

In the United States Court of Appeals for the Ninth Circuit

EDWARD NEIL BRUNDRIDGE and IMA
CARTER,

Defendants-Appellants,

vs.

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

No. 99-15838

REBECCA NIKKEL,

Defendant-Appellant,

vs.

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

No. 99-15844

LUCIA Y. VIER,

Defendant-Appellant,

vs.

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

No. 99-15879

On Appeal from the United States District Court for the Northern
District of California San Francisco Division
Charles R. Breyer, Judge

APPELLANTS' SUPPLEMENTAL RESPONSE TO JUNE 2, 1999 ORDER
TO SHOW CAUSE WHY APPEAL SHOULD NOT BE DISMISSED

PILLSBURY MADISON & SUTRO LLP
THOMAS V. LORAN III, CSBA #95255
MARGARET SCHROEDER, CSBA #178586
235 Montgomery Street
Post Office Box 7880
San Francisco, CA 94120-7880
Telephone: (415) 983-1000

Attorneys for Appellants, Edward Neil
Brundridge, Ima Carter, Rebecca Nikkel
and Lucia Y. Vier

Appellants, Edward Neil Brundridge, Ima Carter, Rebecca Nikkel and Lucia Y. Vier, respectfully submit this supplemental response to the Court's June 2, 1999 order to show cause.

DISCUSSION

This appeal is from the district court's February 25, 1999 order dismissing appellants' Counterclaim-in-Intervention for Declaratory and Injunctive Relief ("Counterclaim"). Appellants filed their notices of appeal on April 26, 1999. On June 2, 1999, the Court consolidated the appeals, suspended the briefing schedule and requested that the appellants show cause why the appeals should not be dismissed for lack of jurisdiction. Appellants filed their response on June 16, 1999, contending that the Court has jurisdiction under 28 U.S.C. § 1292(a)(1) and further noting that they had filed a motion for certification of the order under Rule 54(b).

Appellants now inform the Court that the district court granted their motion for entry of judgment under Rule 54(b) on July 19, 1999. The district court expressly determined there was no just reason to delay and ordered entry of partial judgment retroactive to April 26, 1999. Attached hereto as Exhibits A and B are true and correct copies of the district court's order and the accompanying judgment, respectively.

Accordingly, the Court now has an additional (and indisputable) basis for jurisdiction of this appeal. A Rule 54(b) certification is sufficient to validate a prematurely filed notice of appeal if neither party is prejudiced. Aguirre v. S.S. Sohio Intrepid, 801 F.2d 1185, 1189 (9th Cir. 1986) (district court directed entry of judgment retroactive to notice of appeal filed four months earlier).

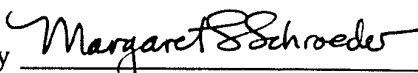
CONCLUSION

For the foregoing reasons, appellants respectfully request that the Court find that it has jurisdiction to hear appellants' appeal.

Dated: July 23, 1999.

Respectfully submitted.

PILLSBURY MADISON & SUTRO LLP
THOMAS V. LORAN III
MARGARET S. SCHROEDER
235 Montgomery Street
P.O. Box 7880
San Francisco, CA 94120-7880

By 
Margaret S. Schroeder

Attorneys for Appellants, Edward Neil
Brundridge, Ima Carter, Rebecca Nikkel and
Lucia Y. Vier

Docket No. 99-15838
99-15844
99-15879

PROOF OF SERVICE BY OVERNIGHT COURIER

I, Doreen M. Griffin, hereby declare:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Madison & Sutro LLP in San Francisco, California.

2. My business address is 235 Montgomery Street, San Francisco, California 94104. My mailing address is P.O. Box 7880, San Francisco, CA 94120-7880.

3. On July 23, 1999, in the city where I am employed, I served a true copy of the attached document, titled exactly APPELLANTS' SUPPLEMENTAL RESPONSE TO JUNE 2, 1999 ORDER TO SHOW CAUSE WHY APPEAL SHOULD NOT BE DISMISSED, by depositing it in a box or other facility regularly maintained by Federal Express, an express service carrier providing overnight delivery, or delivering it to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier, with overnight delivery fees paid or provided for, clearly labeled to identify the person being served at the address shown below:

Mark T. Quinlivan, Esq.
U.S. Department of Justice
Civil Division, Room 1048
901 E. Street, N.W.
Washington, D.C. 20530
(202) 514-3346 Telephone
(202) 616-8470 Fax

Attorneys for Plaintiff-Appellee
United States of America

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

Executed this 23rd day of July, 1999, at San Francisco,
California.

Doreen M. Griffin