

NATURAL DISASTERS AND GOVERNMENT TORTS: IMMUNITY FOR DELICTUAL INJURY AFTER DISASTER DAMAGE

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I. INTRODUCTION

Katrina, Rita, Gustav, and Isaac are not just names in Louisiana; they represent life-changing natural disasters. From these storms to the recent catastrophic flooding around Baton Rouge and south Louisiana in the summer of 2016, natural disasters have caused billions of dollars in losses for Louisiana residents. These financial losses, staggering as they are, do not compare to the tragic loss of lives in these disasters, often disproportionately affecting the poor, elderly, and infirm. While the disaster itself and its accompanying winds, rains, and flood waters are often to blame for these losses and damages, the influx of disaster relief from volunteers, local and state government agencies, and federal actors inevitably brings with it claims for delictual injuries.¹

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1. “[D]elictual fault is an act between juridical strangers that violates some duty imposed by law, not by contract, and that requires reparation.” *Terrebonne Parish Sch. Bd. v. Columbia Gulf Transmission Co.*, 290 F.3d 303, 311 (5th Cir. 2002). “The notion of delictual liability includes: intentional misconduct, negligence, abuse of right, and liability without negligence.” LA. CIV. CODE ANN. art. 3492, cmt. (b) (2017).

Based on Louisiana's geographic location and recent history, the state remains at continued high-risk for future natural disasters. Therefore, courts and Louisiana practitioners—whether plaintiff- or defense-oriented, government or private sector—should have a working knowledge of the general concepts and statutes implicated in disaster-tort litigation, particularly as they relate to immunity defenses.

II. LOUISIANA STATE-LAW LIMITATIONS ON LIABILITY

In 1993, the Louisiana legislature passed a comprehensive bill known as the Louisiana Homeland Security and Emergency Assistance and Disaster Act (Louisiana Disaster Act), which superseded older statutes related to civil defense and emergency preparedness.² The Louisiana Disaster Act adopted several immunity provisions designed to insulate a variety of actors who provide disaster assistance or engage in emergency-preparedness and recovery activities.

The immunity provision of the most general applicability is Louisiana Revised Statute § 29:735, which provides that the state, political subdivisions,³ and agencies are immune from claims for “death of or any injury to persons or damage to property” as a result of defendants’ engagement “in any homeland security and emergency preparedness activities.”⁴ This provision also applies to agents, employees, or representatives of the government except in cases of willful misconduct.⁵ Unlike other immunity provisions in the Louisiana Disaster Act, § 29:735 does not limit its application to negligent acts committed only during a declared state of emergency,⁶ though courts have cited the existence of such declarations as evidence that the complained-of acts occurred while defendants were carrying out emergency-

2. 1993 La. Sess. Law Serv. Act 800 (H.B. 2084) (West) (codified at LA. STAT. ANN. §§ 29:721–735) (2007).

3. “[A] political subdivision of a state is a subdivision thereof to which has been delegated certain functions of local government.” *Commander v. Bd. of Comm’rs of Buras Levee Dist.*, 11 So. 2d 605, 607 (La. 1942). Included are parishes, municipalities, levee districts, and police juries, among other local-government political entities. See LA. HOUSE OF REPS., STATE AND LOCAL GOVERNMENT IN LOUISIANA: AN OVERVIEW ch. 3A-1 (2011), <http://house.louisiana.gov/slg/PDF/Chapter%203%20Part%20A%20-%20Local%20Government.pdf>.

4. LA. STAT. ANN. § 29:735(A)(1) (2007).

5. *Id.*

6. *Cooley v. Acadian Ambulance*, 2010-1229, pp. 12–13 (La. App. 4 Cir. 5/4/11); 65 So. 3d 192, 198–99.

preparedness activities.⁷

The lack of a bright-line, temporal expiration on § 29:735 immunity broadens its reach, although immunized activity must, nonetheless, meet the definition of “homeland security and emergency preparedness activities.”⁸ This provision broadly covers a variety of activities undertaken in the “mitigation of, preparation for, response to, and [in] the recovery from emergencies or disasters.”⁹ For example, courts applying this immunity provision of the Louisiana Disaster Act have held that the following qualify as immunized emergency-preparedness activities: removing debris,¹⁰ inspecting culverts and drainage structures,¹¹ making arrests and transporting arrestees or prisoners,¹² removing an earthen berm causing flooding,¹³ responding to a house fire,¹⁴ and failing to provide proper

7. *See, e.g.,* Lemoine v. United States, 2009 WL 2496561, at *3–7 (E.D. Aug. 13, 2009).

8. LA. STAT. ANN. § 29:735(A)(1) (2007).

9. LA. STAT. ANN. § 29:723(4) (Supp. 2017).

10. *See* Castille v. Lafayette City-Parish Consol. Gov’t, 04-1569, p. 3 (La. App. 3 Cir. 3/2/05); 896 So. 2d 1261, 1263 (“The City employees moving debris blocking Louisiana Avenue, therefore, were involved in emergency preparedness activities. The Act thus applies to this case.”).

11. *See* Fryoux v. Tensas Basin Levee Dist., 12-997, p. 3 (La. App. 3 Cir. 2/6/13); 2013 WL 440129, at *3 (finding that “any flooding that occurred during and/or after Hurricane Gustav occurred during a declared state of emergency and . . . the Levee District checked the drainage structures for which it is responsible”).

12. *See* Noyel v. City of St. Gabriel, 2015-1890, pp. 9–13 (La. App. 1 Cir. 9/1/16); 202 So. 3d 1139, 1144–47 (“The St. Gabriel Police Department’s employees, who arrested and transported Noyel to jail, were clearly engaged in activities which constitute ‘civil defense,’ and thus, according to the Act, are also known as ‘emergency preparedness activities.’”); *see* Rabeaux v. Theriot, 15-724, pp. 3–5 (La. App. 3 Cir. 12/9/15); 2015 WL 8469758, at *3–5 (“Rabeaux acknowledged that Deputy Prunty was patrolling the area where Rabeaux lived to facilitate public safety as part of the emergency response effort to the threat of flooding.”); *see* Koonce v. St. Paul Fire & Marine Ins. Co., 15-31, p. 1 (La. App. 3 Cir. 8/5/15); 172 So. 3d 1101, 1103 (“On September 22, 2005, as Hurricane Rita approached, a school bus driven by Deputy Ryan Lavergne . . . was transporting prisoners, including Appellant, for evacuation when it crashed into the rear end of another school bus that was also transporting prisoners for evacuation.”).

13. *See* Neil v. Lafourche Parish Council, 2013-0587, p. 3 (La. App. 1 Cir. 2/7/14); 2014 WL 505479, at *2–4 (“In the instant case, at all relevant time periods, Lafourche Parish was under a state of emergency . . . [W]e find that the actions of the defendants in tearing down Mr. Neil’s earthen berm were clearly in response to a disaster, i.e., the flooding of Lake Long Subdivision as a result of the rising canal waters and the obstruction created by Mr. Neil’s berm.”).

14. *See* Haab v. E. Bank Consol. Special Serv. Fire Prot. Dist. of Jefferson Parish, 13-954, p. 5 (La. App. 5 Cir. 5/28/14); 139 So. 3d 1174, 1179 (“Inasmuch as the [Louisiana Disaster Act] provides absolute immunity to the political subdivision and

warnings in advance of a disaster.¹⁵

The Louisiana Disaster Act also contains a provision immunizing healthcare providers who render “emergency care or first aid to assist persons injured as a result of the emergency.”¹⁶ Unlike § 29:735, however, the medical care must occur “during a declared state of emergency,” though the care may geographically occur either “in the area subject to the declaration or elsewhere.”¹⁷ As with § 29:735, instances of “gross negligence or willful misconduct” are exempt from the healthcare immunity provision.¹⁸

After Hurricane Katrina, the legislature amended the Louisiana Disaster Act to immunize medical personnel “who render or fail to render” care “as a result of an evacuation or treatment or failed evacuation or treatment conducted in accordance with disaster medicine protocol and at the direction of military or government authorities.”¹⁹ A companion provision immunizes claims against healthcare providers as a result of “an evacuation, sheltering, transportation or repopulation of a health care provider facility” or a failure to take those actions.²⁰ The immunized medical care and evacuation activities (or omissions), however, must occur during a declared state of emergency and instances of “willful and wanton misconduct” are not immunized.²¹ Unlike § 29:735, Louisiana courts have not extensively interpreted the healthcare immunity provision of the Louisiana Disaster Act since its post-Katrina adoption.

Finally, the Louisiana Disaster Act immunizes property owners that voluntarily and freely shelter persons, pets, or

its agencies during emergency preparedness activities, we find that the trial court was correct to grant summary judgment in favor of the Parish and its various departments regarding their conduct in activating the Plan, and in their response to the fire during the actual emergency event.”).

15. See *Robertson v. St. John the Baptist Parish*, 15-240, p. 9 (La. App. 5 Cir. 10/14/15); 177 So. 3d 785, 789 (“There can be no dispute appellants seek damages allegedly caused by the Parish’s failures with respect to its emergency preparedness and management activities as defined in La. R.S. 29:723(4). The trial court did not err in finding the appellants’ claims relate to the Parish’s emergency preparedness activities.”).

16. LA. STAT. ANN. § 29:735.1 (2007).

17. *Id.*

18. *Id.*

19. LA. STAT. ANN. § 29:735.3(A) (Supp. 2017).

20. LA. STAT. ANN. § 29:735.5(A) (Supp. 2017).

21. *Id.*; § 29:735.3(A); § 29:735.1.

service animals during an emergency.²² To trigger this immunity provision, the injury must occur “on or about such immovable property or premises during the actual, impending, mock, or practice emergency or . . . solely by reason” or as a result of the use of the property as a shelter.²³ This “Good-Samaritan” provision does not apply if “gross negligence or the willful and wanton misconduct” of the property owner “is the proximate cause of the death, injury, loss, or damage occurring during the sheltering period.”²⁴

The *FEMA Trailer* multi-district litigation illustrates how this provision of the Louisiana Disaster Act operates to deprive recovery to injured parties. In that case, plaintiffs alleged tortious exposure to formaldehyde while staying in emergency housing units (FEMA trailers) in Louisiana after Hurricanes Katrina and Rita.²⁵ The district court concluded that the Louisiana Disaster Act should be “interpreted broadly to shield the Government from liability.”²⁶ Applying the private-person analogy of the Federal Tort Claims Act (FTCA),²⁷ the U.S. Fifth Circuit Court of Appeals concluded that Federal Emergency Management Agency (FEMA) supplied shelter to Louisiana disaster victims (1) voluntarily, (2) without compensation, and (3) during or in recovery from a natural disaster.²⁸ For these reasons, the “Good-Samaritan” provision of the Louisiana Disaster Act applied and immunized the United States from the plaintiffs’ claims.²⁹

The Civil Code ancillaries in Title 9 of the Louisiana Revised Statutes include several other immunity provisions that could apply to certain fact patterns in disaster-tort litigation. One such statute provides that an individual “who in good faith gratuitously renders emergency care, first aid or rescue at the scene of an emergency, or moves a person” to a place of medical care is immune from claims arising out of “any act or omission in

22. LA. STAT. ANN. § 29:733.1 (2007).

23. *Id.*

24. *Id.*

25. *In re FEMA Trailer Formaldehyde Prod. Liab. Litig.*, 2010 WL 2010487, at *1 (E.D. La. May 18, 2010), *aff’d*, 713 F.3d 807, 811 (5th Cir. 2013).

26. *Id.* at *5, n.8 (internal citations omitted).

27. See 28 U.S.C. § 1346(b)(1) (2012); 28 U.S.C. § 2674 (2012); *infra*, Part III.

28. *In re FEMA Trailer Formaldehyde Prod. Liab. Litig.* (Louisiana Plaintiffs), 713 F.3d 807, 811 (5th Cir. 2013).

29. *Id.*

rendering the care or services.”³⁰ But this immunity does not apply if there is a business, commercial, or pecuniary relationship between the parties, nor does the immunity apply vicariously to a rescuer’s employer.³¹

Louisiana law also contains a discretionary-function immunity that insulates “public entities or their officers or employees” from liability for claims “based upon the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties.”³² Relying on interpretive authority from the United States Supreme Court on the similarly worded discretionary-function exception of the FTCA,³³ the Louisiana Supreme Court instructed lower courts to consider first whether the alleged negligent actor had an element of choice in the course of action.³⁴ If there was an element of choice or discretion, courts next consider whether the discretion was grounded in social, economic, or political policy.³⁵

While a full explication of the history, purpose, and application of this oft-cited provision is beyond the limited scope of this article, disaster-tort defendants have successfully pleaded this defense in conjunction with immunity defenses available under the Louisiana Disaster Act. For example, in *Hontex Enterprises, Inc. v. City of Westwego*, a shrimp-processing plant in Westwego flooded during Tropical Storm Frances after the city built a ring levee around a leaking pipe in a pump station that, in turn, caused flooding in the pump station itself and plaintiff’s nearby shrimp plant.³⁶ The Louisiana Fifth Circuit Court of Appeal affirmed the district court’s application of both the Louisiana Disaster Act and discretionary-function immunity.³⁷ As to the latter, the fifth circuit agreed with the district court that “the decision[s] to block the roadway and build a levee around the pumping station were discretionary, tactical decisions” that were “grounded in social, economic, and public

30. LA. STAT. ANN. § 9:2793(A) (2007).

31. LA. STAT. ANN. § 9:2793(A)–(B) (2007).

32. LA. STAT. ANN. § 9:2798.1 (2007).

33. 28 U.S.C. § 2680(a) (2012).

34. *Jackson v. State ex rel. Dep’t of Corr.*, 2000-2882, p. 8 (La. 5/15/01); 785 So. 2d 803, 809 (citing *Berkovitz v. United States*, 486 U.S. 531 (1988)).

35. *Id.*

36. *Hontex Enters., Inc. v. City of Westwego*, 02-506, pp. 3–4 (La. App. 5 Cir. 12/11/02); 833 So. 2d 1234, 1235.

37. *Id.* at 13–14; 833 So. 2d at 1240–41.

policy,” specifically “to protect the citizens of Westwego from the threat of a flood.”³⁸

In the disaster-tort context, Louisiana courts have also applied discretionary-function immunity to decisions regarding the design and operation of drainage systems,³⁹ the disbursement of monetary disaster relief in the Road Home Program,⁴⁰ and emergency closing of roadways due to weather conditions.⁴¹

III. THE FEDERAL TORT CLAIMS ACT: EXTENSION OF STATE-LAW IMMUNITIES TO FEDERAL ACTORS

From FEMA and the Army Corps of Engineers to the Small Business Administration and the National Guard, the onset of a federally-declared major disaster inevitably yields an influx of federal personnel to render aid and recovery to affected areas and individuals. The FTCA provides a limited waiver of sovereign immunity that makes the United States “liable to the same extent as a private party [under state law] for certain torts of federal employees acting within the scope of their employment.”⁴² But, “if a private person under ‘like circumstances’ would be

38. *Hontex Enters., Inc. v. City of Westwego*, 02-506, p. 12 (La. App. 5 Cir. 12/11/02); 833 So. 2d 1234, 1240.

39. *Fossier v. Jefferson Parish*, 07-926, p. 8 (La. App. 5 Cir. 4/15/08); 985 So. 2d 255, 259 (“Applying the *Berkovitz* test to the facts of the instant case, we find that the decisions made in this case involved elements of judgment and choice, which means the Parish’s actions were discretionary. Further, we find that Jefferson Parish has articulated social, economic and political considerations surrounding its decisions regarding the drainage system for this specific area, including financial limitations, safety considerations, equipment availability, and feasibility.”); *Marino v. Parish of St. Charles*, 09-197, pp. 8–9 (La. App. 5 Cir. 10/27/09); 27 So. 3d 926, 932 (“The Parish has shown the necessary social and economic consideration surrounding its decisions regarding the choices and operation of the drainage system for this specific area.”).

40. *Blanchard v. Newton*, 865 F. Supp. 2d 709, 717 (M.D. La. 2012) (“The claims by plaintiff involve administrative, discretionary actions in the implementation of the Road Home Program, all of which fall under Louisiana Revised Statute 9:2798.1 The Court finds that the defendants are clearly entitled to the discretionary immunity for the acts taken in this matter under Louisiana law.”). The success or failure of any lawsuits against the City of New Orleans and its Sewerage and Water Board due to damage from urban flooding on August 5, 2017 will likely turn on the courts’ application of discretionary-function immunity and the cases cited above. *See also* Daley and Duval, *infra* n.57.

41. *Hamilton v. Bathgate*, 2008-0432, p. 6 (La. App. 4 Cir. 11/19/08); 999 So. 2d 789, 792 (“[B]y the specific terms of the statutes, emergency closing of a roadway is a discretionary decision and, therefore, the DOTD is immune to liability in this case.”).

42. *United States v. Orleans*, 425 U.S. 807, 813 (1976); *see also* 28 U.S.C. §§ 1346(b)(1), 2674 (2012).

shielded from liability pursuant to a state statute, lower courts must decline to exercise subject-matter jurisdiction” under the FTCA.⁴³ Thus, the FTCA’s limited waiver of sovereign immunity is jurisdictionally circumscribed not only by the various exceptions Congress has codified into the Act itself,⁴⁴ but also by the myriad state-law immunities applicable to private parties.⁴⁵

Because the FTCA borrows and incorporates Louisiana state-law tort duties and defenses, the United States has successfully invoked the Louisiana Disaster Act and Good-Samaritan statutory immunity defenses to liability in disaster-tort litigation. For example, in *Alfonso v. United States*, the plaintiff sued the United States after his truck skidded off a roadway, flipped, and ejected him.⁴⁶ Plaintiff alleged that members of the National Guard—activated to federal pay status after Hurricane Katrina and under control of Louisiana’s governor and adjutant general—had hauled dirt and debris across the roadway where the accident occurred, leaving a slippery accumulation of mud that caused the accident.⁴⁷ The U.S. Fifth Circuit Court of Appeals, however, found that an analogous private person under Louisiana law hauling storm debris for a state official after a major disaster would be entitled to immunity under the Louisiana Disaster Act.⁴⁸ The Fifth Circuit, therefore, affirmed the dismissal of the plaintiff’s suit based on Louisiana Disaster Act immunity.⁴⁹

43. *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.* (Mississippi Plaintiffs), 668 F.3d 281, 289 (5th Cir. 2012).

44. 28 U.S.C. § 2680 (2012).

45. *See, e.g.*, *Woods v. United States*, 909 F. Supp. 437, 440 (W.D. La. 1995) (applying the Louisiana recreational-use statute in an FTCA case); *Dorman v. United States*, 812 F. Supp. 685, 686 (S.D. Miss. 1993) (applying the Mississippi recreational-use statute in an FTCA case); *Willoughby v. United States*, 730 F.3d 476, 480–81 (5th Cir. 2013) (applying Texas statutory-employer and workers’ compensation defenses in an FTCA case).

46. *Alfonso v. United States*, 752 F.3d 622, 625 (5th Cir. 2014).

47. *Id.*

48. *Id.* (“The FTCA permits recovery against the United States if the federal employees would be liable for the same conduct as private individuals under state law. . . . We agree with the district court that under Louisiana law the guards-men were engaged in emergency-preparedness activities and are therefore clothed with immunity.”).

49. *Id.* at 626–27. Louisiana federal district courts have employed similar analyses in dismissing FTCA suits based on activities of the National Guard and other federal officials assisting state actors in the aftermath of natural disasters. *See Robin v. United States*, 2006 WL 2038169 (E.D. La. July 17, 2006) (applying a similar analysis when a federal wildlife and fisheries agent assisted state law enforcement in search and rescue); *Lemoine v. United States*, 2009 WL 2496561

Also, as noted above, the United States successfully invoked Louisiana's Good-Samaritan immunity defense to a FTCA suit alleging tortious formaldehyde leaks in temporary trailers that federal agencies provided in the aftermath of Hurricanes Katrina and Rita.⁵⁰ Because a private person gratuitously providing use of a trailer as emergency shelter after a disaster would be immune from tort liability under Louisiana law, the United States also enjoyed that state-law immunity derivatively under the FTCA.

IV. FEDERAL-LAW LIMITATION ON LIABILITY

In addition to state-law immunities and the FTCA, the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) includes a discretionary-function provision designed to immunize federal actors from claims arising out of their provision of disaster assistance.⁵¹ In *Freeman v. United States*, the Fifth Circuit analyzed and applied this provision to the plaintiffs' wrongful-death claims arising out of alleged negligent failure to provide emergency medicine, food, water, and transportation to elderly and ill evacuees stranded at the Convention Center in New Orleans in the days following Hurricane Katrina.⁵² Courts have also applied this provision to defeat claims for: wrongful death occurring during a failed helicopter rescue from a flooded overpass,⁵³ denial of monetary disaster aid,⁵⁴ vehicle accidents during debris removal,⁵⁵ and the

(E.D. La. Aug. 13, 2009) (applying a similar analysis when a national guardsman hauled material under the control of the state adjutant general); *see also* Lumpkin v. Lanfair, 2010 WL 3825427 (E.D. La. Sept. 23, 2010).

50. *In re* FEMA Trailer Formaldehyde Prod. Liab. Litig. (Louisiana Plaintiffs), 713 F.3d 807, 811 (5th Cir. 2013).

51. 42 U.S.C. § 5148 (2012). In general, the Stafford Act is the statutory authority for most federal disaster-response activities, including: search and rescue; emergency medical care; emergency mass care; emergency shelter; provision of food, water, medicine, durable medical equipment, and other essential needs, including movement of supplies or persons; clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; demolition of unsafe structures which endanger the public; warning of further risks and hazards; dissemination of public information and assistance regarding health and safety measures; provision of technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and provision of rescue, care, shelter, and essential needs. *See* § 5170b(a)(3)(A)–(J) (2012).

52. *Freeman v. United States*, 556 F.3d 326, 329, 334–36 (5th Cir. 2009).

53. *See* *Davis v. United States*, 597 F.3d 646 (5th Cir. 2009).

54. *See* *St. Tammany Parish ex rel. Davis v. Fed. Emergency Mgmt. Agency*, 556

provision of temporary trailers as emergency lodging.⁵⁶

V. RECOMMENDATIONS AND CONCLUSION

The immunity statutes identified above may leave injured parties with no right of recovery against a government tortfeasor acting in the aftermath of a natural disaster.⁵⁷ Therefore, plaintiffs' counsel should familiarize themselves with the elements of these defenses to evaluate and screen cases properly. Likewise, when appropriate to the factual allegations, plaintiffs' counsel may seek to allege defendants' willful misconduct or gross negligence in an attempt to escape the reach of certain immunity statutes. Defense counsel for government actors, insurers, and representatives should assert statutory immunity defenses in their first responsive pleading to a petition or complaint. Defense counsel should resist any merits-based discovery until the court has ruled on and resolved the threshold question of immunity.

Regardless of the posture and parties involved, a working knowledge of the immunity statutes implicated in disaster-tort litigation will best equip both counsel and the courts in reaching a just, speedy, and inexpensive resolution of tort claims that inevitably follow natural disasters.

F.3d 307 (5th Cir. 2009).

55. See *Thomas v. Tyler Cty.*, 2010 WL 4962968, at *6 (E.D. Tex. Nov. 4, 2010), *report and recommendation adopted*, 2010 WL 4955716 (E.D. Tex. Dec. 1, 2010) (“The alleged facts upon which the plaintiffs [sic] claims for relief are based took place in a short time frame after Hurricane Rita and within the scope of federal disaster relief efforts authorized by the President pursuant to the Stafford Act.”).

56. See *Salazar v. United States*, 633 F. Supp. 2d 232, 237 (E.D. La. 2009) (“[T]he Court finds that the discretionary function exception [of the Stafford Act] applies to the case at bar. No statute or regulation instructed FEMA to take certain actions in the selection of travel trailers for disaster victims. While handrails could have provided a more safe environment, FEMA was allowed to use its judgment in selecting travel trailers. Moreover, when exercising its judgment, public policy was involved. Therefore, Defendant is also shielded from liability under the discretionary function exception.”).

57. For criticism of this result specifically focused on an interpretation of the FTCA's discretionary-function exception, 28 U.S.C. § 2680(a), see Janet Louise Daley and Judge Stanwood Richardson Duval, Jr., *The Discretionary Function: License to Kill? The Federal Tort Claims Act and Hurricane Katrina Implications of the Robinson/MRGO Decisions: Can the King Do No Wrong?*, 62 LOY. L. REV. 299 (2016).