

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

ARACELY ZAMORA-GARCIA, §  
et al., §  
in their own name and right, and on §  
behalf of all others similarly situated, §  
Petitioners/Plaintiffs §  
v. §  
MARC MOORE, DISTRICT §  
DIRECTOR FOR INTERIOR §  
ENFORCEMENT, DEPARTMENT OF §  
HOMELAND SECURITY, et al., §  
Respondents/Defendants. §

C.A. No. M-05-331

**DEFENDANT FAIRMONT SPECIALTY INSURANCE COMPANY  
AND STONINGTON INSURANCE COMPANY'S  
MOTION TO DISMISS PLAINTIFFS' FIFTH AMENDED  
PETITION FOR WRIT OF HABEAS CORPUS, AND CLASS ACTION  
COMPLAINT FOR DAMAGES, INJUNCTIVE, DECLARATORY  
AND OTHER RELIEF**

COME NOW DEFENDANTS, FAIRMONT SPECIALTY INSURANCE COMPANY, f/k/a RANGER INSURANCE COMPANY and STONINGTON INSURANCE COMPANY f/k/a NOBEL INSURANCE COMPANY, hereinafter "Defendants," and file this Motion to Dismiss Plaintiffs' Fifth Amended Petition for Writ of Habeas Corpus, and Class Action Complaint for Damages, Injunctive, Declaratory and Other Relief (the "Fifth Amended Complaint") under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted, and in support hereof would show the Court as follows:

1. Defendants hereby incorporate by reference in their entirety, as if fully set forth herein, the following Motions:

- a. Defendants' Motion to Dismiss Plaintiffs' Fourth Amended Petition for Writ of Habeas Corpus, and Class Action Complaint for Damages, Injunctive, Declaratory and Other Relief (Docket # 34); and
- b. Defendants' Supplement to their Motion to Dismiss Plaintiffs' Fourth Amended Petition for Writ of Habeas Corpus, and Class Action Complaint for Damages, Injunctive, Declaratory and Other Relief (Docket # 54).

2. On May 8, 2006, Plaintiffs filed their Fifth Amended Complaint, which was identical to the Fourth Amended Complaint, with the only exception that paragraph no. 16 was changed to add the current representative of the Estate of Don Vannerson as a party to the suit. That amendment to the Complaint did not change any substantive argument set forth in Defendants' motion to dismiss, supplement to their motion to dismiss, or the reply brief which has been filed in this matter. The diversity of citizenship argument is also not changed (although it does not appear that Plaintiffs are relying upon diversity of citizenship jurisdiction any longer in this case) because it is the citizenship of the decedent before his death that controls, not the citizenship of the representative of the estate. 28 U.S.C. § 1332(c)(2).

3. This motion has been filed to clarify to the Court that Defendants are maintaining their previous arguments set forth in their Motion to Dismiss and Supplement to their Motion to Dismiss as against Plaintiffs' Fifth Amended Complaint.

WHEREFORE, PREMISES CONSIDERED, Defendants FAIRMONT SPECIALTY INSURANCE COMPANY, f/k/a RANGER INSURANCE COMPANY and STONINGTON INSURANCE COMPANY (f/k/a NOBEL INSURANCE COMPANY) ask the Court to dismiss

Plaintiffs' suit with prejudice, assess costs against Plaintiffs, and award Defendants all other relief to which they are entitled.

Dated: May 22, 2006

Respectfully submitted,

/s/ Bradford W. Ireland

By: ~~with permission by Dan K. Worthington~~ \_\_\_\_\_

Bradford W. Ireland

TSBN 10411550 / SDOTBN \_\_\_\_\_

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**ATTORNEYS FOR FAIRMONT SPECIALTY  
INSURANCE COMPANY, f/k/a RANGER  
INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 22nd day of May, 2006, a true and correct copy of the foregoing, *Defendant Fairmont Specialty Insurance Company and Stonington Insurance Company's Motion to Dismiss Plaintiffs' Fifth Amended Petition for Writ of Habeas Corpus, and Class Action Complaint for Damages, Injunctive, Declaratory and Other Relief*, was duly served upon the following counsel in accordance with the Federal Rules of Civil Procedure.

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/s/ Dan K. Worthington

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