

Docket No. 98-897L

Date: January 11, 2005

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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ROBERT BRACE,

Plaintiff,

v.

UNITED STATES,

Defendant.

Docket No. 98-897L

Room 505  
National Courts Building  
717 Madison Place, N.W.  
Washington, D.C.

Tuesday,  
January 11, 2005

The parties met, pursuant to notice of the Court,  
at 10:10 a.m.

BEFORE: HONORABLE FRANCIS M. ALLEGRA  
Judge

APPEARANCES:

For the Plaintiff:

NANCIE G. MARZULLA, Esquire  
ROGER J. MARZULLA, Esquire  
BRENDA D. COLELLA, Esquire  
Defenders of Property Rights  
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For the Defendant:

SUSAN COOK FLORENTINE, Esquire  
SYDNEY F. COOK, Esquire  
U.S. Department of Justice  
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C O N T E N T S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
<u>For the Plaintiff:</u>					
Joseph Burawa	64	82	--	--	--
John Burawa	92	102 110	--	--	--
Robert H. Brace	113	140	--	--	--

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1           A     Well, you know, we had the local judge said that,  
2     hey, we were in compliance, we didn't do anything that  
3     wasn't exempt, and then, when the Appellate Court judges  
4     reversed it, why, that put us in a real catch-22. I mean,  
5     we had to apply to the Supreme Court.

6           Q     Okay. But did you enter into a -- eventually  
7     enter into a consent decree?

8           A     Yes. Yes.

9           Q     Would you describe that decision to enter into a  
10    consent decree with the government as voluntary?

11          A     No, it was sure not. I mean, I tried and tried  
12    and tried to work the problem out, but, at this time, I was  
13    forced into doing something and trying to stay out of any  
14    more major problems than they already had me in.

15          Q     Mr. Brace, could I turn your attention to  
16    Plaintiff's Exhibit No. 22?

17          A     Okay.

18          Q     Is this the consent decree that you entered into,  
19    Mr. Brace?

20          A     Yes, it is.

21          Q     What did this consent decree require you to do?

22          A     Well, I had to tear out several miles or feet of  
23    tile line, took the excavator down to both sites and had to  
24    go four feet deep and intersect any tile lines that were in  
25    there, on Greenlee Road as well as Lane Road, and then I had

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1 to put riprap in and bring the water table up and excavate  
2 and fill that back over to make your tile lines all quit  
3 functioning and your drainage system quit.

4 Q How long did it take you to do what was required  
5 under the consent decree?

6 A It probably was, working with two track hoes and a  
7 bulldozer, the better part of two-and-a-half, three days.

8 Q Did you do this by yourself?

9 A I hired it.

10 Q And how many men did you hire?

11 A There was roughly four or five people. There were  
12 three on the equipment. I believe there was two of us  
13 building and constructing the riprap.

14 Q And how much did you pay for this work done under  
15 the consent decree?

16 A I cannot tell you for sure, but it was a lot more  
17 work than it should have been, but it was -- you know, it  
18 was just -- it was -- in paying for it, it was something  
19 that was the worst devastating situation that I ever had in  
20 my life to destroy something that I had worked for 20 years  
21 to work on and try to improve, and, you know, I got to the  
22 point where I still am.

23 I don't know what to do anymore. I am lost for  
24 words when it comes to whether I should continue to try to  
25 get food and fight or whatever. I just -- it's the most