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cheaper in the six other countries of the EMS as well as in the United States. By making exports from France and Italy more competitive while simultaneously decreasing their imports, the realignment could help these countries reduce large trade deficits and restore international confidence in their currencies. These changes should also enable France and Italy to start reducing the high interest rates they were forced to adopt to prevent the flight of capital to other countries. In addition, inflationary tendencies in West Germany and the Netherlands should be reduced as a result, while the French franc should gain in strength. Finally, the realignment will discourage investment in the U.S. dollar—a very favorable haven due to high U.S. interest rates—and relieve the criticism levelled at U.S. fiscal policy. Hopefully, realignment may also lessen the counterattacks launched by Washington in defense of its policies.

J.H.W.Jr.

Rex v. Cia. Pervana De Vapores, S.A.: Sovereign Immunity And The Constitutional Right To Jury Trial

Three circuit courts of appeal[1] recently considered the seventh amendment right[2] to jury trial in conjunction with actions brought under the Foreign Sovereign Immunities Act of 1976 (FSIA).[3] Specifically, the courts addressed whether all actions brought pursuant to the FSIA must be tried to the court without a jury, and whether the Act is the sole basis for federal subject matter jurisdiction in civil actions against agencies or instrumentalities of foreign sovereigns. More importantly, the courts considered whether, if the answers to both of the above questions are in the affirmative, the FSIA is consistent with the seventh amendment guaran-

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joined the European Community on January 1, 1981, but has not linked its drachma to the system even though it has signed the basic EMS agreements. Wall St. J., Mar. 16, 1981, at 26, col. 2.

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1. *See* Williams v. Shipping Corp. of India, 653 F.2d 875 (4th Cir. 1981), and Ruggerio v. Compania Pervana De Vapores "Inca Capac Yupanqui," 639 F.2d 872 (2d Cir. 1981), wherein the courts affirmed district court orders striking jury demands on grounds consistent with those of Rex v. Cia. Pervana De Vapores, S.A., 660 F.2d 61 (3d Cir. 1981).

2. The seventh amendment states in relevant part: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . ." U.S. CONST. amend. VII.

3. 28 U.S.C. § 1330(a) (1976).

tee of civil jury trial.

Rex v. Cia. Pervana De Vapores, S.A.,[4] the most recent of the three cases, involved Calvin Rex, a longshoreman who was injured while unloading cargo from a ship of Compania Pervana De Vapores, S.A., a Peruvian corporation whose stock is wholly owned by the government of Peru. Calvin Rex filed suit for damages under section 5(b) of the Longshoremen's and Harbor Workers' Compensation Act[5] alleging federal subject matter jurisdiction on the grounds of diversity of citizenship,[6] a federal question,[7] and an action against a foreign sovereign.[8] A request for a jury trial was included in the claim for relief. The district court granting the demand for a jury trial[9] was reversed on interlocutory appeal by the Third Circuit on grounds of congressional intent and interpretation of the seventh amendment right to jury trial. In so doing, the Third Circuit agreed with the conclusions reached by the Second and Fourth Circuits in *Ruggerio v. Compania Pervana De Vapores "Inca Capac Yupanqui"* and *Williams v. Shipping Corp. of India*,[10] but arrived at its decision by a slightly different route.

The courts in *Ruggerio* and *Williams*, citing Supreme Court precedent,[11] held the seventh amendment applies only to defendants who could be sued at common law in 1791. Because the commercial vessels of foreign states were immune from suit in 1791, actions now brought pursuant to FSIA would not be within the seventh amendment. The *Rex* court, in deciding whether Rex's claim was a suit at common law, did not accept this static approach to such a "vital constitutional guarantee."[12] Instead, the court noted that beginning with an 1830 decision,[13] the guarantee has been held applicable to almost any suit that falls within the federal court's jurisdiction over suits at law as opposed to suits in equity or admiralty. Since it cannot be maintained that under the common law in 1791 jury trial was a matter of right for persons asserting claims against the sovereign,[14] there is now no generally applicable jury trial right that attaches when the United States consents to suit. The accepted principles of sovereign immunity require that a jury trial be clearly provided in the legislation creating the cause of action. Therefore, the relevant inquiry as focused upon by the Third Circuit is whether the action is in the nature

4. 660 F.2d 61 (3d Cir. 1981).
5. 33 U.S.C. § 905(b) (1972).
6. 28 U.S.C. § 1332 (1976).
7. 28 U.S.C. § 1331 (1976).
8. *Id.* § 1331(a).
9. Rex v. Cia. Pervana De Vapores, S.A., 493 F. Supp. 459 (E.D. Pa. 1981).
10. *See Ruggerio*, 639 F.2d at 872 (2d Cir. 1981), and *Williams*, 653 F.2d at 875 (4th Cir. 1981).
11. *See* McElrath v. United States, 102 U.S. 426 (1880), and Parsons v. Bedford, 28 U.S. (3 Pet.) 433 (1830).
12. 660 F.2d at 66.
13. *Parsons v. Bedford*, 28 U.S. (3 Pet.) at 446-47.
14. Galloway v. United States, 319 U.S. 372 (1943).

of a legal remedy provided by statute similar to a suit at common law.[15]

History conclusively demonstrates that actions against foreign sovereigns did not exist at common law, but have only existed exclusively at the "sufferance of the United States Department of State."[16] In 1976, Congress complied with the recommendations of the Departments of State and Justice to legislate the restrictive theory of sovereign immunity by enacting the FSIA. In doing so, Congress expressed the intent that foreign sovereigns not be subject to the jury system.[17] Congress has specifically refused to subject the United States to trial by jury.[18] The court concluded that by such specific legislation and express intent, the cause of action under FSIA was not in the nature of a legal remedy at common law, and significantly, that no jury should intervene. Such denial of jury trial would not violate the Constitution since no suit at common law[19] was being litigated.

Dissenting Judge Soviter agreed that the statute must provide the sole basis of federal jurisdiction in actions against foreign sovereigns and that the action must be in the nature of a suit at common law. However, the dissent would look to the nature of the defendant rather than to the nature of the plaintiff's claim or rights to determine the existence of a suit at common law. Specifically, the FSIA should be considered unconstitutional "insofar as it denies plaintiff a jury trial merely because the defendant is a corporation in which a foreign state owns a controlling interest."[20]

Despite the strength and logic of the dissenting opinion in *Rex*, the rule would now appear to be clearly delineated by at least three circuits. The significance of the *Williams*, *Ruggerio*, and *Rex* decisions should not be seen as a cutting back on the restrictive theory of sovereign immunity,[21] but rather as an expression of the intent to preserve the basic concept of sovereign immunity and, more importantly, the discretionary determinations of the executive branch of the government as it functions in the international legal system.

C.J.

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15. 660 F.2d at 67.

16. *Id.* at 68.

17. *See Ruggerio*, 639 F.2d at 880 n.12; Aldisert, *The Nature of the Judicial Process: Revisted*, 49 U. CIN. L. REV. 1, 8-16 (1980).

18. 28 U.S.C. §§ 1346(a)(2), 2402 (1976).

19. 660 F.2d at 69.

20. *Id.* at 70.

21. *See* the Tate Letter, *reprinted in* Alfred Dunhill of London, Inc. v. Republic of China, 425 U.S. 682, 711 (1976).