

In the United States Court of Federal Claims

PEOPLE OF BIKINI *et al.*, *

Plaintiffs, *

v. * No. 06-288C

THE UNITED STATES, * (Filed June 6, 2007)

Defendant. *

ORDER

A review of the supplemental briefing and additional documents filed pursuant to the order entered on April 24, 2007, identified a potentially dispositive issue that the parties have not yet addressed. This issue would require revisiting one of Judge Harkins’s rulings. Accordingly,

IT IS ORDERED, as follows:

1. Plaintiffs and defendant shall file a brief by June 18, 2007, not to exceed ten pages, regarding the following issues:

1) Their understanding and characterization of the doctrine of the law of the case as it applies to Judge Harkins’s holdings in Juda v. United States, 6 Cl. Ct. 441 (1984) (“Juda I”). See, e.g., Arizona v. California, 460 U.S. 605, 618 (1983) (finding that law of case is applied at court’s discretion and “does not limit the tribunal's power”); Chiu v. United States, 948 F.2d 711, 718 (Fed. Cir. 1991) (finding no legal error when predecessor judge reexamined an issue on remand considered by original trial judge not considered by appellate court).

2) Case law and other guidance on the scope of judicial review of Judge Harkins’s determination that the Marshall Islanders were granted the protections of the Bill of Rights in Juda I at 456-58. In Juda I the court held that the “protections of the Bill of Rights are conveyed to the Marshall Islanders by the force of the Constitution and our system of government.” Id. at 458. Supplemental briefing revealed that defendant reargued the

issue in front of the United States Court of Appeals for the Federal Circuit. In the Consolidated Brief of Appellee the United States, People of Enewetak v. United States, Nos. 888-1206, 888-1207, 888 -1208, (Fed. Cir. June 24, 1988), defendant moved to dismiss appellants' takings claims on the ground that the Fifth Amendment's just compensation clause does not extend to citizens of the United Nations Trust Territory for the Marshall Islands. The Federal Circuit did not reach this issue in People of Enewetak v. United States, 864 F.2d 134 (Fed. Cir. 1988). Reconsideration of Judge Harkins's decision may be appropriate insofar as he held that the Marshall Islanders were granted the protections of the Bill of Rights in Juda I at 456-58.

2. Should plaintiffs or defendant determine it appropriate to file a single consolidated supplemental brief in response to ¶ 1 of this order and ¶ 1 of the order issued in Ismael John v. United States, No. 06-289L (Fed. Cl. filed June 6, 2007) (order following supplemental briefing), a consolidated brief shall not exceed twenty pages.

s/ Christine O.C. Miller

Christine Odell Cook Miller
Judge