

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 28, 2011

No. 09-30485

Lyle W. Cayce
Clerk

IN RE: KATRINA CANAL BREACHES LITIGATION

LOUISIANA STATE, Individually and on behalf of State of Louisiana,
Division of Administration, Office of Community Development ex rel;
JAMES D. CALDWELL, also known as Buddy Caldwell, proper plaintiff
party, in place of Charles C. Foti, Jr.,

Plaintiffs-Appellees

v.

ANPAC LOUISIANA INSURANCE COMPANY; AMERICAN NATIONAL
GENERAL INSURANCE COMPANY; AMERICAN NATIONAL PROPERTY
& CASUALTY COMPANY; REPUBLIC FIRE AND CASUALTY
INSURANCE COMPANY; AUTO CLUB FAMILY INSURANCE COMPANY;
AEGIS SECURITY INSURANCE COMPANY; AIG CENTENNIAL
INSURANCE COMPANY; AIU INSURANCE COMPANY; ALLSTATE
INDEMNITY COMPANY; ALLSTATE INSURANCE COMPANY; AMERICA
FIRST INSURANCE COMPANY; AMERICAN BANKERS INSURANCE
COMPANY OF FLORIDA; AMERICAN FAMILY INSURANCE; AMERICAN
GENERAL PROPERTY INSURANCE COMPANY; AMERICAN
INSURANCE COMPANY; AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY; AMERICAN MODERN INSURANCE GROUP;
AMERICAN MODERN SURPLUS LINES INSURANCE COMPANY;
AMERICAN RELIABLE INSURANCE COMPANY; AMERICAN SECURITY
INSURANCE COMPANY; AMERICAN SUMMIT INSURANCE COMPANY;
AMERICAN SOUTHERN HOME INSURANCE COMPANY; AMERICAN
WESTERN HOME INSURANCE COMPANY; AMICA MUTUAL
INSURANCE COMPANY; ARMED FORCES INSURANCE EXCHANGE;
ASSURANCE COMPANY OF AMERICA; AUDUBON INSURANCE
COMPANY; BALBOA INSURANCE COMPANY; CERTAIN
UNDERWRITERS AT LLOYDS OF LONDON, London Market Insurers;
CHUBB INDEMNITY INSURANCE COMPANY; CHUBB CUSTOM

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INSURANCE COMPANY; CHUBB NATIONAL INSURANCE COMPANY;
CLARENDON NATIONAL INSURANCE COMPANY; ECONOMY PREMIER
ASSURANCE COMPANY; EMPIRE FIRE & MARINE INSURANCE
COMPANY; EMPIRE INDEMNITY INSURANCE COMPANY; ENCOMPASS
INSURANCE COMPANY OF AMERICA; ENCOMPASS PROPERTY AND
CASUALTY COMPANY; FARMERS INSURANCE EXCHANGE; FEDERAL
INSURANCE COMPANY; FIDELITY AND DEPOSIT INSURANCE
COMPANY OF MARYLAND; FIDELITY NATIONAL INSURANCE
COMPANY; FIDELITY NATIONAL PROPERTY AND CASUALTY
INSURANCE COMPANY; FIREMAN'S FUND INSURANCE COMPANY;
GREAT NORTHERN INSURANCE COMPANY; HANOVER AMERICAN
INSURANCE COMPANY; HANOVER INSURANCE COMPANY;
HARTFORD ACCIDENT & INDEMNITY COMPANY; HARTFORD
CASUALTY INSURANCE COMPANY; HARTFORD FIRE INSURANCE
COMPANY; HARTFORD INSURANCE COMPANY OF THE MIDWEST;
HARTFORD INSURANCE COMPANY OF THE SOUTHEAST, ET AL;
HOMESITE INSURANCE COMPANY; HORACE MANN INSURANCE
COMPANY; HORACE MANN PROPERTY AND CASUALTY INSURANCE
COMPANY; LAFAYETTE INSURANCE COMPANY; LEXINGTON
INSURANCE COMPANY; LIBERTY MUTUAL FIRE INSURANCE
COMPANY; LIBERTY MUTUAL INSURANCE COMPANY; LOUISIANA
FARM BUREAU MUTUAL INSURANCE COMPANY; LOUISIANA FARM
BUREAU CASUALTY INSURANCE COMPANY; MASSACHUSETTS BAY
INSURANCE COMPANY; MERASTAR INSURANCE COMPANY;
MERITPLAN INSURANCE COMPANY; METROPOLITAN CASUALTY
INSURANCE COMPANY; METROPOLITAN PROPERTY AND CASUALTY
INSURANCE COMPANY; NATIONAL LLOYDS INSURANCE COMPANY;
NATIONAL SECURITY FIRE & CASUALTY COMPANY; NATIONAL
UNION FIRE INSURANCE COMPANY OF LOUISIANA; NATIONAL
UNION FIRE INSURANCE COMPANY OF PITTSBURGH,
PENNSYLVANIA; OMEGA ONE INSURANCE COMPANY; SCOTTSDALE
INSURANCE COMPANY; SECURITY PLAN FIRE INSURANCE
COMPANY; SHELTER GENERAL INSURANCE COMPANY; SHELTER
MUTUAL INSURANCE COMPANY; SOUTHWEST BUSINESS
CORPORATION; STANDARD FIRE INSURANCE COMPANY; STATE
FARM FIRE & CASUALTY COMPANY; STATE FARM GENERAL
INSURANCE COMPANY; TRINITY UNIVERSAL INSURANCE COMPANY;
UNION NATIONAL FIRE INSURANCE COMPANY; UNITED FIRE AND
CASUALTY COMPANY; UNITED FIRE AND INDEMNITY 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;

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VOYAGER INDEMNITY INSURANCE COMPANY; VOYAGER PROPERTY AND CASUALTY INSURANCE COMPANY; ZC STERLING CORPORATION; ZC STERLING INSURANCE AGENCY INC; ZURICH AMERICAN INSURANCE COMPANY; ZURICH NORTH AMERICA; METLIFE INC,

Defendants-Appellants

Appeal from the United States District Court
for the Eastern District of Louisiana

Before JONES, Chief Judge, PRADO, Circuit Judge, and O'CONNOR, District Judge.*

EDITH H. JONES, Chief Judge:

In this interlocutory appeal, over 200 insurance companies challenge approximately 151,000 homeowners' insurance claims based upon policyholders' purported assignments of policy rights to the State. Previously, we determined that no controlling Louisiana Supreme Court precedent had determined whether an insurance contract's anti-assignment clause prohibited post-loss assignments of policy rights. *See In re Katrina Canal Breaches Litig.*, 613 F.3d 504 (5th Cir. 2010). Because that issue appeared to be case-dispositive, we certified the following question to the Louisiana Supreme Court:

1) Does an anti-assignment clause in a homeowner's insurance policy, which by its plain terms purports to bar any assignment of the policy or an interest therein without the insurer's consent, bar an insured's post-loss assignment of the insured's claims under the policy when such an assignment transfers contractual obligations, not just the right to money due?

Id. at 512. The Louisiana Supreme Court accepted the certified question and answered it as follows:

* District Judge of the Northern District of Texas, sitting by designation.

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There is no public policy in Louisiana which precludes an anti-assignment clause from applying to post-loss assignments. However, the language of the anti-assignment clause must clearly and unambiguously express that it applies to post-loss assignments, and thus it must be evaluated on a policy by policy basis.

In re Katrina Canal Breaches Litig., No. 2010-CQ-1823, at *1 (La. May 10, 2011). Without contradicting this court’s analysis, however, the Louisiana Supreme Court also observed that “any contradiction or ambiguity in the contract must be strictly construed against the insurer” *Id.* at *12.

In light of the Louisiana Supreme Court’s decision, we are unable to resolve the parties’ dispute in this appeal, and the statute of limitations issues. We VACATE the district court’s judgment and REMAND for further proceedings consistent herewith.

VACATED AND REMANDED.