



RELEASED TO THE PDR
3/23/94
Date Initial

ADJUDICATORY ISSUE
(Information)

March 2, 1994

SECY-94-053

For: The Commission
From: John F. Cordes, Jr.
Solicitor
Subject: LITIGATION REPORT - 1994 - 01

O'Conner v. Commonwealth Edison Co., No. 92-2989 (7th Cir., Jan. 7, 1994)

The plaintiff in this lawsuit was a pipefitter who worked for a construction company that did work at a Commonwealth Edison nuclear power reactor. He sued Commonwealth Edison in state court claiming that he suffered cataracts as a result of overexposure to radiation. Commonwealth Edison removed the case to federal district court pursuant to the Price-Anderson Amendments Act of 1988.

Plaintiff, inter alia, challenged the Price-Anderson Act's removal provision as unconstitutional and sought a remand to state court. The United States intervened in the suit to defend the constitutionality of the removal statute. The district court upheld the removal provision, and also entered summary judgment on the merits for Commonwealth Edison. The court reasoned that plaintiff had not alleged radiation exposures in excess of NRC regulations and that his proposed expert testimony on causation was not scientifically credible and therefore inadmissible.

Plaintiff took an appeal to the United States Court of Appeals for the Seventh Circuit. We collaborated with the Department of Justice on a brief for the United States. (The late Eric Jakel of OGC played an important role in drafting the government's brief.) Our brief addressed the constitutional question only.

The court of appeals (Ripple, Manion & Shadur, JJ.) affirmed the district court judgment. It agreed with our position, and with a prior ruling of the Third Circuit, In re TMI Cases Consolidated II, 940 F.2d 832 (3d Cir. 1991), cert. denied, 112 S. Ct. 1262 (1992) (see Litigation Rep. 1991-15, SECY-91-249), that the Price-Anderson Act's removal provision is constitutional. The court found enough "federal ingredients" in "public liability"

NOTE: TO BE MADE PUBLICLY AVAILABLE
IN 10 WORKING DAYS FROM THE
DATE OF THIS PAPER

240002

9403250137 940302
PDR SECY
94-053 PDR

DF03
'11

actions under the Act to justify establishing federal court jurisdiction over such actions.

On the merits the court upheld the trial court's summary judgment for Commonwealth Edison. Significantly, the court held that NRC "regulations . . . provide the sole measure of the defendants' [tort] duty in a public liability cause of action." In short, the court found NRC regulations preemptive -- i.e., they override any standard of care imposed by state tort law. But cf. Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984) (holding that punitive damages claims under state tort law are not preempted by the Atomic Energy Act).

Finally, the court upheld the district court's rejection of plaintiff's proposed expert testimony. Relying on last term's Supreme Court decision in Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S. Ct. 2786 (1993), the court found as a matter of law that the "methodology" of plaintiff's expert was 'not well grounded in the scientific method."

Plaintiff has until early April to seek certiorari in the Supreme Court.

Contact:
John F. Cordes
504-1600

Jean-Louis v. Department of Energy & Nuclear Regulatory Commission, Civ. No. 94-____ (D.D.C., Filed Feb. 1, 1994)

This is a pro se lawsuit brought against DOE and the NRC by a federal prisoner. While the complaint is vague, plaintiff apparently seeks government records on the use of humans in testing radiation effects. We will work with the United States Attorney's office in defending this suit.

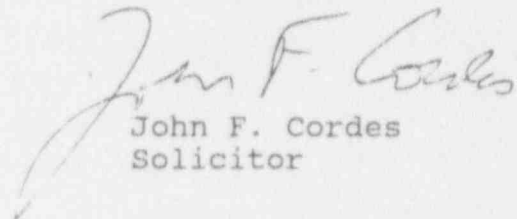
Contact:
Daryl M. Shapiro
504-1631

Knittle v. NRC, Civ. No. 94-0561 (E.D. Pa., filed Jan. 28, 1994)

This lawsuit arises under the Age Discrimination in Employment Act. Plaintiff applied for a clerical position in one of our regional offices and was turned down for the job. She claims that the NRC denied her the job because of age discrimination.

We will provide a copy of the full complaint upon request. We are working with the United States Attorney's office in Philadelphia in defending the suit.

Contact:
Michael R. Gartman
504-1577



John F. Cordes
Solicitor

DISTRIBUTION:
Commissioners
OGC
OCAA
OIG
OPA
OCA
OPP
REGIONAL OFFICES
EDO
ASLBP
SECY

ATTACHMENT -
O'Conner v. Commonwealth Edison Co., No. 92-2989 (7th Cir.,
Jan. 7, 1994)

In the
United States Court of Appeals
 For the Seventh Circuit

No. 92-2989

JAMES R. O'CONNOR,

Plaintiff-Appellant,

v.

COMMONWEALTH EDISON COMPANY and
LONDON NUCLEAR SERVICES, INC.,

Defendants-Appellees,

and

UNITED STATES OF AMERICA,

Intervenor-Appellee.

Appeal from the United States District Court
 for the Central District of Illinois, Peoria Division.
 No. 89-C-1272—Michael M. Mithm, Judge

ARGUED FEBRUARY 17, 1993—DECIDED JANUARY 7, 1994

Before RIPPLE and MANION, *Circuit Judges*, and
SHADUR, *District Judge*.*

* The Honorable Milton L. Shadur, District Judge of the United States District Court for the Northern District of Illinois, is sitting by designation.

RIFFLE, Circuit Judge. James O'Conner originally brought this suit in Illinois state court. He sought damages for personal injuries allegedly caused by unsafe dosages of radiation. Shortly before trial, the action was removed to federal district court under the Price-Anderson Amendments Act, 42 U.S.C. §§ 2014, 2210 (the "Amendments Act"). Defendants Commonwealth Edison Co. ("Commonwealth Edison") and London Nuclear Services ("London Nuclear") then moved for summary judgment. The district court granted the defendants' motion. Mr. O'Conner appealed. We now affirm.

I

BACKGROUND

A. Facts

Mr. O'Conner was a pipefitter who performed work in September and October of 1988 at a nuclear facility operated by Commonwealth Edison. During this period, Mr. O'Conner was employed by Morrison Construction Company, a subcontractor at the plant. At the time of his alleged overexposure, he was performing services for London Nuclear, a contractor of the plant. His actions while at the plant were controlled extensively by Commonwealth Edison because his particular pipefitting work was performed in areas containing radioactive materials. These areas were designated as radiation controlled areas and access was limited to only those radiation workers who had been trained specially to work in such an area. Mr. O'Conner had received training as a radiation worker. Even after this training, however, he was required to read and sign a Radiation Work Permit before he could enter a radiation controlled area. The work permit reported the actual levels of radiation in the area and specified how the worker must dress and what radiation measuring devices the worker must wear while doing work in the area. Mr. O'Conner adhered to these requirements at all times while in the area.

At the time radiation, he v
eters, scientific
According to t
of 45 millirems
Federal regulat
lirems (or 12
never defines
but claims tha
while working
diagnosed with
Karl Scheribel
racts were cau
cataracts are
ly by observs
minimum dos
well above th
on the night

In 1985, Mr
cuit Court of
well County.
leged that he
as a result of
by London N
to trial, how
Amendments
federal jurisd
pass "any leg
a nuclear inc
§ 2014(w). Th
of public liabi
Pursuant to
Petition for I
O'Conner's o

B. District

In the distr
mination of t

r originally brought
ought damages for
unsafe dosages of
on was removed to
Anderson Amend-
the "Amendments
son Co. ("Common-
Services ("London
gment. The district
Mr. O'Conner ap-

performed work in
nuclear facility op-
ing this period, Mr.
Construction Com-
the time of his al-
services for London
his actions while at
by Commonwealth
ting work was per-
ve materials. These
ontrolled areas and
iation workers who
such an area. Mr.
a radiation worker.
was required to read
ore he could enter
armit reported the
and specified how
ion measuring de-
work in the area.
ments at all times

At the time Mr. O'Conner allegedly was overexposed to radiation, he was wearing three different types of dosimeters, scientific instruments that measure radiation dosage. According to the dosimeters, Mr. O'Conner received a dose of 45 millirems on the night of the alleged excessive dose. Federal regulations allow a worker to receive 12,000 millirems (or 12 rems) of radiation per year. Mr. O'Conner never defines what he considers to be an "excessive dose" but claims that he was overexposed because he felt warm while working. About ten months later, Mr. O'Conner was diagnosed with early posterior subcapsular cataracts by Dr. Karl Scheribel. It is Dr. Scheribel's opinion that the cataracts were caused by radiation because radiation-induced cataracts are so unique that they can be identified merely by observation. However, all experts agree that the minimum dose necessary to cause cataracts is 200 rems, well above the .045 rem dose that Mr. O'Conner received on the night of October 3, 1983.

In 1985, Mr. O'Conner brought this action in the Circuit Court of the Tenth Judicial Circuit of Illinois, Tazewell County. In a two-count complaint, Mr. O'Conner alleged that he had been exposed negligently to radiation as a result of the pipe-flushing procedure being conducted by London Nuclear for Commonwealth Edison. Just prior to trial, however, Congress enacted the Price-Anderson Amendments Act of 1988. The Amendments Act expanded federal jurisdiction for public liability actions to encompass "any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation." 42 U.S.C. § 2014(w). The Amendments Act also allowed for removal of public liability actions currently pending in state courts. Pursuant to this second provision, the defendants filed a Petition for Removal. The petition was granted over Mr. O'Conner's objection.

B. District Court Proceedings

In the district court, the defendants moved for a determination of the legal duty owed to Mr. O'Conner under

the Amendments Act. The district court determined that the maximum permissible radiation dose levels set by federal safety standards provide the applicable standard of care. Furthermore, the district court opined, even if Illinois would not use federal safety standards as the standard of care in this situation, a different state standard would be preempted by federal law. *O'Conner v. Commonwealth Edison Co.*, 748 F. Supp. 672, 678 (C.D. Ill. 1990).

Mr. O'Conner then filed a motion asking the district court to remand the case to state court. He argued that the Amendments Act unconstitutionally conferred jurisdiction on the federal courts. He further argued that the retroactive application of these provisions violated due process. The district court disagreed. It held that Congress had created the public liability cause of action as a federal cause of action with a state law basis, similar to what Congress had done in the Outer Continental Shelf Lands Act, 43 U.S.C. § 1831 [OCSLA]. Furthermore, the district court believed that the other federal ingredients of the statutory scheme provided a sufficient basis for federal jurisdiction under the broad tests of *Osborn v. Bank of United States*, 22 U.S. (9 Wheat.) 738 (1824), and *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983). The district court also held that removal did not violate due process. Because the Amendments Act is essentially economic legislation, the district court determined that "[t]he validity of . . . the removal mechanism . . . depends on whether such retroactive application is a rational means of achieving a legitimate congressional purpose." *O'Conner v. Commonwealth Edison Co.*, 770 F. Supp. 448, 456 (C.D. Ill. 1991). The district court determined that retroactive application of the removal provisions was a rational means to accomplish congressional purposes.

Prior to these motions, the defendants had moved for summary judgment on the ground that there was no evidence that the plaintiff had received a dose in excess of the federal permissible dose limits, and on the ground that

there was no radiation exposure. The plaintiff filed his testimony of D that only radiation. However that explained causation. The tal affidavits a Scheribel's opi from Dr. Scher that formed t these represer defendants' m that a genuin whether the p federal dose r reconsidering testimony sus Dr. Scheribel judgment in :

Mr. O'Conner ment. He rer district court. erred in not in applying t maintains th the applicabl tion. Finally, Dr. Scheribe dress each o

A. Jurisdic

The plainti have reman ner argues :

No. 92-2989

rt determined that
se levels set by fed-
licable standard of
opined, even if Illi-
ndards as the stan-
rent state standard
O'Conner v. Com-
672, 678 (C.D. Ill.

asking the district
rt. He argued that
y conferred jurisdic-
er argued that the
isions violated due
l. It held that Con-
cause of action as
e law basis, similar
er *Continental Shelf*
). Furthermore, the
federal ingredients
sufficient basis for
tests of *Osborn v.*
est.) 738 (1824), and
Igeria, 461 U.S. 480
at removal did not
ndments Act is es-
ict court determined
val mechanism . . .
application is a ra-
; congressional pur-
Edison Co., 770 F.
istrict court deter-
he removal provi-
lish congressional

its had moved for
there was no evi-
a dose in excess of
on the ground that

No. 92-2989

5

there was no evidence that the plaintiff's occupational radiation exposure caused any injuries to the plaintiff. The plaintiff filed his response, which included the deposition testimony of Dr. Karl Scheribel. Dr. Scheribel testified that only radiation could have caused the plaintiff's cataracts. However, Dr. Scheribel did not include an affidavit that explained the basis of his opinion with respect to causation. The plaintiff was allowed to file supplemental affidavits and information regarding the basis of Dr. Scheribel's opinion. Mr. O'Conner filed a short affidavit from Dr. Scheribel which listed the names of four articles that formed the scientific basis of his opinion. Based on these representations, the district court first denied the defendants' motion for summary judgment on the ground that a genuine issue of material fact existed regarding whether the plaintiff had received a dose in excess of the federal dose limits. However, on August 29, 1991, after reconsidering the issue of admissibility of Dr. Scheribel's testimony *sua sponte*, the district court determined that Dr. Scheribel's testimony was inadmissible and entered judgment in favor of the defendants.

Mr. O'Conner appeals from the entry of summary judgment. He renews on appeal the arguments made to the district court. Specifically, he alleges that the district court erred in not remanding the case to the state court and in applying the Amendments Act retroactively. He also maintains that the district court improperly determined the applicable standard of care for a public liability action. Finally, Mr. O'Conner reasserts the admissibility of Dr. Scheribel's testimony to establish causation. We address each of these in turn.

II

ANALYSIS

A. Jurisdiction

The plaintiff first maintains that the district court should have remanded the case to the state court. Mr. O'Conner argues that 42 U.S.C. § 2210(n)(2), which allows for

removal of public liability actions, does not create a federal cause of action and is therefore a hollow grant of federal jurisdiction. Specifically, Mr. O'Conner maintains that, because the governing law for public liability actions is derived from state law rather than from a newly-created body of federal law, the cause of action does not arise under a law of the United States; instead, the public liability action arises under state law. Consequently, the removal provisions do not satisfy the requirement of Article III that causes of action "arise under" the Constitution or laws of the United States.

1.

In order to evaluate properly its constitutionality, we must look at the Amendments Act in the context of the entire federal statutory scheme on nuclear power. The Amendments Act is simply the last addition to the federal law of nuclear energy that has been evolving since 1946 when Congress enacted the Atomic Energy Act. The Atomic Energy Act initially gave the federal government a monopoly with respect to the development of nuclear power. Later, however, Congress determined that the national interest would be served by including the private sector in the development of atomic energy. Thus, Congress enacted the Atomic Energy Act of 1954 which established the Atomic Energy Commission and gave it authority to license and regulate nuclear facilities. See 42 U.S.C. §§ 2211-2281. However, this legislation alone did not spur the private sector into the industry. "[S]pokeemen for the private sector informed Congress that they would be forced to withdraw from the field if their liability were not limited by appropriate legislation." *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 64 (1978). Congress responded in 1957 with the Price-Anderson Act for the purpose of "protect[ing] the public and . . . encourag[ing] the development of the atomic energy industry." 42 U.S.C. § 2012. The Price-Anderson Act had three main features: 1) It "established a limit on the aggregate liability of those who wished to undertake activities involving the handling

or use of radios
liability resultin
government; and
claims above th
"protection wou
ment, up to the
218, 100th Cong
U.S.C.A.N. 1

In 1966, the P
extended for te
quired that thos
in the event of
nuclear occurre
provided for th
all claims arising
In re TMI Cas
Cir. 1991), cert.
visions were pr

congression
liability for
and that of
of responsi
was needed
the prefer
ference wit
of a feders

Duke Power, &

The Price-And
1975 and again
sion to amend
from congressi

[t]he Price-
defenses p
predetermi
seeking cor
clear incide
cedures an
wise be ap

No. 92-2980

No. 92-2889

7

not create a federal
 w grant of federal
 maintains that, be-
 ility actions is de-
 m a newly-created
 ion does not arise
 ead, the public lia-
 nsequently, the re-
 quirement of Article
 " the Constitution

onstitutionality, we
 the context of the
 nuclear power. The
 dition to the federal
 evolving since 1946
 rgy Act. The Atomic
 government a mo-
 it of nuclear power.
 d that the national
 the private sector
 Thus, Congress en-
 i which established
 ave it authority to
 42 U.S.C. §§ 2211-
 id not spur the pri-
 men for the private
 would be forced to
 y were not limited
 er Co. v. Carolina
 4 (1978). Congress
 erson Act for the
 . . . encourag[ing]
 dustry." 42 U.S.C.
 ree main features:
 ate liability of those
 olving the handling

or use of radioactive materials"; 2) It channelled public liability resulting from nuclear incidents to the federal government; and 3) It established that all public liability claims above the amount of required private insurance "protection would be indemnified by the Federal Government, up to the aggregate limit on liability." S. Rep. No. 218, 100th Cong., 1st Sess. 2 (1987), reprinted in 1988 U.S.C.C.A.N. 1476, 1477 [hereinafter S. Rep. No. 218].

In 1966, the Price-Anderson Act, due for expiration, was extended for ten years. In addition, a new provision required that those indemnified waive common law defenses in the event of an action arising from an extraordinary nuclear occurrence ("ENO"). "The 1966 Amendments also provided for the transfer, to a federal district court, of all claims arising out of an [ENO]. 42 U.S.C. § 2210(n)(2)." *In re TMI Cases Consolidated II*, 940 F.2d 832, 852 (3d Cir. 1991), cert. denied, 112 S. Ct. 1262 (1992). These provisions were premised on

congressional concern that state tort law dealing with liability for nuclear incidents was generally unsettled and that some way of insuring a common standard of responsibility for all jurisdictions—strict liability—was needed. A waiver of defenses was thought to be the preferable approach since it entailed less interference with state tort law than would the enactment of a federal statute prescribing strict liability.

Duke Power, 438 U.S. at 65-66.

The Price-Anderson Act was amended a second time in 1975 and again in 1988 by the Amendments Act. The decision to amend and extend the Price-Anderson Act arose from congressional recognition that

[t]he Price-Anderson System, including the waiver of defenses provisions, the omnibus coverage, and the predetermined sources of funding, provides persons seeking compensation for injuries as a result of a nuclear incident with significant advantages over the procedures and standards of recovery that might otherwise be applicable under State tort law. The Act also

provides a mechanism whereby the federal government can continue to encourage private sector participation in the beneficial uses of nuclear materials.

S. Rep. No. 218 at 4. Among other provisions, the Amendments Act expanded the reach of 42 U.S.C. § 2210(n)(2) to provide for removal of, and original federal jurisdiction over, claims arising from any "nuclear incident," instead of actions arising only from ENOs. The amended section reads:

With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place, or in the case of a nuclear incident taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission, or the Secretary, as appropriate, any such action pending in any State court (including any such action pending on [the date of the enactment of the Price-Anderson Amendments Act of 1988]) or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States.

42 U.S.C. § 2210(n)(2). The Amendments Act also added § 2014(hb) to the definition section. This section defines a public liability action as "any suit asserting public liability."¹ In addition to defining the cause of action, this sec-

¹ The definition of public liability, "any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation," 42 U.S.C. § 2014(w), was not affected by the 1988 amendments. Although the definition of nuclear incident was altered slightly by the Amendments Act, the parts of that definition pertinent to this case remained constant.

(Footnote continued on following page)

tion grants federal liability claims:

A public liability action arising substantive derived from clear incidents consistent

42 U.S.C. § 201 Act was designe Circuit had held matter jurisdiction nuclear incident 1984), cert denied at 13. The Senate Works made clear of the statute, the Act: "Any suit to be an action

Although the preexisting statutory elements as well as the limitations period for § 2210(n)(1), the probability of punishment ENO, § 2210(s) defenses be waived Amendments of action into

¹ continued

The term "any extraordinary causing, with sickness, fire or loss of or radioactive, source, spe-

42 U.S.C. § 201

the federal govern-
private sector par-
nuclear materials.
visions, the Amend-
U.S.C. § 2210(n)(2)
nal federal jurisdic-
nuclear incident," in-
NOs. The amended

ty action arising out
incident, the United
ct where the nuclear
case of a nuclear in-
United States, the
r the District of Co-
iction without regard
r the amount in con-
defendant or of the
as appropriate, any
e court (including any
te of the enactment
ents Act of 1988) or
shall be removed or
as district court hav-
Process of such dis-
roughout the United

nents Act also added
This section defines
asserting public liabil-
se of action, this sec-

egal liability arising out
precautionary evacua-
ed by the 1988 amend-
r incident was altered
s of that definition per-

ing page)

tion grants federal courts jurisdiction to adjudicate public
liability claims:

A public liability action shall be deemed to be an ac-
tion arising under section 2210 of this title, and the
substantive rules for decision i. such action shall be
derived from the law of the State in which the nu-
clear incident involved occurs, unless such law is in-
consistent with the provisions of such section.

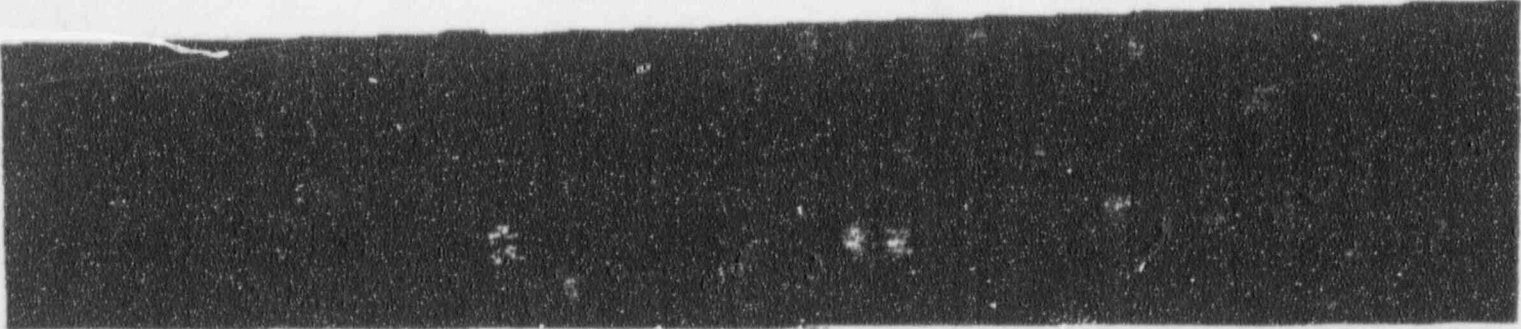
42 U.S.C. § 2014(hh). This provision of the Amendments
Act was designed to overturn decisions in which the Third
Circuit had held that "federal courts do not have subject
matter jurisdiction for claims arising out of a non-ENO
nuclear incident. *Stibitz v. GPU*, 746 F.2d 993 (3d Cir.
1984), cert denied, 105 S. Ct. 1187 (1985)." S. Rep. No. 218
at 13. The Senate Committee on Environment and Public
Works made clear in its report, as well as in the language
of the statute, that the new cause of action arose under the
Act: "Any suit asserting public liability shall be deemed
to be an action arising under the Price-Anderson Act." *Id.*

Although the public liability cause of action is built around
preexisting state law, it contains some distinctively federal
elements as well. The Amendments Act dictates the limita-
tions period for a public liability cause of action, 42 U.S.C.
§ 2210(n)(1), provides for venue, § 2210(n)(2), limits the avail-
ability of punitive damages in an action arising out of an
ENO, § 2210(s), and mandates that normally-available de-
fenses be waived in the cases of ENOs, § 2210(n)(1). The
Amendments Act, therefore, forms the state-based cause
of action into the federal mold.

¹ *continued*

The term "nuclear incident" means any occurrence, including
an extraordinary nuclear occurrence, within the United States
causing, within or outside the United States, bodily injury,
sickness, disease, or death, or loss of or damage to property,
or loss of use of property, arising out of or resulting from the
radioactive, toxic, explosive, or other hazardous properties of
source, special nuclear, or byproduct material

42 U.S.C. § 2014(q).



Thus, the Amendments Act is the latest installment in nearly fifty years of congressional work. During that time, Congress has attempted to encourage the development of domestic nuclear power to the fullest extent through licensing, indemnification, limitation of liability, and consolidation of litigation. Nevertheless, Congress has balanced this encouragement of private sector activity with an acute concern for public safety by authorizing extensive regulation first by the Atomic Energy Commission, and now by the Nuclear Regulatory Commission, and by imposing a carefully constructed measure of liability should nuclear accidents occur. It is against this statutory background that challenges to the constitutionality of the Amendments Act must be evaluated. We turn now to that constitutional issue.

2.

a. the constitutional standard

The Constitution of the United States confers limited jurisdiction on the federal courts. Article III provides that the judicial power of the United States "shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority." Causes of action that are based entirely on federal law clearly arise under the laws of the United States for Article III purposes. However, when state and federal elements are present in the same cause of action, the analysis is necessarily more complex. We therefore turn to an examination of the caselaw discussing Article III "arising under" jurisdiction² in situations presenting both state and federal law questions.

² The "arising under" language also appears in the statute which authorizes district courts to hear cases involving federal questions. It states: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties (Footnote continued on following page)

Our analysis in *States*, 22 U.S. Supreme Court Article III "arising under" a suit brought from collecting which had incurred and be sued States." *Id.* at the separation made the United States following arbitration for jurisdiction party, may be substituted or is the opposite of a state law. When federal law of the original give the Circuit other questions

³ continued of the United States identical language differently.

Section 1331 has been a statutory that jurisdiction and the difference from the federal jurisdiction

Verlinden B. (1983) (quoting 358 U.S. 854, than the cause arises under complaint, it created by federal 211 U.S. 149,

test installment in
 During that time,
 he development of
 ent through licens-
 ity, and consolida-
 s has balanced this
 ity with an acute
 g extensive regula-
 ssion, and now by
 and by imposing a
 lity should nuclear
 tutory background
 of the Amendments
 that constitutional

tes confer limited
 le III provides that
 s "shall extend to
 nder this Constitu-
 nd Treaties made,
 Authority." Causes
 federal law clearly
 tes for Article III
 deral elements are
 he analysis is nec-
 urn to an examina-
 II "arising under"
 : state and federal

in the statute which
 g federal questions.
 iginal jurisdiction of
 on, laws, or treaties
 page)

Our analysis begins with *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), in which the Supreme Court first articulated the constitutional test for Article III "arising under" jurisdiction. *Osborn* involved a suit brought by the bank to prevent Ohio's state auditor from collecting a tax levied against the bank. The statute which had incorporated the bank also authorized it "to sue and be sued . . . in any Circuit Court of the United States." *Id.* at 817. The Court held that the act of incorporation made the case one "arising under" the laws of the United States. In doing so, the Court articulated the following oft-quoted standard: "[I]t is a] sufficient foundation for jurisdiction, that the title or right set up by the party, may be defeated by one construction of the constitution or law of the United States, and sustained by the opposite construction . . ." *Id.* at 822. The presence of a state law issue did not destroy federal jurisdiction. When federal law, continued the Court, "forms an ingredient of the original cause, it is in the power of Congress to give the Circuit Courts jurisdiction of that cause, although other questions of fact or law may be involved in it." *Id.*

² *continued*

of the United States." 42 U.S.C. § 1331. Although they contain identical language, the two provisions have been interpreted differently.

Section 1331 . . . although broadly phrased,

has been continuously construed and limited in light of the history that produced it, the demands of reason and coherence, and the dictates of sound judicial policy which have emerged from the [statute's] function as a provision in the mosaic of federal judiciary legislation.

Verlinden B. V. v. Central Bank of Nigeria, 461 U.S. 480, 496 (1983) (quoting *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 379 (1959)). The statutory grant is much narrower than the constitutional grant. Under the statutory grant, a case arises under federal law only if, from the face of the plaintiff's complaint, it is apparent that the plaintiff's cause of action was created by federal law. *Louisville & Nashville R.R. v. Mottley*, 211 U.S. 149, 152 (1908).

at 823. As Judge Mansmann wrote for the Third Circuit in *In re TMI Cases Consolidated II*,

The central teaching of *Osborn*, therefore, is that a case cannot be said to arise under a federal statute where that statute is nothing more than a jurisdictional grant. In order to confer "arising under" jurisdiction, "the act [may] not stop with incorporating the Bank;" it must do more.

940 F.2d 832, 849 (3d Cir. 1991), cert. denied, 112 S. Ct. 1262 (1992).

More recently, the Court has addressed the issue of "arising under" jurisdiction in *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983). In *Verlinden*, the Court evaluated the constitutionality of the Foreign Sovereign Immunities Act ("FSIA"), which authorizes a foreign plaintiff to sue a foreign state in federal district court on a nonfederal cause of action. However, this jurisdiction is contingent upon the district court's finding that one of the statutorily prescribed exceptions to foreign sovereign immunity applies. In evaluating the FSIA's constitutionality, the Court first reviewed the standard established in *Osborn*:

Osborn . . . reflects a broad conception of "arising under" jurisdiction, according to which Congress may confer on the federal courts jurisdiction over any case or controversy that might call for the application of federal law. . . . It has been observed that, taken at its broadest, *Osborn* might be read as permitting "assertion of original federal jurisdiction on the remote possibility of presentation of a federal question." We need not now resolve the issue or decide the precise boundaries of Art. III jurisdiction, however, since the present case does not involve a mere speculative possibility that a federal question may arise at some point in the proceeding. Rather, a suit against a foreign state under this Act necessarily raises questions of substantive federal law at the very outset, and hence clearly "arises under" federal law, as that term is used in Art. III.

Id. at 492-93. The first instance, to stated exceptions 1 Only if an excep This determinatio ing under" jurisd possibility" that : 461 U.S. at 492.

The Court the: "arising under" guished the FSL ercise of federal tion to the fede

As the Cour "The law It m district cou pose. . . .] ing [the law to regulate

In contra munities A to regulate fied Art. I dicates, th forth comp nity"; the ply one ps thus does courts. R which for United S:

Id. at 496-97

* The Court in further the idea Court reviewed

the Third Circuit

therefore, is that a federal statute more than a jurisdiction "arising under" jurisdiction with incorporating

denied, 112 S. Ct.

addressed the issue of *Verlinden B.V. v. Central Bank of Nigeria*. In *Verlinden*, the Supreme Court of the Foreign Sovereign Immunities Act authorizes a federal district court. However, this jurisdiction court's finding that exceptions to foreign immunity under the FSIA's conventional standard as

conception of "arising under" jurisdiction which Congress may exercise over any case or the application of jurisdiction. It is observed that, taken together, the provisions can be read as permitting jurisdiction on the basis of "a federal question." The Court does not decide the question, however, since a mere speculative possibility may arise at some point in a suit against a foreign party. It merely raises questions at the very outset, and the law, as that term

Id. at 492-93. The FSIA requires federal courts, in the first instance, to determine whether one of the enumerated exceptions to foreign sovereign immunity applies. Only if an exception applies is jurisdiction appropriate. This determination, held the Court, is sufficient for "arising under" jurisdiction. There is more than a "speculative possibility" that a federal question may arise. *Verlinden*, 461 U.S. at 492.

The Court then contrasted the circumstances in which "arising under" jurisdiction would be lacking. It distinguished the FSIA from acts which, without any other exercise of federal legislative power, merely grant jurisdiction to the federal courts. The Court stated:

As the Court stated in *The Propeller Genessee Chief*: "The law . . . contains no regulations of commerce It merely confers a new jurisdiction on the district courts; and this is its only object and purpose. . . . It is evident . . . that Congress, in passing [the law], did not intend to exercise their power to regulate commerce"

In contrast, in enacting the Foreign Sovereign Immunities Act, Congress expressly exercised its power to regulate foreign commerce, along with other specified Art. I powers. As the House Report clearly indicates, the primary purpose of the Act was to "set forth comprehensive rules governing sovereign immunity"; the jurisdictional provisions of the Act are simply one part of this comprehensive scheme. The Act thus does not merely concern access to the federal courts. Rather, it governs the types of actions for which foreign sovereigns may be held liable in the United States, federal or state.

Id. at 496-97 (citations omitted).²

² The Court in *Mesa v. California*, 489 U.S. 121 (1989), discussed further the idea of a purely jurisdictional statute. In *Mesa*, the Court reviewed whether allegation of a federal defense was a pre-emption. (Footnote continued on following page)

Thus, more than a jurisdictional grant is required for a matter to "arise under" the Constitution or laws of the United States. Congress may not simply invoke federal jurisdiction; however, when it invokes this jurisdiction in conjunction with exercising its Article I legislative powers, the constitutional concerns are satisfied. As the Third Circuit held, "We take from *Verlinden* the proposition that where Congress has the authority to legislate in a given area and substantively does so, a grant of federal subject matter jurisdiction will survive an Article III challenge." *In re TMI Cases Consolidated II*, 940 F.2d 832, 850 (3d Cir. 1991), cert. denied, 112 S. Ct. 1262 (1992).

b. application

Because we believe that the Amendments Act embodies substantive federal policies and does not merely create federal jurisdiction for a state claim, we must conclude that Article III's "arising under" requirement has been

³ continued

requisite to removal under the federal officer removal statute, 42 U.S.C. § 1442(a)(1). The government urged that the statute permitted removal "whenever a federal official is prosecuted for the manner in which he has performed his duties . . ." *Mead*, 489 U.S. at 125. The Court disagreed. It held that the federal officer removal statute was a purely jurisdictional statute

seeking to do nothing more than grant district court jurisdiction over cases in which a federal officer is a defendant. Section 1442(a), therefore, cannot independently support Art. III "arising under" jurisdiction. Rather, it is the raising of a federal question in the officer's removal petition that constitutes the federal law under which the action against the federal officer arises for Art. III purposes.

Id. at 1489. The court preserved the test, articulated in both *Osborn* and *Verlinden*, that Article III requires only a federal ingredient: "Nor is it any objection that questions are involved which are not all of a Federal character. If one of the latter exist, if there be a single such ingredient in the mass, it is sufficient (for constitutional purposes)." *Id.* at 129 (quoting *The Mayor v. Cooper*, 78 U.S. (6 Wall.) 247, 252 (1867)).

met. At the outset Congress explicitly course of action Insular Affairs : al concerns:

The Commi of the Cons eral courts this reason asserting p tion arising making su arising un within the tee believe jurisdiction: cidents in authority

H.R. Rep. No customary defe is certainly sp; cally considere ity." *Rostker*

Given the st fully considere pronouncement diction establi Amendments with jurisdic Act is at leas visions of the liability action: First, the bro bodied in the

⁴ See *supra* ne equally broad d

ant is required for
 ation or laws of the
 uly invoke federal
 this jurisdiction in
 legislative powers.
 1. As the Third Cir-
 he proposition that
 legislate in a given
 it of federal subject
 icle III challenge."
 O F.2d 832, 850 (8d
 262 (1992).

ments Act embodies
 not merely create
 we must conclude
 quirement has been

er removal statute, 42
 that the statute per-
 al is prosecuted for the
 ties" *Mesa*, 489
 that the federal officer
 al statute

district court jurisdic-
 er is a defendant. Sec-
 ively support Art. III
 the raising of a federal
 n that constitutes the
 nst the federal officer

ulated in both *Osborn*
 a federal ingredient:
 nvolved which are not
 ter exist, if there be
 sufficient for constitu-
Mayor v. Cooper, 73

met. At the outset, we believe it is important to note that Congress explicitly considered the constitutionality of its course of action. The House Committee on Interior and Insular Affairs specifically addressed possible constitutional concerns:

The Committee recognizes, of course, that Article III of the Constitution limits the types of cases that federal courts created under that Article may hear. For this reason, H.R. 1414 expressly states that any suit asserting public liability shall be deemed to be an action arising under the Price-Anderson Act, thereby making suits asserting public liability "Cases * * * arising under * * * the Laws of the United States" within the meaning of Article III. . . . The Committee believes that conferring on the Federal Courts jurisdiction over claims arising out of all nuclear incidents in this manner is within the Constitutional authority of Congress

H.R. Rep. No. 104, 100th Cong., 1st Seas., pt. 1. "The customary deference accorded the judgments of Congress is certainly appropriate where, as here, Congress specifically considered the question of the Act's constitutionality." *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981).

Given the strong presumption in favor of Congress' carefully considered decisions as to the constitutionality of its pronouncements and the scope of "arising under" jurisdiction established in the caselaw, we conclude that the Amendments Act constitutionally vests the district court with jurisdiction. The federal basis of the Amendments Act is at least as strong as that in *Verlinden*. Two provisions of the Amendments Act demonstrate that a public liability action "arises under" the Price-Anderson Act. First, the broad definition of "public liability action" embodied in the Price-Anderson Act implies that Congress

⁴ See *supra* note 2 for the definition of "public liability" and the equally broad definition of "nuclear incident" which it encompasses.

has exercised power under Article I and has enacted a new and independent, indeed exclusive, cause of action. As the Third Circuit explained in its discussion of the jurisdictional grant of the Amendments Act:

Under the terms of the Amendments Act, the "public liability action" encompasses "any legal liability" of any "person who may be liable" on account of a nuclear incident. 42 U.S.C. § 2014(h) (emphasis added). Given the breadth of this definition, the consequence of a determination that a particular plaintiff has failed to state a public liability claim potentially compensable under the Price-Anderson Act is that he has no such claim at all. After the Amendments Act, no state cause of action based upon public liability exists. A claim growing out of any nuclear incident is compensable under the terms of the Amendments Act or it is not compensable at all. Any conceivable state tort action which might remain available to a plaintiff following the determination that his claim could not qualify as a public liability action, could not be one based on "any legal liability" or "any person who may be liable on account of a nuclear incident."

In re TMI Cases Consolidated II, 940 F.2d 832, 854 (3d Cir. 1991), cert. denied, 112 S. Ct. 1262 (1992). Thus, a state cause of action is not merely transferred to federal court; instead, a new federal cause of action supplants the prior state cause of action.

Furthermore, Congress provided that the law governing a public liability cause of action was to be "derived from" state law. In creating the public liability cause of action, Congress specified:

The term "public liability action", as used in section 2210 of this title, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 2210 of this title, and the substantive rules for decision in such action shall be derived from the law of the state in which the nuclear incident involved occurs, unless such law is inconsistent with the provision of such section.

42 U.S.C. § 2014(h) fashion state law cause of action on the other parts of law provide the however, Congress in the context would mold and state law. This is Act's legislative authorizing the I tee on Environm

The Price-Anderson defenses pre-predetermined seeking con-clear incidence procedures otherwise

S. Rep. No. 218 liability cause of action is only "derived from, by design, of that act: to development of § 2012.⁵

⁵ In choosing to of action, Congress law. Specifically, fair reported:

Rather than ern such cas-tive rules for the law of th-curs, unless Act. The Co-courts jurisd-dents in this

I and has enacted a
 dive, cause of action.
 discussion of the ju-
 its Act:

ments Act, the "public
 my legal liability" of
 "on account of a nu-
 (h) (emphasis added).
 tion, the consequence
 lar plaintiff has failed
 tentially compensable
 s that he has no such
 its Act, no state cause
 ibility exists. A claim
 dent is compensable
 nents Act or it is not
 able state tort action
 o a plaintiff following
 i could not qualify as
 ot be one based on
 on who may be liable
 it."

40 F.2d 832, 854 (8d
 1262 (1992). Thus, a
 ransferred to federal
 action supplants the

hat the law govern-
 was to be "derived
 lic liability cause of

, as used in section
 asserting public lia-
 ll be deemed to be
 10 of this title, and
 in such action shall
 state in which the
 , unless such law is
 of such section.

42 U.S.C. § 2014(hh). Congress did not adopt in wholesale fashion state law. State law serves as the basis for the cause of action only as long as state law is consistent with the other parts of the Act. Congress desired that state law provide the content for and operate as federal law; however, Congress recognized that state law would operate in the context of a complex federal scheme which would mold and shape any cause of action grounded in state law. This recognition is explicit in the Amendments Act's legislative history. In discussing the need for reauthorizing the Price-Anderson Act, the Senate Committee on Environment and Public Works reported:

The Price-Anderson system, including the waiver of defenses provisions, the omnibus coverage, and the predetermined sources of funding, provides persons seeking compensation for injuries as a result of a nuclear incident with significant advantages over the procedures and standards for recovery that might otherwise be applicable under State tort law.

S. Rep. No. 218 at 4. Thus, although the basis for a public liability cause of action is state law, the applicable law is only "derived" from state law. The Price-Anderson system, by design, alters state tort law to forward the goals of that act: to "protect the public and . . . encourage the development of the atomic energy industry." 42 U.S.C. § 2012.⁵

⁵ In choosing to adopt state law as the basis for the federal cause of action, Congress compared this to other acts based on state law. Specifically, the House Committee on Interior and Insular Affairs reported:

Rather than designing a new body of substantive law to govern such cases, however, the bill provides that the substantive rules for decision in such actions shall be derived from the law of the state in which the nuclear incident involved occurs, unless such law is inconsistent with the Price-Anderson Act. The Committee believes that conferring on the Federal courts jurisdiction over claims arising out of all nuclear incidents in this manner is within the constitutional authority of

(Footnote continued on following page)

In addition to Congress' manifest intent to create a new and entirely federal cause of action, there are sufficient other federal elements in this cause of action to support "arising under" jurisdiction. Before determining whether it has jurisdiction, the district court must decide, in the first instance, whether the alleged injuries arise out of a nuclear incident. This prerequisite parallels the determination that a court must make when faced with a cause of action under the Foreign Sovereign Immunities Act, a determination that, according to the *Verindon* Court, satisfies the requirements of Article III. Additionally, if the public liability action results from an ENO, the district court then will have to apply the federal statute of limitations contained in the Amendments Act. It will also have to enforce the provisions of the Amendments Act which require the defendants to waive their state common law defenses. Finally, the court will have to assess whether the applicable state law is consistent with federal law. As the Third Circuit noted in *TMI*, the Amendments Act places great weight on the necessity of the district court's determining whether state and federal law are consistent. Because the Supreme Court had made clear that federal law completely occupies the field of nuclear safety, and consequently preempts state action in this area, the *TMI* court believed that the duty a defendant owes to a plaintiff in a public liability action similarly is dictated by

⁶ continued

Congress and notes that the Congress has used this approach in the Outer Continental Shelf Lands Act.

H.R. Rep. No. 104, pt. 1 at 18.

Mr. O'Connor seeks to distinguish the use of state law in the OCSLA from the use of state law in the Amendments Act. Primarily, Mr. O'Connor asserts that OCSLA is distinguishable because Congress was legislating over federal territory. Like the district court, we "believe[] that Congress has jurisdiction over interstate commerce [(the Amendments Act's basis for jurisdiction)] just as it has jurisdiction over federal territory. Congress would have the same power to federalize state causes of action asserting either basis for jurisdiction." *O'Connor v. Commonwealth Edison Co.*, 770 F. Supp. 448, 458 (C.D. Ill. 1991).

federal law. If
ity action has
arising under:

All of these
the United States
state a cause of
presence of the
Act is particu-
assessed not
eral regulator.
As the Third

⁶ We address
liability cause of
action in part II.C

⁷ In support of
invites our attention.
See, e.g., *Stabil*
(3d Cir.) (holding
pre-1985 Price-Anderson
federal court jurisdiction
of action), cert.
Edison Co., 75
think this assessment
above, the Amendments
Price-Anderson
by created a cause of
action, venue, and
Third Circuit jurisdiction
provided no amendments
Act. The

With the
action land
the decision
tended to
upon an assessment
provided, it
intent that
under the
contrary, *Knic*
provide no

TMI, 940 F.2d

ent to create a new there are sufficient of action to support determining whether must decide, in the injuries arise out of parallels the deter- faced with a cause gn Immunities Act, ie *Verlinden* Court, III. Additionally, if an ENO, the district ral statute of limita- ct. It will also have ndments Act which r state common law e to assess whether with federal law. As c Amendments Act of the district court's l law are consistent. le clear that federal nuclear safety, and ; this area, the *TMI* ant owes to a plain- arily is dictated by

has used this approach Act.

ve of state law in the amendments Act. Pri- is distinguishable be- al territory. Like the has jurisdiction over o basis for jurisdiction) itory. Congress would auses of action assert- v. *Commonwealth Ed-* 1991).

federal law. *TMI*, 940 F.2d at 858. Thus, any public liability action has significant federal ingredients which satisfy arising under jurisdiction.⁶

All of these federal "ingredients." *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 823 (1824), create a cause of action "arising under" federal law.⁷ The presence of these federal ingredients in the Amendments Act is particularly convincing when their significance is assessed not in a vacuum but in relation to the entire federal regulatory scheme which we have described earlier. As the Third Circuit noted in *TMI*:

⁶ We address this particular issue of duty of care for a public liability cause of action in greater detail later in the opinion. See *infra* part II.C.

⁷ In supporting his position of unconstitutionality, Mr. O'Conner invites our attention to a number of pre-Amendments Act cases. See, e.g., *Stibitz v. General Pub. Util. Corp.*, 746 F.2d 993, 997 (3d Cir.) (holding that public liability action did not "arise under" pre-1988 Price-Anderson Act for Article III purposes and therefore federal court did not have subject matter jurisdiction over cause of action), *cert. denied*, 489 U.S. 1214 (1988); *Kiick v. Metropolitan Edison Co.*, 784 F.2d 490, 495 (3d Cir. 1986) (same). We do not think this assertion merits discussion at length. As demonstrated above, the Amendments Act greatly expanded the coverage of the Price-Anderson Act. Furthermore, the Amendments Act specifically created a cause of action and designated the substantive provisions, venue, choice of law, etc. See *supra* part II.A.1. Indeed, the Third Circuit explicitly stated that its pre-Amendments Act cases provided no support for an Article III challenge to the Amendments Act. That court explained:

With the Amendments Act, however, the entire Price-Anderson landscape was transformed. Congress clearly considered the decisions of our court holding that Congress had not intended to create a federal cause of action for cases not based upon an extraordinary nuclear occurrence Congress then provided, in the Amendments Act, the clearest expression of intent that there be a federal cause of action arising directly under the Act. Despite the plaintiffs' arguments to the contrary, *Kiick*, *Stibitz*, and the other pre-Amendments Act cases provide no support for the Article III challenge made here.

TMI, 940 F.2d at 857.

The Amendments Act creates a federal cause of action which did not exist prior to the Act, establishes federal jurisdiction for that cause of action, and channels all legal liability to the federal courts through that cause of action. By creating this federal program which requires the application of federal law, Congress sought to effect uniformity, equity, and efficiency in the disposition of public liability claims. With the federal jurisdiction and removal provisions set forth in the Amendments Act, Congress ensured that all claims resulting from a given nuclear incident would be governed by the same law, provided for the coordination of all phases of litigation and the orderly distribution of funds, and assured the preservation of sufficient funds for victims whose injuries may not become manifest until long after the incident. . . . Thus, Congress clearly intended to supplant all possible state causes of action when the factual prerequisite [sic] of the statute are met.

Through the Amendments Act, Congress has placed an overlay of federal law upon the rights and remedies previously available under state law. Once a federal court is satisfied that a particular suit is a public liability action, additional questions under the Amendments Act may need to be addressed. Under certain circumstances licensees may be required to waive defenses which would have been viable under state law. Punitive damage awards available under state law also may be precluded. Furthermore, in every case alleging public liability, courts will be required to determine whether state law principles conflict with other parts of the Price-Anderson scheme.

940 F.2d at 856-58. Consequently, the Amendments Act does not violate Article III.

B. *Retroactive*

Mr. O'Connell's assertions of the station of the statute no "legitimate Act." Appellate was designed. Mile Island ("wholly irrational Act.

We disagree statute's purpose its constitution must overcome application of the retroactive legitimate legal judgments ab within the executive branch Gray & Co., 4 believe that C "has acted b 781, we uphold lence.

In enacting that the same ENO could al cident.

The exper dent den consolidate

* Section 20(b) makes clear the at issue here a fore, on, or aft

ederal cause of ac-
e Act, establishes
f action, and chan-
al courts through
is federal program
ederal law, Con-
quity, and efficien-
ility claims. With
val provisions set
gress ensured that
lear incident would
vided for the coord-
nd the orderly dis-
se preservation of
injuries may not
the incident. . . .
supplant all possi-
e factual prerequi-

ongress has placed
e rights and reme-
state law. Once a
articular suit is a
estions under the
addressed. Under
ay be required to
been viable under
is available under
Furthermore, in
courts will be re-
aw principles con-
nderson scheme.
Amendments Act

B. *Retroactivity*

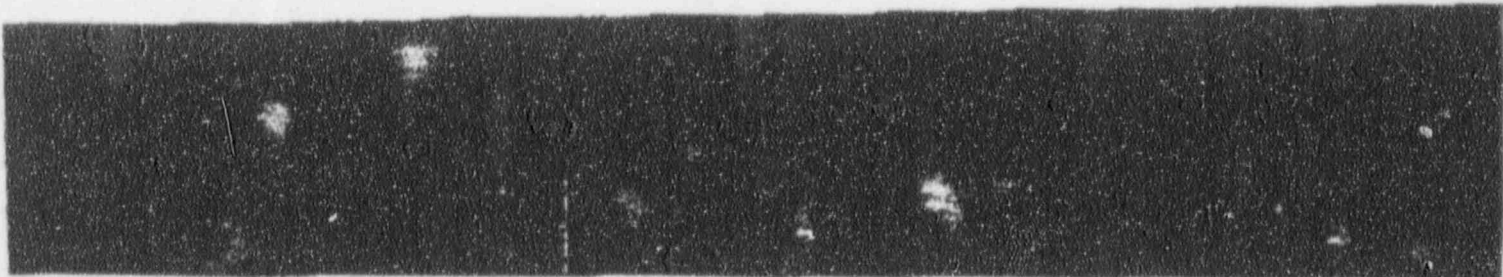
Mr. O'Conner next challenges the retroactivity provisions of the statute.⁸ He argues that retroactive application of the statute violates due process because there is no "legitimate legislative purpose . . . presented by the Act." Appellant's Br. at 20. He claims that the statute was designed only for the benefit of those in the Three Mile Island ("TMI") litigation, and that therefore it is wholly irrational that he falls within the reaches of the Act.

We disagree with Mr. O'Conner's characterization of the statute's purpose and therefore with his conclusion as to its constitutionality. First, we note that Mr. O'Conner must overcome a strong presumption that the retroactive application of the statute is constitutional. "Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729 (1984). Because we do not believe that Congress, in making the statute retroactive, "has acted in an arbitrary and irrational way," *id.* at 731, we uphold it against the plaintiff's constitutional challenge.

In enacting the removal provision, Congress recognized that the same problems that could arise in litigating an ENO could also occur in litigating a non-ENO nuclear incident.

The experience with claims following the TMI accident demonstrates the advantages of the ability to consolidate claims after the nuclear incident. . . . The

⁸ Section 20(b)(1) of the Amendments Act, Pub. L. No. 100-408, makes clear that the jurisdictional and standard of care provisions at issue here are applicable to all nuclear incidents occurring before, on, or after the effective date of the statute.



availability of the provisions for consolidation of claims in the event of any nuclear incident, not just an ENO, would avoid the inefficiencies resulting from duplicative determinations of similar issues in multiple jurisdictions that may occur in the absence of consolidation.

S. Rep. No. 218 at 18. According to the legislative history, there are at least two reasons for the removal provisions which pertain to retroactive as well as prospective application of the Amendments Act. First, the removal provisions "ensure the equitable and uniform treatment of victims." H.R. Rep. No. 104, pt. 3, at 80. In addition, removal assures "the avoidance of similar issues in multiple jurisdictions that may occur in the absence of consolidation." S. Rep. No. 218 at 18. "Retroactivity guarantee[s] that all cases arising out of the same nuclear incident could be consolidated in one forum," *TMI*, 940 F.2d at 861, and thus accomplishes the purposes as set forth by the congressional committees.⁹ Consequently, Mr. O'Con-

⁹ Mr. O'Conner submits that, even if there is a general federal purpose accomplished by the retroactive application of the removal provisions, such as the *TMI* litigation, there is no federal purpose accomplished by including his case in the class of cases that can be removed, retroactively or prospectively. In fact, Mr. O'Conner's counsel suggested at oral argument that the purposes of the Price-Anderson Act would not be accomplished unless claims from an incident totalled at least \$60 million, the trigger point of indemnification. However, Mr. O'Conner presents no authority that would render a statute violative of due process because it includes within its ambit cases whose adjudicative facts directly implicate identifiable interests and those whose facts do not impact as severely on the federal interest. Furthermore, although the pipe-flushing incident at Commonwealth Edison apparently did not present such a situation, it is conceivable that such an incident would spawn litigation by various individuals in various courts. In such a situation, consolidation and removal would accomplish the purposes of the Amendments Act as set forth by the committees, even if the claims did not total \$60 million.

ner has not o
Amendments

C. Standard

Mr. O'Conne
in determining
tions as an ab
claims that un
tion and stand
of, but not co
lant's Br. at
dards should

We begin o
the Price-And
statute, "the
shall be deriv
nuclear incide
sistent with
§ 2014(hh). Th
the standard

Illinois cour
ing how regi

¹⁰ Mr. O'Con
of the statute
this court with
it is clear that
constitutionally
100 U.S. 257,

The remo
States] fro
sion of St.
of the ger
of and try
the Unite
that gover

consolidation of claims, not just an ENO, arising from duplications in multiple jurisdictions of consolidation.

legislative history, removal provisions as prospective application, the removal provisions of 30. In addition, similar issues in multi-occurrence of consolidation guarantees for a nuclear incident. *TMI*, 940 F.2d at 1000, as set forth by the court. Recently, Mr. O'Conner

is a general federal purpose of the removal provisions is no federal purpose in cases of cases that can be fact, Mr. O'Conner's purposes of the Price-Anderson Act is to remove nuclear claims from an independent point of indemnification authority that would use it includes within the scope of the Act directly implicate identical impact as severely as the pipe-flushing incident did not present such an incident would spawn lawsuits. In such a situation, to accomplish the purposes of the Act, even if the

ner has not overcome the presumption in favor of the Amendments Act's constitutionality.¹⁰

C. Standard of Care

Mr. O'Conner next argues that the district court erred in determining that Illinois would apply the federal regulations as an absolute standard of care for negligence. He claims that under Illinois law "it is axiomatic that regulation and standards of an administrative body are evidence of, but not conclusive of, the standard of care." Appellant's Br. at 82. Consequently, the federal safety standards should have constituted only evidence of due care.

We begin our analysis with the statutory directive in the Price-Anderson Amendments Act. According to the statute, "the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section." 42 U.S.C. § 2014(h). Thus, we first look to Illinois law to determine the standard of care applicable to this cause of action.

1.

Illinois courts have spoken on several occasions regarding how regulations should be used in negligence cases.

¹⁰ Mr. O'Conner also maintains that the retroactivity provisions of the statute violate state sovereignty. Mr. O'Conner provides this court with scant authority for this proposition. Furthermore, it is clear that removal provisions generally do not encroach unconstitutionally upon state sovereignty. See *Tennessee v. Davis*, 100 U.S. 257, 267 (1880), stating:

The removal of cases arising under [the laws of the United States] from State into Federal courts is, therefore, no invasion of State domain. On the contrary, a denial of the right of the general government to remove them, to take charge of and try any case arising under the Constitution or laws of the United States, is a denial of the conceded sovereignty of that government over a subject expressly committed to it.

The principal Illinois case articulating this use is *Darling v. Charleston Hospital*, 211 N.E.2d 253 (Ill. 1965), cert. denied, 383 U.S. 946 (1966). In *Darling*, the trial court had allowed the plaintiff to introduce hospital regulations, standards, and by-laws as evidence of the defendant hospital's negligence. The Illinois Supreme Court held that, in the case before it, standards played the same role as custom.

"By the great weight of modern American authority a custom either to take or to omit a precaution is generally admissible as bearing on what is proper conduct under the circumstances, but is not conclusive." Custom is relevant in determining the standard of care because it illustrates what is feasible, it suggests a body of knowledge of which the defendant should be aware, and it warns of the possibility of far-reaching consequences if a higher standard is required. But custom should never be conclusive.

Darling, 211 N.E.2d at 257 (citations omitted).

The plaintiff argues that *Darling* mandates that regulations be used only as evidence of the standard of care and not the standard itself. Like the district court, however, we believe that, in the case at hand, Illinois law does not mandate such a wooden application of *Darling*. Unlike the safety regulations at issue in *Darling*, safety standards for nuclear power plants do not equate easily to custom. As the district court stated, "[c]ustom is a flexible guide for situations in which there is a margin of error." *O'Connor v. Commonwealth Edison Co.*, 748 F. Supp. 672, 676 (C.D. Ill. 1990). The regulations for nuclear power plants, however, are not flexible guides; there is no "margin of error." The regulations require strict adherence so that workers and the public are protected, and so that public utilities are not exposed to liability when workers receive noninjurious doses of radiation. Strict adherence to federal safety standards in the field of nuclear energy, unlike in other industrial or quasi-industrial settings, is a necessity. Consequently, the approach of *Darling* is not

appropriate with industry are a

We find instruction in *Rucker*, N.E.2d 584 (Ill. 1965), the role of features of care. The defendant's Federal regulation states the industry should attain compliance with at 587. The I

11 Other cases by regulations care than that court noted, "T (2d) of Tort, a regulation of care." *O'Connor Oil Co.*, 856 N. ment (2d) of T

The court: man the relative regul part (a) to whose inte which is i kind of ha against th

As the district situation at h protect the w protected is (c) the regula caused by ov protect the f exposure to r Illinois courts eral standard

this use is *Darling* 253 (Ill. 1965), cert. denied, 389 U.S. 974 (1967). In *Darling*, the trial court held that the hospital regulations, and the defendant's negligence, were the same as

American authority requires a precaution in what is proper, but is not conclusive in determining the standard of care. The standard of care is what is feasible, of which the defendant's negligence is one of the possibilities. If a higher standard is required, it never be conclusive. (The standard is omitted).

The court mandates that regulate the standard of care. The district court, however, on the other hand, Illinois law requires the application of *Darling*. In *Darling*, safety regulations do not equate easily to custom. A flexible margin of error. *O'Connor*, 748 F. Supp. 1000 (D. Minn. 1990). There is no "margin of error" in strict adherence so that it is not strict adherence when workers are exposed to nuclear energy. Strict adherence of nuclear energy, in industrial settings, is not the standard of *Darling* is not

appropriate when matters of safety in the nuclear power industry are at stake.¹¹

We find instructive the Illinois Supreme Court's decision in *Rucker v. Norfolk & Western Railway Co.*, 396 N.E.2d 534 (Ill. 1979). In that case, the court addressed the role of federal regulations that specified the safety features of railroad cars in determining the standard of care. The defendants argued that the "promulgation of Federal regulations on the subject of railroad cars indicates the intention of Federal authorities that no liability should attach to manufacturers whose products are in compliance with those regulations." *Rucker*, 396 N.E.2d at 537. The Illinois Supreme Court disagreed. It stated:

¹¹ Other cases suggest that Illinois law affords the federal safety regulations a more vital role in determining the standard of care than that given the regulations in *Darling*. As the district court noted, "Illinois courts have explicitly used the Restatement (2d) of Torts, § 286 to determine the proper duty where there is a regulation or other law relevant to the applicable standard of care." *O'Connor*, 748 F. Supp. at 677; see also *Davis v. Marathon Oil Co.*, 356 N.E.2d 93, 97 (Ill. 1978). Section 286 of the Restatement (2d) of Torts provides:

The court may adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment or administrative regulation whose purpose is found to be exclusively or in part (a) to protect a class of persons which includes the one whose interest is invaded, and (b) to protect a particular interest which is invaded, and (c) to protect that interest against the kind of harm that has resulted, and (d) to protect that interest against the particular hazard from which the harm results.

As the district court determined, all of these factors apply to the situation at hand: (a) the purpose of the federal regulations is to protect the worker, see 10 C.F.R. § 20.101; (b) the interest to be protected is the interest in not being overexposed to radiation; (c) the regulation also is designed to protect against bodily harm caused by overexposure; and (d) the regulations were enacted to protect the interest in bodily safety against the hazard of overexposure to radiation. Thus, we believe the Restatement, on which Illinois courts have relied explicitly, counsels application of the federal standard in this situation.

Contrary to GATX' contention, we do not believe that the presence of Federal regulations on the subject precludes the imposition of tort liability according to State tort law standards more stringent than those contained in the Federal regulations. *We find no indication in the Federal regulations that the presumption of State tort law was intended.* In fact, it would be reasonable to conclude that the purpose of the regulations is to insure greater safety and that the imposition of tort liability on the basis of more stringent State tort law was intended.

Id. (emphasis added).

We believe that the differences between *Rucker* and the present case also counsel application of the federal safety standards as the standard of negligence in this case. In *Rucker*, there was no evidence of preemption and therefore the court did not use the federal regulations as the measure of duty. By implication, when there is evidence of federal preemption, the court would use the federal regulations as the measure of duty.¹² In the field of nuclear safety, there is not only evidence of preemption, but also uncontradicted statements by the Supreme Court that federal nuclear safety regulations preempt all state safety regulations. For instance, in *Pacific Gas & Electric Co. v. State Energy Conservation & Development Commission*, 461 U.S. 190, 208 (1983), the Court concluded that "the safety of nuclear technology was the exclusive business of the Federal Government." Similarly, in *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 240-41 (1984), the Court reiterated that "states are precluded from regulating the safety aspect of nuclear energy." In *Silkwood*, the Court

¹² *Cf. Hunt v. Blasius*, 370 N.E.2d 617, 620 (Ill. App. 1977) ("If applicable governmental standards and specifications are mandatory requirements for sale of a product to that governmental entity and from which a manufacturer cannot deviate, is liability precluded in any respect in which the product complies? We answer in the affirmative."), *aff'd*, 884 N.E.2d 368 (Ill. 1978).

distinguished state tort remedies:

Congress' disrupting the premises or qualified to should be e: was inform: vided for c: arduous ma: siderations that any S during the 86th Cong. more, this imulate eff: States from on complia: guably wo by those s plant. The gress had vide such

Id. at 250-51 (Supreme Cour der state tort cuit in *TMI* t

¹³ *Silkwood's* Amendments A U.S.C. § 2210(a) action with res: tion against a y ligated to make covering such ments Act mak eral standards at 857, is to b Price-Anderson

we do not believe regulations on the sub-tort liability accord more stringent than regulations. We find regulations that the pre-intended. In fact, it is that the purpose of water safety and that on the basis of more intended.

ween *Rucker* and the of the federal safety ence in this case. In reemption and there-al regulations as the ven there is evidence d use the federal regn the field of nuclear preemption, but also rome Court that fed-empt all state safety : *Gas & Electric Co. evelopment Commis-* Court concluded that is the exclusive busi-imilarly, in *Silkwood* 0-41 (1984), the Court l from regulating the *Silkwood*, the Court

20 (Ill. App. 1977) ("If edifications are manda- that governmental en- not deviate, is liability oduct complies? We an- 2d 808 (Ill. 1978).

distinguished state standards for nuclear safety from state tort remedies:

Congress' decision to prohibit the States from regulating the safety aspects of nuclear development was premised on its belief that the Commission was more qualified to determine what type of safety standards should be enacted in this complex area. As Congress was informed by the AEC, the 1959 legislation provided for continued federal control over the more hazardous materials because "the technical safety considerations are of such complexity that it is not likely that any State would be prepared to deal with them during the foreseeable future." H.R. Rep. No. 1125, 86th Cong., 1st Sess., § (1959). If there were nothing more, this concern over the States' inability to formulate effective standards and the foreclosure of the States from conditioning the operation of nuclear plants on compliance with state-imposed safety standards arguably would disallow resort to state-law remedies by those suffering injuries from radiation in a nuclear plant. There is, however, ample evidence that Congress had no intention of forbidding the States to provide such remedies.

Id. at 250-51 (emphasis added). Noting this difference, the Supreme Court allowed an award of punitive damages under state tort law.¹³ Thus, we agree with the Third Circuit in *TMI* that it is clear from *Pacific Gas & Electric*

¹³ *Silkwood's* holding regarding damages was overruled by the Amendments Act which specifically bars punitive damages. See 42 U.S.C. § 2210(a) ("No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation."). Moreover, the Amendments Act makes pointedly clear that the "tension" between federal standards and state liability standards, see *Silkwood*, 464 U.S. at 857, is to be resolved so as to avoid inconsistency with the Price-Anderson Act. See 42 U.S.C. § 2014(hh).

and from *Silwood* that state regulation of nuclear safety, through either legislation or negligence actions, is preempted by federal law. See *TMI*, 940 F.2d at 858 ("Two Supreme Court cases indicate that the duty the defendants owe the plaintiffs in tort is dictated by federal law."). When there is such overwhelming evidence of preemption with respect to safety matters, we believe *Rucker* requires use of the federal standard as the standard of care in state tort actions. Accordingly, we conclude that Illinois would use the federal safety regulations as the applicable standard of care in public liability actions.

2.

Even if Illinois would not apply the federal safety standards as the standard of care, however, we believe that the federal regulations must provide the sole measure of the defendants' duty in a public liability cause of action. Two reasons support this conclusion. First, the pre-Amendments Act preemption of state safety standards prevents application of a state standard of care at odds with federal safety standards. As we have already noted, the field of nuclear safety has been occupied by federal regulation; there is no room for state law. Consequently, "states are preempted from imposing a non-federal duty in tort, because any state duty would infringe upon pervasive federal safety regulations in the field of nuclear safety, and thus would conflict with federal law." *TMI*, 940 F.2d at 859.

In addition, as we noted at the outset of this discussion, the Amendments Act provides that state law shall be applied only as long as it is consistent with the Price Anderson Act. 42 U.S.C. § 2014(hh). As discussed in Part II.A.1 of this opinion, Congress has attempted for nearly fifty years to encourage private sector involvement in the nuclear industry and at the same time has sought to protect the public. The Price-Anderson Act was enacted to promote these goals of "protect[ing] the public and . . . encourag[ing] the development of the atomic energy industry." 42 U.S.C. § 2012. Accordingly, the Price-Anderson Act limits liability and provides for indemnification, but

does so again federal nuclear regulatory scheme. federal regulations between progress has achieved other than the of care is in and consequential action.

D. Evidentiary

Lastly, Mr. O'Connor when it rules inadmissible never believes and diagnosis be allowed

Our discussion testimony is general, Inc., 11 Court reject *States*, 298 admissibility

¹⁴ Mr. O'Connor is a treating Federal Rule distinguish the ruling physician *Porter v. W* 489148, at *6 us any authority
¹⁵ Prior to *Frye* standard The *Frye* is scientific testimony reliable in 489148, at *

ation of nuclear safety actions, is pre-empted by federal law. Two federal courts have held that the duty of care is defined by federal law. We believe *Rucker* re-affirms the standard of care and conclude that Illinois law is preempted as the applicable law in this case.

The federal safety standard, we believe that the standard is the sole measure of the duty of care in this cause of action. Two federal courts have held that the pre-emptive effect of the Price-Anderson Act prevents application of state law in the field of nuclear safety regulation; there is no state law that is preempted in this case because any state law that would conflict with the federal safety standard, and thus would be preempted. 7 F.2d at 859.

As a result of this discussion, state law shall be applied in this case with the Price-Anderson Act. As discussed in Part II.A.1 of the opinion, the Act is intended for nearly fifty years of involvement in the nuclear industry. The Act has sought to protect the public and the nuclear industry from the atomic energy industry. The Price-Anderson Act provides for indemnification, but

does so against a stringent regulatory background. The federal nuclear safety regulations are part of this statutory scheme. Imposing a standard of care other than the federal regulations would disturb the carefully crafted balance between private involvement and safety that Congress has achieved. Thus, the application of something other than the federal safety regulations as a standard of care is inconsistent with the Price-Anderson scheme and consequently cannot be applied in a public liability action.

D. Evidentiary Issues

Lastly, Mr. O'Conner argues that the district court erred when it ruled Dr. Scheribel's testimony inadmissible. Mr. O'Conner asserts that Dr. Scheribel's testimony was held inadmissible only because he is a "lone voice." Mr. O'Conner believes that Dr. Scheribel's method of observation and diagnosis is sound and therefore that the jury should be allowed to hear and weigh the testimony itself.¹⁴

Our discussion of the admissibility of Dr. Scheribel's testimony is guided by *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786 (1993). In *Daubert*, the Supreme Court rejected the test first announced in *Frye v. United States*, 293 F. 1018 (D.C. Cir. 1923), as the standard for admissibility of scientific evidence.¹⁵ Instead, the Court

¹⁴ Mr. O'Conner also seems to argue that, because Dr. Scheribel is a treating physician, he is exempt from the requirements of Federal Rules of Evidence 702 and 703. However, we do not distinguish the treating physician from other experts when the treating physician is offering expert testimony regarding causation. See *Porter v. Whitehall Labs., Inc.*, Nos. 92-1962, 92-2281, 1993 WL 439148, at *6 (7th Cir. Nov. 1, 1993). Mr. O'Conner has not cited us any authority to the contrary.

¹⁵ Prior to *Daubert*, the majority of federal courts applied the *Frye* standard to determine the admissibility of scientific evidence. The *Frye* test held "inadmissible expert testimony based on a scientific technique unless that technique is generally accepted as reliable in the relevant scientific community." *Porter*, 1993 WL 439148, at *5 n.3.

adopted a standard based on the Federal Rules of Evidence. The Court "began its analysis by focusing on the language of Rule 702. It found the rule clearly anticipated 'some degree of regulation of the subjects and theories about which an expert may testify.'" *Porter v. Whitehall Labs., Inc.*, Nos. 92-1962, 92-2231, 1993 WL 489148, at *5 (7th Cir. Nov. 1, 1993) (quoting *Daubert*, 113 S. Ct. at 2795).¹⁶ The Court stated in *Daubert*:

The adjective "scientific" implies a grounding in the methods and procedures of science. Similarly, the word "knowledge" connotes more than subjective belief or unsupported speculation. The term "applies to any body of known facts or to any body of ideas from such facts or accepted as truths on good grounds."

Daubert, 113 S. Ct. at 2795 (citations omitted). The Court continued:

[I]n order to qualify as "scientific knowledge," an inference or assertion must be derived by the scientific method. Proposed testimony must be supported by appropriate validation—i.e., "good grounds," based on what is known. In short, the requirement that an expert's testimony pertain to "scientific knowledge" establishes a standard of evidentiary reliability.

Id.

We have interpreted *Daubert* to require that the district court undertake a two-step inquiry. *Daubert* first "directs the district court to determine whether the expert's testimony pertains to scientific knowledge. This task requires that the district court consider whether the testimony has been subjected to the scientific method; it must rule out

¹⁶ Federal Rule of Evidence 702 provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

'subjective belief' (1993 WL 489148, at *5 (7th Cir. Nov. 1, 1993)). Second, the evidence or understanding the That is, the subject issue to which do not believe at least the fir

I know wh induced by exposure t ly describ present, c

Scheribel Dep. is to observe t characteristics Scheribel cites methodology. I that radiation-i observation. In establish that in scientific fac tion-induced c type, all poster induced.¹⁷ Furt of the sources Scheribel's cor cataracts are c racts, but are : resents." Appi

¹⁷ *Daubert* and meet both requi

¹⁸ Although the Scheribel's testir does not dispute tents of these a

ederal Rules of Evi-
 by focusing on the
 e clearly anticipated
 objects and theories
Porter v. Whitehall
 13 WL 439148, at *5
Daubert, 118 S. Ct. at
 *

s a grounding in the
 ence. Similarly, the
 than subjective be-
 The term "applies to
 y body of ideas from
 on good grounds."
 omitted). The Court

: knowledge," an in-
 ved by the scientific
 st be supported by
 grounds," based on
 irement that an ex-
 perientific knowledge"
 tiary reliability.

ire that the district
 court first "directs
 er the expert's tes-
 t. This task requires
 r the testimony has
 d; it must rule out

knowledge will assist
 ence or to determine
 expert by knowledge.
 may testify thereto

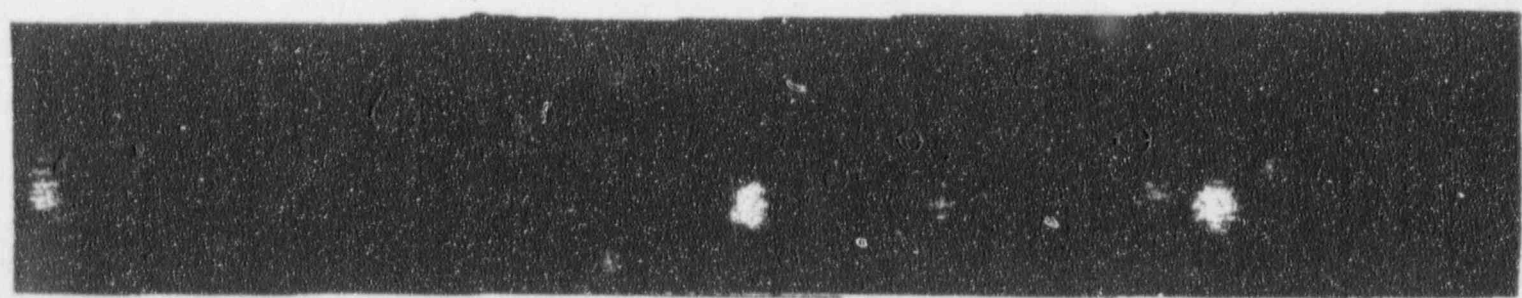
'subjective belief or unsupported speculation.'" *Porter*,
 1993 WL 439148, at *6 (quoting *Daubert*, 113 S. Ct. at
 2795). Second, the district court must "determine whether
 the evidence or testimony assists the trier of fact in un-
 derstanding the evidence or in determining a fact in issue.
 That is, the suggested scientific testimony must 'fit the
 issue to which the expert is testifying.'" *Id.* at *8.¹⁷ We
 do not believe that Dr. Scheribel's testimony can meet
 at least the first requirement. Dr. Scheribel testified:

I know what cataracts look like when they've been
 induced by radiation, by whatever dosage or time of
 exposure there was. Radiation cataracts are clinical-
 ly describable and definable condition which, when
 present, cannot be mistaken for anything else.

Scheribel Dep. at 69. Essentially, Dr. Scheribel's method
 is to observe the cataracts and determine if they have
 characteristics specific to radiation-induced cataracts. Dr.
 Scheribel cites several sources that allegedly support this
 methodology. However, none of these sources indicates
 that radiation-induced cataracts can be identified by mere
 observation. Indeed, the articles referenced by Dr. Scheribel
 establish that Dr. Scheribel's methodology has no basis
 in scientific fact. These articles state that, although radia-
 tion-induced cataracts are of the posterior subcapsular
 type, all posterior subcapsular cataracts are not radiation-
 induced.¹⁸ Furthermore, Dr. David J. Apple, author of one
 of the sources cited by Dr. Scheribel, affirmed that Dr.
 Scheribel's conclusion was incorrect: "Radiation induced
 cataracts are characteristically posterior subcapsular cata-
 racts, but are not pathognomic [sic] as Dr. Scheribel rep-
 resents." Apple Aff. at 2. Dr. Apple then describes the

¹⁷ *Daubert* and the Federal Rules require that scientific evidence
 meet both requirements before it is admissible.

¹⁸ Although the specific pages of the articles that refute Dr.
 Scheribel's testimony are not included in the record, the plaintiff
 does not dispute the district court's conclusions regarding the con-
 tents of these articles.



methodology necessary to determine if cataracts are radiation-induced:

The proper methodology, upon which any reasonable expert would rely, would include an examination of the medical literature on radiation-induced cataracts, an examination of the occupational dosimetry records which existed for the patient, a medical work-up to look for any of the normal biological changes which occur in individuals exposed to high levels of radiation, and a work-up of the patient's history to look for any other causes of the observed cataracts.

Id. However, Dr. Scheribel took none of these steps to determine the cause of Mr. O'Conner's cataracts. His method of diagnosis and his conclusion regarding causation therefore are not supported by the authors on which he claims to rely.

Beyond the recitation of authorities which clearly do not support his opinion, Dr. Scheribel has not come forward with any other support for his causation opinion. He has not produced any personal study or experiments that otherwise would justify his conclusions that Mr. O'Conner's cataracts are radiation-induced. Indeed, his familiarity with the effects of radiation generally is limited.²⁰ Dr. Scheribel's opinion has no scientific basis and, consequently, the district court

²⁰ During his deposition, Dr. Scheribel testified that he based his opinion on his prior experience with radiation-induced cataracts. However, Dr. Scheribel has treated only five patients with radiation-induced cataracts in his twenty years of practice. We do not believe that this limited exposure to radiation-induced cataracts qualifies as a basis for a scientifically sound opinion. *Accord Fortin*, 1993 WL 439148, at *9 n.6 (stating that seeing disease five times during lengthy career not sufficient basis for scientific opinion under *Daubert*). Furthermore, Dr. Scheribel seemed to abandon this as a basis for his opinion in his affidavit which made no mention of personal experience.

correctly ruled that Mr. O'Conner's cataracts were radiation-induced.²⁰

Because Dr. Scheribel's opinion is not supported by the authors on which he claims to rely, the district court is affirmed.

For the foregoing reasons, the district court is affirmed.

A true Copy:
Teste:

²⁰ Because we are well grounded in the law, we will consider whether the facts used and the facts

No. 92-2989

No. 92-2989

38

if cataracts are ra-

which any reasonable
e an examination of
n-induced cataracts,
al dosimetry records
medical work-up to
gical changes which
high levels of radia-
nt's history to look
erved cataracts.

is of these steps to
er's cataracts. His
on regarding causa-
he authors on which

which clearly do not
s not come forward
n opinion. He has not
nents that otherwise
O'Conner's cataracts
arity with the effects
. Scheribel's opinion
ly, the district court

tified that he based his
tion-induced cataracts.
ve patients with radia-
of practice. We do not
tion-induced cataracts
opinion. Accord Porter,
ing disease five times
r scientific opinion un-
eemed to abandon this
which made no mention

correctly ruled that Dr. Scheribel's testimony is inadmis-
sible.³⁰

Because Dr. Scheribel provided the only evidence that
Mr. O'Conner was subjected to radiation in excess of fed-
eral safety standards, Mr. O'Conner cannot prove causa-
tion. Accordingly, the district court was correct in grant-
ing summary judgment.

Conclusion

For the foregoing reasons, the judgment of the district
court is affirmed.

AFFIRMED.

A true Copy:

Teste:

*Clerk of the United States Court of
Appeals for the Seventh Circuit*

³⁰ Because we conclude that Dr. Scheribel's methodology is not
well grounded in the scientific method, we have no occasion to
consider whether there is the proper fit between the methodology
used and the facts presented.

ATTACHMENT -

Jean-Louis v. Department of Energy & Nuclear Regulatory
Commission, Civ. No. 94-____ (D.D.C., Filed Feb. 1, 1994)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.O. Box 420

F.C.I. FAIRTON
NEW JERSEY
JOSEPH W. Jean-Louis,
23345-048
Petitioner

DEPARTMENT OF
~~ATOMIC ENERGY COMMISSION~~ ENERGY
Secretary HAZEL O'Leary
NUCLEAR REGULATORY
COMMISSION WASH D.C.

PETITION FOR COURT
ORDER

Comes Now the Petitioner seeking to apply for at this time through this court litigation,

to come under the Freedom Of Information, to ~~successfully~~ Make available to this Court as well as to the,

DEPARTMENT
OF ENERGY

Petitioner Plaintiff. All of any In Office level all orders for the testing by the ~~Atomic Energy~~
NUCLEAR REGULATORY COMMISSION
commission all records of the suposively use of people as tests for what the effect that this,

Radiation would do or could do, What Is Thought to be very minimal doses (now appear) to be
more serious then what was being told to the United states Citizens.

From 1952 up to and included any reports made to the Atomic energy Commission.

OR CONGRESSIONAL RELEASE REPORTS RELATED
TO THE ABOVE MATTERS.

23345-048
Respectfully submitted
Joseph Jean Louis
Joseph Jean Louis
Federal CORRECTIONAL Institution
Fairton Nr New Jersey.

~~January 28th 1994~~
Pro se litigant.

February 1st 1994

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Joseph Jean-Louis,

)

-v- Plaintiff

)

Nuclear Regulatory Commission

0

Clerk to decide docket #

DEPARTMENT OF ENERGY

Defendants

COMES NOW, The Plaintiff into this Honorable, United States District Court.

What is at issue the Plaintiff wants to do is present, EVIDENCE.

Into this Legal Problem that only a United States; District Court to settle.

For the Record a similar complaint was dated September 7, 1993, and filed with this court.....*Civil Action No. 93-1857*
The Court and the Government dismissed my previous...Complaint; on the grounds that my complaint contained numerous allegations, lacking Factual support.

So therefore I have filed again with ~~kgm~~ this Honorable UNITE STATES DISTRICT COURT.
Bringing this time Actual Facts That the Government will have no other choice but to respond to this New Complaint.
So therefore I Joseph Willaim Jean-Louis the Plaintiff Petitioner, now makes this New Evidence to this Court.:

- Exhibit A.
- Exhibit B.
- Exhibit C.

NEWS PAPER ARTICLES

Respectfully Submitted
Joseph Jean- Louis

23345-048 Pro Se Litigant
January 1994

Joseph W. Jean Louis
Joseph W. Jean Louis
*F.I.C. P.O. Box 420
FAIRTON NEW JERSEY
210*

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

P.O. Box 420

Federal Correctional
INSTITUTION
FAIRTON NEW Jersey

Joseph W. Jean-Louis,

PEITIONER

DEPARTMENT OF ENERGY
~~ATOMIC ENERGY~~ COMMISSION
NUCLEAR REGULATORY
ENERGY Secretary HAZEL O'leary

DEPARTMENT OF ENERGY

COMES NOW The Petitioner Plaintiff against the ATOMIC ENERGY COMMISSION,

Whereby the Plaintiff, Petitioner does now make these allegations to this Honorable United,

States District Court.

For a period of about four or five days there was an experiment in California IN The San Pedro, District, Whereby I was the victim of A dose of Radioactive Fallout.

This was done by a very dis regard for anyones health. I believe that we were the victims,

during September 1966. I was a federal Prisoner in the Federal Correctional Institution known as Terminal Island California.

Every Thing We Touched was very HDt Walls included.

When this event took place. This shows beyond anyones doubt .

That we as PRISONERS WAS TOTALLY UNAWARE WHO WAS DOING WHAT TO WHOM.

So after this event we saw a News article in the Paper that said that the United States Navy was

down in the street with some type of LASER WEAPON AND THEY WERE TRYING TO SHOOT SOMETHING OUT

OF THE SKY.. I remember something very bright falling down over the pacific Islands, MAYBE A STAR WARS RESEARCH ELEMENT LIKE A FLAWED SATELLITE OCEAN

We now know to what extreme that the Government will go. I personally believe that there,

was some type of test that went bad or it WAS A deliberate act by someone.

Respectfully
Submitted
Jean-Louis
F.C.I. P.O. Box 420
FAIRTON NEW JERSEY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.O. Box 420

F.C.I. FAIRTON
NEW JERSEY
JOSEPH W. Jean-Louis,
23345-048
Petitioner

DEPARTMENT OF
~~ATOMIC ENERGY COMMISSION~~ ENERGY
Secretary HAZEL O'Leary
NUCLEAR REGULATORY
COMMISSION WASH D.C.

MOTION FOR COURT
ORDER

Comes NOW the Petitioner seeking to apply for at this time through this court litigation,

to come under the Freedom Of Information, to ~~secretly~~ Make available to this Court as well as to the, DEPARTMENT OF ENERGY

Petitioner Plaintiff. All of any In Office level all orders for the testing by the ~~Atomic Energy Commission~~ NUCLEAR REGULATORY COMMISSION commission all records of the suposively use of people as tests for what the effect that this,

Radiation would do or could do, What Is Thought to be very minimal doses (now appear) to be more serious than what was being told to the United states Citizens.

From 1952 up to and included any reports made to the Atomic energy Commission.
OR CONGRESSIONAL RELEASE REPORTS RELATED TO THE ABOVE MATTERS.

23345-048
Respectfully submitted
Joseph Jean Louis
Federal CORRECTIONAL Institution
Fairton Nr New Jersey.
~~Joseph Jean Louis~~
Pro se litigant.

February 1st 1994

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Joseph Jean-Louis,

-v- Plaintiff

Nuclear Regulatory Commission

DEPARTMENT OF ENERGY
Defendants

)
)
0 Clerk to decide docket #

COMES NOW, The Plaintiff into this Honorable, United States District Court.

What is at issue the Plaintiff wants to do is present,
EVIDENCE.

Into this Legal Problem that only a United States; District Court to settle.

For the Record a similar complaint was dated September 7, 1993, and filed with this court.....*Civil Action No. 93-1857*
The Court and the Government dismissed my previous...Complaint; on the grounds that my complaint contained numerous allegations, lacking Factual support.

So therefore I have filed again with ~~the~~ this Honorable UNITED STATES DISTRICT COURT.
Bringing this time Actual Facts That the Government will have no other choice but to respond to this New Complaint.
So therefore I Joseph Willaim Jean-Louis the Plaintiff Petitioner, now makes this New Evidence to this Court.:

- Exhibit A.
- Exhibit B
- Exhibit C.

*NEW'S PAPER
ARTICLES*

Respectfully Submitted
Joseph Jean- Louis
23345-048 Pro Se Litigant
January 1994

Joseph W Jean Louis
F.I. I 50 Box 420
FAIRTON NEW JERSEY
ZIP

P.O. Box 420

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

FEDERAL CORRECTIONAL
INSTITUTION
FAIRTON NEW JERSEY
Joseph W. Jean-Louis,

PETTIONER

DEPARTMENT OF ENERGY
~~ATOMIC ENERGY COMMISSION~~
ENERGY SECRETARY HAZEL O'LEARY

DEPARTMENT OF ENERGY

COMES NOW The Petitioner Plaintiff against the ATOMIC ENERGY COMMISSION,

Whereby the Plaintiff, Petitioner does now make these allegations to this Honorable United,

States District Court.

For a period of about four or five days there was an experiment in California IN The San Pedro, District, Whereby I was the victim of A dose of Radioactive Fallout.

This was done by a very dis regard for anyones health. I believe that we were the victims,

during September 1966. I was a federal Prisoner in the Federal Correctional Institution known as Terminal Island California.

Every Thing We Touched was very HOT Walls included.

When this event took place. This shows beyond anyones doubt .

That we as PRISONERS WAS TOTALLY UNAWARE WHO WAS DOING WHAT TO WHOM.

So after this event we saw a News article in the Paper that said that the United States Navy was

down in the street with some type of LASER WEAPON AND THEY WERE TRYING TO SHOOT SOMETHING OUT
MAYBE A STAR WARS RESEARCH ELEMENT LIKE A FIAT (SATELLITE)
OF THE SKY.. I remember something very bright falling down over the pacific Islands,
OCEAN

We now know to what extreme that the Government will go. I personally believe that there,

was some type of test that went bad or it WAS A deliberate act by someone.

Respectfully
Submitted
Joseph W. Jean-Louis
F.C.I. P.O. Box 420
FAIRTON NEW JERSEY

MR. JOE TERRY LOUIS

23345-046

F.C.I. P.O. Box 4700

FARROW NEW

Jersey

Chairman Director

Nuclear Regulatory

Commission

WASHINGTON D.C.

SPECIAL
LETTER
MAIL

[Handwritten signature]



70555



34

NJ 08320 Date 2/2/94

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If this letter raises a question over which this facility has jurisdiction, you may wish to return this material for further information or clarification. If the writer desires correspondence, we forward on to another address. We are returning this enclosure to this address.

MR. JOE TERRY LEWIS
23345 046

F.C.I. P.O. Box 400
TRENTON NEW JERSEY

Chairman Director

Nuclear Regulatory

Commission

WASHINGTON D.C.

SPECIAL
LETT
MAIL

[Handwritten signature]



20555



30

NY 08320 Date 7/1/64

The enclosed letter was processed through special mailing procedure for forwarding to you. The letter has been neither opened nor inspected. If this letter raises a question over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence, we forward it to another address, or forward the enclosure to the address above.

ATTACHMENT -
Knittle v. NRC, Civ. No. 94-0561 (E.D. Pa., filed Jan. 28,
1994)

CARNEY AND CARNEY
ATTORNEYS AT LAW
SUITE 506
ONE MONTGOMERY PLAZA
SWEDE AND AIRY STREETS
NORRISTOWN, PENNSYLVANIA 19401

JOSEPH L. CARNEY
JAMES F. CARNEY

(215) 275-5990
FAX: (215) 275-9506

February 2, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: Knittle v. United States Nuclear
Regulatory Commission, No. 94-0561

Dear Sir/Madam:

This office represents Anna May Knittle with regard to the above-captioned matter.

Enclosed herewith is a true and correct copy of the Complaint filed in the United States District Court for the Eastern District of Pennsylvania on January 28, 1994. Please sign the Acknowledgement of Receipt of Summons and Complaint and return to our office in the self-addressed stamped envelope provided.

By copy of this letter, we are forwarding a courtesy copy of the Complaint to Marvin L. Itzkowitz.

Very truly yours,


JOSEPH L. CARNEY

JLC:sbl
Enclosure
cc: Anna May Knittel
Marvin L. Itzkowitz

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANNA MAY KNITTEL

v.

IVAN SELIN, CHAIRMAN, UNITED STATES NUCLEAR
REGULATORY COMMISSION

CIVIL ACTION NO. 94-0561

TO: (NAME AND ADDRESS OF
DEFENDANT)

IVAN SELIN, CHAIRMAN, UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555-0001

YOU ARE HEREBY SUMMONED and required to serve upon

Plaintiff's Attorney (Name and Address)

JOSEPH L. CARNEY, ESQ.
506 ONE MONTGOMERY PLAZA
NORRISTOWN, PA 19401

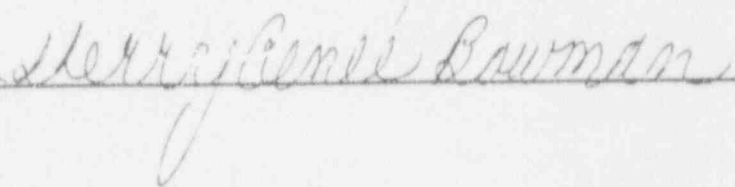
an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Michael E. Kunz, Clerk of Court

Date: JANUARY 28, 1994

(By) Deputy Clerk

SHERRY RENEE BOWMAN



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of indexing the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

ANNA MAY KNITTEL
3163 Colony Lane
Plymouth Meeting, PA 19462

DEFENDANTS

IVAN SELIN, CHAIRMAN
United States Nuclear Regulatory Commission
Washington, D.C.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Montgomery
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT 1/a
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

JOSEPH L. CARNEY, ESQUIRE
Suite 506, One Montgomery Plaza
Norristown, PA 19401
(610)275-5990

ATTORNEYS (IF KNOWN)
Marvin L. Itzkowitz, Esquire
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|--|---|---|
| Citizen of This State | <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CLAIM)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS OVERBITE

Age Discrimination in Employment Act

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	PERFECTION/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Indemnitor <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Motor Act <input type="checkbox"/> 140 Negotiable Instruments <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Debtor's Student Loans (U.S. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airline Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal & Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Short Motor Vehicle <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Torts in Landing <input type="checkbox"/> 380 Other Personal Property Damage Product Liability <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 810 Agriculture <input type="checkbox"/> 820 Other Food & Drug <input type="checkbox"/> 825 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 830 Labor Laws <input type="checkbox"/> 840 P.N. & Trust <input type="checkbox"/> 850 Airline Hops <input type="checkbox"/> 860 Occupational Safety/Health <input type="checkbox"/> 890 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Right Actions <input type="checkbox"/> 730 Labor/Right Negotiating & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Fair Act Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patents <input type="checkbox"/> 840 Trademarks SOCIAL SECURITY <input type="checkbox"/> 861 MIA (1395a) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 880 DMWC/WWVA (405(a)) <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RUI (408(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 <input type="checkbox"/> 800 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rules/Act <input type="checkbox"/> 460 Expropriation <input type="checkbox"/> 470 Receiver Influenced and Control Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Acts
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Easement <input type="checkbox"/> 240 Eas to Land <input type="checkbox"/> 245 Ten Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 610 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 630 General <input type="checkbox"/> 635 Death Penalty <input type="checkbox"/> 640 Habeas Corpus & Other <input type="checkbox"/> 660 Other	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patents <input type="checkbox"/> 840 Trademarks SOCIAL SECURITY <input type="checkbox"/> 861 MIA (1395a) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 880 DMWC/WWVA (405(a)) <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RUI (408(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 800 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rules/Act <input type="checkbox"/> 460 Expropriation <input type="checkbox"/> 470 Receiver Influenced and Control Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Acts

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

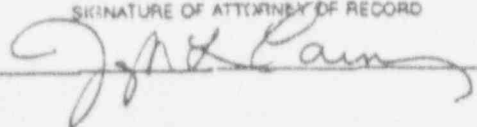
- 1 Original Proceeding
 2 Removal from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate's Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **JURY DEMAND:** YES NO

VIII. RELATED CASE(S) IF ANY

(See instructions.) JUDGE _____ DOCKET NUMBER _____

DATE 1-26-74 SIGNATURE OF ATTORNEY OF RECORD 

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 3163 Colony Lane, Plymouth Meeting, PA 19462

Address of Defendant: United States Nuclear Regulatory Commission, Washington, D.C.

Place of Accident, incident or Transaction: United States Nuclear Regulatory Commission, King of Prussia, (Use Reverse Side For Additional Space)

Does this case involve multidistrict litigation possibilities? Yes [] No []

RELATED CASE IF ANY

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No []
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No []
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No []

CIVIL: (Place [X] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FEIA
3. [] Jones Act—Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations
7. [] Civil Rights
8. [] Habeas Corpus
9. [] Securities Act(s) Cases
10. [] Social Security Review Cases
11. [X] All other Federal Question Cases (please specify) AGE DISCRIMINATION

B. Diversity Jurisdiction Cases:

- 1. [] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [] Products Liability
8. [] Products Liability—Asbestos
9. [] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check appropriate category)

I, counsel of record do hereby certify:

- [] Pursuant to Local Civil Rule 8, Section 4(a)(2), that, to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$100,000 exclusive of interest and cost;
[] Relief other than monetary damages is sought.

DATE: Attorney-at-Law Attorney I.D. #

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1-26-94 Attorney-at-Law 21535 Attorney I.D. #

FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CASE MANAGEMENT TRACK DESIGNATION FORM

ANNA MAY KNITTEL

CIVIL ACTION

v.

IVAN SELIN, CHAIRMAN, UNITED STATES
NUCLEAR REGULATORY COMMISSION

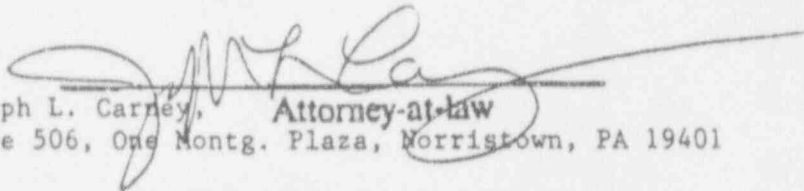
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2441 through §2255. ()
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 8. ()
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. (✓)

1/26/94
(Date)


Joseph L. Carney, Attorney-at-law
Suite 506, One Montg. Plaza, Norristown, PA 19401

Attorney for Plaintiff

IN THE
United States District Court
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANNA MAY KNITTEL

V.

IVAN SELIN, CHAIRMAN, UNITED STATES
NUCLEAR REGULATORY COMMISSION

CIVIL ACTION NO. 94-0561

NOTICE OF ACKNOWLEDGEMENT
OF RECEIPT OF SUMMONS
AND COMPLAINT

NOTICE

TO:

(Name)
U.S. Nuclear Regulatory Commission

(Street)
Washington, D.C. 20555-0001

(City and State)

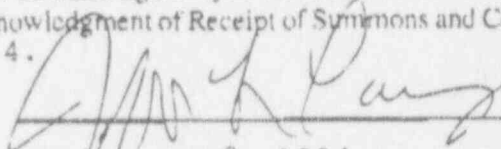
The enclosed summons and complaint are served pursuant to Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure. You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expense incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice of Acknowledgment of Receipt of Summons and Complaint was mailed on February 2, 1994.



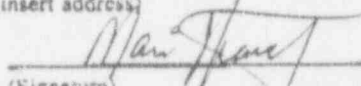
February 2, 1994

(Date of Signature)

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned matter at ONE WHITE LINDS WORTH, ROCKVILLE, MARYLAND

(insert address)



(Signature)

ATTORNEY, U.S. N.R.C.

(Relationship to Entity/Authority to Receive Service of Process)

2/7/94

(Date of Signature)