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**APPENDIX A**

UNITED STATES COURT OF APPEALS FOR THE  
EIGHTH CIRCUIT

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No. 20-2047

Carrie S. Willis, individually and as trustee of the  
Trust of James C. and Norma D. Willis,  
*Plaintiff-Appellee*

v.

Stephen Boyd; Jason Brushwood; Missouri Highway  
Patrol; Sergeant D Nash; The City of Farmington,  
New Mexico, doing business as Farmington Police  
Department; Detective Corporal Russell Bradford,  
*Defendants*

United States of America,

*Defendant-Appellant*

Robert Jackson, IRS Special Agent, Individually and  
in his official capacity; Scott Wells, IRS Special  
Agent, Individually and in his official capacity,  
*Defendants.*

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Appeal from the United States District Court for the  
Western District of Missouri- Springfield

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Submitted: February 17, 2021

Filed: April 2, 2021

Before SMITH, Chief Judge, ARNOLD and STRAS,  
Circuit Judges.

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ARNOLD, Circuit Judge.

This is a case of mistaken identity, though not of the usual kind. During the search of Carrie Willis's home, police seized a large number of coins and passed them along to the Internal Revenue Service. An IRS agent deposited the coins at their face value into an IRS account and later remitted the amount to Willis. She maintains the coins were collectors' items and so the agent was mistaken when he essentially swapped them for ordinary currency, greatly discounting their value, so she sued the government under the Federal Tort Claims Act for conversion. After a bench trial, the district court agreed and awarded Willis \$94,880. The government appeals, arguing that the district court erred when it concluded that the FTCA had waived the government's sovereign immunity to suit in the current circumstances. We agree with the government and so reverse and remand.

According to the district court's findings of fact, which the parties do not challenge, the government seized 364 boxes of recently minted one-dollar coins commemorating deceased U.S. Presidents. Each box contained one thousand coins. An agent with the local IRS office took possession of them the day after they were seized and had them removed from their original packaging and processed through a coin counter, after which \$364,000 was deposited into an IRS account. The agent admits that he did not make an effort to

determine whether the coins had any numismatic value. A few years later, after Willis requested the coins' return, the IRS informed her they had been "converted to cash and deposited into the government's account." When the government then paid Willis the face value of the coins, she asserted they were worth a great deal more than that as collectors' items. This suit followed.

A person who sues the federal government must show that it has unequivocally waived its sovereign immunity from suit. *See Barnes v. United States*, 448 F.3d 1065, 1066 (8th Cir. 2006). The FTCA waives sovereign immunity in suits seeking money damages against the federal government "for injury or loss of property . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant." 28 U.S.C. § 1346(b)(1); *see also Brownback v. King*, 141 S. Ct. 740, 746 (2021).

But the FTCA contains a number of exceptions to this general waiver of immunity. *Hinsley v. Standing Rock Child Protective Servs.*, 516 F.3d 668, 672 (8th Cir. 2008). The so-called "discretionary-function exception" that the government relies on as a bar to this action applies when government agents make decisions that are discretionary in nature, that is, ones that involve "an element of judgment or choice." *See United States v. Gaubert*, 499 U.S. 315, 322 (1991). More specifically, the exception applies to any claim that is "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee

of the Government, whether or not the discretion involved be abused.” 28 U.S.C. § 2680(a).

The Supreme Court has held, though, that the exception, despite its apparent breadth, does not insulate from suit every discretionary decision that a government agent makes; the decision must be “of the kind that the discretionary function exception was designed to shield.” *See Gaubert*, 499 U.S. at 322–23. The Court has explained that, in enacting this exception, “Congress wished to prevent judicial ‘second-guessing’ of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort.” *See United States v. Varig Airlines*, 467 U.S. 797, 814 (1984). So suppose, for example, that a government agent was driving a car on government business and negligently caused an accident. While “driving requires the constant exercise of discretion,” that’s not the type of discretion that triggers the exception because the decisions the agent makes when exercising the discretion associated with driving a car are not grounded in government policy. *See Gaubert*, 499 U.S. at 325 n.7.

The upshot of these and other Supreme Court decisions is that we must answer two questions to determine if the exception applies. First, we ask “whether the challenged conduct or omission is ‘truly discretionary’” in that “it involves an element of judgment or choice instead of being controlled by mandatory statutes or regulations.” *See Buckler v. United States*, 919 F.3d 1038, 1045 (8th Cir. 2019). If it is, we consider whether the employee’s judgment or choice could be “based on considerations of social, economic, and political policy.” *Id.* If it could, the

exception applies, and sovereign immunity bars the suit.

The parties vigorously dispute whether the agent's decision to send the coins for processing rather than to preserve them *in specie* was a matter that is "truly discretionary" or if it was mandated by laws or policies that the agent failed to follow. We agree with the government that the agent's decision was a discretionary one. The manual governing the actions of IRS agents provided, as relevant here, "that domestic and foreign currency seized for forfeiture, except where it is . . . held as a 'collectible asset,' must be expeditiously counted, processed, and deposited . . . within 5 days of seizure." *See* Internal Revenue Manual § 9.7.4.6.1(2); *see also id.* § 9.7.6.14.1(1).

Willis's own expert agrees that neither that manual nor any other mandatory rule instructed an agent how to determine whether seized currency is a "collectible asset." That determination is left to the agent's discretion. Willis asserts that the agent violated this manual provision by failing to investigate whether the coins had a special value to collectors. But that provision does not direct an agent to undertake an investigation. The agent satisfied the provision when he determined that the coins were ordinary currency and had them expeditiously processed. Willis's argument misses the mark.

Willis maintains that some other provisions of the IRS manual required the agent to investigate whether the coins had collectors' value. For example, Willis faults the agent for failing to fulfill certain "pre-seizure planning" obligations, including a general obligation to consider and "realistic[ally] estimate" the value of seized property. *See id.* § 9.7.4.3.2(1). But the

provision Willis cites never elaborates on the information an agent must obtain before making a realistic estimate. It never spells out when additional investigatory duties are triggered, or what an additional investigation might look like; rather, it apparently gives an agent discretion to determine whether seized currencies' face value is a realistic estimate of its worth or whether an investigation into its value as a collectible asset is needed and what it might entail.

Willis also points to provisions in the IRS manual relating to the storage of seized property and property appraisals. *See id.* §§ 9.7.6.9.2(1), 9.7.6.8(1), 9.7.6.8.1, 9.7.6.7.3. But those provisions do not guide agents in determining whether seized currency is collectible in the first place. At most, they tell agents how to handle coins like these should they conclude that the coins are collectibles. But as we've pointed out before, we may not ignore the discretion associated with an underlying, antecedent determination. *Buckler*, 919 F.3d at 1050.

We think this case is distinguishable from *Buckler* and *Appley Brothers v. United States*, 164 F.3d 1164 (8th Cir. 1999), two cases Willis invokes for the proposition that the discretionary-function exception does not apply when a government agent fails to perform a mandatory task requiring discretion to carry out. In *Buckler*, for example, a plaintiff sued a mine inspector who was obligated to review certain training records. 919 F.3d at 1054. Our court explained that, though the inspector had discretion in how to examine those records, he was obliged to conduct at least some review, and so his alleged entire failure to do so did not trigger the discretionary-function exception. *See id.*

Similarly, in *Appley Brothers*, a grain-warehouse inspector had discretion in how he carried out a mandatory grain inspection, and since the complaint centered on an allegation that the inspector conducted no inspection at all, rather than an allegation that the inspector had performed his obligations negligently, we held that the discretionary-function exception did not apply. 164 F.3d at 1172–73.

Here, however, the agent satisfied his mandatory obligation—he did not fail to decide whether the seized currency was ordinary currency or a collectible asset. He quite clearly decided that the coins were ordinary currency and so had them quickly processed. Though Willis argues that the IRS manual required him to do more, and that his failure to follow the manual was not discretionary, we do not think, as just explained, that the manual required the agent to do more than he did when he categorized the coins. Even if the decision was carelessly made or was uninformed, the agent’s negligence in making it is irrelevant. *See Layton v. United States*, 984 F.2d 1496, 1502 (8th Cir. 1993). The decision was still discretionary.

That brings us to the second question we must answer—whether the agent’s choice to treat these coins as ordinary currency could have been “based on considerations of social, economic, and political policy.” When we’ve already determined that a government’s choice was discretionary, as here, we presume that it was based on relevant policy considerations. *See Buckler*, 919 F.3d at 1046. We are not convinced that Willis has rebutted that presumption.

In rejecting the government’s argument that the discretionary-function exception applied, the district court pointed out that the agent exercised no judgment

because he never considered whether the coins had numismatic value, and so, presumably, there was never a balancing of any policy considerations. As our court has explained, however, it does not matter whether the agent actually “engaged in conscious policy-balancing.” What matters is whether the decision in question is by its nature as an objective matter “susceptible to policy analysis.” *See Herden v. United States*, 726 F.3d 1042, 1047 (8th Cir. 2013) (en banc).

A decision is quite obviously susceptible to a policy analysis when it requires a federal employee to balance competing policy interests. *See id.* at 1050. One matter of policy at play in this case is the policy of expeditiously depositing seized currency. Once again, the manual required agents to count, process, and deposit seized currency within five days. *See* §§ 9.7.4.6.1(2), 9.7.6.14.1(1). A reason for this rule, the manual elaborated, is that “[t]he security, budgetary, and accounting problems associated with the seizure and retention of large amounts of cash creates great concern . . . and raises both financial management and internal control issues.” *Id.* § 9.7.4.6.1(1). The manual to the Department of Justice’s Asset Forfeiture Program, in which the IRS participates, echoes this concern and says that participating agencies “have held tens of thousands of dollars in office safes and other locations throughout the country. This raises both financial management and internal control issues. The Department must report annually to Congress on the amount of seized cash not on deposit.” DOJ Asset Forfeiture Policy Manual ch. 2, pt. VI (previously codified at ch. 1, pt. IV). But agents acting in circumstances like the ones present here must also



undertake reasonable efforts to preserve the value of seized property. The IRS manual requires that agents “strive to ensure that seized property is protected and its value preserved.” Internal Revenue Manual Ex. 9.7.1-1(IX).

What this comes down to is that agents who seize currency must balance the competing interests of expeditious deposit on the one hand and preserving property on the other—a calculation that plainly involves questions of social, economic, and political policies as to which the IRS and DOJ have understandably professed “great concern.” So we conclude that the agent’s choice was “susceptible to policy analysis” in the relevant sense. *Cf. Metter v. United States*, 785 F.3d 1227, 1233 (8th Cir. 2015).

We therefore hold that the FTCA’s discretionary-function exception applies, and so the government has not waived its sovereign immunity.

We reverse the judgment of the district court and remand for it to dismiss Willis’s claim.

**APPENDIX B**

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

CARRIE S. WILLIS,	)	Case No.
Plaintiff,	)	6:16-cv-03251-SRB
v.	)	
UNITED STATES OF	)	
AMERICA,	)	
Defendant.	)	

**MEMORANDUM OF DECISION**

On November 12, 2019, the Court commenced a two-day bench trial on Plaintiff Carrie S. Willis’s claims based on the Federal Tort Claims Act, 28 U.S.C. § 1346, *et seq.* (“FTCA”). Pursuant to Federal Rule of Civil Procedure 52(a)(1), “In an action tried on the facts without a jury . . ., the court must find the facts specially and state its conclusions of law separately.” The Court need not make specific findings on all facts but only “on the ultimate facts necessary to reach a decision.” *Allied Van Lines, Inc. v. Small Bus. Admin.*, 667 F.2d 751, 753 (8th Cir. 1982) (citations omitted). “Findings are adequate if they afford a reviewing court a clear understanding of the basis of the trial court’s decision.” *Id.* (citations and internal quotation marks omitted).

**I. Findings of Fact**

Based on the evidence presented at trial and the Court’s credibility determinations of the witnesses who provided testimony, the Court makes the

following fact findings:

### **\$1 Presidential Coin History**

1. In 2007, the United States Treasury (“Treasury”) began issuing \$1 coins depicting deceased United States Presidents with the intended purpose of having the coins replace paper dollars.
2. The initial release of these \$1 Presidential coins (George Washington through James Garfield) was done by the Treasury on a rolling basis between February 15, 2007, (George Washington) and November 17, 2011 (James Garfield).
3. The \$1 Presidential coins from George Washington through James Garfield were intended for wide circulating production and accordingly were minted in large numbers ranging from a high of over 163 million George Washington coins to a low of over 36 million James Buchanan coins.
4. In all, over two billion \$1 Presidential coins were produced by the United States Mint at facilities in Denver and Philadelphia between 2007 and 2011, using a production process that moved as quickly as possible for the purpose of getting the coins into circulation as United States currency.
5. The minting process involved taking a massive metal coil, feeding the coil into a blanking press to create coin-sized disks, placing the metal disks into a larger heater (running between 700° to 900° F.), feeding the annealed disks into “cleaning” and “upsetting” processes, and then running the disks into high-speed stamping and edge-lettering presses.

6. The \$1 Presidential coins minted between 2007 and 2011 were produced with no particular care, were dumped into bins by the thousands, and shot into “ballistic” bags at ballistic speed causing a lot of friction to the surface of the coins.
7. Newly-minted coins were then placed into bags of 2,000 coins each.
8. A large portion of the \$1 Presidential coins minted between 2007 and 2011 were then sent from the United States Mint to a third-party vendor, Coin Wrap, a commercial processor for wrapping, rolling, and boxing to be used in commerce as currency.
9. This wrapping, rolling, and boxing process subjected the surface to considerable friction impacting the circulating quality of the coins by using a vacuum to draw up coins into an industrial hopper and then dropping them into a wrapping process.
10. To commercially wrap the coins, the coins in each roll were compressed by machine and then wrapped in multiple thin layers of paper, making an extremely tight package. To unwrap the coins, a roll would have had to be cracked open with considerable force.
11. The wrap was also meant to be a security feature to ensure that any tampering with a roll would be evident because the roll would lose its structural integrity.
12. Following the wrapping of the coins, Coin Wrap placed 25 rolls of 40 \$1 Presidential coins into boxes (sometimes referred to as “bricks”) and

sent them out to banks so as to permit individuals and businesses to directly order the \$1 Presidential coins in these \$1,000 bricks.

13. The distribution of \$1 Presidential coins in bricks was done to help commercial retailers get the coins into circulation more quickly and cheaply, and not to identify the coins as collector's items.
14. The United States Mint has no "first strike" designation for coins. Moreover, the metal "dies" utilized by the United States Mint, which strike each side of a coin with artwork, wear out and are replaced at random times making it impossible to predict when a batch of coins might contain a coin struck by a brand-new die.
15. The \$1 Presidential coins minted between 2007 and 2011 had no designation as to when produced, other than the name of the president and a "do not open until" the release date sticker on each box, making it impossible to tell when a coin was struck by looking at the box.
16. The \$1 Presidential coins were not popular with the public and by 2011 were deemed by the Treasury to be unsuccessful.
17. Following the issuance of the James Garfield coins in 2011, the Treasury ended the circulating production of \$1 Presidential coins.
18. Due to the unpopularity of the \$1 Presidential coins, a surplus of over one billion unwanted coins remains in Federal Reserve terminals and in vaults under the United States Mint, including millions of coins never circulated in commerce, some in original boxes.

19. From the moment that they were minted through the present day, the \$1 Presidential coins were and still are legal United States tender with a face value of \$1 per coin.

**Seizure of the Willis \$1 Presidential Coins**

20. Between 2007 and 2011, Bobby Willis and Carrie Willis purchased \$1 Presidential coins in 364 \$1,000 bricks, obtaining coins depicting Presidents George Washington through James Garfield, with the following distribution:

<b>President</b>	<b>Quantity</b>	<b>President</b>	<b>Quantity</b>
2007 George Washington	7,000	2009 James K. Polk	20,000
2007 John Adams	10,000	2009 Zachary Taylor	20,000
2007 Thomas Jefferson	10,000	2010 Millard Fillmore	20,000
2007 James Madison	10,000	2010 Franklin Pierce	20,000
2008 James Monroe	20,000	2010 James Buchanan	20,000
2008 John Quincy Adams	26,000	2010 Abraham Lincoln	20,000
2008 Andrew Jackson	26,000	2011 Andrew Johnson	20,000
2008 Martin Van Buren	20,000	2011 Ulysses S. Grant	20,000
2009 William Henry Harrison	20,000	2011 Rutherford B. Hayes	20,000
2009 John Tyler	20,000	2011 James Garfield	15,000

21. Twenty-percent of the funds used to purchase the \$1 Presidential coins came from the James and Norma Willis Trust, Bobby Willis's grandparents, and eighty-percent of the funds came from the Bobby L. and Carrie S. Willis Trust.
22. Bobby Willis and Carrie Willis divorced in early 2012.
23. As part of the divorce, Bobby Willis gave up any ownership interest in the \$1 Presidential coins.
24. Bobby Willis was removed as a trustee and beneficiary of the Bobby L. and Carrie S. Willis Trust, leaving Carrie Willis as the lone trustee and beneficiary.
25. After Bobby and Carrie Willis's divorce, 20% of the \$1 Presidential coins were owned by the James and Norma Willis Trust, and 80% of the \$1 Presidential coins were owned by the Bobby L. and Carrie S. Willis Trust.
26. Plaintiff owned 80% of the \$1 Presidential coins.
27. Prior to September 26, 2012, state and federal authorities in the State of New Mexico were actively investigating claims of financial fraud, including embezzlement and misappropriation of escrow money, involving the title company and escrow business previously operated by Bobby Willis and Carrie Willis.
28. In May 2012, Bobby Willis voluntarily and unilaterally came into the Springfield, Missouri IRS office to advise agents of his connection to a foreign drug cartel and to tell the agents he was under investigation in New Mexico for embezzlement.

29. According to the two IRS agents in Springfield, Missouri, who interviewed him, Bobby Willis told them, among other things, that:
- (a) he was under investigation by the Farmington (New Mexico) Police Department and the New Mexico Regulation and Licensing Dept. Financial Institutions Div.,
  - (b) he was being asked by a “drug cartel” to negotiate counterfeit checks in amounts exceeding 750 million pesos,
  - (c) he owned “jewel mines” and was selling precious stones to the “drug cartels,” and
  - (d) he was “worth a lot of money but [did] not make a lot of money.”

Ex. 117.

30. In August 2012, state law enforcement officers from New Mexico came to Missouri to execute search warrants at the Branson Underground, a storage facility used by Bobby Willis, based on a belief that they might find evidence related to allegations that Bobby Willis had embezzled substantial money from his title and escrow businesses.
31. On August 17, 2012, an IRS agent in Springfield, Missouri, prepared an Information Report Referral that stated the IRS had been contacted by an attorney who stated that his client had information concerning Bobby Willis’s dealings in Branson, Missouri, and, on further investigation by the IRS agent, it was learned that Bobby Willis had “been indicted and an arrest warrant issued on suspicion of racketeering, fraud,



embezzlement, and securities fraud” and that Willis had operated a title company in New Mexico that showed “escrow deficits of \$1.6 million.” Ex. 127.

32. In 2012, Scott Wells was employed as a Special Agent with the IRS, working out of the Springfield, Missouri office as a liaison with the Missouri Highway Patrol.
33. Prior to September 26, 2012, Agent Wells was aware that there were state and federal investigations of Bobby Willis in New Mexico, and Agent Wells was specifically aware of the contents of both the May 2012 report of interview and the August 2012 Information Referral Report.
34. On September 25, 2012, a state court judge in Taney County, Missouri, issued a search warrant to New Mexico state law enforcement authorities for several additional Missouri properties associated with Bobby Willis, including a residence at 822 Cliff Drive, Branson, Missouri, to search for papers and documents relative to the financial and business transactions of Bobby Willis in connection with allegations of fraud, embezzlement, and theft against Bobby Willis.
35. The search warrant was executed at 822 Cliff Drive on September 26, 2012, while Carrie Willis was in Rochester, Minnesota.
36. During execution of the search warrant in which several local and state law enforcement agencies participated, Missouri State Highway Patrol Trooper Dan Nash contacted Special Agent Scott Wells with the IRS.
37. Trooper Nash called to inform the IRS that, while

executing the Search Warrant at 822 Cliff Drive, officers found multiple, large, black safes containing collectibles and 364,000 \$1 Presidential coins that were boxed and packaged.

38. The Presidential coins were outside the scope of the search warrant.
39. Agent Wells contacted his supervisor at the IRS, Tonya Martin, who instructed Wells to contact Assistant United States Attorney ("AUSA") Cindy Hyde about whether the Presidential coins could be seized without a warrant.
40. Agent Wells told AUSA Hyde that the Highway Patrol executed a search warrant related to Bobby Willis and that there was a large amount of currency in the residence.
41. AUSA Hyde advised Agent Wells that she would contact the AUSA office in New Mexico.
42. AUSA Hyde called Agent Wells back and instructed Agent Wells that he could seize the Presidential coins.
43. Agent Wells seized the coins.
44. The IRS did not apply for a seizure warrant or fill out any affidavit explaining the need to seize the \$1 Presidential coins.
45. Agent Wells did not document the reason for seizing the \$1 Presidential coins, either before or after the seizure occurred.
46. At the time they were seized, the Presidential coins were in 364 boxes of 1,000 coins each.
47. Some of the boxes had been opened by Bobby Willis.

48. Each box of \$1 Presidential coins that was sent to a bank for distribution had a sticker with the particular President's name and two stickers with a release date.
49. Agent Wells saw that the 364 boxes of \$1 Presidential coins seized from 822 Cliff Drive also had stickers indicating from which bank they were purchased.
50. Agent Wells did not photograph any of the seized items.
51. The Missouri Highway Patrol took pictures of the stacked boxes of \$1 Presidential coins, but no one took pictures of the stamps or markings on the boxes.
52. After the Presidential coins were seized, Special Agent Robert Jackson, who was then the Asset Forfeiture Coordinator ("AFC") for the Missouri IRS office, was contacted and travelled from Kansas City to take possession of the Presidential coins.
53. As the Asset Forfeiture Coordinator, Agent Jackson was responsible for assisting IRS agents by giving guidance, advice, and training to IRS agents and by processing assets that had been seized by the IRS.
54. On September 27, 2012, Agent Jackson traveled to Springfield, Missouri, to pick up the boxes of coins and other property.
55. On September 27, 2012, Agent Jackson had the Presidential coins transported to Dunbar Armored, Inc. in Kansas City, Missouri.
56. At Dunbar the Presidential coins were removed

from their original packaging and processed through a coin counter.

57. Thereafter, \$364,000 was deposited in an IRS account.
58. The boxes in which the 364,000 \$1 Presidential coins were seized were destroyed.
59. Other items of property seized at the same time as the Presidential coins, including other collectible coins, gems, and paper money, were stored in an asset forfeiture safe.
60. No chain of custody documentation was created for the \$1 Presidential coins or any of the other property stored in safes.
61. Agent Jackson did not conduct any analysis to determine whether the \$1 Presidential coins had numismatic value.
62. On November 12, 2012, the IRS sent formal written notice to Bobby Willis that the IRS had seized property at the Branson residence.
63. On December 5, 2012, counsel for Plaintiff requested return of the assets.
64. In April 2015, different counsel for Plaintiff again sought return of the Presidential coins and other seized property.
65. On April 13, 2015, the IRS informed counsel that the Presidential coins had been “converted to cash and deposited into the government’s account.” Ex. 5-T.
66. Thereafter, the IRS wire transferred \$364,000 to counsel’s trust account.

67. Plaintiff's brother, Thomas Padilla, travelled to Kansas City to retrieve the other seized property.
68. After discovering that the Presidential coins had been deposited into circulation, Plaintiff filed an administrative tort claim with the Department of Treasury on August 17, 2015.

#### **IRS Policies**

69. The Internal Revenue Manual ("IRM") states IRS agents should obtain judicial approval of a seizure other than in exceptional circumstances.
70. The IRM states that warrantless seizures "should only be made if the exigent circumstances prohibiting the timely obtainment of a seizure warrant can be clearly documented."
71. IRM policy 9.7.6.14.1(1) and IRM policy 9.7.4.6.1(2) include identical language, "Criminal Investigation policy mandates that domestic and foreign currency seized for forfeiture, except where it is to be used as evidence or held as a 'collectible asset,' must be expeditiously counted, processed, and deposited to the Customs Suspense Account within 5 days of seizure. The use of safe deposit boxes or other secure methods of storing seized currency temporarily is acceptable when necessary."

#### **Findings as to Damages**

72. Although gold-colored, the \$1 Presidential coins do not contain more than trace amounts of valuable metal and are worth no more than 11 cents per coin.
73. With regard to the value of the \$1 Presidential coins as collector's items, the parties offered expert

testimony from two witnesses: Mitchell Spivack, who testified as a damages expert for the United States, and Dane Olevian, M.D., who testified as a damages expert for Plaintiff.

74. Dr. Olevian opined that the value of the Willis collection based on PCGS pricing data was \$7,264,220. Dr. Olevian further opined that certification costs given the size of the Willis collection could be negotiated for \$500,000, resulting in a net valuation of \$6,764,222.
75. The Greysheet is a monthly publication that lists the raw value of coins. Utilizing the Greysheet figures, Mr. Spivack's expert report found the value of the Willis collection to be \$482,600. Mr. Spivack then reduced this figure based on his review of dealer-to-dealer transactions on the Certified Coin Exchange. Mr. Spivack ultimately concluded the value of the Willis collection as raw coins was between \$391,200 and \$412,400.
76. Mr. Spivack also conducted a certified coin analysis and found the net value was \$96,743.10 due to screening and certification fees.

## **II. Conclusions of Law**

The claims and parties involved in this case have been narrowed during the course of the proceedings such that Plaintiff's Federal Torts Claims Act ("FTCA") claims for negligence and conversion against the United States were all that remained at trial. In her post-trial submission to the Court, however, Plaintiff abandoned her negligence claim and chose to submit only the conversion claim for the Court's

consideration.<sup>1</sup> (Doc. #259).

“It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.” *United States v. Mitchell*, 463 U.S. 206, 212 (1983). Generally, the FTCA provides the United States will be liable “for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U.S.C. § 1346(b)(1). The FTCA also includes thirteen exceptions to the United States’ waiver of sovereign immunity. 28 U.S.C. §§ 2680(a)-(f), (h)-(n). At issue in this case are the detained-goods exception and the discretionary-function exception.

Also at issue in this case is the FTCA statute of limitations. Title 28 U.S.C. § 2401(b) provides, “A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing . . . of notice of final denial of the claim by the agency to which it was presented.” Plaintiff presented her claim to the Department of Treasury on August 17, 2015, so the claim must have accrued on or after August 17, 2013, to be timely filed.

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<sup>1</sup> Irrespective of this abandonment, the Court finds Plaintiff failed to establish at trial the elements of a negligence claim under Missouri law.

### A. Conversion

The parties agree Missouri law applies to the underlying claim of conversion. Under Missouri law, “[p]roof of conversion can be shown in one of three ways: (1) by tortious taking; (2) by any use or appropriation to the use of the person in possession, indicating a claim of right in opposition to the rights of the owner; (3) by a refusal to give up possession to an owner upon demand, *even though the defendant's original possession of the property was proper.*” *Northland Ins. Co. v. Chet’s Tow Serv., Inc.*, 804 S.W.2d 54, 56 (Mo. App. W.D. 1991) (citation omitted) (emphasis added). The Missouri Approved Instruction for a claim of conversion based on failure to surrender possession modified to fit the facts of this case provides:

First, plaintiff was the owner of the 364,000 \$1 Presidential coins, and

Second, defendant had possession of the 364,000 \$1 Presidential coins, and

Third, plaintiff made a demand to defendant for possession of the 364,000 \$1 Presidential coins, and

Fourth, thereafter defendant intentionally failed to return possession of the 364,000 \$1 Presidential coins to plaintiff.

M.A.I. 23.12(2).

The Court finds Plaintiff has established the elements of conversion for failure to surrender possession. The Court finds Plaintiff owned 80% of the \$1 Presidential coins. Defendant seized and possessed the \$1 Presidential coins. Plaintiff demanded the \$1 Presidential coins be returned, and Defendant failed



to return them.

Defendant argues probable cause existed to seize the coins, which insulates it from liability. The Court disagrees. As stated in *Northland Ins.*, liability for conversion can be found even where a defendant's original possession was proper. 804 S.W.2d at 56. The Court need not decide whether probable cause existed to seize the \$1 Presidential coins because Defendant was not entitled to retain possession of the \$1 Presidential coins upon Plaintiff's demand for return. Defendant did not return the \$1 Presidential coins to Plaintiff but instead gave Plaintiff a check for \$364,000. As will be discussed more fully in the Damages section below, the Court finds this amount was less than the value of the \$1 Presidential coins and did not adequately compensate Plaintiff for her loss of property.

#### **B. Detained-Goods Exception**

Even though Plaintiff has proven the elements of a claim for conversion based on failure to surrender possession, Defendant is entitled to sovereign immunity and therefore insulated from liability if the detained-goods exception applies. The detained-goods exception preserves the United States' sovereign immunity over "[a]ny claim arising in respect of . . . the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer[.]" 28 U.S.C. § 2680(c). The FTCA further includes an exception to this exception, however, thereby re-waiving the United States' sovereign immunity "if—(1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a

criminal offense; (2) the interest of the claimant was not forfeited; (3) the interest of the claimant was not remitted or mitigated (if the property was subject to forfeiture); and (4) the claimant was not convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.” 28 U.S.C. §§ 2680(c)(1)-(4).

The Court finds the exception to the exception applies in this case resulting in a waiver of sovereign immunity as to Plaintiff’s claim. Even assuming that the property at issue must be seized solely for the purpose of forfeiture in order for the exception to the exception to apply, *see Petrovic v. United States*, No. 4:16-cv-1744-SNLJ, 2017 WL 1058852, at \*2 (E.D. Mo. Mar. 21, 2017), *aff’d*, No. 17-1717, 2017 WL 4844252 (8th Cir. Sept. 20, 2017), the Court finds the evidence presented at trial compels the factual conclusion that the 364,000 \$1 Presidential coins were seized solely for forfeiture in this case.

Defendant’s only argument against application of the exception to the exception found in 28 U.S.C. §§ 2680(c)(1)-(4) is that the \$1 Presidential coins were seized for forfeiture, evidence of a crime, and potential restitution making the exception to the exception inapplicable. The Court finds the evidence does not support such a factual finding. No documentation was ever made of the reason for the seizure, either before *or after* the seizure was made, even though IRS policy required it. No chain of custody documentation was created. No pictures were taken of the individual boxes, which would have shown the stickers on the boxes and the condition of each box at the time of the seizure. Neither the coins nor the boxes in which they were stored were kept, which directly contradicts the

assertion they were seized as evidence. Agent Jackson testified he considered the \$1 Presidential coins to be currency without any consideration or analysis of their character as a collectible asset, and IRS policy requires that currency seized for forfeiture be expeditiously counted, processed, and deposited as was done here. Based on the weight and totality of all the evidence presented, the Court finds the \$1 Presidential coins were seized solely for forfeiture. Sovereign immunity is, therefore, waived by 28 U.S.C. §§ 2680(c)(1)-(4).

### **C. Discretionary-Function Exception**

Defendant also argues the discretionary-function exception applies thereby preserving sovereign immunity as to Plaintiff's claim for conversion. Title 28 U.S.C. § 2680(a) excepts from the FTCA's waiver of sovereign immunity "any claim based upon an act or omission of an employee of the Government . . . based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." "The discretionary-function exception precludes suit against the government for harm caused by a government employee's acts if those acts are subject to discretion that is grounded in social, economic, and political policy." *Buckler v. United States*, 919 F.3d 1038, 1044 (8th Cir. 2019) (citation and internal quotation marks omitted).

Courts employ a two-step analysis to determine whether the discretionary-function exception applies. As stated by the Eighth Circuit in *Buckler*:

First, we ask whether the challenged conduct or omission is truly discretionary, that is, whether it involves an element of judgment or

choice instead of being controlled by mandatory statutes or regulations. . . . If the conduct or omission involves discretion, we next ask whether the government employee's judgment or choice was based on considerations of social, economic, and political policy. . . . Importantly, as long as a discretionary decision is susceptible to policy analysis, . . . the exception applies whether or not [a] defendant in fact engaged in conscious policy-balancing. And, if qualifying discretion exists, the exception applies regardless of whether the government employee abuses that discretion. . . . Finally, if discretion exists, a presumption arises that the discretion is grounded in policy considerations, and the plaintiff must rebut this presumption.

919 F.3d at 1045-46 (citations and internal quotation marks omitted).

IRS policy is silent as to the difference between currency and collectible assets. Defendant argues this silence means Agent Jackson's actions were discretionary and, therefore, subject to the discretionary-function exception. The evidence at trial, however, shows Agent Jackson did not exercise any discretion in his actions. Agent Jackson performed no analysis regarding whether the \$1 Presidential coins had numismatic value. He used no "judgment" and made no "choice" because he never even considered an alternative to the \$1 Presidential coins being currency. As stated in *Buckler*, "Based on Appley Brothers, therefore, we believe it is permissible, when analyzing the discretionary-function exception, to recognize that some duties are mandatory in that they must be

performed *in some fashion*, even if the manner in which they are performed involves protected discretion.” 919 F.3d at 1052. Having failed to perform his duty at all, Agent Jackson’s actions do not fall within the discretionary-function exception.

#### **D. Statute of Limitations**

An FTCA “claim ‘accrues’ when the plaintiff knows or reasonably should know of both the existence and cause of the injury.” *Slaaten v. United States*, 990 F.2d 1083, 1041 (8th Cir. 1993) (citations omitted). The Court finds Plaintiff reasonably became aware of the existence and cause of the injury on April 13, 2015, the date she was informed the \$1 Presidential coins had been “converted to cash and deposited into the government’s account.” Ex. 5-T. The Court finds Plaintiff’s claim was filed within the statute of limitations.

#### **E. Damages**

The Court finds the most credible evidence presented at trial as to the \$1 Presidential coins’ value came from Defendant’s expert Michal Spivack based on the Greysheets, although the Court disagrees that the discounts Mr. Spivack applied to the Greysheet analysis are appropriate. Mr. Spivack’s Greysheet analysis resulted in a valuation of \$482,600.00 for the entire Willis collection. (Ex. 143, p. 7). The discounts Mr. Spivack applied to this figure based on CCE transactions are rejected by the Court. Defendant returned \$364,000 resulting in a balance of \$118,600. The Court finds the damages owed to Plaintiff are 80% of the balance not paid out by the Government, or \$94,880.00.

**III. Conclusion**

Based on the foregoing, the Court hereby directs the Clerk of the Court to enter Judgment in favor of Plaintiff Carrie S. Willis in the amount of \$94,880.

**IT IS SO ORDERED.**

/s/ Stephen R. Bough

STEPHEN R. BOUGH, JUDGE

UNITED STATES DISTRICT COURT

DATE: March 23, 2020

**APPENDIX C****INTERNAL REVENUE MANUAL,  
SELECTED PROVISIONS****9.7.4.2 (03-19-2003)****Pre-Seizure Planning Responsibility**

1. The Assistant United States Attorney (AUSA) is responsible for ensuring that proper **and** timely pre-seizure planning occurs in civil judicial and criminal forfeiture actions. In administrative forfeiture actions, the Asset Forfeiture Coordinator (AFC) has this responsibility.
2. Although the AUSA may be ultimately responsible for pre-seizure planning in civil judicial and criminal forfeiture actions, the AFC is responsible for **initiating** the pre-seizure planning process set forth in this section and **ensuring** that they are followed in all seizure and forfeiture actions.
3. Most importantly, it is the investigating agent's responsibility to inform the AFC of any potential seizure or forfeiture action as early as possible, so the AFC can ensure that timely and proper pre-seizure planning occurs.
4. When an individual or the underlying conduct giving rise to the forfeiture is also the subject of a simultaneous criminal investigation or proceeding, the AUSA responsible for the civil forfeiture action should consult with the AUSA responsible for the criminal investigation or proceeding to ensure that their activities are coordinated and consistent.

\* \* \* \*

**9.7.4.3.2 (11-20-2013)**

**Evaluation of Property**

1. When determining whether to seize property that is subject to forfeiture, the type of property involved and its value should be considered and analyzed. The analysis should be a realistic estimate of the condition and value of the property, the extent of the violator's interest, and the potential validity of third-party claims.
2. The seized property contractor should be consulted to discuss possible problems with the property's storage and preservation during the forfeiture proceeding. The Warrants and Forfeitures Section and the Treasury Executive Office for Asset Forfeiture (TEOAF) should also be contacted when particularly difficult problems of business management, maintenance, and/or eventual disposition are presented.
3. If it is likely that third parties, such as lienholders or victims, will be entitled to relief from the forfeiture, or if the costs and difficulties of storage, preservation, and disposition will be unduly burdensome, it may be ill-advised or wasteful to seize the property and attempt to forfeit it. The same is true if the target property has a low monetary value or is in poor condition.

\* \* \* \*

**9.7.4.6.1 (11-20-2013)**

**Cash**

1. The security, budgetary, and accounting problems associated with the seizure and retention of large amounts of cash creates great concern within CI,



the Department of the Treasury, and Congress, and raises both financial management and internal control issues.

2. Criminal Investigation policy mandates that domestic and foreign currency seized for forfeiture, except where it is to be used as evidence or held as a “collectible asset,” must be expeditiously counted, processed, and deposited to the Treasury Suspense Account within 5 days of seizure. The use of safe deposit boxes or other secure methods of storing seized currency temporarily is acceptable when necessary.
3. The TEOAF Directive Number 4, Seized Cash Management Policy, establishes policy on the management of seized cash, including levels of approval to hold seized currency for evidentiary purposes.

\* \* \* \*

**9.7.6.7 (06-11-2002)**

**Seized Property Management**

1. The seized property contractor will take custody of all seized property, at/or in the vicinity of the place of seizure, or at any other location designated by CI.
2. The AFC will make any decisions related to the management of any seized or forfeited property which is in the seized property contractor's custody as outlined throughout the SOW.

\* \* \* \*

**9.7.6.7.3 (03-01-2013)**

**Receipt and Transfer of Seized Property**

1. Seized property will be transferred to the seized property contractor at a designated site or site of mutual agreement. The seized property contractor will inspect and accept custody of property associated with each consignment.
2. The seized property contractor will conduct a joint inventory of seized property with the AFC or designated CI contact at the time of transfer.
3. Accessories, equipment, and spare parts required for the operation and/or maintenance of the seized property are normally included in the seizure of the property. Criminal Investigation should remove all other contents such as personal effects for return to the owner before the seized property contractor assumes custody of the seized property.
4. A properly completed and executed Form 9573, Custody Receipt for Retained or Seized Property and Form 9572, Custody Receipt for Retained or Seized Property - Continuation Sheet, are required for all seized real and personal property transferred to the custody of the seized property contractor. Form 9573 serves as the chain of custody form. Form 181, Property Inventory Record, must be completed and provided to the seized property contractor when transferring custody of a conveyance to the seized property contractor. All of these forms are available in Document Manager.
5. At a minimum, the following information will be entered on the Form 9573 when transferring custody of seized property:

- A. AFTRAK number (if assigned)
  - B. CIMIS number
  - C. date seized
  - D. seizing officer
  - E. telephone number
  - F. property line item number
  - G. seized property description
  - H. condition and appraised value
  - I. date of transfer of custody name, title, organization, and signature of the persons transferring and accepting custody of the seized property
  - J. item and number of units transferred
6. The seized property contractor will verify the Form 9573 for accuracy and completeness before or during acceptance of seized property.

**Note:**

The seized property contractor may not refuse custody.

7. The seized property contractor will not add anything or write on the Form 9573 except:
- A. his/her signature and quantity on the signature line
  - B. annotate discrepancies
  - C. annotate that the seized property contractor accepts conditional, administrative and/or constructive custody as applicable pending inventory

8. The seized property contractor will keep the original Forms 9573 and 9572. The original Form 9573 will be returned to the AFC upon disposition of the seized property (see IRM 9.7.8, Disposition of Seized and Forfeited Property).
9. A completed property Form 181 is required for all seized vehicles, vessels, and aircraft transferred to the custody of the seized property contractor.
10. The seized property contractor will verify the Form 181 for accuracy and note any discrepancies.
11. The seized property contractor will keep the original Form 181.
12. The seized property contractor will also complete its own forms upon the receipt and transfer of any seized property. The AFC, or other designated CI contact on site, will verify the accuracy of the information contained on the seized property contractor's forms before signing them.
13. The seized property contractor will provide the AFC with the Seizure Case and Asset Tracking System (SEACATS) generated seizure number used to track and identify seized property by the seized property contractor.
14. Any movement of seized property from its current physical storage location must be approved by the AFC. The seized property contractor will provide the AFC with the Form 9573, which shows the new location of the seized property. The seized property contractor, or its designated agent, may contact the AFC to confirm details of the proposed transfer.

\* \* \* \*

**9.7.6.7.4 (06-11-2002)**

**Documentation of Condition of Seized Property**

1. At the time of the receipt and/or transfer of the seized property, it is the responsibility of the seized property contractor to document the condition of the seized property in writing, videos, and/or photographs.
2. The AFC, or other designated CI contact on site, will also document the condition of the seized property in writing and may photograph or videotape the property.

\* \* \* \*

**9.7.6.8 (06-11-2002)**

**Appraisal**

1. All seized property must be assigned a value upon seizure. The terms “appraised value” and “fair market value” have different meanings in the context of dealing with the seized property contractor.

\* \* \* \*

**9.7.6.8.1 (08-11-2008)**

**Appraised Value**

1. The appraised value (APV) of seized property is the responsibility of CI. The AFC, or other designated CI contact on site, will enter the APV for each line item on the Form 9573. The seized property contractor will notify the AFC within the time period specified in the SOW when an APV was not provided on the Form 9573.
2. In situations where a third-party appraisal is required, the AFC may request the assistance of

the seized property contractor in obtaining third-party appraisals. The third-party appraisal becomes the APV.

3. The following types of seized property may require third-party appraisals:
  - A. conveyances for which there are no established retail value publications, such as an antique
  - B. high-value or specialty jewelry items
  - C. precious metals, stones, and gems
  - D. rare or valuable coins
  - E. objects of art
  - F. antiques or artifacts
  - G. any other unusual, unique, or special items

\* \* \* \*

**9.7.6.9.2 (06-11-2002)**  
**Methods of Storage**

1. Seized property will be stored by the seized property contractor in the most cost-effective method available to preclude any deterioration of the property so that the physical condition of the property is maintained as it was at the time of acceptance. Methods of storage will range from open storage to highly secured facilities, depending upon the type of seized property to be stored.

\* \* \* \*

**9.7.6.14.1 (03-01-2013)**  
**Currency**

1. Criminal Investigation policy mandates that domestic and foreign currency seized for forfeiture,

except where it is to be used as evidence or held as a “collectible asset” must be expeditiously counted, processed, and deposited into the Treasury Suspense Account within 5 days of seizure. The use of safe deposit boxes or other secure methods of temporarily storing seized currency is acceptable when necessary.

2. Refer to IRM 9.7.12, Evidence Seizures, for the required procedures to obtain the appropriate approvals to hold seized currency as evidence.
3. Seized currency will be transported with appropriate security measures to ensure safe transportation to the physical site of deposit. The CI contact will remain at the site until the currency is recounted, if necessary, by the financial facility and a proper receipt is provided for the deposit.