

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,
EX REL. BRANCH CONSULTANTS, L.L.C.,

Plaintiff

VERSUS

ALLSTATE INSURANCE COMPANY, et. al.,

Defendants

CIVIL ACTION NO.: 06-4091

SECTION: "R" (1)

JUDGE: VANCE

MAGISTRATE: SHUSHAN

**DEFENDANTS' OBJECTIONS TO BRANCH CONSULTANTS, LLC'S
FEBRUARY 26, 2010 RULE 30(b)(6) NOTICE OF CORPORATE DEPOSITION**

Pursuant to this Court's March 3, 2010 Order (R. Doc. No. 441), Defendants respectfully aver that the Rule 30(b)(6) Notices of Corporate Deposition served by Branch Consultants, LLC ("Branch") on February 26, 2010 do not comply with the Court's February 10, 2010 ESI Order, and assert the following objections.

BACKGROUND FACTS

In November and December, 2009, Branch served Rule 30(b)(6) notices, seeking to depose various corporate representatives on five (5) discrete areas of inquiry regarding the storage, organization and retrieval of ESI. *See* Exhs. "A" and "B."¹ Defendants asserted burden and relevance objections. During the January 20, 2010 status conference, Branch argued that ESI depositions are needed to test the Defendants' burden arguments, determine what fields of data regarding wind and flood claims are, in fact, stored electronically, and determine whether

¹ The notices of deposition attached hereto are directed to Liberty Mutual Fire Insurance Company; however, they are representative of the notices served to all defendants.

this data can be exported into programs like Microsoft Excel. *See* Transcript of January 20, 2010 Hearing, Exh. “C”, 42:15-17, 42:25-43:3, 50:11-14, 51:5-6.

On January 20, 2010, the Court limited discovery to the twenty-seven properties identified in the First Amended Complaint (“FAC”). *See* R. Doc. No. 309. Thereafter, this Court issued an Order setting parameters on ESI depositions. *See* R. Doc. No. 359, pp. 9-10. Finding that “the parties have not presented sufficient information to permit a determination on whether ESI should be presented in native format”, this Court ordered that ESI depositions be held “so that the parties can present testimony and other evidence on defendants’ record keeping and maintenance of ESI.” *Id.* The Court expressly limited the scope of the ESI depositions, stating:

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.

Id. (emphasis added). The Court also required disclosure of “what information is contained on the backup tapes or other long-term media and . . . the burden associated with accessing these tapes or media”. *Id.*

Relying on the originally-issued deposition notices containing five discrete areas of inquiry regarding the storage, organization, and retrieval of Defendants’ electronic information and the Court’s January 20 and February 10, 2010 Orders, Defendants selected witnesses and negotiated dates for the ESI depositions. Three weeks after issuance of the Court’s Order, Branch served new expanded 30(b)(6) ESI notices upon the Defendants. The new notices list eighteen (18) areas of inquiry, more than a three-fold increase from Branch’s original notices, and include matters completely outside the scope and the spirit of this Court’s February 10, 2010 order and the FAC. *See* Exh. “D”. The new areas of inquiry are unrelated and

unnecessary to address ESI, and clearly relate to Branch's Second Amended Complaint which was rejected by this Court three days after issuance of the notices by Branch. Defendants object to Branch's unilateral modification of this Court's January 20 and February 10 Orders.

GENERAL OBJECTIONS

1. Defendants object to Branch's definitions to the extent they would impose obligations on the defendants that are inconsistent with or greater than the obligations imposed by the Federal Rules of Civil Procedure or the Court's Orders (R. Doc. Nos. 309, 357, and 359) governing the scope of discovery, Electronic Discovery, and ESI depositions.
2. Defendants object to Topics 1-5 to the extent they seek information relevant to properties other than the twenty-seven properties listed in the FAC.

SPECIFIC OBJECTIONS

1. Information regarding hard copies of claims files – Topics 1(e), (f) and 2(e), (f)
Beyond the scope of deposition pertaining to Electronically Stored Information.
2. Information regarding emails – Topics 6 and 8
Beyond the scope of deposition taken to address whether ESI should be produced in its native format.
3. Retention and preservation policies – Topics 10, 11, 13
Beyond the scope of disclosing information on and accessibility to backup tapes as provided by the Court's February 10, 2010 Order (R. Doc. No. 359, pp. 10-11).
4. Computer system configuration – Topic 12
Beyond the scope of deposition taken to address whether ESI should be produced in its native format.
5. Electronic communications with adjusters – Topic 14
Beyond the scope of deposition taken to address whether ESI should be produced in its native format.

6. Price lists, depreciation information, adjusting computer programs and Xactanalysis reports – Topics 15-18

Based on Inflated Revenue Claims in Second Amended Complaint for which this Court denied leave to amend and are irrelevant to the claims in the FAC based on loss shifting.² Also, beyond the scope of deposition taken to address whether ESI should be produced in its native format.

Defendants submit this joint response without prejudice to their right to assert additional objections specific to their own situation in due course.

Respectfully submitted,

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FREEMAN & SARVER, LLC

NIELSEN LAW FIRM, LLC

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² See generally March 1, 2010 Order, R. Doc. No. 417. In its March 1, 2010 Order, the Court specifically noted that the scope of the FAC is limited to those properties where the Defendants issued both the flood and homeowners policies. *Id.* at pp. 16-17.

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**Attorneys for The Standard Fire Insurance
Company (*erroneously named as St. Paul
Travelers Co.*)**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has this date been served upon all parties to this suit through counsel by filing into the Court's electronic filing system and, for non-participants, via electronic mail, this 5th day of March, 2010.

/s/ Keith L. Magness
KEITH L. MAGNESS

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

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

**NOTICE OF DEPOSITION OF THE CORPORATE REPRESENTATIVE OF
LIBERTY MUTUAL FIRE INSURANCE COMPANY**

TO: Defendant, LIBERTY MUTUAL FIRE INSURANCE COMPANY, by and through its attorneys of record, Barrasso, Usdin, Kupperman, Freeman & Sarver, LLC, LL&E Tower, 909 Poydras Street Suite 1800, New Orleans, Louisiana 70112.

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 Liberty Mutual Fire Insurance Company ("LM"). The deposition will take place at 9:00 am on December 18, 2009, at the offices of Kanner & Whiteley, 701 Camp Street, New Orleans, Louisiana 70130, 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. LM 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 LM.

Dated: November 20, 2009

Respectfully submitted,

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Attorneys for Plaintiff/Relator

Certificate of Service

I hereby certify that on November 20, 2009, a copy of the above and foregoing 30(b)6 Notice of Deposition to Liberty Mutual Fire Ins. Co. has been served upon all counsel of record in this matter by placing the same in the U.S. Mail, first class postage prepaid and properly addressed, by facsimile and/or by electronic mail. I further certify that a true and correct copy of this document was sent via electronic mail (pursuant to agreement) on November 20, 2009, to Assistant United States Attorney, Jay D. Majors.



Allan Kanner

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.

"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.

7. "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).

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

9. “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”.

10. “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.”

11. "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.
12. "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.
13. "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.
14. "Government" refers to the United States federal government and all of its agencies, including but not limited to FEMA.
15. "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.
16. "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.
17. "Covered Wind Properties" means those Covered Flood Properties for which you provided insurance against wind damage that was effective on August 29, 2005.

18. "Covered Wind Claims" means claims paid by You on Covered Wind Properties as a result of wind damage that occurred in connection with Hurricane Katrina.

19. 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").

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, organizing and sorting Claims File data.
2. The means by which you store, organize and retrieve Claims Files for Covered 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, organizing and sorting Claims File data.
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 Covered 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.

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

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

**NOTICE OF DEPOSITION OF THE CORPORATE REPRESENTATIVE OF
LIBERTY MUTUAL FIRE INSURANCE COMPANY**

TO: Defendant, LIBERTY MUTUAL FIRE INSURANCE COMPANY, by and through its attorneys of record, Barrasso, Usdin, Kupperman, Freeman & Sarver, LLC, LL&E Tower, 909 Poydras Street Suite 1800, New Orleans, Louisiana 70112.

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 Liberty Mutual Fire Insurance Company ("LM"). The deposition will take place on a date to be mutually agreed upon that shall be on or before January 15, 2010, at the offices of Kanner & Whiteley, 701 Camp Street, New Orleans, Louisiana 70130, 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. LM 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 LM.

Dated: December 11, 2009

Respectfully submitted,

SUSMAN GODFREY LLP

By: /s/ Matthew R. Berry

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Attorneys for Plaintiff/Relator

Certificate of Service

I hereby certify that on December 11, 2009, a copy of the above and foregoing 30(b)(6) Notice of Deposition to Liberty Mutual Fire Ins. Co. has been served upon all counsel of record in this matter by placing the same in the U.S. Mail, first class postage prepaid and properly addressed, by facsimile and/or by electronic mail. I further certify that a true and correct copy of this document was sent via electronic mail (pursuant to agreement), to Assistant United States Attorney, Jay D. Majors.

/s/ Matthew R. Berry
Matthew R. Berry

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

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1. “You” or “Your” means Defendant Liberty Mutual Fire Insurance 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.

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or graphic records or representations of any kind, and all mechanical or electronic data, records or representations of any kind.

7. “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).

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

9. “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”.

10. “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.”

11. "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.
12. "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.
13. "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.
14. "Government" refers to the United States federal government and all of its agencies, including but not limited to FEMA.
15. "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.
16. "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.
17. "Covered Wind Properties" means those Covered Flood Properties for which you provided insurance against wind damage that was effective on August 29, 2005.

18. “Covered Wind Claims” means claims paid by You on Covered Wind Properties as a result of wind damage that occurred in connection with Hurricane Katrina.

19. 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”).

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, organizing and sorting Claims File data.
2. The means by which you store, organize and retrieve Claims Files for Covered 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, organizing and sorting Claims File data.
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 Covered 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.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

U.S. Ex Rel	*	Civil Action
BRANCH CONSULTANTS, L.L.C.,	*	No. 06-4091
	*	
Plaintiff,	*	Section "R"(1)
	*	
v.	*	New Orleans, Louisiana
	*	January 20, 2010
ALLSTATE INSURANCE COMPANY,	*	
ET AL,	*	
	*	
Defendants.	*	
* * * * *		

HEARING,
BEFORE THE HONORABLE SALLY SHUSHAN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

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 590 Madison Avenue, 8th Floor
 New York, New York 10022

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 By: MATTHEW R. BERRY, ESQ.
 1201 Third Avenue, Suite 3800
 Seattle, Washington 98101



1 can't produce this, this is tough.

2 What we're asking for initially is how many flood
3 claims did you adjust? How many wind claims? What are the
4 amounts at issue? They have that information at their
5 fingertips.

6 THE COURT: If it was a sole adjustment of a wind
7 claim, why do you care about that?

8 MR. NAGY: Because we need the data to do a proper
9 stratification, Judge. It's the issue that you brought up. We
10 want to know how many wind claims, what percentage of -- well,
11 how many flood claims --

12 THE COURT: Well, I have no problem with asking that
13 kind of question. Now, producing claims files for all of
14 those, probably is over the top.

15 MR. NAGY: What we tried to do, Judge, to address
16 that was take depositions about the burdens that are actually
17 involved in producing those files. For example, a lot of the
18 information we're seeking is required by federal regulation to
19 be made available to the Government. All of it, in our
20 experience, is stored electronically, and that's what we've
21 asked for. We've limited our first request to electronic
22 documents.

23 THE COURT: Okay.

24 MR. NAGY: And as far as the sampling goes, Judge, we
25 don't need the complete files initially. All we need is a list

1 with whatever fields of data they have electronically. They
2 can put it on, you know, they can export it to an Excel
3 spreadsheet. And I have here, from another case that I'm
4 involved in; you can put everything we're asking for on this
5 (indicating). It's a flash drive, eight gigabytes. I've got
6 multiple spreadsheets on here with 40,000 entries, that's more
7 than we think any of them would have to put on, in the
8 spreadsheet we're asking for it.

9 One other point I wanted to address briefly is this
10 notion that sampling is wholly unorthodox. That is simply not
11 true.

12 THE COURT: Well, it is unorthodox in regard to this
13 kind of case, which is a false claim case where the burden is
14 to prove fraud. They are contending that it is quite different
15 than the Medicare kind of cases that we have read about, and
16 that you're going on a fishing expedition to find more cases
17 that might support your theory. So, if you can't make your
18 case with your 57, why should you go beyond is basically the
19 argument.

20 Is that the argument?

21 MR. ROSENBERG: Yes, Your Honor.

22 MR. KANNER: That is it, precisely, Your Honor.

23 MR. NAGY: Judge, and I think there's two issues
24 there. One is jurisdiction. Does the case have to be limited
25 to the properties in the complaint before of a jurisdictional

1 your back.

2 THE COURT: Well, certainly guys, I think you all
3 will agree that if these are just scanned images of paper
4 claims file, then that is quite different than what you were
5 using as an example of electronic records that have been input
6 relative to the information regarding the claim and you can
7 search the field and see how much the claim was for and how
8 much was paid out and how much was wind and how much was flood,
9 right?

10 MR. NAGY: Certainly. Judge, absolutely. Those are
11 two different things. We have not insisted someone produce
12 something that they don't have. It's our understanding that
13 there are electronic files. We asked for information about
14 that. We asked for depositions on that topic, and if we're
15 wrong, if all they have are images.

16 THE COURT: Scanned images.

17 MR. NAGY: You see, then we would have to take a
18 different approach. But if we're right, and we think we are,
19 because of the federal regulations on this issue then they've
20 got it in a format that they can produce to us.

21 THE COURT: Okay.

22 MR. NAGY: In fact, they themselves raised that point
23 in their protective order. It says some of us have proprietary
24 software that it relates to databases and you can't look at it
25 unless you have the proprietary software, so in that situation

1 we have to meet and confer. The reason that's in there is
2 because the data I'm talking about is in their proprietary
3 databases.

4 THE COURT: Okay.

5 MR. NAGY: The question is: Can they export it to
6 Excel?

7 THE COURT: Okay. But you and I are on the same page
8 on what data is searchable and can go on your memory stick and
9 what scanned, and the difference between that and the scanned
10 claims files.

11 MR. NAGY: Absolutely, Your Honor. And I would just
12 add, I mean this is not news to everybody, when the Louisiana
13 Department of Insurance does an audit, what it typically does
14 is it goes to the actual offices.

15 THE COURT: Right.

16 MR. NAGY: Gets on the computer and extracts the
17 data. This is not a novel approach to an insurance audit at
18 all.

19 THE COURT: Okay.

20 MR. KANNER: I wanted to tell you something about
21 Rigsby real quick, just for --

22 MR. ROSENBERG: It's like being in the St. Bernard
23 Auditorium, tag team wrestling.

24 THE COURT: (Laughter.)

25 MR. KANNER: No, it goes to what you said earlier and

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

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

**NOTICE OF DEPOSITION OF THE CORPORATE REPRESENTATIVE OF
LIBERTY MUTUAL INSURANCE CO.**

TO: Defendant, LIBERTY MUTUAL INSURANCE CO., by and through its attorney of record Judy Barrasso, Barrasso, Usdin, Kupperman, Freeman & Sarver, LLC, 909 Poydras Street, Suite 1800, New Orleans, Louisiana 70112.

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 Liberty Mutual Insurance Company (“Liberty Mutual”). The deposition will take place at 9:00 am on March 23, 2010, in Boston, Massachusetts, 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. Liberty Mutual 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 Liberty Mutual.

DATED: February 26, 2010

Respectfully submitted,



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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 Liberty Mutual Insurance 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.