

In the United States Court of Federal Claims

No. 01-571C

Errata Filed June 10, 2004
(Opinion Filed June 8, 2004)

TEXAS STATE BANK
(successor by merger to
COMMUNITY BANK & TRUST),

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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* **Jurisdiction;**
* **Non-appropriated**
* **funds instrumentality;**
* **Federal Reserve System;**
* **Takings; Sovereign**
* **immunity; Illegal exaction.**
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ERRATA

Page 2, first full paragraph - please replace with the following:

The facts of this case were outlined in the court's previous Order and Opinion. *Cnty. Bank*, 54 Fed. Cl. at 353-54. Only a brief recitation of facts relevant to the following discussion is included here. Plaintiff, Texas State Bank, is the successor by merger to Community Bank and Trust, which originally filed this action. It is a bank chartered in the state of Texas which holds or has held reserves with Federal Reserve banks in accordance with the Monetary Control Act of 1980, Pub. L. 96-221, Title I, 94 Stat. 132 (March 31, 1980).

Page 3, second full paragraph - please replace with the following:

During the evidentiary hearing plaintiff argued that "[w]hatever the status of the Federal Reserve Board is as to NAFI, our claim is not against the Federal Reserve Board; it is a claim against the U.S. Treasury or the United States . . . NAFI simply does not apply to suits against the United States for funds that are part of the general revenue."¹ The

¹ Transcript at 16.

briefing and testimony given by the parties have clarified the facts underlying plaintiff's claim and, therefore, the court begins by readdressing its subject matter jurisdiction.

Last paragraph beginning on Page 4 - please replace with the following:

The Federal Circuit has held that “absent some specific jurisdictional provision to the contrary, the Court of Federal Claims generally lacks jurisdiction over actions in which appropriated funds cannot be obligated.” *Core Concepts*, 327 F.3d 1331, 1334 (Fed. Cir.), *cert. denied*, 124 S. Ct. 805 (2003). That requirement has been interpreted, however, “to mean that, when an issue arises under the non-appropriated funds doctrine, the Court of Federal Claims must exercise jurisdiction absent a clear expression by Congress that it intended to separate the agency from general revenues.” *Id.* (quotation omitted). The Federal Circuit has also held that the Federal Reserve is not susceptible to suit in this court because it does not operate with appropriated funds. *Denkler v. United States*, 782 F.2d 1003, 1005 (Fed. Cir. 1986); see also *Research Triangle Inst. v. Bd. of Governors of the Fed. Reserve Sys.*, 132 F.3d 985, 989 (4th Cir. 1997) (holding “that the Tucker Act does not waive [the government’s] sovereign immunity” for Federal Reserve activities.).²

BOHDAN A. FUTEY
Judge

² A notably thorough history of the NAFI doctrine has recently been provided by *AINS, Inc. v. United States*, 56 Fed. Cl. 522, 527-537 (2003).