# United States Court of Appeals for the Federal Circuit

02-5082

FRANK E. FISHER,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

J. Byron Holcomb, Attorney, of Bainbridge Island, Washington, filed a response to the petition for rehearing en banc for plaintiff-appellant.

Douglas K. Mickle, Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, filed a petition for rehearing en banc for defendant-appellee. Of counsel on the petition were Peter D. Keisler, Assistant Attorney General, David M. Cohen, Director, and James M. Kinsella, Deputy Director.

Appealed from: United States Court of Federal Claims

Senior Judge Eric G. Bruggink

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02-5082

FRANK E. FISHER,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

O R D E R

A combined petition for panel rehearing and rehearing en banc having been filed by the Appellee, a response thereto having been invited by the court and filed by the Appellant, the petition for panel rehearing having been referred to the panel that heard the appeal, thereafter the petition for rehearing en banc and response 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:

(1) The petition for rehearing en banc is granted for the limited purpose of overruling this court's decision in Gollehon Farming v. United States, 207 F.3d 1373, 1379 (Fed. Cir. 2000), and clarifying the procedure for determining Tucker Act jurisdiction.  The panel's judgment and original opinion entered on April 22, 2004, and reported at 364 F.3d 1372 (Fed. Cir. 2004), is vacated.

(2) The vacated panel opinion is replaced by a new panel opinion issued this date. The Appellee's petition for panel rehearing is granted for the limited purpose of addressing the issues raised.

FOR THE COURT

March 9, 2005                                             S/ Jan Horbaly
        Date                                             Jan Horbaly
                                                                     Clerk