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Case Digest

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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.

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1. ADMIRALTY

COURT SITTING IN ADMIRALTY MAY GRANT INJUNCTIVE RELIEF TO PREVENT MARITIME INSURER FROM "BLACKLISTING" SEAMEN WITHOUT CAUSE

Seamen who had previously prosecuted personal injury claims against a maritime protection indemnity insurer brought an admiralty action alleging that the insurer was tortiously and unjustifiably "blacklisting" them from seagoing employment by demanding extra insurance from their prospective employers. The district court found that the insurers were engaged in intentional tortious interference with plaintiffs' employment and awarded temporary injunctive relief pending a hearing on damages. Additionally, the lower court rejected the insurer's claims that the court lacked jurisdiction to grant equitable relief. The court of appeals affirmed the lower court's holding that a district court sitting in admiralty can both hear tort claims and award equitable relief, but found that the insurer could require vessel owners to submit "settlement sheets" including the names of employees after each voyage. The court relied on both *Vaughan v. Atkinson*, 369 U.S. 527 (1962) and a change in Fed. R. Civ. P. 65 that extends the Rules to admiralty cases. Specifically, the appellate court found that both the Supreme Court and Congress were willing to give courts sitting in admiralty the flexibility to grant whatever relief was proper under the circumstances and that traditional limitations on admiralty jurisdiction were no longer valid. *Significance* — This is the first decision to solidify trends in statutory and case law by expressly allowing district courts sitting in admiralty to award injunctive

relief. *Pino v. Protection Maritime Insurance Co.*, 599 F.2d 10 (1st Cir. 1979).

EXPENSES OF JUSTICE INCLUDE ONLY THOSE STORAGE EXPENSES INCURRED AFTER THE FILING OF A FORFEITURE ACTION BY THE UNITED STATES GOVERNMENT

The M/V PHGH was seized by the United States government for carrying contraband. Plaintiff brought an action *in rem* seeking damages resulting from the ship's diversion from its legitimate voyage and its accompanying seizure by the United States. The United States then brought a forfeiture action, claiming storage expenses from the time the vessel was seized until the time plaintiff took over the storage charges. The Government classified these costs as an "expense of justice," thus giving them priority over all liens. Plaintiff objected, claiming that the United States was entitled to have priority only on those storage expenses incurred after the filing of the forfeiture action. The district court held for the plaintiff, rejecting the government's claim for three reasons: (1) the expenses that accrued prior to the filing of the forfeiture action were not incurred by the United States as a Court - appointed custodian; (2) the pre - forfeiture expenses are not "proper" within 19 U.S.C. § 1613(a)(1) because of the unreasonable delay by the Government; and (3) due to the unreasonable delay the claim is barred by laches. *Significance* — This decision narrows the interpretation of "expenses of justice" as it applies to storage expenses, distinguishing between those incurred prior to the filing of the forfeiture action and those filed thereafter. *Rayon Y Celanese Peruana v. M/V PHGH*, 471 F. Supp. 1363 (S.D. Ala. 1979).

2. ALIENS' RIGHTS

IMMIGRATION AND NATURALIZATION SERVICE MAY APPEAL AN IMMIGRATION JUDGE'S DECISION TO GRANT AN ALIEN RELIEF FROM DEPORTATION UNDER SECTION 212(c) OF THE IMMIGRATION AND NATIONALITY ACT

A resident alien convicted on two separate counts of distribution and conspiracy to distribute cocaine was found deportable under section 241(a)(11) of the Immigration and Nationality Act (Act), but was granted relief from deportation under section 212(c). The Immigration and Naturalization Service (INS) appealed, and the Board of Immigration Appeals ordered the deportation of the resident alien. Petitioning the court of appeals, the resident alien claimed: (1) pursuant to 8 C.F.R. §§ 3.1(b) (3) & 212.2, the Board

of Immigration Appeals lacked jurisdiction over an appeal by the INS from an immigration judge's grant of section 212(c) relief, and (2) the INS failed to file its appeal within the five-day period specified in 8 C.F.R. § 236.7(c). The court of appeals affirmed, holding that although the regulation makes no specific reference to a right of appeal by the INS, its silence does not imply the absence of such a right. The court stated that nothing in section 212(c) suggests that the Attorney General intended to provide an appeal to an alien denied relief, while denying appeal by the INS when relief from deportation was granted. Further, the court noted that nothing compels the conclusion that an immigration judge has the final decision concerning the exercise of discretionary authority by the INS. The court also denied the resident alien's claim that the appeal by the INS to the Board was untimely. Because the application for section 212(c) relief was made in connection with a deportation hearing rather than an exclusionary hearing, the appeal was timely filed within the ten-day period specified in 8 C.F.R. § 242.21. *Significance* — This decision expands the jurisdiction of the Board of Immigration Appeals to include appeals by the INS from an immigration judge's grant of section 212(c) relief, in spite of the absence of a specific statutory provision. *Byus-Narvaez v. INS*, No. 78-3164 (5th Cir. Aug. 31, 1979).

3. CONSTITUTIONAL LAW

Fourth Amendment No Bar to Warrantless Search of Foreign Fishing Vessel Authorized by Fishery Conservation and Management Act of 1976

Defendant Japanese fishing vessel, 167 miles offshore, was boarded and searched without warrant or consent under the authority of the Fishery Conservation and Management Act of 1976 (FMCA), 16 U.S.C. §§ 1801-22. Comparing the ship's cumulative catch log with their estimates of the amount of frozen fish stored in the ship, government agents concluded that there had been intentional underlogging of the incidental catch. Defendant vessel and her documents were seized and taken to Kodiak, Alaska, where subsequent searches, also without warrant, disclosed a discrepancy of more than 160 metric tons between the vessel's log and the fish in possession. The United States brought action seeking forfeiture of defendant vessel for violation of 16 U.S.C. §§ 1821, 1854 and the implementing regulations, 50 C.F.R. § 611.9(d)(2)(vi)-(viii) and 611.9(d)(3). Defendant fishing company, alleging that the search of the vessel and seizure of its documents were invalid without warrant, moved to dismiss the complaint. The

court denied defendant's motion, holding that the fourth amendment was no bar to warrantless searches authorized to protect the fishery conservation zone (200 mile limit). Examining the language and legislative history of the FMCA, the court noted that the Act authorized warrantless inspections and searches of fishing vessels licensed under the Act for the purpose of the legislation's enforcement. The court further maintained that both federal interest in fisheries and pervasive and historic regulation of the fishing industry brought this case within the exception to the warrant requirement. Since the permit which allowed defendant vessel to fish in the conservation zone, 16 U.S.C. § 1824, incorporates the regulations of the FMCA, the court concluded that the Japanese vessel was on notice of the possibility of warrantless search and seizure for violation of the provisions of the Act. In conclusion, the court emphasized that the authority to use the warrantless search provisions of the FMCA is carefully limited to fishing vessels in the fishing conservation zone, and the scope of the search is implicitly limited to those areas of the ship that must be inspected to enforce the fishing regulations. *Significance* — The instant decision demonstrates domestic judicial support for strictly enforcing the FCMA beyond the customary 12-mile limit. *United States v. Tsuda Maru*, 470 F. Supp. 1223 (D. Alaska 1979).

4. CUSTOMS AND TRADE REGULATION

SCOPE OF LACEY ACT IS LIMITED TO FOREIGN LAWS DESIGNED TO PROTECT WILDLIFE

The United States brought indictments against defendants involved in smuggling snakes and other reptiles into the United States in violation of the Lacey Act, 18 U.S.C. § 43. The Lacey Act imposes penalties on anyone who transports, sells, receives, or purchases any wildlife taken, transported, or sold in violation of any law or regulation of a foreign country. Defendants were charged with smuggling reptiles in violation of the laws of Fiji and Papua New Guinea. The United States appealed the district court's dismissal of those counts based on violations of legislation and regulations promulgated in Fiji and Papua New Guinea. The instant court relied on both expert testimony and legislative history and rejected the charge based on the Fiji law but allowed the charge based on Papua New Guinea regulations. On the basis of expert testimony, the court held that the Fiji law is not for the protection of wildlife, but is instead revenue legislation and therefore the Lacey Act is inapplicable. Conversely, the court accepted expert

testimony that the Papua-New Guinea law is for the protection of wildlife, thereby triggering the Lacey Act. *Significance* — This case indicates the the court will rely on foreign law experts to determine whether the foreign law is for the protection of wildlife and therefore subject to the Lacey Act. *United States v. Molt*, 599 F.2d 1217 (3rd Cir. 1979).