

Major Court Decision with implications for Climate Adaptation, Hazard Mitigation and a Safer and More Just Future.

Edward A. Thomas Esq.

President Natural Hazard Mitigation Association

May 2, 2015

On May 1, 2015, in *Saint Bernard Parish Government v. United States*, the U.S. Court of Claims found the United States government liable in an enormously important government liability case concerning flood damage caused by Hurricane Katrina and subsequent hurricanes. It appears that this case is enormously validates what some of us predicted following the 2013 *Arkansas Game and Fish* case. Further details on that case can be found in an article by Lynsey R. Johnson and Ed Thomas available on the ABA website at:

http://www.americanbar.org/content/dam/aba/administrative/state_local_government/land_use.authcheckdam.pdf

Further information on Arkansas Game and Fish can also be found in a webinar featuring Professor Lisa Sun Ed Thomas and Dr. John Wiener available at:

<http://player.vimeo.com/video/83390903>

The lawsuit is essentially a successful end run around the very specific immunity provided to the United States with respect to the construction and management of flood control projects.

The Plaintiffs sued based on the US Constitution Fifth Amendment protections against government taking property without compensation. While federal law provides for US Government immunity with respect to floods, the Constitution trumps any legislation.

The US Court of Claims essentially agreed with the Plaintiffs that the US Army Corps of Engineers construction, maintenance and operation of a portion of the enormous Mississippi Rivers and Tributaries project, in particular a portion of the project designed and built for navigation rather than flood control, called MR GO resulted in temporary takings by causing increased flooding of the plaintiffs' properties during Hurricane Katrina other flood events.

In 2007, Ed Thomas wrote an article for the Environmental Law Institute which posed a question in its title: *Recovery Following Hurricane Katrina: Will Litigation and Uncertainty Today Make for an Improved Tomorrow?* [National Wetlands Newsletter, vol. 29, no. 5.] The article will soon be available on the Natural Hazard Mitigation Association website at:

_____. In that Article Ed expressed the hope that the Katrina Litigation would prod Society to do a better job of at providing a safer, more just and resilient future for our Nation:

“Organizations as disparate as ProtectingAmerica.org, the National Association of Realtors, The National Association of Insurance Commissioners, and many others agree that our nation needs legislation setting up some sort of national catastrophic insurance program to better prepare

for the financial consequences of human occupancy in hazardous locations. Any such catastrophic insurance program must provide for proper building codes and land use planning to protect wetlands and floodplains so that the consequences of future floods and other hazards are not exacerbated due to poor planning, engineering, and land use.”

The article went on to urge:

“As Katrina so clearly demonstrated, we must do a better job of providing for the rebuilding of shattered lives following a catastrophe. At the same time, our land use and building decisions must improve dramatically. Otherwise, the problems we currently face in hazard management will only get worse.”

Today I renew all the thoughts in the National Wetlands Newsletter I wrote in 2007.