

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

United States Court of Appeals for the Federal Circuit

04-1428

MOTION SYSTEMS CORPORATION,

Plaintiff-Appellant,

v.

GEORGE W. BUSH, President of the United States,
and ROBERT B. ZOELLICK, United States Trade Representative,

Defendants-Appellees,

and

CCL INDUSTRIAL MOTOR LTD.,

Defendant-Appellee.

Before MICHEL, Chief Judge, NEWMAN, MAYER, LOURIE, CLEVINGER, RADER, SCHALL, BRYSON, GAJARSA, LINN, DYK, and PROST, Circuit Judges.

ORDER

PER CURIAM.

This case, having been argued before a panel of three judges on March 7, 2005, and thereafter having been referred to the circuit judges who are in regular active service and a poll having been requested and taken,

IT IS ORDERED THAT:

This case be heard en banc.

The parties are to submit additional briefs addressing the following issues:

- (1) Is the President an "officer" under the terms of 28 U.S.C. § 1581(i) and is the President's action under 19 U.S.C. § 2451 subject to judicial review in a suit against the President? See Franklin v. Massachusetts, 505 U.S. 788 (2000); Mississippi v. Johnson, 71 U.S. 475 (1866).
- (2) Is there any constitutional barrier that would preclude the Court of International Trade from issuing the requested injunctive relief against the President? See Franklin v. Massachusetts, 505 U.S. 788 (2000); Dalton v. Spector, 511 U.S. 462 (1994); Mississippi v. Johnson, 71 U.S. 475 (1866).
- (3) Should Corus Group PLC v. Int'l Trade Comm'n., 352 F.3d 1351 (Fed. Cir. 2003) be overruled en banc insofar as it holds that § 1581(i) does not authorize relief against the President?
- (4) Under the terms of § 1581(i) and § 2451, is the relief requested against the United States Trade Representative available in this case?

This case will be heard en banc on the basis of the briefs already filed and additional briefs addressing the issues set forth above. An original and thirty copies of additional briefs shall be filed, and two copies served on opposing counsel. Such additional briefs shall be filed simultaneously by the parties, forty-five days from the date of this Order, and shall not exceed 7,000 words in length. Briefs of amici curiae will be entertained in accordance with Federal Rule of Appellate Procedure 29 and Federal Circuit Rule 29.

Oral argument is scheduled for 2:00 p.m. on Thursday, October 6, 2005, in Courtroom 201. Counsel for each side shall have 30 minutes to argue.

FOR THE COURT

July 15, 2005

Date

Jan Horbaly
Clerk