

March 28, 1996

For: The Commission  
 From: John F. Cordes, Jr. /s/  
 Solicitor  
 Subject: LITIGATION REPORT - 1996 - 2

**Connelly v. NRC**, N. 95-3432 (Fed. Cir., decided January 26, 1996)

This is a long-running personnel dispute in which an NRC official sought rescission of a Commission-issued letter of reprimand on the ground that it stemmed from unlawful retaliation for whistleblowing. After a hearing, the Merit Systems Protection Board rejected petitioner's arguments. She then sought review in the U.S. Court of Appeals for the Federal Circuit.

In a short decision, the court of appeals (Newman, Plager & Clevenger, JJ) affirmed the Board's decision. It upheld the Board's finding that "clear and convincing" evidence supported the NRC position that the Commission would have reprimanded petitioner absent any "protected disclosures" under the Whistleblower Protection Act. OGC and the Office of the Inspector General worked closely with the Department of Justice in defending this case.

Petitioner has ninety days to seek Supreme Court review.

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**Homestake Mining Co. v. NRC**, No. 92-S-2057 (D. Colo., decided March 5, 1996)

This was a lawsuit filed in 1992 against the NRC and the United States government under CERCLA. The suit sought government reimbursement of reclamation costs at a uranium mining facility in New Mexico. While plaintiff's right to seek relief from the NRC was highly questionable from the outset, the issues never were litigated, because the suit was held in abeyance virtually from the date it was filed. Rather than litigating, plaintiff decided to seek compensation under then-new legislation allowing DOE to pay certain reclamation expenses in situations like this one.

DOE has now begun making such payments, and the district court (Sparr, J.) has concluded that DOE's expected payments over the next several years "will effectively satisfy the Plaintiff's claim in this civil action." The court therefore has issued an order "deeming" the case "closed," subject to reopening "for good cause."

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**Zolotarevsky v. Selin**, No. 93-40172-XX-NMG (D. Mass., decided Feb. 21, 1996)

Plaintiff sought employment from the NRC on several occasions and never obtained a position. He filed a lawsuit under Title VII of the Civil Rights Act of 1964 and claimed age and national origin discrimination. In collaboration with the United States Attorney's office we filed a motion for summary judgment, on the ground that the record defeated plaintiff's claim. A United States Magistrate Judge agreed, and the district court (Swartwood, J.) subsequently approved the Magistrate's ruling and entered judgment for the NRC.

Plaintiff has sixty days to appeal.

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[ATTACHMENT -](#)

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[ATTACHMENT -](#)

**Homestake Mining Co. v. NRC**, No. 92-8-2057 (D. Colo., decided March 5, 1996)

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[ATTACHMENT -](#)

**Zolotarevsky v. Selin**, No. 93-40172-XX-NMG (D. Mass., decided Feb. 21, 1996)