

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

JOHN K. DRAKE, M.D. AND  
DEBARAH J. DRAKE

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:08cv690-LTS-RHW

NATIONWIDE MUTUAL FIRE INSURANCE  
COMPANY; NATIONWIDE MUTUAL  
INSURANCE COMPANY; AND JOHN AND  
JANE DOES A, B, C, D, E, F, AND G

DEFENDANTS

**PLAINTIFFS' RESPONSE TO DEFENDANTS' [92] MOTION TO STRIKE EXPERT  
DESIGNATION AND EXPERT TESTIMONY OF TOM BARRETT, JR.**

COME NOW the Plaintiffs, by and through their counsel of record, and file this their *Response to Defendants' [92] Motion to Strike Expert Designation and Expert Testimony of Tom Barrett, Jr.* as follows:

***Defendants Admit that Plaintiffs  
Are Entitled to Additional Living Expense Coverage***

1. Defendants have judicially admitted that Plaintiffs are fully entitled to recover benefits under *Coverage D- Loss of Use* (Additional Living Expenses) for losses suffered by the Plaintiffs as a result of Hurricane Katrina. Notwithstanding this admission, Defendants seek to limit and exclude evidence the Drakes' home was destroyed and made unlivable by wind. Mr. Barrett, the adjuster for the Plaintiffs' separate wind policy through the Mississippi Windstorm Underwriter's Association (MWUA), recommended payment of \$600,000.00 (policy limits) for wind damage to the Plaintiffs' home.<sup>1</sup> In an apparent attempt to "un-do" its binding admission that Plaintiffs are entitled to full coverage for additional living expenses, Nationwide seeks to

---

<sup>1</sup> Nationwide provided a homeowner's policy to cover the Plaintiffs' home, however it included a wind exclusion, prompting the Plaintiffs to obtain wind insurance through the Mississippi Wind Pool. Nationwide's policy provided coverage for additional living expenses, however, which coverage the express language of the policy provided is *not* excluded via the wind exclusion.

avoid acknowledgement of the fact, and to exclude the admission by the MWUA that the Plaintiffs' home suffered catastrophic wind damage as a result of Hurricane Katrina.

2. Nationwide long ago determined that the Plaintiffs indeed had coverage under their homeowners' insurance policy for *Coverage D: Loss of Use*. Nationwide's 30(b)(6) representative, Charles Higley, admitted that Nationwide determined at least by July 24, 2006 that the Plaintiffs are entitled to coverage under the *Coverage D: Loss of Use* for losses suffered by the Plaintiffs as a result of Hurricane Katrina. Specifically, Nationwide 30(b)(6) representative testified:

335

1 Q. Now, as a result of Nationwide's  
2 review of Mr. Bidy's report, Nationwide made a  
3 determination that there would be coverage for  
4 the Drakes' ALE claim; correct?

5 A. We made a business decision to provide  
6 payment for additional living expense, but we  
7 did not determine that there was coverage.

8 Q. You sure about that?

9 A. Well, can you show me what you're  
10 citing because maybe my memory is wrong.

...

336

7 Q. 3487. It's an entry on July the 24th,  
8 2006, by Roger Woods.

9 In Mr. Woods' report in the  
10 second paragraph on 3487 concluded in the second  
11 sentence that, Due to the conclusion above in  
12 Mr. Biddy's report, this does put the cause of  
13 loss into controversy; right?

14 A. Yes.

15 Q. And "cause of loss into controversy"  
16 could be otherwise stated as meaning there's a  
17 question or doubt about the cause of loss;  
18 correct?

19 A. Yes.

20 Q. And it was Nationwide's policy to  
21 resolve doubt about cause of loss in favor of  
22 coverage for the insured; correct?

23 A. Yes.

24 Q. And so that's what Nationwide decided  
25 to do on July the 24th, 2006; correct?

337

1 A. Yes. And that's why I stated that it  
2 was a business decision, and that's what I  
3 consider a compromise --

4 Q. Now --

5 A. -- when there's that kind of dispute.

(See excerpts of 30(b)(6) Deposition of Nationwide at pg. 335-337 attached hereto as “Exhibit 1”).

3. Importantly, Nationwide concealed from the Plaintiffs’ the fact that Nationwide had determined that ALE coverage was available to the Plaintiffs. In fact for the period of one year, contrary to Nationwide’s decision that coverage was fully available to the Plaintiffs, Nationwide misrepresented material facts to the Plaintiffs by falsely telling them there may not be coverage for their ALE claims:

349

5 Q. Now look at the entry in part of the  
6 electronic claim file, which is Exhibit 4, on  
7 Page 110, dated 7/23/2007.

8 MR. SCHULTZ: Which page are you  
9 looking at?

10 MR. VAN CLEAVE: 110.

11 A. On Exhibit 4?

12 BY MR. VAN CLEAVE:

13 Q. Right. 7/23/07.

14 MR. SCHULTZ: 7/23/07.

15 BY MR. VAN CLEAVE:

16 Q. Do you see that?

17 A. Which entry?

18 Q. 7/23/07, in the middle of the page.

19 A. Yes.

20 Q. And this is an entry by Alec Harmer, I  
21 presume, or whoever the claims associate was at  
22 that time.

23 A. Yes. Yeah. That's who it's  
24 designated as.

25 Q. Regarding a conversation with the

**350**

1 Drakes; right?

2 A. Yes.

3 Q. And this was after the time that a  
4 decision had been made that there was a doubt  
5 about the cause of loss and that that doubt was  
6 going to be resolved in favor of coverage for  
7 the Drakes; correct?

8 MR. SCHULTZ: Objection to form.

9 A. It was, yes.

10 BY MR. VAN CLEAVE:

11 Q. But what Mr. Harmer's report reflects  
12 in the final two sentences that he explained to  
13 the Drakes was, quote, CA explained there are  
14 homes within eyeshot of PH's home that were not  
15 made unlivable by wind. They appear to suffer  
16 far less flood damage and were still standing.

17 Most likely the home would not be unlivable due  
18 to wind for the max 12-month period of coverage  
19 under ALE; right?

20 A. That's what it says.

21 Q. So according to Nationwide's claims  
22 file, as of July the 23rd, 2007, Nationwide's  
23 claims personnel were still advising the Drakes  
24 that there would not be full coverage for the  
25 policy period under the ALE provisions of their

351

1 policy; correct?

2 MR. SCHULTZ: Objection to form;  
3 misstates the document.

4 A. I can only take it as written, as  
5 stated. Other than that, I don't have any  
6 commentary to add to it.

7 BY MR. VAN CLEAVE:

8 Q. Certainly the Drakes should not have  
9 been informed such as of that date; isn't that  
10 true, sir?

11 MR. SCHULTZ: What do you mean by  
12 "such," Christopher?

13 BY MR. VAN CLEAVE:

14 Q. The Drakes should not have been  
15 informed as of July of 2007, assuming that  
16 that's the right date for that entry, that there  
17 would probably not be coverage for the entire  
18 12-month period on their ALE claim.

19 MR. SCHULTZ: Objection to form.

20 BY MR. VAN CLEAVE:

21 Q. Right?

22 A. I would rather that conversation not  
23 to have been held.

24 Q. **Well, it was contrary to the claims**  
25 **decision that had been made by Nationwide**

352

1 **management as of that date; true?**

2 A. **Yes.**

(See excerpts of 30(b)(6) Deposition of Nationwide at pg. 349-352 attached hereto as "Exhibit 2") (emphasis added). Nationwide has unequivocally admitted, four (4) years after Hurricane Katrina (the 30(b)(6) deposition was taken on August 11, 2009), that the Plaintiffs are entitled to full coverage for additional living expense under the policy of insurance that is the subject of this litigation.

4. Plaintiffs anticipated calling Mr. Tom Barrett as an expert witness regarding his investigation and preparation of the wind damage assessment for the Plaintiffs' home in connection with the Plaintiffs' claim under their MWUA Windpool Policy, and Mr. Barrett's

recommendation that the MWUA pay policy limits to the Plaintiffs. The facts are undisputed that Nationwide considered the MWUA's investigation of Plaintiffs' losses under their wind policy as part of Nationwide's investigation of Plaintiffs' claims under the Nationwide Homeowner's policy. (See 10/17/06 excerpt from NW claims file at 18:30, NW-DRA 000322; and fax from MWUA to Nationwide claims adjuster setting forth estimate of wind damages and recommendation policy limits be paid, also contained with Nationwide's claims file, NW-DRA 000175-182, attached as "Cumulative Exhibit 3"). Plaintiffs originally designated Mr. Barrett as an expert witness as a precaution, in the event his testimony would be required to establish that the Plaintiffs had coverage for additional living expenses under their Nationwide policy of insurance because the Plaintiffs' home was damaged by wind. Since Nationwide has now judicially admitted that the Plaintiffs are entitled to full coverage for additional living expenses, Plaintiffs respectfully request this Court find that the Plaintiffs are entitled to coverage for any and all expenses they actually incurred as additional living expenses to maintain their normal standard of living, necessitated by the destruction of their home by Hurricane Katrina, during the 12 month period following their loss.

5. Moreover, Nationwide's motion should be denied, and Plaintiffs should be allowed to offer Mr. Barrett's testimony at the trial of this matter, because it is information that was directly considered by Nationwide as part of its investigation of the Plaintiffs' claims.

***Nationwide Lacks Candor Before This Court and Attempts to Hide the True Facts***

6. Nationwide continues to attempt to hide that fact that it determined Plaintiffs are entitled to full coverage under *Coverage D: Loss of Use* as a result of Hurricane Katrina. Not only did Nationwide conceal its true coverage decision from the Plaintiffs, Nationwide improperly and subversively attempts to hide the TRUE FACT that *Coverage D: Loss of Use* was not affected by

the Windstorm or Hail Exclusion (H-6072) attached to Plaintiffs' homeowners' policy. Nationwide cites to the exclusion in its [93] Memorandum in Support of the instant Motion, yet Nationwide intentionally omitted the pertinent language of the document from its [93] Memorandum. The **complete** language of the Windstorm or Hail Exclusion states:

For a premium credit, it is agreed that:

1. We do not insure for loss caused directly or indirectly by the perils of windstorm or hail; and
2. Windstorm or hail loss is excluded regardless of any cause or event contributing concurrently or in any sequence to the loss.

We will cover direct loss by fire or explosion resulting from windstorm or hail damage.

**This exclusion does not apply to Coverage D- Loss of Use.**

All other policy provisions apply.

This endorsement is issued by the company in the Declarations as the issuing company.

(See Windstorm or Hail Exclusion attached hereto as "Exhibit 4") (emphasis added to show language omitted by Nationwide in its [93] Memorandum).

***Nationwide Cannot Re-characterize the Wind Damage  
Paid To Plaintiffs by MWUA As Some Other Type of Damage***

7. Nationwide's [92] Motion goes far a field of requesting that the Court simply strike the expert testimony of Mr. Tom Barrett. In actuality, Nationwide is requesting that this Court rule that the determination Plaintiffs' home suffered at least \$600,000 (the policy limits of the MWUA policy) of wind damage made by the MWUA, and the acceptance of those proceeds by the Plaintiffs, is not an admission binding upon Nationwide. This position is markedly different from the position Nationwide has repeatedly taken with regard to payment of proceeds under NFIP policies in Katrina related litigation. Unfortunately for Nationwide, as the phrase goes in

South Mississippi, their “Hook Is Hung.”

8. Under Nationwide’s consistent arguments in Katrina related litigation, and this Court’s previous rulings (accepting Nationwide’s and other insurance companies’ arguments re: the acceptance of NFIP “flood” proceeds<sup>2</sup>), the parties cannot re-characterize the \$600,000.00 paid to them for wind damage pursuant to the Plaintiffs’ wind pool policy as any thing other than wind damage. (See Robichaux v. Nationwide Mut. Ins. Co. 1:06CV1165-LTS-RHW, 2007 WL 2783325, at \*2 (S.D. Miss. Sep. 21, 2007) (“Once an insurance payment is made and accepted, this act establishes, as an admission by both the insurer and the insured, that the insured’s losses were caused by an event covered by the policy under which the payment is made, at least to the extent of the amount paid and accepted.)) It is undisputed that the MWUA Windpool Policy covers losses due to windstorms, and that Nationwide considered the findings of the MWUA as part of its investigation of the Plaintiffs’ claims. Nationwide must be prohibited from now re-characterizing the wind damage paid for by MWUA as anything other than wind damage, so that Nationwide can attempt to offer some excuse for wrongfully denying Plaintiffs coverage Nationwide has now judicially admitted it determined the Plaintiffs are entitled to more than four years ago.

9. Regardless of whether or not Mr. Barrett is found by the Court to be qualified to offer expert testimony at the trial of this matter, Plaintiffs request the Court instruct the Jury in this cause that Nationwide cannot dispute the fact that wind caused at least \$600,000 of damage to the Plaintiffs’ dwelling.

---

<sup>2</sup> Counsel for these Plaintiffs have consistently opposed those rulings, and, while not acknowledging that they are proper in the context of NFIP payments made under the unique, amended procedures used to resolve NFIP claims arising from Hurricane Katrina, acknowledge that the Court’s prior rulings on those issues must be likewise applied to payments for “wind” damage under an MWUA policy.

***Plaintiffs Designated Mr. Barrett as an Expert in An Abundance of Caution***

10. Plaintiffs would further show the Court that Mr. Barrett was properly designated by the Plaintiffs as an expert in this cause in an abundance of caution, not unlike the requirement that a party designate treating physicians as experts in litigation. (See Hamburger v. State Farm Mut. Auto. Ins. Co., 361 F.3d 875 (5<sup>th</sup> Cir. 2004)) The Fifth Circuit adopted the ruling in Musser v. Gentiva Health Servs., 356 F.3d 751, 756-57 (7<sup>th</sup> Cir. 2004) stating:

Rule 26(a)(2)(A)'s disclosure requirement applies to “any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence,” not merely to those experts who are retained or specially employed to provide expert testimony in the case or whose duties as employees of the party regularly involve giving expert testimony.

Hamburger, 361 F.3d at 883, footnote 4.

11. In this case, Plaintiffs rightfully designated Tom Barrett as an expert regarding his preparation of his adjuster’s report, which recommended that the MWUA pay the Plaintiffs for extensive and catastrophic wind damage to their home. Plaintiff rightfully designated Mr. Barrett as a person “who may be used at trial” to give expert opinion testimony. It is undisputed that the Plaintiff produced to Nationwide (and that Nationwide actually gathered as part of its investigation of the Plaintiffs’ claims) the report that Mr. Barrett prepared for MWUA regarding the Plaintiffs’ home, which contained the data and information used by Mr. Barrett to recommend payment for Plaintiffs wind damages that resulted from Hurricane Katrina. Plaintiffs complied with the Federal Rules of Civil Procedure 26 regarding the designation of Mr. Barrett as an expert witness.

12. Even if this Court were to determine that Mr. Barrett is not qualified to testify as an “expert”, however, the facts are undisputed that he is a material fact witness whose investigation was considered by Nationwide, and made a part of Nationwide’s claims file for the subject

claim. Mr. Barrett should be allowed, at a minimum, to testify regarding the facts surrounding his adjustment of the Plaintiffs' losses; the facts regarding his recommendation of payment for Plaintiffs' damages by MWUA; and his lay opinion, based on his personal observations, regarding the losses caused to the Plaintiffs' dwelling by Hurricane Katrina.

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request this Court find that Nationwide has judicially admitted Plaintiffs are entitled to full coverage for additional living expenses under their Nationwide Homeowner's Policy. Additionally, Plaintiffs respectfully request this Court find that Nationwide cannot re-characterize the wind damages the MWUA determined were suffered by the Plaintiffs, and which Nationwide considered as part of its investigation of Plaintiffs' claims, as anything other than wind damage to the Plaintiffs' dwelling causing losses of at least \$600,000.00. Plaintiffs would further respectfully request this Court deny Nationwide's Motion, and allow Tom Barrett to testify regarding the facts of his adjustment of the Plaintiffs' losses; the facts regarding his recommendation of payment for Plaintiffs' damages by MWUA; and his expert and/or lay opinion, based on his personal observations, training and experience, regarding the damages suffered by the Plaintiffs, and cause of loss to the Plaintiffs' dwelling as a result of Hurricane Katrina. Plaintiffs request any additional relief deemed appropriate by this Court.

Respectfully submitted, this the 28<sup>th</sup> day of September, 2009.

JOHN K. DRAKE, M.D. AND  
DEBARAH J. DRAKE

BY: s/ David N. Harris, Jr.  
DAVID N. HARRIS, JR. (MSB #100790)

CLYDE H. GUNN, III (MSB #5074)  
CHRISTOPHER C. VAN CLEAVE (MSB #10796)  
W. CORBAN GUNN (MSB #101752)  
DAVID N. HARRIS, JR. (MSB #100790)  
CORBAN, GUNN & VAN CLEAVE, P.L.L.C.  
P.O. Drawer 1916  
Biloxi, MS 39533-1916  
Telephone: (228) 432-7826  
Facsimile: (228) 456-0998  
Email: [david@cgvclaw.com](mailto:david@cgvclaw.com)

**CERTIFICATE OF SERVICE**

I, David N. Harris, Jr., hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record who are CM/ECF participants, with no counsel noted as requiring service by mail.

Laura Limerick Gibbes, Esquire  
WATKINS LUDLAM WINTER & STENNIS, P.A.  
190 East Capitol Street, Suite 800 (39201)  
Post Office Box 427  
Jackson, Mississippi 39205-0427  
Telephone: (601) 949-9400  
Facsimile: (601) 949-4804  
Email: [lgibbes@watkinsludlam.com](mailto:lgibbes@watkinsludlam.com)

DANA E. HILL - PHV  
DANIEL F. ATTRIDGE – PHV  
CHRISTIAN D.H. SCHULTZ - PHV  
ROBERT B. GILMORE - PHV  
KIRKLAND & ELLIS, LLP  
655 Fifteenth St., N.W., Ste. 1200  
Washington, DC 20005-5793  
Telephone: (202) 879-5974  
Facsimile: (202) 654-9635  
Email: [dhill@kirkland.com](mailto:dhill@kirkland.com)  
[dattridge@kirkland.com](mailto:dattridge@kirkland.com)  
[cschultz@kirkland.com](mailto:cschultz@kirkland.com)  
[rgilmore@kirkland.com](mailto:rgilmore@kirkland.com)

**ATTORNEYS FOR NATIONWIDE MUTUAL FIRE INSURANCE COMPANY  
AND NATIONWIDE MUTUAL INSURANCE COMPANY**

This, the 28th day of September, 2009.

BY: s/ David N. Harris, Jr.  
DAVID N. HARRIS, JR.



1 Q. Now, as a result of Nationwide's  
2 review of Mr. Biddy's report, Nationwide made a  
3 determination that there would be coverage for  
4 the Drakes' ALE claim; correct?

5 A. We made a business decision to provide  
6 payment for additional living expense, but we  
7 did not determine that there was coverage.

8 Q. You sure about that?

9 A. Well, can you show me what you're  
10 citing because maybe my memory is wrong.

11 MR. SCHULTZ: Just, just for the  
12 record, I mean while Mr. Biddy's report, I  
13 believe, is dated February, 2006; is that  
14 right?

15 MR. VAN CLEAVE: Yeah.

16 MR. SCHULTZ: The record does not  
17 reflect that it was provided to Nationwide  
18 at that point in time.

19 MR. VAN CLEAVE: Well, I think I  
20 just introduced into the record evidence  
21 that it was provided to Nationwide by July  
22 the 10th of 2006.

23 MR. SCHULTZ: Correct. I was just  
24 stating that it was not, despite having a  
25 date of February 2006, was not provided to

1 Nationwide, the record reflects, until June  
2 of 2006.

3 BY MR. VAN CLEAVE:

4 Q. Look at Page 3487 of the claims  
5 activity log in Exhibit 4, if you will.

6 A. I'm sorry, I didn't catch the number.

7 Q. 3487. It's an entry on July the 24th,  
8 2006, by Roger Woods.

9 In Mr. Woods' report in the  
10 second paragraph on 3487 concluded in the second  
11 sentence that, Due to the conclusion above in  
12 Mr. Biddy's report, this does put the cause of  
13 loss into controversy; right?

14 A. Yes.

15 Q. And "cause of loss into controversy"  
16 could be otherwise stated as meaning there's a  
17 question or doubt about the cause of loss;  
18 correct?

19 A. Yes.

20 Q. And it was Nationwide's policy to  
21 resolve doubt about cause of loss in favor of  
22 coverage for the insured; correct?

23 A. Yes.

24 Q. And so that's what Nationwide decided  
25 to do on July the 24th, 2006; correct?

1 A. Yes. And that's why I stated that it  
2 was a business decision, and that's what I  
3 consider a compromise --

4 Q. Now --

5 A. -- when there's that' kind of dispute.

6 Q. Did Nationwide ever communicate to the  
7 Drakes that it had concluded there was a doubt  
8 about the cause of loss to their home and that  
9 Nationwide was going to resolve that doubt in  
10 favor of coverage?

11 A. Well, our investigative work on this  
12 matter was not complete at that time in that  
13 we -- as Mr. Woods directed, the report from Ted  
14 Bidy was sent to H.S.A. for review.

15 Q. Well, that's right. And you also made  
16 a decision as reflected on Page 3481 on  
17 10/17/2006 to find out how much was paid to the  
18 Drakes under their wind policy; right?

19 A. Yes.

20 Q. And that was a direction that you  
21 personally gave; correct?

22 A. Yes.

23 Q. And the conclusion of that  
24 investigation was that the Drakes had been paid  
25 policy limits for damage to their dwelling under



1 party that doesn't have anything to do with the  
2 particular claim.

3 And so I -- other than that, I  
4 don't know anything about this.

5 Q. Now look at the entry in part of the  
6 electronic claim file, which is Exhibit 4, on  
7 Page 110, dated 7/23/2007.

8 MR. SCHULTZ: Which page are you  
9 looking at?

10 MR. VAN CLEAVE: 110.

11 A. On Exhibit 4?

12 BY MR. VAN CLEAVE:

13 Q. Right. 7/23/07.

14 MR. SCHULTZ: 7/23/07.

15 BY MR. VAN CLEAVE:

16 Q. Do you see that?

17 A. Which entry?

18 Q. 7/23/07, in the middle of the page.

19 A. Yes.

20 Q. And this is an entry by Alec Harmer, I  
21 presume, or whoever the claims associate was at  
22 that time.

23 A. Yes. Yeah. That's who it's  
24 designated as.

25 Q. Regarding a conversation with the

1 Drakes; right?

2 A. Yes.

3 Q. And this was after the time that a  
4 decision had been made that there was a doubt  
5 about the cause of loss and that that doubt was  
6 going to be resolved in favor of coverage for  
7 the Drakes; correct?

8 MR. SCHULTZ: Objection to form.

9 A. It was, yes.

10 BY MR. VAN CLEAVE:

11 Q. But what Mr. Harmer's report reflects  
12 in the final two sentences that he explained to  
13 the Drakes was, quote, CA explained there are  
14 homes within eyeshot of PH's home that were not  
15 made unlivable by wind. They appear to suffer  
16 far less flood damage and were still standing.  
17 Most likely the home would not be unlivable due  
18 to wind for the max 12-month period of coverage  
19 under ALE; right?

20 A. That's what it says.

21 Q. So according to Nationwide's claims  
22 file, as of July the 23rd, 2007, Nationwide's  
23 claims personnel were still advising the Drakes  
24 that there would not be full coverage for the  
25 policy period under the ALE provisions of their

1 policy; correct?

2 MR. SCHULTZ: Objection to form;  
3 misstates the document.

4 A. I can only take it as written, as  
5 stated. Other than that, I don't have any  
6 commentary to add to it.

7 BY MR. VAN CLEAVE:

8 Q. Certainly the Drakes should not have  
9 been informed such as of that date; isn't that  
10 true, sir?

11 MR. SCHULTZ: What do you mean by  
12 "such," Christopher?

13 BY MR. VAN CLEAVE:

14 Q. The Drakes should not have been  
15 informed as of July of 2007, assuming that  
16 that's the right date for that entry, that there  
17 would probably not be coverage for the entire  
18 12-month period on their ALE claim.

19 MR. SCHULTZ: Objection to form.

20 BY MR. VAN CLEAVE:

21 Q. Right?

22 A. I would rather that conversation not  
23 to have been held.

24 Q. Well, it was contrary to the claims  
25 decision that had been made by Nationwide

1 management as of that date; true?

2 A. Yes.

3 Q. Now, the Drakes did in fact send  
4 receipts for food, clothing and furniture that  
5 were received by Nationwide on July 15th, 2007;  
6 is that right?

7 And I'm going to hand you what  
8 I'm marking as Exhibit 34 to your deposition.  
9 (Exhibit 34 marked.)

10 Q. And that's a letter dated July 17th,  
11 2007, to the Drakes from claims representative  
12 Alec Harmer; right?

13 A. Yes.

14 Q. And the very first sentence says, I'm  
15 writing you to confirm Nationwide did receive  
16 your letter dated July 15th, 2007. You included  
17 receipts for food, clothing and furniture;  
18 correct?

19 A. Yes.

20 Q. And in fact you're aware that the  
21 Drakes presented those receipts totaling some  
22 \$11,000 and some-odd -- 11,000 some-odd dollars  
23 to Nationwide and expressed that those were  
24 expenses incurred that were necessary to  
25 maintain the Drakes' ordinary standard of

0200 ADVISORY COMMENTS: - Drake, John K And Debarah J., called the agency to determine how much was paid on the xwind and flood policies. Left message on office voice mail.

Date: 2006-10-24 Time: 13:05:34  
To: 63MSPROPENG  
CC:  
From: Mail Room  
Subject: 05 Imported Images\*\*Engineers Invoice\*\*

A2001001A06J24B30528F51343 IMAGE: 05 Imported Images\*\*Engineers Invoice\*\*

Date: 2006-10-17 Time: 18:31:12  
To: John Hughes  
CC: HIGLEYC  
From: Charles Higley  
Subject: Route: See log

See log.



Date: 2006-10-17 Time: 18:30:59  
Creator: HIGLEYC  
Assignee: TNCTAAM2  
Cov:  
Claimant:

0136 Associate Director Review: Reserve and Activity....Reserve is closed.

To: John Hughes, please contact agent to find out how much coverage and how much was paid under the X-wind and flood policies. Obtain copies of each estimate.

Please contact PH and request copies of all incurred expense relating to ALE following this loss.

With the above info, we will try to determine the amount of covered ALE loss so that same can be paid to PH. Let me know if you have questions. Thanks.

Date: 2006-10-17 Time: 18:31:12  
To: John Hughes  
CC: HIGLEYC  
From: Charles Higley  
Subject: Route: See log

See log.

-----  
Date: 2006-10-16 Time: 17:56:35

4150 South Sherwood Forest Blvd  
Baton Rouge LA 70816  
(225) 293-5900

**AIG Claims**

# Fax

To: John Hughes - Nationwide From: AIGCS  
 Fax: 877-638-0962 # Pages: 8 (including this cover)  
 Phone: \_\_\_\_\_ Date: 10-26-06  
 Rec: John + Deborah Drake cc: \_\_\_\_\_  
 Urgent  For Review  Please Comment  Please Reply  Please Recycle

• Comments:

Copy of Estimate

# Statement of Loss

Claim # PG050305-CB

<b>Adjuster</b> Tom Barrett, Jr	<b>Phillips/Greene LLC</b> PO Box 14128 Jackson, MS 39236 Phone (866) 932-2599 Fax (866) 932-2597	October 22, 2005
<b>Phone</b>		
<b>Fax</b>		
<b>Insured Name</b> Drake, John & Deborah		
<b>Loss Address</b> 95 LaBranche Ave, Ocean Springs, MS 39564		
<b>Phone Number</b> (228) 324-8292		
<b>Other Phone</b> (228) 875-5176	<b>Ins Claims #</b>	<b>Date of Loss</b> 8/29/2005
<b>Ins Company</b> Mississippi Wind Underwriters Assoc.		

## Abstract of Coverage

Policy # CPD0781096 03 Effective 6/18/2005 - 6/17/2006  
 Forms  
 Agency  
 Agent

Coverage	Limit		Deductible
Coverage - Building	\$400,000.00	80% Co-Insurance	\$8,000.00
Coverage - UPP	\$200,000.00		\$4,000.00

## Coverage - Building

Coverage	Limit	Co-Insurance			
Coverage	\$400,000.00	80% Co-Insurance			
	<u>RC Detail</u>	<u>ACV Detail</u>	<u>Value</u>	<u>Loss</u>	<u>Claim</u>
Total Replacement Cost Loss	\$465,770.87	\$465,770.87			
Less Depreciation		(\$62,797.86)			
ACV Loss		\$402,973.01		\$402,973.01	
Less Deductible Applied (\$8,000.00 Maximum)	(\$8,000.00)	(\$8,000.00)			
Less Excess	(\$57,770.87)	\$0.00			
ACV Claim	(\$394,973.01)	\$394,973.01			\$394,973.01
Recoverable Depreciation	\$5,026.99				

## Coverage - UPP

Coverage	Limit				
Coverage	\$200,000.00				
	<u>RC Detail</u>	<u>ACV Detail</u>	<u>Value</u>	<u>Loss</u>	<u>Claim</u>
Total Replacement Cost Loss	\$462,677.00	\$462,677.00			
Less Depreciation		(\$172,435.95)			
ACV Loss		\$290,241.05		\$290,241.05	
Less Non-Recoverable Depreciation	(\$172,435.95)				
Less Deductible Applied (\$4,000.00 Maximum)	(\$4,000.00)	(\$4,000.00)			
Less Excess	(\$86,241.05)	(\$86,241.05)			
ACV Claim	(\$200,000.00)	\$200,000.00			\$200,000.00
Recoverable Depreciation	\$0.00				

<b>Total ACV Loss &amp; Claim</b>	<b>\$693,214.06</b>	<b>\$894,973.01</b>
<b>Total Recoverable Depreciation</b>	<b>\$5,026.99</b>	

A copy of this document does not constitute a settlement of this claim. The above figures are subject to insurance company approval.

Accepted by \_\_\_\_\_

# Adjuster Summary

Claim #

PG050305-CB

<b>Adjuster</b> Tom Barrett, Jr <b>Phone</b> <b>Fax</b>	<b>Phillips/Greene LLC</b> PO Box 14128 Jackson, MS 39236 Phone (866) 952-2599 Fax (866) 952-2597	<b>October 22, 2005</b>
<b>Insured Name</b> Drake, John & Deborah <b>Loss Address</b> 95 LaBranche, Ocean Springs, MS 39564 <b>Phone Number</b> (228) 324-8292 <b>Other Phone</b> (228) 875-5176 <b>Ins Company</b> Mississippi Wind Underwriters Assoc.	<b>Policy #</b> CPD0781096 03 <b>Inx Claim #</b>	<b>Date of Loss</b> 8/29/2005

## Coverage - Building

### Roof

		Repl. Cost	Depr.	ACV	OP	RD
Replace Architectural Shingles, 50 Year	38 SQ @ \$275.00 *	\$10,450.00	\$4,180.00	\$6,270.00		
Replace Elastomeric Roofing	6 SQ @ \$242.66	\$1,455.96	\$72.80	\$1,383.16		
Sweep Roof Allowance	38 SQ @ \$20.00 w	\$760.00	\$304.00	\$456.00		
Replace Roof Sheathing	3800 SF @ \$1.34	\$5,092.00	\$763.80	\$4,328.20		
Replace Hand Framed Roof 2"x8" Rafters	3800 SF @ \$3.33	\$12,654.00	\$1,898.10	\$10,755.90		
<b>Roof Total</b>		<b>\$30,411.96</b>	<b>\$7,218.70</b>	<b>\$23,193.26</b>		

### Second Floor Exterior (50' x 40')

2,000 sf Floor      2,000 sf Ceiling      180 lf Floor      180 lf Ceiling

		Repl. Cost	Depr.	ACV	OP	RD
Replace Fascia Board	365 LF @ \$3.65	\$1,332.25	\$146.55	\$1,185.70		
Includes Third Story						
Paint Exterior Fascia	365 LF @ \$1.19 *	\$434.35	\$56.47	\$377.88		
Includes third story						
Replace Wood Soffit	730 SF @ \$5.36	\$3,912.80	\$430.41	\$3,482.39		
Includes third story						
Replace PER SF: Studwall	3942 SF @ \$3.57	\$14,072.94	\$985.11	\$13,087.83		
Includes interior						
Replace Exterior Wall Sheathing	2891 SF @ \$1.34	\$3,873.94	\$271.18	\$3,602.76		
Replace Brick Veneer	2891 SF @ \$11.55	\$33,391.05	\$4,340.84	\$29,050.21		
Replace Stucco	228 SF @ \$3.56	\$811.68	\$56.82	\$754.86		
Window Replacement Allowance	1 LS @ \$9,116.48 w	\$9,116.48	\$1,914.46	\$7,202.02		
Allowance To Trim Windows	1 LS @ \$3,150.00 w	\$3,150.00	\$567.00	\$2,583.00		
Allowance To Paint Window Trim	1 LS @ \$2,135.00 w	\$2,135.00	\$277.55	\$1,857.45		
Replace Porch Rail w/ Balusters	145 LF @ \$17.27	\$2,504.15	\$325.54	\$2,178.61		
Paint Porch Rail with Balusters	145 LF @ \$5.92	\$800.40	\$136.07	\$664.33		
Replace Brick Chimney	25 LF @ \$214.08	\$5,352.00	\$802.80	\$4,549.20		

Adjuster Summary (MS/B 0120)  
Claim # PG050305-CB

- 1 -

Oct 22, 2005

		Repl. Cost	Depr.	ACV	OP RD
Paint Exterior Porch Posts	9 BA @ \$16.54	\$148.86	\$19.35	\$129.51	
Rescreen Porch	432 SF @ \$0.00 <sup>w</sup>	\$0.00	\$0.00	\$0.00	
<b>Second Floor Exterior Total</b>		<b>\$81,035.90</b>	<b>\$10,330.15</b>	<b>\$70,705.75</b>	

<b>Second Floor Interior (79' x 41' 6" x 9')</b>					
3,278 sf Floor	2,169 sf Wall	3,278 sf Ceiling	241 lf Floor	241 lf Ceiling	29,506 cf Volume

		Repl. Cost	Depr.	ACV	OP RD
Replace Ceiling Framing, 2" x 6" Joist System	3280 SF @ \$2.24	\$7,347.20	\$514.30	\$6,832.90	
Includes third story floor joists					
Replace Ceiling Drywall	3280 SF @ \$2.50 <sup>*</sup>	\$8,200.00	\$738.00	\$7,462.00	
Replace Ceiling Blown Insulation, Fiberglass	3280 SF @ \$1.23	\$4,034.40	\$363.10	\$3,671.30	
Paint Ceiling Drywall or Plaster	3280 SF @ \$0.81 <sup>*</sup>	\$2,656.80	\$292.25	\$2,364.55	
Replace 14" Crown Molding	547 LF @ \$9.01 <sup>*</sup>	\$4,928.47	\$443.56	\$4,484.91	
Paint Crown, Very Ornate Design	547 LF @ \$1.65	\$902.55	\$99.28	\$803.27	
Replace Drywall Walls	3942 SF @ \$2.50 <sup>*</sup>	\$9,855.00	\$886.95	\$8,968.05	
Additional 50% for partition walls.					
Replace Wall Insulation, Batt Fiberglass R-19, 6" Deep	2628 SF @ \$1.18	\$3,101.04	\$279.09	\$2,821.95	
Paint Walls, Drywall or Plaster	3942 SF @ \$0.81 <sup>*</sup>	\$3,193.02	\$351.23	\$2,841.79	
Additional 50% for partition walls.					
Replace Raised Panel Wainscoting	429 SF @ \$12.87 <sup>*</sup>	\$5,521.23	\$496.91	\$5,024.32	
Paint Wainscoting, Ornate Pattern	429 SF @ \$2.09	\$896.61	\$98.63	\$797.98	
Replace Multi-Piece Base Molding	547 LF @ \$7.32 <sup>*</sup>	\$4,004.04	\$360.36	\$3,643.68	
Additional 50% for partition walls.					
Paint Base Molding	547 LF @ \$1.23 <sup>*</sup>	\$672.81	\$74.01	\$598.80	
Additional 50% for partition walls.					
Replace Wood Flooring	1640 SF @ \$10.58	\$17,351.20	\$2,949.70	\$14,401.50	
Insured stated that the second floor was 50% hardwood floors					
Sand & Finish Wood Floors	1640 SF @ \$2.17 <sup>w</sup>	\$3,558.80	\$676.17	\$2,882.63	
Replace Brick Veneer, Reclaimed	1640 SF @ \$13.52	\$22,172.80	\$4,212.83	\$17,959.97	
Insured stated that 50% of floor on the second floor was reclaimed brick.					
Per the insured the floor was reclaimed from the Mississippi State Penal Institution at Tchula, MS.					
Seal Brick Veneer Floor	1640 SF @ \$0.57	\$934.80	\$252.40	\$682.40	
Replace Sub-flooring	3280 SF @ \$1.41	\$4,624.80	\$323.74	\$4,301.06	
Replace Red Iron Bar Joists	1639 LF @ \$8.37 <sup>w</sup>	\$13,718.43	\$2,880.87	\$10,837.56	
Replace Duer Work	3280 SF @ \$1.69 <sup>w</sup>	\$5,543.20	\$388.02	\$5,155.18	
Replace Electrical Wiring, Fixtures & Switches	3280 SF @ \$4.61 <sup>w</sup>	\$15,120.80	\$1,965.70	\$13,155.10	
Replace Complete Plumbing & Fixtures	3280 SF @ \$9.31 <sup>w</sup>	\$10,856.80	\$2,062.79	\$8,794.01	
Security System Allowance	1 LS @ \$2,799.00 <sup>w</sup>	\$2,799.00	\$251.91	\$2,547.09	
Additional to electric allowance					

Adjuster Summary (MS/B 0120)  
Claim # PG050305-CB

Oct 22, 2005

	Repl. Cost	Depr.	ACV	OP RD
Second Floor Interior Total	\$151,993.80	\$20,061.80	\$131,032.00	

Third Floor Exterior				
	Repl. Cost	Depr.	ACV	OP RD
Replace PER SF: Studwall Includes interior	2376 SF @ \$3.57 \$8,482.32	\$593.76	\$7,888.56	
Replace Exterior Wall Sheathing Accounted for gable	702 SF @ \$1.34 \$940.68	\$65.85	\$874.83	
Replace Brick Veneer	702 SF @ \$11.55 \$8,108.10	\$1,054.05	\$7,054.05	
Window Replacement Allowance	1 LS @ \$3,008.44 * \$3,008.44	\$631.77	\$2,376.67	
Allowance To Trim Windows	1 LS @ \$1,655.00 * \$1,655.00	\$297.90	\$1,357.10	
Allowance To Paint Window Trim	1 LS @ \$615.00 * \$615.00	\$79.95	\$535.05	
Third Floor Exterior Total	\$22,809.54	\$2,723.28	\$20,086.26	

Third Floor Interior (49' x 39' 5" x 9')						
1,931 sf Floor	1,591 sf Wall	1,931 sf Ceiling	177 lf Floor	177 lf Ceiling	17,383 cf Volume	
						Repl. Cost Depr. ACV OP RD
Replace Ceiling Framing, 2" x 6" Joist System	1931 SF @ \$2.24	\$4,325.44	\$302.78	\$4,022.66		
Replace Ceiling Drywall	1931 SF @ \$2.50 *	\$4,827.50	\$434.48	\$4,393.02		
Replace Ceiling Blown Insulation, Fiberglass	1931 SF @ \$1.23	\$2,375.13	\$213.76	\$2,161.37		
Paint Ceiling Drywall or Plaster	1931 SF @ \$0.81 *	\$1,564.11	\$172.05	\$1,392.06		
Replace 1 1/2" Crown Molding	266 LF @ \$9.01 *	\$2,396.66	\$215.70	\$2,180.96		
Paint Crown, Very Ornate Design	266 LF @ \$1.65	\$438.90	\$48.28	\$390.62		
Replace Drywall Walls Additional 50% for partition walls.	2387 SF @ \$2.50 *	\$5,967.50	\$537.08	\$5,430.42		
Replace Wall Insulation, Batt Fiberglass R-19, 6" Deep	1591 SF @ \$1.18	\$1,877.38	\$168.96	\$1,708.42		
Paint Walls, Drywall or Plaster Additional 50% for partition walls.	2387 SF @ \$0.81 *	\$1,933.47	\$212.68	\$1,720.79		
Replace Multi-Piece Base Molding Additional 50% for partition walls.	266 LF @ \$7.32 *	\$1,947.12	\$175.24	\$1,771.88		
Paint Base Molding Additional 50% for partition walls.	266 LF @ \$1.23 *	\$327.18	\$35.99	\$291.19		
Replace Sub-flooring	3280 SF @ \$1.41	\$4,624.80	\$323.74	\$4,301.06		
Replace Carpet Insured stated that 3rd floor consisted of 75% carpet	161 SY @ \$34.16	\$5,499.76	\$2,474.89	\$3,024.87		
Replace Carpet Pad	161 SY @ \$3.97	\$639.17	\$287.63	\$351.54		
Replace Tile Flooring Insured stated that 3rd floor consisted of 25% ceramic tile	483 SF @ \$12.04	\$5,815.32	\$988.60	\$4,826.72		
Replace Duct Work	1931 SF @ \$1.69 * \$3,263.39	\$228.44	\$3,034.95			

Adjuster Summary (MS/B 0120)  
Claim # PG050305-CB

	Repl. Cost	Depr.	ACV	OP	RD
Replace Electrical Wiring, Fixtures & Switches	1931 SF @ \$4.61 w	\$8,901.91	\$1,157.25	\$7,744.66	
Replace Complete Plumbing & Fixtures	1931 SF @ \$3.31 w	\$6,391.61	\$1,214.41	\$5,177.20	
<b>Third Floor Interior Total</b>		<b>\$63,116.35</b>	<b>\$9,191.96</b>	<b>\$53,924.39</b>	

**Miscellaneous**

	Repl. Cost	Depr.	ACV	OP	RD
Debris Removal & Job Site Clean Up	1 LS @ \$24,455.73 w	\$24,455.73	\$0.00	\$24,455.73	
<b>Miscellaneous Total</b>		<b>\$24,455.73</b>	<b>\$0.00</b>	<b>\$24,455.73</b>	
<b>Coverage - Building Totals</b>		<b>\$373,823.28</b>	<b>\$50,475.89</b>	<b>\$323,347.39</b>	

**Coverage - UPP**

**Contents-Per Insured Documentation**

	Repl. Cost	Depr.	ACV	OP	RD
Replace Contents of Sun Porch -East (2nd Floor)	1 EA @ \$17,975.00 w	\$17,975.00	\$40,443.75	(\$22,468.75)	N N
Replace Contents of Sun Porch -West (2nd Floor)	1 EA @ \$9,320.00 w	\$9,320.00	\$2,330.00	\$6,990.00	N N
Replace Contents of Kitchen -2nd Floor	1 EA @ \$23,260.00 w	\$23,260.00	\$5,815.00	\$17,445.00	N N
Replace Contents of Foyer -2nd Floor	1 EA @ \$17,200.00 w	\$17,200.00	\$4,300.00	\$12,900.00	N N
Replace Contents of Study -2nd Floor	1 EA @ \$14,325.00 w	\$14,325.00	\$3,581.25	\$10,743.75	N N
Replace Contents of Living Rm -2nd Floor	1 EA @ \$35,675.00 w	\$35,675.00	\$8,918.75	\$26,756.25	N N
Replace Contents of Dining Rm -2nd Floor	1 EA @ \$43,380.00 w	\$43,380.00	\$10,845.00	\$32,535.00	N N
Replace Contents of Quater Rm -2nd Floor	1 EA @ \$18,250.00 w	\$18,250.00	\$4,562.50	\$13,687.50	N N
Replace Contents of Master BR -2nd Floor	1 EA @ \$29,100.00 w	\$29,100.00	\$7,275.00	\$21,825.00	N N
Replace Household Items -2nd Floor-China, Art, Etc.	1 EA @ \$92,890.00 w	\$92,890.00	\$32,511.50	\$60,378.50	N N
Replace Contents of Bedroom 1 -3rd Floor	1 EA @ \$10,800.00 w	\$10,800.00	\$2,700.00	\$8,100.00	N N
Replace Contents of Bedroom 3 -3rd Floor	1 EA @ \$13,175.00 w	\$13,175.00	\$3,293.75	\$9,881.25	N N
Replace Contents of Bedroom 2 -3rd Floor	1 EA @ \$11,250.00 w	\$11,250.00	\$2,812.50	\$8,437.50	N N
Replace Contents of Computer Room-3rd Floor	1 EA @ \$10,800.00 w	\$10,800.00	\$2,700.00	\$8,100.00	N N
Replace Clothing -Deborah	1 EA @ \$24,075.00 w	\$24,075.00	\$8,426.25	\$15,648.75	N N
Replace Clothing -John	1 EA @ \$11,110.00 w	\$11,110.00	\$3,888.50	\$7,221.50	N N
Replace Clothing -Thurston	1 EA @ \$12,652.00 w	\$12,652.00	\$4,428.20	\$8,223.80	N N
Replace Clothing -Anna Katherine	1 EA @ \$33,720.00 w	\$33,720.00	\$11,802.00	\$21,918.00	N N
Replace Clothing -Meredith	1 EA @ \$33,720.00 w	\$33,720.00	\$11,802.00	\$21,918.00	N N
<b>Coverage - UPP Totals</b>		<b>\$462,677.00</b>	<b>\$172,435.95</b>	<b>\$290,241.05</b>	

**Summary**

	Repl. Cost	Depr.	ACV
Estimate Totals	\$836,500.28	\$222,861.84	\$613,638.44
Less Amount Not Subject To Overhead & Profit	(\$462,677.00)	(\$172,435.95)	(\$290,241.05)
Amount Subject To Overhead & Profit	\$373,823.28	\$50,425.89	\$323,397.39
Contractor's Overhead & Profit (20%)	\$74,764.66	\$10,085.18	\$64,679.48
Sub-Total	\$448,587.94	\$60,511.07	\$388,076.87
Amount Not Subject To Overhead & Profit	\$462,677.00	\$172,435.95	\$290,241.05
Total With Overhead & Profit	\$911,264.94	\$232,947.02	\$678,317.92
Mississippi Tax	\$17,182.93	\$2,286.79	\$14,896.14
Total With Tax	\$928,447.87	\$235,233.81	\$693,214.06
Less Non-Recoverable Depreciation	(\$172,435.95)	(\$172,435.95)	
Sub-Total	\$756,011.92	\$62,797.86	\$693,214.06
Less Deductible Applied	(\$12,000.00)		(\$12,000.00)
Less Excess	(\$144,011.92)	(\$57,770.87)	(\$86,241.05)
<b>Net Claim</b>	<b>\$600,000.00</b>	<b>\$5,026.99</b>	<b>\$594,973.01</b>

A copy of this document does not constitute a settlement of this claim. The above figures are subject to insurance company approval.

Accepted by \_\_\_\_\_

**Price Database Legend**

All prices from New DDS Residential & Commercial

w = Write-in

\* = Modified



## *Windstorm or Hail Exclusion*

Please attach this important addition to your policy.

For a premium credit, it is agreed that:

1. We do not insure for loss caused directly or indirectly by the perils of windstorm or hail; and
2. Windstorm or hail loss is excluded regardless of any cause or event contributing concurrently or in any sequence to the loss.

We will cover direct loss by fire or explosion resulting from windstorm or hail damage.

This exclusion does not apply to Coverage D - Loss of Use.

All other policy provisions apply.

This endorsement is issued by the company shown in the Declarations as the issuing company.

**NATIONWIDE INSURANCE COMPANIES**  
**Home Office: Columbus, Ohio 43215-2220**

H-8072

**EXHIBIT 4**

NW-DRA000062