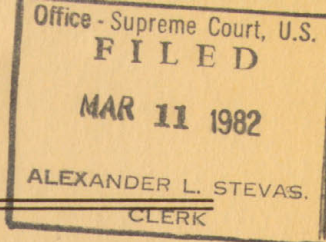


No. 92 Original



In the Supreme Court of the United States

October Term, 1981

STATE OF ARKANSAS, *Plaintiff,*

vs.

STATE OF MISSISSIPPI, *Defendant.*

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE BILL OF COMPLAINT AND APPLICATION FOR STAY ORDER

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March, 1982

QUESTION PRESENTED

The question presented is whether or not Arkansas' Motion for Leave to File Bill of Complaint and Complaint and Application for Stay Order should be granted in view of the pending federal district court action which involves the same identical controversy.

III

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No. 92 Original

In the Supreme Court of the United States

October Term, 1981

STATE OF ARKANSAS, *Plaintiff,*

vs.

STATE OF MISSISSIPPI, *Defendant.*

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE BILL OF COMPLAINT AND APPLICATION FOR STAY ORDER

The State of Mississippi (sometimes hereinafter referred to as Mississippi), the defendant in this original action, respectfully submits this Brief in Opposition to the Motion for Leave to File Bill of Complaint and Complaint and Application for Stay Order filed in this action on November 16, 1981 by the plaintiff, the State of Arkansas (hereinafter referred to as Arkansas).

JURISDICTION

Arkansas invokes this Court's original jurisdiction under Article III, Section 2, Clause 1 (sic) of the United States Constitution and 28 U.S.C. §1251(a)(1) (1948). Complaint Paragraph I, page 6.

U.S. Const., Art. III, §2, cl. 2 provides in pertinent part:

In all Cases . . . in which a State shall be a Party, the Supreme Court shall have original Jurisdiction.

Also, 28 U.S.C. §1251(a) provides:

The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

STATEMENT OF THE CASE

Arkansas seeks leave of this Court to file its Complaint against Mississippi to adjudicate a boundary line in the Mississippi River between Lee County, Arkansas and Tunica County, Mississippi at a bend in the river known as "Bordeaux Point."

In a civil action 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-O, a true and correct copy of the Complaint in which is attached hereto as Exhibit "A", the owner of certain Mississippi lands riparian to the Mississippi River seeks to have the Court adjudicate that the live thalweg of the river has migrated to the west by accretion to such an extent that lands formerly in Arkansas have been wholly eroded and destroyed, the lands deposited by the river on the east side thereof during these natural processes thus becoming part and parcel of, and enlarging, the lands of the plaintiff. The Arkansas citizen defendants named in the Complaint answered the same, alleging that the changed configuration of the river was caused by avulsion—not accretion—and that therefore the ownership of the area in question has never passed from Arkansas to Mississippi.

Though not an original defendant to the lower court action, Arkansas filed a Motion to Intervene in the suit on January 27, 1981. Motion, Paragraph 4, page 3. A

true and correct copy of the Motion, and the Court Order of February 20, 1981 granting the same, are attached hereto as Exhibits "B" and "C", respectively.

After intervening in the district court action, Arkansas proceeded to file, on February 23, 1981, its Answer, a true and correct copy of which is attached hereto as Exhibit "D".

Arkansas, in both its Motion to Intervene and its Answer to the Complaint, chose not to raise the question of jurisdiction in the district court. Indeed, in its Answer Arkansas prayed

that notwithstanding the Court's determination as to the true owner of the subject property to this litigation, that this Court enter an Order declaring the property at issue to be located in the State of Arkansas and for all other relief the Court deems appropriate.

Discovery commenced and the case proceeded toward trial, which was set for September 21, 1981. By order of the district court dated August 14, 1981, a true and correct copy of which is attached hereto as Exhibit "E", the trial was continued upon the announcement of Arkansas—some six months after being allowed to intervene in the suit and answer the same—that an original action over the boundary question would be filed in the United States Supreme Court. Arkansas then filed, in late November, 1981, an Application for Stay Order, and the Court granted the same by order dated December 7, 1981. True and correct copies of the Application and Order are attached hereto as Exhibits "F" and "G" respectively.

The original action before this Court was filed November 16, 1981, some nine months after Arkansas formally entered the suit in the court below.

ARGUMENT

This action is clearly within this Court's original jurisdiction under Article III, Section 2, Clause 2 of the United States Constitution and 28 U.S.C. §1251(a). Indeed, this Court has, on numerous occasions, exercised original jurisdiction over boundary disputes between states. *E.g.*, *Ohio v. Kentucky*, 100 S.Ct. 588 (1980); *Mississippi v. Arkansas*, 415 U.S. 289 (1974); *Nebraska v. Iowa*, 406 U.S. 117 (1972); *Louisiana v. Mississippi*, 384 U.S. 24 (1966); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657 (1838). Here, however, the Motion for Leave to File the Complaint should be denied because of the pendency of the federal district court action in which Arkansas intervened, answered, and proceeded veritably to trial before invoking the jurisdiction of this Court.

In *Arizona v. New Mexico*, 425 U.S. 794 (1976), this Court denied Arizona's Motion for Leave to File a Bill of Complaint by concluding: "In the circumstances of this case, we are persuaded that the pending state-court action provides an appropriate forum in which the issues tendered here may be litigated." *Id.* at 797 (emphasis in original). The Court prefaced its holding by the following discussion of the invocation of original jurisdiction:

We recently reaffirmed that "our original jurisdiction should be invoked sparingly" in *Illinois v. City of Milwaukee*, 406 U.S. 91, 93-94 (1972), where we additionally stated:

"We construe 28 U.S.C. §1251(a)(1), as we do Art. III, §2, cl. 2, to honor our original jurisdiction but to make it obligatory only in appropriate cases. And the question of what is appropriate concerns, of course, the seriousness and dig-

nity of the claim; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had. We incline to a sparing use of our original jurisdiction so that our increasing duties with the appellate docket will not suffer."

And nearly 40 years ago in *Massachusetts v. Missouri*, 308 U.S. 1, 18-19 (1939), the Court said:

"In the exercise of our original jurisdiction so as truly to fulfill the constitutional purpose we not only must look to the nature of the interest of the complaining State—the essential quality of the right asserted—but we must also inquire whether recourse to that jurisdiction . . . is necessary for the State's protection. . . . We have observed that the broad statement that a court having jurisdiction must exercise it . . . is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum."

See also *Washington v. General Motors Corp.*, 406 U.S. 109, 113-114 (1972).

425 U.S. at 796-97.

Here, Arkansas not only has submitted to the jurisdiction of the district court without any objection to the jurisdiction or propriety of the forum thereof, but actually proceeded toward trial with the other parties litigant.

Only after being in the suit for almost six months and then facing trial within another month did Arkansas conclude that it should shop around for another forum.

Arkansas obviously felt for many months, and led the other parties so to believe, that the controversy at bar could be fully and fairly adjudicated in the district court, where the basic issues are the same as those before this Court. Mississippi respectfully urges that the Arkansas Motion for Leave to File its Complaint be denied, and that Arkansas be remitted to the district court to complete what it started there. If Arkansas or any other party feels that Mississippi should be a party to the suit, then remedies to this end are available through nonjoinder motions.

A denial of the Arkansas Motion would work no irreparable harm upon Arkansas, would avoid further glutting the docket of this Court, and would avoid the expense and delay occasioned by the appointment of a Special Master. These judicial economics are particularly important inasmuch as discovery was already underway and the trial set before the jurisdiction of this Court was even invoked. Of course, appellate review by this Court through writ of certiorari would then flow in the natural course of events.

CONCLUSION

For these reasons, the Court should deny the Motion for Leave to File Bill of Complaint and Complaint and Application for Stay Order, and should remit the case to the District Court of the Northern District of Mississippi for further proceedings.

Respectfully submitted,

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State of Mississippi

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Attorneys for Defendant

March, 1982

PROOF OF SERVICE

I, **BILL ALLAIN**, Attorney General of the State of Mississippi, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 10th day of March, 1982, I served copies of the foregoing Brief in Opposition to Motion for Leave to File Complaint and Application for Stay Order on the parties to said cause, as follows:

(1) Upon the Supreme Court of the United States, by mailing sixty (60) copies in duly addressed envelope, with air mail postage prepaid, to the Clerk, United States Supreme Court, 1 First Street, N.E., Washington, D.C. 20543, and

(2) On the State of Arkansas, by mailing three (3) copies in duly addressed envelope, with air mail postage prepaid, to its Attorney General at his address as follows:

Attorney General of Arkansas
Justice Building
Little Rock, Arkansas 72201

BILL ALLAIN
Attorney General of Mississippi

EXHIBIT "A"

(Filed October 30, 1980)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

DELTA DIVISION

No. DC 80-150-LS-O

SIMON ZUNAMON
PLAINTIFF

VS.

GARLAND ALLEN, JR., CLIFFORD ALLEN,
THOMAS ALLEN, CAROLYN ALLEN,
AND RONALD G. ALLEN, SR.
DEFENDANTS

COMPLAINT

I.

Simon Zunamon is an adult citizen and resident of the State of Illinois, whose address is 134 North LaSalle Street, Chicago, Illinois, 60602.

The defendants, Garland Allen, Jr., Clifford Allen, Thomas Allen, Carolyn Allen, and Ronald G. Allen, Sr. are adult residents of the State of Arkansas.

The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand and no/100 Dollars (\$10,000.00).

II.

The plaintiff, Simon Zunamon, is the owner of of the following lands lying and being situate in Tunica County, Mississippi, to-wit:

All Fractional Sections Nineteen (19), Twenty-nine (29), and Thirty (30), and the Southwest Quarter (SW¹/₄) of Section Twenty-eight (28), all in Township Four (4) South, Range Twelve (12) West,

together with all accretions and alluvion which have been added thereto. The above described lands were tracts in place at the time of the Original United States Survey and constituted the base portion of a riparian peninsula-like tract of land in Tunica County, Mississippi, known as "Bordeaux Point," this point being bordered on the North and West by the waters of the Mississippi River and on the South by the abandoned thalweg of the Mississippi River subsequent to the Hardin Point Cut-Off of 1942. The greater portion of the lands of the plaintiffs have been created by the deposition of alluvion to the Mississippi shoreline over a long period of time as a result of the action of the Mississippi River in eroding and caving its right descending bank (the Arkansas bank). As said river eroded into the Arkansas bank it completely destroyed, among other sections of land, All of Sections 1, 2, East 3/4 of 3, Most of Section 11, and All of Section 12, Township 1 North, Range 5 East, Lee County, Arkansas. As aforesaid, Bordeaux continued to build in a generally Westerly direction and the alluvion which was being deposited against Bordeaux Point built out over into the geographical area originally embraced within the limits of the above Arkansas sections, as of the original Township Survey by the United States. However, said building up of the point bar, known as Bordeaux Point, was gradual and occurred over a long period of time, and the deposition of the alluvion against the Mississippi bank was imperceptible except over an appreciable span of time.

III.

Notwithstanding the fact that the Mississippi River, by its erosion and caving of the Arkansas bank, had completely destroyed the above referred to Arkansas sections, the defendant Garland Allen, Jr. and his father, Garland Allen, Sr., applied to the Arkansas State Land Commissioner's Office and secured the following purported Forfeited Land Deeds, as follows:

<u>Date</u>	<u>To Whom</u>	<u>Book & Page</u>		<u>Description of Land</u>
2-13-73	Garland Allen, Jr.	253	156	E $\frac{1}{2}$ SW $\frac{1}{4}$ 3, 80 acres; SE $\frac{1}{4}$ 3, 160 acres; T1N, R5E
2-8-74	Garland Allen, Jr.	258	73	W $\frac{1}{2}$ NW $\frac{1}{4}$ 2, 80 acres; W Pt. E $\frac{1}{2}$ NW $\frac{1}{4}$, W Pt. E $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 3, 90 acres; Res. W $\frac{1}{2}$ SW $\frac{1}{4}$ 2, 2.5 acres; T1N, R5E
2-8-74	Garland Allen, Jr.	258	74	E $\frac{1}{2}$ 2, 320 acres, T1N, R5E
2-8-74	Garland Allen, Jr.	258	75	Pt. SW $\frac{1}{4}$ 12, 20 acres; Und. SE $\frac{1}{4}$ SW $\frac{1}{4}$ 12, 20 acres; NE $\frac{1}{4}$ NW $\frac{1}{4}$ 12, 40 acres; Und. 1/2 SE $\frac{1}{4}$ NW $\frac{1}{4}$ 12, 20 acres; T1N, R5E
2-8-74	Garland Allen, Jr.	258	76	Frl. SW $\frac{1}{4}$; Frl. SE $\frac{1}{4}$ Sec. 1, T1N, R5E, 293.67 acres
2-27-64	Garland Allen, Sr.	209	233	E $\frac{1}{2}$ NW $\frac{1}{4}$ 11, 80 acres; W $\frac{1}{2}$ NW $\frac{1}{4}$ 11, 80 acres; SW $\frac{1}{4}$ NE $\frac{1}{4}$ 11, 40 acres; S or R

				NE $\frac{1}{4}$ SW $\frac{1}{4}$ 11, 21.90 acres; T1N, R5E
10-26-66	Garland Allen, Sr.	222	220	NW $\frac{1}{4}$ NE $\frac{1}{4}$ 11, 40 acres; E $\frac{1}{2}$ NE $\frac{1}{4}$ 11, 80 acres; T1N, R5E

Thereafter, Garland Allen, Jr. executed the following
deeds, to-wit:

<u>Date</u>	<u>To Whom</u>	<u>Book & Page</u>		<u>Description of Land</u>
1-31-75	Clifford Allen	261	471	Pt. SW $\frac{1}{4}$ Sec. 12, T1N, R5E, 20 acres; Pt. SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 12, T1N, R5E, 20 acres; NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 12, T1N, R5E, 40 a.; Pt. SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 12, T1N, R5E, 20 acres; (being lands acquired from State in Book 258, page 75) W $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 2, T1N, R5E, 80 acres; W Pt. E $\frac{1}{2}$ NW $\frac{1}{4}$ and W Pt. E $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 2, T1N, R5E, 90 acres; Residue W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 2, T1N, R5E, 2.5 acres (being lands acquired from State in Book 258, page 73)
12-7-79	Ronald G. Allen, Sr.	281	728	Frl. S $\frac{1}{2}$ Sec. 1, T1N, R5E, 193.67 acres; and All Sec. 12, T1N, R5E, 240 acres

Garland Allen, Sr. died August 30, 1980, leaving a Will which was probated in Lee County, Arkansas, on September 16, 1980. Said will devised lands in Lee County, Arkansas, as follows:

To all five children (defendants herein) the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, Township 1 North, Range 5 East

To Carolyn Allen and Thomas Allen, the Fractional NE $\frac{1}{4}$, and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Sec. 1, 114.72 acres; and Fractional NE $\frac{1}{4}$, and SW $\frac{1}{4}$ NE $\frac{1}{4}$, and W $\frac{1}{2}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$, and South of River NE $\frac{1}{4}$ SW $\frac{1}{4}$, of Section 11, Township 1 North, Range 5 East, 341.7 acres

To Ronald G. Allen, Sr. all his interest in Section 12 and the S $\frac{1}{2}$ of Section 1, Township 1 North, Range 5 East

To all five children (defendants herein) all the residue of his property.

IV.

Although said deeds are of no legal effect, insofar as being able to convey any lands owned by plaintiff lying on Bordeaux Point in the State of Mississippi; nevertheless the defendants have employed surveyors and have gone on the lands of plaintiff, and have run survey lines thereon, erected "Posted" signs, and made representations to people that they are the owners of said lands by virtue of the aforesaid Arkansas Forfeited Land Deeds, claiming that said land is located in the State of Arkansas; whereas, said lands actually lie wholly within the State of Mississippi. Defendants have further executed mortgages so describing the lands and have obtained credit by virtue of these false representations.

V.

Plaintiff would show that said actions on the part of these defendants cast a cloud upon the title of plaintiff, which plaintiff is entitled to have removed.

VI.

Plaintiff alleges that the place of residence, post office address and mailing address of the defendants are as follows:

- (1) Garland Allen, Jr.
300 Longley Lane
Marianna, Arkansas 72360
- (2) Clifford Allen
108 East Main Street
Marianna, Arkansas 72360
- (3) Ronald G. Allen, Sr.
8 Badalona
Hot Springs, Arkansas 71901
- (4) Carolyn Allen
215 East Side Street
Marianna, Arkansas 72360
- (5) Thomas Allen
251 Mixon Street
Marianna, Arkansas 72360

VII.

Plaintiff attaches hereto as Exhibit "A" the deraignment of title of the plaintiff, Simon Zunamon, to his lands.

WHEREFORE, plaintiff prays:

- (1) That the title of Simon Zunamon to All of Fractional Sections Nineteen (19), Twenty-nine (29), and

Thirty (30), and the Southwest Quarter (SW $\frac{1}{4}$) of Section Twenty-eight (28), all in Township Four (4) South, Range Twelve (12) West, lying in and being in Tunica County, Mississippi, together with all Accretions and alluvion which have been added thereto, be quieted and confirmed in the plaintiff Simon Zunamon, and that all claims of the defendants based upon said erroneous and spurious Arkansas deeds be quieted, cancelled, removed, and adjudged to be invalid.

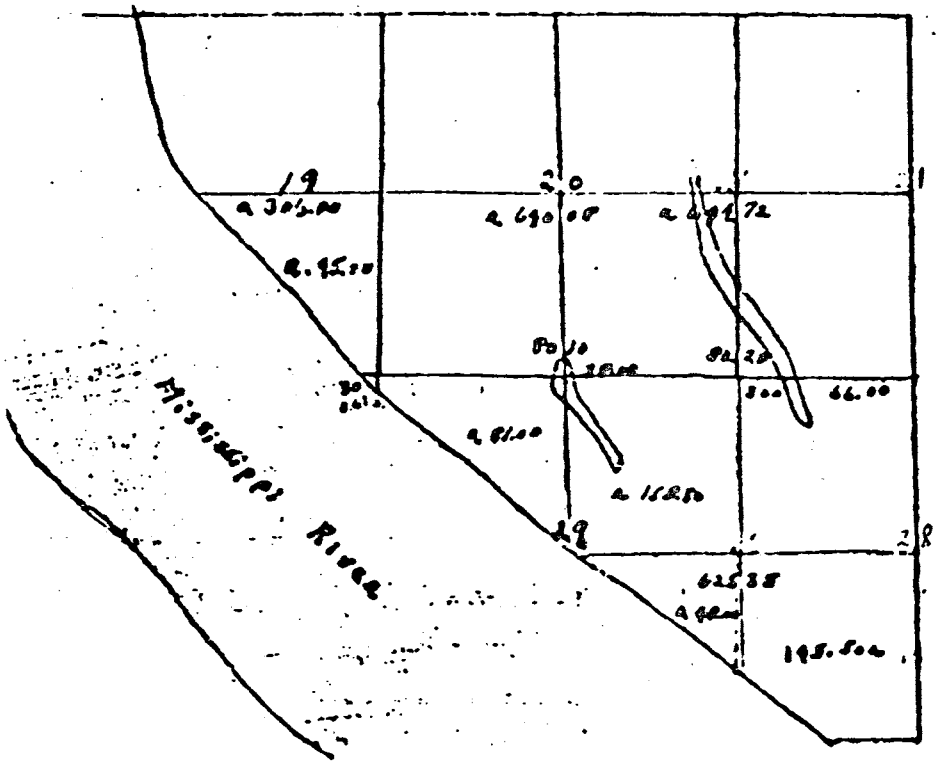
(2) That an injunction issue herein, restraining said defendants, and their successors in title, their agents, servants and employees, from interfering with plaintiff's ownership and possession in and to said lands above described, known as Bordeaux Point, or from trespassing thereon or interfering in the use and enjoyment thereof by any of the agents, employees, servants and lessees of the plaintiff, jointly and severally.

Respectfully submitted,

Daggett, Daggett & Van Dover
Attorneys for Plaintiff

By: /s/ W. H. Daggett
W. H. Daggett

P. O. Box 626, Marianna, Ark. 72360



The above map is a true and correct tracing of a part of a certified photostatic copy of the original township plat of Township Four (4), Range Twelve (12) West of the Chickasaw Cession on file in the office of the Chancery Clerk of Tunica County as a part of the public records of said County.

LAUDS IN TOWNSHIP 4 SOUTH, RANGE 12 WEST
TUNICA COUNTY, MISSISSIPPI

GRANTOR	GRANTEE	Instr.	Date	Filed	Book	Page	Consid.	Dower	All. 544. 29	Sub. Sec. 28C. 30	REMARKS
United States	Elizabeth Eastman	Patent	11-16 1840		1	28				X	
United States	Sally	Patent	1840		1	27		X			
United States	Henry Cook	Patent	11-13 1838		1	28					
United States	Mrs. Henry Carroll	Patent	11-18 1840		19	80					
United States	Daniel Gilchrist	Patent	11-16 1840		19	78					
THEN BY MESSE CONVEYANCES THE TITLE TO THESE LANDS											
VESTED IN S. A. MILLER, AS FOLLOWS:											
H. J. Forndick & Eorence G. Taylor	S. A. Miller	Q.D.	7-26 1898		2	427			X	X	
Yazoo & Miss. Valley R. R. Co.	R. Moody Lbr. Co.	Q.D.	11-30 11-30 1899		2	527		X			
R. Moody Lbr. Co.	S. A. Miller	Q.D.	9-17 5-4-03 1902		E	65		X			
I. G. Owen, Sheriff	Helena Hoop Co.	Exec. Deed	3-12 3-13-04 1906		H-2	6		X	X	X	Execution against S. A. Miller
Helena Hoop Co.	Mrs. M. A. Hunter	M.D.	12-22 12-23 1908		I-2	272		X	X	X	
Mrs. M. A. Hunter	Unknown parties	Deeds	12-13 12-23 1911		J-2	200		X	X	X	Held valid in Papecke v Savage 197 Miss.
C. W. Hunter and wife, Mary A.	Papecke-Leicht Lbr. Co.	M.D.	12-16 12-21-1911		J-2	196		X	X	X	
M. F. Green and B. T. Douglass	Papecke-Leicht Lbr. Co.	M.D.	12-16 12-21 1911		J-2	197		X	X	X	
Papecke-Leicht Lbr. Co.	Hardwood Lbr. & Mfg. Co.	Q.C.	6-1- 6-15 1912		J-2	289		X	X	X	

(Continuation - lands in Township 4 South, Range 12 West, Tunica County, Mississippi)

GRANTOR	GRANTEE	Instr.	Date	Filed	Book	Page	Condid.	Dower	All Sec. 19	All Sec. 29	All Sec. 30	REMARKS
Peapacke Leicht Lbr. Co.	Whitehouse & Savage	Decree	6-25 1920		7	64			X	X	X	FILE CONFIRMED IN Peapacke-LEITCH FILE 157 MRS. J.
Hardwood Lbr. & Mfg. Co.	Peapacke-Leicht Lbr. Co.	Name Change	5-31 1922	11-22 1922	T-2	311			X	X	X	
Peapacke-Leicht Lbr. Co.	The Chicago Mill and Lumber Company	Q.D.	4-23 1923	4-23 1923	R-2	490			X	X	X	
Chicago Mill and Lbr. Co.	Peapacke Corporation	Name Change	11-29 1923	11-23 1923	T-2	350			X	X	X	
Peapacke Corp.	Chicago Mill & Lbr. Corp.	Q.C.	10-29 1928	11-12 1928	T-2	347			X	X	X	
E. C. Horner, Special Water	Chl. Mill Timber Corp.	Master Deed	9-27 1934	10-20 1934	14-2	279			X	X	X	
H. M. Andrews, Sec. of Chicago Mill Lumber Co.	Chicago Mill and Lbr. Co.	Affi- davit	10-30 1928	10-28 1928	D-3	67			X	X	X	Name change
SECTION 30, Township 4 South, Range 12 West												
United States	Remj. Clements	Patent	11-16 1840		19	84					X	Fractional All Cont. 61/100 acre
Rootman, Sheriff	Liquidating Levee Board		5-11 1870	5-11 1870	I	334					X	
E. G. Woolfolk, Tax Collector	Abbey & Leatherman		4-1 1912	4-1 1912	L-2	99					X	
Mrs. E. T. Leatherman	Mary Leatherman Joyner, Grant, Irvin Leatherman, & W. A. Leatherman	Anne										
	W. A. Leatherman	Q.D.	8-31 1934	3-4 1935	14-2	340					X	
State of Mississippi	W. B. Turner	FLP	5-21 1941	6-24 1941	7-2	448					X	
W. B. Turner	Chicago Mill and Lbr. Co.	Q.D.	1-23 1926	2-9 1926	B-3	531					X	
Chicago Mill and Lbr. Co.	STOKES ZIMMON	Q.D.	6-29 1965	1-13 1966	M-3	156			X	X	X	

EXHIBIT "B"

(Filed Feb. 27, 1981)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

No. DC 80-150-LS-O

SIMON ZUNAMON
PLAINTIFF

Vs.

GARLAND ALLEN, JR., CLIFFORD ALLEN, THOMAS
ALLEN, CAROLYN ALLEN, AND RONALD G.
ALLEN, SR.
DEFENDANTS

STATE OF ARKANSAS, EX REL STEVE CLARK,
ATTORNEY GENERAL
DEFENDANT-INTERVENOR

MOTION TO INTERVENE

Comes Steve Clark, Attorney General for the State of Arkansas, by and through his attorney, Assistant Attorney General Rodney E. Slater, and for his Motion to Intervene, on behalf of the State of Arkansas, states and alleges:

1. The applicant for intervention is the Attorney General for the State of Arkansas.

2. The applicant seeks an order granting intervention, as a matter of right, pursuant to Fed.R.Civ.P., Rule 24(a)(2), and affirmatively states as follows:

- (a) This application for intervention is timely made;
- (b) The applicant, as representative of the State of Arkansas, claims an interest relating to the property which is the subject of this action. He further states that as representative of the State of Arkansas, he is so situated that the disposition of this action, may as a practical matter, impair or impede his ability to protect Arkansas interests in the subject property.
- (c) Applicant's interest, as representative of the State of Arkansas, is not adequately represented by existing parties.

3. Applicant is entitled to intervention as a matter of right, pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure.

4. This application and Motion is being filed and served pursuant to Fed.R.Civ.P., Rule 24(c) and Fed.R. Civ.P., Rule 5.

5. Applicant, the Attorney General for the State of Arkansas, is specifically given the right and duty to participate in this cause pursuant to Ark. Stat. Ann. §12-712 (Repl. 1979). Section 12-712 provides that the Attorney General shall maintain and defend the interests of the State of Arkansas in matters before all federal courts.

6. Intervention on the part of applicant, Steve Clark, Attorney General for the State of Arkansas, is necessary in order for applicant to defend against an attack by the plaintiff, Simon Zunamon, who alleges that he owns certain lands which are the subject of this action and asserts that said land is located in the State of Mississippi. Applicant, Attorney General Clark, submits, on behalf of the State of Arkansas, that the subject land in actuality is a political subdivision of the State of Arkansas: The defense of such a contention being a legitimate interest

of the State of Arkansas and therefore an interest warranting intervention and defense by applicant.

7. Simultaneously with the filing of this Motion, applicant for intervention has filed a Memorandum of Points and Authorities Relied Upon in Support of this Motion to Intervene and an Answer of Defendant-Intervenor.

WHEREFORE, the Attorney General for the State of Arkansas, Steve Clark, as representative of the State of Arkansas, prays that the intervention be granted as a matter of right; and that he, on behalf of the State of Arkansas, be allowed to participate as any other party to this action.

Respectfully submitted,

Steve Clark

Attorney General

By: /s/ Rodney E. Slater

Rodney E. Slater

Assistant Attorney General

Justice Building

Little Rock, Arkansas 72201

(501) 371-2007

Attorneys for Defendant-Intervenor

EXHIBIT "C"

(Filed February 23, 1981)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF MISSISSIPPI
DELTA DIVISION**

No. DC 80-150-LS-O

SIMON ZUNAMON, Plaintiff

v.

GARLAND ALLEN, JR., et al., Defendants

ORDER

Steve Clark, Attorney General for the State of Arkansas, has moved, pursuant to Rule 24(a)(2), Federal Rules of Civil Procedure, for leave to intervene in the above entitled action on behalf of the State of Arkansas as an additional party defendant and has attached to his motion his proposed Answer of Defendant-Intervenor. No party has opposed the motion, and the time provided therefor by Local Rule G-8(5) has expired. The court is of the opinion that the motion is well taken and should be sustained. It is, therefore

ORDERED:

That Steve Clark, Attorney General for the State of Arkansas, be, and he is hereby, granted leave to intervene in the above entitled action on behalf of the State of Arkansas and to file and serve within seven days of this date the Answer of Defendant-Intervenor of the State of Arkansas in the form attached to his motion.

THIS, the 20th day of February, 1981.

**/s/ J. David Orlansky
United States Magistrate**

EXHIBIT "D"

(Filed February 3, 1981)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

No. DC 80-150-LS-O

SIMON ZUNAMON
PLAINTIFF

Vs.

GARLAND ALLEN, JR., CLIFFORD ALLEN,
THOMAS ALLEN, CAROLYN ALLEN, AND
RONALD G. ALLEN, SR.
DEFENDANTS

STATE OF ARKANSAS, EX REL. STEVE CLARK
ATTORNEY GENERAL
DEFENDANT-INTERVENOR

ANSWER OF DEFENDANT-INTERVENOR

The State of Arkansas, defendant-intervenor, by its attorney, Attorney General Steve Clark, for its answer to the Complaint states the following:

1. Defendant-intervenor is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph I of Plaintiff Zunamon's Complaint.

2. Defendant-intervenor specifically denies all allegations in paragraph II of the Plaintiff's Complaint so far as such allegations assert that plaintiff is the owner of land not included within the geographical borders of the State of Arkansas. Further, defendant-intervenor spe-

cifically denies that the Mississippi River has eroded into the Arkansas bank, thus completely destroying, among other sections of land, all of Sections 1, 2, East 3/4 of 3, most of Section 11, and all of Section 12, Township 1 North, Range 5, East, Lee County, Arkansas. Accordingly, said land is still a part of the geography of the State of Arkansas and specifically, Lee County, Arkansas.

3. Exclusive of the aforementioned responses to paragraph II of Plaintiff's Complaint found in paragraph 3 of Defendant-Intervenor's Answer thereto, defendant-intervenor specifically denies all other averments and allegations contained in paragraph II of Plaintiff's Complaint.

4. Defendant-intervenor specifically denies that portion of paragraph III of the Plaintiff's Complaint which refers to the erroneous allegation of the Mississippi River having eroded and carved the Arkansas bank so as to completely destroy the above-referred sections of Arkansas property. Defendant-intervenor is without knowledge or information sufficient to form a belief as to the truth of the remaining averments and allegations contained in paragraph III of the Plaintiff's Complaint.

5. Defendant-intervenor is without knowledge or information sufficient to form a belief as to the truth of the averments and allegations contained in paragraphs IV, V, VI and VII of the Plaintiff's Complaint.

6. Defendant-intervenor generally and specifically denies all other averments and allegations not previously referred to in this answer.

WHEREFORE, defendant-intervenor, State of Arkansas, *ex rel.* Steve Clark, Attorney General, prays that notwithstanding the Court's determination as to the true owner of the subject property to this litigation, that this Court enter an Order declaring the property at issue to be

located in the State of Arkansas and for all other relief the Court deems appropriate.

Respectfully submitted,

Steve Clark

Attorney General

By: /s/ Rodney E. Slater

Rodney E. Slater

Assistant Attorney General

Justice Building

Little Rock, Arkansas 72201

(501) 371-2007

Attorneys for Defendant-Intervenor

CERTIFICATE OF SERVICE

I, Rodney E. Slater, Assistant Attorney General, do hereby certify that I have served a copy of the foregoing Answer of Defendant-Intervenor, by mailing a copy of same by U.S. Mail, postage prepaid, to Mr. W. H. Daggett, Attorney at Law, Post Office Box 626, Marianna, Arkansas 72360, and to Mr. Robert J. Donovan, Attorney at Law, 17 North Poplar, Post Office Box 287, Marianna, Arkansas 72360, on this 22 day of January, 1981.

/s/ Rodney E. Slater

Rodney E. Slater

EXHIBIT "E"

(Filed August 17, 1981)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF MISSISSIPPI
DELTA DIVISION

NO. DC 80-150-LS-O

SIMON ZUNAMON,
Plaintiff,

v.

GARLAND ALLEN, JR., et al.,
Defendants.

ORDER

This land title action is presently set for trial during the week of September 21, 1981. The court has been notified that the State of Arkansas has decided to file an original action in the United States Supreme Court against the State of Mississippi to determine the true legal description and location of a particular tract of land along the Mississippi River. Since the land in dispute in this action is part of the disputed tract which will be subject matter of the suit in the United States Supreme Court, it is

ORDERED:

That the trial of this action is hereby continued until further order of the court.

That intervenor the State of Arkansas is hereby directed to promptly notify this court of any final judgment entered in its contemplated original action in the United States Supreme Court against the State of Mississippi.

SO ORDERED this 14th day of August, 1981.

/s/ L. T. Senter, Jr.

United States District Judge

EXHIBIT "F"

(Filed November 25, 1981)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF MISSISSIPPI
DELTA DIVISION**

NO. DC 80-150-LS-O

**SIMON ZUNAMON,
PLAINTIFF,**

V.

**GARLAND ALLEN, JR., ET AL.,
DEFENDANTS,**

**STATE OF ARKANSAS,
INTERVENOR.**

APPLICATION FOR STAY ORDER

Comes now the State of Arkansas, appearing by and through its counsel, Steve Clark, Attorney General and Rodney E. Slater, Assistant Attorney General and respectfully states as follows:

1. Intervenor State of Arkansas respectfully moves the Court for a stay of an action 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-O.

2. The plaintiff in the pending action, Simon Zunamon, claims ownership of the following property, 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.

3. Mr. Zunamon alleges that the greater portion of the above described lands has 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.

4. To the contrary, however, the defendants in *Simon Zunamon v. Garland Allen, et al.* contend that 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 the subject property is in the State of Arkansas; and that they are the true owners of said property.

5. Accordingly, a boundary dispute between the State of Arkansas and the State of Mississippi is inappropriately before this Court.

6. Boundary disputes between states are subject to the exclusive original jurisdiction of the Supreme Court of the United States pursuant to the United States Constitution, Article III, Section 2, Clause 1 and 28 U.S.C., Section 1251(a)(1) (1948).

7. In an effort to avoid needless delay, most probable appellate review and potentially debilitating financial expenditures on the part of the parties in the subject cause,

Intervenor State of Arkansas has filed an original action in the United States Supreme Court against the State of Mississippi pursuant to the Constitution of the United States, Article III, Section 2, Clause 1 and 28 U.S.C., Section 1251(a) (1) (1948).

8. The case *Simon Zunamon v. Garland Allen, et al., supra*, should therefore be stayed by order of this Court, pending final determination by the United States Supreme Court as to the boundary dispute between the State of Arkansas and the State of Mississippi.

WHEREFORE, Intervenor State of Arkansas respectfully request that an order be issued promptly by this Court staying any further action in the case 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 by the United States Supreme Court or until further order by said Court.

Respectfully submitted,

Steve Clark

Attorney General

By: /s/ Rodney E. Slater

Rodney E. Slater

Assistant Attorney General

Justice Building

Little Rock, Arkansas 72201

(501) 371-2007

Attorneys for the Intervenor

State of Arkansas

CERTIFICATE OF SERVICE

I, Rodney E. Slater, Assistant Attorney General do hereby certify that I have served a copy of the foregoing Application for Stay Order, by mailing a copy of same by U.S. Mail, postage prepaid, to counsel listed below, this 23rd day of November, 1981.

The Honorable W. H. Daggett
P. O. Box 646
Mariana, Arkansas 72360

The Honorable John Dulaney
P. O. Box 188
Tunica, Mississippi 38676

The Honorable William H. Drew
P. O. Box 744
Lake Village, Arkansas 71653

The Honorable Steven L. Thomas
P. O. Box 1406
Greenville, Mississippi 38701

EXHIBIT "G"

(Filed December 9, 1981)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF MISSISSIPPI
DELTA DIVISION

NO. DC 80-150-LS-O

SIMON ZUNAMON,
PLAINTIFF

V.

GARLAND ALLEN, JR., ET AL.,
DEFENDANTS

STATE OF ARKANSAS,
INTERVENOR

ORDER

Upon formal Motion and for good cause shown the cause *Simon Zunamon v. Garland Allen, et al.*, No. DC 80-150-LS-0, presently pending on the docket of this Court, shall be stayed by Order of this Court, pending final determination by the United States Supreme Court as to the property dispute between the State of Arkansas and the State of Mississippi or until further Order by said Court.

IT IS SO ORDERED this 7th day of December, 1981.

/s/ L. T. Senter, Jr.

United States District Judge

