

'Takings' Snapshots Volume 15
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1. At the U.S. Supreme Court, on October 5th, the Court denied certiorari in **Lechuza Villas v. California Coastal Commission**, a California decision establishing that the plaintiff has the burden of establishing title to property as a condition precedent to advancing a viable taking claim. Also on October 5, the Court denied certiorari in **Voorhees v. Brown**, a federal court case from Ohio rejecting a taking challenge to restrictions on land use adjacent to an airport. On October 13, the Court denied certiorari in **California Ambulance Assn v. Belshe**, an unsuccessful takings challenge in California to retroactive changes in government standards for reimbursement of medical costs.

2. **Philip Morris, Inc. v. Harshbarger**, 1998 WL 764409 (November 6, 1998, U.S. Court of Appeals for the First Circuit) (in an extraordinary decision, the court of appeals for the first circuit affirmed a district court preliminary injunction barring the State of Massachusetts from enforcing its newly enacted health legislation requiring cigarette companies to provide brand-by-brand information on cigarette additives and permitting public disclosure of the ingredient information; relying principally on the Supreme Court's Monsanto decision, the court of appeals affirmed the trial court's ruling that plaintiffs had demonstrated a likelihood of success on their claim that the ingredient-reporting law effects an unconstitutional taking of the cigarette companies' trade secrets).

3. **Stern v. Halligan**, 1998 WL 692436 (3rd Cir., October 7, 1998) (in an interesting and well written opinion, the court of appeals for the third circuit affirmed the trial court's rejection of constitutional challenges to a municipal ordinance requiring property owners to connect to a municipal water supply system and disconnect private wells, despite plaintiffs' contention that their private wells provided water which was pure and clean; court rejected due process claim because ordinance met minimal rationality standard; court rejected takings claim because plaintiffs failed to pursue compensation remedies in state court, and noted that taking claim also would have failed on the merits because restrictions on use of wells did not begin to approach the total destruction of property as a whole necessary to support a taking claim)

4. **Brewster v. City of Dallas**, 1998 WL 713243 (N.D.Tex., September 30, 1998) (dismissing section 1983 takings claim by owners and operators of commercial buildings challenging city fire registration fee as a taking, on ground that plaintiffs failed to pursue available state procedures for seeking compensation).

5. **Brian B. Brown Construction Co. v. St. Tammany Parish**, 1998 WL 395128 (E.D. La., July 13, 1998) (granting government's motion for summary judgment in challenge to denial of subdivision application, holding that plaintiff's takings claim was rebutted by sale of a substantial portion of the property to an independent investor for \$100,000, which negated assertion that plaintiff was denied all economic use of the property).

6. **BSW Development Group v. City of Dayton**, 83 Ohio St. 338 (Ohio, October 14, 1998) (erroneous denial of demolition permit based on misapplication of historic preservation ordinance did not effect a taking, because action did not deny owner all economically viable use of the property given owner's continuing ability to lease existing property and use the property for parking and storage).

7. **Home Builders Association of Dayton v. City of Bevearbrook**, 1998 WL 735931 (Ohio Ctr. Apps., October 23, 1998) (in a very lengthy and somewhat confusing opinion, the Ohio court of appeals reversed in part a trial court judgment rejecting takings and other constitutional challenges to a municipal impact fee ordinance; while the court ruled that Dolan was inapplicable because it addressed only administrative, not legislative measures, the court apparently reviewed the fee ordinance using an unusually strict standard of review).