

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

1  
2  
3 UNITED STATES OF AMERICA,  
4 ex. Rel., et al.,  
5  
6 Plaintiffs,  
7  
8 -vs-  
9  
10 LILIAN SPIGELMAN, M.D.,  
11 HEPHZIBAH CHILDREN'S  
12 ASSOCIATION, and SEARS  
13 PHARMACY,  
14  
15 Defendants.

Case No. 10 C 3361  
Chicago, Illinois  
March 10, 2011  
9:30 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE GARY FEINERMAN

16 APPEARANCES:

17 For the Government: HON. PATRICK J. FITZGERALD  
18 UNITED STATES ATTORNEY  
19 BY: MR. ERIC S. PRUITT  
20 Assistant United States Attorney  
21 219 South Dearborn Street  
22 Suite 500  
23 Chicago, Illinois 60604  
24 (312) 353-5300

25 For the Relator: MR. S. RANDOLPH KRETCHMAR  
1170 Michigan Avenue  
Wilmette, Illinois 60091  
(847) 853-8106

Court Reporter:  
CHARLES R. ZANDI, CSR, RPR, FCRR  
Official Court Reporter  
United States District Court  
219 South Dearborn Street, Room 1728  
Chicago, Illinois 60604  
Telephone: (312) 435-5387  
email: Charles\_zandi@ilnd.uscourts.gov

1 APPEARANCES: (Continued)

2 For Defendant PRETZEL & STOUFFER, CHTD.  
3 Dr. Spigelman: BY: MS. SHAUNA M. MARTIN  
4 One South Wacker Drive  
5 Suite 2500  
6 Chicago, Illinois 60606-4673  
7 (312) 346-1973

8 For Defendant TAKIGUCHI LAW OFFICE  
9 Sears Pharmacy: BY: MR. MASARU K. TAKIGUCHI  
10 1415 West 22nd Street  
11 Tower Floor  
12 Oak Brook, Illinois 60523  
13 (630) 645-3833  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (Proceedings heard in open court:)

2 THE CLERK: 10 C 3361, United States of America  
3 versus Spigelman.

4 MR. PRUITT: Good morning, your Honor. Eric Pruitt  
5 on behalf of the United States.

6 MR. KRETCHMAR: Good morning, your Honor.  
7 S. Randolph Kretchmar on behalf of relator Nicholson.

8 MR. TAKIGUCHI: Mas, M-A-S, Takiguchi,  
9 T-a-k-i-g-u-c-h-i, on behalf of Sears Pharmacy.

10 MS. MARTIN: Good morning, your Honor. Shauna Martin  
11 on behalf of Dr. Spigelman.

12 THE COURT: Good morning.

13 MR. TAKIGUCHI: Good morning, Judge.

14 THE COURT: So, we have the United -- well, we have a  
15 pending motion to dismiss by the defendants, and now the  
16 United States has come in with a motion to dismiss the  
17 complaint. And we received yesterday a response from the  
18 relator.

19 And let me ask how the government would want to  
20 proceed. Would you like the opportunity to file a reply  
21 brief?

22 MR. PRUITT: I would, your Honor.

23 THE COURT: How long would you like?

24 MR. PRUITT: If we could get four weeks, I would  
25 appreciate that.

1 THE COURT: Four?

2 MR. PRUITT: Well, because with this motion to  
3 dismiss, it involves consulting with the Department of Justice  
4 in Washington as well. I could narrow that down to three  
5 weeks, but it takes a little more time than us just drafting  
6 it internally.

7 THE COURT: Sure. And why don't we give -- three  
8 weeks would be March 31st, is that correct?

9 THE CLERK: Yes.

10 THE COURT: And I'd like to get you guys in that  
11 first week in April. Why don't we set it for a 10:00 o'clock  
12 at some point.

13 THE CLERK: We'll set it for -- we can set you for  
14 April 7th, 10:00 a.m.

15 THE COURT: And, of course, I'll be interested in  
16 your reply to hear about two things. One is the statutory  
17 interpretation, the *Swift* versus the *Sequoia Orange* --

18 MR. PRUITT: Sure.

19 THE COURT: -- and whether the government has  
20 unfettered discretion to dismiss or not. And you might -- I  
21 don't know. I haven't read *Swift* or *Sequoia Orange* or any of  
22 the other cases, but you might want to -- I think there's a  
23 constitutional angle here --

24 MR. PRUITT: Okay.

25 THE COURT: -- where if the statute is ambiguous,

1 under the *Ashwander* principle, we'd want to interpret it in a  
2 way to avoid any constitutional problem.

3           Maybe the government doesn't believe there's a  
4 constitutional problem if a relator is able to essentially  
5 overrule the government in a situation like that; but if the  
6 government does believe there's a constitutional issue with  
7 that, it should -- it should mention that because that's  
8 pertinent to statutory interpretation.

9           And I think that I just had a brief moment to review  
10 the relator's response, but you should also address the  
11 various allegations. Some, quite frankly, appear to be coming  
12 from the grassy knoll, but others seem to be a little more  
13 substantive. So, you'll probably want to address the  
14 allegations made by the relator regarding what actually is at  
15 stake in this case.

16           And even if the relator's right about what's at  
17 stake, whether that ultimately matters, whether the government  
18 still has a --

19           MR. PRUITT: Sure.

20           THE COURT: -- rational basis, assuming that we're in  
21 *Sequoia Orange* land rather than *Swift* land.

22           MR. PRUITT: Understood, your Honor. Thank you.

23           THE COURT: Would anybody else like anything to add?

24           MR. TAKIGUCHI: No, Judge. I think this is fine.

25 We'll just have to review -- we just got the information also,

1 so --

2 THE COURT: Okay.

3 MS. MARTIN: Your Honor, are you still going to be  
4 ruling on the motion on the 24th of March?

5 THE COURT: I don't think so, and why don't we kick  
6 that status. Because if the government's right that the case  
7 ought to be dismissed on the government's motion, there would  
8 be no need to address the defendants' motions to dismiss.

9 So, we'll enter and continue the defendants' motions  
10 to dismiss, and we'll deal first with the government. If the  
11 government's right, then this case is done. If the  
12 government's not right, then we'll have to get to the  
13 defendants' issues.

14 MS. MARTIN: Okay.

15 THE COURT: Okay?

16 MS. MARTIN: Thank you.

17 MR. KRETCHMAR: Thank you, your Honor.

18 MR. TAKIGUCHI: Thank you, your Honor.

19 MR. PRUITT: Thank you, your Honor.

20 THE COURT: Thank you.

21 (Which were all the proceedings heard.)

CERTIFICATE

22 I certify that the foregoing is a correct transcript from  
23 the record of proceedings in the above-entitled matter.

24 */s/Charles R. Zandi*

*March 21, 2011*

25 \_\_\_\_\_  
Charles R. Zandi  
Official Court Reporter

\_\_\_\_\_  
Date