

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

SUNQUEST PROPERTIES, INC.  
AND CARRIAGE HOUSE APARTMENTS PARTNERSHIP

PLAINTIFFS

V.

CIVIL ACTION NO. 1:08cv687-LTS-RHW

NATIONWIDE PROPERTY AND CASUALTY COMPANY  
AND JOHN DOES 1-5

DEFENDANTS

**ORDER**

It is unnecessary to recite the entire procedural history of this cause of action as it pertains to the appraisal process. The most recent relevant order on this subject [245] appointed an umpire and established a deadline for the appraisal to be completed. That deadline has expired.

The Court has received correspondence from the umpire indicating that there is no agreement by two members of the appraisal panel as to the amount of damages sustained from all causes by the insured property during Hurricane Katrina. For the purposes of a complete record, the pertinent documents submitted by the umpire are attached to this order.

The subject insurance policy contains the following provisions:

E. PROPERTY LOSS CONDITIONS

\* \* \*

2. Appraisal

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of loss. *If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. . . .*

Because there is not agreement by any two members of the appraisal panel, this Court determines that the appraisal process is complete and there is no binding appraisal. This cause of action will not be delayed further, and shall proceed in a manner consistent with the Text Only Order entered on March 4, 2010.

**SO ORDERED** this the 30<sup>th</sup> day of March, 2010.

s/ L. T. Senter, Jr.  
L. T. SENTER, JR.  
SENIOR JUDGE

March 24, 2010

*Via Email Only –*

[Kim\\_Overstreet@mssd.uscourts.gov](mailto:Kim_Overstreet@mssd.uscourts.gov)

[Ron\\_Cochran@mssd.uscourts.gov](mailto:Ron_Cochran@mssd.uscourts.gov)

Honorable L.T. Senter, Jr.  
United States District Court  
Southern District of Mississippi  
2012 15th Street, Suite 514  
Gulfport, MS 39501

Re:	Insured:	Sunquest Properties, Inc. Carriage House Apartments 1625 Martin Bluff Rd. Gautier, MS
	Carrier:	Nationwide Insurance Co.
	Policy No.:	63 BP 139-742-0004
	Date of Loss:	Hurricane Katrina
	Civil Action No.	1:08CV687 LTS-RHW
	VCS Claim No.:	01-2815

Dear Judge Senter:

As I reported to your office Monday afternoon, two of the three members cannot agree to an *Award*. Enclosed is a copy of Mr. Horton's letter in which he has declined to agree with the amount that I proposed. Also attached is an e-mail from Mr. O'Leary in which he states that he will not be signing the *Award*. I would like to provide the Court with the *Award* which I have signed which I believe reflects the damage to the Carriage House Apartments caused by both flood and wind during Hurricane Katrina. The damages are reflective of replacement cost.

Honorable L.T. Senter, Jr.  
March 24, 2010  
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Once again I would like to thank you for allowing me to participate in the resolution of this matter. Attached are copies of my Activity Sheet and Invoice that are being sent to the two appraisers. It should document my activity since my interim bill.

Very truly yours,

/s/

John A. Voelpel, III CPCU, AIC

JAV/amp

Enclosed:

*Award*

Letter from David Horton dated March 22, 2010

E-mail from Lewis O'Leary dated March 22, 2010

Activity Sheet

Invoice

cc: *Via Email Only – DWHorton@aeneas.net*

David Horton

*Via Email Only – probuil@aol.com*

Lewis O'Leary

**Sunquest Properties, Inc. (Carriage House Apartments) v.  
 Nationwide Property & Casualty Insurance Company**

**Policy No.: 63 BP 139-742-0004**

**Date of Loss: Hurricane Katrina**

**AWARD**

We, the undersigned, pursuant to our appointment, do hereby certify that we have truly and conscientiously performed the duties assigned to us, agreeably to the foregoing stipulations, and have appraised and determined and do hereby award as the amount of the loss the following sums to wit:

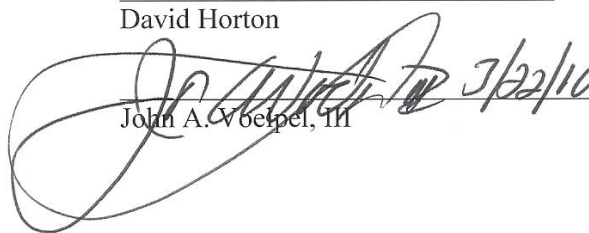
**1625 Martin Bluff Road  
 Gauthier, MS 39553**

<b>Premises</b>	<b>Building No.</b>	<b>Apartment No.</b>	<b>RCV Building</b>
1	1	1 through 6	239,943.59
1	2	7 through 12	214,771.99
1	3	13 through 18	194,535.28
1	4	19 through 24	230,691.34
1	5	25 through 30	250,775.69
1	6	31 through 36	218,685.51
1	7	37 through 42	190,626.92
1	8	43 through 48	215,839.32
1	9	49 through 54	209,669.20
1	10	55 through 60	264,946.54
1	11	61 through 66	233,829.31
1	12	67 through 72	228,666.02
1	13	73 through 78	229,604.30
1	14	79 through 84	181,120.56
1	15	85 through 90	196,795.67
1	16	91 through 96	230,263.55
1	17	97 through 102	242,927.41
1	18	Office	37,030.61
		<b>Total</b>	<b>3,810,722.81</b>

**Less any applicable deductible  
 Less any advance payments**

\_\_\_\_\_  
 Lewis O'Leary APPRAISER & DATE

\_\_\_\_\_  
 David Horton APPRAISER & DATE

 3/22/10  
 John A. Voebel, III UMPIRE & DATE

**From:** Probuil@aol.com  
**Sent:** Monday, March 22, 2010 2:30 PM  
**To:** Ann Marie Pitstick  
**Cc:** dwhorton@aeneas.net  
**Subject:** Re: Sunquest Properties (Carriage House) v. Nationwide Insurance Company appr...  
John,

I will not be signing off on this award.

For the sake of improving on mistakes made by all on this one, I cannot drop all that I am doing again on Compass Point. David has not provided me with RMR's wind and water estimate. They have had mine for 7 months and I do not have his. What can you do to cure this repeat problem for me.

Best Regards,

Lewis O'Leary  
**Probuilders**  
2054 Kildaire Farm Road, #320  
Cary, NC 27511  
919-577-0907 (office)  
919-552-1665 (fax)  
**919-219-4099 (cell)**  
[probuil@aol.com](mailto:probuil@aol.com)

[In a message dated 3/22/2010 1:39:07 P.M. Eastern Daylight Time, AnnMarie@vcs.cc writes:](#)

-  
Attached please find correspondence from John A. Voelpel, III with its enclosures.

-  
*Ann Marie Pitstick*

-  
*Assistant to John A. Voelpel, III*

-  
Voelpel Claim Service, Inc.

-  
<st1:Street w:st="on">2212 Curry Ford Road

March 22, 2010

Mr. John Voelpel III  
Voelpel Claim Services, Inc.  
2212 Curry Ford Road  
Orlando, FL 32806-2422

Re: Carriage House Apartments  
1625 Martin Bluff Road  
Gautier, Mississippi

Dear Mr. Voelpel,

Thank You for your time, effort and opinion as to the RCV of the Wind and Flood damage to the Carriage House Apartments. I can not agree with your Award for the present amount and continue to stand firm on my number of \$2,735,308.45 which includes both Overhead and Profit. I look forward to hearing back from you in this regard.

Sincerely,

A handwritten signature in blue ink, appearing to read "David W. Horton", with a long horizontal flourish extending to the right.

David W. Horton

Cc: Lewis O'Leary