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POINTS TO REMEMBER

JUDICIAL FORECLOSURES

On occasion certain title companies have questioned Marshals' deeds when not personally executed by the United States Marshal. In order to obviate such objections Subpart X of Title 28 of the Code of Federal Regulations has been amended to include the following formal delegation of authority:

> § 0.156 Execution of U.S. Marshal's deeds or transfers of title.
>
> A chief deputy or deputy U.S. Marshal who sells property--real, personal, or mixed--on behalf of a U.S. Marshal, may execute a deed or transfer of title to the purchaser on behalf of and in the name of the U.S. Marshal.

See Page 20406 of the Federal Register, Volume 34, No. 249, for Wednesday, December 31, 1969.

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ANTITRUST DIVISION

Assistant Attorney General Richard W. McLaren

DISTRICT COURT

SHERMAN ACT

BOARD OF REALTORS CHARGED WITH FIXING COMMISSION RATES.

United States v. Prince George's County Board of Realtors, Inc. (D. Md., No. 21545; December 18, 1969; D.J. 60-223-0)

On December 18, 1969, a civil action was filed in the U.S. District court for Maryland charging the Prince George's County Board of Realtors (the Board) with violating Section 1 of the Sherman Act by conspiring to fix commission rates for the sale of real estate in Prince George's County.

The Board is an association of approximately 1,000 real estate brokers, salesmen and others engaged in the business of selling, leasing, managing or financing real estate and operating in Prince George's, Charles, St. Mary's and Calvert Counties in Maryland. The members of the Board are named as co-conspirators.

The Board operates a Multiple Listing Service (MLS) designed to increase the sales and circulation of its members' listings. Most members of the Board who sell residential property in Prince George's County are members of the MLS and as such are required to submit to the MLS all exclusive listings of residential properties over $8,000 located in Prince George's County. The MLS prepares copies of all such listings and distributes them to MLS members. In addition, members have the option of submitting to the MLS listings of commercial and industrial properties, farms, lots and acreage. MLS sales were over $39,000,000 in 1968.

The complaint alleges that the Board's activities have had the following effects: (a) commission rates for the sale of real estate in Prince George's County have been raised and maintained at an artificial and non-competitive level; (b) price competition in the sale of their services among the co-conspirator real estate brokers and salesmen has been eliminated; and (c) sellers of real estate in Prince George's County have been denied the right to use the services of real estate brokers and salesmen at competitively determined rates of commission.

The suit seeks to enjoin the Board and its members from continuing or renewing the alleged violations of the Sherman Act which contributed to

the fixing of commission rates. It is designed as a test case to determine whether Section 1 of the Sherman Act can be applied to the alleged illegal activities of a local board of real estate brokers.

The case has been assigned to Judge Thomson.

Staff: Edward R. Kenney and Linda A. Coffey
(Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General William D. Ruckelshaus

COURT OF APPEALS

FEDERAL EMPLOYEES COMPENSATION ACT

WHERE GOVT. HAS PAID FECA BENEFITS TO AN INJURED EMPLOYEE, EXCLUSIVITY PROVISION OF FECA BARS ANY RECOVERY BY TORTFEASOR AGAINST GOVT. FOR CONTRIBUTION.

Newport Air Park, Inc. v. United States (C.A. 1, No. 7317; December 4, 1969; D.J. 157-66-95)

Owing to the joint negligence of employees of the Government and Newport Air Park, Inc., two light planes collided in midair, and crashed in Warwick, Rhode Island. The pilot of one, a federal employee, was killed. Benefits under the Federal Employees Compensation Act were paid to the survivors, who also settled their action for wrongful death against Newport for $50,000. Newport then brought this action seeking contribution against the Government (i.e. seeking to force the Government to pay one-half of the $50,000 Newport had paid to the survivors) pursuant to the Tort Claims Act and the Rhode Island version of the Uniform Contribution Among Joint Tortfeasors Act. We resisted on the ground that recovery in contribution was barred by 5 U.S.C. 8116(c), the portion of the FECA providing that the liability of the Government to an injured employee for compensation benefits is exclusive of all other liability on account of the employee's injury. The district court allowed contribution, but (adopting for Rhode Island a rule followed in the Pennsylvania courts) limited it to $8,600, the amount that the Government had paid in compensation benefits. We appealed.

The First Circuit reversed. It held, as a matter of federal law, that because the Government could not be held directly liable in tort to its employee (owing to 5 U.S.C. 8116(c)), it could not be held liable in contribution to another tortfeasor on account of an injury for which an employee covered by FECA was entitled to compensation. The Court dismissed the fashioning of a limited-contribution rule by the district court as "impermissible ad hoc legislation".

Staff: Daniel Joseph (Civil Division)

DISTRICT COURT

USE OF GRAND JURY EVIDENCE IN CIVIL CASE

EXAMINATION OF GRAND JURY EXHIBITS BY FBI ACCOUNTANT NOT GROUNDS FOR DISMISSAL OF CIVIL COMPLAINT NOR SUPPRESSION OF SUCH EVIDENCE.

United States v. Conrad DiGregorio, et al. (D. Mass., No. 69-185-W; December 15, 1969; D. J. 46-36-437)

This is a civil action brought under the False Claims Act, 31 U.S.C. 231, the Anti-Kickback Act, 41 U.S.C. 51, and at common law, wherein it is alleged that defendants conspired to rig the bidding for subcontracts under an Air Force prime contract, and remitted or accepted kickbacks as a part of this scheme. Defendants moved to dismiss the complaint or to suppress evidence, on the grounds that there had been a misuse of grand jury subpoenas and an unauthorized disclosure of certain of the evidence, to wit, checks, produced pursuant thereto.

The parties stipulated as follows: That the grand jury, which issued the subpoenas, heard no testimony concerning the checks in question; that the checks were turned over to an FBI agent who took them to another building where he prepared a summary of them; and that two years after expiration of the first grand jury the FBI agent testified before a second grand jury concerning the checks, which checks had not been resubpoenaed. Defendants argued that the subpoena power of the grand jury had been employed merely to obtain evidence for the instant civil case and that the secrecy of grand jury proceedings was breached when the checks were turned over to the FBI agent.

District Judge Wyzanski denied defendants' motions, citing United States v. Proctor & Gamble, 356 U.S. 677, and United States v. Wallace & Tiernan, 336 U.S. 793, which hold that the only remedy available whenever the Government abuses the grand jury process in developing evidence for its civil case is disclosure of the grand jury transcript, not dismissal of the Government's civil complaint, nor suppression of evidence. The court made no findings of fact.

Staff: Assistant U.S. Attorney Joseph A. Lena, Jr. (D. Mass.); Barry Blyveis (Civil Division)

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CRIMINAL DIVISION
Assistant Attorney General Will Wilson

COURT OF APPEALS

MILITARY SELECTIVE SERVICE ACT

BREDE v. UNITED STATES OVERRULED.

United States v. Bert Daniel Stark (C.A. 9, No. 22,994; November 28, 1969; D.J. 25-12C-385)

The Court of Appeals for the Ninth Circuit, sitting en banc, overruled Brede v. United States, 396 F.2d 155, 400 F.2d 599 (9th Cir., 1968) in an appeal from a conviction in the U.S. District Court for the Central District of California for failure to report for civilian work.

The Court held:

> The same situation exists in this case /as in Brede/. Nevertheless we are of the view, and so hold, that where, as here (and in Brede), the board's determination includes not only the type of employment deemed appropriate but also the employer to whom the registrant is to report, the critical exercise of administrative judgment by the board has been made and an order to report to the specified employer (subject to authorization of the National Director) is implicit and the action of the clerk in issuing the order is merely ministerial implementation. To this extent Brede is hereby overruled.

See also Hestad and Cupit v. United States, Seventh Circuit, Nos. 17398, 17404, November 7, 1969, D.J. 25-86-224, reversing 292 F.Supp. 146 (W.D. Wisc. 1968) in which motions under 28 U.S.C. 2255 had been granted based on Brede.

Staff: United States Attorney Wm. Matt Byrne, Jr. and Assistant U.S. Attorney Michael Lightfoot (S.D. Calif.)

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