

**MINUTE ENTRY**  
**DUVAL, J.**  
**August 28, 2008**

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

**IN RE KATRINA CANAL BREACHES**  
**CONSOLIDATED LITIGATION**

**CIVIL ACTION**

**NO. 05-4182**

**PERTAINS TO:**  
**MRGO/BARGE**

**SECTION "K"(2)**

Attending a telephonic status conference held this date were liaison counsel:

Joseph Bruno for MRGO plaintiffs  
Robin Smith for the United States  
Bill Treeby for MRGO defendants  
John Aldock for BARGE defendants  
Brian Gilbert for BARGE plaintiffs.

Noting that there was a hearing scheduled for September 3, 2008, concerning the protocol for determining individual cases for trial in July of 2009 as set forth in CMO No. 7, the Court convened a status conference to discuss the status in general of the MRGO/BARGE cases.

The Court reiterated that it was interested in the input of counsel as to the present schedule. Since CMO No. 7 was promulgated, the Court has had to continue the *Robinson* trial such that it is clear that a determination of liability with respect to the United States for damages allegedly caused by the MRGO will now not be decided prior to the scheduled hearing for Class Certification. Indeed, the Court learned that the United States has had difficulty with respect to the promulgation of its expert reports, and it may seek a continuance.

Because the Court held this conference, it has decided particularly in light of the threat of Hurricane Gustav and the closure of the Courthouse on Tuesday, September 2, 2008, the

hearing on the protocol issue is not necessary. In the event the Court decides otherwise, it will reschedule the hearing at the appropriate time.

Furthermore, the Court is in receipt of the letter from counsel for Entergy as well as the pleadings filed by Universal Health Services. The decision as to which cases will actually be tried in July will be made in January of 2010. Thus, a final decision on this issue is not imminent.

While the Court has received briefing as to those issues over which there is no consensus on the protocol, it is unclear to the Court exactly what parameters about which the participants agree. If the parties should fail to reach an agreement, the Court shall independently select the cases for trial. Furthermore, the Court is inclined not to allow individual named class members to be used as test cases unless that particular plaintiff chooses to opt out of said class.

Accordingly,

**IT IS ORDERED** that the hearing scheduled for September 3, 2008 concerning the resolution of issues concerning the protocol for choosing individual cases for trial in July, 2009 is **CANCELLED**.

**IT IS FURTHER ORDERED** that the parties shall submit to the Court in writing no later than **September 24, 2008** a Joint Proposed Protocol for Selection of Cases. The parties shall note therein their respective objections and alternatives proposed.

**THE CLERK SHALL NOTIFY:  
MAG. JUDGE JAY WILKINSON**

JS-10: 30 MINS.

A handwritten signature in black ink, appearing to read "Jay Wilkinson", is written over a horizontal line.