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In the Supreme Court of the United States

October Term, 1979

UNITED STATES OF AMERICA, *Plaintiff,*

vs.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI,
ALABAMA, and FLORIDA, *Defendants.*

(Mississippi and Alabama Boundary Cases)

MOTION FOR RELIEF FROM DECREE AND MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM DECREE

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MOTION FOR RELIEF FROM DECREE

The State of Mississippi moves the Court pursuant to Rule 9.2 of the Supreme Court and Rule 60, Federal Rules of Civil Procedure, for relief from the final decree entered in this case on December 12, 1960 (364 U.S. 502, 51 L.Ed.2d 247, 81 S.Ct. 258), adjudging that the United States was entitled to all submerged lands more than three geographic miles from the coastline of Mississippi. In support of its motion, Mississippi would show the following.

This case is presently pending before the Special Master on Mississippi's Motion for a Supplemental Decree.

At an earlier stage of this litigation, the United States conceded that Mississippi Sound was inland waters of the State of Mississippi.

The principal issue in that proceeding was the extent of Mississippi's boundary seaward of the Mississippi barrier islands.

In view of the concession of the United States, it was unnecessary for Mississippi to prove its claim to the Sound

as inland waters or the extent of its seaward boundaries as measured from the mainland shore.

The Court, relying upon the concession of the United States, held that Mississippi was entitled to all submerged lands and natural resources within three miles of its coastline.

Although the Court declined to establish the precise location of Mississippi's coastline, it indicated that the coastline would be drawn along the barrier islands.

The United States has since repudiated its concession to Mississippi denying that the Sound is inland waters and asserting that Mississippi's coastline follows the mainland shore rather than the barrier islands.

The United States now asserts the existence of enclaves of high seas within the Mississippi Sound.

If the United States is permitted to withdraw its concessions and litigate the status of Mississippi Sound, the State of Mississippi will be bound by the Court's decision without the opportunity to prove its claims beyond three geographic miles in the Sound.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MOTION
FOR RELIEF FROM DECREE**

The State of Mississippi filed a Motion for a Supplemental Decree in this case on October 31, 1979. That motion is presently pending before the Special Master appointed by the Court. The trial of the issues will begin on June 14, 1982. The principal issue presented in that motion involves the status of the waters of Mississippi Sound.

At an earlier stage of this litigation, the United States conceded that Mississippi Sound was inland waters of the State of Mississippi. It stated:

As in the case of Louisiana (*supra*, p. 177), we need not consider whether the language, "including the islands" etc., would of itself include the water area intervening between the islands and the mainland (though we believe that it would not), because it happens that all the water so situated in Mississippi is in Mississippi Sound, which this Court has described

as inland water. *Louisiana v. Mississippi*, 202 U.S. 1, 48. The bed of these inland waters passed to the State on its entry into the Union. *Pollard's Lessee v. Hagan*, 3 How. 212. Also, we agree that Mississippi has a marginal belt extending three miles seaward from the islands marking the outer limit of the inland waters of Mississippi Sound, under the ordinary application of the three-mile rule. Thus, *the only practical issue between the United States and the Mississippi is whether the statutory expression, "including all the islands within six leagues of the shore," described a water area (containing no islands) extending more than three miles seaward of the outermost islands off Mississippi*. For the reasons stated, we submit that it did not. (Brief of United States in Support of Motion for Summary Judgment on Amended Complaint, p. 254)

The Court thereafter determined that Mississippi was entitled to extend its seaward boundary three miles from its coastline. The Court, noting the concessions made by the United States regarding Mississippi Sound, declined to express its opinion as to the precise location of Mississippi's "coastline." At the same time, the Court directed attention to a virtually identical concession regarding the Chandeleur Islands. The Court noted:

The Government concedes that all the islands which are within three leagues of Louisiana's shore and therefore belong to it under the terms of its Act of Admission, happen to be so situated that the waters between them and the mainland are sufficiently enclosed to constitute inland waters. Thus, Louisiana is entitled to the lands beneath those waters quite apart from the affirmative grant of the Submerged Lands Act, under the rule of *Pollard's Lessee v. Hagan*, 3

How. 212. Furthermore, since the islands enclose inland waters, a line drawn around those islands and the intervening waters would constitute the "coast" of Louisiana within the definition of the Submerged Lands Act. Since that Act confirms to all States rights in submerged lands three miles from their coasts, the Government concedes that Louisiana would be entitled not only to the inland waters enclosed by the islands, but to an additional three miles beyond those islands as well. We do not intend, however, in passing on these motions, to settle the location of the coastline of Louisiana or that of any other State. 363 U.S. 66-67, n. 108)

Thus, with respect to Louisiana, the Court did indicate that a part of Louisiana's coastline would be drawn along the Chandeleur Islands and across the entrances to the Chandeleur Sound. The clear implication is that Mississippi's coastline would lie along the Mississippi barrier islands.

In view of the Federal Government's concessions in that proceeding, there was no dispute regarding the location of Mississippi's coastline along the seaward or south side of the barrier islands. The only practical issue, as the United States stated in its brief, was whether Mississippi's boundary description described a water area "extending more than three miles *seaward of the outermost islands of Mississippi*." (Brief of U.S., *supra*).

In its final decree, the Court defined the term "coastline" as the "line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." (364 U.S. 503). In view of the concession of the United States, there was no reason to believe that Mississippi's

"coastline" would be located anywhere other than along the southern shores of the barrier islands. In this context, the Court provided for an accounting of revenues by the states

Whenever the location of the coastline of any of the defendant states shall be agreed upon or determined (364 U.S. 503)

In the current litigation before the Special Master, the United States has renounced its previous concession. Its present position is that Mississippi Sound is no longer inland waters and that the coastline of Mississippi follows the mainland shore. Following this argument, the United States asserts that Mississippi is entitled to the submerged lands within three miles of the mainland shore and the coast of each island. The application of the Government's position creates enclaves of high seas wholly within the boundaries of Mississippi and changes the status of the remaining waters of the Sound to territorial waters. (See attached exhibit).

The Government's concession respecting Mississippi Sound was made after careful consultation between the Departments of the United States and reflect both the geographic facts and the official United States policy at the time. The advantages of the concession are obvious. The United States did not face the burden of disproving the status of Mississippi Sound as inland waters. It also simplified the proceedings and narrowed the issues to the principal concern regarding the extent of Mississippi's boundary in the Gulf of Mexico as measured from the portico islands.

The United States now seeks to change the basic premise upon which the Court's decree with respect to Mississippi was based. If the United States is permitted to

repudiate its previous concession and is successful in establishing Mississippi's coastline along the mainland shore, Mississippi will have been denied the opportunity to prove its boundary claim beyond three miles in the Sound. Mississippi would expect to show that Congress established Mississippi's boundary along the barrier islands and along with other departments and agencies of the United States has repeatedly reaffirmed that boundary over the past 165 years.

The Submerged Lands Act, 43 U.S.C. § 1301 *et seq.*, confirmed the boundaries of the Gulf Coast states as previously approved by Congress up to three leagues (10 1/2 miles) into the Gulf from their coastline. It further granted to each state rights to the submerged lands within those boundaries as confirmed or extended. Thus, if Mississippi's boundary, as previously approved by Congress, lay along the seaward side of the portico islands, the Submerged Lands Act would have confirmed that boundary or a boundary up to three leagues from the coastline.

Assuming *arguendo* as does the United States that Mississippi's coastline follows the mainland shore, the state may yet be able to prove that its boundary as previously established or approved by Congress lay along the south side of the barrier islands. To the extent that Congress recognized Mississippi's boundary along the barrier islands, the Submerged Lands Act confirms a seaward boundary at that distance or to a distance of three leagues, whichever is less. While such a boundary would not establish the Sound as inland waters, it would nevertheless confirm in the State of Mississippi paramount rights to the submerged lands and natural resources of the entire area.

It is anticipated that the United States may cite the Court's observation respecting the written stipulation with Louisiana. (394 U.S. 11, 73, n. 97) The Court declined to bind the United States by its concession relating to the Breton Sounds. It noted:

Louisiana has not relied to its detriment on the concessions which appear to have been made primarily for purposes of reaching agreement on the leasing of the submerged lands pending a final ruling on their ownership. The Interim Agreement of 1956 specifically recognized that neither party would be bound by its position. (394 U.S. 11, 73, n. 97)

Also see the Final Decree at 364 U.S. 503 (1960).

Mississippi, however, was joined as a party subsequent to June 24, 1957 (*U.S. v. Louisiana*, 354 U.S. 515 (1957)). Prior to that time, Louisiana was the sole defendant in the action. Consequently, Mississippi was not a party to the 1956 Interim Agreement between the United States and Louisiana, nor did it enter into any agreement with the United States for leasing of submerged lands. While the agreement with Louisiana expressly provided neither party would be bound by the so-called Chapman Line along the Louisiana coast, no such line was ever depicted along the Mississippi coast, nor did the United States state any reservations with respect to the status of Mississippi Sound as inland waters. Its sole purpose in making the concession was apparently to simplify the Government's proof and limit the issue to the narrow question of whether Mississippi was entitled to extend its boundary to more than three geographical miles into the Gulf of Mexico as measured seaward from the portico islands.

CONCLUSION

For the foregoing reasons, the State of Mississippi submits that it will be prejudiced by the United States' recent repudiation of its earlier concessions and that it is just and appropriate for the Court to grant relief from its December 12, 1960 final decree.

The granting of such relief will permit the reconsideration of the extent of Mississippi's grant of submerged lands in light of the United States' current position that the "coastline" follows the mainland shores rather than the barrier islands.

In view of the upcoming trial before the Special Master, it is important that Mississippi have the opportunity to present and have considered its evidence on this issue. The granting of relief will not delay the trial of any issue before the Master.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I, Jim R. Bruce, a Special Assistant Attorney General for the State of Mississippi, have caused to be mailed this date via United States Postal Service, first-class postage prepaid, a true and correct copy of the foregoing MOTION FOR RELIEF FROM DECREE and MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM DECREE to the following:

Donald A. Carr, Esq.
Department of Justice
Todd Building, Room 639
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Benjamin Cohen, Esq.
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This, the 20th day of May, 1982.

JIM R. BRUCE



