

Damages sought for U.S. 'bad faith' actions against LaRouche movement

Two former political publishing companies and an internationally renowned scientific foundation associated with Lyndon LaRouche on Oct. 19 filed a multimillion-dollar claim for damages against the U.S. government, announced Warren J. Hamerman, staff director, Constitutional Defense Fund (CDF).

The three organizations were brutally shut down by the U.S. government in a "forced bankruptcy" on April 21, 1987. Two-and-one-half years later, on Oct. 25, 1989, one of the nation's leading federal bankruptcy judges, Judge Martin V.B. Bostetter, found that the government action was unlawful when he ruled that it was:

- 1) done in "objective bad faith."
- 2) conducted through "a constructive fraud on the court."

To cover its tracks in its unlawful persecution of the LaRouche movement, the U.S. Justice Department then tried to appeal this decision to a federal judge in the Eastern District of Virginia, but lost again. The second federal judge, after an independent review, found the same thing that Bostetter did. The government acted unlawfully, "in objective bad faith" and through a "constructive fraud on the court." The Solicitor General of the United States decided to throw in the towel and announced that the government would not appeal further.

Legal observers believe that, if there is no continuing *fraud* on the court system by the government, the innocent LaRouche shall gain an early release.

Police-state actions

What was the bad faith action of the "Get LaRouche" task force? In the early morning on April 21, 1987, from coast to coast, without any warning, U.S. Marshals launched a raid—bursting in, seizing, inventorying, and sealing the offices of nationwide publishing, distribution, and scientific organizations. Approximately 150 persons were robbed of their family's livelihood. Clothing and personal belongings, books, and papers of journalists and scientists were seized. *New Solidarity*, a nationwide twice-weekly newspaper with 150,000 circulation, was shut down. Books and pamphlets were confiscated in utter contempt for the Constitution. The

Fusion Energy Foundation, a leading scientific association, of which Lyndon LaRouche was a member of the board of directors, and which was making vital contributions on scientific policy to the White House, Congress, and scientific community, was snuffed out.

Not only were the very creditors the government claimed to protect severely harmed by the government's own actions, because the companies could no longer repay loans to thousands of their supporters, but, in an act of "double bad faith," the government turned around and falsely prosecuted LaRouche and his associates for not repaying these same loans. This is the so-called "crime" for which political prisoner LaRouche was thrown into prison one and three-quarters years ago to rot and die. LaRouche and his associates were imprisoned in the same week as the inauguration of George Bush as President of the United States. Bush has personally suppressed secret files which prove beyond all doubt that LaRouche is innocent and that the government deliberately framed him up.

The repercussions of the government's actions are legion:

- LaRouche and his associates have been unjustly held in prison for 21 months for economic crimes the government committed and then pinned on him, through a continuing fraud on the court system;
 - The government squandered tens of millions of dollars to fund a federal, state, and private multi-jurisdictional task force whose job it was to make the unjust prosecution of LaRouche and his associates "stick";
 - An extensive distribution network of political literature was dismantled;
 - An internationally respected scientific foundation was demolished;
 - Numerous supporters were *foreclosed* by the government from being able to obtain repayment on loans extended to support these companies.
 - None of the publications or journals were produced or distributed again; no scientific seminars were organized or sponsored by the Fusion Energy Foundation; subscriptions went unfulfilled; and all income-generating activities ceased.
- Now the government must pay for its bad faith actions.

Documentation

The following are excerpts from papers filed demanding government payment of damages.

Motion for attorneys fees, costs, and damages

Come now, Caucus Distributors, Inc., Campaigner Publications, Inc., and Fusion Energy Foundation (collectively the "Former Alleged Debtors") . . . for . . . attorneys fees and costs jointly and severally against the United States of America . . . the Commonwealth of Virginia, and the other creditors . . . and . . . for an Order setting a hearing to determine the amount of damages which [they] may recover from the Government . . . on account of the bad faith filing of the involuntary Chapter 7 bankruptcy petitions . . . and, as grounds therefore, respectfully state . . . :

1. On April 20, 1987, the United States filed involuntary petitions . . . against Caucus, Campaigner, and Fusion.

2. In connection with filing . . . the Government filed motions seeking the appointment of an interim trustee for each corporate entity, and requesting that the Court hear the matter *ex parte*. That motion was granted . . . and no record of that hearing was made.

3. On or after April 21, 1987, the United States Marshals Service seized, inventoried, and locked many offices believed to be those of the Former Alleged Debtors located. . . . In addition, the Interim Trustees seized every known bank account. . . .

4. On October 25, 1989, two and one half years after their businesses were destroyed, this Court dismissed the involuntary petitions. . . . In its Memorandum Opinion, this Court concluded that "the Government's actions could be likened to a constructive fraud upon the Court, wherein the Court may infer the fraudulent nature of the government's conduct," (citation omitted), and that "on an objective level . . . the government filed the petition[s] in bad faith." (Citation omitted.)

5. The Government filed an appeal from this Court's decision, and the Former Alleged Debtors filed cross appeals. On July 19, 1990 . . . Judge Hilton affirmed this Court's decision in its entirety. . . .

6. . . . the order dismissing the involuntary petitions is now final.

7. Before these cases may be closed entirely, however, it remains for this Court to determine the extent to which the Former Alleged Debtors are entitled to recover from the Government . . . the attorneys fees and costs incurred in successfully defending the involuntary petitions and . . . whether the entities are entitled to recover any damages suffered as a result of the Government's actions.

8. . . . the Code provides as follows: If the Court dismisses a petition . . . the Court may grant judgment —

(1) against the petitioners and in favor of the debtor for—

(A) costs; or

(B) a reasonable attorney's fee; or

(2) against any petitioner that filed the petition in bad faith, for—

(A) any damages proximately caused by such filing; or

(B) punitive damages. . . .

10. The question of whether the Former Alleged Debtors are entitled to any damages based upon the conclusion that the filing of the involuntary petitions was done in objective bad faith was not resolved in the comprehensive Memorandum Opinion . . . or in any subsequent proceedings, including the appeal. The question properly was not addressed by this Court because, during the course of the proceedings up to and including trial, the Former Alleged Debtors had not, nor could they have, made any formal request for damages. . . .

11. As to their entitlement to damages, the Former Alleged Debtors submit that where . . . there is a finding of objective bad faith, the plain meaning of [the Code] allows the recovery of damages.

12. The measure of damages remains to be determined at a hearing. The net effect of the Government's filing of the involuntary petitions . . . was the complete shut down of all business activities. Approximately 150 persons were evicted from their livelihood and thousands of contributors and supporters were harmed because the Former Alleged Debtors were unable to repay loans made by those individuals. Indeed, the very people the Government claims it filed the petitions to protect were more severely harmed by the Government's own actions than by any action taken by Caucus, Campaigner or Fusion.

13. The destruction of their businesses left Caucus, Campaigner, and Fusion with substantial unpaid obligations and damages. The damages incurred by each of the Former Alleged Debtors . . . include, but are not limited to the following categories: (a) loans from individuals outstanding as of April 20, 1987, for which no funds have existed for repayment; (b) interest on the . . . loans at varying rates of interest . . . ; (c) trust fund, payroll, and other federal, state, and local taxes due as of April 20, 1987; . . . (g) unfilled subscription obligations; and, (h) business good will and reputation. The Former Alleged Debtors contend that, in light of the Court's finding of objective bad faith, the burden of these damages properly should be borne by the United States, NCNB, MCI Communications, the Commonwealth of Virginia, and the other Intervening Creditors. To the extent the Court concurs, Caucus, Campaigner, and Fusion respectfully request the Court to schedule a hearing on the amount of damages they are entitled to recover. . . .

Memorandum of points and authorities in support of motion for attorneys fees, costs, and damages

. . . The dismissal of the involuntary petitions has been affirmed. . . . Thus, it is now appropriate to consider the

Former Alleged Debtors' claims for attorneys fees and costs. Collectively, Caucus, Campaigner, and Fusion incurred over \$550,000 in legal fees in their defense to the involuntary petitions and their efforts to seek dismissal, and an award of the balance due is proper.

The second issue, i.e., the entitlement to damages presents a different, and unique question. . . .

The fundamental policy question presented by this issue is whether the Government and the Intervening Creditors may escape ultimate financial responsibility for the economic harm and ruin caused . . . by the improper involuntary petitions . . . and the secret, *ex parte* appointment of Interim Trustees. The key legal issue is whether the finding that the Government perpetrated a constructive fraud upon the Court, and the conclusion that the filing of the single creditor, involuntary petitions was, objectively, bad faith, entitle the Former Alleged Debtors to an order of judgment awarding damages. . . .

. . . the salient facts and sequence of events which led up to and immediately followed the filing of the involuntary petitions by the Government; [were] the request for an *ex parte* hearing at which the motion for the appointment of interim trustees was entertained, the request to seal all Court records for a 24-hour period, and, the orders which went out to the [U.S.] Marshals Service to seize offices of each Former Alleged Debtor . . . and to stop the payment of all pre-petition debt.

These pre-filing activities, alone, should support an award of damages. In determining the entitlement to such an award, however, the Court also should consider the consequences which the Government's actions had on the business activities . . . employees, contributors and supporters. In other words . . . the economic harm caused by the involuntary petitions; a perspective which has not previously been presented to the Court. . . .

Collectively, Caucus, Campaigner, and Fusion occupied numerous offices around the country, employing approximately 150 individuals; many of whom had served as writers, editors, computer programmers, sales representatives, etc., for 10-15 years. On April 21, 1987, however, every office was sealed shut, every employee was forcibly evicted from his/her livelihood, and many subscribers and supporters of these concerns were disenfranchised. . . .

The repercussions from the Government's actions are legion: an extensive political distribution system was dismantled, an internationally respected scientific foundation was demolished, and numerous supporters were foreclosed from obtaining repayment on loans extended to support these corporations. Following the filing of the involuntary petitions, none of the Former Alleged Debtors conducted business operations, none of their publications or journals were produced or distributed and no seminars were organized or sponsored. More importantly, all revenue-generating activities were entirely shut down, making it impossible to repay thousands of

supporters and to fulfill obligations, such as subscriptions, to those whose contributions and loans had sustained the three corporations for years. . . .

. . . An award of attorneys' fees not only is appropriate, but mandated by the Code. In enacting Section 303(i)(1), Congress plainly intended that unsuccessful petitioning creditors should be required to pay for the burden they created. . . .

. . . During the course of a three-year period the Former Alleged Debtors incurred well over \$550,000.00 in legal fees in the successful defense of the involuntary petitions filed against them by the Government. . . . Absent full compensation of these costs from the creditor who initiated the involuntary proceedings, the entire burden of this defense will fall squarely upon the targets of the improper filings, a result patently at odds with the intent of [the Code]. . . .

. . . The involuntary petitions filed by the Government destroyed these business entities. The damages . . . remain to be detailed at a hearing, but the sum total of all damages . . . is substantial.

If the Court denies the Former Alleged Debtors the right to seek any damages, it would effectively allow the Government, and the Intervening Creditors, to escape entirely from any responsibility for the economic harm caused by the involuntary petitions. This result would sanction the very conduct the Court decried as improper.

If creditors are certain that, absent a finding of both objective and subjective bad faith, there is no risk of financial liability or any other penalty for improperly invoking the jurisdiction of a bankruptcy court, then there would no longer be any disincentives built into the system to discourage such actions. The consequence to the judicial system posed by this result is unthinkable.

Now Available!

J.S. BACH

The Six Suites for Solo 'Cello
Eliane Magnan, 'Cellist
Ibykus Series
Set of Two Compact Discs

\$38.00 Add \$1.50 postage and handling for first set of 2 CD's,
\$.50 each additional set.

Make check or money order payable to:
Ben Franklin Booksellers, 27 South King Street, Leesburg,
Virginia 22075. Telephone (703) 777-3661. MasterCard and
Visa accepted.