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DR

JUDA v. U.S.

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Cite as 13 Cl.Cl. 667 (1987)

the inherent prob- and the staggered

existing equipment is tion. The Court of nitalization when a bstantial functional application of a su- Pacific RR. v. Unit- 337, 854, 497 F.2d also Southern Pac. r, 75 T.C. 497, 718 n statistics demon- horizontal elements on significantly de- th 13 and 12 leaks . in 1981 and 1982, ore per year in each ling commencement gram in 1977. Mr. the new finless de- rt and, although the ized, the new tubes ntenance. Although nction differently, improved in that it frequent forced out-

ture represents an efficiency loss in the boiler of one percent. Plaintiff offered efficiency tables indicating that the exit temperatures of the steam were higher after the finless tubes were installed. The data are incomplete because plaintiff tested only four out of the six units; of those tested, two exhibited differences of 7° and 16°, while the others read a difference of 23° and 29°. Even the highest figure of the four, the 29° increase, would represent less than a one percent efficiency loss. Mr. Rice testified that each boiler is unique; that a variety of factors affects exit temperature; and that there are five heat exchanges in the boiler, including one in the economizer. Noting that the temperature readings should vary at various points in the boiler, he acknowledged that the data offered measured only the exit temperature. Plaintiff's tests are inconclusive in respect of heat loss in the economizer alone.

horizontal elements prolonged the life of plaintiff's economizers and cannot be deducted as an expense, but must be capitalized. Defendant is entitled to judgment on this issue.

CONCLUSION

Based on the foregoing, the parties' cross-motions for summary judgment are granted in part and denied in part. Plaintiff shall be refunded income tax and interest paid as a result of the IRS' treatment of the surcharge as gross receipts from sales. Defendant is entitled to summary judgment on plaintiff's claims concerning replacement units and depreciation, and judgment shall be entered for defendant on plaintiff's claim concerning replacement of the horizontal elements of the economizers. This determination having been made pursuant to RUSCC 42(c), the parties shall file a stipulation by December 15, 1987, as to the amount of net refund due plaintiff, if any. Defendant represented that its counterclaim would only come into play if plaintiff did not prevail on the replacement and repairs issues. Upon the filing of this stipulation, the Clerk of the Court shall enter judgment. Costs shall not be awarded.

IT IS SO ORDERED.



replacement of the sulted in a better- e efficiency of the rall boiler decreased inless tube design. : position that since function, i.e., it can- duce steam without mprovement can be rment is to the boil- : entire boiler is the that no betterment did not produce any allation of the new

Even if the data were more complete, the economizers still were improved. Plaintiff may have received less efficient economizers in respect of temperature conversion, but the equipment's overall maintenance frequency has decreased. This trade-off is an economic business decision of which Mr. Rice was aware when he made the decision to replace the economizers.

Overall the court deems this evidence more probative of prolonging the life of the economizers than constituting a betterment. Replacement of the horizontal elements allowed plaintiff to begin a new 20-plus-year repair cycle which reduced the probability of pluggage and erosion. The greatly reduced number of leaks since 1980, compared with the accelerating increase in leaks between 1953-1977, proves the point.

Rice, when plaintiff horizontal elements, hether the new eco- efficient. Mr. Moser ease in exit tempera- s province to determine of all the horizontal constituted a repair of a

The court advised at trial that Mr. Moser's particularly candid expert testimony on cross-examination would be given great weight. This witness was instrumental in depicting how replacement of the horizontal elements alleviated for years what had become an acute maintenance problem. Mr. Rice's testimony was not to the contrary. The wholesale replacement of the

Tomaki JUDA, et al., Plaintiffs,  
v.  
The UNITED STATES, Defendant.  
Aikizi LEWIS, et al.,  
Plaintiff-Intervenors.  
v.  
The UNITED STATES, Defendant.  
No. 172-81L.  
United States Claims Court.  
Nov. 10, 1987.

Petitions were brought on behalf of inhabitants of Marshall Islands to claim

Marshall Islands and specifically stated that no United States court had jurisdiction to enter into claims pertaining to nuclear testing program. The Claims Court, Harris, Senior Judge, held that compact of Free Association negotiated between United States and emerging Republic of Marshall Islands implicitly amended Tucker Act so section, § 201, sec 177, 48 U.S.C.A. § 1681 note; 28 U.S.C.A. § 1491(a)(1).

7. Federal Courts - 1185

(Claims contesting constitutionality of procedures set up by compact of Free Association between United States and emerging Republic of Marshall Islands for processing claims arising from United States nuclear testing program were premature; whether compensation and procedures provided by compact were adequate was dependent upon amount and type of compensation that ultimately would be provided through procedures.

8. United States - 12514

Courts have final authority to interpret international agreement for purposes of applying it as law in the United States.

1. Treaties - 8

Whether trusteeship agreement for trust territory of the Pacific Islands had been or might be terminated unilaterally by United States was a question of law that could be examined by Claims Court.

2. Treaties - 8

Trusteeship agreement for trust territory of the Pacific Islands was not terminated and remained in effect under international law until United Nations Security Council acted to terminate it; agreement specifically delegated to the Council authority to exercise all functions of United Nations relating to strategic areas.

9. United States - 125116

Compact of free association negotiated between United States and emerging Republic of Marshall Islands implicitly amended Tucker Act so as to withdraw consent of United States to be sued in Claims Court for taking and breach of contract claims arising from United States nuclear testing program in the Marshall Islands; compact provided for establishment and operation of claims tribunal by the Republic of the

MEMORANDUM OF DECISION

HARKINS, Senior Judge.

Jonathan M. Weisall, Washington, D.C., attorney of record, for plaintiffs and plaintiffs-intervenor.  
 Gary B. Randall, Washington, D.C., with whom was Acting Asst. Atty. Gen. Roger J. Marzulla, for defendant. Marjorie R. Bloom, Washington, D.C., Dept. of Energy, Howard L. Hill, Washington, D.C., JAG-USN, Legal Advisor, Dept. of State, of counsel.

Congress may withdraw its consent in the Government at any time.

was at Bikini Atoll and Eniwetok Atoll, and radioactive contamination of parts of the Marshall Islands claim. Damages claimed ranged from \$50 million to \$500 million.

The 14 cases that have been filed by the Marshall Islanders involve three groups of people: inhabitants of the Bikini Atoll (70 State, 461-421), and inhabitants of atolle Atoll (Johnnes Peter, et al. v. United States, 461-421), and inhabitants of atolle Eniwetok (Johnnes Peter, et al. v. United States, 461-421). The claims of these plaintiffs have been handled separately, with only the *Nitoli* cases consolidated.

At the time the cases were filed in the United States Court of Claims, negotiations between the United States and the Government of the emerging Republic of the Marshall Islands (RMI) toward a Compact of Free Association were well advanced. After a period of suspension to avoid interference with the negotiations, the suspensions were terminated on April 13, 1963, and oral argument was heard on August 2, 1963, on defendant's motions to dismiss. In the *Juda* case, it was determined that the inhabitants of Bikini Atoll had raised claims within the jurisdiction of the court under the Tucker Act (28 U.S.C. § 1491(a)(1)). That sovereignty (mainly of the United States had been waived, and that the claims were not barred by the statute of limitations. 28 U.S.C. § 2501 (1962).

After the rulings on defendant's motions to dismiss, defendant filed answers to the surviving claims and orders were entered for pretrial preparation of the cases. In December 1965, defendant gave notice of final action in (congress on the joint result of information obtained in discovery and to establish a briefing schedule on the jurisdictional issues.

On March 4, 1966, in each case defendant filed motions to dismiss on the ground that the claims were non-justiciable because they now involve a political question. After the rulings on defendant's motions to dismiss, defendant filed answers to the surviving claims and orders were entered for pretrial preparation of the cases. In December 1965, defendant gave notice of final action in (congress on the joint result of information obtained in discovery and to establish a briefing schedule on the jurisdictional issues.







keeping with its decision that the RMI was a sovereign, self-governing state, on October 19, 1986, the President's nomination of the U.S. diplomatic representative to the Marshall Islands, was announced, and on May 4, 1987, the Government of the RMI was notified formally that the general relations between the two governments would be governed by international law as reflected in the Vienna Convention on Diplomatic Relations, and that the RMI representatives would be accorded status commensurate with the heads of diplomatic missions as this expression is used in the Convention. On June 3, 1987, the U.S. Senate gave its consent to appointment of the President's nominee.

The new political status of the RMI under the Compact is further recognized in the following actions:

—the Department of the Treasury has ceased payment of funds appropriated by Congress for the Marshall Islands pursuant to the Trusteehip Agreement and has begun making payments to the Marshall Islands under the Trusteehip Agreement. The United States grant outlay to the Marshall Islands under the Trusteehip Agreement would have been approximately \$9 million. For fiscal year (FY) 1987, payments under the Compact will total approximately \$190 million, including \$40 million in direct grants and \$150 million to the manager of the Fund created pursuant to the Section 177 Agreement.

—plaintiffs in these cases have entered into agreements to implement the Section 177 Agreement, and have borrowed in excess of \$9 million by collateralizing the usual payments they have begun to receive under the Section 177 Agreement.

DISPOSITION

In 1984, in the *Jada, Peter and Nitel* cases, it was determined that the complaints stated claims within the subject matter jurisdiction of this court. Defendant amended motions to dismiss put in issue whether subsequent actions by the Marshall Islands people, by Congress, by the UNCT, and by the President, have the effect of withdrawing, as to all plaintiffs,

All parties agree that the political status of free association that is recognized in the Compact Act, and the guardian-ward rela-

tion of Executive Order No. 11021, as amended, shall remain in effect, in a manner consistent with this Order and pursuant to section 104(c)(2) of the Act, which time the entry of Executive Order No. 11021 shall be impermanded and discharged its responsibilities, at which time the entry of Executive Order No. 11021 shall be impermanded.

(b) Nothing in this Order shall be construed as modifying the rights or obligations of the United States under the provisions of the Compact or as affecting or modifying the responsibility of the Secretary of State and the Attorney General to interpret the rights and obligations of the United States arising out of or concerning the Compact.

By letter dated October 29, 1986, the United States Permanent Representative to the United Nations notified the Secretary General of the United Nations that, as a consequence of consultations held between the United States Government and the Government of the RMI, "agreement has been reached that October 21, 1986, is the date upon which the Compact of Free Association with the Marshall Islands enters fully into force."

(On November 3, 1986, the President announced in Proclamation No. 564 that, as of that day, the United States "has fulfilled its obligations under the Trusteehip Agreement with respect to the (Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, and the Federated States of Micronesia, and they are self-governing and no longer subject to the Trusteehip." Proclamation No. 564, further provided:

Section 1. I determine that the Trusteehip Agreement for the Pacific Islands is no longer in effect as of October 21, 1986, with respect to the Republic of the Marshall Islands, as of November 3, 1986, with respect to the Federated States of Micronesia, and as of November 3, 1986, with respect to the Northern Mariana Islands. This constitutes the determination referred to in Section 1042 of the Covenant

Interior shall be responsible for seeking the appropriation of funds for and, in accordance with the laws of the United States, shall make available to the Freely Associated States the United States economic and financial assistance appropriated pursuant to Article 1 of Title Two of the Compact, the grant, service, and program assistance appropriated pursuant to Article 11 of the Compact; and all other United States assistance appropriated pursuant to the Compact and its related agreements. The Secretary shall coordinate and monitor any program or any activity by any department or agency of the United States provided to the Freely Associated States and shall coordinate and monitor related economic development planning. This Section shall not apply to services provided by the Department of Defense to the Freely Associated States or to activities pursuant to Section 1 of this Order, including activities under the Peace Corps Act.

Section 8. *Superection and Savings Provisions*. of the Executive Order provides: (a) Subject to the provisions of Section 9 of this Order, prior Executive orders concerning the former Trust Territory of the Pacific Islands are hereby superseded and rendered inapplicable, except that the authority of the Secretary of the Interior as provided in applicable provisions of the Executive Order and the Compact, shall be effective as of October 21, 1986.

relationship of inhabitants of a Trust Territory under auspices of the United Nations, are incompatible and mutually exclusive. Defendant argues that the May 28, 1986, UNTC Resolution No. 2183, Executive Order No. 12589, on October 16, 1986, which terminated the authority of the Secretary of the Interior and the High Commissioner, Goldwater v. Carter, 444 U.S. 996, 1000 n. 211, 82 S.Ct. 691, 706, 7 L.Ed.2d 668 (1981); Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 706, 7 L.Ed.2d 668 (1961); Goldwater v. Carter, 444 U.S. 996, 1000 n. 211, 82 S.Ct. 691, 706, 7 L.Ed.2d 668 (1981); Proclamation No. 5564, were effective to terminate the Trusteeship Agreement with respect to the RMI as of October 21, 1986. In each of the cases, plaintiffs contend that the Trusteeship Agreement has not been terminated. Plaintiff *in vada* and *Peter* argue that the Compact of Free Association is not currently in effect, and cannot go into effect until the Trusteeship Agreement is terminated by action in the Security Council. Plaintiff *in vada* contends that the Compact of Free Association and Section 177 Agreement represent a bilateral redefinition of the legal relationship between the United States and the people of the Marshall Islands, and that this relationship is defined by the domestic law of the two parties, independently of the status of the Trusteeship Agreement at international law.

Defendant contends the President, in exercising the option to rely upon UNTC Resolution No. 2183 as the basis for a unilateral declaration that the Trusteeship Agreement may be terminated without action by the UNSC, Defendant further contends that exercise of this option is not subject to judicial review. Defendant fails to recognize that the Trusteeship Agreement and the Compact are two separate documents that involve different parties and raise differing legal issues. The Trusteeship Agreement and the Compact between the United States and the UNSC, the Compact between the United States and the RMI, Trusteeship termination and Compact implementation are two separate issues.

[14] For purposes of United States domestic law, the Trusteeship Agreement has been recognized as a treaty. *Kabana, Kaban v. United States*, 646 F.2d 381, 386 (Ct.Cl. 1978); *Peter v. United States*, 6 America, Inc. v. Arughiano, 461 U.S. 176.

[15] A proper interpretation of the relevant documents requires the conclusion that the Trusteeship Agreement may not be terminated formally until the Security Council has acted. Article 83(1) of the Charter specifically delegates to the Security Council authority to exercise "all functions of the United Nations relating to trusteeship areas." The phrase "including any alteration or amendment" when given its obvious meaning encompasses termination of the entire agreement. *Santitomo Shop*

180, 182 S.Ct. 2274, 2371, 72 L.Ed.2d 765 (1987); *Masterov v. United States*, 373 U.S. 49, 64, 88 S.Ct. 1064, 1067, 10 L.Ed.2d 164 (1963). The word "including" in Article 83(1) indicates that the specified list of or limitation. *Federal Loan Bank v. Bannock Lumber Co.*, 314 U.S. 95, 100, 41 S.Ct. 114, 115, 1 L.Ed. 65 (1941); *Perrito v. Maritime Shipping Auth. v. ICC*, 645 F.2d 1102, 1112 n. 26 (D.C.Cir. 1981); *United States v. Gertz*, 249 F.2d 662, 666 (9th Cir. 1957).

Representatives of the United States, since 1947 and until March 4, 1986, contractually have acknowledged an obligation to seek UNSC approval of termination of the Trusteeship Agreement. In 1947, the United States representative to the Security Council, when the terms of the Trusteeship Agreement were being negotiated, argued that the "bilateral treaty agreement in the nature of a bilateral contract between the United States on the one hand and the Security Council on the other." With respect to the effort to include language in Article 15 which would have given the Security Council a role in a termination, the United States representative stated that the responsibility of the Security Council are defined in the Charter, and that "no amendment or termination can take place without approval of the Security Council." 2 U.N. SCOR 476 (1947).

On November 17, 1975, with respect to the Compact to establish a Commonwealth of the Northern Mariana Islands, the Assistant Secretary of State for Congressional Relations advised the Chairman of the Senate Foreign Relations Committee:

The United States recognizes that it is obligated to seek Security Council approval of termination of the trusteeship agreement. The United States accordingly intends to seek and expects to obtain Security Council approval. The United States does not anticipate that the Security Council would deny or ignore the mandate it shares with the Administrative Authority to elect and respect the freely expressed wishes of the people for self-determination. If for any reason the Security Council's concurrence were withheld, we would have to face that question at the time.

In connection with consideration of the Compact of Free Association, the Committee on Foreign Affairs, House of Representatives, submitted questions to the State Department, in response to an inquiry on whether the United Nations must "approve the Compact and agree to termination of the Trusteeship Agreement." The State Department answered: "It is the intention of the United States to take up the question of termination of the Trusteeship Agreement at the appropriate time with the Trusteeship Council and the Security Council." *Microstate Compact of Free Association: A Review of H.R. 670. Hearings Before Comm. on Foreign Affairs, House of Representatives, 95th Cong., 2d Sess. (1984).*

In this litigation, defendant consistently has taken the position that Security Council approval was needed for termination of the Trusteeship Agreement. Defendant's December 23, 1985, motion to suspend the pretrial proceedings stated:

The United States takes the position that the effective date of the Compact should be the date of termination of the United Nations Trusteeship. The United States plans to represent the Compact to the United Nations Security Council in March 1988 and fully expects termination of the trusteeship to occur by April 30, 1986.

Defendant's March 4, 1986, motion to dismiss included the statement:

The United States is preparing to take up the question of termination of the Trusteeship Agreement with the Trusteeship Council and the Security Council of the United Nations. The United States takes the position that the effective date of the Compact should be the date of termination of the United Nations Trusteeship. The Assistant Secretary of State for Congressional Relations advised the Chairman of the Senate Foreign Relations Committee:

The United States recognizes that it is obligated to seek Security Council approval of termination of the trusteeship agreement. The United States accordingly intends to seek and expects to obtain Security Council approval. The United States does not anticipate that the Security Council would deny or ignore the mandate it shares with the Administrative Authority to elect and respect the freely expressed wishes of the people for self-determination. If for any reason the Security Council's concurrence were withheld, we would have to face that question at the time.

JUDA v. U.S.  
Case No. 13 CLC 67 (1987)



Agreement by division of the Trust Territory into four separate areas.

It may be that in the trusteeship procedure, comparable to terminations by the General Assembly as to non-strategic areas, action by the UNSC to terminate the Trusteeship Agreement should be proposed after the UNTC adopted Resolutions No. 2188. The question of when the Trust Agreement formally has been terminated under United Nations procedure, however, is not before this court. The United Nations has its own internal organ, the International Court of Justice, which is the forum for such an issue.

The fact that the Trusteeship Agreement has not been terminated de jure does not resolve the issue of whether the Compact with the RMI is in effect. Actions by the RMI, the UNTC, and the United States determine that issue. As to the RMI, the Trusteeship Agreement is terminated in fact. De facto termination of the Trusteeship Agreement may be accomplished by the United States where the capacity for self-government is recognized for self-government in recognized territory are brought to a status where the terms are brought to a status where the reporting on the supervision of the trustee-ship and the status of the progress of the political, economic, social and educational advancement of the inhabitants. Each member of the Security Council, under Charter Article 27, has a unilateral veto on Security Council business. This veto power may be exercised for political reasons either) extenuous to the capacity for self-government that may be claimed by the people of the Marshall Islands, recognized by the Administering Authority, and confirmed in the judgment of the UNTC.

Defendant asserts that the Executive Branch has determined that the Soviet Union intends to exercise its veto power in the UNSC to frustrate the decision of the RMI to enter its new political status with the United States. Defendant further argues that such a veto would unfairly cloud the international status of the RMI, and would create the unacceptable result that the Trusteeship Agreement would continue in effect by its terms simultaneously with the 1986. The Section 177 Agreement takes effect by its terms simultaneously with the Compact. Accordingly, the Section 177 Agreement Association, the Section 177 Agreement, and Articles X, XI and XII of that

The program budget of April 2, 1987, proposed by the United Nations Secretariat for Biennium 1988-89, provides funding for the UNTC to carry out its responsibilities regarding the "last remaining Territory," the Trust Territory of the Pacific Islands. These responsibilities include provision for the dispatch of visiting missions during the biennium 1988-89.

All of the foregoing reasons support, if not require, the conclusion that the Trust-eeship Agreement for the Trust Territory of the Pacific Islands has not been terminated. Accordingly, the Agreement remains in effect de jure at international law until the Security Council has acted.

Defendant points out that action by the Security Council to terminate the trustee-ship need not be confined simply to a recognition that the United Nations Article 76(b) objectives for self-government may have been realized, and confirmed by the UNTC. Defendant emphasizes that the UNTC is reporting on the supervision of the trustee-ship and the status of the progress of the political, economic, social and educational advancement of the inhabitants. Each member of the Security Council, under Charter Article 27, has a unilateral veto on Security Council business. This veto power may be exercised for political reasons either) extenuous to the capacity for self-government that may be claimed by the people of the Marshall Islands, recognized by the Administering Authority, and confirmed in the judgment of the UNTC.

agreement, went into effect on October 21, 1986 to a restructuring of the legal relationship that has been recognized by the Congress, the President and the UNTC.

There may be doubt as to the significance at international law in the November 1, 1986, Proclamation that the Trusteeship Agreement has been terminated for three governmental areas. It is clear, however, that the Compact Act, the Compact and the Section 177 Agreement constitute a redetermination of the legal relationship between the United States and the people of the Marshall Islands. This relationship is defined by the domestic law of the two governments. Both the RMI and the United States, since October 21, 1986, have been proceeding in reliance upon the new relationship. In addition, plaintiffs in these cases have pursued legal and financial benefits in reliance on the Compact being in effect.

Plaintiffs in the *Nioto* case suggest that the force of a statute of the United States, and argue that it is not clear that changes in the jurisdiction of the courts of the United States, or in the scope of the consent of the United States to be sued, have been duly authorized. The *Nioto* plaintiffs point out that the Section 177 Agreement is not embodied verbatim in any act of Congress, and the specific terms were not enacted separately. The text of the Section 177 United States Code, along with the other provisions of the Compact Act, nor is the text included in Title 28, Judiciary and Judicial Procedure.

The Section 177 Agreement cannot be carried out of the Compact and its validity separately determined. The overall purpose of the Compact Act must not be lost sight of. The thrust of the Compact Act is to discharge United States obligations to promote the development of the Marshall Island peoples toward self-government. The settlement of claims arising from the nuclear testing program is an integral part of the relationship of the United States and the newly emerged RMI. The settlement cannot be disregarded as if it were not essential to that relationship. To carve out the Section 177 Agreement would amount to a restructuring of the legal relationship that has been recognized by the Congress, the President and the UNTC.

The issue of whether plaintiffs' claims may continue to be heard in this court are determined primarily by Compact Act §§ 103(K)(1) and (2), Compact § 177 and § 471(c), and the Section 177 Agreement, Article X, § 1 and Article XII. Analysis begins with the text of these provisions. Section 177(a) of the Compact provides that the Government of the United States "accepts the responsibility for compensation owing to citizens of the Marshall Islands for loss or damage resulting from the United States nuclear testing program. In this provision, the United States recognizes it is obligated legally to provide compensation. In the Compact Act, Congress







In these consolidated cases, it was determined in the February 14, 1985, memorandum of decision (7 Cl.Ct. 406).

In those cases, unlike in the claims in the Bikini and Eniwetok cases, there is a question of whether in fact there has been any taking.

In cause of action I, the complaints are inadequate to give notice of the claim asserted, and the facts alleged, if accepted as true, are sufficient to state a claim for a taking compensable under the Fifth Amendment within the Tucker Act jurisdiction of the court, 28 U.S.C. § 1491(a)(1) (1982).

Defendant's motion to dismiss was allowed with respect to the causes of action II and III in plaintiffs' complaints and denied with respect to the taking claims in cause of action I.

On March 4, 1986, defendant filed a motion to dismiss on the ground that plaintiffs' claims are non-justiciable because they now involve a political question. On November 4, 1986, defendant filed an amended motion to dismiss, adding lack of Tucker Act claim; trust territory of the Pacific Islands; Compact of Free Association, withdrawal of consent to sue United States; 28 U.S.C. § 1491(a)(1).

David R. Anderson, Washington, D.C., attorney of record for plaintiffs. Lloyd N. Culler, Andrew B. Weissman, Lester Nurick, Stephen J. Schaubly, Barry A. Spergel, and Wilmer, Cutler & Packer, of counsel. Gary B. Randall, Washington, D.C., with whom was Acting Asst. Atty. Gen. Roger J. Marzulla, for defendant. Margorie R. Bloom, Washington, D.C., Dept. of Energy, and Howard L. Hills, Washington, D.C., JAG-USN, Legal Advisor, Dept. of State, are attorneys of record for defendant.

An extensive memorandum of decision has been filed this date in a related case, *Tomaki Judo, et al v. United States*, 13 Cl.Ct. 667 (1987). The memorandum of decision contains an analysis of developments since March 30, 1984, in the relationship of the United States and the Republic of the Marshall Islands, and an explanation for the basis for the conclusion that the consent of the United States to be sued has been withdrawn on the alleged taking of claims of the Marshall Islanders that arose from the nuclear testing program. The Eniwetok people in the nature of a fiduciary, (3) failure to comply with the terms of

plaintiffs suggest that *Gold Bondholders* is inconsistent with precedent and was wrongly decided. Decisions of the United States Court of Claims are binding precedent for this court unless and until modified by decisions of the United States Court of Appeals for the Federal Circuit or the United States Supreme Court. USOC (Chayer, Harvard Law School, and Marshall Islands Atomic Testing Litigation Project, XXII, *Geym Constr. Corp. v. United States*, 627 F.2d 752, 764 (Fed.Cir.1987).

Article XII of the Section 177 Agreement, which was necessary upon approval of the Tucker Act. The consent of the United States to be sued in the Claims Court on plaintiffs' taking claims and breach of contract claims that arose from the United States' nuclear testing program in the Marshall Islands has been withdrawn. Accordingly, IT IS ORDERED: the Clerk is directed to dismiss the complaint. No costs.

Twelve complaints have been consolidated for pretrial preparation. Eleven complaints were filed simultaneously on September 9, 1981, and the 12th complaint was filed on July 26, 1982. The dockets consolidated were:

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Twelve complaints for "taking" against the United States were consolidated for pretrial preparation. The Claims Court, Harkins, Senior Judge, held that withdrawal of United States consent to be sued on alleged taking claims of Marshall Islanders arising from nuclear testing program applied to and was fatal to plaintiffs' claims.

IT IS ORDERED: the Clerk is directed to dismiss the complaint. No costs.

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also *Hennery v. United States*, 114 Cl.Ct. 410 (1985).

Plaintiffs suggest that *Gold Bondholders* is inconsistent with precedent and was wrongly decided. Decisions of the United States Court of Claims are binding precedent for this court unless and until modified by decisions of the United States Court of Appeals for the Federal Circuit or the United States Supreme Court. USOC (Chayer, Harvard Law School, and Marshall Islands Atomic Testing Litigation Project, XXII, *Geym Constr. Corp. v. United States*, 627 F.2d 752, 764 (Fed.Cir.1987).

Article XII of the Section 177 Agreement, which was necessary upon approval of the Tucker Act. The consent of the United States to be sued in the Claims Court on plaintiffs' taking claims and breach of contract claims that arose from the United States' nuclear testing program in the Marshall Islands has been withdrawn. Accordingly, IT IS ORDERED: the Clerk is directed to dismiss the complaint. No costs.

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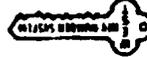
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