

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

JARED VODANOVICH

CIVIL ACTION

VERSUS

NO: 05-4191

**BOH BROTHERS CONSTRUCTION
CO., LLC, ET AL.**

ALL CASES

SECTION “B” (2)

FINAL ORDER AND JUDGMENT

Except as otherwise expressly provided below or as the context otherwise requires, all capitalized terms used in this Final Order and Judgment (“Final Order and Judgment”) shall have the meanings and/or definitions given them in the Amended Class Settlement Agreement and the Protocol for Distribution of Escrowed Funds (“Distribution Protocol”, and together with the Amended Class Settlement Agreement, collectively the “Class Settlement Agreement”) entered into by and on behalf of the Settlement Class, and the Settling Defendants, preliminarily approved by this Court’s Order dated March 19, 2013 (Rec. Doc. 71). A copy of the Amended Class Settlement Agreement is filed in these proceedings at Rec. Doc. 69-1 and is attached hereto and incorporated herein by reference as Exhibit “1”. A copy of the Distribution Protocol (with Exhibits) is filed in these proceedings at Rec. Docs. 69-2 through 69-5 and is attached hereto and incorporated herein by reference as *in globo* Exhibit “2”.

The Certification Hearing and the Fairness Hearing commenced on the 23rd day of September, 2013, at which time the Court considered whether the proposed Class should be certified, whether the proposed Class Settlement Agreement is fair, reasonable and adequate under Rule 23(e) of the Federal Rules of Civil Procedure, and related matters, all as requested in the Parties’ Joint Motion for Certification of a Settlement Class, for Approval of Proposed Settlement and for Related Relief (the “Joint Motion”). (Rec. Doc. No. 69).

Having (i) reviewed the proposed Class Settlement Agreement (including all exhibits thereto); (ii) afforded all parties to the Litigation, including all Class Members, the opportunity to be heard on the propriety of the certification of the Settlement Class at the Certification Hearing, and on the terms and conditions of the proposed settlement at the Fairness Hearing; (iii) ordered

the issuance of proper, comprehensive, and adequate notice consistent with due process of law; (iv) reviewed fully the record of this proceeding (including this Court's Preliminary Approval Order); (v) considered all factors which pertain to the approval or disapproval of the proposed settlement of a class action; (vi) considered all the evidence introduced at the Certification Hearing and the Fairness Hearing; (vii) considered the representations and argument of Class Counsel, counsel for the Settling Defendants, and the objectors; (viii) considered the relevant law, including, without limitation, Federal Rule of Civil Procedure 23, the Supreme Court's decision in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999) and the Fifth Circuit's prior decision in this case, *In re Katrina Canal Breaches Litigation*, 628 F.3d 185 (5th Cir. 2010); and (ix) based on this Court's reasons stated in open court at the close of the Certification Hearing and the Fairness Hearing; and

Having further considered all of the objections presented to the certification of the proposed Settlement Class or to the fairness, reasonableness, and adequacy of the proposed settlement and concluded that these objections are not meritorious; and having determined and concluded that the proposed Settlement Class should be certified and that the proposed settlement is fair, reasonable and adequate and in the best interests of the Settlement Class, the Court, based on the entire record in this matter including the evidence presented at the Certification Hearing and Fairness Hearing, hereby makes the following findings of fact and/or law in support of this Final Order and Judgment:¹

- A. The Court has, and retains, jurisdiction over the subject matter of this proceeding;
- B. The Court has personal jurisdiction over the Parties to this proceeding, and each Class Member has minimum contacts with this forum;
- C. Venue is proper in this Court;

¹ All findings of fact will constitute conclusions of law to the extent applicable and all conclusions of law shall constitute findings of fact to the extent applicable.

- D. The Class Settlement Agreement was entered into in good faith and is the result of extensive arms-length negotiations among highly experienced counsel, with sufficient discovery and full knowledge of the risks inherent in this Litigation, and without collusion;
- E. The Special Master and CADA are impartial, qualified and independent, and their retention and approval are in the best interests of the Class;
- F. The Parties have made an informed decision as to the fairness and adequacy of the proposed Class Settlement Agreement;
- G. The notice provided to all Class Members of the preliminary certification of the Settlement Class, the proposed settlement, the Certification Hearing and the Fairness Hearing complies with the Preliminary Approval Order. Further, this Court finds that the issues with regard to notice raised by the Fifth Circuit in the prior appeal of this case (the “Prior Appeal”) have been fully and adequately addressed. Specifically,
 - 1. As the Distribution Protocol makes clear, the settling parties do not propose a *cy pres* distribution. [Rec. Doc. 60-2]
 - 2. Based on the evidence presented at the Certification Hearing and Fairness Hearing, there are now firm estimates of administrative costs and expenses which the Court finds to be well supported and reasonable.
 - 3. Under the Distribution Protocol, Class Counsel now expressly waive any right to recover both common benefit fees and “enhanced costs”. [Rec. Doc. 69-2, p. 8, ¶12(f)]
 - 4. Under the Distribution Protocol, common benefit fees, expenses and/or awards for Class Representatives from the Escrowed Funds are subject to approval of this Court and the aggregate total of such fees, expenses and/or awards is subject to a Common Benefit Cap (\$3,500,000), which the Court finds to be fair and reasonable. [Rec. Doc. 69-2, pp. 7-8, ¶12(d).] Further, under the settlement, the aggregate total of all common benefit costs, fees and/or expenses that may be paid from the Escrowed Funds now may not exceed forty (40%) percent of the aggregate common benefit costs, fees and expenses as determined by this Court. [Rec. Doc. 69-2, pp. 7-8, ¶12(d)]. The Class Settlement Agreement also makes clear that common benefit expenses may not be awarded if such award would impair the settlement. [Rec. Doc. 69-2, pp. 6-7, ¶12(a-c)] Finally, no Class Representative award may exceed \$2,000. *Id.*
 - 5. Finally, the language now contained in the notice regarding the inability to “exact” additional amounts from the levee district defendants tracks

language actually suggested by the Fifth Circuit in its opinion. [Rec. Doc. 69-6, Attachment B, p. 5, ¶10]; see also *In re Katrina Canal Breaches Litigation*, 628 F.3d at 199.

- H. The form, content and manner of service of the notice required by 28 U.S.C. § 1715 on the fifty-seven federal and state officials, including the Attorney General of the United States, the Attorneys General of each of the 50 states, the Attorney General for the District of Columbia, and the Attorneys General of each of the United States territories, complies with the Preliminary Approval Order and applicable law, including specifically the requirements of 28 U.S.C. § 1715;
- I. The form and content of the Class Notice, and the manner such Class Notice was given to Class Members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement and all related procedures and hearings, were reasonable and reasonably calculated under all the circumstances and have been sufficient, both as to form and content, to apprise interested parties of the pendency of the Litigation, the preliminary certification of the Settlement Class, the Class Settlement Agreement and its contents, the Certification Hearing, the Fairness Hearing, and Class Members' right to hire counsel, to appear in Court to have their objections heard, and to afford Class Members an opportunity to object. Such notice complied with all requirements of the federal and state laws and constitutions, including the due process clause and Federal Rule of Civil Procedure 23 and constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential Class Members of the Settlement Class, as preliminarily certified and defined by the Preliminary Approval Order, and of the Certification Hearing and the Fairness Hearing;
- J. The requisites of Rule 23 of the Federal Rules of Civil Procedure, including particularly, Rule 23(a), (b)(1)(B) and (e), are satisfied;
- K. The Fifth Circuit in the Prior Appeal accepted Judge Duval's prior determination that the Rule 23(a) prerequisites for class action treatment were met in connection with the proposed Settlement Class.² Judge Duval's prior determination remains law of the case. This determination by Judge Duval also was not the subject of any appeal previously considered by the Fifth Circuit and has, thus, been decided under the doctrine of waiver;
- L. Nevertheless, this Court also finds that the Rule 23(a) prerequisites for class action treatment have been met. Specifically, the Court finds (i) that the Class is so numerous that joinder of all Class or Subclass members is impracticable; (ii) that there are questions of law or fact common to the Class and to each Subclass; (iii) that the claims of the Class Representatives are typical of the claims of the Class and each Subclass; and (iv) that the representatives of the Settlement Class and Class Counsel have fairly and adequately represented all Members of the

² *In re Katrina Canal Breaches Litigation*, 628 F.3d 185, 190-191 n. 3 (5th Cir. 2010).

Class and the Members of each subclass and protected the interests of the Settlement Class and the Members of each subclass;

- M. The certification of the Settlement Class and approval of the Class Settlement Agreement under Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure and *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999) is proper and satisfies due process;
- N. The Fifth Circuit in the Prior Appeal found that “[a]s political subdivisions of the State of Louisiana, the levee districts’ assets are statutorily exempt from seizure to satisfy a judgment against them . . . Nor are the levee districts subject to a writ of mandamus requiring them to appropriate additional funds to satisfy a judgment against them.”³ This is the law of the case. Nevertheless, this Court also finds that the levee district defendants’ assets are as a matter of law immune from seizure;
- O. The Fifth Circuit in the Prior Appeal did not disturb Judge Duval’s determination that the insurance proceeds (\$17,000,000.00) plus the Judicial Interest (as defined in the Class Settlement Agreement) deposited into escrow represented the limits of the insurance proceeds available to the Settlement Class, plus interest. Further, this determination by Judge Duval also was not the subject of any appeal previously considered by the Fifth Circuit and has, thus, been decided under the doctrine of waiver;
- P. Nevertheless, sufficient evidence has been presented to establish and to allow this Court to ascertain and evaluate independently the limit and insufficiency of the fund with which to satisfy the Claims of Class Members. This Court finds (i) that the particular insurance policies from which the limited fund was created (the “Limited Fund Policies”) provide the sole insurance coverage that is available to the Class under levee district defendants’ insurance policies and (ii) that the total insurance coverage available for the Settlement Class is the Insurance Policy Limits (\$17,000,000.00) under the Limited Fund Policies, plus the Judicial Interest (as defined in the Class Settlement Agreement);
- Q. The Court finds that each of the three “essential premises of mandatory limited fund actions” identified by the Supreme Court in *Ortiz, supra* at 527 U.S. 848 have been satisfied in this case. Specifically, the Court finds that the totals of the aggregated Claims and the fund available to respond to these Claims in the aggregate, set definitely at their maximums, demonstrate the inadequacy of the fund to pay all Claims; that the whole of the fund is devoted to the Claims (less only necessary fees and expenses); and that the claimants identified by a common theory of recovery are treated equitably among themselves;
- R. Based on the evidence presented at the Certification Hearing and Fairness Hearing, the Court finds that the concern expressed by the Fifth Circuit in the

³ *Id.* at 199 (citations omitted).

Prior Appeal that certification and approval of the Class Settlement Agreement under Rule 23(b)(1)(B) required a procedure for treating differently situated claimants with fairness among themselves has now been fully and adequately addressed through the Limited Fund Distribution Model;

- S. The Court finds as credible and accepts the testimony of Mr. Gregory C. Rigamer given at the Certification Hearing and Fairness Hearing. Specifically, the Court finds credible and accepts Mr. Rigamer's testimony with regard to the Limited Fund Settlement Distribution Model and attendant estimated costs related thereto;
- T. Based on the evidence presented at the Certification Hearing and Fairness Hearings, including Mr. Rigamer's testimony, this Court finds that the Limited Fund Distribution Model (Rec. Doc. 69-5) provides a fair, reasonable and adequate procedure for resolving the issue of treating differently situated claimants with fairness among themselves. There are no impermissible conflicts or inequities between subclasses of Class Members, nor is it necessary or required under these circumstances for the subclasses to be represented by separate counsel;
- U. The Court finds that the Class Settlement Agreement is fair, reasonable and adequate under Rule 23(e) of the Federal Rules of Civil Procedure and in the best interests of the Class Members and the Settlement Class in light of the complexity, expense and likely duration of the litigation, in light of the risks involved in certifying a litigation class and in light of the risks involved in establishing liability and damages, as well as the limited funds available through the Settling Defendants;
- V. This case presents a definable limited fund insufficient to satisfy the claims of Class Members such that prosecuting separate actions by or against individual Class Members would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
- W. It would not be fair, reasonable or in the best interests of the Class to allow the available fund to be diminished by the payment of certain Claims, to the detriment of other Claims;
- X. The Court finds that the concerns of the Fifth Circuit on the Prior Appeal that the settlement could not be approved under Rule 23(e) of the Federal Rules of Civil Procedure because there was no showing "that class members would receive some benefit in exchange for the divestment of their due process rights in a mandatory class settlement" and there had been "no demonstration on the record below that the settlement will benefit the class in any way, either through the disbursement of individual checks or through a cy pres distribution" have been now addressed;

- Y. Based on the record established at the Certification Hearing and Fairness Hearings, this Court finds that the Class will benefit from the settlement through the disbursement of individual checks, and that attendant costs and expenses have now been established either through reasonable estimates or limits contained in the Distribution Protocol;
- Z. Based on the evidence presented at the Certification Hearing and Fairness hearing, the Court finds that the administrative costs related to the Limited Fund Distribution Model are slightly lower than originally anticipated;
- AA. The Court finds the current estimated administrative costs of \$2,355,181.00 (200k claims), \$2,735,019.00 (400k claims), \$3,131,651.00 (600k claims), and \$3,493,925.00 (800k claims), respectively, to be well supported and reasonable;
- BB. Some of these administrative costs have already been incurred and paid. Specifically, the Affidavit of Mr. Cameron Azari (Exhibit 101) as well as the testimony of Mr. Rigamer confirms that most of two tasks to be performed by Mr. Azari's company, Hilsoft Notifications, have been completed. The cost for these two tasks total \$895,000 of the foregoing aggregate estimated administrative costs at each level of assumed claims.
- CC. Accordingly, the Court finds the reasonable estimate of the remaining administrative costs to be \$1,460,181.00 (200k claims), \$1,840,019.00 (400k claims), \$2,236,651.00 (600k claims), and \$2,598,925.00 (800k claims), respectively.
- DD. As of August 31, 2013, the Settlement Funds in the Escrow Account totaled \$19,370,977.67 after the payment of certain costs approved under the Class Settlement Agreement. Accordingly, the Court finds the reasonable estimate of the Settlement Funds that will be available for distribution to the Settlement Class before consideration of common benefit costs to be \$17,910,796.67 (200k claims), \$17,530,958.67 (400k claims), \$17,134,326.67 (600k claims) and \$16,772,052.67 (800k claims), respectively. (These figures equal the total settlement funds as of August 31, 2013, less the estimated remaining costs as set forth above.);
- EE. As the common benefit fees, costs and expenses, if awarded, cannot exceed the \$3.5MM Common Benefit Cap, by subtracting \$3.5 million from the foregoing numbers, the Court also finds that the reasonable estimate of the net Settlement Funds that will be available for distribution to the Settlement Class after deducting both estimated administrative costs and potential common benefit costs (set at the maximum) is \$14,410,796.67 (200k claims), \$14,030,958.67 (400k claims), \$13,634,326.67 (600k claims) and \$13,272,052.67 (800k claims), respectively. If less than the entire Common Benefit Cap is ultimately awarded by this Court, these estimated distribution figures will be larger;

- FF. Based on the evidence presented at the Certification Hearing and Fairness Hearing, which the Court finds to be exceptionally well developed on this issue, the Court finds that the Class Settlement Agreement does provide assurance that attorneys' fees/costs and administrative costs will not, in the words of the Fifth Circuit, "cannibalize" the settlement fund and that the Settlement Class will receive a monetary benefit from the settlement;
- GG. Given the Common Benefit Cap and reasonable estimates of administrative costs which are accepted by the Court, this Court finds that a determination of what, if any, common benefit cost or fee awards will be approved by this Court is not legally required at this time as the Court finds that there will be money remaining in the settlement fund after payment of such costs and fees even if awarded to the full extent of the Common Benefit Cap;
- HH. Pursuant to the terms of a letter dated May 3, 2012, the Centers for Medicare & Medicaid Services has advised that it will not to assert a Medicare Secondary Payer Part A and/or Part B fee-for-service recovery claim against certain distributions to be made under the Class Settlement Agreement that may qualify as Medicare beneficiary awards (Rec. Doc. 69-5); and
- II. The Objections made to certification of the Settlement Class and/or approval of the Class Settlement Agreement, including specifically objections to due process, constitutionality, procedures, and compliance with law (including, but not limited to, the adequacy of notice and the fairness of the proposed Class Settlement Agreement), are overruled. This Court acknowledges again that in a limited fund settlement, as here, involving hundreds of thousands of potential claimants, there are insufficient resources to account for everyone's losses. Without more reasonable options to increase benefits, the instant action results from a long-established basic fact—the total amount of this settlement is the highest amount available.

Accordingly:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

(1) The Joint Motion (Rec. Doc. 69) is approved, and the Amended Class Settlement Agreement and the Distribution Protocol (including all exhibits), attached hereto as Exhibit "1" and *in globo* Exhibit "2", respectively, and the settlement set forth in the foregoing, including (i) any amendments or corrections, (ii) all terms and conditions thereto, and (iii) all attached exhibits, are now finally approved by the Court pursuant to applicable law, including Rules 23(a), (b)(1)(B) and (e) of the Federal Rules of Civil Procedure.

(2) The Objections made to certification of the Settlement Class and/or approval of the Class Settlement Agreement, including specifically any objections to due process, constitutionality, procedures, and compliance with law (including, but not limited to, the adequacy of notice and the fairness of the proposed Class Settlement Agreement), are overruled.

(3) The preliminary certification of the Settlement Class pursuant to the Preliminary Approval Order (Rec. Doc. 71) is hereby confirmed, and the following Settlement Class is certified for settlement purposes only pursuant to the Class Settlement Agreement and Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure: all Persons (a) who at the time of Hurricane Katrina and/or Hurricane Rita (i) were located, present or residing in the Hurricane Affected Geographic Area, or (ii) owned, leased, possessed, used or otherwise had any interest in homes, places of business or other immovable or movable property on or in the Hurricane Affected Geographic Area, and (b) who incurred any losses, damages and/or injuries arising from, in any manner related to, or connected in any way with Hurricane Katrina and/or Hurricane Rita and any alleged Levee Failures and/or waters that originated from, over, under or through the Levees under the authority and/or control of all or any of the Levee Defendants. The term “Class” or “Settlement Class” shall expressly include all Plaintiffs and putative class members of the Pending Actions. The Settlement Class shall include and be divided into three (3) subclasses of Class Members whose losses, damages and/or injuries arise from, relate to or are connected with flooding for which a particular levee district is allegedly responsible based upon a model agreed to for purposes of this Class Settlement Agreement only (collectively, the “Subclasses” and each a “Subclass”). Subclass 1 (Lake Borgne Basin Levee District) and Subclass 2 (East Jefferson Levee District) each overlap with Subclass 3 (Orleans Levee District), but not with each other. A Class Member who falls within these areas of overlap will be included in more than one

Subclass. A Class Member may also otherwise be included in more than one Subclass; however, no Class Member who is not in a particular Subclass shall be entitled to be paid from the funds available to that Subclass. Excluded from the Settlement Class are Class Counsel, counsel for the Settling Defendants and the judge(s) and/or magistrate judge(s) to whom the Litigation is assigned at the trial court or upon any appeal.

As used above in the definition of the proposed Settlement Class (and in the Class Settlement Agreement), the following terms are defined as follows:

- a. The term “Hurricane Affected Geographic Area” shall mean the entire area located within the Parishes of Jefferson, Orleans and St. Bernard, Louisiana.
- b. The term “Hurricane Katrina” shall mean the tropical cyclone named “Hurricane Katrina” by the National Weather Service’s National Hurricane Center which made landfall in Louisiana on or about August 29, 2005 including, but not limited to, its classification as a tropical depression, storm, hurricane and/or other weather event and any and all effects due to, caused by, or relating to Hurricane Katrina regardless of whether same occurred prior to, concurrently with, or following Hurricane Katrina’s landfall including, but not limited to, storm surge, flooding, rainfall, lightning, wind and/or tornados.
- c. The term “Hurricane Rita” shall mean the tropical cyclone named “Hurricane Rita” by the National Weather Service’s National Hurricane Center which made landfall in Louisiana on or about September 24, 2005 including, but not limited to, its classification as a tropical depression, storm, hurricane and/or other weather event and any and all effects due to, caused by, or relating to Hurricane Rita regardless of whether same occurred prior to, concurrently with, or following Hurricane Rita’s landfall including, but not limited to, storm surge, flooding, rainfall, lightning, wind and/or tornados.
- d. The term “Levees” shall include any and all levees, embankments, seawalls, jetties, breakwaters, water-basins, floodwalls, floodgates, gates, outfall canals, drainage canals, berms, spoil banks, and other works in relation to such projects, and/or any other flood or water control structure(s), whether man-made or natural.
- e. The term “Levee Failures” shall mean the actual or alleged breaching, overtopping, seepage, collapse, undermining, weakening or any other alleged failure of Levees regardless of cause, whether caused in whole or part by an alleged defect, error or neglect with respect to the design, construction, maintenance, inspection, and/or operation of the Levees, and all dredging operations necessary in connection therewith or incidental thereto, and/or whether caused in whole or part by any wind, waves, tide, rainfall, storm surge or other

force or effect caused by or resulting from Hurricane Katrina.

- f. The term “Pending Actions” shall mean any and all lawsuits, administrative claims or other actions, however asserted (including but not limited to any and all petitions, complaints, third-party demands, cross-claims and counter-claims), in which a Released Claim has been, or is, asserted (including but not limited to those lawsuits identified on Exhibit “A” to the Distribution Protocol).

(4) The preliminary approval of the Class Representatives and Class Counsel is hereby confirmed, and the Class Representatives and Class Counsel are approved.

(5) Each and every term, provision, condition and agreement of the Class Settlement Agreement, including all exhibits and amendments thereto, shall be effective, implemented and enforced as provided therein.

(6) On the Effective Date of Class Settlement, all Released Claims asserted against the Released Parties in the Litigation are dismissed with prejudice; provided however, that the Litigation shall not be dismissed in its entirety, but shall remain open to facilitate the jurisdiction retained by the Court in Paragraph 10 below.

(7) The stay (including discovery) of all Claims asserted against the Released Parties in the federal Pending Actions contained in the Preliminary Approval Order is hereby re-confirmed and remains in effect. Further, all Claims asserted against the Released Parties in the remaining Pending Actions are stayed (including discovery). “Pending Actions” as used herein means any and all lawsuits, administrative claims or other actions, however asserted (including but not limited to any and all petitions, complaints, third-party demands, cross-claims and counter-claims), in which a Released Claim has been, or is, asserted (including but not limited to those lawsuits identified on Exhibit “A” to the Distribution Protocol). Pending the Effective Date of Class Settlement, Class Members are enjoined from pursuing the Released Claims against the Released Parties, including but not limited to all Claims asserted against the Released Parties in the Pending Actions (as well as discovery against the Released Parties in the Pending

Actions absent further order of this Court). On the Effective Date of Class Settlement, all Claims asserted against the Released Parties in the Pending Actions, shall be dismissed with prejudice. The Class Members, through their Counsel, shall file in the Pending Actions appropriate Final Judgments to effectuate such dismissals to be entered in each of these cases. No finding, judgment, adjudication, or verdict rendered in the Pending Actions after the date of this Final Order and Judgment, or rendered by any Court and/or jury in any proceeding or action after the Claims in such proceeding or action have been stayed or enjoined as to the Released Parties, shall be binding or have any precedential effect on the Released Parties.

(8) On the Effective Date of Class Settlement, the Released Parties are hereby finally released from any and all Released Claims by, through, or on behalf of a Class Member in state or federal court.

(9) On the Effective Date of Class Settlement, each and every Class Member (and all persons claiming by, through or on behalf of a Class Member), is hereby finally and permanently barred and enjoined from instituting, continuing, maintaining or prosecuting any actions against the Released Parties with respect to any and/or all Released Claims in state or federal court.

(10) Notwithstanding any other provision of this Final Order and Judgment and/or the Class Settlement Agreement, the Court reserves continuing and exclusive jurisdiction over the Litigation, the Class, the Class Members and the Class Settlement Agreement for the purpose of administering, supervising, construing and enforcing the Class Settlement Agreement, and also continuing and exclusive jurisdiction over the Class Settlement Funds and the distribution of same to Class Members pursuant to the Class Settlement Agreement.

(11) The Court's retention of jurisdiction as set forth above shall not affect the finality of this Final Order and Judgment. Further, the Court hereby makes an express determination that

there is no just reason for delay and orders entry of this Final Order and Judgment. Accordingly, this Final Order and Judgment is immediately appealable pursuant to Federal Rule of Civil Procedure 54(b).

(12) The Court approves the Limited Fund Settlement Distribution Model attached as Exhibit “G” to the Distribution Protocol and methodology for allocating and distributing funds to Class Members set forth therein and in the Distribution Protocol. The Court further orders that, after the Effective Date of Class Settlement, the Special Master shall submit to the Court for approval a time table for the implementation of the Distribution Protocol.

(13) The Court hereby re-confirms the appointment of A. Shelby Easterly as Special Master under the terms set forth in the Distribution Protocol and prior Orders of this Court [Rec. Docs. 56 and 62]. If Mr. Easterly shall be unable to serve for any reason, any other Person to be recommended to the Court for appointment as Special Master shall be mutually acceptable to Plaintiffs and the Settling Defendants each in their sole and absolute discretion. Subject to the Court’s approval, the Special Master shall have the authority after the Effective Date of Class Settlement to contract with and/or retain and, upon Court approval, pay such Persons as may be necessary to carry out the Special Master’s responsibilities. The Special Master's duties and responsibilities shall include but are not limited to coordination and implementation of the Limited Fund Settlement Distribution Model pursuant to the Distribution Protocol, including but not limited to as set forth in Paragraphs 4-8 of the Distribution Protocol. At all times, the Special Master shall carry out his/her responsibilities in as economical and effective manner as possible. Except as provided in Paragraphs 9 and 10 of the Distribution Protocol and Section VI(2) of the Amended Class Settlement Agreement, the Special Master must obtain Court approval for any requested payment from the Escrowed Funds. Notwithstanding the foregoing or any other

provision of the Amended Class Settlement Agreement, the Distribution Protocol or any other document, the Special Master shall have no rights in the Escrowed Funds unless there is the occurrence of the Effective Date of Class Settlement. The Special Master shall be paid in accordance with a proposed budget (a) approved (i) by Class Counsel and by counsel for St. Paul (to the extent that the work is to be, or may be, undertaken prior to the Effective Date of Class Settlement) and (ii) by Class Counsel (to the extent that the work is to be undertaken after the Effective Date of Class Settlement), and (b) approved by the Court. By agreement of the Special Master, the Special Master's fees shall not exceed \$25,000.00.

(14) The Court hereby re-confirms the appointment of Dennis M. McCartney of Bourgeois Bennett as the CADA. If he shall be unable to serve for any reason, the Court shall appoint a CADA upon motion by the Plaintiffs or the Settling Defendants. The CADA's duties include but are not limited to the payment of amounts from the Escrowed Funds prior to the Effective Date of Class Settlement as limited by the terms of the Class Settlement Agreement, and after the Effective Date of Class Settlement assisting the Special Master in the administration and disposition of the remaining Escrowed Funds, or as so ordered by the Court. Except as provided in Paragraphs 9 and 10 of the Distribution Protocol and Section VI(2) of the Amended Class Settlement Agreement, the CADA must obtain Court approval for any requested payment from the Escrowed Funds. Subject to the foregoing, the CADA shall be paid in accordance with a proposed budget submitted in advance and (a) approved (i) by Class Counsel and by counsel for St. Paul Fire and Marine Insurance Company (to the extent that the work is to be, or may be, undertaken prior to the Effective Date of Class Settlement) and (ii) by Class Counsel (to the extent that the work is to be undertaken after the Effective Date of Class Settlement), and (b) approved by the Court.

(15) Subject expressly to the limitations set forth in the Class Settlement Agreement and this Court's Final Order and Judgment, costs, fees, expenses and other amounts incurred in the implementation of the Class Settlement Agreement (including but not limited to the costs and fees of all experts of the Parties) may be paid from the Escrowed Funds as set forth in the Distribution Protocol.

(16) Until the Effective Date of Class Settlement, no funds in the Escrow Account shall be used or disbursed other than as provided in the Class Settlement Agreement. Prior to the Effective Date of Class Settlement, except with regard to any possessory lien and/or security interest that may be granted to the Escrow Agent under the Escrow Agreement solely to secure the payment of amounts coming due to the Escrow Agent under the Escrow Agreement (i) St. Paul Fire and Marine Insurance Company has, and shall retain, exclusive right, title and interest, both legal and equitable, in and to the Escrowed Funds (including without limitation the Insurance Policy Limits, the Judicial Interest and all Accrued Interest), and (ii) no other Person (including, but not limited to, Plaintiffs, Plaintiffs' counsel, counsel for any Class Member, the Special Master, the CADA, Class Counsel and Class Members) shall have any right, title or interest, whether legal or equitable, in or to said Escrowed Funds.

(17) The Court approves the Common Benefit Cap as set forth in Paragraph 11(d) of the Distribution Protocol, finding it to be reasonable based upon its review of the evidence presented in connection with the Certification Hearing and Fairness Hearing. Accordingly, upon the Effective Date of Class Settlement and the subsequent request of the Special Master, the Court will set a deadline for Class Counsel to file applications for reimbursement of common benefit costs and expense and for other counsel to file applications for common benefit costs, fees and/or expenses, provided that the aggregate total of all common benefit costs, fees and/or

expenses that may be paid from the Escrowed Funds shall not exceed forty percent (40%) of the aggregate common benefit costs, fees and expenses as determined by the Court upon review of said applications, nor shall it exceed the Common Benefit Cap of Three Million Five Hundred Thousand Dollars (\$3,500,000.00).

(18) Upon the Effective Date of Class Settlement and the subsequent request of the Special Master, the Court will set a deadline to apply for awards to Class Representatives, which awards, if granted, shall not exceed \$2,000.00 each and are subject to the Common Benefit Cap.

(19) The Court finds that the above-referenced common benefit and Class Representative awards, if any, and the right to seek recovery of same are subject to all of the limits, restrictions and conditions contained in the Distribution Protocol which limits, restrictions and conditions are hereby incorporated by reference and approved. The above-referenced common benefit and Class Representative awards, if any, the right to seek recovery of same and the Common Benefit Cap in no way preclude or impair in any way approval of the Class Settlement Agreement for the benefit of Class Members, and in all respects conform with Federal Rule of Civil Procedure 23, *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), and other applicable law.

(20) The Court finds that the Centers for Medicare & Medicaid Services (“CMS”) expressly reserved in its May 3, 2012 letter to counsel for one of the Settling Defendants the right to assert a Medicare Secondary Payer (“MSP”) Part A and/or Part B fee-for-service recovery claim against Medicare beneficiary awards as to any individual claimant (i) entitled to receive distributions under the Class Settlement Agreement for any amount which is based, in whole or in part, on an allowed wrongful death and/or survival benefits claim, or (ii) entitled to receive distributions on any basis under the Class Settlement Agreement totaling an amount in

excess of \$1,000. Except as set forth in the preceding sentence, the CMS stated in its letter that it will not assert a MSP Part A and/or Part B fee-for-service recovery claim against Medicare beneficiary awards to any claimant receiving distributions under the Class Settlement Agreement.

(21) Distributions under the Class Settlement Agreement either (a) based, in whole or in part, on an allowed wrongful death and/or survival benefits claim or (b) which in the aggregate is in excess of \$1,000 (without regard to the basis for the claim), shall not be made to any individual claimant unless the Special Master receives written consent or approval from each Class Counsel and each counsel for the Settling Defendants, which approval shall not be made until receipt of either (a) confirmation from CMS that no MSP Part A and/or Part B fee-for-service recovery claim is being made against that claimant's settlement funds or (b) documentation from CMS identifying the amount of the MSP Part A and/or Part B fee-for-service recovery claim that is being made against that claimant's settlement funds. For those claims in which an MSP Part A and/or Part B fee-for-service recovery claim is being made against a claimant's settlement funds, the check distributing that claimant's payment under the Class Settlement Agreement shall be issued jointly in the name of the Class Member and Medicare.

(22) As to each individual claimant entitled to distribution under the Class Settlement Agreement either (a) based, in whole or in part, on an allowed wrongful death and/or survival benefits claim or (b) which in the aggregate is in excess of \$1,000 (without regard to the basis for the claims), the Special Master shall maintain and make available to CMS the claimant's last name, first name, social security number, Medicare Health Insurance Claim Number, date of birth, gender, date of settlement, and the amount of the anticipated distribution. Furthermore, if

the distribution is based, in whole or in part, on an allowed wrongful death and/ or survival benefits claim, then the Special Master shall maintain and make available to CMS the foregoing information for both the claimant and the individual whose death is the basis for the wrongful death and/or survival benefits claim.

(23) As set forth in Paragraph 5 of the Distribution Protocol, the following claims are automatically disallowed: (i) any claim form that is not signed, (ii) any claim within a claim form to the extent that the required information is not completed for that particular claim, (iii) any particular claim for property damage that does not provide a valid address within the Hurricane Affected Geographic Area at the time of Hurricanes Katrina and/or Rita, and (iv) any particular claim within a claim form for which required supporting documentation is not provided.

(24) As set forth in Paragraph 7 of the Distribution Protocol, Class Members shall have an opportunity to request a review by the Special Master only in the event they believe there is a mathematical or other administrative error in the processing of their claim, and shall have the right to appeal the Special Master's corresponding decision to the District Judge presiding over the Litigation if such appeal is filed within fourteen (14) days after the Special Master's decision. The District Judge's decision on any such appeal shall be final and non-appealable. In this post-claim review process, no objection or appeal will be permitted to the Distribution Model itself or to whether the scoring of a Class Member's claim was fair or reasonable. Class Members shall not have the right to appeal individual awards based on the Limited Fund Settlement Distribution Model, except to the extent described above. Qualifying as a Class Member herein does not automatically or immediately entitle any Person to any monies pursuant to the Class Settlement Agreement.

(25) Upon the occurrence of a Class Termination Event, notice of same shall be filed into the record in the Litigation.

(26) Notwithstanding any other provision of the Class Settlement Agreement (or of any other document) or the Preliminary Approval Order or this Final Order and Judgment, if the Class Settlement Agreement is terminated, (a) the Class Settlement Agreement shall have no effect on the rights of the Parties or the Class Members (i) to take action in support of or in opposition to class certification in the Pending Actions, or any other action; or (ii) to prosecute or defend the Pending Actions, or any other action and (b) subject expressly to the reservation and preservation of rights and defenses in favor of the Settling Defendants contained in the Class Settlement Agreement, the Parties and all Class Members shall be restored to their respective *status quo ante* immediately prior to the date the Parties signed the Class Settlement Agreement. In such event, the Class Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be without prejudice to the Settling Defendants and Plaintiffs, and shall not be deemed or construed to be an admission or confession by or against any Party of any fact, matter, or proposition of law, whether in the Pending Actions or otherwise.

(27) Nothing in this Final Order and Judgment shall preclude any action before the Court to enforce the terms of the Class Settlement Agreement.

New Orleans, Louisiana this 10th day of October, 2013.


UNITED STATES DISTRICT JUDGE