

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

**IN RE KATRINA CANAL BREACHES
CONSOLIDATED LITIGATION**

CIVIL ACTION

NO. 05-4182

**PERTAINS TO:
BARGE**

SECTION "K"(2)

ORDER AND REASONS

Before the Court is a Motion for Leave of Court to File New York Marine and General Insurance Company, American Home Assurance Company, and the Northern Assurance Company of America's First Amended Answer, Affirmative Defenses and Cross-Claims Against Lafarge North America, Inc. and American Steamship Owners Mutual Protection & Indemnity Association (Doc. 14591). This motion was filed because the Barge plaintiffs had sought to have the Court rule on certain insurance coverage disputes despite the fact that these issues were pending in the Southern District of New York before Judge Haight. In response, the Excess Insurers filed this Motion for Leave to File its First Amended Answer to assert their cross-claims and to file the appropriate motions against Lafarge and the Club in this Court if it took up the insurance issues. (Doc. 14591-2 at 3).

However, on August 29, 2008, this court made clear to plaintiffs that it would not take up the insurance dispute as Judge Haight had informed the Court that he intended to decide this matter on an expedited basis. (Doc. 14719). And indeed, on September 29, 2008, the insurance coverage issue between American Steamship Owners Mutual Protection and Indemnity Association, Inc. and Lafarge was decided by Judge Haight, *American Steamship Owners Mutual Protection and Indemnity Association, Inc. v. Lafarge North America, Inc.*, 2008 WL

4449353 (S.D.N.Y. September 29, 2008), wherein he found that the American Club policy did not provide coverage for the barge ING4727.

Furthermore, in the instant motion, as further reason to allow the First Amended Answer, American Home Assurance Company and the Northern Assurance Company of America opine that their declaratory judgment action already filed in New York which concerns corollary insurance issues had been stayed. However, the Court has been informed that a status conference was held in these matters and that Judge Haight is seeking an expedited resolution of these issues as well with dispositive motions to be filed and served on November 3, 2008, opposition papers by December 1, 2008, and reply papers by December 12, 2008. Judge Haight has further informed the Court that he intends to rule on these motions forthwith.

Thus, it is clear that this entire coverage matter has been and will be adjudicated in New York and in the Second Circuit Court of Appeals in a timely fashion. For reasons of comity and judicial economy, this Court will not undertake a second look at the precise same issues. Such a course of action could potentially wreak havoc and create unnecessary conflicts. Judge Haight determined that the first to file rule was not applicable to these disputes and as such, the Court will not take any action to create any potential conflict. Simply put, two federal courts should not be adjudicating the same issues. The consequences of such a situation could result in two different results that both of which might be binding if upheld by the respective circuits involved. Therefore, this Court will not be complicit in creating such a legal quagmire. Accordingly,

IT IS ORDERED that the Motion for Leave of Court to File New York Marine and General Insurance Company, American Home Assurance Company, and the Northern Assurance

Company of America's First Amended Answer, Affirmative Defenses and Cross-Claims Against Lafarge North America, Inc. and American Steamship Owners Mutual Protection & Indemnity Association (Doc. 14591) is **DENIED**.

New Orleans, Louisiana, this 9th day of October, 2008.



STANWOOD R. DUVAL, JR.
UNITED STATES DISTRICT COURT JUDGE