

No.

IN THE

Supreme Court of the United States

LARRY RICE,

Petitioner

v.

INTERFOOD, INC. and its DIRECTORS:
JASON MEDCALF, DIRK NEERHOFF, NICK SHARP, and
F.C.G.M. (FRANK) VAN STIPDONK

Respondents

On Petition for Writ Of Certiorari
To The United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Larry Rice, pro se
127 Elm St., Suite 201
Washington, MO, 63090
(314) 239-9895
Larry@Interfood.us

QUESTIONS PRESENTED FOR REVIEW

I.- When an Opinion states that a complaint is barred by a statute of limitations because Plaintiff knew about the incident years before it happened, does Due Process demand that the case be remanded for at least some minimal explanation as to the basis for the decision?

II.- Does a claim barred by a statute of limitations also bar future similar but unrelated claims?

III.- Can an “agreement” be enforced in Summary Judgment when the non-movant states that it was obtained by fraud and coercion in a proceeding that had no subject matter jurisdiction?

IV.- Is a complaint valid if it is filed by a lawyer who does not represent the named plaintiff?

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PETITION FOR WRIT OF CERTIORARI

Larry Rice, pro se, hereby Petitions for a Writ of Certiorari to review the unpublished per curiam January 22, 2018 opinion of the United States Court of Appeals for the Eighth Circuit whose judgments are contrary to the facts in the case, contrary to law, contrary to long standing judgments of this Court, and which depend entirely on Rice being aware of activities before they occur.

OPINIONS AND ORDERS

The following Opinions and Orders are reproduced in the Appendix on pages A1, A3, & A10:

- A.- Court of Appeals for the 8th Circuit 17-1886 Feb 28 '18 Order denying Rehearing, Doc# 150. Page A1.
- B.- Court of Appeals' unpublished per curiam order and judgment filed January 22, 2018 affirming the lower court's opinion, Doc# 149. Page A1.
- C.- Final Judgment of the U.S. District Court for the Eastern District of Missouri – St. Louis, 4:13-cv-01171-HEA, Doc# 139, May 30, 2017. Page A3.
- D.- January 23, 2015 Order granting Defendant/ Respondents' Counterclaim, Doc# 102. Page A3.
- E.- May 8, 2014 Docket Text Order denying Rice's Motion for Summary Judgment on his Complaint, Doc# 39. Page A10.
- F.- March 10, 2014 District Court Opinion granting Defendants' Motion to Dismiss, Doc# 38. Page A10.

JURISDICTION

The Court of Appeals' unpublished judgment on this civil diversity case was filed January 22, 2018 and Rice's Petition for Rehearing was denied on February 28, 2018. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

US Constitution, Amendment XIV, Section 1.
“... No state shall... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATUTORY PROVISIONS

MO Supreme Court Rules of Civil Procedure - Rule 55.08: A pleading that sets forth an affirmative defense or avoidance shall contain a short and plain statement of the facts showing that the pleader is entitled to the defense or avoidance.

MO Supreme Court Rules of Civil Procedure - Rule 55.27(g)(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

FRCP 12(h)(3) If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

STATEMENT OF THE CASE

The District Court for the Eastern District of Missouri, St. Louis, found that Rice's **2013** suit against Interfood, Inc. [Interfood-DE] for their **2010** and **2011** breaches of Rice's exclusive territory agreement is barred by a five-year statute of limitations ¹ because Rice could have known about those **2010** and **2011** sales in **2004** or in March **2006**; the Court of Appeals found no basis for reversal and denied a rehearing.

Interfood-DE sold product in the US in 2010 and in 2011 in violation of an exclusivity agreement between the Interfood Group and Rice. There is no mention anywhere in the record of any sales by Interfood-DE at any time prior to 2010. Plaintiff/ Petitioner Rice filed suit in 2013 against Interfood-DE asking for an injunction and damages.

Rice also filed suit against Interfood-DE's Directors for breach of fiduciary duty for diverting this business to Interfood-DE and away from other Group companies in which they were also Directors, as was Rice, and where Rice had an ownership interest.

Defendants/ Respondents moved to dismiss for Failure to State a Claim, and filed a Counterclaim based on an alleged settlement agreement with Rice not to sue based on any breaches that existed on December 11, 2009. Rice replied that the alleged

¹ Doc# 38: Order granting Motion to Dismiss for Failure to State a Claim, reproduced as Appendix F, page A10.

settlement was obtained by fraud, coercion and duress ² and that all his claims are for activity after December 11, 2009, and Rice filed a Motion for Summary Judgment on the 2010 – 2011 activities.

In granting Defendants/ Respondents' Motion to Dismiss, the Judge noted that Interfood-DE was created in September **2006** and that the activities complained about occurred "**sometime thereafter**", and hat Rice knew about **these** activities in 2004 or early 2006, and should have filed the claims within five years, by 2011, not 2013.

The Judge also granted Defendants' Counterclaim ³ and dismissed Rice's Motion as Moot. The Appellate Court found "no basis for reversal" and a Rehearing was denied on February 28, 2018; this Petition follows.

REASONS FOR GRANTING THE WRIT

The Writ should be granted because the Eighth Circuit Court of Appeals' decisions conflict with: the Due Process clause of the Constitution of the United States, this Court's prior decisions, decisions of other Circuit Courts of Appeals, and their own precedent.

² A contract procured by duress is also unenforceable. *Aurora Bank v. Hamlin*, 609 S.W.2d 486, 487 (Mo. App. S.D. 1980). Duress constitutes the inability of one party to exercise their free will because of the threats or wrongful conduct of another. *Andes v. Albano*, 853 S.W.2d 936 (Mo. banc 1993). Duress is an affirmative defense. FRCP-Rule 55.08.

³ Doc# 102: "Plaintiff's claims rest on actions which occurred prior to December 11, 2009." Order, Appendix D: Page A7.

I.- DUE PROCESS REQUIRES A FAIR AND IMPARTIAL HEARING WITH THE RESULTS BASED ON THE RECORD AND THE LAW.

Count I is against Defendants Neerhoff and van Stipdonk for diverting business to Interfood-DE *after* forming Interfood-DE in September 2006.⁴

In the introduction to the Complaint, to establish that everyone involved here agreed that Rice had an exclusive territory agreement ⁵ binding the entire Interfood Group,⁶ Rice showed how similar conflicts which arose in 2004 and in March 2006 were handled; but none of that could possibly have involved Interfood-DE because Interfood-DE did not exist until September 2006, and did not do business until years later.

The only mention on the record of Interfood-DE's business is their sales starting in 2010, so the Court's assertion that Rice could have known about this in 2004 or in March 2006 is wrong and contrary to the record; those breaches prior to the 2010 sales

⁴ Complaint ¶ 34, Appendix page A25-26

⁵ Complaint ¶¶ 20-27 Appendix pages A22-A23

⁶ Defendant/respondent Neerhoff, Interfood-DE Director and Group CFO, testifying under oath for Tepco and Waltepc, with his lawyer Jeffrey Schultz present, was asked: "Was it the intention of Tepco when it signed the shareholder agreement with Rice to allow other members of the Interfood Group to sell dairy products directly to Canadian and U.S. customers?" Answer: "No." Doc# 32-4, Deposition page 47 Line 23 through page 48, line 3, Certified by the Clerk of the Court.

Van Stipdonk testified the same: See Appendix page A82.

were necessarily by other companies in the group, and were mentioned only to enforce the point that the whole Group agrees that they are bound by the exclusivity agreements.

The Judge acknowledges that a statute of limitations starts when “damage is sustained and capable of being discovered” which would have been 2010 in this case and could not possibly have been in 2004 or when a Franklin County Missouri case was filed in March 2006 before Interfood-DE existed.

Since this claim was brought in 2013 for activity that took place in 2010, it cannot be barred by a five-year statute of limitations as the Court has ruled.⁷

Count II, Complaint ¶38 against van Stipdonk and Neerhoff was dismissed and is not contested.

Count II, Complaint ¶37 against Interfood-DE seems to have been lost in the shuffle and has not been addresses. Rice stated that Interfood-DE “has effectively admitted to breaching the exclusivity agreement with Rice”. ¶37. And Rice attached the Cover Sheet of Interfood-DE’s complaint against Select Veal where the Verified Complaint⁸ states that Interfood-DE sold product in excess of three million dollars in the US in 2010 and again in 2011, Rice asked that the Court take judicial notice of that

⁷ See reproduced orders Doc# 102 & 38 at A6 and A15

⁸ Interfood-DE Verified Complaint: Doc# 12-1, ¶¶ 10, 15.

case ⁹ and the Court acknowledges that it may do so in a summary judgment. ¹⁰

The Waltepcos shareholder agreement containing the exclusivity agreement with Rice made Interfood-IN a third-party beneficiary with the benefits accruing to Tepco and Rice as the only shareholders of Waltepcos, a pass-through holding company which owns Interfood-IN. Defendants argue that the harm was done to Interfood-IN and that Rice cannot sue for a remedy without all the Waltepcos shareholders agreeing because the damage is to all of them. ¹¹

This is not so however because diverting business away from Interfood-IN, jointly owned by Tepco and Rice, and towards Interfood-DE which is 100% owned by Tepco, benefited Tepco, and only harmed Rice.

Under Missouri law a shareholder can maintain an individual action against a corporation and its directors when the injury alleged has specifically harmed the shareholder. ¹² Neerhoff and van Stipdonk as directors in all of these companies breached their duty to Rice in diverting these business opportunities away from Interfood-IN in 2010 and 2011.

The point isn't really about a shareholder action, but rather that all parties knew that this Complaint filed in 2013 revolves around those sales in 2010 and 2011, so it is more than disturbing that a federal

⁹ Opposition to the Motion to Dismiss, Doc#12, page 3.

¹⁰ District Court Opinion: Doc# 38: Appendix page A15.

¹¹ Defendants' Motion to Dismiss: Doc# 9, Appendix page A37

¹² *Gieselmann v. Stegeman*, 443 S.W.2d 127 (Mo. 1969).

Judge would, as he did here, rule that the claims are barred by a five-year statute of limitations, or by an agreement not to sue on any facts that existed on December 11, 2009, or that Rice became aware of these breaches in 2004 or 2006, years before they happened.¹³

**The Exclusivity Agreement between Rice and
the Interfood Group**

The "Interfood Group" is Headed by Interfood Holding, B.V. which is owned by a group of Dutch Investors including Frank van Stipdonk.

The Dutch wanted Rice to invest in their business and develop the US and Canadian markets. Rice was willing to do this so long as the other companies in the Group were not allowed to compete with him in these markets and potentially confuse or disrupt the market and reduce Rice's profit potential.

Tepco agreed, i.e. the Dutch agreed, van Stipdonk agreed, the Waltepcos Shareholder Agreement was signed containing the **exclusivity agreement**, and Rice became the manager and joint owner of the Group's US/Canada business by becoming an owner, Director and Officer in Waltepcos (the US holding Co.) with Tepco owning the rest of the shares. The agreement is for the benefit of Waltepcos's two shareholders: Rice representing himself, and Tepco representing the Group; Interfood-IN is simply

¹³ District Court Order: Doc# 38: Appendix page A15

named as the vessel through which the business should be channeled.

There was never any doubt by anyone in the Group that they are bound and obligated by the exclusivity agreement as both van Stipdonk and Neerhoff have testified,¹⁴ and the agreement has been discussed and approved, ratified if you will, by the Group at Group Board meetings.¹⁵

Under Missouri law Rice is allowed to sue anyone obligated by an agreement with him when they breach the agreement, and the law grants that Rice sustained damage by the simple fact that his contract was materially breached¹⁶ without his having to prove additional specific damages with the Complaint.

There is no question here that Interfood-DE is bound by the exclusivity agreement with Rice and that they breached that agreement in 2010 and again in 2011. Since Neerhoff and van Stipdonk participated in those breaches and they claim to also be Directors of Waltepcu, they breached their Fiduciary Duty to Rice as a Waltepcu Director and shareholder.

There is no dispute as to any of the elements of this Breach of Contract Claim, and there is no indication

¹⁴ See Footnote 6 above.

¹⁵ Minutes of Board Meeting, Complaint Doc# 1-3

¹⁶ *Shirley's Realty, Inc. v. Hunt*, 160 S.W.3d 804, 808 (Mo. App. W.D. 2005)

by the District Court or the Court of Appeals as to why this specific claim was dismissed.

COUNTERCLAIM

The Counterclaim is that Rice's claims are barred because a settlement agreement to a **Franklin County Missouri case** states among many other things, that "all claims based on facts that existed on December 11, 2009" ¹⁷ have been released.

Because Interfood-DE said that deliveries started the first week of January 2010, Rice presumed that the deliveries must have been planned sometime in December 2009... even though the actual breach of contract did not occur until the first delivery in 2010.

So, Rice filed a Conspiracy claim against all Defendants/ Respondents stating that "Starting in at least 2009 Defendants conspired to do business in Dairy Goods in the US and Canada in violation of the Group's agreement with Rice." ¹⁸

Based on the phrase "Starting in at least 2009", the Court found that "Plaintiff's claims rest on actions which occurred prior to December 11, 2009" ¹⁹ ... certainly not the interpretation most favorable to the **non-movant** Rice, as the rules would require, and it

¹⁷ Doc# 61-63, Defendants' Motion for Summary Judgment on Counterclaim, Appendix K, page A72, ¶ 7

¹⁸ Doc# 1, Complaint, Conspiracy, ¶39, Appendix page A27

¹⁹ Doc# 102: Order granting Counterclaim, Appendix page A7

certainly does not explain why the complaint about the 2011 sales was not granted.²⁰

VOID IF NO JURISDICTION

The “settlement agreement” on which the Counterclaim is based is Void for a number of reasons with Jurisdiction and Due Process at the top of the list:

- The Franklin County Missouri Case *Interfood Inc, v Larry Rice et al*²¹ was not a “judicial matter before the court” which could have been heard on the merits, because the named Plaintiff did not bring the complaint and could not be confronted by the Defendant. Because nobody with standing brought the Complaint the Court did not gain Jurisdiction over it.
- Even with jurisdiction over the Complaint, which the Court did not have, the Franklin County Missouri Judge did not have subject matter jurisdiction over the alleged “settlement agreement” which required Rice to withdraw his objections in a Trademark proceeding and to withdraw from cases in Federal Court and in state court in Indiana.²²

²⁰ In deciding whether there is a genuine issue of material fact, the court is to view the record in the light most favorable to the party opposing the motion, giving the non-movant the benefit of all favorable inferences that can reasonably be drawn from the record and the benefit of any doubt as to the existence of any genuine issue of material fact. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157-59 (1970).

²¹ Cause No. 07AB-CC00086, *Interfood, Inc. v Larry Rice et al*, filed by Defendants/ Respondents’ lawyers here.

²² Rice’s Motion for Summary Judgment: Doc# 27, A60-63.

- Even if arguendo the court had jurisdiction, the “agreement” would not be enforceable in Counterclaimants’ favor because they were the first to breach it as it called for them to turn over a “Window Suit” to Rice and they decided to dismiss the suit with prejudice instead.²³

U.S. v Throckmorton, 98 U.S. 61 (25 L.Ed. 93)(1985) explains the need for finality when a case is properly decided, but recognizes that if the Complaint is brought without standing, or if it is heard by a court without jurisdiction over the parties and/ or over the subject matter, or if a fair and impartial hearing cannot be had because of fraud against the loser, then the judgment is to be disregarded.

That is exactly the case here in that the Franklin County Case was brought by lawyers who had no standing to bring the Complaint and who filed it anyway lying about who they were representing, which prevented a fair and impartial hearing from taking place and did not afford the Court jurisdiction over the case, rendering all judgments void.

²³ “The question of whether there has been substantial performance—or a breach—is to be determined, whenever there is any doubt, by the trier of fact.” *Jane Doe v Sammy Hagar*, 13-2156 (2014) US Court of Appeals, 8th Circuit. “Therefore, we reverse the district court’s grant of summary judgment on Doe’s breach-of-contract claim.”

DUE PROCESS

A judgment is void if the court that rendered the judgment acted in a manner inconsistent with due process.²⁴

Due process requires that a decision be made based on the legal rules and the record, with at least some minimal explanation to the parties and any reviewing court as to the basis for the decision: “the decisionmaker should state the reasons for his determination and indicate the evidence he relied on, though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law.”²⁵

Anybody who cares about the US legal system and can do something about it, cannot let this stand. This case must be remand for rulings consistent with the law, the record, and due process.

II.- THE STAUTE OF LIMITATIONS RUNS WITH THE LAST INDEPENDENT WRONG, NOT THE FIRST.

Rice’s Complaints revolve around Interfood-DE’s sales in 2010 and 2011 and the Directors’ participation in those sales.

Even if Rice had included a Count involving diversion of product in 2004 to some other company before Interfood-DE existed, which he did not, the

²⁴ *Taylor v. Taylor*, 47 S.W.3d 377, 385 (Mo.App. 2001).

²⁵ *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970)

fact that those Claims might have been barred by a statute of limitations does not infect these new distinct claims which were only three-years old when filed against Interfood-DE and its Directors. ²⁶

An actionable breach by Interfood-DE did not occur until 2010 when Interfood-DE actually violated the agreement not to sell, but regardless, if the violations surrounding the 2010 sales were “released” because they were *planned* in 2009, the contract and deliveries in 2011 certainly did not exist on December 11, 2009 and would not be blocked by the alleged “settlement agreement”, even if that agreement were valid.

III.- ONE CAN NOT BE CONVICTED OF VIOLATING A VOID DOCUMENT.

Defendants’ Counterclaim is based exclusively on an alleged “settlement agreement” that contains several provisions including one paragraph that would prevent Rice from suing Defendants “for any claim based on facts that existed on December 11, 2009”.

Rice did not participate in or agree with the “settlement” because, among other things, it was “settling” a Franklin County Missouri Case, *Interfood-IN v. Rice et al* Cause No. 07AB-CC00086, which is void from the beginning because it was not filed by the named Plaintiff or by anyone

²⁶ *Brown Parks Estates v. United States*, 127 F.3d 1449. 1458 (Fed. Cir. 1997). Continuing Claim Doctrine.

representing them, or by anyone with standing to do so; “settling” a void case seemed like an oxymoron.

Besides not having jurisdiction over the case filed by an imposter, a state judge has no jurisdiction to force anyone to take action in a Federal Case, a Trademark proceeding, ²⁷ or a case in a different state as Judge Lynch did here when he ordered Rice to sign the “agreement” even after Judge Lynch recognized that Judge Anna Forder had already ruled that: whoever filed that suit did not represent the Plaintiff, and had no authority to file it. ²⁸

The US District Court here should have called for briefings on the issue of the validity of the agreement before trying to show that it was breached. ²⁹

Since the District Court ruled to enforce the agreement, the Judge should have given us some indication as to how he determined that it was valid and enforceable when *Defendants* admitted that

²⁷ “No state, including Missouri, can grant subject matter jurisdiction to its courts to hear matters that federal law places under the “exclusive” jurisdiction of the federal courts. *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253 n.6 (2009).” MO supreme Court, SC90542, Aug 23, 2010.

²⁸ **Judge Lynch:** “Judge Forder said we’ve got to decide who was in control and then she made a determination that Mr. Rice was in control of Interfood [IN] at the time this suit [No. 07AB-CC00086] was filed” Certified Transcript, July 13, 2009: Doc# 32-2. Page 51, lines 11-14.

See also Judge Forder’s rulings: Doc# 79-1 pages 12 and 13.

²⁹ *Rose v. Himely*, 8 U.S. 241, 269 2 L. Ed. 608 (1808)

Rice did not sign it willingly, but rather had to be forced to do so by a \$1,000 per day fine ³⁰.

The Judge should also have given us some indication as to how he concluded that the Missouri state Judge had subject matter jurisdiction over such an “agreement” which required Rice to drop his ongoing cases in Federal Court, and in Indiana, and his objections to a Trademark application, contrary to Missouri law and Federal law.³¹

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. ³²

Actions by a court without subject matter jurisdiction, and actions taken by state actors in reliance on the court’s actions, violate the rights of parties who are the subject of those actions to due process of law under the **Fourteenth Amendment to the United States Constitution**. ³³

IV.- A COMPLAINT FILED BY AN IMPOSTER WITHOUT STANDING IS VOID.

³⁰ Doc# 11, page 6, Defendants’ Memorandum in Support of their Motion for Sanctions: “even after the Judgment Enforcing Settlement Agreement was affirmed, Mr. Rice continued to attempt to avoid his obligations and, as a result, a contempt judgment was entered against him.” Doc#s 11-1 through 11-14

³¹ *Bagsby v. Gehres*, 169 S.W.3d 543 (Mo.App.E.D. 2005), *Donnovan v. City of Dallas*, 377 U.S. 408 (1964) accord, *General Atomic Co. v. Felter*, 434 U.S. 12 (1977).

³² See MO Supreme Court Rule 55.27(g)(3)

³³ See FRCP 12(h)(3)

Defendants' Counterclaim is based exclusively on an alleged settlement agreement of a March 2007 suit filed against Rice in Franklin County Missouri, Cause # 07AB-CC00086, **Interfood-IN v Rice et al**, by the law firm representing Defendant/ Respondents here. Interfood-IN immediately filed with the Court in Franklin County just to inform them that Interfood-IN did not file the suit and that those lawyers had no authority to do so on their behalf.

On January 14, 2008 Judge Forder ruled in that case that the filing attorneys who brought the suit did not in fact represent Interfood-IN who was the only alleged Plaintiff.³⁴

Since *Interfood-IN v Rice* was not brought by someone with standing, and in fact it was not even signed by the named plaintiff or on its behalf, but rather filed by an imposter who had never been hired by Interfood-IN, the case was void from the beginning.³⁵

It is an abuse of discretion for a court not to vacate a judgment where it is clear that the alleged plaintiff had not employed the filing attorney to institute a suit for the plaintiff.³⁶

³⁴ [Complaint ¶¶ 32-33, Appendix page A25] See also "Certified Attachment W" Doc# 79-1 including Judge Anna C. Forder's Orders as pages 12 and 13.

³⁵ *Andrews v. Andrews*, 188 U.S. 14, 47 L.ed. 366, 23 Sup. Ct. Rep. 237.

³⁶ *Cooper v. Armour & Co.* 222 Mo/App. 1176, 15 S.W.2d 946 (1929).

CONCLUSION

A pro se complaint, "however inartfully pleaded"... can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." ³⁷

Through sworn statements by Defendants/ Respondents, Rice has shown that he had a valid contract that bound Interfood-DE, that Interfood-DE breached that contract in 2010 and again in 2011, and that Rice was damages by these breaches. This is more than sufficient to withstand a Motion to Dismiss for failure to state a claim.³⁸

There is no mention anywhere in the record of any sales by Interfood-DE prior to January 2010, so for the Court to find that Rice should have known about Interfood-DE breaches of the exclusivity agreement before that, is not based on the record; and to conclude that these claims for sales *starting* in 2010, i.e. including the ones in 2011, somehow existed on December 11, 2009 is unfounded.

The Court seems to have reached its conclusions *in spite of the record* and *in spite of the law* and has given us no insight as to how it did so, except to conclude that Rice could have known about these breaches by Interfood-DE and its Directors years

³⁷ *Haines v. Kerner*, 404 U.S. 520 521 (1972), quoting *Conley v. Gibson*, 355 U.S. 41,45, 46 (1957).

³⁸ *Dioguardi v. Durning*, 139 F.2d 774, 775, (2d Cir. 1944).
Cruz v. Beto, 405 U.S. 319,322 (1972).

before they took place, and even before Interfood-DE came into existence.

Condoning or simply ignoring this type of activity can do great harm to the credibility of our legal system, particularly at this time in history where the credibility of the entire governing structure in the US seems to be in question.

As busy as this Court is, it seems that its oversight responsibility demands that this case be remanded for consideration of the questions presented.

Respectfully submitted, April 2018.

By: /S/
Larry Rice, pro se
127 Elm St., Ste. 201
Washington, MO 63090
636-583-0802
Larry@Interfood.us