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'First real trial' about Katrina under way

A lawsuit claiming that the Army Corps of Engineers made the flooding worse starts today.

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NEW ORLEANS

A landmark trial against the United States government began here today, with prosecution lawyers arguing that the Army Corps of Engineers contributed to the catastrophic flooding that hit the city after hurricane Katrina in 2005.

The civil-negligence suit could ultimately affect 400,000 New Orleanians and set the record straight on the causes of the disaster – an event from which the polyglot city, still at only two-thirds of its pre-Katrina population, has not fully recovered.

It's the only one of a series of lawsuits that Judge Stanwood Duval, Jr., has allowed to go to trial. US tort laws protect the Corps from damages directly related to flood control and levees. But the topic at the center of the case is a US navigation channel, not a flood-control project, so Judge Duval permitted the case.

The trial is expected to last at least three weeks and to focus on three main points: The cause of the damage, the potential negligence of the Corps, and the extent of damages that could be owed if the Corps is found liable.

"This is a significant case that could affect hundreds of thousands of people," said Judge Duval today at the start of what he called the "first real trial" about Katrina. "You all know what this is about: ... What did the Corps know, when did it know it, and when should it have known?"

At the heart of the lawsuit is the Mississippi River Gulf Outlet, or MR-GO – often shorthand as "Mr. GO" – a 64-mile channel connecting the Port of New Orleans to the Gulf of Mexico. Six plaintiffs charge that the construction of Mr. GO and the subsequent failure of the Corps to maintain it led to broad devastation of natural storm barriers, such as swamps. That helped funnel hurricane waters into the city in a manner that one prosecution witness, Sherwood Gagliano, described as "a great pipe."

The plaintiffs' strategy became clear with Dr. Gagliano, their first witness. He is Louisiana's oldest coastal engineer, and he said the dangers posed by Mr. GO amounted to "Coastal Geology 101." "One of the greatest catastrophes in the history of the US" was both predictable and preventable,

he told a full courtroom in US District Court.

Gagliano testified that a series of studies had warned of Mr. GO's impacts as far back as 1958, the year construction began. The threats included salination overload of sensitive freshwater swamps and erosion that would widen the channel over time. A 1984 Corps report acknowledged that large portions of St. Bernard and Orleans Parishes could be "exposed to a direct hurricane attack" because of a looming breach in the channel connecting it to Lake Borgne to the east.

Proving negligence won't be easy, according to a report by the Congressional Research Service. The Corps' mission to shape the land for human use and habitation is inherently difficult, so it has broad discretion in the decisions it makes and significant insulation from liability.

The government is expected to argue that Katrina was such a massive event that no remedial action on the Corps' part would have prevented the flooding. "The government's primary defense is that what we did, it did not cause this, and if it didn't cause it, there is no liability," says Mark Davis, a professor at Tulane University Law School here.

Yet Duval's willingness to move the case to trial is worrisome for the US government, which has prepared a massive defense, including some 2,000 exhibits of evidence. Scientists will dig deep into the intricacies of coastal ecology and geology in the following weeks, but Duval made it clear he seeks common sense and logical explanations.

It is a nonjury trial, meaning Duval will decide upon the verdict. He sought to reassure lawyers on both sides that he is not a complete novice when it come to understanding wetlands and their role in hurricane mitigation. He told the court that he grew up in the coastal oil city of Houma, La., "where I spent a lot of time in the swamps myself."

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