

June 12, 2001
Mabry Order
#2

MABRY ORDER # 2 (06/12/01)

- (2), p. 4: State Farm doesn't inspect the car BEFORE the wreck.
- (2), p. 5: in excess of 26,000 1st party claims; only inspected ~~2,79~~^{2,679} vehicles
- (6): An appropriate methodology and procedure to assess non-repair related DV claims need not and should not be a standardless methodology and procedure.
- (7) State Farm's insistence that an assessment for DV must include an inspection of the vehicle is not supported by the evidence.

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IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

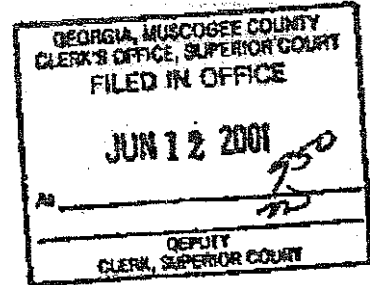
RUDINE MABRY, INDIVIDUALLY, MAURICE
J. CARDENAS, INDIVIDUALLY, AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.



CIVIL ACTION
FILE NO. SU 99 CV 4915

**ORDER ON COMPLIANCE AND INJUNCTION GRANTING
FURTHER AND CONSISTENT RELIEF**

On December 1, 2000, this Court granted Plaintiffs' Motion for Declaratory and Injunctive Relief (hereinafter "the first motion") to the policyholder class, defined by the Court's June 15, 2000 certification Order, with respect to class members' claims from December 1, 2000 forward and requiring State Farm to assess, using an appropriate methodology and procedure, all reported first party automobile property damage losses of State Farm insureds for diminished value, to determine from such assessments if diminished value was present and to pay or deny those claims following such assessment. The Court further ordered State Farm to collect, catalogue and maintain the information regarding such process and to report to the Court the results. On December 8, 2000, a Motion for Further and Consistent Injunctive Relief (hereinafter "the second motion") was filed on behalf of that same class of policyholders seeking the same relief on behalf of all class members who had reported first party automobile

property damage losses of the same kind prior to December 1, 2000, and including all such reports of loss filed after six years preceding the filing of this lawsuit on December 22, 1999.

This Court has held numerous hearings, taken evidence and considered many issues and positions of the parties during the months of the pendency of this action on both the second motion and on the question of the Defendants' compliance or failure of compliance with the Court's declaratory and injunctive Order of December 1, 2000, on Plaintiffs' first motion and the subsequent orders and decrees entered in furtherance of the injunction, including an Order entered May 1, 2001, and filed May 2, 2001. Many of the hearings held have been lengthy and, in total, have involved many witnesses and much documentary evidence. The latest hearing, culminating in this Order and Decree, was conducted on June 1, 2001, and lasted from 10:30 A.M. until just before midnight. At that June 1, 2001, hearing the Court concluded the testimony offered in support of and in opposition to the second motion and received the Defendant's Second Report of Compliance with the Court's May 1, 2001, Order. The Court further conducted a hearing and considered the position of the parties in conjunction with direction to show cause by the Defendant following the Second Report as such had been directed by the May 1, 2001 Order.

Having thus received all of the evidentiary submissions and arguments of the parties and after having considered all such from the June 1, 2001 hearing and all the previous hearings conducted in this matter, the Court is now prepared to rule on both the Plaintiffs' second motion and on the issue of State Farm's compliance with the May 1, 2001, Order. The Court directed both parties to propose an Order granting the

Plaintiffs' second motion. Plaintiffs did so, but State Farm instead submitted a Memorandum In Opposition to the Second Motion. The Court has considered both submissions.

Accordingly, the Court finds as follows:

COMPLIANCE WITH DECEMBER 1, 2000 AND MAY 1, 2001 ORDERS

1. State Farm has implemented a costly and vast state-wide system of "assessments" for those first party claims which have been reported since December 1, 2000, and which State Farm has previously failed or refused to properly assess by an appropriate methodology and procedure as required by this Court's Orders of December 1, 2000 and May 1, 2001.

2. Dallas Mathile, State Farm's corporate representative, testified at the February 14, 2001 hearing. He testified, among other things, that on many reports of loss, particularly those before December 1, 2000, the vehicles Plaintiffs now seek to have State Farm assess will not be available in many instances for inspection because those vehicles have been sold or otherwise disposed of (February 14, 2001, Hearing Testimony, p. 270); and that in those instances, and in order to assess for diminished value, State Farm, he said, could use the claim file materials, i.e. police reports, repair estimates, photographs, vehicle inspection reports, etc. and information from the insured to reconstruct the condition of the vehicle and the diminished value loss without the necessity for having an inspection (February 14, 2001, Hearing Transcript, pp. 271-280).

In fact, Mr. Mathile testified as follows:

Q. Okay. So if we look back at these, the old files as we call them, despite not having the vehicle or the vehicle being there but time having lapsed, you could still make an evaluation it just won't be as accurate as if you had the car, isn't it?"

A. "We could make, we possibly could make an evaluation, yes."

February 14, 2001, Hearing Transcript, p. 280, Lines 4-10.

Thus, the Court finds, as it has so previously in its May 1, 2001 Order, that an inspection of the vehicle is not necessary in order for State Farm to make an assessment for diminished value, particularly for non-repair related diminished value, which this case is primarily about. Inspections are undertaken primarily to test the adequacy of repairs and allegedly to compare the post-repair condition of the vehicle to the pre-loss condition. This latter reason is inconsistent with the obvious fact that State Farm does not inspect the vehicle prior to any loss, as Ray Smith testified.

The Court's finding that inspections are not necessary, however, is not intended to prohibit State Farm's choice to conduct inspections on what has been called the "going forward" class claims as those claims are made. In State Farm's Second Report on Compliance, filed with the Court on May 28, 2001, State Farm indicated that it intends to inspect vehicles before they leave the repair shop or as soon thereafter as possible, a matter that was addressed during the June 1, 2001 hearing. That process should continue, at least as long as State Farm maintains its position that inspections are necessary or preferred.

3. The Second Report on Compliance filed with the Court on May 28, 2001, and the evidentiary offering, including the testimony of State Farm's witnesses Laura Quinn and John Dosen in support of that report at the June 1, 2001 hearing, reveals

that in excess of 26,000 first party claims were made after the Court's December 1, 2000 Order and that some 24,000 first party claims were not inspected and were either not "assessed," i.e., the exclusion of leased vehicles, or were "assessed" by some standardless review. Of the total first party claims, State Farm's process resulted in inspections of only 2679 vehicles, which small number is in large part a result of the discouraging language used by State Farm in both its telephone and written communications when it contacted its insureds as the Court had ordered in its May 1, 2001 Order. An invitation to an insured to join a lawsuit can hardly be considered a good faith effort by State Farm to obtain access for inspection to its policyholders' vehicles, yet that is what State Farm has written and told to its insureds. The remaining claims that were "assessed" were allegedly "assessed" in the manner set forth in the Court's May 1 Order, that is, by a review of the claim file and other information available to State Farm. But the testimony adduced during the June 1 hearing and the exhibits to State Farm's Second Report show that any inspection or any claim file review that may have been made was made without any criteria or any method of calculating a number, be it zero or greater, and that such review was prejudiced by State Farm's corporate mindset that diminished value does not occur where proper repairs have been made and that nothing in its claims files, regardless of detail or substance, could evidence any diminished value or lead to a determination of diminished value. The Court finds that it is not credible that such claim file "review" could result in not a single vehicle having any diminished value, particularly if proper criteria were adopted for use in the assessments, and if the intent in State Farm's "assessments" were not to predetermine and thus to preclude finding diminished value in all instances. Contrary to

the Court's Orders and declarations of the Georgia law, State Farm insists, however, that its only inquiry is to determine repair related diminished value. This position is inconsistent with State Farm's own expert who testified that diminished value will occur in "most" vehicles after repairs have been completed following a loss.

4. The testimony of Laura Quinn, a State Farm employee whose testimony was offered at the June 1st hearing by the Defendant, clearly demonstrates that State Farm has refused to adopt any criteria or standards for assessing for the existence of and calculating dollar amounts for diminished value. Ms. Quinn testified that there was no standard or uniform measure or guide employed by State Farm for the assessment and quantification of diminished value and she confirmed, as is set out in footnote 5 of State Farm's Second Report, that the personnel responsible to do the required assessments received from State Farm no instructions or directions on how to assess vehicles for non-repair related diminished value even though all of these employees had been made aware of State Farm's corporate view that a repaired vehicle will ordinarily not have any diminished value. The result of such failure to educate the very "assessors" charged with looking for non-repair related diminished value is that they were not to look for what the Court had ordered State Farm to look for and were not instructed on how to recognize it and calculate it in any event. In fact, counsel for State Farm represented to the Court at the June 1st hearing that State Farm's determinations and quantifications of diminished value were arrived at only through the process of negotiations on a case by case basis between State Farm and its policyholders, not based on any assessment of the loss using criteria or standards.

5. John Dosen, the second highest ranking State Farm employee in Georgia and the State Farm executive in charge of State Farm's compliance with the Court's Orders, testifies that State Farm has not paid one single non-repair related diminished value loss since December 1, 2000. Though that statement is difficult to square with the documents produced and the prior testimonies of State Farm witnesses, it conclusively shows State Farm's non-compliance with the December 1, 2000 and May 1, 2001 Orders.

6. The evidence in this case, presented from both Plaintiffs and Defendant makes it clear that an appropriate methodology and procedure to assess non-repair related diminished value claims need not and should not be a standardless methodology and procedure. Such methodology must be one that can be based upon uniform criteria found in and determined from the claims files of the insureds. Standards must then be applied thereto by the assessor in order to determine the existence of and amount of diminished value.

7. The insistence of State Farm that an assessment for diminished value must include an inspection of the vehicle that is the subject of the claim for diminished value is not supported by the evidence before the Court. On the contrary, the evidence shows that evaluation for non-repair related diminished value is done by other insurance companies in the industry, including Safeco, Progressive and Nationwide, without the necessity for inspecting the vehicle. Testimony taken before this Court from car dealers, appraisers, adjusters, including State Farm's own expert witness John Williams, and the adjusting company, Crawford & Co., together with valuation experts, show that assessors from all areas of the industry can and do provide regularly

evaluations for insurance companies without the requirement of an inspection. Moreover, State Farm hires appraisers, including the independent appraiser, Don Peterson, to perform such evaluations without the requirement of an inspection. Importantly, beginning in approximately 1995, State Farm utilized the largest valuation company in this valuation industry, CCC Information Services Inc., to perform valuations, including non-repair related diminished value assessments, without requiring an inspection. Unknown to its policyholders, State Farm has used for years the valuation company, CCC, to reduce State Farm's obligation to third party claimants against State Farm in its resistance to paying for losses to vehicles insured by other carriers where such losses were caused by State Farm's policyholders. In this context, State Farm used CCC's non-repair related diminished value assessments to prove that the third party vehicle had been in a previous collision and suffered diminished value even though properly repaired. By using CCC's methodology for assessing non-repair related diminished value without inspecting the vehicle, State Farm has been able for years to decrease total loss determinations by substantiating previous loss of diminished value.

8. The evidence shows that State Farm has used the contrived concept of the need for inspection of its insureds' vehicles in its first party claims since the December 1, 2000 Order of this Court as a means of making the assessment requirement so arduous, onerous and burdensome as to accomplish two purposes. The first purpose is to shift to the insured the responsibility for physically making the vehicle available for inspection. State Farm has always sought to wait to address the diminished value issue until after the policyholders' vehicle had been repaired and

returned to its owner, instead of dealing with the issue while the vehicle was conveniently available after repairs in the repair shop and when corrective repairs and a diminished value assessment could most readily be made and before further burdening the policyholder. Prior to the December 1 Order, State Farm addressed diminished value only if the policyholder knew to raise and did raise the issue, at which time State Farm's first response was what it continues to argue here -- a properly repaired vehicle has no diminished value. Since the Court's May 1, 2001 Order, many policyholders have not been able to be contacted, resulting in no assessment. Others have been required to submit to two or three unnecessary inspections, resulting in great inconvenience and frustration. Still others have been subjected to carefully prepared pre-scripted statements and representations by the company representatives in calls to the insureds in the inspection process which can only be described as discouraging the whole process. The second purpose is, by utilizing the inspection procedure and insisting upon the necessity for conducting one, State Farm is able to argue to this Court that the whole concept for assessing for diminished value is so burdensome and expensive as to be an exercise which is not worth the effort and expense. The 281 State Farm policyholders who have been paid a total of \$205,023.03 for diminished value, which according to Mr. Dosen has been paid for repair-related diminished value, most likely would not agree that the Court's effort to have State Farm comply with Georgia law is not worth the effort. The Court expressly does disagree with State Farm's position that it has not been worth the effort, and notes that other evidence indicates that at least some of the payments have been made for non-repair related diminution in value. The Court notes that State Farm has failed to assess on a routine

basis all of its policyholders' claims for diminished value since the Gibbs and Simmons decisions and despite numerous other intervening cases consistent with those decisions, as discussed in the Court's prior Orders, even though it has accepted premiums which include experience based on the occasional payment of diminished value.

9. Because State Farm had insisted that it needed to look at and inspect each and every vehicle in order to properly assess for diminished value, in the May 1, 2001 Order this Court ordered State Farm "to evaluate those insureds' vehicles for diminution in value either by inspecting the vehicles at the convenience of the insureds or by review of information in the files otherwise available elsewhere. (emphasis added) The Court further directed: "Should these phone calls or contacts (for inspection) not produce an assessment for diminished value, for whatever reason, State Farm will assess each claim for diminished value based upon the information which it has at its disposal" (emphasis added) The evidence is now clear that State Farm has ignored the alternative directive because it could not contact by phone the insureds or otherwise get them to arrange an inspection and has chosen to instead take the position that it has not been able to inspect most of the vehicles the Court ordered it to inspect and, thus, it can avoid the inspection and assess the remainder by simply doing and finding nothing. This artifice provides the excuse that has resulted in only 2678 inspections out of more than 26,000 potential ones since December 1, 2000 and in only 281 payments being made for diminished value. It is significant that only 170 payments for diminished value have been made since the May 1, 2001 Order. Just as revealing and indicative of State Farm's non-compliance with the mandate in the Court's May 1, 2001 Order is the

fact, as shown on page 21 of State Farm's Second Report, that since December 1, 2000 a total number of 23,389 claims have been denied, the vast majority of which have been denied without the "necessary" inspection. Except for a very few instances which Ms. Quinn could only sketchingly recall having to do with vehicles that had been sold, State Farm denied every claim where an inspection was not arranged. Moreover, State Farm's John Dosen, the Vice President of Operations in Georgia, testified that State Farm has paid no inherent or non-repair related diminished value claim to its insureds since December 1, 2000 and that the 281 claims which have been paid were all repair related.

10. The Court is convinced from the evidence that the State Farm claims files contain all of the information necessary to assess each claim in an orderly, relatively inexpensive, standardized and appropriate manner, regardless of whether an inspection takes place or not, which comports with the way the industry and State Farm have assessed claims in the past. State Farm witnesses, as well as every independent car dealer, adjuster, appraiser, claims representative and valuation expert appearing before this Court, has clearly testified that all, or substantially all, of the information necessary for an assessment of diminished value is contained in State Farm's claims files. These files include reports of loss, police reports, photographs, repair estimates, vehicle inspection reports, claims logs, etc., which provide all of the particulars regarding a subject vehicle, to wit, year, make, model, mileage, VIN, condition, options and accessories, nature of damage, location of damage, cost of repair, repair work necessary, parts, labor, repair facility, payments made and the discussion or communications regarding the damage between State Farm and its policyholder, etc.

Several of these adjusters, appraisers, claims representatives and valuation experts, including Don Peterson, Javier Bermudez, John Williams, Chris Harmon, David McCollum, Gene Malone, Jim Boyd, Gary Griffin, Mark Baker, Bill Geen and Neil Blitstein have testified that, based on their particular methodology, i.e. the Georgia Insurance Commissioner's distributed formula, their personal formula developed and used in the industry, or the ClaimCoach.com system, all or a subset of these pieces of information can be used to accurately, consistently and fairly determine diminished value. In fact, Bill Geen and Neil Blitstein, co-partners in ClaimCoach.com, have developed a methodology to determine diminished value based on their twenty years experience in the valuation business. Bill Geen, while at CCC, developed the methodology used by CCC which has been recognized and used by all automobile insurance carriers in the U.S., including State Farm, for determining total loss values of automobiles. Neil Blitstein, as an independent contractor with CCC, developed CRV, a division of CCC, to determine total loss value of specialty vehicles, trucks, boats, motorcycles, recreational vehicles and heavy equipment. Further, Neil Blitstein, while with CCC, developed a system to determine the diminished value of vehicles and State Farm and other insurance carriers, hired CCC/CRV to provide such determinations in third party total loss contexts. The present system developed and being used by Messrs. Geen and Blitstein of ClaimCoach.com utilizes the valuation methodology recognized in the insurance industry, and the standards and criteria they are currently utilizing to determine diminished value is more complete, accurate and consistent than the CCC/CRV method which they originally developed and which has been recognized, used and accepted previously by State Farm and others. In addition, the

fairly

ClaimCoach.com methodology could be utilized to provide the assessments required of State Farm in Georgia at a fraction of the cost State Farm has expended and which it has shown this Court it has employed with regard to its standardless efforts at compliance with this Court's orders.

11. The large expense and burden that State Farm now complains of is a consequence of its failure to comply timely with this Court's December 1st Order at the time that such Order was entered. Its failure to comply resulted in the accumulation of a large backlog of claims that had to be assessed and, since State Farm insisted that the inspection of vehicles was necessary to assess that backlog, people from State Farm's national catastrophe group had to be brought into Georgia to accomplish the inspections. These national catastrophe adjusters were, for the most part, unfamiliar with any methodology for assessing for non-repair related diminished value and were only employed to look at vehicles to determine if they were repaired correctly. The testimony from State Farm's Ms. Quinn that timely compliance would not have avoided any of this expense occasioned by the five-month delay and subsequent backlog is simply not credible.

12. State Farm is not in compliance with either the Court's Order of December 1, 2000 or May 1, 2001. The withholding of a decision on this issue by the Court is reserved because of the Court's belief that if the resources devoted to and the expenses incurred by State Farm had been with a corporate mindset to approach the task of determining diminished value as required by the Court with the employment of an appropriate methodology, the job could have been done. Nonetheless, in the continuing

hope that State Farm will do what it can and should do, as ordered by this Court, the Court reserves its decision on contempt until the following has been completed:

(a) The Court, at the June 1, 2001 hearing, required and State Farm agreed to provide to Plaintiffs within 45 days of June 1, 2001, the search and retrieval of its CSR for and download of each of the criteria outlined by Plaintiffs at the May 16, 2001 meeting at State Farm's Duluth office (the transcript of that meeting has been admitted into the record by agreement of counsel) on an Access database. This search, retrieval and download shall encompass January 1, 1986 to the present.

(b) The Court ordered State Farm to provide all of the claims files for the 2679 inspections and assessments referenced in State Farm's Second Report of Compliance with the Court's May 1, 2001 Order within thirty (30) days from the June 1st hearing for Plaintiffs' review and copying.

(c) The Court Orders State Farm to produce, within that same thirty (30) days, all the written assessments of the 24,250 claim files noted at page 21 of State Farm's Second Report, to show the Court the work, if any, State Farm did to assess those files. If there are no such assessment documents, State Farm is to notify the Court in writing no later than Monday, July 9, 2001.

(d) The Court ordered State Farm to produce hereafter, on a regular basis, for review and copying by Plaintiffs, the claims files for any additional inspections and/or assessments not heretofore addressed in this Order; and

(e) State Farm is ordered to propose to this Court, no later than thirty (30) days after the entry of this Order, an assessment methodology, based upon criteria found in and determined from its policyholders' claim files, with standards applied

thereto to determine the existence of and amount of non-repair related diminished value. Such a methodology must clearly illustrate how State Farm's claims representatives will uniformly and consistently determine, in writing, the existence of and amount of diminished value that will provide this Court with an opportunity to objectively review each written assessment. This assessment methodology must be applicable whether or not an inspection is or could be conducted. If at the end of the thirty (30) day period, State Farm fails or refuses to provide an approved methodology, the Court will select one of the methodologies referenced in ¶¶ 7, 10 and 17, at least for the reassessment of the approximately 24,000 files not heretofore appropriately assessed and for all future claims. A timetable for these reassessments will be addressed by further order of the Court.

INJUNCTION GRANTING FURTHER AND CONSISTENT RELIEF

13. The Court finds the factual and legal scenario with regard to the claims prior to December 1, 2000, to be the same as for those claims subsequent to that date. The findings of the December 1, 2000 and May 1, 2001 Orders are, therefore, incorporated herein. The Court finds that State Farm did not notify its policyholders of the coverage for diminished value losses nor did State Farm evaluate for diminished value and pay its policyholders for diminished value unless forced to do so by its policyholders, despite the fact that policyholders pay a portion of their premium that is attributable to diminished value losses. (February 14, 2001, Hearing Transcript, p. 267). Nevertheless, State Farm did not obtain releases from these first party property damage claimants and the claims, therefore, remain unevaluated to present. (February 14, 2001, Hearing Transcript, pp. 268-269). Counsel for State Farm agreed at the June 1,

2001 hearing that State Farm's files were still open and the diminished value losses were not resolved. He further agreed that policyholders who sustained a loss during the past six years could today seek payment for diminution in value from State Farm.

14. The Court hereby grants Plaintiffs' Motion for Further Injunctive Relief, and with regard to the first party property damage reports of loss by class members herein made prior to December 1, 2000, and subsequent to December 22, 1993, this Court hereby ORDERS and ENJOINS State Farm to evaluate each of those first party physical damage claims for the presence of non-repair related diminution in value by an appropriate methodology and procedure, as that methodology is outlined in ¶7 and ¶10 above, and to offer to pay such diminution in value if it determines it has occurred or to deny the presence of diminution in value and so advise its insureds. The Court ORDERS and ENJOINS State Farm to collect, catalog and maintain any information necessary to make such determination as to the amount of any loss for diminution in value sustained by the vehicles of its insureds.

15. State Farm has not established criteria or standards with which to assess non-repair related diminished value losses, yet because State Farm has demonstrated to the Court it is capable of developing and utilizing a methodology of assessment based on criteria and standards that will result in determining non-repair related diminished value, from the claims files and without the necessity for an inspection, the Court will not accept State Farm's decision to expend additional enormous resources as establishing anything other than a hollow process that results in a blanket denial offered under the guise of an "assessment."

16. The Court is convinced that methodologies are available and in use in the insurance and valuation industries that will and do provide assessments of non-repair related diminished value based squarely on recognized criteria and standards which result in fair and reasonable determinations and quantifications of diminished value losses. See ¶17, 10 *supra*.

17. Within thirty (30) days of the entry of this Order, State Farm is to submit in writing for approval, by the Court, a methodology for assessment of non-repair related diminished value based on criteria and standards that the Court can approve as being acceptable. State Farm may employ or use the following methodologies to make such required assessments:

- (a) The ClaimCoach.com system;
- (b) The Classic Car Appraisal Service (Don Peterson) methodology;
- (c) The formula distributed by the Georgia Insurance Commissioner's office and used by Safeco, Progressive, Nationwide and Crawford & Co.;
- (d) Any combination or modification of (a), (b) or (c) as approved by the Court;

If State Farm were to employ or use (a) or (b) or any combination thereof, such employment and use would be at State Farm's expense.

18. If, after the end of the thirty (30) day period, State Farm has not submitted an appropriate methodology approved by the Court, the Court, in such event, will select one of the methodologies outlined in ¶17 *supra*, for the assessments of pre December 1, 2000, reports of loss, which assessments shall be conducted at State Farm's expense.

19. After the end of the thirty (30) day period, the Court will consider State Farm's submission and thereafter will establish a schedule of assessments of pre December 1, 2000 losses and schedule reports to be received from State Farm regarding the timeliness, adequacy and sufficiency of said assessments.

SO ORDERED this the 12 day of June, 2001.


DOUGLAS C. PULLEN
SUPERIOR COURT JUDGE

Muscogee County, Georgia

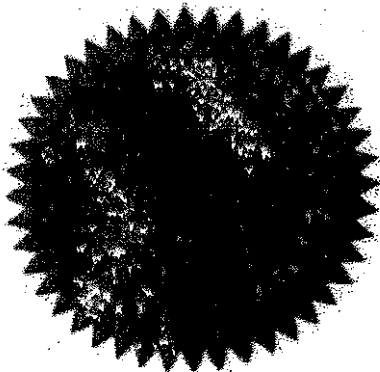
*I do certify that the within and foregoing is a true and
Correct copy of the document (s) as appears by the
Original on file and record in the office of the Clerk of
Muscogee Superior Court.*

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26 DAY OF AUGUST 2010

Zermie Pitts

Deputy Clerk, Muscogee Superior Court



*M. Linda Pierce
Clerk Of Superior Court
Muscogee County, Georgia*