

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

**UNITED STATES OF AMERICA, *EX REL.*  
BRANCH CONSULTANTS, LLC**

**CIVIL ACTION**

**VERSUS**

**NO: 06-4091-SSV-SS**

**ALLSTATE INSURANCE COMPANY, et al**

**CASE MANAGEMENT ORDER<sup>1</sup>**

**I. PRIOR DISCOVERY ORDERS**

The following discovery orders were entered and not appealed. They shall control the proceedings unless otherwise noted.

1. February 10, 2010 order for electronic discovery (Rec. doc. 357).
2. February 10, 2010 order for production and exchange of confidential information (Rec. doc. 358).
3. February 10, 2010 order governing confidentiality, electronic discovery and privilege logs (Rec. doc. 359).
4. February 10, 2010 order for production of privilege logs (Rec. doc. 360).
5. June 2, 2010 order on the motion of Liberty Mutual Fire Insurance Company (“Liberty Mutual”) to compel (Rec. doc. 584).

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<sup>1</sup> If any party objects to any provision of this order, by **Monday, November 1, 2010**, it shall file a motion for relief from the order. The motion shall be noticed for hearing before Chief District Judge Vance and shall be accompanied by a motion for expedited consideration. The provisions of this order will not be stayed pending such a motion. Any request for a stay shall be made to the District Judge.

Except as provided here, the parties may not alter the order by agreement. Any alteration must be approved by the court.

6. June 8, 2010 order on the defendants' motion for protective order and motion of Louisiana Citizens Property Insurance Corporation ("Citizens") for a protective order (Rec. doc. 589).
7. September 20, 2010 order concerning documents produced by Branch Consultants, LLC ("Branch") for *in camera* inspection (Rec. doc. 640).

The following discovery orders were entered in this case, appealed and affirmed by the District Judge. They shall control the proceedings in this case unless otherwise noted.

1. May 12, 2010 order on motions of the defendants to compel (Rec. doc. 567). See Rec. doc. 623 for order affirming ruling.
2. June 1, 2010, order on Branch's motion to compel discovery from American National Property & Casualty Company ("ANPAC")(Rec. doc. 579). See Rec. doc. 625 for order affirming ruling.
3. June 7, 2010, order on Branch's motion for protective order as to information sought by ANPAC (Rec. doc. 585). See Rec. doc. 625 for order affirming ruling.

## **II. GENERAL DISCOVERY PROVISIONS**

1. All parties are reminded of their obligation under Fed. R. Civ. P. 26(e)(1) to supplement their responses to written discovery, including responses to the contention discovery.
2. Other than as provided herein (Parts III.B. and IV.D.) the parties shall not serve any further written discovery (Fed. R. Civ. P. 33, 34 and 36) without leave of court. If the parties, in the individual discovery plans (Parts III.C. and IV.E.) agree to further written discovery, the request will be granted.

3. If any party has an issue with a party's discovery responses, including responses to Fed. R. Civ. P. 30(b)(6) deposition notices, the parties shall meet and confer as required by the Local Rules before filing a motion to compel. If the parties fail to file a motion to compel within the deadlines provided herein, they may not do so without leave of court. All motions to compel shall be accompanied by motions for expedited consideration. Copies of the motions to compel, oppositions and replies with attachments in Word Perfect or Microsoft Word shall be e-mailed to mike\_okeefe@laed.uscourts.gov.
4. Depositions shall not be scheduled without the agreement of counsel.
5. The amendments to Federal Rules of Civil Procedure 26(a)(2) and (b)(4) effective December 1, 2010 shall apply to all expert discovery in this case.
6. This order makes provision for individual discovery plans for each defendant. Upon request, the court will conduct conferences with Branch and the individual defendant in furtherance of a plan. The discovery plans in Word Perfect or Microsoft Word shall be e-mailed to mike\_okeefe@laed.uscourts.gov.

### **III. DEFENDANTS' DISCOVERY FROM BRANCH**

#### **A. Outstanding Discovery.**

The defendants report that Branch has not complied fully with the following discovery orders: (1) May 12, 2010 order on motions of the defendants to compel (Rec. doc. 567); (2) June 2, 2010 order on Liberty Mutual's motion to compel (Rec. doc. 584); and (3) June 7, 2010, order on Branch's motion for protective order as to information sought by ANPAC (Rec. doc. 585).

By **Friday, October 29, 2010**, Branch shall supplement its response to these orders and/or

certify that it has no further information responsive to them.

**B. Supplemental Discovery.**

By **Friday, November 5, 2010**, the defendants<sup>2</sup> may serve a joint supplement to the Fed. R. Civ. P. 30(b)(6) deposition notice of Branch, including ESI. The deadline for Branch to respond to the supplemental Rule 30(b)(6) notice is **Friday, November 12, 2010**. The deadline for the defendants to file a joint motion to compel is **Tuesday, November 23, 2010**.

By **Friday, November 19, 2010**, the defendants may serve joint written discovery on Branch. The deadline for Branch to respond is **Monday, December 20, 2010**. The deadline for the defendants to file a joint motion to compel is **Friday, January 7, 2011**.

Allstate and Pilot may serve separate written discovery on Branch by **Friday, November 5, 2010**. Branch shall respond by **Friday, December 10, 2010**. The deadline for Allstate and Pilot to file motions to compel is **Tuesday, December 28, 2010**.

**C. Discovery Plan for Completion of Defendants' Discovery of Branch.**

By **Friday, November 12, 2010**, counsel for the defendants and Branch shall meet and confer on further discovery of Branch. By **Friday, November 19, 2010**, the defendants and Branch shall present a joint discovery plan for the completion of the defendants' discovery from Branch, including depositions, any sampling discovery sought by defendants, and "clean-up" written discovery. It shall not cover matters provided for in this Case Management Order; for example contention discovery. If they cannot agree, they shall present the draft joint statement redlined to reflect of the areas of disagreement.

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<sup>2</sup> The term defendants includes Allstate and Pilot unless otherwise indicated. It also includes the subsidiary of any defendant.

**IV. BRANCH'S DISCOVERY FROM THE DEFENDANTS**

**A. "Catch-Up" Discovery from Allstate and Pilot.**

By **Friday, October 29, 2010**, the defendants shall provide Allstate and Pilot with all information obtained from Branch.

By **Friday, November 12, 2010**, Allstate, Pilot and Branch shall exchange their initial disclosures.

By **Monday, November 29, 2010**, Allstate shall provide Branch with the Claim Files<sup>3</sup> on the properties identified for Allstate in the second amended complaint ("SAC").

By **Monday, November 29, 2010**, Allstate and Pilot shall comply fully with the discovery orders identified in Part I above to the extent they are applicable to them.

On September 29, 2010, Branch served discovery requests on the defendants. By **Monday, November 29, 2010**, Allstate and Pilot shall serve their objections to the discovery. Allstate and Pilot shall make a good faith effort to provide complete objections. It is understood that they will not be able to make some objections, for example privilege objections, until the deadline for responding. The deadline for Allstate and Pilot to fully respond to the discovery is **Friday, December 10, 2010**.

The deadline for Branch to file motions to compel with respect to any the foregoing discovery responses by Allstate and Pilot is **Monday, December 20, 2010**.

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<sup>3</sup> The term "Claim File" means all documents associated with a particular claim made by an insured under an insurance policy issued or serviced by any insurer defendant, including federally backed flood policies and policies covering wind damage. For federally backed flood insurance policies, Claim File includes all FEMA forms, including but not limited to forms 81-40, 81-41, 81-41A, 81-42A, 81-43, 81-44, 81-57, 81-58, 81-98 and 81-109, and reinspection reports. Claim File also includes all estimates of damage, including preliminary estimates, final estimates, and supplemental estimates.

**B. Rule 30(b)(6) ESI Depositions.**

By **Friday, October 29, 2010**, and after consultation with the defendants, Branch shall provide the court with a schedule showing the date, time and place for the ESI depositions of each defendant. The Allstate and Pilot ESI depositions shall be scheduled nearer to the end of the schedule. These depositions shall be completed by **Friday, December 10, 2010**.

**C. Outstanding Discovery.**

By **Friday, October 29, 2010**, the defendants (other than Allstate and Pilot) shall comply fully with the discovery orders identified in Part I above and/or certify that they have no further information responsive to them.

By **Friday, November 12, 2010**, the defendants (other than Allstate and Pilot) shall supplement their responses to Branch's February 3, 2010 written discovery and/or certify that, pursuant to Fed. R. Civ. P. 26(e)(1), no supplemental responses are required.

On September 29, 2010, Branch served discovery requests on the defendants. By **Friday, November 19, 2010**, the defendants (other than Allstate and Pilot) shall respond to the discovery. The deadline for Branch to file motions to compel is **Monday, December 6, 2010**. Branch may file a combined motion which contains a part applicable to all defendants and sections for issues unique to particular defendants.

**D. Supplemental Written Discovery.**

By **Friday, November 5, 2010**, Branch may serve supplemental written discovery and supplemental Fed. R. Civ. P. 30(b)(6) deposition notices on each defendant. The deadline for each defendant to respond is **Friday, December 17, 2010**. The deadline for Branch to file motions to compel is **Friday, January 7, 2011**. Branch may file a combined motion which contains a part

applicable to all defendants and sections for issues unique to particular defendants.

**E. Discovery Plans for Each Defendant.**

**Within seven (7) calendar days of the completion of each Rule 30(b)(6) ESI deposition,** counsel for Branch and the defendant shall meet and confer on further discovery of that defendant.

**Within fourteen (14) calendar days of the completion of each Rule 30(b)(6) ESI deposition,** Branch and the defendant shall present a joint discovery plan for the completion of discovery from that defendant, including oral depositions, any sampling discovery sought by Branch, and “clean-up” written discovery. It shall not cover matters provided for in this Case Management Order; for example contention discovery. If they cannot agree, Branch and the defendant shall present the draft joint discovery plan redlined to reflect areas of disagreement.

This process shall not be delayed for the completion of all Rule 30(b)(6) ESI depositions. There will be a separate plan for the completion of discovery for each defendant on the matters which are not covered in this Case Management Order. **These plans shall be presented to the court within fourteen (14) calendar days of the completion of each Rule 30(b)(6) ESI deposition.**

**V. DISCOVERY FROM NON-PARTIES**

1. Any responses to subpoenas served on non-parties received prior to the entry of this order shall be exchanged with all parties by **Friday, October 29, 2010.**
2. The parties may not contact a non-party insurance policy holder/homeowner (formally or informally, directly or indirectly) (“policy holder(s)”) concerning this case without leave of court or as provided in the individual discovery plans. A subpoena served on a policy holder shall be accompanied by a letter which shall be

the subject of a further order of the court.

3. A subpoena served on a non-party shall be served on all parties on the date of the issuance of the subpoena. Material received by a party pursuant to a non-party subpoena shall be made available to all other parties within two business days of receipt.
4. Parties and their counsel are not prohibited from communicating with non-parties other than policy holders concerning their response to a subpoena.

## **VI. CONTENTION DISCOVERY**

### **A. Defendants' Contention Discovery.**

Branch shall provide the following information to each defendant by **Thursday, June 30, 2011.**

- a. A detailed description and identification of the statement, claim or certification alleged to be false (including by and to whom the statement was made).
- b. A detailed description of all facts supporting Plaintiff's contention that the foregoing statement, claim or certification is false.
- c. A detailed description and identification of the facts supporting Plaintiff's contention that the foregoing statement, claim or certification was knowingly presented to the Government by a defendant.
- d. The federal regulation, standard, guidance, rule or procedure that was allegedly breached by a defendant and a description of all facts supporting Plaintiff's contention.
- e. The section of the False Claims Act allegedly violated by the statement, claim or



certification.

- f. A detailed description and identification of damages as a result of the foregoing statement, claim or certification and all facts supporting such damages.
- g. A detailed description and identification of all facts that support Plaintiff's contention that it is an original source for that claim.

If Branch contends that the information sought is objectionable for any reason other than the date on which it is required to provide the information, by **Friday, November 12, 2010**, it shall serve the defendants with objections. By **Tuesday, December 7, 2010**, the defendants shall file a motion to compel.

**B. Branch's Contention Discovery.**

By **Friday, January 14, 2011**, Branch shall serve the defendants with contention discovery. If the defendants contend that the information sought is objectionable for any reason other than the date on which they are required to provide the information, by **Friday, February 4, 2011**, they shall serve Branch with objections. By **Friday, February 18, 2011**, Branch shall file a motion to compel.

By **Thursday, June 30, 2011**, the defendants shall respond to Branch's contention discovery.

**VII. DEPOSITIONS**

The parties shall block the weeks beginning on the follow dates for depositions after the Rule 30(b)(6) ESI depositions. The parties shall multi-track depositions during these weeks. The parties may agree on depositions outside of these weeks.

January 31, 2011

July 18, 2011

February 21, 2011	August 8, 2011
March 14, 2011	August 29, 2011
April 4, 2011	September 19, 2011
April 25, 2011	October 10, 2011
May 16, 2011	October 31, 2011
June 6, 2011	November 14, 2011
June 27, 2011	November 28, 2011

### **VIII. PRETRIAL AND TRIAL SCHEDULE**

**There shall be no further amendments to the pleadings and no persons may be added as parties.**

By **Monday, February 14, 2011**, the parties shall meet and confer to agree: (1) on a statement of issues on which expert testimony will be provided; and (2) on which party has the burden of proof on each issue. By **Monday, February 28, 2011**, the parties shall report to the Magistrate Judge on their agreement. If they have not been able to reach agreement, by **Monday, February 28, 2011**, Branch shall submit a statement of the issues on which it contends expert testimony will be provided and who it contends has the burden of proof on each issue. The defendants shall submit a combined statement by **Monday, February 28, 2011**.

Counsel for the parties shall file in the record and serve upon their opponents a preliminary list of all witnesses who may or will be called to testify at trial and all exhibits which may or will be used at trial no later than **Monday, August 1, 2011, at 4:30 p.m.**

Written reports of experts, as defined by the Federal Rules of Civil Procedure 26(a)(2)(B), who may be witnesses for the party/parties **with the burden of proof** fully setting forth all matters

about which they will testify and the basis therefor shall be obtained and delivered to counsel for the party/parties without the burden of proof as soon as possible, but in no event later than **Friday, August 26, 2011, at 4:30 p.m.**

Written reports of experts, as defined by the Federal Rules of Civil Procedure 26(a)(2)(B), who may be witnesses for the party/parties **without the burden of proof** fully setting forth all matters about which they will testify and the basis therefor shall be obtained and delivered to counsel for the party/parties with the burden of proof as soon as possible, but in no event later than **Monday, October 31, 2011, at 4:30 p.m.**

The Court will not permit any witness, expert or fact, to testify or any exhibits to be used unless there has been compliance with this Order as it pertains to the witness and/or exhibits, without an order to do so issued on motion for good cause shown.

Depositions for trial use shall be taken and all discovery, including expert discovery, shall be completed no later than **Thursday, December 1, 2011.**

Daubert motions shall be filed by **Friday, December 9, 2011**, and noticed for hearing with oral argument for **Wednesday, February 15, 2012, at 10:00 a.m.** The deadline for oppositions to the Daubert motions is **Tuesday, January 17, 2012.** The deadline for reply memoranda is **Tuesday, January 31, 2012.** The Court will not consider any additional responses unless the Court requests them.

**Deposition transcripts submitted in support of motions are to be in an uncompressed format, specifically, double-spaced lines on single sided pages.**

The deadline for filing motions for summary judgment is **Monday, January 30, 2012**, and

noticed for hearing with oral argument on **Wednesday, April 11, 2012.**<sup>4</sup> The deadline for opposition to these motions for summary judgment is **Tuesday, February 28, 2012.** The deadline for reply memoranda is **Tuesday, March 20, 2012.** The Court will not consider any additional responses unless the Court requests them.

Motions for summary judgment and oppositions to motions for summary judgment shall be filed in compliance with Local Rules 56.1 and 56.2 E&W, requiring parties to file a short and concise statement of material facts as to which there does or does not exist a genuine issue to be tried. Additionally, each party shall make specific reference to record evidence supporting its statement of material facts. Citations to record evidence shall indicate, whenever applicable, an exhibit reference, page reference, and record document number reference. Record evidence not specifically referred to by the parties may not be considered by the Court.

A **Settlement Conference** will be held on **Tuesday, March 27, 2012, at 8:30 a.m.** before Magistrate Judge Sally Shushan, located at 500 Poydras Street, Hale Boggs Building, Room B-345, New Orleans, Louisiana. The parties shall reserve the full day for the conference. **All counsel are to have access to someone with full settlement authority.**

By **Monday, March 19, 2012, at 4:30 p.m.** each party shall submit to Magistrate Judge Shushan an *in-camera* letter/memorandum briefly outlining the liability dispute, the damages, the value of the case and what realistic amount the respective party would be willing to offer/accept to settle this matter. **The letter/memorandum is to be faxed to 504-589-4994.**

Branch's settlement position paper may contain a general section of no more than five pages

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<sup>4</sup> Non-evidentiary and dispositive pretrial motions, including motions challenging the Court's jurisdiction, may be filed at any time prior to the January 30, 2012 deadline. Such motions shall be noticed and briefed in accord with the Local Rules or as provided by order of Chief Judge Vance.

(double spaced) in length followed by separate sections no more than two pages (double spaced) in length on each defendant. The defendants may submit a joint position paper no more than five pages (double spaced) in length. Each defendant may submit a separate position paper no more than two pages (double spaced) in length.

On **Wednesday, April 11, 2012**, the parties shall exchange lists of trial witnesses and exhibits.

A **Final Pretrial Conference** will be held on **Thursday, May 10, 2012, at 2:00 p.m.** Counsel shall be prepared in accordance with the final Pretrial Notice attached. The pretrial order, in duplicate, must be delivered to the Court's chambers by **Thursday, May 3, 2012, at 4:30 p.m.**

**THE PRETRIAL ORDER SUBMITTED TO THE COURT MUST BE DOUBLE SPACED AND SIGNED BY ALL COUNSEL. The parties shall comply with all deadlines stated in the Pretrial Notice, including without limitation, the deadlines for filing briefs on objections to exhibits and on objections to deposition testimony.**

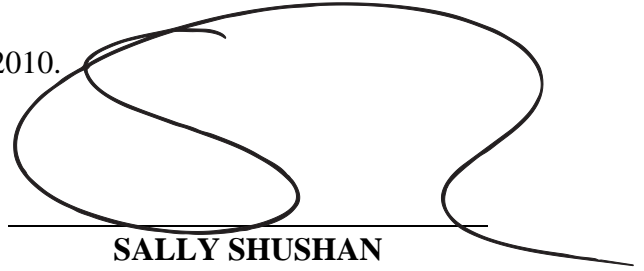
All **motions *in limine*** (other than Daubert motions) and **trial memoranda** shall be filed by **Monday, June 4, 2012** and response thereto shall be filed by **Monday, June 11, 2012.**

Motions filed in violation of this order will not be considered unless good cause is shown.

**Trial** will commence the week beginning **Monday, June 25, 2012, at 8:30 a.m.** before the District Judge with a jury. Attorneys are instructed to report for trial no later than 30 minutes prior to trial. The starting time on the first day of a jury trial may be delayed or moved up because of jury pooling. Trial is estimated to last TWELVE WEEKS.

Deadlines, cut-off dates, or other limits fixed herein may only be extended by the Court upon timely motion filed in compliance with this Case Management Order and Local Rules and upon a showing of good cause.

New Orleans, Louisiana, this 25th day of October, 2010.



**SALLY SHUSHAN**  
**United States Magistrate Judge**

cc: United States District Judge Vance

**THIS PRE-TRIAL NOTICE CONTAINS NEW MATERIAL.  
REVISED DECEMBER, 1993.**

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

**PRE-TRIAL NOTICE**

IT IS ORDERED that a pre-trial conference will be held in chambers before Judge Sarah S. Vance, Section "R", in the cases shown on the attached list on the dates and the times there indicated.

The purpose of the pre-trial conference is to secure a just and speedy determination of the issues. If the type of pre-trial order set forth below does not appear calculated to achieve these ends in this case, please arrange a conference with the Judge and opposing counsel immediately so that alternative possibilities may be discussed.

The procedure necessary for the preparation of the formal pre-trial order that will be reviewed and entered at this conference is as follows:

I.

The pre-trial order, in duplicate, must be delivered to the Court's chambers by 4:30 p.m. on a day that allows one full work day prior to the conference, excluding Saturdays, Sundays and holidays (i.e., if the conference is set for 10:00 a.m. Friday, it must be delivered by 4:30 p.m. Wednesday. If the conference is set on Monday, the pre-trial order will be delivered to the Judge on Thursday by 4:30 p.m.).

II.

Counsel for all parties shall confer in person (face to face) or by telephone at their earliest convenience for the purpose of arriving at all possible stipulations and for the exchange of copies of documents that will be offered in evidence at the trial. It shall be the duty of counsel for plaintiff to initiate this conference, and the duty of other counsel to respond. If, after reasonable effort, any party cannot obtain the cooperation of other counsel, it shall be his duty to communicate immediately with the Court. The conference of counsel shall be held at least ten days

prior to the date of the scheduled pre-trial conference in order that counsel for all parties can furnish each other with a statement of the real issues each party will offer evidence to support, eliminating any issues that might appear in the pleadings about which there is no real controversy, and including in such statement issues of law as well as ultimate issues of fact from the standpoint of each party. Counsel for plaintiff then will prepare a pre-trial order and submit it to opposing counsel, after which all counsel jointly will submit the original and one copy of the final draft of the proposed pre-trial order to the Judge.

III.

At their meeting, counsel must consider the following:

A. **Jurisdiction.** Since jurisdiction may not ever be conferred by consent and since prescription or statutes of limitations may bar a new action if the case or any ancillary demand is dismissed for lack of jurisdiction, counsel should make reasonable effort to ascertain that the Court has jurisdiction.

B. **Parties.** Correctness of identity of legal entities; necessity for appointment of tutor, guardian, administrator, executor, etc., and validity of appointment if already made; correctness of designation of party as partnership, corporation or individual d/b/a trade name.

C. **Joinder.** Questions of misjoinder or nonjoinder of parties.

IV.

At the pre-trial conference counsel must be fully authorized and prepared to discuss settlement possibilities with the Court. Counsel are urged to discuss the possibility of settlement with each other thoroughly before undertaking the extensive labor of preparing the proposed pre-trial order. Save your time, the Court's time, and the client's time and money.

V.

The pre-trial conference must be attended by the attorneys who will try the case, unless prior to the conference the Court grants permission for other counsel to attend. These attorneys will familiarize themselves with the pre-trial rules, and will come to the conference with full authority to accomplish the purposes of Rule 16 of the Federal Rules of Civil Procedure.

VI.

Pre-trial conferences will not be continued except for good cause shown in a written motion presented sufficiently in



advance of the conference for opposing counsel to be notified.

VII.

Failure on the part of counsel to appear at the conference may result in sanctions, including but not limited to sua sponte dismissal of the suit, assessment of costs and attorney fees, default or other appropriate sanctions.

VIII.

All pending motions and all special issues or defenses raised in the pleadings must be called to the court's attention in the pre-trial order.

IX.

The pre-trial order shall bear the signatures of all counsel at the time it is submitted to the Court; the pre-trial order shall contain an appropriate signature space for the Judge. Following the pre-trial conference, the signed copy of the order shall be filed into the record, and the additional copy shall be retained in the Judge's work file. The order will set forth:

1. The date of the pre-trial conference.
2. The appearance of counsel identifying the party(s) represented.
3. A description of the parties, and in cases of insurance carriers, their insured must be identified. The legal relationships of all parties with reference to the claims, counterclaims, third-party claims and cross claims, etc.
4.
  - a. With respect to jurisdiction, a brief summary of the factual basis supporting each claim asserted, whether original claim, counterclaim or third-party claim, etc., and, the legal and jurisdictional basis for each such claim, or if contested, the jurisdictional questions;
  - b. In diversity damage suits, there is authority for dismissing the action, either before or after trial, where it appears that the damages reasonably could not come within the jurisdictional limitation. Therefore, the proposed pre-trial order in such cases shall contain either a stipulation that \$75,000 (or for a case commenced before January 17, 1997, \$50,000) is involved or a resume of the evidence supporting the claim that such sum reasonably could be awarded.

5. A list and description of any motions pending or contemplated and any special issues appropriate for determination in advance of trial on the merits. If the Court at any prior hearing has indicated that it would decide certain matters at the time of pre-trial, a brief summary of those matters and the position of each party with respect thereto should be included in the pre-trial order.
6. A brief summary of the material facts claimed by:
  - a. Plaintiff
  - b. Defendant
  - c. Other parties.
7. A single listing of all uncontested material facts.
8. A single listing of the contested issues of fact. (This does not mean that counsel must concur in a statement of the issues; it simply means that they must list in a single list all issues of fact.) Where applicable, particularities concerning the following fact issues shall be set forth:
  - a. Whenever there is in issue the seaworthiness of a vessel or an alleged unsafe condition of property, the material facts and circumstances relied upon to establish the claimed unseaworthy or unsafe condition shall be specified with particularity;
  - b. Whenever there is in issue negligence of the defendant or contributory or comparative negligence of the plaintiff, the material facts and a circumstances relied upon to establish the claimed negligence shall be specified with particularity;
  - c. Whenever personal injuries are at issue, the nature and extent of the injuries and of any alleged disability shall be specified with particularity;
  - d. Whenever the alleged breach of a contractual obligation is in issue, the act or omissions relied upon as constituting the claimed breach shall be specified with particularity;
  - e. Whenever the meaning of a contract or other writing is in issue, all facts and circumstances surrounding execution and subsequent to execution, both those admitted and those in issue, which each party contends serve to aid interpretation, shall be specified with particularity;
  - f. Whenever duress or fraud or mistake is in issue,

and set forth in the pleadings, the facts and circumstances relied upon as constituting the claimed duress or fraud or mistake (see Fed. R. Civ. P. 9(b)) shall also be set forth in the pre-trial order;

- g. If special damages are sought, they shall be itemized with particularity. (See Fed. R. Civ. P. 9(g));
  - h. If a conspiracy is charged, the details of facts constituting the conspiracy shall be particularized.
9. A single listing of the contested issues of law. (See explanation in 8 above.)
10. For each party, a list and description of exhibits intended to be introduced at the trial. Prior to the confection of the pre-trial order, the parties shall meet, exchange copies of all exhibits, and agree as to their admissibility. As to any exhibits to which the parties cannot agree, memoranda shall be submitted on or before five working days prior to trial.
- a. Each list of exhibits first should describe those that are to be admitted without objection, and then those to which there will be objection, noting by whom the objection is made (if there are multiple adverse parties), and the nature of the objection. Markers identifying each exhibit should be attached to the exhibits at the time they are shown to opposing counsel during preparation of the pre-trial order;
  - b. If a party considers he has good cause not to disclose exhibits to be used solely for the purpose of impeachment, he may ex parte request a conference with the Court and make his position known to the Court in camera.
  - c. Where appropriate to preserve trade secrets or privileges, the listing of exhibits may be made subject to a protective order or in such other fashion as the Court may direct. If there are such exhibits, the pre-trial order will state: The parties will discuss exhibits alleged to be privileged (or to contain trade secrets, etc.) at the pre-trial conference.
  - d. In addition to the formal list of exhibits, counsel shall prepare copies for opposing counsel and a

bench book of tabbed exhibits delivered to the Court five working days before the start of the trial. If the trial is a jury trial and counsel desires to display exhibits to the members of the jury, then sufficient copies of such exhibits must be available so as to provide each juror with a copy , or alternatively, enlarged photographic copies or projected copies should be used. The Clerk of Court has available an opaque projector, and arrangements for its use should be made directly with the Clerk.

- e. Unless otherwise ordered by the Court, only exhibits included on the exhibit list and/or for which memoranda have been submitted shall be included for use at trial.
  - f. Each counsel shall submit to the Court on the day of trial a list of exhibits properly marked for identification which he or she desires to use at trial.
11. a. A list of all deposition testimony to be offered into evidence. The parties shall, prior to trial, meet and agree as to the elimination of all irrelevant and repetitive matter and all colloquy between counsel. In addition, the parties shall, in good faith, attempt to resolve all objections to testimony so that the Court will be required to rule only on those objections to which they cannot reach an agreement as to their merit. As to all objections to the testimony which cannot be amicably resolved, the parties shall deliver to the Court, not less than three days prior to trial, a statement identifying the portions objected to, and the ground therefor. Proponents and opponents shall furnish the Court appropriate statements of authorities in support of their positions as to the proposed testimony.
- b. In non-jury trials, the parties shall, at least five days prior to trial, submit to the Court:

A summary of what each party intends to prove and convey to the Court by the deposition testimony, including, where appropriate, particular page and line reference to said depositions. The parties shall indicate to the Court by page and line numbers, those parts of the deposition which each party intends to use, and upon which each party shall rely, in proving their respective cases.

12. a. A list and brief description of any charts, graphs, models, schematic diagrams, and similar objects which, although not to be offered in evidence, respective counsel intend to use in opening statements or closing arguments;
  - b. Either a stipulation that the parties have no objection to the use of the listed objects for such purpose, or a statement of the objections to their use; and a statement that if other such objects are to be used by any party, they will be submitted to opposing counsel at least three days prior to trial and, if there is then opposition to their use, the dispute will be submitted to the Court at least one day prior to trial.
13. a. A list of witnesses for all parties, including the names, addresses and statement of the general subject matter of their testimony (it is not sufficient to designate the witness simply "fact," "medical" or "expert"), and an indication in good faith of those who will be called in the absence of reasonable notice to opposing counsel to the contrary;
  - b. A statement that the witness list was filed in accordance with prior court orders. No other witness shall be allowed unless agreeable to all parties and their addition does not affect the trial date. This restriction will not apply to rebuttal witnesses or documents whose necessity cannot be reasonably anticipated. Furthermore, in the case of expert witnesses, counsel shall certify that they have exchanged expert reports in accordance with prior court orders. Expert witnesses whose reports have not been furnished opposing counsel shall not be permitted to testify nor shall experts be permitted to testify to opinions not included in the reports timely furnished;
  - c. Except for good cause shown, the Court will not permit any witness to testify unless with respect to such witness there has been complete compliance with all provisions of the pre-trial order and prior court orders;
  - d. Counsel shall not be allowed to ask questions on cross-examination of an economic expert which would require the witness to make mathematical calculations in order to frame a response unless the factual elements of such questions shall have been submitted to that expert witness not less than

three full working days before trial.

14. A statement indicating whether the case is a jury or non-jury case.
  - a. If the case is a jury case, then indicate whether the jury trial is applicable to all aspects of the case or only to certain issues, which issues shall be specified. In jury cases, add the following provisions:

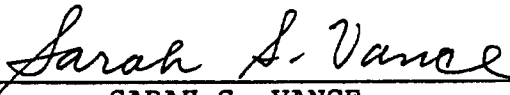
"Proposed jury instructions, special jury interrogatories, trial memoranda and any special questions that the Court is asked to put to prospective jurors on voir dire shall be delivered to the Court and opposing counsel not later than five working days prior to the trial date, unless specific leave to the contrary is granted by the Court."
  - b. In a non-jury case, suggested findings of fact and conclusions of law and a separate trial memorandum are required, unless the Court enters an order that such is not required. Same are to be submitted not less than five full working days prior to trial.
  - c. In a jury case, a trial memorandum shall be required only when and to the extent ordered by the Court. However, any party may in any event submit such memoranda not less than five working days prior to trial and should accomplish this with respect to any anticipated evidentiary problems which require briefing and jury instructions requiring explanation beyond mere citation to authority.
15. In cases where damages are sought, include a statement for completion by the Court, that "The issue of liability (will or will not) be tried separately from that of quantum." It is the policy of this Court in appropriate cases to try issues of liability and quantum separately. Accordingly, counsel should be prepared to discuss at the pre-trial conference the feasibility of separating such issues. Counsel likewise should consider the feasibility and desirability of separate trials as to other issues.
16. A statement describing any other matters that might expedite a disposition of the case.
17. A statement that trial shall commence on \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ a.m./p.m. A realistic estimate of the

number of trial days required. Where counsel cannot agree upon the number of trial days required, the estimate of each side should be given. In addition, the proposed order must contain a sentence including the trial date and time previously assigned.

18. The statement that "This pre-trial order has been formulated after conference at which counsel for the respective parties have appeared in person. Reasonable opportunity has been afforded counsel for corrections, or additions, prior to signing. Hereafter, this order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice."
19. The statement that "Possibility of settlement of this case was considered."
20. The proposed pre-trial order must contain appropriate signature spaces for counsel for all parties and the Judge.

**IT IS FURTHER ORDERED** that the foregoing pre-trial notice be mailed to counsel of record for all parties to these cases, and counsel will comply with the directions set forth herein.

New Orleans, Louisiana

  
\_\_\_\_\_  
SARAH S. VANCE  
United States District Judge

**EACH NUMBERED PARAGRAPH IS TO BE PRECEDED  
BY A HEADING DESCRIPTIVE OF ITS CONTENT**