

STATE OF MICHIGAN
IN THE SUPREME COURT

RICHARD JAMES,

Plaintiff

and

SAFECO INSURANCE
COMPANY OF AMERICA,

Plaintiff-Appellee

v.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant-Appellant,

and

AUTO CLUB GROUP INSURANCE and MARIO
SYLVESTRI,

Defendants,

and

DAVID GASOWSKI,

Defendant-Appellee.

Supreme Court Docket No. 130460

COA Docket No. 262805

St. Clair County Circuit Court
Case No. 03-002466-NZ

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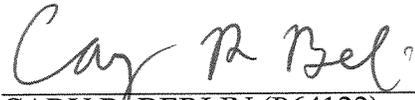
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**DEFENDANT/APPELLANT, STATE FARM FIRE AND CASUALTY COMPANY'S,
RESPONSE IN OPPOSITION TO DEFENDANT/APPELLEE, DAVID GASOWSKI'S,
MOTION TO ENLARGE RECORD ON APPEAL OR, IN THE ALTERNATIVE,
STRIKE STATE FARM'S SUPPLEMENTAL BRIEF**

For the reasons set forth in the attached brief, the Defendant/Appellant, State Farm Fire and Casualty Company ("State Farm"), through its attorneys, Patrick, Johnson & Mott, P.C., pursuant to MCR 7.313(C), respectfully requests this Honorable Court deny the Defendant/Appellee's Motion to Enlarge the Record or to Strike State Farm's Supplemental Brief.

Respectfully submitted,

PATRICK, JOHNSON & MOTT, P.C.



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Dated: September 21, 2007

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**BRIEF IN SUPPORT OF
DEFENDANT/APPELLANT, STATE FARM FIRE AND CASUALTY COMPANY'S,
RESPONSE IN OPPOSITION TO DEFENDANT/APPELLEE, DAVID GASOWSKI'S,
MOTION TO ENLARGE RECORD ON APPEAL OR, IN THE ALTERNATIVE,
STRIKE STATE FARM'S SUPPLEMENTAL BRIEF**

Defendant/Appellee, David Gasowski's Motion to enlarge the record, requests that this Court Order the inclusion of Mr. Gasowski's criminal trial transcripts into the record. If granted, the parties would be required to file more than 400 pages with the Court.

State Farm opposes Gasowski's Motion to enlarge the record because those materials are not relevant to the issues the Court ordered the parties to address in the supplemental briefs. State Farm believes that the Motion should not be granted.

In its June 15, 2007 Order requiring the parties to file supplemental brief's, the Court specifically instructed the parties not to restate their application papers. State Farm's reference to portions of the testimony of two police officers during the criminal trial was merely offered by State Farm to provide context for its discussion regarding the manner in which an insurer should proceed when it believes its insured is committing fraud to invoke coverage. These materials were not offered in State Farm's Supplemental Brief to further persuade the Court that there was in fact collusion between the parties in the underlying lawsuit. The Court's June 15, 2007 Order appears to acknowledge there was evidence that justified State Farm's concerns.

Contrary to the insinuation in Mr. Gasowski's Motion, State Farm has nothing to hide regarding the information contained in those transcripts. If this Court determines that the criminal trial transcripts will aid it in its review of, and decision in this matter, State Farm will produce it.

Conclusion

For the reasons stated above, the Defendant/Appellant, State Farm Fire and Casualty Company, respectfully requests this Honorable Court deny the Defendant/Appellee's Motion to strike State Farm's Supplemental Brief. Further, unless the Court deems it necessary, State Farm requests that this Court deny the Defendant/Appellee's Motion to Enlarge the Record to include the

criminal trial transcripts.

Respectfully submitted,

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September 21, 2007

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Re: Richard James et al v State Farm Fire & Casualty Company et al
Michigan Supreme Court Docket No. 130460
Michigan Court of Appeals Docket No. 262805
St. Clair County Circuit Court Case No. 03-002466-NZ
Our File No. 03102

Dear Clerk:

Enclosed please find the original and seven copies of Defendant, Appellant, State Farm Fire and Casualty Company's, Response in Opposition to Defendant/Appellee, David Gasowski's, Motion to Enlarge Record on Appeal or, in the Alternative, Strike State Farm's Supplemental Brief, Brief in Support, and Proof of Service, relative to the above-captioned litigation.

Thank you for your assistance in this matter.

Very truly yours,

PATRICK, JOHNSON & MOTT, P.C.

Cary R. Berlin
Cary R. Berlin

CRB:rew

cc: Mr. Jon R. Garrett
Mr. Larry W. Hoskins
Mr. Charles Trickey III
Mr. James T. Mellon

