

SUPREME COURT OF LOUISIANA

No. 98-C-0551

MAJOR BANKS, CHRISTOPHER EDWARDS ET AL.

Versus

NEW YORK LIFE INSURANCE CO. ET AL

LEMMON, J., Subscribing to the Opinion and Assigning Additional Concurring
Reasons

Allegations of consumer fraud raise the common issue of law and fact in this case. The focus of the allegations of consumer fraud on the officers and executives of New York Life, rather than on the agents and employees, cause the questions of law and fact common to the members of the class to predominate over any questions affecting only individual members, as explained more fully by the majority opinion.

I write separately to point out that the class action is superior to other available methods of procedure because, in addition to the reasons stated in the majority opinion, approximately 1,500 Louisiana citizens who owned over 1,800 policies opted out of the national class action settlement, thereby signaling their intention to litigate their claims in a class action already filed in Louisiana.¹ See Fed.R.Civ. Proc. 23(b)(3)(b), which lists, as one of the factors bearing on the predominance issue, the extent and nature of any litigation concerning the controversy commenced by members of the class. Separate actions in Louisiana by the approximately 1,500 persons who opted out in New York would have to be consolidated, at least as to the

¹The pending class action was dismissed after the present class action was filed.

common issues of law and fact discussed above and in the majority opinion. Moreover, the class representatives in the present action alleged that separate actions were not practical because many claims were too small for efficient litigation. See *McCastle v Rollins Environmental Serv. of La., Inc.*, 456 So. 2d 612 (La. 1984). The class action, therefore, is clearly the superior method of procedure.²

²The reliance of the class members on the alleged misrepresentations is a secondary issue which may have to be tried separately along with the amount of individual damages.