

RALPH KATZ

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NO. 2004-CA-1133

VERSUS

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COURT OF APPEAL

**ALLSTATE INSURANCE
COMPANY**

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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MURRAY, J., CONCURS AND ASSIGNS REASONS

I write to further expand upon the majority’s discussion of whether the filing of the class action suit suspended prescription on Mr. Katz’s claim against his insurer.

Neither party has cited, nor have I found, a Louisiana case that addresses the precise issue presented herein, which seems to be one of first impression.

Allstate argues that the reference to “liberative prescription” in La. C.C.P. article 596 means that the suspension granted under that article does not apply to contractual prescription periods such as the one at issue herein. In addition, Allstate cites federal district court cases from various jurisdictions which hold that a plaintiff who files an independent action *before* a determination on class certification has been made cannot benefit

from the tolling of prescription applicable to putative class members under federal law. The underlying rationale for this rule, which is that the plaintiff has effectively “opted out” of the class action by filing his own suit, seems to apply to the instant situation as well.

As the plaintiff has not cited any authority that supports his argument, I agree with the majority that the trial court did not err by granting the exception of prescription. Accordingly, I respectfully concur in the result.