No. 15-2590

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Andrew U. D. Straw, et. al.
Plaintiff-Appellants,

v.

United States,
Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Illinois
Case No. 15-C-1756
The Honorable Judge Ruben Castillo

REPLY JURISDICTIONAL MEMORANDUM

Andrew U. D. Straw, *Pro Se*
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I, plaintiff-appellant Andrew U. D. Straw, proceeding *pro se* and for my daughter, plaintiff-appellant A.S., having received and reviewed the RESPONSE of Defendant-appellee United States regarding the question of jurisdiction, hereby reply:

We relied in our Jurisdictional Memorandum and Amended Jurisdictional Memorandum on the reasoning in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949). The Defendant-appellee said in its RESPONSE that this case should be analyzed under the recent *Herx* decision of this Court because it treats the question of collateral orders and appellate review. The decision against granting review in *Herx* relied in important part on the fact that the litigants were *private parties*, and the government was not involved. *Herx v. Diocese of Fort Wayne-South Bend*, 14-3057 (7th Cir. 2014). This factual difference is critical in distinguishing this case.

Herx mentioned the several categories where review was appropriate, and quoted the *Will* case: "the decisive consideration is whether delaying review until the entry of final judgment 'would imperil a substantial public interest' or 'some particular value of a high order.'" (quoting *Will* 546 U.S. at 352-53).

The value must support "avoiding trial." These interests include "* * * mitigating the **government's advantage over the individual**." *Will*, at 352-53. (Plaintiffs-appellees' bold and underline)

Naturally, default judgment exists under Rule 55 and its successful use precludes trial. The government has used an incredible unfair advantage to prevent a default judgment that should have been granted. Defendant-appellee brought the case, filed in the Northern District of Illinois, to the Panel's attention. The Panel's ORDER had a very small window for objection, and Plaintiff-appellants objected. Plaintiff-appellants are in a position of poverty and weakness as a result of the poisoning that Defendant-appellee did and Defendant-appellee's own agencies admit the water at Camp LeJeune caused injury. My mother, Sandra K. Isaacs Straw Stevens, grandmother of the other plaintiff-appellant, was also poisoned and she died of a cancer (breast cancer) that the Veterans Administration lists as being associated with the poisons.

Three generations of this family were injured by Defendant-appellee, with wrongful death, spinal deformity, and mental illness being the result. The Camp LeJeune disabilities have caused pain and suffering and we have been waiting literally decades for compensation. My mother died from that Camp LeJeune cancer in poverty, with SSI as her income source. She died

the same year I graduated from law school. Her cancer was discovered the same year I was accepted to Indiana University-Maurer School of Law.

Knowing full well the injury and staggering cost to this family, Defendant-appellee did not defend. It apparently did not *need* to defend, because the District Court prevented even the possibility of using the rules governing answering and default, Rule 12(a)(2) and Rule 55. The government brought the matter to the attention of the Panel, the Panel will wait until **141 days** after service of summons and complaint, and Defendant-appellee is **required to provide no defense** as the judicial branch holds the government's hand during the transfer process and protects it from these disabled plaintiff-appellants. Default was the right result and this is a collateral issue that fits the criteria for review.

Herx held that it is more important to grant collateral review when the government is a litigant. In this case, the government is the defendant. That Defendant-appellee is using its power and the power of the judicial branch in its defense, but only after it put up no defense and was in default, deserving to lose. The Defendant-appellee is ***so favored*** that the District Court dismissed the case and refused to reopen it when it was obvious that default had happened. The District Court cited no rule or authority for dismissing the case, or for keeping it closed in the face of plaintiff-

appellants' righteous demand for justice. The District Court acted in the Defendant-appellee's favor so vigorously that the Defendant-appellee got its way without even having to file anything to prevail.

Plaintiff-appellants expect justice when the rules and the facts are in our favor. The District Court should have acted like a neutral decision-maker, but instead appears to be collaborating with the Multijurisdictional Panel to ensure this case goes to Georgia no matter what the rules say, or how long Defendant-appellee refused to act. 60 days was the limit. At 77 days we were making motions to ask the District Court to act. We are at 107 days past service now. Defendant-appellee still has not even filed an appearance in the District Court.

The Federal Rules of Civil Procedure must mean something when the Clerk puts a seal on a summons and signs it. Just because there is a Panel and a procedure for the convenience of the Defendant-appellee for discovery does not set aside all of the Rules with the sole aim to funnel this case safely to the Court in Georgia.

It seems clear that the District Court wants this case to go to Georgia, not to end in default right now. So does the Panel, which made such an ORDER. So does the Defendant-appellee. Plaintiff-appellants want default judgment.

Plaintiff-appellants respectfully ask again for this Honorable Court to take jurisdiction over this case and correct the errors of the District Court. We believe default judgment is appropriate given how the injuries were spread over such a long time, and the disabilities are life-long. Scoliosis has no cure. Bipolar disorder has no cure. Until Judgment Day, wrongful death has no cure, and my mother's wrongful death caused the bipolar to become fully active.

The government has an unfair advantage and the District Court has neutered the rules to give the government that advantage. When the District Court appears to be denying default only to ensure that the case has a chance to be transferred for discovery and pretrial work a thousand miles away, it is doing an injustice. A motion for default takes place before discovery begins.

Please give us, the poisoned family members of a U.S. Marine and Vietnam veteran who served and was discharged honorably, justice.

I, Plaintiff Andrew U. D. Straw, verify that to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that the above statements and factual representations are true.

Respectfully submitted,

s/ ANDREW U. D. STRAW
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August 29, 2017

CERTIFICATE OF SERVICE

I, Andrew U. D. Straw, certify that I filed the above REPLY with the Court via its electronic CM/ECF system on August 29, 2015. The Court's CM/ECF system will serve the REPLY to all counsel and *pro se* parties.

Respectfully submitted,

s/ ANDREW U. D. STRAW

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