

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

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

CIVIL ACTION NO.: 05-4182

SECTION: "K"

**PERTAINS TO: INSURANCE *
Master Consolidated Class Action *
Complaint ***

MAGISTRATE: 2

**JUDGE DUVAL *
MAGISTRATE JUDGE WILKINSON ***

(Record Doc. No. 3413) *

**DEFENDANTS' MOTION TO STRIKE CLASS ACTION ALLEGATIONS FROM
INSURANCE MASTER COMPLAINT**

Defendants move to strike plaintiffs' class action allegations pursuant to Rule 23(d)(1)(D) of the Federal Rules of Civil Procedure. In support of their Motion, defendants submit the accompanying Memorandum of Law, which is fully incorporated by reference herein, and state as follows:

1. Plaintiffs' Complaint is completely unsuitable, as a matter of law, for class action treatment under Rule 23. The Fifth Circuit has made it clear that where, as here, a complaint cannot meet the requirements of Rule 23 of the Federal Rules of Civil Procedure on its face, it is appropriate for this Court to strike the class action allegations at this stage of the proceedings. *See John v. Nat'l Sec. Fire & Cas. Co.*, 501 F.3d 443 (5th Cir. 2007).

2. In fact, judges in this and the Western District have repeatedly dismissed or stricken class action allegations in similar lawsuits against insurers related to losses from

Hurricanes Katrina and/or Rita. *See, e.g., Nguyen v. St. Paul Travelers*, 2008 WL 4534395, at *9 (E.D. La. Oct. 6, 2008) (Vance, J.); *Aguilar v. Allstate Fire & Cas. Ins. Co.*, 2007 WL 734809, at *3 (E.D. La. Mar. 6, 2007) (Feldman, J.); *Spiers v. Liberty Mut. Fire Ins. Co.*, 2006 WL 4764430, at *2 (E.D. La. Nov. 21, 2006) (Feldman, J.); *Henry v. Allstate Ins. Co.*, 2007 WL 2287817, at *7 (E.D. La. Aug. 8, 2007) (Feldman, J.); *Chetta v. State Farm and Cas. Co.*, 2007 WL 1233546, at *1 (E.D. La. Apr. 25, 2007) (Livaudais, J.); *Caruso v. Allstate Ins. Co.*, 2007 WL 2265100, at *3-5 (E.D. La. Aug. 3, 2007) (Vance, J.); *Escoe v. State Farm Fire & Cas. Co.*, 2007 WL 2903048, *3 (E.D. La. Sept. 27, 2007) (Berrigan, J.); *Terrebonne v. Allstate Ins. Co.*, 251 F.R.D. 208, 211 (E.D. La. 2007) (Vance, J.); *John v. Nat. Sec. Fire & Cas. Co.*, 2006 WL 3228409 (W.D. La. Nov. 3, 2006) (Trimble, J.), *aff'd*, 501 F.3d 443 (5th Cir. 2007).

3. As in the above cases, plaintiffs here complain that defendants allegedly failed to properly adjust and pay Hurricane Katrina-related property damage claims. Resolution of such allegations will necessarily involve a detailed inquiry into the individualized facts and circumstances of each purported class member's unique property damages and each insurer's response to those damage claims, which will overwhelm any common issues.

4. As a matter of law, plaintiffs cannot satisfy the requirements for a class action, because common issues will never predominate here, and the relief plaintiffs seek is primarily monetary.

WHEREFORE, defendants respectfully request this Court enter an Order striking plaintiffs' class action allegations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on the 15th day of December 2008, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to All Known Counsel of Record by operation of the Court's electronic filing system and/or U.S. mail.

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