

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

(*****), Plaintiff,

Vs.

State Farm Insurance, Defendant

CIVIL ACTION

FILE NO.: _____

PLAINTIFFS' MOTION TO EXCLUDE EVIDENCE PURSUANT TO O.C.G.A. SECTION 24-9-67.1

COMES NOW *****, Plaintiff of the above-styled action, and files this Motion to Exclude Evidence pursuant to O.C.G.A. Section 24-9-67.1.

In support of said Motion, Plaintiff respectfully shows unto this Court the following:

INSURER'S APPRAISER USED A FORMULA THAT IS NOT THE PRODUCT OF RELIABLE PRINCIPLES AND METHODS

O.C.G.A. Section 24-9-67.1 is Georgia's codification of the decision in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 570 (1993) and its progeny. The Daubert standard purports to ensure that all scientific testimony or evidence is not only relevant, but reliable.

Daubert may be broken down into a two prong inquiry: Reliability and Relevance.

RELIABILITY	RELEVANCE
Whether the expert's METHODOLOGY has been tested?	Whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute.
Whether the expert's METHODOLOGY has been subject to PEER REVIEW?	
Whether the expert's METHODOLOGY has a known ERROR RATE?	
Whether the expert's METHODOLOGY is subject to standards	
Whether the expert's METHODOLOGY is generally accepted?	

O.C.G.A. Section 24-9-67.1 (b)(2) requires the expert's testimony to be "the product of reliable principles and methods." This requirement alone will bar fact witnesses from testifying regarding the methodology utilized to calculate Plaintiff's property damage loss amount. It is important to note that:

- * None of their FACT witnesses created the methodology.
- * None of their FACT witnesses created or developed the factors used in the methodology.
- * None of their FACT witnesses will be able to testify to the science of HOW and WHY these factors are chosen and plugged into the formula.
- * None of their FACT witnesses will be able to proffer to the court any RELIABLE data which will support their use of the methodology.
- * None of their FACT witnesses will be able to proffer any evidence that the methodology has been TESTED.

Daubert provides guidance as to the admissibility of expert testimony and lists the following factors as relevant to the analysis:

1. Whether the specialized theory or technique has been or can be tested,
2. The theory's general acceptance in the expert community,
3. Rate of error, and
4. Peer review.