SUPREME COURT OF THE UNITED STATES

Syllabus

KEENE CORP. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 92–166. Argued March 23, 1993—Decided May 24, 1993

Petitioner Keene Corporation has been sued by thousands of plaintiffs alleging injury from exposure to asbestos fibers and dust released from Keene products. Claiming that it was following Government specifications in including asbestos within products supplied to Government projects, and that it actually bought asbestos fiber from the Government, Keene filed two complaints against the United States in the Court of Federal Claims to recoup some of the money it was paying to litigate and settle the asbestos suits. At the time it filed each of the complaints, Keene had a similar claim pending in another court; the other actions were dismissed before the Court of Federal Claims ordered the dismissals at issue here. The Court of Federal Claims dismissed both cases on the authority of 28 U. S. C. §1500, which prohibits it from exercising jurisdiction over a claim ``for or in respect to which'' the plaintiff ``has [a suit or process] pending'' in any other court, finding that Keene had the same claims pending in other courts when it filed the cases. The Court of Appeals affirmed.

Held: Section 1500 precludes Court of Federal Claims jurisdiction over Keene's actions. Pp. 5–17.

(a) In applying the jurisdictional bar here by looking to the facts existing when Keene filed each of its complaints, the Court of Federal Claims followed the longstanding principle that a court's jurisdiction depends upon the state of things at the time the action is brought. *Mollan* v. *Torrance,* 9 Wheat. 537, 539. Keene gives no convincing reason for dispensing with this rule in favor of one that would look to the facts at the time of the Court of Federal Claims' ruling on a motion to dismiss. Although some of the provisions surrounding §1500 use the phrase ``jurisdiction to render judgment,'' §1500 speaks of ``jurisdiction,'' without more; this fact only underscores the

Court's duty to refrain from reading into the statute a phrase that Congress has left out. Keene's appeal to statutory history is no more availing, since Congress expressed no clear intent that a shift in the provision's language from ``file or prosecute'' to ``jurisdiction'' indicated a change in the substantive law. Pp. 5–9.

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(b) For the purposes of a possible dismissal under §1500, claims must be compared to determine whether the plaintiff has a suit pending in another court ``for or in respect to'' the claim raised in the Court of Federal Claims. That comparison turns on whether the plaintiff's other suit is based on substantially the same operative facts as the Court of Federal Claims action, at least if there is some overlap in the relief requested, see, *Ex parte Skinner & Eddy Corp.,* 265 U. S. 86; *Corona Coal Co.* v. *United States,* 263 U. S. 537, not on whether the actions are based on different legal theories, see *British American Tobacco Co.* v. *United States,* 89 Ct. Cl. 438 *(per curiam).* Since this interpretation of §1500's immediate predecessor represented settled law when Congress reenacted the ``for or in respect to'' language in 1948, the presumption that Congress was aware of the earlier judicial interpretations and, in effect, adopted them is applied here. Thus, the Court rejects Keene's theory that §1500 does not apply here because the other pending suits rested on legal theories that could not have been pleaded in the Court of Federal Claims. Pp. 9–14.

(c) There is no need to address the question whether the Court of Appeals' construction of §1500 is ``a new rule of law'' that ought to be applied only prospectively under the test set out in *Chevron Oil Co.* v. *Huson,* 404 U. S. 97, because Keene's claims were dismissed under well-settled law. Finally, Keene's policy arguments should be addressed to Congress. Pp. 14–17.

962 F. 2d 1013, affirmed.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, BLACKMUN, O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion.