

Exhibit C –

Expert Report of Louis G. Fey, Jr.

EXPERT REPORT OF
LOUIS G. FEY JR, CPCU, CIC, AIC
FEY CONSULTING LLC

ADDRESS: 2136 N Woodchase Ct., Baton Rouge, LA 70808

(225) 362-3919

Occupation:

Risk Management Consultant, Insurance Underwriting, Insurance Claims consulting, coverage analysis, contract review.

Field of Expertise:

Insurance claims adjustment, defense consulting, policy placement, underwriting, policy drafting (as to manuscript policies), coverage analysis and review.

DATE OF REPORT: January 26, 2010

I. Introduction

I will act as an expert witness. I have been retained by plaintiffs to assist in their investigation into matters relating to wind and flood claims made under policies of insurance issued to the McIntosh's by State Farm Mutual Insurance Company (SF). I offer this report in compliance with F.R.C.P. 26(a)(2)(B).

I am familiar with the Federal Rule of Civil Procedure 26(a)(2)(B) which I have read and which I understand.

I have been asked based upon my investigation and with the benefit of my qualifications and expertise whether I have certain opinions as more fully set out below. Where I do, in fact, have such an opinion or opinions, I state what the opinion(s) is and explain the basis for that opinion(s). Where such an opinion is stated, it is provided based upon my personal knowledge of the event in question, information provided to me that I consider to be reliable and which is the type of information reasonably relied upon by one in my profession. I have not been asked to assume anything, but to the extent that assumptions were made in arriving at my conclusions, the assumptions are reasonable based on my experience and expertise in claim procedures, standards and good faith claim handling. All of my opinions set forth herein are given to a reasonable degree of certainty based upon that standard which applies in the property insurance industry.

II. Qualifications and Expertise:

B.B.A. Bachelors of Business Administration – University of Cincinnati
Certificate in General Insurance - INS
Associate in Claims - AIC
Chartered Property Casualty Underwriter - CPCU
Certified Insurance Counselor – CIC
Licensed adjuster
Licensed Property Casualty Producer
Licensed Life & Health Producer
28 years of practical experience handling complex property casualty claims including complex property losses.

Each designation is the result of countless hours of study and classroom participation. For example, the Chartered Property and Casualty Underwriter designation is awarded upon completion of 10 courses of study covering every facet of the property casualty insurance industry. The classes are deemed worthy of credit in master's degree programs from many universities and are very comprehensive. The Certified Insurance Counselor designation is a five year program encompassing very technically advanced studies of Commercial Property Insurance coverage as well as other subjects. The Associate in Claims designation is a multi year program whose courses includes Commercial Lines Property coverage and claim handling.

I have given numerous seminars on insurance coverage; claim handling and related issues as outlined on my CV. I assisted in authoring the Claims Manual for Ohio Casualty's Claim Department in the mid 1980's. I am a former member of the N.A.I.I.A. National Advisory Council (NAC) (an industry think tank). I currently serve as a member of Chartis Insurance Companies (formerly AIG) claim advisory counsel.

I oversaw the claim operations post Hurricane Andrew in South Florida for Ohio Casualty Insurance and encountered many issues regarding flood verses wind damage. Close examination of the evidence and discussions with the flood adjusters resulted in resolution of countless claims involving both causes of loss.

I own and operate Fey Consulting LLC. I act as a liaison between clients and insurance companies and or their coverage or defense counsel to advise and assist with regard to insurance coverage issues, improper denials and other claim issues including but not limited to proper claim handling practices and procedures in various claim scenarios.

My opinions are based on a broad spectrum of education, experience and research. I have access to various industry resources such as Sage, Silver Plume and IRMI, I research case law, industry writings, text books and apply actual practical property claim handling experience, management and practice.

As applicable to this litigation; my area of expertise is common custom, usage and practice in adjusting property losses. Specifically the proper investigation, claim handling, file documentation and claim procedures. Proper use and retention of experts and evaluation of State Farm's claim handling as it relates to the claims at issue, based upon common standards, application and practice in the industry.

III. The basis of my Opinion

In rendering my opinion, I have relied upon my experience and training in the industry. I have also relied upon my review of the FEMA / NFIP claim manual and discussions with NFIP trainers at NFIP certification training and Katrina specific NFIP / FEMA directives. I have reviewed all documents related to this case as set forth below:

a. Documents received from Gilbert LLC having the following sub parts:

Ford Report

Kelly Report

FEAC second Supp. Production 5-6-09

Flood file summary exhibit

SF Flood claim file

SF Wind claim file

Pictures from State Farm production April 21st 2009

Deposition testimony of Alexis King

Hearing testimony of Michael Ferrier

Realtor's Consolidated Post-Hearing Brief

Defendant/Counter-plaintiff State Farm Fire And Casualty Company's Post-Hearing Rebuttal Memorandum

Defendant/Counter-plaintiff State Farm Fire And Casualty Company's Post-Summary Judgment Hearing Memorandum

b. FEMA Memo dated 3-26-2001, Guide for Write Your Own Counsel

c. FEMA memo dated 9-2-2005, Activation of the single adjuster Program – Ala. and Miss.

- d. FEMA memo dated 8-31-2005, Wavier of Proof of Loss Requirement
- e. FEMA memo dated 8-29-2005, Substantially Damaged Structures
- f. FEMA memo dated 9-21-2005, Hurricane Katrina Flood Handling Standards
- g. NFIP FEMA Adjuster Claims Manual, January 1, 2004 revision
- h. FEMA ARRANGEMENT 44 C.F.R. Pt. 62, App. A)

IV. Opinion

SF has a fiduciary responsibility to NFIP, which places a greater degree of care on SF to fairly and appropriately investigate, handle and pay NFIP claims. Where there is a gray area between wind and flood damage, the advantage should go to and favor NFIP and SF should apportion any disputed damages to wind. Once a claim is made by an insured and the insured proves that there was a covered claim (as was obvious in this case), SF had an obligation to prove that a particular exclusion excluded coverage for any portion of the claim. Where SF could not prove conclusively that certain damage was caused by flood, the damage is covered under the SF wind coverage / homeowners policy which covers risk of loss except losses that are specifically excluded. SF has the duty to prove the applicability of the flood exclusion. Where the cause of damage is inconclusive, the damage is covered.

SF has an obligation to use the utmost care in handling NFIP claims and also has a greater public good responsibility to protect federal funds while also acting responsibly by promptly paying all claims owed under the programs coverage.

SF failed to met its obligations to NFIP and FEMA on various fronts.

SF failed to adequately investigate the claims at issue. SF used pre-conceived notions as to the cause of the damage and directed the resolution of the claim so that the ultimate outcome conformed to that pre-conceived belief.

SF obtained a regional engineering study and instructed their adjusters to use that report as a reference or as investigative input at the least or to use it as “the bible” at worst. The industry’s fair claim practices hold that each claim must be addressed on its own merits and no pre-conceived assumptions should be used to influence the outcome.

The adjuster used Xacttotal to create an estimate of flood damage that deemed the house a total loss from flood. The actual flood related damage was much less than estimated (the exact amount of flood damage is an area of dispute to this day). This house was standing and accessible. The use of Xacttotal was inappropriate and SF’s investigation into the cause loss was inadequate. Xactimate should have been used, as was done for the wind damage portion of the claim. The use of Xacttotal for the flood claim and Xactimate for the wind claim is another example of SF placing their own interests in front of the interests of NFIP / FEMA’s and their own insured’s. SF merely estimated the complete replacement of the house and deducted the itemized wind damage and depreciation from

the total. The resulting figure had no bearing on the flood damage amount. The flood damage essentially went unaddressed, yet SF paid the flood policy limits based on this mishandling.

By way of background, Xacttotal is a program developed by XactWare specifically for SF. This software is not sold to the industry for broad use. The limitation of Xacttotal is that the resulting estimate is not an accurate depiction of the actual structure being estimated. It is more of an average estimate of the value of the house based on square footage and the quality of construction. Particular characteristics of the house are not considered and those unique qualities of the property can easily affect the value of the house. The scope generated by the program is basically useless as it is inaccurate and merely a generalization of the house. Additional information from the homeowner or photos taken prior to the loss with regard to the layout and number of rooms and the unique characteristics of the house in question must be considered and either additions or subtractions would need to be made to the estimate. This is why it is inappropriate to use Xacttotal when the house can be accessed and accurately scoped.

SF failed to meet its obligations to NFIP and FEMA with regard to the proper use of engineers.

SF forced their pre-conceived opinions of causation upon their engineers. The engineers were not permitted to address the structural integrity of the house or investigate the structure to see if high winds compromised the structural integrity of the house.

When confronted with an expert report that they felt was wrong and that didn't conform to their preconceived opinions on causation, SF strong-armed the engineering firm into reversing their opinion and directed them to disregard key evidence.

SF failed to include the Ford report in their claim file, supply a copy of the report to their insured or include any analysis or discussion regarding the report in the claim file. This is a direct violation of fair claim practices.

If an insurer is unsure of causation and retains an expert to determine that cause of loss, an untrained (as an engineer) employee cannot unilaterally reject the report and strong arm the expert into creating a replacement report conforming to the insurer's desire. The entire purpose of retaining an expert is to evaluate an issue from an educated, professional and independent perspective as the expert has training in the field that the insurer does not possess. If an insurer disagrees with the opinion sought from an expert, they have to live with it. Any other course would only lead to the appearance of impropriety as we have here.

SF's instruction to determine the "predominant cause" of the damage was inadequate and not based on any insurance concept. Instead SF should have requested that the engineers check the structural integrity of any homes that sustained significant damage (determined on a case by case basis by the handling adjuster) and the engineers should have been instructed to check for hidden damage or structural weakness. SF should have fully investigated the cause of loss including a neighborhood canvass and made that

investigative information available to the engineers. The task of determining the predominate cause of the loss should not have been the assignment. The assignment should have included a request to analyze the damage and itemize what damage was specifically caused by wind and what damage was specifically caused by flood. Where the cause of damage was uncertain and could not be concretely determined, the damages should have been itemized and treated as a covered loss under the SF homeowner's policy since SF would have been unable to prove that those damages were specifically excluded from coverage.

SF's instruction to FAEC's second engineer Mr. Kelly to disregard eyewitness testimony is also an unfair claims practice. Upon learning of Mr. Church, SF should have immediately met with him to obtain his signed statement and to evaluate his testimony. The fact that he had no interest in the outcome of the McIntosh's claim seems to lend credibility to his testimony. Likewise, a neighborhood canvass is a basic element of any investigation and SF should have attempted to talk to everyone in the neighborhood to see if there were any other corroborating eyewitness accounts. In fact SF failed to pursue this key evidence and even instructed their engineers not to rely upon eyewitness accounts, which is contrary to proper claim investigative procedures.

For the sake of argument, had SF not agreed with the first engineering report, the claim should have been fully investigated prior to any other action, especially before the call to the engineer to complain. Additionally, for the sake of argument, once an issue arose on the claim, a complete evaluation of the structure should have been commissioned. Of course this proper and thorough investigation should have been commissioned at the outset.

SF essentially used Federal funds to appease insureds and then "continued their investigation" with regard to wind damage rather than pay both claims at the same time. If they were sure of their determination on the split between flood and wind damage they should have been able to settle both claims at the same time. This seems to be another example of SF placing their own interests ahead of NFIP / FEMA and their own insured.

For the above reasons, it is my opinion that SF completely mishandled this claim, violated various fair claim practices and breached its fiduciary duty to both the Federal Government and its insured.

V. Peer review

My findings have been peer reviewed by a well-qualified insurance expert with more than 30 years of practical claim handling experience. I also referenced numerous property insurance related texts and FEMA's own website for additional insight with regard to Write Your Own Flood Insurance programs (WYO), carrier responsibilities and FEMA claim handling guidelines.

Basis and Reasons for Opinions: The basis and reasons for the above opinions are as set forth in the above statement.

VI. Data Considered in Forming my opinion

My opinions are based upon my experience, my knowledge of the industry, my review of the FEMA claims manual, the claim file, my review of all other documents identified herein as well research through IRMI and industry text books.

VII. Compensation and expert testimony

Prior testimony or activity in past 4 years as a consultant or expert:

Southgate v MAPP Construction - Nineteenth Judicial District Court, East Baton Rouge Parish, Louisiana, Case No. 69-110-J-009929-06 docketed as Case Nos. 529,351 and 550,534. Defense consultant.

Loyola University v MAPP Construction Suit No. 04-1314, Div. C; Civil District Court Parish of Orleans. Defense consultant

Fuselier v Diamond B – wrongful death case settled pre-suit. For the defense

Atlantic Recycling and Tiger Fibres LLC v Aspen Specialty Ins. Co. No. 1:07cv1106, 2008 WL 3849367 (E.D. Va. Aug. 15, 2008). Plaintiff's expert.

The State of Louisiana v Arrighi Simoneaux, LLC (Bogue Chitto State Park). Defense Consultant.

Securtec, Inc. v State of Louisiana, Division of Administration; 536, 651, 19th JDC, Div. "D". Defense consultant.

Petro Log v Evanston – Albert Dominick Capozzi v Atwood Oceanics, Inc. et. al. United District Court for the Western District of Louisiana, Civil Action No. 6:08-cv-00776. Plaintiff's consultant.

Kenneth Whittington, et. al. v PCS Fertilizer & Christopher Hall, et. al. v PCS Nitrogen Fertilizer, et. al. 23rd Judicial District Court For the Parish of Ascension State of Louisiana NO. 85-261 & NO. 85,322 DIVISION "E" & "A" respectively. Defense consultant.

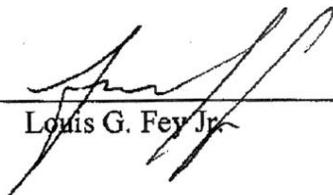
Georgia Casualty & Surety, Co. v Chambers Drum Company, Inc. - Superior Court of Fulton County- State of Georgia No: 2005-CV-104094

I do not believe I have testified in any other cases. If I discover any other cases I will provide the information. Likewise, the above information is the best information that I have concerning the cases in which I provided testimony. If I am better able to

identify a case or court I will do so. Further, I have not published any articles in the last 10 years.

My compensation is based on an hourly rate. My hourly compensation is \$300 per hour. I have worked on this case for approximately 21.75 hours to date on an hourly basis. I have been paid \$0 for my time to date.

1-29-2010
Date


Louis G. Fey Jr.

CURRICULUM VITAE

LOUIS G. FEY JR, CPCU, CIC, AIC

BUSINESS

Insurance consulting, expert testimony, litigation support, insurance producer and licensed adjuster

- Industry practice (underwriting, claims and company operations), standards, means, methods
- Coverage expert
- Multi-line claim issues
- Business Interruption Coverage
- Fair claim practice standards
- Defense strategy with regard to insurance issues
- Contractual provision and CRT analysis as it relates to insurance as well as additional insured concepts
- Mediation and negotiation

EDUCATION

1981 **B.B.A. Bachelors of Business Administration** – University of Cincinnati

1985 **Certificate in General Insurance** - INS

1994 **Associate in Claims** - AIC

1995 **Chartered Property Casualty Underwriter** - CPCU

2003 **Certified Insurance Counselor** – CIC

EXPERIENCE:

2007 – Present **LOUIS G. FEY JR, CPCU, CIC, AIC**

- Consultation on Risk Management opportunities
- Assist clients on claim and coverage disputes
- Act as a liaison and consultant for clients and carriers
- Contractual issues and exposure assistance
- Technical resource for producers and clients
- Expert witness testimony

2000 – 2007 **St. Paul/Travelers Insurance, Atlanta, GA**
Director of Major Case – Construction Claims Services

- Handled very large exposure and complex liability cases
- Mentored, directed, and oversaw multiple Construction Claim Regions
- Directed investigation and litigation, negotiated settlements, attended trials and mediated cases; coverage and contract analysis and interpretation

1996 – 2000

**Lumber Mutual Ins. Co., Greer, SC
Regional Claims and Underwriting Manager, Southern
Region**

- Trained, organized, and implemented this start-up claims operation
- Oversaw claims for Southern Region
- Oversaw Underwriting Department in the Southern Region
- Managed a staff of over 40 people
- Handled large exposure cases, all lines
- Handled large exposure lawsuits; including mediations, negotiations, and trials
- Negotiated and implemented managed care program
- Implemented a WC telephonic nurse program for in-house managed care
- Developed a triage program to reduce the frequency of surgery on W.C. claims

1981 – 1996

**Ohio Casualty Ins. Co., Hamilton, OH
Senior Claims Supervisor**

- Oversaw litigation and claims in both Home Office and Branch Office settings
- Oversaw Hurricane Andrew cleanup
- Developed and implemented a training program for new adjusters
- Conducted various instructional seminars for adjuster training
- Member of the company's "Swat Team" (Cleanup of distressed offices)

RELATED EXPERIENCE

Louis has given numerous seminars on insurance coverage and related issues, specifically:

- ◆ Commercial General Liability Coverage –CGL Coverage, Conditions, Exclusions and Endorsements
- ◆ Occurrence Law – Various Jurisdictional Interpretations and Their Effect on CGL Coverage
- ◆ Occurrence Law – Manifestation, Multiple or Continuous Triggers
- ◆ Additional Insured Endorsements and Related Issues
- ◆ Certificate of Insurance Issues
- ◆ Contractual Defense and Indemnity Provisions, The Anti-Indemnity Statutes of Various Jurisdictions and How They Interact With The Contractual Related Provisions of The CGL Policy.
- ◆ Contractual Provisions to Look for: What To Include in Contracts and How They Impact One’s Liability Exposure and Insurance Coverage
- ◆ Wavier of Subrogation Contractual Provisions and Policy Endorsements
- ◆ Professional Liability Endorsements
- ◆ WC Immunity, The Statutes Regarding Statutory Employer Status; How They are Treated in Various Jurisdictions and their Impact on CGL Coverage
- ◆ Excess/Umbrella Coverage and Related Issues
- ◆ Litigation Management
- ◆ Negotiations and Mediation
- ◆ Claim Operation Policy and Procedures – Fair Claims practice
- ◆ Business Interruption issues and considerations

Assisted in authoring the Claims Manual for Ohio Casualty’s Claim Department in the mid 1980’s.

Former member of the N.A.I.I.A. National Advisory Council (NAC) (industry think tank)

Current member of Chartis Insurance Companies (formerly AIG) claim advisory counsel

Louis has been acting as an insurance consultant and expert witness since September 2007 and has evenly balanced his litigation support efforts between insurance defense and plaintiff's work. Much of his effort has been as a claim consultant on both litigated and non-litigated matters assisting both clients and insurers with coverage interpretation, issues, defense strategy, negotiation and contract interpretation.

CONTINUING EDUCATION

Life and Health Institute

Agency Management Institute

Commercial Property Institute

Personal Lines Institute

Ruble Graduate Seminar 11/6/2004

Ruble Graduate Seminar 8/16/2006

Commercial Casualty Institute

Principles of Risk Management

Practice of Risk Management

So you want to be an expert witness?

Insuring Defective Construction

Contractual Liability, What's Covered and What's Not?

Commercial Property Insurance and Risk Management

Commercial Liability Insurance and Risk Management

Principles of Risk Management and Insurance

Issues in Insurance

Insurance Economics

Insurance Company Operations

Insurance Issues and Professional Ethics

Insurance Accounting and Finance

Insurance Company Management

Commercial Underwriting: Principles and Property

Principles of Suretyship

Liability Claim Practices

Property Loss Adjusting

Principles of Insurance – Liability Claims Adjusting

Principles of Insurance – Property Loss Adjusting

Casualty Insurance

Property Insurance

Louisiana Life and Health Pre-licensing

Solutions To Disagreements Over Time Element Claims
Surprise and the Other Three “S” Words That Result in Time Element Disagreements

GENERAL INFORMATION

Louis G. Fey Jr. is a second generation insurance professional living in Baton Rouge Louisiana, the son of an attorney and claims manager.

LITIGATION SUPPORT AND EXPERT TESTIMONY

Southgate v MAPP Construction - Nineteenth Judicial District Court, East Baton Rouge Parish, Louisiana, Case No. 69-110-J-009929-06 docketed as Case Nos. 529,351 and 550,534. Defense consultant.

Loyola University v MAPP Construction Suit No. 04-1314, Div. C; Civil District Court Parish of Orleans. Defense consultant

Fuselier v Diamond B – wrongful death case settled pre-suit. For the defense

Atlantic Recycling and Tiger Fibres LLC v Aspen Specialty Ins. Co. No. 1:07cv1106, 2008 WL 3849367 (E.D. Va. Aug. 15, 2008). Plaintiff’s expert.

The State of Louisiana v Arrighi Simoneaux, LLC (Bogue Chitto State Park). Defense Consultant.

Securtec, Inc. v State of Louisiana, Division of Administration; 536, 651 , 19th JDC , Div. "D". Defense consultant.

Petro Log v Evanston – Albert Dominick Capozzi v Atwood Oceanics, Inc. et. al. United District Court for the Western District of Louisiana, Civil Action No. 6:08-cv-00776. Plaintiff’s consultant.

Kenneth Whittington, et. al. v PCS Fertilizer & Christopher Hall, et. al. v PCS Nitrogen Fertilizer, et. al. 23rd Judicial District Court For the Parish of Ascension State of Louisiana NO. 85-261 & NO. 85,322 DIVISION “E” & “A” respectively. Defense consultant.

Davco Restaurants, Inc. v Landmark American Insurance Co. and RSUI Ind. Co. U.S. District Court – Eastern District of Virginia (Alexandria Division) Case#: 1:09 CV 581 JCC/TCB

Georgia Casualty & Surety, Co. v Chambers Drum Company, Inc. - Superior Court of Fulton County- State of Georgia No: 2005-CV-104094

Exhibit D –

Expert Report of Dr. Patrick J. Fitzpatrick, Ph.D