

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

LENA A. PANTANELLI

CIVIL ACTION

VERSUS

NO. 15-139

**UNITED STATES ARMY CORPS
OF ENGINEERS**

SECTION "K"(3)

ORDER AND REASONS

Before the Court is the defendant United States Army Corps of Engineers' Motion to Dismiss (Doc. 4). Having reviewed the Complaint, the motion and memoranda filed and the relevant law, the Court finds the motion of the United States Army Corp of Engineers ("the United States") to have merit.

On January 21, 2015, plaintiff filed a *pro se* complaint which consists of six paragraphs of ambiguous allegations. Apparently, plaintiff experienced 10 feet of flood waters which destroyed her home which emanated from the Seventeenth Street Canal breach. It appears that plaintiff believes that wind "had to have helped bring in more water" and as such both the United States and her insurer State Farm should have paid "half and half for damages."

She complains that while the U.S. Army Corps of Engineers was involved in court proceedings from 1977, she was "not told of this" by State Farm. She alleged that had State Farm told her, she would have carried flood insurance. She did receive \$150,000 from the federal government in 2008 to help her return to her home. She also sued State Farm *pro se* under the wind portion of her policy and was offered \$35,000 in settlement which she did not take as she "did not want to do anything against FEMA." She then requests that the Court "judge her case."

Attached to the "Complaint" are 51 pages of documents concerning her damages, her suit against State Farm, portions of a 1977 decision by Judge Schwartz concerning the levee system, and the docket sheet from that suit.


The United States Army Corps of Engineers' filed the instant Motion to Dismiss pursuant to Fed. R. Civ. Proc. 12(b)(1) and 12(b)(6). It maintains that the suit should be dismissed for lack of subject matter jurisdiction as the United States, not the Army Corps of Engineers, is the only proper defendant in an action under the Federal Tort Claims Act (FTCA). 28 U.S.C. § 1346(b). Moreover, it contends that plaintiff failed to exhaust her administrative remedies under the FTCA before filing this action. 28 U.S.C. § 2675(a). Finally, it maintains that the Discretionary Function Exception under the FTCA, 28 U.S.C. §2680(a) and the Flood Control Act, 33 U.S.C. § 702c bar recovery.

In her opposition, plaintiff makes clear that she is seeking damages in the amount of \$280,000 to her home caused by the failure of the Seventeenth Street Canal. While she includes in this request recompense from State Farm Insurance Company, she has not named the company here and as previously noted has already sued it.

Since the damages she seeks are those caused by the failure of the Seventeenth Street Canal, there is no merit in this suit as this Court has found that the United States is immune for the damages cause by the failure of the Seventeenth Street Canal under the provisions of the Flood Control Act, 33 U.S.C. § 702c which decision and the Fifth Circuit has affirmed. *In re Katrina Canal Breaches Consol. Lit.*, 533 F.Supp.2d 615, 637. 642 (E.D.La. 2008), *aff'd*, 696 F.3d 436, 452 (5th Cir. 2012), *cert. denied sub nom. Lattimore v. United States*, 133 S. Ct. 2855 (2013). Accordingly,

IT IS ORDERED that the United States Army Corps of Engineers' Motion to Dismiss (Doc. 4) is **GRANTED** and judgment shall be entered in favor of the United States Army Corps of Engineers and against Lena A. Pantanelli dismissing this suit with prejudice each party to bear her/its own costs.

New Orleans, Louisiana, this 5th day of August, 2015.



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