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The Anti-War Movement and the Seeger Decision: United States v. Seeger (U.S. 1965)

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immunity, courts have held that the employer's tort immunity does not extend to an insurer where its negligence contributes directly to the injury rather than aggravating it.²⁷

CONCLUSION

The ultimate conclusion must be that the court's interpretation of sections 3852 and 3850 has, in effect, placed the workmen's compensation carrier in an invulnerable position insofar as undertakings it might assume which are not directly involved in the insurance process. The traditional public policy argument must certainly falter when ramifications of this problem come before the courts in the future. Most importantly, it will be interesting to see how the court will answer these two questions: (1) Will an insurer acting as an inspector still be immune from a common law suit when it fails to carry out this duty in a *grossly* negligent manner?²⁸ (2) What other collateral undertakings can a carrier assume, for consideration, from which he will be deemed immune because of the court's decision in this case?

In the opinion of the present writer, it seems that the court has opened up a Pandora's box of problems by extending the employer's immunity to apply to instances where the insurer is acting in a capacity other than that of insurer.

Grace M. Kubota

THE ANTI-WAR MOVEMENT AND THE SEEGER DECISION:

UNITED STATES v. SEEGER (U.S. 1965)

In keeping with our country's respect for freedom of religion, persons whose religious beliefs prevent their participation in war have always been exempt from military service.¹ The exemption is

Fabricius v. Montgomery Elevator Co., 254 Iowa 1319, 121 N.W.2d 361, 93 A.L.R.2d 591 (1963); *Smith v. American Employers' Ins. Co.*, 102 N.H. 530, 163 A.2d 564 (1960).

²⁷ See 51 VA. L. REV. 347 (1965).

²⁸ The *Hazelwerdt* and *Noe* cases, *supra* note 24, stated that although an employer and insurer are immune from suit for a physician's aggravation of a compensable injury, the physician still may be liable to the injured party in a malpractice suit. Using similar reasoning, it may be well argued that the insurer-inspector is liable apart from the immunity extended by workmen's compensation insurance in cases of gross negligence.

¹ The First Continental Congress passed a resolution granting protection to those who could not bear arms because of "religious principles." See 2 Journals of the Continental Congress 189 (1905). The first Federal Draft Act resulting from

not based on any Constitutional guarantee, but on a grant of grace by Congress. As such, it is under the control of Congress with regard to the class of persons to whom it extends.²

During World War I a conscientious objector had to show membership in an historic peace church to receive exemption.³ The test was simple and the courts and draft boards had little difficulty applying it. However, this test permitted discrimination against those conscientious objectors who were members of less prominent faiths, since these were not "historic peace churches."⁴ To clarify the situation, the Draft Act of 1940 granted exemption to persons who were, "by reason of religious training and belief opposed to war in any form."⁵ To further clarify this phrase, the Draft Act of 1948⁶ added language requiring that the conscientious objector's belief be in relation to a "Supreme Being involving duties superior to those arising from any human relationship. . . ."⁷

In the case of *United States v. Seeger*⁸ the United States Supreme Court defined "Supreme Being" as encompassing a broad range of beliefs, thereby granting exemption to persons whose beliefs were thought not to qualify under former interpretations.⁹ The purpose of this note is to consider the effect of the *Seeger* decision on members of the current Anti-War Movement, who might seek exemption from military service as conscientious objectors.¹⁰

the Civil War also had a provision for persons religiously opposed to war. Act of March 3, 1863, ch. 75 § 2, 12 Stat. 731; Act of Feb. 24, 1864, ch. 13 § 17, 13 Stat. 9.

² *Bousiden v. United States*, 251 F.2d 728 (10th Cir.), *cert. denied*, 356 U.S. 927 (1958); *Dickinson v. United States*, 346 U.S. 389 (1953); *Bradshaw v. United States*, 242 F.2d 180 (10th Cir. 1953).

³ Act of May 18, 1917, Ch. 15 § 4, 40 Stat. 78.

⁴ See *Selective Draft Law Cases*, 245 U.S. 366 (1918).

⁵ *Selective Training and Service Act of 1940*, § 5(g), 54 Stat. 889.

⁶ *Universal Military Training and Service Act*, 62 Stat. 604 (1948), as amended, 50 U.S.C. App. § 453 (Supp. III 1959), as amended, 50 U.S.C. App. §§ 453-67 (Supp. IV, 1963).

⁷ 50 U.S.C. App. § 456(j) (1958). Hereinafter references will be to that section unless otherwise indicated.

⁸ 380 U.S. 163 (1965). Consolidated for argument with *Seeger* were *United States v. Jakobson*, 325 F.2d 409 (2d Cir. 1963), and *Peter v. United States*, 324 F.2d 173 (9th Cir. 1963).

⁹ *E.g.*, *Berman v. United States*, 156 F.2d 377 (9th Cir.), *cert. denied*, 329 U.S. 795 (1946). It was said of Berman, "his philosophy and morals and social policy without the concept of *deity* cannot be said to be religion." *Berman v. United States*, *supra* at 380-81. (Emphasis added.)

¹⁰ "Anti-War Movement" as used in this note refers generally to those persons actively demonstrating their disapproval of United States foreign policy and, in particular, United States involvement in Viet Nam. "Anti-War Movement" does not refer to any particular organized group. Whether or not *Seeger* participated in such activities does not affect the importance of the decision to those seeking exemption as conscientious objectors.

THE SEEGER CASE

In 1957 Seeger sought reclassification as a conscientious objector. He had previously been classified 1-S, as a student. Professing that this belief was a religious one, Seeger declared that he preferred to leave the question as to his belief in a Supreme Being open, "rather than answer yes or no."¹¹ Seeger declared, "that his skepticism or disbelief in the existence of God did not necessarily mean a lack of faith in anything whatsoever";¹² and "that his was a belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed."¹³ Seeger further stated that his was a belief in intellectual and moral integrity, "without belief in God, except in the remotest sense."¹⁴ The local and appeal boards of the Selective Service System denied Seeger's claim, as not based upon a "belief in relation to a Supreme Being" as required by section 6(j) of the Draft Act.¹⁵

The District Court for the Southern District of New York convicted Seeger of refusing to submit to induction into the armed service.¹⁶ The Court of Appeals reversed his conviction, finding that section 6(j) was an "impermissible classification" under the due process clause of the fifth amendment.¹⁷ The United States Supreme Court granted certiorari and in a unanimous decision, affirmed the reversal of Seeger's conviction. The Supreme Court did not reach the constitutional question however, because it found that Seeger's beliefs *were* essentially religious and were based upon a Supreme Being as required by section 6(j) of the Draft Act of 1948.

Thus the Supreme Court has defined the Supreme Being requirement of the Draft Act as extending to beliefs other than those based upon the traditional, orthodox God.¹⁸ Justice Clark, author of the majority opinion, quoted from modern religious writers to show that a narrow Supreme Being concept is at odds with present religious philosophy.¹⁹ The Court proposed a test to determine if the registrant's belief is "religious in his scheme of things."²⁰ Called

¹¹ 380 U.S. at 166.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Universal Military Training and Service Act, 62 Stat. 604 (1948), as amended, 50 U.S.C. App. § 453 (Supp. III 1959), as amended, 50 U.S.C. App. §§ 453-67 (Supp. IV. 1963).

¹⁶ *United States v. Seeger*, 216 F. Supp. 516 (S.D.N.Y. 1960).

¹⁷ *United States v. Seeger*, 326 F.2d 846 (2d Cir. 1964).

¹⁸ This broad approach was first taken by Judge Augustus Hand's dictum in *United States v. Kauten*, 133 F.2d 703 (2d Cir. 1943). It was followed in *United States ex rel. Phillips v. Downer*, 135 F.2d 531 (2d Cir. 1943).

¹⁹ 380 U.S. at 180-83.

²⁰ *Id.* at 185.

the parallel belief test,²¹ it is: "[D]oes the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption?"²² The Court considered this test to be objective and capable of application by local boards, the examiner being furnished with "a standard that permits consideration of criteria with which he has considerable experience."²³

THREE ELEMENTS OF RELIGIOUS BELIEF

The majority opinion in *Seeger* points out the three elements which a draft board must look to when a registrant seeks exemption as a conscientious objector. These are: (1) sincerity of belief; (2) validity of belief; and (3) the importance of the belief in the life of the claimant. The Court made it clear that the test of a registrant's sincerity of belief is unchanged by the *Seeger* decision; it remains the "prime consideration to the validity of every claim for exemption as a conscientious objector."²⁴ Regardless of the nature of the belief professed, it must be found that the registrant is sincere in his belief before the other aspects will be considered.

As provided in the Draft Act,²⁵ the appeals board receives assistance from the Department of Justice in answering the subjective question of sincerity of belief. This department holds a hearing and orders an investigation by the F.B.I.²⁶ The Department of Justice Hearing Officer considers the report of the F.B.I. and the file of the registrant, including statements he has made to the local and appeals boards. However, the factors given the greatest weight are the registrant's manner of conducting himself before the Hearing Officer, and his answers to the hypothetical questions asked of him. This was pointed out in *United States v. Simmons*;²⁷

Probing a man's conscience is at best, a speculative venture. No one, not even his closest friends and associates can testify to a certainty as to what he believes and feels. These, at most, can only express their opinion as to his sincerity. The best evidence on this question may

²¹ The test was first mentioned in Conklin, *Conscientious Objector Provisions: A View in the Light of Torcaso v. Watkins*, 51 GEO. L.J. 252 (1963).

²² 380 U.S. at 184.

²³ *Id.* at 183-84.

²⁴ *Id.* at 185. See *Bousiden v. United States*, 251 F.2d 728 (10th Cir.), *cert. denied*, 356 U.S. 927 (1958). See generally 32 C.F.R. § 1626.25 (1957), and Smith & Bell, *The Conscientious Objector Program—A Search for Sincerity*, 19 U. PITT. L. REV. 695 (1958).

²⁵ Universal Military Training and Service Act, 62 Stat. 604 (1948), as amended, 50 U.S.C. App. § 453 (Supp. III 1959), as amended, 50 U.S.C. App. §§ 453-67 (Supp. IV, 1963).

²⁶ 32 C.F.R. § 1626.25 (1957).

²⁷ 213 F.2d 901 (7th Cir.), *rev'd on other grounds*, 348 U.S. 397 (1954).

well be, not the man's statements or those of other witnesses, but his credibility and demeanor before the fact-finding agency.²⁸

Testing the registrant's sincerity of belief before going on to the other elements, prevents his mimicking the belief of another to qualify for an exemption. The test is just as vital when a person professes belief as a Quaker as it is when a person professes a belief such as Seeger's.²⁹

The second element, that of validity or correctness of belief, is beyond the province of any board or court, and is not to be questioned even though it is beyond comprehension. As Justice Douglas said in *United States v. Ballard*:³⁰

Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are real as life to some may be incomprehensible to others.³¹

The third element of the registrant's belief, emphasized by the Court, is the importance of that belief in his life. This is the element which is measured by the parallel belief test. However, the belief to be measured by this test is not just any belief which results in an opposition to war.³²

The parallel belief test is to be applied within the framework of section 6(j), to provide the Congressional grant of exemption to persons opposed to war on grounds of religious belief based upon a Supreme Being.³³ The Court pointed out that the parallel belief test will not be applied to beliefs based on sociological, political, or economic considerations, since these are expressly excluded by section 6(j). Another express exclusion is a belief stemming from a "merely personal moral code." The meaning of this phrase, "merely personal moral code" became important in the *Seeger* case, since Seeger's beliefs might well be said to stem from such a code. The Court, in considering this exclusion, applied a rule of construction. Since Supreme Being had been broadly interpreted, it was held that

²⁸ 213 F.2d at 904.

²⁹ *Bradley v. United States*, 218 F.2d 657 (9th Cir. 1954), *rev'd per curiam*, 348 U.S. 967 (1955); *United States v. Corliss*, 173 F. Supp. 677 (S.D.N.Y. 1959).

³⁰ 322 U.S. 78 (1944).

³¹ *Id.* at 86.

³² Several writers have reached the contrary conclusion by a literal reading of the words of the test. See, *e.g.*, criticism of Seeger as allowing even an atheist to qualify for exemption within the parallel belief test in 14 *CATHOLIC U. L. REV.* 238 (1965).

³³ 380 U.S. at 187, where the court says that Seeger, "professed 'religious belief' and . . . did not disavow any belief 'in a relation to a Supreme Being' In the light of his beliefs and the unquestioned sincerity with which he held them, we think the Board had it applied the test we propose today, would have granted the exemption."

any exceptions thereto must be given a narrow interpretation. A narrow interpretation of the exclusion in question resulted in the holding that it applies only to a belief that is based on a moral code which is merely personal, and in no way related to a Supreme Being. Since Seeger's belief, although perhaps stemming from a personal moral code, was in some way related to a Supreme Being, it was not *merely* personal within the meaning of the exception and it was entitled to an exemption.³⁴

Restated, the rule of the *Seeger* case is: if the registrant's belief, sincerely held, and professedly religious, occupies the same place in his life that an orthodox belief in God does in the life of a registrant clearly entitled to exemption, it is *not* based on a "merely personal moral code," and the registrant deserves an exemption.³⁵

CONCLUSION

The *Seeger* decision provides a much needed clarification and modernization of the term "Supreme Being." However, because of the strong emphasis placed on the registrant's sincerity, and because of the newly created parallel belief test, the class of persons eligible for exemption is not greatly enlarged. The effect of the *Seeger* decision is to expand the category of religious belief which qualifies for exemption on the one hand, and on the other hand to provide a test intended to limit the grant of exemption to those properly qualified.

The *Seeger* decision represents no great victory for the Anti-War Movement. While there are undoubtedly members of the movement whose convictions against war are based on the requisite religious principles, the bulk of the demonstrators have no particular religious convictions about war but merely feel that the action of the United States in Viet Nam is morally wrong. A belief that a particular war is wrong or a reservation of the right to determine whether some future war is right or wrong will never be grounds for an exemption from military service under present law, even though based on a recognized religious belief.³⁶

Until Congress sees fit to grant exemption to all pacifists, or section 6(j) is found unconstitutional, a registrant seeking exemption as a conscientious objector may expect to be closely examined on the tenets of his "faith." Under the provisions of the Selective

³⁴ 380 U.S. at 186.

³⁵ *Ibid. Accord*, *Fleming v. United States*, 344 F.2d 912, 914 (10th Cir. 1965). *Fleming* follows *Seeger* and applies its holding where the registrant was influenced by religious beliefs, but was more influenced by philosophical beliefs. He was granted an exemption since his beliefs were not "merely personal."

³⁶ *United States v. McIntosh*, 283 U.S. 605 (1931).