

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DENNIS R. and S. IMANI WOULLARD
individually and on behalf of those
similarly situated

PLAINTIFFS

VS.

CIVIL ACTION NO. 1:06-CV-1057-LTS-RHW

**STATE FARM FIRE AND CASUALTY
COMPANY**

DEFENDANT

**MEMORANDUM IN SUPPORT OF ATTORNEY GENERAL'S MOTION TO
INTERVENE TO ENFORCE STATE COURT SETTLEMENT AGREEMENT**

INTRODUCTION

Pursuant to Fed. R. Civ. P. 24, the Attorney General seeks to intervene in this action in order to protect the interests of the State of Mississippi in accordance with a Settlement Agreement executed by the Attorney General and State Farm Fire and Casualty Company, ("State Farm"), Defendant herein. Alternatively, the Attorney General respectfully seeks the Court's permission to participate in the February 28, 2007, hearing set in this matter to address the areas of concern related to the substance of the proposed class action settlement.

FACTUAL BACKGROUND

On January 23, 2007, the Attorney General and State Farm filed a Settlement Agreement, (Exhibit A to the Motion to Intervene), in the Chancery Court of Hinds County, Mississippi, resolving all claims brought on behalf of the State of Mississippi against State Farm in the civil action styled *Jim Hood v. Miss. Farm Bureau Ins. Co. et al.*, Cause No. G-2005-1642 O/3. As part of that Settlement Agreement, State Farm agreed "to establish an administrative procedure to reevaluate claims of State Farm policyholders in Hancock, Harrison, and Jackson Counties who

had residential or commercial policies in effect on August 29, 2005, . . . [that] will establish an orderly, fair, and prompt resolution of claims . . . based upon criteria and guidelines approved by the United States District Court for the Southern District of Mississippi.” Settlement Agreement at p. 3, Section III. Any petition to enforce the terms of this resolution process must be filed in this Court. *Id.* at p. 5, Section VI.(C).

On January 24, 2007, State Farm and the Scruggs Katrina Group submitted to this Court for preliminary approval a proposed class action settlement in the current case, brought by the Woullards on behalf of a proposed class consisting of “all Mississippi residents of Hancock, Harrison and Jackson Counties whose insured property located in Hancock, Harrison and Jackson Counties were insured on August 29, 2005 by certain policies of insurance issued by the State Farm Fire and Casualty Company.” (First Amended Class Action Complaint, PACER Docket Entry No. 23-1, p. 1). The proposed class action settlement did not establish an “orderly, fair and prompt resolution of claims” as required in the State Farm Settlement Agreement with the Attorney General. The Attorney General was not a party to the proposed class action settlement and did not participate in the negotiations of its terms.

By Order dated January 26, 2007, this Court denied preliminary class certification and denied preliminary approval of the proposed class action settlement, citing several concerns regarding the terms of the proposed claims resolution procedure. Specifically, the Court found that only those class members with foundation and pier only sites are guaranteed a minimum payment, and there are insufficient criteria for the Court or potential class members to even roughly estimate what portion they will receive of the \$50,000,000 aggregate minimum State Farm has committed to pay. This uncertainty of payment is exacerbated by the fact that the

overly-complicated claims procedure, under the indirect control of State Farm, does not honor this Court's previous rulings related to interpretation of State Farm's policy provisions. Despite the lack of guaranteed adequate compensation, class members who do not comply with the strict opt-out procedure surrender all potential claims against multiple parties and are subjected to binding arbitration. Moreover, there is no provision for assistance or representation by Class Counsel of class members in pursuing their individual claims. In sum, the Court concluded that the proposal lacks sufficient guidelines to ensure the establishment of a procedure that meets the basic standards of fairness.

The Attorney General shares the Court's concerns regarding the proposed class action settlement. These same shortcomings, and this Court's withholding of its approval, also render the proposal inadequate to comply with the terms of the Attorney General's state court Settlement Agreement with State Farm. As pointed out by this Court in its January 26 Order, the state court Settlement Agreement between the Attorney General and State Farm relies upon the establishment of a fair procedure for reevaluation of claims to be approved by this Court. The current terms of the proposed class action settlement do not satisfy that standard.

Any class resolution of State Farm policyholder claims arising out of Hurricane Katrina will have a significant impact on the viability of the Attorney General's Settlement Agreement with State Farm and is a matter of concern to the general public. As a result, and based on the deficiencies in the proposal currently before the Court, the Attorney General is compelled to seek intervention in this matter to protect interests of the State of Mississippi by enforcing the terms of his Settlement Agreement with State Farm. Alternatively, the Attorney General respectfully requests leave of the Court to participate in the February 28, 2007, hearing in this matter.

ARGUMENT

I. The Attorney General Should Be Allowed to Intervene as a Matter of Right.

Rule 24(a)(2) of the Federal Rules of Civil Procedure provides that a party shall be allowed to intervene in a cause of action as a matter of right when the following factors are met:

- (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action;
- (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair his ability to protect that interest; (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Ford v. City of Huntsville, 242 F.3d 235, 239 (5th Cir. 2001). “[I]t has been the traditional attitude of the federal courts to allow intervention ‘where no one would be hurt and greater justice would be attained.’” *McDonald v. E. J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970).

All four conditions for intervention as a matter of right are plainly satisfied here. Moreover, allowing the Attorney General to intervene will promote the greater justice and will not prejudice any party.

A. The Attorney General's Application is Timely.

The Fifth Circuit has outlined four factors to determine whether an application to intervene is timely:

- (1) The length of time during which the would-be intervenor actually knew or reasonably should have known of its interest in the case before it petitioned for leave to intervene;
- (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as it knew or reasonably should have known of its interest in the case;
- (3) the extent of the prejudice that the would-be intervenor may suffer if intervention is denied; and
- (4) the existence of unusual circumstances militating either for or against a determination that the application is timely.

Sierra Club v. Espy, 18 F.3d 1202, 1205 (5th Cir. 1994) (citing *Stallworth v. Monsanto Co.*, 558 F.2d 257, 267 (5th Cir. 1977)). Promptness should be measured by “the speed with which the would-be intervenor acted when it became aware that its interests would no longer be protected by the original parties.” *Id.* at 1206.

The Attorney General’s interest in this case arises from the proposed class action settlement filed on January 24, 2007, and this Court’s January 26 Order denying preliminary approval. Generally, a petition to intervene filed within one month of the would-be intervenor’s becoming aware of his interest in the case is considered timely. *See Espy*, 18 F.3d at 1206. No apparent prejudice to the Woullards or to State Farm will result from the Attorney General’s submission of his motion to intervene filed within one month of filing of the proposed class action settlement. However, if this Court denies the Attorney General’s motion to intervene, the State of Mississippi will suffer prejudice because satisfaction of the terms of State Farm’s Settlement Agreement with the Attorney General depends upon a fair administrative procedure to reevaluate the class of claims against State Farm presented in this litigation. There are no unusual circumstances under the fourth *Stallworth* factor related to timeliness. Therefore, this Court should determine that the Attorney General’s motion to intervene is timely.

B. The Attorney General Has an Interest in the Subject of this Class Action.

The second component of intervention as a matter of right requires that the would-be intervenor have a “direct, substantial, and legally protectable interest in the proceedings.” However, the Fifth Circuit has held that “the inquiry under subsection (a)(2) is a flexible one, which focuses on the particular facts and circumstances surrounding each application,” and concluded that “intervention of right must be measured by a practical rather than technical

yardstick.” *Ross v. Marshall*, 426 F.3d 745, 753 (5th Cir. 2005). “[T]he ‘interest’ test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Espy*, 18 F.3d at 1207.

The Attorney General’s interest in the current litigation is direct and substantial. The proposed class action settlement purports to resolve the claims arising from Hurricane Katrina of all residents of Hancock, Harrison, and Jackson Counties with property insured by State Farm on August 29, 2005. Under the terms of its Settlement Agreement with the Attorney General, State Farm is required to establish an “orderly, fair, and prompt” procedure to reevaluate these same claims “based upon criteria and guidelines approved by the United States District Court for the Southern District of Mississippi.” Settlement Agreement at p. 3, Section III.B. Because the proposed class action settlement addresses the exact subject matter of the Attorney General’s Settlement Agreement with State Farm, the Attorney General has a legally protectable interest in ensuring that the terms of the class action settlement are in compliance with the terms of his Settlement Agreement with State Farm.

C. The Attorney General Will Be Impaired by Non-Intervention.

The third factor in determining intervention as a matter of right is whether the would-be intervenor is so situated that his ability to protect his interest may be impaired or impeded by disposition of the action. Disposition of this class action will necessarily impair the Attorney General’s ability to protect his interest in enforcing his state court Settlement Agreement with State Farm. That Settlement Agreement requires State Farm to establish a court-approved orderly, fair, and prompt procedure to reevaluate Katrina claims. A class action agreement in this case would either comply with that core requirement or would constitute a breach of the

Settlement Agreement. If the Attorney General is not allowed to intervene, he may have no other opportunity to protect that interest.

D. The Attorney General's Interest is Not Adequately Represented.

The final requirement imposed on a would-be intervenor seeking intervention as a matter of right is to demonstrate that his interest is not adequately represented by any existing party. *Espy*, 18 F.3d at 1207. This burden is “minimal” and requires the applicant to show only that “representation ‘may be’ inadequate.” *Id.* (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). The insufficiencies of the class action settlement proposed by the existing parties to this litigation demonstrate that the Attorney General's interest is not adequately represented in this case. Clearly State Farm's interest cannot be said to align with that of the Attorney General. Moreover, the Attorney General seeks to protect the interests of the State of Mississippi, which by nature are much broader than the interests of private litigants. Because the Attorney General must represent the broad public interest, his interest is not necessarily aligned with the economic concerns of private parties. *See id.* at 1208; *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (interest of private industry may share common ground with public interest but will not necessarily coincide because government's interest is broader than industry's mere economic interest). As a result, this Court should conclude that intervention is necessary in order for the Attorney General to adequately protect the state's interest in this matter.

II. The Attorney General Should Be Granted Permissive Intervention.

Alternatively, the Attorney General respectfully requests that this Court allow him to permissively intervene pursuant to Fed. R. Civ. P. 24(b)(2). Even when the factors supporting intervention as a matter of right are not met, a court has complete discretion to allow a timely

applicant to intervene in a case when the applicant's claim shares a common question of law or fact with the main action. *U.S. v. LULAC*, 793 F.2d 636, 644 (5th Cir. 1986); *Graham v. Evangeline Parish School Bd.*, 132 Fed. Appx. 507, 513 (5th Cir. 2005) (*per curiam*). "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Cajun Elec. Power Co-op., Inc. v. Gulf States Utilities, Inc.*, 940 F.2d 117, 121 (5th Cir. 1991).

For the foregoing reasons, the Attorney General's motion to intervene is timely, and his right to enforce the terms of his Settlement Agreement with State Farm directly coincides with the class action claims in this case. Moreover, the existing parties will suffer no apparent prejudice if the Attorney General is allowed to intervene. As a result, should this Court determine that the Attorney General has no inherent right to intervene, the Attorney General respectfully requests that this Court exercise its discretion to allow him to permissively intervene.

Mississippi law clearly establishes that the Attorney General is a constitutional officer possessed of all the power and authority vested in him by common law and by statute, including the right to "intervene in all actions which were of concern to the general public, including the right to institute, conduct, and maintain all suits necessary for the enforcement of the laws of the state, the preservation of order, and protection of the public rights." *Dunn Const. Co. v. Craig*, 2 So.2d 166, 175 (Miss. 1941). It is of concern to the general public that the global resolution of Katrina claims proposed in this matter be conducted in accordance with the requirements imposed on State Farm by its Settlement Agreement with the Attorney General. Therefore, the Attorney General respectfully requests that this Court permit him to intervene in this matter to protect the public rights.

III. The Attorney General Should Be Allowed to Participate at the February 28 Hearing.

Finally, if this Court denies the Attorney General's motion to intervene, he respectfully requests that this Court allow him to participate in the February 28 hearing in this matter to address the areas of concern related to the substance of the proposed class action settlement. Any global resolution of Katrina claims against State Farm must comply with the terms of the Attorney General's state court Settlement Agreement. As a result, the Attorney General requests an opportunity to address the Court to promote a fair and just resolution of these proceedings that will also satisfy State Farm's obligations under the state court Settlement Agreement.

CONCLUSION

For all of the above and foregoing reasons, the Attorney General respectfully requests that this Court grant his motion to intervene as a matter of right in this action in order to protect the interests of the State of Mississippi. Alternatively, the Attorney General respectfully seeks the Court's permission to intervene, or to participate in the February 28, 2007, hearing set in this matter.

Respectfully submitted, this the 22nd day of February, 2007,

JIM HOOD, ATTORNEY GENERAL FOR THE STATE OF MISSISSIPPI, *EX REL.* THE STATE OF MISSISSIPPI

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CERTIFICATE OF SERVICE

I, Mary Jo Woods, Special Assistant Attorney General of the State of Mississippi, do hereby certify that on February 22, 2007, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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This 22nd day of February, 2007.

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