

INVERSE CONDEMNATION: ADDICKS AND BARKER DAM RELEASE

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WHAT IS INVERSE CONDEMNATION?

- The term *inverse condemnation* refers to the taking or damaging of a person's real property by a government entity, without payment of just compensation.
- In such cases, the property owner is faced with the prospect of suing the government in order to obtain compensation.
- *Permission vs. Forgiveness*

CONSTITUTION

- The Fifth Amendment to the U.S. Constitution places strict limits on the government's ability to take a person's private property, stating:

“... nor shall private property be taken for public use, without just compensation.”

- This clause, called the “Takings Clause,” is commonly referred to as “eminent domain,” and provides that property may be taken for “public use,” but only with just compensation to the property's owner.
- Tex. Const. art. 1, §17 also provides:

“No person's property shall be taken , damaged or destroyed for or applied to public use without adequate compensation....”

- Eminent domain, or “condemnation” of private property, can be exercised by federal, state, and local government agencies.

ELEMENTS OF INVERSE CONDEMNATION

- The plaintiff has a financial or monetary interest in the property;
- The property was taken, or was damaged, by the government's action;
- The government action was *intentional* or *foreseeable*;
- The taking of the property, or damage to it, was substantially caused by the government's activity.

WAS THE GOV'T ACT INTENTIONAL OR FORESEEABLE?

- The Army Corps of Engineers intentionally decided to open the flood gates ...
“If we don’t begin releasing now, the volume of uncontrolled water around the dams will be higher and have a greater impact on the surrounding communities.”
- The intentional decision was made to flood some in order to protect others.
- Must compensate even if the decision was right decision under the circumstances.

WHO ARE THE POTENTIAL DEFENDANTS?

- The US Army Corps of Engineers
 - Lawsuit filed in US Court of Federal Claims (Washington DC)
 - Multiple lawsuits seeking class certification have already been filed.
- Harris County and Harris County Flood Control District
 - Harris County, Texas
 - At least one lawsuit has been filed.

BIFURCATED TRIAL

Inverse condemnation trials are typically split in two parts:

Part 1: Determination of the above elements of inverse condemnation.

Part 2: Once all of these elements of inverse condemnation have been proven, the property owner will need to prove the value of the property, or the portion of it, that was taken, damaged, or rendered unusable.

CASE LAW

Arkansas Fish & Game Commission v. United States, 568 U.S. 23, 31 (2012).

- A dam release case flooding property downstream, SCOTUS held that temporary flooding resulted in a compensable taking from the downstream property owners. The Court said:
 - the Fifth Amendment is “*designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.*”
 - “[w]hen the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner.”

POTENTIAL DAMAGES

- Repair or replacement of real estate and improvements damaged by use.
- Repair or replacement of contents damaged by use.
- Applicable temporary living expenses.
- Any permanent loss of value of real property affected by use.
- Prejudgment Interest.

DOCUMENTATION OF LOSS

- Photos of damaged structure, improvements, vehicles, contents.
- Receipts (if possible) of damaged items
- Receipts for temporary housing, autos, meals, demolition, rehabilitation, and construction.

QUESTIONS?

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