

Takings Snapshots, Volume 58, March 27, 2003

1. *Brown v. Legal Foundation of Washington*, 2003 WL 1523550 (U.S., March 26, 2003) (In a 5 to 4 ruling, the U.S. Supreme Court handed the Washington Legal Foundation a defeat in its long-running campaign to use the Takings Clause to block the use of interest earned on lawyers' trust accounts to fund legal services for the poor; the Court assumed *arguendo* that the Washington State IOLTA program effected a taking of the clients' property right in the interest earned on their funds, but ruled that the plaintiffs' takings claims failed because they suffered no net adverse financial effect and, therefore, could claim no entitlement to "just compensation" under the Takings Clause).

2. *El-Shifa Pharmaceutical Industries, Co. v. United States*, 2003 WL 1342179 (Ct. Fed. Cls., March 14, 2003) (in a fascinating and timely case, the Court of Claims (Baskir, J.) granted the motion of the U.S. to dismiss a taking claim by a Saudi Arabian citizen and a Sudanese company who owned a pharmaceutical plant in Sudan destroyed by U.S. cruise missiles in retaliation for the bombing of U.S. embassies in East Africa; the court rejected the three grounds initially presented by the United States for dismissing the complaint, (1) that the Sudanese courts would not hear similar claims filed by U.S. citizens, (2) that the claim fell within the federal district courts' exclusive admiralty jurisdiction because the missiles had been launched from U.S. warships, and (3) that the Takings Clause does not apply to alleged takings of property of non-citizens located outside the United States; however, the court granted the motion to dismiss on the ground that the Takings Clause "does not extend to the destruction of property designated by the President as enemy war-making property, and that the court may not look behind the President's discharge of his Constitutional duties as Commander in Chief, including his declaration of what constitutes an enemy target and his determination to use military force to destroy that target").

3. *American Pelagic Fishing Co. v. United States*, available at <http://www.uscfc.uscourts.gov/2003.htm> (Ct. Fed. Cls., March 18, 2003) (the Court of Federal Claims,

in the wake of its controversial 2002 ruling in this case that Congress' retroactive prohibition against the operation of plaintiff's fishing boat in U.S. waters effected a taking, conducted an extensive trial on damages and ordered the government to pay just compensation in the amount of \$37,275,952.67).

4. *Eggleston v. Pierce County*, 64 P.3d 618 (Wash., March 6, 2003) (in a 7-2 decision, the Washington Supreme Court ruled that property damage to the home of the mother of a criminal suspect, caused by police execution of a criminal search warrant and a judicial evidence-preservation order, did not effect a taking under the Takings Clause of the Washington Constitution; the court's comprehensive opinion surveys the extensive federal and state case law generally supporting the rule that property damage caused by law enforcement activities does not result in compensable takings; Justice Sanders filed a lengthy dissent).

5. *Gordon v. Norton*, 2003 WL 463977 (10th Cir., February 25, 2003) (Tenth Circuit affirmed District Court dismissal of taking claim for lack of subject matter jurisdiction where plaintiff rancher alleged that U.S. Fish and Wildlife Service's reintroduction of grey wolves to the northern Rockies effected a taking of his property; the court ruled that the district court lacked jurisdiction because a taking claim necessarily involves a claim for financial compensation and such a claim must be pursued in the Court of Federal Claims; the court rejected the argument that the Supreme Court decision in *Eastern Enterprises* overruled the traditional rule that monetary relief is the proper remedy for a taking and also rejected the argument that the plaintiffs were entitled to sue for injunctive relief in district court because they alleged a physical taking of their property).

6. *Gadd v. United States*, 2003 WL 1342401 (Ct. Fed. Cls., March 13, 2003) (in a pro se takings case based on U.S. officials' prosecution of allegedly improper forfeiture proceedings against plaintiffs' assets, the Court of Federal Claims ruled that a viable taking claim requires the plaintiff to concede the lawfulness of the government action and since the plaintiff challenged the lawfulness of the proceedings a takings claim was foreclosed; the court

also dismissed plaintiff's claim that the forfeiture was an illegal exaction within the Court of Claims jurisdiction, on the ground that Congress has vested the district courts with jurisdiction over forfeitures and related decisions).

7. *Windsor Jewels of Pennsylvania, Inc. v. Bristol Township*, 2002 WL 31999367 (E.D. Penn., March 23, 2002) (in a complex case, based on a township's denial of a use and occupancy permit for a check-cashing business, the federal district court rejected the taking claim on the ground that the plaintiff had failed to allege a denial of all economically viable use of the property and, in any event, the plaintiff should have pursued its claim for compensation in the state courts).

8. *Birdsall v. City of Hartford*, 2003 WL 728884 (D. Conn., March 4, 2003) (in a suit alleging that city police conducted an illegal search of plaintiff's restaurant, causing the plaintiff to lose business, the federal district court rejected the plaintiff's Fifth Amendment takings claim, reasoning that a taking claim requires a showing that the owner has been denied all economically viable use of the property and plaintiff's evidence did not support a finding of a taking under this standard).

9. *Shea Homes Limited Partnership v. County of Alameda*, 2003 WL 1154139 (Cal. Ct. App., March 13, 2003) (not officially published) (California Court of Appeals affirmed rejection of a facial regulatory takings challenge to a voter-approved measure prohibiting virtually any development outside of designated urban growth boundaries; applying the *Agins* 2-part test the court ruled that the measure's goal of protecting open space clearly advanced a legitimate government interest and the measure did not deny the owner all economically viable use of the property because it allowed agricultural use and very limited residential development and, by its terms, would not apply if its enforcement would result in a constitutional taking; the court also rejected an as applied taking claim based on the measure on the ground that the plaintiff had not filed an actual development application after the measure was passed and, therefore, it was impossible to know exactly how the measure would be applied to this property).

10. Hazen v. Anne Arundel County, 2003 WL 504864 (D. Md., February 15, 2003) (Federal District Court rejected taking claim based on county's refusal to permit development on lot, on the ground that the plaintiff had not pursued available state compensation remedies).