

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF  
AMERICA,  
PLAINTIFF

V

: CIVIL ACTION NO. 1:17-CV-0006

ROBERT BRACE, ROBERT  
BRACE FARMS, INC., AND  
ROBERT BRACE AND SONS,  
INC.,

DEFENDANTS

UNITED STATES OF  
AMERICA,  
PLAINTIFF

V

: CIVIL ACTION NO. 1:90-CV-00229

ROBERT BRACE AND ROBERT  
BRACE FARMS, INC.,

DEFENDANTS

DEPOSITION OF:

BARRY ISAACS

TAKEN BY:

DEFENDANTS

BEFORE:

DIANE F. FOLTZ, RDR  
NOTARY PUBLIC

DATE:

JANUARY 26, 2018, 2:45 P.M.

PLACE:

HAMPTON INN HARRISBURG EAST  
4230 UNION DEPOSIT ROAD  
HARRISBURG, PENNSYLVANIA

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EXHIBIT

15

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21  
22 ALSO PRESENT:

23  
24 ROBERT BRACE  
25 BEVERLY BRACE

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1           A     I started as a student trainee in Corydon,  
2     Indiana, for the summer of 1977. Under that program I was  
3     on leave without pay while I finished my senior year at  
4     Perdue University. In June of two thousand -- June of 1978  
5     I reported to Richmond, Indiana, and I worked in the Wayne  
6     and Union County field offices for a little over a year.  
7     And then I worked in the Indianapolis state office as a  
8     watershed biologist from 1979 until 1982, and then I was  
9     the district conservationist in Spencer, Indiana, from 1982  
10    to 1984, and I was the district conservationist in Marengo,  
11    Indiana, from 1984 to 1987, and in July of 1987 I reported  
12    to Harrisburg, Pennsylvania, as a state biologist, and  
13    that's the position I retired from in May of 2013.

14           Q     So in your roles within the SCS in Indiana  
15    before you made your way to Harrisburg --

16           A     Uh-huh.

17           Q     -- what were your duties?

18           A     District conservationist, and our primary duty  
19    was to promote the concept of conservation with landowners,  
20    primarily farmers. In the Midwest it was mostly row crop  
21    farmers. There were some beef farmers that I worked with  
22    in the second position, but, you know, it was typically  
23    promoting things like no-till planting, rotational crops,  
24    so that, you know, it wasn't corn, soybeans every year,  
25    reducing excessive soil erosion. That's what we were

1 could have been other eligibility issues under HEL and a  
2 lot of other things, but if we're focussing just on a --

3 Q Non-HEL. Non-HEL.

4 A I know. If we're just focussing on a potential  
5 converted wetland violation -- that's where we're focussed,  
6 right?

7 Q Uh-huh.

8 A Okay. The PC, they were eligible for the next  
9 five years whether they did anything with it or not. The  
10 abandonment provision existed back then.

11 The commenced conversion, they were eligible to  
12 receive program payments while they had that commenced  
13 conversion label.

14 Q Until completed?

15 A Whatever the outcome was. If they didn't  
16 complete it, it could become a CW. I mean, that was  
17 basically NRCS's job was to keep FSA apprised, you know, of  
18 the technical situation out there on the land.

19 If the landowner got to the point where they  
20 could plant a crop, I don't even -- I honestly don't know  
21 what ASCS, FSA's process was at the end.

22 Q Okay.

23 A I don't know if it stayed a CC, if it became a  
24 PC. I don't -- I honestly don't know. You seriously would  
25 have to go to the Farm Service Agency, ASCS, because that

1 -- I don't recall that being in our guidance. That was  
2 FSA's, ASCS's job.

3 Q So you don't recall seeing that in the NFSAM?  
4 You don't recall seeing that information in the NFSAM?

5 A The National Food Security Act Manual?

6 Q Yeah, for '88 or anything like that.

7 A No, you'd have -- you'd have to look at it.

8 Q Okay.

9 A I mean, we had a role to provide technical  
10 information to FSA. The commenced conversion was their  
11 label, their exemption I'll call it.

12 Q So once they made a determination like that, then  
13 SCS was bound by that determination? They -- when ASCS  
14 made a determination of commenced conversion, what was the  
15 impact on SCS? Was SCS done with their work on that  
16 particular transaction, that project?

17 A No. We would have come in at the end and  
18 provided technical information to ASC. You have to realize  
19 at that time -- and I'm almost speaking out of turn here a  
20 bit. You know, having grown up in an agricultural  
21 community, I know how things work.

22 You know, excuse me for a sideline, but, you  
23 know, a lot of high school teachers in the summer did field  
24 measurements for ASCS, and, you know, people went out and  
25 measured bins, the amount of grain in a bin under the farm

1 loan program. I mean, it was a commodity loan.

2 So FSA had a field -- ASCS at the time had a  
3 field presence for certain things, but there was a pretty  
4 well-demarcated line between what ASCS and SCS did, and SCS  
5 did the technical determinations, and I'm not just talking  
6 about National Food Security Act. I'm saying, you know,  
7 SCS did the technical determinations on these farm bill  
8 programs. You know, was the cover crop established? Was  
9 it really no till? Has this commenced conversion been  
10 completed, you know, and out there in the Midwest and West  
11 has it been effectively drained?

12 I mean, SCS would have made that determination,  
13 not ASCS. It was -- SCS, you know, at the end of that  
14 commenced conversion process when it was completed, SCS  
15 would have had a role to go out and document what was there  
16 for ASCS.

17 Q Now, what about at the beginning of the process  
18 when the commenced determination -- commenced conversion  
19 determination was being considered, what was the role?

20 A The same kind of thing, you know, describe --  
21 letting -- my impression -- I'm going to use the word  
22 impression because, you know, we may have only had one of  
23 these in Pennsylvania. My impression was SCS would have  
24 went out and gathered field information and provided it to

1 information for things like this.

2 Now, that's not to say the county executive  
3 director or county committeeman did not go out there, but  
4 policy wise this was SCS's part of the job.

5 Q So there was ongoing contact between the SCS and  
6 ASCS?

7 A At the county level.

8 Q And even though you weren't involved -- you said  
9 you were not involved in many of these determinations,  
10 these commenced determinations?

11 A No, I wasn't involved in any commenced conversion  
12 determination. I think his was the only one, and I wasn't  
13 directly involved in it.

14 Q Okay. Can you explain how you became indirectly  
15 involved in it?

16 A The district conservationist, Lew Steckler,  
17 consulted me.

18 Q Do you remember when that was?

19 A That's how -- you asked me how I became aware.  
20 Mr. Brace's name, Robert Brace, I became aware because Lew  
21 Steckler called me sometime back then 30 years ago. I  
22 don't know.

23 Q Do you remember what he asked you to do?

24 A What Lew asked me?

25 Q Yeah. Do you remember what he asked of you?

1           A     No. Lew just wanted to discuss the options, you  
2 know. Is it PC? You know, what is it? Is it a converted  
3 wetland? We would have discussed what was in the guidance  
4 at the time.

5           Q     Do you remember what you tentatively concluded or  
6 concluded with certainty or uncertainty?

7           A     My impression today was at the time it was kind  
8 of a classic swampbuster for Pennsylvania, converted  
9 wetland. That was my impression at the time.

10          Q     So it was a commenced conversion though? Is that  
11 what that means?

12          A     No. I meant CW, converted wetland.

13          Q     Right. And you don't -- did you review the  
14 records that ASCS reviewed?

15          A     Lew and I would have discussed -- you know, I'm  
16 not claiming I remember the specific details of the  
17 conversation. That's 30 years ago. Lew and I would have  
18 discussed the previous land use, what Mr. Brace had been  
19 doing, what the results were, what the present situation  
20 was, and my recollection today was it had been forested  
21 wetland.

22                   I honestly don't know when Mr. Brace started  
23 working on it, clearing it. I don't know. But, you know,  
24 this had to be after July of 1987 because I wasn't even in  
25 Pennsylvania until that date, and he had been clearing it,

1 trees.

2 Q And what do you recall Mr. Steckler telling you  
3 about whether it was forested or non-forested?

4 A Oh, forested. I remember -- he called me because  
5 Mr. Brace had cleared a forested area on hydric soils.

6 Q But you never saw --

7 A I was never --

8 Q -- a photograph, an image, an aerial of the land  
9 to know whether it was actually forested or not?

10 A The only photograph I remember today 30 years  
11 later was some oblique photographs taken from a small plane  
12 I believe by U.S. Fish and Wildlife, and they were after  
13 the area had been cleared.

14 Q So you really don't know whether it was actually  
15 forested or some other type of -- in another type of  
16 condition?

17 A Other people told --

18 MR. UHOLIK: Objection. Asked and answered.  
19 He's testified --

20 MR. KOGAN: I'm asking the question.

21 MR. UHOLIK: He's testified that Mr. Steckler  
22 told him that it was forested.

23 THE WITNESS: Yeah, other people told me it was  
24 forested --

25 BY MR. KOGAN:

1 Q And, therefore, you relied on that?

2 A -- before he cleared it.

3 Q And you relied on that?

4 A I relied on other people like our local district  
5 conservationist, Lew Steckler.

6 Q But you didn't verify it though?

7 A Well, when you say verify it --

8 Q Or validate it in scientific terms?

9 A Well, no. I didn't have access to aerial  
10 photography in Harrisburg in 1987. You know, there was no  
11 satellite image. There wasn't even a computer. Well,  
12 1988, 1989, there wasn't a computer on my desk.

13 The only way I could have seen an aerial image is  
14 if Lew had access to a better quality photocopier than they  
15 had in the field office in Waterford, which he didn't --

16 Q Right.

17 A -- and mailed it to me. I took Lew Steckler at  
18 his word.

19 Q Right. But you just testified earlier that this  
20 was the first, perhaps the only commenced conversion  
21 determination in the state of Pennsylvania that you were  
22 aware of even to this day; is that true?

23 A Yes.

24 Q Okay. Then how -- and if Mr. Steckler -- to the  
25 best of your knowledge did Mr. Steckler ever deal with a

1           A     He may very well have. I don't recall.

2           Q     Okay. All right. Were you aware that -- did you  
3 have liaison with Fish and Wildlife Service during your  
4 tenure with SCS?

5           A     Oh, yeah, I worked -- in many of our programs I  
6 worked with the U.S. Fish and Wildlife Service.

7           Q     Did you have a specific person that you worked  
8 with over there in Pennsylvania?

9           A     At that time it was Dave Putnam.

10          Q     Okay. Were you aware that Fish and Wildlife  
11 Service had a problem with the commenced determination of  
12 ASCS?

13          A     No. No.

14          Q     You did not speak to Mr. Putnam, he did not speak  
15 to you about that at all?

16          A     I -- I don't remember 30 years later discussing  
17 commenced conversion with Lew Steckler, and I certainly  
18 don't remember Dave Putnam ever mentioning commenced  
19 conversion to me.

20          Q     Okay. Do you recall there being -- did you ever  
21 hear -- do you recall ever hearing about lawsuits that were  
22 brought to oppose commenced conversion determinations  
23 elsewhere in the country, in the plains or in the prairie  
24 pothole area?

25          A     No. Can I make a statement?

1 Q Yes, please.

2 A Back at that time we had training sessions,  
3 multi-state, sometimes the whole country on when, you know,  
4 a new edition came out, obviously the first edition,  
5 sometimes some of the major amendments, and there were  
6 discussions from all across the country. I don't ever  
7 remember commenced conversion examples really being  
8 discussed. I mean, NRCS's role was to help FSA document  
9 the type of material you just provided.

10 MR. KOGAN: Right. Okay. And I hear what you're  
11 saying, sir. Again I'm going to present as Isaacs Exhibit  
12 5 a reported lawsuit in the Eighth Circuit in North Dakota  
13 dealing with a commenced conversion determination brought  
14 by the National Wildlife Federation against the ASCS. And  
15 that was brought in 1990, this lawsuit, and it was  
16 ultimately decided by the appellate court, the federal  
17 Eighth Circuit Court of Appeals in 1999, showing that there  
18 was opposition to these commenced determinations which is  
19 possibly why there weren't many of them as you've  
20 testified.

21 MR. UHOLIK: Object to the characterization of  
22 whatever this exhibit is.

23 (The National Wildlife Federation and the North  
24 Dakota Wildlife Federation v The Agricultural Stabilization  
25 and Conservation Service, United States Court of Appeals,

1 Q Okay.

2 A And even at those meetings I don't ever remember  
3 it being discussed.

4 MR. KOGAN: Okay. I don't think I've got any  
5 more questions.

6 MR. UHOLIK: Take two minutes.

7 (Recess from 4:05 p.m. to 4:06 p.m.)

8 THE WITNESS: So I wanted to clarify. You guys  
9 walked out of the room. That last statement I made was a  
10 general statement. I do not recall commenced conversion  
11 being discussed with the other wetland memorandum of  
12 agreement agencies.

13 MR. UHOLIK: Are you ready, Counsel?

14 MR. KOGAN: Yes.

15 BY MR. UHOLIK:

16 Q I just have a couple questions. Mr. Isaacs --

17 A Speak up.

18 Q Mr. Isaacs, what was your and by you I mean Soil  
19 Conservation Service or NRCS's involvement in the commenced  
20 conversion determination? Did you have any involvement  
21 whatsoever in that?

22 A The agency?

23 Q Did the agency -- yes.

24 A Yeah. My understanding was our role was to visit  
25 the site and document the conditions and provide that