

No. 10-114

IN THE
Supreme Court of the United States

RICKY D. FOX,

Petitioner,

v.

BILLY RAY VICE, Chief of Police for the
Town of Vinton, and TOWN OF VINTON,

Respondents.

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

**DECLARATION OF E. JOSHUA ROSENKRANZ
IN SUPPORT OF LETTER BRIEF**

J. Steven Broussard
Randall E. Hart
BROUSSARD & HART, LLC
1301 Common Street
Lake Charles, LA 70601
(337) 439-2450

E. Joshua Rosenkranz
Counsel of Record
Jessica S. Pers
Michael K. Gottlieb
ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5380
jrosenkranz@orrick.com

E. JOSHUA ROSENKRANZ, an attorney duly admitted to the Bar of the Supreme Court of the United States, hereby declares as follows:

1. I am a partner of Orrick, Herrington & Sutcliffe LLP, counsel for Petitioner Ricky D. Fox in this action. I submit this declaration in support of Petitioner's Letter Brief to the Court, dated March 11, 2011.
2. This Declaration is based on my personal knowledge of the facts set forth herein and the documents attached hereto.
3. Attachment A hereto is a true and correct copy of a letter from Michael Gottlieb to Mark Miller, Joseph Stamey, Christopher Ieyoub, and Kendrick Guidry, dated November 12, 2010.
4. Attachment B hereto is a true and correct copy of an email from Mark Miller to Michael Gottlieb, dated November 17, 2010, attaching an email from Michael Gottlieb to Mark Miller, Joseph Stamey, Christopher Ieyoub, and Kendrick Guidry, dated November 12, 2010.
5. Attachment C hereto is a true and correct copy of an email from Mark Stancil to Michael Gottlieb, dated November 21, 2010, attaching an email from Michael Gottlieb to Mark Stancil, dated November 21, 2010.
6. Attachment D hereto is a true and correct copy of an email from Mark Stancil to Michael Gottlieb and me, dated December 14, 2010.
7. Attachment E hereto is a true and correct copy of an email from Michael Gottlieb to Mark Stancil, dated December 17, 2010, attaching draft

language for a Suggestion of Death Upon the Record regarding the death of Respondent Billy Ray Vice.

8. Attachment F hereto is a true and correct copy of an email from Mark Stancil to Michael Gottlieb, dated December 17, 2010, attaching an email from Michael Gottlieb to Mark Stancil, dated December 17, 2010.

9. Attachment G hereto is a true and correct copy of an email from Mark Stancil to Michael Gottlieb, dated December 20, 2010, attaching an email from Michael Gottlieb to Mark Stancil, dated December 20, 2010.

10. Attachment H hereto is a true and correct copy of an email from Mark Stancil to Michael Gottlieb, dated December 20, 2010, attaching an email from Michael Gottlieb to Mark Stancil, dated December 20, 2010.

11. Attachment I hereto is a true and correct copy of an email from Mark Stancil to Michael Gottlieb, dated December 21, 2010, attaching draft language for a Suggestion of Death Upon the Record regarding the death of Respondent Billy Ray Vice.

12. Attachment J hereto is a true and correct copy of a letter from me to the Clerk of the Court, dated December 23, 2010.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 11, 2011
New York, NY



E. Joshua Rosenkranz
MKG

ATTACHMENT A



ORRICK, HERRINGTON & SUTCLIFFE LLP
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1152 15TH STREET, NW
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WWW.ORRICK.COM

November 12, 2010

Michael K. Gottlieb
202-339-8432
mgottlieb@orrick.com

VIA FIRST-CLASS MAIL AND E-MAIL

J. Mark Miller, Esq.
Joseph B. Stamey, Esq.
Stamey & Miller, LLC
727 Second Street P O Drawer 1288
Natchitoches, LA 71458
jmm_stameymiller@cp-tel.net
jbs_stameymiller@cp-tel.net

Tel. 318-352-4559

Counsel for Billy Ray Vice, Chief of Police of the Town of Vinton

Christopher P. Ieyoub, Esq.
Kendrick J. Guidry, Esq.
Plauché Smith & Nieset, LLC
1123 Pithon Street, P.O. Drawer 1705
Lake Charles, Louisiana 70602
cicyoub@psnlaw.com
kjguidry@psnlaw.com

Tel. 337-436-0522

Counsel for the Town of Vinton

Re: FOX, RICKY D. v. VICE, BILLY R., ET AL., No. 10-114

Counsel:

I write with regard to the above-captioned matter, and with specific regard to the parties' Joint Appendix to be submitted in this case. As I indicated by phone to Mr. Stamey and Mr. Guidry, I think it would be productive for the parties to agree to extend the time period during which agreement must be reached in determining the contents of a Joint Appendix. In the interest of efficiency and of limiting the burden on the Court and the parties of a lengthy appendix, we



O R R I C K

November 12, 2010

Page 2

therefore propose a stipulation to provide more time for the parties to discuss the parameters of record materials to be submitted to the Court and how those materials should be identified.

In the alternative, I have set forth below an initial list of materials for inclusion in the parties' Joint Appendix, pursuant to Supreme Court Rule 26. For convenience, materials are identified by reference to the record citations used in the parties' briefing before the Fifth Circuit Court of Appeals. We also intend to include any additional record materials necessary to identify the documents designated below (e.g., deposition cover pages). If you do not wish to stipulate to an extension of the time period during which the parties can agree on the contents of a Joint Appendix, please let me know whether there are additional materials you wish to counter-designate.

- RI-V: 1-28; 39-41; 43-44; 50-59; 70-71; 121-123; 136-138; 157-159; 162-87; 192-93; 197-99; 205-06; 209-211; 220-21; 232-34; 240-44; 255-58; 260-61; 265-66; 270-71; 277-79; 283-85; 309-23; 340-41; 388-392; 396-399; 402-03; 409-18; 421-22; 427-30; 435-567; 581-97; 609-36; 664-71; 783-87; 793-95; 803-829; 889; 896-97; 921-1001, 1014-16; 1025-26; 1030-1041; 1048-49; 1053-54.
- SR: 18-20
- RE1; RE2; RE3; RE4; RE5; RE6; RE7; RE8
- "Porterfield Affidavit"
- "Delcambre Criminal Trial Testimony:" 1-30
- "Extortion Letter"
- "Extortion Letter Envelope"
- "Fox Deposition:" 24-32; 37-39; 40-59; 68-76; 120; 134-137; 146-48; 152-56; 160-61; 164-66; 169-75; 177-179; 189-90; 198
- "Phillips Deposition:" 44-56; 59-61; 63-74 77-97; 100-107; 118-120; 146-147; 159-161
- "Vice Deposition:" 13-15; 21; 45-50; 60-62; 93-95; 105-107; 133-135; 189-90
- "Budwine Deposition:" 14-16; 19-23; 25-29; 56-68; 74-79; 82-84; 94-96; 99-102; 105-108
- "Budwine Statement"
- "Duenas Criminal Trial Testimony:" 10-12; 20-22; 26-28
- "Peveto Criminal Trial Testimony:" 38-42; 46-51
- "Cary Deposition:" 24-25; 30-34; 39-41; 44-49; 59-62; 82-94; 113-115



O R R I C K

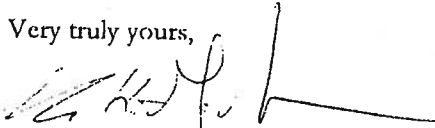
November 12, 2010
Page 3

- "Cary Report"

Furthermore, we regret to learn of the passing of Mr. Vice, former co-defendant in this matter. Will counsel for Mr. Vice submit a suggestion of death to the Court and make clear its intentions with regard to any proposed substitutions?

Please do not hesitate to contact me with questions regarding the above. I look forward to speaking with you soon at your convenience.

Very truly yours,



Michael K. Gottlieb

Counsel for Ricky D. Fox

ATTACHMENT B

Gottlieb, Michael

From: Mark Miller [jmm_stameymiller@cp-tel.net]
Sent: Wednesday, November 17, 2010 12:59 PM
To: Gottlieb, Michael
Subject: RE:

Michael:

Thanks. We are evaluating with our respective clients. We will get back to you soon.

Mark Miller

J. MARK MILLER
Stamey & Miller, LLC
Attorneys at Law
727 2nd Street
P.O. Drawer 1288
Natchitoches, LA 71457
Telephone (318) 352-4559
Facsimile (318) 352-0071
E-Mail jmm_stameymiller@cp-tel.net

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-----Original Message-----

From: Gottlieb, Michael [mailto:mgottlieb@orrick.com]
Sent: Friday, November 12, 2010 4:24 PM
To: jmm_stameymiller@cp-tel.net; jbs_stameymiller@cp-tel.net; cieyoub@psnlaw.com; kjguidry@psnlaw.com
Subject:

Counsel:

Please find attached correspondence related to the matter of *Fox v. Vice, et al.* As I mentioned to Mr. Stamey and Mr. Guidry, I am working with Josh Rosenkranz as counsel for Mr. Fox and I look forward to further discussions with you at your convenience.

Have a pleasant weekend and do not hesitate to contact me as your schedule permits.

Respectfully,

Michael K. Gottlieb



ORRICK

MICHAEL K. GOTTLIEB

Attorney At Law

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=====

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=====

ATTACHMENT C

Gottlieb, Michael

From: Stancil, Mark [mstancil@robbinsrussell.com]
Sent: Sunday, November 21, 2010 8:36 PM
To: Gottlieb, Michael
Subject: RE: Fox v. Vice

Mike:

I can speak for both defendants with respect to these issues. If my memory serves, Josh and I agreed that your brief would be due Dec. 23, our brief Feb. 1. I'd be happy to discuss the joint appendix at your convenience, although it would probably behoove me to get a little deeper into the case first. Mark Miller had mentioned the possibility of seeking to defer the JA, which is fine with me if we think the Court will go along.

Best,

Mark

Mark T. Stancil
Robbins, Russell, Englert, Orseck,
Untereiner & Sauber LLP<<https://mail.robbinsrussell.com/owa/UrlBlockedError.aspx>>
1801 K Street N.W., Suite 411
Washington, DC 20006
(202) 775-4520 phone
(202) 775-4510 fax
www.robbinsrussell.com

From: Gottlieb, Michael [mgottlieb@orrick.com]
Sent: Sunday, November 21, 2010 8:25 PM
To: Stancil, Mark
Subject: Fox v. Vice

Mr. Stancil:

I work with Josh Rosenkranz at Orrick, Herrington & Sutcliffe, and wanted to ask whether you will be representing both defendants in the Fox v. Vice case before the Supreme Court. I have previously reached out to and been in conversation with Messrs. Miller and Ieyoub to discuss whether a suggestion of death will be filed at the court and how the case ought to be styled following Mr. Vice's unfortunate passing. I have also asked each whether they would agree to a two-week extension for the briefing. I understand that you have already spoken with Josh and agreed on behalf of Mr. Vice to split the extension between plaintiff and defendants, but wanted to confirm that you are in a position to speak for both defendant parties so that we can make a formal request to the Court with the consent of all parties.

We should also, at your convenience, discuss the filing of a joint appendix in this case.

Thank you for your time. I look forward to hearing from you and working with you.

Mike Gottlieb
[http://www.orrick.com/images/marketing/Orrick_logo_75x46.gif]<http://www.orrick.com/>
Michael K. Gottlieb
Attorney At Law
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=====

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=====

ATTACHMENT D

Gottlieb, Michael

From: Stancil, Mark [mstancil@robbinsrussell.com]
Sent: Tuesday, December 14, 2010 4:43 PM
To: Rosenkranz, Joshua
Cc: Gottlieb, Michael
Subject: RE: Extension

As you may be aware, I'm told that Billy Ray Vice passed away a couple of months ago. Have you guys given any thought as to how to proceed under S.Ct. Rule 35 in light of this? Also, where do we stand on the JA? I think we'd left it that we'd reconvene about the contents, but I wanted to touch base. Thanks,

Mark

Mark T. Stancil
Robbins, Russell, Englert, Orseck,
Untereiner & Sauber LLP
1801 K Street N.W., Suite 411
Washington, DC 20006
(202) 775-4520 phone
(202) 775-4510 fax
www.robbinsrussell.com

ATTACHMENT E

Gottlieb, Michael

From: Gottlieb, Michael
Sent: Friday, December 17, 2010 2:33 PM
To: Stancil, Mark
Subject: Fox v Vice
Attachments: Suggestion of Death.doc

First, please let me know your thoughts on the attached.

Second, thanks for the heads-up on the Notice of Removal, Opposition to Partial Summary Judgment, and Motions for Summary Judgment. Will you be troubled if, in response, we stick in our full papers moving for partial summary judgment and our briefing in response to the memos you've added? I think we'd also like the option of putting in Chief Vice's memo in opposition to motion for summary judgment filed by Shelter Mutual Insurance (Oct. 9 2007) (*careful -- I think this one's mistitled MEMORANDUM OF PLAINTIFF*).

Let me know your thoughts.

Thanks,

Mike

jrosenkranz@orrick.com

Counsel for Petitioner

With the consent of all parties, Petitioner Ricky D. Fox, by and through his attorneys, respectfully suggests upon the record, pursuant to Supreme Court Rule 35, the death of Respondent Billy Ray Vice on August 26, 2010 during the pendency of this action.

No representative of the deceased Respondent has come forward for substitution as a party. But the case is still alive because Petitioner remains burdened by the order requiring him to pay attorneys' fees, and at least one Respondent, the Town of Vinton, seeks to collect those fees.

Accordingly, the parties agree that the Court need not substitute any party for the time being.

Respectfully submitted,

E. Joshua Rosenkranz
Counsel of Record

ATTACHMENT F

Gottlieb, Michael

From: Stancil, Mark [mstancil@robbinsrussell.com]
Sent: Friday, December 17, 2010 3:24 PM
To: Gottlieb, Michael
Subject: RE: Fox v Vice

Mike,

Certainly no objection to adding whatever you'd like. Please be sure you have our reply in support of the MSJ, too. I'll take a look at the motion and pass it along to the Louisiana lawyers too. And I'm still hoping to get you the additional designations today.

Mark

Mark T. Stancil
Robbins, Russell, Englert, Orseck,
Untereiner & Sauber LLP<<https://mail.robbinsrussell.com/owa/UrlBlockedError.aspx>>
1801 K Street N.W., Suite 411
Washington, DC 20006
(202) 775-4520 phone
(202) 775-4510 fax
www.robbinsrussell.com

From: Gottlieb, Michael [mgottlieb@orrick.com]
Sent: Friday, December 17, 2010 2:33 PM
To: Stancil, Mark
Subject: Fox v Vice

First, please let me know your thoughts on the attached.

Second, thanks for the heads-up on the Notice of Removal, Opposition to Partial Summary Judgment, and Motions for Summary Judgment. Will you be troubled if, in response, we stick in our full papers moving for partial summary judgment and our briefing in response to the memos you've added? I think we'd also like the option of putting in Chief Vice's memo in opposition to motion for summary judgment filed by Shelter Mutual Insurance (Oct. 9 2007) (careful -- I think this one's mistitled MEMORANDUM OF PLAINTIFF).

Let me know your thoughts.

Thanks,

Mike

=====
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=====

ATTACHMENT G

Gottlieb, Michael

From: Stancil, Mark [mstancil@robbsrussell.com]
Sent: Monday, December 20, 2010 10:09 AM
To: Gottlieb, Michael
Subject: Re: Suggestion of Death

Waiting to hear from Louisiana. Sorry.

From: Gottlieb, Michael <mgottlieb@orrick.com>
To: Stancil, Mark
Sent: Mon Dec 20 09:07:30 2010
Subject: Suggestion of Death

Any thoughts?

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ATTACHMENT H

Gottlieb, Michael

From: Stancil, Mark [mstancil@robbinsrussell.com]
Sent: Monday, December 20, 2010 5:40 PM
To: Gottlieb, Michael
Subject: RE: Suggestion of Death
Attachments: Respondents JA Counterdesignations (Dec 20).wpd

Mike:

Attached should be the final word on respondents' JA counter-designations, unless you make additional designations of course. I'm working on getting you a response on the suggestion of death. Thanks,

Mark

From: Gottlieb, Michael [mailto:mgottlieb@orrick.com]
Sent: Monday, December 20, 2010 9:08 AM
To: Stancil, Mark
Subject: Suggestion of Death

Any thoughts?

=====
IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.
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=====

ATTACHMENT I

Gottlieb, Michael

From: Stancil, Mark [mstancil@robbinsrussell.com]
Sent: Tuesday, December 21, 2010 7:54 PM
To: Gottlieb, Michael
Subject: Suggestion of death
Attachments: Suggestion of Death (rev).doc

Mike:

I do not yet have sign-off from my co-counsel on the attached, but in the interests of keeping the ball rolling I wanted to send it to you for your review. Let me know your thoughts, and I'll let you know if/when I get comments from this end.

Thanks,

Mark

jrosenkranz@orrick.com

Counsel for Petitioner

With the consent of all remaining parties, Petitioner Ricky D. Fox, by and through his attorneys, respectfully suggests upon the record, pursuant to Supreme Court Rule 35, the death of Respondent Billy Ray Vice on August 26, 2010 during the pendency of this action.

No representative of the deceased Respondent has come forward for substitution as a party. But the case is still alive because Petitioner remains burdened by the order requiring him to pay attorneys' fees, and one or more Respondents seek to collect those fees.

Accordingly, the remaining parties agree that the Court need not substitute any party for the time being.

Respectfully submitted,

E. Joshua Rosenkranz
Counsel of Record

ATTACHMENT J



ORRICK

December 23, 2010

E. Joshua Rosenkranz
(212) 506-5380
jrosenkranz@orrick.com

VIA HAND DELIVERY

Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543

Re: Ricky D. Fox v. Billy Ray Vice, et al., No. 10-114

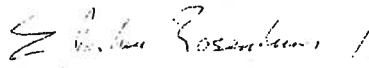
Dear Clerk of the Court:

Petitioner Ricky D. Fox, by and through his attorneys, respectfully suggests upon the record, pursuant to Supreme Court Rule 35, the death of Respondent Billy Ray Vice on August 26, 2010 during the pendency of this action.

No representative of the deceased Respondent has come forward for substitution as a party. But the case is still alive because Petitioner remains burdened by the order requiring him to pay attorneys' fees, and one or more Respondents seek to collect those fees.

Accordingly, the Court need not substitute any party for the time being.

Respectfully Submitted,


E. Joshua Rosenkranz *JKG*

cc: Mark Stancil
Counsel of Record for Respondents

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#312

DEC 23 10 41 21