

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

ILLINOIS METROPOLITAN INVESTMENT
FUND; UNIVERSITY OF WISCONSIN CREDIT
UNION; HARVARD SAVINGS BANK;
ENCORE BANK; CITIZENS BANK;
BLACKHAWK BANK: and WATERFRONT
SERVICES COMPANY,

Plaintiffs,

CASE NO.:

v.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Plaintiffs, ILLINOIS METROPOLITAN INVESTMENT FUND,
UNIVERSITY OF WISCONSIN CREDIT UNION, HARVARD SAVINGS
BANK, ENCORE BANK, CITIZENS BANK, BLACKHAWK BANK, and
WATERFRONT SERVICES COMPANY by their undersigned attorneys,
complaining of Defendant, UNITED STATES OF AMERICA, state:

JURISDICTION AND VENUE

1. This is an action arising under the Federal Tort Claims Act (FTCA),
28 U.S.C. § 2671-2680, over which this Court has jurisdiction under 28 U.S.C. §
1346(b)(1).

2. Venue is proper in this district because the negligent acts or omissions of the United States complained of herein occurred in the Northern District of Florida.

APPLICABLE LAW

3. Since the negligent acts or omissions of the United States complained of herein occurred in the State of Florida, the whole law of Florida applies herein, including its law of comparative fault, which bars joint and several liability.

THE PARTIES

4. Plaintiff, Illinois Metropolitan Investment Fund (“IMET”), is an Illinois non-profit governmental investment fund created in 1996 under the Illinois Municipal Code to assist Illinois public entities with the investment of their intermediate term dollars. IMET’s principal place of business is the Northern District of Illinois. IMET presented a timely claim to the United States Department of Agriculture (“USDA”) for money damages for loss of property caused by the negligent or wrongful acts or omissions of the USDA, alleged herein below. The USDA denied IMET’s claim on April 22, 2016.

5. Plaintiff, University of Wisconsin Credit Union (“UWCU”), is a member-owned cooperative business organization and a federally insured Wisconsin State Chartered credit union with its principal place of business in Madison, Wisconsin. UWCU presented a timely claim to the USDA for money

damages for loss of property caused by the negligent or wrongful acts or omissions of the USDA, alleged herein below. The USDA denied UWCU's claim on April 22, 2016.

6. Plaintiff, Harvard Savings Bank ("HARVARD"), is an Illinois savings institution with its principal place of business in Harvard, Illinois. HARVARD presented a timely claim to the USDA for money damages for loss of property caused by the negligent or wrongful acts or omissions of the USDA, alleged herein below. The USDA denied HARVARD'S claim on April 22, 2016.

7. Plaintiff, Encore Bank ("ENCORE"), is a financial institution incorporated in the State of Florida, with its principal place of business in Naples, Florida. ENCORE presented a timely claim to the USDA for money damages for loss of property caused by the negligent or wrongful acts or omissions of the USDA, alleged herein below. The USDA denied ENCORE's claim on April 22, 2016.

8. Plaintiff, Citizens Bank ("CITIZENS"), is a State Chartered commercial bank incorporated in the State of Wisconsin, with its principal place of business in Mukwonago, Wisconsin. CITIZENS presented a timely claim to the USDA for money damages for loss of property caused by the negligent or wrongful acts or omissions of the USDA, alleged herein below. The USDA denied CITIZENS' claim on April 22, 2016.

9. Plaintiff, Blackhawk Bank (“BLACKHAWK”), is a community bank, having its principal place of business in Beloit, Wisconsin, which operates banking centers in south central Wisconsin and north central Illinois. BLACKHAWK presented a timely claim to the USDA for money damages for loss of property caused by the negligent or wrongful acts or omissions of the USDA, alleged herein below. The USDA denied BLACKHAWK’s claim on April 22, 2016.

10. Plaintiff, WATERFRONT SERVICES COMPANY (“WATERFRONT”), is a Delaware corporation with its principal place of business in Cairo, Illinois. WATERFRONT presented a timely claim to the USDA for money damages for loss of property caused by the negligent or wrongful acts or omissions of the USDA, alleged herein below. The USDA denied WATERFRONT’s claim on July 7, 2016.

11. The USDA is a department of the United States government.

BACKGROUND

12. At all times relevant to the matters alleged herein, the USDA administered the Business and Industry Guaranteed Loan Program (“B&I Program”).

13. Under the B&I Program, the USDA guaranteed a percentage of loans issued to borrowers who would improve economic and environmental conditions in rural communities. The USDA only guaranteed percentages of loans that were

originated by lenders designated by the USDA as eligible to participate in the program. Consequently, the USDA's approval of a lender constituted a stamp of government approval and made the purchase of an interest in a lender's guaranteed loans an attractive investment for those public and private institutions seeking an investment backed by the full faith and credit of the United States government.

14. On November 2, 2011, First Farmers Financial ("FFF"), formerly known as First Farmers Bancorp, LLC, headquartered in Orlando, Florida, filed an application for participation in the B&I Program as an approved lender. The application was filed with the office of the Rural Development Section of the USDA in Gainesville, Florida.

15. The principal officers of FFF were Nikesh Patel and Timothy Fisher.

16. Prior to the submission of FFF's application to the USDA, Patel and Fischer had concocted a scheme involving the sale of interests in fictitious government guaranteed loans. By participating in the B&I Program as an approved lender, whose loans were eligible for US government guarantees, FFF sought access to the secondary market for US guaranteed loans, in which to market their fictitious loans.

17. In support of their application for approved lender status, FFF's principals submitted to the USDA demonstrably false statements about the

company's financial condition and its experience as a lender. Among other things, FFF's submission to the USDA falsely represented that there was \$22 million in an FFF bank account at Wells Fargo. A responsible investigation of these statements, as required by federal regulations, would have revealed their falsity.

18. On April 2, 2012, the Florida State Director of the USDA Rural Development Service notified FFF of the USDA's approval of FFF as an eligible lender for the Business and Industry Guaranteed Loan Program. The USDA's approval of FFF, however, was the product of a negligent investigation which failed to verify that FFF and its principals met the criteria mandated by the USDA's own regulations.

19. At the time that USDA approved FFF as an eligible lender, the USDA knew that interests in the B&I Program USDA guaranteed loans were attractive investments for public and private institutions that participated in the secondary market. In fact, the USDA encouraged approved lenders to sell interests in the USDA guaranteed portions of loans to secondary market participants.

20. In the Spring of 2013, Plaintiffs' investment advisor was introduced to FFF as an approved originator of USDA guaranteed loans.

21. Beginning in 2013, Plaintiffs' investment advisor purchased for the benefit of the Plaintiffs interests in a certain repurchase agreement known as the First Farmers Financial Master Repurchase Agreement B (the "FFF Repo B").

Under the FFF Repo B agreement, FFF agreed to transfer the guaranteed portions of 25 USDA guaranteed loans to the Plaintiffs' agent in exchange for (a) the Plaintiffs transfer of funds to FFF and (b) the Plaintiffs agreement to transfer to FFF, upon the occurrence of certain events, the guaranteed portions of the USDA guaranteed loans in exchange for FFF's transfer of funds to Plaintiffs. The agreement also transferred to Plaintiffs collateral interests in the USDA guaranteed portions of the loans.

22. During the period from May 16, 2013 through August 2014, the Plaintiffs invested in interests in the FFF Repo B:

- a. Plaintiff, IMET, invested \$50,442,142.78 in the FFF Repo B;
- b. Plaintiff, UWCU, invested \$52,977,010.68 in the FFF Repo B;
- c. Plaintiff, HARVARD, invested \$18,084,796.74 in the FFF Repo B;
- d. Plaintiff, CITIZENS, invested \$15,000,000.00 in the FFF Repo B;
- e. Plaintiff, ENCORE, invested \$4,825,506.63 in the FFF Repo B;
- f. Plaintiff, BLACKHAWK, invested \$5,675,056.71 in the FFF Repo B; and
- g. Plaintiff, WATERFRONT, invested \$7,211,788.61 in the FFF Repo B.

23. On September 29, 2014, Plaintiffs learned that the documentation for the FFF Repo B, including the USDA loan guarantees which collateralized the FFF Repo B, were forged and that none of the borrowers, to which FFF supposedly had lent money, actually existed. Further, Plaintiffs learned that even the CPA, who allegedly performed the most recent audit of FFF's financial statements, did not exist. In short, the Plaintiffs learned that they had invested over \$154,000,000 in a fiction.

24. Subsequently, Plaintiffs learned that the money that Plaintiffs invested in the FFF Repo B was used by FFF's principals, Patel and Fisher, to pay themselves and support their lavish lifestyles, invest in real estate, and perpetuate their scheme involving the sale of fictitious loans.

25. Had it not been for the USDA's negligence in approving FFF as a participating lender in the B&I Program, the Plaintiffs never would have invested in the FFF Repo B which was purportedly collateralized by USDA guaranteed loans originated by FFF.

COUNT I

ILLINOIS METROPOLITAN INVESTMENT FUND'S CLAIM FOR DAMAGES

26. Plaintiff, IMET, incorporates herein by reference the allegations made in paragraphs 1 through 25.

27. Defendant, USDA, had a duty to exercise ordinary care in approving

entities as non-regulated lenders that originated USDA guaranteed loans that would be sold on the secondary markets.

28. By its purchase of an interest in FFF Repo B, IMET was a participant in the secondary markets for USDA guaranteed loans.

29. Defendant, USDA, was negligent in one or more of the following ways:

a. The USDA improperly investigated and failed to discover that FFF did not have in excess of \$22 million dollars in liquidity in the form of deposits in a large financial institution;

b. The USDA improperly investigated and failed to discover that FFF did not have a record of making commercial loans and did not have sufficient tangible assets to facilitate loan making as required by applicable regulations;

c. The USDA improperly investigated and failed to discover that FFF had not made at least three commercial loans annually for at least the most recent three years prior to the submission of FFF's application for certification, nor had personnel with the requisite prior experience making loans when the commercial portfolio was of a similar quantity and quality;

d. The USDA improperly investigated and failed to

discover that FFF did not have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposed to approve within the first six months of being approved as a guaranteed lender;

e. The USDA improperly investigated and failed to discover that FFF did not have the necessary capital and resources to successfully meet its responsibilities;

f. The USDA improperly investigated FFF and its principals and failed to discover that FFF and its principals were providing the USDA with incorrect and fraudulent information in order to manipulate the USDA into approving FFF as a non-regulated lender; and/or

g. Otherwise failed to comply with the mandatory duties as set forth in 7 CFR 4279.29 that it had agreed to perform before approving FFF as a non-regulated lender.

30. The USDA's negligence proximately caused IMET to suffer damages totaling \$50,442,142.78.¹

Wherefore, Plaintiff, ILLINOIS METROPOLITAN INVESTMENT FUND,

¹Plaintiffs' respective damages may be reduced by recoveries obtained from other wrongdoers in other proceedings.

demands judgment in favor of Plaintiff, ILLINOIS METROPOLITAN INVESTMENT FUND, and against Defendant, UNITED STATES OF AMERICA, in the amount of \$50,442,142.78, plus costs and interest as provided by law.

COUNT II

UNIVERSITY OF WISCONSIN CREDIT UNION'S CLAIM FOR DAMAGES

31. Plaintiff, UWCU, incorporates herein by reference the allegations made in paragraphs 1 through 25.

32. Defendant, USDA, had a duty to exercise ordinary care in approving entities as non-regulated lenders that originated USDA guaranteed loans that would be sold on the secondary markets.

33. By its purchase of an interest in FFF Repo B, UWCU was a participant in the secondary markets for USDA guaranteed loans.

34. Defendant, USDA, was negligent in one or more of the following ways:

a. The USDA improperly investigated and failed to discover that FFF did not have in excess of \$22 million dollars in liquidity in the form of deposits in a large financial institution;

b. The USDA improperly investigated and failed to discovery that FFF did not have a record of making commercial loans

and did not have sufficient tangible assets to facilitate loan making as required by applicable regulations;

c. The USDA improperly investigated and failed to discover that FFF had not made at least three commercial loans annually for at least the most recent three years prior to the submission of FFF's application for certification, nor had personnel with the requisite prior experience making loans when the commercial portfolio was of a similar quantity and quality;

d. The USDA improperly investigated and failed to discover that FFF did not have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposed to approve within the first six months of being approved as a guaranteed lender;

e. The USDA improperly investigated and failed to discover that FFF did not have the necessary capital and resources to successfully meet its responsibilities;

f. The USDA improperly investigated FFF and its principals and failed to discover that FFF and its principals were providing the USDA with incorrect and fraudulent information in order to manipulate the USDA into approving FFF as a non-regulated

lender; and/or

g. Otherwise failed to comply with the mandatory duties as set forth in 7 CFR 4279.29 that it had agreed to perform before approving FFF as a non-regulated lender.

35. The USDA's negligence proximately caused UWCU to suffer damages totaling \$52,997,010.68.²

Wherefore, Plaintiff, UNIVERSITY OF WISCONSIN CREDIT UNION, demands judgment in favor of Plaintiff, UNIVERSITY OF WISCONSIN CREDIT UNION, and against Defendant, UNITED STATES OF AMERICA, in the amount of \$52,997,010.68 plus costs and interest as provided by law.

COUNT III

HARVARD SAVINGS BANK'S CLAIM FOR DAMAGES

36. Plaintiff, HARVARD, incorporates herein by reference the allegations made in paragraphs 1 through 25.

37. Defendant, USDA, had a duty to exercise ordinary care in approving entities as non-regulated lenders that originated USDA guaranteed loans that would be sold on the secondary markets.

38. By its purchase of an interest in FFF Repo B, HARVARD was a

²Plaintiffs' respective damages may be reduced by recoveries obtained from other wrongdoers in other proceedings.

participant in the secondary markets for USDA guaranteed loans.

a. The USDA improperly investigated and failed to discover that FFF did not have in excess of \$22 million dollars in liquidity in the form of deposits in a large financial institution;

b. The USDA improperly investigated and failed to discovery that FFF did not have a record of making commercial loans and did not have sufficient tangible assets to facilitate loan making as required by applicable regulations;

c. The USDA improperly investigated and failed to discover that FFF had not made at least three commercial loans annually for at least the most recent three years prior to the submission of FFF's application for certification, nor had personnel with the requisite prior experience making loans when the commercial portfolio was of a similar quantity and quality;

d. The USDA improperly investigated and failed to discover that FFF did not have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposed to approve within the first six months of being approved as a guaranteed lender;

e. The USDA improperly investigated and failed to

discover that FFF did not have the necessary capital and resources to successfully meet its responsibilities;

f. The USDA improperly investigated FFF and its principals and failed to discover that FFF and its principals were providing the USDA with incorrect and fraudulent information in order to manipulate the USDA into approving FFF as a non-regulated lender; and/or

g. Otherwise failed to comply with the mandatory duties as set forth in 7 CFR 4279.29 that it had agreed to perform before approving FFF as a non-regulated lender.

40. The USDA's negligence proximately caused HARVARD to suffer damages totaling \$18,084,796.74.³

Wherefore, Plaintiff, HARVARD SAVINGS BANK, demands judgment in favor of Plaintiff, HARVARD SAVINGS BANK, and against Defendant, UNITED STATES OF AMERICA, in the amount of \$18,084,796.74 plus costs and interest as provided by law.

COUNT IV

ENCORE BANK'S CLAIM FOR DAMAGES

³Plaintiffs' respective damages may be reduced by recoveries obtained from other wrongdoers in other proceedings.

41. Plaintiff, ENCORE, incorporates herein by reference the allegations made in paragraphs 1 through 25.

42. Defendant, USDA, had a duty to exercise ordinary care in approving entities as non-regulated lenders that originated USDA guaranteed loans that would be sold on the secondary markets.

43. By its purchase of an interest in FFF Repo B, ENCORE was a participant in the secondary markets for USDA guaranteed loans.

44. Defendant, USDA, was negligent in one or more of the following ways:

a. The USDA improperly investigated and failed to discover that FFF did not have in excess of \$22 million dollars in liquidity in the form of deposits in a large financial institution;

b. The USDA improperly investigated and failed to discover that FFF did not have a record of making commercial loans and did not have sufficient tangible assets to facilitate loan making as required by applicable regulations;

c. The USDA improperly investigated and failed to discover that FFF had not made at least three commercial loans annually for at least the most recent three years prior to the submission of FFF's application for certification, nor had personnel

with the requisite prior experience making loans when the commercial portfolio was of a similar quantity and quality;

d. The USDA improperly investigated and failed to discover that FFF did not have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposed to approve within the first six months of being approved as a guaranteed lender;

e. The USDA improperly investigated and failed to discover that FFF did not have the necessary capital and resources to successfully meet its responsibilities;

f. The USDA improperly investigated FFF and its principals and failed to discover that FFF and its principals were providing the USDA with incorrect and fraudulent information in order to manipulate the USDA into approving FFF as a non-regulated lender; and/or

g. Otherwise failed to comply with the mandatory duties as set forth in 7 CFR 4279.29 that it had agreed to perform before approving FFF as a non-regulated lender.

45. The USDA's negligence proximately caused ENCORE to suffer

damages totaling \$4,825,506.63.⁴

Wherefore, Plaintiff, ENCORE BANK, demands judgment in favor of Plaintiff, ENCORE BANK, and against Defendant, UNITED STATES OF AMERICA, in the amount of \$4,825,506.63 plus costs and interest as provided by law.

COUNT V

CITIZENS BANK'S CLAIM FOR DAMAGES

46. Plaintiff, CITIZENS, incorporates herein by reference the allegations made in paragraphs 1 through 25.

47. Defendant, USDA, had a duty to exercise ordinary care in approving entities as non-regulated lenders that originated USDA guaranteed loans that would be sold on the secondary markets.

48. By its purchase of an interest in FFF Repo B, CITIZENS was a participant in the secondary markets for USDA guaranteed loans.

49. Defendant, USDA, was negligent in one or more of the following ways:

- a. The USDA improperly investigated and failed to discover that FFF did not have in excess of \$22 million dollars in

⁴Plaintiffs' respective damages may be reduced by recoveries obtained from other wrongdoers in other proceedings.

liquidity in the form of deposits in a large financial institution;

b. The USDA improperly investigated and failed to discover that FFF did not have a record of making commercial loans and did not have sufficient tangible assets to facilitate loan making as required by applicable regulations;

c. The USDA improperly investigated and failed to discover that FFF had not made at least three commercial loans annually for at least the most recent three years prior to the submission of FFF's application for certification, nor had personnel with the requisite prior experience making loans when the commercial portfolio was of a similar quantity and quality;

d. The USDA improperly investigated and failed to discover that FFF did not have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposed to approve within the first six months of being approved as a guaranteed lender;

e. The USDA improperly investigated and failed to discover that FFF did not have the necessary capital and resources to successfully meet its responsibilities;

f. The USDA improperly investigated FFF and its

principals and failed to discover that FFF and its principals were providing the USDA with incorrect and fraudulent information in order to manipulate the USDA into approving FFF as a non-regulated lender; and/or

g. Otherwise failed to comply with the mandatory duties as set forth in 7 CFR 4279.29 that it had agreed to perform before approving FFF as a non-regulated lender.

50. The USDA's negligence proximately caused CITIZENS to suffer damages totaling \$15,000,000.00.⁵

Wherefore, Plaintiff, CITIZENS BANK, demands judgment in favor of Plaintiff, CITIZENS BANK, and against Defendant, UNITED STATES OF AMERICA, in the amount of \$15,000,000.00 plus costs and interest as provided by law.

COUNT VI

BLACKHAWK BANK'S CLAIM FOR DAMAGES

51. Plaintiff, BLACKHAWK, incorporates herein by reference the allegations made in paragraphs 1 through 25.

52. Defendant, USDA, had a duty to exercise ordinary care in approving entities as non-regulated lenders that originated USDA guaranteed loans that

⁵Plaintiffs' respective damages may be reduced by recoveries obtained from other

would be sold on the secondary markets.

53. By its purchase of an interest in FFF Repo B, BLACKHAWK was a participant in the secondary markets for USDA guaranteed loans.

54. Defendant, USDA, was negligent in one or more of the following ways:

a. The USDA improperly investigated and failed to discover that FFF did not have in excess of \$22 million dollars in liquidity in the form of deposits in a large financial institution;

b. The USDA improperly investigated and failed to discovery that FFF did not have a record of making commercial loans and did not have sufficient tangible assets to facilitate loan making as required by applicable regulations;

c. The USDA improperly investigated and failed to discover that FFF had not made at least three commercial loans annually for at least the most recent three years prior to the submission of FFF's application for certification, nor had personnel with the requisite prior experience making loans when the commercial portfolio was of a similar quantity and quality;

d. The USDA improperly investigated and failed to

wrongdoers in other proceedings.

discover that FFF did not have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposed to approve within the first six months of being approved as a guaranteed lender;

e. The USDA improperly investigated and failed to discover that FFF did not have the necessary capital and resources to successfully meet its responsibilities;

f. The USDA improperly investigated FFF and its principals and failed to discover that FFF and its principals were providing the USDA with incorrect and fraudulent information in order to manipulate the USDA into approving FFF as a non-regulated lender; and/or

g. Otherwise failed to comply with the mandatory duties as set forth in 7 CFR 4279.29 that it had agreed to perform before approving FFF as a non-regulated lender.

55. The USDA's negligence proximately caused BLACKHAWK to suffer damages totaling \$5,675,056.71.⁶

Wherefore, Plaintiff, BLACKHAWK BANK, demands judgment in favor of

⁶Plaintiffs' respective damages may be reduced by recoveries obtained from other wrongdoers in other proceedings.

Plaintiff, BLACKHAWK BANK, and against Defendant, UNITED STATES OF AMERICA, in the amount of \$5,675,056.71 plus costs and interest as provided by law.

COUNT VII

WATERFRONT SERVICES COMPANY's CLAIM FOR DAMAGES

56. Plaintiff, WATERFRONT, incorporates herein by reference the allegations made in paragraphs 1 through 25.

57. Defendant, USDA, had a duty to exercise ordinary care in approving entities as non-regulated lenders that originated USDA guaranteed loans that would be sold on the secondary markets.

58. By its purchase of an interest in FFF Repo B, WATERFRONT was a participant in the secondary markets for USDA guaranteed loans.

59. Defendant, USDA, was negligent in one or more of the following ways:

a. The USDA improperly investigated and failed to discover that FFF did not have in excess of \$22 million dollars in liquidity in the form of deposits in a large financial institution;

b. The USDA improperly investigated and failed to discovery that FFF did not have a record of making commercial loans and did not have sufficient tangible assets to facilitate loan making as

required by applicable regulations;

c. The USDA improperly investigated and failed to discover that FFF had not made at least three commercial loans annually for at least the most recent three years prior to the submission of FFF's application for certification, nor had personnel with the requisite prior experience making loans when the commercial portfolio was of a similar quantity and quality;

d. The USDA improperly investigated and failed to discover that FFF did not have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposed to approve within the first six months of being approved as a guaranteed lender;

e. The USDA improperly investigated and failed to discover that FFF did not have the necessary capital and resources to successfully meet its responsibilities;

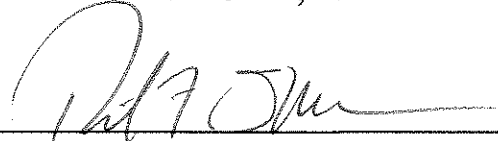
f. The USDA improperly investigated FFF and its principals and failed to discover that FFF and its principals were providing the USDA with incorrect and fraudulent information in order to manipulate the USDA into approving FFF as a non-regulated lender; and/or

g. Otherwise failed to comply with the mandatory duties as set forth in 7 CFR 4279.29 that it had agreed to perform before approving FFF as a non-regulated lender.

60. The USDA's negligence proximately caused WATERFRONT to suffer damages totaling \$7,211,788.61.⁷

Wherefore, Plaintiff, WATERFRONT SERVICES COMPANY, demands judgment in favor of Plaintiff, WATERFRONT SERVICES COMPANY, and against Defendant, UNITED STATES OF AMERICA, in the amount of \$7,211,788.61 plus costs and interest as provided by law.

SPOHRER & DODD, P.L.



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