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POINTS TO REMEMBER

Kidnaping - missing persons, change in Criminal Division policy re: investigation

The Criminal Division has recently initiated a new policy whereby this Division closely reviews any decision by the Federal Bureau of Investigation not to conduct an investigation in those missing person cases wherein the facts indicate possible violations of the Federal kidnaping statute. Under this new policy, the Bureau will refer information concerning questionable missing person cases to this Division. The Criminal Division will thoroughly review such information, and if deemed warranted, will request the FBI to immediately commence an investigation under the authority of the kidnaping statute.

United States Attorneys who become aware of a missing person case in their District which may involve a kidnaping should insure that such information is brought to the attention of the Criminal Division. Questions concerning the policy should be directed to Attorneys of the General Crimes Section of (FTS) 202-739-2745.

(Criminal Division)

ANTITRUST DIVISION

Assistant Attorney General Thomas E. Kauper

DISTRICT COURT

SHERMAN ACT

GOVERNMENT AMENDS COMPLAINT TO INCLUDE A CLAIM FOR DAMAGES AGAINST STEEL COMPANIES.

United States v. Armco Steel Corporation, et al., (Civ. 73-H-1427; April 30, 1974; DJ 60-138-175)

On April 30, 1974, the United States filed an Amended Complaint in its antitrust suit against nine steel companies doing business in the State of Texas. The original complaint, filed on October 15, 1973, sought to enjoin the defendants from future bid rigging practices and concerted efforts to suppress the competition of independent steel fabricators in the fabrication and sale of reinforcing steel in violation of Section 1 and 2 of the Sherman Act. The Amended Complaint adds as a second cause of action a claim for an undetermined amount of damages sustained by the United States, as a result of the alleged conspiracy, pursuant to Section 4A of the Clayton Act. This suit is now pending before Judge Carl O. Bue, Jr., sitting in Houston, Texas.

The United States had no knowledge of the conspiracy until sometime in 1973, when facts revealing its scope were ascertained during the course of grand jury proceedings which culminated in the return, on August 30, 1973, of the indictment in United States v. Armco Steel Corporation, et al., Criminal Action No. 73-H-336, Southern District of Texas. The companion criminal case is now pending in the Court of Judge Allen B. Hannay.

The defendants in the civil action are Armco Steel Corporation, Middletown, Ohio; Bethlehem Steel Corporation, Bethlehem, Pennsylvania; Border Steel Rolling Mills, Inc., El Paso, Texas; The Ceco Corporation, Chicago, Illinois; Laclede Steel Company, St. Louis, Missouri; Schindler Brother Steel, Sealy, Texas; Structural Metals, Inc., San Antonio, Texas; Texas Steel Company, Fort Worth, Texas; and United States Steel Corporation, Pittsburgh, Pennsylvania.

The Amended Complaint alleges that the United States contracts for and purchases buildings and other structures which contain substantial quantities of re-bars fabricated by the defendants. The United States also provides funds to state and local governments for the construction of buildings, structures and highways containing re-bars. As a result of the alleged violations of the Sherman Act, the United States has been

compelled to pay significantly higher prices for construction projects than it would otherwise have paid and has provided substantially greater funds to state and local governments than it otherwise would have provided had there been no unlawful collusion. Sales by the defendants of re-bars in Texas, pursuant to the bid rigging scheme, amount to more than $20 million annually.

In an effort to comply with the provisions of Rule 15a of the Rules of Civil Procedure for the United States District Courts and the requirements of Rule 16H of the Local Rules of the United States District Court for the Southern District of Texas, counsel for the defendants were notified of the Government's intention to file the Amended Complaint and afforded an opportunity to indicate their opposition thereto. The pleading was filed without objection by counsel for any defendant.

Staff: Wilford L. Whitley, Jr., David R. Bickel, Jill Radek and Ernest T. Hays (Antitrust Division)

CIVIL DIVISION
Assistant Attorney General Carla A. Hills

COURTS OF APPEAL

DUE PROCESS RIGHT TO A PRIOR HEARING

FOURTH CIRCUIT HOLDS THAT H.E.W. NEED NOT PROVIDE FORMAL EVIDENTIARY HEARING BEFORE WITHHOLDING CURRENT MEDICARE PAYMENTS TO OFFSET PAST OVERPAYMENTS TO HOSPITALS

Wilson Clinic & Hospital, Inc. v. Blue Cross of South Carolina (C.A. 4, No. 73-1148, March 14, 1974; D.J. 137-36-897)

The Medicare Program, 42 U.S.C. 1395 et seq., is administered by HEW through "fiscal intermediaries" which supervise the payment of funds to reimburse hospitals providing medicare services to patients. The fiscal intermediary in this case, Blue Cross, gave notice to Wilson Hospital (1) that the hospital had been overpaid for past medicare services, and (a) that Blue Cross intended to suspend future medicare reimbursements until the overcharges were recouped. The parties held informal meetings to discuss the amount of the overcharges. Pursuant to HEW's regulations, 20 C.F.R. 405.491 - 405.499i (May 27, 1972), Blue Cross informed the hospital of its right to an informal hearing on the determination of overpayments. The hospital did not request a hearing under the regulations, but brought suit to enjoin Blue Cross from withholding any medicare funds. The district court granted the injunction on the ground that due process required a prior evidentiary hearing before current medicare payments could be withheld.

The Fourth Circuit reversed. The court of appeals found that due process was satisfied by the procedures followed in this case -- notice, hearing, and advice of the right to review the fiscal intermediary's determination and adjustment of medicare reimbursement. These procedures--which did not include the preparation of a complete record and a comprehensive opinion at the pre-setoff stage--fully comported with Goldberg v. Kelly, 397 U.S. 254 (1970), the court concluded.

Staff: Jean Staudt (Civil Division)

CUSTOMS BONDS

FIFTH CIRCUIT UPHOLDS LIABILITY OF BERTHING AGENTS ON STANDARD FORM CUSTOMS BOND.

Gissel v. United States, Thibodeaux v. United States (C,A, 5 No. 73-2829, April 26, 1974, D.J. 61-75-180, 61-74-593).

The defendants, local berthing agents for a vessel, signed a standard form blanket bond agreeing to "promptly pay any duties * * * found legally due the United States from any master or other proper officer or owner of said vessels * * * on account of said vessels." The government subsequently sought recovery from the agents under these standard form bonds, for foreign repairs customs duties assessed against a vessel under 19 U.S.C. 257 (1964).

The Court of Appeals affirmed the district court's ruling in favor of the government for the penal sum of each bond. The Court of Appeals accepted our argument that the bonds called for payment of foreign vessel repairs customs duties. In addition, the court rejected the bonding company's argument that the government's act of permitting the vessel to depart was a release of the security, and that the government was limited to its remedy against the vessel owner (now insolvent).

Staff: Robert E. Kopp (Civil Division)

CRIMINAL DIVISION

Assistant Attorney General Henry E. Petersen

COURT OF APPEALS

IMMIGRATION

DECISION OF ATTORNEY GENERAL OR HIS DELEGATE TO DENY ALIEN BAIL PENDING FINAL DISPOSITION OF DEPORTATION PROCEEDINGS WILL BE UPHELD IF THERE IS ANY BASIS IN FACT FOR THE DECISION.

United States ex rel. Mamdouh Barbour v. District Director of the Immigration and Naturalization Service, (C.A. 5, No. 73-1411, March 21, 1974; D.J. 39-76-213)

Mamdouh Barbour in February, 1972, deserted from the Syrian Army, where he had served as a major in SAIQA, a Syrian organization which is reportedly connected with terrorist groups. Shortly thereafter he entered the United States through the use of false identification. The Syrian Government issued a warrant for Barbour's arrest on a charge that he had embezzled more than $450,000 from the Syrian Army.

In May, 1972, Barbour was apprehended by the Immigration and Naturalization Service and has been detained since that time. His application for release on bail pending a final decision in his deportation proceedings was denied by the immigration judge. This decision was affirmed by the Board of Immigration Appeals, which made a determination that Barbour was a security risk. This decision was based on classified information furnished to the Board by the Government.

On January 17, 1973, the District Court for the Western District of Texas denied Barbour's petition for habeas corpus. The court held that Barbour was not a security risk but was a bail risk. On appeal, the Fifth Circuit found that the classified information upon which the Board relied was adequate basis for holding that Barbour was a security risk.

The Court of Appeals noted that, in reviewing the decision of the district court, it was not restricted to reviewing only the district court's grounds of decision. The decision pointed out that the Attorney General has wide discretion to determine whether to release an alien on bail, and the alien has a heavy burden to establish that the Attorney General has abused his discretion. The Court rejected Barbour's contentions that (1) the ex parte presentation to the Board of confidential information violated his constitutional right to due process, and (2) because the confidential, security risk information had not been considered by the immigration judge who denied the bail, the Board was precluded from considering such information.

Staff: James P. Morris and Donald H. Feige, Criminal Division

FOREIGN AGENTS REGISTRATION ACT

OF 1938, AS AMENDED

The Registration Unit of the Criminal Division administers the Foreign Agents Registration Act of 1938, as amended, (22 U.S.C. 611) which requires registration with the Attorney General by certain persons who engage within the United States in defined categories of activity on behalf of foreign principals.

APRIL 1974

During the last half of this month the following new registrations were filed with the Attorney General pursuant to the provisions of the Act:

Malaysian Tourist Information Centre of San Francisco registered as agent of the Tourist Development Corporation, Ministry of Trade and Industry, Government of Malaysia. Registrant is to promote and facilitate tourism in Malaysia and to disseminate information with respect to Malaysia to prospective group or individual tourists. Registrant's yearly operating budget has been set at approximately $95,000.

Partido de la Liberacion Dominicana of New York registered as agent of Juan Bosch of the Dominican Republic. Registrant will engage in political activities and will disseminate propaganda via all media to inform the Dominican community and other interested individuals or organizations about the social and political situation in the Dominican Republic as interpreted by the foreign principal. Registrant reports no receipt of funds as of the date of filing its registration.

Graff International, Inc. of New York City registered as agent of the Bulgarian Tourist Office, Sofia. Registrant will engage in public relations and advertising to promote tourism to Bulgaria and reports receipt of $39,657.27 from the principal for the period March 1973 - January 1974. John Paul Andrews filed a short-form registration statement as writer working directly on the Bulgarian account.

Activities by persons and organizations already registered under the Act:

TADCO Enterprises, Inc. of Washington, D.C. filed exhibits in connection with its representation of Jamaica Nutritional Holdings Ltd., Kingston. Registrant will select and recommend U.S. personnel for the administration of a Jamaican commodity procurement and supply agency and will develop and supervise a commodity procurement training program for Jamaican personnel. Registrant will also advise the foreign principal and the Jamaican Embassy on commodity market conditions in the U.S. and implementation procedures of PL. 480 agreements and recommend shipping agents. Registrant's fee for these services will be $24,000 per year.

Voltaire F.T. Andres of New York filed exhibits in connection with his representation of the Department of Tourism, Manila, Philippines. Registrant is to conduct travel market studies and to generally promote tourism to the Philippines.

Shearman & Sterling of New York filed exhibits in connection with its representation of ASA Limited, Johannesburg, South Africa. Registrant represents the foreign principal in the preparation of annual proxy statements, the filing of periodic reports with the Securities & Exchange Commission and the rendering of occasional advice with respect to U.S. securities laws. Registrant receives a quarterly retainer of $2,500 plus an additional amount from time to time depending on services performed during the year.

Short-form registrations filed in support of registrations already on file under the Act:

On behalf of Foote, Cone & Belding of New York whose foreign principal is Bermuda Department of Tourism: J. Walter Reed as Vice President, Director of Media engaged in the preparation and placement of advertising in U.S. media to attract tourists to Bermuda. Mr. Reed reports a salary of $37,000 per year.

On behalf of Jones, Brakeley & Rockwell, Inc. of New York whose foreign principal is Omar Sakkaf, Minister of State for Foreign Affairs, Kingdom of Saudia Arabia: Henry T. Rockwell as officer engaged in the production and selection of media for an advertisement entitled "Open Letter to the American People" on behalf of the foreign principal. Mr. Rockwell reports a salary of $16,000 per year.

On behalf of the Japan National Tourist Organization of San Francisco: Minoru Soma as Deputy Director and reporting a salary of $1,312.16 per month.

On behalf of Milbank Tweed, Hadley & McCloy of New York whose foreign principals are four foreign banks, three foreign governments, three foreign petroleum companies and one foreign export corporation: Harry E. White, Jr. as partner engaged in legal services and reports pro rata share of periodic distribution of partnership earnings.

On behalf of the Greek National Tourist Organization of Los Angeles: Nikiforos Gegos as Manager engaged in tourist promotion and reporting a salary of $800 per month.

On behalf of Arnold and Porter of Washington, D.C. whose foreign principals are the Ambassador of the Swiss Confederation, Swiss Cheese Union, Inc. and Switzerland Gruyere Processed Cheese Manufacturer's Association: James A. Dobkin as attorney rendering legal services. Mr. Dobkin is a regular salaried employee of registrant.

On behalf of Cox, Langford & Brown of Washington, D.C. whose foreign principals are Government and Embassy of Belgium and Embassy of Italy: John Lansdale, Jr. as attorney reporting a share of partnership profits and William C. Collishaw as attorney and reporting a salary of $29,200 per year.

On behalf of the Arab Information Center of New York: Sami Hadawi as Acting Director of the Dallas branch. Mr. Hadawi disseminates materials for the purpose of improving the understanding between the American and Arab peoples in the area of trade, religion, culture, tourism and politics. He reports a salary of $750 per month.

LAND AND NATURAL RESOURCES DIVISION

Assistant Attorney General Wallace H. Johnson

ENVIRONMENT

CLEAN AIR ACT; APA REQUIRES EPA TO COMPLY WITH INFORMAL RULEMAKING PROCEDURES.

Detroit Edison Company v. Environmental Protection Agency (No. 73-1552; C.A. 6, decided April 18, 1974; D.J. 90-5-2-3-143).

In October 1972, EPA promulgated a regulation which amended the Michigan air pollution control implementation plan. Public hearings were held prior to this promulgation. Subsequent to October 1972, EPA received inquiries as to the meaning of the regulation. In May 1973, EPA promulgated a clarification of its October 1972 regulation. EPA considered its May regulation merely as a clarification of its earlier regulation, and it contended that the May regulation made no change in the substantive requirements of the earlier regulation. Since the May regulation was not regarded as a change in its earlier regulation, EPA did not, prior to the promulgation, conduct informal rulemaking procedures. Detroit Edison challenged the validity of the May regulation.

The Court decided that the May 1973 regulation in fact made substantive changes in the October 1972 regulation, and that since EPA did not conduct informal rulemaking procedures as required by the Administrative Procedure Act, the May regulation must be vacated and the matter remanded to EPA with instructions to comply with the Administrative Procedure Act.

Staff: James R. Walpole (Land and Natural Resources Division)

INDIANS

STATUTORY CONSTRUCTION; EMPLOYMENT PREFERENCE.

Enola E. Freeman v. Rogers C. B. Morton (C.A. D.C. No. 73-1409, decided April 25, 1974; D.J. 90-1-0-914).

The Indian Employment Preference statute, 25 U.S.C. sec. 472, provides that qualified Indians "shall * * * have the preference to appointment to vacancies" at the Bureau of Indian Affairs. The issue in this case was whether the Bureau of Indian Affairs had discretion to make an exception from Indian preference, as regarded a limited number of promotions and lateral reassignments within the Bureau of Indian Affairs which involved no change in responsibility or promotion potential. The court of appeals held that the statute by its terms applies to all vacancies and does not give the Secretary any discretion to make exceptions.

Staff: Eva R. Datz (Land and Natural Resources Division)