

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

<b>IN RE: KATRINA CANAL BREACHES CONSOLIDATED LITIGATION</b>	<b>* CIVIL ACTION</b>
	<b>*</b>
	<b>* NO. 05-4182 "K" (2)</b>
	<b>*</b>
<b>PERTAINS TO LEVEE:</b>	<b>* JUDGE DUVAL</b>
	<b>*</b>
<b>ADAMS, No. 06-4634</b>	<b>* MAG. WILKINSON</b>
<b>TAUZIN, No. 06-0020</b>	<b>*</b>

**CSX TRANSPORTATION, INC.'S MOTION TO DISMISS  
UNDER FED. R. CIV. P. 12(b)(6) (FAILURE TO STATE A CLAIM)**

CSX Transportation, Inc. ("CSXT"), sought to be made a defendant herein, with full reservation of all defenses and objections, moves this Court to dismiss the plaintiffs' complaint filed against CSX Transportation, Inc. in Civil Actions 06-4634 and 06-0020, under Fed. R. Civ. P. 12(b)(6).

The complaint in each action fails to state a claim against CSXT on which relief can be granted for two independent reasons. First, the complaint does not allege a legally enforceable duty owed by CSXT to the plaintiffs. The existence of a duty is an element of the plaintiffs' negligence claim, and in the absence of a duty the complaint must be dismissed. Second, the plaintiffs' claim is completely pre-empted by federal law, in particular the Interstate Commerce Commission Termination Act of 1995 and the Federal Railroad Safety Act.

In deference to the Court's Minute Entry of November 29, 2006 (Dkt. No. 2034), CSXT is responding to both *Tauzin* and *Adams* in one Motion to Dismiss under Federal Rule 12(b)(6). There are differences between the complaints in the two actions, but the CSXT-specific allegations are identical.

**WHEREFORE** defendant CSX Transportation, Inc. moves this Court to dismiss the plaintiffs' complaint against CSX Transportation, Inc. in Civil Actions 06-4634 and 06-0020, under Fed. R. Civ. P. 12(b)(6).

s/Jonathan C. McCall

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**ATTORNEYS FOR CSX TRANSPORTATION, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of February, 2007, a copy of the foregoing pleading has been filed with the United States District Court for the Eastern District of Louisiana by electronic case filing/case management. All counsel of record are being served this filing by either the court's electronic filing system or by telefaxing and/or placing a copy of same in the United States mail, properly addressed and with adequate postage affixed thereon.

s/ Jonathan C. McCall