FORM 12. Informal Brief (District Court, Court of International Trade, and Court of Federal Claims Cases)

Form 12
Rev. 03/16

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Jeffrey T. Maehr v. US

Case No. 18-2286

INFORMAL BRIEF OF APPELLANT

Read the Guide for Pro Se Petitioners and Appellants before completing this form. Attach a copy of the final decision or order of the trial court. Answer the following questions as best you can. Your answers should refer to the decision or order you are appealing where possible. Use extra sheets if needed.

1. Have you ever had another case in this court? ☐ Yes ☒ No If yes, state the name and number of each case.

2. Did the trial court incorrectly decide or fail to take into account any facts? ☒ Yes ☐ No If yes, what facts? (Refer to paragraph 7 of the Guide.)

1. The case was not transferred "as a matter of law," and no "law" was cited to justify not transferring the case to the court with proper jurisdiction for denied due process of rebuttal evidence and Sup. Ct. stare decisis.
2. The Motion for Grand Jury under 18 U.S.C. was dismissed in error with claims of lack of jurisdiction to respond. (See appendix for detailed discussion)

3. Did the trial court apply the wrong law? ☒ Yes ☐ No If yes, what law should be applied?

Transfer of case based on 5th Amendment right for due process, and Traveler's Indem. of all evidence of record and proof of claim, denied in all past courts; Rule 6 - Grand Jury; Title 18 U.S.C. for reporting a crime, and U.S. Supreme Court. (See appendix for additional discussion).

4. Did the trial court fail to consider important grounds for relief? ☒ Yes ☐ No If yes, what grounds?

Failure of Defendant to rebut evidence of record with documentation on assessment and levy, and to answer with documentation rebutting U.S. Supreme Court stare decisis on the issues raised but never adjudicated. This has not been done in any previous courts,and due process has been denied Appellant,providing ample justice opportunity for transfer of the case to a court of competent jurisdiction. There is no reason to deny Appellant, under due process, his "day in court" to be heard on the lawful facts never adjudicated and no harm to any party to have done so.

5. Are there other reasons why the trial court's decision was wrong? ☐ Yes ☒ No If yes, what reasons?

Reset Fields

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6. What action do you want the court to take in this case?

1. To remand or transfer the case issues to a court of competent jurisdiction for lawful due process of the case,and for "findings of fact and conclusions of law"on ALL issues raised in the case,including,but not limited to, fraudulent assessment and levy, and to order the summons of one or more grand juries to investigate all original intent and historic evidence of record as provided by Title 18, U.S.C., and U.S. Supreme Court Williams case on grand jury availability.
2. To award compensatory damages for all out of pocket expenses based on UNITED STATES v. John H. WILLIAMS, Jr., 504 U.S. 36 (112 S.Ct. 1735, 118 L.Ed.2d 352)
3. To aware attorney fees under 34 CFR 21.1 - Equal Access to Justice Act. (See Appendix discussion)

7. Do you believe argument will aid the court? ☐ Yes ☒ No If yes, submit a separate notice to the court requesting oral argument and include the reasons why argument will aid the court. (Refer to paragraph 15 of the Guide.)

8. Do you intend to represent yourself? ☒ Yes ☐ No If you have not filed an Entry of Appearance, indicate your full name, address, telephone number and e-mail address.

Appellant has requested assistance of counsel in a past court, without response, and is attempting contact with local attorneys without any responses to date. Appellant is a disabled vet with limited means to have any face-to-face meeting with potential counsel, living in a remote area of Colorado, and will have to do phone or video conferencing.

9. I certify that a copy of this brief and any attachments were sent to: Sophia Siddiqui (Last available name and address of last attorney for Defendant), the attorney for appellee, at the following address: U.S. DOJ, Tax Division P.O.Box 26, Ben Franklin Station, Washington D.C. 20044. (Address is found on the Entry of Appearance served on you by the attorney for the appellee. If you do not send a copy of this brief to the appellee, the court will not file the brief.) no entry of appearance received to date.

Sept 5, 2018
Date

Jeffrey T Mach
Appellant's signature

In addition to mailing a copy to the attorney for the appellee, mail three copies of this informal brief and attachments to:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

Reset Fields

Appendix

1. Federal Court of Appeals Informal Brief - question #2 & #3 additional comments:
2. Federal Court of Appeals Informal Brief - question #6 additional comments:
3. Certificate of Service
4. Copy of Final Order

Federal Court of Appeals Brief - #2 and #3 additional comments:

Appellant provided ample evidence to the court to allow for transfer and grand jury reconsideration of the case, "to prevent manifest injustice."

A. Transfer error issue:

The court erred by not properly applying the precedent of *Traveler's Indem. Co. V. United States*, 72 Fed. Cl. 56, 59 (Fed. Cl. 2006) as stipulated. The court had two choices under *Traveler's*; "To dismiss the action as a matter of law...," OR "to transfer it to another federal court that would have jurisdiction." (ORDER, P. 3, last paragraph).

The court stated in its final ORDER...

> "This dismissal is entirely consistent with Travelers (sic) Indemnity co...(determining that the court may 'dismiss the action as a matter of law,' if it determines that it does not have the requisite jurisdiction to adjudicate the claims on its merits)." (ORDER, P. 4, top paragraph).

This, of course, begs the question... "If the court has two lawful choices... to transfer the case OR to dismiss due to lack of jurisdiction, what would the case situation be if the court chose to 'transfer' the case?" i.e. Why would the court "transfer" the case if it HAD jurisdiction to hear it? Why have the "transfer" option if "the matter of law" dealt ONLY with dismissal of the case on jurisdictional grounds, and no consideration of the transfer for the same reason?

The element of "lack of jurisdiction" would logically be related to "transferring"

the case to proper jurisdiction instead of dismissing the case "as a matter of law." The court seems to equate the "matter of law" with lack of jurisdiction and does not consider transferring the case, which "transfer" would be moot in *Traveler's Indem.*, if there are not two distinct options, depending upon the circumstances of the case.

Appellant contends that the "matter of law" involves other "laws" which would clearly impact the case, which are NOT spelled out in *Traveler's Indem.*, and have no bearing here. The court did not provide what the "matter of law" authorizing the "dismissal" over "transfer" was, considering ample evidence of "manifest injustice" has been of record throughout, and reiterated by the court in its ORDER.

B. Grand Jury Summons error issue:

The court stated...

> "... the United States Court of Federal Claims does not have jurisdiction to adjudicate claims that concern the criminal code." (ORDER, P. 4, third paragraph).

The court erred in coming to that conclusion for a grand jury. Appellant was not asking or expecting the court to "assert jurisdiction over criminal matters" or to "adjudicate claims" in regard to a grand jury (since no indictment/true bill has been handed down) and was only providing the court/Judge of criminal activities NOTICE under 18 U.S.C. which needed to be investigated by a grand jury. Since due process has been denied Appellant (and others similarly situated) and no proof of debt/claim was provided, and no documents exist to substantiate the frivolous assessment and levy against Appellant, or to rebut all other evidence of record against Defendant, the issue is still lawfully unanswered and Defendant continues in default.

Further, the court erred under Rule 6;

> Federal Rules of Criminal Procedure, Rule 6 - Grand Jury. (1) In General. When the public interest so requires, the court must order that one or more grand juries be summoned.

Rule 6 clearly stipulates that the "when the public interest so requires, the court must order that one or more grand juries be summoned," and yet this motion was denied for purely adjudicative, "jurisdictional" reasons. The court's ruling that it lacked "jurisdiction" to "hear" the case has no bearing on ANY judge's duty under Title 18 to act on the evidence of record and to summons one or more grand juries, especially given the *Williams*([1]) precedent on grand juries for the public.

"Public interest" certainly exists when 100 million Americans are being affected by the Defendant's color-of-law activities, and administrative actions. The counter evidence in this adjudicative-ripe subject, not to mention all those similarly situated as Appellant in having a frivolous assessment and levy against them without proof of debt by Appellee, MUST be justly reviewed.

Thus far, obstruction of justice([2]) has been the standard in dealing with Appellant's "manifest injustice" to his rights, and those of all Americans similarly situated, and damage to the court itself in failing due process to seek justice and the truth in these matters. This amounts to a *fraud upon the court*([3]) and damages

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[1] *United States v. John H. Williams, Jr.*, 504 U.S. 36 (112 S.Ct. 1735, 118 L.Ed.2d 352)

[2] 18 U.S. Code Chapter 73 - OBSTRUCTION OF JUSTICE - Obstruction of justice in the federal courts is governed by a series of criminal statutes (18 U.S.C.A. §§ 1501–1517). Two types of cases arise under the Omnibus Clause involving Obstruction of Justice: The concealment, alteration, or destruction of documents; and the encouraging or rendering of false testimony. Actual obstruction is not needed as an element of proof to sustain a conviction. The Defendant's endeavor to obstruct justice is sufficient. "Endeavor" has been defined by the courts as an effort to accomplish the purpose the statute was enacted to prevent. **The courts have consistently held that "endeavor" constitutes a lesser threshold of purposeful activity than a criminal "attempt."** Federal obstruction of justice statutes have been used to prosecute government officials who have **sought to prevent the disclosure of damaging information**. (Emphasis added).

[3] "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false

the reputation of the courts and the stated goals of providing manifest justice and fairness to all.

3. **Federal Court of Appeals Informal Brief - #6 additional comments:**

Due to the deafening silence on the issues by Defendant, which is a form of fraud([4]), compensatory damages should be based on all levied social security and

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statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or **where the judge has not performed his judicial function** --- thus where the impartial functions of the court have been directly corrupted." (Emphasis added); "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is **a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.**" *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final;" "We must decide whether the Tax Court's finding of a pattern of government misconduct amounts to a fraud on the court and, if so, whether such a fraud requires a showing of prejudice to justify relief. We conclude that the misconduct, including its persistence and concealment, did indeed amount to a fraud on the court. Consistent with Supreme Court authority and the law of this Circuit, we hold that no showing of prejudice is required and, for the reasons that follow, we reverse the Tax Court determination that these taxpayers are not entitled to relief." *Jerry A. DIXON, Hoyt W. & Barbara D. Young, Robert L. & Carolyn S. Du Fresne, Terry D. & Gloria K. Owens, Richard & Fedella Hongsermeier, et al.*, Petitioners-Appellants, v. COMMISSIONER OF INTERNAL REVENUE, Respondent. *No. 00-70858.* United States Court of Appeals, Ninth Circuit.

[4] "Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading. (See *United States v. Sclafani*, 265 F.2d 408 (2d Cir.), cert. den., 360 U.S. 918, 79 S.Ct. 1436, 3 L.Ed.2d 1534 (1959); c.f., *Avery v. Clearly*, 132 U.S. 604, 10 S.Ct. 220, 33 L.Ed. 469 (1890); *Atilus v. United States*, 406 F.2d 694, 698 (5th Cir. 1969); *American Nat'l Ins. Co., etc. v. Murray*, 383 F.2d 81 (5th Cir.

other assets, and all "attorney" costs under 34 CFR 21 for litigating this ongoing issue over the last 6 years, (at approximately 2000 hours since 2012... Appellant's time and expenses are worth no less than the average attorney) and should be included in "out-of-pocket-expenses" at four times the actual costs as in the *Haslip* case for fraud, and/or whatever this court deems right and just to enforce U.S. Supreme Court long past warnings to the Defendant. (*U.S. v. Tweel,* 1977).

Final Statement:

Appellant asks this simple question of the court... if Appellant's arguments and evidence are frivolous and without merit, and have no standing in law or under the constitution or original, never overturned, stare decisis, as the Defendant and all past courts claim, this rebuttal evidence would exist and should be produced, so why won't either the Appellee or the courts provide *findings of fact and conclusions of law*[5] never yet provided Appellant on ALL the evidence of record

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1967). *United States v. Prudden*, 424 F.2d 1021 (5th Cir. 1970); "Fraud in its elementary common law sense of deceit — and this is one of the meanings that fraud bears in the statute, see *United States v. Dial*, 757 F.2d 163, 168 (7th Cir.1985) — includes the **deliberate concealment of material information in a setting of fiduciary obligation**. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them, he is guilty of fraud..." Justice Stevens (dissenting) in *McNally v. United States*, 483 U.S. 350, 371(1987), quoting Judge Posner in *United States v. Holzer*, 816 F.2d 304 (1987). (Emphasis added)

[5] **FRCPA Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings.** (a) Findings and Conclusions. (1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court; "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." Citing *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978). *Federal Maritime Commission V. South Carolina State Ports Authority et al.* certiorari to the united states court of appeals for the fourth

to rebut and silence these issues that Appellant and so many others have been asking about but not being answered for over 25 years? The court denied Appellant's Motion to summons one or more grand juries to put to rest the issue raised by experts across the field against the Appellee, and failed to transfer the case for proper due process adjudication. That must be remedied, post haste!

Jeffrey T. Maehr — Sept. 5, 2018

Jeffrey T. Maehr — Date

CERTIFICATE OF SERVICE

I, Jeffrey T. Maehr, do hereby certify that I mailed on September 5, 2018, via U.S. Mail, a true and complete copy of the Informal Brief of Appellant and Appendix attachments to the below counsel who previously represented the Appellee in the U.S. Court of Federal Claims, at the only address of record for these issues, lacking any Entry of Appearance by Defendant to date.

Sophia Siddiqui
U.S. Department of Justice, Tax Division
P.O. Box 26
Ben Franklin Station
Washington D.C. 20044

Jeffrey T. Maehr

Jeffrey T. Maehr
924 E. Stollsteimer Rd.,
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circuit No. 01-46. 2.535 U.S. 743, 122 S. Ct. 1864, 152 L. Ed. 2d 962, (2002). Argued February 25, 2002--Decided May 28, 2002. See also FRCPA Rule 52(a) and *United States v. Lovasco* 431 U.S. 783 (06/09/77), 97 S. Ct. 2044, 52 L. Ed. 2d 752, and *Holt v. United States* 218 U.S. 245 (10/31/10), 54 L. Ed. 1021, 31 S. Ct.

ORIGINAL COPY

In the United States Court of Federal Claims

No. 17-1000T
Filed: July 26, 2018

FILED
JUL 2 6 2018
U.S. COURT OF FEDERAL CLAIMS

JEFFREY T. MAEHR, Plaintiff, *pro se*, v. THE UNITED STATES, Defendant.	Rules of the United States Court of Federal Claims ("RCFC") 59(a) (Grounds For New Trial Or Reconsideration; Further Action After Trial); 59(e) (Motion To Alter Or Amend Judgment).

Jeffrey T. Maehr, Pagosa Springs, Colorado, Plaintiff, *pro se*.

Sophia Siddiqui, United States Department of Justice, Tax Division, Washington, D.C., Counsel for the Government.

MEMORANDUM OPINION AND FINAL ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

BRADEN, *Senior Judge*.

I. RELEVANT BACKGROUND.[1]

On July 24, 2017, Jeffrey Maehr ("Plaintiff") filed a Complaint and a Motion For Leave To Proceed In Forma Pauperis in the United States Court of Federal Claims. The July 24, 2017 Complaint alleged that the Internal Revenue Service ("IRS") did not have authority to assess a federal tax on wages, salary, or compensation for services, as income, because the Sixteenth Amendment to the United States Constitution did not provide a constitutional basis for taxing income as defined by the IRS. Compl. at 2; *see also* Compl. Ex. 1 at 6, 9. The July 24, 2017 Complaint also alleged that the IRS unlawfully assessed as "income and business profits" Plaintiff's business assets, including customer order payments, payments to business vendors, and business expense payments, *i.e.*, "all that came into the business account for the years 2003-2006." Compl. at 2; Compl. Ex. 1 at 2 (emphasis omitted). In the alternative, the July 24, 2017 Complaint

[1] The relevant facts discussed herein were derived from: the July 24, 2017 Complaint ("Compl.") and attached Exhibits ("Compl. Exs. 1–2"). *See also Maehr v. United States*, No. 17-1000T, 2018 WL 2016319, at *1 (Fed. Cl. Apr. 30, 2018) (Memorandum Opinion And Order Granting The Government's Motion To Dismiss).

alleged that the IRS had authority to tax wages, salary, and compensation for services under the Sixteenth Amendment, but any taxes on business assets were "based on a fraudulent assessment of untaxable assets," deprived Plaintiff of due process of law, or were a "complete taking." Compl. at 2; *see also* Compl. Ex. 1 at 2, 9. In addition, the July 24, 2017 Complaint alleged that the IRS's ability to tax income did not extend to "an unconstitutional direct tax on wages, salary[,] or compensation for services of private Americans, and never did." Compl. at 2; Compl. Ex. 1 at 3.

Finally, the July 24, 2017 Complaint alleged that, even if the IRS had authority to tax "private wages," levies assessed by the IRS to satisfy unpaid taxes were fraudulent, because they were made against "what has been 'assessed' as 'income[,]' but is NOT actual 'wages' or business gain or profit, and included everything in respective accounts, including 'gross' assets and business[] expenses, and protected assets." Compl. at 2 (emphasis in original); *see also* Compl. Ex. 1 at 5. The levies and tax assessments were "a vindictive move against [Plaintiff] for daring to raise a defence [*sic*] against unlawful taking, and for raising the original intent of Congress and the Supreme Court." Compl. Ex. 1 at 5.

For relief, the July 24, 2017 Complaint requested that the court order the IRS "to respond to the evidence as filed in the stated Supreme Court Petition" to "revers[e the] unlawful taking," provide "compensatory and punitive damages," in an unspecified amount, and "order a [f]ederal [g]rand [j]ury investigation[] to review and remedy any similar activities involving others similarly situated . . . or [order such other] remedy as this court deems right and just." Compl. at 2–3.

On November 21, 2017, the Government filed a Motion To Dismiss the July 24, 2017 Complaint, pursuant to Rules of the United States Court of Federal Claims ("RCFC") 12(b)(1) and 12(b)(6). On December 22, 2017, Plaintiff filed a Motion For Summons Of Grand Jury And Response To The Government's November 21, 2017 Motion To Dismiss. On January 8, 2018, the Government filed a Reply to Plaintiff's December 22, 2017 Motion For Summons Of Grand Jury And Response To The Government's November 21, 2017 Motion To Dismiss.

On April 30, 2018, the court issued a Memorandum Opinion And Order Granting The Government's Motion To Dismiss. *Maehr v. United States*, No. 17-1000T, 2018 WL 2016319 (Fed. Cl. Apr. 30, 2018). The April 30, 2018 Memorandum Opinion And Order also dismissed the December 22, 2017 Motion For Summons Of A Grand Jury, because the court determined that it did not have jurisdiction to adjudicate claims arising under the criminal code, including "requests to empanel a grand jury." *Maehr*, 2018 WL 2016319, at *14.

On June 6, 2018, Plaintiff filed a "Corrected Filing of Motion to Consider Transfer of Instant Case, and to Reconsider Summons of Grand Jury" ("Motion To Reconsider").[2]

II. STANDARD OF REVIEW.

The court may reconsider and alter or amend its judgment, if the movant demonstrates that: (1) there has been an intervening change in controlling law; (2) previously unavailable evidence is now available; or (3) the motion is necessary to prevent manifest injustice. *See* RCFC 59(a)(l);

[2] The court construes the June 6, 2018 Corrected Filing as a Motion For Reconsideration, pursuant to RCFC 59(a).

see also Dairyland Power Co-op v. United States, 106 Fed. Cl. 102, 104 (Fed. Cl. 2012) ("Reconsideration is not to be construed as an opportunity to relitigate issues already decided. Rather, the moving party must demonstrate either an intervening change in controlling law, previously unavailable evidence, or a manifest error of law or mistake of fact."). A Motion For Reconsideration requires "a showing of extraordinary circumstances." *Caldwell v. United States*, 391 F.3d 1226, 1235 (Fed. Cir. 2004) (citation omitted), *cert. denied*, 546 U.S. 826 (2005). It is not intended to give an "unhappy litigant an additional chance to sway" the court. *See Matthews v. United States*, 73 Fed. Cl. 524, 526 (Fed. Cl. 2006). Nor may a party prevail by raising an issue for the first time on reconsideration, when it was ripe for adjudication at the time the complaint was filed. *Id.*

III. DISCUSSION.

A. Plaintiff's Argument.

Plaintiff argues that this case should be transferred to "a court of competent jurisdiction for lawful due process." Motion For Reconsideration at 2 (citing *Travelers Indem. Co. v. United States*, 72 Fed. Cl. 56, 59 (Fed. Cl. 2006) ("Should the court find that it lacks subject matter jurisdiction to decide a case on its merits, it is required either to dismiss the action as a matter of law . . . or to transfer it to another federal court that would have jurisdiction.")). Plaintiff contends that "the [United States] Supreme Court, under original jurisdiction, should be the court to properly adjudicate these issues." Motion For Reconsideration at 2.

Plaintiff also argues that this court has "jurisdiction to initiate summons of a grand jury" under "the authority and jurisdictional elements of a Judge's [*sic*] responsibility in criminal actions." Motion For Reconsideration at 2. Plaintiff insists that "there is no prohibition on this court, or lack of jurisdiction by this court" to summon a grand jury. Motion For Reconsideration at 3–4 (emphasis omitted). Finally, Plaintiff argues that "to continue to suppress evidence and due process is treason." Motion For Reconsideration at 4.

B. The Court's Resolution.

Plaintiff has failed to establish that he is entitled to reconsideration of the court's April 30, 2018 Memorandum Opinion And Order Granting The Government's Motion To Dismiss. *See* Motion For Reconsideration at 1–5 (containing no argument that there is new evidence available, that there has been an intervening change in controlling law, or that reconsideration is necessary to prevent manifest injustice). Plaintiff cites *Travelers Indemnity Co. v. United States*, 72 Fed. Cl. 56, 59 (Fed. Cl. 2006), as support for his argument that the court should reconsider its dismissal and transfer the case to the United States Supreme Court. Motion For Reconsideration at 2. The court in *Travelers Indemnity Co.*, however, determined that "should [a] court find that it lacks subject matter jurisdiction to decide a case on its merits, it is required *either* to dismiss the action as a matter of law . . . *or* to transfer it to another federal court that would have jurisdiction." *Travelers Indem. Co.*, 72 Fed. Cl. at 59 (emphasis added). In this case, the court dismissed the July 24, 2017 Complaint as it did not have jurisdiction to adjudicate the claims alleged therein.

See Maehr, 2018 WL 2016319, at *12. That dismissal is entirely consistent with *Travelers Indemnity Co. See Travelers Indem. Co.*, 72 Fed. Cl. at 59 (determining that the court may "dismiss the action as a matter of law," if it determines that it does not have the requisite jurisdiction to adjudicate the claim on its merits).

Plaintiff has also failed to establish that there has been an intervening change in controlling law regarding his due process claim. In granting the Government's November 21, 2017 Motion To Dismiss, the court relied on the holding of the United States Court of Appeals for the Federal Circuit that "the Due Process clauses of both the Fifth and Fourteenth Amendments do not mandate the payment of money and thus do not provide a cause of action under the Tucker Act." *Smith v. United States*, 709 F.3d 1114, 1116 (Fed. Cir. 2013); *see also Maehr*, 2018 WL 2016319, at *12. *Smith* was controlling law, when the court issued the April 30, 2018 Memorandum Opinion And Order, and remains controlling law today.

Likewise, Plaintiff has failed to establish that there has been an intervening change in controlling law regarding his criminal claims. A grand jury is "an accusatory body that sits to assess whether there is adequate basis for bringing a *criminal* charge." *United States v. Williams*, 504 U.S. 36, 37 (1992) (emphasis added). As the court explained in the April 30, 2018 Memorandum Opinion And Order, the United States Court of Federal Claims does not have jurisdiction to adjudicate claims that concern the criminal code. *Maehr*, 2018 WL 2016319, at *12 (citing *Joshua v. United States*, 17 F.3d 378, 379–80 (Fed. Cir. 1994) (affirming a trial court's dismissal of claims arising under the federal criminal code)); *see also Hufford v. United States*, 85 Fed. Cl. 607, 608 (Fed. Cl. 2009) ("[I]t appears that [Plaintiff] alleges claims of obstruction of justice and conspiracy. As these claims are based on criminal statutes, these too must be dismissed."). Plaintiff has shown no intervening change in controlling law that would allow this court to assert jurisdiction over criminal matters or a grand jury to be empaneled. *See* Motion For Reconsideration at 1–5 (alleging no intervening change in controlling law).

IV. CONCLUSION.

For these reasons, the court has determined that Plaintiff has not established that he is entitled to reconsideration of the April 30, 2018 Memorandum Opinion And Order. Accordingly, the June 6, 2018 Motion For Reconsideration is denied.

IT IS SO ORDERED.

SUSAN G. BRADEN
Senior Judge

Appendix

1. **Copy of Final Order**

2. **Federal Court of Appeals Informal Brief - #2 and #3 additional comments:**

3. **Certificate of Service**

Federal Court of Appeals Brief - #2 and #3 additional comments:

Appellant provided ample evidence to allow reconsideration of the case, " to prevent manifest injustice," or to transfer the case as appropriate and for the summons of one or more grand juries.

A. Transfer issue:

The court erred by not properly applying the precedent of *Traveler's Indem. Co. V. United States*, 72 Fed. Cl. 56, 59 (Fed. Cl. 2006) as stipulated. The court had two choices under *Traveler's*; "To dismiss the action as a matter of law," OR "to transfer it to another federal court that would have jurisdiction."

The court stated in its final order...

> "This dismissal is entirely consistent with Travelers (sic) Indemnity co...(determining that the court may 'dismiss the action as a matter of law,' if it determines that it does not have the requisite jurisdiction to adjudicate the claims on its merits)."

This, of course, begs the question... "If the court has two lawful choices... to transfer the case OR to dismiss due to lack of jurisdiction, what would the case situation be if the court chose to 'transfer' the case?" i.e. Why would the court "transfer" the case if it HAD jurisdiction to hear it? Why have the "transfer" option if "the matter of law" dealt ONLY with dismissal of the case on jurisdictional grounds, and no consideration of the transfer for the same reason?

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The court seems to equate the "matter of law" with lack of jurisdiction and not consider transferring the case, which transfer would be moot in Traveler's Indem., if there are not two distinct options, depending upon the circumstances of the case.

Appellant contends that the "matter of law" involves other "laws" which would clearly impact the case, which are NOT spelled out in Traveler's Indem., and have no bearing here. The court did not provide what "matter of law" authorized the "dismissal" over "transfer," considering ample evidence of "manifest injustice" has been of record throughout, and reiterated by the court.

B. Grand Jury Summons issue:

The court stated...

> "... the United States Court of Federal Claims does not have jurisdiction to adjudicate claims that concern the criminal code."

Appellant was not asking or expecting the court to "adjudicate claims" in regard to a grand jury (since no indictments/true bills have been handed down) and was only providing the court/Judge NOTICE under 18 U.S.C. of criminal activities which needed to be investigated by a grand jury. Since due process has been denied Appellant (and millions of others) and no proof of debt was provided and no documents exist to substantiate the assessment and levy against Appellant, or to rebut all other evidence of record, the issue is still lawfully unanswered and undocumented.

Further, the court erred under Rule 6;

> Federal Rules of Criminal Procedure, Rule 6 - Grand Jury. (1) In General. When the public interest so requires, the court must order that one or more grand juries be summoned.

Rule 6 clearly stipulates that the "when the public interest so requires, the court must order that one or more grand juries be summoned" and yet this motion was denied for purely adjudicative, "jurisdictional" reasons. The court's ruling that it lacked "jurisdiction to "hear" the case has no bearing on ANY judge's duty under

Title 18 to act on the evidence of record and to summons one or more grand juries, especially given the Williams([1]) precedent on grand juries for the public.

"Public interest" certainly exists when 100 million Americans are being affected by the Defendant's administrative actions. The counter evidence in this adjudicative ripe subject, not to mention all those similarly situated as Appellant in having a frivolous assessment and levy against them without proof of debt by Appellee, MUST be justly reviewed.

Thus far, obstruction of justice([2]) has been the standard in dealing with Appellant's "manifest injustice" to his rights, and those of all Americans similarly situated, and damage to the court itself in failing to seek justice and the truth in these matters. This amounts to a fraud upon the court([3]) and damages the

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[1] *United States v. John H. Williams, Jr.*, 504 U.S. 36 (112 S.Ct. 1735, 118 L.Ed.2d 352)

[2] 18 U.S. Code Chapter 73 - OBSTRUCTION OF JUSTICE - Obstruction of justice in the federal courts is governed by a series of criminal statutes (18 U.S.C.A. §§ 1501–1517). Two types of cases arise under the Omnibus Clause involving Obstruction of Justice: The concealment, alteration, or destruction of documents; and the encouraging or rendering of false testimony. Actual obstruction is not needed as an element of proof to sustain a conviction. The Defendant's endeavor to obstruct justice is sufficient. "Endeavor" has been defined by the courts as an effort to accomplish the purpose the statute was enacted to prevent. **The courts have consistently held that "endeavor" constitutes a lesser threshold of purposeful activity than a criminal "attempt."** Federal obstruction of justice statutes have been used to prosecute government officials who have **sought to prevent the disclosure of damaging information**. (Emphasis added).

[3] "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or **where the judge has not performed his judicial function** --- thus where the impartial functions of the court have been directly corrupted."

reputation of the courts and the stated goals of providing manifest justice and fairness to all.

Final Statement:

Appellant asks this simple question of the court... if Appellant's arguments and evidence are frivolous and without merit, and have no standing in law or under the constitution or original, never overturned stare decisis, this evidence would exist, so why won't either the Appellee or the courts provide findings of fact and conclusions of law([4]) (never provided Appellant) on ALL the evidence of record

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"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is **a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.**" Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

[4] **FRCPA Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings.** (a) Findings and Conclusions. (1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58; **Right to Findings of Fact and Conclusions of Law**

"The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." Citing *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978). *Federal Maritime Commission V. South Carolina State Ports Authority et al.* certiorari to the united states court of appeals for the fourth circuit No. 01-46. 2.535 U.S. 743, 122 S. Ct. 1864, 152 L. Ed. 2d 962, (2002). Argued February 25, 2002--Decided May 28, 2002. See also FRCPA Rule 52(a) and *United States v. Lovasco* 431 U.S. 783 (06/09/77), 97 S. Ct. 2044, 52 L. Ed. 2d 752, and *Holt v. United States* 218 U.S. 245 (10/31/10), 54 L. Ed. 1021, 31 S. Ct.

to rebut and silence these issues that Appellant and so many others have been asking about but not being answered for over 20 years? The court denied Appellant's Motion to summons one or more grand juries to put to rest the issue raised by experts across the field against the Appellee, and failed to transfer the case for proper adjudication. What has happened to due process of law?

Jeffrey T. Maehr — Sept 4, 2018

Jeffrey T. Maehr — Date

CERTIFICATE OF SERVICE

I, Jeffrey T. Maehr, do hereby certify that I mailed, via U.S. Mail, a true and complete copy of the Entry of Appearance and Informal Brief of Appellant to the below party who previously represented the Appellee in the U.S. Court of Federal Claims, at the only address of record for these issues.

Entry of Appearance mailed on September 3, 2018 under separate cover.
Copy of Brief mailed on September 4, 2018.

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