



Missouri River Basin Landowners Secure Legal Victory in Mass-Action Lawsuit for Flooding Against U.S. Army Corps of Engineers

Federal judge's ruling impacts farmers, landowners and business owners in four states

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KANSAS CITY, Mo., March 13, 2018 /PRNewswire/ -- A federal judge in Washington, D.C. ruled today that the U.S. Army Corps of Engineers bears responsibility for causing recurrent flooding and damaging farms and property in four Midwest states along the Missouri River: Missouri, Iowa, Nebraska and Kansas. The ruling states that the government must compensate farmers, landowners and business owners for the flood damage, which has been estimated to exceed \$300 million.



Polsinelli Shareholder R. Dan Boulware served as lead attorney on the case.

The case, *Ideker Farms et al v. United States of America*, was brought by 372 plaintiffs comprised of farmers, landowners and business owners, and has been led by Polsinelli in partnership with Cohen Milstein Sellers & Toll.

The mass action lawsuit was originally filed on Mar. 5, 2014 and alleged that the U.S. Army Corps of Engineers' actions have violated the takings clause of the Fifth Amendment that bars the Government from taking private property without just compensation. Judge Nancy B. Firestone with the United States Court of Federal Claims found in favor of the plaintiffs in 2017.

five of the six years that the flooding was claimed dating back to 2007, disallowing the flood claims in 2011. The Court found that the Corps' deprioritized flood control in 2004.

Judge Firestone stated in her Trial Opinion that the evidence established that the Corps' changes to the river "had the effect of raising the Missouri River's water surface elevations ("WSEs") in periods of high flows." She found that since 2007, the flooding has been among the worst in the history of the river and the Corps' changes in the management of the river caused or contributed to the flooding. Citing the testimony of plaintiffs' experts, the Court acknowledged that "recurrent flooding in the Missouri River Basin . . . will continue into the future," and that increased blocked drainage of farm lands due to higher river levels is a problem.

"As a farmer and landowner who has experienced substantial losses from these floods, I'm extremely pleased with this outcome," said lead plaintiff Roger Ideker of Ideker Farms in St. Joseph, Mo. "It rightfully recognizes the Government's responsibility for changing the River and subjecting us to more flooding than ever before."

Polsinelli Shareholder R. Dan Boulware of the firm's St. Joseph office served as lead counsel on the case.

"Today is the day the plaintiffs have patiently waited for and have fought for during the past four years. Although we do not concur with the Court's conclusions regarding the 2011 flood event, we are very pleased with the Court's conclusions regarding the Corps changes to the river causing flooding, and we are certainly pleased with an outcome that will provide substantial compensation to plaintiffs living along the river who have suffered significant flood damage and losses throughout the past decade," said Boulware. "It should now be clear that we have a changed river – one that is flood prone. We hope the Corps of Engineers will now do the right thing for our clients and that Congress will also act soon to restore flood control to a higher priority as it was during the last century."

The ruling also addressed the critical shift in the management of the river by the Corps in 2004 to restore its ecosystem and benefit and create habitat for threatened and endangered species. The court found that the notching of dikes and revetments, as well as the reopening of the historic chutes, which allows the river to meander and erode the bank, created potential flood impacts. These changes to the river, coupled with increased reservoir storage and threatened and endangered species releases from the dams during high river stages below the dams, served to cause or contribute to cause flooding in 2007, 2008, 2010, 2013, 2014 and since.

"For nearly a decade, these individuals have suffered not only serious flood damage, but more critically, threats to their fundamental livelihood," said plaintiffs' attorney Benjamin Brown, Partner and Co-Chair of the Antitrust Practice Group at Cohen Milstein Sellers & Toll. "Today's decision reflects what we have been saying since the outset of this litigation – all Americans should share the costs of protecting threatened and endangered species and the entirety of this burden should not be foisted on those who happen to live and work on the river."

The *Ideker Farms, Inc. et al v. United States of America* case has two phases. This ruling marks the end of phase one, which began on Mar. 6, 2017, focusing on liability and the cause of the flooding. The trial in the Federal Claims Court began in Kansas City, Mo. before moving to Washington, D.C. It involved 44 plaintiff "bellwether" tracts and more than 90 witness testimonies over the course of the 63-day trial. Closing arguments were held in November and concluded in December. In total, over 100 depositions were taken and in excess of 20 million documents were produced throughout phase one.

The case will next proceed to phase two, where the Court will determine the extent of losses due to the taking.

The plaintiffs are represented by Am Law 100 firm Polsinelli, led by Boulware, who is recognized by his peers as among the top 1 percent of all trial attorneys in the country, Edwin Smith, Seth Wright, Todd Ehler and Sharon Kennedy. Brown and Laura Alexander of Cohen Milstein Sellers & Toll, one of the nation's leading plaintiffs' firm based in Washington, D.C., also supported plaintiffs in this case.

For more information, including historical background, on this case, please visit <http://www.missouririverflooding.com>.

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Cohen Milstein Sellers & Toll PLLC is recognized as one of the premier law firms in the country handling major, complex plaintiff-side litigation. With more than 90 attorneys, Cohen Milstein has offices in Washington, D.C., Chicago, Ill., Denver, Colo., New York, N.Y., Palm Beach Gardens, Fla., Philadelphia, Pa., and Raleigh, N.C. For additional information, visit www.cohenmilstein.com or call 202.408.4600

Media contact:

Kelsey Rockey

krockey@parriscommunications.com

913-956-9959 (cell)

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