

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
ENTERED

OCT 15 2004

JIMMY D. LANE, et al.,  
  
Plaintiffs,  
  
vs.  
  
ALLSTATE INSURANCE COMPANY,  
  
Defendant.

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Michael N. Milby, Clerk of Court

CIVIL ACTION NO. H-04-3555

**MEMORANDUM AND ORDER**

Before the court<sup>1</sup> is defendant Allstate Insurance Company's unopposed<sup>2</sup> motion for a more definite statement (Dkt. No. 3). The motion is GRANTED IN PART, DENIED IN PART.

Defendant first moves the court to require the plaintiffs to plead fraud with particularity under Federal Rule of Civil Procedure 9(b). Plaintiffs' First Original Petition alleges fraud (§§ IV, IX) and that defendant is "guilty of false, misleading, and deceptive acts" (§ VIII). To plead fraud with particularity under Rule 9(b), a plaintiff must include the "time, place and contents of the false representations, as well as the identity of the person making the misrepresentation and what [that person] obtained thereby." *United States ex rel. Russell v. Epic Healthcare Mgmt. Group*, 193 F.3d 304, 308 (5th Cir. 1999) (alteration in original) (citations omitted). Put another way, Rule 9(b) requires that a plaintiff set forth the "who, what, when, where, and how" of the alleged fraud. *United States ex rel. Doe v. Dow Chem. Co.*, 343 F.3d 325, 328 (5th Cir. 2003) (citations omitted). The

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<sup>1</sup>This motion was referred to this magistrate judge for determination pursuant to 28 U.S.C. § 636(b)(1)(A) (Dkt. No. 4).

<sup>2</sup>The plaintiff has not filed any response, so the court treats defendant's motion as unopposed. See S.D. Tex. Local Rule 7.4 (declaring that "[f]ailure to respond will be taken as a representation of no opposition"); see also *Daniels v. BASF Corp.*, 270 F. Supp. 2d 847, 850 (S.D. Tex. 2003).

plaintiffs' pleading does not state the alleged circumstances constituting fraud with the required factual specificity. Therefore, the plaintiffs shall file a more definite statement of their fraud claims conforming to the requirements of Rule 9(b).

Defendant also moves the court for a more definite statement under Rule 12(e) to require the plaintiffs to identify the second of "two contracts of insurance" alleged by the plaintiffs to be the basis of the suit. The defendant asserts there is only one relevant contract in this matter, a Standard Flood Insurance Policy. This issue is better resolved by the discovery process rather than a motion for a more definite statement.

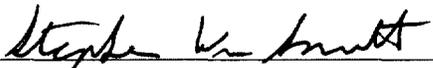
A motion for more definite statement is generally disfavored and is used to provide a remedy only for an unintelligible pleading rather than a correction for lack of detail. *See Nebout v. City of Hitchcock*, 71 F. Supp. 2d 702, 706 (S.D. Tex. 1999). Such motion is appropriate where a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading. *See* FED. R. CIV. P. 12(e). It is not appropriate as a substitute means for discovery. *See Mitchell v. E-Z Way Towers, Inc.*, 269 F.2d 126, 132 (5th Cir. 1959); *Nebout*, 71 F. Supp. 2d at 706.

The defendant's very motion demonstrates that it is able to frame a response to the plaintiffs' pleading, making an order for a more definite statement unnecessary. The defendant's motion goes into considerable detail outlining the nature of the Standard Flood Insurance Policy that it states is the only contract at issue in this case and in framing responses to the plaintiff's claims of breach of that contract. The additional information the defendant seeks is available through the discovery process. *See Herceg v. Hustler Magazine, Inc.*, 583 F. Supp. 1566, 1567 (S.D. Tex. 1984).

Accordingly, defendant Allstate Insurance Company's motion for a more definite statement is GRANTED IN PART, DENIED IN PART. On or before October 31, 2004, the plaintiffs shall

state their fraud claims with particularity to comply with Federal Rule of Civil Procedure 9(b). The remainder of defendant's motion for a more definite statement under Federal Rule of Civil Procedure 12(e) is DENIED.

Signed on October 14, 2004, at Houston, Texas.

  
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Stephen Wm. Smith  
United States Magistrate Judge