

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. \_\_\_\_\_

DIVISION: \_\_\_\_\_

STATE OF LOUISIANA

VERSUS

ALL PROPERTY AND CASUALTY INSURANCE CARRIERS AUTHORIZED AND  
LICENSED TO DO BUSINESS IN THE STATE OF LOUISIANA

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

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PETITION FOR DECLARATORY JUDGMENT

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Now comes the State of Louisiana, ex rel. Charles C. Foti, Jr., Attorney General, who respectfully represents as follows:

1.

Pursuant to La. C.C.P. Art. 1872, the State of Louisiana is an interested party with respect to the constitutionality of Acts 739 and 802 of the 2006 Regular Session of the Louisiana Legislature (this Act originated as House Bill No. 1289). This status derives from the Act itself, which, in Section 3, reads:

The attorney general is hereby directed to file suit within ten days of the effective date of this Act seeking declaratory judgment to determine the constitutionality of the provisions of this Act ...

This legislative mandate to file suit seeking declaratory judgment to test the constitutionality of the new law clearly places the State in the position of an interested party under La. C.C.P. Art. 1872.

2.

Pursuant to La. C.C.P. Art. 1880, made defendants herein are all property and casualty insurance carriers authorized and licensed to do business in the State of Louisiana who may have an interest that would be affected by this declaration. Exhibit 1 contains a list of all of the pre-Hurricane Katrina property and casualty insurance carriers

authorized and licensed to operate in Louisiana as of August 28, 2005. Exhibit 2 contains a list of all of the pre-Hurricane Rita property and casualty insurance carriers authorized and licensed to operate in Louisiana as of September 23, 2005. These constitute the parties whose interests are potentially impacted by these Acts and who are made defendants herein and should receive service. *Delchamps, Inc. v. Gisclair*, 696 So.2d 1062, 96-1646 (La.App. 1 Cir. 6/20/97).

3.

Act 739 (House Bill 1289) of the 2006 Regular Legislative Session (attached as Exhibit 3) adds La. R.S. 22:658.3 to the Louisiana Revised Statutes, which extends the prescriptive period within which a claim for damages arising out of Hurricanes Katrina or Rita may be filed by parties pursuant to their “homeowners’ insurance policy, personal property insurance policy, tenant homeowners’ insurance policy, condominium owners’ insurance policy, or commercial property insurance policy.” Act 739, Sec. 1.

4.

Under this new law, claims for damages resulting from Hurricane Katrina may be filed through September 1, 2007, “unless a greater time period to file such a claim is otherwise provided by law or by contract.” Act 739, Sec. 1. Claims for damages resulting from Hurricane Rita may be filed through October 1, 2007, “unless a greater time period to file such a claim is otherwise provided by law or by contract.” *Id.*

5.

Act 802 (House Bill 1302) of the 2006 Regular Legislative Session (attached as Exhibit 4), an uncodified law, provides a

limited exception to the running of prescription and, as such, prevents the running of prescription for one year on any claim seeking to recover for loss or damage to property against an insurer on any homeowners’ insurance policy, including tenant and condominium policies, personal property insurance policy, commercial property insurance policy, or flood insurance policy, on any automobile or fleet policy for loss or damage to an insured’s vehicle cause by flood, wind, or rain, or on any policy for loss or damage to crop or livestock, when such loss was caused by or as a result of Hurricane Katrina or Hurricane Rita, or both.

Act 802, Sec. 2.

6.

The prescriptive period extension in Act 802, Sec. 2, allows the institution of Hurricane Katrina-related claims on or before August 30, 2007 and for Hurricane Rita-related claims on or before September 25, 2007.

7.

Under Louisiana law as it existed prior to the passage of this new legislation, the prescriptive period within which to file such claims as those noted above was limited to one year. See La. R.S. 22:629 (A)(3).

8.

The circumstances surrounding the passage of these Acts necessitate the extension of certain prescriptive periods. As a result of the evacuations and displacements of vast portions of the population of south Louisiana due to the 2005 hurricanes, many people have not yet had an opportunity to assess the damage to their property, let alone consider legal options that they may have to begin to reassemble their broken lives.

9.

For example, according to the Louisiana Recovery Authority, 1.3 million FEMA applicants were scattered across fifty states by Hurricane Katrina. As of April 10, 2006, 360,000 Louisiana citizens were estimated to still be displaced outside of the State. It is further estimated that 204,700 housing units in Louisiana were either destroyed or suffered major damage during the 2005 hurricane season. Additionally, the extraordinary measures that the State was required to undertake in order to facilitate the mayoral elections in New Orleans in April and May of 2006 are telling of the toll that the 2005 storms continue to take on Louisiana. All told, approximately 22,000 Louisiana residents had to cast their votes from locations outside of the State. Due to the recent dates of these elections, this large number of just Orleans Parish residents provides the State with reason, information, and belief that these individuals have not yet been able to return home to assess their losses.

10.

When Hurricane Rita hit southwest Louisiana it devastated coastal communities in Calcasieu, Cameron, Terrebonne, and Vermilion parishes. More specifically, the storm surge associated with Hurricane Rita left Cameron Parish under as much as fifteen

feet of water and leveled nearly 80 percent of the buildings in the Parish. In Calcasieu Parish, the communities of Lake Charles, Sulphur, Westlake, and Vinton also suffered major damage. The combined estimated population size of Calcasieu, Cameron, and Vermillion Parishes before the storms was 244,630. As of January 1, 2006, approximately 8,000 residents have yet to return to this area. In Terrebonne Parish, nearly every levee was breached, inundating the Parish with close to seven feet of water. Substantial damage was sustained in numerous other Louisiana parishes as a result of Hurricane Rita, including, but not limited to, Acadia, Allen, Beauregard, Calcasieu, Iberia, Jefferson Davis, Lafayette, Lafourche, and St. Mary.

11.

In the aftermath of the storms, several Executive Orders were issued by Governor Blanco that extended various legal deadlines in order to allow the displaced individuals time to take stock and begin to put their lives back in order. See, Executive Order Nos. KBB 2005-32, KBB 2005-48, and KBB 2005-67. The purposes of these Orders were to avoid double devastation on the people in the affected areas: Once at the hands of the hurricanes, factors beyond their control; and a second time by the tolling of various legal deadlines that were impossible to meet under the circumstances.

12.

The law of Louisiana, in general, favors extending extra protections to individuals who are prohibited from exercising their legal rights due to the occurrence of fortuitous events. See *e.g.*, La. Atty. Gen. Op. No. 05-0359. The 2005 hurricanes and the havoc that they unleashed upon south Louisiana certainly constitutes “fortuitous events.”

13.

The general well-being of the economy and culture of the State of Louisiana require that those affected by these horrible natural disasters be granted every opportunity that the law can provide to assist them in making themselves whole again. Indeed, such activity is mandated by the Louisiana Constitution, which states, in Article I, Sec. 1 that the purpose of government is “to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people.” Acts 739 and 802 of the 2006 Regular Session of the Louisiana Legislature are directly in keeping with

the constitutional mandate to “promote the happiness and general welfare of the people” and “protecting the rights of the individual” by providing an opportunity for these victims of circumstance some extra time to make themselves whole, thereby providing for the continued economic and cultural vitality and viability of the State as a whole.

14.

Accordingly, the State of Louisiana seeks a declaration from this Honorable Court declaring that Acts 739 and 802 of the 2006 Regular Legislative Session are constitutional. In addition, the State respectfully requests that, pursuant to the mandate in Act 802 that reads:

[i]n the interest of further expediting this procedure, the Nineteenth Judicial District Court, First Circuit Court of Appeal, if applicable, and the Louisiana Supreme Court are urged to minimize all unnecessary delays and may suspend all applicable rules of court in contravention hereof and for this limited purpose

this Court expedite these proceedings in every manner possible in order that the people of the State of Louisiana are further assisted in proceeding with the rebuilding process for which these Acts provide. Act 802, Sec. 3.

WHEREFORE, the State of Louisiana respectfully prays that after due proceedings are had, this Court issue a declaration that Acts 739 and 802 of the 2006 Regular Legislative Session, extending the prescriptive period for certain claims due to the circumstances surrounding the 2005 hurricane season, are constitutional.

Respectfully submitted,

CHARLES C. FOTI, JR.  
ATTORNEY GENERAL

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PLEASE SERVE:  
All parties listed in Exhibits 1 and 2.