

In the United States Court of Federal Claims

No. 17-1657 L

Filed: November 29, 2017

ANDRUS, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

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ORDER REGARDING JUDICIAL ASSIGNMENT, APPOINTMENT OF PLAINTIFFS' COUNSEL FOR THE PURPOSE OF PRE-TRIAL JURISDICTIONAL DISCOVERY, THE GOVERNMENT'S MOTION TO DISMISS PURSUANT TO RULE OF THE UNITED STATES COURT OF FEDERAL CLAIMS 12(b)(1)–(7), AND SCHEDULING.

On November 1, 2017, eighty-one plaintiffs filed the above-captioned complaint, alleging the United States Army Corps of Engineers' release of water from the Town Bluff Dam near Jasper, Texas in the wake of Hurricane Harvey resulted in a taking of their respective property, in violation of the Takings Clause of the Fifth Amendment to the United States Constitution. Am. Compl. ¶¶ 1–134.

I. Assignment Of A United States Court Of Federal Claims Judge.

The Honorable Lydia Kay Griggsby of the United States Court of Federal Claims is hereby assigned to manage jurisdictional discovery and adjudicate issues presented by any motion filed, pursuant to Rule of the United States Court of Federal Claims ("RCFC") 12(b)(1)–(7).

II. Appointment Of Counsel For Jurisdictional Discovery.

The court makes the following appointment of Plaintiffs' Counsel for the purposes set forth herein.

Mr. David E. Bernsen received his Juris Doctor from St. Mary's University School of Law and served as a Law Clerk for Judge Joseph J. Fisher of the United States District Court for the Eastern District of Texas. Mr. Bernsen is the Founding Partner of the Beaumont, Texas firm Bernsen Law Firm, where he specializes in complex civil litigation. Mr. Bernsen is admitted to

the bar of the United States Court of Federal Claims. The court appoints Mr. Bernsen as Lead Counsel for the purposes set forth herein.¹

The above-referenced appointed counsel satisfies the criteria for selection, set out in the MANUAL FOR COMPLEX LITIGATION (4th ed. 2004) and *MDL Standards and Best Practices*, DUKE LAW SCHOOL CENTER FOR JUDICIAL STUDIES (Sept. 11, 2014), https://law.duke.edu/sites/default/files/centers/judicialstudies/MDL_Standards_and_Best_Practices_2014-REVISED.pdf.

All appointed counsel will be compensated, pursuant to 42 U.S.C. § 4654(c), for work on pre-trial discovery issues and dispositive motions, including any subsequent appeals. *See Hensley v. Eckerhart*, 461 U.S. 424 (1983); *see also Hubbard v. United States*, 480 F.3d 1327 (Fed. Cir. 2007). In that regard, appointed counsel are expected to keep and maintain detailed time records from the date of this Order, take care to limit the use of law firm personnel (partners, associates, and paralegals), only to the extent absolutely necessary to meet professional standards of due diligence and care, and minimize ancillary expenses.

III. Schedule.

To ensure the expeditious and orderly management of jurisdictional discovery, the court establishes the following schedule.

On or before December 15, 2017, the Government will file any Motion For A More Definite Statement, pursuant to RCFC 12(e).

On or before December 22, 2017, the parties will exchange Mandatory Initial Disclosures, including lists of documents and tangible items.

On or before January 5, 2018, the parties will exchange electronically stored information and hard-copy documents.

On or before January 22, 2018, Plaintiffs may file an Amended Complaint, consolidated or otherwise, in response to any motion filed on December 15, 2017, pursuant to RCFC 12(e).

On or before February 22, 2018, the Government will file any Motion To Dismiss, pursuant to RCFC 12(b)(1)–(7).

¹ Where “diverse interests exist among the parties, the court may designate . . . counsel representing different interests.” MANUAL FOR COMPLEX LITIGATION § 10.224 (4th ed. 2004). Mr. Bernsen has filed a complaint on behalf of individual plaintiffs. In the event that an indirectly related complaint is filed that seeks class action certification, the court reserves the right to appoint Co-Lead Counsel to represent the interests of property owners who may ultimately decide to opt-in to a certified class. *See* RCFC 23 Rules Committee Notes (Rule 23 “only contemplates opt-in class certifications”); RCFC 40.2(b)(2)(A)–(B) (“cases are indirectly related when they present common issues of fact and their consolidation for purposes of coordinated discovery can be expected significantly to promote the efficient administration of justice”).

On or before March 22, 2018, Plaintiffs will file any Response to the Government's February 22, 2018 Motion To Dismiss.

On or before April 9, 2018, the Government will file any Reply to the March 22, 2018 Plaintiffs' Response.

On or before July 20, 2018, the court will convene an oral argument on the Government's February 22, 2018 Motion To Dismiss. The court will determine the date, time, and location of the oral argument in a separate Order.

Page limitations for briefs and court filings, set forth in RCFC, are suspended. No extensions of time will be granted, but for extraordinary circumstances.

IT IS SO ORDERED.

s/ Susan G. Braden
SUSAN G. BRADEN
Chief Judge