NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

DIANE S. BLODGETT, TOM LINGENFELTER,
Plaintiffs -Appellants

v.

UNITED STATES,
Defendant-Appellee

2018-2398

Appeal from the United States Court of Federal Claims in No. 1:17-cv-02000-LAS, Senior Judge Loren A. Smith.

Decided: December 3, 2019

DIANE S. BLODGETT, St. Louis Park, MN, pro se.

TOM LINGENFELTER, Doylestown, PA, pro se.

BORISLAV KUSHNIR, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant-appellee. Also represented by JOSEPH H. HUNT, ELIZABETH MARIE HOSFORD, ROBERT EDWARD KIRSCHMAN, JR.

Before NEWMAN, LOURIE, and REYNA, *Circuit Judges.*

PER CURIAM.

Diane S. Blodgett and Tom Lingenfelter are associates of T.G. Morgan, Inc., a rare coin dealer that was shut down by the Federal Trade Commission in the early 1990s for fraudulent and deceptive business practices. Shortly after the shutdown, TGM's creditors forced the company into bankruptcy. More than 25 years later, Blodgett and Lingenfelter, proceeding pro se, filed a lawsuit at the U.S. Court of Federal Claims. Their 832-page complaint alleged that the 1990s proceedings were part of an "egregious conspiracy" perpetrated by multiple federal courts, multiple federal agencies, and by their own attorneys. The Claims Court dismissed Blodgett's and Lingenfelter's complaint for lack of subject matter jurisdiction, untimeliness, and failure to state a claim upon which relief can be granted. **[SA 1, 5]** Because we agree with the Claims Court on each ground for dismissal, we *affirm*.

BACKGROUND

In August 1991, the Federal Trade Commission ("FTC") brought fraud charges in federal district court against a rare coin dealer, T.G. Morgan, Inc. ("TGM"), and its president, Michael Blodgett. To settle the FTC action, TGM and its principals agreed in a signed consent order to transfer TGM's assets to a "settlement estate" that would reimburse the victims of TGM's fraud. TGM's assets were transferred to the settlement estate

"irrevocably and without the possibility of reversion to themselves or to any entity owned or controlled by them." *Fed. Trade Comm. v. T.G. Morgan, Inc.*, No. Civ. 4-91-638, 1992 WL 88162, at *4 (D. Minn. Mar. 4, 1992). The district court explained that TGM and its principals had thus "waive[d] any and all claims that they, or entities owned or controlled by them, may have to the [transferred] assets." *Id.* at *5.

Shortly thereafter, TGM's creditors forced the company into involuntary bankruptcy. The bankruptcy court appointed a trustee to manage the bankruptcy estate. The trustee filed a motion to seize assets in the settlement estate and transfer those assets to the bankruptcy estate. Mrs. Diane S. Blodgett, a principle of TGM, and Mr. Thomas Lingenfelter, a business associate and third party beneficiary of TGM, objected to the transfer. The bankruptcy court rejected their arguments, finding that neither party had a legally cognizable claim against the settlement estate. The bankruptcy court granted the trustee's motion.

Over the next 25 years, Mrs. Blodgett and Mr. Lingenfelter (collectively, "Blodgett") filed more than a dozen lawsuits that claimed an interest in the assets seized by the trustee and challenged the scope and content of the bankruptcy estate. In each case, the court rejected Blodgett's claims as meritless.

On December 18, 2017, Blodgett filed an 832-page pro se complaint in the U.S. Court of Federal Claims ("Claims Court"). Blodgett's complaint, which gave rise to this appeal, alleges a 26-year government

conspiracy that involves breach of contract, various torts, a Fifth Amendment taking, and violations of the Bankruptcy Code, the Internal Review Code ("IRC"), and the Employment Retirement Income Security Act of 1974 (ERISA).

On March 13, 2018, the Government moved to dismiss Blodgett's complaint. Blodgett opposed. On July 26, 2018, the Claims Court granted the Government's motion for three reasons. First, the Claims Court found a lack of subject matter jurisdiction over Blodgett's Bankruptcy Code, IRC, and ERISA claims. Second, the Claims Court held that all of Blodgett's claims are barred by the Tucker Act's six-year statute of limitations. Third, the Claims Court held that Blodgett failed to state a takings claim because Blodgett irrevocably transferred the assets-in-question to the settlement estate and relinquished all rights and property interests in those assets. The Claims Court instructed the clerk to refuse any further filings or complaints from Blodgett without leave of court.

Blodgett timely appealed pro se. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

DISCUSSION

We review de novo whether the Claims Court has properly dismissed for lack of jurisdiction or for failure to state a claim, both of which are questions of law. *Turping v. United States*, 913 F.3d 1060, 1064 (Fed. Cir. 2019). To survive a motion to dismiss for failure to state a claim upon which relief can be granted, a

complaint must contain sufficient factual allegations that, if true, would state a claim to relief that is plausible on its face. *Call Henry, Inc. v. United States*, 855 F.3d 1348, 1354 (Fed. Cir. 2017).

To survive a motion to dismiss for lack of subject matter jurisdiction, the plaintiff must prove by a preponderance of the evidence that the court possesses jurisdiction. *Id.* When determining whether subject matter jurisdiction exists, we generally "accept as true all undisputed facts asserted in the plaintiff's complaint and draw all reasonable inferences in favor of the plaintiff." *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011). While pro se pleadings, like those here, are to be liberally construed, that does not alleviate a plaintiff's burden to establish jurisdiction. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988).

The jurisdiction of the Claims Court is limited in two ways: by subject matter and by timing. First, the Tucker Act limits the subject matter jurisdiction of the Claims Court to claims against the United States for money damages other than those sounding in tort, including those arising from a contract, the Constitution, or a federal statute or regulation. 28 U.S.C. § 1491(a)(1). Because the Tucker Act itself does not create a substantive cause of action, a plaintiff must identify a separate money-mandating source of substantive law that creates the right to money damages. *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005).

Second, all claims brought before the Claims Court "shall be barred unless the petition thereon is filed within six years after such claim first accrues." 28 U.S.C. § 2501. *See Holmes v. United States*, 657 F.3d 1303, 1317 (Fed. Cir. 2011) (explaining that "[c]ompliance with the statute of limitations is a jurisdictional requirement"). A cause of action "first accrues" when "all the events have occurred that fix the alleged liability of the government and entitle the claimant to institute an action." *Holmes*, 657 F.3d at 1317. For example, "[i]n the case of a breach of a contract, a cause of action accrues when the breach occurs." *Id.*

We begin with Blodgett's claims that are based on violations of the Bankruptcy Code, the IRC, and the ERISA. We conclude that the Claims Court properly dismissed each claim for lack of subject matter jurisdiction.

Blodgett appears to assert three bankruptcy-related claims, each arising under Title 11: (i) the court-appointed trustee failed to perform his fiduciary duties in violation of 11 U.S.C. § 704, (ii) the bankruptcy court performed an improper offset in violation of 11 U.S.C. § 362(a)(7); and (iii) TGM's creditors filed involuntary bankruptcy filing in bad faith in violation of 11 U.S.C. § 303. S.A. 126, 137, S.A. 249; S.A. 607. We conclude that the Claims Court properly dismissed each of Blodgett's bankruptcy claims for lack of subject matter jurisdiction because district courts—and not the Claims Court—have "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334.

Blodgett's IRC-based claim appears to assert that the government conducted unauthorized tax collections by virtue of the 1990s FTC proceedings and consent order. S.A. 167, S.A. 595. We conclude that the Claims Court properly dismissed this claim for lack of subject matter jurisdiction because claims for damages based on allegedly unauthorized tax collections must be brought "exclusively before a district court of the United States." *Ledford v. United States*, 297 F.3d 1378, 1382 (Fed. Cir. 2002).

Blodgett's ERISA-based claim appears to assert that the bankruptcy court violated ERISA's anti-alienation provisions by alienating "Blodgett's fully funded, fully vested, fully compliant ERISA pension" and subjecting it to a constructive trust. S.A. 24. *See also* S.A. 14, 51, 69 (claiming the FTC "loot[ed] the Blodgett's TGM fully funded ERISA pension fund"). We conclude that the Claims Court properly dismissed this claim for lack of subject matter jurisdiction because the Claims Court "shall not have jurisdiction [over] any claim for a pension." 28 U.S.C. § 1501.

We likewise conclude that the Claims Court lacked subject matter jurisdiction over Blodgett's torts claims. Blodgett asserts that the government committed "hundreds of torts" and "years of unending torts," including "bad faith torts," and "torts in court filings." S.A. 9, S.A. 14, S.A. 18, S.A. 40, S.A. 69. As a result, Blodgett contends, "the United States must now pay the bill." S.A. 107. We conclude that the Claims Court properly dismissed these claims because the Claims Court "lacks jurisdiction over tort actions against the United

States." *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997) (citing 28 U.S.C. § 1491(a) (excluding from the Claims Court's jurisdiction cases "sounding in tort")).

Blodgett's remaining claims—a breach of contract claim and Fifth Amendment taking claim—are barred by the Claims Court's six-year statute of limitations.

Blodgett's contract claim appears to assert that Blodgett entered into a "settlement contract with the FTC" when Mrs. Blodgett signed the FTC consent order and "fully funded 50% of the consent settlement on December 31, 1991." S.A. 8, S.A. 12. Blodgett alleges that the bankruptcy trustee's 1992 seizure of funds from the settlement estate breached the contract "by interference with Ms. Blodgett's access to untainted personal assets." S.A. 118, 801. The contract claim thus "first accrued" in 1992, when Blodgett contends the breach occurred. *Holmes*, 657 F.3d at 1317. As a result, Blodgett's contract claim is barred because it was filed in 2017, more than six years after it first accrued. 28 U.S.C. § 2501.

Blodgett's Fifth Amendment taking claim appears to assert that the FTC's acquisition and liquidation of assets in 1991 and 1992 constituted a taking of personal property "without just compensation." S.A. 39, S.A. 258–259, S.A. 392–393. A takings claim under the Fifth Amendment "accrues when the taking action occurs." *Navajo Nation v. United States*, 631 F.3d 1268, 1273–74 (Fed. Cir. 2011); *Nw. La. Fish & Game Pres. Comm'n v. United States*, 446 F.3d 1285, 1289 (Fed. Cir.

2006) ("A taking occurs when governmental action deprives the owner of all or most of its property interest."). Construing Blodgett's complaint liberally, the takings claim first accrued in 1992, when the FTC placed TGM's assets in the settlement estate. As a result, Blodgett's Fifth Amendment takings claim is barred because it was filed in 2017, more than six years after it first accrued. 28 U.S.C. § 2501.[1]

Blodgett attempts to circumvent the six-year statute of limitations by arguing that Blodgett "first sued under the Tucker Act in December 1994, thus arguably timely preserving their claims back to 1991." S.A. 1990. *See also* Appellant Br. at 13–14 (asserting that the 1994 complaint "tolled any statute of limitations"). As we have explained, the Claims Court's six-year statute of limitations "is jurisdictional and may not be waived or tolled." *FloorPro, Inc. v. United States*, 680 F.3d 1377, 1382 (Fed. Cir. 2012) (the six-year period "cannot be extended even in cases where such an extension might be justified on equitable grounds."). Nor can Blodgett argue that the instant complaint is timely under the "relate back doctrine" of Rule 15(c) of the Rules of the U.S. Court of Federal Claims, because Rule 15(c)

---

[1] We also agree with the Claims Court that Blodgett failed to state a Fifth Amendment takings claim upon which relief can be granted. Because TGM irrevocably transferred the assets-in-question and "waive[d] any and all claims" to those assets, *T.G. Morgan*, 1992 WL 88162, at *4–*5, Blodgett cannot "identify a legally cognizable property interest." *Am. Bankers Ass'n v. United States*, 932 F.3d 1375, 1384–85 (Fed. Cir. 2019).

expressly applies only to amended complaints, not newly filed complaints.

Because all of Blodgett's claims are outside the scope of the Tucker Act or time-barred, we conclude that the Claims Court properly dismissed Blodgett's complaint.

CONCLUSION

We have considered Blodgett's other arguments and find them unpersuasive. We conclude that the Claims Court properly dismissed Blodgett's complaint for lack of subject matter jurisdiction, untimeliness, and failure to state a claim upon which relief can be granted. We *affirm*.

AFFIRMED

COSTS

No costs.

United States Court of Federal Claims
No. 17-2000C
Filed: July 26, 2018

DIANE S. BLODGETT, *et al.*,
Plaintiffs,
v.
THE UNITED STATES OF AMERICA,
Defendant.

OPINION AND ORDER

***SMITH*, Senior Judge**

On December 18, 2017, plaintiffs, proceeding *pro se*, filed their Complaint with this Court, seeking various forms of relief. Plaintiffs' Complaint asserts, *inter alia*, that the government has violated the Bankruptcy Code, the Internal Revenue Code, and the Employee Retirement Income Security Act of 1974, and that that the government has committed a Fifth Amendment Takings Claim and committed various torts against plaintiffs.

I. Background

Pro se plaintiffs, Diane Blodgett and Tom Lingenfelter, raise claims stemming from an action brought by the Federal Trade Commission ("FTC") in the early 1990's. Complaint (hereinafter "Compl.") at 6. In

August 1991, the FTC brought suit against T.G. Morgan ("TGM") and its president for violations of the prohibitions against deceptive practices under the Federal Trade Commission Act, 15 U.S.C. § 45(a) (2006). *In re T.G. Morgan, Inc.*, 175 B.R. 702, 703 (Bankr. D. Minn. 1994). The FTC charged and convicted Michael Blodgett, Diane Blodgett's husband and TGM's president, of fraud. *Lingenfelter v. Stoebner*, 2005 WL 1225950, at *1 (D. Minn. May 23, 2005). Michael Blodgett, TGM, and TGM's principals agreed to place TGM's assets into a "Settlement Estate" for the purpose of reimbursing its victims. *Id.*

The Final Judgement, issued March 4, 1992, appointed a receiver to liquidate assets within the Settlement Estate. *FTC v. T.G. Morgan*, 1992 WL 88162, at *5 (D. Minn. Mar. 5, 1992). TGM and Mr. and Mrs. Blodgett irrevocably transferred all assets contained in the Settlement Estate to the FTC. *Id.* at *4. During these proceedings, TGM's creditors filed an involuntary bankruptcy suit against TGM. *Lingenfelter*, 2005 WL 1225950 at *1. TGM was subsequently forced into bankruptcy, and, despite protests from TGM's principals, the Bankruptcy Court transferred the Settlement Estate assets to TGM's bankruptcy estate. *Id.* In its Final Judgement, the Bankruptcy Court found that Mrs. Blodgett and Mr. Lingenfelter had no claims against the estate. *Id.* In the case at bar, plaintiffs appear to seek the assets that were irrevocably transferred to the FTC and then subsequently transferred to TGM's bankruptcy estate. Compl. at 14.

In the 25 years since the origin of the FTC matter in 1991, plaintiffs have filed numerous lawsuits against many defendants in a variety of courts. One of the most recent and significant iterations was in *Lingenfelter*, where Tom Lingenfelter and other parties, including Diane Blodgett, raised similar claims. *Lingenfelter*, 2005 WL 1225950, at *1. That cause of action was dismissed with prejudice by the presiding judge. *Id.* at *7.

On December 18, 2017, plaintiffs filed the current Complaint with this Court. Compl. at 1. Plaintiffs seek relief through Rule 60(b)(6) of the Rules of the Court of Federal Claims ("RCFC") for prior judgments that were allegedly entered wrongfully through various torts, conspiracies, and schemes. Compl. at 57.

On March 13, 2018, the government filed a Motion to Dismiss for lack of subject-matter jurisdiction and for failure to state a claim upon which relief can be granted, pursuant to RCFC 12(b)(1) and12(b)(6). Defendant's Motion to Dismiss (hereinafter "MTD") at 1, 4. First, the government argues that that this Court lacks jurisdiction over plaintiffs' contract, statutory, and tort claims. *Id.* at 5-7. Next, the government asserts that plaintiffs fail to state a plausible Fifth Amendment takings claim. *Id*, at 8-9. Finally, the government asserts that plaintiffs' claims are barred by the applicable statute of limitations. *Id.* at 9-10.

Plaintiffs' filed their Response to defendant's Motion to Dismiss on April 18, 2018, arguing that RCFC 60(b)(6) allows this Court to overlook the government's

arguments for dismissal. Plaintiffs' Response to Motion to Dismiss (hereinafter "P's Resp.") at 7. Plaintiffs believe that "[RCFC] 60(b)(6) is triggered by either egregious affirmative schemes or new rules of law." *Id.* at 1. Furthermore, plaintiffs believe that RCFC 60(b)(6), once triggered, will permit this Court to overturn judgments, despite jurisdictional and statutory time limits, so long as a justification for relief exists. *Id.* at 3. The government filed its reply in support of its Motion to Dismiss on April 25, 2018. This case is now fully briefed and ripe for review.

II. Standard of Review

This Court's jurisdictional grant is primarily defined by the Tucker Act, which provides this Court the power "to render any judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States . . . in cases *not* sounding in tort." 28 U.S.C. § 1491(a)(1) (2012) (emphasis added). Although the Tucker Act expressly waives the sovereign immunity of the United States against such claims, it "does not create any substantive right enforceable against the United States for money damages." *United States v. Testan*, 424 U.S. 392, 398 (1976). Rather, in order to fall within the scope of the Tucker Act, "a plaintiff must identify a separate source of substantive law that creates the right to money damages." *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) *(en banc* in relevant part).

In determining whether subject-matter jurisdiction exists, the Court will treat factual allegations in the complaint as true and will construe them in the light most favorable to the plaintiff. *Estes Express Lines v. United States*, 739 F.3d 689, 692 (Fed. Cir. 2014). Further, pleadings from *pro se* plaintiffs are held to more lenient standards than pleadings drafted by lawyers. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *see also Erickson v. Pardus*, 551 U.S. 89, 94 (2007). This leniency, however, does not extend to saving a complaint that lies outside of this Court's jurisdiction. "Despite this permissive standard, *a pro se* plaintiff must still satisfy the court's jurisdictional requirements." *Trevino v. United* States, 113 Fed. Cl. 204, 208 (2013), *red*, 557 F. App'x 995 (Fed. Cir. 2014) (citations omitted). *Pro se* or not, the plaintiff still has the burden of establishing by a preponderance of the evidence that this Court has jurisdiction over its claims. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

III. Discussion

Plaintiffs claim that the FTC, upon accepting the December 1991 Settlement Agreement, breached its contractual obligations. Compl. at 2. Plaintiffs' contract claim rests on the belief that a contract was created between the FTC and the parties, which was breached when plaintiffs' assets were transferred to the bankruptcy estate. Plaintiffs further assert that the FTC owed a fiduciary duty related to the assets from the original FTC and bankruptcy matters, and that the breach of that duty caused plaintiffs' to suffer

losses. Compl. at 794. However, it should be noted that plaintiffs surrendered all rights to the assets in question. T *G. Morgan*, 1992 WL 88162, at *4. Specifically, the Final Judgment and Order for Permanent Injunction stated the following:

> It Is Further Ordered that the Defendants and the non-party spouse of Defendant [Diane Blodgett] . . . hereby transfer to the [FTC], *irrevocably and without the possibility of reversion to themselves or to any entity owned or controlled by them*, any and all title, ownership, rights, interests, and options, present or future, that they, or any entity owned or controlled by them. . . .

T.G. Morgan, 1992 WL 88162, at *4-5 (emphasis added) (including a list of assets that have been omitted). As such, no contract claim exists over which this Court has jurisdiction.

Plaintiffs allege that their assets were improperly seized and committed to the Bankruptcy Estate. Compl. at 267-68. This bankruptcy claim appears to focus on the fact that they did not consent to the involuntary bankruptcy. P's Resp. at 10. Additionally, plaintiffs state that "the involuntary bankruptcy filing was in bad faith under 11 U.S.C. § 303 [(2016)]." Compl. at 120. Alternatively, plaintiffs claim that a fiduciary duty was breached in the original bankruptcy proceeding. Compl. at 794. Claims brought under 11 U.S.C. § 303 are governed by 28 U.S.C. §§ 151 and 1334. 28 U.S.C. §§ 151 (1984), 1334 (2005). Both sections establish that district courts shall have original and

exclusive jurisdiction over all cases arising under Title 11. *Id.* As such, this Court has no jurisdiction over those claims.

Plaintiffs next contend that the United States violated the Internal Revenue Code ("IRC"). Compl. at 12. As best as this Court can discern, plaintiffs' IRC claim is a civil action against the FTC on the grounds of allegedly unauthorized collection actions. Compl. at 161. In *Ledford v. United States*, the Court of Appeals for the Federal Circuit held that claims for damages arising out of allegedly unlawful tax collection activities must be brought "exclusively before a district court of the United States." *Ledford v. United States*, 297 F.3d 1378, 1382 (Fed. Cir. 2002). Moreover, the Court specified that, as it pertains to unlawful tax collection activities, "[t]he Court of Federal Claims is not a district court of the United States, and therefore it lacks subject-matter [jurisdiction]." *Id.* Therefore, this Court is barred from considering plaintiffs' IRC claims.

Additionally, plaintiffs argue that the FTC settlement violated their rights under the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. § 1001 (1978) ("ERISA"), and that the Final Judgement "violated multiple Supreme Court rulings . . . as to ERISA's anti-alienation clause and TGM ERISA § 13.04." Compl. at 7-8. The plain language of 28 U.S.C. § 1501 states, "[t]he [U.S.] Court of Federal Claims shall not have jurisdiction [over] any claim for a pension." *Howell v. United States*, 127 Fed. Cl. 775, 788 (2016) (referencing 28 U.S.C. § 1501 (2012)). Claims asking the federal government "to intervene and

compel private employers to pay the pensions allegedly due to plaintiffs, or for the government to pay the pensions in place of the private employers, lie outside the subject[-]matter jurisdiction of this [C]ourt and are dismissed." *Id.*

Plaintiffs' final claims allege that the FTC, in the original 1991 TGM proceeding, committed a Fifth Amendment taking "'without just compensation' of personal property." Compl. at 33. This Court must evaluate a Fifth Amendment takings claim under a two-part test; the first prong requires plaintiff to establish a property interest, and, if plaintiff fails, this Court need not look further. *Pucciariello v. United States*, 116 Fed. Cl. 390, 414 (2014). As plaintiffs clearly transferred their interest in the assets at issue to the FTC "irrevocably and without the possibility of reversion to themselves or to any entity owned or controlled by them," no such property interest exists.

Even if this Court did have jurisdiction over plaintiffs' claims, the complaint is barred by the statute of limitations. Under the Tucker Act, Claims filed in this Court are subject to a strict six-year statute of limitations, which begins when each claim first accrues. 28 U.S.C. §2501. As plaintiffs' claims all stem from the 1991-1992 FTC matter, logically this Court may infer that plaintiffs were aware of the existence of their claims at the issuance of the Final Judgment. As such, this Court lacks the requisite jurisdiction to examine plaintiffs' claims.

As a catch-all, plaintiffs seek relief under RCFC 60(b)(6), asserting that the Rule expands both the jurisdiction of this Court, as well as the mandatory six-year statute of limitations under the Tucker Act. Compl. at 6. Under RCFC 60(b), relief may be granted from a final judgment, order, or proceeding for a "reason that justifies relief." RCFC 60(b)(6). This Court finds no such reason here. Furthermore, "[t]he Supreme Court has indicated that RCFC 60(b)(6) should be applied only in 'extraordinary circumstances.'" *Progressive Indus., Inc., v. United States*, 888 F.3d 1248, 1255 (Fed. Cl. 2018) (citing to *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988)). The Court will not endeavor to apply it now.

IV. Conclusion

For the reasons set forth above, defendant's MOTION to dismiss is GRANTED. The Clerk is directed to enter Judgment in favor of defendant, consistent with this opinion. Additionally, it is ORDERED that the Clerk is directed to accept no further filings or complaints related to the claims in the case at bar from Diane Blodgett or Tom Lingenfelter, without an order granting leave to file such filings from the Chief Judge of the United States Court of Federal Claims. In seeking leave to file any future documents, Mrs. Blodgett and Mr. Lingenfelter must explain how their submission raises new matters properly before this Court. *See*

RCFC 11(b)-(c) (barring the filing of unwarranted or frivolous claims that have no evidentiary support).

IT IS SO ORDERED.

/s/ Loren A. Smith
Loren A. Smith
Senior Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Federal Trade Commission,
Plaintiff,

vs.

T. G. Morgan, Inc, and
Michael W. Blodgett,
Defendants.

Civ. No.
4-91-638 (DEM)

FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND FOR SETTLEMENT OF CLAIMS FOR MONETARY RELIEF

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action by filing a complaint against Defendants T.G. Morgan, Inc. ("TGM") and Michael W. Blodgett ("Blodgett"). The complaint alleges that Defendants have engaged in deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, and seeks a permanent injunction and redress for injured consumers pursuant to § 13(b) of the FTC Act, 15 U.S.C. § 53(b).

The parties hereby stipulate to the entry of this Final Judgment and Order ("Order"). Being advised in the premises, the Court accordingly finds:

1. This is an action by the Commission instituted under §§ 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45

and 53(b). The complaint seeks both permanent injunctive relief and consumer redress, alleging that Defendants engaged in deceptive acts and practices in connection with the sale of coins.

2. The commission has the authority under § 13(b), of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.

3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the Decants. Venue in the District of Minnesota is proper, and the complaint states a claim upon which relief may, be granted under §§ 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

4. The activities of Defendants are in or assisting commerce, as defined in § 4 of the FTC Act, 15 U.S.C. § 44.

5. Defendants' agreement to entry of this final judgment and a permanent injunction under § 13(b) of the FTC Act, 15 U.S.C. § 53(b), in no way constitutes an admission by Defendants, the non-party spouse of Defendant, or any of their directors, officers, agents or employees, that they have engaged in any illegal or wrongful conduct of any nature whatsoever, or that any person has sustained damage or suffered harm by reason of any of the allegations in the Commission's complaint or otherwise.

I.

DEFINITIONS

(1) The term "Defendants" refers inclusively to either TGM or to Blodgett or to both.

(2) The term "investments" means any items, tangible or intangible, whose purchase was, is, or would be for the purpose of earning or enjoying future income, appreciation in value or profit upon resale, or for the purpose of preserving capital, or any combination of the foregoing purposes, in whole or in part.

II.

INJUNCTIVE PROVISIONS

IT IS ORDERED, ADJUDGED, AND DECREED that Defendants and successors, assigns, officers, agents, servants, employees, and all persons or entities in active concert or participation with Defendants, are hereby permanently restrained and enjoined from:

(1) Falsely representing in any manner, directly or by implication, that purchasing coins that Defendants offer for sale is an effective means of preserving wealth;

(2) Falsely representing any manner, directly or by implication, that purchasing coins that Defendants offer for sale is an effective means of holding wealth in a form that can be easily liquidated;

(3) Falsely representing in any manner, directly or by implication, the safety of investing in coins that Defendants offer for sale;

(4) Falsely representing in any manner, directly or by implication, the relationship between the prices Defendants ask, quote, or charge for coins and the market values of such coins;

(5) Falsely representing in any manner, directly or by implication, the relationship between the prices Defendants ask, quote, or charge for coins and the prices Defendants paid for such coins;

(6) Falsely representing in any manner, directly or by implication, the current or past market values of coins or any investments purchased from Defendants;

(7) Falsely representing in any manner, directly or by implication, (a) past or likely future financial gain of Defendants' customers resulting from the purchase of coins or any investments from Defendants, or in the nature or quality of any service of Defendants in connection with the sale of coins or any investments;

(8) Falsely representing in any manner, directly or by implication, any other fact material to a consumer's decision to purchase coins or any investments from Defendants; or

(9) Failing to disclose the following required disclosure when promoting, offering, or selling coins to individuals or entities other than professional coin dealers: "THE INVESTMENT

VALUE OF A RARE COIN DEPENDS IN LARGE PART ON THE PRICE YOU PAY. IT IS STRONGLY RECOMMENDED THAT WHEN YOU PURCHASE A RARE COIN AS AN INVESTMENT, YOU SEEK TO DETERMINE ITS CURRENT MARKET VALUE AND LIQUIDITY BY CONSULTING AN INDEPENDENT COIN EXPERT."

The required disclosure shall be made by Defendants in all sales brochures pertaining to coins and on the front side of all documents sent by Defendants to acknowledge orders and or funds received from coin purchasers other than professional coin dealers. The required disclosure shall be set forth in a clear and prominent manner, separated from all other text, in 100% black ink against a light background, in Print at least as large as the main text of the brochure or document, and enclosed in a box containing only the required disclosure. Before consummating any coin sale to a customer, other than a professional coin dealer, Defendants shall obtain a signed declaration from the customer that recites the required disclosure and then states that the customer has read and understands the required disclosure.

III.

PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that, for five (5) years after the date of entry of this Order, Defendants, individually and through their agents, and all business entitles owned, managed, or controlled by Defendants,

are hereby restrained and enjoined from destroying, mutilating, changing, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any records, whether written or in computer maintained form, that relate to the purchase, promotion, offering, trading, sale, resale, or remarketing of (i) coins, or (ii) any investments, by Defendants, directly, or through their agents, or by any business entity owned, managed, or controlled by Defendants. Defendant TGM and Defendant Blodgett are each further restrained and enjoined, for five (5) years after the date of entry of this Order, from:

(1) Failing to make and keep records of all sales of coins, and all sales of investments, made by such Defendant directly or through agents, or made by any business entity owned, managed, or controlled by such Defendant. The record maintained for each such sale shall include the name and address of the purchaser, the date of sale a description identifying the particular coin (including the type, year, mint, grade, and certification number if any) or investment sold, and the price paid by the purchaser.

(2) Failing to keep copies of all written promotional materials, and all correspondence with customers or prospective customers, that relate to the sale or proposed sale of coins, or to the sale or proposed sale of any investments, by such Defendant, directly or through agents, or by any business entity owned, managed, or controlled by such Defendant.

(3) Failing to make and keep books, cash disbursements and receipts ledgers, accountants' reports, and account statements which, in reasonable detail, accurately and fairly reflect the assets, liabilities, owners equity, sources of revenue, expenses, and dispositions of assets of all business entities owned, managed, or controlled by such Defendant.

IV.

NOTIFICATION TO THE COMMISSION

IT IS FURTHER ORDERED that, within thirty (30) days of his (i) becoming affiliated (in any capacity) with a business entity, the activities of which include the offering, promotion, or sale of coins or the offering, promotion, or sale of any investments, or (ii) undertaking any new business venture in which his own activities include the offering, promotion, or sale of coins or the offering, promotion, or sale of any investments, Blodgett shall provide the Commission with notification of the new affiliation or undertaking, including the name, address and telephone number of the business entity or venture, a description of the nature and activities of the business entity or venture, and a description of Blodgett's position and responsibilities in the business entity or venture. Blodgett shall also provide the Commission with written notification of each change in his home address, business address, or employment status, within thirty (30) days of each such change. TGM shall provide the Commission with written notification of each change in its principal business

address, within thirty (30) days of each such change. Written notifications to the Commission pursuant to this Paragraph shall be addressed to:

Associate Director for Service Industry Practices
Bureau of Consumer Protection
Room 200
Federal Trade Commission
Pennsylvania Ave. and Sixth St., N.W.
Washington, DC 20580

This Paragraph shall remain in effect for five (5) years after the date of entry of this Order.

V.

NOTIFICATIONS TO BUSINESS ASSOCIATES

IT IS FURTHER ORDERED that Defendants shall provide a copy of this Order to each of their current directors, officers, employees, account executives, sales executives, salespersons, sales representatives, and sales agents. In addition, for five (5) years after the date of entry of this Order, Defendants shall provide a copy of this Order to each person who, and to each business entity acting for or on behalf of Defendants or under Defendants' direction, management, or control, (a) offers, promotes, or sells coins or any investments, except (i) SEC-registered securities offered or sold by licensed broker-dealers or (ii) Defendant Blodgett's company, or (b) makes, keeps, or maintains records described in paragraph III, subparagraphs (1), (2), or (3) of this Order. Upon providing a copy of this Order pursuant to this Paragraph, Defendants shall obtain and keep a signed statement from the recipient

acknowledging receipt. Should any recipient fail or refuse to provide Defendants with a signed statement acknowledging receipt, Defendants shall prepare and keep a sworn statement that a copy of this letter has been provided to such recipient. Statements obtained or prepare pursuant to this Paragraph shall be kept by Defendants for five (5) years after the date of. entry of this Order.

VI.

MONITORING PROVISIONS

IT IS FURTHER ORDERED that, in order to facilitate the Commission's monitoring of compliance with the provisions of this Order, Defendants shall for a period of five (5) years after entry of this Order:

(1) Permit duly authorized representatives of the Commission, within five (5) business days of receipt of written notice from the Commission, access during normal business hours to inspect and copy any documents or records referred to by Paragraphs III or V of this Order;

(2) Produce, within twenty (20) business days of receipt of a written request from the Commission, any documents or records referred to by Paragraphs III or V of this Order;

(3) Refrain from interfering with efforts by Commission employees to contact and interview Defendants' agents and employees (who may have counsel present) regarding conduct subject to this Order.

VII.

T. G. MORGAN SETTLEMENT ESTATE

IT IS FURTHER ORDERED that the Defendants and the non-party spouse of Defendant, as of the date of entry of this Order, hereby transfer to the Commission, irrevocably and without the possibility of reversion to themselves or to any entity owned or controlled by them, any and all title, ownership, rights, interests, and options, present or future, that they, or any entity owned or controlled by them, have in the following assets:

1. All real property in Florida, including:

   Residential lot, Ocean Reef Club, Key Largo, Florida, legally described as: Lot 3, Block 5, of HARBOR COURSE SOUTH, Section 1, according to the plat thereof, recorded in Plat Book 7, at Page 6 of the Public Records of Monroe County, Florida.

   Three bedroom Condominium Unit 7, Anglers Club, Key Largo, Florida, legally described as: Unit Number 7 ANGLERS CLUB, a condominium, according to the Declaration of Condominium thereof, recorded in Official Records Book 1028, Page 2375 of the Public Records of Monroe County, Florida, and any amendments thereto. SUBJECT TO: Any unpaid taxes for the year 1989 and subsequent years.

   Right of exclusive use in and to Dock Space Number D-10, a limited common

element of Anglers Club, a Condominium, which is appurtenant to Unit 7, as described and governed by the Declaration of Condominium, thereof, recorded in Official Records Book 1028, Page 2375 of the Public Records of Monroe County, Florida and any amendments thereto.

2. 1984, 23-foot Cutty Cabin Sunrunner boat (stored by Defendant Blodgett at Rockvam Marina, Lake Minnetonka, Minnesota), listed in the Financial Statement of Michael Blodgett, dated January 14, 1992.

3. 1988 Mercedes 560 SL owned by non-party spouse of Defendant.

4. 1852/1 Humbert PR65 $20 gold coin PCGS No. 10194.65/9114237), 1895 PR67 Silver Dollar PCGS No. 07330.67/ 3066420), and 1880 PF65 $4 Flow Melt (NGC No. 135492-020).

5. All coins and coin holders presently in the possession of the Postal Inspector, St. Paul, Minnesota.

6. Two (2) Simbari original paintings kept in Defendant Blodgett's home.

7. All assets listed on Exhibit "A" attached herein.

All possession and control that the Defendants and the non-party spouse of Defendant have, directly or indirectly, present or future, with respect to the foregoing assets shall be immediately transferred to (or retained

by) Armen R. Vartian, who is hereby appointed Receiver of the T.G. Morgan Settlement Estate (the "Settlement Estate"), with the full power of an equity receiver to hold, manage, and dispose of the foregoing assets under the supervision of the Court. The Defendants, and the non-party spouse of Defendant, shall preserve and protect all such assets in their possession or control until the Receiver is able to assume actual possession or control. The Settlement Estate shall consist of all of the assets listed in this Paragraph with respect to which possession and/or control have been transferred to the Receiver. The Defendants and the non-party spouse of Defendant hereby waive any and all claims that they, or entities owned or controlled by them, may have to the foregoing assets and are hereby ordered to execute and/or transfer, within three (3) business days of the Receiver's request, any documents determined by the Receiver to be necessary or desirable to effectuate, evidence, or consummate the transfers of the foregoing assets.

VIII.

T. G. MORGAN LITIGATION ESTATE

IT IS FURTHER ORDERED that all possession and control that the Defendants and the non-party spouse of Defendant have, directly or indirectly, present or future, with respect to the following assets shall be immediately transferred to (or retained by) Armen R. Vartian, who is hereby appointed Receiver of the T.G. Morgan Litigation Estate (the "Litigation

Estate"), with the full power of any equity receiver to hold, manage, and dispose of the following assets under the supervision of the Court;

1. All funds (not including coins) presently held in the Coin Fund establishing pursuant to the Stipulated Order for Interim Receiver previously entered in this case.

2. Coins held for Defendants at Safrabank, Encino, California that are listed on Exhibit "B" attached hereto. Defendants' liability shall not increase on account of listed coins not being present at Safrabank. Any coins held at Safrabank on behalf of Defendants that have not been previously disclosed to the Commission by Safrabank shall be included in the Litigation Estate.

The Litigation Estate shall consist of all the assets listed in this Paragraph with respect to which possession and/or control have been transferred to the Receiver. The Defendants and non-party spouse of Defendant are hereby ordered to execute and/or transfer, within three (3) business days of the Receiver's request, any documents determined by the Receiver to be necessary or desirable to effectuate, evidence, or consummate the transfers of the assets listed in this Paragraph.

IX.

LIQUIDATION OF ASSETS

IT IS FURTHER ORDERED that the Receiver is charged by the Court with conducting an orderly liquidation of (i) the Commission's interests in the assets of the Settlement Estate, and (ii) the Defendants' and the Defendant's non-party spouse's interests in the assets of the Litigation Estate.

(A) In the event that an asset of the Settlement Estate or the Litigation Estate is determined by the Receiver to secure a bona fide debt, other than a debt to Defendants or to the non-party spouse of Defendant, or to an entity owned or controlled by them, the Receiver shall apply the proceeds from liquidation of the asset to satisfaction of the secured debt, while retaining the balance of such proceeds in the Estate, unless for good cause shown the Court approves a different disposition of the proceeds.

(B) In the event that a specific asset of the Settlement Estate or the Litigation Estate is determined by the Receiver to have been entirely owned by or to have been entirely paid for by a retail customer of Defendants as of August 25, 1991, and has not been transferred by such customer, the Receiver shall transfer the asset to the retail customer, unless for good cause shown the Court approves a different disposition of the asset.

(C) In the event that a specific coin in the Settlement Estate or the Litigation Estate is

determined by the Receiver to have been paid for, in whole or in part, by a retail customer of Defendants on or after August 26, 1991, and before December 1, 1991, the Receiver shall pay to each such retail customer, to the extent that sufficient funds are available in the Settlement Estate, a refund from the Settlement Estate equaling the total amount the customer paid for such coin at any time before December 1, 1991, less any funds already refunded to the customer by Defendants or by the Interim Receiver; however, for good cause shown, the Court may approve a different refund amount, no refund, or the delivery to the customer of the coin paid for.

(D) In the event that ownership of, rights to, or interest in an asset of the Settlement Estate or the Litigation Estate is found by the Receiver, to be joint, shared, undetermined, unknown, or the object of a bona fide and reasonable dispute, the Receiver shall prepare a report for the Court, with copies to the parties, setting forth (1) a description of the asset in question, (ii) the facts pertaining to the issue of ownership of, rights to, or interest in the asset, and (iii) a proposed disposition of the asset; such an asset shall be disposed of only in accordance with a disposition proposal that has been approved by the Court, PROVIDED, however, that the Receiver may immediately recognize, honor, and dispose of partnership interests that have existed in specific coins since prior to August 26, 1991, upon satisfactory documentary proof of the partnership interests, except that the Receiver shall retain any and

all partnership interests of Defendants or the non-party spouse of Defendant, or of any entity owned or controlled by them.

(E) Except as set forth in IX(B) and IX(C) above, the Receiver shall not attempt to compensate individuals and/or entities, including retail customers of Defendants, for actual or alleged injuries and/or losses resulting from transactions with Defendants or with entities under their control. As a condition of receiving final payment of a secured debt pursuant to IX(A), receiving delivery of an asset pursuant to IX(B), or receiving a refund of money pursuant to IX(C), recipients shall be required, unless for good cause shown the Court determines otherwise, to execute releases waiving all claims against the Receiver, Defendants, the non-party spouse of Defendant, their officers, directors, employees, and agents, arising from any failure to pay such secured debt, failure to deliver such asset, or failure to refund such money.

(F) The term "retail customer" in IX(B) and IX(C) above shall be deemed not to include Defendants or the non-party spouse of Defendant, or any entity owned or controlled by them.

X.

POWERS OF THE RECEIVER

IT IS FURTHER ORDERED that the Receiver of the Settlement Estate and the Litigation Estate is hereby authorized:

(1) To make such payments, investments, and disbursements;

(2) To borrow and receive such funds;

(3) To select, employ, and engage such employees, contractors and agents, including but not limited to coin auction companies and coin dealers;

(4) To exercise such legal rights and options; and

(5) To institute, prosecute, defend, compromise, and intervene in or become a party to such actions or proceedings in state or federal courts, including bankruptcy courts;

as may be necessary and advisable to determine, preserve, maintain, and protect all bona fide interests in the tangible and intangible assets of the Settlement Estate and the Litigation Estate, to liquidate and maximize the liquidated value of the Commission's interests in the tangible and intangible assets of the Settlement Estate, to liquidate and maximize the liquidated value of the Defendants' and the Defendant's non-party spouse's interest in the tangible and intangible assets of the Litigation Estate, to protect the interests of the Defendants' retail customers, and otherwise to discharge his duties as Receiver. Defendant T.G. Morgan, Inc. shall, upon request, provide the Receiver with any and all available information, and access to any and all documents and records in its care, custody, or control, that may assist the Receiver in determining the location, possession, ownership of, rights to, or interests in, the assets of the Settlement Estate

and the Litigation Estate. The Receiver shall neither represent nor act on behalf of the Defendants or the Defendant's non-party spouse.

XI.

DISTRIBUTION OF THE SETTLEMENT ESTATE

IT IS FURTHER ORDERED that the Commission's liquidated interests in the assets of the Settlement Estate shall be distributed by the Receiver as follows:

(1) First, reasonable fees to compensate the Receiver, upon Court approval of itemized fee applications by the Receiver, with opportunity for all parties to be heard.

(2) Second, all remaining funds to establish and fund a T.G. Morgan Redress Fund ("Redress Fund") to be transferred to the control of and administered by the Commission or its agents, and to be (i) distributed to retail customers who purchased coins from Defendants and/or (ii) paid over to the U.S. Treasury, in accordance with a plan submitted by the Commission or its agents and approved by the Court. In no event shall any portion of the Redress Fund be paid, directly or indirectly, to Defendants or to the non-party spouse of Defendant, or to any entity owned or controlled by them. Costs of administering and distributing the Redress Fund shall be paid from the Redress Fund, including the cost of determining customers' shares of the distribution. Defendant T.G. Morgan, Inc. shall,

upon request, provide the Commission or its agents with any and all available information, and access to any and all documents and records, that may assist the Commission or its agents in determining the assets within their control and prohibit the withdrawal, removal, assignment, encumbrance, dissipation, loss, destruction, spending, sale, or other disposal of such assets, except (i) by the Receiver in accordance with Paragraphs VII through XII of this Order or (ii) pursuant to further Order of this Court.

XV.

RETENTION OF JURISDICTION

IT IS FURTHER -ORDERED that the Court retains jurisdiction of this matter for purposes of construction, modification and enforcement of this Order. The Consent Orders, Modification of Consent Orders, and Stipulated Order for Interim Receiver earlier entered in this action are hereby superseded by this Order.

The parties hereby stipulate and agree to entry of the foregoing Order which shall constitute a final judgment in this action. Defendants hereby waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order.

STIPULATED AND CONSENTED TO:

DEFENDANTS:

/s/ Michael W. Blodgett
Michael W. Blodgett, individually

/s/ Michael W. Blodgett
Michael W. Blodgett, as president of T. G. Morgan, Inc., for T. G. Morgan, Inc.

APPROVED AS TO FORM:

/s/ James H. Gilbert
Ronald I. Meshbesher
James H. Gilbert
MESHBESHER & SPENCE, LTD.
1616 Park Avenue
Minneapolis, MN 55404
(612) 339-9121

ATTORNEYS FOR DEFENDANTS

NON-PARTY SPOUSE:

/s/ Diane Blodgett
Diane Blodgett, non-party spouse of Michael W. Blodgett, as to her marital, non-marital and other rights being relinquished pursuant to this settlement, as specified herein

APPROVED AS TO FORM:

/s/ Douglas A. Kelley
Douglas A. Kelley
701 Fourth Avenue South
Minneapolis, MN 55415
(612) 337-9594

ATTORNEYS FOR DIANE BLODGETT

PLAINTIFF:

/s/ Connie Wagner
David C. Fix
Bennett Rushkoff
Hugh G. Stevenson
Connie Wagner
Federal Trade Commission
Pennsylvania Ave. and
6th St., N.W.
Washington, DC 20580
(202) 326-3439

ATTORNEYS FOR
PLAINTIFF

/s/ Jerome Getz/RP
Jerome Getz
Tracy Smith
Minnesota Attorney
General's Office
200 Ford Building
117 University Avenue
St. Paul, MN 55155
(612) 296-2367

ATTORNEYS FOR
PLAINTIFF

IT IS SO ORDERED.

Dated: 3/4/92

/s/ Diana J. Murphy, Judge
UNITED STATES DISTRICT
JUDGE

EXHIBIT A

Historical Documents:

Confederate Bond dated February 20, 1863, acquired for $550.

Niles Weekly, Newspaper articles dated June 6, 1834 and December 12, 1829, acquired for $150 (total).

Monroe document, acquired for $3,950.

EXHIBIT B

1880-O MS65 Morgan Silver Dollar

1892-S MS65 Morgan Silver Dollar

$1 Grant with Star MS65

Two 1890-CC MS65DMPL Morgan Silver Dollars

$1 1851 MS65

Three $3 Gold Indians MS65

Two 1884-CC MS66DMPL Morgan Silver Dollars

Two $2.50 Indian PR65

$2.50 Indian PR66

1878-7T R78 MS65DMPL Morgan Silver Dollar

$.01	Lincoln VDE	63RD	(1)
$.03	SLVR TYPE 3	65	(1)
$.05	SHIELD N/R	65PR	(7)
$.05	LIBERTY W/C	65	(1)
$.05	LIBERTY W/C	65PR	(9)
$.05	BUFFALO 1934	65	(1)
$.05	BUFFALO 1934-D	65	(1)
$.05	BUFFALO 1935	65	(1)
$.05	BUFFALO 1935-D	65	(1)
$.05	BUFFALO 1936	65	(1)
$.05	BUFFALO 1937	65	(1)
$.05	BUFFALO 1937-D	65	(1)
$.05	BUFFALO 1937-S	65	(1)
$.05	BUFFALO 1938-D	65	(1)
HALF	$.10 STARS	65	(1)
HALF	$.10 LEG	65PR	(1)
$.10	DRPE BUST SM	65	(1)

$.10	CAP BUST SM	65	(1)
$.10	LEGEND	65PR	(6)
$.10	BARBER	65PR	(1)
$.10	BARBER	66PR	(1)
$.25	NO MOTTO	66	(1)
$.25	WITH MOTTO	66	(2)
$.25	BARBER	66	(1)
$.25	BARBER	65PR	(1)
$.25	BARBER	66PR	(1)
$.50	BARBER	65	(1)
$.50	BARBER	66	(1)
$.50	BARBER	65PR	(1)
$.50	BARBER	67PR	(1)
$.50	W LIB 1941	64	(1)
$.50	WLK LB 1941-D	64	(1)
$.50	WLR LB 1941-S	64	(1)
$.50	W LIB 1942	64	(1)
$.50	W LIB 1942-D	64	(1)
$.50	WLK LB 1943	64	(1)
$.50	W LIB 1943-D	64	(1)
$.50	WLK LIB 1943-S	64	(1)
$.50	WLK LB 1944	64	(1)
$.50	WLK LB 1944-D	64	(1)
$.50	WLK LIB 1944-S	64	(1)
$.50	WLK LB 1945	64	(1)
$.50	WLK LIB 1945-D	64	(1)
$.50	WLK LIB 1945-S	64	(1)
$.50	WLK LIB 1946	64	(1)
$.50	W.L. 1946-D	64	(1)
$.50	W LIB 1946-S	64	(1)
$.50	WK LIB 1947	64	(1)

$.50	WLK LIB 1947-D	64	(1)
$1	WITH MOTTO	66	(1)
$1	NO MOTTO	64PR	(1)
$1	MORG 1878 8TF	65	(1)
$1	MORG 1878 7T REV 78	65	(1)
$1	MORG 1878 7T REV 78	65PL	(1)
$1	MORG 1878 7T REV 79	65	(1)
$1	MORG 1878 7/8 TF	65	(1)
$1	MORG 1878-CC	65PL	(2)
$1	MORG 1878-S	65	(1)
$1	MORG 1878-S	66	(1)
$1	MORG 1879	65	(1)
$1	CAPP DIE 1879-CC	64	(1)
$1	MORG 1879-S	65	(1)
$1	MORG 1879-S	66	(2)
$1	MORG 1879-S REV 78	65	(1)
$1	MORG 1880	65PL	(3)
$1	MORG 1880-CC	65	(2)
$1	MORG 1880-CC	65PL	(3)
$1	MORG 1880-CC REV 78	66	(1)
$1	MORG 1880-S	65	(3)
$1	MORG 1880-S	66	(5)
$1	MORG 1880-S	67	(2)
$1	MORG 1880-S	65PL	(5)
$1	MORG 1881	65	(1)
$1	MORG 1881-CC	65	(5)
$1	MORG 1881-CC	66	(1)
$1	MORG 1881-O	65	(1)
$1	MORG 1881-S	65	(1)
$1	MORG 1881-S	66	(1)
$1	MORG 1881-S	67	(1)

$1	MORG 1881-S	65PL	(1)
$1	MORG 1881-S	66PL	(1)
$1	MORG 1882	65	(1)
$1	MORG 1882-CC	65	(3)
$1	MORG 1882-CC	66	(1)
$1	MORG 1882-CC	65PL	(3)
$1	MORG 1882-O	65	(1)
$1	MORG 1882-O	65PL	(1)
$1	1882-O/S	63	(1)
$1	MORG 1882-S	65	(6)
$1	MORG 1882-S	66	(2)
$1	MORG 1882-S	65PL	(3)
$1	MORG 1882-S	65PL	(1)
$1	MORG 1883	65	(1)
$1	MORG 1883-CC	65	(14)
$1	MORG 1883-CC	66	(2)
$1	MORG 1883-CC	65PL	(1)
$1	MORG 1883-CC	66PL	(1)
$1	MORG 1883-O	65	(1)
$1	MORG 1884	65	(2)
$1	MORG 1884	65PL	(1)
$1	MORG 1884-CC	65	(10)
$1	MORG 1884-CC	66	(2)
$1	MORG 1884-O	65	(4)
$1	MORG 1884-S	65	(1)
$1	MORG 1885	65	(1)
$1	MORG 1885	66	(1)
$1	MORG 1885-CC	65	(5)
$1	MORG 1885-CC	66	(1)
$1	MORG 1885-CC	66PL	(1)
$1	MORG 1885-O	65	(7)

$1	MORG 1885-O	66PL	(1)
$1	MORG 1885-S	66	(1)
$1	MORG 1886	65	(1)
$1	MORG 1886-S	65	(1)
$1	MORG 1886-S	65PL	(3)
$1	MORG 1887	65	(3)
$1	MORG 1887/6	65	(1)
$1	MORG 1887-O	65	(1)
$1	MORG 1887-S	65	(1)
$1	MORG 1888	65	(1)
$1	MORG 1888	65PL	(1)
$1	MORG 1888-O	65	(1)
$1	MORG 1888-O	65PL	(3)
$1	MORG 1888-S	65	(1)
$1	MORG 1889	65	(1)
$1	MORG 1889-O	65	(1)
$1	MORG 1889-S	65	(1)
$1	MORG 1889-S	66	(1)
$1	MORG 1890	65	(1)
$1	MORG 1890-CC	65	(2)
$1	MORG 1890-O	65	(1)
$1	MORG 1891	66	(1)
$1	MORG 1891-CC	65	(1)
$1	MORG 1891-S	65	(1)
$1	MORG 1891-S	65PL	(1)
$1	MORG 1892	65	(1)
$1	MORG 1892-CC	65	(2)
$1	MORG 1892-CC	65PL	(1)
$1	MORG 1892-O	65	(1)
$1	MORG 1893	65	(1)
$1	MORG 1893-O	64	(1)

$1	MORG 1893-S	65	(1)
$1	MORG 1894	66	(2)
$1	MORG 1894-S	65	(1)
$1	MORG 1894-S	66	(1)
$1	MORG 1895-S	64	(1)
$1	MORG 1896	65	(1)
$1	MORG 1896-S	65	(2)
$1	MORG 1897	65	(2)
$1	MORG 1897-S	65	(1)
$1	MORG 1898	65	(2)
$1	MORG 1898-O	65	(7)
$1	MORG 1898-O	66	(1)
$1	MORG 1898-S	65	(1)
$1	MORG 1899	65	(1)
$1	MORG 1899-O	65	(1)
$1	MORG 1900	65	(1)
$1	MORG 1900-O	65	(1)
$1	MORG 1900-O/CC	65	(1)
$1	MORG 1900-S	65	(1)
$1	MORG 1900-S	66	(1)
$1	MORG 1901-O	65	(1)
$1	MORG 1901-O	66	(1)
$1	MORG 1901-O	65PL	(1)
$1	MORG 1901-S	65	(1)
$1	MORG 1902	65	(2)
$1	MORG 1902	65PL	(1)
$1	MORG 1902	65	(1)
$1	MORG 1902-O	65PL	(1)
$1	MORG 1903	65	(1)
$1	MORG 1903-O	65	(1)
$1	MORG 1903-S	65	(2)

$1	MORG 1904-O	65	(2)
$1	MORG 1904-O	65PL	(3)
$1	MORG 1904-O	66PL	(1)
$1	MORG 1904-S	65	(3)
$1	MORG 1904-S	65PL	(1)
$1	MORG 1921	65	(1)
$1	MORG 1921	65PL	(1)
$1	MORG 1921-D	65	(1)
$1	MORG 1921-S	65	(2)
$1	MORG 1883	65PR	(1)
$1	MORG 1890	65PR	(1)
$1	MORG 1891	65PR	(1)
$1	MORG 1892	65PR	(1)
$1	MORG 1892	66PR	(1)
$1	MORG 1894	66PR	(1)
$1	MORG 1895	65PR	(1)
$1	MORG 1896	66PR	(1)
$1	MORG 1879-O	64PR	(1)
$1	PEACE 1921	65	(1)
$1	PEACE 1921	66	(1)
$1	PEACE 1922	65	(3)
$1	PEACE 1922	66	(1)
$1	PEACE 1922-D	65	(2)
$1	PEACE 1922-S	65	(1)
$1	PEACE 1922-S	66	(1)
$1	PEACE 1923	65	(1)
$1	PEACE 1923	66	(1)
$1	PEACE 1923-D	65	(2)
$1	PEACE 1923-D	66	(2)
$1	PEACE 1923-S	64	(1)
$1	PEACE 1923-S	65	(1)

$1	PEACE-1924	65	(1)
$1	PEACE 1924	66	(1)
$1	PEACE 1924-S	64	(1)
$1	PEACE 1924-S	65	(1)
$1	PEACE 1925	65	(2)
$1	PEACE 1925	66	(2)
$1	PEACE 1925-S	65	(2)
$1	PEACE 1926-S	65	(2)
$1	PEACE 1926	66	(2)
$1	PEACE 1926-D	65	(1)
$1	PEACE 1926-D	66	(1)
$1	PEACE 1926-D	67	(1)
$1	PEACE 1926-S	65	(2)
$1	PEACE 1927	64	(1)
$1	PEACE 1927	65	(3)
$1	PEACE 1927-D	65	(1)
$1	PEACE 1927-S	64	(1)
$1	PEACE 1927-S	65	(1)
$1	PEACE 1928	65	(2)
$1	PEACE 1928-S	64	(1)
$1	PEACE 1928-S	65	(2)
$1	PEACE 1934	65	(2)
$1	PEACE 1934-D	65	(1)
$1	PEACE 1934-D	66	(1)
$1	PEACE 1934-S	64	(1)
$1	PEACE 1934-S	65	(1)
$1	PEACE 1935	65	(2)
$1	PEACE 1935	66	(1)
$1	PEACE 1935-S	65	(2)
$1	PEACE 1935-S	66	(2)
$1	JEFFERSON 1903	65	(1)

$1	MC KINLEY 1903	65	(2)
$1	LEWIS/CLARK 1904	65	(1)
$2.50	PAN-PAC	65	(1)
$1	MC KINLEY 1916	65	(2)
$1	MC KINLEY 1917	65	(1)
$1	GRANT NO STARS	65	(1)
$1	LIBERTY TYPE 1	65	(1)
$1	LIBETY 1851-C	66	(1)
$1	INDIAN T-2	65	(1)
$1	INDIAN T-3	65	(1)
$2.50	LIBERTY	65	(11)
$2.50	LIBERTY	66	(1)
$2.50	INDIAN	65	(3)
$2.50	INDIAN	66	(1)
$2.50	INDIAN	65	(2)
$2.50	INDIAN	66	(1)
$4	STELLA	PR66	(1)
$10	INDIAN	65	(2)
$10	INDIAN	65	(1)
$20	LIBERTY	64	(1)
$20	LIBERTY	65	(27)
$20	ST GD 1908 NM	65	(4)
$20	ST GAUD 1911-D	65	(5)
$20	ST GAUD 1914-D	65	(1)
$20	ST GAUD 1915-S	65	(1)
$20	ST GAUD 1916-S	65	(4)
$20	ST GAUD 1923-D	65	(3)
$20	ST GAUD 1924	65	(45)
$20	ST GAUD 1925	65	(19)
$20	ST GAUD 1926	64	(4)
$20	ST GAUD 1927	64	(2)

$20	ST GAUD 1927	66	(1)
$20	ST GAUD 1928	65	(1)
$.25	ISABELLA	65	(1)
$1	LAFAYETTE	64	(2)
$.50	ALABAMA 1921	65	(1)
$.50	ALABAMA 2X2	65	(1)
$.50	ALBANY 1936	65	(1)
$.50	ANTIETAM 1937	65	(1)
$.50	ARK 1935	65	(1)
$.50	ARK 1935-D	65	(1)
$.50	ARK 1935-S	65	(1)
$.50	ARK 1936	65	(1)
$.50	ARK 1936-D	65	(1)
$.50	ARK 1936-S	65	(1)
$.50	ARK 1937	65	(1)
$.50	ARK 1937-D	65	(1)
$.50	ARK 1937-S	65	(1)
$.50	ARK 1938	65	(1)
$.50	ARK 1938-D	65	(1)
$.50	ARK 1938-S	65	(1)
$.50	ARK 1939	65	(1)
$.50	ARK 1939-D	65	(1)
$.50	ARK 1939-S	65	(1)
$.50	BAYBRIDGE 1936	65	(2)
$.50	BOONE 1934	65	(1)
$.50	BOONE 1935	65	(1)
$.50	BOONE 1935-S	65	(1)
$.50	BOONE 1935/34	65	(1)
$.50	BOONE 1936	65	(1)
$.50	BOONE 1936-D	65	(1)
$.50	BOONE 1936-S	65	(1)

$.50	BOONE 1937	65	(1)
$.50	BOONE 1937-D	65	(1)
$.50	BOONE 1938	65	(1)
$.50	BOONE 1938-S	65	(1)
$.50	BRIDGEPORT 1936	65	(1)
$.50	CA 1925	65	(3)
$.50	CIN 1936	65	(1)
$.50	CIN 1936-D	65	(3)
$.50	CIN 1936-S	65	(1)
$.50	CLEVELAND 1936	65	(1)
$.50	COLUMBIA 1936	65	(1)
$.50	COLUMBIA 1936-D	65	(1)
$.50	COLUMBIA 1936-S	65	(2)
$.50	COLUMBIAN 1892	65	(1)
$.50	COLUMBIAN 1893	65	(1)
$.50	CONNECTICUT	65	(2)
$.50	DELAWARE 1936	65	(2)
$.50	ELGIN 1936	65	(1)
$.50	GETTYSBURG	65	(3)
$.50	GRANT N/STRS	65	(1)
$.50	GRANT W/STRS	65	(1)
$.50	HUDSON 1935	65	(1)
$.50	HUGUENOT 1924	65	(1)
$.50	IOWA 1946	65	(1)
$.50	LEXINGTON	65	(1)
$.50	LINCOLN 1918	65	(2)
$.50	LONG ISLAND	65	(2)
$.50	LYNCHBURG	65	(1)
$.50	LYNCHBURG	66	(1)
$.50	LYNCHBURG	67	(1)
$.50	MAINE 1920	65	(1)

$.50	MARYLAND	65	(1)
$.50	MISSOURI	65	(1)
$.50	MISSOURI 2X4	65	(1)
$.50	NEW ROCHELLE	65	(1)
$.50	NORFOLK 1936	65	(1)
$.50	OREGON 1926	65	(1)
$.50	OREGON 1928	65	(1)
$.50	OREGON 1933-D	65	(1)
$.50	OREGON 1934-D	65	(1)
$.50	OREGON 1936	65	(1)
$.50	OREGON 1937-S	65	(1)
$.50	OREGON 1938	65	(2)
$.50	OREGON 1938-D	55	(2)
$.50	OREGON 1938-S	65	(1)
$.50	OREGON 1939-S	65	(1)
$.50	PILG 1920	65	(1)
$.50	PILG 1920	67	(1)
$.50	PILG 1921	65	(1)
$.50	R.I. 1936	65	(1)
$.50	R.I. 1936-D	65	(1)
$.50	R.I. 1936-S	65	(1)
$.50	ROANOKE 1937	65	(1)
$.50	ROBINSON 1936	65	(1)
$.50	ROBINSON 1936	67	(1)
$.50	S DIEGO 1935-S	65	(1)
$.50	S DIEGO 1936-D	65	(1)
$.50	SESQUI	65	(1)
$.50	SPAN TRAIL	65	(1)
$.50	STN MT 1925	65	(1)
$.50	TEXAS 1934	65	(1)
$.50	TEXAS 1935	65	(1)

$.50	TEXAS 1935-D	65	(1)
$.50	TEXAS 1935-S	65	(1)
$.50	TEXAS 1936	65	(1)
$.50	TEXAS 1936-D	65	(1)
$.50	TEXAS 1936-S	65	(1)
$.50	TEXAS 1937	65	(1)
$.50	TEXAS 1937-D	65	(1)
$.50	TEXAS 1937-S	65	(1)
$.50	TEXAS 1938	65	(1)
$.50	TEXAS 1938-D	65	(1)
$.50	TEXAS 1938-S	65	(1)
$.50	VANCOUVER 25	65	(1)
$.50	VERMONT 1927	65	(1)
$.50	BTW 1946	65	(1)
$.50	BTW 1946-S	65	(1)
$.50	BTW 1947-S	65	(1)
$.50	BTW 1948	65	(1)
$.50	BTW 1948-D	65	(1)
$.50	BTW 1950-S	65	(1)
$.50	BTW 1951	65	(1)
$.50	WASH CARV 1951	65	(11)
$.50	WASH CARV 1951-D	65	(39)
$.50	WASH CARV 1951-S	65	(115)
$.50	WASH CARV 1952	65	(80)
$.50	WASH CARV 1952-D	65	(21)
$.50	WASH CARV 1952-S	65	(95)
$.50	WASH CARV 1953	65	(31)
$.50	WASH CARV 1953-D	65	(16)
$.50	WASH CARV 1953-S	65	(103)
$.50	WASH CARV 1954	65	(52)
$.50	WASH CARV 1954-D	65	(31)

$.50	WASH CARV 1954-S	65	(122)
$.50	WISCONSIN 1936	65	(1)
$.50	YORK 1936	65	(1)
$.50	MOR 1878 7T REV 78	65DM	(1)
$1	MORG 1879-S	65DMPL	(5)
$1	MORG 1879-S	66DMPL	(2)
$1	MORG 1880-S	65DMPL	(23)
$1	MORG 1880-S	66DMPL	(2)
$1	MORG 1881-CC	65DMPL	(10)
$1	MORG 1881-S	65DMPL	(5)
$1	MORG 1882	65DMPL	(1)
$1	MORG 1882-CC	65DMPL	(9)
$1	MORG 1883	65DMPL	(4)
$1	MORG 1883-CC	64DMPL	(1)
$1	MORG 1883-CC	65DMPL	(36)
$1	MORG 1883-O	65DMPL	(5)
$1	MORG 1884-CC	65DMPL	(25)
$1	MORG 1884-O	65DMPL	(16)
$1	MORG 1884-O	66DMPL	(1)
$1	MORG 1885	65DMPL	(39)
$1	MORG 1885	66DMPL	(1)
$1	MORG 1885-CC	65DMPL	(3)
$1	MORG 1885-O	65DMPL	(15)
$1	MORG 1885-O	66DMPL	(2)
$1	MORG 1886	65DMPL	(9)
$1	MORG 1887	65DMPL	(12)
$1	MORG 1888	65DMPL	(6)
$1	MORG 1888-O	65DMPL	(4)
$1	MORG 1890-CC	65DMPL	(1)
$1	MORG 1896	65DMPL	(2)
$1	MORG 1897	65DMPL	(2)

$1	MORG 1897-S	65DMPL	(2)
$1	MORG 1898	65DMPL	(2)
$1	MORG 1898-O	65DMPL	(13)
$1	MORG 1899	65DMPL	(3)
$1	MORG 1899-O	65DMPL	(6)
$1	MORG 1899-O	66DMPL	(2)
$1	MORG 1903-O	65DMPL	(1)
$1	MORG 1904-O	65DMPL	(10)
$1	MORG 1881-S	65PL	(1)
$1	MORG 1885-CC	65	(1)
$1	MORG 1886	65	(2)
$1	MORG 1887	65	(1)
$1	MORG 1904	65	(1)
$1	INDIAN T-3	65	(1)
$1	MORG 1878-S	65DMPL	(2)
$1	MORG 1880	65DMPL	(1)
$1	MORG 1880-S	65DMPL	(1)
$1	MORG 1881-CC	65DMPL	(1)
$1	MORG 1861-S	65DMPL	(1)
$1	MORG 1882-CC	65DMPL	(1)
$1	MORG 1882-S	65DMPL	(2)
$1	MORG 1883-CC	65DMPL	(1)
$1	MORG 1883-CC	66DMPL	(1)
$1	MORG 1884	65DMPL	(1)
$1	MORG 1884-O	65DMPL	(2)
$1	MORG 1885	65DMPL	(1)
$1	MORG 1885-O	65DMPL	(1)
$1	MORG 1886	65DMPL	(1)
$1	MORG 1896	65DMPL	(2)
$1	MORG 1897-S	65DMPL	(2)
$1	MORG 1899-O	65DMPL	(1)

$1	MORG 1900-O	65DMPL	(3)
$1	MORG 1904-O	65DMPL	(2)
$20	ST GUD H.R	63	(1)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Federal Trade Commission, Civ. No 4-91-638

Plaintiff,

v.

T.G. Morgan, Inc. and
Michael W. Blodgett,

Defendants.

APPROVAL OF MODIFICATION TO
PROPOSED FINAL JUDGMENT

The undersigned hereby consents to Paragraph XIV of the Final Judgment And Order For Permanent Injunction And For Settlement Of Claims For Monetary Relief (Final Judgment) being changed to read as follows:

"IT IS FURTHER ORDERED that all individuals and entities in possession or control of assets listed or described in Paragraphs VII or VIII of this Order shall hold, preserve, and retain such assets within their control and prohibit the withdrawal, removal, assignment, encumbrance, dissipation, loss, destruction, spending, sale, or other disposal of such assets, except (i) by the Receiver in accordance with Paragraphs VII through XII of this Order or (ii) pursuant to further Order of this Court."

The undersigned understands that the Commission staff will effect this language change by substituting a new page 21 in the Final Judgment and that, in the event the Commission approves the proposed settlement of this case, the new page 21 will be part of the Final Judgment to be submitted to the Court for entry in this case.

/s/ James H. Gilbert
James H. Gilbert

DATED:

Attorney for T. G. Morgan Inc., Michael W. Blodgett

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Federal Trade Commission, Civ. No 4-91-638

Plaintiff,

v.

T.G. Morgan, Inc. and
Michael W. Blodgett,

Defendants.

APPROVAL OF MODIFICATION TO
PROPOSED FINAL JUDGMENT

The undersigned hereby consents to Paragraph XIV of the Judgment And Order For Permanent Injunction And For Settlement Of Claims For Monetary Relief (Final Judgment) being changed to read as follows:

"IT IS FURTHER ORDERED that all individuals and entities in possession or control of assets listed or described in VII or VIII of this Order shall hold, preserve, and retain such assets within their control and prohibit the withdrawal, assignment, encumbrance, dissipation, loss, destruction, spending, sale, or other disposal of such assets, except (i) by the Receiver in accordance with Paragraphs VII through XII of this Order or (ii) pursuant to further Order of this Court."

The undersigned understands that the Commission staff will effect this language change by

substituting a new page 21 in the Final Judgment and that, in the event the Commission approves proposed settlement of this case, the new page 21 will be part of the Final Judgment to be submitted to the Court for entry in this case.

/s/ Douglas A. Kelley
Douglas A. Kelley

DATED: Attorney for Diane Blodgett

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Federal Trade Commission, Civ. No 4-91-638

Plaintiff,

v.

T.G. Morgan, Inc. and
Michael W. Blodgett,

Defendants.

APPROVAL OF MODIFICATION TO
PROPOSED FINAL JUDGMENT

The undersigned hereby consents to Paragraph XIV of the Final Judgment And Order For Permanent Injunction And For Settlement Of Claims For Monetary Relief (Final Judgment) being changed to read as follows:

"IT IS FURTHER ORDERED that all individuals and entities in possession or control of assets listed or described in Paragraphs VII or VIII of this Order shall hold preserve, and retain such assets within their control and prohibit the withdrawal, removal, assignment, encumbrance, dissipation, loss, destruction, spending, sale, or other disposal of such assets, except (i) by the Receiver in accordance with Paragraphs VII through XII of this Order or (ii) pursuant to further Order of this Court."

The undersigned understands that the Commission staff will effect this language change by substituting a new page 21 in the Final Judgment and that, in the event the Commission approves the proposed settlement of this case, the new page 21 will be part of the Final Judgment to be submitted to the Court for entry in this case.

/s/ Michael W. Blodgett
Michael W. Blodgett, as president of T. G. Morgan, Inc., for T. G. Morgan, Inc.

DATED:

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Federal Trade Commission, Civ. No 4-91-638

Plaintiff,

v.

T.G. Morgan, Inc. and
Michael W. Blodgett,

Defendants.

APPROVAL OF MODIFICATION TO
PROPOSED FINAL JUDGMENT

The undersigned hereby consents to Paragraph XIV of the Final Judgment And Order For Permanent Injunction And For Settlement Of Claims For Monetary Relief (Final Judgment) being changed to read as follows:

"IT IS FURTHER ORDERED that all Individuals and entities in possession or control of assets listed or described in Paragraphs VII or VIII of this Order shall hold, preserve, and retain such assets within their control and prohibit the withdrawal, removal, assignment, encumbrance, dissipation, loss, destruction, spending, sale, or other disposal of such assets, except (i) by the Receiver in accordance with Paragraphs VII through XII of this Order or (ii) pursuant to further Order of this Court."

The undersigned understands that the Commission staff will effect this language change by substituting a new page 21 in the Final Judgment and that, in the event the Commission approves the proposed settlement of this case, the new page 21 will be part of the Final Judgment to be submitted to the Court for entry in this case.

/s/ Michael W. Blodgett
Michael W. Blodgett, as president of T. G. Morgan, Inc., for T. G. Morgan, Inc.

DATED:

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Federal Trade Commission, Civ. No 4-91-638

Plaintiff,

v.

T.G. Morgan, Inc. and
Michael W. Blodgett,

Defendants.

APPROVAL OF MODIFICATION TO
PROPOSED FINAL JUDGMENT

The undersigned hereby consents to Paragraph XIV of the Final Judgment And Order For Permanent Injunction And For Settlement Of Claims For Monetary Relief (Final Judgment) being changed to read as follows:

"IT IS FURTHER ORDERED that all individuals and entities in possession or control of assets listed or described in Paragraphs VII or VIII of this Order shall hold, preserve, and retain such assets within their control and prohibit the withdrawal, removal, assignment, encumbrance, dissipation, loss, destruction, spending, sale, or other disposal of such assets, except (i) by the Receiver in accordance with Paragraphs VII through XII of this Order or (ii) pursuant to further Order of this Court."

The undersigned understands that the Commission staff will effect this language change by substituting a new page 21 in the Final Judgment and that, in the event the Commission approves the proposed settlement-of this case, the new page 21 will be part of the Final Judgment to be submitted to the Court for entry in this case.

/s/ Diane Blodgett
Diane Blodgett, non-party spouse of Michael W. Blodgett

DATED:

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Federal Trade Commission, Civ. No 4-91-638

Plaintiff,

v.

T.G. Morgan, Inc. and
Michael W. Blodgett, CLARIFYING ORDER

Defendants.

The Federal Trade Commission moved for an order clarifying that part of Paragraph XIII of the judgment which provides that "These Financial Statements shall be kept confidential by the Commission and shall not be disclosed to any person or entity." The parties filed memoranda in support of their positions, and the court asked the office of the United States Attorney for the District of Minnesota for its input. The office of the United States Attorney submitted a memorandum, and defendant has filed a reply to this memorandum.

The motion presents a single narrow issue for resolution: the meaning of Paragraph XIII of the judgment. Defendants argue that the language of the paragraph is unambiguous, so that there is no need to go beyond it See Carl Bolander & Sons, Inc. v. United Stockyards Corp., 298 Minn. 428, 215 N.W.2d 473 (1974). The language of the agreement is unambiguous; It prevents the Federal Trade Commission from

turning over the financial statements to any person or entity. It is equally unambiguous, however, that the language does not prevent the Federal Trade Commission from complying with a court order.

A true copy in 2 sheet(s)
of the record in my custody.
CERTIFIED 8-4, 1995
Francis E. Dosal, Clerk
BY: /s/ Francis E. Dosal

ORDER

Accordingly based upon the above, and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that Paragraph XIII of the judgment entered on March 4, 1992 has meaning consistent with its plain language as clarified by this order.

Date: 4/24/92

/s/ Diana E. Murphy
Diana E. Murphy
United States District Judge

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

DIANE S. BLODGETT, TOM LINGENFELTER,
Plaintiffs-Appellants

v.

UNITED STATES,
Defendant-Appellee

2018-2398

Appeal from the United States Court of Federal Claims in No. 1:17-cv-02000-LAS, Senior Judge Loren A. Smith.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK, MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN, and STOLL, *Circuit Judges*.*

PER CURIAM.

---

* Circuit Judge Hughes did not participate.

ORDER

(Filed Feb. 19, 2020)

Appellant Diane S. Blodgett filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied. The petition for en banc rehearing is denied.

The mandate of the court will issue on February 26, 2020.

FOR THE COURT

February 19, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

* * *

113. **After** the Blodgett's **full performance** on December 31, 1991, and unknown to the Blodgett's, a Secret meeting (hereinafter, the "first known" secret Meeting) was held at the U. S. Attorney's Office in Minneapolis **on or about January 22, 1992**. See excerpts of Vartian's deposition, attached as retyped for clarity . . . entire Vartian. deposition attached by reference.[46]

114. Evidence of statements of Government attorneys or coconspirators, including false affidavits and attorney work product, and as attached will be admissible against the interests of the Government under Fed. R. Evid. R. 801(d)(2)(E) and other rules including the crime fraud exception. See, In re: Spalding Sports Worldwide, Inc., 203 F. 3d 800, 807 (Fed. Cir. 2000) and as subject to discovery.

115. Among such attached direct evidence are excerpts from the 1993 deposition of FTC Receiver Armen Vartian, which was delayed or suppressed until 1994 by the Government.

116. Mr. Blodgett was at all times material trying to protect the fully funded, fully vested TGM ERISA pension for both Blodgett's and for the vested but not yet funded beneficiaries and for those TGM employees who would vest and should be funded.

---

[46] Upon information and belief this was the exact time that Vartian, Faegre Benson's Conn and the FTC's Rushkoff were in the first known secret meeting with Joan Ericksen Lancaster held at the U. S. Attorney's Office.

117. In 1994 under their divorce and a Qualified Domestic Relations Order (QDRO), Mr. Blodgett transferred all his vested, funded ERNA rights to Ms. Blodgett, (QDRO court order attached)

118. Prior to that QDRO and at times referenced in Vartian's deposition, Mr. Blodgett was acting to try to preserve all the Blodgett TGM ERISA pension rights and benefits. (See attached TGM ERISA documents, dating back to 1985) (see attached FAXED list of TGM ERISA coins, December 18, 1991, as "valued" for the FTC by coin dealer Garrett) (see letter from attorney Gilbert to Safrabank, attached). Garrett simply looked up the emergency liquidation bids, not 'asks' or 'fair market value'.

119. The TGM ERISA pension coins were not listed for turnover in the FINAL JUDGMENT AND ORDER, but were fully disclosed to the FTC and were excluded per the contract maxim ***inclusio unis est exclusio alterius***.

120. Among other statements, Vartian said in 1993 about that first known secret meeting held on or about January 22, 1992 after the Blodgett's had fully performed, in questioning by attorney Brent Ward:

A. "{we went} to the office of Joan Lancaster, who is a prosecutor in Minneapolis. I was accompanied by Mr. Bennett Rushkoff and Gordon Kahn and the three of us went and we met with Joan Lancaster.

The purpose of that meeting was to discuss the treatment of certain coins that were

supposed to go to Mike Blodgett as part of a settlement with the FTC. Apparently the government wanted to freeze the coins for potential forfeiture as property purchased with the proceeds of fraud. For that reason, it was necessary for the prosecutor to coordinate with me what was going to happen with those coins in the event there was a settlement with Blodgett. She wanted to be sure I did not transfer the coins to Blodgett so quickly that the Justice Department would not have the opportunity to go to court and seek a freeze order.

121. Further Vartian testified:

A. "It had something to do with the settlement that the FTC was negotiating with Blodgett and the division of the coins – which coins Blodgett was going to get as part of the settlement. Someone at the FTC was concerned as to whether or not – given the value of the coins, whether or not it was a fair settlement and asked me if I had recent valuations of certain of the coins so that they could assess the value that they were giving to Blodgett and the value of what they were not.

Q. While we are on that, was there a stipulation and agreement reached, to your knowledge, between the government and Blodgett as to certain coins that he and/or his wife would retain as part of the settlement?

A. I think so, yes.

Q. Do you know whether Mr. Blodgett actually received the coins that were to go to him under that agreement?

A. He did not get them from me, and I don't know what happened after I turned the coins over.

Q. Over to who?

A. Over to Kelly.

Q. Do you know whether Mrs. Blodgett received any of the coins that she may have been to receive under that agreement?

A. I don't know because whatever happened, happened after I was responsible for the coins.

Q. You mentioned you had a meeting with Joan Lancaster the assistant U. S. Attorney?

A. Yes.

Q. Was that on this subject of which coins, if any, the Blodgett's might be entitled to keep?

A. No, I think at that time the FTC had an idea of which Coins they wanted to give, and my recollection was that it was actually

A. {There was a receivership list of receivership coins and there were twenty some odd coins} that just were not on that {receivership} list. And those were coins which I was told by the FTC were the coins that were going to go to Blodgett. But apparently at the time nobody wanted it to be public knowledge what coins it was that Blodgett was going to get. So there isn't a list, per se, that says them. I took those

> coins and I labeled those with – I taped them together. I rubberbanded them together and I put a label on them saying they were for Blodgett. And when I turned them over to Kelly, it had all this labeling on it to make sure that Kelly didn't by mistake sell one of those. Since they were also of interest to the U. S. Attorney's Office in Minneapolis. I am pretty sure that the trustee would still have them because I think they are under a lot of different rules about not alienating them . . . "

122. Vartian also stated that when Bennett Rushkoff was away from the FTC on vacation, Vartian worked with FTC A. U. S. A.'s Connie Wagner, David Fix and Michael McCarey.

123. Gilbert and the FTC and DOI also misled the Blodgett's that the TGM ERISA coins would be returned out of Safrabank, when all along Vartian had already taken possession of those coins prior to February 18, 1992.[47]

124. Vartian also stated as did Trustee Stoebner in court filings that the FINAL JUDGMENT AND ORDER did not mention the "twenty some" {ERISA} coins to be returned to the Blodgetts, thus justifying that neither person had any notice or legal duty to protect or return them.

125. While it was true the FINAL JUDGMENT AND ORDER, nor the December 18, 1991 order

---

[47] Mr. Blodgett's trip on February 18, 1991 out to Safrabank to pick up those ERISA coins was doomed from before he took off, in further egregious affirmative Government scheme with Vartian and Gilbert.

appointing Vartian did not mention ERISA – Vartian's own deposition (excerpts attached) and the FTC's own 'appraisal' by Garrett and Alternative # 1 and # 2 negotiations gives the lie to those "defenses" as Vartian clearly stated that the four attorneys at that first known secret meeting in January 1992, held months prior to any such attempted in court defenses by Vartian and Stoebner, all knew the coins were under "a lot of rules not to be alienated" and were to be returned to the Blodgett's.

126. Gordon Conn (aka Kahn), Stoebner's attorney was at that meeting and his knowledge is imputed from the FTC and to Stoebner, and Faegre & Benson, and all its partners including Kroupa and

* * *

1187. Gitlitz v. Commissioner, 531 U.S 206 (January 2001) as applied herein to tax year 1999 (which could have been carried back to 1997 and forward to 2019) (refunds estimated at $215,000 which would be included in the *ex parte* damages);

1188. And as to misconduct of IRS Chief Counsel's Office and Judge Kroupa in 2003 Tax Court proceedings, ignoring or omitting, *see* Stoebner v. Meshbesher, 172 F. 3d 607 (8th Cir. 1999) as to $350,000 deductible in 1999);

1189. The unreported payment on any TGM 1120S of $121,000 to Vartian deductible as paid as "Administrative expenses" approved by Judge Kressel and the FTC and Gilbert.

1190. And the recent indictment, guilty plea, and sentencing of Judge Kroupa, and other articles attached herein as compared with docket sheet (attached) for Ms. Blodgett's 2003 Tax Court proceedings wherein Judge Kroupa refused to recuse herself under 28 U.S.C. § 455(a) and denied any discovery for Ms. Blodgett and denied any

---

Stoebner October 1999 request and then from Judge Kresser's November 18, 1999 Order attached, approving that October 1999 request (attached).

A true copy in 3 sheet(s)
of the record in my custody.
CERTIFIED 10-7, 1999
Francis E. Dosal, Clerk
BY: /s/ Francis E. Dosal
Deputy Clerk

MEMORANDUM

LEGAL & CONFIDENTIAL – FOR DISCUSSION ONLY

TO: File

FROM: Jim Gilbert

RE: FTC v. T.G. Morgan, Inc., et al
FTC Alternate Settlement Proposals

FILE.TO. 10117/28438

DATE: November 11, 1991

Both proposals assume $220,000 equity in the homestead after real estate commissions and the clients can keep the homestead.

Alternative #1:

1. That the defendants may continue in business by posting a bond, keep the homestead, and keep assets equal to $550,000 that the clients may select out of Group 2 and Group 3 assets, which will be commented on hereafter.

2. That the sum of $300,000 will be paid into a legal defense fund after the FTC as liquidated the coins to be transferred to a global settlement fund.

3. That out of the coins to be transferred to the FTC, the FTC will post $200,000 of value on those coins in a fund to secure a bond for the clients to continue in business. Additionally, the clients will contribute a percentage of future sales off each coin to that bond fund. The money will be placed in an irrevocable trust, and the clients will have no reversionary interest in that bond fund. If the attorneys' fees are not used in full, the balance of the attorneys' fees will be paid over into the settlement fund.

Alternative #2

1. The clients will keep the homestead.
2. The defendants will be banned from being involved for the rest of their lives in the coin and investment business, except where the defendants may be otherwise licensed by the state for real estate, insurance or other governmental license.
3. The clients will keep the sun of $950.000 out at assets selected from Group 2 and Group 3.
4. The sum of $500.000 will be paid for attorneys' fees, and any unused portions will be paid into the settlement fund once the litigation is done. These attorneys' fees can only be used for litigation with the FTC, with third parties, with debtor/creditors, and for criminal defense fees.
5. The FTC will help negotiate a side settlement with Britt to dispose of that lawsuit now, and will contribute some of the coins that they are going to be receiving to Britt facilitate that settlement.

Group 1 Assets:

There was a Group 1 designation of assets that will be considered personal, prior acquired, and/or family assets. These assets will remain with their respective owners, and will include the South Dakota farms that Diane inherited and the coins and bullion that were acquired by separate family members other than Michael and owned by those family members for a number of years. The retention of these assets will be subject to appropriate proof of acquisition and ownership in either Diane or the children.

All of the personal household goods and belongings in the homestead and personal items, including Diane's furs, the T-shirt company, the Steinway piano, the Japanese scrolls, the Suburban automobile, and all of the furniture, fixtures and equipment, will be designated as Group 1 assets. all going or remaining with the family, subject to proof of ownership.

Group 2 Assets:

Group 2 assets will include other personal affects, including antiques (subject to appraisal), documents which we valued as a group for the salvage value of $250,000 (but those documents will be subject to identification and appraisals), the accounts receivable owed to T. G. Morgan, and the coin lists supplied to Doug Kelley by Diane and Mike Tuesday morning. Those coins, as a group, were valued by Bennett and their coin expert at $591,000, and were valued as follows:

3 Indian coins	$12,500 - $14,00 each on a 30-day sale
2 Stellas:	
#65	$55,000 - $60,000
#66	$75,000 - $80,000
1851	$75,000 assuming MS65
1837	$59,000
High Relief 920-65	$22,000
1893	$175,000 - $200,000 (although Bennett thought he might be able to get $300,000 to $400,000 for this coin)
1895	$100,000, assuming MS65

Clients could retain part of these coins as the alternative assets they want to select as part of Group 2, and would be able to resell these assets if the ban was in effect, only to other dealers.

We disclosed the acquisition of the rare documents in excess of $600,000 or $700,000, but that our client felt that on the immediate fire-sale type basis, they might fetch $350,000. The paintings were valued at $150,000, the antiques were valued at $35,000, and all of these were on a forced liquidation sale.

The global settlement pot would be set up so that any and all customers, partners, or creditors who make claim to this settlement pot would have to sign a general release releasing the codefendants, their agents and employees from any and all claims, both now and in the future. These other parties, of course, would not have to opt into this settlement fund and may be able

to pursue separate recourses against the defendants, including independent lawsuits or possible involuntary bankruptcy proceedings.

Hopefully, there will be enough incentive there for them to opt into the settlement fund to work an overall settlement. This would include Britt, Oklahoma, Stedsman, the people at South Dakota, and any other claimants that we can identify. A notice will go out to all of the potential claimants advising them of the fund after everything has been resolved.

In regard to confidentiality, the government said that they cannot agree to a confidentiality agreement, but would agree to keep the financial information confidential.

We also discussed a possible RICO forfeiture on potential criminal proceedings, and the FTC said they have had no experience with them, and there is a possibility that these other assets that our clients are getting might be subject later forfeiture. We will endeavor to get the court's approval on this to give it some added strength, but that issue has to be looked at and our clients have to be aware of that risk.

Enter name of debtor and case number exactly the same as court notices

All attached pages must be letter size (81/2x11)

United States Bankruptcy Court ____ District of Minnesota	**PROOF OF CLAIM**
In re (Name of Debtor) T.G. Morgan, Inc.	Case Number 92-40578 RIK
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 581.	
Name of Creditor *(The person or entity to whom the debtor owes money or property)* Federal Trade Commission	☒ Check box if you are not sure that anyone else is going to claim relating to your claim. (See Attachment B)
Name and Address where Notices Should be Sent Bennett Rushkoff Federal Trade Commission Room 200 6th St. & Pennsylvania Ave., N.W. Washington, DC 20580 Telephone No. (202) 326-3439	☐ Check box if you have received any notices from the bankruptcy court in this case. ☒ Check box if the address differs from the address on the envelope sent to you by the court.

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:	Check here if this claim: ☐ replaces ☐ amends a previously filed claim, case: _____
1. BASIS FOR CLAIM: ☐ Goods sold ☐ Services performed ☐ Money retained ☐ Personal injury/ wrongful claim ☐ Taxes ☒ Other (Describe briefly): violation of § 5(a) of FTC Act	☐ [Illegible] in 11 U.S.C. § 1114(a) ☐ Wages, [illegible], and commissions (Fill out below) Your social security number _____ Unpaid compensation for services performed from _____ to _____ [illegible] [illegible]
2. DATE DEBT WAS INCURRED: Jan. 1, 1987 to Feb. 10, 1992	3. IF COURT JUDGMENT, DATE OBTAINED: March 5, 1992 (Attachment A)
4. CLASSIFICATION OF CLAIM. Under Bankruptcy Court all claims are classified as one or more of the following: (1) Unsecured nonpriority (2) Unsecured priority (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe our claim and STATE THE AMOUNT OF THE CLAIM. ☐ SECURED CLAIM $ _____ Attach evidence of protections on security interest Brief Description of Collateral: ☐ Real Estate ☐ Motor Vehicle ☐ Other (Describe briefly)	

Amount of real estate, motor vehicles, and other charges included in securing claim above. $ ____*____ ☒ UNSECURED NONPRIORITY CLAIM $ 38,056,174 * A claim is unsecured if there is no collateral or [illegible] on the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.
☐ UNSECURED PRIORITY CLAIM $ _____ Specify the [illegible] of the claim ☐ Wages, salaries, or commissions (up to $2000L earned not more than 30 days prior filing of the bankruptcy petition or [illegible] of the debtor's business, whichever is earlier)—11 U.S.C. § 507(a)(3) ☐ Contributions as an employee benefit plan—11 U.S.C. § 507(a)(4) ☐ Up to $[illegible] of discounts toward purchases, leases or rental of property or services for personal, family, or household use—11 U.S.C. § 507(a)(5) ☐ Taxes or penalties of governmental units–11 U.S.C. § 507(a)(7) ☐ Other—11 U.S.C. § 507(a)(2), (a)(5)—(Describe briefly)
5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: $38,046,524* (Unsecured) $_____ (Secured) $_____ (Priority)

$38,046,524* (Total)	☐ Check this box if claims includes precertification charges in addition to the [illegible] of the claim. Attach itemized statement of all additional charges

6. CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim, in filing this claim, claimant has deductions and amounts that claimant [illegible] to debtor.

7. SUPPORTING DOCUMENTS: [Illegible] copies of supporting documents, such as supervisory forms, courthouse orders, invoices, itemized statements of running accounts, court judgments, or evidence of [illegible] interests. If the documents are not available, explain, if the documents are voluminous, attach its summary. see attached statement

8. TIME STAMPED COPY: To receive an acknowledgment of the filing of your claim, include a stamped, self-addressed envelope and copy of this proof of claim.

SEND CLAIM TO:

U.S. Bankruptcy Court
600 Towle Building
330 2nd Ave. S.
Minneapolis, MN 55401

Date	Sign and print the name and title, if any, of the [illegible] authorized to file this claim (attach copy of power of attorney, if any)
Sept. 25, 1992	/s/ Bennett Rushkoff Bennett Rushkoff, Attorney, F.T.C.

***Penalty for presenting fraudulent claim*: Fine of up to $50,000 or imprisonment for up to 5 years, or both. 18 U.S.C. § 152 and 2571.**

*less market value (as of 3/5/92) of coins received by Debtor's customers.

UNITED STATES COURT OF CLAIMS
WASHINGTON, D.C.

MICHAEL W. BLODGETT, INDIVIDUALLY AND AS TRUSTEE FOR THE T.G. MORGAN DEFINED BENEFIT PENSION PLAN (ERISA); DIANE S. BLODGETT, INDIVIDUALLY AND AS BENEFICIARY OF THE T.G. MORGAN DEFINED BENEFIT PENSION PLAN; WARREN AND JEAN HARTJE, INDIVIDUAL AND FOR THE WARREN HARTJE SALES COMPANY EMPLOYEES' PENSION PLAN AND TRUST (ERISA) ELEANOR CARLSON; AND PHIL FLORENCE et al, AND THE EMPIRE PAPER COMPANY 'PENSION PLAN AND TRUST (ERISA); AND OTHER UNNAMED PENSION PLANS, PARTNERSHIP OWNERS, AND INDIVIDUALS . . .

PLAINTIFFS

vs.

the UNITED STATES OF AMERICA, [redacted]

DEFENDANTS

COMPLAINT

CASE NUMBER: 94-1069C

(Filed Dec, 16, 1994

COMPLAINT UNDER THE TUCKER ACT AND OTHER AUTHORITY

Plaintiffs, for their Complaint against the Federal Trade Commission, the United States of America, and individual defendants including defendants to be named, state and allege as follows:

PARTIES

At all times relevant hereto, Plaintiffs:

Michael W. Blodgett and Diane S. Blodgett were residents of Minnesota; Warren and Jean Hartje were residents of North Dakota, with a temporary domicile in Minnesota; Phil Florence was a resident of Georgia, as was Eleanor Carlson; The T.G. Morgan Defined Benefit Pension Plan

* * *

673 F.3d 1342 (2012)

Gladys S. VANDESANDE, Plaintiff-Appellant,

v.

UNITED STATES, Defendant-Appellee.

No. 2011-5012

United States Court of Appeals, Federal Circuit.

March 23. 2012

Roderick V. Hannah, of Davie, FL, argued for plaintiff-appellant.

Hillary A. Stern, Senior Trial Attorney, Commercial Litigation Branch, Civil Division, of United States Department of Justice, of Washington, DC, argued for defendant-appellee. With her on the brief were Tony West, Assistant Attorney General, Jeanne E. Davidson, Director, and Todd M. Hughes, Deputy Director, and Dawn E. Goodman, Trial Attorney.

Before NEWMAN, PLAGER, and LINN, Circuit Judges.

PLACER, Circuit Judge.

This is a dispute between the Government and a federal employee over whether a "Stipulation Agreement Regarding Damages," resulting from a settlement of an earlier personnel case, is a contract, a consent decree, or perhaps both. The label we put on it dictates the court that will have jurisdiction to hear the case on its merits, a necessary predicate to a judicial determination of whether the Stipulation Agreement (hereafter "Stipulation Agreement" or

"Agreement") was breached by the Government as the employee alleges. This dispute is yet another example of the wastefulness of litigation over where to litigate.

Plaintiff-Appellant, Ms. Gladys S. VanDesande, entered into the Stipulation Agreement with the approval of the Equal Employment Opportunity Commission ("EEOC") to resolve Ms. VanDesande's Title VII pregnancy discrimination claim against her employer, the United States Postal Service ("USPS"). She later filed suit in the Court of Federal Claims alleging that the Government breached that Agreement.

The Court of Federal Claims, at the Government's behest, held that it did not possess jurisdiction to hear Ms. VanDesande's claim because the Stipulation Agreement was a consent decree, not a contract. On appeal, Ms. VanDesande argues that, whatever else it may be, the Agreement is a contract for purposes of enforcement. Thus we must determine the legal status of the Stipulation Agreement.

Though there is precedent on both sides of this argument, we conclude that the trial court erred by holding the Stipulation Agreement not enforceable as a contract within the jurisdiction of the Court of Federal Claims; accordingly, we reverse and remand for further proceedings consistent with this opinion.

BACKGROUND

We begin by briefly summarizing the lengthy and tortured history of this case. To fully detail its course

through the several federal agencies and courts during the numerous years it has been in dispute (nearly a decade and a half) would unduly extend the opinion, and it might be confused with *Jarndyce v. Jarndyce.*[1]

Ms. VanDesande in 1998 and 1999 filed a series of complaints with the USPS, her employer, and subsequently with the EEOC, alleging that the USPS had violated the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) (amending Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-16). Before the EEOC, the complaints were consolidated into a bifurcated proceeding, in which the question of liability was first addressed. On the question of liability, the EEOC issued an Order finding that the USPS had discriminated and retaliated against Ms. VanDesande.

On the question of damages, the parties entered into the Stipulation Agreement, at issue here, which settled that phase of the proceeding substantially in her favor. On June 23, 2003, the EEOC issued a Final Order, closing the case, which incorporated the Stipulation Agreement by reference. The USPS then issued a Notice of Final Action adopting the EEOC's order.

Later in 2003, Ms. VanDesande notified the USPS that she believed the agency had breached the Stipulation Agreement. The USPS, in a Final Decision dated November 4, 2003, denied Ms. VanDesande's claim. She appealed the denial to the EEOC. Several years went by before the EEOC issued its decision, in which

---

[1] *Jarndyce v. Jarndyce* is the Chancery suit around which the plot of Dickens's *Bleak House* (1853) revolves.

it found that Ms. VanDesande had not met her burden of showing that the USPS failed to comply with the Stipulation Agreement. Ms. VanDesande requested reconsideration, and on May 17, 2006, the EEOC denied the request and informed Ms. VanDesande of her right to file a civil action in an appropriate United States District Court.

Ms. VanDesande then filed an action for breach of the Stipulation Agreement in the District Court for the Southern District of Florida. In response to that lawsuit, the Government filed a Motion for Summary Judgment in which it argued that the District Court lacked subject matter jurisdiction over Ms. VanDesande's complaint because it was "a contract claim within the meaning of the Tucker Act." Defendant's Motion for Summary Judgment and Memorandum of Law at 6, *VanDesande v. Potter*, No. 06-61263 (S.D. Fla. Mar. 28, 2007). According to the Government, because Ms. VanDesande's claim for monetary damages exceeded $10,000, "[t]he United States Court of Federal Claims has exclusive jurisdiction over Plaintiff's monetary claims for breach of the Stipulation Agreement . . . against the Postal Service." *Id.* Following an unsuccessful attempt at a mediated settlement, the parties stipulated to a voluntary dismissal of the case, which was entered on May 31, 2007.

In July of 2007, the USPS unilaterally terminated Ms. VanDesande's employment (the Stipulation Agreement had included a lump sum payment to her in exchange for her resignation). Believing her termination was wrongful because the USPS had not yet complied

with part of the Stipulation Agreement, Ms. VanDesande submitted another breach notice to the USPS. After the USPS failed to timely respond, Ms. VanDesande again appealed to the EEOC. On February 5, 2008, the EEOC issued its decision in which it found that Ms. VanDesande had not shown that the USPS failed to comply with the Stipulation Agreement, and again informed Ms. VanDesande of her right to file a civil action in an appropriate District Court.

On May 8, 2008, Ms. VanDesande once again filed suit in the District Court for the Southern District of Florida, this time seeking *de novo* adjudication of her Title VII pregnancy discrimination claim under 42 U.S.C. § 2000e-16(c). In an order issued February 18, 2009, the District Court granted the Government's motion to dismiss the case as untimely. The court determined that Ms. VanDesande was required to file her civil action for a *de novo* trial of the underlying discrimination complaint within 90 days of receiving the USPS's Notice of Final Action on those charges, presumptively the 2003 USPS Notice of Final Action adopting the EEOC's order. Thus the court concluded that Ms. VanDesande's action was time-barred.

Ms. VanDesande. adopting the Government's position in her first District Court suit that the agreement is a contract and can be enforced only in the Court of Federal Claims, then filed on April 24, 2009, a complaint for breach of contract in the Court of Federal Claims; this is the suit that brought the case here. As indicated above, the Government in this suit again moved to dismiss the case for lack of subject matter

jurisdiction. Now, however, in sharp contrast to its original stance before the District Court, the Government argued before the Court of Federal Claims that the Stipulation Agreement is not a contract but a consent decree, enforcement of which is not within the jurisdiction of the Court of Federal Claims under the Tucker Act. *Vandesande v. United States,* 94 Fed. Cl. 624, 629 (Fed.Cl.2011). The Court of Federal Claims, after a review of the conflicting precedents on the issue, agreed with the Government and granted the motion. Ms. VanDesande timely appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

DISCUSSION

The issue on appeal is the determination by the Court of Federal Claims that it lacks subject matter jurisdiction over Ms. VanDesande's claim for breach of contract by the Government. We review determinations of the Court of Federal Claims regarding its jurisdiction without deference. *Wheeler v. United States*, 11 F.3d 156. 158 (Fed.Cir.1993).

I.

When parties to a dispute arrive at an agreement that settles the dispute, the resulting agreement will generally have the characteristics of a contract: "a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty." Restatement (Second) of Contracts § 1 (1981). A party alleging a breach

of the contract may bring an action in a court of competent jurisdiction for legal or equitable remedies. *Id.* at § 345. In some cases, however, a dispute settles only after it becomes a matter of court proceedings. If the parties later negotiate a settlement agreement and that agreement is incorporated into a court decree that terminates the judicial proceeding, determining where to bring an action for enforcement can become a point of dispute. The question that arises in such cases is whether the parties must enforce their agreement through the trial forum that issued the decree, or whether they may pursue a separate action for breach of contract in any suitable court.

Typically, the court that issues a consent decree will retain jurisdiction to enforce it, see, *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 379, 114, S.Ct. 1673, 128 L.Ed.2d 391 (1994), and often the settlement agreement that led to the decree will so specify. Even if the matter is not clearly addressed in advance, in many cases the same court will have jurisdiction regardless of whether the theory for enforcement is a breach of contract or breach of a judicial decree.

In the federal system, however, when the United States is the defendant the difference between enforcement of a court decree by the issuing forum and enforcement of a settlement agreement through a separate suit for breach of contract becomes a matter of critical importance. It can determine which court in the system is empowered to decide the dispute.

For example, if the United States is a party to a contract that the Government is alleged to have breached, and the claim is for more than $10,000, the exclusive forum for the suit is in the Court of Federal Claims for the damages claimed to have resulted from the breach. *Compare* 28 U.S.C. §§ 1346(a)(2) *with id.* 1491(a)(1). Thus, when viewed simply as a contract, a breach of a settlement agreement involving damages of more than $10,000 is within the Tucker Act jurisdiction of the Court of Federal Claims. *See Holmes v. United States*, 657 F.3d 1303, 1317 (Fed.Cir.2011).

But what if the claim against the Government is based not on a settlement agreement per se, but on a settlement agreement that has been incorporated into a judicial or administrative order, in the form, for example, of a consent decree? Does the non-breaching party have the option to pursue a remedy in the Court of Federal Claims under the Tucker Act, or does jurisdiction for enforcing such an agreement rest solely in the hands of the tribunal that issued the order?

This is a matter of first impression in this court, and, as this case exemplifies, parties wishing to enforce such agreements with the Government require answers to these questions in order to know which forums are available. For nearly nine years Ms. VanDesande has been seeking enforcement of her Stipulation Agreement with the Government. As we have explained, she first brought an enforcement suit against the Government in the District Court for the Southern District of Florida. Then when that failed. and her subsequent attempt to get *de novo* review was

blocked, she took her complaint to the Court of Federal Claims as the Government had instructed. Here the Government reversed field and argued that her suit was actually one for enforcement of a decree, and not after all a contract claim within the jurisdiction of the Court of Federal Claims. That court agreed with the Government and dismissed the case. The result of all this, if the Government gets its way, is to leave Ms. VanDesande with no judicial forum able to hear her complaint.[2]

We put aside for later consideration the possible consequences of the Government's attempt to win this case by taking inconsistent positions in two different federal courts. This fast footwork by the Government not only imposed further delay and litigation costs on

---

[2] In the Southern District of Florida, the Government took the position that EEOC regulations contemplate just such an outcome. *See* Defendant's Motion for Summary Judgment and Memorandum of Law, *supra;* at 10. According to the Government, "[t]here is no provision [under EEOC regulations] that allows a federal employee to bring an enforcement action in district court if the EEOC has determined that the agency is in compliance with the EEOC's Final Order." *Id.* While there may not be an EEOC regulation that expressly authorizes judicial enforcement actions, the absence of an agency regulation does not per se determine the jurisdiction of a federal court to hear an appeal from the agency. Indeed, the regulations provide that "[a] complainant *may* petition the Commission for enforcement of a decision issued under the Commission's appellate jurisdiction," 29 C.F.R. § 1614.503(a) (emphasis added). Thus, the regulations clearly do not confine enforcement actions to the EEOC, as the Government contends. Simply because an employee chooses to initially pursue enforcement through the EEOC does not preclude her from later seeking enforcement in a court of competent jurisdiction.

a citizen trying to obtain relief in the nation's courts, but caused a case of ping-pong among the courts themselves. with a resulting waste of judicial resources.

We turn then first to the substance of this appeal. To resolve it, we must review the Court of Federal Claims's twin holdings: that consent decrees and settlement agreements are mutually exclusive, and that the Stipulation Agreement in this case is a consent decree over which jurisdiction is lacking.

A.

In *Holmes v. United States*, we held that "Tucker Act jurisdiction may be exercised in a suit alleging breach of a Title VII settlement agreement," and thus jurisdiction properly lay in the Court of Federal Claim, 657 F.3d at 1317. The question *Holmes* left unanswered, however, since it was not before the court, was whether the Court of Federal Claims also has jurisdiction over Title VII consent decrees. *Id.* at 1316. The trial court, recognizing that "inquiry into consent decree *vel non* would be academic if the Stipulation Agreement, despite its incorporation into the Final Order of the [EEOC], nevertheless obtained or retained the status of an independent legal agreement between the parties," *Vandesande*, 94 Fed.Cl. at 630, requested additional briefing from the parties on the question of whether settlement agreements and consent decrees are inherently mutually exclusive.

After reviewing the submissions and the way courts have treated similar agreements in other cases,

the trial court concluded that an action for breach of contract no longer exists "if the contract alleged is a settlement agreement that has been incorporated in a consent decree entered by another court or administrative entity." *Id.* at 632. After reviewing the same materials, we conclude otherwise.

In *Local No. 93, Intl Ass'n & Firefighters v. City of Cleveland*, 478 U.S. 501, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986), the Supreme Court was asked to determine the legal status of a Title VII consent decree. The Court applied a flexible approach in which it declined to be cabined by labels. *See id.* at 519, 106 S.Ct. 3063 ("The question is not whether we can label a consent decree as a 'contract' or a judgment,' for we can do both."). Instead, the Court noted that the legal status of a consent decree depends on the purpose of the litigation. *Id.* ("this Court's cases do not treat consent decrees as judicial decrees in all respects and for all purposes").

The issue in *Local No.* 93 was whether a district court's consent decree settling a Title VII race discrimination case was an "order" for purposes of section 706(g), which prohibits any "order of the court" from providing relief to individuals who were not victims of discrimination. The Court concluded that for such purposes, the contractual nature of Title VII consent decrees trump their nature as judicial acts. Specifically, the Court emphasized Congress' intention that "voluntary compliance . . . be the preferred means of achieving the objectives of Title VII" and that the "voluntary nature of a consent decree is its most fundamental characteristic." *Id.* at 515 and 521, 106 S.Ct. 3063.

Indeed, the Court noted that "it is the parties' agreement that serves as the source of the court's authority to enter any judgment at all." *Id.* at 522, 106 S.Ct. 3063. Thus, the Court concluded that consent decrees are not judicial orders for the purposes of section 706(g) of Title VII. *Id.* at 521, 106 S.Ct. 3063

The trial court in its opinion noted that despite highlighting the "contractual resemblance" of Title VII consent decrees, "nothing in the [*Local No.* 93] decision established that violation of the terms of a consent decree could be litigated separately and solely as a breach of contract." *Vandesande*, 94 Fed.Cl. at 631. That statement is correct as far as it goes, since that issue was not before the Court. What *Local No.* 93 establishes, however, is that consent decrees and settlement agreements are not, as a matter of law, mutually exclusive, and "[t]he fact that a consent decree *looks* like a judgment entered after a trial" does not control whether the consent decree is treated as a court order. *Local No.* 93, 478 U.S. at 523, 106 S.Ct. 3063 (emphasis in original). Instead, the legal status of a Title VII consent decree will depend upon the nature of the case.

The Government cites to the analysis employed by our sister circuits of consent decrees under the Prison Litigation Reform Act ("PLRA"). *See Rowe v. Jones*, 483 F.3d 791 (11th Cir.2007); *Benjamin v. Jacobson*, 172 F.3d 144 (2d Cir.1999) (*en banc*). Even assuming they had the power to undercut the position of the Supreme Court taken in Local *No. 93*, we are not persuaded that these cases are so inconsistent. *Benjamin* and Rowe both involved actions under the PLRA's "termination

provision," 18 U.S.C. § 3623(b). The terms "consent decree" and "private settlement agreement" are specifically defined in the PLRA, and termination proceedings are limited to the former. Based on the PLRA's specific treatment of consent decrees and settlement agreements, both courts concluded "that Congress sought to make *the Act's concepts* of consent decrees and private settlement agreements mutually exclusive." *Benjamin*, 172 F.3d at 157 (emphasis added); *see also* Rowe, 483 F.3d at 796 (citing *Benjamin*). But neither court suggested that the PLRA's bright-line distinction between consent decrees and settlement agreements reflects the "plain definitions" of those terms that are broadly applicable to other areas of law, and Congress provided no indication that the statutorily-derived mutual exclusivity would extend beyond the PLRA. Thus, we do not view these cases as detracting from the Supreme Court's flexible approach for determining the legal status of Title VII consent decrees found in *Local No. 93*.

We also are unpersuaded that the other cases discussed in the trial court's opinion establish that consent decrees and settlement agreements are mutually exclusive for all purposes, especially enforcement. The trial court's conclusion that they are mutually exclusive was based in large part on an opinion from this court, *Blodgett v. United States*, No. 96-5067, 1996 WL 640238 (Fed.Cir.1996), which cited a Supreme Court decision, *United States v. Swift & Co.*, 286 U.S. 106, 52 S.Ct. 460, 76 L.Ed. 999 (1932), for the premise that "a decree entered upon consent is a judicial act and is not

a contract." *Blodgett*, 1996 WL 640238 at *1. As the trial court correctly observed, however, *Blodgett* was a nonprecedential opinion of this court. and therefore is not binding on subsequent decisions.

Furthermore, because the portion of *Swift* cited in *Blodgett* was not essential to the Court's decision in that case, it is also nonbinding dictum. *Swift* involved a consent decree between the Government and certain meat packers that enjoined the meat packers from conducting certain activities that the Government alleged violated the Sherman Antitrust Act. 15 U.S.C. § 4. *Swift*, 286 U.S. at 111, 52 S.Ct. 460. When a district court modified the consent decree 11 years later, a group of wholesale grocers intervened, arguing that the modifications constituted a breach of the parties' underlying contractual obligations. *Id.* at 114, 52 S.Ct. 460. The Supreme Court rejected the interveners' argument "that a decree entered upon consent is to be treated as a contract and not as a judicial act" but also noted that la] different view would not help them, for they were not parties to the contract, if any there was." *Id.* at 115, 52 S.Ct. 460.

Thus in *Swift*, determining that the consent decree should not be treated as a contract was not essential to the Court's disposition of the interveners' claim. Beyond that, the *Swift* opinion can be seen as less than wholly consistent regarding the judicial act and contract paradigms of a consent decree. Despite the Court's insistence that a consent decree is a judicial act, it nonetheless recognized that consent judgments have certain elements of a bargain. *Id.* at 116-17, 52

S.Ct. 460. In fact, the test the Court adopted in *Swift* for modifying a consent decree was essentially a contractual one "Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation *with the consent of all concerned.*" *Id.* at 119, 52 S.Ct. 460 (emphasis added). In view of *Swift's* internal inconsistencies, and because it was not essential for the Court to find that the consent decree "was not a contract as to any one," we decline to give stare decisis effect to statements taken from *Swift* suggesting that consent decrees are not to be treated as contracts.

More importantly, our view of *Swift* is consistent with several later opinions from the Supreme Court acknowledging the hybrid nature of consent decrees as both contracts and judicial acts, For example, in *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 95 S.Ct. 926, 43 L.Ed.2d 148 (1975), the Government brought an action against a manufacturer of baked goods seeking imposition of civil penalties for the manufacturer's alleged violation of a Federal Trade Commission consent order prohibiting certain activities that allegedly violated the Sherman Antitrust Act. In a footnote, the Court acknowledged that "[c]onsent decrees and orders have attributes both of contracts and of judicial decrees or. in this case, administrative orders. . . . Because of this dual character, consent decrees are treated as contracts for some purposes but not for others." *Id.* at 237, 95 S.Ct. 926. After reviewing its treatment of similar consent decrees in other cases, the

Court concluded that "since consent decrees and orders have many of the attributes of ordinary contracts, they should be construed basically as contracts. . . ." *id.* at 236, 95 S.Ct. 926 (citing *Hughes v. United States*, 342 U.S. 353, 72 S.Ct. 306. 96 L.Ed. 394 (1952), *United States v. Atl. Ref. Co* 360 U.S. 19, 79 S.Ct. 944, 3 L.Ed.2d 1054 (1959), and *United States v. Armour & Co.*, 402 U.S. 673, 91 S.Ct. 1752, 29 L.Ed.2d 256 (1971)). We are not the first to observe that these post-Swift decisions cast further doubt on the statements in *Swift* that consent decrees are to *be* treated as judicial acts, not contracts.[3]

The trial court took a somewhat narrower view of the *ITT* line of cases, seeing them as "merely establish [ing] that in certain contexts consent decrees are to be analyzed or interpreted according to contract principles, but not necessarily that they are also contracts separate from their existence as judicial orders." *Vandesande.* 94 Fed.Cl. at 631. What the trial court failed to give sufficient weight to, however, is that a fundamental issue in any contract enforcement

---

[3] Scholars have reconciled the apparent conflict between the Courts initial view of consent decrees in *Swift* and its later view in *Hughes, Atlantic Refining, Armour*, and *ITT* by noting that the *Swift* Court treated consent decrees as judicial acts for the purposes of modification, consistent with the "time-honored principle that an injunction is always subject to adaptation on a showing of changed circumstances," Milton Handler, *Twenty-Fourth Annual Antitrust Review*, 72 Colum. L. Rev. 1. (1972), while *Hughes, Atlantic Refining, Armour*, and *ITT* treated consent decrees as contracts for purposes of construction. *See also* Thomas M. Mengler. *Consent Decree Paradigms: Models Without Meaning*, 29 B.C. L. Rev. 291, 331 (1988).

proceeding is whether, absent enforcement, the non-breaching party will have received the benefit of her bargain. As a result, the application of contract concepts lies at the heart of any claim for enforcement in such a case. Indeed, the *ITT* Court noted that "a consent decree or order is to be construed *for enforcement purposes* basically as a contract. . . ." *ITT*, 420 U.S. at 238, 95 S.Ct. 926 (emphasis added). Thus, the *ITT* line of cases supports a conclusion that settlement agreements, even if they are incorporated into judicial or administrative consent decrees, should be viewed for enforcement purposes as having the attributes of a contract.

Indeed, to hold otherwise is inconsistent with the well-established rule that neither a court nor the parties has the power to alter a federal court's statutory grant of subject matter jurisdiction. *See, e.g., Christianson v. Colt Indus, Operating Corp.*, 486 U.S. 800, 818, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988); *Ins. Corp. of Ir., Ltd. v. Compaqnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982). The Tucker Act provides that the Court of Federal Claims "shall have jurisdiction to render judgment upon any claim against the United States founded . . . upon any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1). In *Holmes*, we held that a Title VII settlement agreement is a contract for purposes of Tucker Act jurisdiction. *See Holmes*, 657 F.3d at 1312. If, however, a settlement agreement was no longer enforceable as a contract once incorporated into a consent decree, the effect would be to divest the

Court of Federal Claims of its Tucker Act jurisdiction by the simple act of a court or agency adopting the agreement. We are unaware of any act of Congress that would allow for such an outcome.

For all of these reasons, and contrary to the first of the trial court's conclusions in this case, we hold that consent decrees and settlement agreements are not necessarily mutually exclusive.

B.

This leads to the second of the trial court's conclusions, that the Stipulation Agreement in this case is not a contract within the jurisdiction of the Court of Federal Claims. The Government takes the position that the Agreement is nothing other than an EEOC order, and thus a consent decree over which the Court of Federal Claims lacks jurisdiction. However, having determined that the relationship between these two labels is not a mutually exclusive one, we have no difficulty in concluding that the Stipulation Agreement in this case is a contract for enforcement purposes.

Even if the name, "Agreement," was not enough, the record establishes that the Agreement has all the indicia of a contract: "a bargain in which there is a manifestation of mutual assent to the exchange and a consideration." Restatement (Second) of Contracts § 17 (1981). Furthermore, the circumstances under which the Agreement was entered into by the parties to it, and its extensively detailed terms, leave little doubt

about its legal character.[4] Thus, we agree with the opinion of another of our sister circuits that a settlement agreement, even one embodied in a decree, "is a contract within the meaning of the Tucker Act." *Angie v. United States.* 709 F.2d 570, 573 (9th Cir.1983) ("The trial court then held that the Settlement Agreement, which is embodied in the decree of the Claims Commission, is a contract' within the meaning of the Tucker Act. Again, we agree.").

II.

Finally, we take note of the Government's attempt to win this case by taking entirely irreconcilable positions regarding the jurisdiction of the federal courts to hear Ms. VanDesande's case. We recognize that the position initially taken in the District Court was under the United States Attorney for that district, whereas the position later taken in this court was determined by the Department of Justice's civil division attorneys here in Washington, D.C. Nevertheless, both groups are part of the United States Justice Department, and it was the latter office that did the flip-flop.

The Justice Department, regardless of which of its offices is last to speak, is responsible to ensure that justice is more than what is in a name. As noted during

---

[4] The Stipulation Agreement included compensation for back pay and lost overtime; lost sick and annual leave; interest payments; tax consequence payments, payments for pain and suffering; medical and other expenses; and, as earlier noted. a lump sum payment in exchange for Ms. VanDesande's resignation.

oral argument, this court considers the Government's conduct in this case unacceptable and should not be how our Government handles itself. "It is as much the duty of the Government to render prompt justice against itself, in favor of citizens, as it is to administer the same, between private individuals." President Abraham Lincoln, Annual Message to Congress 1861 (quoted in Cong. Globe, 37th Cong., 2d Sess., Pt. IV. App. at 2 (1962), and engraved in the facade of this court's building). The Government's shifting positions have led to an unnecessary waste of money and judicial resources, and are manifestly unfair to the litigant.

Regrettably, this is not the first case in which the Government urged a district court to dismiss a case on the ground that jurisdiction belonged in the Court of Federal Claims and then, after suit was brought in the Court of Federal Claims, again urged dismissal on the ground that the Court of Federal Claims lacked jurisdiction.[5] We hope our decision today will reduce the prevalence of these "jurisdictional ping-pong" games, *see Christianson*, 486 U.S. at 818, 108 S.Ct. 2166. The Government would be well advised to avoid taking positions in future litigations that open it up to the criticism that it has used its overwhelming resources to whipsaw a citizen into submission. At a minimum. the Government should consider an authoritative position on jurisdiction in cases such as this binding on the Government, just as appellate courts are encouraged

---

[5] *See, e.g., Phillips v. United States*, 77 Fed.Cl. 513 (Fed.Cl. 2007). *Drury v. United States*, 52 Fed.Cl. 402 (Fed.Cl.2002), and *Clark v. United States*, 229 Ct.Cl. 570 (Ct.Cl.1981),

by the Supreme Court to avoid wasteful jurisdictional litigation by accepting the jurisdictional determination of the first circuit that decides the jurisdictional issue. *Id.* at 819, 108 S.Ct. 2166 ("Under law-of-the-case principles, if the transferee court can find the transfer decision plausible, its jurisdictional inquiry is at an end.")

CONCLUSION

For all these reasons, we reverse the Court of Federal Claim's judgment of no jurisdiction, and we remand for further proceedings on Ms. VanDesande's breach of contract claim.[6]

REVERSED AND REMANDED

[6] Since that claim has yet to have its day in court, we take no position on its merits.