

Bond Case Briefs

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EMINENT DOMAIN - TEXAS

Ablan v. United States

United States Court of Appeals, Federal Circuit - December 22, 2025 - F.4th - 2025 WL 3703921

Owners of property upstream of dams brought action against the United States, alleging Army Corps of Engineers' operation of dams during hurricane constituted an uncompensated physical taking of their property.

Following bench trial, the Court of Federal Claims found the government liable for taking permanent flowage easements across owners' properties, denied class certification and awarded damages totaling \$454,535.03 on six bellwether properties, 162 Fed.Cl. 495. Government and owners cross-appealed.

The Court of Appeals held that:

- Permanent intermittent flooding of upstream properties due to Corps' operation of dams constituted a per se physical taking of permanent flowage easements in properties;
- As matter of apparent first impression, post-trial class certification for optional classes is not presumptively permitted;
- Award of compensation for structures and personal property damaged during flooding was warranted;
- Damages were properly awarded to lessee for government's taking of his leasehold advantage;
- Property owner was not entitled to compensation for lost rent and utility payments arising out of flooding;
- Property owners were not entitled to recover costs for amounts they spent renting alternative housing while their properties were inaccessible due to flooding; and
- Offset of property owners' compensation awards by amount they received from Federal Emergency Management Agency (FEMA) for emergency relief after their properties were flooded was appropriate.