

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

and expensive "Hurricane Deductible," which do provide full coverage for damage caused by a "Hurricane."

23. State Farm is merely attempting to dodge its coverage obligations to the Plaintiffs under the subject policy by wrongfully characterizing their damage as "Flood," in order to avoid paying Plaintiffs' claim.

24. State Farm should not be allowed to rewrite the subject policy to retroactively exclude that which is not excluded by the policy. Similarly, State Farm should also not be allowed to recharacterize Hurricane Katrina as a "flood" in order to avoid their payment obligations under the subject policy. Lastly, State Farm should not be allowed to collect 40 years of premiums for nothing. Plaintiffs are therefore entitled to full coverage under the subject policy for the damage caused by Hurricane Katrina, injunctive relief, specific performance of the Contract, indemnity, unjust enrichment, reformation and other such equitable relief.

**V.**

**COUNT ONE:**

**DECLARATION OF INSURANCE COVERAGE**

25. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-24 of the Complaint.

26. Plaintiffs seek a Declaratory Judgment pursuant to Federal Rule of Civil Procedure 57 for the purposes of determining a question of actual controversy between the parties concerning their rights, obligations, and coverages under the subject policy.

27. Based on the representations made by State Farm, the express subject policy coverage provisions, and the "Hurricane Deductible," Plaintiffs are entitled to full insurance coverage under

the subject policy for all damage to insured property and loss of use caused by Hurricane Katrina, whether it be by hurricane winds, storm surge proximately caused by hurricane winds, or both.

28. Plaintiffs therefore seek a declaration that the subject policy provides full insurance coverage for all damage to their insured residence, property, and loss of use caused by Hurricane Katrina.

29. Plaintiffs also seek a declaration that any damage to their insured residence and property that was caused by Hurricane Katrina's "storm surge" is not excluded under the subject policy.

30. Plaintiffs also seek a declaration that the subject policy's "flood" exclusion is not applicable and does not exclude coverage for the damage to Plaintiffs' insured residence and property caused by Hurricane Katrina.

31. Further, Plaintiffs seek a declaration that the "flood" exclusion is not applicable because it is ambiguous.

**COUNT TWO:**  
**INJUNCTION/EQUITABLE ESTOPPEL**

32. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-31 of the Complaint.

33. State Farm represented to Plaintiffs that they would have full insurance coverage for any and all property damage and loss of use proximately and efficiently caused by a hurricane, whether it be by hurricane winds, "storm surge" proximately caused by hurricanes, or both.

34. The subject policy also purports to provide full insurance coverage for all property damage proximately and efficiently caused by a hurricane, whether it be by hurricane winds, "storm



surge” proximately caused by hurricanes, or both. The subject policy does not exclude damage caused by “storm surge.”

35. Hurricane Katrina completely destroyed the Plaintiffs’ insured residence and property.

36. However, State Farm is now of the position that the subject policy’s “flood” exclusion excludes insurance coverage for the wind and/or storm surge damage to Plaintiffs’ insured residence and property proximately caused by Hurricane Katrina.

37. State Farm’s coverage position is contrary to the express coverage terms of the subject policy and the “Hurricane Deductible.” In addition, the “flood” exclusion is not applicable to Plaintiffs’ loss.

38. As a result, Plaintiffs have suffered and will continue to suffer substantial and irreparable injury if State Farm continues to rely on the “flood” exclusion or the separate “flood” policy to deny them full insurance coverage for their loss under the subject policy.

39. Therefore, Plaintiffs respectfully seek a preliminary and/or permanent injunction enjoining State Farm from refusing to pay the full amount of the Plaintiffs’ property damage, loss of contents, and loss of use under their subject homeowner’s policy.

40. Plaintiffs also seek a preliminary and/or permanent injunction enjoining State Farm from rewriting the subject policy to exclude damage caused by “storm surge.” Plaintiffs also seek an Order that State Farm be enjoined and/or equitably estopped from refusing to cover damage caused by “storm surge.”

41. Plaintiffs further seek a preliminary and/or permanent injunction enjoining State Farm from relying on the inapplicable and ambiguous “flood” exclusion to defeat insurance coverage for Plaintiffs under the subject policy. State Farm should also be equitably estopped from utilizing the

"flood" exclusion to deny Plaintiffs' insurance coverage for their insured residence and property under the subject policy.

**COUNT THREE:**

**SPECIFIC PERFORMANCE OF INSURANCE CONTRACT**

42. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-41 of the Complaint.

43. State Farm entered into the subject contract of insurance with the Plaintiffs wherein it clearly and expressly agreed to provide insurance coverage for physical loss to property and loss of use proximately and efficiently caused by a hurricane. Plaintiffs in turn have paid State Farm substantial premiums for 40 years, even agreed to a "Hurricane Deductible" in consideration for the agreed upon hurricane coverage.

44. Plaintiffs have now suffered total destruction of their insured residence and property as a proximate and direct result of Hurricane Katrina, and have consequently been denied use of their residence as well.

45. Plaintiffs have performed their end of the bargain and are accordingly now entitled to Specific Performance of their subject insurance contract. The Court should therefore require State Farm to specifically perform such agreement.

**COUNT FOUR:**

**INDEMNITY**

46. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-45 of the Complaint.

47. State Farm is obligated under the subject policy and by its representations to provide full insurance coverage to Plaintiffs for all damage to the insured residence, property, and loss of use caused by Hurricane Katrina.

48. However, State Farm has denied Plaintiffs' insurance coverage and has refused to pay them for their covered loss.

49. As a direct and proximate result of State Farm's denial, Plaintiffs have been and will continue to be forced to pay a substantial amount of money out of their own pockets for their loss of use of the insured residence. Plaintiffs will also be required to pay hundreds of thousands of dollars to rebuild and/or replace destroyed property. This will consequently require Plaintiffs to incur additional debt.

50. The money that Plaintiffs are now obligated to pay is money that State Farm in all fairness and equity should pay under the subject policy or otherwise. Plaintiffs are therefore entitled to indemnity from State Farm for all sums they have expended and will be required to expend, as well as debt they will be required to incur in order to repair, refurbish, and/or replace their insured residence and property.

**COUNT FIVE:**  
**UNJUST ENRICHMENT/CONSTRUCTIVE TRUST**

51. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-50 of the Complaint.

52. In marketing, selling, and issuing the subject policy to Plaintiffs, State Farm represented and agreed to obtain and provide Plaintiffs with full hurricane coverage for all property damage and loss of use typically caused by a hurricane, including damage proximately caused by

hurricane wind and storm surge damage proximately caused by hurricanes. These representations and contractual obligations are also evidenced by the subject policy's coverage provisions and "Hurricane Deductible."

53. Plaintiffs have paid State Farm substantial monetary premiums for such "hurricane" coverage.

54. However, despite realizing substantial premiums from Plaintiffs, State Farm has withheld the insurance proceeds owed to Plaintiffs for the hurricane damage to their insured property.

55. In addition, by classifying Hurricane Katrina and the damage to Plaintiffs' residence and property as "flood", State Farm has wrongfully realized insurance premiums and withheld insurance proceeds that the Plaintiffs are entitled to.

56. State Farm has therefore been unjustly enriched at Plaintiffs' expense.

57. Plaintiffs have suffered injury as a proximate result of State Farm's unjust enrichment. Plaintiffs have been and will continue to be forced to pay for costs and living expenses that should in equity and good conscience be borne by State Farm under the subject policy.

58. As a proximate result of State Farm's false and fraudulent representations and refusal to provide full insurance coverage under the subject policy for the damage to Plaintiffs' insured residence and property caused by Hurricane Katrina, State Farm is in possession of premiums, insurance proceeds, and other monies that it in equity and in good conscience should not be entitled to retain.

59. Plaintiffs are therefore entitled to damages resulting from State Farm's unjust enrichment, including the imposition of a Constructive Trust on all premiums Plaintiffs paid to State

Farm and on the insurance proceeds wrongfully held by State Farm under their subject homeowner's policy.

**COUNT SIX:**

**REFORMATION OF INSURANCE CONTRACT BASED ON EQUITABLE FRAUD**

60. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-59 of the Complaint.

61. Plaintiffs procured insurance through State Farm and its agent Wright and have religiously paid premiums every year to Defendants. State Farm was thoroughly familiar with the physical location of Plaintiffs' property, and more specifically, was familiar with the close proximity of Plaintiffs' property to the Mississippi Gulf Coast. State Farm knew or should have known the types of risks against which Plaintiffs needed property insurance, especially risks relating to hurricanes, which commonly form and/or appear in the Gulf of Mexico.

62. Similarly, in marketing, selling, and issuing the subject policy, State Farm knew or should have known of the importance of hurricane coverage to Plaintiffs and represented to Plaintiffs that the subject policy would provide full and comprehensive coverage for any and all property damage that could be caused by a hurricane, including damage proximately caused by hurricane wind and storm surge damage proximately caused by hurricanes.

63. State Farm held itself out to the public and to Plaintiffs as "Good Neighbors" who were experts in insurance matters. Therefore, Plaintiffs placed complete confidence in State Farm and relied upon it exclusively to formulate an insurance program sufficient to protect Plaintiffs from risks to their property, such as damage caused by hurricanes. State Farm should have known that Plaintiffs were relying on it to provide adequate insurance coverage and that Plaintiffs were relatively unschooled in insurance matters.