

**UNITED STATES OF AMERICA, Plaintiff-Appellee, v. WILLIAM J. BENSON,
Defendant-Appellant.**

No. 94-2214

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

74 F.3d 152; 1996 U.S. App. LEXIS 701

January 18, 1996, Decided

PRIOR HISTORY:

[**1] Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 87 CR 278. John F. Grady, Judge.

Original Opinion of October 6, 1995, Reported at: *1995 U.S. App. LEXIS 27995*.

COUNSEL:

For UNITED STATES OF AMERICA, Plaintiff - Appellee: Barry Rand Elden, AUSA, Joan Safford, OFFICE OF THE UNITED STATES ATTORNEY, Criminal Appellate Division, Chicago, IL.

For WILLIAM J. BENSON, Defendant - Appellant: Lowell H. Becraft, Jr., Huntsville, AL.

JUDGES:

Before Hon. RICHARD D. CUDAHY, Circuit Judge, Hon. KENNETH F. RIPPLE, Circuit Judge, Hon. MICHAEL S. KANNE, Circuit Judge

OPINION:

[*152] ORDER

On consideration of the petition for rehearing filed by defendant/appellant William J. Benson, and the response thereto filed by the Government, the court modifies its opinion issued in the above-entitled case on October 6, 1995, as follows.

In Section I, the sixth, seventh and eighth paragraphs should now read:

During this time period, IDOR was covered by a liability insurance policy issued by Continental Insurance Company. Continental's adjuster was Underwriters Adjusting Company. Underwriters assumed the defense of IDOR employees in the cigarette tax cases. It did not,

however, immediately defend Benson against all of the claims. In 1977, it did, however, appoint Jack Skeffington to represent Benson on two of the claims. Underwriters was apparently under the impression, created by IDOR, that Benson was not an "employee" [**2] covered by the policy with respect to all of the claims. Instead, he was an independent contractor responsible for his own defense for all but two of the claims.

Benson undertook his own defense for approximately one year and had Skeffington's help for a second year. Then, in September 1978, Skeffington convinced Underwriters that it should pay for Benson's defense against all of the claims. In that same month, Benson and Skeffington contacted Underwriters with documentation of Benson's employment status, and Underwriters agreed to undertake his defense. At that point, Benson had not paid any money to Skeffington for the representation rendered. By mid-November, Underwriters had paid Skeffington for all work done beginning with his entry into the case in September 1977.

Benson soon contacted Underwriters about work he had done in his own defense. He apparently prepared two different bills reflecting Benson's work. The first covered work done from November 1976 to October 1977 (when Benson was unrepresented). The second covered work from October 1977 to January 1979. Benson also agreed to continue to do the investigative work on his own cases.

FURTHER, on consideration of the [**3] petition for rehearing all of the judges on the original panel have voted to deny the petition. Accordingly,

[*153] IT IS ORDERED that the petition for rehearing be, and the same is, hereby DENIED.