

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

**CHAREEN GREENWOOD KIRKLAND
AND BRUCE KIRKLAND**

CIVIL ACTION

VERSUS

NO. 10-1940

**TRAVELERS PROPERTY AND CASUALTY
INSURANCE COMPANY, ET AL.**

SECTION "N" (4)

ORDER AND REASONS

Presently before the Court are Plaintiffs' Motion to Remand (Rec. Doc. 6) and "The Standard Fire Insurance Company's Motion to Dismiss Plaintiffs' Petition for Damages Pursuant to Fed. R. Civ. P. 12(b)(6)" (Rec. Doc. 7).¹ The propriety of removal is determined by looking to the plaintiff's complaint as it existed in state court at the time of removal. *See, e.g., Davis v. Dept. of Health and Hospitals*, 195 Fed. Appx. 203, 204-05, 2006 WL 2089264, *1 (5th Cir. 2006); *Cavallini v. State Farm Mut. Auto Ins. Co.*, 44 F.3d 256, 264 (5th Cir.1995); *Boelens v. Redman Homes, Inc.*, 759 F.2d 504 (5th Cir. 1985); *Gaubert v. NCMIC Finance Corp.*, 2010 WL 4026385, (E.D. La. Oct. 13, 2010) (citing *Doddy v. Oxy USA, Inc.*, 101 F.3d 448, 456 (5th Cir.1996)). Thus, for essentially the same reasons stated in The Standard Fire Insurance Company's ("Standard Fire") opposition (Rec. Doc. 8) to Plaintiffs' motion to remand, **IT IS ORDERED** that Plaintiffs' motion

¹ Defendant The Standard Fire Insurance Company indicates that it was initially incorrectly designated in the petition as Travelers Property and Casualty Insurance Company.

to remand is **DENIED**. And, for essentially the same reasons stated in its memorandum in support, **IT IS ORDERED** that Standard Fire's motion to dismiss is **GRANTED**.

It presently appears unlikely that Plaintiffs can amend their petition to state a viable claim against Standard Fire, unless, *e.g.*, the funds in question have been returned to Standard Fire's account, but not turned over to Plaintiffs. In an abundance of caution, however, the Court orders that dismissal of the claims against Standard Fire be without prejudice to Plaintiffs' right to seek leave to amend their petition within fifteen (15) days of entry of this Order and Reasons. Leave to amend will be granted only if Plaintiffs satisfactorily demonstrate why the substance of the requested amendment could not have been included in their petition upon filing or, in any event, prior to removal.

New Orleans, Louisiana, this 22nd day of March 2011.


Kurt D. Engelhardt
United States District Judge