

Katrina victim trial, set for April 20, largest ever

Special to Sentinel-Voice
NEW ORLEANS (NNPA) — A federal judge has cleared the way for a trial of the largest-ever litigation involving the U.S. government by denying the Justice Department's last-ditch attempt to dismiss a damages lawsuit brought by victims of Hurricane Katrina.

The decision by U.S. District Court Judge Stanwood J. Duval, Jr. means Katrina victims seeking just compensation from the U.S. Army Corps of Engineers for the flooding and destruction of their homes will finally get their day in court.

"We are pleased to have overcome this final hurdle to securing the first trial for Katrina victims and to holding the Army Corps accountable," said Pierce O'Donnell, the plaintiffs' lead trial counsel in the nearly three-year-old case. "Battling the federal government with its own army of lawyers and unlimited resources has been a daunting ordeal."

The historic trial on behalf of six plaintiffs whose homes and businesses in New Orleans and St. Bernard Parish were destroyed in 2005 is scheduled to begin on April 20 before Judge Duval. The plaintiffs claim the Corps of Engineers should be held liable for failed levees in 50 locations that caused catastrophic flooding and devastated a 100-square-mile metropolitan area.

Expected to last about

three weeks, the non-jury trial will feature testimony from high-ranking Army Corps officials and some of the world's most renowned experts on coastal flood protection.

"Justice for Katrina victims is long overdue and now in sight," said Joseph Bruno of New Orleans, the Plaintiffs' Liaison Counsel. "A favorable ruling in our test case will pave the way for more than 400,000 other deserving victims to recover damages."

The lawsuit, filed in April 2006, focuses on the major role of the Mississippi River-Gulf Outlet ("MR-GO") in increasing storm surge and wave attacks that overwhelmed Army Corps' levees designed to protect St. Bernard Parish, New Orleans East, and the Lower 9th Ward where the plaintiffs lived. Constructed in the 1960s, the MR-GO is a now-defunct, 76-mile ship channel from the Gulf of Mexico to the Port of New Orleans. For a half century, experts, environmentalists and federal, state and local officials warned the Army Corps that the MR-GO was, in effect, a "Hurricane Highway" that would cause catastrophic flooding to the heart of metropolitan New Orleans.

The denial of the motion for summary judgment on sovereign immunity grounds marked the government's fourth unsuccessful effort to avoid trial. The latest efforts by the government delayed

the opening of the trial from last September until this April.

In Friday's ruling, Judge Duval rejected the Army Corps' argument that it had unlimited discretion to build and operate the MR-GO, including neglecting to remediate a pattern of long-known safety defects that posed a serious risk of devastating flooding during hurricanes.

Judge Duval stated in his opinion that the plaintiffs "have created substantial questions of fact with respect to the actions and inactions that followed the creation of the channel, particularly in light of the documents that demonstrate the knowledge of the Corps concerning the dangers that the MR-GO was creating."

The opinion in *Robinson v. United States* can be obtained on the Internet at www.katrinajustice.com under "DFE Order."

"We will prove at trial that

the tragic destruction of New Orleans was foreseen and preventable by the Army Corps," said John Andry, a St. Bernard Parish native and one of the plaintiffs' trial counsel. "The world will see that the Army Corps of Engineers was guilty of gross dereliction of duty that killed 1,600 people, destroyed hundreds of thousands of homes, and caused hundreds of billions of dollars of property damage."

Plaintiffs are represented by a consortium of 20 law firms from California, Florida and Louisiana that feature some of the top trial attorneys in the country, including Joseph Cotchett (San Francisco), Thomas Girardi (Los Angeles), James Roy (Lafayette), and Jerry McKernan (Baton Rouge).

The *Robinson* case and a pending related MR-GO class action are the only surviving lawsuits on behalf of Katrina victims. Class-action lawsuits by Katrina victims

against insurance companies for flood coverage were dismissed by the U.S. Court of Appeals for the Fifth Circuit in 2007. Last year, Judge Duval also dismissed on immunity grounds another class action on behalf of New Orleans residents against the Army Corps over the failure of the 17th Avenue and London Avenue Canal levees.

The 400,000 Katrina claimants include homeowners, residents, businesses, schools, universities, hospitals, churches and synagogues as well as the public utility Entergy, State of Louisiana, City of New Orleans and St. Bernard Parish.

According to a recent Justice Department filing, the U.S. government has produced so much information — digital and paper — in connection with the case that, "on the basis of this production, the litigation can be described as the largest ever in which the United States has been involved."

In June 2006, Lt. General Carl Strock, the Corps' Chief Engineer, admitted liability for the 17th Avenue and London Avenue Canal levee catastrophic failures. His remarks can be reviewed at www.cbsnews.com/stories/2006/06/01/national/main1675244.shtml.

"Before and after his election, President Obama promised that he would make rebuilding New Orleans a top priority," said O'Donnell, a Los Angeles-based trial lawyer. "We are looking to the White House for leadership in expeditiously resolving the claims of Katrina victims in a fair and equitable manner. The continued stonewalling of Katrina victims is a national disgrace."

The Department of the Army, in a public disclosure last year, estimated the federal government's potential losses on Katrina-related litigation and administrative claims ranged from \$10 billion to \$100 billion.

Group: Bias in UMass prosecution

AMHERST, Mass. (AP) — Biology student Jason Vassell was in his ground-floor University of Massachusetts dorm room hanging out with friends when two drunken strangers tapped on his window, asking for directions. An argument began.

One of the White men hurled racial slurs at Vassell, who is Black, before both

took off.

Vassell then put a black cloth over his face, armed himself with a clothes iron and a folding knife and left his room. Surveillance cameras later show Vassell stabbing both men in the dorm lobby.

A year later, Vassell awaits trial on two counts of aggravated assault and battery with a dangerous weapon in a case that has galvanized the school community.

Hundreds of professors, students and community members continue to rally behind the former student, believing he was the victim of a hate crime and that the two men who set off the chain of events were not held fully accountable.

"When it's someone you know, when you see their life being ruined, it isn't easy to forget it," said sociology professor Dan Clawson, one of Vassell's supporters.

Prosecutors acknowledge John Bowes and Jonathan Bosse, on campus to visit friends, were drunk early the morning of Feb. 3, 2008, and that Bowes shouted racial slurs.

Bowes was convicted in early March of misdemeanor disorderly conduct but acquitted of a civil rights violation and given a year of probation. Bosse was not

charged.

But prosecutors say Vassell, the 24-year-old son of Jamaican immigrants, could have defused the situation multiple times in the more than 10 minutes between when he first entered the lobby and when he stabbed the two men.

During the fight in the lobby, prosecutors said Bowes punched Vassell in the upper body to disarm him, then Vassell stabbed him three times. When Bosse tried to help his friend, he was stabbed four times. Both required emergency surgery.

In court, Assistant District Attorney Elizabeth Dunphy Farris said surveillance camera footage showed Vassell was the aggressor.

"The privilege to use self-defense arises only in circumstances in which the defendant uses all proper means to avoid physical combat," prosecutors said in a court filing.

Vassell's attorney, David Hoose, does not deny the student stabbed the men.

But in a motion to dismiss the charges, Hoose argues prosecutors ultimately made the decision to charge Vassell because he is Black and the two men he stabbed are White.

Hoose said police were hostile toward Vassell from the beginning of the investi-

gation. The attorney claims a police lieutenant said the incident involved a drug deal and Vassell was dealing drugs, even after other officers said the evidence showed no such thing. The motion also describes the same lieutenant as calling Vassell a "donkey."

The lieutenant has denied his comments were based on Vassell's race. Dunphy Farris has said they were taken out of context.

Hoose said Bowes and Bosse had a history of fighting and getting into trouble, which he argues prosecutors chose to ignore. Bowes did not return messages; there was no listing for Bosse.

Hampshire Superior Court Judge Judd Carhart ruled last month that prosecutors must provide the defense five years of data on racial violence and hate crimes in the county. Prosecutors are appealing the order.

Instead of graduating in December 2008 as expected, Vassell left school early and now lives two hours away in Boston, where he works for his father's electrical company, said his sister, Tiffany Vassell. Each charge carries a maximum sentence of up to 15 years in prison.

If convicted, Vassell might face a lighter sentence; he has no criminal record.



FIRST LADY AND THE QUEEN

U.S. first lady Michelle Obama is welcomed by Britain's Queen Elizabeth II, as she arrives with President Obama for an audience at Buckingham Palace in London on Wednesday. The Obamas are in Europe for an economic meeting with world leaders.