

December 16, 1998

For: The Commission
From: John F. Cordes, Jr. /s/
Solicitor
Subject: LITIGATION REPORT - 1998 - 5

Del Core v. Jackson, No. 3:98CV1011 (RNC) (D. Conn., decided Nov. 6, 1998)

This lawsuit sought access to Millstone-related documents under the Freedom of Information Act and money damages for the Commission's allegedly wrongful and unconstitutional denial of access to information. Working with the United States Attorney's office, we filed a motion for summary judgment seeking dismissal of the suit in its entirety. After oral argument, the district court (Chatigny, J.) ruled from the bench that plaintiff was entitled to no relief. The court entered a one-page order dismissing the suit. Plaintiff has sixty days to appeal.

CONTACT: Catherine M. Holzle
415-1560

Dolford v. United International Investigative Service, Civ. No. AW-98-3984 (D. Md., removed Dec. 4, 1998)

In this case, a group of ex-employees of our former security guard contractor filed suit in Maryland state court (Montgomery County) against the contractor and claimed that they were wrongfully fired. Their argument is that they lost their jobs because of non-compliance with height/weight requirements that they consider unreasonable and violative of the federal Americans with Disabilities Act. The security guard contractor has filed a "third party" action against the NRC on the ground that the contractor was simply following NRC-required height/weight standards. The contractor seeks NRC indemnification for any liability to its ex-employees.

We have removed the lawsuit from state court to federal court. We are working with the United States Attorney's office in developing our defense to the third-party action.

CONTACT: Grace H. Kim
415-3605

Unte Cheh v. Jackson, No. AW-98:3610 (D. Md., filed Oct. 22, 1998)

Plaintiff, an NRC employee, claims "disability discrimination," "national origin and race discrimination," and "retaliation" in his conditions of employment at the NRC. He has brought suit under Title VII of the Civil Rights Act of 1964 and under the Americans for Disabilities Act. We are working with the United States Attorney's office in defending the case.

CONTACT: Marvin L. Itzkowitz
415-1566

El Paso Natural Gas Co. v. Neztosie, No. 98-9 (Supreme Court, amicus curiae brief filed Dec. 8, 1998)

This private lawsuit, not involving the government, seeks millions of dollars in tort damages in tribal court for exposure to radiation from uranium mining on Indian tribal lands. The defendant in the tribal court action, El Paso Natural Gas, sought a federal court injunction against tribal court proceedings on the ground that the federal Price-Anderson Act prescribes the exclusive means for obtaining damages for, among other things, the radioactive properties of source material. Both the federal district court and the court of appeals (Ninth Circuit) ruled that El Paso must first exhaust tribal court remedies before seeking federal court relief. Earlier this fall, the Supreme Court granted certiorari to consider the case.

Because the contours of both the tribal exhaustion doctrine and the Price-Anderson Act are of considerable importance to the government, the Solicitor General decided to file an amicus curiae brief in the Supreme Court. As we had urged (after informal consultation with the Commission), the government's amicus brief takes the view that the Price-Anderson Act remedial scheme is exclusive and preempts tribal law remedies. We worked closely with Department of Energy lawyers and with the Solicitor General's office in drafting the Price-Anderson portions of the brief. A decision is expected by the end of the current Supreme Court term in June, 1999.

CONTACT: Marjorie S. Nordlinger
415-1616

John F. Cordes
Solicitor

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