

103^D CONGRESS
2^D SESSION

H. R. 4862

For the relief of INSLAW, INC., a Delaware Corporation, and William
A. Hamilton and Nancy Hamilton, individually.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1994

Mr. ROSE introduced the following bill; which was referred to the Committee
on the Judiciary

A BILL

For the relief of INSLAW, INC., a Delaware Corporation,
and William A. Hamilton and Nancy Hamilton, individually.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That jurisdiction be, and the same is hereby, conferred
4 upon the United States Court of Federal Claims to hear,
5 determine, and render judgment upon the claims of
6 INSLAW, INC., a Delaware Corporation, and William A.
7 Hamilton and Nancy Hamilton, individually, as herein-
8 after described and in the manner set out, which claims
9 arise out of the furnishing of computer software and serv-
10 ices to the United States Department of Justice.

1 **SECTION 1. FINDINGS OF THE HOUSE COMMITTEE ON THE**
2 **JUDICIARY.**

3 That the findings of the House Committee on the Ju-
4 diciary in the INSLAW Affairs, dated September 10,
5 1992, and committed to the Committee of the Whole
6 House on the State of the Union are hereby reaffirmed
7 and adopted, verbatim herein, as follows:

8 “(1) The Department, in an attempt to imple-
9 ment a standardized case management system, ig-
10 nored advice from vendors—including INSLAW—
11 that PROMIS should not be adapted to word proc-
12 essing equipment. As predicted, problems arose with
13 adapting PROMIS to word processing equipment.
14 The Department immediately set out to terminate
15 that portion of the contract and blamed INSLAW
16 for its failure.

17 “(2) The Department exhibited extremely poor
18 judgment by assigning C. Madison Brewer to man-
19 age the PROMIS implementation contract. Mr.
20 Brewer had been asked to leave his position as gen-
21 eral counsel of INSLAW under strained relations
22 with INSLAW’s owner, Mr. William Hamilton.
23 INSLAW’s problems with the Department, which
24 started almost immediately after the award of the
25 contract in March 1982, were generated in large
26 part by Mr. Brewer, with the support and direction

1 of high level Department officials. The potential con-
2 flict of interest in the hiring of Mr. Brewer was not
3 considered by Department officials. However, Mr.
4 Brewer's past strained relationship with Mr. Hamil-
5 ton, and the fact that he lacked experience in ADP
6 management and understanding of Federal procure-
7 ment laws, raises serious questions about why he
8 was selected as the PROMIS project manager.

9 “(3) Mr. Brewer's attitude toward INSLAW,
10 combined with Mr. Videnieks' harsh contract philos-
11 ophy, led to the rapid deterioration of relations be-
12 tween the Department and INSLAW. Any sem-
13 blance of fairness by key Department officials to-
14 ward INSLAW quickly evaporated when Mr. Hamil-
15 ton attempted to protect his companies' proprietary
16 rights to a privately funded enhanced version of the
17 PROMIS software. In a highly unusual move, Mr.
18 Brewer recommended just 1 month after the con-
19 tract was signed that INSLAW be terminated for
20 convenience of the Government even though
21 INSLAW was performing under the contract. From
22 that point forward there is no indication that Mr.
23 Brewer or Mr. Videnieks ever deviated from their
24 plan to harm INSLAW. The actions taken by
25 Messrs. Brewer and Videnieks were done with the

1 full knowledge and support of high level Department
2 officials.

3 “(4) Peter Videnieks, the Department’s con-
4 tracting officer, negotiated Modification 12 of the
5 contract which resulted in INSLAW agreeing to pro-
6 vide its proprietary Enhanced PROMIS software for
7 the Department’s use. This negotiation was con-
8 ducted in bad faith because Justice later refused to
9 recognize INSLAW’s rights to privately financed
10 PROMIS enhancements. Mr. Videnieks and Mr.
11 Brewer, supported by Deputy Attorney General Jen-
12 sen and other high level officials, Unilaterally con-
13 cluded that the Department was not bound by the
14 property laws that applied to privately developed and
15 financed software.

16 “(5) Therefore, the Department ignored
17 INSLAW’s data rights to its enhanced version of its
18 PROMIS software and misused its prosecutorial and
19 litigative resources to legitimize and cover up its
20 misdeeds. This resulted in extremely protracted liti-
21 gation and an immense waste of resources both for
22 the Government and INSLAW. These action were
23 taken even though the Department had already de-
24 termined that INSLAW’s claim was probably justi-
25 fied and that the Department would lose in court. In

1 fact, Deputy Attorney General Burns acknowledged
2 this fact to OPR investigators.

3 “(6) Department of Justice documents show
4 that a ‘public domain’ version of the PROMIS soft-
5 ware was sent to domestic and international entities
6 including Israel. Given the Department’s position re-
7 garding its ownership of all versions of PROMIS,
8 questions remain whether INSLAW’s Enhanced
9 PROMIS was distributed by Department officials to
10 numerous sources outside the Department, including
11 foreign governments.

12 “(7) Several witnesses, including former Attor-
13 ney General Elliot Richardson, have provided testi-
14 mony, sworn statements or affidavits linking high
15 level Department officials to a conspiracy to steal
16 INSLAW’s PROMIS software and secretly transfer
17 PROMIS to Dr. Brian. According to these wit-
18 nesses, the PROMIS software was subsequently con-
19 verted for use by domestic and foreign intelligence
20 services. This testimony was provided by individuals
21 who knew that the Justice Department would be in-
22 clined to prosecute them for perjury if they lied
23 under oath. No such prosecutions have occurred.

24 “(8) Justice had made little effort to resolve
25 conflicting and possibly perjurious sworn statements

1 by key departmental witnesses about the alleged at-
2 tempt by high level Department officials to liquidate
3 INSLAW and steal its software. It is very possible
4 that Judge Blackshear may have perjured himself
5 and even today his explanations for his recantation
6 of his sworn statement provided to INSLAW are
7 highly suspicious. The investigation of this matter by
8 the Department's Office of Professional Responsibil-
9 ity was superficial.

10 “(9) The Department's response to INSLAW's
11 requests for investigations by an independent coun-
12 sel and the Public Integrity Section was cursory and
13 incomplete.

14 “(10) The reviews of the INSLAW matter by
15 Congress were hampered by Department tactics de-
16 signed to conceal many significant documents and
17 otherwise interfere with an independent review. The
18 Department actions appear to have been motivated
19 more by an intense desire to defend itself from
20 INSLAW's charges of misconduct rather than inves-
21 tigating possible violations of the law.

22 “(11) Justice officials have asserted that, as a
23 result of the recent ruling by the Appeals Court and
24 the refusal of the Supreme Court to hear INSLAW's
25 appeal, the Findings and Conclusions of Bankruptcy

1 Judge George Bason and senior Judge William Bry-
2 ant of the District Court are no longer relevant. The
3 Appeals Court decision, in fact, did not dispute the
4 Bankruptcy Court’s ruling that the Department
5 “stole . . . through trickery, fraud and deceit”
6 INSLAW’s PROMIS software. Its decision was
7 based primarily on the narrow question of whether
8 the Bankruptcy Court had jurisdiction; the Appeals
9 Court ruled that it did not. This decision in no way
10 vindicates the Department nor should it be used to
11 insulate Justice from the criticism it deserves over
12 the mishandling of the INSLAW contract.

13 “(12) The Justice Department continues to im-
14 properly use INSLAW’s proprietary software in bla-
15 tant disregard of the findings of two courts and well
16 established property law. This fact coupled with the
17 general lack of fairness exhibited by Justice officials
18 throughout this affair is unbecoming of the agency
19 entrusted with enforcing our Nation’s laws.

20 “(13) Further investigation into the cir-
21 cumstances surrounding Daniel Casolaro’s death is
22 needed.

23 “(14) The following criminal statutes may have
24 been violated by certain high level Justice officials
25 and private individuals:

1 “18 U.S.C. § 371—Conspiracy to commit
2 an offense.

3 “18 U.S.C. § 654—Officer or employee of
4 the United States converting the property of
5 another.

6 “18 U.S.C. § 1341—Fraud.

7 “18 U.S.C. § 1343—Wire fraud.

8 “18 U.S.C. § 1505—Obstruction of pro-
9 ceedings before departments, agencies and com-
10 mittees.

11 “18 U.S.C. § 1512—Tampering with a wit-
12 ness.

13 “18 U.S.C. § 1513—Retaliation against a
14 witness.

15 “18 U.S.C. § 1621—Perjury.

16 “18 U.S.C. § 1951—Interference with
17 commerce by threats or violence (RICO).

18 “18 U.S.C. § 1961 et seq.—Racketeer In-
19 fluenced and Corrupt Organizations.

20 “18 U.S.C. § 2314—Transportation of sto-
21 len goods, securities, moneys.

22 “18 U.S.C. § 2315—Receiving stolen
23 goods.

24 “(15) Several key documents subpoenaed by the
25 committee on July 25, 1991, were reported missing

1 or lost by the Department. While Justice officials
2 have indicated that this involves only a limited num-
3 ber of documents, it was impossible to ascertain how
4 many documents or files were missing because the
5 Department did not have a complete index of the
6 INSLAW materials. The Department failed to con-
7 duct a formal investigation to determine whether the
8 subpoenaed documents were stolen or illegally de-
9 stroyed.” Investigative Report by the Committee on
10 the Judiciary, THE INSLAW AFFAIR, Report
11 102–857, pp. 110–113.

12 **SEC. 2. SATISFACTION OF CLAIMS AGAINST THE UNITED**
13 **STATES.**

14 The Secretary of the Treasury shall pay, out of
15 money in the Treasury not otherwise appropriated:

16 (1) To INSLAW, INC. (INSLAW) an amount
17 of money in compensation for any and all direct,
18 consequential, incidental and/or punitive damages
19 sustained by INSLAW as a result of a negligent or
20 wrongful act, or acts, or failure to act, on the part
21 of the United States Department of Justice (DOJ),
22 its officials, officers, employees, and agents, and
23 other United States agencies, their officials, officers,
24 employees and agents. The negligent or wrongful
25 acts of the aforestated agencies of the United States

1 government arise out of complex issues of fact, and
2 involve willful, wanton and malicious breaches of
3 contract, tortious activity, deceit, trickery, conver-
4 sion, copyright and trademark infringement, abuse
5 of software licensing agreements, and other such un-
6 justified, egregious and fraudulent conduct of offi-
7 cials and agents of the United States government,
8 relating to the unauthorized use and/or dissemina-
9 tion and/or conversion, theft or other misappropria-
10 tion, of computer software proprietary to INSLAW,
11 including INSLAW's PROMIS software and
12 INSLAW's Enhanced PROMIS software, and/or a
13 conspiracy to sell, transfer and distribute INSLAW's
14 Enhanced PROMIS software to other Federal agen-
15 cies and/or foreign governments and/or agencies, all
16 to the damage of INSLAW in the loss of its soft-
17 ware, service contracts, loss or termination of busi-
18 ness relationships with other companies or entities,
19 and the loss of the profits thereof, and the preven-
20 tion of growth that INSLAW would otherwise have
21 had, all to the unjust enrichment of the DOJ, other
22 government agencies, and officials, officers, agents
23 and employees of such agencies, as well as other per-
24 sons, entities and conspirators.

1 (2) To William A. Hamilton and Nancy Hamil-
2 ton, individually, any and all direct, consequential,
3 incidental and/or punitive damages, and/or all rea-
4 sonable legal expenses and other costs to the Hamil-
5 tons, not directly related to the contract between
6 INSLAW and DOJ, but caused by the actions taken
7 by DOJ, its officials, officers, employees and agents
8 to harm INSLAW or its officers and/or employees.

9 **SEC. 3. WAIVER OF SOVEREIGN IMMUNITY AND DEFENSES.**

10 (a) Any available defense of sovereign immunity of
11 the United States, the DOJ, any other United States gov-
12 ernment agency, or any United States government official,
13 officer, agent or employee is specifically waived as to the
14 respective claims of INSLAW, William A. Hamilton and
15 Nancy Hamilton, and the amounts payable to them under
16 section 2 above.

17 (b) INSLAW, INC., William A. Hamilton and Nancy
18 Hamilton shall each be entitled to payment of said claims
19 notwithstanding any defense pertaining to lack of personal
20 and/or subject matter jurisdiction, statutes of limitation,
21 statutes of repose, statute of frauds, laches, stare decisis,
22 waiver, estoppel, including, but not limited to, judicial es-
23 toppel, equitable estoppel, collateral estoppel, estoppel by
24 judgment and promissory estoppel, res judicata, failure to
25 exhaust all legal remedies, administrative or otherwise,

1 payment, accord and satisfaction, release, pendency of
2 claims in others courts, tribunals or departments, or any
3 other equitable or legal defense that might have otherwise
4 been available to the United States, the Department of
5 Justice, or any other United States agencies, and their
6 respective officials, officers, employees, agents and/or con-
7 spirators, all such defenses being hereby waived with re-
8 spect to the claims of INSLAW, and/or William A. Hamil-
9 ton and Nancy Hamilton, individually, and the amounts
10 payable under section 2.

11 (c) The amounts payable under section 2 shall be in
12 satisfaction of all claims, legal or equitable, by INSLAW,
13 William A. Hamilton and Nancy Hamilton, individually,
14 against the United States of America, any agency thereof,
15 or its officials, officers, employees, agents and/or conspira-
16 tors, and shall include interest accrued on all damages,
17 attorneys' fees and expenses.

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