**'Takings' Snapshots Volume 32, April 21, 2000**

**1. Palm Beach Isles Associates v. United States**, 2000 WL 337591 (Fed. Cir., March 31, 2000) (Federal Circuit vacated Court of Federal Claims' dismissal of a takings claim based on Army Corps denial of application to fill 49 acres of submerged lands in Lake Worth in Florida; contradicting the Federal Circuit's decision last year in Good v. United States, the court ruled that a lack of investment-backed expectations is irrelevant to a claimant's ability to recover in a Lucas-type total taking case; the court also ruled that the taking claim was properly analyzed in relation to the 49 acres of submerged lands, not the entire 312-acre property the plaintiff originally purchased; finally the court ruled that disputed issues of fact as to whether the permit denial actually served to protect navigation precluded entry of judgment for the U.S. on the theory that the claim was barred by the federal navigational servitude).

**2. Dureiko v. United States,** 2000 WL 387168 (Fed. Cir., April 14, 2000) (in a somewhat cryptic but nonetheless important new precedent supporting the argument that government error cannot be a taking, the Federal Circuit affirmed the dismissal of a takings claims in which the plaintiff did not allege that the government action was valid but instead argued that the government actions which allegedly effected the takings violated federal regulations and breached a contract between the plaintiff and the United States; the court also affirmed dismissal of the takings claim on the ground that the plaintiff failed to allege that the government intended to take the property; the court held that the plaintiff's claims arising from FEMA's allegedly improper execution of a clean up project in the aftermath of Hurricane Andrew should be instead be asserted in a contract action).

**3. McQueen v. South Carolina Coastal Council**, No. 2779 (S.C., April 17, 2000) (Pointing in completely the opposite direction from Palm Beach Isles (and relying instead on Good), the South Carolina Supreme Court reversed a lower court finding of a taking based on the coastal council's denial of a permit to bulkhead and fill two coastal lots; court held that the plaintiff failed to establish distinct investment- backed expectations when he purchased lots for a few thousand dollars 30 years ago and took no steps to develop the property as the lots eroded and returned to wetlands and restrictions on coastal development became progressively more stringent; on the other hand, the court rejected the argument that the takings claim should have been denied based on an alleged background principle of South Carolina law barring any claim of entitlement to alter land's natural condition (the court left open the possibility that this type of claim could still be barred by the background principle of the South Carolina public trust doctrine).

**4. MDJ Properties, Inc. v. Union Township Board of Trustees**, 2000 WL 313502 (Ohio Ct. Apps., March 27, 2000) (Ohio intermediate court of appeals reversed trial court decision that township's refusal to rezone R-2 (single family) property effected a taking; court held that owner failed to demonstrate that zoning rendered property 'effectively valueless' and in any event plaintiff was not entitled to claim a taking based on zoning in place at the time of the purchase of the property; providing yet more ammunition to challenge the Agins 'substantially advance' takings test, the court observed that the U.S. Supreme Court had articulated a 'substantially advance' takings test, but opined that this allegation related to the validity of the zoning ordinance, and did not raise an actual takings issue).

**5. Quality Towing, Inc. v. City of Myrtle Beach**, 2000 WL 343472 (S.C., April 3, 2000) South Carolina Supreme Court affirmed lower court's rejection of a regulatory takings claim brought by an automobile towing service based on municipal ordinance limiting permitted rates for towing; court ruled that allegation that city imposed costly requirements on 'right to do business' did not state a valid takings claim because the plaintiffs could not demonstrate that the ordinance eliminated 'all economically viable use' of the plaintiff's property).

**6. Mibbs, Inc .v. South Carolina Department of Revenue**, 524 S.E.2d 626 (S.C., Dec. 6, 1999) (South Carolina Supreme Court affirmed rejection of takings claim based on county ordinance

banning video poker machines, on various grounds, including (1) lack of protected property interest in lost profits, (2) fact that right to use machines was based on a regulatory license, and (3) plaintiff's lack of investment- back expectations given that the plaintiff invested nothing in obtaining and performing the contracts allowing machines on its property).

**7. Karuk Tribe of California v. Ammon**, 2000 WL 387172 (Fed. Cir., April 18, 2000) (Federal Circuit affirmed court of federal claims' rejection of takings claim brought by Indians based on federal legislation severing a joint Indian reservation and using part of the land to create a new reservation for one tribe; the court ruled that the Indians deprived of the right to share in the profits from the resources on the old reservation had no viable claim because they lacked a vested property interest in the original joint reservation).

**8. Bay View, Inc. v. United States**, No. 99-456l 9C (Fed.Ct.Cls., April 19, 2000) (in another takings case brought by Indians, the Court of Federal Claims rejected a taking claim brought by an Alaskan native village corporation challenging federal legislation 'clarifying' that Alaskan regional corporation were not required to share revenues derived from the sale of paper tax losses to private corporations with the native village corporations; the court held that since the Alaska Native Claims Act originally granted the villages only the right to share in revenues from timber resources and the surface estate on designated lands, the villages never had a vested right to share in revenues attributable to the tax benefits of owning these resources; absent a protected property interest, the claim necessarily failed, the court ruled).

**9. Vaizburd v. United States**, No. 99-413l (Ct.Fed.Cls, March 17, 2000) (Court of Federal Claims reluctantly dismissed pro se takings claim on the ground that the same claim was originally filed in federal district court and was still pending in the district court as of the date of the filing of the claim in the Court of Federal Claims, under 28 US 1500 the claims court had to dismiss the takings claim, notwithstanding the fact that the district court transferred the takings claim to the claims court specifically so the claim could proceed in the proper forum).