

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LUIS SANCHO, et al.
Plaintiffs-Appellants,

v.

US DEPARTMENT OF ENERGY, et al.
Defendants-Appellees,

v.

SHELDON GLASHOW, et al.
Movants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PETITION FOR REHEARING EN BANC

(Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

Plaintiffs/Appellants

Walter L. Wagner and Luis Sancho
556 E 3050 N
Provo, UT 84604
808-443-6344
retlawdad@hotmail.com

No. 08-17389
(D.C. No. 1:08-cv-00136-HG-KSC)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LUIS SANCHO, et al.
Plaintiffs-Appellants,
v.
US DEPARTMENT OF ENERGY, et al.
Defendants-Appellees,
v.
SHELDON GLASHOW, et al.
Movants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PETITION FOR REHEARING EN BANC
(Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

Petitioners request En Banc hearing of the above-entitled appeal on the basis that the proceeding involves a question of exceptional importance, and on the basis that consideration by the full Court is necessary to secure uniformity of the Court's decisions.

This Petition for Rehearing En Banc is timely filed within 45 days of the August 24, 2010 decision date of the appellate tribunal Panel affirming the underlying appeal.

I

INTRODUCTION

Defendants and Appellees US Department of Energy (DOE) and European Center for Nuclear Energy Research (CERN) have engaged in a joint collaborative effort in the construction, maintenance and operation of a machine (Large Hadron Collider, aka LHC) designed to smash atoms together at energies that do not exist in Nature, in an effort to create new forms of matter referred to in the scientific literature as “strange-matter” or “strangelets”. This type of matter is believed to have existed in the earliest history of the Universe, but no longer exists. Defendant/Appellee DOE has funded approximately 10% of the construction costs (in excess of \$500,000,000) of the LHC, and continues to fund ongoing experimental operations costs.

Plaintiffs and Appellants Luis Sancho and Walter L. Wagner are scientists who are concerned with the evident duplicity of Defendants in telling the general public, via press releases and other communications with the general media, that the LHC will simply recreate events which occur routinely in the Earth’s upper atmosphere by way of natural cosmic ray bombardment, but in a controlled laboratory setting. If such were the case, Plaintiffs would not have filed suit. Rather, in their own internal documents CERN acknowledges that the LHC will create conditions “beyond the reach of cosmic rays” in their quest to create this new form of matter, known as strange matter or strangelets because of the large number of “strange quarks” composing it.

II

CERN IS A DEFENDANT

Contrary to the appellate tribunal Panel ruling, CERN was properly served by Maitre Marco Breitenmoser, Huissier Judiciaire. Mr. Breitenmoser effected the very best type of service possible. He hand-delivered the certified copy of the Complaint to the CERN Legal Department located on the property of CERN in the jurisdiction wherein he serves as a Huissier Judiciaire, namely Switzerland. CERN cannot complain that they did not receive notice of this suit, but instead chose to default and not file an Answer. That service document is in the possession of this Court and it was also published in the public domain (1). Thus Defendant CERN is in this suit, even if it is not present at Court, and this Court has jurisdiction over CERN, even if CERN chose not to participate. The US Attorney's argument on behalf of Defendant CERN that some other type of service should have been effected is an argument that could only be made in Switzerland, not in US Courts, which have long recognized that actual service upon a party, informing them of the proceedings at hand, is the intent and purpose of Service of Process and such actual service, providing a court-conformed certified copy of the Complaint designed to inform a party of the pending proceedings, confers jurisdiction of the Court upon that party.

A “CREDIBLE THREAT OF HARM” EXISTS

The ruling affirms that (2) the plaintiffs must demonstrate “a causal connection between the injury and the conduct complained of” and that an ‘Injury in Fact’ requires some “credible threat of harm.” Credible threat of harm has been proven ad nauseam by Plaintiffs/Appellants using 'standard science'. If the LHC forms this novel type of matter known in theory as strange matter or Strangelets, it will form an explosive quark-liquid, ruled by the so-called Einstein-Bose statistics. Since according to the most advanced laws of standard Strangelet science (MIT, Shanghai Institute of Higher physics (2)), if created, Strangelets will start an “ice-9” reaction that will devour the Earth, converting the planet into a 15 kilometer diameter ‘rock’ of ultra-dense strange matter. Additionally, since according to Einstein, whose Relativity theory is standard science in all things referent to black holes that might be produced at the LHC, those ultra-dense forms of mass known as micro black holes will absorb all the matter of the Earth, destroying the planet should they be produced several years hence when such proton-proton collisions are planned at the highest energies at the LHC.

This Court must understand that standard science is not speculative or probabilistic. When we switch on a light, the standard laws of electromagnetism discovered by Maxwell imply that if the circuit is not broken, light happens. This is

called the 'Totalitarian Principle' of Physics, which states that 'all that is not forbidden by the laws of physics is compulsory'(3).

On the other hand, Defendant CERN uses 'speculative theories' trying to justify the existence of “no-risk” for both micro black hole creation (the so-called Hawking's radiation, never observed and never proved since it is based on the speculation that black holes travel to the past and evaporate, which is like saying that the dead resurrect to the past (4)) and for Strangelet creation. While in the case of Strangelets, knowing its enormous danger (and hoping the risk is small, which apparently is their faith) but evidently not wanting to jeopardize their funding, Defendant CERN has blatantly lied to the public affirming that strange matter (aka Strangelets) cannot be produced, while at the same time readying experimentation in an effort to detect such Strangelets (the CASTOR experiment, *infra*).

Indeed, since the appellate tribunal Panel's ruling took place, plaintiffs have received internal documents from CERN's servers which prove CERN has lied repeatedly to the public, by stating that:

-“Strangelets will not happen at the LHC”.

and

“the experiments taking place at the LHC are safe because they happen constantly in the Universe.” (5)

Both safety statements are false. Since CERN:

- Has designed and installed a particle-detector machine called CASTOR, acronym for Centauro and Strangelet Object Research, to observe the creation of Strangelets at the LHC (Exhibit A).

Defendant CERN affirms in closed door Conferences and documents released for internal consumption that:

- Lead on lead atomic collisions, which will start potentially as early as this November, 2010, will have more energy than natural cosmic ray collisions (which are primarily Proton on Nitrogen/Oxygen) for Lead on Lead, and so in those collisions “events can be expected to show exotic phenomena [strangelets] that is beyond the reach of cosmic rays”(Exhibit B).

- And CERN gives a probability of detecting strangelets in those collisions at low energy of 70%; and at high energy of 65% (Exhibit C).

It is the contention of Plaintiffs that those statements completely change the nature of this suit, since now “injury in fact” is not speculative but proven by CERN's internal papers as a serious potentiality, should the intended creation of strange matter go awry, and the newly created strangelets are spilled from the LHC and engage in the runaway fusion reactions theorized in scientific articles, instead of the hoped-for benign fizzle.

III

PATRIOT ACT ALSO APPLICABLE

Further on, given this new evidence and the number of potential victims of those experiments (namely all mankind), CERN is committing an Act of Terrorism that gives Jurisdiction to this Court under the US Civil Code. In all cases of 'International or Domestic Terrorism', which can put at risk the life of millions of people; the Patriot Act's amendments to the Civil Code (Section 802, 803 and 3077 of US Civil Code) expressly gives Jurisdiction over those crimes to 'any Federal judicial district as provided by law.' (6)

Thus, contrary to the appellate tribunal Panel ruling, which states that “even if Wagner (sic) demonstrated...injury in fact... the destruction of the Earth is in no way attributable to the US government”, under this new evidence the US Government has, according to the US Code, both the obligation and the legal capacity to intervene. Since now there is a possibility of 'Acts of Terrorism' involving nuclear substances that can cause 'mass destruction' (6).

In the suit Plaintiffs quoted the Patriot Act's amendments to the US Code that permits Federal Courts and the American government to intervene when there are Acts of Terrorism or nuclear substances that can harm American lives. Now the Exhibits show further proofs of those acts. Thus, the Court must accept jurisdiction

under the US code, enjoin the Defendant DOE from funding CERN, and ask the US and European Governments to stop those experiments.

IV

NEPA REQUIRES EIS FOR POTENTIAL HARM

The appellate tribunal Panel ruling is based on the premise that the only 'injury in fact' there must be, in essence, is the actual destruction of the Earth (not the potential destruction), as to be enough proof to enjoin CERN. Yet such 'injury in fact' in such case means our extinction. So not even then could we denounce CERN, as we would not be here. That appellate tribunal Panel ruling though no longer applies under the newly discovered evidence (Exhibits A and C), since 'injury in fact' is not speculative, but rather strongly evidenced by the fact that CERN intends to create strange matter, contrary to its public posturing and its indirect assurances to this Court via the Amici Curiae (who appear themselves to be misinformed and/or deceived by CERN). Such duplicity on the part of Defendant CERN, coupled with the strong likelihood that such strange matter could engage in runaway fusion (2), is all that is needed for there to exist the requisite 'injury in fact' as envisioned in NEPA and the Environmental Impact Statements (EIS) mandated whenever such potentialities exist.

So this Court can no longer deny Jurisdiction on those grounds, or else the honorable judges would imply that we should scrap all prevention of crime

including the prevention of genocides; that we should allow rapists to stalk their victims because there is no injury in fact; that we should let people menace the life of others with weapons or threats, because there is no 'injury in fact'; that restraining orders and Injunctions should be scrapped all together until there is in fact an injury, and not an 'injury in fact'.

V

A FAVORABLE RULING WILL REDRESS THE INJURY

The ruling implies that if (3) 'a likelihood that a favorable decision will redress the injury', the case must be accepted. And this is indeed the case herein. Since this September's \$133.4 million cut over a five-year period to 2015 by European Governments which have also been funding CERN has resulted in a one year delay on the upgrades to the Large Hadron Collider's beam intensity that would increase the dangers of injury and the shutting down of all other accelerators in 2012. Thus, eliminating the US DOE contribution will further imperil and delay LHC's operations and the injury it will cause on plaintiffs. (7) Further, eliminating the funding of the intended experimentation (and not the general operations funded by CERN's European support, which funding is significantly reduced), which is the current primary US funding, would also serve to redress the injury.

This Court must be aware that neither the US DOE nor CERN have carried out the environmental impact studies required by NEPA, even though the US

contributed \$531 millions to CERN – a quantity far larger than the total sum invested in many other projects in which environmental impact studies were carried out.

In that sense we must learn from past mistakes of the US Government. Indeed, as the Washington Post recently denounced (8) that the ‘U.S. exempted BP's Gulf of Mexico drilling from Environmental Impact Study’ since BP contended that an oil spill was “unlikely” in our lifetime, and requested exemption from producing an EIS. This “unlikely” is exactly the same word used by CERN's Amici Curiae, Mr. Sheldon Glashow, to deny the possibility of creation of strange matter or strangelets (9), which the exhibits show CERN believes in fact it will produce with a 70% probability of detection. Thus even if this Court trusted the Amici Curiae - unaware of the duplicity and willful blindness of CERN – and it believed there was no risk of ‘injury in fact’, under the new evidence of those exhibits, it must consider that as in the case of BP, a spill will quite possibly happen. Mr. Glashow's affirmation is contradicted by the very same CERN Company in its internal documents that affirm exactly the opposite - the ‘likely’ possibility of creation of those spills.

Indeed, Mr. Katsas, one of the scientists in charge of the CASTOR detector plainly states in one of those documents: “My name is Panos Katsas. I work as an experimental physicist for the CASTOR forward calorimeter of CMS and my main

area of interest is the study of exotic events in heavy ion collisions, especially the identification of strangelets, which are likely to be produced.” (italics added for emphasis) (10)

The difference between both types of spills however is significant:

A spill of hyper-dense Strangelets, falling into the Earth will convert by a runaway fusion reaction more and more atoms into an ultra-dense strange liquid, until its mass is such that it starts an ice-9 reaction, exploding the Earth due to the release of enormous fusion energy, which will be irreversible. (This is no different than the fusion reactions of so-called Hydrogen-bombs, which have a runaway fusion reaction until all utilizable fuel has been consumed, allowing for H-bombs of any size. In the case of Strangelets, the utilizable fuel would be all of the atoms of earth, not just heavy-Hydrogen atoms which are otherwise rare on earth.) This is because there is no way mankind can enter into the center of the Earth and close a spill of stable Strangelets, as British Petroleum has been able to do with great difficulties and environmental damage to the American coast in their Gulf Spill, which was only one mile down from the sea surface.

VI

CONCLUSION

Plaintiffs/Appellees have thus shown that:

- CERN recognizes it will attempt to produce strangelets, and standard science has proven that strangelets could blow up the Earth (2):

- Injury in Fact is proven (1); and “a causal connection between the injury and the conduct complained of” is proven, given the fact that the US is on Planet Earth (2) (11).

- Defendants CERN and DOE are acting with Criminal Negligence and Recklessness, imperiling the life of all the citizens of America by conducting those experiments, which can cause a spill of Strangelets. Hence they are under the jurisdiction of this Court under both NEPA and the US Code against 'Terrorist acts'.

Since 'a likelihood that a favorable decision will redress the injury (3) is shown, this Court must rule immediately against Defendants CERN and the DOE, issuing a temporary Restraining Order until a full Hearing thereon can be held, enjoining the US DOE so as to prevent further funding of those Experiments under NEPA and under the obligations set by the US Code, titles 802, 803 and 3077, and further requesting the European Governments with territorial jurisdiction over CERN (Switzerland and France) to stop the 'likely' creation of Strangelets in those experiments.

DATED: October 3, 2010

Walter L. Wagner

Luis Sancho

Notes:

(1) Published at <http://www.wiki1.net/groups/uploads/LHCfacts/serve2med.jpg>

(2) In the article “Will Relativistic Heavy-Ion Colliders Destroy Our Planet?” 470 Phys. Lett. B 142-148 (1999); Dr. Rujula, who works at CERN and denies any risk in his public statements for this company CERN states “Imagine that, for some unforeseen reason, there is a ‘valley of stability’ for negative strangelets. Suppose that, somehow, such an object is produced in a laboratory high-energy reaction and that it survives the collisions that eventually bring it to rest in matter. The negative strangelet would attract a positive nucleus and may eat it. The resulting object may lose positive charge and adjust its strangeness by electron capture or positron β -decays. The new strangelet may be negative again, and maintain an appetite for nuclei. If its mass grows to some 0.3 ng ($A \approx 2 \times 10^{14}$) it falls to the centre of the Earth, for its weight overcomes the structural energy density of matter (109 erg cm^{-3} or 0.1 eV per molecular bond). At a mass above 1.5 ng, for a typical nuclear density, the object becomes larger than an atom and the positron cloud that it has been developing sits mainly inside the strangelet itself (for stable strangelets that have grown this large, the sign of Z is immaterial). Even without the help of the Coulomb attraction, gravity and thermal motion may then sustain the accreting chain reaction until, perhaps, the whole planet is digested, leaving behind a strangelet with roughly the mass of the Earth and 100 m radius. The release of energy per nucleon should be of the order of several MeV and, if the process is a run-away one, the planet would end in a supernova-like catastrophe.” (underlining added for emphasis)

While in the paper “New solutions for the color-flavor locked strangelets” G. X. Peng, X. J. Wen, Y. D. Chen from the 'Institute of High Energy Physics' of China and the Center for Theoretical Physics at MIT, Cambridge, USA present 'solutions to the system equations where CFL strangelets are slightly negatively charged.' Further on, they give estimates that show they will 'certainly' be produced at the

energies to take place at the LHC. The paper can be downloaded at:
<http://arxiv.org/abs/hep-ph/0512112>

(3) The totalitarian Principle of quantum Mechanics was found by Nobel Prize Gell-mann, who also discovered the quarks that form those strangelets:

http://en.wikipedia.org/wiki/Totalitarian_principle

(4) This absurd theory has been exposed by Mr. Hawking in his book 'Black Holes and Baby Universes (1993)' where he affirms that Black holes are 'time machines' and doors to 'Baby Universes'; and in 'The Universe in a nutshell' where he affirms they can be used to travel in time and 'kill your grand-father'. Further on Mr. Hawking denies 'Einstein's standard theory of black holes' in his article 'The quantum mechanics of black holes; SciAm; Jan. 1977, where he flatly stating without any proof that 'Einstein is double wrong'. We could reply with Mr. Einstein's own words about such improbable theories: “Every theory is speculative. If, however, a theory is such as to require the application of complicated logical processes in order to reach conclusions from the premises that can't be confronted with observation, everybody becomes conscious of the speculative nature of the theory. In such case an almost irresistible feeling of aversion arises...”

Those are indeed the characteristics of Mr. Hawking's theory, reason why he has never received a Nobel Prize given only to proved theories as Mr. Einstein did. So this Court must consider Einstein's work on Relativity and Quark Fermion condensates the standard theory of black holes and strangelets, which considers certain the destruction of the Earth if any of those two types of ultradense matter appear on this planet .

(5) CERN states in 'The Safety of the LHC' at

<http://public.web.cern.ch/public/en/lhc/safety-en.html> that: “The LHC, like other particle accelerators, recreates the natural phenomena of cosmic rays under controlled laboratory conditions, enabling them to be studied in more detail.” Thus, it affirms those experiments are safe because “Over the past billions of years, Nature has already generated on Earth as many [cosmic rays] collisions as about a million LHC experiments – and the planet still exists.” Yet exhibit B shows that the 'serious' internal reports of the CERN Company expect events never found in cosmic rays in the Lead on Lead atomic collisions starting potentially as early as this November, 2010. Regarding Strangelets in the same page on 'The Safety of the LHC' CERN states flatly that “Strangelets cannot be produced” contradicting its own conferences for 'specialists' on the CASTOR Detector that will search for them (Exhibit A and C).

(6) On view of the recognition by CERN that it will produce strangelets (F, Exhibit C) that could extinguish life in this planet, CERN's actions should be considered an act of Terrorism, which falls under Federal Court jurisdiction. Since it applies to

CERN Section 3077(1) of title 18, United States Code, Section 802 and 803 and its amendments by the Patriot Act, 'Title VIII—strengthening the criminal laws against terrorism' that affirm:

“(1) ‘act of terrorism’ means an act of domestic or international terrorism as defined in section 2331.

(5) the term ‘domestic terrorism’ means activities that— “(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; “(B) appear to be intended— “(iii) mass destruction.

(b) A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.”

Specifically this Court should consider the cases of Terrorism in which the Code allows intervention of US Government: Section 831 (relating to nuclear materials), section 2332b (relating to acts of terrorism transcending national boundaries) and finally section 236(a) (relating to sabotage of nuclear facilities), Since the LHC in which the US invested 531 million \$ can be destroyed by those experiments.

(7) See <http://www.reuters.com/article/idUSTRE68G3NL20100917>

(8) See the article “U.S. exempted BP's Gulf of Mexico drilling from Environmental Impact Study” at:

<http://www.washingtonpost.com/wp-dyn/content/article/2010/05/04/AR2010050404118.html>

(9) Both B.P. and CERN lied, saying a spill was 'unlikely'. B.P. 'unlikely' statement can be found at:

http://media.washingtonpost.com/wp-srv/nation/documents/initial_exploration_plan050410.pdf

CERN's 'unlikely' statement on the creation of strangelets by Amicus Curiae, Mr. Glashow can be found in his Amicus Brief, “Argument I. Appellants allegations of a safety risk at CERN and injury to them are purely hypothetical, speculative, and not credible”. This again is in open contradiction with CERN's conferences on CASTOR and the fact that CERN has spent important amounts of time and money, constructing a detector of strangelets and giving 'week conferences' on them (Exhibit A, C.)

(10) Mr. Katsas' statement can be found at:

http://cms.web.cern.ch/cms/Media/Publications/CMStimes/2007/12_03/index.html bottom, left.

(11) See Google maps if the Court doubts of the 'causal connection' between America and Planet Earth.