No. 9, Original

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,
Defendants.

PETITION FOR REHEARING OF DECISION ON EXCEPTIONS TO THE SUPPLEMENTAL REPORT OF THE SPECIAL MASTER

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CITATIONS

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Your Petitioner, the State of Louisiana, respectfully prays that the Court reconsider its decision and order entered on April 28, 1980.

SUMMARY OF GROUNDS

Petitioner respectfully reiterates the grounds previously urged in its Briefs and Argument, but particularly urges grounds related to fundamental inconsistency and inequity in the Court's rulings. One, in rejecting Louisiana's exception to the Special Master's Supplemental Report, the Court failed to heed its own prior adjudication which directed the United States to account for any and all sums derived on account of Louisiana's

minerals. This would include even the indirect monetary benefits derived on account of Louisiana's land and minerals. Secondly, Louisiana should not have been cast for benefits indirectly derived from federal areas in the course of leasing her own lands, if she is not allowed to collect indirect benefits the United States enjoyed. The same decree language applied to both governments. Therefore, there should be no pro rata federal interest in bonus and delay rental payments where Louisiana leased only her own lands; that is, Louisiana portions of tracts that were ultimately held to contain both state and federal areas. At most, the monies paid for the State areas were only indirectly enhanced by an immeasurable indirect extent. This second ground relates only to non-production revenue, and suggests that the Court's Zone 1 ruling should only relate to production revenue and non-production revenue from any lease that was wholly federal.

A third ground relates to misrepresentations of the Government which misled Louisiana into failure to take stronger action after the Government's response to the 1967 request of the Louisiana Legislature that the Government should invest the money.

I.

We respectfully submit that the Court's decision sustains the conclusion that the Court's decree of June 16, 1975[1] ordered the United States to account for sums derived from leasing Louisiana territory. The Court's

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[1]422 U.S. 13.

opinion held that Paragraph 6 of the decree was not merely informational; it imposed pecuniary obligations. Slip Opinion, p. 18. Among the pecuniary obligations thus imposed were paragraph 6(b) of the Decree of 1975.

> The United States shall render to the State of Louisiana . . . a true . . . account of *any* and *all* other sums of money derived by the United States either by sale, leasing, licensing, exploitation *or otherwise* from or *on account of* the lands, minerals or resources [of Louisiana]. (Emphasis added).

The Court's opinion only discussed Louisiana's affirmative arguments on Louisiana's exceptions. Louisiana's exceptions had not initially been based upon the view of paragraph 6 adopted by the Court. This was consistent with the fact that Louisiana had resisted the Zone 1 claims of the United States on the grounds, inter alia, that the quoted paragraph did not impose pecuniary obligations but only informational reporting requirements. However, Louisiana had urged, by way of reply to the Government's Zone 1 arguments, that if those arguments were accepted, then they would require that Louisiana's exceptions should be maintained because the value of the use of the money was indeed a sum derived on account of Louisiana's lands and minerals. *Reply Brief of the State of Louisiana in Opposition to the Exception of the United States to the Report of the Special Master, pp. 82-85.*

It is only fair and just that if paragraph 6 of the 1975 Decree is recognized as imposing pecuniary obligations upon Louisiana for sums at most only indirectly derived from Federal lands and resources, it should also be employed to impose pecuniary liability upon the United

States for indirect benefits derived by free and unrestricted use of impounded funds, which it spent, belonging to Louisiana.

II.

This brings us to the second major point of our grounds. The Court did not limit its Zone 1 ruling in favor of the United States to production revenue, nor to non-production revenue from leases lying wholly in federal areas. It apparently rendered Louisiana liable to the United States for a share of lease bonus and delay rental revenue on State leases which were explicitly limited to State owned areas within map reference tracts which were later found to include small federal areas.

It is one thing to cast Louisiana in judgment for production revenue for royalty payments from production physically obtained from Federal lands, or for lease bonus money from a lease wholly in a Federal area. It is quite another to hold Louisiana liable for a portion of the non-production revenue from mineral leases which, by their terms, only purported to cover and only did cover those portions of larger tracts which were owned by Louisiana. See the language of these leases in Appendix 1 to the *Reply Brief of the State of Louisiana in Opposition to the United States to the Report of the Special Master.*

Three Justices[2] of this Court correctly observed

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[2]Opinion of Mr. Justice Powell, joined by Mr. Justice Stewart and Mr. Justice Rehnquist, concurring in part and dissenting in part.

that "The able Master has a more intimate familiarity" with the controversy than an appellate judge can acquire by studying only the available record. That observation is particularly pertinent to the factual question of the meaning and intent of the numerous leases. Mr. Armstrong heard the witnesses who testified about the fact that such leasing language was customary in the industry in Louisiana and the importance of that custom under Louisiana law. None of this was countered by *any* evidence submitted by the United States. But without one scintilla of evidence to the contrary in the record, the Court has substituted its judgment for that of a Special Master on factual detail involving the testimony of many witnesses not heard by the Court.

III.

The Court was apparently influenced by the fact that Louisiana had not taken action to complain of the Government's failure to invest the money after the 1967 resolution of the Legislature of Louisiana. The Court relied upon and referred to the Government explanation that a Treasury official had pleaded absence of authority. Slip Opinion, p. 12.

Indeed, such a reply was made, but it was an active misrepresentation and misleading. The Government did have authority to make interest bearing investment arrangements, and had in fact offered such arrangements to California. La. Exh. 9, L.P.I. 166, and L.P.I. 167, being a stipulation proposed by the United States to California and a letter from J. Lee Rankin, an Assistant Attorney General of the United States. And as a government expert later testified, the Outer Continental

Shelf Lands Act, by authorizing agreement, authorized an agreement to invest. Deposition of Mr. Swarth, pp. 44-45.

The Government's offer to California had never been disclosed to Louisiana. It was discovered only in the course of trial preparation for the accounting proceedings before the Special Master.

Finally, we submit that the Government should not be rewarded for the effectiveness of its incorrect representation that it lacked authority to comply with the 1967 resolution of the Louisiana Legislature. Whether or not the 1967 language of the legal demand was precatory or adequate as a formal demand, any failure of Louisiana to follow up with harsher action was associated with the denial by the United States of its authority to make interest bearing investment arrangements. The United States, as any other party, should not benefit by its deceit.

A different result might be in order had the funds at issue remained idle, but they were admittedly used in routine federal Government operations in lieu of borrowing or the issuance of greater debt in the form of treasury obligations. At this time, Louisiana received no benefits from the fund whatever.

CONCLUSION

At the very most, a company might have paid more for Louisiana mineral leases affecting Louisiana property because it hoped it might pick up more area than was ultimately held to be Louisiana's territory. That is, at best, a very indirect form of benefit, certainly a more

tenuous and less clear type of benefit than that which the United States obtained from the use of the revenue derived from leasing Louisiana land. Clearly, that indirect benefit to Louisiana is less clearly demonstrable than the financial benefits enjoyed by the United States from the use of Louisiana's mineral lands. If there is to be equality of treatment between the governments, either the Court's position on the Zone 1 ruling, or the Court's position on Louisiana's claim for the value of the use of the money should be modified. The two rulings can not stand together in the company of Justice.

Finally, we pray for reconsideration of the ruling that Louisiana was prejudiced in its claim for value of use of the money by delaying that claim until the final accounting phase, the appropriate time for monetary claims. This Court refused to use a delay and positive change of position by the Government to prejudice Government claims;[3] again, there has not been the same equal justice for a State that has been afforded the United States.

It would have been a simple and fair thing to invest the money for its owner. However, the Government was worse than the servant who buried the Talent instead of investing it. The Government used the money for its own purposes and has kept the fruits of its deed. See the parable of the Talents, Matthew, 25:15-28.

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[3]As at Caillon Bay in the 1969 decision, *United States v. Louisiana*, 394 U.S. 11.

RESPECTFULLY SUBMITTED

/s/ William J. Guste, Jr.

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CERTIFICATE

I, William J. Guste, Jr., Attorney General of the State of Louisiana, and a member of the Bar of the Supreme Court of the United States hereby certify that the foregoing motion for rehearing is filed in good faith and not for the purpose of delay, and that copies have been properly served on the 23rd day of May, 1980, by mailing copies, sufficient postage prepaid, to the Solicitor General and to the Attorney General of the United States, Department of Justice, Washington, D.C. 20530.

/s/ William J. Guste, Jr.
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