

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

JESSE G. YATES, III, and MELISSA)
YATES)

Plaintiffs.)

vs.)

STATE FARM FIRE AND CASUALTY)
COMPANY, a *Property & Casualty*)
Domestic Stock insurance company)
incorporated in Illinois and wholly-owned)
by *State Farm Mutual Automobile*)
Insurance Company, an Illinois *Property*)
& *Casualty Domestic Mutual* insurance)
company,)

Defendant.)

**CONSENT ORDER
ALLOWING DEFENDANT'S MOTION
TO STRIKE PURSUANT TO RULE 12(f)
OF THE FEDERAL RULES OF CIVIL
PROCEDURE**

Civil Action No. 7:13-cv-00233-BO

Whereas, the parties to this Consent Order Allowing Defendant's Motion to Strike have stipulated that certain allegations contained in Plaintiffs' Complaint should be stricken, and have agreed to the terms of this Order; the Court finds as follows:

1. Rule 12(f) of the Federal Rules of Civil Procedure provides, "The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: (1) on its own; or (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading."

2. Rule 12(f) "provides the Court a means to clean up the pleadings, streamline litigation and avoid unnecessary forays into immaterial matters." *Sun Microsystems, Inc. v. Versata Enterprises, Inc.*, 630 F. Supp.2d 395, 402 (D. Del. 2009) (quoting *McInerney v. Moyer Lumber & Hardware, Inc.*, 244 F. Supp.2d 393, 402 (E.D. Pa. 2002)).

3. Defendant timely made a Motion to Strike certain allegations contained in Plaintiffs' Complaint.

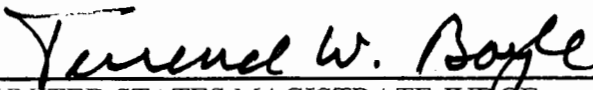
4. The cited allegations of Plaintiffs' Complaint go beyond stating what is necessary to give the Court and the Defendant notice of the nature of the claims being made against the Defendant and the basis for those claims. Instead, Plaintiffs' Complaint contains material and matters which all parties agree should be stricken.

5. The parties having so consented, and the Court having so found, then Defendant's Motion to Strike is therefore ALLOWED.

6. The parties consent to the entry of this Order.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Paragraphs 13, 14, 22, 24, 28, 43, 44, 52, 55, 60, 61, 65, 67, 70, 75, 80, 82, 84, 86 and 93 of the Plaintiffs' Complaint be stricken.

So Ordered, this the 8 day of February, 2014.


UNITED STATES ~~MAGISTRATE~~ JUDGE

CONSENTED TO:

/s/ MICHAEL S. DAVENPORT
MICHAEL S. DAVENPORT
NC State Bar No. 23956
2505 South College Road
Wilmington, North Carolina 28412
Telephone: (919) 362-9500
Facsimile: (910) 799-8496
Email: msd@mdavenportlaw.com
Counsel for Plaintiffs

/s/ H. SCOTT OVERHOLT

H. SCOTT OVERHOLT

NC State Bar No. 18462

2505 South College Road

Wilmington, North Carolina 28412

Telephone: (910) 798-5900

Fascimile: Facsimile: (910) 799-8496

Email: Scott@overholtlaw.com

Counsel for Plaintiffs

/s/ JONATHAN E. HALL

JONATHAN E. HALL

NC State Bar No. 19953

Wells Fargo Capitol Center

150 Fayetteville Street, Suite 1400

Raleigh, NC 27601

Telephone: (919) 828-0564

Facsimile: (919) 834-4564

Email: jonathanhall@parkerpoe.com

Counsel for Defendant