Takings Snapshots, Volume 62, September 5, 2003

1. Santini v. Connecticut Hazardous Waste Management Services, 2003 WL 22020555 (2nd Cir., August 28, 2003) (in a very important ruling, the U.S. Court of Appeals for the Second Circuit. in express disagreement with the rulings of most other federal circuits, ruled that after a claimant has pursued a taking claim in state court under the state constitution, neither the Rooker-Feldman doctrine, nor claim or issue preclusion, precludes or limits the claimant from relitigating exactly the same substantive claim under the federal Takings Clause in federal court).

2. McIntyre v. Bayer, 2003 WL 21920241 (9th Cir., August 13, 2003) (in a variation on Phillips and Brown, the U.S. Court of Appeals for the Ninth Circuit (O'Scannlain, J.) vacated a trial court decision rejecting a prisoner's claim based on the alleged taking of interest earned in an inmate trust account; the Court of Appeals ruled that by diverting the interest to general prison uses, the prison had effected a per se taking of the interest; the court rejected the trial court's conclusion that no compensation was due because, even though the costs of administering the inmate accounts far exceeded the aggregate interest earned by the accounts, the trial court erred in not making an individualized determination on whether this specific plaintiff's pro rata share of the administrative costs exceeded the amount of interest he earned in his prison account).

3. Lion Raisins, Inc. v. United States, 2003 WL 22016881 (Ct. Fed. Cls., August 1, 2003) (the Court of

Federal Claims (Merow, J.), in the course of an opinion dismissing a takings claim on the ground that the suit was based on the actions of a non-appropriated fund instrumentality, observed that: (1) the Takings Clause creates a legal right to compensation but provides no remedy against the United States absent an independent waiver of sovereign immunity, and (2) the adjudication of a takings claim is properly assigned to Article 1 courts such as the Court of Federal Claims).

4. Shea Homes Limited Partnership v. County of

Alameda, 2 Cal.Rptr.3d. 739 (Cal. Ct. App., July 1, 2003) (California Court of Appeals affirmed rejection of federal takings challenge to voter-approved open space and agricultural protection plan, reasoning that preventing the premature and unnecessary conversion of open space to urban uses substantially advances a legitimate government interest and that the plaintiff failed to demonstrate a denial of all economically viable use, given that the plan permitted agricultural, recreational, and certain low-intensity development uses, and also included a provision stating that the restrictions would not apply if they gave rise to a constitutional taking).

5. Figueroa v. United States, 2003 WL 22011412 (Ct. Fed. Cls., August 15, 2003) (in a complex case concerning the payment and allocation of patent fees, the Court of Claims rejected the claim that patent fees effected a taking, on the ground that the mere imposition of financial liability cannot support a takings claim, citing Eastern Enterprises; the court also reaffirmed the rule that an unauthorized government action cannot support a claim under the Takings Clause, although the court declined to dismiss the claim on this ground on the theory that a claimant is entitled to challenge the legitimacy of a governmental action under one legal theory and in the alternative to claim a taking on the assumption that the governmental action is valid).

6. NJD Limited v. City of San Dimas, 2 Cal.Rptr.3d 818 (Cal. Ct. App., July 31, 2003) (California Court of Appeals ruled that trial court did not abuse its discretion, in a facial Lucas-type challenge to a specific plan and building moratorium, by excluding plaintiff's evidence concerning the specific economic impact of the regulation on the plaintiff's property).

7. Buena Park Motel Assoc. v. City of Buena Park, 2003 WL 21040650 (Cal. Ct. App., May 9, 2003) (California Court of Appeals upheld a trial court judgment rejecting a takings claim based on a city ordinance banning long-term stays in residential motels; the court ruled that the ordinance did not deprive the owners of all economically viable use of their properties and substantially advanced the government's legitimate interests in maintaining sanitary, pest-free conditions in the motels).

8. Canel v. Topinka, 2003 WL 21498931, (Ill.Ct.App., June 30, 2003) (Illinois Court of Appeals, reversing a trial court ruling, and relying on the U.S. Supreme Court decisions in Phillips and Brown, held that the Illinois unclaimed property act effected a taking insofar as it provided that the owner of the property being held in custody by the state is not entitled to receive dividends and other income earned by the property).

9. First Federal Savings Bank of Hegewisch v. United States, 57 Fed.Cl. 316 (Ct. Fed. Cls,.,July 17, 2003) (relying on the Federal Circuit decision in Castle v. United States, the Court of Claims dismissed takings claim in a Winstar-type case on the grounds that the plaintiff retained the full range of remedies associated with its contract right and, in any event, the contract did not create a reasonable expectation that the government would cease regulating the thrift industry).

10. Adams v. United States, No. 00-447C (Ct. Fed. Cls., August 11, 2003) (Court of Claims (Block, J.) rejected suit by federal workers to recover overtime pay under the Takings Clause, on the ground that a claim for an undifferentiated sum of money does not involve "property" within the meaning of the Takings Clause).

11. Breneman v. United States, No. 02-1854L (Ct. Fed. Cls., August 6, 2003) (in a case arising from a dispute between a landowner and an adjacent airport, the Court of Claims held that neither the FAA's publication of an aeronautical chart showing the proximity of the airport to plaintiff's land, nor the issuance by the FAA of two hazard determinations concerning potential development on plaintiff's property, constituted a taking; for the purpose of 28 U.S.C. 1500, relating to the prosecution of the same claim in the court of claims and the federal district court, the court ruled that this provision does not apply when the suits were filed in the two courts on the same day, but the court of claims suit was filed before the district court suit was filed).

12. Fifth Third Bank of Western Ohio v. United States, No. 95-503C (Ct. Fed. Cls., August 6, 2003) (Court of Claims, in a Winstar–type case, rejected, based on the Federal Circuit decision in Castle v. United States, a

taking claims based on the alleged taking of contracts rights and of corporate goodwill).

13. Ambase Corp. v. United States, No. 93-531C (Ct. Fed. Cls, August 25, 2003) (Court of Claims, in a Winstar-type case, rejected a taking claim based on the contention that the Financial Institutions Reform, Recovery and Enforcement Act effected a taking of a stockholder's interest in an insolvent bank; the court reasoned that because the bank had a viable breach of contract claim against the government, the stockholder could not demonstrate that it suffered any loss).