

'Takings' Snapshots Volume 40, April 13, 2001

1. **Cayetano v. Chevron, U.S. No. 00-1198, and Greenspring Racquet Club, Inc. v. Hirshfeld, U.S. No. 00- 1227** (U.S. Supreme Court recently denied certiorari in these two cases, one from Ninth Circuit Court of Appeals and the other from the Fourth Circuit Court of Appeals; both cases would have provided the Court an opportunity to decide the validity of the so-called “substantially advance” takings test; it seems inevitable that the Court will have to resolve this issue at some point, and the briefs filed in the Supreme Court in these cases provide a valuable resource for future cert. petitions on the issue, as well as for attorneys struggling with this issue in the lower federal and state courts; the excellent cert. petition filed in the Cayetano case is available on our webpage).

2. **American Pelagic Fishing Co. v. United States**, 2000 WL 331989 (U.S. Ct. Fed. Cls., April 4, 2001) (Federal Court of Claims ruled that the United States effected a regulatory taking of a 350-foot trawler as a result of federal legislation prohibiting the use of a ship of this size in the Atlantic mackerel fishery; the court applied the Penn Central factors, and emphasized what it called the retro- active effect of the law as well as the fact that the law uniquely affected this particular ship; one of the most striking aspects of the decision is the court’s conclusion that the law interfered with the owner’s investment backed expectations because Congress had previously authorized financial payments to owners of vessels withdrawing from other fisheries).

3. **Krupp v. Breckenridge Sanitation District**, 2001 WL 185035 (Colo., February 26, 2001) (Colorado Supreme Court ruled that a sanitation district’s assessment of a fee on all new development to finance investment in waste water treatment facilities did not effect a taking, on the ground that the claim did not fit into the “relatively narrow” category of development exactions addressed by Nollan and Dolan, (1) because the fee was legislatively established, and (2) because the condition involved a requirement to pay money rather than a government- mandated physical occupation of real property).

4. **State of Ohio ex rel., R.T.G. v. State of Ohio**, 2001 WL 238424 (Ohio App., March 8, 2001) (in a suit challenging Ohio DNR’s designation of an area as unsuitable for mining, the Ohio Court of Appeals held (1) there was no taking as to the plaintiffs who owned both mining and surface rights, because designation did not preclude all use of the property as a whole; and (2) there was a taking as to other plaintiffs who held only mining rights because (a) they suffered a total loss of value and (b) the Ohio DNR failed to demonstrate that a restriction on mining to protect the community’s drinking water supply served to prevent a nuisance).

5. **Red Roof Inns, Inc. v. City of Ridgeland**, 2001 WL 204035 (Miss., March 1, 2001) (by a vote of 6 to 2 (with one justice not participating), the Mississippi Supreme Court, in accordance with the clear majority rule, rejected a takings challenge to a city ordinance requiring the removal of non-conforming signs following the end of a five-year amortization period).

6. **Brubaker Amusement Co., Inc v. United States**, No. 98-511C (U.S. Ct. Fed.Cls., January 12, 2001) (Federal Court of Claims rejected a regulatory takings challenge to FDA restrictions on cigarette sales in vending machines on the ground that the U.S. Supreme Court had struck down the regulations in *FDA v. Williamson* and an unauthorized government action will not support a taking claim; the company has filed an appeal in this case).

7. **B & G Enterprises, Ltd v. United States**, 48 Fed.Cl. 866, 2001 WL 284946 (U.S. Ct. Fed. Cls., March 22, 2001) (Federal Court of Claims rejected a regulatory taking challenge to FDA cigarette vending machine regulations on the ground that, as a result of a judicial stay, the regulations never actually went into effect and therefore could not have effected a taking).

8. **United States v. W.R. Grace & Co.**, 2001 WL 26254 (March 9, 2001) (Federal District Court granted U.S. motion for access pursuant to the superfund law to lands contaminated with asbestos, and rejected the argument that a potential taking claim that might arise from the grant of access to the property justified denying the motion for access).

9. **Paradissiotis v. United States**, 2001 WL 334253 (U.S. Ct. Fed. Cls., March 27, 2001) (Federal Court of Claims rejected the claim that the U.S. effected a taking by prohibiting, as part of its economic sanctions against Libya, the claimant from exercising stock options in a U.S. company which owned a share of Libyan state business enterprises; the court ruled that the claimant's lack of investment expectations and important national security considerations barred the claim).

10. **In re. Nazi Era Cases Against German Defendants Litigation**, 129 F.Supp. 370 (D.N.J., March 1, 2001) (Federal District Court rejected claim that former slave laborer in Germany under the Nazi regime suffered a taking as a result of the alleged extinguishment of his legal claims against the German company that used his labor, on the ground that the creation of a new foundation to pay this and similar claims provided an adequate substitute for pursuing legal claims in court).

11. **Qwest Corporation v. United States**, 2001 WL 185172 (U.S. Ct. Fed. Cls., Feb 20, 2001) (in a suit by an incumbent local telephone service provider, the Court of Federal Claims ruled that (1) court had jurisdiction (concurrent with federal district court) over a claim that the Telecommunications Act of 1996 effected a physical taking by requiring the plaintiff to grant a local service competitor physical access to its telephone network; and (2) the Telecom Act's requirement that incumbent carriers provide connections for a competing telephone company does not result in a physical taking, especially given the "grand design" of the Telecom Act to allow the baby bell telephone companies to enter the long-distance telephone market in exchange for opening their local markets to competition).