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IN THE
Supreme Court Of The United States
OCTOBER TERM, 1981

STATE OF ARKANSAS,

Plaintiff,

vs.

STATE OF MISSISSIPPI,

Defendant.

**MOTION FOR LEAVE TO FILE BILL OF COMPLAINT
and
COMPLAINT AND APPLICATION FOR STAY ORDER**

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MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The State of Arkansas, appearing by and through its Attorney General, John Steven Clark, acting pursuant to the authority vested in him by Ark. Stat. Ann. §12-712 (Repl. 1979), respectfully states as follows:

1. A portion of the boundary between the State of Arkansas and the State of Mississippi, common to the County of Lee, Arkansas and the County of Tunica, Mississippi, is in dispute.

2. This boundary dispute between the State of Arkansas and the State of Mississippi is subject to the exclusive original jurisdiction of the Supreme Court of the United States. U. S. Const., art. III, §2, cl. 1; and 28 U.S.C., §1251(a) (1) (1948).

3. An action is presently pending in the United States District Court for the Northern District of Mississippi, Delta Division, styled *Simon Zunamon v. Garland Allen, et al*, No. DC-80-150-LS-0. The plaintiff in the pending action, Simon Zunamon, claims ownership of the following

lands, together with all accretions and alluvion which have been added thereto; the same allegedly lying in and being situated in Tunica County, Mississippi:

All fractional Sections Nineteen (19), Twenty-nine (29), and Thirty (30), and the Southwest Quarter (SW 1/4) of Section Twenty-eight (28), all in Township Four (4) South, Range Twelve (12) West.

Plaintiff Zunamon further contends that the above-described lands were tracts in place at the time of the Original United States Survey and constituted the base portion of the riparian peninsula-like tract of land in Tunica County, Mississippi, known as "Bordeaux Point," which is bordered on the north and west by the Mississippi River and on the south by the abandoned thalweg of the Mississippi River. The plaintiff also alleges that a greater portion of his lands have been created by the deposit of alluvion to the Mississippi River shoreline over a long period of time, as a result of the action by the Mississippi River in eroding and caving its right descending bank (the Arkansas bank), thereby completely destroying, among other sections of land, all of Sections 1 and 2, East 3/4 of Section 3, most of Section 11, and all of Section 12, all in Township 1 North, Range 5 East, Lee County, Arkansas.

To the contrary, however, the defendants contend that action of the Mississippi River has not eroded or caved its right descending bank (the Arkansas bank), so as to completely destroy all of Sections 1 and 2, East 3/4 of Section 3, most of Section 11, and all of Section 12, all in Township 1 North, Range 5 East, Lee County, Arkansas; that they are the true owners of the property in question; and that the

subject property is located within the geographical boundaries of the State of Arkansas.

4. On January 27, 1981, the Attorney General for the State of Arkansas, John Steven Clark, pursuant to Ark. Stat. Ann. §12-712 (Repl. 1979) and in an effort to protect the interests of the State of Arkansas, filed a Motion to Intervene in *Simon Zunamon v. Garland Allen, et al, supra*. This motion has been granted, yet, it is the position of the Office of the Attorney General for the State of Arkansas, that *Simon Zunamon v. Garland Allen, et al, supra*, is not a proper action to have adjudicated a question of land ownership involving parties whose claims are dependent on whether the specified property is in the State of Arkansas or the State of Mississippi.

5. Neither Arkansas nor Mississippi is generally concerned with the individual ownership of the subject property, so much as each has a public responsibility and interest to zealously put forth an argument that the subject property is included within its respective geographical boundaries. Thus, an adjudication of the claims in *Simon Zunamon v. Garland Allen, et al, supra*, will not provide a forum competent to hear the subject of the cause.

WHEREFORE, the State of Arkansas respectfully prays that this Honorable Court take original jurisdiction and grant, to the State of Arkansas, Leave to File a Bill of Complaint in this Court. Further, the State of Arkansas prays that this Court issue an order directed to the United States District Court for the Northern District of Mississippi, Delta Division, placing in abeyance all proceedings in the action styled *Simon Zunamon v. Garland Allen, et al, supra*, pending the conclusion and determination of the matter set forth in the appended Complaint. Lastly, the State of

Arkansas prays for such orders and process as the Court may deem proper, pursuant to the appended Complaint and Application for Stay Order.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

STATE OF ARKANSAS,

Plaintiff,

vs.

STATE OF MISSISSIPPI,

Defendant.

COMPLAINT AND APPLICATION FOR STAY ORDER

I.

The State of Arkansas, appearing by and through its counsel, Attorney General John Steven Clark, acting pursuant to the authority and power vested in him by Ark. Stat. Ann. §12-712 (Repl. 1979), instituting this original action against the State of Mississippi, and makes parties hereto the following citizens of the State of Mississippi.

The Honorable William F. Winter
Governor of the State of Mississippi

The Honorable William A. Allain
Attorney General of the State of Mississippi

The original jurisdiction of this Court is invoked under

Article III, Section 2, Clause 1 of the Constitution of the United States and 28 U.S.C., §1251(a) (1) (1948).

II.

The State of Arkansas was admitted to the Union on June 15, 1836, by an act of Congress. Act of July 15, 1836, ch. 100, 5 Stat. 50. This Act describes the State's boundaries as follows:

Begin with the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees north latitude, running thence west, with the said parallel latitude, to the St. Francis River; thence up to the middle of the main channel of said river to the parallel of thirty-six degrees, thirty minutes north; from thence west to the southwest corner of the State of Mississippi, and from thence to be bounded on the west, to the north bank of Red River, by the lines described in the first article of the treaty between the United States and the Cherokee Nation of Indians west of the Mississippi, made and concluded at the City of Washington on the 25th day of May, in the Year of our Lord, One Thousand, Eight Hundred Twenty Eight; and to be bounded on the south side of Red River by the Mexican Boundary line, to the southwest corner of the State of Louisiana, thence east, with Louisiana state line, to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of the said river, to the thirty-sixth degree of north latitude, the point of beginning.

III.

The State of Mississippi was admitted to the Union of the United States of America by the Act of Congress found in the United States Statutes at Large, Vol. 3, Chapter 23, page 348, approved March 1, 1817, the boundaries of the State being described as follows:

Beginning on the Mississippi River at the point where the Southern Boundary line of the State of Tennessee strikes the same; thence east along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence by a direct line to the northwest corner of the County of Washington (Alabama); thence due south to the Gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore to the most eastern junction of Pearl River with Lake Borgne; thence up said river to the 31st degree of north latitude, thence west along the said degree of latitude to the Mississippi River; thence up the same to the beginning.

IV.

The effect of this legislation, as interpreted by the Supreme Court of the United States in the case of *Arkansas v. Mississippi*, 250 U.S. 39 (1919), was to retain the channel or thread, sometimes known as the thalweg, of the Mississippi River as the common boundary between the two (2) states from the south boundary line of the State of Tennessee on the north to the north boundary of the State of Louisiana on the south.

V.

Under the law of Arkansas, the State of Arkansas owns the bed of the Mississippi River to the boundary line of the States of Arkansas and Mississippi. Under the law of the State of Mississippi, the riparian owner owns to the boundary line between said states. The Supreme Court of the United States has original jurisdiction of suits to determine the boundaries between states, and of parties adversely asserting title to the property of a state. U. S. Const. art. III, §2, cl. 1; 28 U.S.C., §1251 (a) (1) (1948).

VI.

In the necessary and essential exercise of sovereign rights, the exact location of the boundary line between Arkansas and Mississippi, in the area involved, becomes of major and substantial significance to the respective states. In view of the great value of the lands involved, the necessity of determining the limits of each state's respective jurisdiction and the fixing of the boundary line, for purposes of taxation, presents a clear, real and justiciable controversy ripe for adjudication.

VII.

Litigation has developed between the owner of riparian lands in Tunica County, Mississippi and riparian owners of lands in Lee County, Arkansas. Simon Zunamon, the alleged owner of all of fractional Sections 19, 29 and 30, all in Township 4 South, Range 12 West, Tunica County, Mississippi, has instituted an action in the United States District Court, Northern District of Mississippi, Delta Division, styled *Simon Zunamon v. Garland Allen, et al*, No. DC 80-150-LS-O. Therein, Mr. Zunamon alleges that

the action of the Mississippi River, eroded and caved its right descending bank (the Arkansas bank) and thereby destroyed, among other sections of land, all of Sections 1, 2, East 3/4 of Section 3, most of Section 11, all of Section 12, all in Township 1 North, Range 5 East, Lee County, Arkansas. Mr. Zunamon argued further that, as a result of the erosion and caving of the right descending bank of the Mississippi River, a great amount of the land he claims was created by the deposition of alluvion to the Mississippi shoreline; thus, the geographical area, originally embraced within the limits of the above described Arkansas fractional sections, is now the product of accretion to Zunamon lands in the State of Mississippi.

Garland Allen and his brothers and sister, defendants in the District Court action, answered the Complaint of Simon Zunamon denying that they had lost ownership of Sections 1, 2, the East 3/4 of Section 3, most of Section 11, and all of Section 12, all of which are in Township 1 North, Range 5 West, Lee County, Arkansas. John Steven Clark, Attorney General for the State of Arkansas, subsequently intervened in the subject action, on behalf of the State of Arkansas, denying the claims of Simon Zunamon that the boundary of the State of Arkansas had moved. Specifically, Attorney General Clark denied that the Mississippi River had eroded or carved its right descending bank (the Arkansas bank), thereby completely destroying, among other sections, all of Sections 1, 2, East 3/4 of Section 3, most of Section 11 and all of Section 12, all in Township 1 North, Range 5 East, Lee County, Arkansas.

VIII.

The State of Arkansas has exercised jurisdiction over

all lands now in dispute since its admission to the Union, assessing and collecting taxes thereon, asserting at all times its dominion thereover. Property owners have at all times made, executed and delivered real property deeds thereto as described in the Government Land Office Survey of the State of Arkansas. The jurisdiction of the Supreme Court of the United States in boundary disputes between states is exclusive and original. Accordingly, it is appropriate that the suit of *Simon Zunamon v. Garland Allen, et al, supra*, be stayed, that all parties thereto be served with a copy of the stay order herein applied for, and be given an opportunity to assert such interest as they may have in this action.

IX.

From the date of admission of the State of Arkansas to the Union in 1836 until 1891, the Mississippi River occupied essentially the same geographical area. In 1891, commencing at the coordinate of the thalweg in Bordeaux Cut-off of 1874, as surveyed in 1891, the river measured south as follows:

	LATITUDE		LONGITUDE	
Point A:	34° 45'	04"	90° 31'	01.8"
	34° 45'	00"	90° 31'	02"
	34° 44'	50"	90° 31'	02"
	34° 44'	46"	90° 31'	01.5"
	34° 44'	42"	90° 31'	00"
	34° 44'	40"	90° 30'	59"
	34° 44'	36"	90° 30'	57"
	34° 44'	30"	90° 30'	50"
	34° 44'	21"	90° 30'	40"
	34° 44'	20"	90° 30'	39"

LATITUDE		LONGITUDE	
34° 44'	15"	90° 30'	34"
34° 44'	10"	90° 30'	32"
34° 44'	06"	90° 30'	30"
34° 44'	00"	90° 30'	28.5"
34° 43'	50"	90° 30'	27"
34° 43'	45"	90° 30'	26"
34° 43'	40"	90° 30'	26"
34° 43'	35"	90° 30'	26"
34° 43'	30"	90° 30'	28"
34° 43'	24"	90° 30'	30"
34° 43'	20"	90° 30'	32"
34° 43'	10"	90° 30'	37"
34° 43'	03"	90° 30'	40"
34° 43'	00"	90° 30'	42"
Point B:	34° 42' 55.5"	90° 30'	46"

Point "A" represents the point at which the crossing of the thalweg on the North, on the Mississippi River, as shown on the 1904 survey of same. Point "B" represents the point at the crossing of the thalweg on the South, on the Mississippi River, as shown on the 1904 survey of same.

X.

During the interval from 1891 to 1904, the Mississippi River abandoned its geographical position, as described in paragraph IX above. In 1904, the coordinates of the thalweg of the Mississippi River, as surveyed in 1904, with Point "A" at the crossing of the thalweg in Bordeaux Cut-off, as surveyed in 1891, and Point "B" at the crossing of Bordeaux Cut-off, as surveyed in 1891, from Point "A" to Point "B", the Mississippi River meandered South as follows:

	LATITUDE		LONGITUDE	
Point A:	34° 45'	04"	90° 31'	01.8"
	34° 45'	08"	90° 31'	10"
	34° 45'	10"	90° 31'	15"
	34° 45'	12"	90° 31'	20"
	34° 45'	14"	90° 31'	25"
	34° 45'	15"	90° 31'	30"
	34° 45'	18"	90° 31'	40"
	34° 45'	19"	90° 31'	46"
	34° 45'	18.5"	90° 31'	50"
	34° 45'	17"	90° 32'	00"
	34° 45'	16"	90° 32'	03"
	34° 45'	13"	90° 32'	10"
	34° 45'	11"	90° 32'	15"
	34° 45'	10"	90° 32'	17"
	34° 45'	08.5"	90° 32'	20"
	34° 45'	07"	90° 32'	23"
	34° 45'	05.5"	90° 32'	30"
	34° 45'	04"	90° 32'	35"
	34° 45'	00.5"	90° 32'	40"
	34° 45'	00"	90° 32'	41.5"
	34° 44'	57"	90° 32'	46"
	34° 44'	54"	90° 32'	50"
	34° 43'	50"	90° 33'	07.5"
	34° 43'	40"	90° 33'	08"
	34° 43'	34"	90° 33'	08"
	34° 43'	30"	90° 33'	07.5"
	34° 43'	27"	90° 33'	07"
	34° 43'	24"	90° 33'	06"
	34° 43'	22"	90° 33'	04"
	34° 43'	20"	90° 33'	03"
	34° 43'	17.5"	90° 33'	00"
	34° 43'	16"	90° 32'	58"

LATITUDE		LONGITUDE	
34° 43'	13"	90° 32'	56"
34° 43'	10"	90° 32'	55"
34° 43'	08"	90° 32'	54"
34° 43'	06"	90° 32'	53"
34° 43'	04"	90° 32'	50"
34° 43'	00"	90° 32'	45"
34° 42'	57"	90° 32'	42"
34° 42'	55.5"	90° 32'	40"
34° 42'	53.5"	90° 32'	37"
34° 42'	51"	90° 32'	30"
34° 42'	50"	90° 32'	27.5"
34° 42'	47.5"	90° 32'	20"
34° 42'	45.5"	90° 32'	15"
34° 42'	44.5"	90° 32'	10"
34° 42'	44"	90° 32'	06.5"
34° 42'	44"	90° 32'	00"
34° 42'	44.5"	90° 31'	57"
34° 42'	49"	90° 31'	50"
34° 42'	51"	90° 31'	40"
34° 42'	52"	90° 31'	30"
34° 42'	52"	90° 31'	26"
34° 42'	53.5"	90° 31'	20"
34° 42'	54.5"	90° 31'	17"
34° 42'	55.5"	90° 31'	10"
34° 42'	55"	90° 31'	00"
34° 42'	55"	90° 30'	50"
Point B: 34° 42'	55.5"	90° 30'	46"

XI.

The change in the course of the Mississippi River between 1891 and 1904 was not the result of the thalweg passing over and erasing the intervening land in the subject

area, but was the result of the Mississippi River adopting a new channel, abandoning the old channel by passing around the subject intervening land to its new location. This avulsus action of the Mississippi River, in abandoning its former channel for its new one, fixed the boundary of the State of Mississippi and the State of Arkansas in the thalweg of the abandoned channel as it existed in 1891 and as described in paragraph IX herein.

XII.

The property rights and the solemnity of the boundary of the State of Arkansas are inextricably involved in private litigation instituted and pending in the United States District Court, Northern District of Mississippi, Delta Division, and said Court is not the proper forum to have such determinations made. Further, the State of Arkansas is not required to submit its title to said Court, and rightly so. A decision by the Supreme Court of the United States will be conclusively binding on all private parties, and this Court alone has the power to fix and determine the boundary lines herein set forth.

XIII.

The case *Simon Zunamon v. Garland Allen, et al*, *supra*, should be stayed, by order of this Court, until a final judgment by this Court can be had. Correspondingly, application is hereby made by the State of Arkansas for an order to be issued by this Court, directed to the United States District Court, Northern District of Mississippi, Delta Division, staying all proceedings in said suit.

WHEREFORE, PREMISES CONSIDERED, COM-
PLAINANT SAYS:

1. That process issue herein to all parties as required by law.

2. That an order be issued promptly to the United States District Court, Northern District of Mississippi, Delta Division, staying any further action in the cause of *Simon Zunamon v. Garland Allen, et al*, No. DC 80-150-LS-O, on the docket of said Court, until final judgment has been rendered herein or until further order of this Court.

3. That on final hearing hereof, the Eastern boundary line of the State of Arkansas in the abandoned bed of the Mississippi River, as described in paragraph IX herein, be fixed and determined.

4. That the claim of right and title asserted by The Honorable William F. Winter, Governor for the State of Mississippi, and The Honorable William A. Allain, Attorney General for the State of Mississippi, and Simon Zunamon, in and to Arkansas lands, as fixed and determined herein, be herewith cancelled and forever held for naught.

5. And for such other and further relief, general or special, as may be just and proper.

Respectfully submitted,

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