

HANDOUTS

Handouts

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Crusaders and Criminals, Victims & Visionaries
Historic Encounter between Connecticut Citizens and the United States Supreme Court
David Bollier

The Amistad Case

Major 19th Century Cases. 1986

In re Amistad (1842)

The Amistad mutineers: slaves or free men?

For weeks, newspapers along the East Coast in 1839 reported sightings of a strange ship with tattered sails, a hull coated with barnacles and seaweed, and a crew of Negroes. Was the ship friend or foe? Where did it come from? And what was its purpose?

The mystery began to unravel in late August when a dilapidated 120-ton clipper-ship known as the *Amistad* (Spanish for "friendship") was found anchored in the Long Island Sound, near Montauk. Its crew consisted of 49 black men, three girls, and a captain's boy, none of whom spoke English. As it happened, a United States naval brig, the *Washington*, was in the area making a survey of the waters. Upon investigating the strange ship, Lieutenant Commander Thomas Gedney and Lieutenant Richard Meade discovered that the Negroes on the *Amistad* were Africans who had staged a mutiny at sea after being bought by Spanish slave-traders in Cuba.

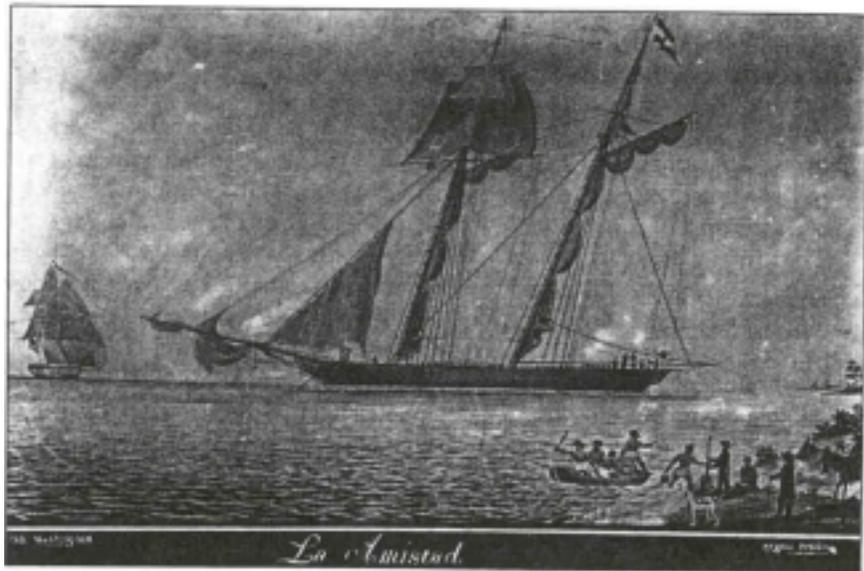
While Spain had outlawed slavery and slave-trading years earlier, there were still men who made fortunes by capturing Africans and illegally selling them into slavery in America. Many slave-traders first took their kidnap victims to Cuba - a Spanish colony - where they were given false papers certifying that the captives had been born before 1820. A loophole in the law made it legal to keep people in slavery if they had been born before 1820. By bribing Cuban officials, the slave-traders bought fraudulent papers making captured Africans "legal" slaves.

In Cuba, two slave-traders, Don Pedro Montez and Don Ruiz, bought 53 such "legal" slaves for \$22,000. Most of them were Mendi tribesmen who had been kidnapped from Sierra Leone in Africa. Montez and Ruiz bought cargo space on the *Amistad*, a trading ship, and set sail for the United States to sell the slaves for \$44,000.

Once at sea, there was not enough food and water for the Mendi tribesmen. Under the leadership of Cinque, the strong, natural leader of the group, the captives revolted and took control of the *Amistad*. Using sugar cane knives, they killed the captain and the cook, while other crewmembers fled by rowboat.

The mutineers spared the lives of Montez and Ruiz because they were the only people on board who knew how to navigate the ship. Cinque ordered them to sail the ship back to Africa. As Ruiz later testified, "We were compelled to steer east in the day; but sometimes the wind would not allow us to steer east; then they would threaten us with death. In the night we steered west and kept to the northward as much as possible." Two months later, after following a zigzag course, the *Amistad* limped into the Long Island Sound.

It was at this point that the Navy's Lieutenant Commander Gedney and Lieutenant Meade stumbled across the *Amistad*. After boarding it, they immediately took charge and towed the vessel to New London. From there, they sent the Africans to New Haven, where they were jailed pending a court trial for piracy and murder.



Aftermath of a mutiny.

The discovery of *La Amistad* in the Long Island Sound triggered a national debate in 1839 over the fate of the 53 African tribesmen aboard. Should they be freed or enslaved?

The situation quickly exploded into an international controversy. Montez and Ruiz, now rescued from their ordeal, demanded that the ship and the "slaves" be returned to them. The Spanish Government, citing a 1795 treaty with the United States, demanded that President Martin Van Buren return the *Amistad* to Spain. The treaty stated that if a vessel of either nation were forced to enter the other's ports "under urgent necessity," that ship would be released immediately.

But there were other claims on the *Amistad* as well. Gedney and Meade, the naval commanders who "captured" the *Amistad*, asked the courts to give them salvage rights to the ship and its property which they said should include the 53 Mendi tribesmen. Gedney and Meade claimed they had found the broken-down vessel at sea, and therefore were entitled to whatever price the ship and its contents could bring.

When word of the *Amistad* capture reached the abolitionists (the activists seeking to outlaw slavery in the United States), they insisted that the Africans be set free at once and returned to Sierra Leone. They argued that it would be an outrage for the U.S. Government to consider the Negroes as property - even though, of course, slaves were then recognized as property in the South and also in Connecticut until 1848. (After 1808, it became illegal to import slaves into the United States. While slavery remained legal in Connecticut until 1848, slaves could only be brought into the state for short stays.) Abolitionists argued that the Mendi were free men who had been kidnapped and fraudulently pressed into slav-

ery by a nation that itself had outlawed slavery.

Anti-slavery forces raised funds to defend the Africans and shrewdly used the case to advance their cause. The chief lawyer for the *Amistad* captives was Roger Sherman Baldwin, the grandson of Roger Sherman, a prominent Connecticut attorney and later a distinguished Governor. Lewis Tappan, a leading abolitionist from New York, who happened to have a summer home in New Haven, helped fund much of the litigation and public agitation to free the captives.

While waiting for trial, the Mendi were held in the New Haven county jail, then located across from the green. The captives soon became celebrities. As historian Gene Gleason writes:

When they were let out to exercise on the New Haven village green, they somersaulted and leaped about with exuberance that astonished the reserved New Englanders. Over 5,000 persons paid 12-1/2 cents each to view the Africans, and the jailer kept his own account of the proceeds. Phrenologists studied the bumps on their heads, a wax museum entrepreneur made life-masks of them, and Nathaniel Jocelyn, a local artist, painted Cinque's portrait.

Newspapers around the country quickly sensationalized the controversy and melodramatically dubbed the *Amistad* "the long, low, black schooner." A play based on the events of the *Amistad* later opened in New York and successfully toured other cities. A Boston artist painted an enormous 135-square-foot dramatic painting entitled, "The Massacre," which portrayed the killing of the *Amistad* captain and cook. The painting drew large, paying crowds and favorable reviews.

In September 1839, the U.S. Circuit Court in Hartford dismissed the piracy- murder charges on the grounds that the alleged crimes had occurred in Spanish territory. But the Court instructed the federal district court to take up the competing claims over what should be done with the *Amistad* itself and its human "cargo."

Under the law and customs of the time, the court faced many perplexing dilemmas. Should the *Amistad* and the Africans be released to Spain under the terms of the 1795 treaty - even though Spain or Cuba would probably put the Africans into slavery, or would execute them? Or should Spain's treaty claims be ignored since the *Amistad* captives had been kidnapped in violation of Spain's own anti-slave trade laws?

Then there was the question of what should happen to the *Amistad* itself and its \$40,000 cargo of cottons, silks, and luxury goods. Should the U.S. naval commanders receive salvage rights? Or should the ship be returned to the Havana shippers who argued that the *Amistad* belonged to them? Or should the ship be given to the Spanish Government?

The most important question of the *Amistad* trial, of course, was whether the court should consider the Africans property or human beings. If the *Amistad* captives were to be considered slaves, then the court should return the 53 Africans to the slave-traders Montez and Ruiz. But if they were free men, then the court

Stranger in a strange land.
Cinque, the leader of the Mendi Tribesmen kidnapped from their home in Sierra Leone, Africa. New Haven painter Nathaniel Jocelyn painted this portrait in 1839 as Cinque and his fellow captives awaited trial



should immediately set them free. But what then? How would they, return to Africa?

The *Amistad* case provoked such enormous public controversy because it forced a definitive ruling on issues that had smoldered, unresolved, for years. In 1836, Congress had refused to deal with any slavery issues by passing its infamous "Gag Resolution," which automatically tabled (indefinitely delayed) any proposals regarding slavery. President Martin Van Buren was a northerner who did not want to inflame the South - so he, too, steered clear of any slavery issues.

So the *Amistad* case forced the courts to deal squarely with a question that the President and Congress had sidestepped - and which ultimately would require a civil war to resolve: What *is* the legal status of black people in a nation that is divided on the question of slavery?

In January 1840, after a weeklong trial in the New Haven Courthouse, District Court Judge Andrew T. Judson, a Van Buren appointee who had shut down Prudence Crandall's boarding school for Negro girls in 1833, rendered a judgment that surprised the abolitionists. He ruled that the Africans were not slaves even under Spanish law and thus should be released. Gedney and Meade received one-third of the salvage of the *Amistad* property - which would not include the Mendi.

The Government appealed the case, first to the Circuit Court and then to the U.S. Supreme Court. To bring added prestige to their case, the abolitionists enlisted Ex-President John Quincy Adams to argue the case. Adams, known as Old Man Eloquent to abolitionists and as the Madman of Massachusetts to southerners, was serving as a Representative in the House at the time. Although he was 74 years

old, in poor health and filled with self-doubts, Adams threw himself into the case. He spoke for 4 1/2 hours in a stirring defense that Justice Joseph Story later described as "extraordinary for its power, for its bitter sarcasm, and its dealing with topics far beyond the record and points of discussion."

On March 9, 1841, Story, one of the most accomplished Justices in our history, delivered the Supreme Court opinion which upheld the district court ruling: the Africans had been illegally pressed into slavery and thus the Spanish treaty could not be enforced. The ruling was explosive in the sense that it upheld the right to rebel against unlawful enslavement - a holding that surely made southern slaveholders uneasy.

The abolitionists took the Africans to Farmington while taking Cinque and a few other Mendi on tour to major U.S. cities. At churches and meeting halls, the tribesmen were exhibited and used to raise funds to finance their return to Africa. In November 1841, three years after their kidnapping by slave-traders, the Mendi tribesmen returned to Sierra Leone. Only 35 of the original 53 had survived their three years of captivity.

They were accompanied by American missionaries who set up a mission there. The American Missionary Association, which had backed the *Amistad* captives, went on to become a major force in Negro education in America. Spain continued to ask later Presidents to pay for the seizure of the *Amistad*. But Congress rejected any payments, and finally, in 1884, four decades later, Spain renounced its claims to the *Amistad* and its human "property."

Segment One Terms

Abolitionist - a person who advocates doing away with slavery.

Admiralty Law - the branch of law concerning maritime disputes.

Chattels Real - the Common Law term in the 18th and 19th Centuries used to refer to slaves.

Chattel Property - the Common Law term in the 18th and 19th Centuries, which referred to land and other forms of property.

Criminal Law - the branch of the law dealing with crimes and their punishment.

Civil Law - the branch of the law dealing with private rights of individuals, groups or businesses such as contracts, personal injury cases and dissolution of marriages.

Courts - institution that (a) determines whether a person accused of breaking the law is guilty or not guilty; (b) resolves disputes involving civil or personal rights; (c) interprets provisions of laws enacted by the legislature; (d) decides what is to be the law when none exists for certain situations; (e) determines whether a law violates the Constitution of the state or the United States.

Judicial Review - the court's power to void any law passed by Congress or a state legislature that conflicts with the nation's highest law, the Constitution.

Justice - The principle or ideal of moral rightness. The upholding of what is right and fair. In our country, justice also includes the concept that every person is entitled to fair and impartial treatment under the law without regard to race, gender, ethnicity, age or religion. Due process requires that no law or government procedure be arbitrary or unfair.

Law - the rules and regulations made and enforced by government that regulate the conduct of people within a society.

Salvage Rights - the right to claim goods or property that remain after casualty.

The Rule of Law - the notion that all members of society – average citizens and government officials such as senators, judges and even the President – are required to support the legal system and obey its laws. No one is above the law.

Treaty - a formal agreement between two or more countries.

The Case of Mary Jones - Justice and the Rule of Law

A state statute provides as follows:

"In order to protect the health and welfare of the people of this state, all persons owning land in this state are required to maintain their land free of pollution that might endanger the public water supply. If the Department of Environmental Protection, after investigation, determines that any land is polluted so that it poses a danger to the public water supply, the Department shall order the landowner to remove the cause of the pollution, and the landowner shall promptly do so at his or her own expense. Any landowner who incurs expenses in removing pollution may sue and recover the amount of such expenses from any other person or company that is proved to have caused such pollution. "

Another state statute provides that any landowner who receives a cleanup order from the Department may appeal to the Superior Court, and the Court must reverse the order if the Court finds that the order is "not in accordance with the statute."

Mary Jones is a single mother of two small children. She works as a computer programmer for an insurance company. Until her father died last year, Mary had been struggling to support her family, but then she inherited the sum of \$50,000, and this greatly relieved her financial problems. Her father also bequeathed her a parcel of undeveloped land, about 20 acres in another part of the state, which he had purchased shortly before he died as an investment. Mary is now the owner of this land, although she has never seen it.

After Mary had become the owner of the land, she received a letter from the Department of Environmental Protection informing her that its investigation revealed that the land was polluted and that the pollution was endangering the public water supply in the area. Specifically, the Department said it found that the soil is contaminated by some dangerous chemicals which are seeping into a stream on the property. This stream flows directly into the local public water reservoir. Pursuant to the state statute, the Department ordered Mary, as the landowner, to remove the cause of the pollution.

Upon receiving the Department's order, Mary did a little investigating of her own. First, she consulted some experts in pollution removal, and they verified that her land is seriously polluted and endangers the reservoir. Mary also learned, to her dismay, that cleaning up chemical pollution is extremely expensive. She was told that it would cost at least \$175,000 and possibly even more, depending upon the results of some scientific tests that would have to be performed to clean up her property. As to the cause of the problem, a little good detective work revealed that the pollution occurred sometime around 1965 (before Mary was born), when a private rubbish removal company, TrashAway, Inc., illegally dumped the chemicals on the property without the knowledge of the person who then owned the property. Official records showed, however, that TrashAway, Inc. has been out of business since 1972, when its owner died leaving

only a few hundred dollars in his estate. Finally, real estate experts advised her that the property, even unpolluted, would be worth only about \$25,000. Mary decided that her only choice was to appeal the Department's order to the court.

In court, Mary argued that neither she nor her father was in any way responsible for the pollution, nor did either of them have any knowledge of it before acquiring the property. She pointed out that it would be futile to try to collect anything from TrashAway, Inc., which is defunct and without funds. But if she, the innocent landowner, were compelled to pay for the clean up, she would be wiped out financially and be in debt for many years into the future. She argued that the legislature could not have intended that the statute it enacted would have such an "unjust" result. Under these circumstances, she argued, the only just decision would be to require the Department to pay for the clean up.

The Department argued that Mary is required to follow the provisions of the state statute, which was duly enacted by the legislature to protect all the people of the state. It pointed out that if the Department were ordered to pay, the Court would essentially be shifting the responsibility from the landowner to the taxpayers, in violation of the statute, and that would be unjust. The Department argued that all citizens are subject to the "rule of law," and the Court may not make exceptions in individual cases unless authorized by the law to do so.

Before the judge made a decision, the judge became aware that people in the community as well as the media overwhelmingly supported Mary in the case. As an editorial in the most influential newspaper put it, "This is about a good, hardworking, innocent citizen caught up in a situation not of her own making, but in danger of being financially destroyed by it. As applied here, this is a cruel and destructive law that nobody wants. The outcome is in the judge's hands. The citizens of the state, voters, are watching. Do the right thing, judge!"

The Judge's Think Sheet

The Case of Mary Jones

1) When was the land contaminated?

2) Does Mary own the land according to Connecticut law?

3) What is the law in this case?

4) How does the rule of law apply in this case?

5) Is Mary responsible for paying the clean-up costs?

6) Would your answer be different, if instead of Mary, the landowner were Micro Tec Company, a multi-billion dollar corporation? Why or why not?

7) To what extent, if any, should you as the judge be influenced in your decision by the obviously strong public opinion in support of Mary?

Synopsis of Starr Case

Susan Starr v. Commissioner, Department of Environmental Protection
Supreme Court, State of Connecticut
226 Conn. 358 (1993)

Superior Court, State of Connecticut
Judicial District of Hartford/New Britain
Docket No. CV91-0398162 (Feb. 10, 1992, Maloney, J.)

Synopsis

The Case of Mary Jones was presented to illustrate the complexities and ambiguities that often confront judges as they attempt to ensure justice for our citizens while adhering to the rule of law. Although the *Mary Jones* case is fictional, it was derived from an actual case in Connecticut that arose as the result of efforts by the Connecticut Department of Environmental Protection to enforce state anti-pollution laws against an individual landowner. The case ultimately involved all three branches of government - the Judicial Branch (the Superior and Supreme Courts), the Executive Branch (the Department of Environmental Protection), and the Legislative Branch (the state House of Representatives and Senate) - each of which struggled in its own way to ensure that the rule of law would result in justice.

If you read the two court decisions, you will see that the facts in the actual case were very similar to those in the fictional case that you read for your class. In 1987, Susan Starr inherited from her deceased husband a 44-acre plot of vacant land in Enfield. Many years before her husband acquired the land, a now defunct trucking company used it as a dumping ground for polluted waste material that it was hauling for a gas company in Massachusetts, which is also now out of business.

Mrs. Starr had very little to do with the land either during her husband's lifetime or after she inherited it. In fact, she was denied access to the land from the time she inherited it until the summer of 1989, when the pollution was first noticed. This circumstance came about because the town of Enfield had closed the road leading into the land.

In the summer of 1989, the State Department of Environmental Protection commenced an investigation of complaints of noxious odors coming from the property. The investigation took about a year. The Department discovered that the polluted waste material that had been dumped on the property many years ago had begun to contaminate the public water supply. Accordingly, on July 9, 1990, the Commissioner of Environmental Protection issued an enforcement order to

Mrs. Starr directing her to clean up the pollution. The Commissioner is the head of the Department, and orders are issued in his or her name.

Mrs. Starr requested a hearing before the Department in order to protest the order. The Department held a hearing, which is very much like a court trial and allows an individual who objects to an order of the Commissioner to present evidence and legal arguments in opposition. After hearing Mrs. Starr's side of the story, the Commissioner issued a final decision ordering her to eliminate the pollution at her own expense.

The Commissioner based the decision primarily on a state statute enacted by the legislature in 1967. This became General Statute 22a-432. One of the state senators who sponsored the law in the legislature called it a "declaration of war against water pollution." The statute provides that if the Commissioner of Environmental Protection finds that any person "is maintaining a condition which reasonably can be expected to create a source of pollution to the waters of the state," the Commissioner may issue an order to such person to eliminate the pollution.

It was estimated that the cost of the cleanup would be about \$700,000, far in excess of what the land was worth, estimated at perhaps \$40,000. Instead of inheriting an asset, Mrs. Starr was handed a harsh financial liability.

Superior Court Proceedings

Mrs. Starr appealed the Commissioner's cleanup order to the Connecticut Superior Court, which is authorized to decide such appeals and to reverse the Commissioner's decision if the court finds that it was based on an error in interpreting the law. She thus became the plaintiff in the Superior Court case, and the Commissioner became the defendant. In the court proceeding, the attorneys for both sides submitted "briefs," which are written legal arguments in support of their respective positions, and the attorneys also appeared in court and presented oral arguments to the judge.

The Superior Court judge decided the appeal in favor of the plaintiff, Mrs. Starr. The judge ruled that the defendant Commissioner had misinterpreted the law in holding the plaintiff responsible for cleaning up the pollution on her property. The judge reasoned that she could not be found to be "maintaining" the pollution, as prohibited by the statute, because the word "maintaining" includes the concept of some positive conduct or effort designed to preserve a particular condition.

In the absence of any definition of the term "maintaining" in the statute itself, the judge turned to the definitions included in different dictionaries as an aid in interpreting the law. In effect, the judge ruled that the clean-up statute as enacted by the legislature applies only to those owners of property who have had some active role in causing or continuing the pollution of the water supply. But in this case, the judge noted, all the evidence indicated that the plaintiff had never had any active involvement of any kind in the property and knew nothing of the pollution.

The law in question read, "In order to protect the health and welfare of the people of this state, all persons owning land in this state are required to maintain their land free of pollution that might endanger the public water supply."

Since the plaintiff was essentially "innocent" of any involvement in the pollution, the judge held that the statute does not apply to her, and the Commissioner's order was in error. The judge did point out that other statutes could be employed to require even an innocent landowner to bear some of the cost of clean-up in some cases, but he noted that the department had not followed the procedures set forth in those laws in this case.

Supreme Court Proceedings

Now it was the Commissioner's turn to appeal, and he did so by appealing to the Connecticut Supreme Court. The Supreme Court is empowered to hear and decide appeals of judgments of the Superior Court and to reverse those judgments if they are found to be based on errors in interpreting or applying the law.

As in the Superior Court proceedings, attorneys for both the plaintiff and the defendant submitted briefs in support of their respective positions. In addition, several other organizations were permitted by the Supreme Court to submit briefs on issues in the case of importance to them. These organizations were allowed to participate as "amicus curiae," or friends of the court, in the interest of providing diverse viewpoints that might be helpful to the Supreme Court in deciding the appeal. The attorneys also appeared in court and presented oral arguments on the legal issues.

The Supreme Court decided the case in favor of the defendant Commissioner, reversing the judgment of the Superior Court. In essence, the Supreme Court decided that the Superior Court judge had erroneously interpreted the relevant statute. It held that the term "maintaining," as used in the statute, does not necessarily require any affirmative action or conduct on the part of the landowner.

In reaching its ruling, the Supreme Court declined to follow the dictionary definitions of the term "maintaining" that the Superior Court judge had used and instead turned to prior Supreme Court decisions which had considered the use of the term in the context of the law relating to public nuisances. This method of reasoning in the law, relying on other cases previously decided, is known as "following precedent." The Court noted that in a preamble to the statute in question, the legislature had declared pollution of the water supply to be a "public nuisance." In prior public nuisance cases, the Court stated, the concept of "maintaining" a nuisance does not necessarily include any fault on the part of the owner of the land where the nuisance exists, and the landowner can be ordered to eliminate the nuisance and compensate anyone harmed by it regardless of the landowner's innocence in causing or continuing the nuisance.

Since the term "maintaining" (a source of pollution), as defined by the Supreme Court in interpreting the statute, can include totally passive ownership of the land where the pollution exists, the Supreme Court ruled that the Commissioner correctly applied the law in ordering the plaintiff to eliminate the pollution, regardless of her lack of fault and regardless of the expense to her.

In rendering its decision, the Supreme Court acknowledged the difficulty of reconciling the rule of law, as determined by the Court, with ordinary notions of fair play and the idea that a person who is not at fault should not be held responsible for damages or harm to others or the public. The Supreme Court stated:

"We realize that our resolution of this appeal may result in the imposition of liability on the plaintiff for abating the pollution on her land, the cost of which may be in excess of the value of the land. That appears to be a draconian result that violates notions of fairness... Our perception, however, is that the legislature in 1967 saw the state's water pollution problem as being so grave that its concern for the public welfare outweighed any sympathy for individual property owners."

In concluding its decision holding the plaintiff financially responsible for cleaning up the pollution on her property, even though she was completely innocent of causing it, the Supreme Court made this observation about the roles of the different branches of government: "If the result is unduly harsh, the remedy properly lies with the legislature and not this court." That is to say, the judicial branch of the government is obligated to apply the law as set forth in statutes enacted by the legislature, and it is up to the legislature, not the Court, to modify the law if that is what the citizens of the state deem to be appropriate.

Legislative Activity

While the appeal to the Supreme Court was pending, the Legislature became aware of the issue surrounding innocent landowners and quickly passed a law that relieved these landowners from liability. The law did not automatically excuse Mrs. Starr from her liability, as the law set up a procedure for the landowner to establish innocence.

Summary: Starr Case Legislation

OLR AMENDED BILL ANALYSIS

SB 820 (File 690, as amended by House "A")*

AN ACT ESTABLISHING AN INNOCENT LANDOWNER DEFENSE IN POLLUTION CASES

SUMMARY: This bill limits innocent landowners with polluted property from liability to the state for assessments, fines, and other costs imposed for cleanup. Liability is limited to reimbursing the state for cleanup costs incurred to the extent of the landowner's interest in the property if the amount of the state's expenditure is a lien on the property handled in accordance with a procedure available under existing law. The limitation on liability applies to spills or discharges whether they occurred before or after passage of the bill, but does not affect actions that are final and no longer appealable after that date.

The landowner must establish his innocence by a preponderance of the evidence. In determining innocence, a court may take into account a person's specialized knowledge or experience; the amount paid for the property as it relates to the value if it were not polluted; commonly known or readily available information; the obviousness of the presence or likely presence of the pollution; and the ability to detect pollution by inspection.

The bill makes any person who sells an interest in contaminated real estate, regardless of whether the state has spent money to clean the site, liable up to the net sale proceeds for the cost of cleanup. Net proceeds are the amount received by a person after paying reasonable expenses and satisfying security interests.

Under current law, unchanged by the bill, secured lenders acquiring title by foreclosure or tender of a deed in lieu of foreclosure have liability limited to the value of the real estate if the spill occurred before acquisition of title.

Current law allows the Department of Environmental Protection (DEP) to issue an order to abate water pollution or correct a hazardous waste violation to a landowner whenever the department is also issuing an order to the person who caused the pollution. The bill exempts innocent landowners from liability for any assessment, fine, or other costs imposed by the state under this law, except through imposition of a lien on the property for reimbursement of state cleanup costs.

*House Amendment "A" eliminates a landowner's innocence if he had reason to know of the act or omission of a third party (the unamended bill excluded only those who actually knew of such act or omission) or if there was a reasonably foreseeable threat of pollution; eliminates fiduciaries as innocent landowner's; makes certain executors, trustees, and administrators of decedent's estates innocent landowners; limits an innocent landowner's liability to that obtained by the imposition of a lien on the property; specifies that the limitation on landowner

liability does not affect actions that are final and no longer appealable on passage of the bill; and makes the bill effective on passage.

EFFECTIVE DATE: Upon passage

FURTHER EXPLANATION

Innocent Landowner

Innocent landowners under the bill are of two types. First, those with an interest in property which is contaminated while owned by them. Second, those who acquire property after the contamination and who have not caused the pollution. The term does not apply to secured lenders.

In the first case, a landowner is innocent if the pollution is caused by: (1) an act of God; (2) an act of war; (3) an act or omission of a third party who is not an employee, agent, lessee, or in a direct or indirect contractual relationship with the landowner; or (4) an act or omission occurring in connection with a contract arising from a published rail transportation tariff. In the case of an act or omission of a third party the landowner is not innocent if he had knowledge, or had reason to know, and failed to take reasonable steps to prevent the pollution, or there was a reasonably foreseeable threat of pollution. But in the case of an act or omission of a third party occurring in connection with a rail transportation contact, the landowner is not innocent if he had knowledge and failed to take reasonable steps.

A person who acquires land after contamination is considered innocent if he (1) has no knowledge of the contamination and inquires into previous uses of the property consistent with good commercial or customary practice, (2) is a government entity, (3) acquires the property by inheritance or bequest, or (4) acquires the interest as executor or administrator of a decedent's estate or as trustee receiving the real estate interest from a decedent's estate if the decedent had held the interest in the real estate.

BACKGROUND

Related Case

In *Starr v. Commissioner* (CV91 039 81 62, February 10, 1992) the Superior Court ruled that an innocent landowner cannot be held primarily liable for cleanup of his land unless the DEP also orders the person responsible for causing the pollution.

Legislative History

The Senate referred the bill to the Appropriations Committee on May 18. That committee

favorably reported the bill, with no changes, on May 20.

The Senate adopted Senate Amendment "A" on May 29. On June 7, the House rejected Senate "A" and adopted House "A." House "A" incorporates the changes of Senate "A" and also makes certain trustees, administrators, and executors of decedent's estates innocent landowners; makes a landowner liable for a third party act or omission if there was a reasonably foreseeable threat of pollution; and makes the bill effective upon passage.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference
Yea 25 Nay 0

Judiciary Committee

Joint Favorable Substitute
Yea 27 Nay 0

Committee on Appropriations

Joint Favorable Report
Yea 42 Nay 0