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Case Digest

Law Review Staff

CASE DIGEST

This *Case Digest* provides brief analyses of cases that represent current aspects of transnational law. The Digest includes cases that apply established legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

TABLE OF CONTENTS

I. ADMIRALTY

A CARGO CONTAINER USED TO SHIP PACKAGED UNITS IS NOT A "PACKAGE" FOR PURPOSES OF LIMITING THE CARRIER'S LIABILITY FOR LOSS UNDER COSGA

A shipper's insurer sued a carrier for loss of cartons of electronic goods shipped in a twenty-foot cargo container. The district court found the carrier liable, but limited liability to five hundred dollars because the cargo container was only one "package" for purposes of section 4(5) of the Carriage of Goods by Sea Act (COGSA), and the statute sets a 500 dollar per package limit on a carrier's liability for lost or damaged goods. The court of appeals reversed, holding that each carton in the main cargo container was a "package" for COGSA purposes. The court reasoned that since the shipper first placed the electronic goods in packages that were then loaded into the carrier's cargo container, and since the number of packages within the container was disclosed to the carrier in the bill of lading, the appellant's definition of "package" was the most sensible. *Significance* — This case provides a definition of "package" for COGSA purposes that takes into account the advent of the containerized cargo method of transporting goods. *Allstate Insurance Co. v. Iversiones*

Navieras Imparca, C.A., 646 F.2d 169 (5th Cir. 1981).

II. ALIENS' RIGHTS

EXEMPTION FROM COMPULSORY MILITARY SERVICE WILL NOT ACT AS A BAR TO CITIZENSHIP FOR AN ALIEN IF THE CLASSIFICATION WAS LATER CHANGED TO MAKE HIM ELIGIBLE TO SERVE

An Ecuadoran national residing in the United States as a resident alien signed an agreement with the United States Government in 1943 that exempted him from United States military service since Ecuador at the time was a neutral country. The agreement specified that the military service exemption would permanently bar him from obtaining United States citizenship. After Ecuador declared war on the Axis Powers in 1945 and became an ally of the United States, the alien was reclassified as eligible for military service. He was not inducted, however, and was later reclassified as ineligible for service due to age. In 1980, the alien sought naturalization. A district court granted his petition. On appeal, the United States, citing the alien's 1943 exemption agreement, sought to revoke his citizenship. The grant of citizenship was upheld since reclassification, which qualified the alien for military service, nullified his earlier agreement. The court relied on United States v. Hoellger, 273 F.2d 760 (2d Cir. 1960), which held that a partial or temporary exemption from military service would not bar citizenship. *Significance* — The decision implies that an alien's previous exemption from compulsory military service will not act as a bar to citizenship as long as prior to filing his petition for citizenship the alien has been reclassified eligible for military service. *Villamar v. United States*, 651 F.2d 116 (2d Cir. 1981).

INDETERMINATE DETENTION OF AN EXCLUDABLE ALIEN IN A MAXIMUM SECURITY PRISON, PENDING UNFORESEEABLE DEPORTATION, VIOLATES INTERNATIONAL LAW

A Cuban refugee, who was properly determined to be excludable from the United States under 8 U.S.C. section 1182(a)(9) and (20), filed a habeas corpus petition complaining of continued detention in a maximum security institution. The extended, indefinite confinement was the result of unsuccessful efforts by the Immigration and Naturalization Service and the Department of State to return petitioner and other excludable aliens to Cuba. Petitioner asserted that his continued confinement without bail

and without having been charged with or convicted of a crime in this country was cruel and unusual punishment in contravention of the eighth amendment to the United States Constitution and a violation of the fifth amendment due process clause. Additionally, petitioner contended that continued detention violated fundamental human justice as embodied in established principles of international law. The district court dismissed the constitutional claims because the Supreme Court has consistently ruled that excludable and excluded aliens, who are not recognized under the law as having entered the United States, do not enjoy the panoply of rights guaranteed to citizen and alien entrants by the Constitution. The district court held that although the Constitution and United States statutes afforded petitioner no protection, international law prohibited such arbitrary detention. The court relied on the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 and the Amercian Convention on Human Rights. *Significance* — The decision reflects the willingness of some courts to look beyond constitutional and statutory protections and apply the principles of customary international law to protect the interests of excludable aliens in the United States. *Fernandez v. Wilkinson*, 505 F. Supp. 787 (D. Kan. 1980).

III. ANTITRUST

PATENTHOLDERS DO NOT VIOLATE ANTITRUST LAWS BY LICENSING ONLY FOREIGN PATENTS EVEN THOUGH THE PATENT DEPENDENCY CREATED LIMITS DOMESTIC COMPETITION

The United States sued Westinghouse Electric Corporation for violating the Sherman Act by maintaining technical assistance agreements with Mitsubishi Electric Corporation and Mitsubishi Heavy Industries (Mitsubishi) which granted Mitsubishi licenses to manufacture, use, and sell certain products under Westinghouse's foreign patents, but excluded the same privileges under Westinghouse's domestic patents. The Government claimed that Westinghouse's refusal to license the use of these patents unreasonably restricted competition because Westinghouse had allowed Mitsubishi to use its foreign patents for many years, thus creating Mitsubishi's dependence on Westinghouse technology, and the exclusion of access to domestic patents severely limited Mitsubishi's opportunity to compete in the United States. The United States also claimed that the agreement requiring Mitsubishi to

receive approval from Westinghouse before any products could be sold in the United States was likewise an antitrust violation, even though Mitsubishi submitted the products for approval to avoid patent infringement suits. At the close of the Government's case, the district court granted Westinghouse's motion to dismiss. The court of appeals affirmed, holding that Westinghouse's actions to license foreign patents while refusing to license domestic patents was merely an exercise of the limited monopoly granted by patent laws. The court stated that to hold otherwise would render almost all patent licensing agreements and attempts to avoid patent infringement suits unlawful. *Significance* — The Ninth Circuit rejected the claim that the dependency that develops between a licensee and a licensor of patent rights entitles the licensee to additional patent rights that would facilitate competiton. *United States v. Westinghouse Electric Corp.*, 648 F.2d 642 (9th Cir. 1981).

IV. JURISDICTION

Arbitral Tribunal Lacks Jurisdiction to Hear the Claims of a Corporation Qualifying as a Citizen of the United States Against Iran

Plaintiff, a private Liberian corporation, obtained writs of attachment on Iranian assets blocked by Executive Order No. 12,170. The district court ordered plaintiff and defendant, the Government of Iran, to file memoranda on whether the Arbitral Tribunal had jurisdiction to hear the claim. Defendant chose not to address that issue and instead argued that the Foreign Sovereign Immunities Act of 1976 did not grant to the district court subject matter jurisdiction. The court rejected defendant's argument and asserted jurisdiction because, while plaintiff was an alien corporation, it was also a United States citizen since its principal place of business was within the United States. The court found, however, that plaintiff corporation could not pursue the claim before the Tribunal because ownership of plaintiff by United States nationals had not been continuous during the period specified by article II of the Iranian Hostage Settlement Agreement. The district court further held that plaintiff's attachment should be vacated even though plaintiff's claim could not be settled by the Tribunal because the obligation of the United States to terminate legal proceedings against Iran under the agreement to settle the hostage situation has been held by the

Supreme Court to be separate from the obligation to resolve the claims of its citizens against Iran. *Significance* — This decision illustrates the problem inherent in the limited jurisdicton of the Arbitral Tribunal that certain United States citizens who are unable to resolve their claims against Iran under the domestic judicial system because the attachments of Iranian assets have been vacated, may also be denied the use of the Tribunal to satisfy their claims. *Hawaiian Agronomics Co. v. Iran*, 518 F. Supp. 596 (C.D. Cal. 1981).

V. LABOR RELATIONS

DISCRIMINATORY HIRING POLICIES BY UNITED STATES SUBSIDIARIES OF FOREIGN CORPORATIONS UPHELD UNDER A TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION

United States employees of a Japanese subsidiary corporation filed a class action under the Civil Rights Act of 1964 and 42 U.S.C. section 1981 alleging that the company discriminated against them by making managerial positions available only to Japanese citizens. The district court denied the company's motion to dismiss, stating that since the Japanese company had been formed under the law of the United States, it was not immune to the Civil Rights Act of 1964. On interlocutory appeal, the appellate court reversed and remanded, holding that the Treaty of Friendship, Commerce and Navigation (FCN) of April 2, 1953, between the United States and Japan, allowed the employer to control its overseas investments through discriminatory hiring practices. The appellate court reviewed the language and cases interpreting article VIII(1) of the FCN and concluded that the section was designed primarily to foster United States private-sector investment by foreign nations. The court further reasoned that this unique type of international agreement conferred certain rights and privileges to Japanese companies even when incorporated in the United States. *Significance* — The Fifth Circuit's interpretation of the FCN as applied to United States incorporated subsidiaries of Japanese corporations eliminated the potential disparity between rights conferred upon branches of a Japanese corporation and rights accorded to United States incorporated subsidiaries of Japanese corporations. *Speiss v. C. Itoh & Co., Inc.*, 643 F.2d 353 (5th Cir. 1981).

VI. TRADE REGULATION

SECTION 617 OF THE TARIFF ACT OF 1930 ALLOWS SETTLEMENT OF UNLIQUIDATED CLAIMS ARISING OUT OF ILLEGAL DUMPING OF JAPANESE TELEVISIONS

Plaintiff, a domestic television manufacturer, brought an action in the Court of International Trade against the United States challenging a settlement made by Japanese television companies with the United States for uncollected duties incurred when Japanese televisions were dumped on the United States market in 1971. At the time of the settlement the Department of Commerce was conducting an administrative review under section 751 of the Tariff Act of 1930 to determine the amount of duties owed. Plaintiff claimed that the settlement was unauthorized by statute until the administrative review was complete because it is only after a review is conducted that a "claim" exists and further, that a "claim" must be liquidated for a settlement to occur under section 617 of the Tariff Act of 1930. The Court of International Trade found that a "claim" for illegal dumping did not have to be liquidated to be subject to settlement under section 617 of the Tariff Act of 1930. Rejecting Zenith's analogy to the provisions of recently repealed revenue statute section 3469 pertaining to collection of duties, the court held there was no evidence that section 3469 was a precursor to section 617 of the Tariff Act and that section 3469 had a different purpose and procedural mechanism than section 617. The plain meaning of section 617, according to the court, indicated that a "claim" arises when the dumping occurs even though the amount of the claim is uncertain. Since judicial review was available to any party adversely affected, the court also rejected the contention that allowing settlement of the claims before completion of the section 751 administrative review would frustrate the purpose of the review and held that such settlement was proper. *Significance* — Section 617 of the Tariff Act of 1930 authorizes settlement of unliquidated claims for antidumping duties and is not limited by section 751 of the Tariff Act or by revenue statute section 3469. *Zenith Radio Corp. v. United States*, No. 80-5-00861 (Ct. Int'l Trade, Feb. 27, 1981).