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VIA CM/ECF

Michael E. Gans
Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Re: *LaBrier v. State Farm Fire and Cas. Co.*, Nos. 16-3185 & 16-3562

Dear Mr. Gans:

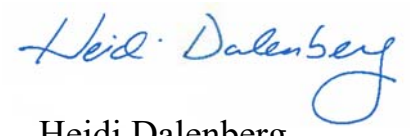
On behalf of Appellant-Petitioner State Farm Fire and Casualty Company ("State Farm"), I am writing to reply to Appellee-Respondent's letter dated February 23, 2017. In that letter, Appellee's counsel erroneously contends that this Court's decision in *McKeage v. TMBC, LLC*, No. 15-3191 (8th Cir. Feb. 13, 2017), "supports a finding that class certification was appropriate" in this case. (Appellee's Letter 2.)

In fact, *McKeage* differs significantly from the present case. Contrary to Appellee's contentions, the file-by-file review approved by this Court in *McKeage* does not support class certification or the district court's discovery order here.

The file-by-file review in *McKeage* (performed and paid for by plaintiffs' attorneys, not by the defendant) was used to determine which customers' contracts contained a Missouri choice-of-law provision – a simple yes-or-no inquiry that identified class members. *McKeage*, slip op. at 8-9. Here, the enormously burdensome file-by-file review the district court has ordered State Farm to conduct would require analysis of each potential class member's claim file to determine, at a minimum, (1) the amount of labor depreciation, if any, actually applied in determining each actual cash value payment made to the insured, (2) which subsequent payments could be regarded as reimbursing labor depreciation (and to

what extent), and (3) the actual repair costs incurred by the insured. That analysis would require examining and interpreting notes by claims adjusters and repair invoices and contracts relating to each insured's property, as well as matching up that information with prior payments to the insured. *See* SF Br. 5-7,11-12. Additionally, State Farm has been ordered by the district court to identify its "affirmative defenses" for each of the approximately 144,900 class members. *Id.* 6,47-49. Unlike in *McKeage*, the extensive, individualized, file-by-file discovery ordered here does not provide an objective or efficient means of identifying potential class members, determining standing, or answering questions of liability. Rather, Plaintiff's purported need for such discovery demonstrates the intractably individual nature of Plaintiff's claims and the lack of predominance and ascertainability. In short, a comparison of this case and *McKeage* underscores the impropriety both of class certification and of the district court's discovery order.

Respectfully submitted,



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cc: All counsel of record (via CM/ECF)