

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA, <i>EX REL.</i> BRANCH CONSULTANTS, L.L.C.,)	Case No. 2:06-cv-4091
)	
<i>Plaintiff</i>)	
v.)	SECTION: "R" (1)
)	
ALLSTATE INSURANCE COMPANY, et al.,)	Magistrate Judge Sally Shushan
)	
<i>Defendants</i>)	
)	

**BRANCH CONSULTANTS, LLC'S MEMORANDUM IN SUPPORT OF ITS
NOTICES OF RULE 30(B)(6) DEPOSITION CONCERNING
ELECTRONICALLY STORED INFORMATION**

Pursuant to this Court's Order (Dkt. # 441), Branch Consultants, LLC ("Branch") respectfully submits this memorandum in support of the Rule 30(b)(6) deposition notices concerning ESI (the "Notices") that it served on Defendants. The Notices comply with this Court's Order concerning the scope of the depositions (Dkt. # 359) and with Sedona Principle 12.¹ The depositions should proceed as currently scheduled and noticed.

The Court's Order concerning ESI (Dkt. # 359, p. 9-10, 11) stated: (emphasis added)

Branch shall depose the defendants, pursuant to Rule 30(b)(6), so that the parties can present testimony and other evidence on defendants' record keeping and maintenance of ESI. This discovery shall be limited to that which is required to permit Branch and the defendants to address the application of Sedona Principle 12 to Branch's request for ESI in native format. The discovery may include inquiry into how the defendants provide information to the United States for the NFIP.

Branch requests that the defendants be required to disclose what information is contained on the back-up tapes or other long-term media and explain the burden associated with accessing these tapes or media. The defendants shall provide this information at their Rule 30(b)(6) depositions directed to ESI.

In addition, the Court's order quoted from Sedona Principle 12: (emphasis added).

[P]roduction should be made in the form or forms in which the information is ordinarily maintained or in a reasonably usable form, taking into account the need to produce reasonably accessible metadata that will enable the receiving party to have the same ability to access, search, and display the information as the producing party where appropriate or necessary in light of the nature of the information and the needs of the case.

As discussed below, each topic identified in Branch's Notices is consistent with the Court's order and Sedona Principle 12.² The topics for examination fall into four general categories:

¹ Colonial and Simsol argue that because they did not adjust wind claims, their ESI depositions should be cancelled. (Dkt. # 449, 450). Whether they adjusted wind claims is irrelevant. Branch's FAC never alleged that they adjusted wind claims. (Dkt. # 49, ¶ 28, 33) Their argument is tantamount to arguing that Branch's FAC failed to state a claim against adjuster defendants, which is not the case. *See* Order Denying Motion to Dismiss (Dkt. # 228, p. 53).

² Branch served the same topics on each insurer defendant. Exhibit 1 is a representative Notice. Branch served Notices on Simsol and Colonial that are nearly identical to those served on the insurer defendants, but revised to apply to adjusting firms. Attached as Exhibit 2 is a representative Notice.

A. Topics Relating to Claims Files

Topics 1, 2, 3, and 4 all relate to the “means by which [Defendants] store, organize and retrieve” claims files, which is directly relevant to “defendants’ record keeping and maintenance of ESI.” ESI Order, 9. Testimony on these topics will reveal the format in which the information is maintained, Defendants’ ability to access, search, and display the information, and any associated burden in producing the ESI.

B. Topics Relating to Data Submitted to the United States for the NFIP

“The discovery may include inquiry into how the defendants provide information to the United States for the NFIP.” (Dkt. # 359, p. 9-10) Topics 5 and 9 are directed at that exact information. Topic 5 relates to the means by which Defendants “store, organize and retrieve documents and data related to all payments and/or reimbursements made to [Defendants] under the NFIP.” Topic 9 relates to the “means by which [Defendants] store, organize, and retrieve data sent to or received from FEMA.” Both topics are also consistent with Sedona Principle 12 because they will reveal Defendants’ ability to access, search, and display that information.

C. Topics Relating to Defendants’ Information Technology Systems

Topics 6, 7, 8, 10, 11, 12, 13, and 14 are relevant to Defendants’ general IT systems. They are consistent with the Court’s order permitting Branch to inquire as to “information [that] is contained on the back-up tapes or other long-term media and explain the burden associated with accessing these tapes or media.” ESI Order at 11. They are also consistent with Sedona Principle 12 because they are relevant to Defendants’ burden in producing ESI and their “ability to access, search, and display information.” For example, Topic 11 (relating to document retention practices) will provide information necessary to determine whether a search of back-up tapes and/or long-term media is needed. Topic 14 relates to how Defendants communicated

electronically with their adjusters, which is needed to determine whether those communications can be accessed and searched electronically. For example, if Defendants communicated with adjusters via instant messaging, then Branch needs to determine whether Defendants retained those instant messages and the means by which they can be searched, viewed, and accessed.

D. Topics Relating to Specific Adjusting Issues

Topics 15, 16, 17, and 18 relate to ESI concerning specific adjusting issues. For example, Topic 18 relates to Xactanalysis reports. Standard Fire revealed in its 2006 Market Conduct Examination that these reports “show detailed transactions between the Company and the Independent Adjuster (IA) such as uploading of estimates, return of estimates, and review and approval dates.” Ex. 3, p. 12-13. These reports are not part of the claims files. *Id.* Topic 17 relates to the computer programs that Defendants used to adjust and process claims, which are consistent with Sedona Principle 12 because it will reveal Defendants’ ability to access, search, and display that information, and is relevant to whether Defendants can produce that information in native format. Topic 15 relates to ESI concerning price lists. As Branch explained at the March 3, 2010 Discovery Status Conference, price lists are critical to determine what type of pricing methods Defendants used to adjust flood claims and whether Defendants charged the same price for damaged items when adjusting flood claims as they did when adjusting wind claims, as required by regulations governing NFIP. *See, e.g.*, 44 C.F.R. 62.23(e), (i)(1). Topic 15 will permit Branch to inquire as to the format of the stored price lists, and Defendants’ ability to access, search, and view them. The same is true for Topic 16 relating to ESI concerning Defendants’ calculation of depreciation.

CONCLUSION

The topics identified in Branch’s Notices comply with the Court’s order concerning ESI

and with Sedona Principle 12.³ Branch respectfully requests that the Court order the depositions to proceed as currently scheduled and noticed.⁴

DATED: March 5, 2010

Respectfully submitted,

SUSMAN GODFREY LLP

By: /s/ Matthew R. Berry
Jonathan Bridges (TX #24028835)
jbridges@SusmanGodfrey.com
901 Main Street, Suite 5100
Dallas, Texas 75202-3775

Tibor L. Nagy, Jr. (NY #4508271)
tnagy@SusmanGodfrey.com
654 Madison Ave., 5th Flr
New York, NY 10065

Matthew R. Berry (WA #37364)
mberry@susmangodfrey.com
1201 Third Avenue, Suite 3800
Seattle, WA 98101

and

KANNER & WHITELEY L.L.C.

Allan Kanner (LA #20580)
a.kanner@kanner-law.com
701 Camp Street

³ If the Court concludes that a topic exceeds the scope of the Court's current order, Branch respectfully requests leave to question Defendants on that topic out of efficiency concerns. The depositions will be located in Florida, Massachusetts, Connecticut, Arizona, and Louisiana. It would not be economical for either party to return to those locations for a second round of depositions on ESI.

⁴ Defendants' supplemental objections (Dkt. # 452) are an improper attempt to circumvent the Court's page limitations for objections. The arguments therein are also meritless and border on the frivolous. It is beyond dispute that ANPAC's related entity, ANPAC Louisiana, issued wind policies on exemplar properties. For example, ANPAC was represented by the same counsel when it was sued under the wind policies that it issued on exemplar properties identified in paragraphs 27(a)-(d) of the FAC. *See* Ex. 4 (Complaint, ¶¶ 3-4); Ex. 5 (Answer, p. 6-7) ("The allegations contained in Paragraph 4 of plaintiffs' Petition are admitted to the extent that ANPAC issued a policy of insurance to plaintiffs, Heather and Chris Nguyen"). The case was pending before the Honorable Judge Vance.

New Orleans, LA 70130

and

HERMAN, HERMAN, KATZ & COTLAR, LLP

Stephen J. Herman (LA #23129)

sherman@hhkc.com

Soren E. Gisleson (LA #26302)

sgisleson@hhkc.com

820 O'Keefe Avenue

New Orleans, Louisiana 70113

Attorneys for Plaintiff/Relator

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2010, a copy of the foregoing was served upon Defendants via electronic mail, pursuant to the parties' agreement on e-mail service. I further certify that a true and correct copy of the above also was sent via electronic mail (pursuant to agreement) to Assistant United States Attorney, Jay D. Majors.

/s/ Bianca Nealious

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA,)	
<i>EX REL.</i> BRANCH CONSULTANTS, L.L.C.,)	
)	
<i>Plaintiff</i>)	Case No. 2:06-cv-4091
v.)	
)	
AMERICAN NATIONAL PROPERTY &)	JURY TRIAL DEMANDED
CASUALTY COMPANY, <i>et al.</i>)	
)	
<i>Defendants</i>)	

**NOTICE OF DEPOSITION OF THE CORPORATE REPRESENTATIVE OF
AMERICAN NATIONAL PROPERTY & CASUALTY COMPANY**

TO: Defendant, AMERICAN NATIONAL PROPERTY & CASUALTY COMPANY, by and through its attorneys of record, Larzelere Picou Wells Simpson Lonero, LLC, Two Lakeway Center, 3850 North Causeway Blvd., Suite 100, Metairie, LA 70002.

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Civil Procedure 26 and 30(b)(6), Plaintiff Branch Consultants, L.L.C., (“Branch”) will take the deposition upon oral examination of the corporate representative(s) of Defendant American National Property & Casualty Company (“ANPAC”). The deposition will take place at a mutually agreeable date in March 2010 at a mutually agreeable location, before a notary public or some other officer authorized by law to administer oaths for use at trial and all other permissible purposes.

The deposition will be videotaped and stenographically recorded. The deposition will continue from day to day until completed. ANPAC must designate one or more officers, directors, or managing agents or other persons who consent to testify on its behalf with respect to the topics on Exhibit A to this notice. The persons designated must testify about information known or reasonably available to ANPAC.

DATED: February 26, 2010

Respectfully submitted,

SUSMAN GODFREY LLP

By: /s/ Matthew R. Berry
Jonathan Bridges (TX #24028835)
jbridges@SusmanGodfrey.com
901 Main Street, Suite 5100
Dallas, Texas 75202-3775

Tibor L. Nagy, Jr. (NY #4508271)
tnagy@SusmanGodfrey.com
654 Madison Ave., 5th Flr
New York, NY 10065

Matthew R. Berry (WA #37364)
mberry@susmangodfrey.com
1201 Third Avenue, Suite 3800
Seattle, WA 98101

and

KANNER & WHITELEY L.L.C.

Allan Kanner (LA #20580)
a.kanner@kanner-law.com
701 Camp Street
New Orleans, LA 70130

and

HERMAN, HERMAN, KATZ & COTLAR, LLP

Stephen J. Herman (LA #23129)
sherman@hhkc.com
Soren E. Gisleson (LA #26302)
sgisleson@hhkc.com
820 O'Keefe Avenue
New Orleans, Louisiana 70113

Attorneys for Plaintiff/Relator

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

As used in this Notice, the following terms are defined as follows:

1. “You” or “Your” means Defendant American National Property & Casualty Company, its predecessors, successors, affiliates, subsidiaries, divisions, parent companies, partners, agents, employees, officers, directors, representatives, or beneficiaries.
2. “Federal Emergency Management Agency” or “FEMA” means the federal government agency that contains those government divisions, branches, and programs responsible for the National Flood Insurance Program, including the Mitigation Division and any and all of its branches, divisions, departments, programs, and employees wherever located.
3. “National Flood Insurance Program” or “NFIP” means the federal government program that backs flood insurance policies issued to homeowners across the United States and any and all of its branches, divisions, departments, programs, and employees wherever located.
4. “WYO Insurer” or “Write-Your-Own Insurer” means any insurance company that participated in the W.Y.O. insurance program and issued or sold federally backed Standard Flood Insurance Policies in Louisiana or Mississippi that were in effect at the time of Hurricane Katrina in August of 2005 and includes any such insurance companies’ successors, subsidiaries, departments, divisions and affiliates, and any organization or entity which each such insurance company manages or controls, together with all present and former directors, officers, employees, agents, or representatives.
5. “Claim File” means, without limitation, all documents, all electronically stored information, all communications, and any other materials associated with a particular claim made by an insured under an insurance policy issued by You, including but not limited to federally backed flood insurance policies sold or serviced by You. For federally backed flood insurance

policies, Claim File includes all FEMA forms, including but not limited to forms 81-40, 81-41, 81-41A, 81-43, 81-57, 81-58, 81-41, 81-42, 81-44, 81-42A, 81-98, 81-109, and any re-inspection reports. Claim File also includes all estimates of damage, including preliminary estimates, final estimates, and supplemental estimates.

6. “Communication” means, without limitation, oral or written communications of any kind, such as electronic communications, e-mail, facsimiles, telephone communications, correspondence, exchanges of written or recorded information, or face-to-face meetings.

7. “Document” or “electronically stored information” means, without limitation, the original and all non-identical copies of all items subject to discovery under Rule 34 of the Federal Rules of Civil Procedure and includes letters, correspondence, memoranda, legal pleadings, calendars, diaries, travel records, summaries, records of telephone conversations, telegrams, notes, reports, compilations, notebooks, work papers, graphs, charts, blueprints, books, pamphlets, brochures, circulars, manuals, instructions, ledgers, drawings, sketches, photographs, videotapes, audiotapes, film and sound reproductions, electronic data, e-mails, internal or external websites, videos, CDs, DVDs, computer files and disks, agreements, stored recordings, minutes or other records of meetings, all written or graphic records or representations of any kind, and all mechanical or electronic data, records or representations of any kind.

8. “Identity” or “identify” shall mean when used with reference to:

a. An individual person:

(i) his or her full name;

(ii) his or her present or last known complete home address;

(iii) his or her present or last known complete business address;

(iv) his or her present or last known position, business affiliation and job

description; and

(v) his or her position, business affiliation and job description at the time in question with respect to the document request involved;

b. A document:

(i) its author;

(ii) its subject matter, title, date and total number of pages;

(iii) its type (e.g., letter, memorandum, report, diary) or some other means of recognizing it;

(iv) each and every addressee;

(v) each and every person to whom copies were sent, by whom copies were received, and who you believe may have knowledge of its contents;

(vi) its present location and custodian; and

(vii) its disposition, if no location or custodian is specified.

c. A communication or meeting:

(i) all persons involved in such communication or meeting;

(ii) the date and location of such communication or meeting;

(iii) the substance of the communication; and

(iv) all documents related to such communication or meeting (including, without limitation, all documents recording or summarizing such communication or meeting).

9. “Including” is used to emphasize certain types of documents requested and should not be construed as limiting the request in any way.

10. “Native format” means as to all documents that are created in digital format (including databases, word processing files, spreadsheets, presentations, and e-mail), their native file format – that is, the format designed specifically for the most efficient use of the information (the associated file structure defined by the original creating application). “Native format,” the

original digital format of a file or electronically stored information, typically allows the editing of the file by the software that created it. For example, if a file was created in Microsoft Word and was saved as a Microsoft file, the native format is the Microsoft Word format with the extension “.doc”.

11. “Or” should be construed so as to require the broadest possible response. If, for example, a request calls for information about “A” or “B”, you should produce all information about A and all information about B, as well as all information about, collectively, A and B. In other words, “or” should be read as “and/or.”

12. “Person” means, without limitation, any natural person, government entity, corporation, partnership, limited liability company, proprietorship, joint venture, association, group or other legal form of legal entity.

13. “Relating to,” “referring to,” “regarding,” or “with respect to” means, without limitation, the following concepts: discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting or otherwise involving, in whole or in part.

14. “Hurricane Katrina” means the hurricane that made landfall in southern Louisiana and Mississippi on or about August 29, 2005 and caused damage in Louisiana and Mississippi.

15. “Government” refers to the United States federal government and all of its agencies, including but not limited to FEMA.

16. “Covered Flood Properties” means properties serviced by You under the NFIP for which a claim was made against the NFIP flood policy in connection with Hurricane Katrina.

17. “Covered Flood Claims” means NFIP claims submitted by You to the Government on Covered Flood Properties as a result of claims made in connection with Hurricane Katrina.

18. “Wind Properties” means those properties located in Louisiana for which you provided insurance against wind damage that was effective on August 29, 2005.
19. “Covered Wind Claims” means claims paid by You on Wind Properties as a result of wind damage that occurred in connection with Hurricane Katrina.
20. Unless otherwise noted, the relevant time period for these Topics for Examination is July 1, 2005 through the date of the deposition (the “relevant time period”).
21. “Adjusting Computer Programs” means any program issued by or incorporating the following: Xactware, XacTotal, XactAnalysis, Xactimate, XactNet, Marshall, Swift & Beck, Integra, Simsol, Estimatics or any variation thereof.
22. “Depreciation Information” means all information that relates to Your policies, practices, and procedures for calculating depreciation when adjusting flood claims and/or when adjusting homeowners claims.

TOPICS FOR EXAMINATION

1. The means by which You store, organize and retrieve Claims Files for Covered Flood Properties, including but not limited to:
 - a. Any software used for these purposes.
 - b. The capabilities of any such software.
 - c. The fields of data and types of information stored by You.
 - d. Your capabilities with respect to accessing, navigating, retrieving, searching, organizing and sorting Claims File data.
 - e. The locations at which you store hard copy Claims Files.
 - f. The organization of hard copy Claims Files.

2. The means by which you store, organize and retrieve Claims Files for Wind Properties, including but not limited to:
 - a. Any software used for these purposes.
 - b. The capabilities of any such software.
 - c. The fields of data and types of information stored by You.
 - d. Your capabilities with respect to accessing, navigating, retrieving, searching, organizing and sorting Claims File data.
 - e. The locations at which you store hard copy Claims Files.
 - f. The organization of hard copy Claims Files.

3. The processes by which Claim Files for Covered Flood Properties can be electronically copied or exported from Your system in native format or in a format compatible with Microsoft Excel.

4. The processes by which Claim Files for Wind Properties can be electronically copied or exported from Your system in native format or in a format compatible with Microsoft Excel.

5. The means by which you store, organize and retrieve documents and data related to all payments and/or reimbursements made to You under the NFIP in connection with Covered Flood Properties, including but not limited to:
 - a. Any software used for these purposes.
 - b. The capabilities of any such software.

- c. The fields of data and types of information stored by You.
 - d. Your capabilities with respect to accessing, navigating, retrieving, organizing and sorting such documents and data.
6. Your electronic mail and messaging systems, including but not limited to the means by which you store, organize, archive, and retrieve email.
7. Your system for storing, organizing, and retrieving electronically stored documents.
8. Your system and capabilities for electronically searching emails, including but not limited to term searches.
9. The means by which you store, organize, and retrieve data sent to or received from FEMA, including but not limited to:
 - a. Types of data submitted to FEMA;
 - b. Format of data submitted to FEMA;
 - c. The fields of data; and
 - d. Your system for storing, maintaining, searching, and retrieving data that was submitted to FEMA.
10. The existence, duties, structure, and personnel associated with Your information technology, information systems, or management information systems department or division, and/or any other department or division responsible for the maintenance, storage, preservation, deletion, and/or utilization of Electronically Stored Information.
11. Your Document (and/or Electronic Evidence) retention and/or destruction policies, including but not limited to when a document destruction hold was placed in response to this litigation and how it was implemented.
12. Your computer system configuration, including the structure and use of networks, intranets, desktops, and offsite access, as well application software and utilities.
13. Your policies and practices regarding deletion, back-up, preservation, and storage of electronic data.
14. The means by which you communicated electronically with in-house and independent adjusters, including but not limited to how you exchanged information, data, and electronic documents.
15. Your system for storing, retrieving, and maintaining price lists used for adjusting claims under homeowners policies and flood policies, including but not limited to:
 - a. The format and location of stored price lists;

- b. The means by which you sent or communicated price lists to in-house and/or independent adjusters;
 - c. The means by which you obtained price lists;
 - d. The means by which you edited, modified, and/or altered in any way price lists;
 - e. Your capability for accessing information in stored price lists, including but not limited to your capability of searching price lists, extracting data from price lists, and determining when and how often a particular price list was used.
16. Your system for storing, retrieving, and maintaining Depreciation Information, including but not limited to:
- a. The format and location of stored Depreciation Information;
 - b. The means by which you sent or communicated Depreciation Information to in-house and/or independent adjusters;
 - c. Your capability for accessing stored Depreciation Information, including but not limited to your capability of searching Depreciation Information, and extracting data concerning Depreciation Information.
17. Your use of Adjusting Computer Programs, including but not limited to:
- a. Any software used for these purposes.
 - b. The capabilities of any such software.
 - c. Your ability to customize the software.
 - d. The fields of data and types of information stored by You.
 - e. Your capabilities with respect to accessing, navigating, retrieving, organizing and sorting data in or created by the Adjusting Computer Programs.
 - f. The format and file extensions of reports from Adjusting Computer Programs to which you have access, including but not limited to Xactimate ESX files.
18. The means by which You store, organize and retrieve Xactanalysis reports, including but not limited to:
- a. Your system for maintaining, storing, and retrieving Xactanalysis reports;
 - b. Your ability to create and/or access Xactanalysis reports;
 - c. Your ability to have Xactanalysis reports created for You;
 - d. The possible fields of data contained in Xactanalysis reports.

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA,)	
<i>EX REL.</i> BRANCH CONSULTANTS, L.L.C.,)	
)	
<i>Plaintiff</i>)	Case No. 2:06-cv-4091
v.)	
)	
AMERICAN NATIONAL PROPERTY &)	JURY TRIAL DEMANDED
CASUALTY COMPANY, <i>et al.</i>)	
<i>Defendants</i>)	

**NOTICE OF DEPOSITION OF THE CORPORATE REPRESENTATIVE OF
DEFENDANT COLONIAL CLAIMS CORPORATION**

TO: Defendant, Colonial Claims Corporation, by and through its attorneys of record, Best Koeppel, 2030 St. Charles Ave., New Orleans , LA 70130, 504-598-1000.

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Civil Procedure 26 and 30(b)(6), Plaintiff Branch Consultants, L.L.C., (“Branch”) will take the deposition upon oral examination of the corporate representative(s) of Defendant Colonial Claims Corporation (“Colonial”). The deposition will take place at 9:00 am on March 18, 2010, in Dunedin, Florida, before a notary public or some other officer authorized by law to administer oaths for use at trial and all other permissible purposes.

The deposition will be videotaped and stenographically recorded. The deposition will continue from day to day until completed. Colonial must designate one or more officers, directors, or managing agents or other persons who consent to testify on its behalf with respect to the topics on Exhibit A to this notice. The persons designated must testify about information known or reasonably available to Colonial.

DATED: February 26, 2010

Respectfully submitted,

SUSMAN GODFREY LLP

By: /s/ Matthew R. Berry
Jonathan Bridges (TX #24028835)
jbridges@SusmanGodfrey.com
901 Main Street, Suite 5100
Dallas, Texas 75202-3775

Tibor L. Nagy, Jr. (NY #4508271)
tnagy@SusmanGodfrey.com
654 Madison Ave., 5th Flr
New York, NY 10065

Matthew R. Berry (WA #37364)
mberry@susmangodfrey.com
1201 Third Avenue, Suite 3800
Seattle, WA 98101

and

KANNER & WHITELEY L.L.C.

Allan Kanner (LA #20580)
a.kanner@kanner-law.com
701 Camp Street
New Orleans, LA 70130

and

HERMAN, HERMAN, KATZ & COTLAR, LLP

Stephen J. Herman (LA #23129)
sherman@hhkc.com
Soren E. Gisleson (LA #26302)
sgisleson@hhkc.com
820 O'Keefe Avenue
New Orleans, Louisiana 70113

Attorneys for Plaintiff/Relator

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

As used in this Notice, the following terms are defined as follows:

1. “You” or “Your” means Defendant Colonial Claims Corporation, its predecessors, successors, affiliates, subsidiaries, divisions, parent companies, partners, agents, employees, officers, directors, representatives, or beneficiaries.
2. “Federal Emergency Management Agency” or “FEMA” means the federal government agency that contains those government divisions, branches, and programs responsible for the National Flood Insurance Program, including the Mitigation Division and any and all of its branches, divisions, departments, programs, and employees wherever located.
3. “National Flood Insurance Program” or “NFIP” means the federal government program that backs flood insurance policies issued to homeowners across the United States and any and all of its branches, divisions, departments, programs, and employees wherever located.
4. “WYO Insurer” or “Write-Your-Own Insurer” means any insurance company that participated in the W.Y.O. insurance program and issued or sold federally backed Standard Flood Insurance Policies in Louisiana or Mississippi that were in effect at the time of Hurricane Katrina in August of 2005 and includes any such insurance companies’ successors, subsidiaries, departments, divisions and affiliates, and any organization or entity which each such insurance company manages or controls, together with all present and former directors, officers, employees, agents, or representatives.
5. “Claim File” means, without limitation, all documents, all electronically stored information, all communications, and any other materials associated with a particular claim made by an insured under an insurance policy issued by a WYO Insurer, including but not limited to federally backed flood insurance policies sold or serviced by a WYO Insurer. For federally

backed flood insurance policies, Claim File includes all FEMA forms, including but not limited to forms 81-40, 81-41, 81-41A, 81-43, 81-57, 81-58, 81-41, 81-42, 81-44, 81-42A, 81-98, 81-109, and any re-inspection reports. Claim File also includes all estimates of damage, including preliminary estimates, final estimates, and supplemental estimates.

6. “Communication” means, without limitation, oral or written communications of any kind, such as electronic communications, e-mail, facsimiles, telephone communications, correspondence, exchanges of written or recorded information, or face-to-face meetings.

7. “Document” or “electronically stored information” means, without limitation, the original and all non-identical copies of all items subject to discovery under Rule 34 of the Federal Rules of Civil Procedure and includes letters, correspondence, memoranda, legal pleadings, calendars, diaries, travel records, summaries, records of telephone conversations, telegrams, notes, reports, compilations, notebooks, work papers, graphs, charts, blueprints, books, pamphlets, brochures, circulars, manuals, instructions, ledgers, drawings, sketches, photographs, videotapes, audiotapes, film and sound reproductions, electronic data, e-mails, internal or external websites, videos, CDs, DVDs, computer files and disks, agreements, stored recordings, minutes or other records of meetings, all written or graphic records or representations of any kind, and all mechanical or electronic data, records or representations of any kind.

8. “Identity” or “identify” shall mean when used with reference to:

a. An individual person:

(i) his or her full name;

(ii) his or her present or last known complete home address;

(iii) his or her present or last known complete business address;

(iv) his or her present or last known position, business affiliation and job

description; and

(v) his or her position, business affiliation and job description at the time in question with respect to the document request involved;

b. A document:

(i) its author;

(ii) its subject matter, title, date and total number of pages;

(iii) its type (e.g., letter, memorandum, report, diary) or some other means of recognizing it;

(iv) each and every addressee;

(v) each and every person to whom copies were sent, by whom copies were received, and who you believe may have knowledge of its contents;

(vi) its present location and custodian; and

(vii) its disposition, if no location or custodian is specified.

c. A communication or meeting:

(i) all persons involved in such communication or meeting;

(ii) the date and location of such communication or meeting;

(iii) the substance of the communication; and

(iv) all documents related to such communication or meeting (including, without limitation, all documents recording or summarizing such communication or meeting).

9. “Including” is used to emphasize certain types of documents requested and should not be construed as limiting the request in any way.

10. “Native format” means as to all documents that are created in digital format (including databases, word processing files, spreadsheets, presentations, and e-mail), their native file format – that is, the format designed specifically for the most efficient use of the information (the associated file structure defined by the original creating application). “Native format,” the

original digital format of a file or electronically stored information, typically allows the editing of the file by the software that created it. For example, if a file was created in Microsoft Word and was saved as a Microsoft file, the native format is the Microsoft Word format with the extension “.doc”.

11. “Or” should be construed so as to require the broadest possible response. If, for example, a request calls for information about “A” or “B”, you should produce all information about A and all information about B, as well as all information about, collectively, A and B. In other words, “or” should be read as “and/or.”

12. “Person” means, without limitation, any natural person, government entity, corporation, partnership, limited liability company, proprietorship, joint venture, association, group or other legal form of legal entity.

13. “Relating to,” “referring to,” “regarding,” or “with respect to” means, without limitation, the following concepts: discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting or otherwise involving, in whole or in part.

14. “Hurricane Katrina” means the hurricane that made landfall in southern Louisiana and Mississippi on or about August 29, 2005 and caused damage in Louisiana and Mississippi.

15. “Government” refers to the United States federal government and all of its agencies, including but not limited to FEMA.

16. “Covered Flood Properties” means all properties for which You adjusted damage that was caused by Hurricane Katrina on behalf of a WYO Company in conjunction with the NFIP.

17. “Wind Properties” means all properties for which You adjusted damage that was caused by Hurricane Katrina relating to a homeowners policy.

18. Unless otherwise noted, the relevant time period for these Topics for Examination is July 1, 2005 through the date of the deposition (the “relevant time period”).

19. “Adjusting Computer Programs” means any program issued by or incorporating the following: Xactware, XacTotal, XactAnalysis, Xactimate, XactNet, Marshall, Swift & Beck, Integra, Simsol, Estimatics or any variation thereof.

20. “Depreciation Information” means all information that relates to Your policies, practices, and procedures for calculating depreciation when adjusting flood claims and/or when adjusting homeowners claims.

TOPICS FOR EXAMINATION

1. The means by which You store, organize and retrieve Claims Files for Covered Flood Properties, including but not limited to:
 - a. Any software used for these purposes.
 - b. The capabilities of any such software.
 - c. The fields of data and types of information stored by You.
 - d. Your capabilities with respect to accessing, navigating, retrieving, searching, organizing and sorting Claims File data.
 - e. The locations at which you store hard copy Claims Files.
 - f. The organization of hard copy Claims Files.

2. The means by which you store, organize and retrieve Claims Files for Wind Properties, including but not limited to:
 - a. Any software used for these purposes.
 - b. The capabilities of any such software.
 - c. The fields of data and types of information stored by You.
 - d. Your capabilities with respect to accessing, navigating, retrieving, searching, organizing and sorting Claims File data.
 - e. The locations at which you store hard copy Claims Files.
 - f. The organization of hard copy Claims Files.

3. The processes by which Claim Files for Covered Flood Properties can be electronically copied or exported from Your system in native format or in a format compatible with Microsoft Excel.

4. The processes by which Claim Files for Wind Properties can be electronically copied or exported from Your system in native format or in a format compatible with Microsoft Excel.

5. The means by which you store, organize and retrieve documents and data related to all payments and/or reimbursements made to You under the NFIP in connection with Covered Flood Properties, including but not limited to:
 - a. Any software used for these purposes.
 - b. The capabilities of any such software.

- c. The fields of data and types of information stored by You.
 - d. Your capabilities with respect to accessing, navigating, retrieving, organizing and sorting such documents and data.
6. Your electronic mail and messaging systems, including but not limited to the means by which you store, organize, archive, and retrieve email.
7. Your system for storing, organizing, and retrieving electronically stored documents.
8. Your system and capabilities for electronically searching emails, including but not limited to term searches.
9. The means by which you store, organize, and retrieve data sent to or received from FEMA and/or Defendant Insurers, including but not limited to:
 - a. Types of data submitted to FEMA and/or Defendant Insurers;
 - b. Format of data submitted to FEMA and/or Defendant Insurers;
 - c. The fields of data; and
 - d. Your system for storing, maintaining, searching, and retrieving data that was submitted to FEMA and/or Defendant Insurers.
10. The existence, duties, structure, and personnel associated with Your information technology, information systems, or management information systems department or division, and/or any other department or division responsible for the maintenance, storage, preservation, deletion, and/or utilization of Electronically Stored Information.
11. Your Document (and/or Electronic Evidence) retention and/or destruction policies, including but not limited to when a document destruction hold was placed in response to this litigation and how it was implemented.
12. Your computer system configuration, including the structure and use of networks, intranets, desktops, and offsite access, as well application software and utilities.
13. Your policies and practices regarding deletion, back-up, preservation, and storage of electronic data.
14. The means by which you communicated electronically with Your adjusters and/or Insurer Defendants, including but not limited to how you exchanged information, data, and electronic documents.
15. Your system for storing, retrieving, and maintaining price lists used for adjusting claims under homeowners policies and flood policies, including but not limited to:
 - a. The format and location of stored price lists;
 - b. The means by which you sent or communicated price lists to Insurer Defendants;

- c. The means by which you obtained price lists;
 - d. The means by which you edited, modified, and/or altered in any way price lists;
 - e. Your capability for accessing information in stored price lists, including but not limited to your capability of searching price lists, extracting data from price lists, and determining when and how often a particular price list was used.
16. Your system for storing, retrieving, and maintaining Depreciation Information, including but not limited to:
- a. The format and location of stored Depreciation Information;
 - b. The means by which you sent or communicated Depreciation Information to Insurer Defendants;
 - c. Your capability for accessing stored Depreciation Information, including but not limited to your capability of searching Depreciation Information, and extracting data concerning Depreciation Information.
17. Your use of Adjusting Computer Programs, including but not limited to:
- a. Any software used for these purposes.
 - b. The capabilities of any such software.
 - c. Your ability to customize the software.
 - d. The fields of data and types of information stored by You.
 - e. Your capabilities with respect to accessing, navigating, retrieving, organizing and sorting data in or created by the Adjusting Computer Programs.
 - f. The format and file extensions of reports from Adjusting Computer Programs to which you have access, including but not limited to Xactimate ESX files.
18. The means by which You store, organize and retrieve Xactanalysis reports, including but not limited to:
- a. Your system for maintaining, storing, and retrieving Xactanalysis reports;
 - b. Your ability to create and/or access Xactanalysis reports;
 - c. Your ability to have Xactanalysis reports created for You;
 - d. The possible fields of data contained in Xactanalysis reports.

EXHIBIT 3



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON, COMMISSIONER

P.O. Box 94214
BATON ROUGE, LOUISIANA 70804-9214
PHONE (225) 342-5900
FAX (225) 342-3078
<http://www.lidi.state.la.us>

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CERTIFIED RECEIPT NUMBER 70041160000329589463

May 10, 2007

Mr. Brian William MacLean, CEO and President
The Standard Fire Insurance Company
One Tower Square
Hartford, CT 06183-6014

Re: Market Conduct Examination – Louisiana Operations Only
The Standard Fire Insurance Company
One Tower Square
Hartford, CT 06183-6014
NAIC #: 19070
Our File #: MCD-06-006

Dear Mr. MacLean:

Enclosed is a copy of the adopted Examination Report of your Company. This report is now a public document.

Should you have any questions, please feel free to contact me at (225) 342-9173.

Sincerely,

A handwritten signature in cursive script that reads "Larry Hawkins".

Larry Hawkins
Director, Market Conduct Division
Office of Financial Solvency

LH: me

Enclosure

CC: Joseph Wiest, Director of Market Conduct Regulatory Compliance & Market Conduct
Travelers
One Tower Square, 5GS
Hartford, CT 06183
Certified Receipt #: 70041160000329589470

REPORT OF EXAMINATION

OF THE

MARKET CONDUCT AFFAIRS

OF

THE STANDARD FIRE INSURANCE COMPANY

HARTFORD, CONNECTICUT

AS OF

April 30, 2006

NAIC CODE 19070

NAIC ETS EXAM NO. LA071-M51

TABLE OF CONTENTS

SUBJECT PAGE NO.

Salutation...3

Foreword...4

Purpose and Scope of Market Conduct Examination...4

Company Operations...5

 Company History...5

 Hurricane Claims Handling...6

Claims Review...7

Comments and Recommendations...13

Conclusion...15

Appendix A – Summary of Claims by Louisiana Parish...16

Appendix B – Map of Louisiana Highlighting Claims Reported by Parish...18



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON, COMMISSIONER

P.O. Box 94214
BATON ROUGE, LOUISIANA 70804-9214
PHONE (225) 342-5900
FAX (225) 342-3078
<http://www.ldi.state.la.us>

December 27, 2006

Honorable James J. Donelon
Commissioner of Insurance
P O Box 94214
Baton Rouge, Louisiana 70804-9214

Sir:

Pursuant to statutory provisions and in compliance with your instructions, a limited market conduct examination has been made of the affairs of

THE STANDARD FIRE INSURANCE COMPANY
ONE TOWER SQUARE
HARTFORD, CONNECTICUT 06183-6014

as of April 30, 2006 and the report of examination is herewith submitted.

FOREWORD

A target market conduct examination was performed of the activities of The Standard Fire Insurance Company from August 28, 2005 through April 30, 2006. The examination was performed by test and all tests applied during the examination are included in this report.

PURPOSE AND SCOPE OF MARKET CONDUCT EXAMINATION

In accordance with **LRS 22:1301 et. seq.**, the market conduct examination of The Standard Fire Insurance Company, hereinafter referred to as ("Company"), was a limited target market conduct examination authorized by the Louisiana Department of Insurance ("Department") to examine the handling of claims resulting from Hurricanes Katrina and Rita.

The purpose of this examination was to review compliance by the Company with Louisiana Insurance Laws, Regulations, Directives and the National Association of Insurance Commissioners ("NAIC") Guidelines. The NAIC Guidelines set the standards of conduct for a property and casualty insurer and promote a program of fair treatment of policyholders. Portions of the *NAIC Market Conduct Examiner's Handbook, Volume I* were used as a measure of compliance.

The ACL Program, a data manipulation program, provided by the Louisiana Department of Insurance was utilized in this examination. Samplings were utilized to test the Company's records and procedures. The ACL Program was used to automatically generate a random sampling of claims records. "Random" is a theoretical concept

meaning that all items in a population or file (before selection) have an equal chance of appearing in the sampling.

Generally, a random or systematic sampling size of sixty (60) records will be selected for review. A minimum confidence level of ninety-five percent (95%) with a maximum error rate of five percent (5%) will be used for all samples.

The examination included, but was not limited to, the following areas of the Company's operation:

- Company Operations and
- Claims

COMPANY OPERATIONS

Company History

The Standard Fire Insurance Company was incorporated on July 6, 1905 and commenced business on March 26, 1910 under the laws of Connecticut. The Company is wholly owned by Travelers Insurance Group Holdings Inc., a wholly-owned subsidiary of Travelers Property Casualty Corp.

Travelers Property Casualty Corp., a direct, wholly-owned subsidiary of The St. Paul Travelers Companies, Inc., is a property-casualty insurance holding company engaged, through its subsidiaries, in two business segments: Commercial Lines and Personal Lines.

On April 2, 1996, Travelers Property Casualty Corp. purchased the property and casualty business of The Aetna Casualty and Surety Company and its property-casualty affiliates. On April 1, 2004, Travelers Property Casualty Corp. merged with The St. Paul Companies and is now known as The St. Paul Travelers Companies, Inc.

Hurricane Claims Handling

Immediately after Hurricane Katrina made landfall on August 29, 2005, the Company began issuing Additional Living Expense (ALE) advances to customers submitting claims in need in areas of devastation. Unable to enter the affected areas, the Company leased 5,000 square feet of space in Houston to add additional staff to service customers in Louisiana. Five catastrophe vans manned by Company staff deployed to the devastated areas to take new notices of loss, process claims, and provide advances to customers in need. The staffing in August consisted of 25 unit managers and 550 claim handlers.

In September, two of the five catastrophe (CAT) vans were redeployed more closely to the heavily affected areas. Teams were established in other claim centers to assist with initial contacts and to manage lower value claims. Customer inquiry units were established in the Houston and Orlando CAT offices. An additional 5,500 square feet of space was leased to the Houston CAT office. When the New Orleans area became accessible, the CAT team moved in and established a satellite claim operation. The staff was increased in September to 950 total personnel.

In October, an additional 7,000 square feet was leased in the Houston CAT office. Total staff was increased to 1,100.

In January 2006, a temporary claim location was established in downtown New Orleans and a dedicated mediation claim unit was established to respond to requests for mediation. In March 2006, a second claim center was established in the New Orleans area.

CLAIMS REVIEW

The Company provided a file of all claims for Hurricanes Katrina and Rita from August 28, 2005 through April 30, 2006. The file was analyzed using ACL and the following categories and amounts were found:

<u>Type of Claim</u>	<u>No. of Claim Payments</u>	<u>Paid Amount</u>
Closed with Payment	24,065	\$116,224,933
Open	1,895	\$17,850,377
Closed without Payment	39	0
Flood Damage*	<u>25</u>	<u>\$68,650</u>
Total	26,024	\$134,143,960

* It should be noted that the above "Flood Damage Claims" are not actually flood claims but are denied claims based on the fact that the damage is due to flood which is not a covered peril.

The following table shows the time elapsed to process and pay the claims from the date received:

Homeowner's Claims

36% were paid within 30 days
 15% were paid within 60 days
 15% were paid within 90 days
 15% were paid within 120 days
 8% were paid within 150 days
 5% were paid within 180 days
 6% were paid after 180 days

The Company provided the following information concerning mediated and litigated CAT claims:

Number of claims that went to mediation	99
Number of claims that went to litigation	0
Number of claims where mediation was requested by the policyholder	99
Number of claims that were settled in mediation	81
Number of claims awaiting mediation as of April 30, 2006	117

Number of claims awaiting mediation as of July 31, 2006	45
Number of claims awaiting litigation as of April 30, 2006	2
Number of claims awaiting litigation as of July 31, 2006	6

The Company provided the following information as of August 31, 2006:

Number of claims incurred	10,640
Number of claims paid and closed	10,087
Number of claims closed without payment	43
Number of claims remaining open	510
Dollar amount of claims incurred	\$765,945,584
Dollar amount of claims paid and closed	\$611,031,005
Dollar amount of claims unpaid (reserve)	\$15,283,278

Closed Claims Review

A random sample of sixty (60) closed paid claims was selected from a listing provided by the Company for the period of August 28, 2005 through April 30, 2006. The files were reviewed to determine the time taken to pay the claims and to determine if the files contained adequate documentation. Also, the files were reviewed to determine if the adjustment of the claims was conducted in accordance with the statutes and regulations.

It was found that five (5) claims in the sample were not paid within the thirty (30) day time period as required by the statutes. This is not in compliance with **LRS 22:658 A(1)** which states:

"All insurers issuing any type of contract, other than those specified in R.S.22:656, R.S. 22:657, and Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, shall pay the amount of any claim due any insured within thirty days after receipt of satisfactory proofs of loss from the insured or any party in interest."

It is recommended that the Company implement procedures to ensure that all claims are paid in accordance with the above statute.

The Company provided a response that stated that they have reviewed the events that occurred after the hurricanes and have implemented enhancements to their workflow processes and claims systems. These enhancements include measures to reduce the

reliance on independent adjusters and updates to the Company's claim system that will allow quicker review of data from outside adjusters and independent adjusting firms, a reason code to be entered for those claims open for greater than thirty (30) days, and an update to enhance the receipt of completed claim estimates.

All of the claims in this sample were paid in an average of twelve (12) days after receipt of proof of loss from the adjuster.

It was found that the initiation of the loss adjustment for all of the claims in the sample was started within thirty (30) days after notification of the loss as required by the statutes. The initiation of the loss adjustment of the claims in the sample was started in an average of one (1) day after notification of the loss.

Open Claims Review

A random sample of sixty (60) open paid claims was selected from a listing provided by the Company for the period of August 28, 2005 through April 30, 2006. The files were reviewed to determine the time it took to pay the claims and to determine if the files contained adequate documentation. Also, the files were reviewed to determine if the adjustment of the claims was conducted in accordance with the statutes and regulations. It was noted that thirty-six (36) of these claims had been closed by the time of the review.

It was found that five (5) claims in the sample were not paid within the thirty (30) day time period as required by the statutes. This is not in compliance with **LRS 22:658 A(1)** which states:

"All insurers issuing any type of contract, other than those specified in R.S.22:656, R.S. 22:657, and Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, shall pay the amount of any claim due any insured within thirty days after receipt of satisfactory proofs of loss from the insured or any party in interest."

It is recommended that the Company implement procedures to ensure that all claims are paid in accordance with the above statute.

The Company provided a response that stated that they have reviewed the events that occurred after the hurricanes and have implemented enhancements to their workflow processes and claims systems. These enhancements include measures to reduce the reliance on independent adjusters and updates to the Company's claim system that will allow quicker review of data from outside adjusters and independent adjusting firms, a reason code to be entered for those claims open for greater than thirty (30) days, and an update to enhance the receipt of completed claim estimates.

All of the claims in this sample were paid in an average of ten (10) days after receipt of proof of loss from the adjuster.

It was found that the initiation of the loss adjustment for all of the claims in the sample was started within thirty (30) days after notification of the loss as required by the statutes. The initiation of the loss adjustment of the claims in the sample was started in an average of one (1) day after notification of the loss.

Denied Claims Review

The claims file provided by the Company contained two groups of denied claims, thirty-nine (39) claims closed without payment and thirteen (13) flood damage claims. The number of claims in these groups was below sixty (60) each so selecting a sample was not necessary. All of the claims in these two groups were reviewed to determine the reason for closure or denial. The following tables show the reasons for the closure or denial of the claims in these two groups:

Closed Without Payment

<u>Reason for Closure or Denial</u>	<u>Number of Claims</u>
Wind loss less than deductible	16
Flood loss denied, wind loss less than deductible	8
Duplicate claims	6
Theft claims without proof of loss	4
Flood loss only	2
Policy not in effect (boat)	1
Paid claim (not a denied claim)	1
Pre-existing damage	<u>1</u>
Total	39

Flood Damage Claims

<u>Reason for Closure or Denial</u>	<u>Number of Claims</u>
Wind loss less than deductible, ALE paid	9
Flood loss denied, wind loss less than deductible and ALE paid	2
Policy cancelled by insured before loss	1
No damage, ALE paid	<u>1</u>
Total	13

It should be noted that the above "Flood Damage Claims" are not actually flood claims but are denied claims based on the fact that the damage is due to flood which is not a covered peril. This review was completed without any exceptions.

Additional Living Expense

The Company provided Additional Living Expense (ALE) to any insured who had evacuated from their home from the time of evacuation until the first inspection was made. In most cases, an initial payment of \$2,000 was issued as soon as the insured notified the Company that they had evacuated. Then additional ALE payments were made if the insured could not return to their home. The ALE was calculated at \$1,000 per week. If, after the inspection was made, the cause of the damage was determined to

be flood (not a covered peril), then the ALE payments were stopped at that point but the Company allowed the insureds to keep the ALE payments that they had already received. There were no exceptions found in the handling of the ALE payments.

General Comments

Some of the claims files presented to the examiner were not complete as they did not contain estimates of the damages. In other cases, the files did not contain the payment register or the diary notes. The Company was able to find this information when it was requested by the examiner. When exceptions were issued to the Company, they responded by providing some additional information that had not been provided in the original claim files. It appears that there was information available as scanned documents in the computer systems or available on other websites that had not been printed out for the claims files.

When the examiner returned to New Orleans on October 18, 2006 to further review the exceptions, the files did not contain information to verify the dates listed in the Company's response. After discussing this with the Company, they provided information from xactware.com which is the estimating system vendor. The reports are called Xactanalysis and show detailed transactions between the Company and the Independent Adjuster (IA) such as uploading of estimates, return of estimates, and review and approval dates. The file notes do not document all of the events which occur. More detail is found on the website of the estimating vendor and the website of the IA (Worley).

The Company provided the following response to a request to explain the missing information in the files:

"It was necessary to gather and reproduce much of the documentation that is stored electronically for the 185 files, which were part of the selected sample for this examination, within a very short time period. In doing so some of the information was not initially retrieved and printed. This information was available and retrieved as it was noted during the review."

"We also have access to property claim data in Xactanalysis which is a window into XactNet, a vendor website used to track and view our property claim information. Xactanalysis data is not part of the claim file. We can go to the website to validate some dates if they are not found in the claim file but it is not part of the file."

The Company's response satisfied the Department's concerns and seemed reasonable under the circumstances.

COMMENTS AND RECOMMENDATIONS

CLAIMS REVIEW

It was found that five (5) claims in the closed claims sample were not paid within the thirty (30) day time period as required by the statutes. This is not in compliance with **LRS 22:658 A(1)**. It is recommended that the Company implement procedures to ensure that all claims are paid in accordance with the above statute.

It was found that five (5) claims in the open claims sample were not paid within the thirty (30) day time period as required by the statutes. This is not in compliance with **LRS 22:658 A(1)**. It is recommended that the Company implement procedures to ensure that all claims are paid in accordance with the above statute.

CONCLUSION


I, Richard S. Robison, do solemnly swear and affirm that I am an examiner for the Commissioner of Insurance of the State of Louisiana and that, as such, I was assigned to conduct an examination of the market conduct activities of

**THE STANDARD FIRE INSURANCE COMPANY
HARTFORD, CONNECTICUT**

That I made such examination and the above and foregoing is a true and correct copy of my report of such company and the same is true and correct to the best of my knowledge, information and belief.

Boyd A. Higgins, Contract Market Conduct Examiner with the Louisiana Department of Insurance also participated in the examination and joins the undersigned in acknowledging the courteous cooperation of the Company's Officers and Employees.

Respectfully submitted,


Richard S. Robison
Louisiana Department of Insurance

APPENDIX A

Summary of Claims by Louisiana Parish

<u>Parish</u>	<u>Claim Count</u>	<u>Claim Amount</u>
ORLEANS	3,172	49,142,828
JEFFERSON	3,473	42,361,010
ST. TAMMANY	786	12,950,847
ST. BERNARD	642	7,744,289
WASHINGTON	319	4,873,638
CALCASIEU	324	4,677,875
EAST BATON ROUGE	435	2,749,384
TANGIPAHOA	153	1,196,403
LAFOURCHE	171	1,032,910
PLAQUEMINES	70	842,818
ST. CHARLES	103	797,515
TERREBONNE	98	769,083
ST. JOHN THE BAPT	91	637,914
LIVINGSTON	98	569,372
JEFFERSON DAVIS	59	491,946
ASSUMPTION	63	408,447
LAFAYETTE	50	264,766
VERMILION	56	258,134
BEAUREGARD	23	255,582
RAPIDES	49	240,919
IBERIA	39	191,790
ST. JAMES	21	184,642
VERNON	25	179,180
ACADIA	28	171,272
CADDO	32	129,125
ST. LANDRY	18	106,795
ALLEN	9	100,824
ASCENSION	21	99,891
ST. MARY	19	98,485
IBERVILLE	12	69,064
EAST FELICIANA	8	68,821
NATCHITOCHE	10	61,634
SABINE	12	61,624
ST. HELENA	9	58,301
WEST BATON ROUGE	12	55,258
AVOUELLES	9	39,847
BOSSIER	14	37,508
GRANT	5	27,004
CONCORDIA	1	21,247
EVANGELINE	2	20,826

<u>Parish</u>	<u>Claim Count</u>	<u>Claim Amount</u>
POINTE COUPEE	4	17,339
WEST FELICIANA	3	16,598
RED RIVER	2	10,513
LA SALLE	1	8,192
ST. MARTIN	1	7,858
WINN	2	7,427
OUACHITA	1	7,122
WEBSTER	2	5,613
DE SOTO	1	5,268
WEST CARROLL	1	3,888
BIENVILLE	1	2,975
JACKSON	1	<u>2,349</u>
Total	10,561	134,143,960

Note: The above claim information was prepared based on data provided by The Standard Fire Insurance Company.

APPENDIX B

Map of Louisiana Highlighting Claims Reported by Parish

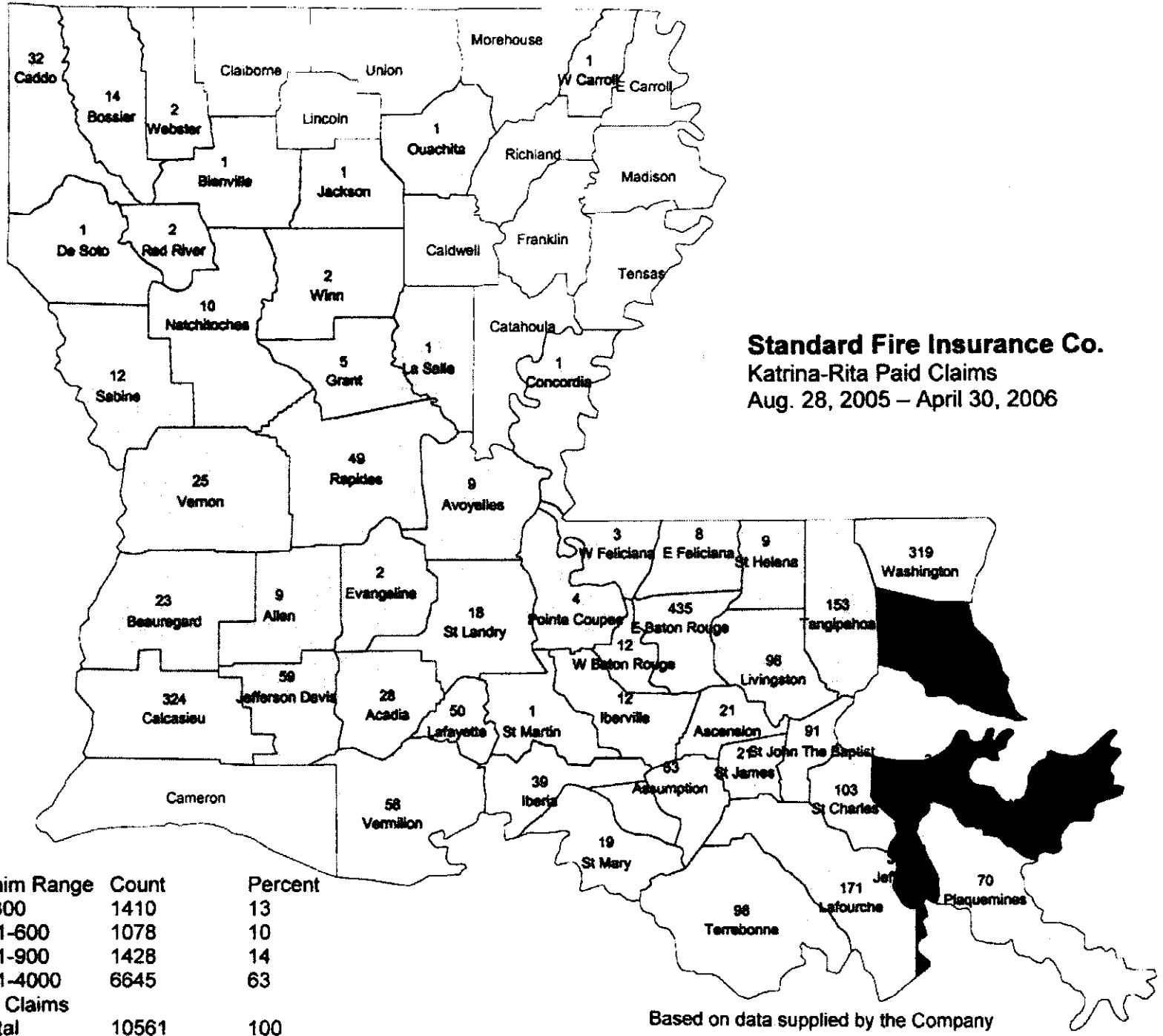


EXHIBIT 4

FILED

AUG 24 P 1:52

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
CIVIL DISTRICT COURT
STATE OF LOUISIANA

NO. 06-7223

DIVISION G-11

HURRICANE LITIGATION

Heather Nguyen, wife of/and Chris Nguyen

versus

ANPAC Louisiana Insurance Company a/k/a American National
Property and Casualty Company

CIVIL DISTRICT COURT
CLERKS FEE 338.00

AUG 23 11:53 PAID

J. Campbell
PAID

FILED: _____

DEPUTY CLERK

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, come Petitioners, Heather Nguyen, wife of/and Chris Nguyen, persons of the full age of majority, residents of and domiciled in the Parish of Orleans, State of Louisiana, who respectfully represent the following:

1.

Made defendant herein is ANPAC Louisiana Insurance Company, a/k/a American National Property and Casualty Company, a foreign insurer authorized to do and doing business in the Parish of Orleans, State of Louisiana.

2.

Venue is proper in Orleans Parish because it is location of the insured property.

3.

At all material times herein, Petitioners were the owners of the immovable property located at 4870, 4900, 4910, 4920 Alsace Street, New Orleans, Louisiana, 70129, a four-plox situated in the Parish of Orleans, State of Louisiana. Petitioners also owned some of the contents and other property situated at, in or upon the insured property. Petitioners rented this property to various tenants at all times pertinent to this claim.

4.

Defendant insured Petitioners under a policy of insurance that was in full force and effect at all pertinent times herein, and specifically on August 29, 2005.



5.

On August 29, 2005, Petitioners suffered extensive wind damage to their property and its contents at 4870, 4900, 4910, 4920 Alsace Street as a result of hurricane Katrina.

6.

Petitioners' property was totally destroyed, damaged or otherwise rendered useless by wind, rain, and other covered perils under the policy.

7.

The damage to Petitioners' property was caused solely by wind and rain and other covered perils. There was no flooding inside the units due to rising waters. The wind damage to Petitioners property includes the following:

- a) Many shingles were blown off of the property, requiring total replacement of the roof shingles;
- b) The felt and sheathing on the roof were badly damaged;
- c) A wind-drive turbine vent and some plumbing stacks were blown away;
- d) Most windows were blown out; and
- e) Numerous storm-related penetrations through the structure's otherwise waterproof "skin" allowed wind-driven rain to saturate the insulation, drywall, and paint finishes of the interior of the dwelling, together with its contents.

8.

Hurricane-force winds blew shingles and other items from neighboring properties into Petitioners' property, resulting in additional damage from flying debris.

9.

Other structures and items, at or upon Petitioners' property, together with their contents, were also destroyed by covered perils.

10.

The policy issued by Defendant to Petitioners is governed by La.R.S. 22:695, et seq.

11.

In its policy issued to Petitioners, Defendant agreed to pay for direct physical loss of, or damage to Petitioners' insured property resulting from a covered loss such as a windstorm, as well as damage to personal property and/or contents, additional expenses, loss of rents, loss of use, as well as various other coverages as set forth in the policy. Petitioners plead the policy, a

written document, as the best evidence of all terms and conditions of said policy, and plead the policy as if copied herein in extenso.

12.

Defendant placed a valuation upon Petitioners' property covered by the policy including the dwelling, other structures and contents. Defendant used such valuation of property for the purpose of determining the premium charged for the policy.

13.

Neither the policy issued to Petitioners by Defendant nor the application therefor set forth a clear and unambiguous different method of computing the value of said loss other than to use the valuation placed upon the property by Defendant in order to determine the premium.

14.

There is no criminal fault on the part of the insureds (Petitioners), or the assigns of the insureds in the case of this covered loss.

15.

The policy issued by Defendant to Petitioners was issued or renewed after January 1, 1992.

16.

The policy issued by Defendant to Petitioners is not a blanket-form policy or a builder's risk policy of insurance.

17.

Defendant is liable for the amount of Petitioners' total loss, valued per La.R.S. 22:695.

18.

Petitioners or their assigns have submitted proof of loss to Defendants. Defendant has received Petitioners' proof of loss. Defendant has not asked Petitioners for additional proof of loss.

19.

More than thirty (30) days have elapsed since Defendant or its agent has received Petitioners' satisfactory proof of loss on their claim.

20.

In the event of a catastrophic loss, LSA-R.S. 22:658 A(3) requires an insurer to initiate loss adjustment within 30 days after notification of the loss by the claimant. This statute also

provides that failure to comply with this provision shall subject the insurer to penalties set forth in LSA-R.S. 22:1220. Upon information and belief, Defendant did not initiate loss adjustment within thirty days of notification of the loss by the Petitioners so it is subject to the penalties set forth in LSA-R.S. 22:1220.

21.

LSA-R.S. 22:658 A(4) requires an insurer to make a written offer to settle within thirty 30 days of receipt of satisfactory proof of loss. Defendant did not make a written offer to settle within thirty days of receipt of satisfactory proof of loss from Petitioners and therefore breached this obligation. Such breach was arbitrary, capricious, and/or without probable cause, so Defendant is therefore subject to penalties as set forth in this statute.

22.

LSA-R.S. 22:658 B provides that the failure to make a payment within 30 days of receipt of satisfactory proof of loss or failure to make a written offer to settle a property damage claim within 30 days after receipt of satisfactory proof of loss, when found to be arbitrary, capricious or without probable cause, shall subject the insurer to a penalty in addition to the amount of the loss of 25% of amount due or \$1,000 or in the event a partial payment or tender has been made, twenty-five (25%) percent of the difference between the amount paid or tendered and the amount found to be due. Defendant did not make a payment or make a written offer to settle within thirty days of receipt of or satisfactory proof of loss from Petitioners. Such failure was arbitrary, capricious, and/or without probable cause, so it is liable for a penalty of 25% of the amount due. Petitioners aver that any breach of this statute subsequent to August 15, 2006 will entitle it to penalties of 50%, not 25%, of the amount due.

23.

LSA-R.S. 22:1220 provides that an insurer owes to his insured a duty of good faith and fair dealing and that an insurer has an affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims with the insured. Defendant did not exercise good faith and fair dealing with the insured in the subject claim. Likewise, it did not adjust the claim fairly and promptly and make a reasonable effort to settle claims with the insured, so it is liable for the damages sustained as a result of the breach.

24.

LSA-R.S. 22:1220 B(5) provides that the failure to pay the amount of any claim due any insured within sixty days after receipt of satisfactory proof of loss, when such failure is arbitrary, capricious, or without probable cause, if knowingly committed or performed, is a breach of the duty imposed in LSA-R.S. 22:1220(A). Defendant breached its duty to Petitioners because it did not pay the claim within sixty days after receipt of satisfactory proof of loss, and such act was knowingly performed or committed, and such failure was arbitrary, capricious, and/ or without probable cause.

25.

LSA-R.S. 22:1220 provides that in addition to any general or special damages to which a claimant is entitled for breach of the imposed duty, the claimant may be awarded penalties assessed against the insurer in an amount not to exceed two times the damages sustained or \$5,000 (five thousand dollars,) whichever is greater. Because Defendant breached its duties imposed by this statute, Petitioners should be awarded penalties in an amount not to exceed two times the damages sustained or five thousand dollars, whichever is greater.

26.

The policy that Defendant issued to Petitioners provides for an additional twenty-five (25%) percent increase in coverage limits in the event that there is a loss to the dwelling that exceeds the policy limits. Petitioners' loss exceeds the policy limits for the dwelling and Petitioners are therefore entitled to a 25% increase in its coverage limits.

27.

As a result of the total damage and destruction to Petitioners' property at 4870, 4900, 4910, 4920 Alsace Street they sustained loss of use of said property, loss of rents from the property and they also incurred additional expenses.

28.

To the extent that any provision in the policy requires action that was or is impossible or impractical due to the conditions in post-Katrina New Orleans, such provisions are in contravention of public policy. The failure to comply, in full or in part, when such action was or is impossible or impractical due to the conditions in post-Katrina New Orleans, should be excused.

29.

Any requirement in the insurance policy that the insured commence to repair or rebuild within 180 days of the loss in order to recover depreciation is impractical, if not impossible, in post-Katrina New Orleans. As such, this requirement should be stricken from the policy. Alternatively, Petitioners affirmatively plead the doctrine of *contra non valentem* as a bar to their performance and their lack of compliance, if any, should be excused.

30.

Petitioners have fully and/or materially complied with all requirements of the policy of insurance. Any purported non-compliance with any policy provision is an immaterial non-compliance.

31.

The amount in controversy exceeds the requisite amount for trial by jury.

32.

Petitioners have made amicable demand to no avail.

33.

Petitioners pray for expedited hearing under CDC's Expedited Hurricane Litigation Program.

34.

Petitioners seek a judgment for monetary damages including, but not limited to, the cost of repairs and/or replacement for the property and its contents, recovery of depreciation, additional expenses, damages for loss of use of the property, litigation expenses, penalties, attorneys' fees, court costs and interest, as well as all general and equitable relief.

WHEREFORE, Petitioners, Heather Nguyen wife of/and Chris Nguyen, pray that defendant, ANPAC Louisiana Insurance Company a/k/a American National Property and Casualty Company, be served with a copy of and duly cited to appear and answer this Petition, and after due proceedings had, there be judgment herein in favor of Petitioners and against Defendant in an amount to be determined by this Court, including but not limited to the cost of repairs and/or replacement for the property and its contents, recovery of depreciation, additional expenses, damages for loss of use of the property, litigation expenses, penalties, attorneys' fees, court costs and interest, as well as all general and equitable relief.

Respectfully submitted,

Halpern & Martin, L.L.C.



David J. Halpern (Bar No. 6452)
Maryann G. Hoskins (Bar No. 20869)
3900 North Causeway Boulevard
One Lakeway Center, Suite 605
Metairie, Louisiana 70002
Telephone: (504) 835-6705
Telefax: (504) 831-2609
*Attorneys for Heather Nguyen, wife of and
Chris Nguyen*

EXHIBIT 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

HEATHER NGUYEN wife of/and CHRIS
NGUYEN

Plaintiffs

VERSUS

ANPAC LOUISIANA INSURANCE
COMPANY a/k/a AMERICAN NATIONAL
PROPERTY and CASUALTY COMPANY

Defendant

CIVIL ACTION NO.: 06-7961

SECTION: "R"(5)

JUDGE: HON. SARAH S. VANCE

MAGISTRATE:
HON. ALMA L. CHASEZ

**ANSWER TO PETITION AND
REQUEST FOR TRIAL BY JURY**

NOW INTO COURT, through undersigned counsel, comes ANPAC Louisiana Insurance Company ("ANPAC"), incorrectly referred to as ANPAC Louisiana Insurance Company a/k/a American National Property and Casualty Company, named as defendant herein, who for answer to the Petition filed by plaintiffs, Heather Nguyen and Chris Nguyen, respectfully avers as follows:

FIRST DEFENSE

The plaintiffs' Petition fails to state a cause of action upon which relief may be granted.

SECOND DEFENSE

The plaintiffs' Petition fails to state a right of action for which relief and remedy may be granted.

THIRD DEFENSE

Venue is proper in this judicial district under 28 U.S.C. § 1441. This civil action was removed from the Civil District Court for the Parish of Orleans, State of Louisiana, which is within the jurisdiction of the United States District Court for the Eastern District of Louisiana.

FOURTH DEFENSE

If plaintiffs suffered any damages as alleged, which is denied, such damages were caused in whole or in part by the actions or inactions of third parties, and not defendant herein.

FIFTH DEFENSE

If plaintiffs suffered any damages as alleged, which is denied, such damages were caused in whole or in part by plaintiffs, and plaintiffs failed to mitigate their damages, which is a complete bar or diminution to plaintiffs' damages, if any.

SIXTH DEFENSE

ANPAC hereby pleads, as if set forth herein *in extenso*, the policy of insurance which it issued to plaintiffs, including any and all provisions, limitations, exclusions, and/or endorsements to said policy, which are the best evidence of said policy.

SEVENTH DEFENSE

Plaintiffs' claims are barred or diminished by the "**Ordinance or Law**" provision in the policy of insurance which defendant issued to plaintiffs, which provides as follows:

We do not insure for loss caused by any of the following.

* * *

1. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, unless specifically provided under this policy.

EIGHTH DEFENSE

Plaintiffs’ claims are precluded and/or barred by the “**Water Damage**” provision in the policy of insurance which defendant issued to plaintiffs, which provides as follows:

We do not insure for the loss caused by any of the following.

* * *

3. **Water Damage**, meaning:
 - a. flood, surface waters, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
 - b. water which backs up through sewers, drains, sump pumps, sump pump wells, or similar systems;
 - c. water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool, or other structure.”

Direct loss by fire, explosion or theft resulting from water damage is covered.

NINTH DEFENSE

Plaintiffs’ claims are precluded and/or barred by the **Neglect** provision in the policy of insurance which defendant issued to plaintiffs, which provides as follows:

We do not insure for loss caused by any of the following:

* * *

4. **Neglect**, meaning neglect of the **insured** to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered by a peril insured against.

TENTH DEFENSE

Plaintiffs' claims are subject to, diminished and/or barred by the "**Fungus**" provision contained in the **Louisiana Rental Owners Amendatory Endorsement** in the policy of insurance which defendant issued to plaintiffs, which provides as follows:

8. We do not insure under any coverage for loss, including loss of use or fair rental value, or the remediation of any such loss, arising out of, caused by, or resulting from **fungus**. We also do not cover:
 - a. any loss of use or delay in rebuilding, repairing or replacing covered property, including any associated cost or expense, due to the interference at the residence premises or location of the rebuilding, repair or replacement, by **fungus**;
 - b. any remediation of fungus, including the cost to:
 - i. remove the **fungus** from covered property or to repair, restore or replace that property, or
 - ii. tear out and replace any part of the building or other property as needed to gain access to the **fungus**; or
 - c. the cost of any testing or monitoring of air or property to confirm the type, absence, presence or level of **fungus**, whether performed prior to, during or after the removal, repair, restoration, or replacement of covered property.

However, any ensuing loss from a covered peril to covered property is covered.

"**Fungus**" is defined in the **DEFINITIONS** Section, as supplemented, as "any type or form of **fungus**, including mold, mildew, mycotoxins, spores, scents or byproducts produced or released by fungi.

ELEVENTH DEFENSE

Plaintiffs' claims are subject to, diminished and/or barred by the "**Insurable Interest and Limit of Liability**," "**Your Duties After Loss**," and/or "**Loss Settlement**," conditions in

the policy of insurance which defendant issued to plaintiffs which are pled as if copied herein *in extenso*.

TWELVETH DEFENSE

Plaintiffs’ claims are subject to, diminished and/or barred by the “**Other Insurance**” condition in the policy of insurance which defendant issued to plaintiffs, which condition provides as follows:

SECTION I - CONDITIONS

* * *

- 6. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only the proportion of the loss that the **limit of liability** that applies under this policy bears to the total amount of insurance covering the loss.

THIRTEENTH DEFENSE

Plaintiffs’ claims are subject to, diminished and/or barred by the “**PERSONAL PROPERTY**”, “**FAIR RENTAL VALUE**” and “**ADDITIONAL COVERAGES**” provisions in the policy of insurance which defendant issued to plaintiffs, which are pled as if copied herein *in extenso*.

FOURTEENTH DEFENSE

Plaintiffs’ claims are subject to, diminished and/or barred by the “**Windstorm or Hail**” provision in the policy of insurance which defendant issued to plaintiffs, which provides as follows:

We insure for accidental direct physical loss to the property described in Coverages A, B, and C caused by:

* * *

2. **Windstorm or Hail** – This peril does not include loss to the interior of a building or the property contained in a building caused by rain, snow, sleet, sand, or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand, or dust enters through this opening.

FIFTHTEENTH DEFENSE

Plaintiffs' claims are subject to, diminished and/or barred by the “**RENTAL OWNERS REVISIONS**” endorsement in the policy of insurance which defendant issued to plaintiffs which is pled in its entirety as if copied herein *in extenso*.

SIXTEENTH DEFENSE

AND NOW, FURTHER RESPONDING to the allegations in the numbered paragraphs of plaintiffs' Petition, ANPAC avers as follows:

I.

The allegations contained in Paragraph 1 of plaintiffs' Petition are admitted to the extent that ANPAC is an insurance company authorized to do and doing business in the Parish of Orleans, State of Louisiana; the remainder of the allegations contained in Paragraph 1 of plaintiff's Petition are denied.

II.

The allegations contained in Paragraph 2 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

III.

The allegations contained in paragraph 3 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

IV.

The allegations contained in Paragraph 4 of plaintiffs' Petition are admitted to the extent that ANPAC issued a policy of insurance to plaintiffs, Heather and Chris Nguyen, which policy of insurance is the best evidence of its contents, terms, conditions, provisions, exclusions and/or other endorsements, which are pled herein by reference as if copied *in extenso*; the remainder of the allegations contained in Paragraph 4 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

V.

The allegations contained in Paragraph 5 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

VI.

The allegations contained in Paragraph 6 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

VII.

The allegations contained in Paragraph 7 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

VIII.

The allegations contained in Paragraph 8 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

IX.

The allegations contained in Paragraph 9 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

X.

The allegations contained in Paragraph 10 of plaintiffs' Petition are conclusions of law and therefore denied.

XI.

The allegations contained in Paragraph 11 of plaintiffs' Petition are denied.

XII.

The allegations contained in Paragraph 12 of plaintiffs' Petition are denied.

XIII.

The allegations contained in Paragraph 13 of plaintiffs' Petition are denied.

XIV.

The allegations contained in Paragraph 14 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

XV.

The allegations contained in Paragraph 15 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

XVI.

The allegations contained in Paragraph 16 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

XVII.

The allegations contained in Paragraph 17 of plaintiffs' Petition are denied.

XVIII.

The allegations contained in Paragraph 18 of plaintiffs' Petition are denied.

XIX.

The allegations contained in Paragraph 19 of plaintiffs' Petition are denied.

XX.

The allegations contained in Paragraph 20 of plaintiffs' Petition are denied.

XXI.

The allegations contained in Paragraph 21 of plaintiffs' Petition are denied.

XXII.

The allegations contained in Paragraph 22 of plaintiffs' Petition are denied. Defendant further answers that all payments due, if any, under the policy of insurance issued to plaintiffs have been made with nothing further being due or owing to plaintiffs..

XXIII.

The allegations contained in Paragraph 23 of plaintiffs' Petition are denied.

XXIV.

The allegations contained in Paragraph 24 of plaintiffs' Petition are denied.

XXV.

The allegations contained in Paragraph 25 of plaintiffs' Petition are denied.

XXVI.

The allegations contained in Paragraph 26 of plaintiffs' Petition are denied.

XXVII.

The allegations contained in Paragraph 27 of plaintiffs' Petition are denied for lack of sufficient information to justify a belief therein.

XXVIII.

The allegations contained in Paragraph 28 of plaintiffs' Petition are denied.

XXIX.

The allegations contained in Paragraph 29 of plaintiffs' Petition are denied.

XXX.

The allegations contained in Paragraph 30 of plaintiffs' Petition are denied.

XXXI.

The allegations contained in Paragraph 31 of plaintiffs' Petition require no answer of this defendant.

XXXII.

The allegations contained in Paragraph 32 of plaintiffs' Petition are denied.

XXXIII.

The allegations contained in Paragraph 33 of plaintiffs' Petition require no answer of this defendant.

XXXIV.

The allegations contained in Paragraph 34 of plaintiffs' Petition are denied.

XXXV.

Defendant denies any and all allegations contained in any unnumbered or misnumbered paragraphs or prayers, as well as any other allegations which otherwise have not been admitted, denied, or qualified.

SEVENTEENTH DEFENSE

NOW FURTHER ANSWERING, and in the alternative, and as a separate and complete defense, ANPAC affirmatively avers that if plaintiffs prevail on their principal demand against ANPAC, which is denied, then ANPAC is entitled to a credit for any and all amounts or payments made or tendered to plaintiffs arising out of this alleged loss.

EIGHTEENTH DEFENSE

NOW FURTHER ANSWERING, and in the alternative, and as a separate and complete defense, ANPAC avers that if plaintiffs prevail on their principal demand, which is denied, against ANPAC, then ANPAC is entitled to a credit for the full amount of any and all flood insurance policies issued to plaintiffs, or amounts paid under said policies, whether or not plaintiffs collected any and all damages under said flood policy.

NINETEENTH DEFENSE

NOW FURTHER ANSWERING, and in the alternative, and as a separate and complete defense, ANPAC avers that plaintiffs have not provided satisfactory proof of loss to ANPAC, and ANPAC has not acted arbitrarily and capriciously such that plaintiffs are entitled to statutory penalties, costs or attorneys' fees, if any are allowable under Louisiana law.

TWENTYETH DEFENSE

NOW FURTHER ANSWERING, and in the alternative, and as a separate and complete defense, ANPAC affirmatively avers that accord and satisfaction has been made and that all payments due under the policy of insurance which ANPAC issued to plaintiffs have been made with nothing further being due or owing to plaintiffs.

TWENTY-FIRST DEFENSE

ANPAC reserves the right to file additional Answers, Third-Party Complaints, Counterclaims and/or Cross-Claims, and to assert additional, supplemental defenses and/or affirmative defenses, such as the facts may later disclose and require.

WHEREFORE, defendant, ANPAC Louisiana Insurance Company, prays:

1. That this Answer be deemed good and sufficient, and that after due proceedings are had, there be Judgment in favor of ANPAC dismissing with prejudice plaintiffs' *Petition for Damages*, with all costs of these proceedings assessed solely to plaintiffs;
2. For trial by jury; and
3. For all such other general and equitable relief as this Honorable Court may deem just under the circumstances and be competent to grant.

Respectfully submitted,

**LARZELERE PICOU WELLS
SIMPSON LONERO, LLC**

Suite 1100 - Two Lakeway Center
3850 N. Causeway Boulevard
Metairie, LA 70002
Telephone: (504) 834-6500
Fax: (504) 834-6565

BY: /s/ Angie Arceneaux Akers
JAY M. LONERO, T.A. (No. 20642)
jlonero@lpw-law.com
CHRISTOPHER R. PENNISON (No. 22584)
cpennison@lpw-law.com
ANGIE ARCENEAUX AKERS (No. 26786)
aakers@lpw-law.com

**ATTORNEYS FOR ANPAC LOUISIANA
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2006, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel registered for electronic service. I further certify that I have served a copy of the foregoing pleading on all parties to this proceeding not registered for electronic service, by e-mailing, faxing, and/or mailing the same by United States mail, properly addressed and first class postage prepaid.

/s/ Angie Arceneaux Akers