

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

In Re : KATRINA CANAL BREACHES	§	CIVIL ACTION
CONSOLIDATED LITIGATION	§	NO. 05-4182 “K” (2)
	§	JUDGE DUVAL
	§	MAG. WILKINSON
	§	
_____	§	
PERTAINS TO: MRGO, Robinson, No. 06-2268	§	
_____	§	

**UNITED STATES OF AMERICA’S
MOTION FOR ORDER TO SHOW CAUSE WHY
PLAINTIFFS’ ATTORNEYS KEA SHERMAN AND
JONATHAN B. ANDRY SHOULD NOT BE DISQUALIFIED**

For the reasons stated in the attached memorandum of law, the United States of America respectfully moves for an order to show cause why Plaintiffs’ attorneys Kea Sherman and Jonathan B. Andry should not be disqualified.

Respectfully submitted,

MICHAEL F. HERTZ
Deputy Assistant Attorney General

PHYLLIS J. PYLES
Director, Torts Branch

JAMES G. TOUHEY, JR
Assistant Director, Torts Branch

s/ Jeffrey P. Ehrlich
JEFFREY P. EHRLICH
Trial Attorney
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Attorneys for the United States of America

CERTIFICATE OF SERVICE

I, Jeffrey P. Ehrlich, hereby certify that a copy of the forgoing was served by ECF upon all Parties this day, April 28, 2009.

s/Jeffrey P. Ehrlich
Jeffrey P. Ehrlich

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

In Re : KATRINA CANAL BREACHES	§	CIVIL ACTION
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PERTAINS TO: MRGO, Robinson, No. 06-2268	§	
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**UNITED STATES OF AMERICA’S
MEMORANDUM IN SUPPORT OF MOTION FOR
ORDER TO SHOW CAUSE WHY PLAINTIFFS’ ATTORNEYS
KEA SHERMAN AND JONATHAN B. ANDRY SHOULD NOT BE DISQUALIFIED**

Within the last few days, the United States has become aware of a potential conflict of interest by one of the attorneys for Plaintiffs, Kea Sherman. On Thursday, April 23, 2009, undersigned counsel began investigating this potential conflict by reviewing documents and correspondence. That same day, undersigned counsel contacted the United States Department of Justice’s Professional Responsibility Advisory Office to seek guidance concerning the rights and obligations of the United States and its attorneys with respect to this potential conflict. Earlier today, April 28, 2009, that office authorized the filing of this motion.

Our preliminary investigation has revealed that Ms. Sherman previously represented Jefferson Parish in this case, as well as in substantially related cases that are part of the Katrina Canal Breaches Consolidated Litigation. Additionally, the United States and Jefferson Parish are parties to a joint defense agreement, pursuant to which Ms. Sherman participated in at least one meeting where counsel for various defendants prepared a jointly-retained expert witness for his

deposition the next day. Ms. Sherman's representation of Plaintiffs, coming on the heels of her representation of a party engaged in a joint defense with the United States, appears to constitute a violation of the Louisiana Rules of Professional Conduct which would appear to require her disqualification in this matter. Moreover, under the applicable rules of professional conduct, Ms. Sherman's conflict is imputed to her firm, the Andry Law Firm. Disqualification of Jonathan B. Andry, also a member of that firm, would appear to be required as well.¹

While sensitive to the fact that raising this issue now may delay resolution of this matter, undersigned counsel believe they have an ethical obligation to apprise the Court of Ms. Sherman's potential conflict of interest as soon as reasonably possible. *See In re Gopman*, 531 F.2d 262, 265 (5th Cir. 1976) ("When an attorney discovers a possible ethical violation concerning a matter before a court, he is not only authorized but is in fact obligated to bring the problem to that court's attention.").

BACKGROUND

Plaintiffs commenced this action, *Robinson v. United States*, in 2006. In July 2007, the United States entered into a Joint Defense and Cost Share Agreement ("JDA") with several of the defendants in various of the Hurricane Katrina cases, including Jefferson Parish. *See App. at 1-27.*²

¹ The United States is concerned that Ms. Sherman's conflicts of interest might also require the disqualification of Plaintiffs' other attorneys, as well. The United States reserves its right to seek an order to show cause why Plaintiffs' other attorneys should not be disqualified should further legal and factual research demonstrate that such a remedy is required to protect its rights.

² Pages 1-14 of the Appendix constitute a legible copy of the JDA; pages 15-27, while not as clear, contain the fully executed signature page, *see App. at 26.*

The JDA was “intended to govern the . . . parties[’] conduct in the Litigation, each of the consolidated cases and any case otherwise governed by Case Management and Scheduling Order No. 4 issued in the Litigation on March 1, 2007.” *Id.* at 1.³ The parties to the JDA agreed “to share and exchange among themselves . . . witness statements and interview summaries, memorandum of law, debriefing memoranda, factual summaries, transcript digests, documents, legal strategies, intelligence, confidences, and other secrets.” *Id.* at 3. They further agreed that “[a]ny communications or Protected Information shared between the parties [would be] within the ‘joint defense privilege’ and are, therefore, confidential and protected from disclosure to any third party by the attorney-client privilege and the work product doctrine, and/or any other applicable privilege.” *Id.* Finally, the parties noted that “[c]ounsel of their respective clients expect[ed] that the communications and Protected Information exchanged pursuant to this Agreement w[ould] remain confidential and agree[d] that, but for this expectation, no exchange would [have taken] place.” *Id.*

Pursuant to the JDA, Ms. Sherman, as counsel for Jefferson Parish, participated in at least one meeting with counsel for other defendants in the various Hurricane Katrina cases, where counsel prepared a jointly retained expert witness for his deposition the next day. *Id.* at 28.

Ms. Sherman also made several appearances at depositions on behalf of Jefferson Parish. *See, e.g., id.* at 29-42, 44-61, 64-69, 71-82. Most of these depositions were noticed only in the *Robinson* case. *See, e.g., id.* at 31-38, 41-42, 44-47, 50-53, 56-61, 66-69, 71-76, 81-82.

³ The JDA defines “Litigation” as “the action styled *In Re Katrina Canal Breaches Consolidated Litigation (Levee)*, which is pending in the United States District Court for the Eastern District of Louisiana as Civil Action No. 05-4182” and “various actions pending in the courts of the States of Louisiana seeking similar relief.”

Subsequent to her work for Jefferson Parish, Ms. Sherman began working with the Andry Law Firm. (Jonathan B. Andry, of course, is one of Plaintiffs' lead lawyers.) Ms. Sherman attended several depositions in this case as an attorney with Mr. Andry's firm, representing Plaintiffs. *See, e.g., id.* at 43, 62-63, 70.⁴

Also in furtherance of her representation of Plaintiffs, Ms. Sherman has been copied on several emails sent by other Plaintiffs' counsel, including Mr. Andry and Joseph M. Bruno, another of Plaintiffs' lead attorneys. *See, e.g., id.* at 88-91.

Finally, Ms. Sherman's association with the Andry Law Firm is demonstrated by a complaint recently filed by the Andry Law Firm in the United States District Court for the District of Nevada. On the first page of that complaint, both Mr. Andry and Ms. Sherman are listed above the heading, "The Andry Law Firm." *See id.* at 92.

ARGUMENT

Pursuant to Rule 1.9 of the Louisiana Rules of Professional Conduct, "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." La. R. Prof. Conduct 1.9(a). That rule also provides that a lawyer "who has formerly represented a client in a matter . . . shall not thereafter . . . (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or

⁴ Indeed, Ms. Sherman attended the deposition of one witness on behalf of Jefferson Parish, and later attended a subsequent deposition of that same witness *on behalf of Plaintiffs*. *Compare id.* at 41-42 (deposition of John W. Day on Nov. 19, 2007, where Ms. Sherman represented Jefferson Parish) *with id.* at 43 (deposition of John W. Day on January 28, 2009, where Ms. Sherman represented Plaintiffs).

require with respect to a client, or when the information has become generally known; or (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.” La. R. Prof. Conduct 1.9(c). Finally, Rule 1.10 provides that “[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.” La. R. Prof. Conduct 1.10(a).

Consistent with these rules, Louisiana courts respect the “inherent attribute” of the legal profession that “an attorney may not represent different interests which are hostile, or in conflict with one another.” *Brasseaux v. Girouard*, 214 So. 2d 401, 404 (La. Ct. App. 1968). “When in violation of this principle . . . an attorney does represent conflicting interests[,] the court in which the proceeding is pending should, upon timely motion by former client who objects to such possible violation of his confidence, disqualify counsel from continuing with the conflicting representation of the subsequent client.” *Id.* at 405. To establish the need for disqualification, “the former client need prove only that matters embraced within the present suit are substantially related to the matters or cause of action wherein the attorney previously represented him.” *Id.* at 406. In such situations, “courts may then infer the receipt of confidences violatable by the subsequent representation.” *Id.* Finally, “[a]n entire law firm is subject to disqualification whenever grounds for disqualification exist against any of its partners or law associates.” *Id.* at 407; *accord Tristem, Ltd. v. City of New Orleans*, No. Civ.A. 03-2882, 2003 WL 22852214, at *2 (E.D. La. Nov. 26, 2003).

Ms. Sherman's conflict of interest could not be more clear. In this *very* case—*Robinson v. United States*—Ms. Sherman has represented both Plaintiffs and Jefferson Parish, with whom the United States was a party to the JDA. Moreover, in substantially related cases also under the *In re Katrina* umbrella, Ms. Sherman has previously represented Jefferson Parish, at both depositions and in meetings with other defense counsel, and Plaintiffs, as demonstrated not only by her appearances at depositions, but also by the emails sent by Plaintiffs' lead counsel, Messrs. Andry and Bruno, which show her involvement in the internal workings associated with the preparation of Plaintiffs' case. The invisible boundary between Ms. Sherman's work for a defendant and Plaintiffs requires her immediate disqualification under Rule 1.9. Her subsequent work at the Andry Law Firm requires the disqualification of Jonathan B. Andry pursuant to Rule 1.10.

The United States, of course, has no way of knowing what confidences, secrets, or strategies that it might have shared with other parties to the JDA were subsequently shared with Plaintiffs' counsel. Unfortunately, therefore, the only appropriate remedy for the conduct of Ms. Sherman and Mr. Andry would appear to be disqualification. Further, the Court should hold an immediate hearing to determine the full extent of the ethical violations by Plaintiffs' counsel, including whether Ms. Sherman's interactions with them would require their disqualification, and to determine whether any additional relief is required to protect the rights of the United States and the sanctity of the judicial process.

CONCLUSION

The Court should enter an order to show cause why Plaintiffs' attorneys Kea Sherman

and Jonathon B. Andry should not be disqualified, and provide further relief as the Court deems just.

Respectfully submitted,

MICHAEL F. HERTZ
Deputy Assistant Attorney General

PHYLLIS J. PYLES
Director, Torts Branch

JAMES G. TOUHEY, JR
Assistant Director, Torts Branch

s/ Jeffrey P. Ehrlich

JEFFREY P. EHRLICH

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Attorneys for the United States of America

APPENDIX

JOINT DEFENSE AND COST SHARE AGREEMENT

This Joint Defense and Cost Share Agreement ("Agreement") is entered into by and among: **United States of America (United States), Board of Commissioners of the Orleans Parish Levee District, Sewerage and Water Board of New Orleans, Board of Commissioners of the East Jefferson Levee District, State of Louisiana (Department of Transportation and Development), The Parish of Jefferson, and Board of Commissioners for the Port of New Orleans**, acting through and upon the advice of their respective counsel, in order to facilitate a common defense in the action styled *In Re Katrina Canal Breaches Consolidated Litigation (Levee)*, which is pending in the United States District Court for the Eastern District of Louisiana as Civil Action No. 05-4182 (the "Federal Litigation"), and various actions pending in the courts of the State of Louisiana seeking similar relief (the "State Litigation") (collectively referred to as "the Litigation").

The parties to this Agreement have been named defendants in numerous civil actions consolidated in certain respects within the Litigation. The terms of this Agreement are intended to govern the undersigned parties conduct in the Litigation, each of the consolidated cases and any case otherwise governed by Case Management and Scheduling Order No. 4 issued in the Litigation on March 1, 2007 and any amendments or modifications thereto (hereinafter, "CMO No. 4") issued in connection with the Federal Litigation and case management orders that may be issued in the State Litigation. Additional civil actions that are filed after the execution of this Agreement may be added to this Agreement without the necessity of an Amendment to this Agreement. Unless otherwise indicated, references in this Agreement to the Litigation shall include all cases governed by CMO No. 4, and the cases identified in Exhibit "A" attached hereto.

The United States District Court for the Eastern District of Louisiana has issued CMO No. 4 in the Federal Litigation, which limits the number of fact and expert witnesses whom the parties may offer in the class certification phase of the Litigation, thereby necessitating coordination and collaboration of expert testimony by the defendants to the Federal Litigation. The parties to this Agreement recognize that the outcome of the Federal Litigation may influence or impact the State Litigation, and vice versa, such that it is in their interest to coordinate a joint approach as to the Litigation. The purpose of this Agreement is to address the joint retention of experts in connection with the class certification phase of the Litigation by, between, and among the parties to this Agreement and their counsel in the course of and in furtherance of a joint defense in the Litigation. Nothing herein shall be deemed to modify, change, or alter the terms of any protective order that may be entered in the Litigation.

THEREFORE, the parties to this Agreement and their counsel wish to (1) formalize in writing their joint defense agreement with respect to the joint retention of experts in connection with the class certification phase of the Litigation, in order to avoid any suggestion of waiver of any applicable privileges, including but not limited to, the attorney-client privilege, investigative privilege, and the work product doctrine, and (2) confirm their agreement to share certain costs associated with the joint retention of experts in the class certification phase of the Litigation. This Agreement is intended to confirm and memorialize the joint defense privilege that exists by operation of law, and is not in any way intended to limit the scope and applicability of such joint defense privilege, except as expressly set forth herein.

Accordingly, the parties to this Agreement and their respective counsel agree as follows:

1. Counsel and their respective clients agree to share and exchange among themselves, as each counsel deems appropriate given the unique circumstances and concerns of each party, witness statements and interview summaries, memoranda of law, debriefing memoranda, factual summaries, transcript digests, documents, legal strategies, intelligence, confidences, and other secrets (hereinafter the "Protected Information") for the limited and restricted purpose of assisting counsel in protecting the rights and interests of their respective clients. The sharing and/or dissemination of Protected Information shall not be deemed to be a waiver of attorney-client, work product or other privileges otherwise applicable thereto.
2. Any communications or Protected Information shared between or among the parties is within the "joint defense privilege" and are, therefore, confidential and protected from disclosure to any third party by the attorney-client privilege and the work product doctrine, and/or any other applicable privilege.
3. Counsel of their respective clients expect that the communications and Protected Information exchanged pursuant to this Agreement will remain confidential and agree that, but for this expectation, no exchange would take place.
4. Counsel and their respective clients agree to mark all Protected Information exchanged pursuant to this Agreement: **PRIVILEGED AND CONFIDENTIAL PURSUANT TO JOINT DEFENSE AGREEMENT.**
5. The parties recognize and agree that facts and other information which are not otherwise privileged from disclosure shall not gain any privilege simply because such

facts and other information may be shared in a joint defense communication. Notwithstanding, the joint defense privilege described herein shall protect the following from disclosure: (a) the fact that particular communications or Protected Information have been shared among parties to this Agreement; (b) the information or Protected Information shared; and (c) any part of memoranda or other work-product containing or referring to such communications or Protected Information.

6. Counsel for the parties to this Agreement may jointly request the assistance of an expert retained by a single party, to collect or analyze information for the purpose of developing or supporting a common legal defense or for the purpose of preparing expert testimony in the class certification phase of the Litigation. Such an expert shall be referred to herein as a "Joint Expert." For each Joint Expert, the party who originally retained the expert shall be referred to as the "Original Retaining Party."

7. For each Joint Expert, the Original Retaining Party shall obtain a signed Acknowledgement, as set out in Exhibit "B" attached hereto, from the Joint Expert expressly agreeing that the Joint Expert shall abide by the terms of this Agreement prior to any party's disclosure to the Joint Expert of any protected information.

8. All documents or information transmitted to any Joint Expert, as well as any work product generated by a Joint Expert in any form whatsoever, shall be subject to the access, use and disposal provisions of this Agreement; provided, however, that access shall be limited to parties to this Agreement, unless all such parties decide to permit disclosure to other parties who are not parties to this Agreement. If disclosure is made to other parties who are not parties to this Agreement, such disclosure shall be governed by the terms of this Agreement.

9. Each Joint Expert shall publish or disseminate information furnished to him/her only at, or in aid of, trial or deposition testimony in the Litigation or as expressly authorized in advance in writing by the originating party or parties whose information formed the basis of the Joint Expert's work product or opinion. Furthermore, no Joint Expert shall publish or disseminate any theories, opinions or conclusions based upon information covered by this Agreement or his/her work in the Litigation, in any way other than at, or in aid of, trial or deposition testimony in the Litigation, without advance written approval of the parties to this Agreement. Approval may only be granted, however, after the termination of the Litigation in accordance with paragraph 15 below. Nothing herein is intended to diminish or waive the right of any party to refer to, publish or otherwise disseminate those theories, opinions or conclusions that are exchanged with or produced to plaintiffs' counsel in the Litigation or otherwise made a part of the Court public record of the Litigation.

10. In consideration of the services rendered to the parties, all parties agree to share on a pro-rata basis the costs and expert fees incurred by the Original Retaining Party in obtaining the services of a Joint Expert. The parties agree that each Original Retaining Party will obtain from each Joint Expert an Estimated Budget for the services and expenses that the Joint Expert estimates in good faith to reflect that expert's anticipated charges for services to be rendered in connection with the expert's retention. Within thirty (30) days of receipt of all of the budgets from the retained Joint Experts, the Board of Commissioners of the Orleans Parish Levee District, Sewerage and Water Board of New Orleans, Board of Commissioners of the East Jefferson Levee District and the Board of Commissioners for the Port of New Orleans (Contributing Parties) agree to pay their

pro-rata share of 50% of the combined total of the Estimated Budgets for each of the Joint Experts into an interest bearing bank account at Capital One, N.A., 3050 Severn Avenue, Metairie, Louisiana (the "Account"). The Account will be opened and maintained with each Contributing Party designating an authorized signatory to the Account. Thereafter, the Joint Expert will bill the Original Retaining Party who, after reasonable advance written notice to all parties, shall ensure that the charges for the expenses and services are in order, and the Original Retaining Party shall cause Contributing Parties' pro-rata shares of such bill to be paid from the Account. The United States, the State of Louisiana and the Parish of Jefferson (Non-Contributing Parties) shall contemporaneously receive a complete copy of the expert's bill from the Original Retaining Party, and each Non-Contributing Party shall ensure that their individual pro-rata shares of the expert's bill are paid directly to the expert within thirty (30) days of receipt of said bill. When the funds in the Contributing Parties' Account fall below \$50,000, the Contributing Parties agree that they will each pay an additional pro-rata amount into the Account in an amount to be determined after discussion by the Contributing Parties. At the conclusion of the class certification proceedings, any money remaining in the account shall be distributed in a pro-rata amount to each of the Contributing Parties who have participated in the Account.

11. The parties and their respective counsel agree that this Agreement and the parties' decision to share the services of a Joint Expert do not disqualify any Joint Expert from subsequently consulting and/or testifying on behalf of the Original Retaining Party in any other phase of the Litigation. The parties and their counsel hereby expressly waive any right they may have in the Litigation to seek the disqualification of any Joint Expert

based on the Joint Expert's prior receipt of Protected Information and/or the Joint Expert's prior participation in the common legal defense of the class certification motion. The parties to this Agreement also expressly agree not to seek such disqualification under any applicable statute or code, whether existing or proposed, under any formal or informal rule of court, or under any state or federal common law rule, and/or the jurisprudence concerning expert witnesses, confidential information and conflicts of interest under the federal common law, including the "substantially related" test. Nothing in this paragraph is intended to restrict or limit the right of any party hereto to seek disqualification of any expert pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 504 U.S. 579 (1993), *Kummo Tire Co. v. Carmichael*, 526 U.S. 137 (1999), and/or their progeny.

12. In the event that testimony of a Joint Expert is offered at trial by that expert's Original Retaining Party, the parties agree and stipulate that the Joint Expert may use the Original Retaining Party's Protected Information but may not use Protected Information from another party received pursuant to this Agreement absent written consent from that party. Moreover, in the event that testimony of a Joint Expert is offered at trial by that expert's Original Retaining Party, the parties agree and stipulate that they shall not make any reference to the prior joint retention of the Joint Expert by the parties hereto at trial, and the parties hereto expressly waive their right to cross examine the Joint Expert concerning the existence of this Agreement, including the fact that such Joint Expert has been or may have been privy to Protected Information, including attorney work product and/or other privileged communications pursuant to this Agreement.

13. The parties to this Agreement acknowledge that, while the parties have common interests, some rights, claims and defenses available to one party may not be available to

all. Except as to the waiver of the right to seek disqualification of a Joint Expert and counsel, based on the Joint Expert's prior receipt of Protected Information and/or the Joint Expert's prior participation in the common legal defense of the class certification motion, each party reserves all rights to assert any and all rights, claims and defenses available to that party with respect to this matter; provided, however, that a party asserting such rights, claims and defenses may not assert or rely on Protected Information obtained from another party pursuant to this Agreement as a basis for such rights, claims and defenses. The waiver of the right to seek disqualification of a Joint Expert and counsel, as set out expressly herein in paragraph 11, is effective regardless of whether any party develops or pursues adverse interests against any other party in the Litigation. Except as to the waiver of the right to seek disqualification of a Joint Expert and counsel, as set out expressly herein in paragraph 11, this Agreement shall not be deemed a waiver of any claim, or defense available to any party, nor a waiver of any right, claim, or defense any party may have against any other party; provided that a party asserting such rights, claims and defenses may not rely on Protected Information received from another party to this Agreement.

14. Except as otherwise agreed in writing by the Originating Party or parties, or as otherwise provided by any protective order and by this Agreement, none of the Protected Information obtained by any party pursuant to this Agreement shall be disclosed to any person outside the scope of this Agreement. Any party receiving a subpoena, discovery demand, or request for any document or information received from another party or jointly created by parties pursuant to this Agreement shall assert all privileges available with respect to such documents or information in order to protect fully each party's

attorney-client, work product, or other applicable privilege claims and shall expeditiously notify the originating party or parties and cooperate fully with them in any judicial or other proceeding relating to the disclosure of such documents or information.

15. To the extent that any party is dismissed with prejudice from the Litigation, that party shall thereafter (1) be denied access to Protected Information and (2) have no further financial responsibility for the services of the Joint Expert, but (3) shall continue to be bound by the Agreement to the extent that it had prior access to other Protected Information covered by this Agreement. All Protected Information received from other parties pursuant to this Agreement (including all copies, summaries, or excerpts thereof) shall be returned to the attorney or client-signatory who furnished them within ninety (90) days after the dismissal with prejudice is entered. At such originating party's option, a written statement by counsel for a party who has possession of an originating party's Protected Information may instead be supplied to the originating party, certifying that all such Protected Information and all copies, regardless of the format thereof, have been destroyed. Counsel for any party that is dismissed with prejudice from the Litigation shall also thereafter be denied access to Protected Information, unless such counsel is then or thereafter becomes counsel for another party that has not been dismissed from the Litigation. In any case, counsel for any party that is dismissed from the Litigation shall continue to be bound by this Agreement to the extent that counsel had prior access to Protected Information.

16. The obligations of the parties and their counsel not to disclose Protected Information, except in accordance with this Agreement, shall not be affected by the removal or replacement of counsel for any party.

17. Notwithstanding any legal presumption or other legal authority to the contrary, the parties do not intend for this Agreement to be construed so as to result in individual counsel for any party to be deemed or regarded as counsel for any other party or parties, and each party expressly acknowledges that it is not a client of counsel it has not formally retained in this matter, that no confidential or fiduciary relationship exists between it and counsel for any other party, and that counsel for any other party owes it no duties other than those expressly set out in this Agreement or in any other agreement in writing that may be made in the future. This paragraph shall not apply to any counsel who formally represents more than one party in this proceeding to the extent of such dual or multiple formal representations.

18. The Agreement shall not create third-party beneficiary status in any person or entity not a party to this Agreement.

19. It is expressly understood that nothing contained in this Agreement shall limit the right of any party to this Agreement to disclose to third parties any documents or information independently possessed or generated by that party or obtained from sources other than pursuant to this Agreement. Nor shall anything contained in this Agreement create an affirmative obligation on the part of any party to share such information or documents with other parties to this Agreement.

20. Any conflict of interest arising out of the sharing of Protected Information under this agreement is waived. Each party and its counsel expressly waive any right to seek the disqualification of counsel for any other party or parties to this Agreement in the Litigation or in any substantially related future litigation, on the grounds that such attorney has received Protected Information shared under this Agreement. The parties to

this Agreement expressly agree not to seek such disqualification of an attorney under any applicable statute or code, whether existing or proposed, under any formal or informal rule of court, or under any state or federal common law rule, including, but not limited to, the Louisiana Rules of Professional Conduct, and the jurisprudence concerning confidential information and conflicts of interest under the federal common law, including the "substantially related" test.

21. To the extent the parties to this Agreement have already been in communication with one another regarding the Litigation, all such communications and work-product are subject to this Agreement.

22. The terms of this Agreement shall remain in effect until the Litigation, including all appeals, is terminated and/or the applicable requirements of paragraph 15 have been satisfied. For purposes of this Agreement, the Litigation is terminated when a final judgment or order terminating the Litigation as to all parties has been entered and either (i) the time to appeal that judgment or order has expired without an appeal or (ii) if the judgment or order was appealed, there has been a final determination of the appeal as to all parties and a final termination of all proceedings resulting from the appeal.

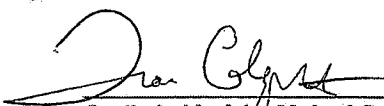
23. Nothing in this Agreement shall establish any agency, joint venture, partnership or similar relationship among or between any of the parties to this Agreement.

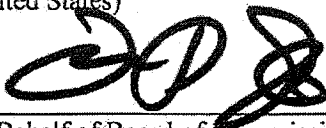
24. All parties to this Agreement represent that they have authority to bind their respective clients to this Agreement.

25. The undersigned parties agree that they may seek an injunction to enforce this Agreement.

26. It is understood and agreed that this Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original for all purposes.

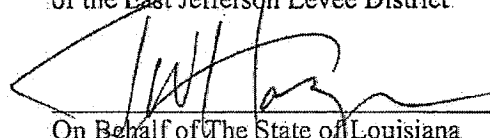
Executed on the dates shown below, but effective as of the date of the initial filing of the Litigation.


On Behalf of the United States of America
(United States) 7/20/07
(Date)


On Behalf of Board of Commissioners
of the Orleans Parish Levee District 7/20/07
(Date)

On Behalf of Sewerage and Water Board
of New Orleans (Date)

On Behalf of Board of Commissioners
of the East Jefferson Levee District (Date)


On Behalf of The State of Louisiana
(Department of Transportation and Development) 7/9/07
(Date)

On Behalf of The Parish of Jefferson (Date)

On Behalf of Board of Commissioners
for the Port of New Orleans (Date)

EXHIBIT A

PENDING CASES SUBJECT TO THE AGREEMENT

1. *Christine Baudot*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9718;
2. *Gaye T. Bennett*, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana; Docket No.: 635-594; c/w No.: 624-894;
3. *Benjamin Brubbacher*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9775;
4. *Gwendolyn Diggs*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9753;
5. *Karen Green*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9803;
6. *Harvey/Laurendine*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 2005-11660;
7. *In Re Katrina Canal Breaches Consolidated Litigation (Levee)*; United States District Court for the Eastern District, State of Louisiana; Civil Action No.: 05-4182;
8. *Yvonne Metters*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9796;
9. *New Investment, LLC*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-8203;
10. *Judy Paul*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 07-0993;
11. *Ray Rieth*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9744;
12. *Audrey Robinson*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9726;
13. *Lisa Rodriguez*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9763; and
14. *West End Tennis and Fitness Club, Inc.*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-13668.

EXHIBIT B

ACKNOWLEDGEMENT

I hereby agree that I have read, understand and shall abide by the terms of the Joint Defense and Cost Share Agreement executed by certain defendants in the Federal Litigation and State Litigation referenced therein in consideration of my retention and participation in said litigation.

Date:

Signature:

JOINT DEFENSE AND COST SHARE AGREEMENT

This Joint Defense and Cost Share Agreement ("Agreement") is entered into by and among United States of America (United States), Board of Commissioners of the Orleans Parish Levee District, Soverage and Water Board of New Orleans, Board of Commissioners of the East Jefferson Levee District, State of Louisiana (Department of Transportation and Development), The Parish of Jefferson, and Board of Commissioners for the Port of New Orleans, acting through and upon the advice of their respective counsel, in order to facilitate a common defense in the action styled *In Re Katrina Canal Breaches Consolidated Litigation (Case)*, which is pending in the United States District Court for the Eastern District of Louisiana at Civil Action No. 05-4182 (the "Federal Litigation"), and various actions pending in the courts of the State of Louisiana seeking similar relief (the "State Litigation") (collectively referred to as "the Litigation").

The parties to this Agreement have been named defendants in numerous civil actions consolidated in certain respects within the Litigation. The terms of this Agreement are intended to govern the undersigned parties' conduct in the Litigation, each of the consolidated cases and any case otherwise governed by Case Management and Scheduling Order No. 4 issued in the Litigation on March 1, 2007 and any amendments or modifications thereto (hereinafter, "CMO No. 4") issued in connection with the Federal Litigation and case management orders that may be issued in the State Litigation. Additional civil actions that are filed after the execution of this Agreement may be added to this Agreement without the necessity of an Amendment to this Agreement. Unless otherwise indicated, references in this Agreement to the Litigation shall include all cases governed by CMO No. 4 and the cases identified in Exhibit "A" attached herein.

The United States District Court for the Eastern District of Louisiana has issued CMO No. 4 in the Federal Litigation, which limits the number of fact and expert witnesses whom the parties may offer in the class certification phase of the Litigation, thereby necessitating coordination and collaboration of expert testimony by the defendants to the Federal Litigation. The parties to this Agreement recognize that the outcome of the Federal Litigation may influence or impact the State Litigation, and vice versa, such that it is in their interest to coordinate a joint approach as to the Litigation. The purpose of this Agreement is to address the joint retention of experts in connection with the class certification phase of the Litigation by, between, and among the parties to this Agreement and their counsel in the course of and in furtherance of a joint defense in the Litigation. Nothing herein shall be deemed to modify, change, or alter the terms of any protective order that may be entered in the Litigation.

WHEREFORE, the parties to this Agreement and their counsel wish to (1) formalize in writing their joint defense agreement with respect to the joint retention of experts in connection with the class certification phase of the Litigation, in order to avoid any suggestion of waiver of any applicable privileges, including but not limited to, the attorney-client privilege, investigative privilege, and the work product doctrine, and (2) confirm their agreement to share certain costs associated with the joint retention of experts in the class certification phase of the Litigation. This Agreement is intended to confirm and memorialize the joint defense privilege that exists by operation of law, and is not in any way intended to limit the scope and applicability of such joint defense privilege, except as expressly set forth herein.

Accordingly, the parties to this Agreement and their respective counsel agree as follows:

1. Counsel and their respective clients agree to share and exchange among themselves, as each counsel deems appropriate given the unique circumstances and concerns of each party, witness statements and interview summaries, memoranda of law, debriefing memoranda, factual summaries, transcript digests, documents, legal strategies, intelligence, confidences, and other security (hereinafter the "Protected Information") for the limited and restricted purpose of assisting counsel in protecting the rights and interests of their respective clients. The sharing and/or dissemination of Protected Information shall not be deemed to be a waiver of attorney-client work product or other privileges otherwise applicable thereto.
2. Any communications or Protected Information shared between or among the parties is within the "joint defense privilege" and are, therefore, confidential and protected from disclosure to any third party by the attorney-client privilege and the work product doctrine and/or any other applicable privilege.
3. Counsel of their respective clients expect that the communications and Protected Information exchanged pursuant to this Agreement will remain confidential and agree that, but for this expectation, no exchange would take place.
4. Counsel and their respective clients agree to mark all Protected Information exchanged pursuant to this Agreement: **PRIVILEGED AND CONFIDENTIAL PURSUANT TO JOINT DEFENSE AGREEMENT.**
5. The parties recognize and agree that facts and other information which are not otherwise privileged from disclosure shall not gain any privilege simply because such

facts and other information may be shared in a joint defense communication. Notwithstanding, the joint defense privilege described herein shall protect the following from disclosure: (a) the fact that particular communications or Protected Information have been shared among parties to this Agreement; (b) the information or Protected Information shared; and (c) any part of memoranda or other work-product containing or referring to such communications or Protected Information.

6. Counsel for the parties to this Agreement may jointly request the assistance of an expert retained by a single party, to collect or analyze information for the purpose of developing or supporting a common legal defense or for the purpose of preparing expert testimony in the class certification phase of the Litigation. Such an expert shall be referred to herein as a "Joint Expert." For each Joint Expert, the party who originally retained the expert shall be referred to as the "Original Retaining Party."

7. For each Joint Expert, the Original Retaining Party shall obtain a signed Acknowledgement, as set out in Exhibit "B" attached hereto, from the Joint Expert expressly agreeing that the Joint Expert shall abide by the terms of this Agreement prior to any party's disclosure to the Joint Expert of any protected information.

8. All documents or information transmitted to any Joint Expert, as well as any work product generated by a Joint Expert in any form whatsoever, shall be subject to the access, use and disposal provisions of this Agreement, provided, however, that access shall be limited to parties to this Agreement, unless all such parties decide to permit disclosure to other parties who are not parties to this Agreement. If disclosure is made to other parties who are not parties to this Agreement, such disclosure shall be governed by the terms of this Agreement.

9. Each Joint Expert shall publish or disseminate information furnished to him/her only at, or in aid of, trial or deposition testimony in the Litigation or as expressly authorized in advance in writing by the originating party or parties whose information formed the basis of the Joint Expert's work product or opinion. Furthermore, no Joint Expert shall publish or disseminate any theories, opinions or conclusions based upon information covered by this Agreement or his/her work in the Litigation, in any way other than at, or in aid of, trial or deposition testimony in the Litigation, without advance written approval of the parties to this Agreement. Approval may only be granted, however, after the termination of the Litigation in accordance with paragraph 15 below. Nothing herein is intended to diminish or waive the right of any party to refer to, publish or otherwise disseminate those theories, opinions or conclusions that are exchanged with or produced to plaintiffs' counsel in the Litigation or otherwise made a part of the Court public record of the Litigation.

10. In consideration of the services rendered to the parties, all parties agree to share on a pro-rata basis the costs and expert fees incurred by the Original Retaining Party in obtaining the services of a Joint Expert. The parties agree that each Original Retaining Party will obtain from each Joint Expert an Estimated Budget for the services and expenses that the Joint Expert estimates in good faith to reflect that expert's anticipated charges for services to be rendered in connection with the expert's retention. Within thirty (30) days of receipt of all of the budgets from the retained Joint Experts, the Board of Commissioners of the Orleans Parish Levee District, Sewerage and Water Board of New Orleans, Board of Commissioners of the East Jefferson Levee District and the Board of Commissioners for the Port of New Orleans (Contributing Parties) agree to pay their

pro-rata share of 50% of the combined total of the Estimated Budgets for each of the Joint Experts into an interest bearing bank account at Capital One, N.A., 3050 Severn Avenue, Metairie, Louisiana (the "Account"). The Account will be opened and maintained with each Contributing Party designating an authorized signatory to the Account. Thereafter, the Joint Expert will bill the Original Retaining Party who, after reasonable advance written notice to all parties, shall ensure that the charges for the expenses and services are in order, and the Original Retaining Party shall cause Contributing Parties' pro-rata shares of such bill to be paid from the Account. The United States, the State of Louisiana and the Parish of Jefferson (Non-Contributing Parties) shall contemporaneously receive a complete copy of the expert's bill from the Original Retaining Party, and each Non-Contributing Party shall ensure that their individual pro-rata shares of the expert's bill are paid directly to the expert within thirty (30) days of receipt of said bill. When the funds in the Contributing Parties' Account fall below \$50,000, the Contributing Parties agree that they will each pay an additional pro-rata amount into the Account in an amount to be determined after discussion by the Contributing Parties. At the conclusion of the class certification proceedings, any money remaining in the account shall be distributed in a pro-rata amount to each of the Contributing Parties who have participated in the Account.

11. The parties and their respective counsel agree that this Agreement and the parties' decision to share the services of a Joint Expert do not disqualify any Joint Expert from subsequently consulting and/or testifying on behalf of the Original Retaining Party in any other phase of the litigation. The parties and their counsel hereby expressly waive any right they may have in the litigation to seek the disqualification of any Joint Expert.

based on the Joint Expert's prior receipt of Protected Information and/or the Joint Expert's prior participation in the common legal defense of the class certification motion. The parties to this Agreement also expressly agree not to seek such disqualification under any applicable statute or code, whether existing or proposed, under any formal or informal rule of court, or under any state or federal common law rule, and/or the jurisprudence concerning expert witnesses, confidential information and conflicts of interest under the Federal common law, including the "substantially-related" test. Nothing in this paragraph is intended to restrict or limit the right of any party hereto to seek disqualification of any expert pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 504 U.S. 579 (1992), *Kamuro Fire Co. v. Carmichael*, 526 U.S. 137 (1999), and/or their progeny.

12. In the event that testimony of a Joint Expert is offered at trial by that expert's Original Retaining Party, the parties agree and stipulate that the Joint Expert may use the Original Retaining Party's Protected Information but may not use Protected Information from another party received pursuant to this Agreement absent written consent from that party. Moreover, in the event that testimony of a Joint Expert is offered at trial by that expert's Original Retaining Party, the parties agree and stipulate that they shall not make any reference to the prior joint retention of the Joint Expert by the parties hereto at trial, and the parties hereto expressly waive their right to cross examine the Joint Expert concerning the existence of this Agreement, including the fact that such Joint Expert has been or may have been privy to Protected Information, including attorney work product and/or other privileged communications pursuant to this Agreement.

13. The parties to this Agreement acknowledge that, while the parties have common interests, some rights, claims and defenses available to one party may not be available to

11. Except as to the waiver of the right to seek disqualification of a Joint Expert and
12 counsel, based on the Joint Expert's prior receipt of Protected Information and/or the
13 Joint Expert's prior participation in the common legal defense of the class certification
14 motion, each party reserves all rights to assert any and all rights, claims and defenses
15 available to that party with respect to this matter, provided, however, that a party
16 asserting such rights, claims and defenses may not assert or rely on Protected Information
17 obtained from another party pursuant to this Agreement as a basis for such rights, claims
18 and defenses. This waiver of the right to seek disqualification of a Joint Expert and
19 counsel, as set out expressly herein in paragraph 11, is effective regardless of whether
20 any party develops or pursues adverse interests against any other party in the litigation.
21 Except as to the waiver of the right to seek disqualification of a Joint Expert and counsel,
22 as set out expressly herein in paragraph 11, this Agreement shall not be deemed a waiver
23 of any claim, or defense available to any party, nor a waiver of any right, claim, or
24 defense any party may have against any other party, provided that a party asserting such
25 rights, claims and defenses may not rely on Protected Information received from another
26 party to this Agreement.

14. Except as otherwise agreed in writing by the Originating Party or parties, or as
15 otherwise provided by any protective order and by this Agreement, none of the Protected
16 Information obtained by any party pursuant to this Agreement shall be disclosed to any
17 person outside the scope of this Agreement. Any party receiving a subpoena, discovery
18 demand, or request for any document or information received from another party or
19 jointly created by parties pursuant to this Agreement shall assert all privileges available
20 with respect to such documents or information in order to protect fully each party's

attorney-client, work product, or other applicable privilege claims and shall expeditiously notify the originating party or parties and cooperate fully with them in any judicial or other proceeding relating to the disclosure of such documents or information.

15. To the extent that any party is dismissed with prejudice from the Litigation, that party shall thereafter: (1) be denied access to Protected Information and (2) have no further financial responsibility for the services of the Joint Expert, but (3) shall continue to be bound by the Agreement to the extent that it had prior access to other Protected Information covered by this Agreement. All Protected Information received from other parties pursuant to this Agreement (including all copies, summaries, or excerpts thereof) shall be returned to the attorney or client signatory who furnished them within ninety (90) days after the dismissal with prejudice is entered. At such originating party's option, a written statement by counsel for a party who has possession of an originating party's Protected Information may instead be supplied to the originating party, verifying that all such Protected Information and all copies, regardless of the format thereof, have been destroyed. Counsel for any party that is dismissed with prejudice from the Litigation shall also thereafter be denied access to Protected Information, unless such counsel is then or thereafter becomes counsel for another party that has not been dismissed from the Litigation. In any case, counsel for any party that is dismissed from the Litigation shall continue to be bound by this Agreement to the extent that counsel had prior access to Protected Information.

16. The obligations of the parties and their counsel not to disclose Protected Information, except in accordance with this Agreement, shall not be affected by the removal or replacement of counsel for any party.

17. Notwithstanding any legal presumption or other legal authority to the contrary, the parties do not intend for this Agreement to be construed so as to result in individual counsel for any party to be deemed or regarded as counsel for any other party or parties, and each party expressly acknowledges that it is not a client of counsel it has not formally retained in this matter, that no confidential or fiduciary relationship exists between it and counsel for any other party, and that counsel for any other party owes it no duties other than those expressly set out in this Agreement or in any other agreement in writing that may be made in the future. This paragraph shall not apply to any counsel who formally represents more than one party in this proceeding to the extent of such dual or multiple formal representations.

18. The Agreement shall not create third-party beneficiary status in any person or entity not a party to this Agreement.

19. It is expressly understood that nothing contained in this Agreement shall limit the right of any party to this Agreement to disclose to third parties any documents or information independently possessed or generated by that party or obtained from sources other than pursuant to this Agreement. Nor shall anything contained in this Agreement create an affirmative obligation on the part of any party to share such information or documents with other parties to this Agreement.

20. Any conflict of interest arising out of the sharing of Protected Information under this agreement is waived. Each party and its counsel expressly waive any right to seek the disqualification of counsel for any other party or parties to this Agreement in the litigation or in any substantially related future litigation, on the grounds that such attorney has received Protected Information shared under this Agreement. The parties to

this Agreement expressly agree not to seek such disqualification of an attorney under any applicable statute or code, whether existing or proposed, under any formal or informal rule of court, or under any state or federal common law rule, including, but not limited to, the Louisiana Rules of Professional Conduct, and the jurisprudence concerning confidential information and conflicts of interest under the federal common law, including the "substantially related" test.

21. To the extent the parties to this Agreement have already been in communication with one another regarding the Litigation, all such communications and work-product are subject to this Agreement.

22. The terms of this Agreement shall remain in effect until the Litigation, including all appeals, is terminated and/or the applicable requirements of paragraph 15 have been satisfied. For purposes of this Agreement, the Litigation is terminated when a final judgment or order terminating the Litigation as to all parties has been entered and either (i) the time to appeal that judgment or order has expired without an appeal or (ii) if the judgment or order was appealed, there has been a final determination of the appeal as to all parties and a final termination of all proceedings resulting from the appeal.


23. Nothing in this Agreement shall establish any agency, joint venture, partnership or similar relationship among or between any of the parties to this Agreement.

24. All parties to this Agreement represent that they have authority to bind their respective clients to this Agreement.

25. The undersigned parties agree that they may seek an injunction to enforce this Agreement.

26. It is understood and agreed that this Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original for all purposes.

Executed on the dates shown below, but effective as of the date of the initial filing of the Litigation.


On Behalf of the United States of America
(United States) 7/25/07 (Date)


On Behalf of Board of Commissioners
of the Orleans Parish Live Oak District 7/22/07 (Date)


On Behalf of Sewerage and Water Board
of New Orleans 7/23/07 (Date)


On Behalf of Board of Commissioners
of the East Jefferson Levee District 7/26/07 (Date)


On Behalf of The State of Louisiana
(Department of Transportation and Development) 7/9/07 (Date)


On Behalf of The Parish of Jefferson 7/25/07 (Date)


On Behalf of Board of Commissioners
for the Port of New Orleans 7/26/07 (Date)

EXHIBIT A

PENDING CASES SUBJECT TO THE AGREEMENT

1. *Christine Boudat*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9713;
2. *Gaye T. Bennett*, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana; Docket No.: 635-594; c/w No.: 624-894;
3. *Benjamin Brubacher*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9775;
4. *Gwendolyn Diggs*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9733;
5. *Kate Green*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9803;
6. *Haley Larrendue*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 2005-11650;
7. *In Re Katrina Canal Breaches Consolidated Litigation (Levees)*; United States District Court for the Eastern District, State of Louisiana; Civil Action No.: 05-4132;
8. *Honne Metters*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9790;
9. *New Investments, LLC*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-8909;
10. *Judy Paul*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 07-0923;
11. *Ray Keith*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9744;
12. *Audrey Robinson*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9726;
13. *Lisa Rodriguez*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-9763; and
14. *West End Tennis and Fitness Club, Inc.*, Civil District Court for the Parish of Orleans, State of Louisiana; Docket No.: 06-13568.

Pirich, Andrew (CIV)

From: Greif, Michele (CIV)
Sent: Sunday, April 26, 2009 1:59 PM
To: Ehrlich, Jeff (CIV)
Subject: Kea Sherman

On Thursday, September 20, 2007, I attended a meeting with Dr. Paul Kuhlmeier (an expert witness for the joint defendants in the Katrina Litigation Class Action, Levee Track) and other attorneys subject to the joint defense agreement, including Gary Zwain and Zwain's associate (counsel for Lake Borgne Levee District), Charlie Lanier (counsel for Sewer and Water Board), and Kea Sherman (counsel for Jefferson Parrish). The purpose of the meeting was to prepare Dr. Kuhlmeier for his deposition on September 21, 2007. This meeting commenced at Gary Zwain's office in Metairie, Louisiana, and we then went out as a group to examine various locations pertinent to the litigation, including levee breach sites and damaged homes.

CHRISTOPHER ACCARDO, JR.

4/4/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION

NO. 05-4182
"K" (2)

PERTAINS TO: MRGO-ROBINSON

JUDGE DUVAL

FILED IN: 05-4181, 05-4182, MAG. WILKINSON
05-5237, 05-6073, 05-6314,
05-6324, 05-6327, 05-6359,
06-0225, 06-0886, 06-1885,
06-2152, 06-2278, 06-2287,
06-2824, 06-4024, 06-4065,
06-4066, 06-4389, 06-4634,
06-4931, 06-5032, 06-5155,
06-5159, 06-5161, 06-5162,
06-5260, 06-5771, 06-5786,
06-5937, 07-0206, 07-0621,
07-1073, 07-1271, 07-1285

Videotaped Deposition of
CHRISTOPHER JOHN ACCARDO, JR.,
85 Dogwood Drive, Kenner, Louisiana 70065,
taken in the offices of the Corps of
Engineers, 7400 Leake Avenue, New Orleans,
Louisiana 70118, on Friday, the 4th day of
April, 2008.

1 APPEARANCES CONTINUED:

2

UNITED STATES DEPARTMENT OF JUSTICE
3 CIVIL DIVISION
TORTS BRANCH
4 (BY: PAUL LEVINE, ESQ.
KEITH LIDDLE, ESQ.)
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ATTORNEYS FOR UNITED STATES

7

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10 ATTORNEYS FOR JEFFERSON PARISH

11

12

JENNIFER LABOURDETTE, ESQ.
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13 ATTORNEY FOR UNITED STATES ARMY
CORPS OF ENGINEERS

14

15

CHAFFE, MCCALL LLP
(BY: TOM FORBES, ESQ.)
16 Suite 2300 Energy Center
New Orleans, Louisiana 70163
17 ATTORNEYS FOR LAFARGE NORTH AMERICA
(ALSO PRESENT)

18

19

VIDEOTAPED BY:
20 Gilly Delorimier
Depo-View, Inc.

21

22

23

REPORTED BY:
24 ROGER D. JOHNS, RMR, CRR, RDR, CSR
Certified Court Reporter
State of Louisiana

25

WALTER, O. BAUMY, JR.

April 9, 2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
 JUDGE DUVAL
PERTAINS TO MAG. WILKINSON
(Robinson, No. 06-2268)

Deposition of WALTER O. BAUMY, JR.,
given at the U.S. Army Corps of Engineers New
Orleans District offices, 7400 Leake Avenue,
New Orleans, Louisiana 70118-3651, on April
9th, 2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR

CERTIFIED COURT REPORTER #75005

WALTER, O. BAUMY, JR.

April 9, 2008

Page 3

1 REPRESENTING THE UNITED STATES OF AMERICA:

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3 TORTS BRANCH, CIVIL DIVISION

4 (BY: ROBIN SMITH, ESQUIRE)

5 P.O. Box 888

6 Benjamin Franklin Station

7 Washington, D.C. 20044

8 202-616-4289

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10 REPRESENTING THE U.S. ARMY CORPS OF ENGINEERS:

11 CORPS OF ENGINEERS, OFFICE OF COUNSEL

12 (BY: NICK MARZONI, ESQUIRE)

13 7400 Leake Avenue

14 New Orleans, Louisiana 70118-3651

15 504-862-2843

16

17 ALSO PRESENT:

18 JOSEPH E. BEARDEN, III, ESQ.

19 KEA SHERMAN, ESQ.

20 CHARLES SUTTON, ESQ.

21 ROBERT B. FISHER, JR., ESQ.

22 JOHN L. ROBERT, III, ESQ.

23 CHRISTOPHER THATCH, ESQ. (VIA I-DEP)

24 ADAM CHUD, ESQ. (VIA I-DEP)

25 VIDEOGRAPHER: KEN HART (HART VIDEO)

POLLY BOUDREAUX

3/5/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION

NO. 06-2268

"K" (2)

PERTAINS TO: ROBINSON

JUDGE DUVAL

MAG. WILKINSON

VIDEOTAPED DEPOSITION OF
POLLY CAMPBELL BOUDREAUX,
4212 Florida Avenue, Meraux, Louisiana 70075,
taken in the offices of Andry Law Firm, 610
Baronne Street, New Orleans, Louisiana 70113,
on Wednesday, March 5, 2008.

1 APPEARANCES CONTINUED:

2

3 UNITED STATES DEPARTMENT OF JUSTICE

4 (BY: KEITH LITTLE ESQ.

5 JESSICA SULLIVAN, ESQ.)

6 Post Office Box 888

7 Benjamin Franklin Station

8 Washington, D.C. 20004

9 ATTORNEY FOR UNITED STATES OF

10 AMERICA

11

12

13 BURGLASS & TANKERSLEY

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15 5213 Airline Drive

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17 ATTORNEYS FOR JEFFERSON PARISH

18

19

20

21 CHAFFE, MCCALL LLP

22 (BY: TOM FORBES, ESQ.)

23 2300 Energy Center

24 New Orleans, Louisiana 70163

25

ATTORNEYS FOR LAFARGE NORTH AMERICA

RICHARD WARREN BROUSSARD, JR.

3/31/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
 JUDGE DUVAL
PERTAINS TO MAG. WILKINSON
(Robinson, No. 06-2286)

Rule 30(b)(6) Deposition of the U.S.
ARMY CORPS OF ENGINEERS, THROUGH ITS DESIGNATED
REPRESENTATIVE RICHARD WARREN BROUSSARD, JR.,
given at the U.S. Army Corps of Engineers New
Orleans District offices, 7400 Leake Avenue,
New Orleans, Louisiana 70118-3651, on March
31st, 2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

VIDEOGRAPHER:

GILLEY DELORIMIER (DEPO-VUE)

1 REPRESENTING THE UNITED STATES OF AMERICA:

2 UNITED STATES DEPARTMENT OF JUSTICE,

3 TORTS BRANCH, CIVIL DIVISION

4 (BY: SARA SOJA, ESQUIRE)

5 (BY: RICHARD STONE, ESQUIRE)

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8 Washington, D.C. 20044

9 202-616-4289

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11 REPRESENTING THE U.S. ARMY CORPS OF ENGINEERS:

12 CORPS OF ENGINEERS, OFFICE OF COUNSEL

13 (BY: NICK MARZONI, ESQUIRE)

14 7400 Leake Avenue

15 New Orleans, Louisiana 70118-3651

16 504-862-2843

17 ALSO PRESENT:

18 JOSEPH E. BEARDEN, III, ESQ.

19 CHARLES M. LANIER, JR., ESQ.

20 KEA SHERMAN, ESQ.

21 ROBERT B. FISHER, JR., ESQ.

22 THOMAS D. FORBES, ESQ.

23 R. SCOTT HOGAN, ESQ.

24 CHARLES SUTTON, ESQ.

25 ADAM CHUD, ESQ. (VIA I-DEP)

Page 4

1 ALSO PRESENT:

2 JOSEPH E. BEARDEN, III, ESQ.

3 KEA SHERMAN, ESQ.

4 THOMAS P. ANZELMO, ESQ.

5 ROBERT B. FISHER, JR., ESQ.

6 CHARLES LANIER, ESQ.

7 CHRISTOPHER THATCH, ESQ. (VIA I-DEP)

8 ADAM CHUD, ESQ. (VIA I-DEP)

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24 VIDEOGRAPHER:

25 GILLEY DELORIMIER (DEPO-VUE)

MICHELLE DAIGLE

4/3/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION

NO. 05-4182
"K" (2)

PERTAINS TO: MRGO-ROBINSON

JUDGE DUVAL

FILED IN: 05-4181, 05-4182, MAG. WILKINSON
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06-5159, 06-5161, 06-5162,
06-5260, 06-5771, 06-5786,
06-5937, 07-0206, 07-0621,
07-1073, 07-1271, 07-1285

Videotaped Deposition of
MICHELLE CRESSY DAIGLE,
342 Walter Road, River Ridge, Louisiana 70123,
taken in the offices of the Corps of
Engineers, 7400 Leake Avenue, New Orleans,
Louisiana 70118, on Monday, the 3rd day of
April, 2008.

1 APPEARANCES CONTINUED:

2

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4 PFISTER & WEINSTOCK
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7 3838 North Causeway Boulevard
8 Metairie, Louisiana 70002
9 ATTORNEYS FOR THE BOARD OF
10 COMMISSIONERS FOR THE LAKE BORGNE
11 BASIN LEVEE DISTRICT
12 (ALSO PRESENT)

13

14 UNITED STATES DEPARTMENT OF JUSTICE
15 CIVIL DIVISION
16 TORTS BRANCH
17 (BY: PAUL LEVINE, ESQ.
18 JACK WOODCOCK, ESQ.
19 KEITH LIDDLE, ESQ.)
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25 BURGLASS & TANKERSLEY
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41 ATTORNEYS FOR LAFARGE NORTH AMERICA
42 (ALSO PRESENT)

43

DAY, JR., DR. JOHN W.

11/19/2007

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CAÑAL CIVIL ACTION
BREACHES CONSOLIDATED
LITIGATION NO. 05-4182 "K" (2)
JUDGE DUVAL
MAG. WILKINSON

PERTAINS TO: Robinson
No. 06-2286

Deposition of DR. JOHN W. DAY, JR.,
2237 Energy Coast and Environment Building,
LSU-Coastal Ecology Institute, Baton Rouge,
Louisiana 70803, taken in the offices of
Lambert & Nelson, P.L.C., 701 Magazine St.,
New Orleans, Louisiana on Monday, the 19th
day of November, 2007 at 9:07 a.m.

APPEARANCES:

ANDRY LAW FIRM
(By: Jonathan B. Andry, Esquire)
(By: Meghan Hays, Law Clerk)
610 Baronne St.
New Orleans, Louisiana 70113
(504) 586-8899
Attorneys for Plaintiffs,
Norman Robinson, et al

DAY, JR., DR. JOHN W.

11/19/2007

Page 3

1 APPEARANCES (continued):
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 "K" (2)
PERTAINS TO: JUDGE DUVAL
ROBINSON, Number 06-2268 MAG. WILKINSON

Videotaped deposition of JOHN W. DAY, JR., Ph.D.,
School of the Coast & Environment, Department of
Oceanography & Coastal Sciences, Louisiana State
University, Baton Rouge, Louisiana 70803, taken
in the offices of Bruno & Bruno, 855 Baronne
Street, New Orleans, Louisiana 70113, on
Wednesday, the 28th day of January, 2009,
beginning at 9:11 a.m.

APPEARANCES:

ANDRY LAW FIRM
(BY: JONATHAN ANDRY
KEA SHERMAN
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AND

GAINSBURGH, BENJAMIN, DAVID,
MEUNIER & WARSHAUER
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ATTORNEYS FOR THE PLAINTIFFS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES
CONSOLIDATED LITIGATION

CIVIL ACTION

PERTAINS TO MRGO (Robinson)

NO. 05-4182 "K" (2)

JUDGE DUVAL

(No. 06-2268)

MAG. WILKINSON

TRANSCRIPT OF THE VIDEOTAPE DEPOSITION OF
SUZANNE HAWES

Given at the U.S. Army Corps of Engineers,
New Orleans District Office, 7400 Leake Avenue, New
Orleans, Louisiana 70118-3651, on April 17, 2008,
commencing at 9:00 a.m.

Reported By:

Estella O. Champion, CRR, CCR

Certified Court Reporter (Certificate #76003)

SUZANNE HAWES

4/17/2008

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APPEARANCES

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(BY: MICHELE GREIF, ESQUIRE)
(BY: KARA MILLER, ESQUIRE)
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ALSO PRESENT:

RYAN MALONE, ESQUIRE
ANDRE LAGARDE
KEA SHERMAN
ERIC GOLDBERG (Via I-DEP)
WILLIAM GARDNER (Via I-DEP)
BRIAN RYCKMEN (Via I-DEP)

VIDEOGRAPHER:

GILLEY DELORIMIER (DEPO-VUE)

KEMP, PH D, G. PAUL

11/27/2007

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
 JUDGE DUVAL
PERTAINS TO: MAG. WILKINSON
Robinson, No. 06-2286

Deposition of G. PAUL KEMP, PH.D.,
given at the offices of Lambert & Nelson,
P.L.C., 701 Magazine Street, New Orleans,
Louisiana 70130, on November 27th, 2007.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

KEMP, PH D, G. PAUL

11/27/2007

Page 4

1 REPRESENTING THE UNITED STATES OF AMERICA:

2 UNITED STATES DEPARTMENT OF JUSTICE,

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13 ALSO PRESENT:

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17 PARKER HARRISON, ESQ.

18 SARAH MACK

19

20 VIDEOGRAPHER:

21 GILLEY DELORIMIER (DEPO-VUE)

22

23

24

25

PAUL D. KUHLMIEIER

9/21/2007

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION

NO. 05-4182
"K" (2)
JUDGE DUVAL

PERTAINS TO: MRGO

FILED IN: 05-4181, 05-4182, MAG. WILKINSON
05-5237, 05-6073, 05-6314,
05-6324, 05-6327, 05-6359,
06-0225, 06-0886, 06-1885,
06-2152, 06-2278, 06-2287,
06-2824, 06-4024, 06-4065,
06-4066, 06-4389, 06-4634,
06-4931, 06-5032, 06-5155,
06-5159, 06-5161, 06-5162,
06-5260, 06-5771, 06-5786,
06-5937, 07-0206, 07-0621,
07-1073, 07-1271, 07-1285

Videotaped Deposition of

PAUL DEAN KUHLMIEIER,

5296 East Softwood Drive, Boise, Idaho 83716,
taken in the offices of Duplass, Zwain,
Bourgeois, Morton, Pfister & Weinstock, 3838
North Causeway Blvd., Suite 2900, Three
Lakeway Center, Metairie, Louisiana 70002, on
Friday, September 21, 2007.

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14 AND WATER BOARD OF NEW ORLEANS

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25 VIDEOTAPED BY: Ken Hart, Hart Video of
Louisiana

REPORTED BY: ROGER D. JOHNS, RMR, CRR, CSR
Certified Court Reporter,
State of Louisiana

GATIEN LIVAUDAIS, JR.

4/7/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION

NO. 06-2268

"K" (2)

PERTAINS TO: ROBINSON

JUDGE DUVAL

MAG. WILKINSON

VIDEOTAPED DEPOSITION OF
GATIEN J. LIVAUDAIS, JR.,
4626 East St. Bernard Highway, Meraux,
Louisiana 70075, taken in the offices of Andry
Law Firm, 610 Baronne Street, New Orleans,
Louisiana 70113, on Monday, April 7 2008.

1 APPEARANCES:

2

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22 (ALSO PRESENT)

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22 MAXWELL & MCDANIEL
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25 3445 North Causeway Blvd.
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ATTORNEYS FOR ORLEANS LEVEE DISTRICT

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MCCROSKY, DONALD

3/4/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES	CIVIL ACTION
CONSOLIDATED LITIGATION	NO. 05-4182 K2
	JUDGE DUVAL
PERTAINS TO MRGO	MAG. WILKINSON
(Robinson, No. 06-2286)	

Deposition of DONALD GERARD MCCROSKY,
given the offices of Andry Law Firm, L.L.C.,
610 Baronne Street, New Orleans, Louisiana
70113, on March 4th, 2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

MCCROSKY, DONALD

3/4/2008

Page 4

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4 639 Loyola Avenue, Suite 2600
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6 504-576-5831

7
8 ALSO PRESENT:
9 JOSEPH E. BEARDEN, III, ESQ.
10 KEA SHERMAN, ESQ.

11
12 VIDEOGRAPHER:
13 GILLEY DELORIMIER (DEPO-VUE)

14
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
JUDGE DUVAL
PERTAINS TO MAG. WILKINSON
(Robinson, No. 06-2268)

- AND -

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
JUDGE DUVAL
FILED IN: MAG. WILKINSON

05-4181, 05-4182, 05-5237, 05-6073, 05-6314,
05-6324, 05-6327, 06-0225, 06-0886, 06-1885,
06-2278, 06-2287, 06-4065, 06-4389, 06-4634,
06-4931, 06-5032, 06-5159, 06-5161, 06-5260,
06-5937, 07-1271

(V O L U M E I)

Deposition of MELVIN M.L. MCELWEE,
SR., given at the Law Office of Joseph M.
Bruno, 855 Baronne St., New Orleans, Louisiana
70113, on April 23rd, 2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

1 REPRESENTING WASHINGTON GROUP INTERNATIONAL:
2 STONE PIGMAN WALTHER WITTMANN, L.L.C.
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15
16 ALSO PRESENT:

17 JOHN L. ROBERT, III, ESQ.
18 KEA SHERMAN, ESQ.
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20 MARK S. RAFFMAN, ESQ. (VIA I-DEP)
21 CHARLES LANIER, ESQ. (VIA I-DEP)
22 JENNIFER SHUMAKER, ESQ. (VIA I-DEP)
23 ADAM CHUD, ESQ. (VIA I-DEP)
24 J. WARREN GARDNER, JR., ESQ. (I-DEP)
25 VIDEOGRAPHER: GILLEY DELORIMIER (DEPO-VUE)

GREGORY MILLER

4/16/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES	CIVIL ACTION
CONSOLIDATED LITIGATION	NO. 05-4182 K2
	JUDGE DUVAL
PERTAINS TO	MAG. WILKINSON
(Robinson, No. 06-2268)	

Deposition of GREGORY B. MILLER, given
at the U.S. Army Corps of Engineers New Orleans
District offices, 7400 Leake Avenue, New
Orleans, Louisiana 70118-3651, on April 16th,
2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

GREGORY MILLER

4/16/2008

Page 4

1 REPRESENTING THE U.S. ARMY CORPS OF ENGINEERS.
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13 ERIC GOLDBERG, ESQ. (VIA I-DEP)
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15 CHARLES M. LANIER, JR., ESQ. (I-DEP)

16
17 VIDEOGRAPHER:

18 GILLEY DELORIMIER (DEPO-VUE)
19
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
 JUDGE DUVAL
PERTAINS TO MAG. WILKINSON
(Robinson, No. 06-2268)

Deposition of KEITH O'CAIN, given at
the U.S. Army Corps of Engineers New Orleans
District offices, 7400 Leake Avenue, New
Orleans, Louisiana 70118-3651, on April 22nd,
2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

KEITH O'CAIN

4/22/2008

4

1 ALSO PRESENT:

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7 ADAM CHUD, ESQ. (VIA I-DEP)

8

9 VIDEOGRAPHER:

10 GILLEY DELORIMIER (DEPO-VUE)

11

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PENLAND, PATRICK

11/20/2007

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
 JUDGE DUVAL
PERTAINS TO MAG. WILKINSON

(Robinson, No. 06-2286)

Deposition of PATRICK SHEA PENLAND,
PH.D., given the offices of Lambert & Nelson,
P.L.C., 701 Magazine Street, New Orleans,
Louisiana 70130, on November 20th, 2007.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

PENLAND, PATRICK

11/20/2007

Page 3

1 REPRESENTING THE UNITED STATES OF AMERICA:

2 UNITED STATES DEPARTMENT OF JUSTICE,

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18 VIDEOGRAPHER:

19 KEN HART (HART VIDEO)

20

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22

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24

25

PODANY, THOMAS

10/8/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
JUDGE DUVAL

PERTAINS TO: MRGO AND ROBINSON
(No. 06-2268)

(V O L U M E I)

Rule 30(b)(6) deposition of THE UNITED STATES OF AMERICA, BY AND THROUGH THE UNITED STATES ARMY CORPS OF ENGINEERS' DESIGNEE THOMAS PODANY, given at the U.S. Army Corps of Engineers New Orleans District offices, 7400 Leake Avenue, New Orleans, Louisiana 70118-3651, on October 8th, 2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

PODANY, THOMAS

10/8/2008

Page 2

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4 (BY: FLORIAN BUCHLER, ESQUIRE)

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NANCY POWELL

4/14/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION

NO. 05-4182
"K" (2)

PERTAINS TO: MRGO-ROBINSON JUDGE DUVAL

FILED IN: 05-4181, 05-4182, MAG. WILKINSON
05-5237, 05-6073, 05-6314,
05-6324, 05-6327, 05-6359,
06-0225, 06-0886, 06-1885,
06-2152, 06-2278, 06-2287,
06-2824, 06-4024, 06-4065,
06-4066, 06-4389, 06-4634,
06-4931, 06-5032, 06-5155,
06-5159, 06-5161, 06-5162,
06-5260, 06-5771, 06-5786,
06-5937, 07-0206, 07-0621,
07-1073, 07-1271, 07-1285

Videotaped Deposition of

NANCY JEANNE POWELL,

3412 Massachusetts Avenue, Kenner, Louisiana
70065, taken in the offices of the Corps of
Engineers, 7400 Leake Avenue, New Orleans,
Louisiana 70118, on Monday, the 14th day of
April, 2008.

NANCY POWELL

4/14/2008

Page 3

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APPEARANCES CONTINUED:

UNITED STATES DEPARTMENT OF JUSTICE
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ATTORNEY FOR UNITED STATES ARMY
CORPS OF ENGINEERS

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ATTORNEYS FOR LAFARGE NORTH AMERICA
(ALSO PRESENT)

VIDEOTAPED BY:
Gilly Delorimier
Depo-Vue, Inc.

REPORTED BY:
ROGER D. JOHNS, RMR, CRR, RDR, CSR
Certified Court Reporter
State of Louisiana

HENRY "JUNIOR" RODRIGUEZ

April 30, 2008

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

In Re: KATRINA CANAL BREACHES	* CIVIL ACTION
CONSOLIDATED LITIGATION	* NO.05-4182
	* "K" (2)
	*
VERSUS	*
PERTAINS TO:MRGO, Robinson	* JUDGE DUVAL
(No.06-2268)	* MAG.WILKINSON
* * * * *	*

Videotaped deposition of
HENRY "JUNIOR" RODRIGUEZ, taken at the law
offices of The Andry Law Firm, 610 Baronne
Street, New Orleans, Louisiana, on Wednesday,
April 30, 2008, at 9:10 a.m.

HENRY "JUNIOR" RODRIGUEZ

April 30, 2008

Page 3

1 Metairie, LA 70002
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25 ATTORNEYS FOR PLAINTIFFS

CHARLES "PETE" SAVOYE

3/5/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION

NO. 06-2268

"K" (2)

PERTAINS TO: ROBINSON

JUDGE DUVAL

MAG. WILKINSON

VIDEOTAPED DEPOSITION OF
CHARLES GEORGE "PETE" SAVOYE,
908 West 24th Avenue, Covington, Louisiana,
taken in the offices of Andry Law Firm, 610
Baronne Street, New Orleans, Louisiana 70113,
on Wednesday, March 5, 2008.

CHARLES "PETE" SAVOYE

3/5/2008

Page 3

1 APPEARANCES CONTINUED:

2

3 UNITED STATES DEPARTMENT OF JUSTICE

4 (BY: KEITH LITTLE ESQ.

5 JESSICA SULLIVAN, ESQ.)

6 Post Office Box 888

7 Benjamin Franklin Station

8 Washington, D.C. 20004

9 ATTORNEY FOR UNITED STATES OF

10 AMERICA

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13 BURGLASS & TANKERSLEY

14 (BY: KEA SHERMAN, ESQ.)

15 5213 Airline Drive

16 Metairie, Louisiana 70001

17 ATTORNEYS FOR JEFFERSON PARISH

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19

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21 CHAFFE, MCCALL LLP

22 (BY: TOM FORBES, ESQ.)

23 2300 Energy Center

24 New Orleans, Louisiana 70163

25 ATTORNEYS FOR LAFARGE NORTH AMERICA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 "K" (2)
PERTAINS TO: JUDGE DUVAL
ROBINSON, Number 06-2268 MAG. WILKINSON

Videotaped deposition of GARY P. SHAFFER, Ph.D.,
Department of Biological Sciences, SLU 10736,
Southeastern Louisiana University, Hammond,
Louisiana 70402, taken in the offices of Bruno &
Bruno, 855 Baronne Street, New Orleans, Louisiana
70113, on Thursday, the 29th day of January,
2009, beginning at 9:20 a.m.

APPEARANCES:

ANDRY LAW FIRM
(BY: JONATHAN ANDRY
KEA SHERMAN
610 Baronne Street
New Orleans, Louisiana 70113

AND

GAINSBURGH, BENJAMIN, DAVID,
MEUNIER & WARSHAUER
(BY: GERALD E. MEUNIER)
Suite 2800
1100 Poydras Street
New Orleans, Louisiana 70163-2800

AND

CECIL SOILEAU

4/11/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2

 JUDGE DUVAL
PERTAINS TO MAG. WILKINSON

(Robinson, No. 06-2268)

Deposition of CECIL WAYNE SOILEAU,
given at the U.S. Army Corps of Engineers New
Orleans District offices, 7400 Leake Avenue,
New Orleans, Louisiana 70118-3651, on April
11th, 2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

VIDEOGRAPHER:

KEN HART (HART VIDEO)

CECIL SOILEAU

4/11/2008

Page 3

1 REPRESENTING THE UNITED STATES OF AMERICA:

2 UNITED STATES DEPARTMENT OF JUSTICE,

3 TORTS BRANCH, CIVIL DIVISION

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5 (BY: PAUL LEVINE, ESQUIRE)

6 P.O. Box 888

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9 202-616-4289

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11 REPRESENTING THE U.S. ARMY CORPS OF ENGINEERS.

12 CORPS OF ENGINEERS, OFFICE OF COUNSEL

13 (BY: RITA TROTTER, ESQUIRE)

14 (BY: DAVID DYER, ESQUIRE)

15 7400 Leake Avenue

16 New Orleans, Louisiana 70118-3651

17 504-862-2843

18 ALSO PRESENT:

19 CHARLES SUTTON, ESQ., ROBERT B. FISHER, JR.,

20 ESQ., JOHN ROBERT, ESQ., KEA SHERMAN, ESQ.,

21 JENNY MORRIS, ESQ., CHRISTOPHER THATCH, ESQ.

22 (VIA I-DEP), ERIC GOLDBERG, ESQ. (VIA I-DEP),

23 KIRK AURANDT, ESQ. (VIA I-DEP), CHARLES LANIER

24 (VIA I-DEP)

25

DAVID VANN STUTTS

4/15/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
 JUDGE DUVAL
PERTAINS TO MAG. WILKINSON
(Robinson, No. 06-2268)

Deposition of DAVID VANN STUTTS, given
at the U.S. Army Corps of Engineers New Orleans
District offices, 7400 Leake Avenue, New
Orleans, Louisiana 70118-3651, on April 15th,
2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

1 REPRESENTING THE U.S. ARMY CORPS OF ENGINEERS.
2 CORPS OF ENGINEERS, OFFICE OF COUNSEL
3 (BY: DAVID DYER, ESQUIRE)
4 7400 Leake Avenue
5 New Orleans, Louisiana 70118-3651
6 504-862-2843

7
8 ALSO PRESENT:

9 JOHN ROBERT, ESQ.
10 RYAN MALONE, ESQ.
11 THOMAS P. ANZELMO, ESQ.
12 KEA SHERMAN, ESQ.
13 CHRISTOPHER THATCH, ESQ. (VIA I-DEP)
14 ERIC GOLDBERG, ESQ. (VIA I-DEP)
15 KIRK AURANDT, ESQ. (VIA I-DEP)
16 CHARLES M. LANIER, JR., ESQ. (I-DEP)
17 J. WARREN GARDNER, JR., ESQ. (I-DEP)

18
19 VIDEOGRAPHER:

20 GILLEY DELORIMIER (DEPO-VUE)
21
22
23
24
25

RICHARD JAMES VARUSO

April 1, 2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2

 JUDGE DUVAL
PERTAINS TO MAG. WILKINSON

(Robinson, No. 06-2268)

Deposition of RICHARD JAMES VARUSO,
given at the U.S. Army Corps of Engineers New
Orleans District offices, 7400 Leake Avenue,
New Orleans, Louisiana 70118-3651, on April
1st, 2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

1 REPRESENTING THE U.S. ARMY CORPS OF ENGINEERS:
2 CORPS OF ENGINEERS, OFFICE OF COUNSEL
3 (BY: RITA TROTTER, ESQUIRE)
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5 New Orleans, Louisiana 70118-3651
6 504-862-2843

7
8 ALSO PRESENT:

9 JOSEPH E. BEARDEN, III, ESQ.
10 KEA SHERMAN, ESQ.
11 THOMAS D. FORBES, ESQ.
12 THOMAS P. ANZELMO, ESQ.
13 NICK DIETZEN, ESQ.
14 CHRISTOPHER THATCH, ESQ. (VIA I-DEP)
15 ADAM CHUD, ESQ. (VIA I-DEP)

16
17
18
19
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21
22
23

24 VIDEOGRAPHER:

25 GILLEY DELORIMIER (DEPO-VUE)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL
BREACHES CONSOLIDATED
LITIGATION

CIVIL ACTION

NO. 05-4182 "K" (2)

JUDGE DUVAL

PERTAINS TO: LEVEE

MAG. WILKINSON

FILED IN:

- 05-4181, 05-4182, 05-4191,
- 05-4568, 05-5237, 05-6073,
- 05-6314, 05-6324, 05-6327,
- 05-6359, 06-0020, 06-1885,
- 06-0225, 06-0886, 06-11208,
- 06-2278, 06-2287, 06-2346,
- 06-2545, 06-3529, 06-4065,
- 06-4389, 06-4634, 06-4931,
- 06-5032, 06-5042, 06-5159,
- 06-5163, 06-5367, 06-5471,
- 06-5771, 06-5786, 06-5937,
- 06-7682, 07-0206, 07-0647,
- 07-0993, 07-1284, 07-1286,
- 07-1288, 07-1289

VOLUME II
IN RE: MRGO

Deposition of PROFESSOR JOHANNES
VRIJLING, 2600 GA Delft, Stevinweg 1, 2628 CN
Delft, The Netherlands, taken in the offices
of Bruno & Bruno, 855 Baronne St., Sixth
Floor, New Orleans, Louisiana on Friday, the
17th day of August, 2007 at 9:14 a.m.

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APPEARANCES (continued):

DUPLASS, ZWAIN, BOURGEOIS, MORTON,
PFISTER & WEINSTOCK
(By: Gary M. Zwain, Esquire)
(By: Joseph E. Bearden, III, Esquire)
3838 N. Causeway Blvd., Suite 2900
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and Lake Borgne Levee District

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(By: Erin Farris, Esquire)
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Attorneys for Washington Group
International, Inc.

PROF. JOHANNES VRIJLING VOL I (LEVEE)

8/16/2007

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL
BREACHES CONSOLIDATED
LITIGATION

CIVIL ACTION

NO. 05-4182 "K" (2)

JUDGE DUVAL

PERTAINS TO: LEVEE

MAG. WILKINSON

FILED IN:

- 05-4181, 05-4182, 05-4191,
- 05-4568, 05-5237, 05-6073,
- 05-6314, 05-6324, 05-6327,
- 05-6359, 06-0020, 06-1885,
- 06-0225, 06-0886, 06-11208,
- 06-2278, 06-2287, 06-2346,
- 06-2545, 06-3529, 06-4065,
- 06-4389, 06-4634, 06-4931,
- 06-5032, 06-5042, 06-5159,
- 06-5163, 06-5367, 06-5471,
- 06-5771, 06-5786, 06-5937,
- 06-7682, 07-0206, 07-0647,
- 07-0993, 07-1284, 07-1286,
- 07-1288, 07-1289

VOLUME I

Deposition of PROFESSOR JOHANNES
VRIJLING, 2600 GA Delft, Stevinweg 1, 2628 CN
Delft, The Netherlands, taken in the offices
of Bruno & Bruno, 855 Baronne St., Sixth
Floor, New Orleans, Louisiana on Thursday,
the 16th day of August, 2007 at 9:14 a.m.

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APPEARANCES (continued):

CHRISTOVICH & KEARNEY
(By: Charles M. Lanier, Jr., Esquire)
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Attorneys for Defendant,
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(214) 220-3939
Attorneys for Washington Group
International, Inc.

HARLEY WINER

April 18, 2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES	CIVIL ACTION
CONSOLIDATED LITIGATION	NO. 05-4182 K2
	JUDGE DUVAL
PERTAINS TO MRGO, Robinson	MAG. WILKINSON
(No. 06-2268)	

Deposition of HARLEY STANFORD WINER,
PH.D., given at the U.S. Army Corps of
Engineers New Orleans District offices, 7400
Leake Avenue, New Orleans, Louisiana
70118-3651, on April 18th, 2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

HARLEY WINER

April 18, 2008

Page 4

1 ALSO PRESENT:

2 RYAN MALONE, ESQ.

3 KEA SHERMAN, ESQ.

4 DARCY DECKER, ESQ.

5 ROBERT FISHER, ESQ.

6 JOHN ROBERT, ESQ.

7 CHRISTOPHER THATCH, ESQ. (VIA I-DEP)

8 ERIC GOLDBERG, ESQ. (VIA I-DEP)

9 KIRK AURANDT, ESQ. (VIA I-DEP)

10 J. WARREN GARDNER, JR., ESQ. (I-DEP)

11

12 VIDEOGRAPHER:

13 GILLEY DELORIMIER (DEPO-VUE)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
JUDGE DUVAL

PERTAINS TO: MRGO AND ROBINSON
(No. 06-2268)

Deposition of THOMAS F. WOLFF, PH.D.,
P.E., given at the offices of the United States
Department of Justice, 400 Poydras Street, 9th
Floor, New Orleans, Louisiana 70130, on
February 6th, 2009.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

1 REPRESENTING THE PLAINTIFFS:

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8 ANDRY LAW FIRM

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12 504-586-8899

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15 FRUGE, L.L.P.

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18 Baton Rouge, Louisiana 70801-1910

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25

MILLER (VOL 1), GREGORY

10/2/2008

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: KATRINA CANAL BREACHES CIVIL ACTION
CONSOLIDATED LITIGATION NO. 05-4182 K2
JUDGE DUVAL

PERTAINS TO: MRGO AND ROBINSON
(No. 06-2268)

(V O L U M E I)

Rule 30(b)(6) deposition of THE UNITED STATES OF AMERICA, BY AND THROUGH THE UNITED STATES ARMY CORPS OF ENGINEERS' DESIGNEE GREGORY MILLER, given at the U.S. Army Corps of Engineers New Orleans District offices, 7400 Leake Avenue, New Orleans, Louisiana 70118-3651, on October 2nd, 2008.

REPORTED BY:

JOSEPH A. FAIRBANKS, JR., CCR, RPR
CERTIFIED COURT REPORTER #75005

1 - AND -

2 ANDRY LAW FIRM

3 (BY: KEA SHERMAN, ESQUIRE)

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7

8 REPRESENTING THE UNITED STATES OF AMERICA:

9 UNITED STATES DEPARTMENT OF JUSTICE,

10 TORTS BRANCH, CIVIL DIVISION

11 (BY: ROBIN SMITH, ESQUIRE)

12 (BY: CONOR KELLS, ESQUIRE)

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14 Benjamin Franklin Station

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19 CORPS OF ENGINEERS, OFFICE OF COUNSEL

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21 7400 Leake Avenue

22 New Orleans, Louisiana 70118-3651

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**PAGE INTENTIONALLY
LEFT BLANK**

Pirich, Andrew (CIV)

From: Scott Joanen [scott@jbrunolaw.com]
Sent: Friday, February 20, 2009 10:52 AM
To: Smith, Robin (CIV); Ralph Hubbard; Seth Schmeeckle
Cc: Joe Bruno; Pierce Odonnell; Andy Owen; egilbert@gilbert-firm.com; bobrien@gilbert-firm.com; jroy@wrightroy.com; John Andry; ksherman@andrylawfirm.com; Elwood Stevens; aphilen@nolacounsel.com; Rob Warren
Subject: Reply re: Motion to Compel reliance Materials
Attachments: Mx.Leave.Reply.pdf; Memo.Mx.Leave.Reply.pdf; Order.Mx.Leave.Reply.pdf; Reply.pdf; Ex.1.pdf; Ex.2.pdf; Ex.3.pdf; Ex.4.pdf

Robin.

Attached please find the pleadings relative to the reply to your Opp. of our Mx. to Compel.

Scott Joanen
The Law Office of Joseph M. Bruno, APLC
855 Baronne Street
New Orleans, LA, 70113
Telephone: (504) 525-1335
Toll Free: 1-800-966-1335
Facsimile: (504) 561-6775
Email: scott@jbrunolaw.com

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Pirich, Andrew (CIV)

From: John Andry [johnandry@yahoo.com]
Sent: Sunday, April 05, 2009 8:11 PM
To: Ehrlich, Jeff (CIV)
Cc: Kat Litigation Team; Kea Sherman
Subject: Depositions of Riley and Diaz and new Corps witnesses

Jeff,

Glen Diaz and David Riley will be available on Thursday, April 9, 2009 for their deposition. Please confirm so that I can make arrangements with the court reporter, etc.

Please provide the expected testimony of your two new witnesses so that I can set up the depositions with the proper member of our team.

Thanks and kindly acknowledge and advise.

From: "Ehrlich, Jeff (CIV)" <Jeff.Ehrlich@usdoj.gov>
To: John Andry <johnandry@yahoo.com>
Cc: "Kells, Conor (CIV)" <Conor.Kells@usdoj.gov>; "Carter, George (CIV)" <George.Carter@usdoj.gov>; "Johnson, Veronica (CIV)" <Veronica.Johnson2@usdoj.gov>
Sent: Monday, March 30, 2009 9:20:51 AM
Subject: Exhibit 14 to Junior Rodriguez's Deposition

John,

At Junior's deposition, you used an exhibit that was, you said, the only copy in existence. We had the court reporter make a copy to attach to the deposition, but the copy is not too good. Would it be possible for your office to make a color copy of the document and provide it to me?

Also, I'd like to talk to you later today about scheduling depositions for your two new witnesses. When would be a good time to talk?

Thanks.

Jeff Ehrlich
Trial Attorney
U.S. Department of Justice
Civil Division, Torts Branch
202-353-2574

Pirich, Andrew (CIV)

From: Joe Bruno [jbruno@jbrunolaw.com]
Sent: Monday, April 06, 2009 10:59 AM
To: Ehrlich, Jeff (CIV); John Andry
Cc: Kat Litigation Team; Kea Sherman; Kells, Conor (CIV); Smith, Robin (CIV); Kirsten R. Tillman
Subject: RE: Depositions of Riley and Diaz and new Corps witnesses

We will not be going forward with these depositions at this time. Robin and I are still discussing this issue.

Joseph M. Bruno
Attorney-at-Law
855 Baronne Street
New Orleans, LA 70113
Telephone: (504) 525-1335
Facsimile (504) 304-4217
jbruno@jbrunolaw.com

The information contained in this electronic message is attorney privileged and confidential information intended only for the use of the owner of the email address listed as a recipient of this message. If you are not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any disclosure, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone at (504) 525-1335.

From: Ehrlich, Jeff (CIV) [mailto:Jeff.Ehrlich@usdoj.gov]
Sent: Monday, April 06, 2009 9:59 AM
To: John Andry
Cc: Kat Litigation Team; Kea Sherman; Kells, Conor (CIV); Smith, Robin (CIV)
Subject: RE: Depositions of Riley and Diaz and new Corps witnesses

John,

I'll get back to you with regard to the timing of Diaz's and Riley's depositions.

We do not have two new witnesses, but only one. His name is Pete Luisa. He works at the Corps's HQ here in Washington. We expect him to testify concerning the budgeting process for specific projects such as the LPVHPP and the MRGO. Mr. Luisa is away on vacation this week, but would be available for deposition next week in Washington, or just prior to his testimony in New Orleans.

Jeff Ehrlich
Trial Attorney
U.S. Department of Justice
Civil Division, Torts Branch
202-353-2574

From: John Andry [mailto:johnandry@yahoo.com]
Sent: Sunday, April 05, 2009 8:11 PM
To: Ehrlich, Jeff (CIV)
Cc: Kat Litigation Team; Kea Sherman
Subject: Depositions of Riley and Diaz and new Corps witnesses

Jeff,

4/28/2009

Glen Diaz and David Riley will be available on Thursday, April 9, 2009 for their deposition. Please confirm so that I can make arrangements with the court reporter, etc.

Please provide the expected testimony of your two new witnesses so that I can set up the depositions with the proper member of our team.

Thanks and kindly acknowledge and advise.

From: "Ehrlich, Jeff (CIV)" <Jeff.Ehrlich@usdoj.gov>
To: John Andry <johnandry@yahoo.com>
Cc: "Kells, Conor (CIV)" <Conor.Kells@usdoj.gov>; "Carter, George (CIV)" <George.Carter@usdoj.gov>; "Johnson, Veronica (CIV)" <Veronica.Johnson2@usdoj.gov>
Sent: Monday, March 30, 2009 9:20:51 AM
Subject: Exhibit 14 to Junior Rodriguez's Deposition

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Also, I'd like to talk to you later today about scheduling depositions for your two new witnesses. When would be a good time to talk?

Thanks.

Jeff Ehrlich
Trial Attorney
U.S. Department of Justice
Civil Division, Torts Branch
202-353-2574

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2 **GLEN J. LERNER & ASSOCIATES**
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E-mail: johnandry@yahoo.com

12 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

16 SANDRA PREZGAY, Individually and)
17 On Behalf of All Similarly Situated)
18 Individuals)
19 Plaintiffs,)

CASE NO.
CLASS ACTION COMPLAINT

20 vs.)

JURY TRIAL DEMANDED

21 COX COMMUNICATIONS, COX)
22 COMMUNICATIONS LAS VEGAS, INC.,)
23 d/b/a COX COMMUNICATIONS,)
24 COX NEVADA TELECOM, LLC,)
25 COX COMMUNICATIONS, INC.,)
26 COX ENTERPRISES, INC., COXCOM,)
27 INC., d/b/a COX COMMUNICATIONS)
ARIZONA, COX COMMUNICATIONS)
28 HOLDINGS, INC., and COX)
COMMUNICATIONS EBD HOLDINGS)
INC.)

Defendants)