



COALEX STATE INQUIRY REPORT - 114
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Miles Franklin, Esquire
Natural Resources and Environmental Protection Cabinet
Department of Law - 5th Floor
Capitol Plaza Tower
Frankfort, Kentucky 40601

TOPIC: SURVIVAL OF CIVIL PENALTIES

INQUIRY:

Are civil penalties abated upon a permittee's death or do they survive to be assessed against the individual's estate?

SEARCH RESULTS:

Research was conducted using both COALEX and LEXIS. One federal decision directly on point was identified. Several related federal decisions and one American Law Reports Annotation were also identified. A list of the materials and the topics they address follow. Copies are enclosed.

U.S.A. v ELIZABETH CARTER EDWARDS AND ELIZABETH CARTER EDWARDS, EXECUTRIX OF THE ESTATE OF JOSEPH CARTER, 667 F. Supp. 1204 (W.D. Tenn. 1987).

This case concerns violations of the Rivers and Harbors Act of 1899 and the Clean Water Act of 1977. When one defendant, Joseph Carter, died Elizabeth Carter Edwards, in her capacity as the Executrix of his estate, was substituted as a party defendant. The court determined that the civil penalty was penal in character, did not survive Carter's death and could not be assessed against his estate. The opinion provides an excellent overview of relevant case law which is summarized below:

1. According to *SCHREIBER v SHARPLESS*, 110 U.S. 76 (1884), actions on "penal statutes" (in this case, copyright infringement) do not survive the death of the defendant. This 19th century case was determined by common law since no relevant federal statutes existed and is "still the law". The court in *USA v EDWARDS* went on to show that the civil penalty at issue was "penal".
2. The factors used to determine if actions are "penal" were established in *MURPHY v HOUSEHOLD FINANCE CORP.*, 560 F.2d 206 (6th Cir. 1977). They are: "(1) whether the purpose of the statute was to redress individual wrongs or more general wrongs to the public; 2) whether recovery under the statute runs to the harmed individual or to the public; and 3) whether the recovery authorized by the statute is wholly disproportionate



to the harm suffered."

In this bankruptcy case, the court held that the actions were remedial not penal, therefore, the trustee of the estate has standing to sue under the Truth in Lending Act (TILA), i.e., the cause of action was "transferable". To reach his conclusions the court analyzed whether a TILA action would survive the death of a debtor plaintiff and concluded that the action would survive.

3. In applying the first factor from the MURPHY case, the court in USA v EDWARDS cited to another TILA case, PORTER v HOUSEHOLD FIN. CORP., 385 F. Supp. 336 (S.D. Ohio 1974), which found that "[t]he true test is whether the wrong to be remedied or punished is primarily to an individual or to the State." TILA actions redress wrongs to individuals; Clean Water Act provisions for civil penalties redress wrongs to the general public.
4. Regarding the second factor, EDWARDS held that Clean Water Act penalties are "...paid to the government and not to any individual...[I]n antitrust, patent/copyright infringement, securities fraud, and truth in lending actions, where the penalty survives the wrongdoer's death, any recovery of the so called 'penal' damages is paid to the injured party and not the government."
5. Finally, the "enhanced [treble] damages" and civil penalty provisions in federal statutes other than the Clean Water Act, e.g., antitrust, patent and securities fraud actions as well as civil fraud penalties in tax cases, were determined not to be penal and, therefore, survived a defendant's death. In contrast, the treble damages provision of the Emergency Price Control Act of 1942, the purpose of which was to protect the general public during wartime, was held to be penal. In the EDWARDS case, it is difficult to determine the amount of the "harm suffered", therefore, the "disproportionate harm" factor "does not appear to be critical" here.

Also see SMITH v NO. 2 GALESBURG CROWN FINANCE CORP., 615 F.2d 407 (7th Cir. 1980), and Annotation "Survivability of Action Brought Under Truth In Lending Act", 53 A.L.R. Fed. 431 (1988), included as attachments.

ATTACHMENTS

- A. U.S.A. v EDWARDS, 667 F. Supp. 1204 (W.D. Tenn. 1987)
- B. SCHREIBER v SHARPLESS, 110 U.S. 76 (1884)
- C. MURPHY v HOUSEHOLD FIN. CORP., 560 F.2d 206 (6th Cir. 1977)
- D. PORTER v HOUSEHOLD FIN. Corp., 385 F. Supp. 336 (S.D. Ohio 1974)
- E. SMITH v NO. 2 GALESBURG CROWN FIN. CORP., 615 F.2d 407 (7th Cir. 1980)
- F. Annotation "Survivability of Action Brought Under Truth In Lending Act", 53 A.L.R. Fed. 431 (1988)