

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MADALYN M. COCHRANE, ET AL.

CIVIL ACTION

VERSUS

NO: 07-4284

USAA CASUALTY INSURANCE CO.

SECTION: "A" (5)

ORDER AND REASONS

Before the Court is a **Motion to Dismiss, or in the Alternative, to Stay This Action (Rec. Doc. 6)** filed by defendant USAA Casualty Insurance Co. Plaintiffs, Madalyn M. Cochrane and Charles J. Cochrane, Sr., oppose the motion. The motion, set for hearing on October 3, 2007, is before the Court on the briefs without oral argument.

Plaintiffs filed this lawsuit against USAA, their homeowner's insurer, for wind damage they sustained during Hurricane Katrina. The property at issue is located at 5901 Doral Court in Orleans Parish.

USAA moves to dismiss this case or in the alternative stay the action. USAA contends that Madalyn M. Cochrane filed suit

against USAA in Connie Abadie, et al. v. Aegis Security Insurance Co., et al., Civil Action 06-5164, which is presently pending in Section K of this Court, and that there is significant overlap between the two cases. The Abadie action is currently under an administrative stay order but USAA points out that the case could be reopened. USAA contends that under the "first to file rule" Plaintiffs must assert their claims in Section K.

The Abadie lawsuit was filed by the Bruno & Bruno firm on behalf of hundreds if not thousands of named plaintiffs. The 145 page complaint does not specifically reference Plaintiffs' property. In fact, Plaintiffs apparently own other properties in addition to the Doral Street property. Plaintiffs have submitted copies of contracts of representation with the Bruno firm for three properties, including Doral Street, but those contracts clearly state that the firm will not file a lawsuit on behalf of the client until the client executes another contract. (Pla. Exhs. 1, 2, & 3). Plaintiffs contend that they never executed a second contract with the Bruno firm, never authorized the firm to file suit on their behalf¹, and that they terminated the representation. Plaintiffs contend that until USAA filed its motion to dismiss they were not aware that Madalyn Cochrane had

¹ The Section K claim purports to be filed on behalf of Madalyn Cochrane only.

been named in the Abadie complaint.

The Court has no basis to conclude that the Doral Street property is involved in the Abadie litigation or that Plaintiffs authorized the Bruno firm to file suit on their behalf. Under the circumstances neither a dismissal nor stay is appropriate.

Accordingly, and for the foregoing reasons;

IT IS ORDERED that the **Motion to Dismiss, or in the Alternative, to Stay This Action (Rec. Doc. 6)** filed by defendant USAA Casualty Insurance Co. is **DENIED**.

October 3, 2007



JAY C. ZAINERY
UNITED STATES DISTRICT JUDGE