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First, the National Law Journal (12/13/99) offers the latest entry in the contest for the most unbelievable takings claim ever. According to a front page article, attorney Alexander Pires is preparing class action lawsuit alleging that the 1998 omnibus tobacco settlement, which provided billions of dollars for tobacco farmers, effected a taking of tobacco farmers" property rights. The theory seems to be this: Because Congress made the mistake many years ago of creating a tobacco growers" cartel which conferred windfall profits on certain growers, that mistake cannot be corrected without conferring yet more billions of dollars on tobacco growers at taxpayer expense.

Other (somewhat less interesting) takings developments include the following:

1. Greenbriar v. United States, 193 F.3d 1348 (Fed.Cir., October 4, 1999) (in a takings challenge based on the alleged abrogation by Congress of the contractual rights of operators of low income housing to prepay mortgage loans, the Federal Circuit affirmed the trial court ruling that the claim was not ripe because the owners had not sought permission from HUD to prepay the loans prior to filing suit).

2. Lakewood Associates v. United States, 1999 WL 086871 (Ct.Cl., December 2, 1999) (Court of claims dismissed regulatory takings claim because owner failed to complete section 404 wetlands permitting application process and claimant failed to demonstrate that pursuing application would necessarily be futile; Court also relied in part on a federal district court ruling in a separate case involving the issue of tax liability to the IRS that it was not futile for the owner to pursue the application process; Court raised but did not resolve the question of whether the takings challenge to the federal permitting process was barred because development of the property was already prohibited by a county agricultural zoning ordinance)

3. Buse Timber & Sales, Inc. v. United States (Ct.Cl., November 4, 1999) (Court of federal claims dismissed takings claim based on Forest Service's suspension of a timber sale contract as a result of the listing of the marbled murrelet as a threatened species under the Endangered Species Act; the Court ruled that the allegations support a potential breach of contract claim, but not a takings claim).

4. American Federated General Agency, Inc. v. City of Ridgeland, 1999 WL 1048358 (D.S.D.Miss., March 30, 1999) (Federal district court dismissed takings challenge to city"s revocation of a permit authorizing construction of a sign. on the grounds that (1) the claim was not ripe because the claimant had not pursued state judicial remedies, and (2) the ordinance requiring the sign removal neither failed to substantially advance a legitimate state interest nor denied the owner economically viable use of the property).

5. Montclair Parkowners Association v. City of Montclair (Cal.Ct.App., December 2, 1999) (in another victory for government defendants on the issue of the standard of review in takings cases, the California intermediate court of appeals , following the California Supreme Court decision in Santa Monica Beach, held that a municipal mobile home rent control ordinance was subject to review under a deferential "arbitrariness" standard and the ordinance easily met that standard; the court ruled that the Agins/Nollan "substantially advance" test is limited to regulations involving physical occupations of private property, expressly rejecting the Ninth Circuit's reasoning in the Richardson case).

6. LaSalle v. Iberia Parish, 741 So.2d 812 (La. App., June 2, 1999) (Louisiana intermediate appellate affirmed trial court's rejection of takings claim brought by landowner based on local government's placement of barricades across unpaved road adjacent to owner's property because road failed to meet local subdivision requirements; court held that there was no taking since the damage plaintiff suffered was the same as the damage suffered by other similarly situated owners and the owner in any event was not deprived of all economic use of the property).

7. Hansen v. Snohomish County, 1999 WL 1020824 (Wash.Ct.App., Nov., 8, 1999) (unpublished decision) (Washington intermediate appellate court affirmed trial court's rejection of takings claim based on theory that county's refusal to rezone residentially zoned property to commercial classification effected a taking; court also held that the claims was properly dismissed as unripe because plaintiffs had not sought a building permit).