DOCKET NO. _____

In the Supreme Court of the United States

GADSDEN INDUSTRIAL PARK, LLC,
Petitioner,

V.

UNITED STATES,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Avrum Levicoff, Esquire
Counsel of Record
Edward I. Levicoff, Esquire
The Levicoff Law Firm, P.C.
4 PPG Place, Suite 200
Pittsburgh, PA 15222
(412) 434-5200
ALevicoff@Levicofflaw.com
ELevicoff@Levicofflaw.com

Counsel for Petitioner

QUESTIONS PRESENTED

I.

Whether this Court should fill a statutory and jurisprudential void in Tucker Act inverse condemnation "takings" law to resolve the obvious constitutional dilemma that confronted the Court of Federal Claims below, where the court found that the Environmental Protection Agency took Petitioner's property and sold some of it for $13.5 million, made no offer of compensation whatsoever, forced Petitioner to incur a decade of expense litigating against the government's ferocious effort to avoid payment, and at trial the court found a compensable *per se* taking, but the court simply set aside the constitutional requirement of just compensation under the Fifth Amendment's Takings Clause and awarded nothing, on the basis that Petitioner's evidence failed to prove a precise value of the property with "reasonable certainty".

II.

Whether the Federal Circuit committed clear constitutional error where it ignored the conduct constituting the taking of Petitioner's slag, impermissibly set aside the trial court's fact findings underlying its conclusion that a taking of slag had occurred, and improperly substituted its own *de novo* findings of fact that themselves were contrary to the record, all in order to disturb the Court of Federal Claims' determination that the government did commit a compensable taking of Petitioner's slag and violated the Takings Clause by failing to pay for it?

CORPORATE DISCLOSURE STATEMENT

Petitioner Gadsden Industrial Park, LLC has no parent corporation and no publicly held company holds 10% or more of its stock.

RELATED PROCEEDINGS

United States Court of Federal Claims

Gadsden Industrial Park, LLC v. The United States, No. 10-757L (May 18, 2018) (trial court opinion)

United States Court of Appeals for the Federal Circuit

Gadsden Industrial Park, LLC v. The United States, Nos. 2018-2132, 2018-2147 (April 22, 2020) (appellate judgment and opinion)

Gadsden Industrial Park, LLC v. The United States, Nos. 2018-2132, 2018-2147 (Sept. 11, 2020) (Order denying Plaintiff's Petition for Panel Rehearing and Rehearing En Banc)

Gadsden Industrial Park, LLC v. The United States, Nos. 2018-2132, 2018-2147 (Sept. 18, 2020) (mandate issued)

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes

Rules

United States Constitution

PETITION FOR WRIT OF CERTIORARI

Petitioner, Gadsden Industrial Park, LLC ("Gadsden"), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit below.

OPINIONS BELOW

The Court of Federal Claims' opinion is reported at 138 Fed. Cl. 79 ("Tr.O.") and appended hereto as Appendix B (App. B, 21-51). The opinion of the Court of Appeals for the Federal Circuit affirming in part and reversing and vacating in part the decision of the trial court is reported at 956 F.3d 1362 ("P.O.") and appended hereto as Appendix A (App. A, 1-20).

JURISDICTION

The Federal Circuit judgment was entered on April 22, 2020. App. A, 20. A petition for rehearing was denied on September 11, 2020. App. C, 52-53. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

28 U.S.C. §1491(a)(1) of the Tucker Act provides:

> The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

The Takings Clause of the Fifth Amendment to the United States Constitution, U.S. Const. amend. V, provides: "[N]or shall private property be taken for public use, without just compensation."

INTRODUCTION

The lobby of the building that houses both the Court of Federal Claims and the Federal Circuit prominently displays the following quote from President Abraham Lincoln: "It is as much the duty of government to render prompt justice against itself, in favor of citizens, as it is to administer the same, between private individuals."[1] Nothing that transpired in this case evidences any intent on the part of the government to fulfill that solemn duty. A statutory and jurisprudential void in existing "takings" law presented the courts below with a constitutional dilemma, which they resolved by ignoring the command of the Takings Clause: "nor shall private property be taken for public use, without just compensation." As a consequence, the government took valuable private property with impunity and the property owner received no compensation. This Court must intervene to correct that injustice, fill the void, and ensure the unconstitutional result below never recurs.

During an environmental reclamation of a defunct steelmaking site, the United States Environmental Protection Agency ("EPA") physically appropriated at least 245,000 tons of material that Gadsden owned. EPA had a government

---

[1] https://www.uscfc.uscourts.gov/sites/default/files/uscfc_court_history_brochure_1_0.pdf; https://www.uscfc.uscourts.gov/node/3055.

contractor sell some of the property for $13.5 Million to subsidize EPA's project costs. Despite having committed a *per se* taking of valuable property, EPA offered Gadsden nothing. Gadsden is a small family-owned business, hardly possessed of resources to comfortably fund substantial litigation against the United States, but Gadsden could not afford to lose millions of dollars worth of valuable property. Left with no alternative, in 2010 Gadsden instituted an inverse condemnation suit against the government under the Tucker Act, and at enormous expense Gadsden spent a decade battling the Department of Justice's ferocious effort to avoid any compensation. After a two-week trial, the Court of Federal Claims found that EPA had committed a compensable physical taking of Gadsden's private property without paying for it, a clear violation of the Takings Clause. Knick v. Township of Scott, 139 S.Ct. 2162, 2170 (2019) (When the government takes "private property without paying for it, the government has violated the Fifth Amendment."). The courts below, however, placed the burden of proof of the property's value solely on Gadsden, and imposed a stringent standard of "reasonable certainty" on Gadsden's proof of value, despite the absence of any guidance provided by the Tucker Act or "takings" cases brought pursuant to the Act. The trial court therefore awarded Gadsden compensation for only a very small fraction of the overall material that was taken, but the Federal Circuit vacated even that award, and Gadsden was ultimately awarded nothing. Both courts acknowledged a taking but explicitly ruled that there was no constitutional obligation to award compensation,

notwithstanding the clear mandate of the Takings Clause which this Court has repeatedly acknowledged. Horne v. Department of Agriculture, 576 U.S. 350, 357 (2015) (recognizing "categorical duty" to pay owner compensation); Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302, 322 (2002); Knick, *supra* (government may not take property "without paying for it").

Since 1890 an owner whose property was taken by the government without payment has been categorically entitled to a statutory provision ensuring "a reasonable, *certain*, and adequate provision for obtaining compensation *before* his occupancy is disturbed." Cherokee Nation v. Southern Kansas Ry. Co., 135 U.S. 641, 659 (1890) (emphasis added). The Cherokee Nation court warned that "[w]hether a particular provision be sufficient to secure the compensation to which, under the constitution, he is entitled, is sometimes a question of difficulty." Id. This case graphically illustrates that while a Tucker Act inverse condemnation suit "provides the standard procedure for bringing such claims,"[2] the Tucker Act falls woefully short of the Cherokee Nation guarantee. The Tucker Act simply waives immunity. It includes no provisions guaranteeing "certain" or "just" compensation as the Takings Clause requires. Nor does the Tucker Act set forth any procedural safeguards, such as placement of the burden of proof of value on the government, especially in the context of a *per se* taking with no offer whatsoever. Nor does the Tucker Act specify an acceptable standard of proof of value. Contrary to the decisions of the lower courts, this Court's takings cases do not suggest a standard

[2] Knick at 2070.

founded upon "reasonable certainty". This case fell into a statutory and jurisprudential void. This Court must fill the void so that all property owners are genuinely assured just compensation and make plain that where a property owner has proved a compensable taking, it is constitutionally unacceptable for the courts below to throw up their hands and award nothing, even where the owner's valuation evidence is not "reasonably certain".

STATEMENT OF THE CASE

I. Factual Background

By Bankruptcy Trustee's Bill of Sale dated December 3, 2002, Gadsden purchased "all right, title and interest" to certain assets of a bankrupt steel mill, Gulf States Steel ("GSS"). Tr.O., 83-84. Among those assets were recyclable byproducts of the steel-making process that GSS had stockpiled at its site, including 420,000 cubic yards of slag, and all of the miscellaneous metal scrap and "kish" on site. The trial court defined "kish" as "a ferrous byproduct of a blast furnace operation in various sizes that has economic value." Id., 94. The total amount of scrap and kish that Gadsden purchased was unknown. As GSS had done while active, Gadsden intended to recycle and sell the materials for profit. Id., 83.

In 2006, EPA commenced environmental removal actions at other portions of GSS's site. EPA's remediation contractor was CMC Inc. ("CMC"). Later in 2006, MultiServ, a division of Harsco Corporation ("Harsco"), contacted EPA's Remedial Project Manager expressing an interest in recovering valuable materials from the

stockpiles. Id., 85. Having examined Gadsden's Bill of Sale, that manager advised that Gadsden "has the mining rights for the slag at the Gulf States Steel Property", and suggested contacting Gadsden ...." Id., 85-86. Harsco made the contact and submitted a proposal to "process the piles", but no deal was reached. Id., 86.

In April 2008, aware that metal prices had "spiked" upward, Harsco personnel visited EPA's site manager to pursue a deal to process the materials. Id., 88, 96-98. EPA's site manager emailed his team "that he had 'a firm very interested in taking ALL the Slag / Kish from the site for reuse, but [that] is [contingent] on taking all of it, including the before mentioned Kish'", Id., 88, noting, however, that "GIP claims they own the right to 'some' of the material (Kish) within the pile." Id. At that time Gadsden was in the advanced stages of negotiations with a different contractor to reclaim its materials. Id., 87-89. However, EPA commandeered Gadsden's property by denying Gadsden's contractor access to the site. The trial court found that EPA's conduct constituted a clear physical "compensable taking" which occurred on June 4, 2008, when, according to the court, "EPA took *all of plaintiff's rights to what it had purchased*". Id., 82, 90, 96 (emphasis added).[3] Despite the express mandate of the Takings Clause, the government offered nothing to Gadsden or anyone else.

Under its deal with EPA, Harsco set out to recycle and sell Gadsden's valuable property, and use the proceeds to pay EPA's remediation contractor, CMC.

[3] Gadsden had already used 15,000 cubic yards of its slag; therefore only 405,000 of its original 420,000 cubic yards were taken by EPA.

Id., 88-96. The trial court found that EPA fully "understood [Gadsden's property] to be ferrous material with resale value." Id. Although EPA's purported justification for the deal with Harsco and CMC was to ameliorate an alleged environmental hazard, the trial court found: "There was no testimony that EPA employees believed the materials GIP purchased constituted an environmental hazard." Id., 88. Rather, the court found: "EPA officials understood that the metal in the piles had value." Id. Under the EPA/Harsco/CMC deal, substantial quantities of slag would be moved but left onsite, in effect burying the remainder of Gadsden's slag (the trial court referred to it as "embalm[ed] permanently"). Id., 96. Ironically, the trial court found that"[t]he only hazardous materials, of course, were associated with the same slag that EPA proposed to leave on site." Id., 88-89.

In 2009 Harsco conducted a pilot study to determine how profitable its deal with EPA might be; Harsco thereafter issued a press release projecting a potential $50 million recovery. Id. Still EPA offered Gadsden nothing. Harsco contracted with CMC, as agent for EPA, to conduct the metal recovery and sale, and pay CMC a "royalty" from the sales which would operate as a credit for amounts EPA otherwise owed CMC. Id. The agreement permitted Harsco to terminate the project should it become unprofitable. Id., 90. EPA contemplated that any materials remaining on-site after the mining operation would be capped in place. Id., 88-89.

Harsco began work in October 2009 using a recovery process to reclaim and sell Gadsden's "valuable ferrous materials" that was "basically the same as that

which [Gadsden's contractor] anticipated using...." Id., 89-91. Over the next four years Harsco processed and sold 245,890 tons of Gadsden's valuable property generating $13,527,405 in gross sales. By 2013 Harsco viewed the deal with EPA as no longer sufficiently profitable, and terminated operations. Id., 90. The piles were never "capped" as originally planned. Id. Although EPA certainly knew it took private property (although it vacuously at times disputed whether it was Gadsden's property), the government made no offer of any compensation to Gadsden or any other putative owner.

II. Procedural History

A. Court of Federal Claims Proceedings

Having been compelled to "'shoulder the burden of securing just compensation by filing suit'", Knick, *supra* at 2180 (Thomas, J., concurring) (*quoting* Arrigoni Enterprises, LLC. v. Durham, 136 S.Ct. 1409 (2016) (Thomas J., dissenting from denial of cert.)), Gadsden sued the government in 2010 while EPA's project was still ongoing. The action was filed in the Court of Federal Claims pursuant to the Tucker Act, which afforded the trial court original jurisdiction. 28 U.S.C. §1491(a)(1). Through the DOJ, the government tenaciously litigated. EPA denied that it took Gadsden's property, then contended Gadsden had abandoned its personalty, and then later contended the property was worthless despite its contractor having sold only a portion of it for $13.5 Million. In the spring of 2014, six years after the date of taking, the case was referred to court-sponsored

mediation. A week before mediation, EPA sent Gadsden a "Request for Information" letter naming Gadsden as a "potentially responsible party" under CERCLA.[4] When mediation failed, the government immediately filed a CERCLA cost recovery action against Gadsden, seeking in excess of $9 million.[5] That action was dismissed.[6] Around the same time, in another separate action between the parties, EPA through the DOJ asserted multiple claims against Gadsden sounding in fraud under the False Claims Act ("FCA") and Forfeiture of Fraudulent Claims Act ("FFCA").[7] Gadsden successfully defended those claims through trial.[8]

Meanwhile this case proceeded to trial in mid-2017, nine years after the date of taking. To support its valuation of just compensation, Gadsden offered expert testimony from a certified public accountant, Mark Gleason ("Gleason"). As for Gadsden's 405,000 cubic yards of slag, Gleason testified to a $5.50 per-unit selling price for the material. Tr.O., 98. As for the unknown quantities of Gadsden's scrap metal and kish, Gleason calculated the bare minimum amount of just compensation due by projecting the revenues that could have been generated through sale of only the metal that EPA had sold, which Gleason valued at $19.8 Million on the date of the taking, and then subtracting anticipated recovery costs. Id., 98. The government elected to offer no independent valuation of the material at all, and likewise introduced no evidence of Harsco's own recovery costs on the project. App.

[4] CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 *et seq.*
[5] Action No. 14-992 (N.D. Ala.).
[6] Id., Docs. 34-35.
[7] Action No. 13-924 (Fed. Cl.), Doc. 40.
[8] Id., Doc. 110.

D, 64 [Tr.Trans. 1559] (trial judge and DOJ acknowledging that EPA's expert report "doesn't offer an independent evaluation of anything"); Tr.O., 100 ("The government's expert on damages, Steven Dowd, did not place an estimate on [recovery] costs...").

After a lengthy trial, the trial court determined that the government had taken Gadsden's slag and metal without payment. Id., 95, 100. The trial court rejected EPA's abandonment argument as "an additional red herring". Id., 95. The trial court awarded Gadsden $755,494 for 92,500 cubic yards of slag that EPA had used to fill a lagoon on-site; but the court awarded no compensation for the remaining slag, and separately awarded nothing for any of the metallics. As for the metallics, the trial court explicitly found that Gadsden's property had significant value, stating that a theoretical willing buyer "would have paid something for the opportunity to retrieve the materials from the piles," and acknowledging Harsco's forecast of a potential $50 million recovery. Id., 99. Nonetheless the trial court awarded no compensation because it rejected Gleason's valuation. The court questioned Gleason's projection of $19.8 Million in anticipated revenue because it was based on "abnormally high" metal market prices that prevailed in June 2008 when the taking occurred, notwithstanding that the "spike" in price no doubt motivated EPA's taking, and notwithstanding the court's recognition that "the general rule in measuring compensation is the fair market value of the property on the date it is appropriated." Id., 96-97 (*citing* Kirby Forest Indus., Inc. v. U.S., 467

U.S. 1, 9-10 (1984); U.S. v. 564.54 Acres of Land, 441 U.S. 506, 511-513 (1979)); *see also* U.S. v. Miller, 317 U.S. 369, 374 (1943) ("value is to be ascertained as of the date of the taking."). The trial court also criticized Gleason's assumptions as to $4,928,603 in "avoided costs [of reclamation]," finding that those costs were instead likely "at least $7 Million." Tr.O., 98-100. The trial court "sympathize[d] with Mr. Gleason in putting together a damage calculation", noting that "[i]t would have been difficult", and the court recognized that "a trial judge may award damages even if he does not fully credit that party's methodology." Id. (*citing* Precision Pine & Timber, Inc., v. U.S., 596 F.3d 817, 833 (Fed. Cir. 2010). Yet the trial judge elected not to do so. Instead the court awarded nothing at all for that discrete item.

B. Appeals to the Federal Circuit

The parties cross-appealed. The Federal Circuit vacated Gadsden's $755,494 slag award on the basis that Gadsden "has not demonstrated that the EPA's presence and operations on the Eastern Excluded Property intruded on any of [Gadsden's] property rights to slag," since in the panel's view there were "tons of slag that [presently] remain on the property" such that "even after the EPA's remediation project sufficient slag remained...for [Gadsden] to recover its full allotment." P.O., 1369; Tr.O., 96. That ruling overlooked the trial court's finding that all of GIP's slag was taken on June 4, 2008 when "EPA took all of plaintiff's rights to what it had purchased", Tr.O., 96, and disregarded that "[a] bank robber might give the loot back, but he still robbed the bank." Knick, *supra* at 2172. In so

doing, the panel set aside the trial court's fact finding that all of the remaining slag on site has been "permanently embalmed" by virtue of EPA's operations, a finding amply supported including by the trial court's own site visit.[9]

As for the metallics that had sold for $13.5 Million, the appeals court acknowledged a governmental taking but nonetheless affirmed the award of nothing. The panel emphasized its view that Gadsden bore the burden of proof of value, and in particular bore the burden of proving the amount of reasonable recovery costs, which of course would only diminish the amount of compensation due. P.O., 1368-69, 1371-72. Notwithstanding that the government offered no evidence of reasonable reclamation costs, the panel faulted Gadsden for having failed to prove that item with "reasonable certainty". Id., 1371-73. The panel thus found the trial court could properly award nothing despite its finding of a *per se* taking.

Notably, the panel acknowledged that Harsco's recovery costs "are not an appropriate proxy to assess GIP's avoided costs";[10] but the panel nonetheless found significant its incorrect conclusion that "[t]he record also contained evidence of the EPA contractors' recovery costs", concluding that "[u]ltimately the EPA contractors spent $14.5 million on the recovery operation, about a million more than income from sales." Id., 1365, 1372-73 (citing Tr.Trans. 1242:18-1243:6). Such evidence was in fact nowhere in the record, since the government elected not to introduce it.

---

[9] App. D, 54-55 [Tr.Trans. 209-210], App. D, 56 [Tr.Trans. 568], App. D, 60-61 [Tr.Trans. 1092-1093].
[10] P.O., 1373.

The trial transcript pages that the panel cited reflect only a colloquy between Gleason and the trial judge regarding an out-of-court document that Gleason said he had seen pretrial and did not consider relevant in forming his opinions.[11] Neither the document nor its contents were introduced into evidence. Gleason explained that the document "was attached to an affidavit or a declaration that Peter Mazzarella had provided";[12] but Mr. Mazzarella testified at trial, and disclaimed any knowledge regarding Harsco's costs on the project. App. D, 57-59 [Tr.Trans. 606-608]. No other Harsco witness testified regarding Harsco's costs.

Gadsden sought re-hearing of the panel's decision, which was denied. Unsatisfied at having taken Gadsden's property without paying compensation, the government filed a Motion seeking to tax $25,459.51 in costs against Gadsden.[13] Gadsden seeks a writ of certiorari so that this unconstitutional result can never recur.

ARGUMENT FOR GRANTING THE PETITION

I. The Government Took Valuable Private Property And The Property Owner Received No Compensation In Derogation Of The Takings Clause

A. The express letter of the Constitution forbids this outcome

The Takings Clause is explicit, and was plainly violated.

> Private property, the Constitution provides, shall not be taken for public use without just compensation, and it is clear that there are few

---

[11] App. D, 62-63 [Tr.Trans. 1242-1243].
[12] Id.
[13] Action No. 10-757 (Fed. Cl.), Dkt. No. 222. The Motion was premature and denied without prejudice. Id., Dkt. No. 225.

> safeguards ordained in the fundamental law against oppression and the exercise of arbitrary power of more ancient origin or of greater value to the citizen...

U.S. v. Russell, 80 U.S. 623, 627 (1871).

This Court has repeatedly, including very recently, acknowledged the mandatory nature of the Takings Clause. Knick, *supra* at 2171 (*quoting* First English Evangelical Lutheran Church of Glendale v. Cnty. of Los Angeles, 482 U.S. 304, 315 (1987) (*quoting from* Armstrong v. U.S., 364 U.S. 40, 49 (1960)) ("government action that works a taking of property rights necessarily implicates the 'constitutional obligation to pay just compensation.'"); Monongahela Navigation Co. v. U.S., 148 U.S. 312, 325, 336 (1893) ("the right to compensation is an incident to" the government's right to take property in the first place, such that the government "can take only on payment of just compensation."). The government has a "categorical duty" to compensate an owner whose property is physically taken. Horne, *supra* at 357-358, 362-363 (*quoting* Ark. Game & Fish Com'n. v. U.S., 568 U.S. 23, 31 (2012) and Tahoe-Sierra, *supra* at 322-323)).[14] "[O]nce there is 'taking,' compensation *must* be awarded", because at that point the property owner "has *already* suffered a constitutional violation". Id. (emphasis in original) (*quoting* First English, *supra* at 315, 318 (*quoting* San Diego Gas & Electric Co. v. San Diego, 450 U.S. 621, 654 (1981)) (Brennan, J., dissenting)). As such, a property owner has "an irrevocable right to just compensation" for a violation of the Takings Clause "as

[14] Horne makes clear that these principles apply with equal force to takings of real property and personal property. Horne at 358.

soon as the government takes his property for public use without paying for it." Knick at 2070-71 (*citing* Jacobs v. U.S., 290 U.S. 13 (1933)). The owner's right to just compensation and the government's corresponding duty to pay it are in fact so fundamental to the government's power to take private property that title to the property "does not pass until compensation has been ascertained and paid". Albert Hanson Lumber v. U.S., 261 U.S. 581, 587 (1923) (*citing* Cherokee Nation, *supra* at 598; Bauman v. Ross, 167 U.S. 548, 598 (1897); Backus v. Fort Street Union Depot Co., 169 U.S. 557, 568 (1898); U.S. v. Jones, 109 U.S. 513, 518 (1883); Boom Co. v. Patterson, 98 U.S. 403, 406 (1878)).

By taking Gadsden's property without compensation, the government broke the law. Yet Gadsden was paradoxically afforded no redress. That outcome sets a dangerous precedent.

Both courts below purported to justify the unconstitutional outcome on the basis that the value of Gadsden's property was debatable, and Gadsden's proofs were legally insufficient. But, the Takings Clause does not limit its application to property of easily ascertainable value, nor does it condition the owner's right to just compensation upon the sufficiency of its proofs. This Court's takings cases are to the contrary. This Court has repeatedly reiterated that when the government takes private property, it has a "categorical duty" to pay for it. Horne, *supra*; Tahoe-Sierra, *supra*. Both courts below disregarded the mandate and allowed the government to shirk its unflagging duty.

The trial judge had any number of tools at his disposal to determine the amount of just compensation that the Takings Clause required. For example, the trial judge might have ventured an approximation of market value, since the value of property is frequently "at best, a guess by informed persons." U.S. v. Miller, 317 U.S. 369, 375 (1943). If the court felt the record did not permit a reliable "guess", it could have ordered a new trial as to value, as in Foster v. U.S., 2 Cl. Ct. 426 (1983). See also Matter of County of Nassau, 43 A.D.2d 45 (N.Y. App.Div. 1973); Frank Micoli Cadillac-Oldsmobile, Inc. v. State of New York, 104 A.D.2d 477, 481 (N.Y. App.Div. 1984) ("A condemnation proceeding is not a private litigation. There is a constitutional mandate upon the court to give just and fair compensation for any property taken."). Or, the court could have notified the parties that the proof was insufficient, and invited supplementary evidence. The court could also have afforded Gadsden the opportunity to designate a new expert. The court could have called its own experts. See Rule 614(a), F.R.Ev. The court could also have informed the parties of the unsatisfactory proof of value, and directed the parties to engage in any of various alternative dispute resolution mechanisms, such as high/low or "baseball" arbitration. In that vein, once the trial judge found a governmental taking but concluded that the property was difficult to value, what the trial court actually should have done is order the government to have the property appraised and place a preliminary value on it. That would have honored the Takings Clause's requirement of just compensation, as it would have made the outcome below of no

compensation impossible. Any of these alternatives would have been more faithful to the dictates of the Takings Clause than to have awarded no compensation at all.

Exhaustive research fails to disclose a single reported case in which the Court of Federal Claims found a compensable taking of property, real or personal, but awarded no compensation. At the same time, an examination of the Court of Federal Claims dockets in 213 inverse condemnation cases involving the alleged taking of personal property dating back to 1987 reveals that in cases not settled by the government, there were only three (3) substantial awards of compensation, and one of those was reversed by the Federal Circuit. There were two (2) other cases in which awards were made, but they were *de minimis* ($5,599; $250). See spreadsheet of Court of Federal Claims dockets, App. E, 65-75. The data is alarming.

B. As applied by the lower courts, the Tucker Act is not sufficient provision for "reasonable, certain, and adequate" compensation

The law has been clear for over 100 years that an owner whose property is taken by the government must be afforded a statutory remedy ensuring "a reasonable, certain, and adequate provision for obtaining compensation before his occupancy is disturbed." Cherokee Nation, *supra* at 659. An inverse condemnation suit under the Tucker Act is supposed to be the vehicle that "guarantees an adequate remedy at law for any taking that might occur." Knick at 2175 (*quoting* Regional Rail Reorganization Act Cases, 419 U.S. 102, 107, 149 (1974) and *citing* Hurley v. Kincaid, 285 U.S. 95, 99, 105 (1932) for the proposition that a court may properly refuse to enjoin a governmental taking because "the Tucker Act provided

the plaintiff with a 'plain, adequate, and complete remedy at law'."). However, the outcome of this case glaringly illustrates that the Tucker Act remedy is neither "reasonable" nor "adequate", and definitely is not "certain". In this case the government committed a clear physical taking of private property without paying for it; the property owner pursued a Tucker Act suit; but the owner was awarded nothing, and is left with nothing but an enormous legal bill plus the government's effort to tax over $25,000 in costs against it. The Constitutional guarantee was entirely thwarted.

The Tucker Act contains no provisions safeguarding the constitutional mandate of just compensation because it was not designed for that particular purpose. Although by enacting the Tucker Act "Congress enabled property owners to obtain compensation for takings in federal court," as a substantive matter "the compensation remedy is required by the Takings Clause itself." Knick at 2176 (*citing* First English, *supra* at 316). As such, the Tucker Act itself includes no guidance to the Court of Federal Claims as to how it should administer inverse condemnation suits in a manner that ensures just compensation is necessarily paid.

The fallout from this jurisprudential void was most evident in the lower courts' treatment of the applicable burdens and standards of proof, which they misapplied so as to reach an unconstitutional result. In Fifth Amendment takings cases, the assignments of the burdens and standards of proof are especially important and must be carefully scrutinized, since "[i]llegitimate and

unconstitutional practi[c]es get their first footing in that way, namely by silent approaches and slight deviations from legal modes of procedure." Monongahela Navigation, *supra* at 325 (*quoting* Boyd v. U.S., 116 U.S. 616, 635 (1886). In Fifth Amendment cases, therefore, "[i]t is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*." Id.

Here, the courts below placed the burden of valuation solely on Gadsden. The government took full advantage of that, since the government either made no effort whatsoever to value the property, or alternatively the government did value the property, but concealed it. App. D, 64 [Tr.Tran. 1559] (trial court and DOJ acknowledging that government's expert "doesn't offer an independent evaluation of anything"); Tr.O., 100 ("The government's expert on damages, Steven Dowd, did not place an estimate on [recovery] costs..."). The government's strategy was very clearly to never pay anything at all, but instead to merely work to defeat Gadsden's evidence in an effort to take the property for free.

The lower courts' placement of the burden solely upon Gadsden unfortunately dovetailed perfectly with that strategy, and rewarded it. The trial court found that Gadsden owned an indeterminate quantity of metal scrap and metal-laden kish, and that the government had taken all of that property on June 4, 2008. The trial court did not conclude that the scrap and kish had no value. Quite to the contrary, the trial court explicitly found that a theoretical willing buyer "would have paid

something for the opportunity to retrieve the materials from the piles." Tr.O., 99. Indeed, the trial court noted that the government's contractor conducted a feasibility study concluding the "possibility of $50 million in recoverable materials." Id. Nonetheless, the trial court awarded no compensation for the physical taking of that property, solely because the trial court quarreled with the particulars of the valuation of Gadsden's expert, Gleason.

The Federal Circuit affirmed the trial court in every detail, rejecting Gadsden's plea that the trial court was "duty-bound to fashion an appropriate damage award." P.O., 1371. Key to that determination was the panel's formulation of the applicable burden and standard of proof. Citing scant authority and no pertinent decisions of the Court, the panel incantated that "once a taking has been established, it is the [property] owner who bears the burden of proving an actual loss has occurred." Id. (*quoting from* Otay Mesa Property, L.P. v. U.S., 779 F.3d 1315 at 1323 (Fed.Cir. 2015)). Further, relying on principles developed in government contracting cases, not Fifth Amendment takings cases, the panel asserted that "to carry its burden, the [property] owner must show actual damages 'with reasonable certain[t]y,' which 'requires more than a guess, but less than absolute exactness.'" Id. (*citing* Otay Mesa, *supra; quoting* Precision Pine, *supra*). On that basis, the panel concluded that "the trial court in a takings case is not obligated to fashion its own award when a plaintiff has not provided evidence sufficient to determine just compensation with reasonable certainty."

The lower courts' treatment of the burden and standard of proof do not reconcile with applicable Supreme Court authority. At the outset, neither the Supreme Court nor to Gadsden's knowledge either of the lower courts have ever expressly endorsed a decision awarding no compensation at all for a clear physical taking of private property, on the purported basis that the property owner's proofs of value failed. Beyond that, there is no Supreme Court case holding that in a Tucker Act suit following a taking of private property without payment, the burden of proof of value must ineluctably fall upon the property owner. To Gadsden's knowledge the only Fifth Amendment decision of this Court that addresses the proper placement of the burden of proof of value is U.S. ex rel. and for Use of Tenn. Valley Auth. v. Powelson, 319 U.S. 266 (1943), and that case involved the very distinct setting of an action for condemnation brought by the government under the Tennessee Valley Authority Act, 16 U.S.C. §831x, in which the government proffered that that the property was worth between $95,000 and $165,000. Id. at 270. By contrast, here, where the government simply violated the Takings Clause by taking property without any offer of payment and forced the property owner to "shoulder the burden" of instituting suit under the Tucker Act, the mandatory nature of the Takings Clause dictates that the burden of proof should have lay with the government. Since the government must presumably contend that it owes nothing because the property has no value at all, logic would dictate that the government should bear the burden of proving no value. Particularly where, as in

this case, the government took and sold the property for millions of dollars, the argument for placing the burden of proof upon the government grows much more compelling. Similarly, with regard to "avoided costs" that operate only to diminish the amount of compensation otherwise due, surely the government ought to bear the burden to prove that item. The only other conclusion is that the government simply elected to commit a clear violation of the Fifth Amendment, and got away with it. To that point, the compensation guaranteed by the Constitution should *never* be outright denied, no matter which party might bear the burden of proof.

As to the requirement of proof "with reasonable certainty" consisting of "more than a guess, but less than absolute exactness," the Federal Circuit has historically relied upon Precision Pine, *supra* for that proposition. P.O., 14 (*citing* Otay Mesa, *supra* at 1323 (*quoting* Precision Pine at 833)). However, Precision Pine was a government contract action rather than a Takings Clause case, and thus lacked the constitutional imperative to award just compensation. The rule may make sense in a contract matter. In a distinct takings setting where the trial court finds a blatant constitutional violation by way of a governmental taking with no offer of payment, a rule permitting the court to award nothing because the owner's valuation evidence falls below a standard of "reasonable certainty" cannot obtain. It would destroy the constitutional mandate of the Takings Clause and render it a nullity.

The imposition of a "reasonable certainty" standard to defeat any award of compensation at all directly conflicts with several Supreme Court cases, which

eschew any such requirement. In Kimball Laundry Co. v. U.S., 338 U.S. 1 (1949) the United States condemned a commercial laundry for military use during World War II. This Court held that "since land and buildings are *assumed to have transferable value*, when a claimant for just compensation for their taking proves he was their owner, that proof is ipso facto proof that he is entitled to some compensation". Id. at 20 (emphasis added). That holding certainly belies any requirement of "certainty" of the evidence before the constitutional imperative of compensation attaches. Likewise, in the seminal case of Miller, *supra*, although endorsing fair market value as the standard measure, this Court explicitly stated that when there is no readily ascertainable market, "the application of this [market value] concept involves at, at best, a *guess* by informed persons" Miller, 317 U.S. at 375 (emphasis added). Similarly, in Montana Ry. Co. v. Warren, 137 U.S. 348 (1890), this Court held that despite plainly speculative evidence as to the value of an unexplored silver mine, compensation had to be determined and paid by the condemnor. The Court admonished that "uncertain and speculative as it is, such prospect has a market value; and the absence of certainty is not a matter of which the [condemnor] can take advantage when it seeks to enforce a sale." Id. at 352-353. Montana Ry. has been relied upon by numerous courts for the proposition that a property owner whose property has been taken by the government is entitled to an award of compensation, even though the market value of the property is uncertain or speculative, if not ephemeral. See, e.g. U.S. v. 25.406 Acres of Land,

172 F.2d 990, 992 (4th Cir. 1949) ("Market value is nothing but a hypothetical concept."); West Chester Cnty. Park Com'n. v. U.S., 143 F.2d 688 (2d Cir. 1944); Eagle Lake Imp. Co. v. U.S., 141 F.2d 562 (5th Cir. 1944); Atlantic Coast Line R. Co. v. U.S., 132 F.2d 959 (5th Cir. 1943). Indeed, former Chief Judge Smith of the Court of Federal Claims recognized the inherent vagaries of proof of value in determining the market value of unmined coal reserves:

> There may be some uncertainty in any estimate of Whitney Coal Reserves, but that should not prevent this court from valuing plaintiffs' coal. There is a market for it and the evidence shows that a substantial amount lies beneath the surface. It certainly would undercut the protection of the Fifth Amendment if the Government could rely on the consequence of its taking a property to claim that compensation is speculative. Such an approach would turn the Fifth Amendment on its head.

Whitney Benefits, Inc. v. U.S., 18 Cl. Ct. 394, 410 (1989). Although the Federal Circuit panel in the matter *sub judice* cavalierly dismissed Whitney Benefits as "not binding authority",[15] that opinion reflects a thoughtful effort to determine the fair value of property which is difficult to ascertain, and it is considerably more faithful to the Takings Clause than the decisions below.

The predecessor to the Federal Circuit appears to have itself concluded, correctly so, that fixing the value of property is at times so ephemeral a concept that it is inherently at odds with a legal construct like "reasonable certainty". Addressing the "elusive phantom of 'value'" in Cities Service Gas Co. v. U.S., 580 F.2d 433, 597 (Ct. Cl. 1978), the Court of Claims characterized valuation of property

---

[15] P.O., 1371.

as having within it "baffling elements of speculation and surmise," and posited that "one guess may be better than another guess, since not all guesses have in them the same element of intelligence." Id. Most poignantly, the court concluded: "[T]he realization that a considerable amount of conjecture is involved should not paralyze the function of deciding, but it should induce humility. Dogmatism is clearly out of order in a modern valuation case." Id. The idea that value of property whose value is obscure must be proved to a degree of "reasonable certainty" is simply untenable.

At bottom, the Supreme Court decisions under the Takings Clause make very clear that "just compensation" must be awarded for a physical taking of private property, even though the proof of value may be uncertain, speculative, and even conjectural. The standard of proof to a "reasonable certainty" applied in this case is incongruent with these decisions. A rule that permits the Court of Federal Claims to award no compensation at all whenever it questions aspects of the property owner's expert's valuation expert and concludes it is something less than "reasonably certain" would "undercut the protections of the Fifth Amendment" and "turn the [Takings Clause] on its head." Whitney Benefits, *supra* at 410.

C. 42 U.S.C. §4651 ("Uniform policy on real property acquisition practices") and Rule 71.1(j), F.R.C.P. do provide a reliable mechanism for "reasonable, certain, and adequate" compensation, but they inexplicably embrace only takings of real property and not personal property

The Takings Clause's assurance of "just compensation," combined with the unconstitutional outcome in this case, underscore the importance of properly fixing the burden of proof in a Tucker Act suit for just compensation, especially one

premised upon a governmental taking with zero offer of compensation. The Tucker Act does not textually assign the burden of proof, nor has this Court addressed the issue. The general rule in condemnation cases commenced by the government is that the burden of proof of value falls on the property owner. See Powelson, *supra;* see also Rolf v. Hazen, 93 F.2d 68, 70 (D.C. App. 1937); Welch et ux. v. Tenn. Valley Auth., 108 F.2d 95, 101 (6th Cir. 1939). But, that assumes an applicable statutory framework with adequate safeguards to assure a reasonable, certain and adequate award of just compensation, including initial burdens upon the government to value the property it takes, and make an initial offer. Cherokee Nation requires as much. For example, 42 U.S.C. §4651 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, entitled "Uniform policy on real property acquisition practices", requires several important steps that the government must follow in connection with taking real property. First, the government must have the property appraised. Second, the government must make an offer of compensation in an amount that is at least equal to the appraised value. Third, barring an acceptance of the appraised value, the government must negotiate with the owner. Fourth, "No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 3114(a) to (d) of Title 40, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in

the condemnation proceeding for such property." Id.; Rule 71.1(j), F.R.C.P. These requirements create at least a floor for the fair value of the property. Only if the property owner elects to contest the government's estimate of value does the owner bear the burden of proving that the government's proffered amount is not "just."

This Court has made clear that takings of real property versus personal property stand on equal footing, equally entitle the owner to just compensation, and equally place upon the government a "categorical duty" to pay just compensation. Horne, *supra*. There is therefore no reason why an owner whose real property is taken is guaranteed "certain" compensation whereas, as the outcome in the matter *sub judice* illustrates, an owner whose personal property is taken has no guarantee and may receive no compensation at all. This Court should fill the interstice in existing takings law to clarify the relative burdens of proof such that another unconstitutional outcome will never recur.

D. The outcome of this case incentivizes and encourages the government to violate the Takings Clause

The result below dramatically incentivizes the government to ignore the Constitution, brazenly take private property with no payment in violation of the law, and intimidate or simply litigate the property owner into submission utilizing its and the DOJ's awesome wealth, power, legal experience, and tenacity. The government determined to take Gadsden's property for free by running roughshod over Gadsden through ferocious litigation -- and the government succeeded. That obviously vitiates the private property protections that are supposed to be

safeguarded by the Takings Clause, and encourages future constitutional violations, especially in cases involving the taking of personal property whose value is inherently difficult to ascertain. The result here not only excuses the government's clear constitutional violation, but it allows the government to retain the benefit of ill-gotten gain, to-wit, over $13.5 million dollars in proceeds from the sale of Gadsden's property unlawfully taken without payment. The outcome takes what one member of this Court has opprobriously termed the "sue me" approach, which he noted is constitutionally infirm to begin with, Knick, *supra* at 2180, and converts it into a "*so what*, sue me" tactic. This is not and cannot be what the Constitution envisions. It is neither "reasonable", nor "adequate".

In fact, irrespective of the outcome below and regardless of whether Gadsden did or did not receive just compensation, this case illuminates an improper economic inducement from the very outset for the government to trammel the property rights and interests of citizens in violation of the Fifth Amendment and in contravention of the aim of the Tucker Act to do prompt justice by citizens. The government took Gadsden's property in the first place because it was economically attractive. But in addition, the government did so without any offer of payment presumably because it was safe in the knowledge that the enormous cost of litigating against the government constitutes such a vast deterrent to an owner pursuing its constitutionally guaranteed right to just compensation that most owners will elect not to "shoulder the burden". The sheer prospect of having to battle the

government's scorched earth defense for over a decade, as Gadsden did here, constitutes a virtually insuperable obstacle for almost any rational citizen to undertake the pursuit in the first place. Even if Gadsden had prevailed, it would have had to expend a small fortune to do so, to say nothing of the distraction from its business of a decade of litigation. This constitutes an enormous impediment to citizens' willingness to assert their constitutional rights from the very beginning. Most citizens would conclude that they had no meaningful choice but to simply forfeit their rights and seek no redress.

That is especially the case where, unlike here, the government takes property that is not overwhelmingly valuable. A rational cost-benefit analysis would almost always militate against undertaking the arduous and expensive task of suing the government to secure its rights. The system is currently set up to encourage agency overreach, not reign it in; and it discourages disposed property owners from pursuing just compensation.

The Chief Judge of the Court of Federal Claims, the Honorable Margaret M. Sweeney, has poignantly stated:

> Indeed, Congress—which created the Court of Federal Claims pursuant to its authority under Article I of the United States Constitution—has recognized the importance of providing citizens with the opportunity to seek, and obtain, redress from the government. It has authorized the court to hear cases throughout the United States and its territories and possessions, with the goal of allowing citizens to appear before the court with as little inconvenience and expense as possible.[16]

---

[16] https://www.uscfc.uscourts.gov/node/3055; see also U.S. v. Mitchell, 463 U.S. 206, 213 (1983).

The government, however, has every incentive to willfully flout those laudable goals. This Court should intervene to ensure that they are served instead, such that citizens have meaningful, "reasonable", and "adequate" recourse when their private property rights are wantonly abused.

II. The Federal Circuit Decision Vacating The Trial Court's Award Of Compensation For Slag Committed Error Of Constitutional Proportions In Invading The Trial Court's Well-Settled Fact-Finding Function Premised Upon A Gross Misapprehension Of Fundamental Takings Law To The Detriment Of Property Rights Protected By The Fifth Amendment

The trial court correctly determined that Gadsden purchased 420,000 cubic yards of slag, removed 15,000 cubic yards, and 405,000 cubic yards remained. Mistakenly asserting that Gadsden only sought compensation for 92,500 cubic yards of slag that EPA used to clean up a lagoon, the trial court awarded Gadsden $755,494 for the taking of only those 92,500 cubic yards. The Federal Circuit vacated that award on the basis that perhaps the particular 92,500 cubic yards of slag that EPA used did not belong to Gadsden, but that Gadsden's slag was instead located somewhere within the "tons of slag that [presently] remain on the property." P.O., 1369. That holding overlooked the trial court's finding that all of Gadsden's slag was taken no later than June 4, 2008, when "EPA took all of plaintiff's rights to what it had purchased" by EPA's site manager informing Gadsden's recycler that "GIP would not be permitted to perform its own recovery operation." Tr.O., 88, 96. The trial court specifically found:

> [T]he date of asserted taking for kish, scrap, and slag is June 4, 2008. This is the date on which Plaintiff asserts EPA precluded it from

> beginning its own recovery operation. We agree that June 4, 2008, can be used as the date of taking for scrap and kish, because Mr. Casey legitimately concluded at that time that GIP would be barred from beginning its own recycling operation. We note, however, that by June 4, 2008, the slag for which Plaintiff seeks compensation had already been taken by EPA, although Plaintiff may have chosen to propose an earlier date, it is therefore also correct to say the taking occurred no later than June 4, 2008.

Tr.O., 96. The panel mistakenly stated that "even after the EPA's remediation project sufficient slag remained...for [Gadsden] to recover its full allotment". P.O., 1369. That statement is wrong, but it is also inconsequential. That refers to a time period of five (5) years after the taking! As this Court has made clear, "A bank robber might give the loot back, but he still robbed the bank." Knick at 2172. The taking of Gadsden's 405,000 cubic yards of slag was effected on June 4, 2008. Gadsden was entitled to just compensation for its slag, clearly including the 92,500 cubic yards for which the trial court made an award.

In order to reach its erroneous result the Federal Circuit also trampled another well-settled legal principle, specifically the substantial deference to which the trial court's fact findings were entitled under Rule 52(a), F.R.C.P. [17] As this Court has repeatedly recognized, the Rule expressly dictates that the trial court's factual findings are entitled to be credited unless "clearly erroneous". Bose Corp. v. Consumers Union of U.S. Inc., 466 U.S. 465, 498 (1984) (*citing* Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844, 855–856 (1982); Pullman–Standard v. Swint, 456 U.S. 273, 287 (1982); U.S. v. U.S. Gypsum Co., 333 U.S. 364, 394–396

[17] Court of Federal Claims Rule 52(a) is identical to Rule 52(a), F.R.C.P.

(1948)); Hendler v. U.S., 175 F.3d 1374, 1378 (Fed. Cir. 1999). The Court of Appeals did not respect that standard. The trial court correctly found that in fact there is no reclaimable slag on-site, since the EPA's recovery operation has "permanently embalmed" any slag remaining on the premises. Tr.O., 96. There was ample record support for that finding, including the trial court's own observations during his visit to the site. App. D, 54-55 [Tr.Trans. 209-210], App. D, 56 [Tr.Trans. 568], App. D, 60-61 [Tr.Trans. 1092-1093]. The appeals court ignored that and made an opposite fact-finding, on the basis that the trial court "did not cite any evidence to support its finding that the remaining material was "embalm[ed] permanently." P.O., 1369. There is of course no requirement that the trial court cite each item of record support for its findings. Instead the standard is that the trial court's findings are entitled to deference unless clearly erroneous. Tellingly, as purported support for its fact-finding that recoverable slag remained on-site, the Federal Circuit cited the trial judge's observation during his site visit that "what's left seems to be a lot of ferrous kind of material that's magnetic". P.O., 1370 (*citing* Tr. 1092:24-1093:4, Tr. 1170:24-1173:15). The trial court correctly defined slag, however, as "a *non-ferrous* material that separates during smelting". Tr.O., 92 (emphasis added). The very evidence cited by the Federal Circuit therefore does not support its conclusion at all.

As the Bose court discussed, an appeals court is permitted to conduct a *de novo* review of the entire record for the purpose of independently determining facts that are critical to protecting First Amendment rights to free speech. Bose at 514

and generally. And, this Court acknowledges that private property rights under the Takings Clause stand on equal footing with all other constitutional rights guaranteed by the Bill of Rights. Knick, *supra* at 2169-2170, 2173. However, the Federal Circuit confounded the holding of Bose and got it precisely backwards. Specifically, the Federal Circuit disturbed a well-supported trial court fact finding in order to vitiate Gadsden's constitutional right to just compensation for slag, not protect it. And, as discussed above, the appeals court did so by making findings that were totally at odds with the evidence, and premised upon a fundamental misunderstanding of what the taking consisted of, and in turn when it occurred. Given that the Federal Circuit is exclusively charged with administering appeals of takings cases involving property in excess of $10,000, this Court should intervene to provide guidance as to that court's proper role and function vis-à-vis safeguarding rather than undermining rights protected by the Fifth Amendment.

CONCLUSION

This should have been a straightforward case. Gadsden purchased property by way of a Bill of Sale from a court-approved trustee. The government took the property without paying for it. The only question was what the value of the property was worth on the day of the taking. The government successfully complicated the issues such that a simple case became an eleven-year odyssey. At the end of the day, confronted with "uncertainty" as to value, the courts below threw up their hands and awarded nothing. This Court should accept this case in order to

provide guidance to the lower courts in administering inverse condemnation suits under the Tucker Act so as to afford a "reasonable, certain, and adequate" avenue for an owner to obtain compensation, eliminate a perilous precedent, and check governmental interference with sacred property rights upon which this nation was founded.

Respectfully submitted,

Avrum Levicoff, Esquire
Counsel of Record
Edward I. Levicoff, Esquire
The Levicoff Law Firm, P.C.
4 PPG Place, Suite 200
Pittsburgh, PA 15222
(412) 434-5200
ALevicoff@Levicofflaw.com
ELevicoff@Levicofflaw.com

Counsel for Petitioner