

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

2007 SEP 11 PM 3:59

LORETTA G. WHYTE  
CLERK

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

THE STATE OF LOUISIANA, individually  
and on behalf of STATE OF LOUISIANA,  
DIVISION OF ADMINISTRATION, OFFICE  
OF COMMUNITY DEVELOPMENT *ex rel*  
THE HONORABLE CHARLES C. FOTI, JR.,  
THE ATTORNEY GENERAL FOR THE  
STATE OF LOUISIANA, individually and as a  
class action on behalf of all recipients of funds  
as well as all eligible and/or future recipients of  
funds through The Road Home Program,

Plaintiff,

VERSUS

AAA INSURANCE; AUTO CLUB FAMILY  
INSURANCE COMPANY; AEGIS SECURITY  
INSURANCE COMPANY; AFFILIATED FM  
INSURANCE COMPANY; AIG CENTENNIAL  
INSURANCE COMPANY; AIU INSURANCE  
COMPANY; ALDRICH INSURANCE AGENCY, INC.;  
ALFA INSURANCE CORPORATION; ALLSTATE  
INDEMNITY COMPANY; ALLSTATE INSURANCE  
COMPANY; AMERICA FIRST INSURANCE  
COMPANY; AMERICAN BANKERS INSURANCE  
COMPANY OF FLORIDA; AMERICAN CENTRAL  
INSURANCE COMPANY; AMERICAN EMPIRE  
GROUP; AMERICAN EMPIRE INSURANCE  
COMPANY; AMERICAN EMPIRE SURPLUS LINES  
INSURANCE COMPANY; AMERICAN FAMILY  
INSURANCE; AMERICAN FAMILY INSURANCE  
COMPANY; AMERICAN FEDERATED INSURANCE;  
AMERICAN FEDERAL INSURANCE COMPANY;  
AMERICAN FEDERATED NATIONAL INSURANCE  
COMPANY; AMERICAN GENERAL PROPERTY  
INSURANCE COMPANY; AMERICAN MODERN

CIVIL ACTION NO.:

**07-5528**

**SECT. C MAG. 3**

DIVISION "\_\_\_"

JUDGE \_\_\_\_\_

MAGISTRATE \_\_\_\_\_

Fee \$350  
Process \_\_\_\_\_  
 Dktd \_\_\_\_\_  
CtRmDep \_\_\_\_\_  
Doc. No. \_\_\_\_\_

SURPLUS LINES INSURANCE COMPANY; THE \*  
AMERICAN INSURANCE COMPANY; AMERICAN \*  
MANUFACTURERS MUTUAL INSURANCE \*  
COMPANY; AMERICAN MODERN INSURANCE \*  
GROUP; AMERICAN NATIONAL INSURANCE \*  
COMPANY; AMERICAN NATIONAL GENERAL \*  
INSURANCE COMPANY; AMERICAN NATIONAL \*  
PROPERTY AND CASUALTY; AMERICAN \*  
RELIABLE INSURANCE COMPANY; AMERICAN \*  
SECURITY INSURANCE COMPANY; AMERICAN \*  
SOUTHERN INSURANCE COMPANY; AMERICAN \*  
SOUTHERN HOME INSURANCE COMPANY; \*  
AMERICAN SUMMIT INSURANCE COMPANY; \*  
AMERICAN VEHICLE INSURANCE COMPANY; \*  
AMERICAN WESTERN HOME INSURANCE \*  
COMPANY; ANPAC LOUISIANA INSURANCE \*  
COMPANY; ASSURANT; AMICA MUTUAL \*  
INSURANCE COMPANY; ARMED FORCES \*  
INSURANCE EXCHANGE; ARROWHEAD GENERAL \*  
INSURANCE GROUP; ASSURANCE COMPANY OF \*  
AMERICA; AUDUBON INSURANCE COMPANY; \*  
AUDUBON INSURANCE GROUP; AULTON VANN, \*  
JR. INSURANCE AGENCY; THE AUTOMOBILE \*  
INSURANCE COMPANY OF HARTFORD \*  
CONNECTICUT; BALBOA INSURANCE COMPANY; \*  
BANKERS INSURANCE COMPANY; BEACON \*  
INSURANCE GROUP; BEST INSURERS, INC.; \*  
CENTRE INSURANCE COMPANY; CENTURY- \*  
NATIONAL INSURANCE COMPANY; CERTAIN \*  
UNDERWRITERS AT LLOYD'S OF LONDON \*  
(LONDON MARKET INSURERS); CHUBB \*  
INDEMNITY INSURANCE COMPANY; CHUBB \*  
INSURANCE GROUP; CHUBB CUSTOM \*  
INSURANCE COMPANY; CHUBB NATIONAL \*  
INSURANCE COMPANY; CLARENDON NATIONAL \*  
INSURANCE COMPANY; COASTAL INSURANCE \*  
ASSOCIATES; THE CONTINENTAL INSURANCE \*  
COMPANY; COUNTRY LIVING INSURANCE, INC.; \*  
DIRECTSOURCE INSURANCE COMPANY; \*  
ECONOMY PREMIER ASSURANCE COMPANY; \*  
ELECTRIC INSURANCE COMPANY; EMC \*  
PROPERTY & CASUALTY INSURANCE COMPANY; \*  
EMCASCO INSURANCE COMPANY; EMPIRE FIRE \*  
AND MARINE INSURANCE COMPANY; EMPIRE \*  
INDEMNITY INSURANCE COMPANY; EMPLOYERS \*  
MUTUAL CASUALTY COMPANY; ENCOMPASS \*

INDEMNITY COMPANY; ENCOMPASS INSURANCE \*  
COMPANY OF AMERICA; ENCOMPASS PROPERTY \*  
AND CASUALTY COMPANY; ESSEX INSURANCE \*  
COMPANY; FARMERS HOME GROUP; FARMERS \*  
INSURANCE EXCHANGE; FARMERS INSURANCE \*  
GROUP; FEDERAL INSURANCE COMPANY; \*  
FIDELITY AND CASUALTY COMPANY OF NEW \*  
YORK; FIDELITY AND DEPOSIT COMPANY OF \*  
MARYLAND; FIDELITY NATIONAL INSURANCE \*  
COMPANY; FIDELITY NATIONAL PROPERTY AND \*  
CASUALTY INSURANCE COMPANY; FIREMAN'S \*  
FUND INSURANCE COMPANY; FIREMAN'S FUND \*  
INSURANCE OF LOUISIANA; FIRST PREMIUM \*  
INSURANCE GROUP; FOREMOST INSURANCE \*  
COMPANY; FOREMOST PROPERTY AND \*  
CASUALTY INSURANCE COMPANY; FOREMOST \*  
SIGNATURE INSURANCE COMPANY; GENERAL \*  
INSURANCE COMPANY OF AMERICA; GREAT \*  
AMERICAN ALLIANCE INSURANCE COMPANY; \*  
GREAT AMERICAN ASSURANCE COMPANY; \*  
GREAT AMERICAN INSURANCE COMPANY OF \*  
NEW YORK; GREAT AMERICAN SECURITY \*  
INSURANCE COMPANY; GREAT AMERICAN \*  
SPIRIT INSURANCE COMPANY; GREAT \*  
AMERICAN INSURANCE COMPANY; GREAT \*  
NORTHERN INSURANCE COMPANY; GUIDEONE \*  
INSURANCE; GUIDEONE MUTUAL INSURANCE \*  
COMPANY; GUIDEONE SPECIALTY MUTUAL \*  
INSURANCE COMPANY; HANCOCK METLIFE \*  
INSURANCE AGENCY; THE HANOVER AMERICAN \*  
INSURANCE COMPANY; THE HANOVER \*  
INSURANCE COMPANY; HARLESYVILLE \*  
MUTUAL INSURANCE COMPANY; HARTFORD \*  
ACCIDENT AND INDEMNITY COMPANY; \*  
HARTFORD CASUALTY INSURANCE COMPANY; \*  
HARTFORD FIRE INSURANCE COMPANY; \*  
HARTFORD INSURANCE COMPANY OF THE \*  
MIDWEST; HARTFORD INSURANCE COMPANY OF \*  
THE SOUTHEAST; HARTFORD INSURANCE \*  
GROUP; HARTFORD UNDERWRITERS INSURANCE \*  
COMPANY; HOMESITE INSURANCE COMPANY; \*  
HORACE MANN INSURANCE COMPANY; HORACE \*  
MANN PROPERTY & CASUALTY INSURANCE \*  
COMPANY; HSBC INSURANCE COMPANY OF \*  
DELAWARE; INSURANCE BARN; KEMPER AUTO \*  
& HOME; LAFAYETTE INSURANCE COMPANY; \*

LEXINGTON INSURANCE COMPANY; LIBERTY \*  
PERSONAL INSURANCE COMPANY; LIBERTY \*  
MUTUAL FIRE INSURANCE COMPANY; LIBERTY \*  
MUTUAL INSURANCE COMPANY; LIGHTHOUSE \*  
INSURANCE SERVICES; LM PROPERTY AND \*  
CASUALTY INSURANCE COMPANY; LOUISIANA \*  
CITIZENS PROPERTY INSURANCE CORPORATION; \*  
LOUISIANA FARM BUREAU CASUALTY \*  
INSURANCE COMPANY; LOUISIANA FARM \*  
BUREAU MUTUAL INSURANCE COMPANY; \*  
LUMBERMENS MUTUAL CASUALTY COMPANY; \*  
MARKEL INSURANCE COMPANY; MARKEL \*  
INTERNATIONAL INSURANCE COMPANY \*  
LIMITED; MASSACHUSETTS BAY INSURANCE \*  
COMPANY; MERASTAR INSURANCE COMPANY; \*  
MERITPLAN INSURANCE COMPANY; \*  
METROPOLITAN CASUALTY INSURANCE \*  
COMPANY; METROPOLITAN PROPERTY AND \*  
CASUALTY INSURANCE COMPANY; MISSISSIPPI \*  
WINDSTORM UNDERWRITING ASSN. (MWUA); \*  
MUTUAL SAVINGS INSURANCE; MUTUAL \*  
SAVINGS FIRE INSURANCE COMPANY; \*  
NATIONAL CASUALTY COMPANY; NATIONAL \*  
FARMERS UNION PROPERTY AND CASUALTY \*  
COMPANY; NATIONAL LLOYDS INSURANCE \*  
COMPANY; NATIONAL SECURITY FIRE AND \*  
CASUALTY COMPANY; NATIONAL SURETY \*  
CORPORATION; NATIONAL UNION FIRE \*  
INSURANCE COMPANY OF LOUISIANA; \*  
NATIONAL UNION FIRE INSURANCE COMPANY \*  
OF PITTSBURGH, PA; NATIONWIDE; \*  
NATIONWIDE AFFINITY INSURANCE COMPANY \*  
OF AMERICA; NATIONWIDE MUTUAL FIRE \*  
INSURANCE COMPANY; NATIONWIDE MUTUAL \*  
INSURANCE COMPANY; OMEGA INSURANCE \*  
COMPANY; OMEGA ONE INSURANCE COMPANY; \*  
PACIFIC INDEMNITY COMPANY; PROPERTY AND \*  
CASUALTY INSURANCE COMPANY OF \*  
HARTFORD; PRIME INSURANCE COMPANY; \*  
PRIME INSURANCE SYNDICATE; PROCTOR \*  
FINANCIAL, INC.; REPUBLIC FIRE AND \*  
CASUALTY INSURANCE COMPANY; REPUBLIC \*  
INSURANCE COMPANY; SAFECO INSURANCE \*  
COMPANY OF AMERICA; SCOTTSDALE \*  
INDEMNITY COMPANY; SCOTTSDALE \*  
INSURANCE COMPANY; SECURITY PLAN FIRE \*

INSURANCE COMPANY; SHELTER GENERAL \*  
INSURANCE COMPANY; SHELTER MUTUAL \*  
INSURANCE COMPANY; SOUTHWEST BUSINESS \*  
CORPORATION; ST. PAUL; ST. PAUL'S \*  
TRAVELERS INSURANCE COMPANY; ST. PAUL \*  
FIRE AND MARINE INSURANCE COMPANY; ST. \*  
PAUL GUARDIAN INSURANCE COMPANY; ST. \*  
PAUL MERCURY INSURANCE COMPANY; ST. \*  
PAUL PROTECTIVE INSURANCE COMPANY; ST. \*  
PAUL SURPLUS LINES INSURANCE COMPANY; \*  
THE STANDARD FIRE INSURANCE COMPANY; \*  
STANDARD GUARANTEE INSURANCE COMPANY; \*  
STATE FARM FIRE AND CASUALTY COMPANY; \*  
STATE FARM GENERAL INSURANCE COMPANY; \*  
STATE NATIONAL INSURANCE COMPANY; \*  
STEWART, SNEED & HEWES; TEACHERS \*  
INSURANCE COMPANY; TEACHERS INSURANCE \*  
AND ANNUITY ASSOCIATION OF AMERICA; \*  
TOKIO MARINE & NICHIDO FIRE INSURANCE \*  
CO. LTD.; TRAVELERS CASUALTY INSURANCE \*  
COMPANY OF AMERICA; TRAVELERS CASUALTY \*  
AND SURETY COMPANY; TRAVELERS HOME AND \*  
MARINE INSURANCE COMPANY; THE \*  
TRAVELERS INDEMNITY COMPANY; THE \*  
TRAVELERS INDEMNITY COMPANY OF \*  
AMERICA; THE TRAVELERS INDEMNITY \*  
COMPANY OF CONNECTICUT; TRAVELERS \*  
INSURANCE COMPANY; TRAVELERS PROPERTY \*  
CASUALTY COMPANY OF AMERICA; TRAVELERS \*  
PROPERTY CASUALTY INSURANCE COMPANY; \*  
TRINITY UNIVERSAL INSURANCE COMPANY; \*  
TRINITY UNIVERSAL INSURANCE COMPANY OF \*  
KANSAS, INC.; TWIN CITY FIRE INSURANCE \*  
COMPANY; UNION NATIONAL FIRE INSURANCE \*  
COMPANY; UNITED FIRE AND CASUALTY \*  
COMPANY; UNITED FIRE & INDEMNITY \*  
COMPANY; UNITED NATIONAL CASUALTY \*  
INSURANCE COMPANY; UNITED SERVICES \*  
AUTOMOBILE ASSOCIATION; UNITRIN AUTO \*  
AND HOME INSURANCE COMPANY; UNITRIN \*  
PREFERRED INSURANCE COMPANY; USAA \*  
CASUALTY INSURANCE COMPANY; USAA \*  
GENERAL INDEMNITY COMPANY; USAA; \*  
VIGILANT INSURANCE COMPANY; VOYAGER \*  
INDEMNITY INSURANCE COMPANY; VOYAGER \*  
PROPERTY AND CASUALTY INSURANCE \*



and former Louisiana citizens who have applied for and received or will receive funds through the Road Home Program. (Am. Petition ¶ 22.)

2. On August 29, 2007, Plaintiff filed its First Amended and Restated Class Action Petition For Damages and Declaratory and Injunctive Relief (“Amended Petition” or “Am. Petition”). The Amended Petition asserts myriad claims against all defendants on behalf of both the State of Louisiana and a purported class of insureds, including: (1) claims under Louisiana’s Valued Policy Law, La. Rev. Stat. § 22:695 (Am. Petition ¶¶ 73-79); (2) breach of insurance contract (Am. Petition ¶¶ 80-84); (3) breach of the implied covenant of good faith and fair dealing (Am. Petition ¶¶ 85-90); (4) breach of fiduciary duty (Am. Petition ¶¶ 91-97); and (5) violations of Louisiana’s bad faith statutes, La Rev. Stat. §§ 22:658 and 22:1220 (Am. Petition ¶¶ 98-107).

3. The Amended Petition seeks to recover amounts that Plaintiff alleges should have been paid, or in the future should be paid, to policyholders by the Insurance Company Defendants, in connection with alleged property damage caused by Hurricanes Katrina and Rita.

4. The Amended Petition seeks relief in the form of, among other things, declarations that (a) the efficient proximate cause of losses suffered by putative class members was windstorm, a covered peril under their policies; (b) the second efficient proximate cause of their losses was storm surge, which Plaintiff contends is not excluded under class members’ policies; (c) the damage caused by water entering affected parishes of Louisiana does not fall within the definition of “flood”; (d) the damages caused by water entering Orleans Parish and the surrounding area was a result of “negligent failure” of the levee system and was a man-made



occurrence covered under class members' policies; (e) many class members suffered total losses to their residences; (f) many class members are entitled to recover the full value for their residences stated on their policies pursuant to the Louisiana Valued Policy Law, La. Rev. Stat § 22:695. (Am. Petition ¶ 46(a)-(f).) In accordance with these requested declarations, Plaintiff seeks to recover amounts that it alleges should have been paid to policyholders under their insurance agreements, as well as penalties, attorneys' fees, and costs. (Am. Petition ¶¶ 79, 84, 89, 97, 106, Prayer ¶¶ f-h.) In short, the claims being asserted by the putative class are substantively identical to claims asserted in numerous other class actions previously filed in the State of Louisiana and this Court.

5. Pursuant to 28 U.S.C. § 1446(a), Allstate has attached all pleadings and service returns available from the state court proceeding and attaches same hereto as Exhibit A.

6. The Secretary of State was served with notice of this suit on August 28, 2007. Pursuant to 28 U.S.C. § 1446, this Notice of Removal is timely filed.

7. Plaintiff's Amended Petition is removable to this Court under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332, 28 U.S.C. § 1441 (a) and (b), and 28 U.S.C. § 1453, because this is a putative class action with more than 100 putative class members who are seeking to recover in excess of \$ 5,000,000, and there is minimal diversity.

**This Court Has Jurisdiction Over This Action Under CAFA**

8. In its putative capacity as a partial and limited assignee/subrogee under the Road Home Program (*see* Am. Petition ¶ 11 and Exhibit B thereto), Plaintiff filed this putative class action on behalf of "[a]ll current or former citizens of the State of Louisiana who have applied



for and received or will receive funds through The Road Home Program, and who have executed or will execute a subrogation or assignment agreement in favor of the State, and to whom insurance proceeds are due and/or owed for damages sustained to any such recipient's residence as a result of any natural or man-made occurrence associated with Hurricanes Katrina and/or Rita under any policy of insurance, as plead herein, and for which the State has been or will be granted or be entitled to recover as repayment or reimbursement of funds provided to any such recipient through the Road Home Program." (Am. Petition ¶ 22.) As of August 13, 2007, the Road Home Program has allegedly recorded 183,867 applications, conducted 41,071 grant closings, with the total amount of benefits funded and to be funded exceeding \$7.938 billion dollars. (Am. Petition ¶ 10.)

9. CAFA reflects Congress's intent to have federal courts adjudicate substantial class action suits brought against out-of-state defendants. Toward that end, CAFA expressly provides that class actions filed in state court are removable to federal court. CAFA expands federal jurisdiction over class actions by amending 28 U.S.C. § 1332 to grant original jurisdiction where the putative class contains at least 100 class members; and any member of the putative class is a citizen of a State different from that of any defendant; and the amount in controversy exceeds \$5,000,000 in the aggregate for the entire class, exclusive of interest and costs. 28 U.S.C. § 1332(d).

10. This suit satisfies all the requirements under CAFA for federal jurisdiction. Based upon the allegations in the Plaintiff's Amended Petition: (1) the putative class exceeds 100; (2) some of the members of the proposed class have a different citizenship from some

Defendants; (3) the amount in controversy exceeds \$5,000,000; and (4) the exceptions to CAFA do not apply here. 28 U.S.C. § 1332(d); *Preston v. Tenet Healthsystems Mem. Med. Ctr., Inc.*, 485 F.3d 793, 803-04 (5th Cir. 2007) (*Preston II*) (reversing district court's order remanding the case, finding that plaintiffs failed to show an exception to CAFA applies and, therefore, the federal court had jurisdiction over the dispute pursuant to CAFA).

**I. The Putative Class Size Exceeds 100.**

11. CAFA requires that the class consist of at least 100 persons. 28 U.S.C. § 1332(d)(5). Plaintiff alleges that it has received 183,867 applications for the Road Home Program, and that it has already conducted 41,071 grant closings. (Am. Petition ¶ 10.) Although not all of those individuals will necessarily be members of the putative class, any of those having property insurance will be, which produces a number clearly in excess of 100. Plaintiff itself recognizes this, alleging that the class “clearly consists of tens of thousands of persons.” (Am. Petition ¶ 21(b).)

12. Furthermore, Allstate has received approximately 150,000 property claims for damage allegedly caused by Hurricanes Katrina and Rita in Louisiana. (Ex. B, Affidavit of Paul Tracey (“Tracey Aff.”) at ¶ 4.) Even if only 1% of these claimants obtained Road Home Program funds, the class vis-à-vis Allstate alone would exceed 100, not even considering the other Insurance Company Defendants’ insureds who are also members of the putative class. In fact, given that Plaintiff alleges there are “tens of thousands of class members,” and given Allstate’s market share of just over 20% of the Louisiana homeowners insurance marketplace, simply applying the 20% figure to the smallest class size alleged, 10,000, results in a class size of

2,000 Allstate insureds. (Am. Petition ¶ 21(b); Ex. B. ¶ 9 and Ex. 1.) Thus, the requirement that the number of members of the putative class exceed 100 has been easily met.

**II. There Is Minimal Diversity Here Because At Least One Putative Class Member Is A Citizen Of Louisiana And Allstate Is A Citizen Of Illinois.**

13. The second CAFA requirement is minimal diversity—at least one putative class member must be a citizen of different state than one defendant. 28 U.S.C. § 1332(d)(2).

14. Here, the putative class is comprised solely of Louisiana citizens or former citizens, and as such it is clear that at least one putative class member remains a citizen of Louisiana. (Am. Petition ¶ 22.) The vast majority of the Insurance Company Defendants are citizens of a state other than Louisiana, including Allstate Insurance Company, which is a citizen of Illinois. (Ex. B at ¶¶ 11-12; Am. Petition ¶¶ 18, 20.) Other Insurance Company Defendants are alleged to be citizens of Missouri, Pennsylvania, Florida, Ohio, Rhode Island, Kansas, California, Delaware, Massachusetts, Connecticut, Arizona, Wisconsin, and New York, among many other states. (Am. Petition ¶ 18.) So it is clear that at least one putative class member is of diverse citizenship to a defendant.

15. Thus, there is minimal diversity here and this prerequisite of CAFA is met. 28 U.S.C. § 1332(d)(2).

**III. The Amount In Controversy Exceeds \$5,000,000.**

**A. Plaintiff's Amended Petition Demonstrates The \$5,000,000 CAFA Amount In Controversy Requirement Is Met.**

16. CAFA also requires that the aggregate amount in controversy exceed \$5,000,000 for the entire putative class in the aggregate, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). Here, based upon Plaintiff's allegations and theories (which Allstate disputes, but

which control for removal purposes), the \$5,000,000 CAFA amount in controversy requirement is easily satisfied.

17. Plaintiff's Amended Petition alleges that \$7.938 *billion* dollars has been paid or will be paid out under the Road Home Program. (Am. Petition ¶ 10.) Plaintiff alleges that the State is "entitled to recover billions of dollars in funds expended or to be expended under the Road Home Program . . . ." (Am. Petition ¶ 38; *see also id.*, ¶¶ 12-13.) Furthermore, Plaintiff alleges that there are "tens of thousands" of class members, each of whom may have been awarded up to \$150,000 dollars under the Road Home Program, all of which may be at issue in this lawsuit. (Am. Petition ¶¶ 10, 21(b).) Assuming the lowest number of class members alleged—10,000—only \$500 would need to be at issue on average—a far cry from the \$150,000 potential amount at issue for each such putative class member—for the minimum \$5,000,000 CAFA amount in controversy to be met.

**B. Insurance Industry Data Also Demonstrates The \$5,000,000 CAFA Amount In Controversy Requirement Is Met.**

18. Allstate has already paid approximately \$1.25 billion dollars under its property policies for damage allegedly incurred from Hurricanes Katrina and Rita. (Ex. B, Tracey Aff. at ¶ 5.) Even assuming a minimal number of Allstate insureds were at issue, given the magnitude of loss payments made by Allstate, it is clear that more than \$5 million is at issue in this litigation for Allstate alone—and that is not even considering all of the other Insurance Company Defendants.

19. As to the numerous other Insurance Company Defendants, it is clear that the amounts at issue for them as a collective are significantly greater than for Allstate. One court in this Judicial District has already relied on such market share data for homeowners insurance in Louisiana in analyzing CAFA jurisdictional issues. *Gauntt v. Louisiana Citizens Prop. Ins.*

*Corp.*, 2007 WL 128801 at \*2 (E.D. La. Jan. 16, 2007) (denying motion to remand relying upon A.M. Best data).<sup>1</sup>

20. The data contained in the A.M. Best Report demonstrates that Allstate Insurance Group, which is comprised of five of the defendants in this action, had a market share of 21.8% of the Louisiana homeowners insurance marketplace in 2005.<sup>2</sup> (Ex. B at ¶ 9 and Ex. 1.) This means all other insurance carriers represent 78.2% of the Louisiana homeowners insurance marketplace. (*Id.*)

21. Thus, logic would dictate that the total amount at issue in this action is 5 times more than that at issue just for Allstate, a number that greatly exceeds the \$5,000,000 CAFA amount in controversy requirement.

22. Additionally, as discussed above, Plaintiff's Amended Petition seeks penalties and attorneys' fees in addition to compensatory damages.<sup>3</sup> (Am. Petition ¶¶ 98-107.) These additional amounts are properly included in the amount in controversy calculation. *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253-54 (5<sup>th</sup> Cir. 1998) (noting that attorneys' fees and penalties are included in determining jurisdictional amount when party could

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<sup>1</sup> The same market share data report relied upon by the court in *Gauntt* is included in Exhibit B, the Affidavit of Paul Tracey, as Exhibit 1 thereto. (Ex. B at Ex. 1.) The report is entitled "Top 50 Homeowners Insurers in Louisiana by Written Premium" (the "A.M. Best Report").

<sup>2</sup> The A.M. Best Report does not contain data for Louisiana Citizens Property Insurance Corporation ("Louisiana Citizens"), *see, infra*, footnote 6, so these market share figures do not include premiums written by Louisiana Citizens.

<sup>3</sup> Allstate denies that attorneys' fees are properly recoverable under the Louisiana bad faith statutes in force at the relevant time alleged in the Amended Petition, including La. Rev. Stat. 22:658. But regardless of whether Plaintiff could recover attorneys' fees under those statutes, attorneys' fees are still properly considered toward the amount in

be liable for same under state law). These potential penalties and fees simply swell the amount in controversy and further establish that the amount in controversy requirement is met.

23. In short, it is clear that much more than \$5,000,000 is in controversy in this action, so the CAFA amount in controversy requirement is met.

#### **IV. The Exceptions To CAFA Do Not Apply Here.**

24. As a threshold issue, Plaintiff bears the burden of establishing any applicable exceptions to CAFA jurisdiction. *See, e.g., Preston II*, 485 F.3d at 797 (noting that in the consolidated case, *Preston I*, the Fifth Circuit held that the “parties moving to remand the class action to state court must prove that the CAFA exceptions to federal jurisdiction divest the district court of subject matter jurisdiction.”) (citing *Preston I*, 485 F.3d at 812). CAFA provides two mandatory exceptions to the application of federal jurisdiction, and one discretionary exception.<sup>4</sup> 28 U.S.C. § 1332(d)(3)-(4); *see also Preston II*, 485 F.3d at 797 (noting that CAFA provided three provisions that allow a court to decline to exercise CAFA jurisdiction). However, as demonstrated below, none of these exceptions is applicable here.

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controversy in the context of the removal of this action. *See generally Foret v. Southern Farm Bureau Life Ins. Co.*, 918 F.2d 534, 536-37 (5<sup>th</sup> Cir. 1990).

<sup>4</sup> CAFA also contains an exception when a State, or State actor is a primary defendant. 28 U.S.C. § 1332(d)(5)(a). Here, of course, the State is a Plaintiff and as such this exception is inapplicable on its face. *See generally Frazier v. Pioneer Ams. LLC*, 455 F.3d 542 (5<sup>th</sup> Cir. 2007) (discussing this exception generally). Similarly, the Eleventh Amendment is not an issue in this removal. *Oklahoma v. Magnolia Marine Transp. Co.*, 359 F.3d 1237, 1240 (10<sup>th</sup> Cir. 2004) (holding that the Eleventh Amendment did not bar removal of an action brought by a state as plaintiff); *California v. Dynegy, Inc.*, 375 F.3d 831, 848-49 (9<sup>th</sup> Cir. 2004) (same); *California v. Atlantic Richfield Co.*, 488 F.3d 112, 119 (2<sup>nd</sup> Cir. 2007) (same); *see also Huber, Hunt & Nichols, Inc. v. Architectural Stone Co.*, 625 F.2d 22, 24 n.6 (5<sup>th</sup> Cir. 1980) (“Of course, the eleventh amendment is inapplicable where a state is a plaintiff . . . .”); *City & County of San Francisco v. PG&E Corp.*, 433 F.3d 1115 (9<sup>th</sup> Cir. 2006) (following *Dynegy, Inc.*).

1. **The “local controversy” exception is inapplicable.**

25. The local controversy exception requires a court to decline CAFA jurisdiction if (1) greater than two-thirds of the members of the putative class are citizens of the state in which the action was filed; (2) at least one defendant is a defendant from whom members of the class seek significant relief, whose alleged conduct forms a significant basis of the asserted claims, and who is a citizen of the state in which the action was filed; (3) the principal injuries resulting from the alleged conduct of each defendant were incurred in the state in which the action was filed; and (4) no other class action asserting the same or similar factual allegations has been filed against any of the defendants within three years preceding the filing of the instant class action. 28 U.S.C. § 1332(d)(4). All four requirements must be met for the exception to apply, and at least two of the requirements are lacking here. *Id.*; see also *Preston II*, 485 F.3d at 797.

a. **Numerous class actions alleging the same or similar allegations have been filed against the Insurance Company Defendants.**

26. First, requirement four is missing because multiple class actions involving the same or similar basic allegation—that the Insurance Company Defendants did not adequately compensate policyholders for property damage caused by Hurricanes Katrina and Rita—have been filed against Allstate, State Farm, and many of the other Insurance Company Defendants. These actions include (but are by no means limited to): *Chehardy v. Wooley*, Case No. 05-1140 (M.D. La.); *Abadie v. Aegis Sec. Ins. Co.*, Case No. 06-5164 (E.D. La.); *Chauvin v. State Farm Fire and Cas. Co.*, Case No. 05-6454 (E.D. La.); *Wallace v. La. Citizens Prop. Ins. Corp.*, Case No. 06-0114 (E.D. La.); *Sinclair v. Allstate Indemnity Co.*, Case No. 06-1095 (W.D. La.); *Crespo v. Liberty Mut. Fire Ins. Co.*, Case No. 06-4667 (E.D. La.); *Caruso v. Allstate Ins. Co.*, Case No. 06-2613 (E.D. La.); *Spiers v. Liberty Mut. Fire Ins. Co.*, Case No. 06-4493 (E.D. La.); *John v. Nat’l Sec. Fire & Cas. Co.*, Case No. 06-1407 (W.D. La.); *Henry v. Allstate Ins. Co.*,



Case No. 06-11217 (E.D. La.) (*Henry I*); *Henry v. Allstate Ins. Co.*, Case No. 07-1738 (E.D. La.) (*Henry II*); *Gonzales v. Allstate Ins. Co.*, Case No. 07-3546 (E.D. La.); *Aguilar v. Allstate Fire and Casualty Ins. Co.*, Case No. 06-4660 (E.D. La.); *Austin v. Allstate Fire and Casualty Ins. Co.*, Case No. 06-5383 (E.D. La.); *Chetta v. State Farm Fire and Casualty Co.*, Case No. 06-4662 (E.D. La.); *Hammer v. State Farm Fire and Casualty Co.*, Case No. 06-9152 (E.D. La.); *Kiefer v. Allstate Ins. Co.*, Case No. 06-5370 (E.D. La.); *Terrebonne v. Allstate Ins. Co.*, Case No. 06-4697 (E.D. La.); *Turk v. Louisiana Citizens Property Ins. Corp.*, Case No. 05-C-5984-A (27<sup>th</sup> Judicial Dist., Parish of St. Landry, Louisiana); *Williams v. State Farm Fire and Casualty Co.*, Case No. 06-2919 (E.D. La.); *Maynard v. St. Paul Travelers Cos.*, 06-11385 (E.D. La.); *In re Katrina Canal Breaches Consolidated Litig.*, Case No. 05-4182 (E.D. La.).<sup>5</sup>

27. Like the present action, all of these class actions seek the recovery of amounts that Plaintiff alleges the Insurance Company Defendants should have paid to policyholders under their insurance agreements in connection with property damage resulting from Hurricanes Katrina and Rita. Specifically, like the present action, these class actions variously seek determinations that the damage to policyholders' properties was caused by "windstorm," "storm surge," or breaches of the "Greater New Orleans area levee system," rather than by "flood." (Am. Petition ¶¶ 46(a)-(d).) Also like the present action, these class actions variously seek determinations that policyholders were entitled to recover the full values of their homes under "All Risk" policies issued by the Insurance Company Defendants, and pursuant to "Louisiana's Valued Policy Law." (Am. Petition ¶¶ 46(e)-(f).)

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<sup>5</sup> Some of these actions are no longer pending and some of them only remain as individual actions after the court struck the class allegations. For CAFA purposes, however, all that is relevant is that these putative actions were *filed* and that they contain the same or similar allegations against parties who are defendants here. 28 U.S.C. § 1332(d)(4).

28. While Plaintiff artfully alleges that “no class actions have been filed regarding the Road Home Program and the State’s right to insurance proceeds,” that is legally irrelevant. (Am. Petition ¶ 20.) What is legally relevant is that all the above class actions were brought within the last three years, and the gravamen of all those cases was substantively identical to that here—*i.e.*, seeking to recoup alleged Hurricane Katrina and Rita underpayments by the insurance industry.

29. By way of example, both the Amended Petition here and the Petition in *Chehardy* seek nearly identical declaratory relief. Both seek a declaration that the efficient proximate cause of losses suffered by putative class members was windstorm, a covered peril under their policies. (Am. Petition ¶ 46(a); *Chehardy* Am. Petition ¶¶ 3, 6.) Both seek a declaration that the damage caused by water entering affected parishes of Louisiana does not fall within the definition of “storm or tidal surge,” “rising water,” or “flood” (Am. Petition ¶ 46(c); *Chehardy* Am. Petition ¶ 3.)

30. CAFA’s legislative history further demonstrates that Plaintiff’s “creative legal theories,” regarding the Road Home Program are insufficient to satisfy this requirement of the local controversy exception of CAFA: “The final factor is whether one or more class actions asserting the same or similar claims on behalf of the same or other persons have been filed in the last three years. The purpose of this factor is to determine whether a matter should be subject to Federal jurisdiction so that it can be coordinated with other overlapping and parallel class actions. . . . It is the sponsors’ intentions that this factor be broadly interpreted and that plaintiffs not be able to plead around it with creative legal theories. . . . I would like to stress that the inquiry under this criterion should not be whether identical or nearly identical class actions have been filed. Rather, the inquiry is whether *similar factual allegations have been made against the defendant in multiple class actions, regardless of whether the same causes of action were*

asserted or whether the proposed plaintiff classes in the prior case were the same.” 151 Cong. Rec. H731; *see also* S. Rep. No. 109-14, at 35, 38 and 40.

31. Although CAFA only requires one such putative class action to have been filed in order to render the local controversy exception inapplicable, the list above demonstrates that at least a dozen such actions have been filed against various of the Insurance Company Defendants. In fact, some of the recipients that are putative members of this class may very well be named representatives in some of those class actions (although that is not necessary to render the “local controversy exception” inapplicable). As such, this requirement for the local controversy exception is lacking.

**b. The members of the class are not seeking “significant relief” from any Louisiana citizen.**

32. Second, requirement two is not met. Contrary to Plaintiff’s allegation (Am. Petition ¶ 20), the members of the class are not seeking “significant relief” from the Insurance Company Defendants that are Louisiana citizens. The courts that have construed this “significant relief” phrase have held that the relief sought against a defendant is “significant” when “the relief sought against that defendant is a significant portion of the relief sought by the class.” *Escoe v. State Farm Fire & Cas. Co.*, 2007 U.S. Dist. LEXIS 30088 at \*6 (E.D. La. Apr. 23, 2007) (holding the non-diverse agent could not meet the significant relief test); *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1167 (11<sup>th</sup> Cir. 2006) (“a class seeks ‘significant relief’ against a defendant when the relief sought against the defendant is a significant portion of the entire relief sought by the class”) (citation omitted); *Kearns v. Ford Motor Co.*, 2005 U.S. Dist. LEXIS 41614 at \*31-35 (C.D. Cal. Nov. 21, 2005) (same).

33. Here, Plaintiff’s Amended Petition conclusorily alleges that the putative class is seeking significant relief from the eleven Louisiana Insurance Company Defendants. (Am.

Petition ¶ 20.) These conclusory allegations are insufficient to support Plaintiff's burden of establishing this exception to CAFA. *Preston II*, 485 F.3d at 797 (stating that parties seeking remand to state court bear the burden of establishing the elements of the CAFA exceptions) (citing *Preston I*). The only support for this conclusory assertion is Plaintiff's allegation that Louisiana Citizens had in place insurance totaling \$14,005,283,000 as of June 30, 2005. (*Id.*) But this number pales in comparison to the value of property insured by the over 200 non-Louisiana insurers. It also ignores the overwhelming market share of the non-Louisiana Insurance Company Defendants in this case, as discussed above and below.

34. Plaintiff's conclusory assertion is also contradicted by their own allegations, which make it clear that the vast bulk of the putative class members are insured by non-Louisiana Insurance Company Defendants. Plaintiff's Amended Petition names 214 Insurance Company Defendants (and 1 or more unknown ABC defendants). (Am. Petition ¶ 18.) Of these 214 named Insurance Company Defendants a mere 11 are alleged to be Louisiana citizens, and the remaining 203 are alleged to be foreign, non-Louisiana citizens. (Am. Petition ¶¶ 18, 20.)

35. More importantly, market share data demonstrates that the significant relief is being sought from non-Louisiana defendants, not from Louisiana defendants. In fact, one of the Plaintiff State of Louisiana's own agencies, the Louisiana Department of Insurance ("La. DOI"), filed market share data in *Chehardy* that demonstrates that this putative class action is not seeking "significant relief" from Louisiana defendants. See Docket Entry 149 in *Chehardy v. Wooley*, Case Nos. 05-1140, 05-1162, 05-1163 (M.D. La. Jan. 27, 2006). The first report contained in that filing by the La. DOI listed all homeowners insurers who wrote or sold insurance in Louisiana in 2004 in order of the "Total Subject Premium" written by that entity as of their respective March 1, 2005 tax reports. (*Id.* at 3-9.) A copy of that filing is attached

hereto as Exhibit E. This report shows that only 6 of the top 100 homeowners insurers were Louisiana entities. (*Id.*) The 94 non-Louisiana entities were responsible for an overwhelming 89.9% of the 2004 written premium (\$1,217,924,874 of \$1,354,015,842). (*Id.*)

36. Similarly, the A.M. Best data discussed above, and previously relied upon by one court in this Judicial District, demonstrates that the only defendants from whom significant relief is being sought are non-Louisiana defendants. *Gauntt*, 2007 WL 128801 at \*2 (E.D. La. Jan. 16, 2007) (denying motion to remand holding jurisdiction was proper under CAFA and noting this exception was not met since the in state insurers had small market shares, noting that defendants presented data showing that defendants' respective homeowners insurance market shares were: 32.3% for State Farm and 20.6% for Allstate (the non-Louisiana defendants), and only 7.6% combined for Lafayette and Citizens (the Louisiana defendants)); 28 U.S.C. § 1332(d)(4)(A)(II).

37. The data contained in the A.M. Best Report demonstrates that the top two homeowners insurers in Louisiana in 2005 (based on direct written premiums) were: State Farm Group and Allstate Insurance Group. (Ex. B at ¶¶ 9-10, and Ex. 1.) Just these two insurance groups combined represent more than half of the homeowners insurance written in Louisiana.<sup>6</sup>

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<sup>6</sup> The A.M. Best Report data does not contain the written premium for Louisiana Citizens Property Insurance Corporation ("Louisiana Citizens") which is a state-sponsored insurer of last resort with different reporting requirements than other insurers. Louisiana Citizens' last annual statement, for the full year 2004, which is publicly available and filed with the Louisiana Department of Insurance, indicates that in 2004 Louisiana Citizens wrote approximately \$67,500,000 in homeowners insurance premium in Louisiana. (Exhibit C at 8 (stating that direct written homeowners insurance premiums were \$67,488,542).) Louisiana Citizens also has a second unit that writes homeowners coverage. That second unit wrote approximately \$3,150,000 in total direct homeowners premium in 2004. (Exhibit D at 8 (stating that direct written homeowners insurance premiums were \$3,150,004).) These two figures combine for an approximate total of \$70,650,000. The A.M. Best Report indicates that total written premiums for the top 50 insurers in 2004, excluding Louisiana Citizens, was \$925,000,000. Thus, Louisiana

(Ex. B at ¶¶ 9-10 and Ex. 1 (stating that in 2005 State Farm Group's market share was 34.5% of the Louisiana homeowners insurance market and Allstate Insurance Group's market share was 21.8%).) The entities comprising the Allstate Insurance Group that are defendants in this action are all Illinois citizens. (*Id.* at ¶¶ 11-12.) Similarly, the two State Farm Insurance Group entities that are also defendants in this action are both non-Louisiana citizens,<sup>7</sup> and none of the entities comprising the State Farm Insurance Group have Louisiana citizenship.

38. The legislative history discussing this provision of CAFA makes clear that the existence of these 11 Louisiana insurers amongst the 214 Insurance Company Defendants is not sufficient to meet this "significant relief" test. The Senate Committee Report explains the "significant relief" criteria as follows:

Under the second criterion, there must be at least one real local defendant. By that the Committee intends that the local defendant must be a *primary focus* - not just a peripheral defendant. The defendant must be a target from whom significant relief is sought by the class *as opposed to just a subset of the class membership*, as well as being a defendant whose alleged conduct forms a significant basis for the claims asserted by the class.

S. Rep. 109-14, at 40 (emphasis added); *see also Robinson v. Cheetah Transp.*, 2006 U.S. Dist. LEXIS 10129 at \*11-12 (W.D. La. Feb. 27, 2006) (discussing this legislative history).

39. Representative James Sensenbrenner, Chairman of the House Judiciary Committee and a principal CAFA sponsor in the House of Representatives, made a similar point

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Citizens represented approximately 7.1% of the market in 2004 (70,650,000 ÷ (\$925,000,000 + 70,650,000)). Even factoring in Louisiana Citizens, it is clear that the vast bulk of homeowners insurance written in Louisiana is written by non-Louisiana citizens.

<sup>7</sup> State Farm Fire and Casualty Company is a citizen of Illinois by incorporation and principal place of business. State Farm General Insurance Company is a citizen of Illinois and also a citizen of California, by reason of incorporation in Illinois and having its principal place of business in California.

in a colloquy on the House floor immediately prior to that body's CAFA vote. Representative Sensenbrenner stated that a class action in which the local defendant "had contact with only some of the purported class members" and in which most of the relief at issue was being sought from the out-of-state defendants would not satisfy the requirements for application of the local controversy exception. 151 Cong. Rec. H731 (2005); *see also* S. Rep. 109-14, at 40 (if a defendant "had contact with only some purported class members," that defendant "would not be a person from whom significant relief would be sought by the plaintiff class viewed as a whole."). That is precisely the situation with the in-state defendants here.

40. For all these reasons, it is clear that Plaintiff cannot meet its burden of establishing that the local controversy exception applies.

**2. Similarly, the "home state controversy" exception is inapplicable.**

41. The home state controversy exception requires a court to decline CAFA jurisdiction if "two-thirds or more of all proposed plaintiff classes, and the *primary* defendants, are citizens of the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4)(B) (emphasis added).

42. Here, the "primary" defendants are not Louisiana citizens; rather, as discussed above, they are out of state insurers as can be demonstrated by unequivocal market share data. *Gauntt*, 2007 WL 128801 at \*2; *supra* ¶¶ 33-35.

43. Moreover, the plain meaning of the term "primary" in 28 U.S.C. § 1332(d)(4)(B) is even more limiting than the term "significant," and thus, the home state exception on its face should apply only if the most important or key defendant is a non-diverse one. *See Kendrick v. Std. Fire Ins. Co.*, 2007 U.S. Dist. LEXIS 28461 at \*18-20 (E.D. Ky. Mar. 31, 2007) (noting the legislative commentary suggests that "primary defendants are those believed to be liable to the



vast majority of the class members, and that all of the primary defendants must be residents of the home state.”)

44. Here, as discussed above, it is clear that the “primary” defendants are non-Louisiana ones. Thus, Plaintiff cannot meet its burden of establishing this exception to CAFA jurisdiction.

**3. The discretionary exception to CAFA jurisdiction also is inapplicable.**

45. The discretionary exception to CAFA does not apply in this case either. 28 U.S.C. § 1332(d)(3). Under CAFA, a court may decline to exercise CAFA jurisdiction in its discretion if “greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the *primary* defendants are citizens of the State in which the action was originally filed.” *Id.* (emphasis added). Because the “primary” defendants are non-Louisiana citizens as discussed above for the home state exception, the discretionary exception is similarly inapplicable.

46. Accordingly, because the CAFA prerequisites are met and none of the exceptions apply, this case is properly removable under CAFA.

**V. Even If This Court Found A CAFA Exception Applied, The Claims Against The Louisiana Insurance Company Defendants Were Fraudulently Misjoined With Those Against Allstate And CAFA Removal Is Appropriate As To Allstate.**

47. Finally, even if this Court were to find that one of the exceptions to CAFA applied (despite the above authorities and the plain language of CAFA), CAFA jurisdiction would still be proper as to Allstate under the doctrine of fraudulent misjoinder.<sup>8</sup>

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<sup>8</sup> This argument would almost certainly apply with equal force to the 203 other non-Louisiana Insurance Company Defendants.

48. Where, as here, parallel but unrelated claims are joined against separate diverse and non-diverse defendants, the claims against the non-diverse defendants are considered fraudulently misjoined and cannot serve as a basis for defeating federal jurisdiction. *Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1359-60 (11<sup>th</sup> Cir. 1996) *abrogated on other grounds by Cohen v. Office Depot*, 204 F.3d 1069 (11<sup>th</sup> Cir. 2000). *In re Benjamin Moore & Co.*, 309 F.3d 296 (5<sup>th</sup> Cir. 2002); *Crockett v. R.J. Reynolds Tobacco Co.*, 436 F.3d 529, 533 (5<sup>th</sup> Cir. 2006).

49. Numerous courts in this Judicial District have applied the fraudulent misjoinder doctrine to nearly identical claims brought by insureds of different insurers arising out of Hurricanes Katrina and Rita. *Accardo v. Lafayette Ins. Co.*, 2007 U.S. Dist. LEXIS 6859 at \*20-21 (E.D. La. Jan. 30, 2007) (Vance, J.) (applying the doctrine of fraudulent misjoinder to sever parallel claims brought by insureds against 18 different insurance company defendants arising out of Hurricane Katrina property damage such that the presence of a nondiverse defendant did not defeat removal jurisdiction); *see also Berthelot v. Boh Brothers Construction Co., L.L.C.*, 2006 U.S. Dist. LEXIS 51603 at \*37-38 (E.D. La. June 1, 2006) (Duval, J.) (applying the doctrine of fraudulent misjoinder); *Defourneaux v. Metropolitan Property & Casualty Ins. Co.*, 2006 U.S. Dist. LEXIS 61550, at \*2 (E.D. La. Aug. 30, 2006) (Feldman, J.) (same).

50. The fact that this action is a putative class action and is being removed pursuant to CAFA does not alter this result. The basis for the fraudulent misjoinder doctrine is Rule 20 of the Federal Rules of Civil Procedure which applies with equal force to putative class actions. Notably, *Tapscott* itself involved a putative class action, and the Eleventh Circuit held that the claims of the two classes were not sufficiently related to be brought together, thus requiring severance and allowing the diverse class to be removed. *Tapscott*, 77 F.3d at 1359-60; *see also Turpeau v. Fidelity Financial Servs., Inc.*, 936 F. Supp. 975, 978 (N.D. Ga. 1996) (“Plaintiffs


assert that, since all of [the requirements for class certification] are satisfied in the instant case, the action should be allowed to proceed in spite of the joinder rules. Plaintiffs misapprehend the application of Rules 20 and 23. The prerequisites to a class action determine whether a class is maintainable—in this case, a plaintiff class. Rule 23(a) does not purport to address, however, the propriety of this plaintiff class suing a group of defendants. Thus, the inquiry must shift to the issue of permissive joinder under Rule 20.”).

51. Here, the claims being alleged against Allstate and against the Louisiana Insurance Company Defendants are merely parallel. The putative class members that have claims against Allstate do not also have claims against the Louisiana Insurance Company Defendants. To the contrary, just as was the situation in the above cases and in *Tapscott* itself, Plaintiff has improperly combined several separate and distinct putative class actions into one putative action in violation of Rule 20 of the Federal Rules of Civil Procedure. Thus, the claims against Allstate should be severed from the wholly unrelated claims being asserted against the other 209 Insurance Company Defendants and this Court should find that it has CAFA jurisdiction over the claims against Allstate for all the reasons discussed above.

**WHEREFORE**, Defendants Allstate Insurance Company, Allstate Indemnity Company, Encompass Insurance Company, Encompass Insurance Company of America, and Encompass Property and Casualty Company respectfully request this Court assume full jurisdiction over this action.

Dated: September 11, 2007

Respectfully submitted,

  
\_\_\_\_\_  
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Insurance Company, Encompass Insurance  
Company of America, and Encompass  
Property and Casualty Company*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Notice of Removal has been served upon all counsel of record by placing same in the U.S. mail, postage prepaid and properly addressed, this 11th day of September, 2007.

  
\_\_\_\_\_



INSURANCE COMPANY; AMERICAN MODERN \*  
SURPLUS LINES INSURANCE COMPANY; THE \*  
AMERICAN INSURANCE COMPANY; AMERICAN \*  
MANUFACTURERS MUTUAL INSURANCE \*  
COMPANY; AMERICAN MODERN INSURANCE \*  
GROUP; AMERICAN NATIONAL INSURANCE \*  
COMPANY; AMERICAN NATIONAL GENERAL \*  
INSURANCE COMPANY; AMERICAN NATIONAL \*  
PROPERTY AND CASUALTY; AMERICAN \*  
RELIABLE INSURANCE COMPANY; AMERICAN \*  
SECURITY INSURANCE COMPANY; AMERICAN \*  
SOUTHERN INSURANCE COMPANY; AMERICAN \*  
SOUTHERN HOME INSURANCE COMPANY; \*  
AMERICAN SUMMIT INSURANCE COMPANY; \*  
AMERICAN VEHICLE INSURANCE COMPANY; \*  
AMERICAN WESTERN HOME INSURANCE \*  
COMPANY; ANPAC LOUISIANA INSURANCE \*  
COMPANY; ASSURANT; AMICA MUTUAL \*  
INSURANCE COMPANY; ARMED FORCES \*  
INSURANCE EXCHANGE; ARROWHEAD GENERAL \*  
INSURANCE GROUP; ASSURANCE COMPANY OF \*  
AMERICA; AUDUBON INSURANCE COMPANY; \*  
AUDUBON INSURANCE GROUP; AULTON VANN, \*  
JR. INSURANCE AGENCY; THE AUTOMOBILE \*  
INSURANCE COMPANY OF HARTFORD \*  
CONNECTICUT; BALBOA INSURANCE COMPANY; \*  
BANKERS INSURANCE COMPANY; BEACON \*  
INSURANCE GROUP; BEST INSURERS, INC.; \*  
CENTRE INSURANCE COMPANY; CENTURY- \*  
NATIONAL INSURANCE COMPANY; CERTAIN \*  
UNDERWRITERS AT LLOYD'S OF LONDON \*  
(LONDON MARKET INSURERS); CHUBB \*  
INDEMNITY INSURANCE COMPANY; CHUBB \*  
INSURANCE GROUP; CHUBB CUSTOM \*  
INSURANCE COMPANY; CHUBB NATIONAL \*  
INSURANCE COMPANY; CLARENDON NATIONAL \*  
INSURANCE COMPANY; COASTAL INSURANCE \*  
ASSOCIATES; THE CONTINENTAL INSURANCE \*  
COMPANY; COUNTRY LIVING INSURANCE, INC.; \*  
DIRECTSOURCE INSURANCE COMPANY; \*  
ECONOMY PREMIER ASSURANCE COMPANY; \*  
ELECTRIC INSURANCE COMPANY; EMC \*  
PROPERTY & CASUALTY INSURANCE COMPANY; \*  
EMCASCO INSURANCE COMPANY; EMPIRE FIRE \*  
AND MARINE INSURANCE COMPANY; EMPIRE \*  
INDEMNITY INSURANCE COMPANY; EMPLOYERS \*

MUTUAL CASUALTY COMPANY; ENCOMPASS \*  
INDEMNITY COMPANY; ENCOMPASS INSURANCE \*  
COMPANY OF AMERICA; ENCOMPASS PROPERTY \*  
AND CASUALTY COMPANY; ESSEX INSURANCE \*  
COMPANY; FARMERS HOME GROUP; FARMERS \*  
INSURANCE EXCHANGE; FARMERS INSURANCE \*  
GROUP; FEDERAL INSURANCE COMPANY; \*  
FIDELITY AND CASUALTY COMPANY OF NEW \*  
YORK; FIDELITY AND DEPOSIT COMPANY OF \*  
MARYLAND; FIDELITY NATIONAL INSURANCE \*  
COMPANY; FIDELITY NATIONAL PROPERTY AND \*  
CASUALTY INSURANCE COMPANY; FIREMAN'S \*  
FUND INSURANCE COMPANY; FIREMAN'S FUND \*  
INSURANCE OF LOUISIANA; FIRST PREMIUM \*  
INSURANCE GROUP; FOREMOST INSURANCE \*  
COMPANY; FOREMOST PROPERTY AND \*  
CASUALTY INSURANCE COMPANY; FOREMOST \*  
SIGNATURE INSURANCE COMPANY; GENERAL \*  
INSURANCE COMPANY OF AMERICA; GREAT \*  
AMERICAN ALLIANCE INSURANCE COMPANY; \*  
GREAT AMERICAN ASSURANCE COMPANY; \*  
GREAT AMERICAN INSURANCE COMPANY OF \*  
NEW YORK; GREAT AMERICAN SECURITY \*  
INSURANCE COMPANY; GREAT AMERICAN \*  
SPIRIT INSURANCE COMPANY; GREAT \*  
AMERICAN INSURANCE COMPANY; GREAT \*  
NORTHERN INSURANCE COMPANY; GUIDEONE \*  
INSURANCE; GUIDEONE MUTUAL INSURANCE \*  
COMPANY; GUIDEONE SPECIALTY MUTUAL \*  
INSURANCE COMPANY; HANCOCK METLIFE \*  
INSURANCE AGENCY; THE HANOVER AMERICAN \*  
INSURANCE COMPANY; THE HANOVER \*  
INSURANCE COMPANY; HARLESYVILLE \*  
MUTUAL INSURANCE COMPANY; HARTFORD \*  
ACCIDENT AND INDEMNITY COMPANY; \*  
HARTFORD CASUALTY INSURANCE COMPANY; \*  
HARTFORD FIRE INSURANCE COMPANY; \*  
HARTFORD INSURANCE COMPANY OF THE \*  
MIDWEST; HARTFORD INSURANCE COMPANY OF \*  
THE SOUTHEAST; HARTFORD INSURANCE \*  
GROUP; HARTFORD UNDERWRITERS INSURANCE \*  
COMPANY; HOMESITE INSURANCE COMPANY; \*  
HORACE MANN INSURANCE COMPANY; HORACE \*  
MANN PROPERTY & CASUALTY INSURANCE \*  
COMPANY; HSBC INSURANCE COMPANY OF \*  
DELAWARE; INSURANCE BARN; KEMPER AUTO \*



& HOME; LAFAYETTE INSURANCE COMPANY; \*  
LEXINGTON INSURANCE COMPANY; LIBERTY \*  
PERSONAL INSURANCE COMPANY; LIBERTY \*  
MUTUAL FIRE INSURANCE COMPANY; LIBERTY \*  
MUTUAL INSURANCE COMPANY; LIGHTHOUSE \*  
INSURANCE SERVICES; LM PROPERTY AND \*  
CASUALTY INSURANCE COMPANY; LOUISIANA \*  
CITIZENS PROPERTY INSURANCE CORPORATION; \*  
LOUISIANA FARM BUREAU CASUALTY \*  
INSURANCE COMPANY; LOUISIANA FARM \*  
BUREAU MUTUAL INSURANCE COMPANY; \*  
LUMBERMENS MUTUAL CASUALTY COMPANY; \*  
MARKEL INSURANCE COMPANY; MARKEL \*  
INTERNATIONAL INSURANCE COMPANY \*  
LIMITED; MASSACHUSETTS BAY INSURANCE \*  
COMPANY; MERASTAR INSURANCE COMPANY; \*  
MERITPLAN INSURANCE COMPANY; \*  
METROPOLITAN CASUALTY INSURANCE \*  
COMPANY; METROPOLITAN PROPERTY AND \*  
CASUALTY INSURANCE COMPANY; MISSISSIPPI \*  
WINDSTORM UNDERWRITING ASSN. (MWUA); \*  
MUTUAL SAVINGS INSURANCE; MUTUAL \*  
SAVINGS FIRE INSURANCE COMPANY; \*  
NATIONAL CASUALTY COMPANY; NATIONAL \*  
FARMERS UNION PROPERTY AND CASUALTY \*  
COMPANY; NATIONAL LLOYDS INSURANCE \*  
COMPANY; NATIONAL SECURITY FIRE AND \*  
CASUALTY COMPANY; NATIONAL SURETY \*  
CORPORATION; NATIONAL UNION FIRE \*  
INSURANCE COMPANY OF LOUISIANA; \*  
NATIONAL UNION FIRE INSURANCE COMPANY \*  
OF PITTSBURGH, PA; NATIONWIDE; \*  
NATIONWIDE AFFINITY INSURANCE COMPANY \*  
OF AMERICA; NATIONWIDE MUTUAL FIRE \*  
INSURANCE COMPANY; NATIONWIDE MUTUAL \*  
INSURANCE COMPANY; OMEGA INSURANCE \*  
COMPANY; OMEGA ONE INSURANCE COMPANY; \*  
PACIFIC INDEMNITY COMPANY; PROPERTY AND \*  
CASUALTY INSURANCE COMPANY OF \*  
HARTFORD; PRIME INSURANCE COMPANY; \*  
PRIME INSURANCE SYNDICATE; PROCTOR \*  
FINANCIAL, INC.; REPUBLIC FIRE AND \*  
CASUALTY INSURANCE COMPANY; REPUBLIC \*  
INSURANCE COMPANY; SAFECO INSURANCE \*  
COMPANY OF AMERICA; SCOTTSDALE \*  
INDEMNITY COMPANY; SCOTTSDALE \*

INSURANCE COMPANY; SECURITY PLAN FIRE \*  
INSURANCE COMPANY; SHELTER GENERAL \*  
INSURANCE COMPANY; SHELTER MUTUAL \*  
INSURANCE COMPANY; SOUTHWEST BUSINESS \*  
CORPORATION; ST. PAUL; ST. PAUL'S \*  
TRAVELERS INSURANCE COMPANY; ST. PAUL \*  
FIRE AND MARINE INSURANCE COMPANY; ST. \*  
PAUL GUARDIAN INSURANCE COMPANY; ST. \*  
PAUL MERCURY INSURANCE COMPANY; ST. \*  
PAUL PROTECTIVE INSURANCE COMPANY; ST. \*  
PAUL SURPLUS LINES INSURANCE COMPANY; \*  
THE STANDARD FIRE INSURANCE COMPANY; \*  
STANDARD GUARANTEE INSURANCE COMPANY; \*  
STATE FARM FIRE AND CASUALTY COMPANY; \*  
STATE FARM GENERAL INSURANCE COMPANY; \*  
STATE NATIONAL INSURANCE COMPANY; \*  
STEWART, SNEED & HEWES; TEACHERS \*  
INSURANCE COMPANY; TEACHERS INSURANCE \*  
AND ANNUITY ASSOCIATION OF AMERICA; \*  
TOKIO MARINE & NICHIDO FIRE INSURANCE \*  
CO. LTD.; TRAVELERS CASUALTY INSURANCE \*  
COMPANY OF AMERICA; TRAVELERS CASUALTY \*  
AND SURETY COMPANY; TRAVELERS HOME AND \*  
MARINE INSURANCE COMPANY; THE \*  
TRAVELERS INDEMNITY COMPANY; THE \*  
TRAVELERS INDEMNITY COMPANY OF \*  
AMERICA; THE TRAVELERS INDEMNITY \*  
COMPANY OF CONNECTICUT; TRAVELERS \*  
INSURANCE COMPANY; TRAVELERS PROPERTY \*  
CASUALTY COMPANY OF AMERICA; TRAVELERS \*  
PROPERTY CASUALTY INSURANCE COMPANY; \*  
TRINITY UNIVERSAL INSURANCE COMPANY; \*  
TRINITY UNIVERSAL INSURANCE COMPANY OF \*  
KANSAS, INC.; TWIN CITY FIRE INSURANCE \*  
COMPANY; UNION NATIONAL FIRE INSURANCE \*  
COMPANY; UNITED FIRE AND CASUALTY \*  
COMPANY; UNITED FIRE & INDEMNITY \*  
COMPANY; UNITED NATIONAL CASUALTY \*  
INSURANCE COMPANY; UNITED SERVICES \*  
AUTOMOBILE ASSOCIATION; UNITRIN AUTO \*  
AND HOME INSURANCE COMPANY; UNITRIN \*  
PREFERRED INSURANCE COMPANY; USAA \*  
CASUALTY INSURANCE COMPANY; USAA \*  
GENERAL INDEMNITY COMPANY; USAA; \*  
VIGILANT INSURANCE COMPANY; VOYAGER \*  
INDEMNITY INSURANCE COMPANY; VOYAGER \*

PROPERTY AND CASUALTY INSURANCE \*  
 COMPANY; WATERSTREET COMPANY; \*  
 WESTCHESTER FIRE INSURANCE COMPANY; \*  
 WESTERN DIVERSIFIED CASUALTY INSURANCE \*  
 COMPANY; WESTERN WORLD INSURANCE \*  
 COMPANY; WNC INSURANCE SERVICES, INC.; \*  
 WRIGHT & PERCY INSURANCE; ZC STERLING \*  
 CORPORATION; ZC STERLING INSURANCE \*  
 AGENCY, INC.; ZURICH AMERICAN INSURANCE \*  
 COMPANY; ZURICH NORTH AMERICA; AND ABC \*  
 INSURANCE COMPANIES, \*  
 \*  
 Defendants. \*  
 \*

\* \* \* \* \*

**NOTICE OF REMOVAL TO ADVERSE PARTY**

TO: The Honorable Charles C. Foti, Jr.  
 Attorney General, State of Louisiana  
 1885 North Third Street, 6th Floor  
 Baton Rouge, Louisiana 70802

Paul G. Aucoin  
 Paul G. Aucoin, Attorney at Law  
 135 Goodwill Plantation  
 Vacherie, Louisiana 70090

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 519 Florida Avenue, S.W.  
 Denham Springs, Louisiana 70726

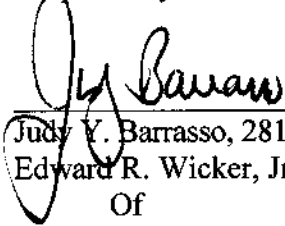
Joseph J. McKernan  
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 8710 Jefferson Highway  
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Drew A. Ranier  
 Ranier, Gayle, and Elliot, L.L.C.  
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The Dudenhefer Law Firm  
A Limited Liability Company  
Pan American Life Center  
601 Poydras Street, Suite 2655  
New Orleans, Louisiana 70130

**PLEASE TAKE NOTICE** that a Notice of Removal of the above-captioned action was filed in the United States District Court for the Eastern District of Louisiana on September 11, 2007.

Respectfully Submitted,



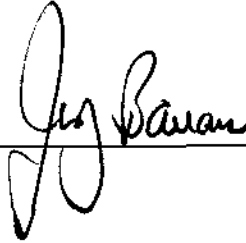
Judy Y. Barrasso, 2814  
Edward R. Wicker, Jr., 27138

Of  
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*Attorneys for Allstate Insurance  
Company, Allstate Indemnity  
Company, Encompass Indemnity  
Company, Encompass Insurance  
Company of America and  
Encompass Property and Casualty  
Company*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Notice of Removal To Adverse Party has been served upon all counsel of record by placing same in the United States mail, postage prepaid and properly addressed, this 11th day of September, 2007.

  
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