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Calling Attention to Judge's Independent and Fearless Rulings

LETTERS TO THE EDITOR COLUMN

The passing of the Hon. Florence-Marie Cooper is a sad event that will touch many within and outside the legal community. I came to know Judge Cooper through our participation together in the American Inns of Court (West Los Angeles branch).

The *Daily Journal's* Jan. 19, article, "*Judge Held Government Accountable for Actions*" understandably focused on Judge Cooper's tenure as a U.S. District Judge. However, she made one decision of note that was very close to her heart while she was a Los Angeles Superior Court Judge. That case was *Stern v Assuciaroni Generali*.

In 1929 Mor Stern, a Czech citizen, took out an insurance contract. The policy specified Czech courts exclusively for lawsuits against the insurer. The insured perished in 1944 in Auschwitz concentration camp.

Lisa Stern, the plaintiff/heir, sued to obtain insurance benefits for premiums paid on policies prior to the outbreak of WWII. Defendant Generali brought a motion to quash service of process, dismiss the action or stay the proceedings. William Shernoff, Esq. of the Firm of Shernoff Bidart Darras & Dillon, represented the plaintiff.

On Jan. 25, 1999, Judge Cooper heard oral arguments on the motion. Generali argued under due process that the Holocaust Victims Insurance Act (passed earlier that year) was unconstitutional; that the case belonged in a European Court; and that Generali did not have the contacts with California to establish general jurisdiction.

Mr. Shernoff argued that when the California Legislature unanimously passed the Holocaust Victims Insurance Act, it expressed the state's monumental and public policy interest in assuring that California citizens are protected with respect to "Holocaust policies." Also, Generali was admitted by the Department of Insurance to do business in California, where it derived 20 percent of its American business.

Judge Cooper, in rendering her decision, said she had an obligation both to uphold the law as the Legislature gave it to her and to uphold the Constitution; and if the statute struck her as blatantly unconstitutional, she would say so. She upheld the constitutionality of the Holocaust Victims Insurance Act.

Judge Cooper cited various factors in support of her decision, which included: Generali had been admitted to transact insurance business in California since 1958. It had acquired a certificate of authority from the California Department of Insurance; and had designated an agent for service of process, as required by law, and the form appointing the agent provided that service on such agent "shall give jurisdiction over the person of such insurer." Execution of these documents by Generali reflected express consent to jurisdiction.

Additionally, Generali had brought suit in California Courts to assert or protect its interests. It had been doing business, selling insurance policies in California, since 1958. It had an office in this state and had owned a subsidiary in California. Sales of insurance to California residents amounted to \$27 million

dollars in 1997 alone.

This decision, the first ruling on the validity of the Act, epitomizes the thoroughness and courage with which Judge Cooper approached her tasks.

At the time, other cases were pending in the United States on similar claims (e.g., against Banks). Further, President Clinton had appointed a special envoy to deal with such matters.

When the time came for Judge Cooper to make a decision, she did not shirk her responsibilities. Her carefully reasoned opinion allowing the claim to stand was based on a careful analysis of the facts of the case as well as the statute in question and also constitutional principles.

The California Court of Appeal upheld Judge Cooper's ruling, as did the California Supreme Court by declining to hear an appeal. Subsequently, the U.S. Court of Appeals for the 9th Circuit (in a different case) also upheld the right to sue under the Act.

Judge Cooper's decision in this case was so courageous and important because it was made independently, without regard to other pending cases (in at least one other instance, Courts had declined to make any rulings on motions for over two years); and without regard to political considerations (special envoy, under secretary Stuart Eizenstat, had already been appointed to handle claims). How easy it would have been to defer a decision. Judge Cooper, though, made her decision.

For a brief moment in time, the spotlight of history required that tragic events that had occurred so long ago and over six thousand miles and a continent away become the focus of a proceeding in a California Court. And as fate would have it, Judge Cooper was called upon to render justice.

Any number of tributes, while welcome, would still not be nearly enough to fully do justice to the career and person of Florence-Marie Cooper.

VICTOR J. DANIELS

ATTORNEY AT LAW, LOS ANGELES

The article you set forth regarding the death of Florence-Marie Cooper, "*Judge Held Government Accountable for Actions*" (Jan. 19), reflected a small percentage of the dozens of incredibly independent and fearless rulings Judge Cooper made during her tenure on the bench. She was also the Los Angeles County Bar's Bench Officer of the Year and she made numerous rulings in the area of federal narcotics and prosecutorial misconduct, which did not receive any press because it was in the best interests of the defendants in those cases to have those matters handled quietly.

Judge Cooper reflected what people strive to be in a Federal Judge. Kind, balanced, calm, and independent. Judge Cooper gave me the best experience I could have ever asked for in a Judge and was the guiding light of justice when at times, it seemed like the system was tilted in one direction.

Judge Cooper provided a balance on the Court and was truly a separate branch of government. Losing her to due to an illness is a greater tragedy than perhaps a reporter who summarizes her life would ever comprehend or know. The one true statement that *no one* could argue with that was expressed in your article is that whether you won or lost in front of Judge Cooper, you always felt that justice was done and a fair decision was reached.

I will miss Judge Cooper both as a Judge and someone I admired as a person. She was clearly a role model for myself and I am very saddened by her passing.

RONALD RICHARDS, ESQ.

BEVERLY HILLS

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