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COMMENT

THE CONGRESSIONAL REFERENCE CASE IN THE UNITED STATES COURT OF CLAIMS

In 1885 Congress passed an act establishing the United States Court of Claims.¹ Prior to that time, the citizen's only relief for the payment of a claim against the United States Government was by way of a petition to Congress for redress of grievances pursuant to the First Amendment.² The United States could not be called upon to answer an individual's claim against it unless it gave its consent. Such consent was not to be found in the United States Constitution. Congress or its committees investigated all grievances against the United States. This procedure was followed even though Congress lacked proper juridical personality to adjudicate private claims. This conduct of necessity made Congress a quasi-judicial body, a function which rightly belonged to the courts. This process was pursued by Congress and claimants until numerous accumulations of claims forced the Congress to seek additional relief not only for Congress but also for the claimants. The result was the establishment of the United States Court of Claims.

The original act creating the Court of Claims, made the court only a fact finding body. The court's jurisdiction was restricted to the determination of facts respecting claims referred to it by either House of Congress. It had no power to render final judgments; that final step was left to the discretion of Congress. Investigation was its sole function. Each judgment required Congressional review and specific appropriation to make it effective. Again Congress instead of being harassed with petitions for claims found that its agendas were replete with reports from the Court of Claims. These voluminous reports could not be handled by Congress or committees thereof without impeding its responsibilities of general legislation. To alleviate this serious deficiency, Congress in 1863 passed an act³ which empowered the court to render final judgments, with the right of appeal to the United States Supreme Court. However, such judgments were in the form of certifications of liability to Congress, and final action thereon resided with the

¹ The act was entitled "An act to establish the United States Court of Claims for Investigating of Claims against the United States," because investigation was the only function of the court. 10 STAT. 612 (1855).
² "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. 1 (Emphasis added).
³ 12 STAT. 765 (1863).
Secretary of Treasury. The Supreme Court found that this procedure was an unconstitutional course of action, and the provisions responsible for such conduct had to be repealed and the court's decisions were afforded finality. Nevertheless, the court still lacked the stature of a judicial tribunal until 1887, when Congress passed the Tucker Act, giving the court full judicial power. No longer was the court a mere administrative body, but instead it was granted jurisdiction over certain controversies with the power of judicial cognizance.

In establishing the United States Court of Claims, the Government by statute waived its sovereign immunity and by acts of Congress has given general consent to be sued in certain classes of cases. The ancient maxim that the Sovereign can do no wrong, or that it should not be accountable for any wrongs that it might do, was no longer true with the establishment of the Court of Claims. The United States could now be sued in certain cases without its consent, Congress gave such consent when it established the court.

From 1885 until recently, the Court of Claims was a legislative court, but in 1953, it was made a constitutional court without qualifications or limitations, whose jurisdiction extends throughout the United States. Thus no longer is there a distinction between the Court of Claims and other Article III Courts.

The court's jurisdiction is primarily statutory and cannot be extended to cases not provided for by Statute. The jurisdiction comprehends the power to render judgment upon any claim against the United States founded upon the Constitution or acts of Congress or any regulation of an executive department, or any contract express or implied, with the United States or for liquidated or unliquidated damages in cases not sounding in tort.

Since the establishment of the Court of Claims is a consent on the part of the United States to be sued in certain types of cases, the only proper defendant is the United States Government. If the claim is against the United States, the fact that there are other potential claimants who are not parties to the suit is not fatal to the court's jurisdiction. All that is necessary is that the United States be the defendant.

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5 14 STAT. 9 (1866).
9 "The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491 (1956).
Nature of Congressional References

The jurisdiction of the Court of Claims extends to two types of cases: cases which are directly taken to the court and are disposed of without any further elaboration, and cases which are referred to it by either House of Congress or the head of an executive department. Cases referred to the court by Congress or one of its committees are aptly known as Congressional Reference cases. These cases are generally those which do not meet legal standards exacted by judicial process and consequently have no independent standing in our judicial tribunals. They only consist of claims against the United States Government. The claimant in these cases is barred from bringing an action for compensation of losses on the merits of the case itself since one or more of the elements necessary for a successful prosecution of the claim are missing, and such absence would preclude recovery had Congress not provided an exclusive remedy for this class of claims.

The Congressional Reference cases arise from the recognition by Congress of the existence of a right that fails to meet strict legal standards, but nevertheless is of a moral or an equitable proportion. In view of this right which a claimant may have against the United States, Congress has authorized the Court of Claims to hear these cases. These cases may consist of claims which are merely moral in character and founded on conscience; however, they may also be gifts or bounties. Without Congressional recognition, these claims would otherwise be outside the court's jurisdiction. Congress afforded this jurisdiction to the Court of Claims by the following provision:

The Court of Claims shall have jurisdiction to report to either House of Congress on any bill referred to the Court by such House, except a bill for pension, and to render judgment if the claim against the United States represented by the referred bill is one over which the Court has jurisdiction under other acts of Congress.

Consequently if X enters into a contract with the United States to perform certain construction work for a fixed sum of money, and the contract contains no escalator clause or other language entitling X to extra compensation in the event costs should be increased, and wages and prices on materials suddenly do go up, and X sustains losses on the contract, X would ordinarily be without a remedy in law or in equity. His case would fail and he would have to sustain the loss. However, he can petition Congress to have his claim referred to the Court of Claims.

If the facts and surrounding circumstances indicate that there is a valid claim either moral or one founded on conscience, the Government will be bound in morals and honor to compensate X for his losses. However, the court may take another view of such a case and refuse to recommend recovery. In cases such as the above other considerations may enter into the claim and preclude recovery. If there are several contractors who find themselves in the same position as X, recovery may be barred by considerations of fiscal policy. The burden of refunding or compensating a large number of such contractors would be too great upon the government. But if X is one of a few contractors, he could probably recover on equitable grounds.

In cases of this nature, the court will find and determine the facts as they really exist, make conclusions of law, and pass on the information to Congress for its final consideration. Whether or not Congress will honor the claim is a matter beyond the court's jurisdiction and within the constitutional power of Congress.

It can be seen from the above discussion that the nature of the Congressional Reference case is such that in the absence of Congressional approval for its referral to the United States Court of Claims, there can be no remedy for the claimant under our judicial system. By providing for such procedure, Congress affords the claimant a remedy which is beyond the power of any judicial tribunal to grant.

In Geo. D. Emery Co. v. United States, the claimant was compensated for certain expenditures made in anticipation that a contract would be entered into with the United States. The compensation was awarded on purely equitable grounds. The court found that in 1950 there was a shortage of abaca fiber, a fiber whose principal use is for marine cordage. In an effort to increase the supply of this fiber plaintiff company was contacted by Reconstruction Finance Corporation about development of a production area in Ecuador. It was contemplated by both parties that eventually a contract would be made. Meanwhile plaintiff expended considerable sums of money in making surveys and arrangements for engaging in the production. These expenses were made with the expectation that a contract would be later entered into. In 1953 it was decided that the project should be abandoned. Plaintiff claimed that the United States should compensate him for his expenses and for work performed at the insistence of the R.F.C. A bill was introduced in Congress for the relief of plaintiff which ultimately was referred to the Court of Claims. The court held:

The failure of Emery to acquire the contract for the project was a financial hardship. It would be unjust to magnify the hardship by disallowing a claim

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14 Ct. Cl., Congressional No. 3-55 (Decided February 11, 1959).
for out-of-pocket expenses made, not as mere arrangements for an expected contract, but for expenses occasioned by its reliance on a contract which, barring extra-circumstances, would have been awarded to Emery... We recommend the payment of $20,000 as the amount equitably due the plaintiff company as compensation..."  

The United States Court of Claims has jurisdiction to report to Congress on any bill referred to it by either House of Congress, except a bill for a pension and to render judgment if the claim against the United States is one over which the court has jurisdiction under the acts of Congress. This jurisdiction to render final judgment in certain cases is different from its statutory jurisdiction relative to references of cases by either House of Congress. In exercise of its statutory jurisdiction to investigate, determine facts, and to report to Congress, the authority of the court is controlled and limited by statute conferring this jurisdiction upon it. The statutes require the court to investigate and determine facts where bills are referred by either House of Congress, and the court reports them with conclusions sufficient to acquaint Congress with the nature and character of the claimant's demand and the amount, if any, legally or equitably due from the United States in cases where the bill referred provides for the payment of a claim legal or equitable; and unless the statute prescribes a different course, the court executes the reference by a report of the facts found and its conclusion as directed by statute. The conclusions which the court makes are for the information of Congress, and in determining the meaning of the terms legal or equitable, or the amount legally or equitably due, the court will confine itself to the meaning of these terms as found in other statutes or authoritative decisions.

Whenever a bill is referred to the court, the court in accordance with its rules must report to the House which referred it all facts relative to the claim, including facts relating to laches, statute of limitations, and facts claimed to excuse the claimant for not seeking established legal remedies. The court will also report conclusions sufficient to inform Congress whether the claim is of a legal or an equitable nature or whether it is a gratuity and the amount, if any, due, to the claimant.

The jurisdiction of the court is necessarily restricted to the bill which transmits the case to the court. The referred bill must be expressly and explicitly for a grant, gift, or a bounty, or for the payment of a legal or an equitable claim.

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[1] Ibid.
This procedure provides judicially determined facts to Congress for its use in deciding whether certain private claims warrant legislative relief, including waiver of certain defenses otherwise available to the United States.

While cases referred to the Court of Claims are usually equitable in nature, a claim legal in nature may also be referred to the court. This is usually done when the claim is outside the jurisdiction of the court, such as a claim arising out of a treaty. In certain cases, the court could have had jurisdiction of the claim in the first instance without it being referred by Congress, but in some cases the statute of limitations within which claims against the United States must be presented has long since run and the cases are outside the realm of the court’s jurisdiction. However, in Congressional Reference cases, the running of the statute is not a bar to allowance of claim by Congress. The United States may waive the statute of limitations and allow recovery where such recovery should be allowed either on legal, equitable, or moral grounds. Only Congress can waive the statute of limitations and allow a suit against the United States. Such power is beyond the jurisdiction of the United States Court of Claims.

In the case of Zadeh v. United States, a claim of a citizen of Iran was referred by the House of Representatives to the Court of Claims. The claimant contended that the United States had seized his tanker on behalf of the Panamanian government and sold it to Turkey and had agreed to save Turkey harmless from any claim growing out of the seizure. The United States alleged that the statute of limitations had run on the claim and that the claimant failed to establish that Iran offered reciprocal rights to American citizens to sue it. These two allegations would ordinarily oust the case out of the jurisdiction of the Court of Claims. However, the court held that since the procedure in reference cases requires all these facts and the court’s province in congressional references is to relay that information, the alleged defects did not affect the court’s jurisdiction. The court further stated that it could not, and would not, render a final judgment, since the relief to be granted was to be legislative relief, and that Congress alone was capable of waiving these defects, if it wished. It was sufficient that the efficacy of the government’s contentions would be determined by the court and conclusions of fact and law respecting the claim would be transmitted to Congress.

Procedure

The procedure governing Congressional Reference cases consists of two steps. First a claimant, having a valid claim against the United States, must petition Congress to have his claim referred to the United States Court of Claims.

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24 The Ship Jones, 24 Ct. Cl. 74 (1889).
26 The running of a statute of limitations is a jurisdictional defect in the Court of Claims. See Carpenter v. United States, 56 F. Supp. 828, 829 (1952).
This usually consists of urging a Senator or a Congressman to present a bill to his body. If such a bill is approved by either of the two Houses of Congress, Congress will pass a resolution referring the bill to the Court of Claims. The resolution may take the following form:

Resolved, That the bill (H.R. 5683) entitled 'A bill for the relief of Willard L. Gleeson,' together with all accompanying papers, is hereby referred to the United States Court of Claims pursuant to sections 1492 and 2509 of Title 28, United States Code; and said court shall proceed expeditiously with the same in accordance with the provisions of said sections and report to the House, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand, as a claim legal or equitable, against the United States, and the amount, if any, legally or equitably due from the United States to the Claimant.\(^7\)

And the bill may consist of the following:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Willard L. Gleeson the sum of ... expanded on channel one and ... for damages. The payment of such sums shall be in full settlement of all claims of the said Willard L. Gleeson against the United States. ... \(^8\)

Once the Court of Claims obtains jurisdiction over the claim, the clerk of the court serves notice on each person whose name appears on the claim and who is interested in the case. Persons thus served with notice have ninety days after such service within which time to appear and assert their claims. At the same time the clerk forwards a copy of each notice to the Attorney General. After the service of notice, all proceedings involved in the disposition of the claim are handled in accordance with the rules of the court prescribed to cases over which the court has jurisdiction,\(^9\) and the machinery of that court. Thus the Congressional Reference case takes the usual course of not being investigated by the five man bench, but instead, the court appoints Commissioners with authority to examine witnesses, receive evidence, and report findings and recommendations to the court.\(^{10}\) The court then will review the findings of the Commissioners.

The court's jurisdiction in reference cases is limited to the claim described in the bill transmitting the case, and the cause of action set up in the petition to Congress must be substantially the same as that in the bill.\(^{11}\) The court examines the bill referring the case and determines what claim Congress intended to have the court investigate, and the bill referring the case must be one involving the payment of money and nothing else.\(^{12}\) The Congressional resolution referring the

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\(^7\) H.R. 284, 83d Congress, 1st Session.
\(^8\) Willard Gleeson v. United States, 140 Ct. Cl. 267 (1956).
\(^9\) Rule 14, Petitions and Procedure in Reference Cases, 140 Ct. Cl. 11 (1956).
\(^{10}\) U.S.C. Title 28 § 792 (1950).
\(^{11}\) Chouteau v. United States, Supra.
\(^{12}\) Calahan v. United States, 42 Ct. Cl. 280 (1907).
claim to the court is merely the medium by which a bill is transmitted to the court and performs no other function. The court is limited in its action to the items and amounts stated in the bill. Once a referred claim is dismissed by the court and the dismissal has been reported to Congress, the court loses jurisdiction of the claim and it is precluded from taking any further action on it. However, the court can again be given jurisdiction of the case by a Congressional re-reference of the claim.

The ultimate function of the Court of Claims in Congressional Reference cases is to determine the facts so that Congress may assume them as the basis for its legislative judgment and discretion. Findings of the court may, for the convenience of Congress, show the relations of the facts to existing law, but findings as to the conclusion of the law are beyond the proper exercise of the court's function. In these cases only Congress can determine the questions of liability on the specific facts.

The allowances made by the court in reference cases are not allowances in the sense in which the term is used in judicial tribunals. The court merely acts as an investigating and informational agency transferring its determinations of fact and law to Congress for its final considerations and actions thereon.

Once a claim has been referred to the Court of Claims and the claimant receives no satisfaction against the United States, re-reference of the claim to the court is not precluded and the court will re-examine the claim and again report the facts to Congress. If the re-reference calls for the review of facts, the doctrine of res judicata does not apply. However, it does apply if the re-reference calls for the redetermination of law. Also a claim referred to the court which had been investigated and paid, may be again referred by Congress, but the claim is barred by acceptance of the payment and the court will merely report back that fact to Congress.

Where the case referred by Congress is neither a legal nor an equitable demand against the Government, the court finds the facts as proven but will not estimate an amount. That matter is a gratuity and only Congress can fix the amount of the award, if any.

After the claim is determined by the Court of Claims, it is sent back to Congress for its final disposition. Once out of the court, the fate of the claim is in the

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8 Hart v. United States, 58 Ct. Cl. 158 (1922).
84 Stanton v. United States, 57 Ct. Cl. 120 (1929).
85 Presbyterian Church v. United States, 33 Ct. Cl. 339 (1898); Guttormsen v. United States, 43 Ct. Cl. 224 (1908).
86 Laughlin et al. v. United States, 44 Ct. Cl. 224 (1909).
87 White v. United States, 33 Ct. Cl. 368 (1898).
90 Widmayer v. United States, 42 Ct. Cl. 519 (1907).

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hands of Congress. Whether the relief sought for will be granted or not entirely depends on the discretion of Congress. If the relief is granted, then the Secretary of Treasury is authorized to pay the claim. However, if a contrary decision is reached, the claimant has to carry the loss. He has no other course of action.

Conclusion

The sole purpose of a Congressional Reference case is to provide a remedy for claims which would otherwise remain uncompensated since the relief for these claims is beyond the scope of any court to grant. However, this does not mean that relief will be granted in every case where losses occur because of dealing with the United States Government. The measure of damages in these cases is not the loss sustained by the claimant but the extent of the benefit which the Government received or would have received had the original course of conduct been adopted by both parties. A mere claim, whether it be legal, equitable, or moral, is not enough without the proof that the United States benefited directly or indirectly as a result of the claimant's loss or injury. One of the functions of the United States Court of Claims is to see to it that the United States does justice to its citizens, but, it must be realized that in order for the citizen to recover, there must be a good reason to which this justice can be applied.

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