CASE NO. 10-3743

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MICHAEL PURCELL, Individually and as
Personal Representative of the Estate of Christopher Lee Purcell, deceased

PLAINTIFF-APPELLANT

v.

UNITED STATES

DEFENDANT-APPELLEE

Appeal from the United States District Court
For the Northern District of Illinois
Case No. 09 C 6137
Judge Joan Lefkow

OPENING BRIEF OF PLAINTIFF-APPELLANT MICHAEL PURCELL

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ORAL ARGUMENT REQUESTED

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STATEMENT OF SUJECT MATTER AND APPELLATE JURISDICTION

This is an appeal from a final judgment of the United States District Court for the Northern District of Illinois, entered on October 14, 2010, dismissing Appellant's complaint under the Federal Tort Claims Act, 28 U.S.C. § 1346(b) (1993) ("FTCA"). The notice of appeal was timely filed on November 24, 2010. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

Jurisdiction in the trial court was based on 28 U.S.C. §§ 1331 and 1346 (b). An administrative claim was filed with the Department of the Navy on January 8, 2009. The Navy denied the claim on June 25, 2009, and the complaint was filed on October 1, 2009. *See* 28 U.S.C. § 2675(a).

STATEMENT OF ISSUE FOR REVIEW

I. Did the trial court err in holding that it lacked jurisdiction to hear the family of a serviceman's claim against the United States under the Federal Tort Claims Act for negligence by Navy and Department of Defense personnel in detaining a mentally ill serviceman because the *Feres* doctrine applied to this case?

STATEMENT OF THE CASE

Plaintiff-Appellant filed a complaint in the Northern District of Illinois, Eastern Division contending that Navy and Department of Defense ("DoD") personnel were negligent in their apprehension and detention of Christopher Purcell. Purcell alleged the trial court had jurisdiction pursuant to the FTCA 28 U.S.C. § 1346(b) (1993). A-1.

Appellee filed a motion to dismiss for lack of subject matter jurisdiction alleging Plaintiff-Appellant's claim was barred by the *Feres* Doctrine. A-9. After the motion was fully briefed the trial court dismissed Plaintiff-Appellant's case. A-56.

On October 14, 2010 the trial court granted Defendant-Appellee's motion to dismiss for lack of jurisdiction because the court concluded that the *Feres* doctrine applies to this case. On November 24, 2010, Plaintiff-Appellant filed notice of appeal. A-66. Plaintiff-Appellant is appealing the trial court's application of the *Feres* Doctrine.

STATEMENT OF FACTS

Christopher Lee Purcell joined the Navy when he was 18. Soon after enlisting, Christopher began experiencing numerous social and emotional problems. The Navy intervened on several occasions with substance abuse treatment and mental health care. A-33.

On the night of January 27, 2008, after an afternoon of heavy drinking alone in his apartment, Christopher told strangers in an online chat room that he was going to kill himself. A-2. Fortunately, one person in the chat room notified Christopher's sister, Kristen, that he had a .357 magnum revolver and planned to kill himself. Kristen then told her parents. Michael Purcell contacted the base at around 8:00 p.m. and notified local law enforcement that his son had a gun and was poised to kill himself. A-2 Christopher was alive when law enforcement officers arrived at his apartment. A-3

After Michael Purcell contacted the base, Navy security dispatcher, Stephen Lollis told local law enforcement that Christopher had a gun and was about to kill himself. Among the first local law enforcement officers to arrive at Christopher's apartment were DoD Police Officers Shawn Goding and Matthew Newcomb, followed by DoD Patrolman Francis Harrigan and Petty Officer First Class David Rodriguez. A-3. All were informed that Christopher had a gun and wanted to end his life that night. *Id.* The investigating officers "searched" the premises and found no weapon. A severely depressed Christopher told the officers that he did not have a gun in the hope that he would later be able to use it on himself. Officers found an empty gun case, a receipt for a Ruger .357 magnum revolver, and a box of bullets minus one shell. A-3. Despite all this evidence that Christopher had a .357 magnum his person was never searched. A-4.

After searching the premises, but not Christopher, the only individual residing there, Rodriguez spoke to Christopher, who answered in a calm manner and without anger in his voice, and suggested they go outside to talk. A-3. Outside, Petty Officer First Class Mitchell Tafel came up to Rodriguez and stated that they needed to get Christopher in restraints to protect him and local law enforcement. *Id.* Christopher became belligerent when they attempted handcuff him. *Id.* A struggle ensued with Rodriguez, Tafel, Harrigan, Goding, and Robinson throwing Christopher onto the frozen ground. *Id.* The four officers held him down as he struggled against them. *Id.* Harrigan placed handcuffs on Christopher who was then escorted back upstairs to his apartment for medical attention as a result of being handcuffed. *Id.* Christopher was not searched for a weapon before or after being handcuffed. *Id.*

Once upstairs Tafel asked Christopher if he wanted a glass of water or if he had to go to the bathroom, and Christopher said he wanted to go the bathroom. *Id.* Christopher wanted to go alone but Tafel insisted that he be accompanied into the bathroom. Christopher conceded but was adamant that his friend, Nathan Mutschler, rather than security personnel go with him. A-4. Tafel then instructed Robinson to remove a handcuff so Christopher could use the bathroom. A-3. Christopher went into the bathroom, turned his back to Mutschler, pulled his .357 magnum from his waistband, and shot himself in the chest. A-4.

Christopher had been carrying the gun he used to kill himself on his person the entire time investigating officers were in his apartment. A-2. No Navy or Department of Defense personnel present at any time, either before or after placing Purcell in restraints, conducted a search of his person despite the fact that they knew that he had a .357 magnum. A-4.

Tafel and Rodriguez faced courts martial for violating a general order, reckless endangerment, and dereliction of duty for failing to properly search and supervise Christopher Purcell. A-32. Ultimately both were punished via an extrajudicial proceeding.

SUMMARY OF ARGUMENT

Christopher Lee Purcell died on January 27, 2008 at the age of 21. Purcell did not have to die that night. Had he been almost anywhere with competent law enforcement personnel he would have been unable to take his own life in such a brutal fashion. The local law enforcement officers, whose negligent acts caused his death, were disciplined for their actions the night Purcell died. Despite the clearly negligent acts and omissions leading to Purcell's death, the trial court wrongfully dismissed this case in accordance with its incorrect application of the *Feres* doctrine.

The *Feres* doctrine does not bar Plaintiff's claim because the occurrence complained of was not incident to Christopher Purcell's service in the Navy. The application of the *Feres* doctrine does not turn on whether the negligence occurred on a military base or the duty status of the decedent because Purcell was not subject to military discipline at the time of his death. Immediately prior to the negligent acts and omissions complained of Christopher Purcell was alone in his apartment drinking and chatting on the internet. The acts and omissions complained of relate to the treatment of a mentally ill man by local law enforcement.

The rationale for the *Feres* doctrine makes clear that the occurrence was not incident to service. This case has little or no effect on military discipline because the actions of Christopher Purcell's superiors are not being questioned nor are the orders he may have been given. The Purcell family is not receiving any benefits for Christopher's death. Thus none of the rationales for the *Feres* doctrine are promoted by barring Plaintiff-Appellant's claim.

STANDARD OF REVIEW

The question of what activity invokes the doctrine set forth in *Feres v. United States,* 340 U.S. 135, 71 S.Ct. 153, 95 L. Ed. 152 (1950) is not a question of fact…but an issue requiring *de novo* appellate review. *Adams v. United States,* 728 F.2d 736, 738 n. 3 (5th Cir. 1984) Thus, the issue of subject matter jurisdiction under the FTCA is a question of law reviewed *de novo* by the Court of Appeals. *Estate of McAllister v. United States,* 942 F.2d 1473, 1475 (9th Cir. 1991).

The only question is whether relief is possible under any set of facts that could be established consistent with the allegations. *Bartholet v. Reishauer A.G.,* 953 F.2d 1073, 1078 (7th Cir.1992), citing *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957). All ambiguities must be resolved in the plaintiff's favor because plaintiff is not required to plead all the essential facts in the complaint: Plaintiff may later add allegations by affidavit or brief, even on appeal. *Hrubec v. National Ry. Passenger Corp.,* 981 F.2d 962, 963 (7th Cir.1992). Unless otherwise provided by Rule 9 of the Federal Rules of Civil Procedure, facts need not be set out with particularity. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit,* 113 S.Ct. 1160 (1993). The court must accept pleaded conclusions-of fact or law-as true. *Id.; Early v. Bankers Life & Casualty Co.,* 959 F.2d 75, 79 (7th Cir.1992). In short, the complaint may be dismissed only if a plaintiff pleads himself out of court by alleging facts that show he is not entitled to judgment. *Id.; Bartholet,* 953 F.2d at 1079.

ARGUMENT

I. THE FERES DOCTRINE DOES NOT APPLY TO PLAINTIFF-APPELLANT'S CLAIM BECAUSE THE OCCURRENCE COMPLAINED OF WAS NOT INCIDENT TO CHRISTOPHER PURCELL'S SERVICE IN THE NAVY.

The Federal Tort Claims Act creates a limited waiver of sovereign immunity from recognized causes of action. In *Feres v. United States*, 340 U.S. 135, 146 (1950) the United States Supreme Court determined that certain types of claims by military persons should not be included in the FTCA. This exception came to be known as the *Feres* Doctrine. The *Feres* Doctrine specifically bars claims for injuries that "arise out of or are in the course of activity incident to service." *Feres v. United States*, 340 U.S. 135, 146 (1950). *Feres* and its application should be strictly construed because *Feres* is a derogation of a federally created right for military personnel to pursue tort claims.

The Supreme Court has long recognized "the line drawn in the *Feres* case between injuries that did and injuries that did not arise out of or in the course of military duty." *United States v. Brown*, 348 U.S. 110, 113 (1954). Thus, it is well established that in cases brought against the government by members of the military, courts must determine whether the injured service member's injury or death occurred incident to his military service. *See Feres*, 340 U.S. at 146. The Supreme Court has emphasized that the "incident to service" test should not be mechanically applied: the *Feres* doctrine cannot be reduced to a few bright-line rules; each case must be examined in light of the statute as it has been construed in *Feres* and subsequent cases. *United States v. Shearer*, 473 U.S. 52, 57 (1985). Adhering to this mandate, those circuits that have ruled on the issue have analyzed the "totality of the circumstances" in each servicemember FTCA case to determine whether the plaintiff's claim is barred by *Feres*.

See Schoemer v. United States, 59 F.3d 26, 28 (5th Cir.), cert. denied, 116 S. Ct. 519 (1995).

The Supreme Court has held that neither the duty status of the claimant nor the situs of the death is determinative of whether a claim is barred by *Feres*. *Shearer*, 473 U.S. at 59; *See Dreier v. United Sta*tes, 106 F.3d 844 (9th Cir. 1996). The rule is that in examining whether a servicemember's injuries were incurred "incident to service," the courts consider various factors, with no single factor being dispositive. *Appelhans v. United States*, 877 F.2d 309, 311 (4th Cir. 1989). Thus, it has never been held that a servicemember who was injured while on active duty and on base was denied recovery under the FTCA simply because of those two facts.

On the night of January 27, 2008 Christopher Purcell's family learned he was suicidal and contacted local law enforcement. A-2. Local law enforcement was negligent in its response. A-4. They were called to apprehend a suicidal individual with a gun and they failed to even search his person for a weapon. A-3. After concluding he was a danger to himself they removed his restraints and allowed him to shoot himself in the chest. A-4. Nothing about the response of local law enforcement was incident to Purcell's service in the Navy. In light of the "totality of the circumstances" *Feres* should not bar Plaintiff-Appellant's claim. *See Schoemer*, 59 F.3d at 28.

A. The application of the *Feres* doctrine does not turn on whether the negligence occurred on a military base.

Christopher Purcell died in his apartment on a military base. A-3 His base apartment was no different from an apartment anywhere else. His interaction with local law enforcement employed by the Navy and DoD was no different than his interaction would have been with Brunswick city police. Dismissing Plaintiff's case solely because

the negligence occurred on base would constitute an unprecedented extension of *Feres* and would place this Court out of line with the holdings of other courts.

The fact that the occurrence complained of was on a military base is not determinative. Many courts have permitted military personnel to recover under the FTCA even though the negligent acts occurred on military bases. *See*, *e.g.*, *Troglia v. United States*, 602 F.2d 1334, 1339 (9th Cir. 1979) (accident on government-owned road adjacent to military base); *Bryson v. United States*, 463 F.Supp. 908, 914 (E.D.Pa. 1978) (serviceman on pass injured on-base can sue under FTCA because the "location of the incident bears no significant causal relationship to the injury"); *Downs v. United States*, 249 F.Supp. 626 (E.D.N.C. 1965)(plaintiff on-base but "on a pass pursuing his personal affairs"); *Hand v. United States*, 260 F.Supp. 38, 42 (M.D.Ga. 1966)(although accident occurred on-base, relevant question is what plaintiff was doing when injured); *Rich v. United* States, 144 F.Supp. 791, 792 (E.D.Pa. 1956)("The determinative fact in each case is not where the plaintiff was at the time he was injured . . . but whether what he was doing at the time was 'in the course of activity incident to service.' "); *Nowatny v. Turner*, 203 F.Supp. 802 (M.D.N.C. 1962) (*Feres* does not bar suit merely because the accident occurred on military base); *Brown v. United states*, 99 F.Supp. 685 (S.D.W.Va. 1951) (government liable for injuries occurring in on-base swimming pool to Navy enlisted man on shore leave).

Although the negligent act in this case occurred on base, the connection between the situs of the negligence and Purcell's military service is so tenuous that location is not an important factor. *See*, *e.g.*, *Troglia v. United States*, 602 F.2d at 1339 (because the connection between location of the accident and military service "is so weak," the court must "further inquire into the extent of the connection between the plaintiff's activities

and his military service.") Purcell being arrested in his on-base apartment had no relevant relationship to his on-base military activities. His apartment is a private place where Purcell was not generally subject to military discipline. The location of his apartment should not obscure the fact that Purcell was performing a non-military activity in what was essentially a civilian context. Accordingly, the fact that the occurrence complained of was on a military base is not determinative.

B. The application of the *Feres* doctrine does not turn on whether the negligence occurred while Purcell was on active duty.

The duty status of the plaintiff, while not dispositive, is often taken into account when deciding whether an activity is truly incident to service. *See, e.g., Woodside v. United States*, 606 F.2d 134, 142 (6th Cir.1979); *Troglia v. United States,* 602 F.2d at 1339. Once again, however, the duty status distinction cannot be mechanically applied to answer the "incident to service" question. On the contrary, Purcell's duty status is relevant only insofar as it bears on the relationship between the activity leading to the injury and his military service. Christopher Purcell was technically "on duty" yet at the time of the incident he was alone in his apartment, out of uniform, chatting on the internet, and drinking. Consequently his duty status cannot be determinative.

A relevant inquiry attaching to all wrongful death claims of service members is what the decedent was doing at the time he died. At the time of the negligent acts and omissions complained of Purcell was not subject to military control; he was not under the compulsion of military orders; he was not performing any military mission. Purcell was away from the military setting at the time of the occurrence; he was alone in his apartment, out of uniform, chatting on the internet, and drinking. Purcell clearly was

not engaged in activity incident to service. *See Parker v. United States,* 611 F.2d 1007 (5th Cir. 1980).

In and of itself Purcell's active duty status is not relevant to this court's inquiry. Rather, the fact that he "was on active duty merely proves that he was not an inactive reservist or a discharged veteran." *Troglia v. United States,* 602 F.2d at 1339. The important question is whether the service member on active duty status was engaging in an activity that is related in some relevant way to his military duties. In this case, Purcell's online suicide threat and subsequent arrest had no such relevant relationship to the military disciplinary structure that the *Feres* doctrine was meant to safeguard. *See Johnson v. United States,* 704 F.2d 1431, 1436-41 (9th Cir.1983). On the contrary, Purcell being arrested for threatening to kill himself has no relation to him being a servicemember. The same people applying the same procedures would arrest a civilian on the base. Purcell was not treated any differently because he was a servicemember. In short, he was in the same position that any civilian might have been in at the time of the government's negligence. The fact that Purcell was off-duty at the time of the occurrence is, under the circumstances presented here, sufficient to eliminate any relevant links between his activities and his military service. *See id.*

C. Purcell was not subject to military discipline or performing a military mission at the time of the occurrence.

At the time the occurrence, Purcell was not subject in any real way to the compulsion of military orders or performing any sort of military mission. *See, e.g., Parker,* 611 F.2d at 1014 (recovery under FTCA allowed because serviceman "was not directly subject to military control; he was not under compulsion of military orders; he was not performing any military mission."); *Bryson v. United States,* 463 F.Supp. at 914 (recovery

permissible because serviceman "was not acting under compulsion of orders or duty and he was not on a military mission."); *Knecht v. United States,* 144 F.Supp. 786, 789 (E.D.Pa.1956) (recovery allowed when serviceman's "activities were not controlled by his military status."), *aff'd* 242 F.2d 929 (3d Cir.1957).

At the time of the occurrence, Purcell stood in exactly the same position as a civilian visiting the base. He was intoxicated, alone in his personal apartment and threatening suicide on the internet. A-3. He was detained for being a threat to himself—not for violating any order. *Id.* None of his activities that night had anything to do with orders given by his superiors. This is simply a matter of negligence by local law enforcement. In short, Purcell could just as easily "have been injured had [he] never worn a uniform at all." *United States v. Brown,* 348 U.S. at 114 (Black, J., dissenting).

The rule is that "if the injury is not the product of a military relationship, suit under the Act may be allowed." *Harten v. Coons*, 502 F.2d 1363 (10th Cir. 1974). Here the injury is the product of negligent law enforcement. Who the local law enforcement officers were employed by is irrelevant. The local law enforcement officers did not order Purcell to do anything they could not order a civilian to do. The interaction between the local law enforcement officers and Purcell makes clear that he was not subject to military discipline.

D. The rationale for the *Feres* doctrine makes clear that this occurrence was not incident to Purcell's service in the Navy.

The answer to the question whether activity is incident to military service determines whether a service member has an FTCA cause of action. The same considerations that originally influenced the Supreme Court in creating the incident to service exception elucidate its features. Thus it is necessary for this Court to consider the rationale underlying *Feres* when evaluating whether or not the occurrence in question was incident to military service. *See generally Parker v. United States,* 611 F.2d 1007 (5th Cir. 1980).

The first rationale for the *Feres* Doctrine is that the relationship between the government and members of its armed forces is "distinctively federal in character." *United States v. Johnson,* 481 U.S. 689, 107 S.Ct. 2063, 95 L.Ed.2d 648 (1987). Courts have found that this federal relationship is implicated to the greatest degree when a service member is performing activities incident to his federal service. *Id.* Although Christopher Purcell will always have a relationship with the federal government due to his membership in the Navy, this relationship was not implicated when he died, as he was not performing activity incident to his federal service at the time. Instead he was being taken into police custody by local law enforcement in the same way any other citizen would be, whether or not he was a member of the Navy.

The second rationale is the existence of statutory disability and death benefits for service related injuries. *United States v. Johnson,* 481 U.S. 689, 107 S.Ct. 2063, 95 L.Ed.2d 648 (1987). This is a moot point in the present case because the Purcell family did not receive any benefits from the Navy as a result of Christopher Purcell's death. A-42.

Even if the Purcell family were to receive benefits as a result of Christopher Purcell's death, an FTCA action is not precluded even if decedent's family receives benefits, since neither the FTCA nor the veterans' benefits laws in Title 38 of the United States Code provide for an exclusive remedy. *Brooks v. United States*, 337 U.S. 49, 53 (1949).

Furthermore, both before and after *Feres,* the Supreme Court has permitted injured servicemen to bring FTCA suits, even though they had been compensated under the Veterans Act ("VBA"). *Johnson*, 481 U.S. at 697. *Feres* described the absence of any provision to adjust dual recoveries under the FTCA and VBA as "persuasive [evidence] that there was no awareness that the Act might be interpreted to permit recovery for injuries incident to military service." *Feres,* 340 U.S. at 144. The only limitation the courts have noted is that the amount payable under servicemember's benefit laws may be deducted or taken into consideration when the service member obtains judgment under the FTCA. *Brooks,* 337 U.S. at 53. Thus, simply because Plaintiff might have received military compensation for his injuries is not sufficient justification to bar his action.

The third rationale, and the doctrine's primary justification, is the effect of a lawsuit on military discipline and whether the suit requires a civilian court to second guess military decisions. *Johnson,* 481 U.S. at 684. The Supreme Court explained in *Brown* that *Feres* seems best explained by the peculiar and special relationship of the soldier to his superiors and the effects of the maintenance of such suits on discipline. *Brown,* 348 U.S. at 112. When courts have discussed this rationale, they seem particularly concerned about actions that go directly to the management of the military; or claims that question basic choices about the discipline, supervision, and control of a

serviceman. *U.S. v. Shearer,* 473 U.S. 52, 57 (1985). Further, the basis of *Feres* was the Court's concern with the disruption of the relationship between soldiers that might result if soldiers were permitted to hale their superiors into court. *Stencel Aero Engineering Corp. v. United States,* 431 U.S. 666, 97 S.Ct. 2054, 52 L.Ed.2d 665 (1977). In the present case, there is no question of the relationship between soldiers and their superiors.

This rationale for the *Feres* Doctrine is perfectly understood in light of suits most threatening to military discipline, such as claims based on combat command decisions or claims based on the performance of discretionary functions. *Johnson,* 481 U.S. at 699. However, Plaintiff-Appellant's claim, as a negligence action against local law enforcement, does not fall into either of those categories. This lawsuit does not threaten the special relationship between a soldier and his superiors, and military effectiveness will not be sacrificed if Plaintiff-Appellant is allowed to maintain his suit. The action is far removed from issues of military discipline and decision-making. This suit no more threatens military discipline than an action brought by a civilian.

This is a case about the negligence of local law enforcement in the treatment of a mentally ill individual. They were called to apprehend a suicidal individual with a gun and they failed to even search his person for a weapon. A-3. After concluding he was a danger to himself they removed Purcell's restraints and allowed him to shoot himself in the chest. A-4. Nothing about the response of local law enforcement has anything to do with the special relationship between soldier and his superiors nor is it incident to Purcell's service in the Navy.

CONCLUSION

For all the reasons stated herein, this Court should reverse the trial court's holding that Plaintiff-Appellant lacks subject matter jurisdiction and its erroneous application of *Feres*.

Respectfully Submitted,

FICHERA & MILLER, P.C
/s/*Howard Miller*
/s/*Alexander Hattimer*
Attorneys for Plaintiff-Appellant
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CERTIFICATE OF COMPLIANCE WITH F.R.A.P. RULE 32(a)(7)

The undersigned, counsel of record for the Plaintiff-Appellant, Michael Purcell, furnishes the following in compliance with F.R.A.P Rule 32(a)(7):

I hereby certify that this brief conforms to the rules contained in F.R.A.P Rule 32(a)(7) for a brief produced with a proportionally spaced font. The length of this brief is 5,497 words.

Dated February 22, 2011.

FICHERA & MILLER, P.C
/s/*Howard Miller*
/s/Alexander Hattimer
Attorneys for Plaintiff-Appellant

PROOF OF SERVICE

The undersigned, counsel of record for the Plaintiff-Appellant, Michael Purcell hereby certifies that on February 22, 2011, two copies of the Brief and Required Short Appendix of Appellant as well as a digital version containing the brief, were hand delivered to counsel for the Defendant-Appellee, United States.

Dated February 22, 2011.

FICHERA & MILLER, P.C
/s/*Howard Miller*
/s/*Alexander Hattimer*
Attorneys for Plaintiff-Appellant

CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), counsel certifies that all material required by Circuit Rule 30(a) and (b) are included in the appendix.

FICHERA & MILLER, P.C
/s/*Howard Miller*
/s/*Alexander Hattimer*
Attorneys For Plaintiff-Appellant

CIRCUIT RULE 30(e) CERTIFICATION

The undersigned hereby certifies that I have field electronically, pursuant to Circuit Rule 31(e), versions of the brief and of all the appendix items that are available in non-scanned PDF format.

FICHERA & MILLER, P.C
/s/*Howard Miller*
/s/Alexander Hattimer
Attorneys For Plaintiff-Appellant

COMBINED RULE 30(a) AND RULE 30(b) APPENDIX

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 10-3743
Short Caption: Purcell v. United States

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):
MICHAEL PURCELL, Individually and as Personal Representative of the Estate of Christopher Lee Purcell, deceased

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Fichera & Miller, P.C.

(3) If the party or amicus is a corporation:
i) Identify all its parent corporations, if any; and
ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: /s/*Alexander N. Hattimer*
Date: 2/22/2011
Attorney's Printed Name: Alexander N. Hattimer
Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). No
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