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OPTIONAL FORM 99 (7-90)

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L. Fisher

**UNITED STATES DISTRICT COURT
DISTRICT OF FLORIDA
WEST DIVISION**

NSN 7540-01-317-7388 5098 101 GENERAL SERVICES ADMINISTRATION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KANE FISHER, and SALVORS, INC.,

Defendants.

**CASE NO. 92-10027-CIV-DAVIS
CASE NO. 95-10051-CIV-DAVIS
MAGISTRATE JUDGE GARBER**

ORDER

FILED BY M.S.D.C.
OCT 15 1997
 TARIOR JUEHKE
 CLERK U.S. DIST. CT.
 S.D. OF FLA. - MIAMI

THIS MATTER is before the Court on the Defendants' Motion for Stay of Execution (filed September 15, 1997), Motion for New Trial (filed September 15, 1997), and Request for Oral Argument (also filed September 15, 1997).

The Defendants set forth 29 reasons why the Court should either grant a new trial or amend its findings of fact and conclusions of law. With one exception, these claims merely rehash evidence and arguments that this Court and the Eleventh Circuit Court of Appeals have rejected, not only at trial but on motions for preliminary injunction and summary judgment. The one exception is the Defendants' request to demonstrate that the main boat in question in this case, the M/V Dauntless, is physically incapable of making holes in seagrass beds using mailboxes.

A motion for new trial or to amend findings of fact and conclusions of law should not be used to relitigate old issues or introduce evidence that was available, but not proffered, at trial. *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986); *Ramos v. Boehringer Mannheim Corp.*, 896 F. Supp. 1213, 1214 (S.D. Fla. 1994). Reasons for a Court to grant either of these motions include an intervening change in controlling law, the availability of new evidence, and the need to

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correct clear error or manifest injustice. *Id.* None of those three circumstances are present here. The Defendants simply seek to relitigate the same issues they have argued all along. As to the request for a mailbox demonstration, this case was pending for five years before it went to trial. The parties engaged in extensive discovery and filed numerous motions. One of the main issues throughout the case was whether the Defendants' mailboxes caused the blowholes in Coffins Patch. The Defendants had ample opportunity to attempt to demonstrate that their mailboxes were physically incapable of blasting through seagrass. The request at this late date is untimely.

Finally, the Court does not find that it needs oral argument to help decide these issues.

Accordingly, it is

ORDERED AND ADJUDGED that the Defendants' Motion for New Trial (filed September 15, 1997) is **DENIED**. It is

FURTHER ORDERED AND ADJUDGED that the Defendants' Motion for Stay of Execution (filed September 15, 1997) is **DENIED AS MOOT**. It is

FURTHER ORDERED AND ADJUDGED that the Defendants' Request for Oral Argument (also filed September 15, 1997) is **DENIED**.

DONE AND ORDERED in Chambers in Miami, Florida, this 15th day of October, 1997.


EDWARD B. DAVIS
CHIEF UNITED STATES DISTRICT JUDGE

Copy: James Lofton
Jon Mueller
Caroline Zander
Michael Barnes
William VanDercreek
Richard Rumrell