

**'Takings' Snapshots Volume 12**  
**August 24, 1998**

1. **International College of Surgeons v. City of Chicago**, 1998 WL 452340 (U.S. 7th Cir., August 6, 1998) (on remand from the U.S. Supreme Court [which held that federal courts have jurisdiction over cases containing claims that local administrative action violates federal law, as well as state law claims for on-the-record review of administrative findings], court of appeals held that abstention was not appropriate under either Burford [because Illinois law did not grant any state court specialized jurisdiction with authority to conduct de novo review] or Pullman [because law governing state law claim was clear and there was no longer any live federal constitutional issue to avoid]; court of appeals refused to consider whether district court should have declined to exercise supplemental jurisdiction over state law issues because plaintiff did not raise this issue in district court; and court affirmed district court's dismissal of state law takings claim because city historic landmark law did not effect a direct physical taking or deprive plaintiff of all economically beneficial or productive use of its property).

2. **Schneider v. California Department of Correction**, 1998 WL 440484 (U.S. 9th Cir, August 4, 1998) (relying in part on recent Supreme Court opinion in Phillips, court reversed trial court's dismissal of takings action by state prisoners challenging department of correction's failure to provide interest on prisoners' trust accounts, and concluded that prisoners have constitutionally cognizable property right in interest earned on accounts; opinion contains interesting discussion of scope of state legislative authority over the definition and recognition of property interests).

3. **Goss v. City of Little Rock**, 1998 WL 459858 (U.S. 8th Cir., August 10, 1998) (affirming district court's ruling that city's refusal to rezone property unless owner accepted condition that he dedicate land for a public road was invalid under Dolan for lack of proportionality, but reversing district court and concluding that owner was not entitled to order requiring a rezoning without the condition, and refusing to award damages for failure to rezone while recognizing plaintiff's potential entitlement to fees under section 1998).

4. **Westling v. County of Mille Lacs**, 1998 WL 378110 (Minn., July 9, 1998) (rejecting, inter alia, a takings challenge to the Minnesota "contamination tax," which functions to recapture property taxes lost when the assessed value of real property is reduced due to environmental contamination; the court found neither a physical taking nor a denial of all economically beneficial or productive use of the property, and emphasized the tradition of judicial deference to state tax programs).

5. **F&L Farm Company v. City Council of Lindsay**, 77 Cal Rptr. 360 (Cal.Ct.Apps., August 4, 1998) (affirming issuance of a peremptory writ to compel city to pay inverse condemnation award, and rejecting claim that state constitutional provisions limiting taxing and spending powers of municipalities shielded city from paying judgment).

6. **Stranahan v. Fred Meyer, Inc.**, 153 Or.App.442 (April 22, 1998) (affirming damages award against shopping center for false arrest in favor of person arrested while gathering signatures for ballot petition in front of shopping center, and rejecting Fifth Amendment takings argument on the merits and because it was irrelevant to the validity of the trial court's ruling that plaintiff did not violate state criminal trespass statute).

7. **Nielsen v. Merriam**, 1998 WL 390442 (Wash.Ct.Apps. July 13, 1998) (unpublished opinion) (affirming rejection of owner's claim to easement over neighbor's property where easement was imposed by county and did not satisfy Nollan nexus requirement because it was not necessary in order for owner to obtain access to his property).

8. **Burton v. Clark County**, 958 P.2d 343 (Wash.Ct.Apps., July 10, 1998) (invalidating as a taking county requirement that developer dedicate right of way as a condition of subdivision approval because there was no showing when county would construct road, and declining to reach due process claim in part because issues might be the "same" as under Nollan/Dolan takings test).
9. **Vereda, LTDA v. United States**, 1998 WL 473145 (Ct.Fed.Cls., August 13, 1998) (rejecting motion to dismiss taking claim by allegedly innocent mortgagee of airplane seized by DEA based on probable cause to believe that it was being used to transport illegal drug ).
10. **Mitchell v. United States**, 1998 WL 470657 (Ct.Fed.Cl., August 12, 1998) (dismissing complaint alleging that federal agency effected a taking by denying livestock owner access to public lands and allegedly depriving owner of state water rights; claim held barred by statute of limitation; alternatively, plaintiff failed to state a taking claim because he admitted a beneficial use of his property rights was available by selling water to conservation groups seeking to conserve the desert tortoise).
11. **Karuk Tribe of California v. United States**, 1998 WL 466843 (Ct. Fed.Cls., August 6, 1998) (1989 congressional enactment partitioning Indian reservation did not result in a compensable taking because legislation originally creating reservation did not create a vested compensable expectancy protected by Fifth Amendment).
12. **BMR Gold Corp. v. United States**, No. 97-274-L (Ct. Fed. Cls., June 30, 1998) (on motion to dismiss takings claim by gold mine operator based on activities of U.S. military that allegedly interfered with use of property, denying dismissal based on 6-year statute of limitations, denying dismissal because suit arguably involves a tort rather than a taking, but dismissing action in part insofar as it relates to an incident of alleged physical invasion to which claimant consented).
13. **The Greystone Hotel Co. v. City of New York**, 1998 WL 411351 (U.S. SDNY, July 20, 1998) (granting summary judgment to City in takings challenge by hotel owner subject to rent stabilization law, because the law substantially advances a legitimate state interest and hotel owner offered no evidence that it was denied economically viable use of the property)
14. **Santini v. Connecticut Hazardous Waste Management Service**, 1998 WL 422166 (Ct.Sup. Ct., July 13, 1998) (rejecting claim that state agency effected a taking by designating property as potential site for low level radioactive waste disposal).