U.S. Customs and Border Protection

Slip Op. 14–65

FORD MOTOR COMPANY, Plaintiff, v. UNITED STATES, Defendant.

Before: Mark A. Barnett, Judge
Court No. 09–00151

[The court grants Defendant's motion to dismiss.]

Dated: June 17, 2014

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OPINION & ORDER

Barnett, Judge:

Defendant, United States, moves, pursuant to USCIT Rule 12(b)(1) and the Declaratory Judgment Act, 28 U.S.C. § 2201, to dismiss Plaintiff's, Ford Motor Company, Second Amended Complaint or, in the alternative, for judgment on the agency record pursuant to USCIT Rule 56.1. (Mem. in Supp. Def.'s Mot. Dismiss, & in the Alternative, Def.'s Mot. J. A.R. ("Def.'s Mot.") 1.) Plaintiff opposes Defendant's motion and moves the court to grant judgment on the agency record in its favor. (Ford's Am. Resp. in Opp'n Def.'s Mot. J. A.R. & Mot. Dismiss ("Pl.'s Resp.") 5–10.) For the reasons provided below, the court grants Defendant's motion to dismiss.

BACKGROUND AND PROCEDURAL HISTORY

A. General Background

In 2004 and 2005, Plaintiff imported motor vehicles from the United Kingdom into the United States. (2d Am. Compl. ¶ 18.) It

deposited estimated duties for each entry using the information available to it at that time, flagged each entry for reconciliation,[1] and filed reconciliation entries, in which Plaintiff claimed that it had overpaid duties owed. (2d Am. Compl. ¶¶ 19–20, Ex. A.) Plaintiff brings this action for a declaratory judgment that nine of its reconciliation entries (the "subject entries") were deemed liquidated by operation of law, entitling Plaintiff to duty refunds. (2d Am. Compl. 1–2.)

Pursuant to 19 U.S.C. § 1504(a), a reconciliation entry not liquidated within one year of its date of filing "shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted by the importer of record," absent an extension under subsection (b) of the statute or suspension as required by statute or court order. 19 U.S.C. § 1504(a)(1). U.S. Customs and Border Protection ("Customs") may extend the period to liquidate an entry three times, for a length of one year each time, if one of the following conditions is met:

> **(1)** the information needed for the proper appraisement or classification of the imported or withdrawn merchandise, or for determining the correct drawback amount, or for ensuring compliance with applicable law, is not available to the Customs Service; or
>
> **(2)** the importer of record or drawback claimant, as the case may be, requests such extension and shows good cause therefor.
>
> The Secretary shall give notice of an extension under this subsection to the importer of record or drawback claimant, as the case may be, and the surety of such importer of record or drawback claimant. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record, or the drawback amount

[1] Reconciliation is "an electronic process, initiated at the request of an importer, under which the elements of an entry (other than those elements related to the admissibility of the merchandise) that are undetermined at the time the importer files or transmits the documentation or information required by section 1484(a)(1)(B) of [Title 19], or the import activity summary statement, are provided to the Customs Service at a later time." 19 U.S.C. § 1401(s). "A reconciliation is treated as an entry for purposes of liquidation, reliquidation, recordkeeping, and protest." *Id.*

The entries at issue are 300–9945919–7 (B), 300–9945928–8 (C), 300–9945935–3 (D), 300–4830222–5 (E), 300–4830252–2 (F), 300–4830281–1 (G), 300–4830280–3 (H), 300–4830290–2 (I), and 300–4830301–7 (J). (2d Am. Compl. ¶ 20, Ex. A; Pl.'s Resp. 1 n.1.) For ease of reference, the court assigned a letter to each entry, as shown above, and has used the same letter designation throughout the case. The court previously dismissed a tenth entry, 300–4830272–0 (A), because Plaintiff obtained all relief sought for that entry. *Ford Motor Co. v. United States*, 34 CIT __, __, 716 F. Supp. 2d 1302, 1309–10 (2010) ("*Ford I*").

> asserted by the drawback claimant, at the expiration of 4 years from the applicable date specified in subsection (a) of this section.

19 U.S.C. § 1504(b); *accord* 19 C.F.R. § 159.12(a)(1), (d), (e).[2] If Customs extends the period for liquidation, it "shall give notice of an extension" to the importer of record and its surety in a manner prescribed by regulation. 19 U.S.C. § 1504(b); *see* 19 C.F.R. § 159.12(b) ("If the port director extends the time for liquidation, . . . he promptly will notify the importer or the consignee and his agent and surety on CBP Form 4333-A, appropriately modified, that the time has been extended and the reasons for doing so."). Customs must treat a reconciliation entry extended under this provision that has not been liquidated as of four years after its filing date "as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record." 19 U.S.C. § 1504(b); *accord* 19 C.F.R. § 159.12(f).[3]

The following chart lists each subject entry, its filing date, the date upon which deemed liquidation would have occurred if Customs had extended the liquidation period a maximum of three times under 19 U.S.C. § 1504(b), and the date on which Customs liquidated and, if applicable, reliquidated the entries:

Entry	Filing Date	Deemed Liquidation Date Under § 1504(b)	Liquidation Date	Reliquidation Date
B	6/29/2005	6/29/2009	6/19/2009	8/7/2009
C	7/28/2005	7/28/2009	7/17/2009	7/31/2009

[2] The regulation, in relevant part, states:

> (a) Reasons – (1) Extension. The port director may extend the 1-year statutory period for liquidation for an additional period not to exceed 1 year if: (i) Information needed by CBP. Information needed by CBP for the proper appraisement or classification of the merchandise is not available . . . .
>
> (d) Additional extensions – (1) Information needed by CBP. If an extension has been granted because CBP needs more information and the port director thereafter determines that more time is needed, he may extend the time for liquidation for an additional period not to exceed 1 year provided he issues the notice required by paragraph (b) of this section before termination of the prior extension period. . . .
>
> (e) Limitation on extensions. The total time for which extensions may be granted by the port director may not exceed 3 years.

19 C.F.R. § 159.12(a), (d), (e).

[3] Subsection (f) states, in relevant part:

> (f) Time limitation--(1) Generally. An entry not liquidated within 4 years from . . . the date of entry . . . will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty asserted by the importer at the time of filing the entry summary for consumption in proper form, with estimated duties attached.

19 C.F.R. § 159.12(f).

Entry	Filing Date	Deemed Liquidation Date Under § 1504(b)	Liquidation Date	Reliquidation Date
D	8/26/2005	8/26/2009	8/14/2009	9/18/2009
E	5/15/2006	5/15/2010	5/7/2010	
F	6/15/2006	6/15/2010	6/4/2010	7/23/2010
G	8/14/2006	8/14/2010	7/30/2010	
H	8/14/2006	8/14/2010	7/30/2010	
I	9/21/2006	9/21/2010	7/30/2010	
J	10/4/2006	10/4/2010	7/30/2010	

(*See* 2d Am. Compl. ¶¶ 29–34, Ex. A; Def.'s Mot. 4 n.4, Ex. A; Def.'s First Mot. Dismiss Ex. B, ECF No. 27; Pl.'s TRO/Prelim. Inj. Mot. 2, ECF No. 36; Def.'s Opp'n Pl.'s TRO/Prelim. Inj. Mot. 5, ECF No. 37).

B. The Present Suit and Plaintiff's Second Amended Complaint

Plaintiff filed suit on April 15, 2009, invoking this court's subject matter jurisdiction pursuant to 28 U.S.C § 1581(i). (*See* Summons, ECF No. 1; 2d Am. Compl. ¶ 6.) Plaintiff filed its Second Amended Complaint on August 18, 2009. (*See generally* 2d Am. Compl.) As of the date that Plaintiff commenced this action, Customs had not liquidated any of the subject entries. (2d Am. Compl. ¶ 67.) During the pendency of the case, however, Customs liquidated, and in some cases reliquidated, the subject entries. Presently before the court are six claims, which broadly challenge Customs' liquidations of the subject entries and ask the court to declare, *inter alia*, the subject entries deemed liquidated one year after filing according to the terms set forth in their reconciliation documents.

In the first cause of action, Plaintiff asks the court to declare the subject entries deemed liquidated one year after filing because, according to Plaintiff, Customs did not extend their liquidation.[4] (2d Am. Compl. ¶¶ 67–69.) In this count, as well as counts two through five, *see infra*, Plaintiff also requests that the court declare the "Internal Advice" issued with respect to Entry C moot or "null, void, and without any legal effect or precedential value or authority." (2d Am. Compl. ¶¶ 70, 75, 80, 87, 94.)

In its second cause of action, Plaintiff, assuming that Customs extended the subject entries' liquidation, asserts that Customs did not issue extension notices, as required by 19 U.S.C. § 1504(b) and (c).

[4] Although Plaintiff raises the issue of suspension in addition to extension in its Second Amended Complaint, Plaintiff's briefs make clear that suspension of the subject entries is ultimately not at issue. (*See generally* Pl.'s Resp.; Pl.'s Reply.)

Plaintiff asks the court to declare that Customs' failure to issue notices nullified the extensions and rendered the subject entries deemed liquidated one year after filing. (2d Am. Compl. ¶¶ 72–74.)

Plaintiff's third cause of action argues that, assuming Customs issued extension notices, the notices did not contain reasons for extension, as mandated by 19 U.S.C. § 1504(b) and (c). According to Plaintiff, this error nullified the extensions and rendered the subject entries deemed liquidated one year after filing. (2d Am. Compl. ¶¶ 77–79.)

In its fourth cause of action, Plaintiff notes that Customs ostensibly extended the liquidation of the subject entries because it needed additional information from Plaintiff to properly appraise the entries or to ensure compliance with the law. However, Plaintiff asserts that because Customs did not ask it for additional information until June 25, 2009, the court must presume that Customs had the information it needed to properly appraise and liquidate the entries. Therefore, Customs had no valid reason to extend the subject entries' liquidation, and the court should declare that they were deemed liquidated one year after filing. (2d Am. Compl. ¶¶ 82–86.)

Plaintiff's fifth cause of action alleges that Customs' respective August 7 and July 31, 2009 reliquidations of Entries B and C were invalid because the entries were deemed liquidated prior to those dates. Moreover, Plaintiff reasons that even if Customs properly extended the entries' liquidation for the four-year maximum permitted by statute, *see* 19 U.S.C. § 1504(b), Customs could not lawfully reliquidate the entries more than four years after their filing date. (2d Am. Compl. ¶¶ 89–93.)

Plaintiff's sixth cause of action concerns only Entry D. Plaintiff filed the entry on August 26, 2005, and Customs issued to Plaintiff a Request for Information for the entry on July 13, 2009, stating that it was "considering other basis [sic] of valuation," and therefore requested that Plaintiff submit additional documents. (2d Am. Compl. ¶¶ 96–97 (brackets in original) (quotation marks omitted).) Plaintiff responded four days later "with legal arguments and objections as to the propriety" of the request. (2d Am. Compl. 17 n.4.) On July 31, 2009, Customs issued a Notice of Action Taken for Entry D, which stated, "Since we did not receive the requested documents in order to properly appraise the value of your merchandise; [sic] we have no recourse but to deny your claim." (2d Am. Compl. ¶ 99 (brackets in original) (quotation marks omitted), Ex. C.) Customs liquidated the entry on August 14, 2009. (2d Am. Compl. ¶¶ 91, 98.) Plaintiff understands the Notice of Action Taken to indicate that Customs liquidated the entry without the duty refunds that Plaintiff asserted in its

reconciliation filing. (2d Am. Compl. ¶ 99.) Plaintiff claims that because Customs admits in the Notice of Action Taken that the agency did not fix the final appraisement for Entry D or fix the final amount of duty, as required by 19 U.S.C. § 1500(a) and (c), the court should declare the liquidation "null and void, and without any legal effect or precedential authority." (2d Am. Compl. ¶ 101.) In addition, Plaintiff avers that the court should declare Entry D deemed liquidated as asserted in the reconciliation filings and order Customs to refund the duties overpaid, plus interest, because Customs did not issue a Notice of Liquidation, as required by 19 U.S.C. § 1500(e), before this suit commenced. (2d Am. Compl. ¶¶ 100–03.) [5]

C. The Proceedings to Date

In November 2009, Defendant moved to dismiss Plaintiff's Second Amended Complaint. (ECF No. 27.) Plaintiff opposed the motion and cross-moved for summary judgment. (ECF No. 31.) Defendant argued that the court lacked subject matter jurisdiction over Entries B, C, and D because they were time-barred by the two-year statute of limitations for 28 U.S.C. § 1581(i) claims and because Plaintiff's then-pending protests against the entries' liquidation and reliquidation would provide the court with jurisdiction over the entries under § 1581(a) if denied. Defendant also averred that Customs had properly extended the liquidations for Entries E-J and that the entries therefore were not deemed liquidated, making Plaintiff's claims arising from these entries not ripe for review. Moreover, Defendant contended that if Plaintiff believed Entries E-J to be deemed liquidated, it should have filed protests and commenced an action pursuant to § 1581(a).

In a July 22, 2010 ruling, the court granted in part and denied in part Defendant's motion and denied Plaintiff's motion. *Ford Motor Co. v. United States*,34 CIT __, 716 F. Supp. 2d 1302 (2010) ("*Ford I*"). The court dismissed all claims related to Entry A, finding that there was no case or controversy because Customs had already provided a refund of duties to Plaintiff. The court also dismissed all claims arising from Entries B, C, D, E and F, reasoning that Customs' liquidations since the filing of the suit meant that relief was available to Plaintiff pursuant to 28 U.S.C. § 1581(a). Because relief was available under another subsection of § 1581 and was not manifestly inadequate, the court found that jurisdiction was not available pur-

[5] Plaintiff's seventh claim, in which it asked the Court to enjoin Customs from taking further action with respect to the subject entries until the disposition of the case, (2d Am. Compl. ¶¶ 105–09), was previously denied as moot, *Ford I*, 34 CIT at __ n.5, 716 F. Supp. 2d at 1309 n.5.

suant to 28 U.S.C. § 1581(i). *Ford I*, 34 CIT at __, 716 F. Supp. 2d at 1310. The court dismissed the remainder of Plaintiff's first claim, concerning Entries C through J, due to a lack of a case or controversy, finding that Plaintiff had acknowledged that the remaining Entries had been extended by Customs. *Id.* at __, 716 F. Supp. 2d at 1310–11.

The court did find that it had jurisdiction over claims 2, 3, and 4 as they related to Entries G, H, I, and J to issue a declaratory judgment confirming whether these entries had been deemed liquidated. The court, however, found that Plaintiff's claims had been undermined during the litigation and Plaintiff would be able to obtain relief in a subsequent § 1581(a) case (following liquidation and protest); therefore, the court exercised its discretion not to issue declaratory relief pursuant to these claims. *Id.* at __, 716 F. Supp. 2d at 1311–14. Finally, the court determined that Plaintiff's seventh claim, a request for injunction, was moot. *Id.* at __ n.5, 716 F. Supp. 2d at 1309 n.5. The court did not address Defendant's statute of limitations argument. Plaintiff moved for reconsideration (ECF No. 41), which the court denied, *Ford Motor Co. v. United States*, 34 CIT __, 751 F. Supp. 2d 1316 (2010) ("*Ford II*").

On appeal, the Federal Circuit reversed in part, vacated in part, and remanded *Ford I* to this court. In relevant part, the Federal Circuit ruled that this court has subject matter jurisdiction to entertain Plaintiff's claims pursuant to 28 U.S.C. § 1581(i) because Customs' post-filing liquidations of Plaintiff's entries did not defeat subject matter jurisdiction under § 1581(i). *Ford Motor Co. v. United States*, 688 F.3d 1319, 1326–28 (Fed. Cir. 2012). It also found Plaintiff's claims ripe for review. *Id.* at 1328. The court also held that Plaintiff had not conceded that Customs had extended Entries C through J and, therefore, reversed the partial dismissal of Plaintiff's first claim. *Id.* at 1329–30. The Federal Circuit vacated the discretionary dismissal of the declaratory judgment claims because it found the decision to dismiss them had "extended in significant part from [*Ford I*'s] flawed jurisdictional analysis." *Id.* at 1330. It concluded that this court "retains authority, but no obligation, to revisit this question on remand." *Id.* The Federal Circuit did not directly address Defendant's statute of limitations argument.

D. The Present Motions

On remand, Defendant again moves the court to dismiss the action or, in the alternative, grant it judgment on the agency record. (*See generally* Def.'s Mot.) Defendant asserts that the court lacks subject matter jurisdiction over Plaintiff's Claims 1–4 and 6 for Entries B, C, and D because they are time-barred. (Def.'s Mot. 12–14.) It also asks

the court to dismiss the remainder of the case on prudential grounds, arguing that actions under 28 U.S.C. § 1581(a) are "better suited" to resolve Plaintiff's claims than a declaratory judgment action under § 1581(i). (Def.'s Mot. 14–18.) Plaintiff opposes Defendant's motion and moves for judgment on the agency record in its favor. (*See generally* Pl.'s Resp.)

SUBJECT MATTER JURISDICTION

A. Defendant's Contentions

Defendant contends that the court has no subject matter jurisdiction over Claims 1–4 and 6 with respect to Entries B, C, and D because they are time barred by the two-year statute of limitations for claims under 28 U.S.C. § 1581(i).[6] (Def.'s Mot. 12 (citing 28 U.S.C. § 2636(i)).) In Claims 1–4 and 6,[7] Plaintiff alleges that Entries B, C, and D became deemed liquidated one year after filing, pursuant to 19 U.S.C. § 1504(a). Because Plaintiff filed Entries B, C, and D on June 29, July 28, and August 26, 2005, respectively, they would have been deemed liquidated on June 29, July 28, and August 26, 2006, respectively. According to Defendant, these dates mark when the claims at issue accrued, and, applying the two-year statute of limitations, Plaintiff had until June 29, July 28, and August 26, 2008 to bring these claims. (Def.'s Mot. 12–13.) Because Plaintiff filed suit on April 15, 2009, Defendant maintains that the claims are time-barred.

B. Plaintiff's Contentions

Plaintiff responds that the court has subject matter jurisdiction over the claims because "[t]he [statute of] limitations issue was necessarily decided by implication when the Federal Circuit held that it and this Court had subject matter jurisdiction over all of [Plaintiff]'s Entries at issue in this case." (Pl.'s Resp. 10 (citations omitted).)

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[6] Although statutes of limitations are not necessarily restrictions on subject matter jurisdiction, the court previously has concluded that 28 U.S.C. § 2636(i) "constitutes a limitation on the government's waiver of sovereign immunity and that the statute of limitations is therefore jurisdictional." *NSK Corp. v. United States*, 36 CIT __, __, 821 F. Supp. 2d 1349, 1354 (2012) (citing *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130 (2008); *SKF USA, Inc. v. U.S. Customs & Border Prot.*, 556 F.3d 1337, 1348 (Fed. Cir. 2009); *Pat Huval Rest. & Oyster Bar, Inc. v. U.S. Int'l Trade Comm'n*, 36 CIT __, __, 823 F. Supp. 2d 1365, 1374–75 (2012)). Even if the statute of limitations were not considered jurisdictional, dismissal of these claims would be appropriate pursuant to USCIT Rule 12(b)(5) for failure to state a claim upon which relief may be granted.

[7] Defendant asserts that Plaintiff's sixth claim is ambiguous and that it cannot discern whether Plaintiff alleges that Entry D became deemed liquidated one or four years after entry. For the purposes of argument, Defendant presumes that Plaintiff alleges that the entry was deemed liquidated one year after filing. (Def.'s Mot. 12 n.5 (citing 2d Am. Compl. ¶ 103).) After a close reading, the court interprets the sixth claim as alleging that Entry D was deemed liquidated one year after entry.

According to Plaintiff, Defendant cannot now challenge the court's subject matter jurisdiction because the Federal Circuit's implicit affirmative finding is law of the case. (Pl.'s Resp. 10.) Even if the court takes up Defendant's argument, Plaintiff contends that the claims did not accrue when the entries became deemed liquidated; they accrued when Plaintiff reasonably should have known about their existence. Plaintiff thus argues that the claims accrued in February 2009, when it learned that Customs did not intend to treat Entries B, C, and D as deemed liquidated. Plaintiff contends its April 2009 filing therefore was timely. (Pl.'s Resp. 11–12.)

C. Discussion

When subject matter jurisdiction is challenged, the plaintiff bears the burden of demonstrating that jurisdiction exists. *E & S Express Inc. v. United States*, 37 CIT __, __, 938 F. Supp. 2d 1316, 1320 (2013) (citing *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011)). When reviewing a motion to dismiss for lack of subject matter jurisdiction, the court sculpts its approach according to whether the motion "challenges the sufficiency of the pleadings or controverts the factual allegations made in the pleadings." *H & H Wholesale Servs., Inc. v. United States*, 30 CIT 689, 691, 437 F. Supp. 2d 1335, 1339 (2006). If the motion challenges the sufficiency of the pleadings, as does Defendant's motion, the court assumes that the allegations within the complaint are true. *Id.*

Contrary to Plaintiff's contention, the court may address Defendant's subject matter jurisdictional challenge. It is well established that Federal Courts are not courts of general jurisdiction, and "'[a] party, or the court sua sponte, may address a challenge to subject matter jurisdiction at any time.'" *Fanning, Phillips, & Molnar v. West*, 160 F.3d 717, 720 (Fed. Cir. 1998) (quoting *Booth v. United States*, 990 F.2d 617, 620 (Fed. Cir. 1993)); *accord Rick's Mushroom Serv., Inc. v. United States*, 521 F.3d 1338, 1346 (Fed. Cir. 2008) (citing *Arbaugh v. Y & H. Corp.*, 546 U.S. 500, 506 (2006)) (citations omitted). In fact, a court has "an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh*, 546 U.S. at 514 (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999); *accord Suntec Indus. Co. v. United States*, 37 CIT __, __, 951 F. Supp. 2d 1341, 1345 (2013) (citation omitted); *see Litecubes, LLC v. N. Light Prods., Inc.*, 523 F.3d 1353, 1359–60 (Fed. Cir. 2008). Notwithstanding this obligation, Plaintiff argues that the law of the case prevents this court from considering Defendant's argument that subject matter jurisdiction is lacking as a result of the two-year statute of limitations having passed.

The law of the case doctrine "generally bars retrial of issues that were previously resolved." *Intergraph Corp. v. Intel Corp.*, 253 F.3d 695, 697 (Fed. Cir. 2001) (citing *DeLong Equip. Co. v. Wash. Mills Electro Minerals Corp.*, 990 F.2d 1186, 1196 (11th Cir. 1993) ("[T]he general rule is that 'an appellate court's decision of issues must be followed in all subsequent trial or intermediate appellate proceedings in the same case' except when there are 'the most cogent of reasons . . . .'"); *United States v. White*, 846 F.2d 678, 684 (11th Cir. 1988) (holding that doctrine of law of the case encompasses not only matters decided explicitly in earlier proceedings, but also matters decided by necessary implication)) (citations omitted). The doctrine's purpose is to "promote[] the finality and efficiency of the judicial process by protecting against the agitation of settled issues." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988) (citation and quotation marks omitted). However, "[i]t is well-accepted" that the application of the doctrine is within a court's discretion; that the doctrine "is a rule of practice and not a limit on a court's power"; and that it "'should not be applied woodenly in a way inconsistent with substantial justice.'" *Hudson v. Principi*, 260 F.3d 1357, 1363–64 (Fed. Cir. 2001) (citations omitted).

Plaintiff's reliance on the law of the case doctrine is premised on the theory that the Federal Circuit implicitly rejected Defendant's statute of limitations argument. Plaintiff suggests that rejection occurred when the Federal Circuit reversed this court's earlier opinion and held that the Court of International Trade retained jurisdiction to consider Plaintiff's claims pursuant to § 1581(i). While the Federal Circuit closely considered whether this court could properly entertain Plaintiff's § 1581(i) claims despite the subsequent liquidations of those very same entries, nothing suggests that the court gave any consideration to Defendant's statute of limitations claim. Consequently, in light of the important obligation to determine the existence of subject matter jurisdiction and the discretion available even if the law of the case doctrine applied, this court must consider the Defendant's statute of limitations argument.

A party must bring a claim pursuant to 28 U.S.C. § 1581(i) within two years after the cause of action accrues. 28 U.S.C. § 2636(i); *accord C.B. Imps. Transam. Corp. v. United States*, 35 CIT __, __, 807 F. Supp. 2d 1350, 1353 (2011). In most circumstances, the statute of limitations begins to run "from the date the plaintiff's cause of action 'accrues,'" and stops when the plaintiff files its complaint in a court of proper jurisdiction. *Hair v. United States*, 350 F.3d 1253, 1260 (Fed. Cir. 2003) (citation omitted). A cause of action accrues "when all events necessary to state the claim, or fix the alleged liability of the

Government, have occurred. In other words, a claim accrues when 'the aggrieved party reasonably should have known about the existence of the claim.'" *Mitsubishi Elecs. Am., Inc. v. United States*, 44 F.3d 973, 977–78 (Fed. Cir. 1994) (quoting *St. Paul Fire & Marine Ins. Co. v. United States*, 959 F.2d 960, 964 (Fed. Cir. 1992)) (internal citation and quotation marks omitted); *accord Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573, 1577 (Fed. Cir. 1988); *see Hair*, 350 F.3d at 1260. Although the court has recognized that "[e]xactly when [a] claim accrues under section 1581(i) is not entirely clear," *Omni U.S.A., Inc. v. United States*, 11 CIT 480, 483 n.7, 663 F. Supp. 1130, 1133 n.7 (1987) (noting that accrual "may be affected by how the claim is characterized or how pursuit of administrative remedies is viewed"), *aff'd*, 840 F.2d 912 (Fed. Cir. 1988), as a general rule, a § 1581(i) cause of action "begins to accrue when a claimant has, or should have had, notice of the final agency act or decision being challenged," *Optimus, Inc. v. United States*, Slip Op. 11–153, 2011 WL 6117937, at *1 (CIT Dec. 9, 2011) (citation omitted).

The court finds that Plaintiff's first, second, third, fourth, and sixth causes of action with respect to Entries B, C, and D are time-barred. The crux of these claims is that the subject entries were deemed liquidated one year after filing. (*See* 2d Am. Compl. ¶¶ 69, 74, 79, 86, 103.) Because Plaintiff filed Entries B, C, and D on June 29, July 28, and August 26, 2005, respectively, (2d Am. Compl. Ex. A), they would have been deemed liquidated on June 29, July 28, and August 26, 2006, *see* 19 U.S.C. § 1504(a), absent extension or suspension. If the entries had been deemed liquidated, Customs would have had a regulatory duty to provide notice to Plaintiff. *See Norsk Hydro Can., Inc. v. United States*, 472 F.3d 1347, 1351 (Fed. Cir. 2006); 19 C.F.R. §§ 159.9(b), 159.11. Such notice would have commenced the period for Plaintiff to protest the liquidation, *see* 19 U.S.C. § 1514(a), (c)(3), and if Customs denied the protest, the denial would have triggered the 180-day statute of limitations for Plaintiff to challenge the denial of the protest in court, 28 U.S.C. § 2636(a); *Norsk Hydro Can., Inc.*, 472 F.3d at 1351 (citing 19 U.S.C. § 1514(c)(3)(A); 19 C.F.R. §§ 159.9(c), 174.12(e)(1)); *Optimus, Inc.*, 2011 WL 6117937, at *1.

In the present case, Customs maintains that it extended the entries' liquidation pursuant to 19 U.S.C. § 1504(b) and, therefore, the entries were not deemed liquidated. Consequently, Customs never issued deemed liquidation notices for the entries. However, if Plaintiff had expected Entries B, C, and D to have been deemed liquidated one year after entry, it should have expected a bulletin notice of the deemed liquidations "'within a reasonable period after each

liquidation.'"[8] *Norsk Hydro Can., Inc.*, 472 F.3d at 1352 (quoting 19 C.F.R. § 159.9(c)(2)(ii)); *see also* 19 C.F.R. § 159.9(d) (stating that Customs typically attempts to provide importers or their agents with additional electronic courtesy notices of deemed liquidations).

When the one-year period went by and, a reasonable time thereafter, the notices failed to appear, Plaintiff should have been alerted to the possibility that Customs had not treated Entries B, C, and D as deemed liquidated.[9] It is at this point that Plaintiff's claims accrued. Plaintiff thus had two years from the period it should have received notice – "a reasonable period" after the alleged deemed liquidations (June 29, July 28, and August 26, 2006) – to bring these claims. Even assuming that it would have been reasonable for Customs to provide notice as long as 180 days after the deemed liquidations occurred, Plaintiff would have had only until December 2008 for Entry B, January 2009 for Entry C, and February 2009 for Entry D to bring these claims – long before Plaintiff filed suit in August 2009.

Ford contends that the statute of limitations period should not have begun to run until February 2009, when Ford says that it received its first indication that Customs did not intend to treat the entries in question as deemed liquidated. (Pl.'s Resp. 12.) In so arguing, Plaintiff ignores that the standard for commencing the statute of limitations period is when Ford knew, or should have known, that it had a claim. *Optimus, Inc.*, 2011 WL 6117937, at *1. Whether the court considers what Ford should have known from the perspective of the one-year statutory deadline for extending the entry, *see* 19 U.S.C. § 1504(a), or Ford's actual awareness that a notice of an extension of liquidation should have been received at that time, (*see* Pl.'s Resp. Attach. 1 (Paulsen K. Vandevert Decl.) ¶¶ 26–30), it is clear that Plaintiff's cause of action accrued, and, therefore, the statute of limitations period began to run, by early 2007.[10]

[8] Customs' obligation to provide notice of deemed liquidations "within a reasonable period" does not establish a precise date on which Plaintiff should have known that Customs did not believe deemed liquidation to have occurred. However, the substantial period between the entries' alleged deemed liquidations and the filing of this suit make the imprecision immaterial to the present analysis.

[9] In fact, Plaintiff's in-house counsel declared that beginning in mid-2006, he asked Plaintiff's third-party Customs service provider whether they had received any notice of extension of liquidation. While he indicated that the Customs service provider had a process for logging and tracking such notices and regularly checked the ACE Portal, Customs' National Liquidation System ("NLS"), and "the FOIA" report, and that he regularly requested and received monthly updates, Plaintiff nevertheless failed to take timely action on the basis of those reports. (*See* Pl.'s Resp. Attach. 1 (Paulsen K. Vandevert Decl.) ¶¶ 26–30.)

[10] The court also declines to credit Plaintiff's concern that starting the statute of limitations period within a reasonable time after the one-year initial deemed liquidation period would amount to "Requiring an importer to bring the same action under § 1581(i) up to four times within the statutory liquidation period" and "would lead to a proliferation of cases brought under § 1581(i), as importers sought to preserve their rights." (Pl.'s Surreply 8.) Plaintiff's

Plaintiff failed to raise its first, second, third, fourth, and sixth causes of action as they relate to Entries B, C, and D within the two-year statute of limitations applicable to actions brought pursuant to 19 U.S.C. § 1581(i). As a consequence, Plaintiff's claims with respect to Entries B, C, and D are time-barred, and the court lacks subject matter jurisdiction to consider them.

Prudential Jurisdiction

A. Defendant's Contentions

Defendant asks the court to not exercise prudential jurisdiction over Plaintiff's declaratory judgment claims. (Def.'s Mot. 14–18.) Defendant avers that because Plaintiff's claims ultimately challenge Customs' extensions of liquidation, Defendant should bring those challenges, pursuant to 28 U.S.C. § 1581(a), after liquidation of the subject entries. (Def.'s Mot. 15.) Defendant further asserts that bringing the claims under § 1581(a) would provide "distinct advantages" over subsection (i), such as discovery, liberation from the factual confines of the administrative record, and a *de novo* standard of review. (Def.'s Mot. 16–17.) Finally, Defendant contends that declining jurisdiction will promote judicial economy and efficiency. Defendant notes that, to the contrary, if the court retains jurisdiction and the Defendant prevails in the current litigation, Plaintiff still could challenge Customs' affirmative liquidation of the subject entries under § 1581(a). Specifically, "the issue of deemed liquidation will be resolved in the context of § 1581(i), and then the merits of [Plaintiff]'s reconciliation claims will be resolved second in the context of § 1581(a)," which would result in "piecemeal litigation." (Def.'s Mot. 18.) Defendant notes that a case challenging the liquidations of Entries B, C, and D already is pending before the court, (Def.'s Reply 6 n.2 (citing *Ford Motor Co. v. United States*, No. 10–138 (CIT filed Apr. 21, 2010))), and that Plaintiff's protests for Entries E though J are pending before Customs, (Def.'s Reply 6 n.2).

B. Plaintiff's Contentions

In rejoinder, Plaintiff asserts that if the court declines jurisdiction over the declaratory judgment claims, Plaintiff will have to wait for Customs to make affirmative liquidations or take enforcement actions before obtaining resolution of the issues presently at bar. Such a delay, Plaintiff contends, would contravene Congress's goal of eliminating uncertainty for importers when it passed 19 U.S.C. § 1504.

argument is based on the false premise that the importer "would be required to bring suit to confirm a deemed liquidation immediately after the one-year anniversary of entry." (Pl.'s Surreply 7.) With a two-year statute of limitations available, no such immediacy is required.

(Pl.'s Resp. 1214.) Consequently, Plaintiff argues that the court should exercise prudential jurisdiction over its declaratory judgment claims.

C. Applicable Law

The sole requirement for a federal court to exercise jurisdiction over a declaratory judgment claim is the existence of an "actual controversy" within the meaning of Article III of the United States Constitution. *Teva Pharms. USA, Inc. v. Novartis Pharms. Corp.*, 482 F.3d 1330, 1338 n.3 (Fed. Cir. 2007). This standard requires that to bring a declaratory judgment action, a plaintiff must show "under 'all the circumstances' an actual or imminent injury caused by the defendant that can be redressed by judicial relief and that is of 'sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *Id.* at 1338 (quoting *MedImmune, Inc. v. Genetech, Inc.*, 549 U.S. 118, 127 (2007)). Nevertheless, when presented with a declaratory judgment claim which meets these criteria, a court "retains discretion . . . to decline declaratory judgment jurisdiction" and not address the merits of the claim. *Id.* at 1338 n.3 (citing *Pub. Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 241 (1952); *Spectronics Corp. v. H.B. Fuller Co.*, 940 F.2d 631, 634 (Fed. Cir. 1991)); *accord Ford Motor Co. v. United States*, 35 CIT __, __, 806 F. Supp. 2d 1328, 1333 (2011) (noting that "courts traditionally have been reluctant to apply [declaratory judgment remedies] to administrative determinations . . . unless the effects of the administrative action challenged have been felt in a concrete way by the challenging parties") (citations and quotation marks omitted). In the declaratory judgment context, "the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 288 (1995); *see Sony Elecs., Inc. v. Guardian Media Techs., Ltd.*, 497 F.3d 1271, 1288 (Fed. Cir. 2007) (holding that trial courts have discretion not to entertain declaratory judgment actions "'because facts bearing on the usefulness of the declaratory judgment remedy, and the fitness of the case for resolution, are peculiarly within their grasp.'" (quoting *Wilton*, 515 U.S. at 289)). Thus, while the court may not decline jurisdiction "as a matter of whim or personal disinclination," *Pub. Affairs Assocs., Inc. v. Rickover*, 369 U.S. 111, 112 (1962) (per curiam), it may choose not to hear the claim as long as it "make[s] a reasoned judgment whether the investment of time and resources will be worthwhile," *Serco Servs. Co. v. Kelley Co.*, 51 F.3d 1037, 1039 (Fed. Cir. 1995).

D. Analysis

The court declines to exercise jurisdiction over Plaintiff's remaining declaratory judgment claims, because adjudicating the claims would not be an efficient and effective use of the court's time and resources. Plaintiff's case involves six causes of action, interwoven with the same nine reconciliation entries. As such, the claims concern largely the same issues of law and fact.

As discussed above, Claims 1–4 and 6, as applied to Entries B, C, and D, which Plaintiff has brought under 28 U.S.C. § 1581(i), are time-barred. However, Plaintiff retains the ability to seek relief for these claims in the § 1581(a) case pending before the court, *Ford Motor Co.*, No. 10–138. In addition to being an adequate vehicle for the court to address the issues that Plaintiff raised within the time-barred claims, litigating the claims pursuant to § 1581(a) would provide a more complete avenue for judicial review of Customs' actions. The § 1581(a) case will allow Plaintiff to challenge not only the question of whether the entries in question were deemed liquidated, but the substance of any actual liquidations or reliquidations that occurred (i.e., the merits of Plaintiff's reconciliation claims), an option not available in this declaratory judgment case.

As previously noted, the Federal Circuit held that this court has subject matter jurisdiction over Plaintiff's non-time-barred declaratory judgment claims pursuant to 28 U.S.C. § 1581(i), and Customs' post-filing actions have not altered this jurisdictional landscape. *Ford Motor Co.*, 688 F.3d at 1327–28. Nevertheless, in deciding whether to exercise declaratory judgment jurisdiction over these claims, the court may look to subsequent procedural events and parallel proceedings to evaluate the appropriateness of the expenditure of judicial time and resources. *See Serco Servs. Co.*, 51 F.3d at 1039–40. In doing so, the court finds that the § 1581(a) case would provide a more appropriate forum for Plaintiff's remaining claims than the present suit. As with the time-barred claims, adjudicating the remaining claims in the § 1581(a) case would permit the court to dispose of challenges to the substantive, as well as procedural, aspects of Customs' treatment of the relevant entries in a single action. Moreover, if Customs denies Plaintiff's pending protests for Entries E through J, Plaintiff could also challenge those denials pursuant to § 1581(a) case, if it so desired. *See* USCIT R. 18(a). Stated simply, entertaining Plaintiff's remaining claims pursuant to § 1581(a) would permit the court to adjudicate all potential disputes stemming from Plaintiff's entries, which arise from a common nexus of law and fact, in a single action, and thereby allow the court to avoid piecemeal litigation and the potential for conflicting outcomes. The court therefore finds that

not exercising declaratory judgment jurisdiction over the remaining claims would make best use of the court's time and resources, and declines to exercise declaratory judgment jurisdiction over them.

CONCLUSION

For the reasons provided above, the court grants Defendant's motion to dismiss. The court finds that it lacks subject matter jurisdiction over Plaintiff's Claims 14 and 6 for Entries B, C, and D, because they are time-barred, and declines to exercise jurisdiction over Plaintiff's remaining declaratory judgment claims. The cross-motions for judgment on the agency record are moot. Judgment will be entered accordingly.

Dated: Jun 17, 2014
New York, New York

/s/ Mark A. Barnett
MARK A. BARNETT JUDGE

Slip Op. 14–67

ASHLEY FURNITURE INDUSTRIES, INC., Plaintiff, v. UNITED STATES and UNITED STATES INTERNATIONAL TRADE COMMISSION, Defendants.

Before: Timothy C. Stanceu, Judge
Court No. 13–00201

[Denying motion to stay]

Dated: June 17, 2014

Jill A. Cramer, *Kristin H. Mowry*, *Jeffrey S. Grimson*, *Sarah Wyss*, and *Rebecca M. Janz*, Mowry & Grimson, PLLC, of Washington, DC for plaintiff.

Jessica R. Toplin and *Courtney S. McNamara*, Trial Attorneys, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for defendant United States. With them on the brief was Tony West, Assistant Attorney General, Jeanne E. Davidson, Director, and Franklin E. White, Jr., Assistant Director. Of counsel on the brief was Andrew G. Jones, Office of Assistant Chief Counsel, U.S. Customs and Border Protection, of New York, NY.

Neal J. Reynolds, Assistant General Counsel for Litigation, Office of the General Counsel, U.S. International Trade Commission, of Washington, DC, for defendant U.S. International Trade Commission.

OPINION AND ORDER

Stanceu, Judge:

In this action, plaintiff Ashley Furniture Industries, Inc. ("Ashley") challenges certain determinations by the U.S. International Trade Commission ("ITC") and U.S. Customs and Border Protection ("Customs" or "CBP") that denied plaintiff benefits under the now-repealed

Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA" or "Byrd Amendment").[1] Specifically, plaintiff brings various statutory and as-applied constitutional challenges to the ITC's determination not to include Ashley on a list of parties potentially eligible for "affected domestic producer" ("ADP") status under the CDSOA, which status could have qualified Ashley for distributions of antidumping duties collected under an antidumping duty order on imports of wooden bedroom furniture from the People's Republic of China ("China").[2] Compl. ¶ 1 (May 14, 2013), ECF No. 4. Plaintiff also brings various statutory and as-applied constitutional challenges to CBP's decision, which was based on the ITC's list of ADPs, to deny Ashley annual CDSOA distributions for Fiscal Year 2011 and Fiscal Year 2012. Compl. ¶ 5.

Before the court is plaintiff's motion to stay further proceedings in this case pending a resolution of a petition for a writ of certiorari to the U.S. Supreme Court in a case concerning the denial of Ashley's CDSOA distributions for Fiscal Year 2007 through Fiscal Year 2010. Pl. Ashley Furniture Indus., Inc.'s Mot. to Continue the Stay of All Proceedings 1 (Feb. 13 2014), ECF No. 19 ("Pl.'s Mot."). Defendant United States and defendant ITC oppose a stay. Def.'s Resp. in Opp'n to Pl.'s Mot. to Stay 1 (Mar. 4, 2014), ECF No. 20 ("Defs.' Opp'n").

Also before the court is plaintiff's motion to supplement the motion to stay with additional exhibits demonstrating Ashley's intent to file a petition for a writ of certiorari to the Supreme Court. Pl. Ashley Furniture Indus., Inc.'s Mot. to Supplement its Feb. 13, 2014 Mot. to Continue the Stay of All Proceedings 1, ECF No. 21. Defendants also oppose this motion. Defs.' Resp. in Opp'n to Pl.'s Mot. to Supplement its Mot. to Stay 1, ECF No. 22. Because the relevant petition has been filed with the Supreme Court, the court denies as moot plaintiff's motion to supplement.

For the reasons discussed herein, the court denies plaintiff's motion to stay these proceedings.

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[1] Pub. L. No. 106–387, §§ 1001–03, 114 Stat. 1549, 1549A-72–75, 19 U.S.C. § 1675c (2000), *repealed by* Deficit Reduction Act of 2005, Pub. L. 109–171, § 7601(a), 120 Stat. 4, 154 (Feb. 8, 2006; effective Oct. 1, 2007).

[2] Under the CDSOA, parties with ADP status are eligible to receive an annual distribution of funds from assessed antidumping and countervailing duties as reimbursement for qualifying expenses. 19 U.S.C. § 1675c(a) (2006). ADP status is limited to petitioners and interested parties that, "by letter or through questionnaire response," indicated support for the petition that gave rise to the pertinent antidumping or countervailing duty order. *Id.* § 1675c(b)(1), (d)(1). Within sixty days after an order is issued, the ITC prepares a list of ADPs associated with the order and forwards it to Customs, which then publishes the list in the Federal Register. *Id.* § 1675c(d)(1). Customs is then responsible for making the annual distributions to the eligible ADPs on the ITC's list, which it does from special accounts containing the duties collected on a particular order. *Id.* § 1675c(d)(3), (e).

I. BACKGROUND

In 2003, the ITC conducted an investigation to determine whether imports of wooden bedroom furniture from China were causing or threatening to cause material injury to a domestic industry. Compl. ¶ 23. During this investigation, the ITC distributed questionnaires to potential ADPs, including Ashley. Compl. ¶ 24. In its response, Ashley indicated that it did not support the petition that resulted in the antidumping duty order that was eventually imposed on imports of wooden bedroom furniture from China.[3] *Id.* As a result of this response, the ITC did not include Ashley on the list of ADP's potentially eligible for CDSOA distributions under the order. Compl. ¶ 5. On June 18, 2011, Ashley filed a certification with Customs requesting CDSOA distributions for Fiscal Year 2011, which Customs subsequently denied. Compl. ¶ 8. On July 19, 2012, Ashley filed another certification with Customs, this time requesting CDSOA distributions for Fiscal Year 2012, which Customs also denied. Compl. ¶ 9.

Plaintiff commenced this action on May 14, 2013. Summons ECF No. 1; Compl. On May 28, 2013, the court granted defendants' unopposed motion to stay these proceedings pending issuance of a mandate by the U.S. Court of Appeals for the Federal Circuit ("Court of Appeal") in *Ashley Furniture Indus., Inc. v. United States*, CAFC Court No. 2012-1248. Order (May 28, 2013), ECF No. 10. That case concerned an appeal of this Court's decision in *Ashley Furniture Indus., Inc. v. United States*, 36 CIT _, 818 F. Supp. 2d 1355 (2012) ("*Ashley I*"), in which the Court dismissed Ashley's claims challenging the denial of CDSOA distributions for Fiscal Year 2007 through Fiscal Year 2010. On August 19, 2013, the Court of Appeals decided *Ashley Furniture Indus., Inc. v. United States*, 734 F.3d 1306 (Fed. Cir. 2013) ("*Ashley II*"), a consolidated opinion affirming the judgments in *Ashley I* and in *Ethan Allen Global, Inc. v. Unted States*, 36 CIT _, 816 F. Supp. 2d 1330 (2012), which involved claims similar to those in *Ashley I.* After denying petitions for rehearing en banc, the Court of Appeals issued its mandate in *Ashley II* on January 10, 2014.

Plaintiff filed its motion to stay these proceedings on February 13, 2014, Pl.'s Mot. 1, to which defendants filed an opposition on March 4, 2014, Defs.' Opp'n 1. On May 2, 2014, Ashley filed a petition for a writ of certiorari seeking Supreme Court review of the decision of the Court of Appeals in *Ashley II*. *See* Pet. for a Writ of Certiorari, U.S. Sup. Ct. Docket No. 13–1367.

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[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value & Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China, 70 Fed. Reg. 329 (Jan. 4, 2005).*

II. DISCUSSION

The court has jurisdiction over this matter pursuant to section 201 of the Customs Courts Act of 1980, 28 U.S.C. § 1581(i)(4) (2006). The power to stay a case "is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936) ("*Landis*"). Decisions concerning when and how to stay a case rests "within the sound discretion of the trial court." *Cherokee Nation of Okla. v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997) (citations omitted). In exercising that discretion, the court must "weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 257.

Plaintiff has failed to demonstrate that the current circumstances weigh in favor of a stay. Plaintiff contends that a stay is warranted in this instance because, in plaintiff's view, the outcome of Ashley's petition for a writ of certiorari for review of *Ashley II* "will have a direct impact on the above-captioned matter." Pl.'s Mot. 2. This is because, according to plaintiff, "the factual circumstances and legal issues underlying all of these cases are substantially similar" and Ashley's petition for a writ of certiorari to review *Ashley II* "could result in a substantive opinion on the merits by the Supreme Court." *Id.*

Plaintiff's argument that the petition "will have a direct impact on the above-captioned matter" is mere speculation. The court can have no assurance that the Supreme Court is likely to grant Ashley's petition. Plaintiff, therefore, has not shown that a stay of this action would promote judicial economy and efficiency rather than simply cause delay.

III. CONCLUSION AND ORDER

Upon consideration of all papers and proceedings herein, and upon due deliberation, it is hereby

ORDERED that plaintiff's motion to stay further proceedings in this case is denied.

Dated: June 17, 2014
New York, New York

/s/ Timothy C. Stanceu
TIMOTHY C. STANCEU
JUDGE