

BAD FAITH BLOG

# Insurer Wins! Supreme Court of Louisiana Rules that Hurricane Katrina Property Damage Claimants, Can't Get No Class Action Satisfaction (For Statutory Bad Faith or on Other Claims)

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Summary: The fact intensive nature of bad faith/extra-contractual damages claims make them unsuitable for class action treatment.

Dupree v. Lafayette Insurance Co. 51 So.3d 673, 2009-2602 (La. 11/30/10)

Natural disasters spawn death and destruction along with pain and agony as demonstrated by the recent Japanese and New Zealand earthquakes and tsunamis. Hurricane Katrina was no different. Another commonly accepted fact (at least in this country) is that wherever there are deep pockets, including insurance companies, litigation will follow. Hurricane Katrina was no exception there either. It has spawned numerous cases, including a fair number of class action cases, against property and casualty insurance companies.

Lafayette Insurance Company was the target of one such class action. In addition to seeking recoveries for covered losses under the policies of insurance issued by Lafayette, class counsel and the class representatives sought the full range of extra-contractual damages allowed under Louisiana statutes to include damages, penalties, attorney's fees, and costs, due to Lafayette's alleged failure to pay claims within 30 or 60 days. The trial court certified the proposed class relying upon Court of Appeals rulings affirming class certification against the Louisiana Citizen's Fair Plan and Louisiana Citizen's Property Insurance Corp. The class certification was affirmed by the Court of Appeals but, thereafter, reversed by the Supreme Court of Louisiana.

As noted in my earlier blog post discussing *Cherry v. Audobon Insurance Company*, Louisiana insureds are entitled to recover statutory penalties by showing “(1) an insurer has received satisfactory proof of loss, (2) the insurer fails to tender payment within 30 or 60 days of receipt thereof, and (3) the insurer’s failure to pay is arbitrary, capricious or without probable cause.” The Louisiana statutes further provide that Louisiana insurers owe insureds “a duty of good faith and fair dealing.” The Supreme Court cited several earlier cases establishing that the elements for the recovery of statutory penalties are well settled. Relying upon the Louisiana class action statutory requirements, the Court also demonstrated that it was equally clear that such claims were not appropriate for class action treatment. After distinguishing the fairly recent Court of Appeals precedents upon which the trial court had relied, the Supreme Court noted that the plaintiffs’ claims against Lafayette were that it had “misadjusted or denied their claims in violation of its statutory duties of good faith and fair dealing” which would “necessarily require intensive review of the individual facts of each putative class member’s damage claim, which under these circumstances are not suitable for resolution on a class-wide basis.” Instead, the resolution of such claims would require a “mini-trial” of each insured’s claim. Accordingly, in addition to holding that the claimants had failed to satisfy the class action commonality requirement, the Supreme Court ruled that the trial court improperly found that “common factual or legal issues predominate over individual questions and a class action is superior to other available methods for the fair and efficient adjudication of the plaintiffs’ claims.”

The statutory extra-contractual penalty discussion in the *Dupree* case was a relatively small portion of the court’s lengthy opinion. However, it demonstrates to insurers and insureds alike that bad faith/extra-contractual claims are fact intensive so they must be decided on a case by case basis. Fact intensive claims are almost by definition inappropriate for class action treatment. As demonstrated by the Supreme Court of Louisiana in *Dupree*, property insurers faced with class action litigation seeking extra-contractual damages resulting from natural and mass disasters have good reason to resist class certification emphasizing the need for individualized, fact intensive inquiries at trial regarding both whether there is coverage for the claim in the first instance and, in addition, whether extra-contractual damages claims (both common law and statutory bad faith) are involved.