

**U.S. District Court  
Southern District of Mississippi (Southern)  
CIVIL DOCKET FOR CASE #: 1:05-cv-00550-LG-RHW**

Lee v. Metropolitan Property & Casualty Insurance  
Company et al  
Assigned to: District Judge Louis Guirola, Jr  
Referred to: Magistrate Judge Robert H. Walker  
Cause: 28:1332 Diversity-Insurance Contract

Date Filed: 11/17/2005  
Jury Demand: None  
Nature of Suit: 110 Insurance  
Jurisdiction: Diversity

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V.

**Defendant**

**Metropolitan Property & Casualty Insurance Company**

**Defendant**

**John Does**  
*1 through 10*

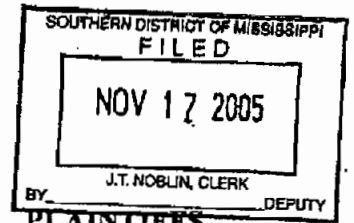
Date Filed	#	Docket Text
11/17/2005	<u>1</u>	COMPLAINT against Metropolitan Property & Casualty Insurance Company (Filing fee \$ 250, receipt #J009204) , filed by Ella Louise L. Stanley, Tina Lee. Exhibits: policy with photographs, maintained in Court file. (Attachments: # <u>1</u> Civil Cover Sheet)(AVM) Modified on 11/22/2005 to add receipt number (AVM). (Entered: 11/17/2005)
11/18/2005		Summons Issued as to Metropolitan Property & Casualty Insurance Company. (AVM) (Entered: 11/18/2005)

<b>PACER Service Center</b>		
<b>Transaction Receipt</b>		
11/22/2005 10:27:58		
PACER Login:	pd0196	Client Code:

<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:05-cv-00550-LG-RHW
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.16

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION



TINA LEE AND ELLA LOUISE L. STANLEY

PLAINTIFFS

VS.

CIVIL ACTION NO.: 105CV550LGRHW

METROPOLITAN PROPERTY &  
CASUALTY INSURANCE COMPANY AND  
JOHN DOES 1 THROUGH 10

DEFENDANTS

**COMPLAINT**  
**EXPEDITED TRIAL SETTING REQUESTED**

COMES NOW, Tina Lee and Ella Louise L. Stanley ("Plaintiffs"), by and through counsel, and files this Complaint against Defendants Metropolitan Property and Casualty Insurance Company ("MetLife"), and John Does 1-10 ("John Does"), and allege as follows:

**I.**  
**PARTIES**

1. Plaintiffs Tina Lee and Ella Louise L. Stanley are adult residents of Jackson County, Mississippi, residing at 2309 Washington Avenue, Pascagoula, Mississippi 39567.

2. Defendant Metropolitan Property & Casualty Insurance Company, which also goes by its brand name "MetLife Auto and Home" is a corporation doing business in Mississippi and organized and existing under the laws of the State of Rhode Island, with its principal office and place of business located at 700 Quaker Lane, Warwick, Rhode Island, and which may be served with process by service on its agent for service of process, CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232, or on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Mississippi Code Annotated §83-21-1.

3. Defendants John Does 1-10 are entities affiliated with Defendants and/or have acted in concert with Defendants and whose identities are currently unknown. All allegations and claims

asserted herein against Defendants are incorporated herein by reference against John Does 1-10. Said John Does, when their identities are known, will be identified by name and joined in this action, if necessary, pursuant to the Federal Rules of Civil Procedure.

**II.**  
**SUBJECT MATTER AND PERSONAL JURISDICTION**

4. This Court has jurisdiction over the subject matter and Defendant in this case pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Defendant MetLife and the amount in controversy exceeds \$75,000.00.

**III.**  
**VENUE**

5. Venue in this cause is proper in this Court pursuant to 28 U.S.C. § 1391, because this suit respects real and personal property located exclusively in Jackson County, Mississippi and the conduct, acts and/or omissions upon which this cause of action is based occurred in Jackson County, Mississippi, which is completely within the United States District Court for the Southern District of Mississippi, Southern Division

**IV.**  
**FACTS**

6. Plaintiffs have been loyal insureds of MetLife for 17 years. They have dutifully paid 17 years of premiums to MetLife.

7. Plaintiffs purchased from MetLife a standard "Homeowner's Policy", Policy Number 1189498330 ("subject policy"), naming Ella Louise Lott Stanley and Tina L. Haygood Lee as the insured. The subject policy insured: the Dwelling at 2309 Washington Ave., Pascagoula, Mississippi ("insured residence") for \$174,400; the private structures for \$17,440; the personal

contents thereof for approximately \$87,200; and loss of use for approximately \$43,600. The operative policy period was from 6/01/05 to 6/01/06. A copy of the subject policy is attached as Exhibit "A" to Complaint.

8. For such coverage, Plaintiffs agreed and paid MetLife an annual premium of \$2,355.00. Plaintiffs also agreed to pay an additional "Hurricane Windstorm Loss Deductible" ("Hurricane Deductible") of \$3,488 to ensure insurance coverage for any and all damage to the insured residence caused by a hurricane, including damage proximately and efficiently caused by hurricane wind and "storm surge" proximately caused by hurricanes.

9. The subject policy was underwritten, marketed, sold, and issued to Plaintiffs by MetLife, who acted by, through, and/or in conjunction with, its agent LMS Inc. d/b/a Gary Smith Insurance.

10. Plaintiffs, whose residence was one block from the Gulf of Mexico, purchased the subject policy from MetLife for one of the express and primary purposes of insuring against any property damage that could possibly result from hurricanes impacting the Mississippi Gulf Coast from the Gulf of Mexico, including any and all damage proximately, efficiently, and often caused by hurricane wind, rain, and "storm surge" proximately caused by hurricanes.

11. In selling the subject policy to Plaintiffs and subsequently collecting premiums under the policy, MetLife and its agent Gary Smith Insurance expressly and/or impliedly represented to Plaintiffs that they would have full and comprehensive coverage for any and all hurricane damage, including any and all damage proximately, efficiently, and typically caused by hurricane wind and "storm surge" proximately caused by hurricanes.

12. The subject policy, through its "Coverages," "Additional Coverages," and "Losses We Cover" provisions, also purported to provide full and comprehensive coverage for all "sudden and accidental direct physical loss" to insured property proximately and efficiently caused by hurricane wind and storm surge.

13. In addition, the subject policy contained a "Hurricane Deductible," which also purported to provide full and comprehensive coverage for "loss caused by hurricane windstorm." The Deductible defines "hurricane windstorm" as meaning "a *windstorm* and accompanying winds along its path, identified and recorded as a hurricane by the National Hurricane Center or agency responsible for identifying and recording hurricanes." This definition not only encompasses hurricane winds, but also rain, microbursts, and "storm surge" proximately and typically caused by hurricane "*windstorms*." Plaintiffs expressly agreed to the "Hurricane Deductible" in consideration for this full and comprehensive hurricane coverage, and therefore reasonably expected that any such hurricane damage would be covered under the subject policy, which expectation was reinforced by MetLife's recent course of conduct in paying Plaintiffs' claims for prior hurricane damage.

14. Based on the representations of hurricane coverage made by MetLife and the express and implicit policy coverages, Plaintiffs reasonably relied on said representations and purchased the subject policy with the reasonable expectation that the subject policy would provide full and comprehensive coverage for any and all hurricane damage to the insured residence.

15. Plaintiffs also procured through Hartford Fire Insurance Company ("The Hartford") a separate "flood" insurance policy which provided \$30,300 of coverage on the Dwelling and \$22,800 for personal contents, because they live in a large river water shed and an area prone to rain

caused flooding. Plaintiffs obtained this additional coverage to ensure protection from true flooding as defined by their "flood" policy by the National Flood Insurance Program.

16. On August 29, 2005, within the subject policy period, the insured residence and the personal contents therein were completely destroyed by hurricane wind, rain, adjoining structures pushed by the hurricane wind, and/or storm surge from Hurricane Katrina, a Category (4) Hurricane with winds in excess of 150 miles per hour. This loss was covered under the subject policy. There is nothing left of the insured residence or contents but a slab. Photographs of the insured residence after the Hurricane are attached as Exhibit "B" to Complaint.

17. Plaintiffs now live in a trailer on the slab of what used to be their home.

18. Almost immediately thereafter, and in accordance with the subject policy provisions, Plaintiffs notified MetLife of the covered loss.

19. After the Hurricane, a MetLife adjuster and its agent Gary Smith Insurance both informed Plaintiffs that whatever their flood policy wouldn't pay, MetLife would pay under the subject homeowners policy.

20. However, on October 21, 2005, MetLife, contrary to MetLife and its agent's express representations and despite the fact that the insured property was completely destroyed, informed Plaintiffs that it would not cover their total loss. MetLife advised Plaintiffs that it considered all of their property loss to have been caused by water, which MetLife claimed was excluded from coverage under the "flood" exclusion to the subject policy. A copy of MetLife's October 21, 2005 denial letter is attached as Exhibit "C" to Complaint.

21. MetLife's position that all of the subject policy does not cover Plaintiffs' hurricane damage and that Plaintiffs' property loss was caused by a "flood" is without merit and defeats the whole purpose for obtaining insurance expressly for "hurricane" damage in the first place.

22. Plaintiffs' residence and contents were completely destroyed by Hurricane Katrina. The subject policy's "Coverages," "Additional Coverages," "Losses We Cover" and "Hurricane Deductible" coverage provisions provide full and comprehensive coverage for any and all damage to the insured residence, contents, and loss of use proximately caused by a "hurricane," whether it be by accompanying hurricane winds, "storm surge" proximately caused by hurricane winds, or both. The Plaintiffs agreed to pay the special, additional "Hurricane Deductible" on any "hurricane" damage sustained in order to receive the contemplated "hurricane" coverage.

23. MetLife's position that Plaintiffs' loss is not caused by the subject policy is directly contrary to the position it took during Hurricane Georges in 1998. Upon information and belief, after Hurricane Georges, MetLife paid Plaintiffs under the subject policy for damage caused by the hurricane.

24. MetLife's claim position also directly contradicts Mississippi's insurance law in existence for the last 40 years, which mandates full insurance coverage if the hurricane winds were the proximate, efficient, and/or contributing concurrent cause of the loss. In the case of the Plaintiffs, it is undisputed that their residence and property would not have been damaged but for the hurricane winds of Katrina. MetLife's coverage position also violates Mississippi's valued policy statute Mississippi Code Annotated § 83-13-5, which requires full coverage if an insured residence is completely destroyed by a covered loss.

25. However, regardless of whether the total damage to Plaintiffs' insured property was caused by hurricane wind, storm surge proximately caused by hurricane wind, or both, the so-called "flood" exclusion, which MetLife defines in the subject policy and in its denial letter as "flood, surface water, waves, tidal water or overflow of a body of water, or spray from any of these, whether or not driven by wind," is not applicable here and in any event, is modified by the "Hurricane Deductible." Although the subject policy does not define "flood" or any of these other listed perils, none of them, as they are commonly understood and defined in the English language, occurred during Hurricane Katrina or caused the damage to Plaintiffs' property. The Gulf of Mexico does not "flood" or "overflow." "Waves" or "tidal waters", as those terms are commonly used, likewise did not occur during Hurricane Katrina. Plaintiffs' insured residence was damaged by "hurricane wind" and/or "storm surge" proximately caused by Hurricane Katrina. "Storm surge" is a meteorological phenomenon caused by major hurricanes like Katrina. Indeed, a number of resources and experts in meteorology note that "storm surge" is the single most dangerous characteristic of a major hurricane.

26. Moreover, because of the cunningly cryptic and jumbled way the exclusion was written in the subject policy, it is impossible to determine how these undefined, confusing, ambiguous, and contradictory perils relate to each other or when they are actually excluded. Based on how the exclusion is grammatically written, damage caused by "flood", "surface water", "waves", "tidal water", or "overflow of a body of water" are not excluded *if* they were "driven by wind." The only listed peril that could arguably be excluded *even if* it was "driven by wind" is "spray from any of these." "Spray from any of these" did not cause the property damage to the Plaintiffs' insured residence or property.

27. This "flood" exclusion is also ambiguous and deceiving when read in conjunction with other provisions of the subject policy, such as the regular coverage provisions and the unique and expensive "Hurricane Deductible," which do provide full coverage for damage caused by a "Hurricane."

28. MetLife is merely attempting to dodge its coverage obligations to the Plaintiffs under the subject policy by wrongfully characterizing their damage as "Flood", which it claims is covered under Plaintiffs separate flood policy, in order to avoid paying Plaintiffs the full amount of their claim. Plaintiffs' "Flood" policy is insured at only \$53,100, which is only a fraction of Plaintiffs' insured loss from the Hurricane.

29. MetLife should not be allowed to rewrite the subject policy to retroactively exclude that which is not excluded by the policy. Similarly, MetLife should also not be allowed to recharacterize Hurricane Katrina as a "flood" in order to avoid their payment obligations under the subject policy. Lastly, MetLife should not be allowed to collect 17 years of premiums for nothing. Plaintiffs are therefore entitled to full coverage under the subject policy for the damage caused by Hurricane Katrina, injunctive relief, specific performance of the Contract, indemnity, unjust enrichment, reformation and other such equitable relief.

V.

**COUNT ONE:**

**DECLARATION OF INSURANCE COVERAGE**

30. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-29 of the Complaint.

31. Plaintiffs seek a Declaratory Judgment pursuant to Federal Rule of Civil Procedure 57 for the purposes of determining a question of actual controversy between the parties concerning their rights, obligations, and coverages under the subject policy.

32. Based on the representations made by MetLife and its agent both before and after the Hurricane, the express subject policy coverage provisions and the "Hurricane Deductible," Plaintiffs are entitled to full insurance coverage under the subject policy for all damage to insured property and loss of use caused by Hurricane Katrina, whether it be by hurricane winds, storm surge proximately caused by hurricane winds, or both.

33. Plaintiffs therefore seek a declaration that the subject policy provides full insurance coverage for all damage to their insured residence, property, and loss of use caused by Hurricane Katrina.

34. Plaintiffs also seek a declaration that any damage to their insured residence and property that was caused by Hurricane Katrina's "storm surge" is not excluded under the subject policy.

35. Plaintiffs also seek a declaration that the subject policy's "flood" exclusion is not applicable and does not exclude coverage for the damage to Plaintiffs' insured residence and property caused by Hurricane Katrina.

36. Further, Plaintiffs seek a declaration that the "flood" exclusion is not applicable because it is ambiguous.

**COUNT TWO:**  
**INJUNCTION/EQUITABLE ESTOPPEL**

37. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-36 of the Complaint.

38. MetLife and its agent represented to Plaintiffs both before and after the Hurricane that they would have full insurance coverage for any and all property damage and loss of use proximately and efficiently caused by a hurricane, whether it be by hurricane winds, "storm surge" proximately caused by hurricanes, or both.

39. The subject policy also purports to provide full insurance coverage for all property damage proximately and efficiently caused by a hurricane, whether it be by hurricane winds, "storm surge" proximately caused by hurricanes, or both. The subject policy does not exclude damage caused by "storm surge."

40. Hurricane Katrina completely destroyed the Plaintiffs' insured residence and property.

41. However, MetLife is now of the position that the subject policy's "flood" exclusion excludes insurance coverage for the wind and/or storm surge damage to Plaintiffs' insured residence and property proximately caused by Hurricane Katrina. Instead, MetLife is of the convenient position that Plaintiffs' separate "flood" policy, which is paid by federal taxpayer money, not MetLife, provides partial coverage for their loss.

42. MetLife's coverage position is contrary to the express coverage terms of the subject policy and the "Hurricane Deductible." In addition, neither the "flood" exclusion nor the "flood" policy are applicable to Plaintiffs' loss.

43. As a result, Plaintiffs have suffered and will continue to suffer substantial and irreparable injury if MetLife continues to rely on the "flood" exclusion or the separate "flood" policy to deny them full insurance coverage for their loss under the subject policy.

44. Therefore, Plaintiffs respectfully seek a preliminary and/or permanent injunction enjoining MetLife from refusing to pay the full amount of the Plaintiffs' property damage, loss of contents, and loss of use under their subject homeowner's policy.

45. Plaintiffs also seek a preliminary and/or permanent injunction enjoining MetLife from rewriting the subject policy to exclude damage caused by "storm surge." Plaintiffs also seek an Order that MetLife be enjoined and/or equitably estopped from refusing to cover damage caused by "storm surge."

46. Plaintiffs further seek a preliminary and/or permanent injunction enjoining MetLife from relying on the inapplicable and ambiguous "flood" exclusion to defeat insurance coverage for Plaintiffs under the subject policy. MetLife should also be equitably estopped from utilizing the "flood" exclusion to deny Plaintiffs' insurance coverage for their insured residence and property under the subject policy.

**COUNT THREE:**  
**SPECIFIC PERFORMANCE OF INSURANCE CONTRACT**

47. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-46 of the Complaint.

48. MetLife entered into the subject contract of insurance with the Plaintiffs wherein it clearly and expressly agreed to provide insurance coverage for physical loss to property and loss of use proximately and efficiently caused by a hurricane. Plaintiffs in turn have paid MetLife substantial premiums over 17 years, even agreed to a "Hurricane Deductible" in consideration for the agreed upon hurricane coverage.

49. Plaintiffs have now suffered total destruction of their insured residence and property as a proximate and direct result of Hurricane Katrina, and have consequently been denied use of their residence as well.

50. Plaintiffs have performed their end of the bargain and are accordingly now entitled to Specific Performance of their subject insurance contract. The Court should therefore require MetLife to specifically perform such agreement.

**COUNT FOUR:**  
**INDEMNITY**

51. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-50 of the Complaint.

52. MetLife is obligated under the subject policy and by its express representations both before and after the Hurricane to provide full insurance coverage to Plaintiffs for all damage to the insured residence, property, and loss of use caused by Hurricane Katrina.

53. However, MetLife has denied Plaintiffs' insurance coverage and has refused to pay them for their covered loss.

54. As a direct and proximate result of MetLife's denial, Plaintiffs have been and will continue to be forced to pay a substantial amount of money out of their own pockets for their loss of use of the insured residence. Plaintiffs will also be required to pay hundreds of thousands of dollars to rebuild and/or replace destroyed property. This will consequently require Plaintiffs to incur additional debt.

55. The money that Plaintiffs are now obligated to pay is money that MetLife in all fairness and equity should pay under the subject policy or otherwise. Plaintiffs are therefore entitled to indemnity from MetLife for all sums they have expended and will be required to expend, as well

as debt they will be required to incur in order to repair, refurbish, and/or replace their insured residence and property.

**COUNT FIVE:**  
**UNJUST ENRICHMENT/CONSTRUCTIVE TRUST**

56. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-55 of the Complaint.

57. In marketing, selling, and issuing the subject policy to Plaintiffs, MetLife, represented and agreed to obtain and provide Plaintiffs with full hurricane coverage for all property damage and loss of use typically caused by a hurricane, including damage proximately caused by hurricane wind and storm surge damage proximately caused by hurricanes. These representations and contractual obligations are also evidenced by the subject policy's coverage provisions and "Hurricane Deductible."

58. Plaintiffs have paid MetLife substantial monetary premiums for approximately seventeen (17) years, for such "hurricane" coverage.

59. After the Hurricane, MetLife and its agent again represented to Plaintiffs that it would pay for all property loss caused by the Hurricane under the subject policy.

60. However, despite realizing substantial premiums from Plaintiffs, MetLife has withheld the insurance proceeds owed to Plaintiffs for the hurricane damage to their insured property.

61. In addition, by classifying Hurricane Katrina and the damage to Plaintiffs' residence and property as "flood", MetLife has wrongfully realized insurance premiums and withheld insurance proceeds that the Plaintiffs are entitled to.

62. MetLife has therefore been unjustly enriched at Plaintiffs' expense.

63. Plaintiffs have suffered injury as a proximate result of MetLife's unjust enrichment. Plaintiffs have been and will continue to be forced to pay for costs and living expenses that should in equity and good conscience be borne by MetLife under the subject policy.

64. As a proximate result of MetLife's false and fraudulent representations and refusal to provide full insurance coverage under the subject policy for the damage to Plaintiffs' insured residence and property caused by Hurricane Katrina, MetLife is in possession of premiums, insurance proceeds, and other monies that it in equity and in good conscience should not be entitled to retain.

65. Plaintiffs are therefore entitled to damages resulting from MetLife's unjust enrichment, including the imposition of a Constructive Trust on all premiums Plaintiffs paid to MetLife and on the insurance proceeds wrongfully held by MetLife under their subject homeowner's policy.

**COUNT SIX:**  
**REFORMATION OF INSURANCE CONTRACT BASED ON EQUITABLE FRAUD**

66. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-65 of the Complaint.

67. Plaintiffs procured insurance through MetLife and its agent Gary Smith Insurance, and have religiously paid premiums every year to Defendants. As Plaintiffs' insurer, MetLife was thoroughly familiar with the physical location of Plaintiffs' property, and more specifically, was familiar with the close proximity of Plaintiffs' property to the Mississippi Gulf Coast. MetLife knew or should have known the types of risks against which Plaintiffs needed property insurance, especially risks relating to hurricanes, which commonly form and/or appear in the Gulf of Mexico.

68. Similarly, in marketing, selling, and issuing the subject policy, MetLife represented to Plaintiffs that the subject policy would provide full and comprehensive coverage for any and all property damage that could be caused by a hurricane, including damage proximately caused by hurricane wind and storm surge damage proximately caused by hurricanes.

69. MetLife held itself out to the public and to Plaintiffs as experts in insurance matters. Therefore, Plaintiffs placed complete confidence in MetLife and relied upon it exclusively to formulate an insurance program sufficient to protect Plaintiffs from risks to their property, such as damage caused by hurricanes. MetLife should have known that Plaintiffs were relying on it to provide adequate insurance coverage and that Plaintiffs were relatively unschooled in insurance matters.

70. Based on MetLife's representations concerning the subject policy coverages, Plaintiffs agreed to purchase the subject policy in reasonable and justifiable reliance that the subject policy would provide full and comprehensive hurricane coverage. MetLife in fact represented to Plaintiffs after the hurricane that it would cover the hurricane damage to Plaintiffs' property and loss of use.

71. However, MetLife has now refused to provide Plaintiffs with full insurance coverage for the damage to their insured residence and property caused by Hurricane Katrina.

72. Through unilateral mistake in combination with actual or equitable fraud by MetLife, the subject policy does not embody the insurance contract entered into by and between Plaintiffs and MetLife, inasmuch as MetLife has taken the position that the subject policy does not provide full insurance coverage for damage to Plaintiffs' insured residence and property caused by Hurricane Katrina, as described herein.

73. Furthermore, through inequitable conduct on the part of MetLife, the subject policy does not embody the insurance contract entered into by and between Plaintiffs and MetLife, insomuch as MetLife has taken the position that the subject policy does not provide full insurance coverage for damage to Plaintiffs' insured residence and property caused by Hurricane Katrina, as described herein.

74. Plaintiffs have no adequate remedy at law, but allege that they are entitled in equity to a reformation of the subject policy, marked Exhibit "A" to Complaint, so as to expressly insure Plaintiffs for property damage caused by Hurricane Katrina. Plaintiffs allege that they are entitled to have the subject policy reformed to conform with the agreement between Plaintiffs and MetLife that Plaintiffs' residence and property would be fully insured for damage caused by hurricanes.

75. Plaintiffs therefore request that the Court exercise its equitable powers and reform, rectify, correct, and/or amend the subject policy to reflect the parties' true intentions that the subject policy provide full insurance coverage to Plaintiffs for the hurricane wind and storm surge damage caused by Hurricane Katrina.

**COUNT SEVEN:**  
**FRAUD AGAINST METLIFE**

76. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-75 of the Complaint.

77. In marketing, selling, and issuing the subject policy, MetLife represented to Plaintiffs that it would provide full and comprehensive coverage for any and all property damage that could be caused by a hurricane, including damage proximately caused by hurricane wind and storm surge damage proximately caused by hurricanes. These representations are also evidenced by the subject policy's coverage provisions and "Hurricane Deductible."

78. After Hurricane Katrina completely destroyed Plaintiffs' residence and property, MetLife again represented to Plaintiffs that the subject policy would provide full coverage for all property loss caused by Hurricane Katrina.

79. However, despite these representations, MetLife fraudulently and intentionally failed to provide full and comprehensive coverage for the property damage caused by Hurricane Katrina.

80. Said representations made by MetLife, which were intended to induce reliance on the part of the Plaintiffs, were false, misleading, and deceptive, and were made with knowledge of the falsity of the representations or with reckless disregard of their untruthfulness.

81. Plaintiffs detrimentally relied on MetLife's fraudulent misrepresentations. Plaintiffs agreed to purchase the subject policy in reasonable and justifiable reliance that the subject policy would provide full and comprehensive hurricane coverage.

82. Plaintiffs' detrimental reliance on MetLife's fraudulent misrepresentations proximately caused them damage. Had MetLife advised Plaintiffs that it would not provide full and comprehensive coverage for all hurricane damage, Plaintiffs would not have purchased the subject policy or would have purchased additional insurance to cover such loss.

83. Plaintiffs therefore seek reformation of the subject policy based on MetLife's fraudulent representations. Plaintiffs do not seek, and expressly disavow, any claim for money damages as a result of MetLife's fraud.

## **VI. REMEDIES**

84. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1-83 of the Complaint.

85. Plaintiffs are entitled to full insurance coverage under the subject policy for the damage to the insured residence and property caused by Hurricane Katrina and other such equitable relief set forth in the Complaint, including, but not limited to:

- A. A Declaration by this Court that the subject policy provides full insurance coverage for the damage caused by Hurricane Katrina to Plaintiffs' insured residence and contents, as well as loss of use and additional living expenses.
- B. A Declaration by this Court that any damage to Plaintiffs' insured residence and property caused by "storm surge" is not excluded under the subject policy;
- C. A Declaration by this Court that the subject policy's "flood" exclusion is not applicable and ambiguous;
- D. An Injunction enjoining and/or equitably estopping MetLife from denying coverage for damage to Plaintiffs' insured residence and property caused by storm surge;
- E. An Injunction enjoining and/or equitably estopping MetLife from utilizing the "flood" exclusion to exclude coverage for damage to Plaintiffs' insured residence and property;
- F. Specific Performance of the subject policy;
- G. Indemnity;
- H. A Constructive Trust on insurance proceeds owed to Plaintiffs for the hurricane damage to their insured residence and property wrongfully held by

MetLife; and insurance premiums paid by Plaintiffs for coverage under the subject policy;

- I. Reformation of the subject policy to reflect and embody the parties true intentions concerning insurance coverage based on MetLife's inequitable conduct, equitable fraud, and fraud;
- J. Attorneys' fees and expenses;
- K. Court costs and expenses;
- L. Prejudgment and post-judgment interests; and
- M. Any and all other equitable relief deemed appropriate by the Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that upon a trial of this cause, judgment will be entered against MetLife for all full insurance coverage for the damage to Plaintiffs' insured residence and property caused by Hurricane Katrina, an injunction, specific performance of the subject policy indemnity, and other such equitable remedies and relief prayed for herein.

Respectfully submitted, this the 16 day of Nov. 2005.

**PLAINTIFFS TINA LEE AND  
ELLA LOUISE L. STANLEY**

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