

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

**IN RE KATRINA CANAL BREACHES
CONSOLIDATED LITIGATION**

CIVIL ACTION

NO. 05-4181

PERTAINS TO:

SECTION "K"(5)

**05-4181 05-6314
05-5237 05-6327
05-6073**

ORDER AND REASONS

Before the Court is a Motion to Dismiss for Failure to State a Claim upon which Relief Can Be Granted (Doc. 200) filed by the City of New Orleans. As noted, this motion was filed with respect to all of the above-listed cases. Only the plaintiffs in C.A. 05-6073 *Kirsch, et al. v. Boh Brothers, et al.* filed an opposition thereto. The gravamen of the City's motion is that plaintiffs in these cases seek damages allegedly caused by the breach of the levees and flood walls in the aftermath of Hurricane Katrina. However, as the City of New Orleans does not own and has no *garde*, care, custody or control of the levees in question, and the City of New Orleans did not participate in the design, construction, or maintenance of the levees, no cause of action lies against it.

The Kirsch opposition contends that this motion is premature and that discovery is required to make sure that the City did not have a hand in this matter. However, it is clear that the statutorily, the City of New Orleans is not responsible for the levees. La. Rev. Stat. 38:307 provides that the Board of Commissioners of the Orleans Levee District has the full and exclusive right and jurisdiction over the levees and La. Rev. Stat. 38:301 provides that the levee districts have the right to maintain levees. Thus, it is clear that there are no duties which the City of New Orleans has with respect to the levees. As such, the Court finds no reason to deny

the City's motion. Accordingly,

IT IS ORDERED that the Motion to Dismiss for Failure to State a Claim upon which Relief Can Be Granted (Doc. 200) filed by the City of New Orleans is **GRANTED**.

New Orleans, Louisiana, this 13th day of September, 2006.



STANWOOD R. DUVAL, JR.

UNITED STATES DISTRICT COURT JUDGE