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Limitaiton on Compensation for Victims of Nuclear Accidents Upheld

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LIMITATION ON COMPENSATION FOR VICTIMS OF NUCLEAR ACCIDENTS UPHELD

CONSTITUTIONAL LAW–PRICE-ANDERSON ACT:

The Price-Anderson Act $560 million limitation on liability for a nuclear accident held not to be a violation of the due process clause of the fifth amendment to the United States Constitution. *Duke Power Co. v. Carolina Environmental Study Group, Inc.* ____U.S. ____, 98 S. Ct. 2620 (1978).

In a decision certain to have great impact on the development of the nuclear power industry in the United States, the U.S. Supreme Court, in *Duke Power Co. v. Carolina Environmental Study Group, Inc.*[1] upheld the constitutionality of the Price-Anderson Act (Price-Anderson).[2] Price-Anderson imposes a $560 million limit on aggregate liability for a single nuclear accident.[3] In an opinion written by Chief Justice Warren Burger, the Court held that the liability limitation was a proper exercise of congressional power to regulate "the burdens and benefits of economic life."[4] Further, the limit neither denied the victims of a nuclear catastrophe adequate compensation for their injuries in violation of the Due Process Clause of the Fifth Amendment nor violated their right to equal protection under the law.

In the Atomic Energy Act of 1954,[5] Congress implemented a policy of encouraging the private sector to become involved in the development of atomic energy for peaceful purposes under a program of federal regulation and liscensure. At the time, the major obstacle to private development in the nuclear energy industry was the risk of vast liability in the event of a nuclear accident. The private nuclear industry and insurance companies were unable to absorb the potential liability of such a disaster. Congress was faced

1. ____U.S. ____, 98 S. Ct. 2526 (1978).
2. 42 U.S.C. §2210 (1957).
3. 42 U.S.C. §2014(q) (1970).
4. Duke Power Co. v. Carolina Environmental Study Group, Inc., ____U.S. at ____, 98 S. Ct. 2620, 2636, quoting from Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15 (1976).
5. The Atomic Energy Act of 1954, 42 U.S.C. §§2011-2281 (1970).

with the prospect of the private sector withdrawing from participation in the nuclear power industry.[6]

In 1957, Price-Anderson was enacted for the dual purposes of "protect[ing] the public . . . and encourag[ing] the development of the atomic energy industry."[7] Its provision for a $560 million limitation on liability was meant to accomplish the latter purpose. While the limit on liability remains at the original $560 million, in 1975 Congress amended Price-Anderson: "in the event of a nuclear incident involving damages in excess of [the] amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude . . ."[8]

In 1973, suit was brought in the Federal District Court for the Western District of North Carolina seeking a judgment declaring Price-Anderson to be unconstitutional.[9] Plaintiffs included two organizations, the Carolina Environmental Study Group and the Catawba Central Labor Union, and forty individuals who lived within close proximity to two planned nuclear power plants. The defendants were Duke Power Company, an investor owned public utility which was constructing the two power plants, and the Nuclear Regulatory Commission, which licenses and regulates such plants.

The district court found for the plaintiffs. It reasoned that the $560 million liability limitation was not rationally related to the potential losses which victims of nuclear accidents would suffer.[10] The limitation, therefore, violated the Due Process Clause. Since victims of a nuclear catastrophe would be forced to bear the burden of injury themselves while society as a whole benefited from the existence and development of nuclear power, their constitutional guarantee of equal protection under the law was being violated.[11] This decision was appealed directly to the United States Supreme Court.

Before considering the merits of appellees' constitutional claims, the Court addressed various jurisdictional, standing, and ripeness questions.

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6. *Hearings before the Joint Comm. on Atomic Energy on Gov't. Indem. for Private Licensees and AEC Contractors Against Reactor Hazards*, 84th Cong., 2d Sess., 122-124 (1956).

7. 42 U.S.C. § 2012(i) (1970).

8. 42 U.S.C. § 2210(e) (1975).

9. Carolina Environmental Study Group, Inc. v. United States Atomic Energy Comm'n., 431 F. Supp. 203 (W.D.N.C. 1977).

10. *Id.* at 222.

11. *Id.* at 224-5.

Before the federal district court, appellees had alleged jurisdiction under 28 U.S.C. 1337, which gives original jurisdiction to federal district courts in actions "arising under" an Act of Congress regulating commerce. Appellants had not questioned this basis of jurisdiction. The Supreme Court found, however, that the district court did not have jurisdiction under that statute. Inasmuch as the appellees' right to relief did not depend upon an interpretation of Price-Anderson, but rather upon a construction of the U.S. Constitution, jurisdiction did not lie under section 1337. But, instead of dismissing the appeal for lack of derivative jurisdiction, the Court stated that jurisdiction existed under the general federal question statute, 28 U.S.C. 1331.[12]

In deciding whether the appellees had standing to sue initially, the Court made two inquiries.[13] First, did appellees suffer an injury sufficient to satisfy constitutional standing requirements? The Court held that proof of thermal pollution to nearby lakes and increased airborne radioactivity was sufficient to establish such an injury.[14] Next, the Court asked whether there was a causal connection between these injuries and Price-Anderson. The Court stated that Duke Power Company would not have built the two nuclear power plants without the liability protection offered by Price-Anderson.[15] Therefore, appellees had standing to bring this cause of action.[16]

In dealing with the ripeness issue, the Court noted that resolution of the questions raised by appellees' complaint would eliminate doubts concerning the scope of private liability in the event of a nuclear accident. In addition, delaying resolution of this case would foreclose appellees from obtaining relief for their injuries. This case was therefore held ripe for adjudication.[17]

The Court began the analysis of the constitutional claims with a discussion of the appropriate standard of review to apply. Appellants argued that Price-Anderson was a congressional regulation of eco-

12. Duke Power Co. v. Carolina Environmental Study Group, Inc., _____U.S. at _____, 98 S. Ct. 2620, 2629.

13. The Court held that to establish standing, the appellees must have a "personal stake" in the outcome of the litigation, Baker v. Carr, 369 U.S. 186, 204 (1962), as shown first by evidence of a "distinct and palpable injury," Warth v. Seldin, 422 U.S. 490, 501 (1975), and secondly, by a causal connection between that injury and the challenged conduct of the defendant, Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 261 (1977).

14. Duke Power Co. v. Carolina Environmental Study Group, Inc., _____U.S. at _____, 98 S. Ct. 2620, 2631.

15. *Id.* at 2633.

16. *Id.* at 2635.

17. *Id.* at 2635.

nomic interests. Therefore, a presumption of constitutionality existed and the appropriate standard was whether Congress had acted in an arbitrary or irrational manner in enacting the law.[18] If not, it should be upheld. Appellees countered that the interests jeopardized by Price-Anderson were more important then those in the usual economic due process case and a more stringent standard of review[19] was called for.

In adopting appellants' standard of review, the Court stated that Price-Anderson is a "classic example of an economic regulation . . . a legislative effort to structure and accommodate the 'burdens and benefits of economic life.' "[20] This is clear from the fact that Congress' purpose in passing it was to remove the economic impediments to the development of nuclear power. Since Price-Anderson is presumed to be constitutional under this reviewing standard, the Court placed the burden on appellees to demonstrate that Congress acted in an arbitrary or irrational manner.[21]

The Court held that a rational relationship exists between the congressional "concern for stimulating the involvement of private enterprise in the production of electric energy through atomic power"[22] and the statutory limit on liability in Price-Anderson. Even if the $560 million fund did not insure full recovery, this limitation figure was intended to be a starting point.[23] Considering the "exceedingly small risk of a nuclear incident involving claims in excess of $560 million"[24] in conjunction with the congressional commitment to aid the victims of a nuclear tragedy, the Court stated that the $560 million figure is within constitutional limits. Thus, the Court held that the appellees had failed to meet their burden and therefore the liability limitation scheme of Price-Anderson is not violative of due process.[25]

The Court also rejected the district court's conclusion that Price-Anderson encouraged irresponsibility on the part of the power companies. It referred to the extensive steps which prospective licensees

18. *See* Ferguson v. Skrupa, 372 U.S. 726, 731-732 (1963); Usery v. Turner Elkhorn Mining Co., at 15.

19. Craig v. Boren, 429 U.S. 190 (1976); United States Trust Co. of N.Y. v. New Jersey, 431 U.S. 1 (1977).

20. Duke Power Co. v. Carolina Environmental Study Group, Inc., _____U.S. at _____, 98 S. Ct. 2620, 2636.

21. *Id.*

22. *Id.*

23. *Id.* at 2637.

24. *Id.*

25. *Id.* at 2638.

were required to follow before they were granted a license to construct or operate a nuclear power plant.[26]

Although this decision seems to be merely an affirmation of congressional power to regulate economic interests, its implications are far greater. For this case was deliberated during a time of national insecurity caused by our country's growing dependence on foreign sources of energy, and nuclear power is viewed by some as a panacea for this problem. Be that as it may, the Court's statement that the risks of a nuclear accident involving claims in exess of $560 million is "exceedingly small," belies the facts.

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26. *Id.*