

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

SUNQUEST PROPERTIES, INC.
AND COMPASS POINTE APARTMENTS PARTNERSHIP

PLAINTIFFS

V.

CIVIL ACTION NO. 1:08cv692-LTS-RHW

NATIONWIDE PROPERTY AND CASUALTY COMPANY
AND JOHN DOES 1-5

DEFENDANTS

ORDER

On June 8, 2009, this Court [32] denied Plaintiffs' [28] Motion for Partial Summary Judgment to Compel Appraisal. Plaintiffs have now filed a [34] Motion for New Trial and a [36] Motion for Appraisal of the Entire Loss arising from the Court's [32] order. Before ruling on these pending [34] [36] motions, it is necessary for the Court to obtain additional information from the parties.

The section on appraisal in the Property Loss Conditions portion of the subject insurance policy reads, in part, as follows: "*If we and you disagree on the amount of loss*, either may make written demand for an appraisal of the loss. *In this event*, each party will select a competent and impartial appraiser" (Emphasis supplied) Therefore, there is a pre-condition to appraisal as set forth in the subject policy, i.e., disagreement on the amount of the loss. While the parties initially engaged in a mutual mis-interpretation of the proper scope of the appraisal provision, which the Court corrected in its [32] June 8th Order, there has been no explicit showing that such a disagreement exists as to the total amount of the loss, without regard to the cause or coverage related to such loss. If such an agreement can be reached, there is no need for an appraisal.

Accordingly, **IT IS ORDERED:**

The parties shall confer and, no later than August 14, 2009, advise the Court in writing whether they agree as to the amount of the total loss to the insured premises resulting from Hurricane Katrina, without regard to the cause of the loss and without regard to whether such loss is covered under the subject insurance policy.

SO ORDERED this the 4th day of August, 2009.

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