

Takings Snapshots, Volume 67, February 23, 2004

1. *Arctic King Fisheries, Inc. v. United States*, 2004 WL 254568 (Ct. Fed. Cls., February 11, 2004) (the Court of Federal Claims rejected a taking claim by a vessel owner barred from using its vessel in the Arctic pollack fishery as a result of the American Fisheries Act of 1998; the legislation permitted certain vessels to continue to exploit the fishery, provided for the buying out and retirement of certain vessels, and effectively barred certain other vessels (including plaintiff's) from operating in the fishery; the court ruled that plaintiff had a cognizable property interest for takings purposes in the vessel, but not in the associated fishing licenses and permits; applying the Penn Central test, the court ruled that all three factors weighed against the claim that the legislation effected a taking of plaintiff's vessel, given that: (1) plaintiff's vessel was reduced in value by at most 50% as a result of the American Fisheries Act; (2) the legislation was a natural and foreseeable outgrowth of previous regulations in this heavily regulated field; and (3) the legislation benefitted both the public and the fishing industry and did not single out the plaintiff to suffer a special economic harm).

2. *Consolidation Coal Co. v. United States*, 351 F.3d 1374 (Fed.Cir., December 11, 2003) (reversing the Court of Federal Claims, the Federal Circuit held that the court of claims had jurisdiction under the Tucker Act to hear claims by producers of coal for export that the fees assessed on them for deposit in the Abandoned Mine Reclamation Fund, established pursuant to the Surface Mining Control Reclamation Act, represent unconstitutional "taxes" prohibited by the Export Clause of the U.S. Constitution, which states that "[n]o Tax or Duty shall be laid on Articles exported from any state").

3. *Washington Legal Foundation v. Legal Foundation of Washington*, (on February 2, 2004, the U.S. District Court for the District of Washington issued a stipulated order of dismissal dismissing plaintiff's First Amendment challenging the Washington IOLTA program, bringing this entire litigation to a close; the U.S. Supreme Court previously affirmed rejection of the taking claim in this case in an opinion captioned *Brown v. Washington Legal Foundation*, 538 U.S. 216 (2003); this development

follows the Washington Legal Foundation's dismissal of its suit challenging Texas' IOLTA program last Fall).

4. Alabama Department of Transportation v. Land Energy Limited, 2004 WL 226094 (Ala. February 6, 2004) (the Alabama Supreme Court, based on an appeal focusing on a limited set of issues, upheld a \$650,000 inverse condemnation award for the taking of plaintiff's sub-surface mineral interests based on the State's acquisition of the surface estate for a highway project and the State's refusal to grant permission to plaintiff to exploit the minerals below the property).