

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2008-5017

FOUR RIVERS INVESTMENT, INC.,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of Federal Claims
in 06-CV-598, Judge Lynn J. Bush.

ON MOTION

Before LINN, Circuit Judge.

ORDER

Four Rivers Investment, Inc. moves for reconsideration of the court's order dismissing its appeal for failure to file a joint appendix. Four Rivers also moves to dispense with the appendix and to proceed on the original trial court record.

Pursuant to Fed. Cir. R. 11(a), the trial court record is not transmitted to the court. Pursuant to Fed. Cir. R. 30, an appellant is required to confer with the appellee and designate materials from the trial court record that might be referred to by the parties. The appellant is required to assign page numbers to those materials, and the parties are required to refer to those assigned page numbers when mentioning the documents or exhibits in their briefs. After the briefs are filed, the appellant is required to file a joint appendix containing the items cited by the parties in their briefs in addition to any mandatory items required by Fed. Cir. R. 30(a).

Four Rivers filed an opening brief that referred to the trial court record rather than to joint appendix citations. Four Rivers attaches one document to its brief, in addition to the trial court decision, but it is unclear if that document was before the trial court. Similarly, the United States referred in its brief to the trial court record "transmitted to this Court." After the briefs were filed, the clerk's office dismissed the appeal because Four Rivers failed to file the required joint appendix.

Four Rivers has not shown that the matter should proceed on the trial court record. Instead, the parties must comply with this court's rules. We direct Four Rivers to prepare a joint appendix with page numbers that contains the items cited by the parties and any other items required by Fed. Cir. R. 30. After Four Rivers has prepared that appendix and assigned page numbers, then the parties must file corrected briefs that refer to the correct joint appendix page numbers. No other substantive changes should be made to the briefs.

Accordingly,

IT IS ORDERED THAT:

(1) The motion for reconsideration of the dismissal order is granted. The mandate is recalled and the dismissal order is vacated.

(2) The motion for leave to dispense with the joint appendix and proceed on the trial court record is denied. Four Rivers is directed to file a joint appendix within 14 days of the date of filing of this order. Four Rivers and the United States are directed to file corrected opening briefs within 30 days of the date of filing of this order. The previously filed briefs are withdrawn.

FOR THE COURT

APR 21 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

cc: Robert L. Goldstein, Esq.
Teresa T. Milton, Esq.

APR 21 2009

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JAN HORBALY
CLERK