

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2005 DEC -5 P 3: 28

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LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FREDERICK BRADLEY, LAWRENCE RABIN, *
AND MARK H. SAMUELS, INDIVIDUALLY *
AND ON BEHALF OF ALL PERSONS *
SIMILARLY SITUATED *

NUMBER:

05 - 6359

VERSUS *

SECTION:

SECT. T MAG. 2

MODJESKI AND MASTERS, INC. *
* * * * *

JURY TRIAL REQUESTED

CLASS ACTION COMPLAINT

TO THE HONORABLE, THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, AND THE JUDGES THEREOF:

The class action complaint of Frederick Bradley, Lawrence Rabin, and Mark H. Samuels, individually, and on behalf of all persons similarly situated, with respect, represents that:

1.

Plaintiffs all are persons of the full age of majority, and are residents of and domiciled in the State of Louisiana.

2.

Defendant, Modjeski and Masters, Inc., is a foreign corporation which operates as a national firm of consulting engineers. Defendant's domicile and principal place of business are located in Mechanicsburg, Pennsylvania.

Fee 250.00
Process B(1) 12/5/05
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CtRmDep _____
Doc. No. _____

3.

The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, inasmuch as complete diversity of citizenship exists between the parties and each plaintiff claims an amount in controversy exceeding seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs. Alternatively, the minimal diversity requirements of the Class Action Fairness Act (CAFA) are met, and the amount in controversy exceeds the sum or value of \$5 million, exclusive of interest and costs. 28 U.S.C. 1332(d)(2).

4.

The Court has supplemental jurisdiction over any residual state law claims, pursuant to 28 U.S.C. § 1367.

5.

The Defendant is subject to personal jurisdiction because, at all relevant times, it conducted substantial business in the State of Louisiana, and within the jurisdiction of this Court, by consulting on engineering projects affecting Plaintiffs and those similarly situated.

6.

The Eastern District of Louisiana is a proper venue for this action pursuant to 28 U.S.C. 1391(a)(2), inasmuch as Plaintiffs reside and suffered damages in this judicial district, rendering this forum the district in which occurred a substantial part of the events or omissions giving rise to Plaintiffs' claim. Alternatively, venue is proper pursuant to 28 U.S.C. 1391(a)(3), inasmuch as the Defendant is subject to personal jurisdiction in the Eastern District of Louisiana.

7.

The 17th Street Canal, situated in Orleans Parish, is connected to Lake Pontchartrain. The flood protection system along the canal consists of both levees and flood walls, designed and constructed to work in tandem.

8.

On August 29, 2005, the eye of Hurricane Katrina made landfall on Louisiana's Gulf Coast, approximately twenty miles east of New Orleans.

9.

Hurricane Katrina's impact created a storm surge in Lake Pontchartrain. Upon information and belief, the storm surge was less than eleven feet in most areas within the City of New Orleans, and was not higher than thirteen feet in any area within the City.

10.

On August 30, 2005, the 17th Street Canal flood wall suffered a breach, allowing Lake Pontchartrain flood waters to surge into large sections of New Orleans. The breach caused massive flooding and property damage to the homes and property of New Orleans residents, including Plaintiffs.

11.

Upon information and belief, the storm surge at the 17th Street Canal did not "overtop" the flood wall in question. Rather, the breach of the flood protection system was directly and/or proximately caused by one or more of the following:

- a. design failure;

- b. structural failure;
- c. inadequate construction;
- d. inadequate testing;
- e. inadequate maintenance;
- f. failure to follow established engineering guidelines; and
- g. inadequate repair.

12.

Defendant, Modjeski and Masters, Inc., failed to ensure the adequacy of the design, composition, and construction of the 17th Street Canal's flood protection system. These acts constituted negligence, subjecting Defendant to liability for all resulting damages. The fault of this Defendant consists of the following:

- a. inadequate design;
- b. inadequate testing;
- c. inadequate construction;
- d. inadequate composition; and
- e. any and all other acts of fault which may be established at trial.

13.

Plaintiffs suffered damages as a result of the flooding caused by the breach of the 17th Street Canal, including, but not limited, to:

- a. damage to property and/or the loss of property;

- b. diminution of property value;
- c. pain and suffering;
- d. mental anguish and emotional distress; and
- e. inconvenience and other losses associated with evacuation and displacement from their homes.

14.

Plaintiffs bring this action both individually and on behalf of all other citizens of Louisiana who are similarly situated, and, specifically, on behalf of that class of persons defined as those citizens of the State of Louisiana who suffered injury to person or property as a result of the breach of the 17th Street Canal flood protection system.

15.

For the following reasons, this action is appropriate for disposition as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure:

- a. The potential class is so numerous that joinder of all members is impracticable;
- b. The large number of potential claimants herein can and will be adjudicated through the class action procedure more efficiently, compared to a mass joinder of individual claims;
- c. Common issues of law and fact pertaining to the determination of fault and to liability for damages predominate over individual issues such as quantum;
- d. The claims of, and issues pertaining to, Plaintiffs are typical of all persons similarly situated in the class as defined above;
- e. The determination of fault and the basis for assessing damages may be adjudicated through the class action procedure without the necessity of

contemporaneous trials as to amount due individual claimants, allowing the class action procedure to be utilized to establish guidelines for either settlement or for subsequent individual trials on damage issues, if necessary;

- f. Plaintiffs will fairly and adequately protect the interests of the proposed class;
- g. The determination of fault and the basis for assessing damages may be adjudicated through the class action procedure without the necessity of contemporaneous trials as to amount due individual claimants, allowing the class action procedure to be utilized to establish guidelines for either settlement or for subsequent individual trials on damage issues, if necessary;
- h. Plaintiffs herein are represented by attorneys who are experienced in class action procedure and who can be expected to prosecute this matter for the best interests of the class members;
- i. The class action procedure is a superior vehicle to dispose of the issues and claims presented herein in an efficient manner.

16.

Plaintiffs are entitled to, and request, a trial by jury.

WHEREFORE, plaintiffs, Frederick Bradley, Lawrence Rabin, and Mark H. Samuels, individually and on behalf of all persons similarly situated, pray that Defendants be served with a copy of this class action complaint, and, after due proceedings had:

- a. That this action be certified as a class action, as alleged and defined above, for the purposes of determining the common issues of liability and general causation;
- b. That upon certification of the class action, this Court call for the formulation of a suitable management plan;
- c. That Plaintiffs and the class herein be awarded compensatory damages in an amount to be proven at trial against the defendants; and

- d. That there be judgment herein in favor of the Plaintiffs and the Plaintiff class and against Defendants, for all damages which are reasonable in the premises, together with legal interest thereon from the date of judicial demand until paid, for all costs of these proceedings, including attorneys' fees, and for all general and equitable relief.

Respectfully submitted,

**GAINSBURGH, BENJAMIN, DAVID,
MEUNIER & WARSHAUER, L.L.C.**

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PLEASE SERVE:

MODJESKI AND MASTERS, INC.

Through its Registered Agent:

WILLIAM B. CONWAY

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New Orleans, Louisiana 70130