

TO: Office of Information and Regulatory Affairs

FROM: Alston & Bird, LLP

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RE: Cochner v. U.S., 248 U.S. 405 (1919)

The Supreme Court's holding in Cochner v. U.S., 248 U.S. 405 (1919): "increase" means "increase."

- **Statutory Language:** This case hinged on the proper interpretation of a customs worker compensation statute ("An Act Fixing the compensation of certain officials in the custom service, and for other purposes"). The relevant section of the statute indicated: "That the Secretary of the Treasury be, and he is hereby, authorized to *increase* and *fix* the compensation of inspectors of customs, as he may think advisable..." [italics added by the Court for emphasis, as explained below]
- **Background on Case:** The plaintiff was a customs worker whose compensation had been decreased during his employment, and he challenged the decrease based on this statute. The Court of Claims had dismissed the plaintiff's petition on the grounds that the word "increase" in this section could mean "decrease." The Supreme Court reversed.
- **Court's Analytical Framework:** Justice McKenna, writing for the Court, explained that "[t]he case is one simply of statutory construction and depends primarily on the words 'increase and fix' which we have italicized in our quotation." Id. at 406. The Court accepted the Government's position that this statute must be analyzed in isolation, since it repealed and superseded prior legislation and practices, and proceeded to examine the statutory language to determine "how far the act is a grant of authority to the Secretary." Id. at 407.
- **Holding:** The Court rejected the Government's argument that the phrase "increase and fix" in the statute permitted the Secretary to decrease salaries. To explain its holding, the Court first stated generally that the establishment of offices and provision for their payment is a legislative function and that, thus, congressional delegations of such power to the Secretary must be done clearly. The Court then indicated that the statute gave a limited, qualified power to the Secretary—not permission to use unlimited discretion. Further, the Court identified the need for "the application of the simple rule of considering all the words of a statute in their proper dependence." Id.

- **Interpretation of “Increase”:** Specifically, the Court noted that the statute “was at pains to express clearly the power to ‘increase.’ If it has been intended to give the power to ‘decrease’—an accurately opposite power—it would have been at equal pains to have explicitly declared it; and thus the unlimited discretion in the Secretary contended for by the Government would have been simply and directly conferred and not left to be guessed from a circumlocution of words or to be picked out of a questionable ambiguity.” Id. at 407-408. The Court concluded that nothing in the statute (including discussion of minimum and maximum salaries) “enlarge[d] the authority to increase salaries into an authority to decrease them.” Id. at 408.
- **Discussion of “Questionable Ambiguity”:** The Court found the statute straightforward but addressed the “questionable ambiguity” found in the phrase “fix the compensation.” The Court suggested that the word “fix” could seem contrary to “increase,” since “increase” suggested making a change while “fix” suggested maintaining without change. However, the Court ultimately concluded that when viewed in context of the statute, the word “fix” is “the natural complement of the power to increase, establishes the increase (fixes is) thereafter as the legal compensation.” Id.
- **Application to Drug Add-On Statute:** Just as the Supreme Court held in Cochnower v. U.S. that the phrase “increase and fix” commanded an increase and not a decrease, the drug add-on statutory command to “increase,” “apply,” “convert,” and “increase” requires an increase and not a decrease. Nothing in the drug add-on statutory language “enlarge[s] the authority to increase [payment amounts] into an authority to decrease them.” See id. at 408. The “questionable ambiguity” resulting from the direction to “increase” based on “estimated growth in expenditures,” potentially even when expenditures have decreased, should be resolved by “the application of the simple rule of considering all the words of a statute in their proper dependence.” See id. at 407. As the Cochnower Court was unwilling to allow the Government to expand its power from the statutory directive to “increase” into a power also to decrease, the Court should similarly conclude that CMS would be violating the drug add-on statute if the agency attempted to decrease payment amounts rather than comply with statutory command to “annually increase” these amounts.
- **Shepard's Report:** Shepard’s shows a Caution symbol on Cochnower in light of a subsequent case, Ryan v. U.S., 260 U.S. 90 (1922), which held that Cochnower did not apply to the facts of the case at issue and, accordingly, upheld the Secretary's authority to set the plaintiff's compensation at the rate he did in that situation. (Significantly, the Secretary had not, in Ryan, decreased the compensation.) Thus, the cautionary case did not modify the holding or challenge the reasoning in Cochnower, it only found that the prior case did not apply to the instant case.