

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

REGINALD EDWIN BOSSIER

PLAINTIFF

VERSUS

CAUSE NO. 1:08-cv-408-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

PLAINTIFF'S MOTION IN LIMINE

COMES NOW the Plaintiff, by and through counsel of record, and files herewith his Motion *in limine*, and for cause therefore would request that this Honorable Court rule in advance of the trial excluding from evidence the following matters and directing counsel and their witnesses to not elicit testimony, argument, or evidence, directly or indirectly, regarding the following matters:

1. **MDA Grant**¹

Plaintiff received a grant from the Mississippi Development Authority concerning his Hurricane Katrina loss. This Honorable Court has previously recognized that the acceptance of such a grant does not affect the insurer's obligations under its policy, nor does it reduce the amount of policy benefits to which Plaintiff is entitled under the policy as an offset or otherwise. *Dickinson v. Nationwide*, 1:06cv00198-LTS-RHW, ECF #225. Moreover, this Honorable Court has held that evidence relating to the application for and acceptance of a MDA

¹Counsel for Plaintiff has requested a stipulation from counsel for Defendant relating to the MDA/SBA evidence issues, in accordance with this Court's prior rulings, in order to avoid the necessity of filing this motion. Counsel for Defendant has not responded to same. Moreover, as counsel for Plaintiff has still not received Defendant's pre-trial inserts, it is unknown whether Defendant intends to introduce this evidence at trial.

grant is admissible only if Plaintiff testifies or offers expert testimony that storm surge caused no damage to the property. *Politz v. Nationwide Mut. Fire Ins. Co.*, 2009 WL 1322556 (May 11, 2009). Consistent with prior precedent, this Honorable Court should enter an order prohibiting Defendant, its witnesses or attorneys from offering any evidence or argument relating to the application for and acceptance of MDA grant proceeds. If, during the trial, Defendant believes that such evidence constitutes impeachment, it should be required to approach the bench prior to offering said evidence. In no event should Defendant be permitted to offer the amount of the MDA grant.

2. **SBA Loan**

Plaintiff obtained a loan from the Small Business Administration relating to the loss at issue. This loan constitutes a collateral source which is not admissible at trial. *See, e.g., Brandon HMA, Inc. v. Bradshaw*, 809 So. 2d 611, 618 (Miss. 2001). State Farm protects itself from any potential risk of double payment by including SBA on any checks that are issued relating to this loss.

Because the SBA loan is inadmissible collateral source, this Honorable Court should enter an order prohibiting Defendant, its witnesses or attorneys, from offering any evidence or argument relating to the application for and acceptance of a SBA loan by Plaintiff. If, during the trial, Defendant feels that the offering of such evidence is necessary for impeachment, Defendant should be required to approach the bench to discuss same prior to offering such evidence.

3. **Personal Statements of Counsel During Voir Dire, Opening Statements and the Like**

State Farm attorney John Banahan and other members of his firm are known to interject personal comments about themselves and their family members during *voir dire*, opening statement, and similar times. For example, during the *Broussard* and *Gemmill* cases, Mr. Banahan discussed during *voir dire* his wife's kind-hearted nature and her disapproval of his representation of State Farm. Mr. Banahan's associate continued the personal homilies during opening statement, beginning in the *Broussard* case as follows:

We have all been through a very trying ordeal with Hurricane Katrina, and [Mr. Banahan's] fears are the same as my fears. I think that you could gather from his *voir dire* that our office was flooded and is now gone, that his home was flooded.

Broussard transcript at 24. During the *Gemmill* trial, the same associate mentioned on multiple occasions that he previously worked for Ham Industries.

The purpose of *voir dire* is to question potential jury members in order to determine their qualifications. Opening statement is designed to give a preview of the evidence at trial. It is improper at either time to interject personal anecdotes relating to matters that will not and cannot be in evidence.

Plaintiff requests that this Honorable Court enter an order prohibiting the attorneys from discussing personal anecdotes or attributes relating to themselves or their families, including their Hurricane Katrina losses, during the trial of this matter.

4. **Jim Newman Letter**

On August 31, 2009, State Farm paid policy limits of Mr. Bossier's dwelling extension. Enclosed with the check was a letter from Jim Newman, previously unidentified State Farm employee, who set forth a factual scenario designed to paint the payment in the light most favorable to State Farm. (See ECF 126-2 at pages 3 -7). The letter is hearsay and should be excluded. Moreover, it contains double, triple, and even quadruple hearsay, matters which Mr. Newman has no personal knowledge of. Much of this hearsay is untrue. For example, Mr. Newman states that State Farm did not know of Mr. Ziz as a potential witness until after Mr. Bossier's counsel was retained. This is untrue, as State Farm's own file indicates that the Ziz affidavit was presented in a mediation months prior to retention of counsel. Mr. Newman also relates purported telephone conversations of other State Farm employees.

Not only is the letter blatant hearsay, but is likewise irrelevant. The self-serving nature of the correspondence weakens any probative value the letter could have had. Moreover, what is relevant is that State Farm made the payment, when the payment was made, and how much was paid. The payment itself constitutes an admission that the dwelling extension was destroyed by wind prior to the arrival of water.

Mr. Newman has never been identified as a witness in this litigation and hence has never been available to be deposed. He has no personal knowledge of the matters relayed in the letter. Indeed, it was State Farm team manager Tip

Pupua who was designated as State Farm's corporate representative in this case and who testified concerning State Farm's intentions relating to the dwelling extension.

If the letter had any probative value, which it does not, then such weak value would be outweighed by issues of undue prejudice, confusion of the issues, and misleading the jury. Hence, the letter should be excluded under Rule 403 as well.

5. **Reservation Relating to Other Issues**

The pre-trial order in this matter is due to the Court on October 7. Counsel for Plaintiff provided counsel for Defendant with Plaintiff's proposed pre-trial inserts on September 4, 2009. As of the time of filing these motions, counsel for Plaintiff has not yet received Defendant's pre-trial inserts nor has she received any indication from counsel for Defendant as to when same will be sent. Accordingly, it is unknown what evidence State Farm intends to offer at the trial of this matter. Protection of Plaintiff's rights may require counsel for Plaintiff to seek leave to file a belated motion *in limine* as to any matters concerning which a contemporaneous objection would not be sufficient.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests this Honorable Court enter its order granting Plaintiff's Motion *in Limine* as set forth herein. Plaintiff prays for such other and further relief as may be deemed appropriate.

THIS the 5th day of October, 2009.

Respectfully submitted,

REGINALD EDWIN BOSSIER

BY: */s/ Judy M. Guice*

JUDY M. GUICE (#5057)

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CERTIFICATE OF SERVICE

I, Judy M. Guice, counsel for Plaintiff, do hereby certify that I have this day electronically filed the foregoing with the Clerk of this Court using the ECF system which sent notification of such filing to the following:

H. Benjamin Mullen, Esquire
John A. Banahan, Esquire
Bryan, Nelson, Schroeder, Castigliola & Banahan, PLLC
P. O. Drawer 1529
Pascagoula, MS 39568

This the 5th day of October, 2009.

s/Judy M. Guice
JUDY M. GUICE (MSB #5057)

010907

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1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF MISSISSIPPI
 3 SOUTHERN DIVISION

3 NORMAN AND GENEVIEVE BROUSSARD PLAINTIFFS

4 V. CIVIL ACTION NO: 1:06CV6-LTS-RHW

5 STATE FARM FIRE AND CASUALTY COMPANY DEFENDANT

6 TRANSCRIPT OF JURY TRIAL
 7 VOLUME II
 8 PAGES 157 - 328

9 BEFORE HONORABLE L. T. SENTER
 10 UNITED STATES DISTRICT JUDGE

11 JANUARY 9, 2007
 12 GULFPORT, MISSISSIPPI

13 REPRESENTING THE PLAINTIFFS:

14 JACK LUCIAN DENTON, ESQUIRE
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 16 POST OFFICE BOX 1204
 17 BILOXI, MISSISSIPPI 39533

18 WILLIAM C. WALKER, JR., ESQUIRE
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 20 OXFORD, MISSISSIPPI 38655

21 REPRESENTING THE DEFENDANT:

22 JOHN A. BANAHAN, ESQUIRE
 23 JOHN SCOTT CORLEW, ESQUIRE
 24 MATTHEW E. PERKINS, ESQUIRE
 25 BRYAN, NELSON, SCHROEDER, CASTIGLIOLA & BANAHAN
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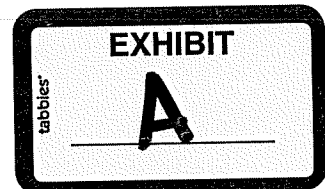
26 COURT REPORTER:

27 TERI B. NORTON, RMR
 28 2012 15TH STREET, SUITE 814
 29 GULFPORT, MISSISSIPPI 39501
 (228) 563-1740

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1 (THE FOLLOWING IN-CHAMBERS CONFERENCE WAS HELD OUTSIDE THE
 2 PRESENCE OF THE JURY:)

3 THE COURT: THE COURT SECURITY OFFICER THAT IS IN
 Page 1



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8 I WANT TO TALK A LITTLE BIT ABOUT WHAT MR. BANAHAN SHARED
9 WITH YOU YESTERDAY. WE HAVE ALL BEEN THROUGH A VERY TRYING
10 ORDEAL WITH HURRICANE KATRINA, AND HIS FEARS ARE THE SAME AS MY
11 FEARS. I THINK YOU COULD GATHER FROM HIS VOIR DIRE THAT OUR
12 OFFICE WAS FLOODED AND IS NOW GONE, THAT HIS HOME WAS FLOODED.
13 AND I SAY THAT NOT TO DRAW EMPHASIS TO IT. I SAY IT BECAUSE IT
14 IS DIFFICULT, I THINK, FOR YOU TO SIT AS MEMBERS OF THE JURY
15 AND DECIDE THIS. BUT YOU TOOK AN OATH WHEN YOU WERE SWORN IN,
16 AND THAT WAS TO DECIDE THIS CASE WITHOUT BIAS, WITHOUT
17 SYMPATHY, OR WITHOUT PREJUDICE, AND YOU HAVE TOLD MR. BANAHAN
18 THAT YOU COULD GIVE STATE FARM AND THE BROUSSARDS THE SAME FAIR
19 TRIAL. AND EVEN THOUGH I THINK THAT IS GOING TO BE A VERY
20 DIFFICULT TASK, WITH ALL THE EMOTIONS THAT ARE INVOLVED AND
21 WITH WHAT WE HAVE BEEN THROUGH, I AM HOLDING YOU TO THAT OATH,
22 AND I AM COUNTING ON YOU TO UPHOLD THAT OATH AND THAT DUTY.

23 I WANT TO LOOK A LITTLE BIT AT THE POLICY, BECAUSE THE
24 POLICY OF INSURANCE IS WHAT WE ARE GOING TO DISCUSS IN THIS
25 CASE, AND IT IS WHAT IS GOING TO DECIDE THIS CASE ULTIMATELY.

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1 MR. WALKER SUMMARIZED IT TO SOME EXTENT, BUT I WANT TO SHOW YOU
2 A COUPLE OF THE POLICY PROVISIONS AND LET YOU KNOW THAT I
3 BELIEVE YOU WILL BE INSTRUCTED, AND THERE IS NOT A DISPUTE,
4 THAT IF WIND DAMAGED THE HOME THROUGH BREACHING AN ENVELOPE AS
5 MR. WALKER TALKED ABOUT, THAT WOULD BE A COVERED LOSS.
6 HOWEVER, IF WATER OR SURGE OR FLOOD WATER, WHETHER DRIVEN BY
7 WIND OR NOT, WE ARE GOING TO LOOK AT THAT IN JUST A SECOND,
8 THAT IS NOT A COVERED LOSS, AND IF THAT IS WHAT DESTROYED THE
9 HOME, THERE IS NO COVERAGE FOR THAT.

10 DAVE, IF WE COULD, LET'S PULL UP D-1-10 AND LOOK AT THAT.
11 AND PULL OUT PARAGRAPH C, IF YOU COULD. THIS IS THE WATER
12 DAMAGE EXCLUSION WE ARE GOING TO BE TALKING ABOUT. YOU WILL