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## Alkon v. United States

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Filed January 19, 2001

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 00-3439

THOMAS ALKON

v.

UNITED STATES OF AMERICA; G&C ENTERPRISES;  
RIGGER & ERECTORS; LEBRON ASSOCIATES; SPILLIS  
CANDELA AND PARTNERS, INC.

United States of America,  
Appellant

Appeal from the District Court of the V irgin Islands  
(Division of St. Croix)  
(D.C. Civ. No. 95-cv-00139)  
District Judge: Honorable John P. Fullam

Argued  
December 4, 2000

Before: MANSMANN and ALITO, Circuit Judges,  
and ACKERMAN, District Judge.\*

(Filed: January 19, 2001)

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\* Honorable Harold A. Ackerman, United States District Judge, sitting by designation.

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#### OPINION OF THE COURT

MANSMANN, Circuit Judge.

In this personal injury action filed against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. S 1346, the United States appeals from an order of the District Court directing that the United States pay interest on a judgment entered against it at the rate set forth in the Virgin Islands Code, 5 V.I.C.S 426, rather than pursuant to

the generally applicable rate formula set forth at 28 U.S.C. S 1961. We are convinced that the calculation should have been undertaken in accordance with the provisions of section 1961. Accordingly, we will reverse the order of the District Court.

I.

Thomas Alkon, a St. Croix attorney, was seriously injured in a fall on the stairs at the Federal Courthouse on St. Croix. Following a bench trial in an action brought pursuant to the Federal Tort Claims Act, Alkon was awarded a judgment in the amount of \$2,463,750.<sup>1</sup> The United States paid the judgment and interest on that judgment calculated according to the formula set forth in 28 U.S.C. S 1961.

Thereafter, Alkon filed a motion in the District Court seeking to have interest due on the judgment recalculated at the higher 9% rate set in 5 V.I.C. S 426. The motion was granted. This timely appeal followed.

II.

This appeal requires that we determine which of two statutory provisions controls the calculation of interest applicable to the judgment awarded in this action. We begin by noting that in almost all instances, the calculation of interest on a judgment rendered against the United States in a civil action is governed by the provisions of 28 U.S.C. S 1961.<sup>2</sup>

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1. The United States filed an appeal, and the order entering judgment in favor of Alkon was affirmed. *Alkon v. United States*, 185 F.3d 861 (3d Cir. 1999).

2. Prior to 1982, section 1961 provided that interest on civil judgments obtained in district courts would be calculated at the rate set by state law. The interest rate on FTCA judgments against the United States, however, was set at 4% by 28 U.S.C. S 2411. In 1982, Congress deleted section 2411's uniform rate applicable to FTCA judgments and made section 1961 applicable to such judgments. Congress also established a uniform rate for district court judgments under section 1961, changing the prior practice of determining interest rates in accordance with state law. Section 1961 now reads as follows:

The District Court held that section 1961 should not apply in this case because the District Court of the Virgin Islands is not a "district court" for purposes of the statute. Accordingly, the District Court found that interest on the judgment awarded to Alkon should be calculated with reference to 5 V.I.C. S 426, which provides that: "The rate of interest on judgments and decrees for the payment of money shall be 9 percent per annum."

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S 1961. Interest

(a) Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal judges.

(b) Interest shall be computed daily to the date of payment except as provided in section 2516(b) of this title and section 1304(b) of title 31, and shall be compounded annually.

(c)(1) This section shall not apply in any judgment of any court with respect to any internal revenue tax case. Interest shall be allowed in such cases at the underpayment rate or overpayment rate (whichever is appropriate) established under section 6621 of the Internal Revenue Code of 1986.

(2) Except as otherwise provided in paragraph (1) of this subsection, interest shall be allowed on all final judgments against the United States in the United States Court of Appeals for the Federal [C]ircuit, at the rate provided in subsection (a) and as provided in subsection (b).

(3) Interest shall be allowed, computed, and paid on judgments of the United States Court of Federal Claims only as provided in paragraph (1) of this subsection or in any other provision of law.

(4) This section shall not be construed to affect the interest on any judgment of any court not specified in this section.



In reaching this conclusion, the District Court found that strict construction of the term "district court" as used in section 1961 is appropriate in light of the prohibition set forth in section 1961(c)(4): "[Section 1961] shall not be construed to affect the interest on any judgment of any court not specified in this section."

In order to determine whether Congress did, in fact, intend that the interest formula set forth in section 1961 not apply to FTCA judgments obtained in the District Court of the Virgin Islands, the District Court first looked to 28 U.S.C. S 451. That section reads in part:

The term "court of the United States" includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

The terms "district court" and "district court of the United States" mean the courts constituted by chapter 5 of this title.

Chapter 5 of Title 28, 28 U.S.C. SS 81-144, provides for the constitution of the district courts of the fifty states, the District of Columbia, and Puerto Rico. As the District Court in this matter recognized,

Conspicuously absent from the [Chapter V] list are the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands, which were established pursuant to 48 U.S.C. SS 1611, 1424, and 1694, respectively.

*Alkon v. United States*, No. 139F/1995, mem. opinion at 2 (D.V.I. Feb. 15, 2000).

According to the District Court, since the District Court of the Virgin Islands was not constituted by Chapter 5, it is not a "district court" for purposes of 28 U.S.C. S 1961; that section, therefore, does not establish the applicable interest rate. The District Court summarized its holding as follows:

While the matter is not altogether free from doubt, I conclude for several reasons that the correct rate of

post-judgment interest to be awarded in the District Court of the Virgin Islands is the 9% rate prescribed by 5 V.I.C. S 426. First, I must consider the mandatory language of 28 U.S.C. S 1961(c)(4), which limits the application of that section to only those courts specified therein. . . . Second, I am r eluctant to substantially invalidate a section of the Vir gin Islands Code absent some compelling reason to do so. 3 Finally, calculating interest on judgments against the United States at the same rate as other Virgin Islands judgments is consistent with the overall theme of the Federal Tort Claim Act itself, which is to r ender the government liable to the same extent as private tortfeasors.

Alkon v. U. S., mem. op. at 3.

III.

We agree with the District Court that r esolution of the issue raised in this appeal turns on whether Congress intended to mandate a technical reading of the term "district court" as used in 28 U.S.C. S 1961(a) when it provided in 28 U.S.C. S 1961(c)(4) that: "[t]his section [providing for the calculation of inter est rates] shall not be construed to affect the interest on any judgment of any court not specified in this section." W e do not, however, agree with the District Court's conclusion that the term "district court" must be read to exclude application of section 1961 to judgments entered against the United States pursuant to the FTCA in the District Court of the Virgin Islands.

In declining to adopt a reading of section 1961 which would make it inapplicable to the judgment obtained here, we are guided by our decision in *In r e Jaritz*, 151 F.3d 93 (3d Cir. 1998). There, we were asked to determine whether 28 U.S.C. S 155 authorized the Third Cir cuit Judicial

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3. A finding that interest, in this matter , should be calculated with reference to section 1961 would not invalidate 5 V.I.C. S 426. Section 426 would still be applied to calculate inter est on judgments rendered by the Territorial Court of the Vir gin Islands.



Council to transfer bankruptcy judges to the Virgin Islands. This determination hinged on a narrow question: "[W]hat did Congress intend when it used the term 'judicial district' in section 155." Id. at 97. "Did it use the term in a generic sense to refer to the geographic area in which a district court exercises judicial authority in bankruptcy matters, or did it intend its scope to be limited to the geographic area in which an Article III district court exercises judicial authority over such matters." Id.

In order to answer this question, we first considered the statutory text, finding nothing that would "limit[] its scope to judicial districts having an Article III district court." Id. at 97. We next considered relevant legislative history, and again failed to find any indication to suggest "an intent to restrict the authorization conferred by section 155 to Article III districts." Id.

Not finding the statutory text or the legislative history to be dispositive, we "inquire[d] whether the broader or the narrower reading of 'judicial district' [would] best service Congress's objectives in enacting Chapter 6 and section 155 in particular." Id. at 98. We identified the objective of Chapter 6 as the creation of "a reorganized bankruptcy system in which a specialized corps of full-time bankruptcy judges would assist district court judges in adjudicating bankruptcy matters." Id. We identified the objective of section 155 as the "efficient and effective use of that corps of full-time bankruptcy judges." Id. Interpreting Congress's use of the term "judicial district" in light of the purpose underlying the statute, we were unable to discern "any reason Congress might have wished to garner the efficiencies provided by [section 155] for judicial districts having an Article III district court and not for judicial districts having an Article IV district court which exercises the jurisdiction of an Article III by virtue of the legislation that created it." Id.

Finally, we addressed the dilemma posed by the application of 28 U.S.C. § 451's limited definition of a "district court" as a court constituted under Article III. We wrote:

While we, of course, recognize that a definitional section like section 451 must presumptively be taken

as reflecting the Congressional intent when a defined term is used even in subsequent legislation, it is not controlling where consideration of the term's immediate context and its place in the overall Congressional scheme clearly indicate that it is being used not as a defined term of art but in its commonly understood sense.

Id. at 100.

We found support for our analysis of the applicability of section 451 in the Supreme Court's decision in *Int'l Longshoremen's & Warehousemen's Union v. Juneau Spruce Corp.*, 342 U.S. 237 (1952). There, the IL WU filed suit against Juneau Spruce in the District Court for the Territory of Alaska, alleging violations of the Labor Management Relations Act. Section 303(b) of that Act provided that an action for violation of its provision could be brought "in any district court of the United States." Addressing whether the District Court of Alaska had jurisdiction over the matter, the Supreme Court accorded great weight to the underlying purpose of the LMRA, concluding that:

[S]ince Congress lifted the restrictive requirements which might preclude suit in courts having the district courts' jurisdiction, we think it is more consonant with the uniform, national policy of the Act to hold that those restrictions were lifted as respects all courts upon which the jurisdiction of a district court has been conferred. That reading of the Act does not, to be sure, take the words "district court of the United States" in their historic, technical sense. But literalness is no sure touchstone of legislative purpose. The purpose here is more closely approximated, we believe, by giving the historic phrase a looser, more liberal meaning in the special context of this legislation.

342 U.S. at 242-43.

In *Jaritz*, we concluded that the analysis undertaken in *Juneau Spruce* applied with equal force:

Although the term "judicial district" as defined elsewhere in the Judicial Code refers only to the

specifically enumerated district courts, the purpose of section 155 -- ensuring maximally efficient use of judicial resources -- is "more closely approximated" by a more pragmatic and flexible construction of that term.<sup>4</sup>

151 F.3d at 101.

Recognizing that our resolution of the question presented in *Jaritz* is relevant to the issue raised here, the District Court in this matter cited *Jaritz*, relying on our opinion to support its conclusion that in light of the section 1961(c)(4) limitation, the meaning of the term "district court" as used in 1961(a) should be restricted to the definition set forth in 28 U.S.C. S 451. The District Court also concluded that "calculating interest on judgments against the United States at the same rate as other Virgin Islands judgments is consistent with the overall theme of the Federal Tort Claims Act itself, which is to render the government liable to the same extent as private tortfeasors." *Alkon v. U.S.*, mem. op. at 4.

IV.

While we agree with the District Court that this matter should be resolved with reference to the analysis in *Jaritz*, we are convinced that faithful adherence to that analysis better supports the view that the interest rate applicable to the judgment in this case should be calculated in accordance with section 1961 rather than pursuant to the Virgin Islands Code. First, the language of section 1961 itself does not -- even considering the section c(4) limitation -- unequivocally preclude its application to the District Court for the Virgin Islands.

The legislative history of section 1961, too, is devoid of any reference to the Virgin Islands and does not suggest why Congress might have intended that FTCA judgments reached in the District Court of the Virgin Islands not be subject to the provisions of section 1961. What scant legislative history there is suggests the opposite. Section

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4. We then found that, section 155 notwithstanding, bankruptcy judges could be authorized to serve temporarily in judicial districts of Article IV courts under the provisions of an alternate statutory section.

1961 was amended, as part of the Federal Courts Improvement Act of 1982, to standardize the calculation of interest rates applicable to civil judgments obtained in federal court. Instead of continuing the practice of calculating interest on civil judgments in accordance with varying state formulae, Congress intended, in amending section 1961, to "set[ ] a realistic and [uniform] rate of interest on judgments" which would be "applicable to all litigation in the Federal courts." S. Rep. No. 97-275, at 30 (1981), reprinted in 1982 U.S.C.C.A.N. p. 11, 40 (emphasis added).<sup>5</sup>

Nothing in the legislative history supports the notion that Congress, in drafting the 1961(c)(4) limitation, had the District Court for the Virgin Islands or any other non-Article III court in mind. In view of the emphasis on rate uniformity, we cannot agree with the District Court that Congress intended that judgments in the V irgin Islands be subject to an interest rate not prevailing anywhere else in the federal system.

We are also convinced that under the approach outlined in *Jaritz*, the definition of "district court" and its use in section 1961 should be assessed, not, as the District Court found, in terms of the scope of the Federal T ort Claims Act, but in terms of section 1961 itself. The District Court wrote, "[C]alculating interest on judgments against the United States at the same rate as other Vir gin Islands judgments is consistent with the overall theme of the Federal Tort Claims Act itself, which is to r ender the government liable to the same extent as private tortfeasors." *Alkon v. U.S.*, mem. op. at 3. We focus instead on the legislative intent underlying section 1961 and are convinced that in amending that section Congr ess intended

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5. Although section 1961 does explicitly mention the Court of Appeals for the Federal Circuit and the Court of Federal Claims, it is likely that this mention flows from the fact that these courts were created pursuant to the Federal Courts Improvement Act of 1982. Section 1961 was amended as part of that same legislation and sought, by r eference to these courts, to clarify certain aspects of their operation. W e cannot infer from the specific mention of these courts that Congr ess intended that section 1961 not apply to judgments obtained in the District Court of the Virgin Islands.

to place all FTCA litigants obtaining judgments against the United States in a district court on the same footing; reading the term "district court" so as to exclude the District Court of the Virgin Islands would destroy the very uniformity that Congress sought to achieve.

Looking, as we did in *Jaritz*, at the statute itself, its legislative history, and the purpose underlying the enactment, we are satisfied that the term "district court" as it is used in section 1961 should be read "not as a defined term of art but in its commonly understood sense" to include the District Court of the Virgin Islands. In *re Jaritz*, 151 F.3d at 100.

V.

Adherence to the analysis set forth in *Jaritz* provides sufficient reason for us to conclude that the interest calculation in this matter is controlled by the provisions of section 1961. In the interest of completeness, however, we note that factors outside the scope of our decision in *Jaritz* also favor application of section 1961.

First, the use of the term "district court" in 28 U.S.C. S 2414 which authorizes the "payment of final judgments rendered by a district court . . . against the United States" and in 28 U.S.C. S 1304, which refers to section 2414 and appropriates amounts necessary to pay final judgments against the United States and interest thereon has not been interpreted to exclude the District Court of the Virgin Islands. To adopt the District Court's reading of section 1961 would, as the government points out, "accord[ ] the phrase 'district court' one meaning as used in the provisions authorizing the United States to pay such judgments with interest, and another meaning as used in the [closely related] provision specifying the rate of interest owing on such judgments."

Second, we agree with the government that the District Court's determination that the Virgin Islands Code controls the calculation of interest impinges upon the sovereign immunity for interest of the United States. The United States' waiver of sovereign immunity for interest for purposes of the FTCA is set forth at 31 U.S.C. S 1304 and

is subject to strict construction. See, e.g., *Andrulonis v. United States*, 26 F.3d 1224, 1231 (2d Cir. 1994). The District Court's analysis of section 1961 does not consider the scope of the United States' waiver and, as the government argues, "subjects the United States to greater liability in [this] case," and "puts it at the mercy of the Virgin Islands legislature more generally, requiring the federal government to pay whatever rate of interest the Virgin Islands legislature may enact."

Finally, we find support for our application of section 1961 in the provisions of S 1614(b) which were enacted as part of the 1984 amendments to the Revised Organic Act of 1954. That section directs that the provisions of Title 28 "shall apply" to the District Court of the Virgin Islands "[w]here appropriate." We examined the reach of this directive in *Walker v. Government of the Virgin Islands*, 230 F.3d 82 (3d Cir. 2000), concluding:

[H]aving vested the District Court of the Virgin Islands with the jurisdiction of the district courts of the United States, Congress intended all of the provisions of Title 28, which speak to procedure, jurisdiction, venue, and particular proceedings (e.g., habeas), to apply, "[w]here appropriate," to the District Court of the Virgin Islands.

*Id.* at 87.6 Alkon has been unable to identify and we have not found any policy concern or other consideration that would render the calculation of interest in this matter pursuant to section 1961 "inappropriate." We agree with the government that, "there is no plausible basis for considering it 'inappropriate' to apply the same rate of interest to the judgments rendered by the District Court of the Virgin Islands as is applied to judgments rendered by the district courts of the fifty States and Puerto Rico." In fact, in at least one Virgin Islands case, we applied section

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6. The legislative history of 48 U.S.C. S 1614(b) indicates that Congress intended that "the only exception to this extension [of Title 28 to the District Court of the Virgin Islands] will be those provisions which are in conflict with specific legislation applicable to the Virgin Islands and those relating to judges who are appointed during good behavior." 130 Cong. Rec. 23,790 (August 10, 1984) (statement of Sen. Weicker). The provisions of section 1961 do not fall into either category.

1961 to the award of post-judgment interest in a civil case, never questioning that section's application. *Dunn v. Hovic*, 13 F.3d 58 (3d Cir. 1993).

In sum, we find that construction of the term "district court" in related statutes, concerns bearing on sovereign immunity, and the applicability of 48 U.S.C. S 1614(b) bolster our analysis of the factors identified in *Jaritz*, and provide additional support for applying section 1961 to calculate the amount of interest owed on the judgment awarded to Alkon.

VI.

We hold that interest on judgments obtained against the United States in the District Court of the Virgin Islands pursuant to the FTCA, should be calculated in accordance with the provisions of 28 U.S.C. S 1961. Accordingly, we will reverse the order of the District Court.

A True Copy:

Teste:

Clerk of the United States Court of Appeals  
for the Third Circuit