

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



TRENT AND TRICIA LOTT

PLAINTIFFS

VS.

CIVIL ACTION NO.: 1:05CV671 LG-RHW

STATE FARM FIRE & CASUALTY COMPANY
AND JOHN DOES 1 THROUGH 10

DEFENDANTS

COMPLAINT
EXPEDITED TRIAL SETTING REQUESTED

COME NOW, Trent and Tricia Lott ("Plaintiffs"), by and through counsel, and files this Complaint against Defendants State Farm Fire & Casualty Company ("State Farm"), and John Does 1-10 ("John Does"), and allege as follows:

I.
PARTIES

1. Plaintiffs Trent and Tricia Lott are adult residents of Jackson County, Mississippi, residing at 801 Beach Blvd., Pascagoula, Mississippi.

2. 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.

3. Defendants John Does 1-10 are entities affiliated with Defendants and/or have acted in concert with Defendants and whose identities are currently unknown. All allegations and claims asserted herein against Defendants are incorporated herein by reference against John Does 1-10.

Said John Does, when their identities are known, will be identified by name and joined in this action, if necessary, pursuant to the Federal Rules of Civil Procedure.

II.
SUBJECT MATTER AND PERSONAL JURISDICTION

4. This Court has jurisdiction over the subject matter and Defendant in this case pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Defendant State Farm and the amount in controversy exceeds \$75,000.00.

III.
VENUE

5. Venue in this cause is proper in this Court pursuant to 28 U.S.C. § 1391, because this suit respects real and personal property located exclusively in Jackson County, Mississippi and the conduct, acts and/or omissions upon which this cause of action is based occurred in Jackson County, Mississippi, which is completely within the United States District Court for the Southern District of Mississippi, Southern Division.

IV.
FACTS

6. Plaintiffs are lifelong residents of Pascagoula, Mississippi and have been loyal insureds of State Farm for approximately forty (40) years. They have dutifully paid 40 years of premiums to State Farm.

7. Plaintiffs purchased from State Farm a standard "Homeowner's Policy" ("subject policy"), naming Trent and Tricia Lott as the insured. The subject policy insured: the Dwelling at 801 Beach Blvd., Pascagoula, Mississippi ("insured residence"); the personal property thereof; and

loss of use for actual loss sustained. A representative copy of the subject policy is attached as Exhibit "A" to Complaint.

8. For such coverage, Plaintiffs agreed and paid State Farm an annual premium. Plaintiffs also agreed to pay an additional "Hurricane Deductible Endorsement" ("Hurricane Deductible") to ensure insurance coverage for any and all damage to the insured residence caused by a hurricane, including damage proximately and efficiently caused by hurricane wind and "storm surge" proximately caused by hurricanes.

9. The subject policy was underwritten, marketed, sold, and issued to Plaintiffs by State Farm who acted by, through, and/or in conjunction with, its agent William Wright.

10. Plaintiffs, whose residence was on the Gulf of Mexico, purchased the subject policy from State Farm for one of the express and primary purposes of insuring against any property damage that could possibly result from hurricanes impacting the Mississippi Gulf Coast from the Gulf of Mexico, including any and all damage proximately, efficiently, and often caused by hurricane wind, rain, and "storm surge" proximately caused by hurricanes.

11. In selling the subject policy to Plaintiffs and subsequently collecting premiums under the policy, State Farm and its agent Wright expressly and/or impliedly represented to Plaintiffs that they would have full and comprehensive coverage for any and all hurricane damage, including any and all damage proximately, efficiently, and typically caused by hurricane wind and "storm surge" proximately caused by hurricanes.

12. The subject policy, through its "Coverages," and Losses Insured" provisions, also purported to provide full and comprehensive coverage for all "accidental direct physical loss" to insured property proximately and efficiently caused by hurricane wind and storm surge.

13. In addition, the subject policy contained a "Hurricane Deductible Endorsement," which also purported to provide full and comprehensive coverage for all loss proximately caused by a hurricane. The Hurricane Deductible defines "hurricane" as meaning "a *storm system* that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service." This definition of hurricane and its use of the term "*storm system*" contemplates not only damage from hurricane winds, but also rain, microbursts, and "storm surge" that also proximately and typically results from a hurricane "*storm system*." Plaintiffs expressly agreed to the "Hurricane Deductible" in consideration for this full and comprehensive hurricane coverage, and therefore reasonably expected that any such hurricane damage would be covered under the subject policy. A representative copy of the "Hurricane Deductible" is attached as Exhibit "B."

14. Based on the representations of hurricane coverage made by State Farm and Wright and the express and implicit policy coverages, Plaintiffs reasonably relied on said representations and purchased the subject policy with the reasonable expectation that the subject policy would provide full and comprehensive coverage for any and all hurricane damage to the insured residence.

15. On August 29, 2005, within the subject policy period, the insured residence and the personal contents therein were completely destroyed by hurricane wind, rain, and/or storm surge from Hurricane Katrina, a Category (4) Hurricane with winds in excess of 150 miles per hour. This loss was covered under the subject policy. There is nothing left of the insured residence or contents but a slab.

16. Almost immediately thereafter, and in accordance with the subject policy provisions, Plaintiffs notified State Farm of the covered loss.

17. However, on December 2, 2005, State Farm, contrary to the subject policy coverage provisions and its prior representations and despite the fact that the insured property was completely destroyed, informed Plaintiffs that it would not cover their total loss. State Farm advised Plaintiffs that it considered their property loss to have been caused by "storm surge," rather than the hurricane wind, which it claimed was excluded from coverage under the "flood" exclusion to the subject policy. A copy of State Farm's December 2, 2005 denial letter is attached as Exhibit "C" to Complaint.

18. State Farm's positions that the subject policy does not cover any of Plaintiffs' hurricane damage, that "storm surge" is excluded, and that Plaintiffs' property loss was caused by a "flood" are without merit and defeat the whole purpose for obtaining insurance expressly for "hurricane" damage in the first place.

19. Plaintiffs' residence and contents were completely destroyed by Hurricane Katrina. The subject policy's "Coverages," "Losses Insured," and "Hurricane Deductible" coverage provisions provide full and comprehensive coverage for any and all damage to the insured residence, contents, and loss of use, whether it be by accompanying hurricane winds, "storm surge" proximately caused by hurricane winds, or both. The Plaintiffs agreed to pay the special, additional "Hurricane Deductible" on any "hurricane" damage sustained in order to receive the contemplated "hurricane" coverage.

20. State Farm's claim position directly contradicts Mississippi's insurance law in existence for the last 40 years, which mandates full insurance coverage if the hurricane winds were the efficient proximate cause of the loss. It is uncontroverted that hurricane wind is covered under the subject policy. In the case of the Plaintiffs, it is undisputed that their residence and property

would not have been damaged but for the hurricane winds of Katrina. In fact, NOAA, the National Weather Service, the National Hurricane Center, and other reputable meteorologic experts all uniformly note that "storm surge" is caused by hurricane wind. State Farm's coverage position also violates Mississippi' valued policy statute Mississippi Code Annotated § 83-13-5, which requires full coverage if an insured residence is completely destroyed by covered loss.

21. However, regardless of whether the total damage to Plaintiffs' insured property was caused by hurricane wind, storm surge proximately caused by hurricane wind, or both, the so-called "flood" exclusion, which State Farm defines in the subject policy and in its denial letter as "flood, surface water, waves, tidal water, tsunami, seiche, or overflow of a body of water, or spray from any of these, all whether or not driven by wind," is not applicable here and in any event, is modified by the "Hurricane Deductible." Although the subject policy does not define "flood" or any of these other listed perils, none of them, as they are commonly understood and defined in the English language, occurred during Hurricane Katrina or caused the damage to Plaintiffs' property. The Gulf of Mexico does not "flood" or "overflow." "Waves" or "tidal waters", as those terms are commonly used, likewise did not occur during Hurricane Katrina. *Hurricane Katrina* was not a "tsunami" or "seiche." Plaintiffs' insured residence was damaged by "hurricane wind" and/or "storm surge" proximately caused by Hurricane Katrina. "Storm surge" is a meteorological phenomenon caused by major hurricanes like Katrina. Indeed, a number of resources and experts in meteorology, including NOAA, the National Weather Service, and the National Hurricane Center note that "storm surge" is part and parcel of a hurricane and is distinguishable from "flood" damage.

22. This "flood" exclusion is also ambiguous and deceiving when read in conjunction with other provisions of the subject policy, such as the regular coverage provisions and the unique