'Takings' Snapshots Volume 10
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1. **Phillips v. Washington Legal Foundation** (U.S. Supreme Court, June 15, 1998) (Court ruled, 5 to 4, that interest earned on client funds placed in Interest on Lawyers Trust Account program is the property of the client for the purpose of the Takings Clause, and remanded the case for a determination whether Texas use of such interest to fund legal services programs constitutes a taking and, if so, whether any "just compensation" may be due; the dissenters argued that the general "interest follows principal" rule should not apply because the funds earn interest only as a result of the IOLTA program, and in any event the Court should have left this "abstract" issue for resolution by the lower court in conjunction with the takings and just compensation issues).

2. **Eastern Enterprises v. Apfel** (U.S. Supreme Court, June 25, 1998) (the Court ruled that the Coal Industry Retiree Health Benefit Act of 1992 was unconstitutional as applied to Eastern, but failed to reach agreement on the grounds for the decision; four Justices concluded that the Acts retroactive assessment of liability to help pay for the health care of retired mine workers effected a taking and did not reach the due process issue, Justice Kennedy concurred in the judgment, but concluded that the Act violated due process and that the Takings Clause was not applicable to this case, and four Justices in dissent argued that the Act effected neither a taking nor a due process violation; the net effect is that, while the Act was struck down as unconstitutional, a majority of the Court rejected the taking claim).

3. **The San Remo Hotel v. City & County of San Francisco**, 1998 WL 282828 (9th Cir. June 3, 1998) (the court held that the plaintiffs facial and as applied takings claims based on the HCOs economic impact were not ripe for failure to exhaust state compensation remedies, the facial takings claim based on the HCOs alleged failure to "substantially advance a legitimate state interest" was ripe, and that the trial court properly declined leave to amend the complaint to add an equal protection claim because the court would have had to dismiss such a claim under Younger v. Harris as to the surviving substantial relationship takings claim, the court held that Pullman abstention was appropriate to determine if the claim cold be resolved on non-constitutional grounds).

4. **Maguire Oil Co. v. City of Houston**, 1998 WL 285908 (5th Cir, June 18, 1998) (reversing trial courts imposition of approximately $100,000 in sanctions after city removed takings action from state court to federal court and did not inform trial court that federal taking claim was not ripe in federal court under Williamson County even after another federal court in same federal district invoked Williamson County in another virtually identical action involving the same defendant; court of appeals ruled that city's failure to inform trial court of jurisdictional defect and highly relevant decision by another judge in same district was negligent but did not amount to "bad faith" necessary to support sanctions).

5. **Del-Rio Drilling Programs v. United States** (Fed. Cir. June 18, 1998) (reversing dismissal of takings challenge based on alleged BLM and BIA interference with mineral leases; the trial court dismissed the action because the claimant contended that the agencies action was illegal and because it believed such an allegation precluded a claim of a taking for public use; the court of appeals reversed, stating that while an agency action that is ultra vires cannot effect a taking, an action which is illegal may be found to be a taking if the traditional tests for a taking are otherwise satisfied).

6. **Wilkinson v. Pitkin County Board of Commissioners**, 1998 WL 216085 (10th Cir., May 4, 1998) (affirming district court decision rejecting takings claim based on res judicata and collateral estoppel where state court fully adjudicated federal takings claim and plaintiff did not attempt at any time to reserve right to litigate federal takings claim in federal court).

7. **Vesta Fire Insurance Corp. v. State of Florida**, 141 F.3rd 1427 (11th Cir., May 22, 1998) (reversing trial courts dismissal of takings claim by insurance companies subject to moratorium, instituted after Hurricane Andrew, prohibiting total withdrawal from doing business in Florida, because trial court failed to evaluate claim based on three Penn Central factors; affirming rejection of takings claim on per se theory).

8. **Osprey Pacific Corp. v. United States**, (Ct. Fed. Claims, June 10, 1998) (court of federal claims awarded $500,000 based on government seizure of boat from private party; the court rejected the defense that the agents who seized the boat lacked the legal authority to so; the court ruled that, at least so long as employees are not acting beyond the scope of their authority or position, the fact that the action was "substantively wrong" is no defense to a taking claim).

9. **Curtis v. Town of South Thomaston**, 708 A.2d 657 (Maine, March 25, 1998) (tow requirement that developer build fire pond and grant town easement to use and maintain pond held not to effect a taking both because requirement was legislative in character and because requirement satisfied rough proportionality standard).

10. **Bailey v. State of North Carolina**, 1998 WL 237019 (N.C., May 8, 1998) (removal of exemption from state taxation of state employees retirement benefits effected a taking under North Carolina Constitution and Fifth Amendment, because tax exemption was part of employees contract of employment, this contract right was a property right, and removal of tax exemption effected a taking of property).

11. **White v. North**, 708 A.2d 1093 (Md. Ct. Special Appeals, April 30, 1998) (denial of permission to build in backyard of home swimming pool which would have encroached on Maryland critical area buffer designed to protect Chesapeake Bay held not to be a taking).