



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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**CITY'S FIGHT TO PURSUE TAX CLAIMS AGAINST INDIA AND MONGOLIA
MOVES TO THE U.S. SUPREME COURT THIS TUESDAY;
CORPORATION COUNSEL MICHAEL A. CARDOZO
TO PRESENT ORAL ARGUMENT**

***SUPREME COURT TO DECIDE WHETHER U.S. COURTS HAVE JURISDICTION
OVER CITY'S CLAIMS DESPITE U.S. GOVERNMENT'S OPPOSITION***

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New York, April 20, 2007 – Corporation Counsel Michael A. Cardozo will personally argue in the U.S. Supreme Court in Washington, D.C., this Tuesday (April 24th) in a case involving the City's claims against India and Mongolia for more than \$18 million in property taxes on buildings the countries use to house staff of their United Nations missions. The Supreme Court will not decide whether the countries actually owe the taxes, but rather whether U.S. courts have jurisdiction to resolve the dispute between the City and two sovereign nations.

In its case, the City argues that its claims should be heard, because they fall within a federal law that provides certain exceptions to the immunity from lawsuits typically granted foreign countries under international and domestic law. Both lower courts that have already heard the case – the U.S. District Court for the Southern District of New York (ruling on July 6, 2005) and the U.S. Court of Appeals for the Second Circuit (ruling on April 26, 2006) – upheld the City's argument and decided that the courts do have jurisdiction to hear the case. Those courts concluded there was indeed jurisdiction, because the City's tax claims put at issue "rights in immovable property," thereby fitting within an exception to immunity provided under the Foreign Sovereign Immunities Act, a federal statute that governs when foreign countries can be sued in U.S. courts.

"We are very hopeful the Supreme Court will find there is a jurisdiction, so that the lower court can decide the merits of the dispute," said Corporation Counsel Michael A. Cardozo of the New York City Law Department. "If the City is given its day in court, we are confident that we will prevail – and India and Mongolia will then pay their fair share of real estate taxes."

"The City ensures that foreign governments are able to carry out their important work, and we expect them to be good neighbors and live up to their obligations under the law," said Marjorie Tiven, Commissioner, NYC Commission for the United Nations, Consular Corps and Protocol. Added Bradford Billet, Deputy Commissioner, "India and Mongolia receive a tax exemption for the portions of the properties actually used for their diplomatic mission, but they are obligated to pay taxes on the many floors devoted entirely to housing staff."

John J.P. Howley, of the law firm of Kaye Scholer, LLP, will argue on behalf of India and Mongolia.

In addition, the U.S. Government has filed an *amicus* or "Friend-of-the-Court" brief in support of India's

and Mongolia's position that the courts lack jurisdiction over the City's claims. When the Second Circuit ruled in favor of the City that court had declined to defer to the federal Government's position, stating that as the dispute "appears to revolve around the proper interpretation of a treaty," it said that it "is well within the competence and authority of the Federal courts and is not a non-justiciable political question."

The Solicitor General's Office of the United States will be represented at Tuesday's oral argument by (Mr.) Sri Srinivasan.

In 1985, the U.S. Government, in a case pending in the U.S. Court of Appeals for the Third Circuit, had taken the opposite position from the one it now advocates, and had urged that Court to find jurisdiction over a case virtually identical to the City's. As to merits of the dispute – i.e. whether property taxes must be paid on staff housing (which will only be decided if the Supreme Court finds there is jurisdiction to hear the case), the U.S. Government has continuously advised U.N. missions that they must pay property taxes on such staff housing.

The properties involved in the current Supreme Court case are located in Manhattan. India owns a building in midtown located at 235 E. 43rd St., and Mongolia owns a building on the Upper East Side located at 6 E. 77th St. India's tax arrears date back to 1991 and Mongolia's date back to 1980. As of Jan. 31, 2003, India owed approximately \$16 million in taxes and interest, and Mongolia owed approximately \$2 million.

The case will be heard at 10 a.m. on Tuesday at the U.S. Supreme Court, located at 1 First St., N.E., and Maryland Avenue in Washington. Reporters interested in attending can contact the U.S. Supreme Court's Press Office at (202) 479-3211, Ext. 1. Members of the public will also be admitted on a first-come, first-serve basis. The public line usually starts forming between 6 and 7 a.m. For more information, the U.S. Supreme Court's web site is: www.supremecourtus.gov.

Once the case is argued, Corporation Counsel Cardozo will be available outside on the U.S. Supreme Court in the plaza area for press interviews. Other media seeking interviews, including those unable to be in Washington for oral argument, can contact the New York City Law Department's Press Office, media@law.nyc.gov or (212) 788-0400. Finally, members of the press or public interested in obtaining the City's legal brief can also request it through the Law Department's Press Office.

In addition to Corporation Counsel Cardozo, Norman Corenthal, John Low-Beer and Brad Snyder of the New York City Law Department have also worked extensively on the case, as had Bradford E. Billet, Deputy Commissioner, NYC Commission for the United Nations, Consular Corps and Protocol.

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