determined by the terms the Attorney General negotiated. This activity has enabled people to voluntarily participate in a quick resolution of their claims without having to retain lawyers or engage in lengthy litigation.

In our meeting Wednesday we described significant settlement efforts underway to resolve pending cases. We also explained how issues pending on appeal affect our ability to settle some cases on reasonable terms. As we said then, it is unclear what purpose would be served by attempting another class action settlement other than providing fees to plaintiffs' class counsel.

The process the Attorney General was instrumental in initiating has produced significant benefits to policyholders wishing to have their claims reevaluated. Further litigation initiated by the Attorney General against State Farm will be disruptive, time consuming, and expensive, resulting only in more delay and uncertainty.

Mary Jo Woods, Esq.
June 8, 2007
Page 6

State Farm is trying to resolve cases and making it possible for Mississippi policyholders to rebuild. We encourage the Attorney General to support these efforts, especially the ongoing reevaluation process. Doing so could create additional positive benefits to the citizens of Mississippi and offset the efforts of plaintiffs' trial lawyers to discredit the reevaluation process.

State Farm remains open to continuing dialogue that can improve the lives of people on the coast. We also intend to continue reporting to the Attorney General pursuant to the terms of the Settlement Agreement.

Sincerely,

A handwritten signature in black ink, reading "Sheila L. Birnbaum". The signature is written in a cursive style with a long horizontal line extending to the right.

Sheila L. Birnbaum

cc: Kim M. Brunner, Esq.
Jeffrey W. Jackson, Esq.

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