No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OAKLEY GRAIN, INC.; BRUCE OAKLEY, INC.,
Petitioners,
v.
M. RANDY RICE, CHAPTER 7 TRUSTEE; TRAVIS MEARS; SCOTT MEARS; TRAVIS MEARS FARMS, INC. and SCOTT MEARS FARMS, INC. DOING BUSINESS AS MEARS BROTHERS FARMS; TURNER GRAIN MERCHANDISING, INC.
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Eighth Circuit erred in affirming the District Court's Order affirming the Bankruptcy Court's ruling that the State Court lawsuit did not violate an Injunction issued pursuant to 28 U.S.C. § 2361 on the basis that the Petitioner failed to first prove that the State Court Lawsuit seeks to recover interpleader funds. In so holding, the Eighth Circuit's current decision is in conformity with a similar decision of the Tenth Circuit both of which decisions directly conflict with decisions of the Eighth, Second and Ninth Circuits.

CORPORATE DISCLOSURE STATEMENT

Bruce Oakley, Inc. is the parent corporation of Oakley Grain, Inc. and owns one hundred percent (100%) of the stock in Oakley Grain, Inc. Neither Oakley Grain, Inc. nor Bruce Oakley, Inc. are publicly traded companies. No party which owns stock in Bruce Oakley, Inc. is a publicly held company.

LIST OF PROCEEDINGS

DIRECTLY PROCEEDINGS BELOW

United States Court of Appeals, Eighth Circuit

No. 20-3207

Oakley Grain, Inc., et al. v.
M. Randy Rice, et al.

Date of Final Order: May 20, 2021

United States District Court
Eastern District of Arkansas
Delta Division

No. 2:19-cv-00141-BSM

Oakley Grain, Inc., et al. v.
M. Randy Rice, et al.

Date of Final Order: September 29, 2020

United States Bankruptcy Court
Eastern District of Arkansas
Helena Division

No. 2:15-ap-01009

In re: *Turner Grain Merchandising, Inc., Debtor Oakley Grain, Inc., et al., Plaintiffs v. United States Department of Agriculture, et al., Defendants*

Date of Final Order: February 28, 2019

United States Bankruptcy Court
Eastern District of Arkansas
Helena Division

No. 2:14-bk-15687

In re: *Turner Grain Merchandising, Inc., Debtor Oakley Grain, Inc., et al., Plaintiffs v. United States Department of Agriculture, et al., Defendants*

Date of Final Order: Order Denying Motion For New Trial Or To Alter Or Amend Judgment: October 11, 2019

United States Bankruptcy Court
Eastern District of Arkansas
Helena Division

No. 2:19-ap-01015

In re: *Turner Grain Merchandising, Inc., Debtor*
Oakley Grain, Inc., et al., Plaintiffs v.
United States Department of Agriculture, et al., Defendants

Date of Final Order: Order: October 11, 2019

United States Court of Appeals, Eighth Circuit

No. 20-3207

Oakley Grain, Inc., et al. v.
M. Randy Rice, et al.

Date of Final Order: June 23, 2021

RELATED PROCEEDINGS

United States District Court
Eastern District of Arkansas
Western Division

No. 4:14-cv-00483-JM

Oakley Grain, Inc., et al. v.
Thomas James Vilsack, Secretary of Agriculture, et al.

Date of Final Order: January 21, 2015

Circuit Court of Jackson County, Arkansas

No. CV-201-793

Travis Mears Farms, Inc. and Scott Mears Farms, Inc. v. Oakley Grain, Inc., Bruce Oakley, Inc., Gavilon Grain, LLC, Jason Coleman, Neauman Coleman, and John Does 1 through 10

Date of Final Order: Pending.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Oakley Grain, Inc. and Bruce Oakley, Inc., respectfully petition this Court for a Writ of Certiorari to review the opinion of the United States Court of Appeals for the Eighth Circuit, Case No. 20-3207, dated May 20, 2021.

OPINIONS BELOW

The Eighth Circuit Court of Appeals Opinion Oakley Grain, Inc., et al. vs. M. Randy Rice, et al., No. 20-3207 (8th Cir. 2021) is unpublished. The Order of the Court is attached at App. 1a. The Opinion of the United States District Court for the Eastern District of Arkansas, Delta Division is also unpublished and is attached in App. 4a. The Petition for Rehearing En Banc was denied. The Order of the Eighth Circuit Court of Appeals denying the Petition For Rehearing En Banc is unpublished and is attached in App. 10a.

JURISDICTION

The Order of the United States Court of Appeals for the Eighth Circuit was entered on May 20, 2021. The Order of the United States Court of Appeals for the Eighth Circuit denying the Petition For Rehearing En Banc and Rehearing By The Panel was entered on June 23, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254, 28 U.S.C. § 2101 (c), and Supreme Court Rule 13.

STATUTORY PROVISIONS INVOLVED

The pertinent text of 28 U.S.C. § 1335 is as follows:

> (a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if
>
> > (1) Two or more adverse claimants, of diverse citizenship as defined in subsection (a) or (d) of section 1332 of this title [28 USCS § 1332], are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if
> >
> > (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry

> of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.
>
> (b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

The pertinent text of 28 U.S.C. § 2361 is as follows:

> In any civil action of interpleader or in the nature of interpleader under section 1335 of this title [28 USCS § 1335], a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs, and shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.

Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

STATEMENT OF THE CASE

This case arises out of a federal statutory interpleader action (the "Interpleader Case") brought by Appellants Oakley Grain, Inc. and its parent corporation, Bruce Oakley, Inc. ("Oakley") on August 19, 2014 prior to the bankruptcy filing of Turner Grain Merchandising, Inc. (the "Debtor") in which the Debtor was one of the defendants. The Interpleader Case involved the proceeds from grain which Oakley had purchased from the Debtor and which sale proceeds were subject to multiple claims and potential claims. Oakley deposited $368,334.58 with the District Court which entered an Order enjoining all defendants, including those named and those identified as John and Jane Does from instituting or prosecuting any action against Oakley and dismissing Oakley from the Interpleader Case. After the Debtor filed for bankruptcy protection, the Interpleader Case was referred to Bankruptcy Court as an adversary proceeding (the "Interpleader AP") where it remains pending. Appellees Travis Mears Farms, Inc. and Scott Mears Farms, Inc. ("Mears") filed their Proof of Claim No. 7-1 in the Debtor's Bankruptcy Case on December 11, 2014 for $910,033.67. On June 23, 2017, Mears filed a lawsuit against Oakley and others in Jackson County, Arkansas Circuit Court for a total of $910,132 (the "State Court Case") involving claims that arose out of the same group of grain purchases in July and August of 2014 which were the subject of the Interpleader Case without the Mears ever delivering a notice of claim or a demand for payment to Oakley for the grain which Mears had sold to the Debtor in July or August of 2014. Oakley removed

the State Court Case to the Interpleader AP. Oakley filed a motion to enforce the automatic stay and the federal court injunction asserting that the State Court Case violated the automatic stay and the federal court injunction which motion was denied. With regard to the federal court injunction, the United States District Court, in affirming the Bankruptcy Court's denial of Oakley's Motion to enforce the federal court injunction held that the Bankruptcy Court was correct in requiring Oakley to first prove that the claim against Oakley in the State Court Case seeks to recover interpleader funds.

REASONS FOR GRANTING THE PETITION

I. THE DIVISION AMONG THE CIRCUITS WITH RESPECT TO THE TREATMENT OF THE REQUIREMENT OF 28 U.S.C. § 1335(b).

A. The Opinion Contravenes Binding Authority By The Eighth Circuit Court of Appeals.

Oakley throughout the Interpleader Case and the Interpleader AP have cited and relied upon the case of *Dakota Livestock Co. v. Keim*, 552 F.2d 1302 (8th Cir. 1977) as the controlling law in these cases. The Court's opinion in *Dakota Livestock* rejects "the historical rule that interpleader would not lie where the stakeholder was independently liable to one of the claimants and would not be relieved of liability

to that claimant even if the fund was awarded to the other claimant." In rejecting this rule, the Eighth Circuit relied upon the then recent case of *Hebel v. Ebersole*, 543 F.2d 14 (7th Cir. 1976). In *Dakota Livestock*, *supra*, the Court states that: "Zurcher through his attorneys asserted that he was not seeking to recover any part of the funds that had been deposited in the registry, and that he was simply standing on his conversion suit against Dakota that was pending in the South Dakota state court."

This disclaimer is precisely what Mears has done in the Interpleader Case/Interpleader AP except that Mears waited almost three years from the date of the filing of the Interpleader Case to file the State Court Case against Oakley on conversion and other grounds.

In agreeing with the holding in *Hebel v. Ebersole*, *supra*, this Court stated:

> Under the Federal Rules of Civil Procedure, the rights of the claimant having an independent claim against the stakeholder can be protected adequately within the framework of the interpleader action, particularly since it now seems to be settled that Rule 13 which provides for compulsory and permissive counterclaims is applicable to interpleader suits. *See* in addition to *Hebel v. Ebersole, supra; Liberty Nat'l Bank & Trust Co. of Oklahoma City v. Acme Tool Div. of the Rucker Co.*, 540 F.2d 1375 (10th Cir. 1976); *Bell v. Nutmeg Airways*

> *Corp.*, 66 F.R.D. 1 (D. Conn. 1975); [**14] 7 WRIGHT & MILLER, *supra*, § 1715 at 448-49. Such an approach serves the purpose of § 1335 and Rule 22 by protecting a stakeholder who may be subject to independent liability from double litigation even if not from double liability. (Emphasis Added)

Of course, in this case, Oakley has been subject to the conflicting claims which prompted Oakley's institution of the Interpleader Case. With the Mears institution of the State Court Case, Oakley is now faced with double liability having already paid the Debtor pre-petition the full amount of the funds now claimed by the Mears against Oakley in the State Court Case. Paraphrasing the question before the Court in *Dakota Livestock*, the question in this case is whether the Debtor had the right to sell the grain purchased from Mears to Oakley and to retain all of the sales proceeds paid to the Debtor by Oakley for that grain. Mears is not seeking to be paid out of the interpleader funds, but is seeking compensation from Oakley for the loss of their grain which loss resulted ultimately from the sale of that grain by the Debtor to Oakley and the Debtor's retention of those sales proceeds. The question of whether the Debtor had the right to retain those sales proceeds ought to be litigated in the Interpleader Case/Interpleader AP based on this Court's binding authority of the *Dakota Livestock* case, *supra*. The *Dakota Livestock* opinion also states:

> We do not think that Zurcher can in effect surrender that fund to the Bank or to the

> Trustee and thus avoid controversy with them while at the same time reserving his claim against Dakota by the simple device of turning his back on that particular fund. It is obvious that Zurcher can afford to take that action only because he feels that he can safely rely on the general assets of Dakota to satisfy any judgment that he may ultimately obtain against it. If Zurcher can thus avoid the jurisdiction of the interpleader court, so perhaps can any other defendant who has an independent claim against a solvent stakeholder. (Emphasis Added)

The Eighth Circuit then explained that its holding that the district court had jurisdiction of Dakota's claim for relief did not prevent Zurcher from pressing his conversion claim in the district court and that Zurcher's claim for damages was not limited by the amount of interpleader funds. The amount of the interpleader funds deposited in the Interpleader Case was less than the total amount sought by the Mears from Oakley in the State Court Case and this fact was raised repeatedly by Mears in asserting the right to proceed with its independent claims in the State Court Case and was relied upon by the United States District Court in affirming the Bankruptcy Court's denial of Oakley's Motion to enforce the federal court injunction. The United States District Court also found that with regard to the Mears claim in the State Court Case, Oakley can be found to be independently liable to Mears without respect to the interpleader funds. Based upon the *Dakota Livestock* holding, the fact that the interpleader funds were less than the

amount of the Mears claim and the fact that the Mears claim is asserted to be independent of the interpleader funds does not entitle the Mears claim to be litigated outside the Interpleader AP. Mears has the right to pursue his claim in the Interpleader AP and to pursue such claim for the full amount of the Mears claim against Oakley which is not limited by the amount of interpleader funds deposited. The holding in the *Dakota Livestock* case supports the enforcement of the federal court injunction in this case.

B. The Opinion Conflicts With Cases In Other Circuits On An Issue of Exceptional Importance.

(i) The case of *Hapag-Lloyd Aktiengesellschaft v. United States Oil Trading LLC*, 814 F.3d 146, 153 (2nd Cir. 2016) holds that vastly different types of claims of conflicting claimants which do not have a common origin, are nevertheless subject to the jurisdiction of a federal statutory interpleader action. In the *Hapag-Lloyd* case, the Second Circuit Court of Appeals held:

> USOT attempts to distinguish the entitlements by arguing that a payment by Hapag-Lloyd to O.W. Germany under its contracts would not discharge the maritime lien held by USOT. Indeed, that may be true.[17] But *HN8* an interpleader action does [*153] not abrogate USOT's right to be paid (if it has one); it merely requires USOT to litigate its claim in the context of the same proceeding

> as competing claimants, so that the District Court can minimize or eliminate the risk of double payment to the extent the governing law permits.[18] Adjudication of Hapag-Lloyd's obligation to pay for the fuel bunkers involves inextricably intertwined claims, and interpleader jurisdiction is proper under the broad and remedial nature of § 1335.[19] (Emphasis Added).

The ruling in Oakley's case regarding the narrow scope of the jurisdiction of the federal statutory interpleader action conflicts with the ruling in the *Hapag-Lloyd* case as decided by the Second Circuit Court of Appeals.

(ii) The case of *Michelman v. Lincoln Nat'l Life Ins. Co.*, 685 F.3d 887 (9th Cir. 2012) deals with the merits of conflicting claims in an interpleader case as follows:

> ***HN9*** Although an interpleading stakeholder need not sort out the merits of [**16] conflicting claims as a prerequisite to interpleader, good faith requires a real and reasonable fear of exposure to double liability or the vexation of conflicting claims. *See Union Cent. Life Ins. Co. v. Hamilton Steel Prods., Inc.*, 448 F.2d 501, 504 (7th Cir. 1971) ("[S]o long as there exists a real and reasonable fear of exposure to double liability or the vexation of conflicting claims . . . , jurisdiction in interpleader is not dependent upon the merits of the claims of

the parties interpleaded . . . ." (internal quotation marks omitted)); *accord Wash. Elec. Co-op., Inc. v. Paterson, Walke & Pratt, P.C.*, 985 F.2d 677, 679 (2d Cir. 1993).

HN10 A "real and reasonable fear" does not mean that the interpleading party must show that the purported adverse claimant might eventually prevail. *Aaron*, 550 F.3d at 663.

> Of course, the claims of some interpleaded parties will ultimately be determined to be without merit. That, however, is [*895] the very purpose of the proceeding and it would make little sense in terms either of protecting the stakeholder or of doing justice expeditiously to dismiss one possible claimant because another possible claimant asserts the claim of the first is without merit.

Id. [**17] (quoting *Hamilton Steel Prods.*, 448 F.2d at 504) (internal quotation marks omitted) (citing *Beardslee*, 216 F.2d at 460). Rather, the stakeholder is required to demonstrate that the adverse claim has a "minimal threshold level of substantiality." *Id.* (quoting *Indianapolis Colts*, 741 F.2d at 958); *accord Equitable Life Assurance Soc'y of the United States v. Porter-Englehart*, 867 F.2d 79, 84 (1st Cir. 1989) ("[T]o support an interpleader action, the adverse claims need attain only 'a

> minimal threshold level of substantiality.'" (quoting 7 Charles Alan Wright et al., *Federal Practice & Procedure* § 1704 (2d ed. 1986))). The adverse claim—whether actual or potential—must be at least colorable. *See Fonseca v. Regan*, 734 F.2d 944, 948-50 (2d Cir. 1984); *Dunbar v. United States*, 502 F.2d 506, 511 (5th Cir. 1974); *cf. Bauer v. Uniroyal Tire Co.*, 630 F.2d 1287, 1292 (8th Cir. 1980) (describing interpleader claimants as having "a colorable interest in the fund"). (Emphasis Added

In this case, Oakley had a reasonable fear of exposure to double liability to unknown farmers, such as Mears (whose claim against Oakley first appeared almost 3 years after the institution of the Interpleader Case) from whom the Debtor had purchased grain which the Debtor in turn sold to Oakley and for which the Debtor was paid but did not pay the unknown farmer and consequently, Oakley named as defendants in the Interpleader Case John and Jane Does 1-20. When the State Court Case was filed, based on the holding in the *Michelman* case, *supra*, "jurisdiction in interpleader is not dependent upon the merits of the claims of the parties interpleaded" so that whether or not the sales proceeds for the grain the Debtor purchased from Mears were actually part of the interpleader funds was not a necessary factor for the determination of whether the Mears Claim was subject to the jurisdiction of the Interpleader Case/Interpleader AP. The claim of any farmer from whom the Debtor purchased grain in July and

August of 2014 and who was not paid by the Debtor after the Debtor had been paid for the sale of that grain to Oakley had "a minimal threshold level of substantiality" and such claim of any unpaid John and Jane Doe farmer was subject to the jurisdiction of the Interpleader Case/Interpleader AP.

(iii) The case of *Amguard Ins. Co. v. SG Patel & Sons II LLC,* 999 F.3d 238, 2021 U.S. App. LEXIS 16860 (4th Cir. 2021) relies on the *Michelman* case *supra*, in holding that: "Statutory interpleader under § 1335 is especially liberal, permitting a valid interpleader action if two claimants *may* claim to be entitled to the interpleader funds, even if there is not yet a claim." As stated, the Mears claim against Oakley first appeared almost 3 years after the institution of the Interpleader Case.

(iv) Conversely, the case of *Aviva Life & Annuity Co. v. White*, 772 F.3d 634 (10th Cir. 2014) states the limitations of statutory interpleader jurisdiction more closely in line with the present ruling against Oakley as follows:

> In an action in interpleader, the court must first determine whether a single, identifiable stake is present. The court must then determine whether there are two or more adverse claims to that stake, focusing on the substance of the legal claims asserted. If these two elements are present, then interpleader jurisdiction is proper and the stake constitutes the outer limits of that jurisdiction. The court may enjoin all other suits claiming an interest in the stake, but

> lacks jurisdiction to enjoin other claims between the claimants and the stakeholder, even if they arise from the same transaction or occurrence.

CONCLUSION

The Petition for Writ of Certiorari should be granted, the decision of the Eighth Circuit Court of Appeals vacated, and the case remanded for further proceedings consistent with this Court's determination.

Respectfully submitted,

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Date: November 8, 2021