

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DISTRICT**

**DAVID W. AIKEN AND MARILYN M. AIKEN**

**PLAINTIFFS**

**V.**

**CIVIL ACTION NO. 1:06CV741-LTS-RHW**

**RIMKUS CONSULTING GROUP, INC.,  
JAMES W. JORDAN, AND USAA CASUALTY  
INSURANCE COMPANY**

**DEFENDANTS**

**PRETRIAL ORDER**

**1.** A pretrial conference will be held

Date: November 28, 2007

Time: 1:30 p.m.

United States Courthouse at: The Dan M. Russell, Jr. Federal Building,  
2012 15<sup>th</sup> Street, Courtroom 506  
Gulfport, Mississippi

before the following judicial officer: Senior U.S. District Judge L.T.  
Senter, Jr.

**2.** The following counsel will appear:

**a.** For the Plaintiff:

Name	Address	Telephone
George W. Healy, IV., Esq.	1323 28 <sup>th</sup> Ave. Gulfport, MS. 39501	228-575-4005
Charles A. Boggs, Esq.	3616 S. I-10 Service Road W Suite 109 Metairie, LA 70001	504-828-1202

**b.** For the Defendants:

Name	Address	Telephone
For USAA CIC: Janet G. Arnold	P.O. Box 6020 Ridgeland, MS 39158	601-856-7200

For Rimkus Consulting Group, Inc. and James W. Jordan, P.E., S.E.  
David A. Ward Jr. 10003 Woodloch Forest Dr., 281-362-7728  
Suite 100  
The Woodlands, TX 77380

James C. Simpson, Jr. 2310 19<sup>th</sup> Street 228-863-6534  
Gulfport, MS 39501

3. The pleadings are amended to conform with this pretrial order.

4. The following claims, including claims stated in the complaint, have been filed:

Plaintiffs' claim against Defendants for breach of insurance contract, bad faith, punitive damages and fraud.

Plaintiffs' claim for policy limits, plus dwelling replacement costs provision of an additional 25% of dwelling limits, for damage to their house, appurtenant structures, contents, and additional living expenses.

Plaintiffs' claim of conspiracy between USAA Casualty Insurance Company ("USAA CIC") and Rimkus Consulting Group, Inc. and Rimkus' employee James W. Jordan, P.E.

Plaintiffs' claims for emotional distress damages, punitive damages, attorneys' fees and expenses, and prejudgment interest.

USAA CIC maintains its answers and defenses asserted in answer to the Complaint, including USAA CIC's due process and constitutional defenses to Plaintiffs' claim for punitive damages.

Defendants Rimkus and Jordan maintain their answers and defenses asserted in its answers to the Complaint, including their due process and constitutional defenses to Plaintiffs' claim for punitive damages.

5. The basis for the court's jurisdiction is 28 U.S.C. § 1332(a) (diversity of citizenship between the parties and an amount in controversy in excess of \$75,000.00 exclusive of interest and costs.)

6. There is the following jurisdictional question:

NONE.

7. The following motions remain pending:
  1. USAA reserves its right to renew its motion to transfer, as set forth in its Answer.
8. The parties accept the following concise summaries of the ultimate facts as claimed by:

By Plaintiffs:

USAA, James Jordan, and Rimkus Consulting Group, Inc. worked in concert to deprive Dr. and Mrs. David Aiken of the rights and benefits due them under their USAA insurance contract. Dr. and Mrs. Aiken's home was destroyed by hurricane force winds- - including tornadic winds - - on August 29, 2005.

Thereafter, USAA dispatched Rimkus Consulting Group, Inc. to review the damaged property located at 1 Eighth Street, Pass Christian, MS 39571.

In October 2005, Rovertto Chapa inspected the Aiken property. Rovertto Chapa is a Texas- licensed engineer who wrote a report which was very favorable to Dr. and Mrs. Aiken. In short, the report opined that the wind was of sufficient force to destroy the insured property.

As per Rimkus internal policy, Rovertto Chapa submitted his report and findings to Rimkus Consulting Group, Inc. Thereafter, team leader James Jordan unilaterally revised the report in a manner designed to mollify the language which would dictate coverage under existing law. Specifically, James Jordan changed the Chapa language as follows:

Mr. Jordan changed the word "destroy" to "damage". Mr. Jordan also changed Mr. Chapa's report "so it must be assumed that a significant portion of the house was damaged due to wind forces", to "it cannot be ruled out that a significant

portion of the house was damaged due to wind forces. There were other changes. In early 2006 representatives of USAA informed representatives of Rimkus Consulting Group, Inc. that they were not satisfied with the Rimkus engineering report. Specifically, the Chapa and Jordan reports were changed to lessen if not eradicate the determination that wind was the dominate force in the Aikens' loss. When Dr. Aiken first reported his claim to USAA he was encouraged to pursue a flood claim. Dr. Aiken was informed by USAA that the flood claim would be ratified in short order and that his first step should be to pursue the federally guaranteed/sponsored flood provision within his insurance coverage. Pursuant to USAA's recommendation, Dr. Aiken did pursue and collect flood coverage in the full and true amount of \$278,000.

Dr. Aiken will present evidence that Rimkus issued a report entitled "Report Conclusions." That report instructed Rimkus personnel to take out bad language "language which would dictate coverage" and change the bad language to better language "language contrary to blanket coverage." Upon information and belief, Rimkus' insurance company clients asked that the new language be included in the engineering reports. Not surprisingly, Dr. Aiken's final report included the language which was memorialized in the Report Conclusions memorandum. Dr. Aiken believes that the total weight of the evidence will show that USAA was one of the clients who wanted the "watered-down" language.

As the Complaint and Memorandum indicate, Dr. and Mrs. Aiken are seeking the following damages:

1. Compensatory damages;
2. Punitive damages;
3. Damages for bad faith denial of a claim;
4. Mental anguish and emotional distress;
5. Fraud; and
6. Attorneys' fees and costs.

It is Plaintiffs' position that USAA ratified the actions of Rimkus, thus Rimkus became an agent of USAA also, Rimkus and USAA engaged in a civil conspiracy in denying the claim. Rimkus violated the standard of care which Plaintiffs will prove with engineer experts and Rimkus and Jordan's violations of Rimkus' own protocol, rules and regulations. This was also gross negligence and/or wanton and reckless disregard of the rights of Dr. and Mrs. David Aiken.

b. Defendants, Rimkus Consulting Group, Inc. and James W. Jordan:

Rimkus Consulting Group, Inc., is a forensics engineering company that was hired by insurance and adjusting companies to investigate Hurricane Katrina damages to homes throughout Mississippi. Rimkus received from USAA a "Hurricane Katrina Assignment Request for Engineer Inspection" dated September 27, 2005, pertaining to the Aikens' property. The Assignment Request asked Rimkus to inspect and offer a professional opinion concerning Aikens' property with respect to causation, i.e., wind v. flood/storm surge. USAA wanted to know if direct physical loss by wind contributed to the destruction and/or damage to the building.

Rimkus contracted with S & B Infrastructure, Ltd., to provide field inspectors to assist in

handling the inspections of the properties. Rovertto Chapa, of S & B Infrastructure, performed a visual inspection of the Aikens' property on October 6, 2005. All structures at the property had been reduced to a slab. Mr. Chapa prepared field notes and took photographs while at the property and subsequently prepared a draft report of findings. Chapa's draft report was sent to James W. Jordan, P.E., S.E., who is licensed in Mississippi as a professional engineer.

Jordan prepared a Report of Findings dated December 20, 2005, that includes his opinions based on his assessment of Chapa's observations.

The Report of Findings dated December 20, 2005, concluded:

1. The high winds and storm surge/flooding accompanying Hurricane Katrina destroyed the house, boat house and the pump house.
2. High wind forces and storm surge forces from the hurricane were both of sufficient magnitude to damage the three-story house, boat house, and pump house on the property.
3. It cannot be visually determined from the remaining physical evidence the percentage of damage resulting from surge forces and the percentage of damage resulting from wind forces.

USAA requested a more detailed statement of the cause of damage and specifically the amount of wind damage, if any.

The request was made through the Rimkus staff and upon receipt of the request, Jordan examined the relevant data that had become available since the issuance of the report.

Among the newly available evidence were high-resolution aerial photographs provided by

NOAA; a compilation of data accessed through NOAA's Katrina Impact Assessment website (<https://www.ncddc.noaa.gov/Katrina-2005/>) which showed officially reported surge height measurements at specific locations along the Mississippi coast; and wind versus surge timeline graphs for Pass Christian and Bay Saint Louis as prepared by Compu-Weather, Inc. This information was more detailed and specific than the information Jordan had available to him at the time Rimkus issued the December 20, 2005, report. The Compu-Weather information available at that time, for example, included only ranges of wind speeds and surge heights shown as color-coded regions on large maps that covered a coastal area from Louisiana to Florida, but included no timing information or detailed data specifically for Pass Christian and Bay Saint Louis. Further, the high-resolution aerial photographs used in conjunction with topographic maps showed how the specific site of the Aikens' property that was submerged within a 25-foot storm surge compared to nearby sites with structures located above the storm surge. Following his review of this information, Jordan prepared and Rimkus issued a supplemental report of conclusions, which are set out in the Rimkus Supplemental Report of Findings dated March 23, 2006. Jordan signed and sealed the report as a licensed Mississippi engineer. The Supplemental Report clarified the prior conclusions and set forth a scope of likely damage from the wind forces versus those from the surge/flooding.

The March 23, 2006, Supplemental Report concluded as follows:

1. The storm surge reached an estimated height of 20-feet above ground at the property (excluding waves) and caused the destruction of the building superstructures; however, based upon

damages to nearby residences that remained after the hurricane in Bay St. Louis, it is likely that high winds damaged the Aiken buildings' siding, fascia/trim, flashing, soffit panels, gutters, roofing, and caused localized damages to the roof and/or wall sheathing (assuming that these materials were used in the construction of the residence, boat house and pump house) prior to the storm surge sweeping through the site.

- a. Wind-blown debris may have broken windows and doors on the windward side of the buildings (south and east facing sides). Wind-driven rain would have entered wind-breached openings in the building, envelopes, and caused water damages to wall and ceiling finishes, floor coverings, insulation, and furnishings (assuming these materials were present in the structures).
- b. The water damages to the interior of the Aiken buildings due to wind-driven rain would have been relatively minor compared to the extensive flooding from the storm surge, except for the reported third story of the residence. The storm surge reached the second story of the buildings, but not the third story of the main residence.

Accordingly, USAA paid the Aikens \$178,204.87 representing damage caused to the house by wind. This was in addition to the \$278,000 the Aikens received on their flood insurance claim.

Greg Quinn, meteorologist examined the report of Charles Barrere and all other pertinent

meteorological evidence and determined that no tornado occurred at the Aiken property. This corroborates the fact that the National Weather Service did not report any tornado occurring at the Aiken property.

c. Defendant, USAA Casualty Insurance Company:

USAA CIC issued a homeowners insurance policy to Dr. David Aiken, Jr. and Marilyn Aiken, insuring their beach house at 1 Eighth Street, Pass Christian. The house and its contents were destroyed during Hurricane Katrina. The homeowner's policy provided the following underlying limits for covered losses: \$333,000 dwelling coverage; \$249,750 contents coverage; \$33,300 appurtenant structure coverage; and \$66,600 for additional (increased) living expenses. The Aikens also had HO-125 coverage on the dwelling, which provides additional benefits of 25% of the dwelling coverage limit if (a) wind damage to the house reached an amount sufficient to exhaust the underlying policy limits; and (b) funds in excess of the underlying policy limits are *actually expended* by the insured to repair or rebuild the house.

The Aikens made a claim under their homeowners policy and also under a separate flood insurance policy issued by USAA General Indemnity Co., which provided \$250,000 dwelling coverage and \$28,200 contents coverage. Based on inspection by three adjusters and on the opinions of an engineering firm, Rimkus Consulting Group, Inc. ("Rimkus"), USAA CIC paid the Aikens a total of \$178,204.87 under their homeowner's policy (dwelling \$85,709.49; contents \$78,140.86; appurtenant structures \$8,052.66; and loss of use \$6,301.86), representing damage USAA CIC believed to have been caused by

wind. Under the water damage exclusion contained in the homeowner's policy, USAA CIC denied coverage for damage caused by tidal surge and flooding. However, the Aikens also received the full policy limits of \$278,200 for the dwelling and part of its contents under their separate flood insurance policy.

USAA CIC retained Rimkus Consulting Group, Inc., as an independent contractor, to perform an engineering analysis of the loss. The initial Rimkus report stated that both wind and storm surge damaged the property, but did not detail the damage that may have been caused by wind. USAA CIC requested that Rimkus issue a supplemental report clarifying the damage that may have been caused by wind, so that USAA CIC could determine how much to pay the Aikens. Rimkus's assigned engineer, James W. Jordan, reexamined the loss and issued a supplemental report detailing likely wind damage before destruction of the house by storm surge. USAA CIC then issued its wind damage payment to the Aikens.

A further engineering analysis by CTL Group confirmed USAA CIC's position on the amount of wind damage to the house, versus storm surge.

The Aikens' loss was primarily the result of storm surge, and USAA CIC has paid all wind damage benefits owed. USAA CIC did not conspire with Rimkus or Jordan to reach any particular result, and USAA CIC handled the Aikens' claim in good faith and with an arguable, legitimate basis for its decisions on the claim.

9. The following facts are established by the pleadings, by stipulation, or by admission:
  1. The Plaintiffs, David and Marilyn Aiken, purchased a homeowners insurance policy with USAA Casualty Insurance Company Policy No. 00153 22 26 91A,

which was in effect the date of Hurricane Katrina with policy limits of \$333,000 dwelling coverage, \$249,750 personal property coverage, \$66,600 loss of use coverage.

2. The Plaintiffs house was destroyed during Hurricane Katrina.
3. The Aikens made an insurance claim under their homeowners insurance policy with USAA Casualty Insurance Company.
4. Total paid by USAA under Homeowners policy was \$178, 204.87
5. Mr Jordan never visited the home prior to authoring the reports of December 20, 2005 and March 23, 2006.
6. Dr. Aiken promptly notified USAA for his loss after Hurricane Katrina.
7. At the time of Hurricane Katrina, and when their Complaint was filed, Plaintiffs were resident citizens of Metairie, Louisiana.
8. USAA Casualty Insurance Company (“USAA CIC”) is a Texas corporation with its principal place of business in San Antonio, Texas.
9. At the time of Hurricane Katrina, Plaintiffs owned a house located at 1 Eighth Street, Pass Christian, Mississippi.
10. Plaintiffs’ house at 1 Eighth Street was insured under USAA CIC homeowners policy number CIC 00153 22 2691A, which was in force at the time of Hurricane Katrina. The policy provided limits for covered losses as follows: \$333,000 dwelling coverage; \$33,300 appurtenant structure coverage, \$249,750 contents coverage; and \$66, 600 coverage for additional (increased) living expenses actually incurred if the Pass Christian house was rendered unfit to live in because

of damage caused by a covered peril.

11. Plaintiffs' homeowners policy also contained an HO-125 Home Protector endorsement. (USAA CIC stipulates to this as fact but objects to relevance.)
12. On August 29, 2005, Plaintiffs' house and its contents were destroyed during Hurricane Katrina.
13. Following Hurricane Katrina, Plaintiffs made an insurance claim under their homeowners policy with USAA CIC.
14. Following Hurricane Katrina, Plaintiffs made and insurance claim under their flood insurance policy with USAA General Indemnity Company.
15. USAA CIC paid the Aikens homeowners policy as follows: dwelling \$85,709.49; contents \$78,140.86; appurtenant structures \$8,052.66; and additional living expense \$6,301.86.
16. Plaintiffs are residents citizens of Metairie, Louisiana.
17. USAA Casualty Insurance Company ("USAA CIC") is a Texas Corporation with its principal place of business in San Antonio, Texas.
18. Rimkus Consulting Group, Inc., is a Texas corporation with its principal place of business in Houston, Texas.
19. James W. Jordan, P.E., S.E., is a resident of Indiana.
20. At the time of Hurricane Katrina, Plaintiffs owned a house located at 1Eighth Street, Pass Christian, Mississippi.
21. Plaintiffs' house at 1 Eighth Street, Pass Christian, was insured under USAA CIC homeowners policy number CIC 00153 22 2691A, which was in force at the time

of Hurricane Katrina. The policy provided limits for covered losses as follows: \$333,000 dwelling coverage; \$33,000 appurtenant structure coverage; \$249,750 contents coverage; and \$66,600 coverage for loss of use (additional living expenses) coverage for increased expenses actually incurred if the house was unfit to live in because of damage caused by a covered peril.

22. Plaintiffs policy also contained an HO-125 Home Protector coverage endorsement regarding replacement of the house. (USAA objects to this as fact but objects to relevance.)
23. On August 29, 2005, Plaintiffs' house and its contents were destroyed during Hurricane Katrina.
24. Following Hurricane Katrina, Plaintiffs made an insurance claim under their homeowners policy with USAA CIC.
25. USAA CIC paid the homeowners policy as follows: dwelling \$85,709.49; contents \$78,140.86; appurtenant structures \$8,052.66; and loss of use \$6,301.86.
26. USAA CIC hired Rimkus to perform an evaluation of damages at Plaintiffs' property.
27. Roerto Chapa performed an inspection of damages at Plaintiffs' property.
28. James W. Jordan, P.E., S.E., prepared a Report of Findings dated December 20, 2005
29. Rimkus issued to USAA Insurance Company a Report of Findings dated December 20, 2005, as to Plaintiffs' property.
30. Rimkus did not send the December 20, 2005, Report of Findings to Plaintiffs.

31. James W. Jordan, P.E., S.E., at all pertinent times was licensed as a professional engineer in the State of Mississippi.
32. James W. Jordan, P.E., S.E., prepared a Supplemental Report of Findings dated March 23, 2006.
33. Rimkus issued to USAA Insurance Company a Supplemental Report of Findings dated March 23, 2006, as to Plaintiffs' property.
34. Rimkus did not send the March 23, 2006, Report of Findings to Plaintiffs.
35. Rimkus is not engaged in the business of insurance business as described in Mississippi Code Ann. § 83-5-5.
36. Rovertto Chapa spoke with Dr. Aiken.
37. The Aikens did not hire Rimkus, nor pay Rimkus any amount of money.
38. The Aikens did not have a contract for services with Rimkus Consulting Group, Inc., James Jordan or Rovertto Chapa.
39. The Aikens were not present at the residence during Hurricane Katrina and did not witness the destruction of the home and surrounding buildings.
40. The Aikens have not identified any individual who saw their home destroyed or that witnessed a tornado in the area of their home.
41. The National Weather Service did not issue an official record of a tornado occurring over the Aiken property.

**10.** The contested issues of fact are as follows:

By Plaintiffs:

- a. Whether and, if so, the amount of actual and punitive damages Plaintiffs are

- entitled to recover?
- b. Whether the damage was caused by flood or any excluded water?
  - c. Whether the Aikens were and are entitled to receive the full amount of their claim?
  - d. Whether USAA Casualty Insurance Company's denial of the Aikens' claim was clearly contrary to the insurance policy and/or Mississippi law?
  - e. Whether the Aikens are entitled to recover, in addition to the full amount of their claim, their attorney's fees and punitive damages?
  - f. USAA Casualty Insurance Company denied part of the Aikens' claim because USAA said it had determined the damage was caused by storm surge, which was excluded?
  - g. Did USAA and Rimkus conspire to create "an arguable reasonable basis" upon which to deny the claim?
  - h. Did USAA and Rimkus conspire to defraud Dr. and Mrs. Aiken of coverage?
  - i. Did USAA and Rimkus conspire to wrongfully deny the Aiken claim?
  - j. Did USAA wrongfully assume control of the engineering function by rejecting the first report of December 20, 2005 and demanding a corrected report of March 23, 2006?
  - k. Can USAA delegate to Rimkus its duty to adjust the claim in good faith?
  - l. Did Rimkus become USAA's agent in gathering essential information necessary for USAA to discharge its "good faith" duty to adjust?
  - m. Did USAA ratify the acts of Rimkus in rejecting the December 20, 2005 report

requiring full payment of the Aiken claim ?

- n. By virtue of this ratification, did Rimkus become USAA's agent?
- o. Did Rimkus conspire with USAA to tortuously interfere with the contract between the Aikens and USAA?
- p. Did Rimkus tortuously interfere with the contract between USAA and Rimkus?
- q. Was James Jordan directed by Rimkus to act in wanton and reckless disregard of the Aikens' rights?
- r. Did USAA direct Rimkus and Jordan to act in wanton and reckless disregard of the Aikens' rights?
- s. Did Jordan and/or Rimkus act in a grossly negligent manner and/or in wanton and reckless disregard of the Aikens' rights?
- t. Did Jordan, in a grossly negligent manner, violate all Rimkus protocols and procedures?
- u. Did Jordan and Rimkus systematically change reports favorable to USAA
- v. Did Jordan act in violation of the Mississippi Code of Professional Ethics?
- w. Did Jordan act in violation of the National Code of Professional Ethics?
- x. Did Jordan protect the safety and rights of the Aikens' in rendering both opinions without examining the loss site?
- y. Did Jordan and/or Rimkus act in a deceitful manner?
- z. Did USAA intentionally create a reason to deny the Aikens' full coverage dictated by the December 20, 2005 report?

By Defendants, Rimkus Consulting Group, Inc. and James W. Jordan:

- a. Whether a tornado occurred at Plaintiffs' property on or about August 29, 2005.
- b. To what degree and what amount of damage was caused to Plaintiffs' property by wind.
- c. To what degree and what amount of damage was caused to Plaintiffs' property by water.
- d. Whether document titled "Report Conclusions" was express policy of Rimkus Consulting Group, Inc. promulgated to its employees to follow.
- e. Whether, in issuing the Supplemental Report, Rimkus made a material misrepresentation, which it knew was false; whether Rimkus intended that its representation should be acted upon by Plaintiffs and in the manner reasonably contemplated; whether Plaintiffs were ignorant of its falsity; whether Plaintiffs relied on the truth of the representation; whether Plaintiffs had the right to rely thereon; and whether Plaintiffs were consequently and proximately injured thereby.
- f. Whether, in issuing a Supplemental Report, Jordan made a material misrepresentation, which he knew was false; whether Jordan intended that his representation should be acted upon by Plaintiffs and in the manner reasonably contemplated; whether Plaintiffs were ignorant of its falsity; whether Plaintiffs relied on the truth of the representation; whether Plaintiffs had the right to rely thereon; and whether Plaintiffs were consequently and proximately injured thereby.
- g. Whether, in issuing a Supplemental Report without being physically present at the

loss site, Jordan made a material misrepresentation, which he knew was false; whether Jordan intended that his representation should be acted upon by Plaintiffs and in the manner reasonably contemplated; whether Plaintiffs were ignorant of its falsity; whether Plaintiffs relied on the truth of the representation; whether Plaintiffs had the right to rely thereon; and whether Plaintiffs were consequently and proximately injured thereby.

- h. Whether Rimkus agreed with USAA to deprive Plaintiffs of money by issuing a Supplemental Report without site inspection.
- i. Whether Rimkus agreed with Jordan to violate the Mississippi Board of Licensure for Professional Engineers and Land Surveyors, “Rules and Regulations of Procedure” by issuing a Supplemental Report.
- j. Whether Jordan agreed with USAA to deprive Plaintiffs of money by issuing a Supplemental Report.
- k. Whether Jordan violated the Mississippi Board of Licensure for Professional Engineers and Land Surveyors, “Rules and Regulations of Procedure”
- l. Whether Jordan violated the engineering standard of practice by not inspecting the premises before issuing his cause and origin report.
- m. Whether Rimkus owed a duty to Plaintiffs; whether Rimkus breached that duty to Plaintiffs; whether any breach proximately caused injury to Plaintiffs; and whether Plaintiffs suffered damage.
- n. Whether Jordan owed a duty to Plaintiffs; whether Jordan breached that duty to Plaintiffs; whether any breach proximately caused injury to Plaintiffs; and whether

Plaintiffs suffered damage.

- o. Whether Plaintiffs are entitled to attorney's fees.
- p. Whether Plaintiffs are entitled to prejudgment interest.
- q. Whether Rovertto Chapa was an independent contractor or Rimkus Consulting Group, Inc.
- r. Whether Rimkus is an agent of USAA.
- s. Whether Jordan is an agent of USAA.

If Case Is Permitted to Proceed to a Punitive Phase:

- t. Whether Jordan committed gross, wanton, arbitrary and capricious negligence in deliberately not inspecting the loss site before issuing the Final and Supplemental Reports.
- u. Whether Jordan committed gross, wanton, arbitrary and capricious negligence in changing the cause of the loss, without inspecting the loss site.
- v. Whether Plaintiffs suffered emotional distress.
- w. Whether Plaintiffs have sufficient evidence to support a punitive damages verdict.

Rimkus and Jordan also adopt by reference contested facts as set out by USAA.

By Defendant USAA Casualty Insurance Company:

- a. Whether Plaintiffs' dwelling sustained any damage caused by wind other than that already paid for by USAA CIC and, if so, the type and extent (dollar amount) of that damage.
- b. Whether Plaintiffs' appurtenant structures sustained any damage caused by wind other than that already paid for by USAA CIC and, if so, the type and extent

- (dollar amount) of that damage.
- c. Whether any of the contents of Plaintiffs' house (other than those already paid for by USAA CIC) sustained damage covered by the homeowner's policy, the type and extent (dollar amount) of such damage.
  - d. If any of the contents of Plaintiffs' house (other than those already paid for by USAA CIC) were damaged by wind or whether all such contents were damaged (or finally damaged/destroyed) by storm surge/flooding.
  - e. Whether Plaintiffs can recover under the contents replacement cost provision of their policy when they have not repaired, replaced, or restored the contents of the house.
  - f. Whether USAA CIC properly assessed that the remainder of the damage to Plaintiffs' dwelling, appurtenant structures, and contents (damage other than that for which USAA CIC paid) was caused by storm surge/flooding.
  - g. Whether a tornado occurred at the site of Plaintiffs' house.
  - h. Whether plaintiffs can recover insurance benefits under their policy's HO-125 endorsement when they have not replaced the house.
  - i. The effect of the Fifth Circuit's decisions in *Leonard v. Nationwide* and *Tuepker v. State Farm* regarding anti-concurrent clauses on the plaintiffs' claims and, particularly, their contents claim.
  - j. Whether plaintiffs are entitled to recovery of any further additional living expenses other than those already paid by USAA CIC and, if so, the amount.
  - k. Whether Rimkus and its employee, James Jordan, were independent contractors as

to USAA CIC.

- l. Whether USAA CIC is vicariously liable for any alleged bad acts by Rimkus and/or James Jordan.
- m. Whether Plaintiffs have sufficient evidence to prove their claim that USAA CIC conspired with Rimkus and James Jordan to contrive engineering reports, fraudulently or otherwise.
- n. Whether Plaintiffs have sufficient evidence to prove their claim that James Jordan breached engineering ethics or internal Rimkus policies and procedures.
- o. Whether USAA CIC possessed a legitimate and arguable reason for its decisions regarding the Plaintiffs' claims.
- p. Whether Plaintiffs have sufficient, clear and convincing, evidence to prove that USAA CIC was grossly negligent or acted with malice or actual fraud in handling Plaintiffs' claim and making payment decisions on the claim.
- q. Whether Plaintiffs are entitled to recover any damages for alleged emotional distress.
- r. Whether Plaintiffs have sufficient evidence to support a verdict for punitive damages.
- s. Whether Plaintiffs are entitled to recovery of attorneys' fees and expenses (mixed question of fact and law) and, if so, the amount.
- t. Whether Plaintiffs are entitled to recover prejudgment interest if they prevail on their claim for breach of contract.
- u. What was the pre-Katrina value of Plaintiffs' house?

- v. In the event the Court overrules USAA CIC's objections as to relevance, what is the cost to replace Plaintiffs' house?

**11.** The contested issues of law are as follows:

By Plaintiffs:

1. Whether the actions of Rimkus, Jordan and USAA amount to civil conspiracy, tortious interference with contract, fraud or bad faith under Mississippi Law.
2. Whether Defendants can mention or refer to flood insurance payments made to Dr. and Mrs. Aiken.
3. Those inherent in the statement of contested issues of fact preceding and in the Complaint.

By Defendant, Rimkus Consulting Group, Inc. and James W. Jordan:

1. Whether Rimkus is liable to Plaintiffs on the basis of fraud
2. Whether Jordan is liable to Plaintiffs on the basis of fraud.
3. Whether Rimkus is an agent of USAA.
4. Whether Jordan is an agent of USAA.
5. Whether flood payments reduce the amount the Plaintiffs can claim as damages.
6. Whether Plaintiffs' live pleadings state a cause of action for tortious interference with contract.
7. Whether Plaintiffs can maintain a cause of action against Rimkus and Jordan based upon alleged violations of the guidelines promulgated by NSPE or the Mississippi rules and regulations governing the practice of engineering.

Rimkus and Jordan also adopt by reference contested issues of law as set out by USAA.

By Defendant USAA Casualty Company:

1. Whether Plaintiffs have sufficient evidence to prove entitlement to further payment of insurance benefits under the dwelling, appurtenant structure, contents, and additional living expense provisions of their homeowners policy.
2. Whether plaintiffs bear the burden of proof under the contents (named peril) portion of their policy to prove that contents (other than those already paid for by USAA CIC) were damaged by wind, as well as the type and dollar amount of that damage?
3. Whether Plaintiffs can recover under the contents replacement cost provisions of their policy when they have not repaired, replaced, or restored the contents of the house.
4. Whether Plaintiffs can recover insurance benefits under their HO-125 endorsement when they have not replaced the house?
5. The effect of the Fifth Circuit's decisions in *Leonard v. Nationwide* and *Tuepker v. State Farm* regarding anti-concurrent clauses on the plaintiffs' claims and, particularly, their contents claim.
6. Whether Plaintiffs have judicially admitted storm surge damage to their house in at least the amount of flood insurance benefits accepted, and whether Plaintiffs can introduce evidence and argument contrary to that judicial admission.
7. Whether *Buente v. Allstate* and other decisions mean, as a matter of law, that USAA CIC had a duty to pay homeowners policy limits for wind damage upon

receipt of the first, indeterminate report from Rimkus, or whether USAA CIC had a right under Mississippi law to investigate the claim.

8. Whether Plaintiffs are entitled to recovery of any further additional living expenses other than those already paid by USAA CIC and, if so, the amount.
9. Whether Rimkus and its employee, James Jordan, were independent contractors as to USAA CIC.
10. Whether USAA CIC is vicariously liable for any alleged bad acts by Rimkus and/or James Jordan.
11. Whether Plaintiffs have sufficient evidence to prove their claim that USAA CIC conspired with Rimkus and James Jordan to contrive engineering reports, fraudulently or otherwise.
12. Whether Plaintiffs have sufficient evidence to prove their claim that James Jordan breached engineering ethics or internal Rimkus policies and procedures.
13. Whether USAA CIC possessed a legitimate and arguable reason for its decision regarding the Plaintiffs' claim.
14. Whether Plaintiffs are entitled to recover any damages for alleged emotional distress.
15. Whether Plaintiffs have sufficient, clear and convincing, evidence to prove that USAA CIC was grossly negligent or acted with malice or actual fraud in handling Plaintiffs' claim and making payment decisions on the claim.
16. Whether Plaintiffs have sufficient evidence to support a verdict for punitive damages.

17. Whether Plaintiffs are entitled to recovery of attorneys' fees and expenses and, if so, the amount.
  18. Whether Plaintiffs are entitled to recover prejudgment interest if they prevail on their claim for breach of contract.
  19. USAA CIC's constitutional defenses to imposition of punitive damages as set forth in its Answer.
  20. Whether Plaintiffs can assert a claim under Mississippi law for alleged violation of Mississippi Insurance Department bulletins.
- 12.** The following is a list and brief description of all exhibits (except exhibits to be used for impeachment purposes only) to be offered in evidence by the parties.
- A. To be offered by the Plaintiffs:
    - P-1 USAA Homeowners Policy
    - P-2 Pictures of Home and Buildings prior to and after Hurricane Katrina
    - P-3 Architectural Drawings and Plans of House and Boathouse
    - P-4 Times Picayune Newspaper Reproduction, 2007 F2 Tornado Event
    - P-5 Rimkus' Report of October 24, 2005 by Rovertto Chapa
    - P-6 Rimkus' Report of December 20, 2005 by James W. Jordan
    - P-7 Rimkus' Report of March 23, 2006 by James W. Jordan
    - P-8 Rimkus' Report of September 22, 2006 by James Jordan
    - P-9 Rimkus' Report of March 23, 2007 by James Jordan
    - P-10 Expert Report of John Ruble
    - P-11 Expert Report of John Holliday

- P-12 Expert Report of Dr. Charles Ivy
- P-13 Mississippi Board of Licensure for Professional Engineers and Surveyors: Rules and Regulations of Procedure Effective June 30, 2005.
- P-14 National Society of Professional Engineers Code of Ethics of Engineers
- P-15 Affidavit of Dr. Charles Ivy, November 16, 2006, and Attachments
- P-16 Affidavit of Mr. Leonard Quick, November 6, 2006, and Attachments
- P-17 Handwritten Correction Memo of William McNamara
- P-18 Annual Report of USAA, 2005
- P-19 Financial Statement of Rimkus Consulting Group, Inc.
- P-20 Pictures from NOAA website: <http://ngs.woc.noaa.gov/katrina/>
- P-21 Pictures from NOAA website: [http://www.ncddc.noaa.gov/Katrina-2005/Interactive Maps/](http://www.ncddc.noaa.gov/Katrina-2005/Interactive%20Maps/)
- P-22 Defense Expert Report of David Mitchell, Ph.D, Meteorology, Undated, Number One
- P-23 Defense Expert Report of David Mitchell, Ph.D., Meteorology, Undated, Number Two.
- P-24 Defense Expert Greg Quinn, Meteorologist, Undated Report.
- P-25 Defense Expert Report of W. Gene Corley, March 16, 2007.
- P-26 Plaintiff Expert Report of Mr. Charles Barrere, Jr., January, 2007 and any attachments to the report and publications and treaties referred to therein.
- P-27 Plaintiff Expert Report of Mr. Robert Stumm, January 24, 2007.
- P-28 Plaintiff Expert Report of Mr. Glenn W. Mitchell, January, 2007.

- P-29 Plaintiff Expert Report of Nancy L. DeFazio, January 22, 2007.
- P-30- Emails between USAA Employees, Rimkus Employees and combinations thereof.
- P-31 RCG Memo of July 6, 2001.
- P-32 Sections 7.3 and 7.4 of Rimkus' Procedural manual.
- P-33 Hurricane Damage Evaluation Manual by Paul Colman, including ways to get more insurance business forming a part thereof.
- P-34 Supplemental Report of Leonard Quick, July 31, 2007.
- P-35 Dr. Charles Ivy Supplemental Report, August 7, 2007.
- P-36 Time sheets of James Jordan for Report of March 23, 2006 and Mr. Jordan's discovery responses in this connection.
- P-37 "Report Conclusions" produced by Rimkus Consulting Group, Inc.
- P-38 Published Article "Hurricane Damage Assessment: Lessons Learned From Hurricane Katrina", by James Jordan and Saul Paulius
- P-39 USAA's redacted list of USAA cases where Rimkus Consulting Group, Inc. was hired as the investigating engineering firm.
- P-40 Structure itemization
- P-41 Contents itemization
- P-42 Any and all documents produced in discovery by any party to this litigation
- P-43 Any and all depositions taken in this litigation
- P-44 Any and all exhibits attached to the depositions taken in this litigation
- P-45 Fax to Rimkus from Dr. Aiken dated 11/15/05 inquiring about report.
- P-45 a The over ten reports altered by Rimkus (Motion in Limine Document # 228).

- P-46 Rimkus ad/article by Susan Marquez, Fall, 2007 Article in Pointe innovation - - a publication of Mississippi technology alliance.
- P-47 Any exhibits utilized by any party in any motion in limine and motion for summary judgment.
- P-48 Any exhibit listed by any other party.
- P-49 Check stub from USSA to Dr. Aiken in payment for wind damage to the boathouse in 2004.
- P-50 RCG Memo by Ralph Graham dated November 4, 2005.
- P-51 Rimkus Report Format Guidelines
- P-52 Exhibit A of Rimkus' Amended Answer to Request for Production
- P-53 Exhibit B of Rimkus' Amended Answer to Request for Production
- P-54 Exhibit C of Rimkus' Amended Answer to Request for Production
- P-55 Exhibit D of Rimkus' Amended Answer to Request for Production
- P-56 All material supplied by Rimkus to Roerto Chapa and Roerto Chapa's full notes
- P-57 Business card presented by Roerto Chapa to Dr. Aiken at the loss site when Dr. Aiken escorted Mr. Chapa to the site
- P-58 Rimkus Hurricane Katrina Policies and Procedures
- P-59 Rimkus standard Katrina Report Format
- P-60 Rimkus Hurricane Property Damage Evaluation Protocol
- P-61 Canceled Check from USAA for debris removal
- P-62 USAA's underwriting manual

Plaintiff reserves the right to introduce into evidence any exhibits listed by the Defendants. The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity and/or admissibility in evidence is objected to, the exhibit must be identified below, together with statement of the specific ground(s) for the objection(s).

**OBJECTIONS** by the Defendant, Rimkus Consulting Group, Inc. and James W.

Jordan:

- P-3 Relevance , hearsay
- P-4 hearsay, relevance, not produced in discovery
- P-5 relevance, hearsay, Fed. R. Evid. 403
- P-10 hearsay, failure to lay proper predicate, relevance
- P-11 hearsay, failure to lay proper predicate
- P-12 hearsay, failure to lay proper predicate
- P-13 relevance
- P-14 relevance
- P-15 hearsay, failure to lay proper predicate. Fed.R.Evid. 702-704
- P-16 hearsay, failure to lay proper predicate
- P-18 relevance, inadmissible until liability to support punitive damages established
- P-19 relevance, inadmissible until liability to support punitive damages established
- P-20 Cannot identify; not produced in discovery, all objections reserved
- P-21 Cannot identify; not produced in discovery, all objections reserved
- P-22 hearsay, failure to lay proper predicate

- P-23 hearsay, failure to lay proper predicate
- P-24 hearsay
- P-25 hearsay
- P-26 hearsay, failure to lay proper predicate
- P-27 hearsay, failure to lay proper predicate
- P-28 hearsay, failure to lay proper predicate
- P-29 hearsay, failure to lay proper predicate
- P-30 hearsay, relevance
- P-31 hearsay, relevance
- P-32 hearsay, relevance
- P-33 hearsay, relevance, authenticity
- P-34 hearsay, failure to lay proper predicate, Fed.R.Evid.702-704
- P-35 hearsay, failure to lay proper predicate, Fed.R.Evid 702-704
- P-36 Unable to identify “Mr. Jordan’s responses……” all objections reserved
- P-37 hearsay, relevance, authenticity
- P-38 hearsay, relevance
- P-39 relevance, law of the case prohibits mention of any claims other than Plaintiffs’
- P-40 No objection if this is USAA CIC’s damage itemization; otherwise, cannot identify ; all objections reserved
- P-41 No objection if this is USAA CIC’s damage itemization; otherwise, cannot identify; all objections reserved
- P-42 failure to identify exhibit with particularity such that an objection could be formed

- P-43 failure to identify exhibit with particularity such that an objection could be formed
- P-44 failure to identify exhibit with particularity such that an objection could be formed
- P-45 Relevence, hearsay, Fed..R.Evid. 403
- P-45a objection as stated in Rimkus and Jordan’s Motion in Limine as to “other reports” and as stated in all motions and responses to motions noted in Rimkus’ and Jordan’s Motion in Limine as to “other reports”, law of case prohibits mention or evidence of any claims other than Plaintiffs’
- P-46 Cannot identify because not disclosed in discovery; therefore objections reserved.
- P-47 Objections as stated to individual exhibits.; cannot identify, all objections reserved
- P-48 Objections as stated to individual exhibits, Certain exhibits listed are not appropriate during the underlying liability phase of the trial, and USAA CIC objects to introduction of such exhibits during the underlying liability phase of the case.
- P-50 Hearsay, relevance
- P-51 Hearsay, relevance
- P-52 Cannot identify, all objections reserved; to extent individual documents contained in this exhibit have been objected to where defendant specifically identified, objection noted to specific document adopted by reference here.
- P-53 Cannot identify, all objections reserved; to extent individual documents contained in this exhibit have been objected to where defendant specifically identified, objection noted to specific document adopted by reference here.

- P-54 Cannot identify, all objections reserved; to extent individual documents contained in this exhibit have been objected to where defendant specifically identified, objection noted to specific document adopted by reference here.
- P-55 Cannot identify, all objections reserved; to extent individual documents contained in this exhibit have been objected to where defendant specifically identified, objection noted to specific document adopted by reference here.
- P-56 Cannot identify, all objections reserved; to extent individual documents contained in this exhibit have been objected to where defendant specifically identified, objection noted to specific document adopted by reference here.
- P-57 Relevance, hearsay
- P-58 Relevance, hearsay, authenticity
- P-59 Relevance, hearsay, authenticity
- P-60 Relevance, hearsay, authenticity
- P-62 Relevance and any objections asserted by USAA CIC

**OBJECTIONS** by the Defendant USAA Casualty Insurance Company:

- P-3: Relevance, violation of in limine order
- P-4: Relevance, hearsay, cannot identify item as produced in discovery - all other objections reserved
- P-5: Relevance, hearsay as to contract liability, Rule 403
- P-10: Relevance, hearsay, violation of in limine order
- P-11: Hearsay

P-12: Hearsay as to contract liability

P-13: Relevance

P-14: Relevance

P-15: Relevance, Hearsay, Fed. R. Evid. 702-704

P-16: Relevance, Hearsay, Fed. R. Evid. 702-704

P-18: Relevance; inadmissible unless and until the Court conducts a punitive damages phase of trial

P-19: Relevance; inadmissible unless and until the Court conducts a punitive damages phase of trial

P-20: cannot identify as produced in discovery – all objections reserved

P-21: cannot identify as produced in discovery – all objections reserved

P-22: Hearsay as to contract liability

P-24: Hearsay as to contract liability

P-25: Hearsay as to contract liability

P-26: Hearsay as to contract liability

P-27: Relevance, hearsay, violation of in limine order

P-28: Relevance, hearsay, violation of in limine order

P-29: Relevance,

P-31: Relevance

P-32: Relevance

P-33: Relevance,

P-34: Hearsay, relevance, Fed. R. Evid. 702-704

P-35: Hearsay, relevance, Fed. R. Evid. 702-704

P-37: Relevance

P-38: Relevance

P-39: Relevance

P-40: No objections if this is USAA CIC's damage itemization; otherwise, cannot identify – all objections reserved

P-41: No objections if this is USAA CIC's itemization; otherwise, cannot identify – all objections reserved

P-42: Failure to identify exhibit with particularity such that objections can be formed – all objections reserved

P-43: Failure to identify exhibit with particularity such that objections can be formed – all objections reserved

P-44: Failure to identify exhibit with particularity such that objections can be formed – all objections reserved

P-45a: Relevance, hearsay, Rule 403, violation of court's in limine ruling

P-46: Hearsay, relevance, cannot identify as produced in discovery-all objections reserved;

P-47: Failure to identify exhibit with particularity such that objection can be formed-all objections reserved;

P-48: Certain exhibits listed are not appropriate during the underlying liability phase of the trial, and USAA CIC objects to introduction of such exhibits during the underlying liability phase of the case.

P-50: Relevance

P-51: Relevance

P-52: Relevance

P-53: Relevance

P-54: Relevance

P-55: Relevance

P-56: Relevance as to materials supplied by Rimkus to Chapa, and Hearsay as to Chapa

P-58: Relevance

P-59: Relevance

P-60: Relevance

P-62: Relevance

b. To be offered by the Defendant, Rimkus Consulting Group, Inc. and James W. Jordan:

Please see attached Exhibit List.

Exhibits Objected to by the Plaintiff:

<b>Exhibit No.</b>	<b>Objection</b>
DU-2	Proper predicate
DU-3	Proper predicate
DU-5	Proper predicate
DU-6	proper predicate
DU-7	wind only
DU-8	proper predicate
DU-9	proper predicate & accuracy
DU-10	proper predicate & accuracy

DU-11	proper predicate & accuracy
DU-14	proper predicate
DU-15	proper predicate
DU-16	proper predicate
DU-17	proper predicate
DU-24	proper predicate
DU-29	proper predicate
DU-30	proper predicate
DU-31	proper predicate
DU-33	proper predicate
DU-34.01-.37	proper predicate
DU-35.01-.10	proper predicate
DU-36.1-.26	proper predicate
DU-37.01-.69	proper predicate
DU-38.01-.112	proper predicate
DU-41.01-.71	hearsay
DU-42.01-.08	proper predicate, hearsay & not produced in discovery
DU-43.01-.04	proper predicate, hearsay & not produced in discovery
DU-44.01-.03	proper predicate, hearsay & not produced in discovery
DU-45.01-.12	proper predicate, hearsay & not produced in discovery

DU-46	proper predicate, hearsay & not produced in discovery
DU-47	proper predicate, hearsay & not produced in discovery
DU-48	proper predicate, hearsay & not produced in discovery
DU-49	proper predicate, hearsay & not produced in discovery
DU-50	proper predicate, hearsay & not produced in discovery
DU-51.01-.02	proper predicate, hearsay & not produced in discovery
DU-52.01-.15	proper predicate, hearsay & not produced in discovery
DU-53	proper predicate, hearsay & not produced in discovery
DU-54	proper predicate, hearsay & not produced in discovery
DU-55	proper predicate, hearsay & not produced in discovery
DU-56	proper predicate, hearsay & not produced in discovery
DU-57	proper predicate, hearsay & not produced in discovery

DU-58	proper predicate, hearsay & not produced in discovery
DU-60	proper predicate, hearsay & not produced in discovery
DU-61.01-.08	proper predicate, hearsay & not produced in discovery
DU-62.01-.07	proper predicate, hearsay & not produced in discovery
DU-63.01-.07	proper predicate, hearsay & not produced in discovery
DU-64.01-.05	proper predicate, hearsay & not produced in discovery
DU-65	proper predicate, hearsay & not produced in discovery
DU-66	proper predicate, hearsay & not produced in discovery
DU-67.01-.07	proper predicate, hearsay & not produced in discovery
DU-68.01-.09	proper predicate, hearsay & not produced in discovery
DU-69.01-.07	proper predicate, hearsay & not produced in discovery
DU-70.01-.08	proper predicate, hearsay & not produced in discovery

DU-71.01-.07	proper predicate, hearsay & not produced in discovery
DU-73.01-.13	proper predicate & hearsay
DU-74	proper predicate
DU-75	predicate
DU-77.01-.10	proper predicate & hearsay
DU-78	proper predicate
DR&J-2	foundation
DR&J-3	foundation
DR&J-8	not properly identified
DR&J-9	not properly identified
DR&J-12	not properly identified
DR&J-22	foundation
DR&J-23	foundation
DR&J-24	foundation
DR&J-25	foundation
DR&J-28	foundation and not identified in discovery
DR&J-35	ok as long as it is the entire file
DR&J-38	vague unable to establish what it is
DR&J-40	objection as this should be seen by judge only
DR&J-42	foundation, not able to identify
DR&J-43	relevance
DR&J-44	not able to identify
DR&J-46	relevance
DR&J-47	foundation
DR&J-49	not produced in discovery

DR&J-50	hearsay, work product
DR&J-52	hearsay
DR&J-57	not able to identify
DR&J-58	not produced in discovery
DR&J-60	hearsay, foundation
DR&J-61	hearsay, foundation
DR&J-62	hearsay, foundation
DR&J-63	hearsay, foundation
DR&J-64	hearsay, foundation
DR&J-65	foundation
DR&J-66	foundation
DR&J-67	foundation
DR&J-68	foundation
DR&J-69	foundation

c. To be offered by the Defendant, USAA Casualty Insurance Company:

Please see attached Exhibit List.

USAA CIC reserves the right to offer any exhibit listed by any other party.

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity and/or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specific ground(s) for the objection(s).

Exhibits Objected to by the Plaintiff:

Exhibit No.	Objection
DU-2	Proper predicate
DU-3	Proper predicate
DU-5	Proper predicate
DU-6	proper predicate
DU-7	wind only
DU-8	proper predicate
DU-9	proper predicate & accuracy
DU-10	proper predicate & accuracy
DU-11	proper predicate & accuracy
DU-14	proper predicate
DU-15	proper predicate
DU-16	proper predicate
DU-17	proper predicate
DU-18	proper predicate
DU-19	proper predicate
DU-20	proper predicate
DU-21	proper predicate
DU-22	proper predicate
DU-24	proper predicate
DU-29	proper predicate
DU-30	proper predicate
DU-31	proper predicate
DU-33	proper predicate
DU-34.01-.37	proper predicate
DU-35.01-.10	proper predicate

DU-36.1-.26	proper predicate
DU-37.01-.69	proper predicate
DU-38.01-.119	proper predicate
DU-39	proper predicate
DU-40	hearsay
DU-41.01-.71	hearsay
DU-42.01-.08	proper predicate, hearsay & not produced in discovery
DU-43.01-.04	proper predicate, hearsay & not produced in discovery
DU-44.01-.03	proper predicate, hearsay & not produced in discovery
DU-45.01-.12	proper predicate, hearsay & not produced in discovery
DU-46	proper predicate, hearsay & not produced in discovery
DU-47	proper predicate, hearsay & not produced in discovery
DU-48	proper predicate, hearsay & not produced in discovery
DU-49	proper predicate, hearsay & not produced in discovery
DU-50	proper predicate, hearsay & not produced in discovery

DU-51.01-.02	proper predicate, hearsay & not produced in discovery
DU-52.01-.15	proper predicate, hearsay & not produced in discovery
DU-53	proper predicate, hearsay & not produced in discovery
DU-54	proper predicate, hearsay & not produced in discovery
DU-55	proper predicate, hearsay & not produced in discovery
DU-56	proper predicate, hearsay & not produced in discovery
DU-57	proper predicate, hearsay & not produced in discovery
DU-58	proper predicate, hearsay & not produced in discovery
DU-59	proper predicate, hearsay & not produced in discovery
DU-60	proper predicate, hearsay & not produced in discovery
DU-61.01-.08	proper predicate, hearsay & not produced in discovery
DU-62.01-.07	proper predicate, hearsay & not produced in discovery

DU-63.01-.07	proper predicate, hearsay & not produced in discovery
DU-64.01-.05	proper predicate, hearsay & not produced in discovery
DU-65	proper predicate, hearsay & not produced in discovery
DU-66	proper predicate, hearsay & not produced in discovery
DU-67.01-.07	proper predicate, hearsay & not produced in discovery
DU-68.01-.09	proper predicate, hearsay & not produced in discovery
DU-69.01-.07	proper predicate, hearsay & not produced in discovery
DU-70.01-.08	proper predicate, hearsay & not produced in discovery
DU-71.01-.07	proper predicate, hearsay & not produced in discovery
DU-72	proper predicate & hearsay
DU-73.01-.13	proper predicate & hearsay
DU-74	proper predicate
DU-75	predicate
DU-76	proper predicate & hearsay
DU-77.01-.10	proper predicate & hearsay

DU-78

proper predicate

DU-79.01-79.03

Not produced in discovery and lack of proper  
foundation

**13.** The following is a list and brief description of charts, graphs, models, schematic diagrams, and similar objects which will be used in opening or closing arguments, but which will not be offered in evidence:

a. By Plaintiff:

1. Plans for the Aikens' home as it existed before Hurricane Katrina.

May use enlargements of any listed exhibit allowed by the Court.

Objections, if any, to use of the preceding objects are as follows:

b. By Defendants, Rimkus Consulting Group, Inc. and James W. Jordan:

1. Rimkus and Jordan may use enlargements of any exhibits listed. If any other party proposes to use enlargements of listed exhibits to which Rimkus and Jordan have objected, Rimkus and Jordan asserts their objections in conformity with those listed as to the exhibit, itself.

c. By Defendant, USAA Casualty Insurance Company:

1. USAA CIC may use enlargements of any exhibits listed. If any other party proposes to use enlargements of listed exhibits to which USAA CIC has objected, USAA CIC asserts its objections in conformity with those listed

as to the exhibit, itself.

2. Dr. Mitchell may use a Power Point presentation including the images in his reports.

Objections, if any, to use of the preceding objects are as follows:

By Plaintiff:

Plaintiffs' objections to these listed exhibits are the same as noted above.

If any other object to be used by any party, such objects will be submitted to opposing counsel at least three days prior to trial. If there is then any objection to use of the objects, the dispute will be submitted to the court at least one day prior to trial.

14. The following is a list of witnesses Plaintiffs anticipated calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by party unless specific arrangements have been made with the trial judge prior to commencement of trial. The listing of a WILL CALL witness constitutes a professional representation, upon which opposing counsel may rely, that the witnesses will be present at trial, absent reasonable written notice to counsel to the contrary:

May testify live:

<u>Name</u>	Will Call	May Call	Fact/Liability Expert <u>Damages</u>	Residence Address & <u>Tel. No.</u>	Business Address & <u>Tel. No.</u>
David Aiken	X		Fact/Liability Damages		4224 Houma Blvd., Suite 650 Metairie, LA 70006 504-319-1360

Marilyn Aiken	X	Fact/Liability Damages	4805 Cleary Ave. Metairie, LA 70002
James W. Jordan	X	Expert & Fact	8910 Purdue Rd., Suite 170 Indianapolis, IN 46268 317-510-6484
Charles Barrere	X	Expert	3209 Valley Meadow Norman, OK 73069 405-217-4126
Charles B. Ivy	X	Expert	1358 Whisper Bay Blvd. Gulfbreeze, FL 32563 850-916-5104
Nancy Defazio	X	Expert	600 E. Railroad St., Suite A. Long Beach, MS 39560 228-907-7575
Robert J. Stumm, Jr.	X	Expert	P.O. Box 15317 New Orleans, LA 70175 504-891-8833
Leonard Quick	X	Expert	21449 Marion Lane, Suite 6 Mandeville, LA 70471 985-249-5130

Glen W. Mitchell	X	Expert	444-B Klondike Road Long Beach, MS 39560 228-863-7183
Wayne O'Neil	X	Expert	11070 Dauro Road Gulfport, MS 39503 228-832-2296
USAA Representative present at trial	X		
Rimkus Consulting Group, Inc. Representative present at trial	X		

Plaintiff reserves the right to call any witness listed by any other party.

May testify by deposition

<u>Name</u>	<u>Will Call</u>	<u>May Call</u>	<u>Fact/Liability Expert Damages</u>	<u>Residence Address &amp; Tel. No.</u>	<u>Business Address &amp; Tel. No.</u>
Roerto Chapa (may call live if present at trial)	X		Fact/Liability		
David Rummel (may call live if present at trial)	X		Fact/Liability		
Sherry Conquest (may call live if present at trial)	X		Fact/Liability		
Duane Quinn (may call live if present at trial)	X		Fact/Liability		

Russ Smith (may call live if present at trial)	X		Fact/Liability
William McNamara ( may call live if present at trial)	X		Fact/Liability
30(b)(6) Rimkus Consulting Group, Inc. Ralph Graham	X		Fact/Liability
Paul Colman (may call live if present at trial)	X		Fact/Liability
Andrew Snyder (may call live if present at trial)	X		Fact/Liability
James McGowin (May testify live if present at trial)		X	

\*portions of depositions may be used

State whether the entire deposition, or only portions will be used. Counsel shall confer, no later than twenty days before the commencement of trial, to resolve all controversies not resolved by the parties shall be submitted to the trial judge not later than ten days prior to trial. All objections not submitted within that time are waived.

- 15.** The following is a list of witnesses Defendants, Rimkus Consulting Group, Inc. and James W. Jordan anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by party unless specific arrangements have been made with the trial judge prior to commencement of trial. The listing of a WILL CALL witness constitutes a professional

representation, upon which opposing counsel may rely, that the witnesses will be present at trial, absent reasonable written notice to counsel to the contrary:

May testify Live:

<u>Name</u>	Will Call	May Call	Fact/Liability Expert <u>Damages</u>	Residence Address & <u>Tel. No.</u>	Business Address & <u>Tel. No.</u>
Dr. Aiken		X	Fact		
Mrs. Aiken		X	Fact		
Ralph Graham and Corporate Representative of Rimkus	X		Fact		Rimkus Consulting Group, Inc. C/o The Ward Law Firm
James W. Jordan, P.E., S.E.	X		Fact & Expert		Rimkus Consulting Group, Inc., c/o The Ward Law Firm
Roerto Chapa		X	Fact & Expert		c/o counsel for S & B Infrascture: Wad e R. Quinn Lyman Twining, Weinberg & Ferrell, P.C. 3600 One Houston Center 1221 McKinney Street Houston, Texas 77010 Tel: (713) 759- 1990

Paul Colman	X	Fact	Rimkus Consulting Group, Inc., c/o The Ward Law Firm
Phil Wilbourn	X	Fact	Rimkus Consulting Group, Inc., c/o The Ward Law Firm
Erica Richards	X	Expert	
Gregory J. Quinn, B.S., M.S.	X	Expert	Rimkus Consulting Group, Inc., c/o The Ward Law Firm
John Ruble	X	Expert	Rimkus Consulting Group, Inc., c/o The Ward Law Firm
John Holliday, Jr., SRA, GRI	X	Expert	Rimkus Consulting Group, Inc., c/o The Ward Law Firm
Charles Ivy		Plaintiff Expert	
Leonard Quick		Plaintiff Expert	
William McNamara (USAA)	X	Fact	
David Rummel (USAA)	X	Fact	

Sherry Conquest (USAA)	X	Fact
Duane Quinn (USAA)	X	Fact & Expert
James McGowin (USAA)	X	Fact
Andrew Snyder (USAA)		Fact & Expert
Duane Quinn (USAA)	X	Fact & Expert
Russ Smith (USAA)		Fact & Expert
W. Gene Corley, Ph.D., P.E.	X	Expert
Steven J. Smith, Ph.D.	X	Expert
Dr. David L. Mitchell, Ph.D.	X	Expert
Chip Barrere		Plaintiff Expert
Robert Stumm		Plaintiff Expert
Glenn Mitchell		Plaintiff Expert
Nancy DeFazzio	X	Plaintiff Expert
Corporate Representative of Rimkus Consulting Group		
James W. Jordan, P.E., S.E.		
Gregory Quinn		

May testify by Deposition:

Roerto  
Chapa  
(if not called  
live by  
Rimkus),  
portions

Paul Colman  
(if not called  
live by  
Rimkus),  
portions

State whether the entire deposition, or only portions will be used. Counsel shall confer, no later than twenty days before the commencement of trial, to resolve all controversies not resolved by the parties shall be submitted to the trial judge not later than ten days prior to trial. All objections not submitted within that time are waived.

The following is a list of witnesses Defendant, USAA Casualty Insurance Company anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by party unless specific arrangements have been made with the trial judge prior to commencement of trial. The listing of a WILL CALL witness constitutes a professional representation, upon which opposing counsel may rely, that the witnesses will be present at trial, absent reasonable written notice to counsel to the contrary:

May testify live:

<u>Name</u>	Will Call	May Call	Fact/Liability Expert <u>Damages</u>	Residence Address & <u>Tel. No.</u>	Business Address & <u>Tel. No.</u>
Russ Smith	X		Fact, Expert, Liability & Damage		USAA CIC 9800 Fredricksburg Rd San Antonio, TX 800-531-8222

David Rummel	X	Fact, Liability & Damage	USAA CIC 9800 Fredricksburg Rd San Antonio, TX 800-531-8222
Sherry Conquest	X	Fact, Liability & Damage	USAA CIC 9800 Fredricksburg Rd San Antonio, TX 800-531-8222
Duane Quinn	X	Fact, Liability & Damage	USAA CIC 9800 Fredricksburg Rd San Antonio, TX 800-531-8222
William McNamara	X	Fact, Liability	USAA CIC 9800 Fredricksburg Rd San Antonio, TX 800-531-8222
Jim McGowin	X	Fact, Liability	USAA CIC 9800 Fredricksburg Rd San Antonio, TX 800-531-8222

Andrew Snyder	X	Fact, Expert Liability & Damage	USAA CIC 9800 Fredricksburg Rd San Antonio, TX 800-531-8222
Don Hemler	X	Fact, Liability & Damage	USAA CIC 9800 Fredricksburg Rd San Antonio, TX 800-531-8222
Dr. David Mitchell	X	Expert, Liability	MET Associates (Houston Office) P.O. Box 70 Dayton, TX 77535-0070
Dr. W. Gene Corley, P.E.	X	Expert, Liability, and Damage	CTL Group 5400 Old Orchard Road Skokie, Illinois 847-965-7500
Dr. Steven J. Smith, P.E.	X	Expert, Liability & Damage	CTL Group 5400 Old Orchard Road Skokie, Illinois 847-965-7500
James W. Jordan, P.E.	X	Fact, Expert, Liability & Damage	Rimkus Consulting Group, Inc. c/o The Ward Law Firm
David Aiken	X	Fact, Liability & Damage	Plaintiff

Further, USAA CIC reserves the right to call any witnesses listed or called by the other parties, whether live or by deposition.

May testify by deposition:

USAA CIC reserves the right to call witnesses by way of deposition if they, if for some reason, become unavailable for trial. USAA CIC will offer portions, in that event.

State whether the entire deposition, or only portions will be used. Counsel shall confer, no later than twenty days before the commencement of trial, to resolve all controversies not resolved by the parties shall be submitted to the trial judge not later than ten days prior to trial. All objections not submitted within that time are waived.

16. This X is \_\_\_\_\_ is not a jury case.

17. Counsel suggest the following additional matters to aid in the disposition of this civil action:

1. Plaintiff suggests that Defendants notify which company representative or employees will be available live at trial and which will need to be submitted via deposition.

18. Counsel estimates the length of the trial will be 14 days.

19 As states in paragraph 1, this pretrial order has been formulated (a) at a pretrial conference before the United States District Court Judge, notice of which was duly served on all parties, and at which the parties attended as is stated above, or(b) the final pretrial conference having been dispensed with by the Magistrate Judge, as a result of conferences between the parties. Reasonable opportunity has been afforded for

corrections or additions prior to signing.. This order will control the course of the trial, as provided by Rule 16, Federal Rules of Civil Procedure, and it may not be amended except by consent of the parties and the court, or by order of the court to prevent manifest injustice.

ORDERED, this the 19<sup>th</sup> day of December, 2007.

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

/s/George W. Healy, IV.  
George W. Healy, IV. (MBN 2154)  
George Healy & Associates  
1323 28<sup>th</sup> Ave.  
Gulfport, Mississippi 39501  
Attorney for Plaintiffs

/s/ James C. Simpson, Jr.  
James C. Simpson, Jr.  
Montgomery, Barnett, Brown, Read, Hammond and Mintz  
Mississippi Bar No. 6810  
2310 19<sup>th</sup> Street  
Gulfport, Mississippi 39501  
Attorney for Defendants James W. Jordan and Rimkus Consulting Group, Inc.

/s/ Janet G. Arnold (MBN 1626)  
ATTORNEY FOR USAA CASUALTY INSURANCE COMPANY