

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

NORMAN J. BROUSSARD AND  
GENEVIEVE BROUSSARD

PLAINTIFFS

V.

CIVIL ACTION NO. 1:06cv6-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

**ORDER**

This order addresses Defendant's [26] Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment as to Fiduciary Duty and Extra-Contractual/Punitive Damages. Plaintiffs in their [37] response do not oppose partial summary judgment being entered on the fiduciary duty issue.

At its core, Plaintiffs' cause of action is based on an alleged breach of contract. The Complaint does not even contain separate counts. The only document attached to the Complaint is a letter to Plaintiffs from one of Defendant's representatives (dated October 21, 2005) denying benefits based on an investigation showing that the damage sustained during Hurricane Katrina was the result of flood not covered by the policy. Defendant's [6] Answer to the Complaint affirmatively pleads that some of Plaintiffs' claims "are either not covered or excluded from coverage under any applicable State Farm policy." Plaintiffs did not have flood insurance.

Attached to Defendant's [26] motion is a copy of a State Farm homeowners policy, but not the one issued specifically to Plaintiffs. This attachment does not disclose the policy limits. The Plaintiffs' residence apparently was reduced to a slab by the storm, although it takes a lot of reading to reach that conclusion.

The tension in the record is between the damages sustained by Plaintiffs and the manner in which their claim was handled by Defendant. A paragraph in the Complaint avers that "Plaintiffs have suffered damages equal to the benefits due under the terms of the insurance policy," but does not quantify what contractual damages Plaintiffs are claiming. Their expert's opinion is that "the Broussard residence was either destroyed by the winds of Katrina, including tornadic winds prior to the advent of the storm surge or damaged first by the winds of Katrina and later by the combined forces of both the wind and the storm surge." Further, "the winds' contribution to the destruction of the Broussard residence would have been greater than that of the storm surge alone. There is not a position that denies contribution to the destruction of the Broussard residence by the winds associated with the subject storm." Plaintiffs maintain that they provided Defendant with evidence of tornado winds coming through the area of their residence. It is their opinion that the house exploded.

As to the handling of the claim, Plaintiffs rely on comments on State Farm's behalf that their residence was more damaged by flood than wind, leaving the impression that some wind damage occurred with still no payment. They also point to a Wind/Water Protocol adopted by Defendant shortly following Katrina, and the application of an improper standard to their loss which is opposed to the terms of the policy.

To the extent that Plaintiffs confess that partial summary judgment is appropriate on the fiduciary duty theory of recovery, it will be granted. Otherwise, the Court is not in a position to rule in a fully informed manner on the remaining part of Defendant's motion.

Accordingly, **IT IS ORDERED**:

Defendant's Motion for Partial Summary Judgment as to any claims made by Plaintiffs based on breach of a fiduciary duty is **GRANTED**.

The Court reserves a ruling on Defendant's Motion for Partial Summary Judgment on the issue of extra-contractual and punitive damages.

**SO ORDERED** this the 6<sup>th</sup> day of November, 2006.

*s/ L. T. Senter, Jr.*

L. T. Senter, Jr.  
Senior Judge