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POINTS TO REMEMBER

Statute of Limitations on Civil Suits (28 U.S.C. 2415-2416)

28 U.S.C. 2415 enacted July 18, 1966, established a six-year period of limitations on Government suits based upon contract (express or implied in fact or law, including quasi-contractual claimed founded on erroneous overpayments of money), trespass on or fire damage to lands of the United States (including trust or restricted Indian lands), the diversion of money paid under a grant program, and conversion of Government property. A three-year period of limitations was established as to other suits for money sounding in tort.

By virtue of 28 U.S.C. 2415(g) causes of action accruing prior to the date of enactment of the statute are deemed to have accrued on July 18, 1966. Thus any claims for money of the types discussed in the first sentence above which actually accrued prior to July 18, 1966, must be placed in suit on or before July 17, 1972, with the limited exceptions mentioned below.

Each office should undertake a systematic review of pending civil claims for money to make sure that timely legal action is taken. The probable date of expiration of the applicable limitations period should be noted on pending claims files and on all future civil claims referrals to insure timely suit. 28 U.S.C. 2415 does not supersede other statutes of limitation, such as those cited at pages 48 and 51 of Title 3 of the United States Attorneys Manual, and in some cases different periods of limitations will have to be considered.

A partial payment or a written acknowledgement of an indebtedness will start the six-year statute running anew as to claims for money based on contract (express of implied in fact or law, including quasi-contractual claims based on an erroneous overpayment of money). However, note that a similar express saving provision was not included with respect to the remaining causes of action covered by the statute. The period of limitations may be suspended in relatively few cases by one of the circumstances enumerated in 28 U.S.C. 2416. The statute may also be suspended as to a very few contract actions by the pendency of required administrative proceedings, but suit may be required within one year of the conclusion of such proceedings. The best procedure is to file suit promptly on all claims except contract claims in which required administrative proceedings are pending unless unsatifactory payments are being made on a claim which is clearly subject to the saving provision referred to in the first sentence of this paragraph. If satisfactory payments are being received on claims for which suit will be barred by the statute notwithstanding such payments, a written waiver of the limitations defense or a written consent to additional time for suit may be obtained well in advance of the bar date as an alternative to suit.

ANTITRUST DIVISION

Assistant Attorney General Richard W. McLaren

DISTRICT COURT

SHERMAN ACT

GOVERNMENT ALLEGES VIOLATION OF SHERMAN ACT BY FIXING MINIMUM COMMISSION RATES FOR BROKERAGE SERVICES.

United States v. Board of Trade of the City of Chicago, Inc. (N. D. Ill., Civil No. 71C2875, December 1, 1971; D. J. 60-268-12)

On December 1, 1971, a civil action was filed in the United States district court for the Northern District of Illinois, Eastern Division, charging that The Board of Trade of the City of Chicago, Inc. ("Board of Trade") and its members are violating Section 1 of the Sherman Act by agreeing to charge fixed minimum commission rates for brokerage services in trading commodity futures contracts on the Board of Trade.

A commodity futures contract is a contract for the delivery of a specified quantity of a commodity at a future date and at a price to be determined at the time the contract is entered into. These contracts are traded on commodity exchanges, and the Board of Trade is the largest such exchange in the country. In 1970, 8.1 million contracts with an estimated value of $73.3 billion were traded on the Board of Trade.

As defined in the complaint, the term "member" of the Board of Trade means and includes individuals, associations, partnerships, corporations and trusts owning or holding membership in, or admitted to membership representation on, the Board of Trade or given members' trading privileges thereon. There are in excess of 1400 members of the Board of Trade. For a commission, many members act as brokers for the purchase or sale of commodity futures contracts on the Board of Trade, and in addition, some members purchase and sell such contracts for their own accounts.

The complaint alleges that the Board of Trade and its members are engaged in an unlawful combination to restrain trade and commerce in the provision of brokerage services for the trading of commodity futures contracts on the Board of Trade. Specifically, the complaint charges the Board of Trade and its members with establishing minimum rates of commission, floor brokerage and other fees for the trading of commodity futures contracts. This combination, the complaint alleges, has the effect of fixing brokerage commissions and other fees at a non-competitive level,

eliminating price competition for such services and depriving the public of the right to trade such contracts on the Board of Trade at competitively determined commission rates or fees.

The complaint requests that the above combination be declared unlawful and that an injunction be issued restraining such practices in the future.

On the same date, the Government filed a motion, pursuant to Rule 16(6) of the Federal Rules of Civil Procedure, for an order requesting the Administrator of the Commodity Exchange Authority to report to the court on his views on certain issues relating to whether commission rate fixing on the appropriate form of relief in this action. The motion papers make clear the Government's position that the doctrine of primary jurisdiction is inapplicable in this case. Rather, we have contended that the Administrator, as the individual charged with the day-to-day regulation of the Chicago Board of Trade under the Commodity Exchange Act, can render an informed opinion on the regulatory requirements of the Commodity Exchange Act and thereby assist the court in resolving promptly the question of whether the rate fixing practices challenged in the government's complaint are necessary to make that regulatory scheme work.

Staff: Daniel R. Hunter and Kevin D. Brenan (Antitrust Division)

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CIVIL DIVISION
Assistant Attorney General L. Patrick Gray, III

COURTS OF APPEALS

COMMODITY EXCHANGE ACT

COMMODITY EXCHANGE ACT APPLIED IN LINE WITH "COMMERCIAL REALITIES OF FUTURES MARKET".

Cargill, Inc. v. Clifford M. Hardin, Secretary of Agriculture (C.A. 8, No. 20,597 decided December 7, 1971, D.J. 56-15)

In one of the most far-reaching decisions ever rendered in the fifty-year history of the Commodity Exchange Act, 7 U.S.C. 1 et seq., the Eighth Circuit has held that Cargill, Inc., the country's largest grain merchandiser and exporter, manipulated the market price of May 1963 wheat futures on the Chicago Board of Trade, in violation of the Commodity Exchange Act (7 U.S.C. 9 and 13). In a 41-page opinion written by Judge Gibson, the Eighth Circuit held that Cargill manipulated the price of the May 1963 wheat future by means of a manipulated device known as a "little corner" or "squeeze", viz.; (1) Cargill acquired and held a controlling long position in the May 1963 wheat future; (2) there was an insufficient supply of wheat available to the shorts for delivery on the futures, and what supply there was controlled by Cargill; (3) Cargill exacted an artificially high price in liquidation of its future contracts; and (4) the squeeze was intentionally caused by Cargill.

In upholding the Department of Agriculture-Judicial Officer's decision in this case, the Eighth Circuit rejected the reasoning of the Fifth Circuit in Volkart Bros., Inc. v. Freeman, 311 F. 2d 52 (C.A. 5, 1962), which, at its broadest reach, held that manipulative squeezes are not prohibited by the Commodity Exchange Act. The Eighth Circuit held that the Fifth Circuit's approach "disregards commercial reality and the economic functions of the futures market * * * [and] it is not in line with the Commodity Exchange Act, 7 U.S.C. §1 et seq., providing for competitive trading markets and proscribing excessive speculation, and should not be followed." (Opinion 39-40).

This decision also rejects the position taken in this case by the Chicago Board of Trade, which had appeared as amicus on the side of Cargill.

Staff: Ronald Glancz (Civil Division)

INSURANCE

A BOARD OF CONTRACT APPEALS FINDING THAT WAREHOUSE WAS NEGLIGENT BINDS WAREHOUSE'S LIABILITY INSURERS.

Safeway Moving & Storage Corp. v. Aetna Ins. Co., (C.A. 4, No. 71-1109, decided December 6, 1971)

A fire destroyed the household goods of servicemen being stored by a warehouse pursuant to a government contract. The contracting officer determined that the warehouse had been negligent. On appeal to the Board of Contract Appeals, the warehouse requested that its two liability insurers handle its defense. They declined, however, on the ground that such a proceeding was contractual and thus not within the coverage of the liability policies. The warehouse proceeded with its appeal and lost.

A suit was then brought in the district court by the warehouse against its insurers. The district court held that the contractor's liability was covered by the policies even though the jurisdiction of the Board of Contract Appeals had been founded on the Standard Disputes Clause in the contract. The insurers were held liable for the full amount of the policies as well as for the attorney's fees incurred at the administrative level (317 F. Supp. 238 (E.D. Va.)). The Fourth Circuit affirmed per curiam.

The United States, which had reimbursed the servicemen pursuant to 10 U.S.C. 2732, was not a party to the suit. The Court of Appeals did, however, protect the Government's interest by impressing upon the judgment a trust for the benefit of property owners and subrogees who might recover judgments against the warehouse. An action by the United States for such a judgment is now pending (United States v. Aetna Ins. Co., U.S.D.C., E.D. Va.; Alexandria Div., No. 508-70-A: D.J. 77-79-965).

Staff: United States Attorney Brian P. Gettings;
Assistant United States Attorney James R. Tate;
Robert Mandel, Civil Division

MEDICAL CARE RECOVERY ACT

NINTH CIRCUIT REVERSES DISTRICT COURT HOLDING UNITED STATES COULD NOT PROCEED UNDER MEDICAL CARE RECOVERY ACT AGAINST AN ESTATE WHICH HAS BEEN CLOSED.

United States v. Cartwright (C.A. 9, No. 26,214 decided November 30, 1971; D.J. 77-0-1-1)

The deceased purchased a policy of insurance protecting others against his negligence. In the accident which caused his death, the deceased also caused injuries to one Rubel; under applicable statutes, the United States provided Rubel with free medical care. About one year after the death, the administrator of his estate closed the estate and distributed the estate assets, complying in all respects with applicable state law. About two years after the decedent's death, the United States brought this action against the administrator, in his capacity as administrator and not personally, under the Medical Care Recovery Act to recover the value of the medical care it had provided Rubel.

The district court held that the claim was barred because the United States had failed to file its claim against the estate within the period provided by state law. It distinguished United States v. Summerlin, 310 U.S. 414 (1940), on the ground that in this case, unlike Summerlin, the government did not file its claim until after the estate assets had been distributed. The court also voiced concern that a contrary result might disrupt the administration of estates throughout the entire country.

On appeal to the Ninth Circuit, we presented a broad argument for reversal, i.e., that the United States cannot be bound by a state imposed time limits, and that since we filed our claim within the period allowed by the Federal Statute of Limitations, 28 U.S.C. 2415, our action could not be time barred. The Ninth Circuit reversed the district court, without reaching this broad issue. It cited an Arizona Supreme Court ruling for the proposition that when a deceased has purchased insurance to protect others against his negligence, and there is no unreasonable dilatoriness on the part of the claimant, an action may proceed against the estate to collect on the insurance policy, even though the estate has been closed. The thrust of the opinion is that an insurance company, unlike an administrator, should not be allowed to invoke state imposed time limits which were not enacted for its benefit. Accordingly, this decision should be of assistance to us in all those cases to which we proceed against the estate of a deceased who purchased liability insurance.

Staff: Raymond Battocchi (Civil Division)

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CRIMINAL DIVISION

Acting Assistant Attorney General Hency E. Petersen

COURTS OF APPEALS

NARCOTICS AND DANGEROUS DRUGS

CONVICTION PURSUANT TO FORMER SECTION 176a OF TITLE 21 DID NOT VIOLATE DEFENDANT'S PRIVILEGE AGAINST SELF-INCRIMINATION.

United States v. Omaira Rios-Gonzalez (C. A. 2, decided November 5, 1971, No. 35078; D. J. 12-017-52)

The appellant was found guilty of importing and smuggling approximately seven (7) pounds of marihuana into the United States in violation of 21 U.S.C. 176a. Former section 176a provided, in pertinent part, that:

> "whoever, knowingly, with intent to defraud the United States, imports or brings into the United States Marihuana contrary to law, or smuggles or clandestinely introduces into the United States marihauana which should have been invoiced . . . shall be imprisoned not less than five . . . years . . ."

The sole issue on appeal was whether the appellant's conviction pursuant to 21 U.S.C. 176a violated her privilege against self-incrimination. More specifically that the phrase "which should have been invoiced" could not have been followed without depriving her of the privilege against self-incrimination.

A panel of the Second Circuit rejected appellant's contention for two reasons. First, the panel found the statutory phrase "which should have been invoiced" is not an essential element of the crime proscribed by section 176a. It is merely descriptive and indicates the type of marihauana about which the statute is concerned.

Secondly, assuming that the failure to invoice was an essential element of the crime, the statutory scheme of 21 U.S.C. 176a was clearly distinguishable from those cases where particular statutes violated a defendant's privilege against self-incrimination. Leary v. United States, 395 U.S. 6 (1969); Marchetti v. United States, 390 U.S. 39 (1968); Grosso v. United States, 390 U.S. 62 (1949). The Government is required by considerations of public health, safety and fiscal policy to know what articles are being brought into the country. To enforce this requirement, the Government relies on a series of penal and non-penal sanctions. See, e.g., 18 U.S.C.

545, 19 U.S.C. 1497 and 21 U.S.C. 176a. The strong governmental policies underlying the need for disclosure show that the statutory scheme was not designed to circumvent as individual's rights and privileges as regards the criminal process.

Staff: United States Attorney Robert A. Morse
Assistant United States Attorney David G. Trager
(E.D. New York)

NATIONAL MOTOR VEHICLE THEFT ACT (18 U.S.C. 2312)

NATIONAL CRIME INFORMATION CENTER (NCIC) "HITS" AS PROBABLE CAUSE FOR 18 U.S.C. 2312 ARRESTS AND INCIDENT SEARCHES

United States v. Golembiewski (C.A. 8, 1971, 437 F. 2d 1212; D.C. 26-10-20)

The sole issue presented for review was whether the trial court erred in failing to suppress certain evidence offered and received at trial on the ground that such evidence was illegally seized from the automobile occupied by the defendant in violation of his Fourth Amendment rights.

The defendant was a passenger in an automobile travelling in Arkansas at the time it was stopped for illegally passing a school bus. The officer placed the driver under arrest for the motor vehicle offense and additionally observed that the car bore expired Texas license plates which bore evidence of having been removed. At that time, the arresting officer obtained the identification number of the vehicle by looking in the window on the dashboard as he approached the vehicle to arrest the driver. (This method of obtaining the ID number was also challenged as an illegal search but upheld by the Eighth Circuit under the plain view doctrine). The officer then submitted the identification number by car radio to headquarters for transmission to NCIC. The defendant and driver then followed the officer to headquarters where bond was being arranged at the time the report was received that the automobile bearing the reported identification number was a stolen vehicle, i.e. an NCIC "hit". Both defendant and driver were immediately placed under arrest on a stolen vehicle charge and the F.B.I. was notified. An agent arrived immediately and with the assistance of the local officer conducted a search of the vehicle revealing that the ignition switch was loose and likely a replacement, and that the key did not open the door as original ignition keys customarily do. Discovered under the front seat was an Illinois license plate which had been issued to the owner who evidence showed resided in Oak Park, Illinois.

The Court of Appeals affirmed the conviction holding the search not to have violated the defendant's rights inasmuch as the agent and trooper "had

reasonable cause to believe the car was stolen and hence to seize and hold the car and make the search that was made," supra, p. 1214.

It was the affirmative report received from the NCIC check on the vehicle identification number that apparently satisfied the court that the action taken by the officers in arresting the two subjects was done with reasonable cause based on the NCIC "hit" and that a search incident to that legal arrest was therefore proper and the evidence obtained was admissible in the subsequent prosecution.

The case was properly prosecuted in Federal Court because of the defendant's involvement in an automobile theft ring thereby bringing it within the Department's prosecution policy for the National Motor Vehicle Theft act as set forth in United States Attorneys Bulletin, Vol. 18, No. 5, dated March 6, 1970.

Staff: United States Attorney Bethel B. Larey
Assistant United States Attorney James A. Gutensohn
(W.D. of Arkansas)

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

CONTENTIONS THAT DOCUMENTS WERE NOT UNDER OATH AND THUS DID NOT CONSTITUTE AFFIDAVITS, AND THAT DEFENDANT DID NOT SWEAR TO TRUTHFULNESS OF THE STATEMENTS HE SIGNED HELD NOT A DEFENSE TO 50 APP. U.S.C. 520(2).

United States v. Leo Kaufman (C.A. 2, No. 71-1423; December 3, 1971; D.J. 25-51-4755)

Leo Kaufman, a process server, signed numerous "affidavits" of non-military service which were subsequently filed in various court actions to comply with 50 App. U.S.C. 520(1). In the affidavits, Kaufman represented that he had personally spoken to the defaulting defendants and determined they were not in military service. In fact, these conversations never took place and he signed the affidavits without knowledge of the military status of the defaulting defendants. The affidavits were signed and stamped by a notary but no oaths were administered. Kaufman was found guilty on 90 counts of violating 50 App. U.S.C. 520(2) which makes it a crime to "make or use an affidavit required under this section . . . knowing it to be false."

On appeal, Kaufman claimed he was improperly convicted because there was no proof that he swore to the truthfulness of the statements which he signed, and the documents did not constitute "affidavits" since they were not statements under oath. With respect to the first contention, the court held: "Under these circumstances--when a written instrument appears on

its face to be an affidavit--there is a presumption that the affiant swore to the truthfulness of the statements contained therein."

The court rejected Kaufman's contention that there was no real affidavit and that he was unlawfully charged, holding that strict interpretation of penal statutes is meant only to protect the defendant from unfair surprise. Here, Kaufman knew he was signing documents which purported to be affidavits and "is hardly in a position to persuate this court that he was unfairly surprised by the district court's construction. The warning of the statute is fair and the line drawn by it is clear."

The Court further held that reversal is not required because the district court allowed cross-examination as to an erroneous income tax return filed by Kaufman in 1968, but for which Kaufman had not been convicted. The tax return was introduced after Kaufman portrayed himself as an "unsophisticated employee" who merely did what he was told to do in signing the affidavits. He testified that a friend prepared the return and he never saw it. The Government justified its inquiry into the return as an attack on Kaufman's credibility and to show "what kinds of documents and papers" he is willing to sign. The Court stated such evidence is admissible to show knowledge and intent and that "evidence that the defendant had signed false legal documents relating to his own personal affairs was relevant to rebut his testimony in which he characterized himself as an unwitting employee beguiled by his superiors into unknowingly signing false affidavits." Such evidence, while damaging to defendant's case, was not inflammatory.

Staff: United States Attorney Whitney North Seymour, Jr.
Assistant United States Attorney James T. B. Tripp
(S.D. New York)

DISTRICT COURTS

FRAUD AGAINST THE GOVERNMENT

CONSPIRACY TO DEFRAUD THE UNITED STATES (18 U.S.C. 371) AND THEFT OF GOVERNMENT PROPERTY (18 U.S.C. 641) STATUTES HELD TO HAVE EXTRATERRITORIAL APPLICATION.

United States v. James Milton Cotton and William Lowell Roberts (D. Hawaii, No. 12,752; November 10, 1971; D.J. No. 46-1021)

In early 1969, defendants, civilian U.S. citizens in Vietnam, conspired to defraud the U.S. by converting money and other property of U.S. military exchanges to their own use. Falsified military I.D. cards and military orders were obtained. A checking account in the same names as on the falsified I.D. cards and orders was opened in the Cholon branch. The

defendants spent two weeks in Japan and negotiated thousands of dollars of worthless checks to military exchanges for money and merchandise which was mailed to actual military acquaintances of defendants in Vietnam. Defendants returned to Vietnam, got possession of the merchandise, and sold the same on the blackmarket.

Defendants were indicted in the Northern District of California, at which time they were still in the Republic of Vietnam, a country with which the U.S. has no treaty for extradition. Consequently, the State Department revoked their passports, Vietnam expelled them, and Vietnamese officials delivered them to awaiting U.S. aircraft bound for Hawaii. Subsequently, the defendants' motions to transfer the case to Hawaii for trial were granted.

Testimony of 85 witnesses was agreed upon and submitted to the trial judge by stipulation. Defense urged dismissal because of lack of jurisdiction over the persons of the defendants (involuntary removal from Vietnam) and lack of jurisdiction over the subject matter (no extra-territorial application of 18 U.S.C. 371 and 641). Defense motions were denied and Chief Judge Martin Pence found the defendants guilty of the total of 23 counts in the indictment.

The holding of Judge Peace is a significant decision on the extra-territorial applicability of 18 U.S.C. 371 and 641, since the conspiracy and all overt acts occurred abroad. An appeal to the U.S. Court of Appeals, Ninth Circuit, is expected and in all probability a petition for certiorari will be filed with the Supreme Court. If the Government prevails at the highest level of judicial consideration, this case may well provide the necessary precedent for future successful prosecutions of similar extra-territorial crimes and may possibly act as a deterrebt to such illegal activities of American citizens in foreign countries.

The other issue to be raised on appeal by the defendants, lack of jurisdiction over their persons, appears to be well settled against them. [See Ker v. Illinois, 119 U.S. 436, 444 (1886); Frisbie v. Collins, 342 U.S. 519, 522-23 (1952); Sheehan v. Huff, 142 F. 2d 81 (D.C. Cir. 1944); Hobson v. Crouse, 332 F. 2d 561 (10th Cir. 1964); Strand v. Schmittroth, 251 F. 2d 590, cert. dismissed, 355 U.S. 886 (1958); Wentz v. United States, 244 F. 2d 172, cert. denied, 355 U.S. 806 (1957); Devine v. Hand, 287 F. 2d 687 (10th Cir. 1961); and Chandler v. United States, 171 F. 2d 921, cert. denied, 336 U.S. 918 (1949).]

Staff: United States Attorney Robert K. Fukuda
Assistant United States Attorney Joseph M. Gedan
Gary D. Jackson (Criminal Division) (D. Hawaii)

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INTERNAL SECURITY DIVISION
Assistant Attorney General Robert C. Mardian

FOREIGN AGENTS REGISTRATION ACT

OF 1938, AS AMENDED

The Registration Section of the Internal Security Division administers the Foreign Agents Registration Act of 1938, as amended, (22 USC 611) which requires registration with the Attorney General by certain persons who engage within the United States in defined categories of activity on behalf of foreign principals.

December, 1971

During the last half of this month the following new registrations were filed with the Attorney General pursuant to the provisions of the Act:

Sonatrach, Inc., 3107 Dumbarton Avenue, Washington, D.C., registered as the commercial representative of its parent, Societe National de Transport et de Commercialisation des Hydrocarbures ("Sonatrach"), the Algerian state-owned petroleum corporation. Sonatrach, Inc. will represent in the United States the commercial interests of Algerian "Sonatrach."

Dailey & Associates, 3807 Wilshire Boulevard, Los Angeles, California, registered as advertising agency for Air New Zealand, New Zealand Government Tourist & Publicity Department, Fiji Visitors Bureau, and Pacific Area Travel Association. The firm promotes travel in the interests of the foreign principals through the preparation and placement of advertisements.

Iceland National Tourist Office, Scandinavia House, 505 Fifth Avenue, New York, New York, registered as agent of its parent Bureau in Reykjavik, Iceland. The New York office will promote tourism to Iceland by providing travel information to travel bureaus and individuals and will publish and distribute travel literature.

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LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Kent Frizzel

SUPREME COURT; COURT OF APPEALS

ENVIRONMENT; DISCOVERY

INJUNCTIONS; NEPA; EXECUTIVE PRIVILEGE

The Committee for Nuclear Responsibility, Inc., et al. v. Seaborg, et al. (S. Ct. and C. A. D. C., see below for case numbers and decision dates; D. J. 90-1-4-336)

On November 6, 1971, the Atomic Energy Commission detonated a nuclear device 6,000 feet underground on Amchitka Island, Alaska. The following is a summary of the litigation, on accelerated schedules, which preceeded the test by AEC:

C. A. D. C., No. 71-1732, Oct. 5, 1971. In this first appeal, the Court reversed the district court's granting of summary judgment for AEC. The plaintiffs had sought a preliminary injunction against the test, alleging that the AEC had violated the National Environmental Policy Act (NEPA) by preparing an inadequate impact statement. The Court determined that "the grant of summary judgment prematurely terminated the discovery process and foreclosed plaintiffs' opportunity to substantiate their allegations." On remand, the district court was directed to permit discovery to ascertain whether "responsible scientific opinion as to adverse environmental consequences" was omitted from the impact statement contrary to NEPA. Discovery was also permitted of those federal agency reports which opposed the test for environmental reasons, subject to the valid claims by the Government of executive privilege.

C. A. D. C., Nos. 3708; 3713; 3714 (Misc.), Oct 20, 1971. The Court of Appeals refused to review the plaintiffs' application for leave to appeal the district court's denial of their motion for a temporary restraining order. The Court's refusal, and its rejection of plaintiffs' application for an injunction pendente lite, were based on the determination of the court that it lacked jurisdiction because the case would not be mooted by an immediate detonation of the device. The Government had assured the Court of Appeals that the test would not occur before October 27, 1971, thereby giving the district court another week to proceed with the plaintiffs' application for a preliminary injunction and related discovery proceedings.

C. A. D. C., No. 71-1854; Oct. 28, 1971. The Court of Appeals affirmed the denial of a preliminary injunction by the district court. The Court noted that the President had directed the AEC to proceed with the

test, based upon "over-riding requirements of national security." Stating that it was "concerned solely with the question of the legality of the AEC action under NEPA," and that to consider any other questions would "interject the Court into national security matters that lie outside its province," the court declined to enjoin the detonation. However, the Court did affirm an order of the district court requiring a limited in camera examination of documents to which the Government had claimed executive privilege, in order to determine whether AEC had complied with NEPA.

C. A. D. C., No. 71-1869; No. 3717 (Misc.). Nov. 3, 1971. In an application by the plaintiffs for summary reversal of the denial of a motion for preliminary injunction and application for a stay order, the Court of Appeals refused to grant the relief sought. In denying the requests for injunctive relief, the Court again referred to the national security considerations that were involved. Additionally, the Court stated that the detonation of the device would not moot the case since it was still to be determined whether AEC had complied with NEPA in the preparation of the impact statement for the test.

SUPREME COURT, No. A-483, Nov. 6, 1971. The Supreme Court, without opinion, refused to enjoin the nuclear test scheduled for later that day. Justice Douglas dissented in a separate opinion and would have granted the injunction until the case was heard on the merits. Justices Marshall and Brennan would have enjoined the test until the Court decided whether to review the case.

Staff: Erwin N. Griswold (Solicitor General); Edmund B. Clark, Thomas L. McKevitt, Fred L. Miller, Jr., and Peter R. Steenland (Land and Natural Resources Division)

COURT OF APPEALS

CONTRACTS; CONSTITUTIONAL LAW

STATE LAW RULED RETROACTIVELY APPLICABLE TO FEDERAL ACQUISITION OF LANDS; IMPRESCRIPITIBILITY OF MINERAL RESERVATIONS UNDER STATE LAW; IMPAIRMENT OF CONTRACT OBLIGATIONS; SUPREMACY; DISCRIMINATION AGAINST UNITED STATES.

United States v. Little Lake Misere Land Co. (C. A. 5, No. 71-2425, Dec. 30, 1971; D. J. 90-1-5-1011, 90-1-5-1082)

The Fifth Circuit has reaffirmed its decision in Leiter Minerals, Inc. v. United States, 329 F. 2d 85 (1964). vacated as moot (settled), 381 U.S. 413, holding that Louisiana Act 315 of 1940 rendered imprescriptible mineral servitudes for 10 years reserved in deeds or condemnation actions

through which the United States acquired fee title to land. In this case, part of the land was acquired by purchase in 1937 and the rest by condemnation in 1939, all prior to the 1940 Act. The Court specifically rejected our claim that the Act as applied to these prior acquisitions would be unconstitutional as interfering with the obligations of contracts (the deed), derogating the power of the Federal Government to acquire what it wishes by purchase or condemnation, and discrimination against the United States.

Staff: Edmund B. Clark, Howard O. Sigmond, and Peter R. Steenland (Land and Natural Resources Division)

DISTRICT COURT

STANDING; INJUNCTIONS

LACK OF STANDING TO ENJOIN PROPERTY EXCHANGE; FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.

John M. Murphy, et al. v. General Services Administration, et al. (E.D. N.Y., No. 71C1013, Dec. 16, 1971; D.J. 90-1-4-354)

Plaintiffs sought to enjoin officials of the General Services Administration from performing the terms of an agreement in which G.S.A. was to exchange 125 acres of federal property, known as Miller Field, located in Staten Island, New York, for the Willard Hotel in Washington, D.C. G.S.A. officials and the owner of the Willard Hotel were joined.

Plaintiffs alleged that Section 203(e)(3)(G) of the Federal Property and Administrative Services Act, 40 U.S.C. 484(e)(3)(G), did not give the federal defendants authority to make the exchange. The federal defendants filed a motion to dismiss based on lack of standing and failure to state a claim.

The Court dismissed the suit for lack of standing and did not reach the failure-to-state-a-claim issue. The Court noted that the plaintiffs sued on behalf of the citizens living in the immediate area of Miller Field and ruled that the plaintiffs did not meet the twofold test for standing set forth in Association of Data Processing Service Organizations v. Camp, 397 U.S. 150. The Court found that the plaintiffs had not suffered injury in fact and that the plaintiffs did not come within the zone of interest arguably protected by the statute. The Court held that the statute vests authority in the General Services Administration for the disposal of property and vests wide

discretion in the disposal of real property. The Court found that the only parties adversely affected by the operation of the statute would be the immediate parties to the agreement and potential bidders.

Staff: Assistant United States Attorney Paul E. Warburgh, Jr. (E. D. N. Y.); Anthony S. Borwick (Land and Natural Resources Division)

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