

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

MOTION TO ADJOURN ESI DEPOSITIONS FOR FORTY-FIVE DAYS

Defendants Liberty Mutual Fire Insurance Company ("Liberty Mutual"), The Standard Fire Insurance Company ("Standard Fire"), Allstate Insurance Company ("Allstate"), and Pilot Catastrophe Services, Inc. ("Pilot") move the Court to adjourn the ESI depositions for forty-five days to allow the Court to consider whether it has jurisdiction over this matter.¹ On November 18, 2010, Branch submitted a brief and supporting declaration on its disclosures to the Government. In its eve-of-hearing submissions, Branch effectively concedes that (a) Branch first provided its disclosures to the government on August 2, 2006 – the same day it filed this action,

¹ Counsel for Standard Fire contacted counsel for Branch to request his consent to adjourning the depositions. Counsel for Branch advised that Branch would not so consent.

and (b) Branch had not provided any specific facts to the government regarding Liberty Mutual and Standard Fire prior to filing this action.

As this Court recognized at the November 19 hearing, these jurisdictional facts raise serious questions as to the Court's jurisdiction. As numerous courts have recognized and a leading commentator has noted, in such circumstances it is "wise to stay discovery on the merits until challenges to jurisdiction have been resolved." As set forth more fully in the attached memorandum in support, given the substantial jurisdictional questions here, Branch's wide-ranging ESI discovery depositions, spanning 18 topics as to each of the nine defendants, and taking place around the country, should be adjourned for forty-five days to give the Court an opportunity to consider whether it has jurisdiction. Such action will cause no prejudice to Branch and will preserve precious judicial resources and prevent a serious waste of time and effort by all should this Court grant the pending motions. During the forty-five day period, defendants will work with Branch to develop a schedule for the ESI depositions should any portion of Branch's claim survive, and will be prepared to move forward in a targeted fashion in line with the Fifth Circuit's guidance espoused in *U.S. ex rel. Grubbs v. Kanneganti*, 565 F.3d 180 (5th Cir. 2009).

Accordingly, Defendants respectfully request that their motion be granted, and ESI depositions be adjourned for forty-five days.

Dated: November 24, 2010

Respectfully submitted,

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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 24th day of November, 2010.

/s/ Keith L. Magness
KEITH L. MAGNESS

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

**MEMORANDUM IN SUPPORT OF
MOTION TO ADJOURN ESI DEPOSITIONS FOR FORTY-FIVE DAYS**

Defendants Liberty Mutual Fire Insurance Company ("Liberty Mutual"), The Standard Fire Insurance Company ("Standard Fire"), Allstate Insurance Company ("Allstate"), and Pilot Catastrophe Services, Inc. ("Pilot") (collectively, "Defendants") move the Court to adjourn the ESI depositions for forty-five days, while the Court considers whether it has jurisdiction over this matter.¹ On November 15, 2010, the Court, considering the pending jurisdictional motions, stayed the bulk of discovery in this case, but at that time, the Court ruled that ESI depositions could proceed as scheduled. Since then, as set forth in greater detail below, recent developments have revealed even greater questions about the Court's jurisdiction over Branch's claims. These jurisdictional issues now could result in dismissal of the case in its

¹ Counsel for Standard Fire contacted counsel for Branch to request his consent to adjourning the depositions. Counsel for Branch advised that Branch would not so consent.

entirety or dramatically alter the landscape of discovery.² Because jurisdiction is in question – and consequently, so is the scope of Branch’s ESI depositions for each defendant – defendants respectfully request that the Court adjourn the ESI depositions for forty-five days. Such a short stay would not prejudice Branch, and would allow the parties to take account of the Court’s jurisdictional ruling in determining whether the ESI depositions need to proceed at all and, if so, their proper scope.

Since the Court last considered whether ESI depositions should proceed, Branch has effectively conceded that (a) it first provided its disclosures to the government on August 2, 2006 – the same day it filed this action, and (b) Branch had not provided any specific facts to the government regarding Liberty Mutual and Standard Fire prior to filing this action. These concessions were made in Branch’s eve-of-hearing submission on November 18, 2010, three days after the Court’s initial discovery stay decision.

The next day, on November 19, the Court heard oral argument on defendants’ jurisdictional motions pending before it. As this Court recognized at that hearing, these jurisdictional facts raise serious questions as to the Court’s subject matter jurisdiction over this case. As numerous courts have recognized and a leading commentator has noted, in such circumstances it is “wise to stay discovery on the merits until challenges to jurisdiction have been resolved.”³

Given these recent developments, and the substantial jurisdictional questions that are now clearly presented for the Court’s decision in this case, Defendants respectfully request that the Court adjourn Branch’s wide-ranging ESI depositions – depositions which could span 18

² Branch’s notice for the ESI depositions is quite wide-ranging, spanning 18 topics for each of the nine defendants, and the depositions will require multiple witnesses for many defendants and take place around the country.

³ See note 14, *infra*.

topics as to each of the nine defendants and take place around the country – for forty-five days, during which time defendants will work with Branch on a schedule for those depositions should they need to proceed.

I. PRELIMINARY STATEMENT

On November 1, 2010, several defendants sought review of the Case Management Order (“CMO”) in this action.⁴ On November 15, 2010, the Court, noting the various jurisdictional and/or dispositive motions before it, issued an order staying the CMO, but allowing ESI depositions to “proceed as planned.”⁵ The ESI depositions for all defendants presently are scheduled between December 1 to 9, 2010.⁶

After the Court issued this ruling, on November 18, 2010, counsel for Branch filed a “Preliminary Consolidated Response to Defendants’ Supplemental Statements of Undisputed Material Facts”, supported by the declaration of its counsel, wherein it acknowledged that despite specific statutory requirement to do so, Branch had failed to voluntarily provide the Government with any information on which its original complaint was based before August 2, 2006, the day Branch filed suit.⁷ Moreover, Branch’s submission effectively concedes that Branch failed to provide the Government with any specific facts as to Liberty Mutual and Standard Fire. During oral argument, the Court noted this issue, cited *Martin v. Alamo Cmty. College Dist.*, 353 F.3d 409 (5th Cir. 2003), and questioned whether Branch’s same-day submission satisfied 31 U.S.C. § 3730 (e)(4)(B)’s requirements.⁸

⁴ See R. Doc. Nos. 736, 741, 744, and 746.

⁵ See R. Doc. 781.

⁶ See R. Doc. 729.

⁷ See R. Doc. 793, p. 1; R. Doc. 793-1, ¶ 4; 31 U.S.C. § 3730(e)(4)(B).

⁸ Standard Fire’s and Liberty’s argument that an untimely disclosure deprives the Court of subject matter jurisdiction would apply equally to all Defendants.

Despite its admission regarding its failure to provide the Government with any information on which its original complaint was based before August 2, 2006, Branch continues to press for eighteen part (not including subparts) ESI depositions of defendants related to the merits of the litigation.⁹ The deposition notice is broad in nature, and requires substantive testimony regarding a host of proprietary systems applicable to both flood and wind claims.¹⁰ The breadth of Branch's notice will require multiple individuals to appear, individuals who are located throughout the United States and will be required to fly to various deposition sites. Additionally, Branch noticed similar broad ESI depositions of the other six defendants starting December 1, 2010.¹¹ The depositions are multi-tracked and are scheduled to occur all across the country resulting in substantial preparation and attendance costs.¹²

Defendants' motions raise serious jurisdictional issues applicable to all defendants, and those arguments have been bolstered by Branch's November 18 admission that it failed to provide the required pre-suit notice to the Government. These jurisdictional questions have the potential to result in dismissal of this case. By contrast, any discovery Branch obtains through the ESI depositions will not change the jurisdictional facts and therefore, these depositions are not necessary to any decision on the pending motions. A forty-five day stay of ESI discovery to allow the Court to consider the jurisdictional issues will not prejudice Branch. Rather, it will preserve precious judicial resources and prevent a serious waste of time and effort by all should this Court grant the pending motions. A brief stay is even more appropriate in light of the Fifth Circuit's recent setting of ANPAC's writ of mandamus for oral argument -- a

⁹ An example of Branch's ESI deposition notice is attached as Exh. 1.

¹⁰ *Id.*

¹¹ *See R. Doc. 729.*

¹² *Id.* By way of example, Branch's March 26, 2010 ESI deposition of Liberty Mutual only covered two of the eighteen topics listed in Branch's November 17, 2010 notice, but lasted four hours and resulted in 152 pages of testimony.

decision also issued *after* this Court had ruled on the schedule for discovery and ESI depositions. This writ, which will now be considered by the Fifth Circuit in January, presents the issue of whether this Court's jurisdiction is limited to the exemplar properties, and could seriously circumscribe discovery and make the information requested in the ESI depositions irrelevant. Accordingly, this Court should adjourn the ESI depositions for forty-five days while it considers the pending jurisdictional issues.

II. LAW AND ARGUMENT

As this Court recognized when it stayed most discovery pending resolution of the jurisdictional motions, trial courts are vested with broad discretion to manage the conduct of discovery.¹³ In accord with this broad discretion, courts across the land (including the Fifth Circuit and this very Court) have recognized that entry of an order staying discovery pending resolution of jurisdictional issues and/or dispositive motions is an appropriate exercise of the Court's discretion.¹⁴ This is especially true where the proposed discovery will divulge nothing

¹³ See *Herbert v. Lando*, 441 U.S. 153, 177 (1976) (“judges should not hesitate to exercise appropriate control over the discovery process”). See also Fed. R. Civ. Proc. 26(c) (“The court may, for good cause, issue an order to protect a party or person from . . . undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; [or] (B) specifying terms, including time and place, for the disclosure or discovery. . . .”).

¹⁴ See e.g. *Thigpen v. United States*, 800 F.2d 393, 396-97 (4th Cir. 1986) (affirming stay of discovery pending ruling on 12(b)(1) motion); *Kelleher v. Omark Indus., Inc.*, 1974 WL 168875 at *2 (D.Mass. 1974) (staying discovery where serious question as to jurisdiction is raised); *Orchid Biosciences, Inc. v. St. Louis Univ.*, 198 F.R.D. 670, 675 (S.D.Cal. 2001) (“When a defendant raises jurisdictional objections, the court may stay discovery proceedings generally and limit discovery to matters relevant to the court’s jurisdiction. . . .”); *Progressive N. Ins. Co. v. Fleetwood Enterprises, Inc.*, 2005 WL 2671353 at * 5 (W.D.Wash. 2005) (same); *Enplanar, Inc. v. Marsh*, 11 F.3d 1284, 1291 (5th Cir. 1994) (staying discovery on merits until questions regarding venue are resolved); *Sperberg v. Firestone Tire & Rubber Co.*, 61 F.R.D. 70, 74 (N.D. Ohio 1973) (same); *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30, 30-31 (3d Cir. 1970) (staying discovery until court considers motion to transfer); *O’Brien v. Avco Corp.*, 309 F. Supp 703, 705 (S.D.N.Y. 1969) (“[W]hen, as here, the determination of a preliminary question may dispose of the entire suit, applications for discovery may be properly deferred until the determination of such questions”); *Ladd v. Equicredit Corp. of America*, 2001 WL 175236 at * 1 (E.D. La. 2001) (staying discovery until dispositive motions are resolved); see also 8A Wright & Miller, Fed. Prac. & Proc. Civ. § 2040 (“it would be wise to stay discovery on the merits until challenges to jurisdiction have been resolved”).

related to the basis for the moving party's motion to dismiss and/or dispositive motion.¹⁵ As noted by several Courts, "such a procedure is an eminently logical means to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial resources."¹⁶

When considering whether a stay of all discovery pending resolution of jurisdictional/dispositive motions is warranted, federal courts are guided by the following factors: (1) the type of motion and whether its challenge is a "matter of law" or to the "sufficiency" of the allegations, (2) the nature and complexity of the action, (3) whether counterclaims and/or cross-claims have been interposed, (4) whether some or all of the defendants join in the request for a stay, (5) the posture or stage of the litigation, (6) the expected extent of discovery in light of the number of parties and complexity of issues in the case, and (7) any other relevant circumstances.¹⁷

This Court already has exercised its discretion to properly stay the bulk of discovery in this action. Defendants respectfully request that the Court revisit its prior decision in light of the above new developments and exercise further discretion here to briefly extend the time to complete the ESI depositions. In the present case, defendants' jurisdictional challenge is a matter of law. Either Branch complied with the pre-suit disclosure requirements or it did not. If not, this Court lacks subject matter jurisdiction over (or at least a majority of) Branch's claims. Regarding the nature of the action, the regulatory and adjusting lapses alleged by Branch will doubtless involve significant factual and expert discovery. In the event this Court grants

¹⁵ *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) (staying discovery where nothing plaintiff could learn through proposed discovery would affect resolution of defendant's motion to dismiss). *See also Kelleher*, 1974 WL 168875 at * 2.

¹⁶ *See Bragg v. United States*, 2010 WL 3835080 at * 1 (S.D. W.Va. 2010); *Chavous v. D.C. Fin. Resp. and Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D.D.C. 2001); *Coastal States Gas Corp. v. Dept. of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979).

¹⁷ *Bragg*, 2010 WL 3835080 at * 1.

defendants' jurisdictional challenge, Branch's entire case, or at minimum a large part of, will be dismissed thus eliminating the need for or significantly reducing the scope these ESI depositions and other discovery, and any resources devoted to those time consuming and expensive efforts would be fruitless. For example, should this Court grant defendants' motions and dismiss Branch's claim in its entirety, hundreds of attorney hours and countless client resources will have been spent on a meaningless exercise. Considering these factors, and given no counterclaims and/or cross claims have been interposed, a forty-five day adjournment of the ESI depositions is proper.¹⁸

In its Order allowing ESI to proceed, this Court acknowledged that numerous jurisdictional issues are pending.¹⁹ After entry of this Court's Order, Branch conceded that it failed to provide the government with its disclosures prior to the date on which its suit was filed, and therefore, not *before* this action was filed as required under 31 U.S.C. § 3730 (e)(4)(B).²⁰ Branch further effectively conceded that it had not provided the government with specific facts as to Liberty Mutual or Standard Fire. These jurisdictional facts will not be changed by information gained during the currently scheduled ESI depositions. Thus, for the foregoing reasons, this Court should grant Defendants' motion and adjourn all ESI depositions for forty-five days. In light of the Court's stay of the remainder of the CMO dates, this brief stay to allow the Court to consider the significant jurisdictional issues pending will not prejudice Branch. During the forty-five days, defendants will work with Branch to develop a schedule for the ESI depositions, should any portion of Branch's claim survive, and will be prepared to move forward

¹⁸ *Id.*

¹⁹ *See* R. Doc. 781.

²⁰ *See* R. Doc. 793, p. 1; R. Doc. 793-1, ¶ 4.

in a targeted fashion in line with the Fifth Circuit's guidance espoused in *U.S. ex rel. Grubbs v. Kanneganti*, 565 F.3d 180 (5th Cir. 2009).

Dated: November 24, 2010

Respectfully submitted,

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**Attorneys for Pilot Catastrophe Services,
Inc.**

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 24th day of November, 2010.

/s/ Keith L. Magness

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

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

**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 9:30 a.m. on December 6, 2010, at the offices of O’Brien & Levine, 195 State Street, 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: November 17, 2010

Respectfully submitted,

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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

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.

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

ORDER

Considering the foregoing Motion to Adjourn ESI Depositions for Forty-Five Days ("Motion") of Liberty Mutual Fire Insurance Company, The Standard Fire Insurance Company, Allstate Insurance Company and Pilot Catastrophe Services, Inc. (collectively, "Defendants");

IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED**. ESI depositions in this matter are hereby stayed for a period of forty-five days. The parties are ordered to begin calendaring ESI depositions for the weeks immediately following expiration of this stay.

New Orleans, Louisiana this ____ day of _____, 2010.

UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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

PLAINTIFF

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ALLSTATE INSURANCE COMPANY, et. al.,

Defendants

CIVIL ACTION NO.: 06-4091

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NOTICE OF HEARING

PLEASE TAKE NOTICE that defendants Liberty Mutual Fire Insurance Company, The Standard Fire Insurance Company, Allstate Insurance Company and Pilot Catastrophe Services, Inc. shall bring their Motion to Adjourn ESI Depositions for Forty-Five Days for hearing in the United States District Court for the Eastern District of Louisiana on the 15th day of December, 2010 at 9:00 a.m., to be heard before the Honorable Sally Shushan, United States Magistrate Judge.

Dated: November 24, 2010

Respectfully submitted,

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Inc.**

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 24th day of November, 2010.

/s/ Keith L. Magness
KEITH L. MAGNESS