

*Special instructions given at
the end of character evidence*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

D. W. Bush
Judge

COURT'S INSTRUCTIONS TO THE JURY:

THE JURY IS INSTRUCTED THAT THIS IS A CIVIL ACTION. IN SAME A JURY ORDINARILY IS NOT PERMITTED TO HEAR EVIDENCE REGARDING THE CHARACTER AND REPUTATION OF A WITNESS. THIS RULE, HOWEVER, IS SUBJECT TO CERTAIN EXCEPTIONS AND LIMITATIONS. WHEN A PARTY CHOOSES TO TESTIFY, HIS CREDIBILITY IS SUBJECT TO THE SAME CONSIDERATION AS ANY OTHER WITNESS. WHERE THE CHARACTER OF A WITNESS FOR TRUTHFULNESS HAS BEEN OTHERWISE ATTACKED THEN EVIDENCE OF THE WITNESS'S CHARACTER FOR TRUTHFULNESS MAY BE HEARD BY THE JURY TO ASSIST IT IN DECIDING THE CREDIBILITY OF SUCH WITNESS.

BY REASON OF THE EVIDENCE, THE CREDIBILITY OF THE PLAINTIFF AND WITNESS, JOE D. WEDDINGTON, IS IN ISSUE; THEREFORE, THE JURY WAS PERMITTED TO HEAR THIS CHARACTER EVIDENCE.

THE JURY IS FURTHER INSTRUCTED THAT THIS EVIDENCE WAS NOT ADMITTED TO PROVE AN ACT OR A FAILURE TO ACT BUT FOR THE LIMITED PURPOSE OF ASSISTING THE JURY IN DECIDING THE ISSUE OF CREDIBILITY, OF THE WITNESS, IF IN THE DISCRETION OF THE JURY IT DOES SO ASSIST.

Special admonition given
prior to final statement of the parties.
D. W. [unclear]
Judge

THE JURY IS INSTRUCTED THAT THE CASE OF UNITED STATES
VERSUS CLIFFORD BEVINS IS NO LONGER BEFORE THE JURY.

THE JURY IS GIVEN THIS ADMONITION BECAUSE IT WILL NOT
HEAR ANY FINAL STATEMENT ON BEHALF OF CLIFFORD BEVINS.

A MORE IN DEPTH STATEMENT IS CONTAINED IN THE COURT'S
INSTRUCTION WHICH WILL BE GIVEN TO THE JURY UPON THE CONCLUSION
OF THE FINAL STATEMENT OF THE CASE OF THE PARTIES.

Friday, Dec. 2, 1983

Plaintiff made Motion for Directed Verdict which you overruled.

Δ United States made no motion for a directed verdict \rightarrow the Court, on its own motion, entered judgment against the

Third Party Dept. Clifford D. Bevins ^{solely for}

made motion that Judgment not be entered against him which you also overruled

① Π moved for directed verdict \rightarrow overruled

② Δ did not move for directed verdict but Court on its own motion entered a directed verdict ~~and~~ and judgment vs. the 3rd party defendant, Clifford Bevins,

③ Third party Δ objected.

Bevens has admitted he ~~was~~
was a responsible person
He has admitted that he caused
to be paid over money to creditors
in preference to the United States

The only possible ~~excuse~~ ~~where~~
thing to make a jury issue is a
phrase - to which the United States
is objecting - ~~and that is~~ - this phrase is
"intentionally done without reasonable
Cause"

What possible evidence of reasonable
Cause is there sufficient to make
a jury issue as to Clifford Bevins?

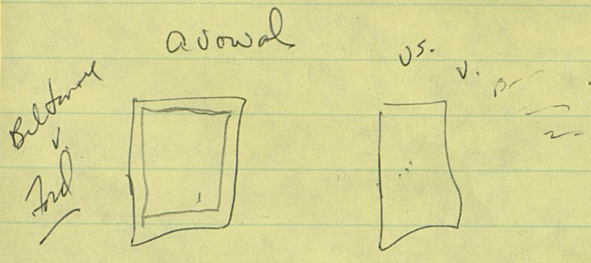
Mr. Bevins excuse ~~is~~ was
the Corp. Couldn't continue doing
business and pay the taxes.

Frankly, these Corporations did
business - Several quarters - - -
on money of the United States;
the Bank of Josephine and money
which it factured, ~~and was unable~~
~~to make a go of it~~

yet it was unable to make
a go of it.

but this isn't a legal excuse.

Mr. Wedding, on the other hand
contends he had no knowledge
and did not have any part in
the writing of checks and paying
over of money.



not relevant

Legal Duty vs: Understanding

Whether there was
an obligation in
the Beltmore v Ford
is immaterial
if it was contrary to law
it is illegal
if it is in compliance w/ law

Did you do such &
Such -

Did Beltmore or Ford agree to change requirement
of law that Beltmore had to pay its withholding
taxes on its employees - no

Belt. sell Ford to Ford
agreement to pay all taxes and charges
Ford didn't pay - Beltmore
Filed action -
an action
Beltmore asked if it had
paid taxes & costs on cars sold
to Ford -
Said "yes" -

Why did he say "yes"
doesn't know -
didn't

do not touch a legal or factual
matter.

~~Hearing on all pending motions~~

~~the~~

Motions for Summary Judgment
are denied:

5. Yes

7-10

8-10

9-10

10-10

11-10
12-10
13-10
14-10
15-10
16-10
17-10
18-10
19-10
20-10
21-10
22-10
23-10
24-10
25-10
26-10
27-10
28-10
29-10

Joe Weddington

Sold Mr. Beavis a home, he was a
federal mine inspector.

They went into business together - "boon"
was going on -
bribe.

Murray, Beavis, Weddington
Clifford Latta & Company
Maryland Fuel - dividend.
Hooper - Beavis

Royal Coal
Stratford
Baltimore

5 yrs lease on tyzelle, given by Frances
and Hooper to south ~~the~~ the ~~the~~
feeling ~~over~~ of Weddington
and Beavis over Mary Fuel.

they decided to go into business
and Clifford Latta put them into
possession of Baltimore Coal.

1977 - used parcels from River tyzelle
& mortgage to get funds for
Royal and Baltimore.

Went from Latta's office
to Joe Weddington's office 30-45 days
then Beavis was to get other office

while office in Joe's.

Clifford and Sarah signed checks

Baltimore Offices moved to
South ~~Sherwood~~ Drive where Sherrill Shephard
had been working.

Sarah Jones did not sign any more
checks after offices moved to ~~Lake Wood~~
South Lake
Drive

Baltimore - Lawrence Co
Royal - over looking David

Beveris did everything concerning
Baltimore and Royal.

Beveris }
Weddington } Authorized to sign
Shephard } checks and tax

Michael Dixon had authority to sign checks??
had rubber stamps of Beveris

Pay to Day operations of Corp.
Sherrill Shephard
Clifford Blewitt

Rec'd
2:50
2:18-

Ford Energy - Sub Contractor w/ashland
oil.
Beveris negotiated terms
of Agreement between Ford - Baltimore - etc.

Joe Weddington signed notes
of Ford for dis-counting at Bank

Problems w/ Ford - late summer 1978
Bad check - 30,000 + tax
over \$500,000 -
never received payment

after 2nd problem - one check bounced
Discounted other Coal - Commenced proceeding
to collect -

~~one~~
he believed Corp would be able to pay
debts thru factored Coal - He had to
sign notes..

In Dec 78 attempted to find
new partner

Became aware of taxes 29 Jan 1979.
No money in Corp at this time
problem w/ Ford later summer
of 1978

Ex 3 delivered to him 29 Jan 1979
1st Knowledge of Any Amounts being
due as taxes

Records removed from South Lake
to Garage at David filling station

May 1979 he was
met by Steve Sharfman who wanted
to see records - He gave him
Key and told him to go to garage
and look the records over

Gave interviews - Corrected a
prior inconsistent statement
Never gave any direction to pay debts

borrowed money on motor vehicle - 4,500⁰⁰
He (widdings) pd the loan 78 personally.

ITC $\frac{5}{4}$

Street and Coal Co. & Elkhorn

21 Nov 1978.

~~signed by~~

Man Sow.

Street Jan 79.

paid 10,000 to Employees of Street
out of his own personal funds - He was
unaware of any withholding taxes being
due.

This was Quarter ending
March 1979. Days and days of
business Jan 1979.

Recess
3:40
4:00

Nov. 25, 1978 meeting at Baltimore

Ronnie Newsome

Mr. Ellis

Bevins

Wedding

ms. Shykel refused to give
him records - said he would have
to get authorization from Bevins next
door - said she had put them in
report which was given to Bevins

Cross-Kearns

Prior to this time knew that w/ Holder of
of taxes had to be done by Corp and
to be pd to Government.

A Responsible person had to
do this on behalf of Corp.

Relationship w/ Blooms broke down
when he voted against him on \$40,000 dividend.

C/A account formed after many
fuel difficulty.

interest on Doc's Check terminal was
used to buy equipment for Baltimore.

4 borrowed million

Collateral - note & mortgage of Real property

bought equipment from Mc Graw and
Justus and Royal Coal Company

240,000

130,000 debt.

} - Royal Coal Co. on
hill overlooking Daves
Flord - Mc Graw
County line

"Vast business enterprises."

on Bd of Directors of Baltimore

Had Authority to sign checks

" " " sign Corp documents

Cont. D - W.E. #1

Corp. Am acct. Baltimore
13th Hill Bronx

Authority to Sign Checks for Royal
STRATFORD

He and Beorns were only stockholders
and officers of 3 Corporations.

Not involved in hiring of Sherrill
Shepherd.

Did not instruct Beorns to hire
(nephew) Ernie Hall.

- △ 2: Assignment - Beorns + Wellington - 1st Natl Bank
- △ 3: Similar Assign. - Royal
- △ 4: " - Baltimore
- △ 5: STRATFORD

*** money went into C/O and
then into Corporations ***

- △ Ex 60 = Guaranty Agreement ^{guaranteed by line of} Credit ^{130,000} Baltimore
- △ Ex 70 = Guaranty Agreement

only visited Baltimore mine once
at Tappan (Stratford) maybe once a week
during visits inquired about operations +
business.

△ Ex 8. Bank Statements - Baltimore 3/78-12/78

Saturday after Thanks giving became
aware of w/ Red Taxes - Sherrill Shepherd

△9 - Form 941 - Federal Tax Return
did not see this

△10 - Letter - 1st Natl Bank

at times persons would not extend
credit to Baltimore - therefore, he
personally purchased such goods and
services when he was personally liable
he made payments.

On one occasion he furnish

Baltimore	}	78		
led		April	→	\$ 33,000.00
Deposits		May	—	156,000.00
from January		June	—	225,564.00
(capital)		July	—	45,343.00
Re-direct		Aug	—	479,146.00
		Baltimore		
		By May 78,		20,840.86 - O.D.
		End		34,432.00 - O.D.
		14,000 in debit		

No knowledge to whom or
why these checks were issued.

8 June 78 - 34,422.51 - O.D.
30 June 78 - 37,785.61 - O.D.

no knowledge of these
checks

July 78

38,765.08 O.D.
47,964.61 O.D.

August 78

38,765.81 O.D.
45,343.00 O.D.

Sept 78

No activity throughout
deposits or withdrawals

other than

Assignments were forthcoming

Neither he nor Bernard received
any of this money it went directly to
Bank

Although he had authority to sign
checks (Pg 3) he doesn't recall
signing any checks nor authorizing
any to be issued & signed.

Address:

this is re-direct and

No duties other than endorsing notes
(if he furnished money did he have
conspicuous duty to see that money was
properly spent)

I.R.A. Smith

Asheville, NC
C.P.A.

Went to Princeton - office of
Clifford Beavis - Sherrill Shepherd -
to set up records of Biltmore Coal
Co.

Jan 1977.

Visited Office 4-5 times
Saw Mrs. Shepherd - maybe Beavis

Jan, 1978

Meeting w/ Miller, Beavis and
Wedding

purpose of meeting - Miller to
put together and enterprise
projection of Assets and Liabilities
Wedding - the 1st hr. (w. dinner 2 days)

last 77 - pre 77 he had
telephone conversation w/ Mrs
Shepherd

Cross -

Ronnie Newsome

STRA + food ^{sup.}

June 78

kind by Clifford Bennis

did not know Joe Widdington

did not know at time he had interest
in staffed

Bennis had boss and only one
he reported to -

Finished working 3 Feb 1981

Went to Island Park after 81

Close 2 - in -

Chief

U S

Sherrill Shepherd
Cheryl

Aug 77,

Interviewed for work

for Baltimore, ~~Royal, Stafford~~

by Joe Weddington + Clifford Bevins

discussed wages and limit
Oct 77.

Bevins President
Weddington V/ President

Both Weddington + Bevins
were their bosses and both went
over bills

In April 78 - w/ bill taxes
not paid due because no
money in bank

Brought Taxes to Bevins
attention every quarterly
what was 941 liability and
what was paid;

no deposits made
Royal - Stafford -

last quarter 78
1st qtr 79

2⁵⁰

1st time - 1st payroll

2nd time - Beverly in Hospital

Wedding for went over Telephone call
Told him that Payroll Taxes had not been
paid

gave him sum or amount
of Taxes due.

He said we would get
to it when we could

In July 78
Showed Mr. Wedding for 941

He told me to pay Wayne
Supply.

Ex 9

Later - Approximately Oct 78
Showed Wedding for 944 and discussed
liability

asked her to pay Wayne Supply

1st

Oct 77 - list of bills
joint checking of 7 bills

2nd

Cliffed in Hospital

78 } 3rd

4th

Called on telephone. o.k. and payment of bills of persons in
his office.

Financial sheets for each ship
for the Quarters in controversy were
prepared by witness - Shepherd - which
reflected that taxes were due and owing
and were given to both Mr.
Wedderburn & Bevins.

Called Joe Wedderburn
latter part of 78
met him at Bronx.

(Something about displaying a check but
didn't deposit it.)

C	△ Ex 11.	941	-12/31/78	- Beltrac
D	Ex 12.	941	-12/31/78	- Royal
F	13.	941	-12/31/78	- Stratford

14.

15.

18.

17.

Cross - Baird

Bevins in office on regular basis
more than 50% of the time

Wayne Supply
Central Supply

Told Mr. Smith - twice that
Taxes had not been paid.

Spring 778 - Told Joe P.
Wedder for Taxes had not been
paid

W Ex. 6 ~~6/11/83~~
~~1/11/84~~ Check book for Baltimore
Coal - 8/31/77 - 1/11/78.

Pat Newsome

Receptionist & Secretary
for Belmont, Royal and Stratford
She - Mrs Shughart - Bevin.

Joe Weddington came in to office
2 or 3 times
1st time came to see telephone
Bill took it into ~~the~~ Cheryl's
office - overheard no conversation,
present when he came in twice
after that

never heard Cheryl deny
Mr Weddington's request.

Joe Weddington was one of
her bosses.

She typed the 941st after
prepared by Cheryl.

She delivered one of them
to Weddington's office Jan 19 79.

She delivered bills, etc -
to Weddington's office

Clifford D. Beavis
May 1977.

1st Clifford Mining Co.

He got out in 1974

WB + H - Partnership - took losses - Depletion Partnership
May Fuel - operating Co
Doe's Creek Terminal Co
C. J. Company - Depletion Partnership
Baltimore - To mine coal in Lawrence Co

purchased equipment - stock + assets of
Royal Mining Co
equipment from Grayson motor sales
all of this was from McGuire family.

Beavis -
Harold + Fred

Wellington
Some Authority - Financial.

He consulted wife on everything.

Stratford - Triple operation

Came into existence after Baltimore
Coal or went under.

discussed affairs of Corp every day
until Sept. 1978

Knew of law
Became aware of Tax problems in
2nd quarter 1978.

He was told this by Cheryl Shephard
Authorized payroll each week
Knowing it was due, was told about
taxes each week

Gavin 941^s in Evidence

Ex - # 9

Ex - # 11

Ex - # 12

Knew amounts had not been
paid and said for wedding. Knew this

Payment made on End Order to
Pinnacle Nat'l Bank - 2nd quarter

He & wedding met w/ W & C -
payments on End-Order

Stratford Westinghouse's financial cost crusher
payment made by wedding - over \$19,070

Rocking - Rucker - Baltimore
finally pd by wedding

Cross -

Bill v Ford
Aug 78

When he found taxes weren't being
pd in 1978

didn't tell Joe Wellington that
taxes were due until Aug 78.

April, May, June.

Did he discuss w/ Joe before

August.

~~Nov. 78~~ -

Rebuttal

Rule
51

Defendant's
EXHIBIT AND WITNESS LIST

Joe D. Weddington vs. U.S. <small>PLAINTIFF'S ATTORNEY</small>	VS. Clifford G. Bevins <small>DEFENDANT'S ATTORNEY</small>	DISTRICT COURT E.D. K.Y. - Pikeville <small>DOCKET NUMBER</small> Civil No. 82-244 <small>TRIAL DATE(S)</small> COURTROOM DEPUTY
Charles J. Baird <small>PRESIDING JUDGE</small>	Michael J. Kearns Bevins, Pro Se <small>COURT REPORTER</small>	

PLF NO.	DEF. NO.	DATE OFFERED	Marked	Admitted	DESCRIPTION OF EXHIBITS* AND WITNESSES
	X				Bank signature card - The Bank Josephine - Acct. #500-184-7 - Biltmore Coal Corp.
	Y				Bank statements - Bank Josephine - Account #500-184-7 - Biltmore Coal Corp. - 4/78 - 7/78
	Z				Biltmore Coal Corp. - Daily Bank Reconciliation - Payroll Account
	A-1	12-1-83	2		Assignment dated 1/17/78 - Biltmore Coal
	A-2				Guaranty Agreement - Biltmore Coal - 1/18/78
	A-3	12-1-83	3		Assignment dated 3/8/78 - Royal Coal
	A-4	12-1-83	4		Assignment dated 5/17/78 - Biltmore Coal
	A-5				Guaranty Agreement - Biltmore Coal - 5/78
	A-6	12-1-83	5		Assignment dated 9/78 - Stratford Coal
	A-7				8 Statements Re: Coal shipped - Biltmore Coal
	A-8				Financing statement - Royal Coal - signed 3/17/78
	A-9				Letter from First National Bank to Joe Weddington dated 12/14/78
	A-10				Stratford Coal Corp. - daily bank reconciliation - (Expenses)
	A-11				Stratford Coal Corp. - daily bank reconciliation - (Payroll)
	A-12				Royal Coal Corp. - daily bank reconciliation - (Expenses)
	A-13				Royal Coal Corp. - daily bank reconciliation - (Payroll)
	A-14				Assignment of Rights and Coveyance of Interest - 1/19/79
	A-15				Operating Contract - 1/19/79
	A-16				Bill of Sale - 1/19/79
	A-17				Security Agreement - The Bank Josephine
	A-18				Continuing Guaranty Agreement - Biltmore Coal - 12/30/77
	A-19				Credit application and loan record - The Bank Josephine - Acct. #04015
	A-20				Loan record - The Bank Josephine - shows payment of note by Joe Weddington - 12/14/78

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

No objections by Pelf

Michael J. Kearns

Defendant's
EXHIBIT AND WITNESS LIST

Joe D. Weddington vs. U.S.		vs. Clifford G. Bevins		DISTRICT COURT	
PLAINTIFF'S ATTORNEY		DEFENDANT'S ATTORNEY		E.D. K.Y. - Pikeville	
Charles J. Baird		Michael J. Kearns		DOCKET NUMBER	
PRESIDING JUDGE		Bevins, Pro Se		Civil No. 82-244	
		COURT REPORTER		TRIAL DATE(S)	
				COURTROOM DEPUTY	
PLF. NO.	DEF. NO.	DATE OFFERED	Marked	Admitted	DESCRIPTION OF EXHIBITS* AND WITNESSES
	A				Form 941 - Biltmore Coal Corp. - Quarter ending 6/30/78
	B				Form 941 - Biltmore Coal Corp. - Quarter ending 9/30/78
	C				Form 941 - Biltmore Coal Corp. - Quarter ending 12/31/78
	D				Form 941 - Royal Coal Corp. - Quarter ending 12/ 31/78
	E				Form 941 - Royal Coal Corp. - Quarter ending 3/31/79
	F				Form 941 - Stratford Coal Corp. - Quarter ending 12/31/78
	G				Form 941 - Stratford Coal Corp. - Quarter ending 3/31/79
	H				Form 4340 - Certificate of Assessments and Payments - Joe D. Weddington (Biltmore Coal Corp.)
	I				Form 4340 - Certificate of Assessments and Payments - Joe D. Weddington (Royal Coal Corp.)
	J				Form 4340 - Certificate of Assessments and Payments - Joe D. Weddington (Stratford Coal Corp.)
	K				Form 4340 - Certificate of Assessments and Payments - Clifford G. Bevins (Biltmore Coal Corp.)
	L				Form 4340 - Certificate of Assessments and Payments - Clifford G. Bevins (Royal Coal Corp.)
	M				Form 4340 - Certificate of Assessments and Payments - Clifford G. Bevins (Stratford Coal Corp.)
	N				Transcript of Account - Biltmore Coal Corp.
	O				Transcript of Account - Royal Coal Corp.
	P				Transcript of Account - Stratford Coal Corp.
	Q				Form 4180 - Report of Interview - Joe D. Weddington
	R				Biltmore Coal - listing of accounts payable - 1/19/79
	S				Royal Coal Corp. - listing of accounts payable - 1/19/79
	T				Stratford Coal Corp. - listing of accounts payable - 1/19/79
	U				"Recap of accounts payable & payroll taxes" - 1/19/79
	V				Bank signature card - First National Bank - Acct #60-2395-9-01 (Biltmore Coal Corp.)
	W				Bank statements - First National Bank - Acct. #60-2395-9-00 Biltmore Coal - 3/78 - 12/78

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*No Objections by Plff.
as to Foundation*

Plaintiff's
EXHIBIT AND WITNESS LIST

JOE WEDDINGTON		vs. UNITED STATES OF AMERICA		DISTRICT COURT Eastern District of Kentucky at Pikeville	
PLAINTIFF'S ATTORNEY Charles J. Baird		DEFENDANT'S ATTORNEY Michael J. Kearns		DOCKET NUMBER 82-244	
PRESIDING JUDGE Hon. Wix Unthank		COURT REPORTER		TRIAL DATE(S) 11-30-83	
PLF. NO.		DEF. NO.		DATE OFFERED	
				Marked	
				Admitted	
DESCRIPTION OF EXHIBITS* AND WITNESSES					
X					Report of Interview with Clifford Bevins dated 7/30/79
Y					Letter dated 8/29/78 from Cheryl Shepherd to Gerald Hughes
Z					Form 941 - Biltmore dated 1/31/79 signed by Clifford Bevins
AA					Form 941 - Biltmore undated signed by Clifford Bevins
BB					Form 941 Biltmore dated 1/31/79 signed by Clifford Bevins
CC					Mortgage dated 6/18/77 between Joe D. Weddington, et ux and The Bank of Josephine <i>specimen - only bank would know of this</i>
DD					Assignment of Rights and Conveyance of Interest dated 1/19/79 <i>Portman</i> <i>11/21/83</i> <i>3:15</i> <i>11/30/83</i>
EE					Monthly bank statements from First National Bank of Prestonsburg (First Commonwealth Bank) on Biltmore's checking account
FF-KK					Six (6) books of carbon copies of checks on Biltmore Coal Corporation and Stratford Coal Corporation Agreement dated 11/21/78 between Stratford and Superior Elkhorn Mining Co., Inc.
LL					Certified copy of Court Record in case of The Bank of Josephine v. Ford Energy, Action No. 78-CI-674, Floyd Circuit Court <i>11/21/83</i> <i>11/20/83</i>
MM					Certified copy of Court Record in case of Biltmore Coal Corporation v. Ford Energy, Action No. 78-CI-459 Floyd Circuit Court
NN					Certified copy of Court Record in case of Biltmore Coal Corporation v. Ford Energy, Action No. 78-CI-459 Floyd Circuit Court <i>Some</i> <i>11/21/83</i> <i>11/20/83</i> <i>objection</i>
OO					Accountant's copy of corporate tax return Form 1120 for Biltmore Coal Corporation for 1977
PP					Accountant's copy of corporate tax return Form 1120 for Biltmore Coal Corporation for 1978
QQ					Copy of corporate record book of Biltmore Coal Corporation, including Articles of Incorporation, By-Laws, and Minutes
This is to certify that a true copy of the foregoing List was this day duly mailed to Hon. David Y. Olinger, Assistant United States Attorney, P. O. Box 1490, Lexington, KY 40591; Mr. Michael J. Kearns, Trial Attorney, Tax Division, U.S. Department of Justice, Washington, D.C. 20530; and a copy has been left with the clerk for Third Party Defendant, Clifford Bevins. 10/27/83					

*Include a notation as to the location of any exhibit not held with the case file or not available because of size.

D

Plaintiff 12
EXHIBIT AND WITNESS LIST

JOE WEDDINGTON		vs. UNITED STATES OF AMERICA			DISTRICT COURT Eastern District of Kentucky at Pikeville	
PLAINTIFF'S ATTORNEY Charles J. Baird		DEFENDANT'S ATTORNEY Michael J. Kearns			DOCKET NUMBER 82-244	
PRESIDING JUDGE Hon. Wix Unthank		COURT REPORTER			TRIAL DATE(S) 11-30-83	
PLF. NO.		DEF. NO.	DATE OFFERED	Marked	Admitted	DESCRIPTION OF EXHIBITS* AND WITNESSES
A						Proposed Assessment of 100 Percent Penalty Stratford Coal Corporation \$12,392.86
B						Proposed Assessment of 100 Percent Penalty Biltmore Coal Corporation \$84,404.07
C						Proposed Assessment of 100 Percent Penalty Royal Coal Corporation \$5,685.75
						Statement of Tax Due IRS
D						Statement of Tax Due IRS - Stratford Coal Corporation \$12,392.86
E						Statement of Tax Due IRS - Biltmore Coal Corporation \$84,404.07
F						Statement of Tax Due IRS - Royal Coal Corporation \$5,685.76
G						Form 843 - Stratford Coal - \$9,367.11
H						Form 843 - Stratford Coal - \$3,025.75
I						Form 843 - Biltmore - \$61,791.98
J						Form 843 - Biltmore - \$ 3,157.46
K						Form 843 - Biltmore - \$19,454.63
L						Form 843 - Royal Coal Corporation - \$4,870.13
M						Form 843 - Royal Coal Corporation - \$815.62
N-T						Six letters dated February 2, 1982 and one letter dated March 4, 1982, all from the IRS to Joe D. Weddington denying his claims for refund
U						Notice of Federal Tax Lien Form 668
V						Form 941 - Stratford Coal Corporation dated 1/31/79 signed by Clifford Bevins
W						Report of Interview with Joe Weddington dated 7/24/83

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

No Objections as to Authenticity from Dept USA

#48115 pre-trial memo

1.

2.

3. Explanation - pay a part
& sue for refund should
place on issuer the ~~entire~~

4.

~~amount~~ liability for
entire amount

D
#46

offer
Brents

Royal

Fax:

7

1

REF. NO.	DOCKET NUMBER	FILING DATE MO DAY YEAR	J	NO.	D	F	R	S DEMAND	JUDGE/MAG. NO.	COUNTY	JURY DEM.	DOCKET NO. NUMBER
643	7 82 244	05 28 82	2	870	1			(\$over \$1,000)	4308	21071	P	82 244

PLAINTIFFS

DEFENDANTS

JOE D. WEDDINGTON

UNITED STATES OF AMERICA

Each Party Given 3 strikes ea.
on Jury Panel
Each Party Given 1 strike ea.
for alternate

COUNTERCLAIM filed 7/30/82

VS:

CLIFFORD G. BEVINS (Pro Se)
(3RD PTY COMPL. fil 8/2/82)

DEMAND FOR JURY

BY *plff* DATE *5-28-82*

VS:

JOE D. WEDDINGTON per
Counterclaim fil 8/30/82

CAUSE

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE
IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

26 USC §7422 - Seeks recovery of Federal employment taxes allegedly and
wrongfully collected by the government.

GS

ATTORNEYS

(FLOYD)

Charles J. Baird
BAIRD & BAIRD, P.S.C.
P. O. Box 351
Pikeville, KY 41501
606/437-6276

U. S. Attorney
P. O. Box 1490
Lexington, KY 40591
606/233-2661

David L. Williams
P. O. Box 279
Pikeville, KY 41501

3RD PTY DEFT
CLIFFORD G.
BEVINS

Bruce A. Levy
P. O. Box 543
Pikeville, KY 41501
606/437-4026

Michael J. Kearns
Trial Atty, Tax Division
U. S. Dept. of Justice
Washington, D. C. 20530
202/724-6346

ASSIGNED FOR TRIAL BY JURY AT PIKEVILLE JUDGE UNTHANK

DATE NOVEMBER 30, 1983 AT 9:00 A. M.

11/29 #55 MOTION, of plff to hold counterclaim of Clifford G. Bevins
in abeyance against Joe D. Weddington w/copy Floyd Circuit
Court record (Placed in sep. envelope).

SUPPLEMENTAL EXHIBIT LIST, of plff TENDERED 11/29/83

SUPPLEMENTAL WITNESS LIST of plff TENDERED 11/29/83

REQUESTED JURY INSTRUCTIONS of plff TENDERED 11/29/83.

MEMORANDUM OF LAW, of deft, re: definition of willfulness under
26 USC §6672 - TENDERED 11/29/83

#56 MOTION, of plff, to enter judgment in favor of U.S. against Clifford
Bevins, 3rd pty deft.

Factory and
deficit banking
resulted in
Coke down
business

~~man~~ who a
Coke flows at
a. 1000 3 1000

WITNESS LIST OF THE DEFENDANT, CLIFFORD G. BEVINS
AS GIVEN IN COURT ON 11/8/83

1. Pat Hall Newsome
2. Johnny Borders (lives at Richardson, or near Louisa)
3. Robert Trader (Eastpoint)
4. Lowell Tackett (Paintsville)
5. William G. Francis (Prestonsburg)
6. Ronnie Newsome

NO OBJECTIONS BY EITHER PARTY

MR. BEVINS SAID HE WOULD NOT HAVE ANY EXHIBITS.

Plaintiff (stated he may have court record of Bevins vs: Weddington which was filed in 1978 (for personal expenditures Mr. Weddington expended to small creditors w/out Bevins consent).

Plaintiff stated had three witnesses he could not locate

1. Patricia Hall
2. Ronnie Newsome
3. Michael Dixon

The plaintiff stated that Mr. Sharpels WOULD NOT TESTIFY AT TRIAL

Porton JVA

MINING AGREEMENT

THIS MINING AGREEMENT, made and entered into this 1 day of May, 1978, by and between FORD ENERGY CORPORATION, a Kentucky corporation (hereinafter "FORD") and BILTMORE COAL CORPORATION, a Kentucky corporation, being a corporation engaged in independent contract mining (hereinafter "CONTRACTOR" or "CONTRACTORS");

W I T N E S S E T H:

WHEREAS, FORD is currently authorized to conduct certain coal mining operations on mineral-bearing property (hereinafter "PROPERTY"), as defined in Paragraph 1, pursuant to the terms of certain agreements by and between FORD and Kentucky Eastern Coal Company, Inc; and,

WHEREAS, FORD is desirous of obtaining the services of CONTRACTOR in the capacity of an independent contract miner to mine for a fixed sum cash payment per ton certain coal from the PROPERTY, and CONTRACTOR are desirous of serving in said capacity; and

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the parties agree as follows:

1. CONTRACTOR shall have the exclusive right during the term of this Mining Agreement to mine, extract, and remove by the strip and auger methods certain of the coal from the property located in Greenup County, Kentucky, specifically being that property described in Kentucky Department for Natural Resources and Environmental Protection, Division of Reclamation, Strip Mining Permit No. 6944-77, dated February 22, 1978.

C. J. V.

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*E #2
B/c*

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2.1 CONTRACTORS will mine, extract and remove coal from the property and deliver said coal to FORD by loading same on FORD's trucks at the sight of the mine.

2.2 CONTRACTORS will, at their own cost and expense, in their capacity as independent mining contractors construct and maintain all facilities, including access roads and silt dams and obtain any and all machinery, equipment, tools, materials, supplies, fuels, utilities, and insurance necessary or desirable for the mining, extraction or removal of coal from the provisions of this Mining Agreement.

2.3 CONTRACTORS will furnish and have available adequate, sufficient, and modern machinery and equipment for the performance of the mining operations herein contemplated, and will keep said equipment and machinery at all times in good working order, condition and repair.

2.4 CONTRACTORS will maintain sufficient equipment and personnel on the PROPERTY to maintain the minimum production required by paragraph 9 hereof.

2.5 CONTRACTORS will be responsible in all respects for the hiring, employment and working conditions of all individuals engaged to carry on operations herein contemplated and agree to use only competent, skilled personnel.

2.6 CONTRACTORS will perform their work in such a manner and by permitted methods so as to produce and recover the maximum quantities of merchantable and mineable coal from the PROPERTY, and always with due regard for the value of the remaining contracted and adjacent areas as mineral-bearing properties.

✓ 2.7 CONTRACTORS will (i) employ, fix the compensation of and the pay of its employees as required by law, being solely responsible for such payment; (ii) deduct from the wages of its employees and pay over to the proper authorities any tax or taxes as required by law, ordinance, rule, regulation or resolution of any proper authority; and, (iii) comply with all present and future federal and

state laws pertaining to the duties and obligations arising out of the employer and employee relationship, including without limitation Unemployment Compensation, Social Security, Withholding Taxes, Workmen's Compensation, Wage and Hour Laws, Federal and State Safety Laws, Occupational Disease Compensation and all other applicable laws and regulations lawfully promulgated under such laws.

3. FORD makes no warranty or representation either express or implied, as to the condition of the PROPERTY or the quality or quantity of the coal contained therein; it being specifically understood that CONTRACTORS take and accept said PROPERTY "as is". FORD hereby covenants and warrants that it has the contractual right to conduct or contract for coal mining operations on the PROPERTY, and further covenants that it will hold CONTRACTORS harmless from defect in title to said coal or any action in trespass asserted by third parties as to FORD's right to mine the property.

4. The parties have attached hereto and intend to make a part hereof Exhibit "A" reciting the CONTRACTORS' extensive experience and expertise in the area of independent contract mining.

5. It is expressly agreed that CONTRACTORS will carry out the services contemplated by this Mining Agreement as an independent contract; it being the intention of the parties that Ford has engaged CONTRACTORS to mine, load and deliver certain coal to FORD pursuant to this Mining Agreement. It is understood that CONTRACTORS shall exercise complete and exclusive control over their work force including matters pertaining to labor relations, employment practices, wages, hours, working conditions, hiring, firing, discipline and supervision and nothing herein shall be construed as creating a single enterprise joint venture or joint employer relationship between CONTRACTORS and FORD. CONTRACTORS are not and shall not represent themselves to be partners, agents or representatives of FORD.

5.1 CONTRACTORS will conduct all mining, extraction, removal and delivery of coal, and all related activities, in a prudent and workmanlike manner, in accordance with modern techniques of good and

economical mining practice, with due regard to the development and preservation of the PROPERTY as a workable mine or mines, and in accordance with the terms of any and all applicable mining permits, underlying leases, and any and all federal, state and local laws, rules or regulations applicable to the coal properties or to the operations to be conducted hereunder, including all such laws, ordinances, rules and regulations not in effect or made, enacted or issued during the term hereof.

5.2 CONTRACTORS will be responsible at their own cost and expense for damage, refilling, regrading and reclamation in accordance with the terms of the permits and all applicable federal, state and local laws, rules and regulations, and in accordance with any revisions thereof as may become effective during the term of this agreement. FORD shall deduct from the monies payable to the CONTRACTORS under the provisions of this Agreement the sum of

W TON COSTS _____ (\$.10) per net ton of coal delivered to FORD by CONTRACTORS and shall hold same

until such time as CONTRACTORS shall, in the judgment of FORD, adequately have refilled, regraded and reclaimed the property in accordance with the terms of the permits and any applicable Federal, state and local laws, rules or regulations as are in effect from time to time. Upon successful completion, to the satisfaction of FORD, the Kentucky Department for Natural Resources and Environmental Protection, Division of Reclamation, or any other Federal, state or local body or agency then having jurisdiction over the property and the operations conducted thereon, of such refilling, regrading and reclamation, FORD shall pay over to CONTRACTORS the funds theretofore withheld with simple interest thereon at the annual rate of BANK

M RATES () computed from the date the sums are withheld to the date of payment thereof to CONTRACTORS. CONTRACTORS hereby indemnify and agree to hold FORD harmless against any and all loss, cost, damage

or expense including reasonable attorney's fees, incurred by FORD with respect to said damage, refilling, regrading and reclamation.

6. CONTRACTORS hereby represent and warrant that they are in good standing with the Kentucky Department of Natural Resources and Environmental Protection, Division of Reclamation, and that they have not received, nor have outstanding, any notice of noncompliance from said Division.

7. The term of this Agreement shall begin on the date of execution, and continue until CONTRACTORS have delivered certain coal from the permitted area described above and/or certain contiguous areas, or until earlier termination of this Mining Agreement pursuant to the provisions of paragraph 14 hereof, and as otherwise provided herein.

8.1 FORD will pay to CONTRACTORS as the sole and exclusive consideration payable to CONTRACTORS for the services to be performed by CONTRACTORS under this Mining Agreement, subject to offset a deduction of any amount due from CONTRACTORS to FORD under any of the terms and conditions of this Mining Agreement, the sum of Fifteen Dollars and Twenty Five Cents (\$15.25) per net ton of merchantable coal of two thousand pounds, (2,000 lbs.) delivered by CONTRACTORS to FORD for coal mined by the strip mining method, which satisfies minimum quality standards described in paragraph 10 hereof.

8.2 Included in these payments shall be the reclamation fee of Thirty Five Cents (\$.35) per ton of surface mined coal and Fifteen Cents (\$.15) per ton of deep mined coal or Ten Percent (10%) of the value of the coal at the mine, which ever is less, as required by title I.V., 402(a) of the "Surface Mining Control and Reclamation Act of 1977", and the Black Lung Fund payment of Two Percent (2%) or Twenty Five Cents (\$.25) per ton maximum for surface mines and Fifty Cents (\$.50) per ton maximum for deep mines as required by the "Black Lung Benefits Revenue Act", 8 R. 5322, which went into effect on April 1, 1978, both all of which CONTRACTORS agree to pay.

8.3 Excluded from these payments by FORD to CONTRACTORS are all severance taxes due with respect to said coal, which FORD hereby agrees to pay, and excluded from said payments by FORD to CONTRACTORS are all royalties due with respect to the PROPERTY which FORD hereby agrees to pay.

8.4 FORD shall render to CONTRACTORS ninety percent (90%) of the monies due CONTRACTORS under the terms hereof on Friday for the coal mined the previous week, and the remaining ten percent (10%) of said monies due CONTRACTORS upon audit of certified weight slips.

8.5 Said monies shall be accompanied by reports setting forth the number of tons of coal from the PROPERTY delivered by CONTRACTORS to FORD during the preceding period, and a statement of the manner in which the amounts thus paid to CONTRACTORS were computed, including a brief explanation of any amounts deducted therefrom in accordance with the terms and conditions of this Mining Agreement.

8.6 The parties hereby agree that any coal rejected by FORD pursuant to the terms of this Mining Agreement may be purchased by CONTRACTORS at a price of royalty (plus Six Percent (6%) sales commission if sold) in the pit, and ~~at the tipples~~ at the tipples per ton of two thousand pounds (2,000 lbs.) of coal.

8.7 The CONTRACTORS hereby agree that FORD may deduct and deposit in an escrow account established pursuant to paragraph 12 hereof Ten Cents (\$.10) per ton of coal delivered to FORD pursuant to paragraph 5.2 hereof.

8.8 The CONTRACTORS hereby agree that FORD may deduct from said Fifteen Dollars and Twenty Five Cents (\$15.25) the equipment lease payment of Three Dollars (\$3.00) per ton contractually agreed to by the parties in an equipment lease dated MAY 5, 1978.

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~~10,000~~
TEN THOUSAND ~~10,000~~ tons of merchantable, clean coal per month, not later than THIRTY days (30) from the date hereof. Time and quantities are of the essence of this Mining Agreement, and not less than TEN THOUSAND tons (10,000) of merchantable clean coal shall be mined and delivered to FORD each month after the previously described THIRTY (30) day period.

10.1 The parties hereby agree that the quality standards and specifications of coal mined and delivered pursuant to this Mining Agreement shall be the same as the standards and specifications stated in the FORD/ADDINGTON BROTHERS MINING COMPANY, INC., coal sales contract dated April 11, 1978, and attached hereto as Exhibit C.

10.2 Increases and decreases in the base price as stated in paragraph 8.1 hereof shall be the same as provided in said FORD/ADDINGTON BROTHERS MINING COMPANY, INC., with the exception that the increases provided in Section 8 (ii) thereof, which shall be modified to provide an increase if the semi-monthly weighted average BTU content is greater than 11,500 of two one-thousands dollars (\$0.002) per ton. Price revision shall be consistent with Section 9 of said FORD/ADDINGTON BROTHERS MINING COMPANY, INC., coal sales contract.

10.3 All coal delivered under this Mining Agreement shall be reasonably free of slate, rock, stumps, clay and other extraneous materials and impurities.

10.4 The parties hereto recognize and agree that delivery of merchantable, clean coal from the PROPERTY at a minimum rate of production and of minimum specifications described herein to be of the essence of this Mining Agreement, and that FORD may reject deliveries of coal on the grounds described above and shall not have any obligation to pay CONTRACTORS with respect to coal thus rejected. If any coal is rejected by FORD, CONTRACTORS shall have the right to purchase such coal from FORD, at the point of rejection, at the price stated in paragraph 10.6 hereof and upon such purchase and payment or credit thereof, the title to such coal shall pass to CONTRACTORS and it shall have the right to dispose of such coal at will by its own methods and facilities. Title to all coal not rejected by FORD shall remain in FORD and no coal produced hereunder shall become property or be sold by CONTRACTORS until it has been definitely offered to and rejected by FORD.

11. Upon completion of all terms and conditions of this Mining Agreement for the mining of certain coal from Strip Mining Agreement for the mining of certain coal from Strip Mining Permit No. 6944-77, this Mining Agreement may be extended to include an expansion of said permit, or additional permits on those properties commonly known as the BUSH property in GREENUP County, Kentucky.

12. FORD and CONTRACTORS hereby agree to select a banking institution mutually acceptable to both parties to be the recipient of monies escrowed pursuant to paragraph 5.2 and 8.5 hereof.

13. CONTRACTORS acknowledge that they have been furnished a copy of the underlying lease and represent that they have reviewed same and are familiar with the terms, conditions, limitations and requirements therein. CONTRACTORS agree that they shall not contravene any of the terms, conditions, limitations and requirements of such lease in the conduct and performance of their mining operations pursuant hereto. For the purposes hereof, without intending any limitation of CONTRACTORS' obligations hereunder by reason of this specification, CONTRACTORS expressly and particularly agree (i) to utilize the methods and procedures required under the lease; (ii) to refrain from such actions and/or omissions as are required to refrain from under the lease; (iii) that CONTRACTORS rights hereunder to mine and deliver coal are limited to the extend limited in said lease; (iv) that it is expressly stipulated and agreed that CONTRACTORS shall not have any economic interest in the coal to be mined hereunder; and (v) that whenever the approval or consent of the lessor or sublessor under the lease as the case might be is required under the lease or some action is required thereunder involving the giving or furnishing of documents, notices, or information to said lessor or sublessor, which by reason of CONTRACTORS performing contract mining services pursuant hereto should necessitate contact by and between CONTRACTORS and the said lessor or sublessor, the CONTRACTORS shall not be required to make or initiate such contact, it being the intention of the parties hereto that FORD shall have the sole responsibility for same and that all contact with the said lessor or sublessor under the lease hereunder shall be undertaken by FORD and not by CONTRACTORS; provided, however,

CONTRACTORS shall be obligated to cooperate with FORD at all times hereunder in respect to any contact as should be necessary with the said lessor or sublessor by furnishing such information or doing or refraining from such acts as may be required in connection therewith.

14. FORD shall have the right to terminate this Mining Agreement without cause, at any time, by giving thirty (30) days prior written notice of such termination to CONTRACTORS. The termination of this Mining Agreement shall not, however, invalidate or waive any of the indemnities, warranties or representations of the parties hereto, and all of said indemnities, warranties and representations shall survive any termination of this Mining Agreement, but only as to acts or events occurring prior to the termination of this Mining Agreement.

15. CONTRACTORS agree forthwith to commence mining operations and diligently prosecute the work in good and workmanlike manner in accordance with modern and approved mining methods, and at all times energetically open, develop and maintain operations in order to maximize their mining capacity.

16. CONTRACTORS represent, warrant and agree that it will have working capital and personnel sufficient to permit it to fulfill its agreement to mine and deliver coal and perform the services contemplated by this Mining Agreement.

17. During the term of this Mining Agreement and for the term of reclamation liability thereafter, CONTRACTORS shall indemnify and hold FORD harmless against any and all liabilities, claims, fines, penalties, damages, suits, judgments and settlements of any kind, whether on account of injury to or death of any person or persons, damage to or loss of property, violation of law or regulation, or otherwise, arising out of or attributed, directly or indirectly, to CONTRACTORS' operations hereunder, together with any and all costs and expenses including reasonable attorneys' fees that may be incurred by FORD in connection therewith. The foregoing obligations of CONTRACTORS shall be in addition to its specific agreements and obligations hereunder. CONTRACTORS shall further be liable to and

[Signature]

shall indemnify and hold FORD harmless from and against any and all liabilities, demands, losses, claims and damage of whatever kind arising from or in any way connected with a breach of any material covenant, representation, warranty or other term of this Mining Agreement or a default or breach of the underlying lease, or a default of the contract between FORD and a third party for the sale of coal mined pursuant hereto caused by CONTRACTORS' operations hereunder.

18.1 CONTRACTORS covenant and agree to carry all public liability, property damage, automotive and other appropriate insurance to cover all liability herein assumed, including but not limited to the following:

- (i) Coal Mine Liability Insurance - with limits of one million, one million, one million providing coverage against loss arising out of legal liability due to maintenance of premises and coal mining operation of CONTRACTORS including (a) premises and operations, (b) contractual, (c) contingent, (d) products, (e) hired cars, (f) non-ownership (liability arising out of employees' use of personal cars for company business), (g) subsidence, (h) pollution or contamination of water, (i) gob pile slides, (j) movement of overburden.

- (ii) Excess Liability Coverage CLC - (Umbrella) of

Jan ONE MILLION Dollars (\$1,000,000.00) *CLC*
for each occurrence.

- (iii) Workmen's Compensation and Occupational Disease - (Black Lung) or Employer's Liability;

- (iv) Fire, Property Damage, and Extended Coverage on Structures for the replacement value thereof concerning perils of (a) windstorm, (b) civil commotion, (c) riot, (d) explosion, (e) hail (f) aircraft (g) vehicles (h) smoke and

(d) explosion, (e) earthquake, (f) collision except coupling or shunting of cars, derailment, upset or overturning, (g) collision, upset, overturning and/or derailment or any transporting conveyance, (h) collapse of bridges, culverts, trestles, tipples, conveyors, head houses or any other platforms or structures, (i) slate fall, roof fall, cave-in, landslide or squeeze, (j) strikers, locked-out workmen and persons taking part in labor disturbances, riot and civil commotion and, (k) malicious damage and vandalism;

18.2 All insurance policies shall name FORD as "its interest may appear" with provisions for notice to FORD of any overdue or unpaid premium and notice to FORD of any proposed cancellation.

18.3 CONTRACTORS further agree to obtain and deliver to FORD such waivers of subrogation from its insurer(s) as FORD shall hereafter require.

18.4 FORD shall be permitted to pay any past premium due and deduct the amount for such payment from monies due CONTRACTORS from time to time hereunder.

18.5 CONTRACTORS agree to furnish certificates of insurance prior to commencing operations and thereafter upon request and agree to provide FORD with copies of all policies.

18.6 Insurance shall be written on an occurrence basis, shall contain a "completed operations" clause, shall have a specific clause insuring CONTRACTORS contractual assumption of liability as herein contained, and shall provide that the same may not be cancelled or modified by the insured until after ten (10) days written notice to FORD of the intention to do so.

19. CONTRACTORS agree to pay any business or occupational taxes which may be required, or any other tax which may be assessed or charged against its operations under and the performance of this Mining Agreement including such property taxes as may be assessed against any property or improvements which it may at any time have or own upon the PROPERTY or in connection with its performance of this Mining Agreement, excluding ad valorem real property taxes.

20.1 Upon termination of this Mining Agreement due to completion of the mining as contemplated hereunder, or by cancellation by either party under Paragraph 14 hereof, CONTRACTORS shall have sixty (60) days in which to remove its personal property from the PROPERTY, provided CONTRACTORS shall not be in default of any of its obligations, covenants or conditions hereunder. Upon failure to remove such property within sixty (60) days, the title shall vest in FORD without charge or payment therefor.

20.2 CONTRACTORS agree that upon termination of this Mining Agreement for any cause whatsoever, it will protect or preserve the premises for future operation as mining property and will leave the surface and all buildings and improvements thereon in good and orderly condition, subject, however, to normal wear and tear. If, however, FORD shall request CONTRACTORS to remove certain or all buildings, equipment, improvements and fixtures thereon, CONTRACTORS shall do so and grade the site and leave the premises in an orderly condition without cost to FORD.

21. This Mining Agreement is personal to the CONTRACTORS; and shall not constitute an interest in realty or coal in place nor an economic interest in coal. This Mining Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs and assigns, but this Mining Agreement shall not be

CONTRACTORS without the prior written consent of FORD

assigner hereunder in the event of default by the assignee. Notice of any assignment by FORD shall be given promptly to CONTRACTORS. Nothing in this paragraph contained shall prevent or prohibit CONTRACTORS from subcontracting in the usual and customary way, such services as normally are purchased by an independent contract miner, providing that no such subcontracting shall release or relieve CONTRACTORS of any of its undertakings or obligations hereunder.

22. It is expressly understood and agreed by and between the parties that CONTRACTORS have no economic interest, legal or beneficial, nor any title to the coal in place as mined hereunder; that the economic interest in said coal is hereby reserved and retained by FORD exclusively; that CONTRACTORS shall look to FORD alone for payment for all services rendered by CONTRACTORS hereunder and in no event to the proceeds received from the sale of said coal; that CONTRACTORS undertake the performance of the provisions of this Agreement as independent contractors; and, that CONTRACTORS agree that, for Federal Income Tax purposes, they shall not claim a deduction for mineral depletion.

23. The failure of either party to perform any of its obligations hereunder if occasioned by an act of God or the public enemy, fire, explosion, flood, draught, war, riots, sabotage, vandalism, accident, embargo, government priority, requisition or allocation or other action of any governmental authority, or any circumstance of like or different character beyond the reasonable control of such party, or by inability to market the coal mined hereunder, interruption or delay in transportation, shortage or railroad cars, inadequacy, shortage or failure of supply of materials or equipment, breakdowns, shutdowns, or repairs, plant accidents, labor shortage, strikes, labor trouble, or compliance with any order or request of the United States government or any officer, Department, agency, instrumentality or committee thereof, or any other cause of a similar nature (any such cause being herein referred to as "force majeure") wholly or partly prevents the mining and delivering of coal by CONTRACTORS, the accepting of coal by

CONTRACTORS, the accepting of coal by FORD, or renders either CONTRACTORS or FORD unable to carry out its obligations under this Mining Agreement "other than obligations of either party to pay or expend money for or in connection with the performance of this agreement", then if the party affected by such force majeure gives to the other party written notice of the extent and probable duration of such force majeure, the obligations of the party giving such notice shall be suspended to the extent necessary by such force majeure and during its continuation; provided, however, that the cause of such force majeure is eliminated in so far as possible with all reasonable dispatch.

24.1 FORD and its respective agents, engineers or other persons acting on their respective behalfs, shall each have the right at all reasonable and proper times and at their own respective risks, to inspect or examine CONTRACTORS books, records and operations hereunder and to enter upon and into all parts of the PROPERTY or upon any facility or other property used by CONTRACTORS in connection with its mining operations hereunder or in connection with delivering coal mined in the course hereof.

24.2 FORD shall keep and retain accurate records of coal delivered by CONTRACTORS hereunder and thereafter sold, supported by accurate records of scale weight, selling price and adjustments thereto. CONTRACTORS shall likewise keep and maintain accurate records of coal delivered hereunder and the costs of the mining, removal and delivery of same. The records of both shall at all reasonable times be opened to inspection and examination by the other or their authorized representatives.

25. CONTRACTORS shall keep the PROPERTY free from all liens and encumbrances occasioned by its operations thereon, and in the event any employee of CONTRACTORS or third party files a notice of intent to claim a lien upon the PROPERTY as a result of CONTRACTORS' nonpayment of wages or other monies due third parties then FORD may elect to pay such employees or third parties directly and deduct

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such payments, if any, from any monies due CONTRACTORS under Paragraph 8 hereof. This provision shall not be construed as a promise for the benefit of any third party or constitute an agreement to pay any such employee or third party.

26. CONTRACTORS shall construct and maintain at their own cost and expense such roads to the mine pits necessary to transport the coal mined hereunder, and additional roads necessary after mining operations are commenced. CONTRACTORS agree to furnish all materials, labor, supplies and equipment necessary to construct said haul roads and install culvert pipes necessary for proper drainage thereof.

27. CONTRACTORS agree to supply and maintain a sufficient amount of auger mining equipment at its own cost and expense to efficiently auger mine on the PROPERTY.

28.1 CONTRACTORS will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. CONTRACTORS will make affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. CONTRACTORS agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer (as defined in Executive Order No. 11246, dated September 24, 1965, 3 C.F.R. 339, as amended, a copy of which is attached hereto as Exhibit B) setting forth the provisions of this nondiscrimination clause;

28.2 CONTRACTORS will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTORS,

state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin;

28.3 CONTRACTORS will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of CONTRACTORS' commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

28.4 CONTRACTORS will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor;

28.5 CONTRACTORS will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders;

28.6 In the event of CONTRACTORS' noncompliance with the nondiscrimination clause of this Mining Agreement or with any of such rules, regulations, or orders, this Mining Agreement may be cancelled, terminated or suspended in whole or in part and CONTRACTORS may be declared ineligible for Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

28.7 CONTRACTORS will include the provisions of Paragraphs 28.1 through 28.7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTORS will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTORS become involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, CONTRACTORS may request the United States to enter into such litigations to protect the interests of the United States.

29. CONTRACTORS shall secure, at its own expense, any and all licenses required by law for conducting strip mining or mining operations as are contemplated herein with the exception of permitting and bonding.

30. A waiver by either party of a default hereunder shall not be deemed to be a waiver of any subsequent default, nor shall any delay in ascertaining a right hereunder be deemed a waiver of such right. The preceding sentence shall not be construed as a waiver of any applicable statute of limitation. Failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this Mining Agreement or to take advantage of any rights hereunder, shall not be construed as a waiver of any of such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect. All remedies afforded under this Mining Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or by law.

31. Whenever, under the terms of this Mining Agreement, it shall be necessary or proper for either of the parties to give notice to the other, whether such notice be expressly required herein or necessary or proper in law under the circumstances, such notice shall be in writing and shall be delivered by registered mail.

addressed when being given to FORD to Ford Energy Corporation, Suite 201, 1910 Harrodsburg Road, Lexington, Kentucky, 40503, and when being given to CONTRACTORS, to Biltmore Coal Corporation, Box 112, Prestonsburg, Kentucky, 41653 or to such other place or places as the parties may from time to time designate in writing.

32. The CONTRACTORS have full legal power and capacity, and all necessary corporate or other action has been taken to execute and deliver this Mining Agreement.

33. CONTRACTORS agree that, by their relationship with FORD, they will have access to specialized information and trade secrets of a confidential nature and they therefore expressly agree that during the continuance of this Mining Agreement and thereafter, they will not, without prior written approval of FORD, divulge, transmit or otherwise disclose or authorize or cause to be divulged, transmitted or otherwise disclosed, any information acquired during the term of this Mining Agreement.

34. This Mining Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

35. This Mining Agreement may, for convenience, be executed in several counterparts, each of which shall be deemed an original and all of which, taken together, constitute one mining agreement.

36. All of the covenants, agreements, conditions and undertakings herein contained shall extend to, be binding upon and inure to the benefit of the parties hereto, their successors and assigns, subject to Paragraph 21 above.

IN WITNESS WHEREOF, the parties hereto have caused this Mining Agreement to be executed as of the day and year first above written.

BILTMORE COAL CORPORATION

FORD ENERGY CORPORATION

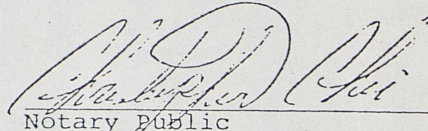
Clifford H. Beards
BY: *W. Beards*

Frank T. ...
BY: *Frank T. ...*

STATE OF KENTUCKY

COUNTY OF Fayette

Subscribed and sworn to before me by Clifford Bevins as
President of Biltmore Coal Corporation on this 1st day of May,
1978.

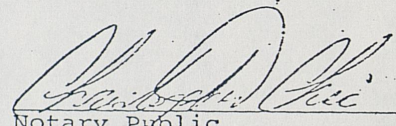

Notary Public

My Commission Expires: May 6, 1982

STATE OF KENTUCKY

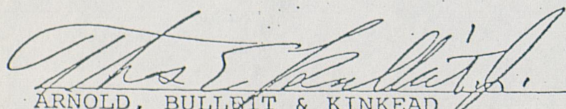
COUNTY OF Fayette

Subscribed and sworn to before me by Frank T. Moreland
as Executive Vice President of Ford Energy Corporation on this the
1st day of May, 1978.


Notary Public

My Commission expires: May 6, 1982

PREPARED BY:


ARNOLD, BULLEIT & KINKEAD
1502 First National Building
Lexington, Kentucky 40507

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

STATUS REPORT OF CASE ON APPEAL

Docket: EASTERN DISTRICT OF KENTUCKY-PIKEVILLE

Date: MARCH 6, 1984

To: Judge G. WIX UNTHANK

Re: (style) Joe D. Weddington v. U.S.A. v. Clifford G. Bevins (No.) 82-244

Date of Entry of Order/Judgment appealed: Judgment 12/6/83;
Order 1/11/84; Amended Judgment 1/11/84

Date Notice of Appeal filed: March 6, 1984

By: Plaintiff - Defendant - Both

Appeal dismissed on motion of: Appellant - By Agreement

6CCA Action:

Judgment - Date filed District Court _____

Order - Date filed District Court _____

Mandate - Date filed District Court _____

Affirmed - Reversed - Modified _____
(date filed)

Dismissed for lack of prosecution: _____
(date filed)

Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

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Judgment - Date filed District Court _____

Order - Date filed District Court _____

Mandate - Date filed District Court 4/10/85

Affirmed - Reversed - Modified _____
(date filed)

Dismissed for lack of prosecution: _____
(date filed)

Gayle Smith
Deputy Clerk

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 26 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this condition is approved.

NOT FOR PUBLICATION

No. 84-5199

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Pike 82-244

FILED

MAR 12 1985

JOE D. WEDDINGTON,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee,
Third-Party Plaintiff,

CLIFFORD G. BEVINS,

Third-Party Defendant.

JOHN P. NEWMAN, Cle

On Appeal from the
United States District
Court for the Eastern
District of Kentucky.

Eastern District of Kentucky
FILED

APR 10 1985

AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U.S. DISTRICT COURT

Before: ENGEL and JONES, Circuit Judges; and SPIEGEL, District Judge.*

PER CURIAM. Appellant Joe D. Weddington appeals the judgment in favor of the United States entered by the United States District Court for the Eastern District of Kentucky in his action to recover certain withholding taxes under 26 U.S.C. § 7422. Weddington claims that the trial court erred in refusing to give one requested jury instruction and in failing to grant a new trial because of newly discovered evidence.

Weddington was an officer and director as well as a 50 percent owner of three coal corporations. Clifford G. Bevins owned the other 50 percent of the companies' stock and was the only other corporate officer and director. The companies developed financial problems, and beginning in April, 1978, certain employment taxes withheld from the companies' employees were not paid to the IRS. In January, 1979, the companies' assets were sold, and all their operations ceased. At that point the unpaid but due taxes totaled \$102,482.68.

* Honorable S. Arthur Spiegel, Judge of the United States District Court for the Southern District of Ohio, sitting by designation.

On June 29, 1981, the IRS assessed a penalty of \$102,482.68 against Weddington and Bevins under the provisions of 26 U.S.C. § 6672. Section 6672 authorizes the assessment of a penalty equal in amount to the unpaid tax against persons who are responsible for the payment of the unpaid taxes when their failure to pay is willful.

Weddington paid the IRS \$384.00, which represents the amount of federal taxes withheld from one employee for one quarter for each of the three companies, and then he filed a claim for a refund. The IRS denied the claim, and Weddington brought this suit in the United States District Court for the Eastern District of Kentucky to recover the \$384.00. The United States filed a counterclaim for \$102,098.68 and a third-party complaint against Bevins for \$102,482.68. After a jury trial, Judge Unthank sua sponte directed a verdict against Bevins who is not a party to this appeal. The jury returned a verdict against Weddington. On December 6, 1983, the court entered judgment against Weddington and Bevins in the amount of \$102,482.68 each less any amounts previously paid. The judgment stipulated that the United States may collect only a single sum totaling \$102,482.68. On January 11, 1983, the court amended its judgment to include accrued interest, resulting in a total of \$139,065.88 owed by Weddington and \$124,619.90 owed by Bevins. On December 15, 1983, Weddington moved for a new trial. That motion was denied, and this appeal followed.

On appeal, Weddington raises two grounds for reversal. First, Weddington argues that the district court's denial of his motion for a new trial was in error. While the jury was deliberating, the government told Weddington and the court that they had just discovered that Bevins had paid \$20,000.00 of the unpaid taxes after the suit commenced. The government had represented in its answer and to the jury throughout trial that none of the taxes sought had been paid. Weddington contends that a new trial should have been granted because of this error. Second, Weddington asserts that the court erred in not giving a requested jury instruction with regard to intent. Weddington wanted

and was refused a jury instruction stating that he could not be held liable if when he first learned of the unpaid taxes, he was unable to pay them because of circumstances beyond his control.

Upon a consideration of the record as a whole, although the court was concerned with the government's failure to discover and, hence, timely reveal Bevins' \$20,000 payment, it is satisfied that such omission was not intentional. While that fact should have been discovered and disclosed, there was no showing that Weddington himself could not have ascertained the payment in the course of his trial preparation. Weddington does not claim that he will be denied any credit for such payment. It is also clear that any use of that payment to avert his own liability as a responsible officer is at best doubtful. It is well established that more than one officer may be responsible for the unpaid taxes, Hartman v. United States, 538 F.2d 1336, 1340 (8th Cir. 1976), and the proofs showed that Bevins' payment came well after the time during which Weddington was in a position of responsibility for collecting, holding safe, and paying over the withholding taxes. We also find that the district court did not err in failing to give appellant's requested charge and that the instruction actually given was fully adequate.

AFFIRMED.

ISSUED AS MANDATE: APRIL 3, 1985

COSTS: NONE

A TRUE COPY
Attest:
JOHN P. HEHMAN, Clerk
By A. Schulken
Deputy Clerk

3-14-85

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202

JOHN P. HEHMAN
CLERK

TELEPHONE
(513) 684-2953
FTS 684-2953

March 12, 1985

Mr. Charles J. Baird
Mr. Glenn L. Archer, Jr.

Re: Case No. 84-5199, Joe D. Weddington vs.
United States of America
District Court No. 82-244

Dear Counsel:

Enclosed is a copy of the per curiam entered today
in the above-style case.

Yours very truly,

John P. Hehman, Clerk

Nancy Schulkens

By: (Mrs.) Nancy Schulkens
Deputy Clerk

Enclosure

cc: U.S. District Court
District Court Judge

John P. Hehman

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

NOT FOR PUBLICATION

No. 84-5199

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

MAR 12 1985

JOE D. WEDDINGTON,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee,
Third-Party Plaintiff,

CLIFFORD G. BEVINS,

Third-Party Defendant.

JOHN P. NEWMAN, Cle

On Appeal from the
United States District
Court for the Eastern
District of Kentucky.

INFORMATION COPY
DJS. CT # 82-244

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AFFIRMED.

Judge,

6-2-83

RE: 82-244

Joe D. Weddington v. USA v. Clifford G. Bevins

At the last status conference herein on 3-23-83, the Court granted the USA leave to proceed in bankruptcy court for the lifting of the automatic stay imposed by 11 U.S.C. §362.

On May 10, 1983, the USA filed notice of lift of stay. The stay expired on 5-12-83.

Pending Motions:

1. Third party defendant has moved the Court to stay this action pending resolution of the bankruptcy action.

Donald

TO: Judge
FROM: Donald
DATE: 11-7-83
RE: 82-244

Joe D. Weddington v. USA v. Clifford G. Bevins

PTC, Tues., 11-8-83, at 1:00

Synopsis: The USA issued a 100% penalty assessment against plff in the amount of more than \$102,000.00 for the non-payment of corporate taxes involving three different corporations of which plff was involved as either an officer or director or both.

Plff paid a minor portion of the assessment and then sued the USA for a refund, alleging that he is not a "responsible person" as defined in 26 U.S.C. §6671.

The U.S. has also filed a third-party complaint against Bevins, alleging that he also is a "responsible person" under the act. It seems that both Bevins and Weddington were both involved in these three corporations, and they would interchange duties as officers and directors of the corporations.

Subsequent to the filing of this action, Bevins filed for bankruptcy.

Pending Motions: None.

Substantive Issues:

Due to plff's concession that the assessments are correct, there are now only the following issues:

1. Whether ~~plff~~ ^{Weddington + Bevins are} is a "responsible person" within the meaning of 26 U.S.C. §6671(b)?
2. If plff is a responsible person, did he willfully, etc. fail to collect and pay the taxes in question?

3. Cross Claim

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

Free file
Weddington

THE COURT'S INSTRUCTIONS TO THE JURY:

TAX REFUND SUITS
F. Section 6672 Penalty

This action involves the United States of America, the Biltmore Coal Company, Royal Coal Corporation and Stratford Coal Corporation, Kentucky Corporations, doing business in Floyd County, Kentucky. Joe D. Weddington and Clifford Bevins, were officers, and directors of said corporations.

In the present case, as required by the Internal Revenue Code, the Biltmore Coal Company, Royal Coal Corporation and Stratford Coal Corporation, withheld from the wages and salaries paid to its employees during the periods involved, federal income taxes and social security taxes as follows:

<u>BILTMORE</u>	6/30/78	\$104,625.11
	9/30/78	5,679.11
	12/31/78	27,136.00
<u>ROYAL</u>	12/31/78	6,779.99
	3/31/79	1,465.74
<u>STRATFORD</u>	12/31/78	12,320.15
	3/31/79	5,450.05

These corporations failed to pay to the Government the total amount of One Hundred Two Thousand, Four Hundred Eighty-two and 68/100 Dollars (\$102,482.68), the amount withheld as they were required to do under the law.

To assure that withheld taxes are eventually paid to the Government when an employer fails to pay, the Congress has enacted a special provision in the law. That provision is this: Any person associated with a corporation, who had the duty and responsibility to see that the taxes were paid to the Government, and who willfully failed to do so, is personally liable in the form of a penalty for the amount of taxes withheld and not paid to the Government. The penalty which is provided by law is generally referred to as the 100 percent (100%) penalty since the amount of the penalty is equal to the amount of taxes which were withheld but not paid. Thus, the penalty is merely a means of collecting the taxes withheld and not paid over, and enables the Government to be made whole.

The employers in this case were corporations and, as stated previously, it can only act through its officers, directors, and employees. Every corporation which is an employer must have some person who has the duty or responsibility of withholding and paying over those taxes which the law requires the corporation to withhold and to pay over to the Government. There may be more than one responsible person, but there is always at least one. Thus, there may be more than one person liable for the 100 percent (100%) penalty.

The Plaintiff, Joe D. Weddington, agrees that an assessment was made against himself and the Biltmore Coal Corporation, Royal Coal Corporation and Stratford Coal Corporation, in the total amount of One Hundred Two Thousand,

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

THE COURT ADVISES THE JURY THAT IT SHOULD NOT SPECULATE OVER
THE WITHDRAWAL OF THE MATTER OF THE UNITED STATES VERSUS CLIFFORD BEVINS.

THE ENTIRE PROCEEDING IS TWO SEPARATE AND DISTINCT ACTIONS:
DE D. WEDDINGTON VERSUS THE UNITED STATES AND THE UNITED STATES VERSUS
CLIFFORD BEVINS. EACH ACTION SHOULD BE DECIDED UPON ITS OWN MERITS AND
EVIDENCE. IN THIS PROCEEDING THE COURT WILL DECIDE ONE MATTER AND THE
JURY WILL DECIDE THE OTHER. WHAT ACTION OR DECISION THE COURT MAY TAKE
ON ONE MATTER, IF ANY, IS NOT EVIDENCE NOR TO BE CONSIDERED BY THE JURY
ON THE DETERMINATION OF THE OTHER MATTER.

THE JURY HEARD THE TESTIMONY OF CLIFFORD BEVINS AS A WITNESS.
THE LAW PERMITS THE CALLING OF A PARTY, AS IF ON CROSS-EXAMINATION,
AND THE TESTIMONY IS EVIDENCE. THE JURY WILL CONSIDER THIS TESTIMONY
AS EVIDENCE IN THE MATTER SUBMITTED FOR ITS DETERMINATION; HOWEVER,
THE WEIGHT AND CREDIBILITY OF SAME IS IN THE DISCRETION OF THE JURY.

Four Hundred Eighty-two and 68/100 Dollars (\$102,482,68), and contends, however, that such assessment is erroneous. He paid the sum of Three Hundred Eighty Four Dollars (\$384) on said assessment, representing the taxes of one employee of each corporation for said period of time, and contends he is entitled to a refund of the money paid by him and to be absolved of any liability on behalf of said corporation.

Subsequently, the United States extended this action to include Clifford Bevins as a Third Party Defendant, another officer and director of said corporations. The United States contends that Clifford Bevins is a responsible person and also liable for said assessment in the total amount of One Hundred Two Thousand, Four Hundred Eighty-two and 68/100 Dollars (\$102,482.68). The jury is instructed, however, that this subsequent proceeding is no longer for the jury's consideration.

The Government contends that the Plaintiff, Joe D. Weddington was a person responsible to collect, truthfully account for and pay over the taxes which were withheld. The Government also contends that the failure of the Plaintiff to pay over those taxes was willfull. With regard to those issues, however, you are instructed that a Plaintiff has the burden of proving to you by a preponderance of the evidence either that he was not a person whose duty it was to collect and pay over the taxes in question, or that he did not willfully fail to collect and pay over such taxes.

The first issue for you to decide, therefore, is whether the Plaintiff Joe D. Weddington, was a "responsible person." The term "responsible person" includes any person who is connected or associated with the corporation-employer in such a manner that he has the power to see that the taxes are paid, or the power to make final decisions concerning the corporation, or determines which creditors are to be paid and when they are to be paid. The term "responsible person" may include corporate officers, employees, members of the board of directors or stockholders. The meaning of the term is very broad and is not limited to the person who actually prepares the payroll checks or the tax returns. The "responsible person" need not even be authorized to draw checks for the corporation so long as he has the power to decide who will get such checks. In other words, the "responsible person" is any person who can effectively control the finances, or determine which bills should or should not be paid. This control may be exercised jointly or singularly.

If you find that the Plaintiff, Joe D. Weddington, was not a "responsible person," then you will not consider any other issue. On the other hand, if you conclude that he was a "responsible person," you must then decide whether he acted "willfully" in the failure to pay the withheld taxes to the Government.

For purposes of this case the term "willfully" means only that the act of failing to pay over the taxes was voluntarily, consciously, and intentionally done without reasonable cause. If the responsible person consciously, voluntarily and intentionally used the trust funds which were withheld, or caused them to

be used for purposes other than payment of taxes, he is deemed to have acted willfully. It is not necessary for you to determine that a Plaintiff had an intent to defraud or to deprive the United States of the taxes, nor is it necessary that bad motives or wicked designs be shown on the part of a Plaintiff. The only thing that need be shown is that he made the deliberate choice to pay other creditors instead of paying the Government. This means that if you find that a Plaintiff decided to use corporate funds to pay suppliers, employees' net take home salaries, rent, or any creditor, including himself, other than the Government, at a time when withheld taxes were due and owing to the Government, then you must find that he acted willfully in failing to see that the withheld taxes were paid. It is no excuse that the responsible person, in good faith, hoped to pay the taxes at a later time, or relied upon the advice and information furnished by regularly employed accountants and attorneys.

Under the law, there may be more than one person liable for the penalty. If, in addition to Plaintiff, you find that there were other officers, directors, or employees of Biltmore Coal Corporation, Royal Coal Corporation, and Stratford Coal Corporation, who had a duty to collect and pay over the trust fund monies, you are instructed as a matter of law that the failure of such other person does not excuse the Plaintiff for his failure, if any.

While more than one person may be liable for the same corporate failure to collect, truthfully account for and pay over taxes, the United States can collect only a single amount equal to the amount which was not collected, truthfully accounted for and paid over. Thus, amounts collected from one responsible person will be applied, as collected, in reduction of the amount owed by others.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

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The employers in this case were corporations and, as stated previously, it can only act through its officers, directors, and employees. Every corporation which is an employer must have some person who has the duty or responsibility of withholding and paying over those taxes which the law requires the corporation to withhold and to pay over to the Government. There may be more than one responsible person, but there is always at least one. Thus, there may be more than one person liable for the 100 percent (100%) penalty.

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object

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3-22-83

RE: 82-244

Joe D. Weddington v. USA v. Clifford G. Bevins

Status Conference, Wed., 3-23-83, 10:00 a.m.

Judge,

There are no new developments herein since the
PC in November, 1982.

Pending Motions: None.

The Court disposed of all pending motions at PC.

(SEE ATTACHED ANALYSIS, AS IT IS STILL CURRENT).

Donald

TO: Judge
FROM: Donald
DATE: 11-5-82
RE: 82-244
Joe D. Weddington v. USA v. Clifford G. Bevins

PC, Monday, 11-8-82, at 11:00 a.m.

Synopsis: The withholding taxes for three coal corporations (Biltmore Coal Corp., Royal Coal Corp., and Stratford Coal Corp.) were not paid during various periods in 1978 & 1979.

Assessments were made against plff and Bevins as responsible officers of these corps. Both plff & Bevins were officers & directors of these corps., but both allege they are not "responsible persons" within the meaning of 26 U.S.C. §6672 who should have collected and paid the tax to the USA.

The amount of the assessment and penalty totals \$102,482.68.

Pending Motions:

1. 3rd party-defendant, Bevins, has objected to interrogatories served on him by the USA, and has moved the Court to extend the time in which can answer these interrogatories until December 10, 1982. The interrogs were served on 10-14-82.
2. Plff also moves the Court for an extension of time in which to answer the USA's interrogatories that were served on him about the same time. Plff's grounds are that he needssmore time to obtain the requested information.

Substantive Issues:

1. Is plff a "responsible person" within the meaning of 26 U.S.C. §6671(b), and is 3rd-party defendant, Clifford G. Bevins, a responsible person as well?

Comments:

1. The case seems to turn on who is a "responsible person" in this matter.
2. If Weddington & Bevins are found to be such persons, then it must be determined if they willfully, voluntarily, etc., failed to pay the withholding taxes.
3. If they did, then it must be determined if the amounts of the assessments are correct.

Procedural Issue:

1. It appears that the burden of proof on the issue of responsibility and the issue of willfulness is on the taxpayers.

ALL PARTIES HAVE FILED THEIR PRELIMINARY CONFERENCE MEMOS.

TO: Judge
FROM: Donald
DATE: 3-24-83
RE: 82-244
Joe D. Weddington v. USA v. Clifford G. Bevins

IS USA's MOTION TO DISMISS BEVINS' COUNTERCLAIM AGAINST PLFF PROPER?

Comments:

1. There is a U.S. Tax Case on point.

DiBenedetto V. U.S. v. Corwin, et al, v. Goodman, et al (1975)

The diagram of this case shows:

- a. IRS had assessed a penalty of \$26,099.12 against plff, who paid \$50.00 on the penalty and then brought suit to recover that payment.
 - b. Then the U.S. counterclaimed against plff for the balance due on the assessment and filed a 3rd-party complaint against Corwin.
 - c. Then the 3rd-party defendants (Corwins, et al) filed a fourth-party complaint against Goodman alleging that Goodmans may be liable to U.S. (Corwins did not allege that Goodmans were liable to them).
 - d. The U.S. Tax Court dismissed Corwins 4th party complaint holding that it was entirely inappropriate for a third-party defendant to bring a fourth-party defendant simply because the 4th party is or may be liable to the U.S.
2. Sinder v. U.S. v. Ventrone, 655 F.2d 729 (1981)
 - a. IRS assessed a tax deficiency against plff for failure to pay quarterly taxes in the last quarter of '71 & first quarter in '72. Plff paid part and sued for a refund.
 - b. U.S. counterclaimed for the remainder owing.
 - c. Then plff sued third-party defendant for the unpaid amount.
 - d. As §6672 imposes joint & several liability on each responsible person, there is no right of contribution between tortfeasors, the District Court properly dismissed cross-claim against Ventrone.
 3. Our Case - U.S. brought the 3rd-party complaint against Bevins, who counterclaimed against plff, citing sale to plff of all assets.

See Items 4 & 8 of the record.