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Case Comments S. Sovereign Immunity Goldstar (Panama) S.A. V. United States

holding that Howard's general statements made on the golf course amounted to only puffery is consistent with other federal decisions.[655]

S. Sovereign Immunity

Goldstar (Panama) S.A. v. United States

967 F.2d 965 (4th Cir.), *cert. denied*, 113 S. Ct. 411 (1992)

The United States is not subject to suit unless it explicitly waives its sovereign immunity.[656] One explicit waiver of immunity is the Federal Tort Claims Act (FTCA). The statute provides that the district courts have exclusive jurisdiction for civil actions resulting from the negligent or wrongful conduct of federal government employees acting within the scope of their employment.[657] However, Congress limited the scope of this waiver with certain enumerated exceptions.[658] As a result, subject matter jurisdiction in actions against the United States is quite limited. Recently, the Fourth Circuit had the opportunity to broaden jurisdiction in *Goldstar (Panama) S.A. v. United States*.[659]

In December 1989, United States forces invaded Panama and occupied the capital, Panama City. The plaintiffs (Goldstar) owned businesses in the occupied city. The United States forces remained in the city for nearly a month and effectively eliminated the Panamanian Defense Force (PDF), Panama's only police force. The United States, knowing the PDF's role, tried to provide protection and police Panama City. However, plaintiffs contend that the United States negligently failed to provide adequate personnel, equipment, and orders to protect civilians and businesses within the city. This failure, Goldstar argued, allowed uncontrolled mobs to loot its businesses.

The plaintiffs brought suit in the United States District Court for the Eastern District of Virginia seeking damages for the destruction of their property. The district court dismissed the case for lack of subject matter jurisdiction. Goldstar appealed, arguing that jurisdiction was proper because the United States waived its sovereign immunity. Goldstar advanced two theories supporting its contention. The Fourth Circuit addressed each theory separately.

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655. *See* Zerman v. Ball, 735 F.2d 15, 21 (2d Cir. 1984) (holding that broker's description of stock as "marvelous" was not factual misrepresentation actionable under securities law); Newman v. Rothschild, 651 F. Supp. 160, 163 (S.D.N.Y. 1986) (stating that "[c]ourts have recognized a category of statements by brokers which are better characterized as 'puffery' than as material misstatements . . . [and] the reasonable investor is presumed to understand that this is nothing more than the 'common puff of a salesman,' not a material factual misstatement.").

656. *See* Block v. North Dakota, 461 U.S. 273, 287 (1983) (holding that United States cannot be sued without waiver of sovereign immunity).

657. 28 U.S.C. § 1346(b) (1988).

658. 28 U.S.C. § 2680 (1988).

659. 967 F.2d 965 (4th Cir.), *cert. denied*, 113 S. Ct. 411 (1992).

First, Goldstar argued that certain provisions of the Hague Convention, an international treaty to which the United States is a party, constitute a waiver of sovereign immunity. The treaty provides that a party who violates certain regulations shall in some cases be liable to pay compensation for resulting damages. Goldstar claimed that the United States violated a Hague Convention regulation by failing as an occupying force, to take necessary measures to restore order. The plaintiffs contended that this provision constituted a self-executing waiver of sovereign immunity, and therefore, the United States was liable for compensation.

The Fourth Circuit rejected this contention. First, the court stated that international treaties are not presumed to create privately enforceable rights, but rather are self-executing only if the document as a whole manifests an intent to provide a private right of action. The Fourth Circuit examined the entire document and found no explicit provision creating a private right of action. The court further determined that a reasonable reading of the treaty revealed no intent by the signatories to create such a right.

The Fourth Circuit compared the provisions of the Hague Convention with similar provisions of the Geneva Convention. The court reasoned that the comparison was appropriate because the Supreme Court had recently concluded that the Geneva Convention did not create a private cause of action. The Fourth Circuit determined that the language of the two provisions were largely similar, and therefore, the Hague Convention and the Geneva Convention need not be construed to have different meanings. The comparison yielded the conclusion that the Hague Convention did not create a private cause of action.

Finally, the court examined the language in the treaty stating that parties would issue instructions to their own armed forces. The court concluded that such a provision is evidence that each individual nation would take subsequent executory actions to discharge the obligations of the treaty. Therefore, the court concluded that the treaty is not self-executing and does not constitute a waiver of sovereign immunity.

Goldstar alternatively argued that jurisdiction was proper under the FTCA. The Fourth Circuit acknowledged that the FTCA explicitly grants jurisdiction and waives sovereign immunity for tort claims against the United States, but the court also noted that Congress placed limits on the statute's scope. First, the court explained, the FTCA does not create novel causes of action.[660] The FTCA only conveys jurisdiction when an alleged breach of duty is tortious under state law or a federal law analogous to a state law. The court rejected Goldstar's argument that the Hague Convention provided for a cause of action, and that as an international treaty, it was equivalent to federal law because the Hague Convention was not self-executing, and therefore, it did not create a cause of action. Therefore, no tortious cause of action existed under federal law. Finding no valid tort for

660. Goldstar (Panama) S.A. v. United States, 967 F.2d 965, 969 (4th Cir. 1992).