

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PATRICK MARTIN

VERSUS

UNITED STATES OF AMERICA, ET AL

CIVIL ACTION

NO. 07-663-FJP-CN

RULING

The matter before the Court is the defendant's motion to dismiss, or alternatively, motion for summary judgment.¹ The plaintiff has filed an opposition to this motion.² The defendant's motion is granted for reasons set forth below.

I. Defendant's Motion to Dismiss

The instant suit is brought under the Federal Tort Claims Act.³ Congress waived sovereign immunity and granted consent for the United States to be sued for acts committed by any employee of the U.S. Government while acting within the scope of his office or employment.⁴ A limitation on the FTCA's waiver of immunity is

¹Rec. Doc. No. 12.

²Rec. Doc. No. 16.

³28 U.S.C. 1346(b) (1997).

⁴*Johnston v. U.S.*, 85 F.3d 217 (5th Cir. 1996)(quoting *U.S. v. Kubrick*, 444 U.S. 111, 117-18, 100 S.Ct. 352, 356-57, 62 L.Ed.2d 259 (1979)).

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contained in 28 U.S.C. 1346(b)(1), which states that "the U.S. will be held liable," under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.⁵ Similarly, the FTCA imposes tort liability upon the United States "in the same manner and to the same extent as a private individual under like circumstances."⁶

It is undisputed that the spare tire on the vehicle Mr. Speith was driving struck plaintiff's car in Baton Rouge, Louisiana, while Speith was performing Hurricane Katrina relief operations as a member of the Illinois National Guard. Therefore, the place of the act or omission is Louisiana and its law should apply.

The issue in dispute and now before the court is whether Louisiana law imposes tort liability on a private person under like circumstances as Mr. Speith. The Court finds that Louisiana law does not impose such tort liability.

The Louisiana Homeland Security and Emergency Assistance and Disaster Act⁷ governs the state's response to an emergency, whether natural or man-made. Paragraph 1 of Section 723 identifying disasters triggering application of the Act specifically includes

⁵28 U.S.C. 1346(b)(1)(1997).

⁶28 U.S.C. 2674 (1948).

⁷La.Rev.Stat. Ann. 29:721-737 (1993).

hurricanes as disasters.⁸ There is an immunity provision in this Act which states,

Neither the state nor any political subdivision thereof, nor other agencies, nor, except in case of willful misconduct, the agents' employees or representatives of any of them engaged in any homeland security and emergency preparedness activities, while complying with or attempting to comply with this Chapter, shall be liable for the death of or any injury to persons or damage to property as a result of such activity.⁹

A private individual under circumstances likened to Mr. Speith would be afforded immunity from tort liability if: (1) he had been an agent of the state, (2) he had engaged in emergency preparedness activities, and (3) he had complied with regulations of the Emergency Assistance Act.

The Court finds that such a private individual would be considered an agent of the state. An agency relationship existed between Speith and the State due to the expansive operational control the Louisiana Adjutant General had over the Illinois National Guard during Hurricane Katrina recovery. The facts indicate that the Louisiana Adjutant General provided Mr. Spieth with a mission to pick-up automotive parts under orders handed down by his platoon leader.¹⁰ The facts further indicate that the damage sustained by the plaintiff occurred while Speith was on such mission.

⁸*Castille v. Lafayette City-Parish Consol. Government*, 896 So.2d 1261 (La. App. 3 Cir.,2005).

⁹La.Rev.Stat. Ann. § 29:735(A)(1)(1993).

¹⁰Rec Doc. No. 12, p.12.

The Court further finds that Speith engaged in emergency preparedness activity and complied with regulations of the Emergency Assistance Act. Louisiana courts give the term "emergency preparedness activity" a broad interpretation. The court in *Castille v. Lafayette City-Parish Consolidated Government*¹¹ held that cleanup activity which caused the placement of the debris following a hurricane was covered by the immunity provision of the Emergency Assistance Act. Also, in *Clement v. Reeves*¹², the plaintiff's negligence claim for failure to maintain a road sign was dismissed based on the statutory immunity of the Emergency Assistance Act because even though the actual or threatened condition of a hurricane had passed at the time of the accident, a state of emergency remained in effect.

In the instant case, Speith was a member of the Illinois National Guard. On September 1, 2005, the Illinois Governor granted Louisiana's request for assistance in hurricane relief and directed deployment of the Illinois National Guard to Louisiana. Given the broad interpretation generally applied to the term "emergency preparedness activity," the Court finds that the defendant's duties with the Illinois National Guard clearly constitute "emergency preparedness activity." There is no evidence cited by the plaintiff which would indicate willful conduct as to

¹¹896 So.2d 1261 (La. App. 3 Cir. 2005).

¹²975 So.2d 170 (La. App. 3 Cir. 2008).

put the United States in violation of the Emergency Assistance Act regulations.

The Court now turns to the plaintiff's argument that La. R.S. 29:736(D) guarantees plaintiff an adequate remedy by due process of law and justice. The defendant offers no jurisprudence that the legislative intent of the Act was to ensure individuals would have adequate remedy by law. The Emergency Assistance Act grants broad authority to the officials listed in the Act in order to ensure the safe and expedient recovery from a disaster. The Court will not contradict the clear legislative intent of the Act merely to grant the plaintiff's unsupported claim of denial of due process.

Therefore;

IT IS ORDERED that the defendant's motion to dismiss for lack of subject matter jurisdiction is granted. The defendant's motion for summary judgment is rendered moot.

Judgment shall be entered accordingly.

Baton Rouge, Louisiana, September 24, 2008.



FRANK J. POLOZOLA
MIDDLE DISTRICT OF LOUISIANA