

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

STATE FARM FIRE AND CASUALTY  
COMPANY and STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY

PLAINTIFFS

v.

CIVIL ACTION NO. 2:07CV188KS-MTP

JIM HOOD, IN HIS OFFICIAL CAPACITY  
AS ATTORNEY GENERAL OF THE STATE  
OF MISSISSIPPI

DEFENDANT

**COMPLAINT**

State Farm Fire and Casualty Company and State Farm Mutual Automobile Insurance Company ("State Farm") file this Complaint against Jim Hood, in his official capacity as Attorney General of the State of Mississippi, and allege as follows:

**NATURE OF THE ACTION**

1. This is an action to enjoin the unlawful and unconstitutional acts of Mississippi Attorney General Jim Hood ("Attorney General Hood"), who has deprived State Farm and its employees of their constitutional rights secured by the due process clause of the Fourteenth Amendment to the United States Constitution.

2. As set forth more particularly below, by serving State Farm, on August 23, 2007, with a grand jury subpoena returnable to the Jackson County, Mississippi Circuit Court on September 17, 2007 ("the Fourth Grand Jury Subpoena"), Attorney General Hood has unilaterally, and without due process, breached his January 23, 2007 Non-Prosecution Agreement with State Farm to finally conclude and not reinstate or resume his investigation into State Farm's handling of Hurricane Katrina claims, and to refrain from bringing criminal

charges against State Farm or any of its current or former employees, directors, engineers, agents, counsel, or adjusters.

3. Attorney General Hood's investigation of State Farm, as set forth in the Fourth Grand Jury Subpoena, is in violation of his January 23, 2007 Non-Prosecution Agreement with State Farm.

4. Consequently, service of the Fourth Grand Jury Subpoena was initiated in bad faith, and in violation of State Farm's due process rights.

### **PARTIES**

5. State Farm Mutual Automobile Insurance Company is a mutual insurance company, organized and existing under the insurance laws of the State of Illinois, and has its principal place of business in Illinois. State Farm Fire and Casualty Company is a stock insurance company organized and existing under the insurance laws of the State of Illinois, is a wholly owned subsidiary of State Farm Mutual Automobile Insurance Company, and has its principal place of business in Illinois. Plaintiffs are jointly referred to as State Farm.<sup>1</sup>

6. Attorney General Hood is the Attorney General of the State of Mississippi.

7. Attorney General Hood is sued in his official capacity.

### **JURISDICTION**

#### *Subject Matter*

8. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331, as the matters at issue arise under the Constitution and laws of the United States of America. This Court also has jurisdiction pursuant to 28 U.S.C. § 1343(3).

---

<sup>1</sup> The Fourth Grand Jury Subpoena (that is defined and discussed below) was served on State Farm Fire and Casualty Company. However, the January 23, 2007 non-prosecution agreement that is the subject of this lawsuit also provides that Attorney General Hood will not further investigate or prosecute State Farm Mutual Automobile Insurance Company, thus making it a proper Plaintiff to this action.

9. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

*In Personam*

10. This Court has *in personam* jurisdiction over Attorney General Hood.

**VENUE**

11. Venue is proper pursuant to 28 U.S.C. § 1391(b) in the Southern District of Mississippi.

**FACTS**

12. On March 16, 2006, Attorney General Hood's office caused to be issued a grand jury subpoena on State Farm in connection with a criminal investigation which, according to statements attributed to Attorney General Hood in the news media, centered on State Farm's claims-handling practices following Hurricane Katrina. A true and correct copy of the March 16, 2006, subpoena is attached hereto as Exhibit A.

13. State Farm fully cooperated with Attorney General Hood's investigation and produced hundreds of thousands of pages of documents in response to the subpoena.

14. Later, on December 14 and 18, 2006, Attorney General Hood caused to be issued two more Mississippi grand jury subpoena duces tecum on State Farm seeking additional documents. True and correct copies of the December 14 and 18, 2006, subpoenas are attached hereto as Exhibits B and C.

15. In further cooperation with the investigation, in January 2007, employees of State Farm agreed to accept grand jury subpoenas and testify before the Jackson County grand jury and to answer the questions of at least three different officials from Attorney General Hood's office.

16. On or about January 23, 2007, State Farm and Attorney General Hood reached a Non-Prosecution Agreement whereby Attorney General Hood concluded his criminal investigation into State Farm's handling of Hurricane Katrina claims.

17. The agreement to conclude Attorney General Hood's criminal investigation of State Farm's handling of Hurricane Katrina claims was memorialized in a letter dated January 23, 2007, from Attorney General Hood to State Farm's attorneys. A true and correct copy of the January 23, 2007 Non-Prosecution Agreement is reproduced below and is attached hereto as Exhibit D.

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

January 23, 2007

James Tucker, Esq.  
Butler Snow O'Mara Stevens & Cannada  
210 E Capitol Street Suite 1700  
Jackson, MS 39225  
HAND DELIVERY

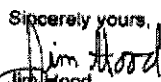
Dear Mr. Tucker:

Pursuant to the settlement of this case, I hereby agree as follows:

In light of the cooperation by State Farm Fire and Casualty Company and State Farm Mutual Automobile Insurance Company (jointly, "State Farm") in the criminal investigation being conducted by the Mississippi Attorney General's Office into State Farm's handling of Hurricane Katrina claims (hereinafter "Investigation"), and based on the facts developed and State Farm's willingness to enter into a settlement agreement requiring them to pay a substantial penalty to the victims, the Mississippi Attorney General and the State of Mississippi (a) will conclude the investigation as to State Farm, any of its current or former employees, directors, engineers, agents, counsel or adjusters, and (b) will not bring criminal charges against State Farm or any of its current or former employees, directors, engineers, agents, counsel or adjusters in connection with the investigation.

State Farm will pay costs of investigation as agreed to in the Settlement Agreement. All outstanding grand jury subpoenas issued from the Attorney General of Mississippi's Office to State Farm or its current or former employees, engineers, agents or adjusters are deemed withdrawn. State Farm may inform the recipients of these grand jury subpoenas that they need take no further action or appear as otherwise stated therein.

If you have any questions, please contact me.

Sincerely yours,  
  
Jim Hood  
Attorney General

CARROLL CARTER JUSTICE BUILDING • POST OFFICE BOX 220 • JACKSON, MISSISSIPPI 39205-0220  
TELEPHONE (601) 359-3600 • TELEFAX (601) 359-3441

18. A press release issued on January 23, 2007, by the Attorney General's Office stated that "[t]he criminal investigation of State Farm's claims handling practices is now complete. 'Although their activities warranted criminal investigation, our career prosecutors found that the matter would be better handled in civil court and in the United States Congress,' said Attorney General Hood."

19. The January 23, 2007 Non-Prosecution Agreement concluding Attorney General Hood's criminal investigation of State Farm's handling of Hurricane Katrina claims is a valid and enforceable contract between Attorney General Hood and State Farm.

20. In reliance upon the representations and agreements by Attorney General Hood in the January 23, 2007 Non-Prosecution Agreement concluding the criminal investigation, State Farm paid to Attorney General Hood's office, in consideration for the January 23, 2007 Non-Prosecution Agreement, the sum of \$5,000,000.00 which he demanded and accepted to cover the costs of his office's criminal investigation.

21. On August 23, 2007, Attorney General Hood served the Fourth Grand Jury Subpoena on State Farm evidencing the reopening or reinstatement of his criminal investigation of State Farm's claims-handling practices following Hurricane Katrina. Much of the information being requested has been provided previously by State Farm, in varying forms, to the federal authorities in response to a federal investigation and requests for information. A true and correct copy of the Fourth Grand Jury Subpoena is attached hereto as Exhibit E.

22. Specifically, the Fourth Grand Jury Subpoena seeks a wide array of documents from State Farm concerning State Farm's handling of Hurricane Katrina claims; precisely the same matters that Attorney General Hood agreed would not be investigated or prosecuted pursuant to his January 23, 2007 Non-Prosecution Agreement with State Farm.

23. In addition to Attorney General Hood's service of the Fourth Grand Jury Subpoena, State Farm has recently learned that Attorney General Hood wrote a letter dated July 16, 2007 to federal law enforcement officials in Alabama stating that he is engaged in "an ongoing investigation into what [Attorney General Hood] believes is State Farm's fraudulent conduct, not only toward their own policyholders, but also against the National Flood Insurance Program as well. Our investigation continues . . . ." A true and correct copy of Attorney General Hood's July 16, 2007 letter is attached hereto as Exhibit F.

24. Attorney General Hood's July 16, 2007, letter to federal law enforcement officials in Alabama, demonstrates his bad faith: he has reinstated an investigation of State Farm's handling of Hurricane Katrina claims notwithstanding his unequivocal affirmation in the Non-Prosecution Agreement that "based on the facts developed" in his investigation, the investigation was concluded and no criminal charges would be brought.

25. Attorney General Hood's past and continuing acts, omissions, and bad faith conduct have proximately caused and are causing State Farm to suffer irreparable harm.

### CLAIMS

26. State Farm presently seeks against Attorney General Hood only prospective equitable relief in this Action, including specific performance, declaratory relief, and injunctive relief.

### COUNT I

#### *Declaratory Judgment as to Attorney General Hood's Breach of the January 23, 2007 Non-Prosecution Agreement with State Farm*

27. State Farm incorporates and adopts by reference the preceding averments of this Complaint.

28. As alleged above, State Farm is entitled to a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202, in that there is an actual and immediate controversy now existing between State Farm and Attorney General Hood as to which State Farm seeks the judgment of this Court.

29. As alleged above, State Farm is entitled to a declaratory judgment that Attorney General Hood's service of the Fourth Grand Jury Subpoena constitutes a material breach of the January 23, 2007 Non-Prosecution Agreement.

### COUNT II

#### *Specific Performance by Attorney General Hood of the January 23, 2007 Non-Prosecution Agreement with State Farm*

30. State Farm incorporates and adopts by reference the preceding averments of this Complaint.

31. The acts and omissions of Attorney General Hood as alleged above constitute material uncured breaches of contract.

32. The acts of Attorney General Hood as alleged above have caused and are causing State Farm and its employees consequent, proximate and irreparable injury.

33. Specific performance is required because Attorney General Hood's breach of the January 23, 2007 Non-Prosecution Agreement cannot be remedied through any alternative means.

34. Accordingly, State Farm is entitled to an order or injunction of specific performance, directing Attorney General Hood to specifically perform all provisions of his January 23, 2007 Non-Prosecution Agreement with State Farm, including, but not limited to refraining from: (a) seeking State Farm's compliance with the Fourth Grand Jury Subpoena; (b) reopening or reinstating any criminal investigation(s) of State Farm's handling of Hurricane

Katrina claims; and (c) bringing criminal charges against State Farm or any of its current or former employees, directors, engineers, agents, counsel or adjusters concerning the handling of Hurricane Katrina claims.

### COUNT III

*Due Process and Equal Protection Violations Related to Attorney General Hood's Breach of the January 23, 2007 Non-Prosecution Agreement with State Farm Actionable Under 42 U.S.C. § 1983*

35. State Farm incorporates and adopts by reference the preceding averments of this Complaint.

36. As alleged above, acting under color of state law, Attorney General Hood has unilaterally and without due process, as required by the Fourteenth Amendment of the United States Constitution, breached the January 23, 2007 Non-Prosecution Agreement with State Farm.

37. State Farm has performed all of its obligations under the January 23, 2007 Non-Prosecution Agreement with Attorney General Hood, and State Farm has relied to its detriment on that agreement.

38. At no time prior to Attorney General Hood's service of the Fourth Grand Jury Subpoena in violation of the January 23, 2007 Non-Prosecution Agreement did Attorney General Hood obtain a final judgment from a court of competent jurisdiction adjudicating that State Farm has materially breached the January 23, 2007 Non-Prosecution Agreement.

39. Attorney General Hood's service of the Fourth Grand Jury Subpoena in breach or rescission of the January 23, 2007 Non-Prosecution Agreement violates State Farm's rights to due process and equal protection under the Fourteenth Amendment to the United States Constitution, and his conduct is actionable under 42 U.S.C. § 1983.

40. The unconstitutional and unlawful acts of Attorney General Hood as alleged above have caused and are causing State Farm and its employees consequent and proximate injury, and other irreparable harm.

41. Accordingly, State Farm is entitled to an order or injunction of specific performance, directing Attorney General Hood to specifically perform all provisions of the January 23, 2007 Non-Prosecution Agreement with State Farm and including, but not limited to refraining from: (a) seeking State Farm's compliance with the Fourth Grand Jury Subpoena; (b) reopening or reinstating any criminal investigation(s) of State Farm's handling of Hurricane Katrina claims; and (c) bringing criminal charges against State Farm or any of its current or former employees, directors, engineers, agents, counsel or adjusters concerning the handling of Hurricane Katrina claims.

#### **COUNT IV**

##### *Costs, Expenses of Litigation and Reasonable Attorneys' Fees Under 42 U.S.C. § 1988*

42. State Farm incorporates and adopts by reference the preceding averments of this Complaint.

43. Pursuant to 42 U.S.C. § 1988, State Farm is entitled to recover its reasonable expenses, attorneys' fees and costs of litigation incurred in this action brought under 42 U.S.C. § 1983.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, based upon the above, State Farm requests that this Court grant it the following relief:

- (1) A declaratory judgment under 28 U.S.C. §§ 2201 & 2202 that Attorney General Hood is bound to perform his obligations under the January 23, 2007 Non-Prosecution Agreement with State Farm wherein he agreed to finally conclude


and not reinstitute or resume his criminal investigation of State Farm's handling of Hurricane Katrina claims and to not bring criminal charges against State Farm or any of its current or former employees, directors, engineers, agents, counsel or adjusters concerning the handling of Hurricane Katrina claims;

- (2) A declaratory judgment under 28 U.S.C. §§ 2201 & 2202 that Attorney General Hood is in breach of his obligations under the January 23, 2007 Non-Prosecution Agreement with State Farm by his criminal investigation of State Farm's handling of Hurricane Katrina claims and pursuing criminal charges against State Farm and/or its current or former employees, directors, engineers, agents, counsel or adjusters concerning the handling of Hurricane Katrina claims;
- (3) A temporary restraining order, preliminary injunction, permanent injunction and final judgment of specific performance, pursuant to 28 U.S.C. §§ 1651 & 2283, as well as 42 U.S.C. §§ 1983 & 1985(2) and other law, requiring Attorney General Hood, his agents, and any other person or persons purporting to act on behalf of the State of Mississippi and/or its political subdivisions, and their respective successors, to honor, abide by and perform in full the entirety of the January 23, 2007 Non-Prosecution Agreement with State Farm, by, including but not limited to, withdrawing the Fourth Grand Jury Subpoena and terminating the current investigation of State Farm's handling of Hurricane Katrina claims and refraining from reopening, continuing, reinstating or launching any further investigation of State Farm's handling of Hurricane Katrina claims, as well as seeking to initiate, bring or prosecute in any manner any criminal charges whatsoever against State Farm or any of its current or former employees, directors, engineers, agents, counsel or adjusters, related in any manner to the handling of Hurricane Katrina claims;
- (4) An award of costs, expenses of litigation and reasonable attorneys' fees as provided by 42 U.S.C. § 1988; and
- (5) Such further, supplemental, alternative, different or additional equitable relief as may be appropriate under the premises.

Respectfully submitted, this 13<sup>th</sup> day of September, 2007.

STATE FARM FIRE AND CASUALTY COMPANY and  
STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY, Plaintiffs

BY:

  
Robert C. Galloway, MB No. 4388  
Jeffrey A. Walker, MB No. 6879

ATTORNEYS FOR STATE FARM FIRE AND  
CASUALTY COMPANY and STATE FARM  
MUTUAL AUTOMOBILE INSURANCE  
COMPANY

OF COUNSEL:

ROBERT C. GALLOWAY, MB No. 4388  
BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC  
P. O. DRAWER 4248  
GULFPORT, MS 39502  
T: (228) 575-3019  
F: (228) 868-1531  
E-MAIL: [bob.galloway@butlersnow.com](mailto:bob.galloway@butlersnow.com)

JEFFREY A. WALKER, MB No. 6879  
BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC  
210 E. Capitol Street, Suite 1700 (39201)  
P.O. BOX 22567  
JACKSON, MS 39225-2567  
T: (601) 985-4558  
F: (601) 985-4500  
E-MAIL: [jeff.walker@butlersnow.com](mailto:jeff.walker@butlersnow.com)

**CERTIFICATE OF SERVICE**

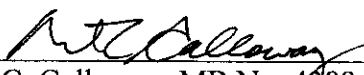
I, Robert C. Galloway, one of the attorneys for Plaintiffs, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means indicated below:

**Via Hand Delivery and E-mail**

Attorney General Jim Hood  
Office of the Attorney General  
Walter Sillers Building  
550 High Street, Suite 1200  
Jackson, Mississippi 39201

DEFENDANT

THIS the 13<sup>th</sup> day of September, 2007.

  
Robert C. Galloway, MB No. 4388