

Second Time is Not the Charm: U.S. Court of Federal Claims Declines to Reconsider Lone Star Dismissal

On May 30, 2013, the U.S. Court of Federal Claims denied a property owners' motion for reconsideration in *Lone Star Industries, Inc. v. United States*, holding again that Lone Star had failed to state a valid claim for just compensation. After that ruling, Lone Star filed a motion for reconsideration arguing that the Court had not accepted the allegations of the complaint that Lone Star had a valid property interest, misapplied the navigational servitude defense, and misapplied Louisiana state law. The CFC rejected all three arguments.

The facts that gave rise to Lone Star's original taking claim are as follows: Lone Star is a cement importer that owns a deep-draft terminal abutting the Michoud Canal in New Orleans. In 2009, the federal government closed the Mississippi River Gulf Outlet, cutting off access to Lone Star's deep-draft terminal. Lone Star brought a claim in the CFC alleging the taking of deep-draft access to its property, but the court rejected the claim, holding that Lone Star "has failed to allege a compensable property interest in deep-draft access to its property under Louisiana or Federal Law."

The court focused on the heavy burden any party bears when seeking reconsideration. Rule 59 allows reconsideration of a judgment only if the movant can show "manifest error of law, or mistake of fact." Reconsideration, however, "is not intended to give an unhappy litigant an additional chance to sway the court."

The court held that Lone Star failed to meet the standards of Rule 59. Lone Star's first argument was that, under RCFC 12(b)(6), the court was required to accept all factual allegations as true, including Lone Star's allegation that its facilities were now useless. The court responded that it had accepted these allegations, but that those allegations were not enough to identify a valid property interest in using the property as a deep-draft vessel terminal. Nor did Lone Star identify any new facts or changes in the law of the navigational servitude defense—which was an alternative basis for the court's earlier holding. Finally, Lone Star's argument that the Government had taken an access servitude defined by state law had already been heard and rejected. The court therefore concluded that there was no reason for the court to reconsider the original judgment.

The full opinion can be read [here](#).

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