

KELVIN SLATON, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

VERSUS

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY AND THE
BOARD OF COMMISSIONERS FOR
THE ORLEANS LEVEE DISTRICT

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536664
SUIT NO.:

SECTION:

19TH JUDICIAL DISTRICT COURT

SEC. 27

PARISH OF EAST BATON ROUGE

COST OK Amt. 280
440
JAN 23 2005

STATE OF LOUISIANA

BY 
BY CLERK OF COURT

CLASS ACTION PETITION

NOW INTO COURT, through undersigned counsel, comes Plaintiff, KELVIN SLATON, a person of the age of majority, domiciled in the Parish of Orleans, State of Louisiana, who brings this action on behalf of himself and all others similarly situated.

I.

This is a class action on behalf of persons and entities who suffered property damage as a result of flooding in the Lakeview and downtown areas of New Orleans caused by breaches in the 17th Street and London Avenue drainage canals. Plaintiff is a resident of New Orleans who resided on Chapelle Street, near the 17th Street canal. On or about August 30, 2005, as flood waters entered his home because of the failure of the flood protection system on the 17th Street and London Avenue canals, plaintiff was forced to flee to the attic and then to the roof of his home, from which he was subsequently rescued by the Coast Guard. Plaintiff brings this action based on personal information and belief and alleges as follows:

II.

Made defendants herein are:

- A. St. Paul Fire and Marine Insurance Company, a foreign insurance company, authorized to do and doing business in the State of Louisiana, which may be served through the Louisiana Secretary of State.
- B. Board of Commissioners for the Orleans Levee District, which may be served through its President, James P. Huey, 7300 Lakeshore Drive, New Orleans, LA 70124.

III.

Venue is proper in this Court pursuant to Louisiana Code of Civil Procedure Article 42.

IV.

Louisiana statutes define a “levee district” as a “political subdivision of this state organized for the purpose and charged with the duty of constructing and maintaining levees, and all other things incidental thereto within its territorial limits.” Louisiana Revised Statute 38:281(6).

V.

Levee boards “may construct and maintain levees, drainage, and levee drainage, and do all other things incidental thereto.” Louisiana Revised Statute 38:301A.(1).

VI.

The Louisiana Legislature created the Orleans Levee District and granted it certain powers, rights, responsibilities, and duties. Louisiana Revised Statute 38:307.

VII.

In particular, the Orleans Levee District has “full and exclusive right, jurisdiction, power, and authority to locate, relocate, construct, maintain, extend, and improve levees, embankments, sea walls, jetties, breakwaters, water basins, and other works in relation to such projects and to conduct all dredging operations necessary in connection therewith or incidental thereto along, over, and on the shores, bottom, and bed of Lake Pontchartrain in the Parish of Orleans...and along and on the shores adjacent to the lake and along the canals connected therewith.” Louisiana Revised Statute 38:307A.(1).

VIII.

Further, the Orleans Levee District is specifically empowered to take sufficient action to protect Orleans Parish from flooding. Louisiana Revised Statute 38:307A.(1) states “the levees, embankments, sea walls, jetties, breakwaters, water basins, and other works shall be of such character and extent and of such height, width, slope, design and materials as the board determines, with power and authority to improve and to protect the same with such other structures as are deemed necessary and proper by the board.” (Emphasis added.)

IX.

Further, “the board [of commissioners of the Orleans Levee District] shall have the right, jurisdiction, power and authority to plan, execute and maintain all the works and all the phases of the projects and improvements undertaken hereunder.” Louisiana Revised Statute 38:307B.(1).

X.

The power granted to levee districts in furtherance of their duties is substantial. Each board of commissioners of levee districts in Louisiana “may buy and hold, sell and transfer, or exchange property, make and execute contracts, and do and perform any and all acts necessary to ensure the thorough and adequate protection of the lands of the district from damage by flood, and, in the case of levee and drainage boards, for the adequate drainage control of the district.” Louisiana Revised Statute 38:306.

XI.

In addition to these general powers, the Orleans Levee District has the authority to issue bonds, raise taxes (up to a certain rate), make all contracts necessary to perform their functions and sell, lease, or otherwise dispose of property for the purpose of raising funds. Louisiana Revised Statutes 38:302, 38:314, 38:335, 38:336A, 38:431, 38:401, 38:404, and 38:306A.

XII.

A levee district’s powers, considerable as they are, may be exercised only within clearly defined territorial limits. Louisiana Revised Statute 38:281(6).

XIII.

The “17th Street Canal” and the “London Avenue Canal” are canals connected to Lake Pontchartrain in Orleans Parish and are within the jurisdiction and control of the Orleans Levee District.

XIV.

The flood protection system along the 17th Street and London Avenue canals consists of levees and flood walls and is designed to handle storm surges of more than fourteen (14) feet above sea level and to withstand a Category Three (3) hurricane.

XV.

On August 29, 2005, Hurricane Katrina made landfall on the Louisiana Gulf Coast approximately twenty (20) miles east of New Orleans.

XVI.

New Orleans did not receive the full brunt of Hurricane Katrina because Hurricane Katrina’s strongest winds passed dozens of miles to the east of the city.

XVII.

Category Three (3) hurricanes are defined as those hurricanes with sustained winds of one hundred eleven (111) to one hundred thirty (130) miles per hour.

XVIII.

When Hurricane Katrina reached and impacted Lake Pontchartrain, its maximum sustained winds were only ninety-five (95) miles per hour, less than a Category Three (3) storm.

XIX.

The impact of Hurricane Katrina on Lake Pontchartrain did cause some storm surge. Upon information and belief, most of the surge around the lake and its nearby canals was less than eleven (11) feet above sea level and none of the surges were greater than thirteen (13) feet.

XX.

Those surges were several feet below of the height that would have been necessary to overtop the 17th Street and London Avenue levee system and flood walls.

XXI.

Upon information and belief, the surges caused by Hurricane Katrina did not spill over those barriers and at the time of its impact on the area around Lake Pontchartrain, Hurricane Katrina was less than a Category Three (3) hurricane.

XXII.

The 17th Street and London Avenue canal flood walls and levees did, however, fail and the failure of those flood walls and levees resulted in the intrusion of the waters of Lake Pontchartrain into certain sections of New Orleans and its surrounding areas, causing massive flooding and property damage.

XXIII.

Upon information and belief, a faulty design, inadequate construction, or some combination of the two caused the breach of the flood walls and levees along the 17th Street and London Avenue canals. In fact, the levee system failed after the passage of Hurricane Katrina.

XXIV.

The flood walls that failed were known as "T" walls in which individual slabs are anchored to a continuous steel sheet buried in the levee. Above that short foundation, the slabs are linked only by rubbery gaskets. Additionally, the walls were segmented which allowed any

weak point to allow water through, resulting in catastrophic failure. The walls were not interlocked and there was no top railing or other similar system to bind the walls together.

XXV.

Upon information and belief, the Orleans Levee District never tested whether the design, construction or maintenance of the 17th Street and London Street levee systems was adequate, proper, and within standards.

XXVI.

The Orleans Levee District was legally charged with the obligation, jurisdiction, power, and authority to ensure the proper construction, maintenance, and design of the levees and flood walls along the 17th Street and London Avenue canals to protect Orleans Parish from flooding.

XXVII.

The district's failure to ensure the adequacy of the 17th Street and London Street canal's flood walls' and levees' design, composition, and construction constituted negligence, subjecting it to liability for all resulting damages. Further, the flood walls and levees were within the exclusive care, custody, control and garde of Orleans Levee District and were defective, for the reasons set forth above, all of which was known, or should have been known to Orleans Levee District, thus rendering Orleans Levee District strictly liable pursuant to applicable Louisiana law.

XXVIII.

At all times pertinent herein, there was in full force and effect between St. Paul Fire and Marine Insurance Company and the Board of Commissioners for the Orleans Levee District a policy of liability insurance, under the terms, conditions and provisions of which St. Paul Fire and Marine Insurance Company assumed liability for acts and/or negligence of its insured. Plaintiff asserts this claim against St Paul Fire and Marine Insurance Company pursuant to the Louisiana Direct Action Statute, R.S. 22:655.

XXIX.

Plaintiff suffered damages as a result of the flooding caused by the breaches in the 17th Street and London Avenue canals. In particular, on or about August 30, 2005, as flood waters entered his home because of the failure of the flood protection system on the 17th Street and London Avenue canals, plaintiff was forced to flee to the attic and then to the roof of his home,

from which he was subsequently rescued by the Coast Guard.

XXX.

This action is brought and maintained as a class action pursuant to the provisions of Louisiana Code of Civil Procedure, Art. 591 et seq. The plaintiff brings this action on behalf of himself, and on behalf of all other persons and entities who are similarly situated and who suffered property damage as a result of flooding caused by the breaches in the 17th Street and London Avenue canals.

XXXI.

Said definition may be amended by future pleadings, evidentiary hearings, or orders of the Court.

XXXII.

The plaintiff and the class members are entitled to have this cause of action maintained as a class action pursuant to Louisiana Code of Civil Procedure, Article 591, et seq. for, inter alia, the following reasons:

- (a) The class is so numerous that joinder of all members is impracticable;
- (b) There are questions of law or fact common to the class;
- (c) The claims of the representative party are typical of the claims of the class;
- (d) The representative party will fairly and adequately protect the interests of the class;
- (e) The class is or may be defined objectively in terms of ascertainable criteria, such that the court may determine the constituency of the class for purposes of the conclusiveness of any judgment that may be rendered in the case;
- (f) The prosecution of separate actions by individual members of the class would create risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class;
 - ii. Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interest of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
 - iii. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; and
 - iv. The questions of law or fact common to the members of the class

predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

WHEREFORE, plaintiff, KELVIN SLATON, individually, and on behalf of all others similarly situated, prays that Defendants be served with a copy of this petition and cited to appear and answer same, and that after all due proceedings had, there be a judgment herein as follows:

- I. That after a hearing upon the Motion for Class Certification filed by the plaintiff, an Order be entered herein certifying this action and maintaining this action as a class action;
- II. That the plaintiff and the class herein be awarded compensatory damages in an amount to be proven at trial against the defendants;
- III. That plaintiff be awarded attorney fees and interest on the award of attorneys fees; and
- IV. For all costs of this suit, legal interest on any award of costs, legal interest from date of judicial demand, all just and equitable relief, for a trial by jury and such other relief as may be appropriate pursuant to applicable statutes and equity.

Respectfully submitted,

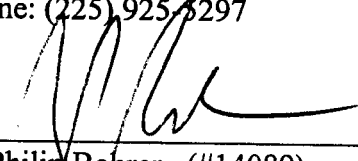
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Philip Bohrer (#14089)

PLEASE SERVE:

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

Through its agent for service:

Secretary of State

8549 United Plaza

Baton Rouge, LA 70809

Board of Commissioners for the Orleans Levee District

Through its President, James P. Huey

7300 Lakeshore Drive

New Orleans, LA 70124

DEPOTIFIED TRUE COPY

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DEPUTY CLERK OF COURT

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CLERK OF COURT E.B.R. PARISH

CIVIL

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