UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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IN RE HURRICANE SANDY CASES

REPORT OF DEFENSE LIAISON COUNSEL FOR THE NFIP CASES

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THIS DOCUMENT APPLIES TO:

ALL RELATED CASES

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NOW INTO COURT, comes Gerald J. Nielsen, as Court appointed liaison counsel for the Defendant National Flood Insurance Program ("NFIP") Write-Your-Own ("WYO") Program carriers. Prior to filing this submission, the undersigned conferred with all known WYO carrier defense counsel, as well as counsel for the Federal Emergency Management Agency ("FEMA") and at the U.S. Attorney's Office for the State of New York.

PREAMBLE

This report relates only to the NFIP cases. A separate submission will be filed by Jared Greisman concerning the wind cases.

This submission for the NFIP cases has two core objectives. First, to comply with the Court's February 21, 2014 Order (Doc. 243) seeking a list of common issues and defenses "in order to educate and fully prepare our mediators and arbitrators." *Id.* at p.11. Second, to make a "showing to the contrary," (*Id.* at p. 6) establishing that the current Case Management Order ("CMO") should be modified with respect to the NFIP cases, to allow formal discovery to commence now on at least one category of the NFIP cases, because quick resolution of these via mediation upon only document exchanges is demonstrably unlikely, given the substantive laws at issue.

ISSUES FOR THE PREPARATION OF MEDIATORS AS TO THE
NATURE OF RISK FOR A WYO CARRIER

An effective mediator looks for what makes a party feel at risk. Once understood, the effective mediator uses this information to persuade the party to lessen that risk by settling the dispute. This Court is no doubt serious about wanting its mediators to be well prepared, and certainly, to be effective. For this to happen in the NFIP cases, those mediators need to know how an NFIP-WYO carrier gains risk, or lessens risk.

A WYO carrier lessens its risk by settling NFIP cases within FEMA's views of FEMA's regulations.[1] Plaintiffs and their counsel may make all the arguments *they* wish concerning how they construe or interpret FEMA's rules. They can pull out a lone FEMA Manual provision and grab a snippet here, or a partial phrase there, or claim that some WYO carrier in some other case somewhere, did settle with them as to this or that point. That's fine. However, these types of arguments rarely lead to settlements against experienced NFIP defense counsel, and they certainly don't lead to settlements at volume. They lead to trials, which then often lead to appeals. Most often, on an NFIP appeal, the insured loses out.[2]

If the Court's mediators push settlements that are not in accord with FEMA's rules, few settlements will happen. This is because WYO carriers entering into such settlements risk a FEMA audit wherein FEMA rejects the carrier's decisions, and requires the carrier to reimburse FEMA for the entirety of any improper payments made.[3] It is safer for a WYO carrier to simply

[1] An agency's interpretation of its own regulations is entitled to "controlling weight unless it is plainly erroneous or inconsistent with the regulation it interprets." *Stinson v. United States*, 508 US 36, 45 (1993)
[2] This is precisely what happened to the insured in *Decosta v. Allstate Ins. Co.*, 730 F.3d 76 (1st Cir. 2013), wherein the district judge refused to allow the WYO carrier to conduct discovery, and refused to abide any of FEMA's rules governing that case. It is the hope of this submission to avoid such occurrences wherever possible.
[3] These points were discussed in the "Explanation" undersigned counsel filed on January 31, 2014. (Doc. 201-2)

let the Court rule at a trial upon the merits, than to agree to a settlement not in accord with FEMA's views of FEMA's rules.

This Court may independently confirm for itself the circumstances that will cause a WYO carrier to (a) settle, (b) try the case, or (c) appeal an adverse ruling. In Louisiana, U.S. Magistrate Judges Joseph Wilkinson, Sally Shushan, Daniel Knowles and Karen Wells Roby, personally mediated over 2,000 post-Katrina NFIP WYO Program cases. Less than twenty of those cases had to be tried. The main reason: plaintiffs were ordered by the Magistrates to produce whatever documents the defendants explained they needed, the carriers were afforded a full and fair opportunity to conduct the discovery they needed, and it became well understood that while the defendants definitely did want to settle as many cases as they possibly could, they had no difficulty going to trial and then on to appeal where necessary. A court order is safer than a settlement.

The substantive laws predicating all of this should be examined thoroughly by the mediators. Two different sets of laws are in play:

First, the mediator must examine the regulations that govern the NFIP-WYO Program. These make clear that a WYO carrier is the Government's "fiduciary," and that its duty is to "assure that any taxpayer funds are accounted for and appropriately expended." 44 C.F.R. Pt. 62.23(f). *See also* 44 C.F.R. Pt. 62.23(i)(2), which states in part, "It is important that the company's Claims Department verifies the correctness of the coverage interpretations and reasonableness of the payments recommended by the adjusters." Please consider also that within the Arrangement between FEMA and all WYO carriers, which is itself a federal law, the Arrangement provides at 44 C.F.R. Pt. 62, App. A, Art. II(G), that, "The company shall comply with written standards, procedures, and guidance issued by FEMA or FIA relating to the NFIP

and applicable to the company." These are non-discretionary legal duties governing disbursements of federal funds. At bottom, WYO carriers facing NFIP litigation cannot settle those cases without first "verifying" all damages being claimed. A WYO carrier cannot just take a public adjuster's word for it.

Second, the mediator must give due consideration to the Improper Payments Information Act of 2002, and the Improper Payments Elimination and Recovery Act of 2010. ("IPIA" and "IPERA"). These federal laws contain nondiscretionary Congressional mandates that apply to FEMA, which require it to require WYO carriers to reimburse to FEMA, any payments made that are not properly documented in accordance with agency rules and regulations. For example, if a WYO carrier were to engage in traditional "split the baby" type settlements as might occur routinely in private litigation, this would constitute a direct violation of both the IPIA and the IPERA.

An effective NFIP mediator will also have to understand this: Pursuant to FEMA's rules, and without litigation, 99% of the NFIP claims arising from Hurricane Sandy have already been successfully resolved. This Court is only reviewing the claims of 1% of the total claims. Wholly apart from whether the individuals within that 1% are right or wrong, it would be inappropriate, wrong and obviously contrary to the underlying substantive laws, to afford to the 1% a different or better deal under this Program beyond what was received by the 99%.

The mediator should also understand that WYO carriers view the word "settlement" in this context as a misnomer. An NFIP insured's lawsuit is more properly described as a continuation of the NFIP claims process. If all conditions to the lawsuit were met, and if more is actually owed under the Program's rules, then it should be paid. But, "splitting the baby" just to make cases go away is not a part of this federal program. Candidly, it's illegal.

In the same vein, nothing in this submission should be construed as conveying a belief that "it's FEMA's way or the highway." Congress adopted 42 U.S.C. §4072, which gives this Court exclusive jurisdiction over disputes of this type. Wherever an NFIP insured/plaintiff disagrees with FEMA's view, this Court is authorized by Congress to resolve that dispute. The sole point being made here, is that a WYO carrier is not this Court. It is not empowered by ANYTHING in either the statutory or regulatory scheme to take a position contrary to FEMA's, or to disburse federal funds in a manner not approved by FEMA.

SPECIFIC COMMON LEGAL ISSUES AND DEFENSES

Presented in no particular order, the following are commonly occurring legal issues and defenses in NFIP cases. To avoid repetition, issues that are a fixture of standard principles of insurance law (such is that no one may profit from an insurance claim) are addressed in the separate submission of the wind carriers.

1. Is the suit time barred? FEMA did extend its regulatory deadline for the filing of a proof of loss from 60 days to 18 months for Hurricane Sandy claims. 44 C.F.R. Pt. 61, App. A(1), Art. VII(J)(4). However, this extension of a regulatory rule has no impact upon, or relation to, the statutory deadline for filing NFIP lawsuits established by Congress at 42 U.S.C. §4072, and incorporated into both FEMA's regulations and each plaintiffs' SFIP. *See* 44 C.F.R. Pt. 61, App. A(1) Art. VII(R), and 62.22(a). FEMA Bulletin W-13069 explaining this exact topic is attached hereto as Exhibit A.
2. Were all damages from prior flood events, for which an NFIP claim was paid, completely repaired? A currently unknown number of the Sandy litigants also had NFIP claims from Hurricanes Irene or Lee. NFIP rules concerning paying for the

same damage twice require the WYO carrier to determine whether prior repairs were in fact completed in these situations.

3. Did the plaintiff comply with all conditions precedent to the filing of the lawsuit, before filing that lawsuit? *See* 44 C.F.R. Pt. 61, App. A(1), Art. VII(R). The most notable of these requirements is FEMA's proof of loss rule. An explanation of the strictness with which this rule is enforced by the appellate courts is to be found in the following cases: *DeCosta v. Allstate Ins. Co.*, 730 F.3d 76, 81-86 (1st Cir. 2013); *Jacobsen v. Metropolitan Prop. & Cas. Ins. Co.*, 672 F.3d 171, 175 (2nd Cir. 2012); *Suopys v. Omaha Prop. & Cas.*, 404 F.3d 805 (3rd Cir. 2005); *Dickson v. American Bankers Ins. Co. of Florida*, 739 F.3d 397 (8th Cir. 2014).

4. Coupled with the proof of loss requirement, is FEMA's supporting documentation requirement found at 44 C.F.R. Pt. 61, App. A(1), Art. VII(J)(3) and IV(F) and (I). As numerous courts have held, the pre-suit documentation submitted with the proof of loss as its support, must be sufficiently detailed that it genuinely allows the WYO carrier to perform its job as the Government's fiduciary, to determine the underlying basis of the claim, before a lawsuit is filed. *See e.g., Sun Ray Village Owners Association v. Old Dominion Ins. Co.*, 546 F.Supp. 2d 1283 (N.D.Fla. 2008); *Trosclair v. State Farm*, 2008 WL 5157715, *3 (E.D.La., Dec. 9, 2008); *Treme Cottages, Inc. v. Fidelity*, 2008 WL 4974660, *1 (E.D.La., Nov. 19, 2008); and *Wells v. Fidelity*, 2008 WL 2781539, *3-4 (E.D. La., July 14, 2008). One obvious purpose of this rule is to avoid the cost of unnecessary lawsuits.

5. Limited Scope of Coverage. The NFIP/SFIP is a "single risk" insurance policy. *Wagner v. Dir., FEMA*, 847 F.2d 515, 521 (9th Cir. 1988). It only covers "direct

physical loss by or from flood." 44 C.F.R. Pt. 61, App. A(1), Art. II(B)(12). This provision further states that, "there must be evidence of physical changes to the property." And, because of numerous restrictions, conditions and exclusions contained throughout the SFIP, many of which are designed to facilitate and bolster FEMA's mitigation initiatives, there are many instances where damages that can indeed be traceable to a "but for" causal relationship to the flood, are nevertheless not covered by this federal program. *See e.g.*, the earth movement exclusion of the SFIP. *West v. Harris*, 573 F.2d 873 (5th Cir. 1978), *cert. denied*, 440 U.S. 946, 99 S.Ct. 1424 (1979).

6. The Loss Settlement Clause. 44 C.F.R. Pt. 61, App. A(1), Art. VII(V). Recognizing the standard insurance law doctrine that no one should "profit" from insurance, FEMA's loss settlement clause provides that a claimant may only receive the lesser of (1) policy limits, (2) the actual cost of repairs, or (3) the estimated cost of repairs. *See e.g.*, *Mathews v. State Farm Fire and Cas. Co.*, 2007 WL 2127581, *2 (E.D.La., July 24, 2007). In many instances, given the amount of time that has passed since Hurricane Sandy, repairs will have already been completed. In those situations, the cost of repairs is a far more relevant indicator of the proper value of the claim than are professional estimators' estimates. *LaCroix v. State Farm Fire and Cas. Co.*, 2010 WL 226557, *4 (E.D.La., June 2, 2010).[4] In similar fashion, wherever a claim was also made for wind damage, no insured may recover from both their wind and flood policies, an amount that exceeds the value of their structure. *Bradley v. Allstate Ins. Co.*, 620 F.3d 509, 523 (5th Cir. 2010).

[4] Indeed, once the work is done, estimates are irrelevant.

7. Mass produced estimates. Early settlements will not happen in NFIP cases predicated on mass produced estimates and proofs of loss where policy limits are claimed in every single claim, and inflated costs are included for repair items on every single claim, regardless of need, and without any individual consideration of whether or not that repair would actually occur in that particular home. These efforts are dubious at best, and do not reflect the individualized judgment required by the SFIP at 44 C.F.R. Pt. 61, App. A(1), Art. VII(J)(5). In some cases, the repair estimates are almost double the entire value of the building. Given the Court's interest in moving cases, and in early resolution, undersigned counsel believes it necessary to point out at this early juncture, that there will be a fairly large number of cases that will bog down because of these types of issues. None of these cases will resolve without formal discovery. Examples of this type of problem resulting in the dismissal of the insured's lawsuit, include *Donovan v. Fidelity Nat'l Property & Casualty Co.*, 2014 WL 50811 (S.D.Tex, Jan. 7, 2014.); *Charnock v. Fidelity*, Docket #3:10-mc-07015 (S.D.Tex., Jan. 7, 2014) (Attached as Exhibit B); and *Pye v. Fidelity*, 2014 WL 496520 (S.D. Tex., Feb. 6, 2014).[5]

8. Appraisal. 44 C.F.R. Pt. 61, App. A(1), Art. VII(P). Via the appraisal clause, FEMA has adopted by regulation its own form of Alternative Dispute Resolution ("ADR"). *Id.* The process works exceedingly well, when its standards are adhered to. *See* however, *Decosta*, *supra*. Prior to appraisal, the parties must achieve agreement on all issues of claims presentment, coverage and scope. *De La Cruz v. Bankers*, 237 F.Supp.2d 1370, 1374 (S.D.Fla. 2002). Only pricing disputes may be presented on

[5] The *de minimus* judgment in *Pye* for $2500.00 for car parts has been appealed to the Fifth Circuit. Car parts are not covered under the NFIP.

appraisal. Further, the parties must actually submit "qualified" and "disinterested" appraisers. Where the process is used appropriately, it is very effective at moving files. FEMA Bulletin W-13029, which explains the process in detail, is attached as Exhibit C.

9. FEMA Waivers. The defendant WYO Program carriers have no more power to waive or not enforce a rule of this Program than do the courts.[6] The sole power of waiver of the regulations rests with FEMA. 44 C.F.R. Pt. 61, App. A(1), Art. VII(D). FEMA is known to grant additional individual waivers of the timeframe for compliance with its proof of loss requirement in certain circumstances, provided all parties have at all times acted in good faith, provided that the parties achieve a complete agreement as to all matters in litigation such that after the waiver is granted, the lawsuit is promptly dismissed, and provided, the waiver request comes early, before FEMA is put to the expense of having to pay both a large litigation bill, and the claim itself. In the past, FEMA officials have expressed their disdain for being asked to pay for both a large litigation bill, and then the claim. Understandably, they would rather just pay one or the other.

10. Exclusion for Post-FIRM elevated buildings. Given that coastal areas were impacted, FEMA's exclusion in the SFIP for damage to the lower area of post-FIRM elevated buildings (44 C.F.R. Pt. 61, App. A(1), Art. II(23) and Art. III(a)(8) and (b)(3) will be an issue. There are various ways that a building might be elevated; thus, no single across the board ruling is possible. For an example of a court applying FEMA's rules

[6] *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); and *Heckler v. Community Health Services*, 467 U.S. 51 (1984).

to a particular structure, s*ee Ayers Realty Co., LLC v. Selective Ins. Co. of Southeast*, 2014 WL 807509 (M.D.Pa., Feb. 28, 2014).

11. Basements. Examples of cases applying FEMA's rules concerning basements are as follows: *McGair v. American Bankers Ins. Co.*, 693 F.3d 94 (1st Cir. 2012); *Benbenek v. Fidelity Nat. Prop. and Cas. Ins. Co.*, 2013 WL 5366395 (S.D. Ind., Sept. 24, 2013); and *Oaks v. Allstate Ins. Co.*, 2006 WL 3328179 (E.D.Ky., Nov. 14, 2006)

12. Earth Movement. There are times when a flood is indeed the "but for" cause of differential settlement which leads to damage to an insured structure. Many times, damages of this type are actually pre-existing. In either situation, the damage is not covered. For cases applying this exclusion, *see West v. Harris, supra; Sodowski v. NFIP*, 834 F.2d 653 (7th Cir. 1987) and *Wagner v. Director, FEMA*, 847 F.2d 515 (9th Cir. 1988).

OBSERVATIONS CONCERNING THE CURRENT CMO

The undersigned most respectfully submits the following observations in hopes of beginning the process of swaying the Court that its current CMO will not achieve the Court's objectives with regard to the NFIP cases. The points made below are a precursor to the suggestions which follow.

CMO, p. 1: "Nothing in this Case Management Order is intended to slow the resolution of any case." In stark contrast to this statement, the CMO bars all formal discovery in all NFIP cases, regardless of how far apart the parties may be, for almost six months. Logically, as to all of those NFIP cases that the parties already know cannot be resolved without formal discovery,

six months will have been lost. The CMO, as currently written, will necessarily slow the resolution of virtually all of the hard NFIP cases.

CMO, pp. 2 and 8: The Court may be assuming that many of the NFIP Plaintiffs have not been paid anything. In reality, virtually every NFIP Plaintiff has already been paid 100% of the damages the WYO carrier believes it can legally pay under the Program. The lawsuits being received by this Court, for the most part, only seek additional funds. And, as noted earlier, these Plaintiffs represent only 1% of Sandy's victims.

CMO, p. 6: "As long as damages are properly documented, carriers have an incentive to pay." This statement is certainly true. However, proper presentation of the Plaintiff's documentation, which legally must occur pre-suit, only speaks to the *insured's* legal duties. That is only half of the equation. If the insured has indeed fully met his or her legal duty, then the WYO carrier's legal duty comes to the fore, which is to "verify" that which the Plaintiff has presented. 44 C.F.R. Pt. 62.23(i)(2)

A WYO carrier cannot simply let two adjusters (for instance, an independent adjuster and a public adjuster) sit in a room and haggle, and come up with a number. Such a process, which some Plaintiffs' counsel pushed for on February 5, 2014, and which seems to be what the Court envisions, is impossible in the NFIP cases. The WYO carriers cannot do it as a matter of substantive law, particularly in mass marketed cases involving disputes as to the conditions precedent, and coverage, and scope, and pricing, and calculations of loss settlement value.

CMO, p. 6: Formal discovery is to wait "in the absence of a showing to the contrary." In the *Decosta* matter, one of the three issues the WYO carrier in that case appealed upon was the district judge's refusal to allow the carrier to conduct discovery. The district judge in that matter decided the case was going to proceed as he directed, and without regard to FEMA's rules. On

appeal, because FEMA's rules had not been followed, the judgment for the plaintiff was reversed in its entirety. The district court's decisions cost the insured the entire amount in dispute, when likely some of it was payable.

As an officer of this Court, and as an expression of pure candor, the more that the WYO carriers are allowed to do their jobs to find out if additional federal benefits are actually owed, the greater the number of insured/plaintiffs who will see their disputes resolved successfully. In contrast, the longer it takes before the WYO carriers are allowed to do their work, the longer it will be until these insured/plaintiffs can resolve these issues, and then get on with their lives.[7]

PROPOSED MODIFICATION OF CMO NO. 1

The Court is requested to consider modifying the current CMO to provide for three different tracks for the resolution of the NFIP cases. As a foundational point, it is believed critical to this idea, that the individual Plaintiffs must certify, in writing, that they have had these three tracks fully explained to them, and that they have knowingly made a choice.

The timing of when the election of a particular track is to be made could follow section 5 on page 10 of the current CMO. In other words, the election could be made after the completion of the already required document exchanges. However, Defendants would have no problem if the Court allowed more time for this, since it is a new proposition.

Track 1 - - Already Repaired Homes

A significant number of the NFIP Plaintiffs have already repaired their homes. It is unknown whether this is 10% or 50% or more of the total. Regardless, it is a significant piece of

[7] Counsel for one WYO carrier, Nationwide, has asked the undersigned to convey the following to this Court: Nationwide raises a concern "regarding the potential restrictions on discovery and whether such potential limitations could raise constitutional and/or due process issues. At present, such issues are not ripe for consideration. Out of an abundance of caution, this issue is noted herein." The rest of the WYO carriers read the Court's CMO as a postponement of formal discovery, not blocking it forever. Nevertheless, Nationwide's requested comment is included.

the puzzle. The WYO carrier Defendants are interested in trying to attempt mediation without utilizing the processes of formal discovery in NFIP cases meeting these parameters:[8]

- All conditions precedent to presentment of the claim were satisfied pre-suit.
- The current CMO as to document exchanges was fully complied with.
- Repairs to the house are substantially or fully complete.
- The cost of repairs is known, well documented, and all documentation concerning these repairs has been fully exchanged pursuant to the current CMO.
- The exchanged documentation from the contractor meets the requirements of the SFIP, and is sufficient to allow the carrier to segregate out the cost of any improvements or betterments, additions or other items that aren't within the scope of NFIP coverage.
- The insured actually did spend more to repair their covered flood damage than was offered by the WYO carrier, and would like to attempt to resolve their dispute for the difference between the actual cost of covered repairs, and the carrier's prior payments.

It is likely that in many of these situations, some additional documentation or information might be needed, and that this might come to light only during the first mediation session. If the Court allows for this track, it is asked to allow the following:

- Initial mediation sessions upon this track should be conducted via telephone, with second sessions to be done in person.
- The Court's subpoena power should be available to collect whatever additional documents either side may deem needed.

[8] Even without the formal designation by the Court of a "track," plaintiffs' counsel believing their NFIP case fits these parameters are encouraged to reach out to the carrier's counsel.

- Site inspections should be available if deemed needed.
- Depositions should be permissible if, in the opinion of the parties and the mediator, such would likely move the dispute forward to resolution.
- The parties should be allowed to stay upon this track to meet with the mediator successive times, if they and the mediator believe that progress is being made.
- The parties should be afforded a maximum time upon this track; with four months being one possible time limit.

Track 2 - - Homes Not Yet Repaired

A large number of the NFIP cases pending in this Court are predicated upon mass produced estimates, where one public adjuster prepared estimates for large numbers of different properties in factory fashion, including many of the same high priced repairs in every single estimate, regardless of need. Examples of that practice are on full display in the *Charnock, Donovan* and *Pye* rulings mentioned earlier. This second track is <u>not</u> for persons whose claims were presented via such estimates. It is for those who wish to consider the following question:

Are there NFIP Plaintiffs for whom an individualized set of detailed documentation was actually prepared, and which was submitted to the carrier pre-suit as required by the policy, who either are 1) willing now to agree to the independent adjuster's estimate as to coverage and scope, but not as to pricing, or 2) want to see if the carrier might agree that it missed a few items, and try to achieve an agreement on coverage and scope? In other words, is there a group of NFIP Plaintiffs who desire to confine their claim voluntarily right now, and to invoke the Appraisal Clause of the SFIP? 44 C.F.R. Pt. 61, App. A(1), Art. VII(P). If so, the WYO carrier Defendants are inclined to attempt appraisals, without utilizing the processes of formal discovery, in NFIP cases meeting these perimeters:

- All conditions precedent to the presentment of the claim were satisfied pre-suit.
- The current CMO as to document exchanges was fully complied with.
- It can be established and verified that repair work upon the home is neither complete nor underway, and no bids for the actual works have been obtained.
- The parties are in complete agreement, in writing, on all issues of claims presentment, coverage and scope, such that the parties have agreed to one specific detailed line item list of covered items to be repaired, with the only remaining dispute being the pricing of those agreed upon items.

If the Court adopts this track, it is asked to develop its own list of umpires to the appraisal process. All too often, disagreements over picking an umpire lead to the process breaking down. Also, these umpires must be instructed that they have no authority to exceed the parties' prior agreements as to scope and coverage. Their role regards only pricing of agreed upon items of covered damage.

Track 3 - - Normal Litigation.

Given the large number of mass produced estimates,[9] undersigned counsel speculates that at least half of the total NFIP case load will have to proceed normally, at least through written discovery and depositions. These are the cases where the parties disagree as to the validity of the pre-suit documentation, the application of either coverage or exclusions, the scope of the covered damages, the pricing, and the method of calculation of the loss settlement value. Simply put, if literally everything is in dispute in the mass marketed NFIP cases, barring discovery for six months in all of these matters is simply counterproductive. These NFIP cases should be allowed to just get to it, because they will not settle just based upon document exchanges. With respect,

[9] This is something new for the Program. Little was seen of this after Katrina. More was seen after Hurricane Ike. Now it seems a cottage industry. Indeed, one law firm from Metairie, Louisiana is asserting publicly that it alone plans to file as many as 2,000 cases. Virtually all of these use estimates from just one public adjusting firm.

given the large number of these cases and the relatively small number of plaintiffs' counsel, a discovery period of eight months is not unreasonable.

CONCLUSION

Obviously, all parties will proceed as directed by the Court. However, in fulfillment of liaison counsel's duty of candor to the Court, he most respectfully submits that the current CMO will not achieve the Court's aims for the NFIP cases, namely many settlements and few trials. It is respectfully prayed that this Honorable Court consider modifying the current CMO with respect to the NFIP cases, along the lines suggested above.

Respectfully submitted,

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