THE NATIONAL PORT AUTHORITY (NPA), represented by and thru its Managing Director, Appellant, *v.* THE EXECUTIVE COMMITTEE OF THE SIX CONSOLIDATED GROUPS OF RETIREES AND COMPULSORY EMPLOYEES OF THE NATIONAL PORT AUTHORITY, Appellees.

APPEAL FROM THE CIVIL LAW FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY, INFORMATION PROCEEDINGS, AND APPEAL FROM THE RULING OF THE JUSTICE IN CHAMBERS DENYING THE WRIT OF CERTIORARI.

Heard: (Undated). Decided: December 4, 1998.

1. When actions involving common questions of law and facts are pending before a court of record, the court, upon motion or sua sponte, may order a joint trial of any or all of the matters in issue or the consolidation of matters in issue of the actions; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs and delays.
2. The Supreme Court has the authority to consolidate causes of action before it to conclusively terminate the controversies and save time and costs of litigation.
3. A bill of information is an action cognizable before the Supreme Court sitting *en banc* to inform the Court that its mandate is being executed improperly or contrary to its decision as rendered.
4. If a judge or any judicial officer attempts to execute the mandate of the Supreme Court in an improper manner, the correct remedy is by a bill of information to the Court.

5. It is erroneous for a Chambers Justice to hear and determine the merits of a certiorari in a bill of information proceeding without proceeding to hear the certiorari proceedings out of which the bill of information grows.
6. Under the doctrine of judicial estoppel, a party is bound by his judicial declarations and may not contradict them in a subsequent proceeding involving the same issues and parties. Thus a party who, by his pleadings, statements or contentions under oath, has assumed a particular position in a judicial proceeding, he is estopped from assuming an inconsistent position in a subsequent action.
7. The term "issue preclusion" means that when a particular issue has already been litigated, further litigation of the same issue is barred. As it relates to civil actions, it means that any fact, question or matter in issue and directly adjudicated or necessarily involved in determination of an action before a court of competent jurisdiction in which judgment is rendered on the merits, is conclusively settled by the judgment therein and cannot be relitigated in any future action between the parties or privies, either in the same court or in a court of concurrent jurisdiction.

In these proceedings, the Supreme Court consolidated three actions pending determination, the first being an appeal from the judgment of the trial court dismissing the appellants claim; the second being a petition for a writ of certiorari filed in connection with the said claim; and the third being a bill of information growing out reported irregularities committed by the trial court relating to the certiorari. The appellee had taken up an pension program with an insurance company, ALICO, under which the

appellants contributed 5% of their monthly salaries and the appellee contributed 7% of the employees' monthly salaries, for the benefit of the employees after their retirement or to the benefit of their families following their death. Appellants claimed that the appellee violated the terms of the contract when it failed to deposit or transfer the salary deductions made from appellants salaries to the insurer, causing the latter to terminate the pension fund scheme. Appellants specifically demanded that they be paid the amounts which they said the appellee continued to deduct from their salaries long after the policy had been terminated by ALICO and which they said the appellee continued to hold. Appellee denied the allegation contending that in a previous action commenced by the appellants, appellee had paid the full amount due to the appellants, under the supervision of the trial court an a court-appointed administrator.

The trial court upheld the contention of the appellee and dismissed the appellants action. From this dismissal, several courses were pursued, including the announcement of an appeal, the filing of a writ or certiorari, and the filing of a bill of information, growing out of the writ of certiorari, accusing the petitioner of obstructing the enforcement of the mandate of the Supreme Court because of its pursuit of the former two steps taken against the trial court's "final judgment".

The Supreme Court consolidated all of the actions and ruled upholding and affirmed the judgment of the trial court dismissing the appellants' petition, holding that the appellants were barred from pursuing the matter once it had previously been litigated in the trial court in a prior action and a determination had been made on the merits, and from which the appellants had enjoyed benefits.

With regards to the certiorari, the Supreme Court held

that the Chambers Justice had erred in determining the merits of the certiorari in the course of disposing of the information without conducting a hearing of the certiorari out of which the information grew. The Court therefore declared the Chambers Justice's ruling in the information proceedings as null and void, and of no legal effect.

Benedict F. Sannoh appeared for appellants. *H. Varney G. Sherman* appeared for appellee.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

This cause of action is before this Court on appeal from a ruling of the trial court granting a motion to dismiss appellants' petition for declaratory judgment filed against the appellee in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County.

The records reveal that appellants herein, namely the Execu-tive and Working Committee of the Six Consolidated Groups of Retirees and Compulsory Leave Employees of the National Port Authority and Beneficiaries of the ALICO Pension Fund # U65 43, represented by and thru Arthur B. Tarr, General Chairman, James C. Fowler, General Secretary, and Messrs Thomas Laruga, Moses Baryor, Robert R. Jones, and Aryee K. Williams, Sr. Chairmen, respectively, of the Arthur Tarr, Moses Baryor, Duaryenneh and Aryee Williams Group, all of the City of Monrovia, filed a petition on October 9, 1997 in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, praying for a declaratory judgment.

Substantially petitioners/appellants claimed and averred that:

(1) Appellee herein, in 1972 entered into a Pension

Plan Agreement with the American Life Insurance Company (ALICO) with appellants as the direct beneficiaries. Amounts under the plan became payable upon the death, retirement, or pension of appellants, retirees and former employees of appellee.

(2) Contributions to the pension fund was a total of 12% of the monthly salary of each employee of appellee. Appellants contributed 5% of their individual monthly salary through payroll deduction, and appellee contributed 7% of the monthly salary of each of its employees.

(3) Pursuant to the terms of the pension fund policy appellee effected the 5% monthly salary deduction from all of its employees, from 1972 to December 1988.

(4) Appellee violated the terms and conditions of the pension and policy by failing to deposit or transfer the contributions deducted from appellants salaries as well as its own contribution of 7%, causing the insurer, ALICO, to terminate the pension fund policy on January 1, 1998.

(5) On January 1, 1988, the termination date of the contract between appellee and ALICO, the total contributions made by appellants and appellee to the Policy was a conso-lidated sum of US$9,326,733.16, which figure is contained in a memorandum signed by Wheatonia Y. Barnes and Harry T. F. Nayou, Acting Managing Director and Chairman of the Board of NPA, appellee herein. The aforementioned memo-randum was attached to appellants/petitioners petition.

(6) A joint NPA-AL1CO audit was conducted, as a result of which it was agreed that the total amount remitted by appellee to ALICO was $2,077,681.00.

(7) The joint audit also reported that a total of $7,249,052 representing the balance of combined or

consolidated contri-butions was never transmitted to ALICO by appellee, as required by the terms and conditions of the policy.

(8) Due to the default and negligence of appellee, ALICO terminated the contract on January 1, 1988; and further that appellee, although being aware of this fact continued to make deductions from Appellants monthly salary from January 1-August 31, 1988, which deductions total approximately $640,000.00.

(9) The amounts of US$7,249,052 and $640,000.00 represent deductions from the salaries of appellees. Hence, appellants prayed the court to so declare and to order the appellee to make a refund to appellants of all amounts deducted from appellants monthly salary which were not remitted to ALICO.

Appellees in their answer duly filed in the Civil Law Court contended, as follows:

1) That appellee contend that appellants/petitioners, in paragraphs 3, 4, and 5 of their petition for declaratory judg-ment stated that appellee breached the contractual relation-ship between appellants and appellee in 1988, and that assuming, without admitting, that this is the truth, then pursuant to section 2.13 (1) of the Civil Procedure Law the statute of limitation of seven years commence and the action for breach of contract had lapsed. The right to relief accrued in 1988 and the action was commenced in 1997, a total of nine years, which is two years beyond the statutory limitation.

2) That appellants/petitioners conceded that they were also petitioners in a previous petition for declaratory judg-ment filed in the said same Civil Law Court for the Sixth Judicial Circuit, sitting in its June A. D. 1995 Term, and at which time appellants/petitioners simultaneously filed a motion for a preliminary

injunction. Appellee requested the court to take judicial notice of count four of the said motion, wherein movants/petitioners said that from the inception of the plan in 1972 to its termination by ALICO in 1988, Co-respondent NPA Management, with movants/petitioners consent and approval, had deducted various monthly and individual amounts from each employee's salary and deposited same with ALICO on behalf of the aforesaid individual employees, including movants/petitioners herein. Appellee noted that the identical averment was also couched in the said previous petition for declaratory judgment of 1995, as in the present action, to which a judgment was rendered in favor of appellants; that from which ruling and judgment in the previous case, appellants had enjoyed and benefitted, and therefore, a revival of the same issue is an appropriate subject for the application of the legal principle of *res judicata*.

3) That further to the principle of *res judicata,* appellants in the motion for preliminary injunction simultaneously filed with the petition for declaratory judgment of June 1995, the said same Civil Law Court authorized a negotiated settlement with ALICO for the amounts deducted from their salaries from 1972 - 1988. It quoted count five (5) of the said motion for preliminary injunction, as follows:

> "That after the termination of the plan by ALICO in 1994, the owners of the funds, NPA employees/ beneficiaries (including movants/petitioners herein) trusted and authorized Co-respondents NPA Board of Directors and Management, as their agent, to enter into and conclude negotiations with ALICO on their behalf for the settlement, payment and disbursement of their funds under the plan."

4) Appellee/defendant further explained in its answer that appellee never breached the conditions of the insurance policy with ALICO, stating that in 1972, when the policy commenced, the medium of exchange was the United States dollar and this was the case until 1982 when the five dollars Liberian coin was introduced; and that as a result of this development, appellee began to pay its employees in Liberian currency from 1982.

5) That the introduction of the five dollars Liberian coin resulted into liquidity problems as the disparity between the Liberian dollar and the United States dollar became greater and greater. Hence, ALICO began to refuse to accept the Liberian dollar on a one to one pari y with the United States dollar. These problem, along with accounting and report issues, led to the termination of the pension fund by ALICO.

6) That the liquidity problem, recounted in count 5, created a difficulty to remit salary deductions and appellees contributions to the pension fund, in a total of $7,000,000.00 Liberian dollars, to ALICO. As such, this amount was retained by appellee and refund thereof was made to appellants and other beneficiaries/employees prior to the filing of the 1995 action in the Civil Law Court. This, it said, was evidenced in a document signed by Dr. Harry T. F. Nayou, the Chairman of the Board of Directors of NPA and Mrs. Wheatonia Y. Dixon-Barnes, Acting Managing Director of NPA, which document was exhibited with appellants complaint. The relevant paragraph of the document stated:

> "The total entitlement due workers is a consolidated $9,326,733.16. This amount includes the current $2,327,381 settlement received from ALICO. The ba-lance represents funds that were held locally with the NPA and never remitted to ALICO. However,

most of the locally held funds (over $7,000,000.00) which were largely Liberian dollars, have since been paid to the workers as advances against their entitlements..."

Appellee simultaneously filed with their answer a motion to dismiss, basically on two legal grounds:

1.The doctrine of *res judicata*

2. The statute of limitations, which they said had tolled against appellants.

Appellants filed a resistance to the said motion to dismiss and contended, as follows:

1. That non of the statutory grounds for dismissal of a cause of action was pleaded; and

2. That movants/defendants and respondent/plaintiff/appel-lant had an employee/employer relationship which terminated in 1992, and that it was at this termination that respondents/ petitioners/appellants became aware of the termination of the policy with ALICO and not in 1988, as alleged by appellee. As a result, the statute of limitations began to toll in 1992 and not 1988.

3. That the principle or doctrine of *res judicata* will not lie as neither the subject matter nor the facts and evidence or the relief sought are identical.

The assigned judge of the Civil Law Court for the Sixth Judicial Circuit, Her Honour C. Ameisa Reeves, presiding over the December Term, A. D. 1997, granted the motion to dismiss on the following points.

1. She upheld the doctrine of *res judicata*, stating that the same court in its June Term, 1995, had rendered judgement upholding appellants contention that no employer/employee relationship existed between appellants and appellee. She noted that to defeat the contention of an employer/appellee relationship, all

cases pending before the Ministry of Labour and the National Labour Court as a result of the employer . employee relationship and relating to the ALICO pension plan, were withdrawn and certificates were presented to evidence this fact. The judge therefore concluded that the court could not once again rule on a second declaratory judgment and revive the employer/employee relationship on the identical subject matter of the ALICO pension plan.

2. That the right to relief accrued in 1988 when appellee halted the monthly deduction from the monthly salaries of appellants, noting that with due diligence appellants would have discovered that the pension plan with ALI O had been terminated and that the amount of $7,000,000 had not been remitted.

It is from the foregoing ruling that appellants announced an appeal to this Court for review.

At the call of the case for argument, this Court noticed that there was pending remedial actions between the same parties in the instant case, regarding that ALICO pension plan. One remedial process related to a bill of information that was filed before, and heard and ruled upon by the then presiding Chambers Justice, Mr. Justice M. Wilkins Wright. An appeal was announced to this Court *en banc* by Hitler Richards, N. P.A., etc. from the decision of Justice Wright in favor of the P. K. Sherman Group and members of the Consolidated 6 (six) Group of Retirees and Compulsory Leave Employees of NPA.

The other remedial process was a petition for a writ of certiorari filed by the Hitler Richards, special court appointed administrator of the N.P.A./ALICO pension fund and the Consolidated Six (6) Group of Retirees and Compulsory Leave Employees of N.P.A. against Judge Sebron Hall et al. A close inspection of the records in that

case reveal that the petition for a writ of certiorari remains undetermined before the Chambers Justice.

The Chief Justice, speaking for the Supreme Court sitting en banc ordered the Clerk of the Supreme Court to consolidate the three actions. The Court also ordered the Chambers Justice to hear and determine the petition for a writ of certiorari, so that the Court could thereafter render a comprehensive decision of the controversies between beneficiaries of the ALICO pension fund and the Board of Directors and Management of N.P.A.

Pursuant to the above ruling of this Court, the presiding Chamber Justice, Associate Justice Karmo G. Soko Sackor, Sr., rendered a ruling on the 7th day of October A. D. 1998 granting the petition for a writ of certiorari. No appeal was announced from this decision.

The bill of information, referred to hereinabove, was filed on November 24,1995 before the then presiding Justice, Associate Justice Fulton Yancy. The information stated substantially as follows:

> 1) That informants were part of the Consolidated Six (6) Group of Retirees and Former Employees who had received a favorable judgment in a petition for declaratory judgment filed in 1995 in their behalf by the Brumskine and Associates Law Firm.
>
> 2) That pursuant to the 1995 declaratory judgment the special administrator of the ALICO pension fund, respondents herein determined and reported to the trial Judge, His Honour Hall W. Badio, that only thirty persons of the list of 348 retirees and former employees of the P. K. Sherman Group were eligible to receive payments as the remainder had received refunds or payments from the NPA between 1981 and 1987 and executed releases in favor N.P.A. and ALICO. This finding was affirmed by Judge Badio and

the 2nd respondent, ITC, in the 1995 declaratory judgment case, was ordered to make payments to the said thirty person.

3) Informants filed a bill of information before Judge Sebron Hall, who succeeded Judge Badio by assignment. Judge Hall reversed the decision of Judge Badio and ordered the special administrator to pay all 348 persons of the P. K. Sherman Group their benefits under the ALICO pension fund, and to do so 100% in United States dollars. Informants further explain in their information before the presiding Chambers Justice that Brumskine and Associates, instead of protecting informants' interests that had been secured by Judge Hall's ruling and without the consent of informant, filed a petition for a writ of certiorari before the presiding Chambers Justice, declaring the ruling of Judge Hall as "erroneous, unwarranted, and completely unsup-ported by any facts".

4) The presiding Chambers Justice, M. Wilkins Wright, handed down a ruling on the 4th day of November, A. D. 1997, in which he stated:

> "That payment made to informants between 1981-1987 in Liberian dollars, other than those stipulated in the policy contract, is illegal, and that informants are here-by ordered paid in United States dollars in keeping with the Pension Fund Contract, and that the portion already paid to informants in Liberian dollars be refunded by informants to respondents in substitution for United States dollars in the same amount."

The respondents also announced an appeal from this ruling to this Court sitting *en banc*.

A review of the petition for a writ of certiorari reveal that the petitioners complained, as follows:

(1) That contrary to law, Judge Sebron Hall had reversed a ruling made by his predecessor by assignment, Judge Hall W. Badio, affirming and confirming the determination of the special administrator of the ALICO pension fund that out of the total of 348 only 30 persons were entitled to refund or repayments being, that the remainder had accepted refund/repayment from ALICO and/or N.P.A. between 1981-1988 and had signed releases therefor.

2) That Counsellor Francis S. Korkpor had filed a bill of information in favor of the members of the staff of N.P.A., claiming that the said staff be paid 100% of their benefits instead of 65%, in that they never consented to the said negotiated settlement as other beneficiaries. To this, Counsellor Pierre, of Brumskine and Associates, filed a motion to strike on ethical grounds and subsequently filed a formal complaint of unethical conduct against Counsellor Korkpor before the Acting Chief Justice, Mr. Justice Hall W. Badio. Justice Badio ordered the trial court judge, His Honour Sebron Hall, to stay all proceedings in the bill of information pending the outcome of the complaint against Counsellor Frances Korkpor before the Grievance and Ethics Committee.

3) That notwithstanding the stay order from the Acting Chief Justice, Judge Sebron Hall proceeded to hear the two bills of information without disposing of the motion to strike, and thereafter thereupon proceeded to amend the ruling of Judge Badio to the effect that "all six (6) groups, including the P. K. Sherman Group, be included to receive their pension fund and benefits under the pension scheme, that members of the staff be paid their benefits in 100% US dollars, and that the legal bill of charges filed by Sherman and

Sherman be forwarded to the Special Administrator since there was no objections thereto."

During the hearing and subsequent ruling of the petition for the writ of certiorari, the presiding Chambers Justice, Associate Justice Karmo G. Soko Sacker, Sr. ordered the petition granted and noted that P. K. Sherman was barred from appearing as a Co-respondent by and through Counsellor George S. B. Tulay. The Chambers Justice ruled that the P. K. Sherman Group was part and parcel of the Six (6) Consolidated Groups of Retirees and Former Employees and therefore co-petitioners. If the P. K. Sherman Group had desired to participate as co-respondents, he said, they should have moved o intervene in the said petition and that upon their failure to do so, it was improper to permit the participation/argument of counsel for the said P. K. Sherman Group.

The Chambers Justice also ruled that it was improper and erroneous for Judge Sebron Hall to dispose of the two bills of information without determination of the motion to strike. He noted that such action by the trial judge was in violation of the stay orders of the Acting Chief Justice, Mr. Justice Hall Badio.

Further the Chambers Justice ruled that the trial judge, His Honour Sebron J. Hall, committed a reversible error when he ignored and disregarded the findings of the Special Court Administrator and amended the ruling of Judge Badio contrary to law, practice and procedure in this jurisdiction. Therefore, he said, the act of Judge Sebron Hall in reviewing and amending the ruling of his predecessor of concurrent jurisdiction was erro-neous, contrary to law, and therefore reversible, void *ab initio*, and of no legal effect. Hence, Judge Badio's ruling affirming the report of the court appointed special administrator determining persons eligible for refund or payment from the ALICO pension

scheme was affirmed.

Finally, the Chambers Justice confirmed the ruling of Judge Badio on the bill of information, which ruling had terminated the agency of NPA. Additionally, the Chambers Justice discharged NPA from further liability under the ALICO pension fund, as disbursed by the court appointed special administrator. As no appeal was taken from the decision of the Chambers Justice on the petition for a writ of certiorari, the facts stated therein are deemed by this Court to be correct, and also that the determi-nation made therein to be binding on and effective against all of the parties therein.

We now return to the appeal from the motion to dismiss the petition for declaratory judgment. In that connection, we have determined that the issues to be decided by this Court are:

1) Whether or not the doctrine of *res judicata* is applicable in the second petition for declaratory judgment?

2) Whether or not the statute of limitations bars the petitioners petition for declaratory judgment?

3) Whether a bill of information is cognizable before a Justice in Chambers?

4) Whether or not this Court can *sua sponte* consolidate causes of action involving the same parties and the same subject matter?

We shall discuss the issues in the reverse order.

As aforementioned, at the call of the hearing of the appeal from the Civil Law Court granting appellee's motion to dismiss appellants' petition for declaratory judgement, this Court *sua sponte* consolidated the bill of information and the petition for a writ of certiorari.

The Civil Procedure Law, Rev. Code 1: 6.3, *Consolidation of Claims*, found on page 78 of the Liberian Code of Laws

Revised, Volume 1, provides:

> *1. Court order of limitations*. When actions involving a common question of law or fact are pending before a court of record, the court, upon motion or *sua sponte*, may order a joint trial of any or all the matters in issue or the consolidation of matters in issue or the consolidation of the actions; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.
>
> 2) Order to avoid unnecessary costs or delay. The court in which the actions are consolidated or issues or claims tried together may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay.

A review of the three actions reveal that the subject matter in all three is the refund of the ALICO pension fund. The appeal under consideration is a refund of US$7,000,000.00 deducted from the monthly salaries of the employees between 1981 and 1988 and $640,000.00, deducted between January 1, 1988 and August 31, 1988, which amounts were allegedly retained instead of being remitted to ALICO, as per the Pension Fund Contract executed between NPA and ALICO for the benefit of the former employees upon their retirement or death.

The bill of information decided by Chambers Justice M. Wilkins Wright, and from which decision an appeal was taken to the Supreme Court sitting *en banc*, deals with the payment of refund of the ALICO Pension Fund in United States dollars.

The petition for a writ of certiorari seeks to reverse the allege illegal review and amendment of the decision of assigned circuit judge, His Honour Hall W. Badio, confirming the eligibility of persons to receive benefits under the refund of the ALICO pension fund.

Clearly, a consolidation of these actions and a comprehensive determination thereof would conclusively terminate the controversies and save time and cost of litigation. Clearly, this Court has the authority to consolidate causes of action.

We shall now proceed to discuss the third issue. That issue is whether or not a bill of information is cognizable before a Chambers Justice? Ancillary to this issue is, what is the office of a bill of information?

Numerous opinions of this Court have held that a bill of information is an action cognizable before the Supreme Court sitting *en banc*. This Court has held that the office of a bill of information is to inform the Supreme Court that its mandate is being executed improperly or contrary to its decision, as rendered. Moreover, this Court defined the role or office of bill a bill of information in *Kromah v. Pearson and British Petroleum Mobil West Africa (Liberia) Ltd.*, 34 LLR 304 (1986), delivered in the October Term A. D.1986. Further, this Court has said:

> "When an issue has reached the point of executing a mandate of the Supreme Court, a remedial writ was out of question. If any thing went wrong at that stage, it was the duty of the party who felt he was wronged to in some way bring the action of wrong against whoever was committing the wrong to the court *en banc* .. . from time immemorial, it has been the practice to come by bill of information to this Court in cases like these, and therefore if a judge or any judicial officer attempts to execute the mandate of the Supreme Court in an improper manner, the correct remedy is by bill of information to the Court..." *Jawhary v. Jones and Housseine,* 38 LLR 572 (1998), delivered during the October Term A. D. 1997.

It is clearly erroneous for a Chambers Justice to hear and

determine the merits of a certiorari in a bill of information proceedings without proceeding to hear the certiorari. proceed-ings out which the bill of information grows. It was therefore erroneous for the Chambers Justice to hear and determine this bill of information and the decision therefrom is void and of no legal effect

The second issue is whether or not the statute of limitations will lie in a petition for declaratory judgment? In truth, the issue of statute of limitations does not apply. The records reveal that appellants became aware of the non-remittance of the consolidated contributions representing deductions from their monthly salary in 1989. In fact, refund of this amount commenced in 1989. The letter quoted hereunder is evidence thereof.

"National Port Authority
Freeport of Monrovia
Monrovia, Liberia

July 18, 1989

Hon. Francis B. Dunbar
Managing Director, NPA
Freeport of Monrovia
LIBERIA

Dear Mr. Dunbar:

We write to inform you that we have <u>not</u> received portion of insurance benefits in Liberian dollars. Legitimately, Sir, we are entitled to two currencies, both US dollars and the Liberian dollars.

We have received the Liberian dollars, but still awaiting the US dollars. Your management received two currencies from us, NPA Employees, for the American Life Insurance Company (ALICO). What had happened to the US dollars?

With kindest regards,

Very truly yours,

NPA EMPLOYEES

1. Arthur Tarr-OPRS. DEPT.
2. Joseph Miller-ADM.
3. William Sarmu- FINANCE
4. James Sarwah-FINANCE
5. John Kollie-FINANCE

cc: Chairman of the
Board, NPA."

Also, the records reveal that the actions voluntarily withdrawn were filed and commenced in 1992. Appellants were aware that their rights to the amounts not remitted by appellee to ALICO had accrued and they took the proper legal steps within statutory time.

We have now arrived at the crucial issue, whether or not the doctrine of *res judicata* is applicable to the petition for declaratory judgment?

Appellee contend that the second petition for declaratory judgment is about the refund of contributions deducted from the monthly salaries of appellants from 1982-1988, which were to be remitted to ALICO for the pension fund in behalf of appellants. Appellee further explained that this identical contention was contained in a previous petition for declaratory judgment decided during the June A. D. 1995 Term of the Civil Law Court in favor of appellants, and that appellants have received benefits from the said decision.

Appellants contended, on the other hand, that the petition for declaratory judgment, decided by the Civil Law Court in 1995, was to request court to determine and decide the controversy as to the rights, status and legal relationship of appellants to the sums of US$1,500,135.00 and L$977,188.00 received and deposited in the International Trust Company and which amounts represented a negotiated settlement of the court action instituted by

appellants against ALICO for the pension fund received in behalf of appellants and not for contributions deducted from 1982 to 1988 and withheld by appellee. Appellee requested this Court to take judicial notice of the records in the first petition for

declaratory judgment in the trial court below. We inspected the file from the court below and the petition for declaratory judgment filed and determined during the June, A. D. 1995 Term of court reveal the following facts stated therein:

> "(1) That the petitioners collectively are members of six groups of former employees of the National Port Authority (NPA), specifically the Arthur Tarr Group, the Moses Baryor Group, the Myer K. Duaryenneh Group, the P. K. Sherman Group, the Peter S. Weah Group, and the Aryee K. Williams Group, with a total membership in excess of 1,300 ex-NPA workers.
>
> "(3) Petitioners say that from the inception of the plan in 1972 to its termination by ALICO in 1988, Co-respondent NPA Management, with petitioners' consent and approval, deducted various monthly and individual amounts from each employee's salary and deposited same with ALICO on behalf of the aforesaid and individual employees, including petitioners herein. Petitioners therefore say that their funds deposited with ALICO by Co-respondent NPA manage-ment were at all times the sole and exclusive property of the employees and that Co-respondent NPA was merely a fiduciary and agent of the employees in administering and managing the petitioners' funds deposited with ALICO."

From the foregoing, this Court believes that the first petition for declaratory judgment covers monthly salary deduction from appellants salary from January 1972 to

August 1988, as contributions to the ALICO pension fund. This period is also inclusive of the period from 1982-1988 for the amount of US$7,000,000. and L$640,000 as claimed in the second petition for declaratory judgement.

Appellants argued vehemently and strenuously that the main thrust of the first petition for declaratory judgment was the determination of rights and status in relations to the amounts of US$1,500,135 and L$979,188 which represented the negotiate settlement of the ALICO pension fund for amounts/contributions of appellants actually received from appellee and not amounts which were never remitted covering the period January 1, 1982 to 1988.

Once again we searched the records of the first petition for declaratory judgment for evidence of a better understanding of what transpired and the determinations made therein. In the process of that search, we discovered the pleading filed June 25, 1995 in the Civil Law Court, captioned motion to dismiss petition for declaratory judgment, filed by appellee in its capacity as first respondent. A close scrutiny of the said pleading reveals the following counts:

> 1) that according to the motion for preliminary injunction, Movants have submitted that the alleged controversy for which they pray for a declaratory judgment grows out of an employer/employee relationship. As such, first respondent submits that the Civil Law Court does not have jurisdiction over such matter; original appellate jurisdiction is vested by law in the National Labor Court. First respondent prays Your Honour to take judicial notice of the 1972 New Executive Law....
>
> 9) that first respondent prays that the writ of preliminary injunction be vacated for an additional reason of *lis pendis*. That is the main controversy

between petitioners and first respondent is pending at the National Labor Court and the Ministry of Labour in keeping with the clerk's certificates.

Appellants resistance to the pleading mentioned supra and duly filed in the Civil Law Court countered the allegations of the first respondent, as follows:

"(3) Petitioners further say... that respondent's possession of their funds was based solely on the authorization initially granted them by the beneficiaries. In the absence of same, respondent would not have had the legal right or capacity to have acquired their funds received from ALICO on their behalf; thus, respondent's express agency status is clearly inconsistent its allegations that (it) was acting in the capacity as employer.

(4) Petitioners further say that the mere fact that respondent had to first obtain express prior authorization and per-mission from the beneficiaries to negotiate on their behalf with ALICO further negates the allegation of an employer-employee relationship and rather confirms that the relation-ship was rather one of agent (respondent) and principal (the beneficiaries) rather one of employer and employee."

(6) Petitioners deny that there are pending actions before the National Labour Court and the Ministry of Labour involving the main controversy... the matter referred to has been voluntarily discontinued as may more clearly be seen from two certificates confirming same and attached..."

What this Court needs to decipher now in order to determine whether the doctrine of *res judicata* is applicable to the second petition for declaratory judgment is what was the nature of the complaint in the matter voluntarily discontinued by appellants herein, plaintiffs in the matters

discontinued, and petitioners in the first petition for declaratory judgment.

We inspected appellants exhibit, being the clerk's certificate evidencing the voluntary withdrawal of the matter, in re:

Arthur Tarr et al.)Unfair Labor practices

v.)

National Port Authority)

The evidence gleaned from the records reveal the complaint quoted below:

"December 2, 1992

Hon. Prof Cyrenius Forh

Minister of Labour

Ministry of Labour

Monrovia, Liberia

Dear Minister Forh:

We, the former employees of N.P.A., are anxious to bring to your administration attention the confusing attitude of the management of the National Port Authority (N.P.A.).

Mr. Minister, it was decided by the Board of Directors and announced to the workers of N.P.A. that Management will not or should not pay any employee or employees pension refund, whether in or out, until the Alico case is completely concluded in the U. S.

To our surprise, Mr. Minister, the management of N.P.A. completely violated the Board's decision and are paying those in the system instead of paying the frustrated out going ones.

Therefore, we are calling on you as the mediator to please tell the management legally to free us once and for all. The money is for us and we are not part of the company again.

KIND REGARDS.

Very truly yours,

Arthur Tarr, et al.

COMPLAINANTS

An inspection also of the records in the matter:

Moses Baror et al)

) Unfair Labour Practice

ational Port Authority)

reveals