
STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

No. 07-00247-CA

MARK LANDRY, ET AL.
Plaintiffs - Appellees

v.

LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION
Defendant - Appellant

On Appeal from the 15th Judicial District Court for the Parish of Vermilion
Docket No. 85571-D
Honorable Edward D. Rubin
Civil Proceeding

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*
UNITED POLICYHOLDERS AND THE WILLIAMS
REPRESENTATIVE POLICYHOLDERS**

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NOW INTO COURT, through undersigned counsel, come Amicus Curiae United Policyholders (hereinafter referred to as "UP") and the Williams Representative Policyholders and move the Court for leave to file the attached amicus brief in support of Plaintiffs-Appellees Mark and Barbara Landry (hereinafter "the Landrys"). UP is a not-for-profit corporation founded in 1991 as an educational resource for the public on insurance issues and insurance consumer rights. Williams Representative Policyholders are parties to a suit involving claims under Louisiana's Valued Policy Law ("VPL"), La. Rev. Stat. § 22:695, which was originally filed in the United States District Court for the Eastern District of Louisiana¹.

Pursuant to the Uniform Rules of the Courts of Appeal, UP and the Williams Representative Policyholders submit that they have a significant stake in the outcome of this appeal. UP and Williams Representative Policyholders further suggest that they have arguments that are not duplicative of those made in any briefs already filed, and that their arguments will assist this Honorable Court in interpreting this important consumer protection statute.

Accordingly, UP and Williams Representative Policyholders request that the Court grant leave to file the attached brief of amicus curiae in support of the Landrys.

Respectfully submitted,

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¹Civil Action No. 06-2919 (styled as *Genevieve Williams, Rosetta Irons and Eric Irons, and Ella Foster and Howard Foster, Jr.*, Plaintiffs, v. *State Farm Fire and Casualty Company, Allstate Indemnity Company, and Louisiana Citizens Property Insurance Corporation*, Defendants).

and

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

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to File Brief of *Amicus Curiae* United Policyholders and the Williams Representative Policyholders was served upon counsel of record listed below, via U.S. Mail, postage prepaid and properly addressed, and via electronic mail, this 3rd day of May 2007.

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STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

No. 07-00247-CA

MARK LANDRY, ET AL.
Plaintiffs - Appellees

VERSUS

LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION
Defendant - Appellant

ORDER

CONSIDERING THE FOREGOING motion of *Amicus Curiae* United Policyholders and the Williams Representative Policyholders for leave to file the attached amicus brief in support of Plaintiffs-Appellees Mark and Barbara Landry;

IT IS ORDERED that the motion is GRANTED.

Lake Charles, Louisiana, this _____ day of _____, 2007.

JUDGE, THIRD CIRCUIT COURT OF APPEAL

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

No. 07-00247-CA

MARK LANDRY, ET AL.
Plaintiffs - Appellees

v.

LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION
Defendant - Appellant

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AND THE WILLIAMS REPRESENTATIVE POLICYHOLDERS**

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TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
TABLE OF AUTHORITIES	ii - iii
I. STATEMENT OF INTEREST OF AMICUS CURIAE	1 - 3
II. STATEMENT OF THE CASE	3
III. ARGUMENT	4 - 9
A. Citizens’ Suggested Interpretation of the VPL is Untenable and Would Contravene Louisiana’s “Efficient Proximate Cause” Test	4 - 8
B. Louisiana Citizens’ Hyperbole and Inaccurate Statement Regarding the Impact of the District Court’s Decision are Irrelevant and Unsupported	8 - 9
IV. CONCLUSION	10
CERTIFICATE OF SERVICE	11
EXHIBIT “A”	

TABLE OF AUTHORITIES

<u>Section</u>	<u>Page</u>
Cases:	
<u>Citizens Mutual. Auto. Ins. Co. v. Campbell,</u> 538 U.S. 408 (2003)	3
<u>Ducote v. Koch Pipeline Co., L.P.,</u> 730 So.2d 432 (La. 1999)	2
<u>Evana Plantation, Inc. v. Yorkshire Ins. Co.,</u> 58 So.2d 797 (Miss. 1952)	7
<u>FL Aerospace v. Aetna Casualty and Surety Co.,</u> No. 90-289 (U.S. Sept. 13, 1990)	2 - 3
<u>Glens Falls Ins. Co. of Glens Falls, N.Y. v. Linwood Elevator,</u> 130 So.2d 262 (Miss. 1961)	7
<u>Graham v. Public Employees Mut. Ins. Co.,</u> 656 P.2d 1077 (Wash. 1983)	6
<u>Humana, Inc. v. Forsyth,</u> No. 97-303 (U.S. Sept. 18, 1998)	2 - 3
<u>Julian v. Hartford Underwriters Ins. Co.,</u> 110 P.3d 903 (Cal. 2005)	3
<u>Lorio v. Aetna Ins. Co.,</u> 232 So.2d 490 (La. 1970)	6 - 7
<u>Mierzwa v. Florida Windstorm Underwriting Assoc.,</u> 877 So.2d 774 (Fla. 4th DCA 2004)	5, 7
<u>Miller-Wohl Co. v. Commissioner of Labor & Indus.,</u> 694 F.2d 203 (9th Cir. 1982)	2
<u>Norfolk Southern et al v. California Union Insurance Co.,</u> No. 2002-CA-371 (La. Ct. App. 1 st Cir. 2002)	2
<u>Roach-Strayhan-Holland Post No. 20, Am. Legion Club, Inc. v.</u> <u>Continental Ins. Co.,</u> 112 So.2d 680 (La. 1959)	6, 7
<u>Vandenberg v. Superior Court,</u> 982 P.2d 229 (Cal. 1999)	3

Watts Industries, Inc. v. Zurich American Insurance Co.,
121 Cal. App. 4th 1029 (Cal. App. 2d Dist. 2004). 3

Western Assurance Co. v. Hann,
78 So. 232 (Ala. 1917) 7

Statutes:

La. Rev. Stat. Ann. § 22:695 *passim*

La. Rev. Stat. Ann. § 22: 1430 8 n. 2, 9, 9 n. 3 & n. 4

Articles:

R. Stern, E. Greggman & S. Shapiro,
Supreme Court Practice, 570-71 (1986) 2

Bruce Alpert, Washington Bureau,
“Underpaid Claims Cited In Insurance Profits,”
The Times-Picayune, Jan. 09, 2007 9 n. 5

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“Insurers Saw Record Gains In Year Of Catastrophic Loss 9 n. 5

Eileen Alt Powell (Associated Press)
and Ted Griggs (The Advocate),
“Profits Raise Eyebrows Insurers,
Critics Face Off Over Record 2006 Income,”
The Advocate, Mar. 27, 2007 9 n. 5

They Say the Profits are a Fluke,
but the Industry has Worked to Shift Risk
to Clients and the Public,
Los Angeles Times, Apr. 5, 2006, 2006 WLNR 6950194 9 n. 5

**BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS AND THE
WILLIAMS REPRESENTATIVE POLICYHOLDERS**

I. STATEMENT OF INTEREST OF AMICUS CURIAE

United Policyholders (“UP”) is a not-for-profit corporation founded in 1991 as an educational resource for the public on insurance issues and insurance consumer rights. The organization is tax-exempt under Internal Revenue Code § 501(c) (3). UP is based in California but operates nationwide and is funded by donations and grants from individuals, businesses, and foundations and governed by an eight-member Board of Directors. UP contributes on an ongoing basis to the formulation of insurance related public policy at both the national and state level.

UP exists because businesses and individuals rely on the insurance they buy to protect themselves; their property and their livelihoods against the risk of loss and insurance companies are in business to earn profits by assuming that risk. Insurance is a regulated industry because of this dynamic and the fact that the financial security insurance policies provide is an integral part of the fabric of our society and economy.

UP monitors the insurance sector, works with public officials, has a nationwide network of volunteers and affiliate organizations, publishes written materials, files *amicus* briefs in cases involving coverage and claim disputes and is a general information clearinghouse on consumer issues related to commercial and personal lines insurance products. UP provides disaster aid to property owners across the U.S. via educational activities designed to illuminate and demystify the claim process. For more information about UP, please visit www.unitedpolicyholders.org.

Genevieve Williams, Rosetta and Eric Irons and Ella and Howard Foster, Jr. (“Williams representative Policyholders”) filed a Class Action Complaint on June 2, 2006, on behalf of themselves and a class of homeowners

insurance policyholders who, on August 29, 2005, were Louisiana residents who owned immovable property with improvements, principally houses or related residential structures which was destroyed or damaged by winds generated by Hurricane Katrina. (Complaint, ¶ 1, attached as Exhibit "A.") The Williams Representative Policyholders' Complaint names Citizens, Allstate Indemnity Insurance Company and Louisiana Citizens Property Insurance Company (collectively "Insurance Company Defendants") as defendants and is currently pending in the United States District Court for the Eastern District of Louisiana action.

In this brief, United Policyholders and the Williams Representative Policyholders seek to fulfill the "classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." Miller-Wohl Co. v. Commissioner of Labor & Indus., 694 F.2d 203, 204 (9th Cir. 1982). This is an appropriate role for *amicus curiae*. As commentators have often stressed, an *amicus* is often in a superior position to "focus the court's attention on the broad implications of various possible rulings." R. Stern, E. Greggman & S. Shapiro, Supreme Court Practice, 570-71 (1986) (quoting Ennis, Effective Amicus Briefs, 33 Cath. U.L. Rev. 603, 608 (1984)).

United Policyholders previously has appeared as *amicus curiae* in over one hundred forty state and federal cases throughout the United States, including a number in Louisiana. Ducote v. Koch Pipeline Co., L.P., 730 So.2d 432 (La. 1999); Norfolk Southern et al v. California Union Insurance Co., No. 2002-CA-371 (La. Ct. App. 1st Cir. 2002). United Policyholders has appeared as *amicus curiae* in cases before the United States Supreme Court. See Humana, Inc. v. Forsyth, No. 97-303 (U.S. Sept. 18, 1998); FL Aerospace v. Aetna Casualty and

Surety Co., No. 90-289 (U.S. Sept. 13, 1990), and the United States Supreme Court cited United Policyholders' brief in *Humana, Inc. v. Forsyth* (1999) 525 U.S. 299. UP was the only national consumer organization to submit an *amicus* brief in the landmark case of Citizens Mutual. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003). Arguments from our *amicus curiae* brief were cited with approval by the California Supreme Court in Vandenberg v. Superior Court, 982 P.2d 229 (Cal. 1999), and discussed in Julian v. Hartford Underwriters Ins. Co., 110 P.3d 903 (Cal. 2005). UP's *amicus* brief factored into the decision in Watts Industries, Inc. v. Zurich American Insurance Co., 121 Cal. App. 4th 1029 (Cal. App. 2d Dist. 2004).

II. STATEMENT OF THE CASE

Louisiana Citizens Property Insurance Corp. ("Citizens") is attempting to evade the obligations imposed upon them by Louisiana's Valued Policy Law, La. Rev. Stat. Ann. 22:695 ("VPL"), despite having invoked the VPL when it was in their fiscal interest to do so in determining the premiums to be paid by the policyholders for their homeowners insurance coverage. The VPL provides that if an insurance company places a value on a property and uses such value to determine the premiums to be charged, then the insurance company must compute "any covered loss of, or damage to, such property" at such valuation "without deduction or offset." La. Rev. Stat. Ann. § 22:695. Citizens placed such valuations on policyholders' property to determine premiums and subsequently collected the applicable premiums based on such valuations. Policyholders paid these premiums in order to obtain coverage for any and all losses to their residence and personal property caused by hurricanes. Only now when faced with having to pay the full face value of such valuations in accordance with the VPL Citizens contests the plain language of the statute.

III. ARGUMENT

A. Citizens' Suggested Interpretation Of The VPL Is Untenable And Would Contravene Louisiana's "Efficient Proximate Cause" Test

The Court must reject Citizens' untenable and unsupported suggested interpretation of the VPL which, in effect, seeks to render the VPL inapplicable to situations where a covered peril and a non-covered peril were each involved in the total loss to a covered property. Furthermore, Citizens' position is in complete derogation of the "efficient proximate cause" test, which has been adopted by the Louisiana Supreme Court and provides that a policyholder is entitled to coverage if a covered peril was the proximate or efficient cause of the loss or damage, notwithstanding that other excluded or non-covered perils contributed to the damage. Citizens' position evinces both an effort to avoid the contractual obligations it owes and sold to this class of policyholders, but it also represents an attempt to have the Court effectively rewrite the VPL in an insurance-company friendly manner while abrogating or eviscerating the "efficient proximate cause" test. In essence, Citizens is seeking to have the Court rewrite Louisiana insurance law on causation and valuation of homeowners' coverage in one fell swoop. Adoption of Citizens' position would result in significant consequences not only with regard to the current and future hurricane-related insurance litigation, but with regard to insurance coverage issues in general. As such, Citizens' wholly unsupported and novel interpretation of the VPL and Louisiana insurance causation law must be rejected.

Louisiana's VPL provides, in relevant part, that:

Under any fire insurance policy insuring inanimate, immovable property in this state, if the insurer places a valuation upon the covered property and uses such valuation for purposes of determining the premium charge to be made under the policy, in the case of total loss the insurer shall compute and indemnify or

compensate any covered loss of, or damage to, such property which occurs during the term of the policy at such valuation without deduction or offset, unless a different method is to be used in the computation of loss, in which latter case, the policy, and any application therefore, shall set forth in type of equal size, the actual method of such loss computation by the insurer. Coverage may be voided under said contract in the event of criminal fault on the part of the insured or the assigns of the insured.

La. Rev. Stat. Ann. § 22:695(A) (emphasis added). The plain language of the VPL provides that where a total loss exists, the insurance company shall compute, indemnify and compensate the policyholder for “any covered loss, or damage to,” the property at the valuation set forth by the insurance company “without deduction or offset.” The plain language of the statute requires only that a total loss occur and that under such circumstances the amount of compensation for “any covered loss” be the valuation amount, without any offset or deduction. There is no language in the VPL that limits its application exclusively to situations where a covered peril is the sole cause of the total loss. Similarly, there is no language in the VPL that restricts or apportions the valuation determination in situations where both a covered peril and an excluded or non-covered peril both cause the total loss. See Mierzwa v. Florida Windstorm Underwriting Assoc., 877 So.2d 774 (Fla. 4th DCA 2004). (holding that “if the insurance carrier has any liability at all to the owner for a building damaged by a covered peril and deemed a total loss, that liability is for the face amount of the policy”).

In the absence of any express language in the VPL which limits its application to situations where a non-covered peril contributes to the loss in some manner, Citizens instead forwards the argument that its own policy language supercedes not only the plain language of the VPL, but also Louisiana’s “efficient proximate cause” test. Citizens argues that policy language somehow limits the application of the VPL to instances where no excluded or non-covered peril is

involved in the total loss. Under Citizens' theory, if a policy excludes coverage for water damage, the VPL does not apply if a property has become a total loss if the property sustained "some" damage from a covered peril and some damage from a non-covered peril. In other words, if the excluded peril of water damage, which is almost certain to occur in some fashion in the context of damage caused by a hurricane, has visited "some damage" upon the property, then the VPL does not apply.

This contention is not only contrary to the express language of the VPL, it is patently unfair and punitive to the extent that, if adopted by the Court, wholly inequitable results could follow. For example, under Citizens' theory, in the event of a total loss an insurance company could literally find one square inch of "water damage" to a property and, thus, avoid paying the full face value of the property as mandated by the VPL despite, of course, having previously collected premiums that were determined based upon such valuation.

The position advocated by Citizens is completely contrary to the "efficient proximate cause" test that the Louisiana Supreme Court has adopted in determining whether coverage exists. Roach-Strayhan-Holland Post No. 20, Am. Legion Club, Inc. v. Continental Ins. Co., 112 So.2d 680, 683 (La. 1959). "Efficient proximate cause" has been technically defined as "the efficient or predominant cause which sets into motion the chain of events producing the loss... not necessarily the last act in a chain of events." Graham v. Public Employees Mut. Ins. Co., 656 P.2d 1077, 1081 (Wash. 1983). The "efficient proximate cause" analysis focuses on whether all of the losses or claims can be traced to one original causative factor, regardless of the number of injuries or claims made. If the originating or dominant cause of the loss is a covered peril, there is coverage.

Lorio v. Aetna Ins. Co., 232 So.2d 490 (La. 1970) (holding that policyholders may have coverage when covered peril causes an excluded peril).

The Louisiana Supreme Court, as well as other courts in the Gulf region, have interpreted the “efficient proximate cause” doctrine to permit coverage for hurricane-related losses where the evidence has shown that wind was the “proximate cause” of the damage, notwithstanding that flooding contributed to the loss. See, e.g., Roach-Strayhan-Holland Post No. 20, Am. Legion Club, Inc. v. Continental Ins. Co., 112 So.2d 680, 683 (La. 1959); Western Assurance Co. v. Hann, 78 So. 232, 236 (Ala. 1917); Glens Falls Ins. Co. of Glens Falls, N.Y. v. Linwood Elevator, 130 So.2d 262, 270 (Miss. 1961); Evana Plantation, Inc. v. Yorkshire Ins. Co., 58 So.2d 797, 798 (Miss. 1952). Moreover, Florida courts have addressed this very issue in connection with Florida’s Valued Policy Statute, holding that a policyholder was entitled to receive the full face value of his homeowners’ policy regardless of whether the excluded peril of flood contributed to the total loss. Mierzwa v. Florida Windstorm Underwriting Assoc., 877 So.2d 774 (Fla. 4th DCA 2004). The Mierzwa court, held that “if the insurance carrier has any liability at all to the owner for a building damaged by a covered peril and deemed a total loss, that liability is for the face amount of the policy.” Mierzwa, 877 So.2d at 776.¹

Under these cases and the underlying rationale behind the “efficient proximate cause” test, if coverage exists where wind is ultimately shown to be the proximate cause of damage despite contribution from a non-covered peril, then the more restrictive application of the VPL being advocated by Citizens cannot be

¹ The Mierzwa holding was “overruled” by the Florida legislature which amended Florida’s VPL subsequent thereto. No Court overruled the Mierzwa opinion as the court there applied and interpreted the statute as it was written at that time. Louisiana’s VPL has not been amended to reflect any of the changes made by the Florida Legislature and, as such, the Court must interpret the Louisiana VPL as it is written.

adopted by the Court. The VPL addresses the value which is to be paid when coverage exists and does not purport to address or set forth any substantive standard for determining causation. Adoption of Citizens' position will limit application of the VPL to instances where the total loss was caused solely by a covered peril, contrary to Louisiana's efficient proximate cause doctrine. Moreover, Citizens' proffered interpretation of the VPL would make the "efficient proximate cause" test an academic exercise with no practical impact as the VPL would effectively pre-empt the doctrine by adding a second layer of causation analysis at the most critical juncture – valuation of the coverage amount to be paid – a practice nowhere authorized by the Louisiana Legislature. Under Citizens' theory, a determination that wind or a covered peril was the "efficient proximate cause" of a loss would be meaningless if a Court, in applying the VPL to determine the amount of coverage owed to the policyholder, found "some damage" from an excluded peril. Citizens' interpretation of the VPL and contention that its policy exclusion abrogates the plain language of the VPL, as well as the "efficient proximate cause" doctrine, cannot and should not be adopted by the Court as it is unsupported in the statute's express language and would result in a sweeping change in the causation analysis and standard as it applies to policyholders in Louisiana.

B. Louisiana Citizens' Hyperbole And Inaccurate Statements Regarding The Impact Of The District Court's Decision Are Irrelevant And Unsupported.

Contrary to its implied assertions, Louisiana Citizens Property Insurance Corporation is not an Agency of the State of Louisiana, but rather, is a virtual pawn of the insurance industry itself². Louisiana statutory law expressly provides that the Insurance Industry select and submit the names of the nominees

² See La. R.S. 22: 1430.2(B)(1); 22:1430.16 (J); and 22:1430.17.

for 8 of 15 seats on the Board of Directors of Citizens thereby effectively giving legal control of the Board of Directors to the Insurance Industry³. Evidence of this relationship between the Insurance Industry and Citizens is the anticompetitive advantage given to private insurers by virtue of La. R.S. 22: 1430.12⁴ which in essence requires Citizens to only write policies that private insurers won't and then to charge rates which exceed by at least ten percent the rates charged among the ten insurers with the greatest total direct written premium in each parish for that line of business in the preceding year.

Moreover, Citizens erroneously suggests that affirming the District Court's Order denying the Motions to Dismiss would be catastrophic. Contrary to this doom and gloom argument, the property-casualty Insurance Industry is having record years of profits in 2005 and 2006 and a current surplus of nearly \$500 billion.⁵ Consequently, Citizens' arguments are irrelevant as the District Court properly and correctly applied Louisiana law and that decision should be affirmed.

³ See La. R.S. 22:1430.3 at subparagraphs (A) 5-11. See also http://house.louisiana.gov/slg04/SLG_Ch2_PVIII.htm which provides in part that "The corporation is governed by a 15-member board of directors **consisting primarily of representatives of the insurance industry** appointed by the governor, the commissioner of insurance . . ." (emphasis added).

⁴ La. R.S. 22:1430.12 provides in relevant part:

- A. (1) As residual markets, the plans made available by the Louisiana Citizens Property Insurance Corporation are not intended to offer rates competitive with the voluntary market. Rates for policies issued under the Coastal Plan and the FAIR Plan shall be set by the governing board of the Louisiana Citizens Property Insurance Corporation, adjusted annually, shall be actuarially justified, and, except for coverages authorized under R.S. 22:1430.1(6)(b), shall exceed by at least ten percent the rates charged among the ten insurers with the greatest total direct written premium in each parish for that line of business in the preceding year. (emphasis added).

⁵ See Peter G. Gosselin, "Insurers Saw Record Gains In Year Of Catastrophic Loss; They Say the Profits are a Fluke, but the Industry has Worked to Shift Risk to Clients and the Public," Los Angeles Times, Apr. 5, 2006, 2006 WLNR 6950194; Bruce Alpert, Washington Bureau, "Underpaid Claims Cited In Insurance Profits," The Times-Picayune, Jan. 09, 2007; and Eileen Alt Powell (Associated Press) and Ted Griggs (The Advocate) "Profits Raise Eyebrows Insurers, Critics Face Off Over Record 2006 Income," The Advocate, Mar. 27, 2007.

IV. CONCLUSION

For the aforementioned reasons, this Court should affirm the decision of the District Court.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of *Amicus Curiae* United Policyholders and the Williams Representative Policyholders was served upon counsel of record listed below, via U.S. Mail, postage prepaid and properly addressed, and via electronic mail, this 3rd day of May 2007.

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U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED JUN - 2 2006
LORETTA G. WHYTE
CLERK

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Genevieve Williams, Rosetta Irons and
Eric Irons, and Ella Foster and Howard
Foster, Jr.

Plaintiffs

vs.

State Farm Fire and Casualty Company,
Allstate Indemnity Company, and Louisiana
Citizens Property Insurance Corporation

Defendants.

CIVIL ACTION

NO. 06-2919

JURY TRIAL

SECTION "B"

JUDGE LEMELLE

MAGISTRATE JUDGE ROBY

COMPLAINT - CLASS ACTION

This Document relates to the following civil actions in the Eastern District of Louisiana:
Nos. 05-6454, 05-6455, 05-6456, 05-6457, 05-6458, 05-6887, 05-6888, 06-0078, 06-
0177, 06-0252, 06-0340, 06-0518, 06-0558, 06-0559, 06-0560, 06-0561, 06-0596, 06-
0813, 06-0830, 06-0831, 06-0885, 06-1053, 06-1064, 06-1081, 06-1090, 06-1091, 06-
1092, 06-1097, 06-1148, 06-1242, 06-1243, 06-1255, 06-1271, 06-1297, 06-1439, 06-
1440, 06-1571, 06-1580, 06-1585, 06-1597, and all other cases transferred to this
Section that contain claims under Louisiana Revised Statute 22:695.

CLASS ACTION COMPLAINT

Representative Policyholders Genevieve Williams, Rosetta Irons and Eric
Irons, and Ella Foster and Howard Foster, Jr. (collectively, "the Representative
Policyholders"), by and through their undersigned counsel, aver as follows:

Fee 350.
Process _____
 Dktd _____
CtRmDep _____
Doc. No _____

I. INTRODUCTION

1. The Representative Policyholders have instituted this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and a class of homeowners insurance policyholders as defined in Paragraph 17 ("Policyholders") who, on August 29, 2005, were Louisiana residents who owned immovable property with improvements, principally houses or related residential structures, as well as personal property located there, which was destroyed or damaged by winds generated by Hurricane Katrina.

The Representative Policyholders bring this class action for declaratory judgment and breach of Louisiana's valued policy and bad faith statutes, arising out of the wrongful, negligent, reckless and/or intentional refusal of various Insurance Companies (collectively "Insurance Company Defendants") to provide insurance coverage to Policyholders for losses and damages to Policyholders' property caused by Hurricane Katrina, as required by the insurance policies that Policyholders purchased from one or more of the Insurance Company Defendants.

2. Policyholders seek compensatory and punitive damages from the Insurance Company Defendants as a result of their wrongful conduct, in addition to declaratory relief by the Court that:

- a. The efficient proximate cause of the losses suffered by the Policyholders on August 29, 2005 was "windstorm," a covered peril under all of the insurance policies purchased by the Policyholders, thereby rendering any subsequent impact from water irrelevant to coverage afforded by the insurance

policies;

b. The second efficient proximate cause of Policyholders' losses was "storm surge," a known meteorological phenomenon that is not specifically excluded by any of the Insurance Company Defendants' insurance policies, in contrast to other insurance policies available in the market, thereby rendering any damage caused by "storm surge" and resulting water pressure covered under the policies;

c. The damage caused by water entering the Parishes of Jefferson, Orleans, Plaquemines, St. Bernard and St. Tammany, State of Louisiana, neither falls within the regular definition of "flood," nor within any of the subject insurance policies' exclusions of "flood;"

d. The Policyholders have suffered total losses to their property which are covered under their respective All Risk Policies sold by the Insurance Company Defendants;

e. The Policyholders suffered a "covered loss of, or damage to" the covered property; and

f. Because the Insurance Company Defendants placed valuations on the Policyholders' properties and used such valuation for purposes of determining premiums to be charged

for each policy, under Louisiana's Valued Policy Law, La. Rev. Stat. Ann. §22:695, et seq., Policyholders are entitled to recover the full value placed on their properties by the Insurance Company Defendants without deduction or offset.

II. PARTIES

3. Representative Policyholder Genevieve Williams purchased a homeowners insurance policy from State Farm Fire and Casualty Company.

4. Representative Policyholders Rosetta Irons and Eric Irons purchased a homeowners insurance policy from Allstate Indemnity Company.

5. Representative Policyholders Ella Foster and Howard Foster, Jr. purchased a homeowners insurance policy from Louisiana Citizens Property Insurance Corporation.

6. Defendant State Farm Fire and Casualty Company ("State Farm") is a foreign insurer domiciled in the State of Illinois and doing business in the State of Louisiana with a market share of approximately 33.34% of Louisiana homeowner's insurance policies and can be served through its registered agent for service of process, the Louisiana Secretary of State, 8549 United Plaza Blvd., Baton Rouge, LA 70809.

7. Defendant Allstate Indemnity Company ("Allstate Indemnity") is a foreign insurer domiciled in the State of Illinois and doing business in the State of Louisiana with a market share of approximately 8.07% of Louisiana homeowner's insurance policies and can be served through its registered agent for service of process, the Louisiana Secretary of State, 8549 United Plaza Blvd., Baton Rouge, LA 70809.

8. Defendant Louisiana Citizens Property Insurance Corporation ("Louisiana Citizens") is an insurer domiciled in the State of Louisiana and can be served through its registered agent for service of process, the Louisiana Secretary of State, 8549 United Plaza Blvd., Baton Rouge, LA 70809.

III. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction based upon 28 U.S.C. § 1332(d) because the proposed class of Policyholders contains more than 100 members, the aggregate amount in controversy exceeds five million dollars and at least one member of the Policyholders' class is diverse from at least one of the Insurance Company Defendants.

10. This Court has personal jurisdiction over the Insurance Company Defendants because the Insurance Company Defendants are or were transacting business in this District within the relevant time periods by way of selling insurance policies to the Policyholders, who are also located in this District.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to this action occurred in this District and the Insurance Company Defendants regularly transact business in this District.

IV. FACTUAL BACKGROUND

Appropriateness of Class Action

12. Representative Policyholders meet the prerequisites to bring this action on behalf of the class because:

(a) As a result of this unprecedented catastrophic event up to 160,000 homes are estimated to be unusable and the exact number and identities of the class of Policyholders are unknown at this time, and can only be ascertained through appropriate investigation. Representative Policyholders are

of information and belief that the class of Policyholders clearly consists of tens or perhaps hundreds of thousands of persons presenting a level of numerosity better handled through the class action procedure. The class is so numerous that joinder of all members as individual plaintiffs is impracticable;

(b) There are common questions of law and fact common not only to all class members but will be applicable to all Insurance Company Defendants and all homeowners insurance companies in the New Orleans area including the issues of law and fact that form the basis for the declaratory and other relief sought by Representative Policyholders;

Among the questions of law and fact common to the class are:

- i. whether the fire (homeowner's) insurance policies issued by Insurance Company Defendants to Representative Policyholders are subject to La. R.S. 22:695, Louisiana's "Valued Policy Law" (VPL), which provides in part:

"Under any fire insurance policy insuring inanimate, immovable property in this state, if the insurer places a valuation upon the covered property and uses such valuation for purposes of determining the premium to be made under the policy, in the case of total loss the insurer shall compute and indemnify or compensate any covered loss of, or damage to, such property which occurs during the term of the policy at such valuation without deduction or offset, unless a different method is to be used in the computation of loss, in which latter case, the policy, and any application therefore, shall set forth in type of equal size, the actual method of such loss computation by the insurer. Coverage may be voided under said contract in the event of criminal fault on the part of the insured or the assigns of the insured."

- ii. whether defendant placed a valuation on the Representative Policyholders covered property and used such valuation for purposes of determining the premium charges to be made under the policy;
- iii. whether Representative Policyholders suffered a "covered loss of, or damage to" the covered property pursuant to La. R.S. 22:695(A);

iv. whether the immovable property owned by Representative Policyholders has been rendered a "total loss" by Hurricane Katrina; and

v. whether Representative Policyholders are entitled, under La. R.S. 22:695(A), to recover the full value stated on the face of their policies.

(c) Representative Policyholders' claims are typical of the claims of the class insofar as they are all seeking declaratory and other relief and damages from the Insurance Company Defendants for their bad faith conduct and wrongful refusal to pay Policyholders' insurance claims; and

(d) Representative Policyholders will fairly and adequately represent the interests of the class. The class representatives herein are represented by skilled attorneys who are experienced in the handling of class action and large-scale insurance litigation and who may be expected to handle this action in an expeditious and economical manner to the best interest of all members of the class.

13. The Policyholders' Class, for purposes of relief sought by this action, is defined as all owners in the Parishes of Jefferson, Orleans, Plaquemines, St. Bernard and St. Tammany, State of Louisiana, who own immovable property with improvements, principally houses or related residential structures, as well as personal property located there, which was destroyed or damaged by winds generated by Hurricane Katrina resulting in total loss and not fully reimbursed by their insurance companies, but excluding members of the judiciary, their administrative staff and any other personnel who may cause a member of the Louisiana judiciary to be unable to preside over this action.

Policyholders' Purchase Of The Policies

14. Policyholders are owners of immovable property with improvements, principally houses or related residential structures, as well as personal property located there, with such property being located in the New Orleans Metropolitan Area.

15. Each Policyholder purchased a homeowner's insurance policy (the "All Risk Policy" or "All Risk Policies") from one of the Insurance Company Defendants.

16. Plaintiffs purchased their policy with the reasonable expectation that they would be able to recover for any and all losses to their residence and personal property caused by hurricanes, including any and all damage proximately and efficiently caused by hurricane wind, and "storm surge" proximately caused by hurricane wind.

17. For the purpose of obtaining such hurricane coverage, some policyholders had to agree to pay a "hurricane deductible," in addition to any other applicable deductibles.

18. Policyholders purchased their respective All Risk Policies either directly from State Farm, Allstate Indemnity or Louisiana Citizens, each of whom sells its policies directly to policyholders, or from agents authorized by the Insurance Company Defendants to sell insurance as agents on their behalf.

19. Plaintiffs trusted and relied upon the Insurance Company Defendants' representations, or representations made on their behalf by their authorized agents, that the subject policy would cover any damage caused by a hurricane and, thus, reasonably believed that their respective Insurance Policies would cover any and all hurricane damage.

20. The amount of insurance varied for each Policyholder based on the estimated cost of replacing the home, an amount estimated by the Insurance Company Defendants or an agent authorized by them to determine the replacement cost of each individual home.

21. At all times relevant hereto, Policyholders made timely payment of the premiums due on their respective All Risk Policies.

Hurricane Katrina Damages Policyholders' Property

22. At 6:10 a.m. on August 29, 2005, Hurricane Katrina made landfall near Buras, Louisiana as a Category 3 hurricane, and then made a second landfall a short time later near the Louisiana-Mississippi border, the eye of the storm passing just east of the city of New Orleans at approximately 9:00 a.m.

23. Policyholders' property sustained loss or damage from Hurricane Katrina, a category 3 storm, which is a covered peril under the policy issued by defendant.

24. As a result of Hurricane Katrina, Policyholders' sustained substantial damage to their homes, rendering them a total loss.

COUNT I – DECLARATORY JUDGMENT
v. All Insurance Company Defendants

25. Policyholders repeat and reallege the allegations of the foregoing paragraphs as if the same were set forth at length herein.

26. An actual controversy exists between Policyholders and the Insurance Company Defendants concerning the Insurance Company Defendants' duty to indemnify Policyholders for their losses.

27. Consequently, under the circumstances, it is necessary and appropriate for the Court to declare Policyholders' and Insurance Company Defendants' rights and duties under the Policies pursuant to 28 U.S.C. § 2201.

28. The losses suffered by Policyholders as a result of Hurricane Katrina are covered losses under their respective All Risk Policies.

29. Policyholders have given timely notification to the Insurance Company Defendants and made timely demands in writing that the Insurance Company Defendants cover Policyholders' losses.

30. The Insurance Company Defendants are obligated by the terms and conditions of their All Risk Policies to indemnify Policyholders for their losses.

31. The Insurance Company Defendants have refused to indemnify Policyholders for their losses and have denied coverage for the losses.

32. Thus, Policyholders are entitled to a declaratory judgment that the damages they suffered are covered losses under the All Risk Policies. Upon information and belief, the Insurance Company Defendants' actions, inaction and policies are representative of other unnamed insurance companies' actions, inaction and policies providing and failing to recognize coverage in the class' geographic area.

33. Specifically, the Policyholders' losses were caused by covered perils, the efficient causes of their losses were covered perils and the efficient and proximate causes of loss were covered perils.

34. Policyholders suffered a "covered loss of, or damage to" the covered property.

35. Further, that Policyholders suffered total losses to their property.

36. The Insurance Company Defendants placed valuations on the Policyholders' properties and used such valuation for purposes of determining premiums to be charged under the policy, and, as such, under Louisiana's Valued Policy Law, Policyholders are entitled to recover the full value placed on their properties by the Insurance Company Defendants without deduction or offset.

37. Finally, Policyholders should not be deprived of the coverage of the All Risk Policies where the Insurance Company Defendants have drafted vague, ambiguous and unclear limitations on coverage, thereby violating the rule that exclusions must be clearly and explicitly drafted. If so intended, and in contrast to other insurance policies available in the market, Insurance Company Defendants should have specifically excluded hurricane damage and/or the failure of levees as the most probable perils for the New Orleans Metropolitan Area. Instead, Insurance Company Defendants decided to sell the same comprehensive All-Risk Homeowners Insurance Policies that they sell in the "high and dry" plains throughout the United States.

38. While the Insurance Company Defendants may continue to make investment income during the course of any protracted legal proceedings, Policyholders, on the other hand, have little recourse but to sit idly by awaiting a decision, all the while being unable to begin reconstruction or renovation of their homes until they have the money to pay contractors.

39. As a result, without resolution of this issue by declaratory judgment, Policyholders, in most instances, will be unable to remedy the damages they fully expected were covered by their All Risk Policies.

WHEREFORE, Policyholders respectfully request that this Court enter a declaratory judgment in their favor and against the Insurance Company Defendants as to Count I, ordering and decreeing that:

- (i) The efficient proximate cause of the losses suffered by the Policyholders on August 29, 2005 was "windstorm," a covered peril under all of the insurance policies purchased by the Policyholders, thereby rendering any subsequent impact from water irrelevant to coverage afforded by the insurance policies;**
- (ii) The second efficient proximate cause of Policyholders' losses was "storm surge," a know meteorological phenomenon that is not specifically excluded by any of the Insurance Company Defendants' insurance policies, in contrast to other insurance policies available in the market, thereby rendering any damage caused by "storm surge" and resulting water pressure covered under the policies;**
- (iii) The damage caused by water entering the Parishes of Jefferson, Orleans, Plaquemines, St. Bernard and St. Tammany, State of Louisiana, neither falls within the regular definition of "flood," nor within any of the subject insurance policies' exclusions of "flood;"**
- (iv) The Policyholders have suffered total losses to their property which are covered under their respective All Risk Policies sold by the Insurance Company Defendants;**

- (v) The Policyholders suffered a "covered loss of, or damage to" the covered property; and
- (vi) Because the Insurance Company Defendants placed valuations on the Policyholders' properties and used such valuation for purposes of determining premiums to be charged under the policy, under Louisiana's Valued Policy Law, La. Rev. Stat. Ann. §22:695, et seq., Policyholders are entitled to recover the full value placed on their properties by the Insurance Company Defendants without deduction or offset.

COUNT II — BREACH OF LA. REV. STAT. ANN. § 22:695
v. All Insurance Company Defendants

40. Policyholders repeat and reallege the allegations of the foregoing paragraphs as if the same were set forth at length herein.

41. Louisiana is a "valued policy" state, requiring that if an "insurer places a valuation upon the covered property and uses such valuation for purposes of determining the premium charge to be made under the policy, in the case of total loss the insurer shall compute and indemnify or compensate any covered loss of, or damage to, such property which occurs during the term of the policy at such valuation without deduction or offset." La. Rev. Stat. Ann. § 22:695.

42. The Insurance Company Defendants placed a value on the respective Policyholders' property and used such valuation for purposes of determining the premium charge under their respective All Risk Policies.

43. Policyholders have suffered total losses to their property which are covered under their respective All Risk Policies.

44. Policyholders suffered a "covered loss of, or damage to" the covered property.

45. The Insurance Company Defendants have failed to indemnify or compensate Policyholders for their "covered loss of, or damage to" the covered property in an amount equal to the values used for determining the individual policy premiums.

46. Instead, the Insurance Company Defendants have failed to pay anything to Policyholder or paid an amount lower than the valuation assessed to the properties for purposes of determining premiums.

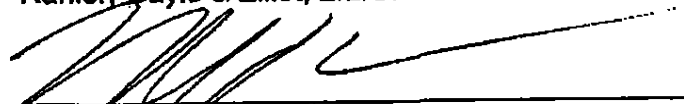
47. As a result, the Insurance Company Defendants have breached La. Rev. Stat. Ann. §22:695 entitling Policyholders to damages equal to the full value placed on the Policyholders' property by the Insurance Company Defendants with no offset or deductions.

WHEREFORE, Policyholders demand judgment against the Insurance Company Defendants for all amounts due under the Policies, other compensatory damages, interest, attorney's fees, costs, and any further relief this Court deems equitable, just and proper.

48. Policyholders are entitled to and pray for trial by jury on all Counts
in this Complaint.

Respectfully Submitted,

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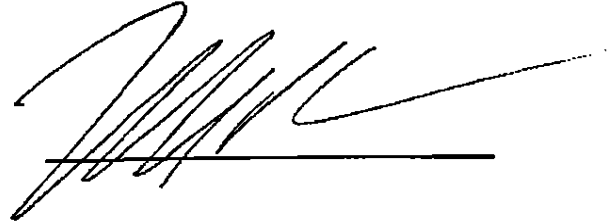
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CERTIFICATE OF SERVICE

I, N. Frank Elliot III, an attorney of record in this case, hereby certify that on June 2, 2006, a copy of the foregoing Complaint was served on all parties by mailing it postage prepaid, properly addressed.

A handwritten signature in black ink, appearing to read "N. Frank Elliot III", is written over a solid horizontal line. The signature is stylized and cursive.