

**IN THE SUPREME COURT AND COURT OF APPEALS
OF THE STATE OF MISSISSIPPI
NO. 2008-CA-00456**

**GENE JONES, ASHLEY CRAFT,
RALPH SCOTT, HARDY GORDON,
JAMES WILLIAMS, and REGGIE WILLIAMS**

APPELLANTS

v.

FLUOR DANIEL SERVICES CORPORATION

APPELLEE

**APPEAL FROM THE FINAL JUDGMENT
OF THE CIRCUIT COURT OF JONES COUNTY,
FIRST JUDICIAL DISTRICT
CIVIL ACTION NO. 13-0036**

BRIEF OF APPELLEE

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

1. Gene Jones, Ashley Craft, Ralph Scott, Hardy Gordon, James Williams, and Reginald Williams, Appellants.
2. Thomas Q. Brame, Attorney for Appellants.
3. Fluor Daniel Services Corporation, Appellee.
4. Gary E. Friedman, Sandra Strong, and Steven J. Allen, Attorneys for Appellee.
5. The Honorable Robert G. Evans, Circuit Judge.

SO CERTIFIED this the 9th day of April, 2009.



GARY E. FRIEDMAN

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES.....	iv
STATEMENT REGARDING ORAL ARGUMENT	1
STATEMENT OF THE ISSUES	2
STATEMENT OF THE CASE	3
SUMMARY OF THE ARGUMENT.....	18
LAW AND ARGUMENT	19
I. The Trial Court Did Not Abuse Its Discretion by Considering Fluor Daniel's Statute of Limitations Defense	19
A. The Trial Court Did Not Abuse Its Discretion by Allowing Fluor Daniel to Answer Plaintiffs' Second Amended Complaint Out of Time.	20
B. The Trial Court Did Not Abuse Its Discretion by Considering Fluor Daniel's Statute of Limitations Defense Advanced in a Summary Judgment Motion Filed Two Weeks Before Trial.....	24
II. The Trial Court Properly Applied the One-Year Statute of Limitations Contained in Miss. Code Ann. § 15-1-35 to Plaintiffs' I.I.E.D. Claims	28
III. The Trial Court Did Not Abuse Its Discretion by Denying as Moot Plaintiffs' Motion for a Protective Order	30
CONCLUSION	31
CERTIFICATE OF SERVICE.....	34
APPENDIX	

TABLE OF AUTHORITIES

FEDERAL CASES

Theunissen v. GSI Group, 109 F. Supp. 2d 505 (N.D. Miss. 2000)..... 24, 25, 26

STATE CASES

Bennett v. Madakasira, 821 So. 2d 794 (Miss. 2002)..... 24, 25, 26

Citifinancial Mortgage Co., Inc. v. Washington, 967 So. 2d 16 (Miss. 2007)
..... 4, 12, 29

City of Jackson v. Presley, 942 So. 2d 777 (Miss. 2006)..... 13, 20, 21, 22, 23

East Mississippi State Hospital v. Adams, 947 So. 2d 887 (Miss. 2007) 26

Estate of Grimes v. Warrington, 982 So. 2d 365 (Miss. 2008)..... 25, 26

Jones v. B.L. Development Corp., 940 So. 2d 961 (Miss. App. 2006) 29

Jones v. Fluor Daniel Services Corp., 959 So. 2d 1044 (Miss. 2007)..... 1, 3, 9, 15

MS Credit Ctr., Inc. v. Horton, 926 So. 2d 167 (Miss. 2006)..... 26

McGuffie v. Herrington, 966 So. 2d 1274 (Miss. App. 2007) 24, 25, 26

McMillan v. Rodriguez, 823 So. 2d 1173 (Miss. 2002) 29

Pierce v. Cook, 992 So. 2d 612 (Miss. 2008)..... 29

Rector v. Mississippi State Hwy. Commission, 623 So. 2d 975 (Miss. 1993) 21

Slaydon v. Hansford, 830 So. 2d 686 (Miss. App. 2002)..... 29

*Taylor Machine Works, Inc. v. Great American Surplus Lines Insurance
Co.*, 635 So. 2d 1357 (Miss. 1994)..... 21

STATE STATUTES

Miss. Code Ann. § 15-1-35	1, 2, 3, 4, 28, 29
Miss. R. Civ. P. 12(b)(6)	24
Miss. Rule Civ. P. 15(a)	21

STATEMENT REGARDING ORAL ARGUMENT

Disposition of this appeal turns on the Court's resolution of three issues arising out of simple, undisputed facts: 1) whether the trial court abused its discretion in allowing defendant/appellee Fluor Daniel Services Corporation ("Fluor Daniel") to answer out of time the Second Amended Complaint for Damages of plaintiffs/appellants Gene Jones, Ashley Craft, Ralph Scott, Hardy Gordon, and Reginald and James Williams ("Plaintiffs"); 2) whether the trial court abused its discretion in agreeing to consider a summary judgment motion filed by Fluor Daniel two weeks before trial, which motion raised a statute of limitations defense pled both in Fluor Daniel's answer to Plaintiffs' Second Amended Complaint for Damages and its answer to the First Amended Complaint for Damages filed by Plaintiffs Jones and Craft, the first pleading in this case ever served on Fluor Daniel; and 3) whether the trial court correctly concluded that the one-year statute of limitations contained in Miss. Code Ann. § 15-1-35 applied to Plaintiffs' intentional infliction of emotional distress ("i.i.e.d.") claims – the only claims (one per plaintiff) remanded by the Court in Jones v. Fluor Daniel Services Corp., 959 So. 2d 1044 (Miss. 2007) ("Jones v. Fluor Daniel I") – and that, consequently, the Plaintiffs' claims were barred by the statute of limitations. Because the first two issues are reviewed merely for an abuse of discretion, because all three issues arise from undisputed facts, and because the one-year

statute of limitations applies to i.i.e.d. claims under well-settled law, Fluor Daniel respectfully submits that the Court does not need oral argument to assist it in concluding that summary judgment in Fluor Daniel's favor was the proper outcome in the trial court.

STATEMENT OF THE ISSUES

1. Whether the trial court abused its discretion in allowing Fluor Daniel to answer Plaintiffs' Second Amended Complaint for Damages out of time.

2. Whether the trial court abused its discretion in considering Fluor Daniel's statute of limitations defense advanced in a summary judgment motion filed two weeks before trial.

3. Whether the trial court properly determined that the one-year statute of limitations contained in Miss. Code Ann. § 15-1-35 barred each of the Plaintiff's i.i.e.d. claims.

4. Whether the trial court abused its discretion by denying as moot Plaintiffs' motion for a protective order.

STATEMENT OF THE CASE¹

I. Nature of the Case, Course of Proceedings, and Disposition Below

This case, which began in April 2003, is before the Court for a second time as a consequence of a summary judgment entered by the Circuit Court of Jasper County. The first summary judgment, granted in March 2005 (R.2), culminated in this Court's partial reversal and remand on June 21, 2007. See Jones v. Fluor Daniel Services Corp., 959 So. 2d 1044 (Miss. 2007) ("Jones v. Fluor Daniel I"). See App., Tab 1, 6/21/07 docket sheet entry. The mandate remanding the case issued on August 2, 2007. Id., 8/2/2007 docket sheet entry.

After remand, the trial court set a February 4, 2008, trial date, but did not enter a scheduling order. The January 18, 2008, court-ordered mediation broke off when Fluor Daniel realized that Plaintiffs' lone remaining claims – an i.i.e.d. claim for each of the six Plaintiffs – were barred by the one-year statute of limitations contained in Miss. Code Ann. § 15-1-35 and applicable to such claims. Fluor

¹ This Statement of the Case is derived from the 99-page record of circuit court papers, cited as "R." followed by the page number(s); the transcript of the January 25, 2008, hearing on Fluor Daniel's Motion for Leave to File Answer to Plaintiffs' Second Amended Complaint Out of Time, Fluor Daniel's Motion for Summary Judgment, and Plaintiffs' Motion for Protective Order and Response to Fluor Daniel's Motion to Shorten Discovery Time, cited as "T." followed by the page number(s); and 12 exhibits to Fluor Daniel's Motion for Leave to File Answer to Second Amended Complaint Out of Time, many of which are in the tabbed appendix ("App.") to this brief. Fluor Daniel seeks to include the 12 exhibits in the record on appeal via the unopposed Motion to Supplement Record on Appeal that Fluor Daniel is filing contemporaneously with this brief. The exhibits are added supplementally because the clerk provided in the designated record only the motion supported by the exhibits, not the exhibits themselves. Although the motion to supplement includes all 12 exhibits, not all of them are in the appendix to this brief, and they appear in the appendix in the order in which they are cited in the brief.

Daniel had pled this defense in its August 2003 answer (R.88) to the First Amended Complaint for Damages (App., Tab 2), which named as plaintiffs only Gene Jones and Ashley Craft. Fluor Daniel pled it again in its identical out-of-time answer (R.19) to the Second Amended Complaint for Damages (R.5), which answer the trial court granted Fluor Daniel leave to file tardily (R.43).

The statute of limitations defense was the sole basis for Fluor Daniel's second summary judgment motion, filed on January 22, 2008. R.97. Fluor Daniel supported this motion with an itemization of undisputed material facts (R.26) that Plaintiffs never controverted.² The circuit court initially denied the motion from the bench on January 25, reasoning that i.i.e.d. was not governed by the one-year statute of limitations contained in Miss. Code Ann. §15-1-35 because it was not among the torts listed in that statute. T.21. Later that afternoon, and in reliance on Citifinancial Mortgage Co., Inc. v. Washington, 967 So. 2d 16 (Miss. 2007), the trial court judge reversed himself (R.82).³ The lower court subsequently entered an opinion that Plaintiffs' i.i.e.d. claims *were* barred by a one-year statute of limitations, R.63, and entered final judgment dismissing the claims with prejudice.

² In fact, Plaintiffs on appeal do not argue that genuine issues of material fact precluded the entry of summary judgment, only that the trial court abused its discretion by considering Fluor Daniel's statute of limitations defense, and that the trial applied the wrong statute of limitations to their i.i.e.d. claims.

³ Ironically, Citifinancial was a case in which the trial judge here had been reversed on the precise issue presented: whether the one-year statute of limitations in Section 15-1-35 governed i.i.e.d. claims.

R.62. Plaintiffs timely filed their Notice of Appeal on March 7, 2008; they did not serve their Brief of Appellants, however, until 10 months later, on January 7 of this year.

II. Statement of the Facts

The span of years between Plaintiff Gene Jones's filing of his Complaint for Damages on April 4, 2003, and now, when this case appears for a second time before this Court, belies its procedural and substantive simplicity, and masks the relatively brief period within that span of years that the parties actually spent actively litigating the case. The passage of time, however, and the lawsuit's dormancy during much of that time, have not deterred the inexorable result: Fluor Daniel is entitled to judgment as a matter of law.

Plaintiff Gene Jones filed his Complaint for Damages against Fluor Daniel on April 3, 2003. App., Tab 3. Fluor Daniel had terminated Jones's employment some eighteen months earlier. R.26. Jones alleged that his Fluor Daniel supervisor, Rudy Amaro,⁴ made an inappropriate remark to him, and that Fluor Daniel terminated him shortly after he reported the incident to management. See App., Tab 3, ¶¶ X and XII. Jones's complaint alleged that "the actions of defendants ... constituted a wrongful and malicious discharge, a violation of rights of your plaintiff, a *negligent* infliction of emotional distress, a breach of the duty of

⁴ Jones named Amaro as a defendant to avoid the diversity jurisdiction of the federal courts, but never served the complaint and attendant summons upon him. Fluor Daniel is and always has been the lone defendant.

good faith and fair dealings [sic], a retaliatory discharge, and a grievous and malicious tort under other various theories of the law.” Id., ¶ XIII (italics added). Jones did *not* plead intentional infliction of emotional distress. Jones sought judgment “in an amount not to exceed \$ 75,000.00” to avoid removal to federal court. Id., ¶ XIV. This pleading never was served on Fluor Daniel.

On June 12, 2003, Jones and plaintiff Ashley Craft filed a First Amended Complaint for Damages. App., Tab 2. This pleading generalized the charge of improper conduct by Amaro, alleging that he “did annoy, harass, ridicule, demean, and use inappropriate, slanderous language against and toward your plaintiffs which was designed to, and which did, hurt, demean and incite your plaintiffs, without any cause or justification.” Id., ¶ 8. The description of alleged torts in this pleading varied slightly from the description in Jones’s Complaint: “the actions of the defendants ... constituted a wrongful and malicious discharge, a *negligent* infliction of emotional distress, a willful and malicious breach of the duty of good faith and fair dealings [sic], and a grievous and malicious tort under other various theories of the law.” Id., ¶ XI (italics added). Again, Jones and Craft did *not* plead intentional infliction of emotional distress. This is the first pleading Fluor Daniel received through service of process. Fluor Daniel filed Fluor Daniel’s Answer, Defenses, and Affirmative Defenses on August 14, 2003 (R.88), raising, among others, a statute of limitations defense. Id.

Shortly after Fluor Daniel filed its answer, Jones and Craft served Fluor Daniel with written discovery. App., Tab 4.⁵ Interrogatory No. 12 and Request for Production VIII sought information and documents, respectively, supporting Fluor Daniel's affirmative defenses.⁶

Fluor Daniel deposed Ashley Craft on October 27, 2003, just over two months after filing its answer. With Plaintiffs' motion for leave to file the Second Amended Complaint for Damages pending (Jones and Craft filed the motion on September 12, 2003 (R.1)), and knowing that the new pleading would change nothing except to add four more plaintiffs, Fluor Daniel also deposed the four new plaintiffs, Hardy Gordon, Ralph Scott, Reginald Williams, and James Williams, on October 27 and 28, 2003. Fluor Daniel deposed Plaintiff Jones on November 4, 2003.

On October 30, 2003, Plaintiffs filed the Second Amended Complaint for Damages, adding Gordon, Scott, and Reginald and James Williams as plaintiffs. R.5. Beyond adding plaintiffs, however, the Second Amended Complaint for Damages is materially identical to its immediate predecessor, the First Amended Complaint for Damages, which Fluor Daniel answered. In particular, the Second Amended Complaint for Damages, just like its predecessor, claimed that Fluor

⁵ Jones and Craft had served several interrogatories earlier than this, but none targeted Fluor Daniel's defenses because Fluor Daniel had not answered yet.

⁶ The "new" Plaintiffs served an identical set of written discovery on September 12, 2003. App., Tab 5.

Daniel *negligently* inflicted emotional distress upon the Plaintiffs. R.7, ¶ XI. The Second Amended Complaint for Damages does *not* plead intentional infliction of emotional distress.

On November 24, 2003, Fluor Daniel responded to Plaintiffs' written discovery. App., Tab 6. Fluor Daniel's answer to Interrogatory No. 12, concerning affirmative defenses, stated that the facts supporting the defenses appeared in the transcripts of the Plaintiffs' depositions completed several weeks earlier. Fluor Daniel's Response to Request for Production No. VIII stated that responsive documents would be made available for inspection and copying at a mutually convenient time and place.

Unable to obtain sworn testimony from Plaintiffs that they would not seek a judgment in excess of \$ 74,999, Fluor Daniel removed the case to federal court on December 4, 2003. R.2. The federal court promptly remanded the case after the parties stipulated that the amount in controversy would not satisfy the federal court's jurisdictional threshold.⁷

Plaintiffs waited over five months to file a motion to compel targeting Fluor Daniel's written discovery responses. App. Tab 7. Before Plaintiffs could schedule a hearing on the motion, Fluor Daniel filed its first summary judgment motion on July 28, 2004 (R.24), less than a year after filing its answer to the First

⁷ The remand order was docketed by the circuit clerk on April 2, 2004. R.2.

Amended Complaint for Damages. At that point, *negligent* infliction of emotional distress was the only emotional distress claim Plaintiffs had pled. The motion accepted all facts as portrayed by Plaintiffs in their deposition testimony, and argued, simply, that the law provided no relief to at-will employees for the conduct Plaintiffs alleged. By agreement with Plaintiffs' counsel, the hearing on the motion was rescheduled several times, and Plaintiffs did not respond to it until December 14, 2004. Id. The motion remained pending, with nothing else happening in the case, for three more months after Plaintiffs responded to it. Following a brief hearing on the motion, the circuit court, on March 23, 2005, granted the motion in its entirety, dismissing all claims of all Plaintiffs with prejudice (R.2).⁸

Plaintiffs' appealed this first summary judgment order on April 9, 2005. Id. More than two years elapsed between Plaintiffs' filing of their notice of appeal and this Court's mandate on August 2, 2007. App., Tab 1.⁹ Plaintiffs' appeal resulted in the limited reversal and remand memorialized in Jones v. Fluor Daniel I. This Court reasoned that a jury could have found, first, that Amaro spoke racial slurs; and, second, that the alleged slurs, if authorized or ratified by Fluor Daniel, amounted to Fluor Daniel's *intentional* infliction of emotional distress upon the

⁸ Fluor Daniel's summary judgment motion and Plaintiffs' motion to compel were noticed for hearing at the same time. Plaintiffs agreed to table their motion to compel pending a ruling on the fully dispositive summary judgment motion.

⁹ The Court's opinion issued on June 21, 2007. App., Tab 1.

plaintiffs. For the first time, a claim of intentional infliction of emotional distress was in play.

On remand, the case proceeded quickly on a course to trial. The lower court did not enter a new scheduling order. On January 4, 2008, a month before trial, Plaintiffs' served on Fluor Daniel a "second" motion to compel (App., Tab 8), which was a recapitulation of their first motion to compel filed in May 2004 (App. Tab 7). Plaintiffs noticed these motions for hearing on January 11, 2008, less than a month before trial (App., Tab 9). Four days later, Fluor Daniel propounded to Plaintiffs two witness interrogatories and two exhibit-related requests for production of documents (R.79), which plaintiffs met with a motion for a protective order (R.28).

A court-ordered mediation convened on January 18, 2008. The mediation abruptly ended, however, when Fluor Daniel realized that Plaintiffs' *intentional* infliction of emotional distress claims were barred by the one-year statute of limitations.

Fluor Daniel prepared and filed a motion for summary judgment (R.97), which asserted the statute of limitations as a bar to Plaintiffs' i.i.e.d. claims. Fluor Daniel filed an accompanying itemization of undisputed material facts (R.26) that set forth the time line demonstrating the statute of limitations bar to Plaintiffs' intentional infliction of emotional distress claims. Plaintiffs' did not contest this itemization in the trial court, nor do they here. In the process of preparing this

motion, Fluor Daniel realized that it never had filed an answer to the Second Amended Complaint for Damages. Consequently, Fluor Daniel drafted and filed the answer (R.19), following it with a motion for leave to file the answer out of time (R.32), which the circuit court, exercising its discretion, granted (R.43).

Following a hearing on January 25, 2008,¹⁰ the transcript of which constitutes a portion of the record on appeal, the circuit court *denied* Fluor Daniel's summary judgment motion, concluding, erroneously, that a three-year statute of limitations applied to Plaintiffs' i.i.e.d. claims. The circuit judge recited as follows from the bench:

Okay. Here's what I'm going to do. I'm going to deny the motion for summary judgment based on the statute of limitations defense because intentional infliction of emotional distress is not specifically listed in the statute, Section 15-1-35. I'm a strict constructionist and we've been cautioned not to add causes of action into statutes. I assume the supreme court would consider the same with regard to defenses.

I'm going to reserve the right to consider this issue, however, especially if the verdict is adverse to the defendant. I see this as purely a question of law, so I don't see this going to the jury. There's no questions [sic] about the date of discharge, which would be the last date emotional distress could have been inflicted. There's no question about the date of filing. I can look at the clerk's stamp on it and determine whether or not the statute's run.

¹⁰ Although Plaintiffs' counsel noted at the hearing that he had received the motion only three days earlier, T.14, he did not ask the trial court to continue the hearing to permit further research on the statute of limitations issue, choosing, instead, to "protect [the] trial setting." T.10.

T.21-22. The circuit court also denied Plaintiffs' motion for a protective order targeting Fluor Daniel's trial witness- and exhibit-related discovery, citing the court's "broad general policy" of requiring parties to disclose pre-trial their evidence in chief, and noting the ease with which the plaintiffs could provide the information sought by the discovery. T.25.¹¹

Several hours later, the trial judge notified the parties by telephone, then by letter (R.82), that he had reconsidered and withdrawn his decision. Relying on Citifinancial Mortgage Co. v. Washington, 967 So. 2d 16 (Miss. 2007), the court concluded "that there is a one year statute of limitations on intentional infliction of emotional distress." Id.¹² The circuit court proceeded to issue an opinion granting Fluor Daniel's summary judgment motion, R.63, and entered final judgment consistent with that opinion, R.62, signing both on March 4, 2008.¹³ Plaintiffs filed their notice of appeal on March 7, 2008, R.67, designated the record on

¹¹ The trial court later amended this ruling, denying Plaintiffs' motion as moot in light of the trial court's contemporaneous granting of Fluor Daniel's summary judgment motion.

¹² The circuit judge's letter further stated, "I will hold my opinion on the statute of limitations in abeyance, however, until you provide me with your opinions on whether the EEOC action tolled the running of the statute." R.82. Jones is the only plaintiff who filed an EEOC charge, and he withdrew it almost immediately. Fluor Daniel provided authority to the circuit judge for the proposition that the EEOC charge did not toll the statute of limitations; and, thereafter, the circuit court entered summary judgment for Fluor Daniel. R.62-66. The tolling issue is not before this Court on appeal.

¹³ A March 5, 2008, letter from the trial judge to the attorneys (R.59) sets forth the context in which he issued the final orders in the matter.

March 20, 2008, R.69, and filed their Brief of Appellant, however, until January 7, 2009.

Fluor Daniel offers the following bullet-point chronology of events to aid the Court's analysis of the waiver issue lying in the core of this appeal. The Court used a similar schematic in City of Jackson v. Presley, 942 So. 2d 777 (Miss. 2006), to explain its conclusion that the trial court there *had* abused its discretion by *failing* to permit the City of Jackson to file an amended answer four years late:

* **October 27, 2001 (Jones and James Williams); January 31, 2002 (Scott); February 8, 2002 (Craft); February 22, 2002 (Gordon and Reginald Williams):** Dates when Fluor Daniel terminated Plaintiffs' employments (R.26).

* **April 3, 2003:** More than a year after Fluor Daniel terminated him, Gene Jones files his Complaint for Damages (App. Tab 3), which is not served on Fluor Daniel. Jones alleges *negligent*, not intentional, infliction of emotional distress.

* **June 12, 2003:** Jones and Ashley Craft file their First Amended Complaint for Damages (App., Tab 2), which is served on Fluor Daniel. Craft, thus, joins the lawsuit more than a year after Fluor Daniel terminated him. Again, they plead *negligent* infliction of emotional distress, not i.i.e.d.

* **August 14, 2003:** Fluor Daniel files its answer (R.88), raising a statute of limitations defense. Issue being joined, the litigation effectively commences.

- * **August 22 and September 12, 2003:** Plaintiffs propound written discovery that evidences their awareness of the statute of limitations defense (App., Tabs 4 and 5).
- * **October 27-28, 2003:** Fluor Daniel deposes Plaintiffs Craft, Gordon, Scott, and Reginald and James Williams.
- * **October 30, 2003:** Plaintiffs Gordon, Scott, and Reginald and James Williams officially join the lawsuit with the filing of Plaintiffs' Second Amended Complaint for Damages (R.5). These four Plaintiffs join the lawsuit more than a year after Fluor Daniel terminated them. *Again*, they plead negligent, not intentional, infliction of emotional distress.
- * **November 24, 2003:** Fluor Daniel answers and responds to Plaintiffs' written discovery (App. Tab 6), including the defense-related interrogatory and request for production of documents.
- * **December 4, 2003:** Fluor Daniel removes the case to federal court.
- * **April 2, 2004:** The federal court remands the case to the circuit court.
- * **May 4, 2004:** Plaintiffs file a motion to compel (App. Tab 7), challenging the sufficiency of Fluor Daniel's discovery responses, including those addressing defenses. The motion never is heard, Plaintiffs agreeing to table the motion in early 2005 during the hearing on Fluor Daniel's first summary judgment motion.
- * **July 28, 2004:** Less than a year after joining issue, Fluor Daniel moves for summary judgment (R.24), attacking all of Plaintiffs' claims as lacking substantive

merit – because they were at-will employees and because no Mississippi court ever had concluded that employment-related misconduct, however bad, amounted to an actionable infliction of emotional distress. A hearing was not held on this motion, however, until early 2005.

- * **March 23, 2005:** After a hearing, the circuit court grants Fluor Daniel summary judgment.

- * **April 9, 2005:** Plaintiffs appeal the circuit court's summary judgment.

- * **June 21, 2007:** Over two years later, with Jones v. Fluor Daniel I, this Court reverses and remands in part, reaching the conclusion that a jury might find that Amaro's conduct, if authorized or ratified by Fluor Daniel, amounted to Fluor Daniel's *intentional* infliction of emotional distress upon Plaintiffs. For the first time, intentional infliction of emotional distress emerges as a claim in the lawsuit.

- * **August 2, 2007:** Court's mandate issues. Shortly thereafter, the trial court sets the case for trial on February 4, 2008, but does not enter a scheduling order regarding the filing of pretrial motions.

- * **January 4, 2008:** Plaintiffs' file a second motion to compel one month before trial (App. Tab 8), essentially recapitulating their earlier motion to compel filed in May 2004 (App., Tab 7).

- * **January 11, 2008:** Hearing on Plaintiffs' motions to compel.

- * **January 18, 2008:** Court-ordered mediation terminates when Fluor Daniel realizes that Plaintiffs' i.i.e.d. claims were barred on the day they were filed.

* **January 22, 2008:** Fluor Daniel answers Second Amended Complaint for Damages (R.19) and files motion for summary judgment (R.97) on the statute of limitations issue.

* **January 25, 2008:** Trial court hears by agreement Fluor Daniel's motion for leave to file out-of-time answer (R.32) and motion for summary judgment, and Plaintiffs' motion for protective order (targeting Fluor Daniel's witness- and exhibit-related discovery) and motion to strike Fluor Daniel's answer to the Second Amended Complaint for Damages. Plaintiffs' counsel does ask the trial court to continue consideration of Fluor Daniel's summary judgment motion raising the statute of limitations defense. Trial judge grants leave to file the answer (T.12; R.43),¹⁴ denies the motion for protective order (T.25; R. 60),¹⁵ and denies the motion for summary judgment (T.21), only to reverse himself several hours later upon realizing that i.i.e.d. claims clearly are governed by a one-year statute of limitations and Plaintiffs indisputably did not commence their i.i.e.d. within one year of their accrual (R.63).

* * *

Several occurrences in this list are crucial to the Court's resolution of the issues related to the trial court's consideration of Fluor Daniel's statute of

¹⁴ The trial court subsequently entered an order denying Plaintiffs' motion to strike the answer (R.56).

¹⁵ Again, Fluor Daniel points out that the trial court later modified this outright denial to a denial "as moot," which disposes of Plaintiffs' issue on appeal related to this order. R.60. The trial court also denied as moot Plaintiffs' motions to compel. R.61.

limitations defense, which are the central, dispositive issues on this appeal. First, Plaintiffs' counsel obviously was aware of the statute of limitations issue *before he filed the first complaint in April 2003*, which is why he artfully pled *negligent*, rather than intentional, infliction of emotional distress. Second, Fluor Daniel raised the statute of limitations defense in its first pleading. Third, Plaintiffs directed discovery to Fluor Daniel regarding affirmative defenses raised in its answer. Fourth, the trial court did not enter a scheduling order requiring the filing of pretrial motions. Fifth, Plaintiffs never controverted (and here do not controvert) Fluor Daniel's itemization of undisputed material facts submitted in support of its summary judgment motion, which "unchangeable" facts established that the one-year statute of limitations barred Plaintiffs' i.i.e.d. claims. Sixth, Plaintiffs' counsel agreed to the trial court's consideration of Fluor Daniel's summary judgment motion in order to protect the February 4, 2008, trial setting.

This bullet-point recitation of facts proves the following, which are dispositive of this appeal: First, the trial court did not abuse its discretion by granting Fluor Daniel leave to file an answer to the Second Amended Complaint for Damages that was identical to its first answer, both of which raised the statute of limitations defense. Second, the trial court did not abuse its discretion by considering the statute of limitations issue on summary judgment presented two weeks before trial. No scheduling order had been entered, and Plaintiffs filed their own motion (a motion to compel) a month before trial. Plaintiffs did not ask for a

continuance of the trial court's hearing on the motion, preferring to protect their trial date. Plaintiffs were not surprised or prejudiced – unfairly, unduly, or otherwise – by the presentation of a defense that they had no factual basis for contesting and could not have developed a factual basis for contesting in discovery. Third, no genuine issues of material fact precluded the trial court's granting Fluor Daniel summary judgment, and Plaintiffs do not argue otherwise on this appeal. Finally, the i.i.e.d. claims were time-barred if the trial court correctly determined, as a matter of law, that the one-year statute of limitations applied. Again, Plaintiffs do not argue to the contrary.

SUMMARY OF THE ARGUMENT

Although Plaintiffs' cast the issue as one of waiver, in fact, the issue before the Court concerning Fluor Daniel's presentation of its statute of limitations defense simply is whether the trial court abused its discretion by considering it. If the trial court did not abuse its discretion by allowing Fluor Daniel to answer the Second Amended Complaint for Damages out of time and by considering Fluor Daniel's motion for summary judgment, then it follows inexorably that the statute of limitations defense properly was before the trial court. Because Plaintiffs initially pled negligent infliction of emotional distress; because Fluor Daniel initially pled the statute of limitations as an affirmative defense; because intentional infliction of emotional distress only became an issue on remand; because the trial court did not enter a scheduling order; and because Plaintiffs' do

not contend that they were unfairly surprised or unduly prejudiced in their litigation posture by the statute of limitations defense, the trial court did not abuse its discretion by considering the statute of limitations defense ten days before trial. With the defense properly before the trial court, and there existing no genuine issues of material fact to preclude it, granting Fluor Daniel summary judgment on the basis of well-settled law – that the one-year statute of limitations barred Plaintiffs’ i.i.e.d. claims – was the correct decision. A trial would have been fruitless and wasteful of everyone’s resources. Summary judgment in Fluor Daniel’s favor was appropriate.

Plaintiffs’ protective order issue is frivolous. Although the trial court would have been within its discretion to deny Plaintiffs’ motion for a protective order outright – the court’s general policy favoring full pre-trial disclosure of witnesses and exhibits informed its decision – the trial court simply denied the motion as moot because the court contemporaneously was granting Fluor Daniel’s dispositive motion that rendered trial unnecessary. This obviously was not an abuse of discretion.

LAW AND ARGUMENT

I. The Trial Court Did Not Abuse Its Discretion by Considering Fluor Daniel’s Statute of Limitations Defense

Plaintiffs’ “you’re late; you lose” approach to whether the trial court properly considered and properly granted Fluor Daniel’s summary judgment

motion raising the statute of limitations defense conflates two important, discrete issues. The first is whether the trial court abused its discretion by allowing Fluor Daniel to answer the Second Amended Complaint for Damages out of time and by considering Fluor Daniel's summary judgment motion in which it presented the statute of limitations defense for dispositive pretrial consideration. Fluor Daniel argues in this section that the trial court did not abuse its discretion. The second issue is whether Mississippi decisional law on the waiver issue is consistent. Analyzing the decisions on a results-only basis, as Plaintiffs do, leads to the conclusion that the decisions are inconsistent. Fluor Daniel will show that, in fact, the decisions are consistent, principally by pointing out that the cases considering the claimed waiver of a statute of limitations defense have held consistently that the defense is not waived under circumstances such as those presented here.

A. The Trial Court Did Not Abuse Its Discretion by Allowing Fluor Daniel to Answer Plaintiffs' Second Amended Complaint Out of Time.

City of Jackson v. Presley, 942 So. 2d 777 (Miss. 2006), upon which Fluor Daniel relied in the court below, controls the Court's decision as to whether the trial court properly allowed Fluor Daniel to answer the Second Amended Complaint for Damages shortly before trial. In Presley, the Court held that a trial

court's decision to allow an out-of-time answer is reviewed for an abuse of discretion. Id. at 781, ¶ 7.¹⁶

Fluor Daniel, like the City of Jackson in Presley, timely answered the First Amended Complaint for Damages filed by Plaintiffs Jones and Craft. In that answer, Fluor Daniel raised a statute of limitations defense. The only difference between the First Amended Complaint for Damages and the Second Amended Complaint for Damages is that the latter added four Plaintiffs – Hardy Gordon, Ralph Scott, and Reginald and James Williams. Beyond expanding the introductory paragraph to list the four new names; including residence allegations for those four men (¶ I); altering the service of process allegation pertaining to Fluor Daniel, and adding a certificate of service, to reflect that its counsel had appeared (by answering the First Amended Complaint for Damages) (¶ II); and adding separate prayer for relief paragraphs for each of the added Plaintiffs, the Second Amended Complaint for Damages is identical to its immediate predecessor, the First Amended Complaint for Damages.¹⁷ This fact, too, was significant in Presley, where the tardily filed answer did not differ materially from

¹⁶ A similar standard of review governs tardy amendments to pleadings. See, e.g., Taylor Machine Works, Inc. v. Great American Surplus Lines Ins. Co., 635 So. 2d 1357, 1362 (Miss. 1994). This deferential standard of review is grounded in the principle of Miss. Rule Civ. P. 15(a) that leave to amend should be freely given in the “interests of justice.” Only actual prejudice to the opposing party warrants denial of leave to amend. See, e.g., Rector v. Mississippi State Hwy. Comm’n, 623 So. 2d 975, 978 (Miss. 1993).

¹⁷ Other than in the ways set forth, the two pleadings differ from one another only in the occasional capitalizing and insertion of titles (e.g., “Defendant” and “Co-Defendant”), in referring to Fluor Daniel as “Fluor Daniel Services Corporation” rather than simply “Fluor Daniel,” and in the addition of names above the signature line for Plaintiffs’ counsel.

the earlier filed answer. Indeed, the facts here are stronger than they were in Presley: here, Fluor Daniel changed *nothing* in its out-of time answer; in Presley, the City of Jackson added three affirmative defenses. Here, the statute of limitations defense was in Fluor Daniel's first answer, just as it was in the second.

While the Brief of Appellants correctly observes that Fluor Daniel's counsel explained as an "oversight" his failure to answer timely the Second Amended Complaint for Damages, see Brief of Appellants, p.19; T.11, Plaintiffs misapprehend and, consequently, misstate the standard for determining whether a tardy pleading should be allowed. Contrary to Plaintiffs' assertion, excusable neglect is *not* the issue. Rather, the issue – focusing on the Plaintiffs, not Fluor Daniel or its counsel – is whether Plaintiffs were surprised or unduly prejudiced by the late answer. Plaintiffs do not argue to this Court that they were unfairly surprised or unduly prejudiced, and the trial court did not abuse its discretion in concluding that Plaintiffs neither were unfairly surprised nor unduly prejudiced.

Here, as in Presley, Plaintiffs never sought to default Fluor Daniel for not filing an answer to the Second Amended Complaint for Damages. Plaintiffs here were not surprised by anything appearing in the tardy answer; it was identical to Fluor Daniel's first pleading, including the assertion of a statute of limitations defense.¹⁸ Plaintiffs' counsel obviously had considered the defense even before

¹⁸ Plaintiffs complain that Fluor Daniel did not plead the defense properly because it used the word "may" to predicate the defense's applicability. This argument is frivolous. Aside from

initiating the lawsuit, which is why he pled negligent, rather than intentional, infliction of emotional distress. Plaintiffs addressed discovery to Fluor Daniel concerning the defense, signifying their awareness of the defense from the outset of the litigation.

Most importantly, Plaintiffs suffered no prejudice, which, under Presley, is the dispositive issue. Fluor Daniel's statute of limitations defense was anchored in the simple, indelible fact of the relationship between the dates of Plaintiffs' terminations by Fluor Daniel and the dates when they either filed (Jones) or joined (the remaining five Plaintiffs) the lawsuit. No tactic or stratagem could have been developed by Plaintiffs at any time during the litigation to avoid the inexorable consequence of this relationship: Plaintiffs' i.i.e.d. claims were time-barred on the day (or days) they were pled. The best and worst that can be said for Plaintiffs' situation is that they almost got away with going to trial (and, perhaps, getting to a jury) on time-barred claims. There is no authority in Mississippi or any other jurisdiction that such a near escape from the jaws of the statute of limitations constitutes prejudice.

the overarching principle of notice pleading – there is no magic to articulating a defense, and the words “statute of limitations,” without more, would have sufficed to notify Plaintiffs of the defense – Fluor Daniel had to word the defense as it did because of Plaintiffs' artful avoidance of the defense by articulating their claim as one for *negligent* infliction of emotional distress.

B. The Trial Court Did Not Abuse Its Discretion by Considering Fluor Daniel's Statute of Limitations Defense Advanced in a Summary Judgment Motion Filed Two Weeks Before Trial

Again, this Court reviews for an abuse of discretion whether the trial court properly considered Fluor Daniel's statute of limitations defense advanced in its summary judgment motion filed two weeks before trial. See Bennett v. Madakasira, 821 So. 2d 794, 802 ¶ 30 (Miss. 2002). The trial court here did not abuse that discretion.

Initially, the Court should be aware that *none* of the authorities upon which Plaintiffs rely in their Brief of Appellants are statute of limitations cases. On the other hand, *every* case upon which Fluor Daniel relies addresses a claimed waiver of a statute of limitations defense has found *against* waiver and in favor of the trial court's consideration of the defense. See Bennett, supra; McGuffie v. Herrington, 966 So. 2d 1274 (Miss. App. 2007). See also Theunissen v. GSI Group, 109 F. Supp. 2d 505 (N.D. Miss. 2000) (allowing statute of limitations defense raised for first time in summary judgment motion because plaintiff neither surprised nor prejudiced).

In Bennett, a defendant raised a statute of limitations defense *for the first time* in a summary judgment motion. The defense never had been pled. (Here, it was.) The Court reasoned that the trial court properly exercised its discretion in allowing the defense because the "defendant's timing [did not] result[] in unfair

surprise or undue prejudice.” 821 So. 2d at 802, ¶ 29.¹⁹ The Court observed that the plaintiff was given an opportunity to respond, which was sufficient to support the trial court’s discretionary determination.

Plaintiffs’ argument in their Brief of Appellants suffers from two related infirmities. First, they do not even attempt to argue or demonstrate surprise at or prejudice resulting from Fluor Daniel’s timing, which are *the* tests for determining whether a waiver occurs under these circumstances. See Bennett, supra, at 802, ¶¶27-30; McGuffie, supra, at 1277, n.4 and accompanying text; Theunissen, supra, at 509. Fluor Daniel already has explained in detail that Plaintiffs neither were surprised nor prejudiced – unfairly, unduly, or otherwise – by the fact that Fluor Daniel brought the statute of limitations defense in a late summary judgment motion. This is a critical defect in Plaintiffs’ position on waiver.

Second, Plaintiffs’ “you’re late; you lose” approach to the waiver issue hides a fundamental consistency in the case law that, at first glance (and at Plaintiffs’), does not appear. If nothing but the results in the cases are heeded – defense waived versus defense not waived – the cases appear inconsistent. Compare Bennett, supra (statute of limitations defense not waived although raised for the first time in a summary judgment motion), McGuffie, supra (same), and Theunissen, supra (same), with Estate of Grimes v. Warrington, 982 So. 2d 365

¹⁹ Again, Plaintiffs’ “inexcusable neglect” argument misses the point. The Court’s focus should be on unfair surprise or undue prejudice *to the Plaintiffs*, not on neglect, excusable or otherwise, by Fluor Daniel.

(Miss. 2008) (Mississippi Tort Claims Act immunity waived because not pled), East Mississippi State Hosp. v. Adams, 947 So. 2d 887 (Miss. 2007) (insufficiency of process waived if not promptly and diligently pursued as defense), and MS Credit Ctr., Inc. v. Horton, 926 So. 2d 167 (Miss. 2006) (right to arbitrate under Federal Arbitration Act waived because not pursued). In Bennett, McGuffie, and Theunissen, the defense – statute of limitations – went to the very existence of the claim. In Estate of Grimes, Adams, and Horton, the defenses pertained to the status of the defendant – immune from suit, properly served, or properly held to resolve the dispute in court. Those defenses do not inhere in the claim itself, and, therefore, are not within the control of the plaintiff. Necessarily, the plaintiff is prejudiced by being put to the expense of litigating with someone who, by virtue of status, is beyond the reach of the plaintiff's claims. The statute of limitations defense, on the other hand, is *entirely* within the plaintiff's control. If the plaintiff files suit in a timely fashion, the defense is extinguished. If the plaintiff does not file suit in a timely fashion, nothing anyone can do during the course of the litigation will alter the nature of the claim as extinguished, as "dead on arrival." The plaintiff's litigation posture is not altered in the slightest.

The law of Mississippi is that a statute of limitations defense is never waived unless the plaintiff is unfairly surprised by it or actually prejudiced in the conduct

of litigation by its untimely presentation.²⁰ Neither occurred here. The Plaintiffs and their counsel knew of the statute of limitations problem and tried to avoid it by artful pleading. Once this Court firmly cast the Plaintiffs' claims as being, if anything, intentional infliction of emotional distress, the statute of limitations arose as an insurmountable barrier because *Plaintiffs* filed their lawsuit too late. This decision predated any involvement in the litigation by Fluor Daniel and was not influenced by anything Fluor Daniel did or failed to do. Plaintiffs were put to no expense that they otherwise would not have incurred had the case gone to trial. They were deprived of no discovery or pretrial strategy or tactic that they otherwise would have had. No testimony or other evidence Plaintiffs could have developed through discovery would have altered the relationship between their dates of termination by Fluor Daniel and the dates they filed or joined the lawsuit against Fluor Daniel.

Fluor Daniel cannot imagine a scenario where a plaintiff could claim unfair surprise by the late presentation of a meritorious statute of limitations defense. The plaintiff and the plaintiff alone is in control of the facts necessary to create or avoid the defense. The Court need not decide that here, however, because these Plaintiffs clearly were *not* surprised by it: they anticipated it, they attempted to plead around it, they inquired about it in discovery, and they even had the trial

²⁰ Analogously, a Rule 12(b)(6) defense is not waived by its untimely assertion. See Miss. R. Civ. P. 12(h)(2) (failure to state a claim may be raised at a trial on the merits).

judge convinced for several hours that their position was correct. The only prejudice Plaintiffs suffered was losing on the merits, but that prejudice is not what they must suffer to claim waiver. Rather, they must prove that something they might have done during the litigation would have avoided the defense had they known about it earlier. Plaintiffs do not argue on appeal that such was the case because they cannot prove it. Fluor Daniel terminated them, and they waited too long to file suit. Nothing Plaintiffs could have done in the litigation process would have changed that indisputable circumstance.

The trial court was within its discretion to consider the statute of limitations defense raised in Fluor Daniel's two answers and in its second summary judgment motion. This argument presents no basis for reversal.

II. The Trial Court Properly Applied the One-Year Statute of Limitations Contained in Miss. Code Ann. § 15-1-35 to Plaintiffs' I.I.E.D. Claims

Once the Court reaches the conclusion, as Fluor Daniel is convinced it will, that the trial court did not abuse its discretion by considering Fluor Daniel's statute of limitations defense, the matter of affirming the trial court's summary judgment in Fluor Daniel's favor is logically unavoidable. No genuine issues of material fact existed (Plaintiffs do not contend otherwise), and the trial court properly determined that the one-year statute of limitations barred the Plaintiffs' i.i.e.d. claims. This Court reviews de novo a trial court's decision to grant summary

judgment. See, e.g., McMillan v. Rodriguez, 823 So. 2d 1173, 1176-77 ¶ 9 (Miss. 2002).

Plaintiffs correctly point out that the evolution of the case law on this issue was inconsistent. What defeats their argument, however, is that this consistency resolved itself long before Plaintiffs filed suit. Even the trial judge recognized this in reversing himself within a span of hours in reliance on what, at the time of the subject hearing in late January 2008, had been the Court's most recent pronouncement on the subject, Citifinancial Mortgage Co., Inc. v. Washington, 967 So. 2d 16 (Miss. 2007).²¹ Citifinancial holds that a one-year statute of limitations applies to i.i.e.d. claims. Id. at 19, ¶ 6. Citifinancial was the last in a line of cases that emerged from the settling dust in 2001, two years before these Plaintiffs artfully pled negligent infliction of emotional distress claims in order to avoid the statute of limitations bar. See also Jones v. B.L. Dev. Corp., 940 So. 2d 961, 965 ¶ 13 (Miss. App. 2006); Slaydon v. Hansford, 830 So. 2d 686, 688 ¶ 5 (Miss. App. 2002).²² Without question, Plaintiffs i.i.e.d. claims were barred if not filed within a year of the conduct forming the alleged basis of the tort.

²¹ This Court subsequently applied the one-year statute of limitations to the i.i.e.d. claim in Pierce v. Cook, 992 So. 2d 612 (Miss. 2008). The trial judge's abandonment of his own strict constructionist viewpoint in reaching his decision here sufficiently addresses Plaintiffs' laborious argument from that perspective in the Brief of Appellant. Whatever merits that argument might have had in times past, it is not the argument that finally won the day and established the now well-settled precedent on the question.

²² The rationale that won the day is set forth in clear detail in Judge Southwick's concurrence in Slaydon: i.i.e.d. is analogous to torts listed in Miss. Code Ann. § 15-1-35, and, therefore

Fluor Daniel's Itemization of Material Facts as to Which There Is No Genuine Issue, R.26, succinctly sets forth the simple, undisputed facts demonstrating that none of these Plaintiffs filed or joined this lawsuit in a timely manner. All were terminated by Fluor Daniel more than a year before they filed or joined the lawsuit. Plaintiffs' termination dates necessarily defined when the statute of limitations began to run on their i.i.e.d. claims. Plaintiffs did not take exception to this analysis in the trial court and do not contest it here. Plaintiffs concede, in other words, that their i.i.e.d. claims are time barred if they were subject to a one-year statute of limitations. They were; and, consequently, the trial court properly concluded that Plaintiffs' i.i.e.d. claims should be dismissed with prejudice.

III. The Trial Court Did Not Abuse Its Discretion by Denying as Moot Plaintiffs' Motion for a Protective Order

Fluor Daniel is unsure why Plaintiffs have raised this issue. Plaintiffs' protective order motion (R. 28) was targeted at two interrogatories and two requests for production (R. 79) Fluor Daniel served shortly before trial to determine who Plaintiffs' witnesses would be and what their exhibits would be. The trial court denied the motion *as moot* after deciding to grant Fluor Daniel's summary judgment motion (R.60). If this Court reverses the trial court on the summary judgment order, Plaintiffs are free to file the motion, although it is

i.i.e.d. should be governed by that statute's one-year limitations period. See Slaydon v. Hansford, 830 So. 2d at 690-92, ¶¶ 11-23.

impossible to imagine how Plaintiffs then would be prejudiced by the pendency of the discovery. The trial court, citing its "broad general policy" favoring pretrial disclosure of witnesses and exhibits, initially denied the motion at the hearing and was within its discretion to do so. Plaintiffs now complain about a more favorable ruling on the motion. In any event, it is hard to imagine a sounder act of discretion by a trial court than denying as moot a motion designed to hide the identity of trial witnesses and trial exhibits in a case that does not even go to trial because of a contemporaneous ruling by the trial court.

CONCLUSION

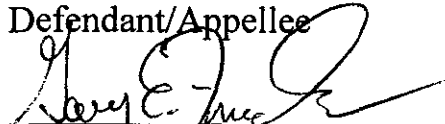
Summary judgment was the appropriate disposition of the Plaintiffs' i.i.e.d. claims. The trial court did not abuse its discretion by considering Fluor Daniel's statute of limitations defense and correctly determined that Plaintiffs' i.i.e.d. claims were time-barred. Fluor Daniel respectfully requests that the Court affirm the trial court's decision dismissing Plaintiffs' i.i.e.d. claims with prejudice as barred by the applicable one-year statute of limitations.

This the 9th day of April, 2009.

Respectfully submitted,

FLUOR DANIEL SERVICES CORPORATION,
Defendant/Appellee

By:



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CERTIFICATE OF SERVICE

I, GARY E. FRIEDMAN, do hereby certify that I have this day mailed a true and correct copy of this Brief of Appellee to the following:

Honorable Robert G. Evans
Jasper County Circuit Court
PO Box 545
Raleigh, MS 39153

Thomas Q. Brame, Esquire
PO Box 301
Bay Springs, MS 39422

This the 9th day of April, 2009.



GARY E. FRIEDMAN

APPENDIX

Case Docket For Case

Case Attorneys and Parties

Trial Court Information



4/9/2005	Notice of Appeal Filed
4/26/2005	Court Reporter Transcript Due Date issued
4/26/2005	Designation of Record received - Hon. Sherry Breland
4/26/2005	Certificate of Compliance received - Trial Court Clerk - Hon. Sherry Breland
5/6/2005	Appearance Form received - Steve J. Allen and Amy M. Klotz
5/6/2005	Trial Court Order received - Hon. Sherry Breland
5/16/2005	Appearance Form received - Thomas Quitman Brame Jr.
6/20/2005	Court Reporter Demand Letter issued - Court Reporter Kimberly Garner Ulmer
6/21/2005	Trial Court Order received - Kimberly Garner Ulmer
7/18/2005	Court Reporter Demand Letter issued - Court Reporter Kimberly Garner Ulmer
8/16/2005	Court Reporter - Motion for Time - Kimberly Garner Ulmer
8/16/2005	Clerks Notice Issued
12/15/2005	Court Reporter Demand Letter issued - Court Reporter Kimberly Garner Ulmer
2/28/2006	Record Filed
2/28/2006	Briefing Schedule Notice Issued.
4/10/2006	Motion for Time for Filing Brief - Thomas Quitman Brame Jr.
4/10/2006	Clerks Notice Issued
5/9/2006	Motion for Time for Filing Brief - Thomas Quitman Brame Jr.
5/9/2006	Clerks Notice Issued
5/30/2006	Motion for Time for Filing Brief - Thomas Quitman Brame Jr.
5/30/2006	Clerks Notice Issued
6/9/2006	Appellant's Brief filed on behalf of Reggie Williams, James Williams, Hardy Gordon, Ralph Scott, Ashley Craft and Gene Jones
6/9/2006	Record Excerpts filed on behalf of Reggie Williams, James Williams, Hardy Gordon, Ralph Scott, Ashley Craft and Gene Jones
7/7/2006	Motion for Time for Filing Brief - Steve J. Allen
7/7/2006	Clerks Notice Issued
8/8/2006	Motion for Time for Filing Brief - Steve J. Allen

EXHIBIT

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8/8/2006	Clerks Notice Issued
8/29/2006	Motion for Time for Filing Brief - Steve J. Allen
8/29/2006	Clerks Notice Issued
9/9/2006	Appellee's Brief filed on behalf of Fluor Daniel Services Corporation
9/9/2006	Appellee's Brief filed on behalf of Rudy Amaro and Fluor Daniel Services Corporation
9/11/2006	Motion # 2006 - 2827 Appellee's Motion for Leave to Supplement the Record
9/12/2006	Clerks Notice Issued Motion # 2006 - 2827
9/26/2006	Motion for Time for Filing Brief - Thomas Quitman Brame Jr.
9/26/2006	Clerks Notice Issued
10/20/2006	Motion # 2006 - 3324 Supplemental Motion for Leave to Supplement the Record
10/26/2006	Reply Brief filed on behalf of Reggie Williams, James Williams, Hardy Gordon, Ralph Scott, Ashley Craft and Gene Jones
10/27/2006	Motion # 2006 - 3402 Appellant's Motion for Leave to Supplement Record
10/30/2006	Notice of Retention by the Supreme Court
11/1/2006	Response filed Motion # 2006 - 3402
12/1/2006	Letter issued by Court - Oral Argument is not required for this case after review by SCT
1/3/2007	Case Submitted without Oral Argument
6/21/2007	Order Entered Motion # 2006 - 3402
6/21/2007	Order Entered Motion # 2006 - 3324
6/21/2007	DECISION: Affirmed in Part; Rev. & Rem. in Part
6/22/2007	Supplemental Record filed
7/2/2007	Motion # 2007 - 1837 Motion for Enlargement of Time to File Motion for Rehearing
7/2/2007	Clerks Notice Issued Motion # 2007 - 1837
7/3/2007	Appearance Form received - Fred L. Banks Jr. and Rebecca Hawkins
7/3/2007	Appearance Form received - Fred L. Banks Jr.
7/3/2007	Motion # 2007 - 1872 Appellants' Motion for Enlargement of Time to File Request for Re-Hearing
7/20/2007	Motion # 2007 - 2014 Appellants' Motion for Enlargement of Time to File Request for Re-Hearing
7/24/2007	Order Entered Motion # 2007 - 2014
8/2/2007	Mandate Issued

<input checked="checked" type="checkbox"/>	Case Attorneys and Parties	Trial Court Information
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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF JASPER COUNTY, MISSISSIPPI

GENE JONES and ASHLEY CRAFT

PLAINTIFFS

VS.

FILED
JASPER COUNTY, MISS.

CIVIL ACTION NO. 13-0036

JUN 12 2003

FLUOR DANIEL SERVICES CORPORATION
AND RUDY AMARO

MARK A. ISHEE
CIRCUIT CLERK

DEFENDANT

FIRST AMENDED COMPLAINT FOR DAMAGES

JURY TRIAL REQUESTED

Comes now your plaintiffs, GENE JONES and ASHLEY CRAFT, by and through counsel, and respectfully file this their First Amended Complaint for Damages, seeking monetary damages of, from and against the defendants, FLUOR DANIEL SERVICES CORPORATION, a Delaware Corporation, and RUDY AMARO, an adult resident citizen of Clarke County, Mississippi, and sets forth their several claims as follows:

I

Your plaintiffs are each adult resident citizens of the First Judicial District of Jasper County, Mississippi, appearing by and through counsel.

II

The defendant, Fluor Daniel Services Corporation, is a Delaware Corporation, in good standing with the Secretary of State of the State of Mississippi, and may be served with process in this cause by service on its registered agent for process, National Registered Agents, Inc., 840 Trustmark Building, 248 East Capitol Street, Jackson, Mississippi 39201. Plaintiffs respectfully request service of process on said Defendant by private process server.

EXHIBIT

B

III

Plaintiffs would show that the Defendant, Rudy Amaro, is an adult resident citizen of Clarke County, Mississippi, whose residence address is presently unknown, but who's address can be ascertained through the co-defendant, Fluor Daniel Services, Corporation. Plaintiff respectfully requests service of process on said defendant by personnel of the Clarke County Sheriff's Office.

IV

Plaintiffs would each show that they were employed by the defendant, Fluor Daniel Services Corporation, in the late Summer or early Fall of 2001, and worked for said defendant under the direct supervision, authority and control of co-defendant Rudy Amaro.

V

That your plaintiffs each worked hard for and served the corporate defendant, Fluor Daniel Services Corporation, faithfully and diligently and were each excellent employees for and on behalf of said corporate defendant, for many months.

VI

That your plaintiffs each worked under the direct supervision, authority and control of their immediate job supervisor, defendant Rudy Amaro, who was also an employee, agent and representative of the corporate defendant, Fluor Daniel Services Corporation.

VII

That at all times and in all manners complained of herein, co-defendant Rudy Amaro was acting within the scope, course and authority of his employment relationship with Fluor Daniel Services Corporation; was acting in furtherance of his masters business; the corporate defendant, Fluor Daniel Services Corporation, ratified and adopted all of said acts and inactions of said Rudy Amaro, and said corporate defendant is vicariously liable for all acts and inactions of the co-defendant, Rudy Amaro, complained of herein

VIII

That in his capacity as agent and employee of defendant Fluor Daniel, and in the course and scope of his employment there, defendant Amaro did annoy, harass, ridicule, demean and use inappropriate, slanderous language against and toward your plaintiffs which was designed to, and which did, hurt, demean and incite your plaintiffs, without any cause or justification. That this conduct by Amaro was repeated on a number of occasions, and was without justification or cause whatsoever.

IX

That finally your plaintiffs did report this highly improper course of conduct, pursued by defendant Amaro, to the defendant Amaro's supervisors at and with defendant Fluor Daniel.

X

That within a very few days after this highly improper conduct of defendant Amaro was reported to Amaro's superiors at defendant Fluor Daniels, by your plaintiffs, plaintiffs were summarily discharged without reason, justification or lawful excuse by defendant Fluor Daniel.

XI

That the actions of the defendants, Fluor Daniel Services Corporation and Rudy Amaro, as herein set forth, acting jointly and in concert, or severally as the facts may show, constituted a wrongful and malicious discharge, a negligent infliction of emotional distress, a willful and malicious breach of the duty of good faith and fair dealings, a retaliatory discharge, and a grievous and malicious tort under other various theories of the law.

XII

That the said wrongful acts of the defendants were malicious, evidencing intent, willfulness, maliciousness, and/or a wanton and/or reckless disregard for the plaintiffs and/or gross negligence against plaintiffs, entitling plaintiffs to punitive and exemplary damages of, from and against the defendants.

That your plaintiffs each sustained substantial and material damages, both economic and non-economic, as a direct, natural and proximate consequence of this wrongful conduct on the part of the defendants acting jointly and in concert, or severally, as the facts may show.

WHEREFORE, PREMISES CONSIDERED, Plaintiff GENE JONES, severally, respectfully demands judgment of, from and against the Defendants, Fluor Daniels Services Corporation and Rudy Amaro, jointly and severally, for actual, compensatory damages in an amount which will adequately compensate him for his damages and injuries sustained, under every theory of law applicable to said facts, and for exemplary or punitive damages and attorney fees, in a total amount not to exceed \$75,000.00, plus pre-judgment and post-judgment interest at a rate to be set by the court, plus all costs of this proceeding.

FURTHERMORE, PREMISES CONSIDERED, Plaintiff ASHLEY CRAFT, severally, respectfully demands judgment of, from and against the Defendants, Fluor Daniels Services Corporation and Rudy Amaro, jointly and severally, for actual, compensatory damages in an amount which will adequately compensate him for his damages and injuries sustained, under every theory of law applicable to said facts, and for exemplary or punitive damages and attorney fees, in a total amount not to exceed \$75,000.00, plus pre-judgment and post-judgment interest at a rate to be set by the court, plus all costs of this proceeding.

GENE JONES and ASHLEY CRAFT

BY: 

Attorney for Plaintiffs

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Telephone: (601) 764-4355
Facsimile: (601) 764-4356
Mississippi State Bar Number 4287

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF JASPER COUNTY, MISSISSIPPI

GENE JONES

PLAINTIFF

FILED
JASPER COUNTY, MISS

VS.

APR - 3 2003

CIVIL ACTION NO. 13-0036

MARK A. ISHEE
CLERK
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AND RUDY AMARO

DEFENDANT

COMPLAINT FOR DAMAGES

JURY TRIAL REQUESTED

Comes now your plaintiff, **GENE JONES**, by and through counsel, and respectfully files this his Complaint, seeking monetary damages of, from and against the defendants, **FLUOR DANIEL SERVICES CORPORATION**, a Delaware Corporation, and **RUDY AMARO**, an adult resident citizen of Clarke County, Mississippi, and sets forth his claim as follows:

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Your plaintiff is an adult resident citizen of the First Judicial District of Jasper County, Mississippi, appearing by and through counsel.

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The defendant, Fluor Daniel Services Corporation, is a Delaware Corporation, in good standing with the Secretary of State of the State of Mississippi, and may be served with process in this cause by service on it's registered agent for process, National Registered Agents, Inc., 840 Trustmark Building, 248 East Capitol Street, Jackson, Mississippi 39201. Plaintiff respectfully requests service of process on said Defendant by private process server.



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Plaintiff would show that the Defendant, Rudy Amaro, is an adult resident citizen of Clarke County, Mississippi, whose residence address is presently unknown, but who's address can be ascertained through the co-defendant, Fluor Daniel Services, Corporation. Plaintiff respectfully requests service of process on said defendant by personnel of the Clarke County Sheriff's Office.

IV

Plaintiff would show that he was employed by the defendant, Fluor Daniel Services Corporation, in the late Summer or early Fall of 2001, and worked under the direct supervision, authority and control of defendant Rudy Amaro.

V

That your plaintiff served the corporate defendant, Fluor Daniel Services Corporation, faithfully and diligently and was an excellent employee for and on behalf of said corporate defendant, for many months.

VI

That your plaintiff worked under the supervision, authority and control of his immediate job supervisor, defendant, Rudy Amaro, who was also an employee, agent and representative of the corporate defendant, Fluor Daniel Services Corporation.

VII

That at all times and in all manners herein complained of, co-defendant Rudy Amaro was acting within the scope and authority of his employment relationship with Fluor Daniel Services Corporation; was acting in furtherance of his masters business; was acting within the course of his said employment; and all of the said acts and actions herein complained of arose out of and in the scope and course of his employment relationship with said corporate defendant. That the corporate defendant, Fluor Daniel Services Corporation,

ratified and adopted all of said acts and inactions of said Rudy Amaro, and said corporate defendant is vicariously liable for all acts and inactions of the co-defendant, Rudy Amaro, herein complained of.

VIII

Plaintiff would show that at the beginning of each work day, a safety meeting would be held, at which your plaintiff's attendance, as an employee, was required. On numerous occasions at said daily safety meetings, co-defendant, Rudy Amaro, who is of the Mexican nationality, would make a comment in Spanish, gesturing at the time toward your plaintiff, who is of the African-American nationality, and other African-American employees associated with your plaintiff on this job site. Plaintiff did not speak, nor understand, the Spanish language.

IX

That as said Rudy Amaro would make such comments and gestures toward your plaintiff and other Black employees, other employees who were also of the Mexican nationality and understood Spanish would laugh violently and make gestures toward your plaintiff and other Black employees there situated.

X

That on one occasion, after this had gone on for an extended period of time, plaintiff approached co-defendant Rudy Amaro and asked what he was saying. Defendant Amaro replied that he was saying words to the effect "you monkeys can go to work or go to the house or hit the ropes", and laughed at your plaintiff.

XI

That your plaintiff reported this improper incident to the supervisors of defendant Rudy Amaro, who were also agents, employees and representatives of defendant Fluor Daniels Services Corporation and who were each acting within the scope and authority of their employment relationship with Fluor Daniel Services Corporation; were acting in furtherance of their masters business; were acting within the course of their said

employment; and all of their said acts and actions herein complained of arose out of and in the scope and course of their employment relationship with said corporate defendant. That the corporate defendant, Fluor Daniel Services Corporation, ratified and adopted all of said acts and inactions of said supervisory personnel, and said corporate defendant is vicariously liable for all acts and inactions of them, herein complained of.

XII

That in approximately three (3) days after this highly improper matter was reported by your plaintiff, plaintiff, and other Black employees similarly situated, were summarily discharged without reason, justification or excuse.

XIII

That the actions of the defendants, Fluor Daniels Services Corporation and Rudy Amaro, as herein set forth, constituted a wrongful and malicious discharge, a violation of the rights of your plaintiff, a negligent infliction of emotional distress, a breach of the duty of good faith and fair dealings, a retaliatory discharge, and a grievous and malicious tort under other various theories of the law.

XIV

That the said wrongful acts of the defendants were malicious, evidencing willfulness and/or a reckless disregard for the plaintiff and/or gross negligence, entitling him to punitive and exemplary damages of, from and against the defendants.

That your plaintiff sustained substantial and material damages, both economic and non-economic, as a direct, natural and proximate consequence of this wrongful conduct on the part of the defendant.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully demands judgment of, from and against the Defendants, Fluor Daniels Services Corporation and Rudy Amaro, jointly and severally, for actual, compensatory damages in an amount which will adequately compensate him for his damages and

injuries sustained, under every theory of law applicable to said facts, and for exemplary or punitive damages and attorney fees, in an amount not to exceed \$75,000.00, plus pre-judgment and post-judgment interest at a rate to be set by the court, plus all costs of this proceeding.

Respectfully submitted.

GENE JONES

BY: 

His Attorney

THOMAS Q. BRAME, JR.
Attorney at Law
Post Office Box 301
Bay Springs, Mississippi 39422
Telephone: (601) 764-4355
Facsimile: (601) 764-4356
Mississippi State Bar Number 4287

08/22/2008 11:36

764

THOMAS G. BEANE JR

PAGE 03

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
JASPER COUNTY, MISSISSIPPI

GENE JONES and ASHLEY CRAFT

PLAINTIFFS

VS.

CIVIL ACTION NO. 13-0036

FLUOR DANIEL SERVICES CORPORATION
AND RUDY AMARO

DEFENDANT

**PLAINTIFFS' AMENDED FIRST INTERROGATORIES, AND REQUEST
FOR PRODUCTION OF DOCUMENTS PROPOUNDED UNTO
THE DEFENDANT, FLUOR DANIEL SERVICES CORPORATION**

Comes now your plaintiffs, GENE JONES and ASHLEY CRAFT, in the above styled and numbered cause, acting by and through counsel, and respectfully submits these First Interrogatories propounded unto the defendant, FLUOR DANIELS SERVICE CORPORATION, to be answered under oath, in writing, in the time and manner prescribed by law, and to be supplemented pursuant to the Mississippi Rules of Civil Procedure as additional information is obtained. Plaintiffs set forth these First Interrogatories as follows:

INTERROGATORY NO. 1: Please state the name, address, employment and telephone number of all occurrence witnesses to the incidents—the discharge of each plaintiff— which are the subject of this lawsuit.

INTERROGATORY NO. 2: Please state your complete corporate name, present address, principal business endeavors, age, date and place of organization, total number of employees, Social Security number and driver's license number.

INTERROGATORY NO. 3: Please state the name, address, telephone number, occupation and relationship to you of every person residing in this venue who is employed by you now or in the past five (5)



08/22/2003 11:36 75

THOMAS G BRAD JR

PAGE 04

years.

INTERROGATORY NO. 4: Please state whether or not any of your corporate owners, officers or directors, have ever been convicted of any crime other than a traffic violation. If so, please state: a) the nature of the offense, b) the name of the Court and the jurisdiction in which you were convicted or plead guilty, c) the date of the conviction or guilty plea, d) the particular crime of which you were convicted, and e) the sentence given you.

INTERROGATORY NO. 5: Please state the full names, addresses, occupations, telephone numbers and business or personal relationships of you of all persons known by you or your attorney to have any knowledge regarding any aspect of this litigation, including but not limited to occurrence witnesses, medical witnesses or any other witnesses having any knowledge of this litigation.

INTERROGATORY NO. 6: Has defendant ever been involved in any other legal action, either as a defendant or a plaintiff? If so, please state: a) the name and jurisdiction of the Court in which each such action was filed, together with the style and number of the case, b) the date each such action was commenced and the date each such action was terminated, c) the result of each such action, including whether or not there was a judgment, agreed settlement, or any other disposition of each such case, and d) a complete narrative description of the nature of the case, including whether you were a plaintiff or a defendant.

INTERROGATORY NO. 7: Please state the complete name, address, telephone number, and business or personal relationship to either you or your attorney of every expert consulted by you in connection with this action, who will be called as a witness at a trial of this matter. Additionally, for each such expert identified, please state: 1) the business or profession of said expert; 2) the field of expertise of each such expert; 3) a complete resume' of the qualifications and background of such expert; 4) the subject matter on which such expert is expected to testify at trial; 5) the facts and opinions to which the expert is expected to testify; 6) a summary of the grounds for each opinion; and 7) the identify (name, publisher, author, and publishing date) of books, articles, treatises or other technical publications on which they will

08/22/2008 11:36

764

THOMAS G. BEANE JR.

PAGE 05

rely, together with the volume, chapter, section or page on which he will rely.

INTERROGATORY NO. 8: Are you, your attorneys, or anyone acting on your behalf aware of the existence of any written or recorded statement (including but not limited to any statement taken by any adjuster or investigator or law enforcement officer, or any statement or testimony given during any prior court proceeding, including any depositions) made by or for any party or witness? If so state: a) the name and address of each person making the statement or giving the testimony; b) the date of the statement or testimony; c) the name and last known address of the person(s) taking said statement and the person(s) now in possession of the original statement (or record of testimony, transcript, or stenographic notes thereof) or any copy of same.

INTERROGATORY NO. 9: Please state the name, address, telephone number, business or profession, place of employment, and professional or personal relationship to you or your attorney of all persons whom you will call as witnesses at a trial of the issues of this lawsuit; please provide an evidentiary account of the testimony of each such witness; and designate whether each such witness *will* be called or *may* be called..

INTERROGATORY NO. 10: Please state the name, address, business or profession and professional or personal relationship to you or your attorney of each person who assisted or participated in the formation of your responses to these interrogatories, and state which particular interrogatories each such person assisted in answering.

INTERROGATORY NO. 11: Have your attorney's, officers, directors, owners, agents, employees, or representatives, contacted or attempted to contact any doctor, hospital or other provider of medical goods or services, who provided medical services unto any of the plaintiffs? If so, please state who made that contact on your behalf, who was contacted on behalf of the medical supplier, the nature of the contact (telephone, letter, personal or otherwise), and give a detailed account of the information obtained by you as a result of each such contact or request.

08/22/2003 11:36

76

THOMAS G. REINE JR

PAGE 06

INTERROGATORY NO. 12: For any affirmative defense which you plead as a response to our complaint filed herein, please state all facts which support such affirmative defense, including times, places, narrative of events and identity of persons present; and additionally please itemize those persons whom you will call to testify in support of such affirmative defense.

INTERROGATORY NO. 13: If you contend that any of the plaintiffs were at fault in any manner at the time, which contributed to their termination, please detail all facts which you base this contention.

INTERROGATORY NO. 14: Please state a detailed, narrative account of all reasons and justifications, if any for the termination of each several plaintiff, together with all actions taken by you and by each plaintiff immediately before, during and after each such claimed fact or justification, together with the name and address of each agent or representative of Fluor Daniels who participated in each fact or event you include in your response.

INTERROGATORY NO. 15: Were any statements made by any plaintiff unto the defendant, or by the defendant unto any plaintiff, or at any time regarding any issues of this litigation which are relevant and material to the issues, and on which you will rely at trial or otherwise attempt to tender into evidence? If so, please state what was said by each party, the date, time and place of each such statement, and the name, address and telephone number of all persons present or participating in the conversations in which each such statements were made.

INTERROGATORY NO. 16: Please state the net worth of the defendant corporation, together with net earnings, as of the end of the most recent fiscal year.

INTERROGATORY NO. 17: Please state the name, address and telephone number, as last recorded in your records, of every person discharged or laid off within a period of six (6) weeks before the date of discharge of the plaintiff first discharged, until six (6) weeks after the date of discharge of the plaintiff last discharged.

08/22/2003 11:36

THOMAS Q. BRAME JR

PAGE 07

REQUEST FOR PRODUCTION OF DOCUMENTS

AND NOW, plaintiff, by and through counsel, also files these his first requests for production of documents and tangibles unto the defendant, requesting that same be produced at the offices of Thomas Q. Brame, Jr., attorney for plaintiffs, at 47 Highway 15 South, Bay Springs, Jasper County, Mississippi, within 30 days of service of these request (or 45 days after service of a summons on you, whichever is greater) so that plaintiff can inspect, copy, photograph, photocopy or otherwise examine, inspect and duplicate the following documents and tangibles, to-wit:

I

Any and all statements taken by either you or your attorney or other agents or employees, of any witnesses or any parties, concerning any aspect of this litigation.

II

A copy of any and all reports made regarding any aspect of this litigation, whether made for insurance reporting, in house record keeping, or other reason whatsoever.

III

Any and all documents, correspondence, reports, statements, deposition testimony, charts, treatises, books, research, materials or other tangible things upon which any expert you expect to testify at trial will base his opinion.

IV

Any and all documents, tests, computations, summaries, reports, sketches, diagrams, drawings, photographs, pictures, video tapes or other tangible objects or materials which you have supplied to any expert witness you expect to testify at trial.

V

Copies of any photographs, maps, plats, diagrams, drawings or other documents regarding the incident scene, the persons involved in the incident, injuries sustained by the plaintiff, injuries sustained by

09/22/2003 11:36

THOMAS G. PRIME JR

PAGE 08

the defendant, or any aspect of this litigation.

VI

Copies of all personnel reports, insurance claim forms or other such account, written or verbal (if preserved), of the occurrence which is the subject of this lawsuit, regardless of whether such report was made by you or someone else on your behalf, or whether said report was made by any other person, but which is accessible to you, your attorney or any other person acting on your behalf.

VII

Any and all documents, instruments, tangibles or other items whatsoever which you will tender into evidence at a trial of the issues of this lawsuit.

VIII

All documents substantiating or in anywise supporting any defense designated by defendant in its answer filed in this cause.

IX

A copy of any letters, reports, memoranda or other documents portraying the opinions of any experts consulted by you in connection with any aspect of this litigation.

X

Copies of any photographs, maps, plats, diagrams, drawings or other documents regarding the incident scenes, the people involved in the termination of each plaintiff, injuries sustained by each plaintiff, the reasons or justifications claimed by the defendant, or any aspect of this litigation.

XI

Copies of all documents referenced in your discovery responses or evidencing or concerning any of same.

08/22/2003 11:36

THOMAS Q. BRAME JR

PAGE 09

XII


Copies of all reports of private investigators or other surveillance personnel of any activities of any party or witness, and copies of any photograph, video tapes or other preservations of any activities of any such person so surveilled, and copies of all notes or preservations of impressions or observations of any surveilor.

XIII

Copy of the most recent published annual report of the defendant.

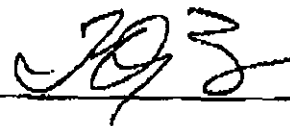
Respectfully submitted,

By:


Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Thomas Q. Brame, Jr., attorney for the plaintiffs, do hereby certify that I have this day caused to be delivered a true and correct copy of the foregoing instrument by facsimile to Hon. Amy M. Klotz, Attorney for defendant Fluor-Daniels, at 601-960-6902, all on this the 22nd day of August, A.D., 2003.



THOMAS Q. BRAME, JR.
Attorney at Law
Post Office Box 301
Bay Springs, Mississippi 39422
Telephone: (601) 764-4355
Facsimile: (601) 764-4356
Mississippi State Bar Number 4287

09/12/2003 12:33

78 5

THOMAS G. PRIME JR

PAGE 02

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
JASPER COUNTY, MISSISSIPPI

GENE JONES, ASHLEY CRAFT,
JAMES WILLIAMS, REGGIE WILLIAMS,
RALPH V. SCOTT and HARDY GORDON

PLAINTIFFS

VS.

CIVIL ACTION NO. 13-0036

FLUOR DANIEL SERVICES CORPORATION
AND RUDY AMARO

DEFENDANT

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS OF JAMES WILLIAMS,
REGGIE WILLIAMS, RALPH V. SCOTT AND HARDY GORDON,
PROPOUNDED UNTO THE DEFENDANT,
FLUOR DANIEL SERVICES CORPORATION**

Comes now your plaintiffs, JAMES WILLIAMS, REGGIE WILLIAMS, RALPH V. SCOTT and HARDY GORDON, in the above styled and numbered cause, acting by and through counsel, and respectfully submits this their First Interrogatories and Requests for Production of Documents propounded unto the defendant, FLUOR DANIEL SERVICES CORPORATION, to be answered under oath, in writing, in the time and manner prescribed by law, and to be supplemented pursuant to the Mississippi Rules of Civil Procedure as additional information is obtained. Plaintiffs set forth these First Interrogatories as follows:

INTERROGATORY NO. 1: Please state the name, address, employment and telephone number of all occurrence witnesses to the incidents – the discharge of each plaintiff – which are the subject of this lawsuit.

INTERROGATORY NO. 2: Please state your complete corporate name, present address, principal business endeavors, age, date and place of organization, total number of employees, Social Security number and driver's license number.



09/12/2003 12:33

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THOMAS G. BRADY JR

PAGE 03

INTERROGATORY NO. 3: Please state the name, address, telephone number, occupation and relationship to you of every person residing in this venue who is employed by you now or in the past five (5) years.

INTERROGATORY NO. 4: Please state whether or not any of your corporate owners, officers or directors, have ever been convicted of any crime other than a traffic violation. If so, please state: a) the nature of the offense, b) the name of the Court and the jurisdiction in which you were convicted or plead guilty, c) the date of the conviction or guilty plea, d) the particular crime of which you were convicted, and e) the sentence given you.

INTERROGATORY NO. 5: Please state the full names, addresses, occupations, telephone numbers and business or personal relationships of you of all persons known by you or your attorney to have any knowledge regarding any aspect of this litigation, including but not limited to occurrence witnesses, medical witnesses or any other witnesses having any knowledge of this litigation.

INTERROGATORY NO. 6: Has defendant ever been involved in any other legal action, either as a defendant or a plaintiff? If so, please state: a) the name and jurisdiction of the Court in which each such action was filed, together with the style and number of the case, b) the date each such action was commenced and the date each such action was terminated, c) the result of each such action, including whether or not there was a judgment, agreed settlement, or any other disposition of each such case, and d) a complete narrative description of the nature of the case, including whether you were a plaintiff or a defendant.

INTERROGATORY NO. 7: Please state the complete name, address, telephone number, and business or personal relationship to either you or your attorney of every expert consulted by you in connection with this action, who will be called as a witness at a trial of this matter. Additionally, for each such expert identified, please state: 1) the business or profession of said expert; 2) the field of expertise of each such expert; 3) a complete resume' of the qualifications and background of such expert; 4) the subject matter on which such expert is expected to testify at trial; 5) the facts and opinions to which the expert i

09/12/2003 12:33 780-355

THOMAS G. ROOME JR

PAGE 04

expected to testify; 6) a summary of the grounds for each opinion; and 7) the identify (name, publisher, author, and publishing date) of books, articles, treatises or other technical publications on which they will rely, together with the volume, chapter, section or page on which he will rely.

INTERROGATORY NO. 8: Are you, your attorneys, or anyone acting on your behalf aware of the existence of any written or recorded statement (including but not limited to any statement taken by any adjuster or investigator or law enforcement officer, or any statement or testimony given during any prior court proceeding, including any depositions) made by or for any party or witness? If so state: a) the name and address of each person making the statement or giving the testimony; b) the date of the statement or testimony; c) the name and last known address of the person(s) taking said statement and the person(s) now in possession of the original statement (or record of testimony, transcript, or stenographic notes thereof) or any copy of same.

INTERROGATORY NO. 9: Please state the name, address, telephone number, business or profession, place of employment, and professional or personal relationship to you or your attorney of all persons whom you will call as witnesses at a trial of the issues of this lawsuit; please provide an evidentiary account of the testimony of each such witness; and designate whether each such witness *will* be called or *may* be called..

INTERROGATORY NO. 10: Please state the name, address, business or profession and professional or personal relationship to you or your attorney of each person who assisted or participated in the formation of your responses to these interrogatories, and state which particular interrogatories each such person assisted in answering.

INTERROGATORY NO. 11: Have your attorney's, officers, directors, owners, agents, employees, or representatives, contacted or attempted to contact any doctor, hospital or other provider of medical goods or services, who provided medical services unto any of the plaintiffs? If so, please state who made that contact on your behalf, who was contacted on behalf of the medical supplier, the nature of the contact

09/12/2003 12:33

76-1155

THOMAS Q. PRIME JR

PAGE 05

(telephone, letter, personal or otherwise), and give a detailed account of the information obtained by you as a result of each such contact or request.

INTERROGATORY NO. 12: For any affirmative defense which you plead as a response to our complaint filed herein, please state all facts which support such affirmative defense, including times, places, narrative of events and identity of persons present; and additionally please itemize those persons whom you will call to testify in support of such affirmative defense.

INTERROGATORY NO. 13: If you contend that any of the plaintiffs were at fault in any manner at the time, which contributed to their termination, please detail all facts which you base this contention.

INTERROGATORY NO. 14: Please state a detailed, narrative account of all reasons and justifications, if any for the termination of each several plaintiff, together with all actions taken by you and by each plaintiff immediately before, during and after each such claimed fact or justification, together with the name and address of each agent or representative of Fluor Daniels who participated in each fact or event you include in your response.

INTERROGATORY NO. 15: Were any statements made by any plaintiff unto the defendant, or by the defendant unto any plaintiff, or at any time regarding any issues of this litigation which are relevant and material to the issues, and on which you will rely at trial or otherwise attempt to tender into evidence? If so, please state what was said by each party, the date, time and place of each such statement, and the name, address and telephone number of all persons present or participating in the conversations in which each such statements were made.

INTERROGATORY NO. 16: Please state the net worth of the defendant corporation, together with net earnings, as of the end of the most recent fiscal year.

INTERROGATORY NO. 17: Please state the name, address and telephone number, as last recorded in your records, of every person discharged or laid off within a period of six (6) weeks before the date of discharge of the plaintiff first discharged, until six (6) weeks after the date of discharge of the plaintiff last

09/12/2003 12:33 790055

THOMAS Q. BRAME JR

PAGE 06

discharged.

INTERROGATORY NO. 18: You aver that Rodolfo Amaro is no longer employed by you. Please state the date of his discharge, the reasons for his discharge, whether he has filed a grievance or objection to his discharge; whether he has to your knowledge sought unemployment benefits as result of this discharge. Additionally please state the time of the initial hiring of Mr. Amaro by you; and the job locations of all places where he performed his job duties for and on behalf of you between his initial hire date and his date of final discharge.

REQUESTS FOR PRODUCTION OF DOCUMENTS

AND NOW, plaintiffs, by and through counsel, also files this their Requests for Production of Documents and tangibles unto the defendants, requesting that same be produced at the offices of Thomas Q. Brame, Jr., attorney for plaintiffs, at 2781 Highway 15 South, Bay Springs, Jasper County, Mississippi 39422, within 30 days of service of these request (or 45 days after service of a summons on you, whichever is greater) so that plaintiffs can inspect, copy, photograph, photocopy or otherwise examine, inspect and duplicate the following documents and tangibles, to-wit:

I

Any and all statements taken by either you or your attorney or other agents or employees, of any witnesses or any parties, concerning any aspect of this litigation.

II

A copy of any and all reports made regarding any aspect of this litigation, whether made for insurance reporting, in house record keeping, or other reason whatsoever.

III

Any and all documents, correspondence, reports, statements, deposition testimony, charts, treatises, books, research, materials or other tangible things upon which any expert you expect to testify at trial will base his opinion.

09/12/2003 12:33 76 055

THOMAS G. PRIME JR

PAGE 07

IV

Any and all documents, tests, computations, summaries, reports, sketches, diagrams, drawings, photographs, pictures, video tapes or other tangible objects or materials which you have supplied to any expert witness you expect to testify at trial.

V

Copies of any photographs, maps, plats, diagrams, drawings or other documents regarding the incident scene, the persons involved in the incident, injuries sustained by the plaintiffs, injuries sustained by the defendants, or any aspect of this litigation.

VI

Copies of all personnel reports, insurance claim forms or other such account, written or verbal (if preserved), of the occurrence which is the subject of this lawsuit, regardless of whether such report was made by you or someone else on your behalf, or whether said report was made by any other person, but which is accessible to you, your attorney or any other person acting on your behalf.

VII

Any and all documents, instruments, tangibles or other items whatsoever which you will tender into evidence at a trial of the issues of this lawsuit.

VIII

All documents substantiating or in anywise supporting any defense designated by defendants in its answer filed in this cause.

IX

A copy of any letters, reports, memoranda or other documents portraying the opinions of any experts consulted by you in connection with any aspect of this litigation.

09/12/2003 12:33

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THOMAS G. PRIME JR

PAGE 08

X

Copies of any photographs, maps, plats, diagrams, drawings or other documents regarding the incident scenes, the people involved in the termination of each plaintiff, injuries sustained by each plaintiff, the reasons or justifications claimed by the defendant, or any aspect of this litigation.

XI

Copies of all documents referenced in your discovery responses or evidencing or concerning any of same.

XII

Copies of all reports of private investigators or other surveillance personnel of any activities of any party or witness, and copies of any photograph, video tapes or other preservations of any activities of any such person so surveilled, and copies of all notes or preservations of impressions or observations of any surveilor.

XIII

Copy of the most recent published annual report of the defendant.

Respectfully submitted,

JAMES WILLIAMS, REGGIE WILLIAMS,
RALPH V. SCOTT and HARDY GORDON

By: 

Attorney for Plaintiffs

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF JASPER COUNTY, MISSISSIPPI**

**GENE JONES, ASHLEY CRAFT,
JAMES WILLIAMS, REGGIE WILLIAMS,
RALPH V. SCOTT and HARDY GORDON**

PLAINTIFFS

VS.

CIVIL ACTION NO. 13-0036

**FLUOR DANIEL SERVICES CORPORATION
and RUDY AMARO**

DEFENDANTS

**FLUOR DANIEL SERVICES CORPORATION'S RESPONSES
TO PLAINTIFFS' AMENDED FIRST INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED
UNTO THE DEFENDANT, FLUOR DANIEL SERVICES CORPORATION,
AND FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS OF JAMES WILLIAMS, REGGIE WILLIAMS, RALPH V. SCOTT
AND HARDY GORDON, PROPOUNDED UNTO THE DEFENDANT,
FLUOR DANIEL SERVICES CORPORATION**

Defendant Fluor Daniel Services Corporation ("Fluor") responds to the Plaintiffs' Amended First Interrogatories and Request for Production of Documents Propounded Unto the Defendant; Fluor Daniels Services Corporation, and First Set of Interrogatories and Requests for Production of Documents of James Williams, Reggie Williams, Ralph V. Scott and Hardy Gordon, Propounded Unto the Defendant, Fluor Daniel Services Corporation, as follows:

INTERROGATORY NO. 1: Please state the name, address, employment and telephone number of all occurrence witnesses to the incidents - the discharge of each plaintiff- which are the subject of this lawsuit.

RESPONSE TO INTERROGATORY NO. 1: The following individuals may have knowledge of the termination of the plaintiffs' employment with Fluor:

The plaintiffs

The individuals identified by the plaintiffs in their deposition testimony



Rodolfo Amaro
2012 New Jersey Street
Baytown, Texas 77520
832-549-3287

Kelvin Burns
P.O. Box 295
Belews Creek, NC 27009
Work Telephone (336) 445-2378

Mr. Burns is a management-level Fluor employee who may not be contacted except through undersigned counsel for Fluor.

Norman Thompson is not a Fluor employee. His last known address is:
1312 Eagle Glen
Escondido CA 92092
Home Telephone: (760) 432-0742

Ed Strickland
P.O. Box 353
Theodore AL 36590
Home Telephone: (251) 957-3061.

Mr. Strickland is a management-level Fluor employee who may not be contacted except through undersigned counsel for Fluor.

INTERROGATORY NO. 2: Please state your complete corporate name, present address, principal business endeavors, age, date and place of organization, total number of employees, Social Security number and driver's license number.

RESPONSE TO INTERROGATORY NO. 2: All information sought by this interrogatory, except for Fluor's corporate name, Fluor Daniel Services Corporation, and address, One Enterprise Drive, Aliso Viejo, California 92656-2606, is not discoverable because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 3: Please state the name, address, telephone number, occupation and relationship to you of every person residing in this venue who is employed by you now or in the

past five (5) years.

RESPONSE TO INTERROGATORY NO. 3: Fluor objects to Interrogatory No. 3 as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 4: Please state whether or not any of your corporate owners, officers or directors, have ever been convicted of any crime other than a traffic violation. If so, please state: a) the nature of the offense, b) the name of the Court and the jurisdiction in which you were convicted or plead guilty, c) the date of the conviction or guilty plea, d) the particular crime of which you were convicted, and e) the sentence given you.

RESPONSE TO INTERROGATORY NO. 4: Fluor objects to Interrogatory No. 4 as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 5: Please state the full names, addresses, occupations, telephone numbers and business or personal relationships of you of all persons known by you or your attorney to have any knowledge regarding any aspect of this litigation, including but not limited to occurrence witnesses, medical witnesses or any other witnesses having any knowledge of this litigation.

RESPONSE TO INTERROGATORY NO. 5: See response to Interrogatory No. 1. Fluor has no relationships - business, personal, or otherwise - with any individuals having knowledge of any aspect of this litigation, though Fluor currently employees or has in the past employed some of the individuals identified.

INTERROGATORY NO. 6: Has defendant ever been involved in any other legal action, either as a defendant or a plaintiff? If so, please state: a) the name and jurisdiction of the Court in

which each such action was filed, together with the style and number of the case, b) the date each such action was commenced and the date each such action was terminated, c) the result of each such action, including whether or not there was a judgment, agreed settlement, or any other disposition of each such case, and d) a complete narrative description of the nature of th case, including whether you were a plaintiff or a defendant.

RESPONSE TO INTERROGATORY NO. 6: Fluor objects to Interrogatory No. 6 as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 7: Please state the complete name, address, telephone number, and business or personal relationship to either you or your attorney of every expert consulted by you in connection with this action, who will be called as a witness at a trial of this matter. Additionally, for each such expert identified, please state: 1) the business or profession of said expert; 2) the field of expertise of each such expert; 3) a complete resume' of the qualifications and background of such expert; 4) the subject matter on which such expert is expected to testify at trial; 5) the facts and opinions to which the expert is expected to testify; 6) a summary of the grounds for each opinion; and 7) the identity (name, publisher, author, and publishing date) of books, articles, treatises or other technical publications on which they will rely, together with the volume, chapter, section or page on which he will rely.

RESPONSE TO INTERROGATORY NO. 7: Fluor has not consulted any expert in connection with this matter. Fluor reserves all objections that might be available to it in the course of supplementing this response in accordance with Rule 26.

INTERROGATORY NO. 8: Are you, your attorneys, or anyone acting on your behalf

aware of the existence of any written or recorded statement (including but not limited to any statement taken by any adjuster or investigator or law enforcement officer, or any statement or testimony given during any prior court proceeding, including any depositions) made by or for any party or witness? Is so state: a) the name and address of each person making the statement or giving the testimony; b) the date of the statement or testimony; c) the name and last known address of the person(s) taking said statement and the person(s) now in possession of the original statement (or record of testimony, transcript, or stenographic notes thereof) or any copy of same.

RESPONSE TO INTERROGATORY NO. 8: No.

INTERROGATORY NO. 9: Please state the name, address, telephone number, business or profession, place of employment, and professional or personal relationship to you or your attorney of all persons whom you will call as witnesses at a trial of the issues of this lawsuit; please provide an evidentiary account of the testimony of each such witness; and designate whether each such witness *will* be called or *may* be called.

RESPONSE TO INTERROGATORY NO. 9: Fluor has not yet determined the witnesses it will call at the trial of this matter. Fluor reserves all objections that might be available to it in the course of supplementing this response in accordance with Rule 26.

INTERROGATORY NO. 10: Please state the name, address, business or profession and professional or personal relationship to you or your attorney of each person who assisted or participated in the formation of your responses to these interrogatories, and state which particular interrogatories each such person assisted in answering.

RESPONSE TO INTERROGATORY NO. 10: Counsel of record and in-house counsel participated in the formation of responses to each of the interrogatories.

INTERROGATORY NO. 11: Have your attorney's, officers, directors, owners, agents, employees, or representatives, contacted or attempted to contact any doctor, hospital or other provider of medical goods or services, who provided medical services unto any of the plaintiffs? If so, please state who made that contact on your behalf, who was contacted on behalf of the medical supplier, the nature of the contact (telephone, letter, personal or otherwise), and give a detailed account of the information obtained by you as a result of each such contact or request.

RESPONSE TO INTERROGATORY NO. 11: No.

INTERROGATORY NO. 12: For any affirmative defense which you plead as a response to our complaint filed herein, please state all facts which support such affirmative defense, including times, places, narrative of events and identity of persons present; and additionally please itemize those persons whom you will call to testify in support of such affirmative defense.

RESPONSE TO INTERROGATORY NO. 12: Many of the facts supporting Fluor's affirmative defenses appear in the transcripts of the plaintiffs' depositions. Fluor will supplement this response with further information as it becomes available. Other than the plaintiffs, Fluor has not yet determined the witnesses it may call at trial to support its affirmative defenses. Fluor reserves all objections that might be available to it in the course of supplementing this response in accordance with Rule 26.

INTERROGATORY NO. 13: If you contend that any of the plaintiffs were at fault in any manner at the time, which contributed to their termination, please detail all facts on which you base this contention.

RESPONSE TO INTERROGATORY NO. 13: Fluor does not contend that any of the plaintiffs were terminated because they were "at fault."

INTERROGATORY NO. 14: Please state a detailed, narrative account of all reasons and justifications, if any, for the termination of each several plaintiff, together with all actions taken by you and by each plaintiff immediately before, during and after each such claimed fact or justification, together with the name and address of each agent or representative of Fluor Daniels who participated in each fact or event you include in your response.

RESPONSE TO INTERROGATORY NO. 14: See Response to Interrogatory No. 13, as well as the plaintiffs' deposition testimony. Fluor will supplement this response in a manner that is appropriate under Rule 26 and reserves all objections that might be available to it in the course of doing so.

INTERROGATORY NO. 15: Were any statements made by the plaintiff unto the defendant, or by the defendant unto plaintiff, or at any time regarding any issues of this litigation which are relevant and material to the issues, and on which you will rely at trial or otherwise attempt to tender into evidence? If so, please state what was said by each party, the date, time and place of each such statement, and the name, address and telephone number of all persons present or participating in the conversations in which each such statements were made.

RESPONSE TO INTERROGATORY NO. 15: No.

INTERROGATORY 16: Please state the net worth of the defendant corporation, together with net earnings, as of the end of the most recent fiscal year.

RESPONSE TO INTERROGATORY NO. 16: Fluor objects to the discoverability of this information prior to the plaintiffs obtaining a punitive damages instruction. Fluor also reserves other objections that might be available in the course of supplementing this response.

INTERROGATORY 17: Please state the name, address and telephone number, as last

recorded in your records, of every person discharged or laid off within a period of six (6) weeks before the date of discharge of the plaintiff first discharged, until six (6) weeks after the date of discharge of the plaintiff last discharged.

RESPONSE TO INTERROGATORY NO. 17: Fluor objects to Interrogatory No. 17 as seeking information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Fluor reserves all other objections.

REQUESTS FOR PRODUCTION OF DOCUMENTS

I.

Any and all statements taken by either you or your attorney or other agents or employees, of any witnesses or any parties, concerning any aspect of this litigation.

RESPONSE TO REQUEST FOR PRODUCTION NO. I: Fluor objects to Request for Production No. I because it seeks the production of documents protected by the attorney-client privilege and work product doctrine.

II.

A copy of any and all reports made regarding any aspect of this litigation, whether made for insurance reporting, in house record keeping, or other reason whatsoever.

RESPONSE TO REQUEST FOR PRODUCTION NO. II: Fluor objects to Request for Production No. II to the extent that it seeks the production of documents protected by the attorney-client privilege and work product doctrine. If responsive documents exist within Fluor's possession, custody, or control that are not protected, then Fluor will produce them at a mutually convenient time and place. .

III.

Any and all documents, correspondence, reports, statements, deposition testimony, charts, treatises, books, research, materials or other tangible things upon which any expert you expect to testify at trial will base his opinion.

RESPONSE TO REQUEST FOR PRODUCTION NO. III: There are no documents responsive to this request that are within Fluor's possession, custody, or control, and Fluor objects to producing otherwise responsive documents that are protected by the by the attorney-client privilege or the work product doctrine.

IV.

Any and all documents, tests, computations, summaries, reports, sketches, diagrams, drawings, photographs, pictures, video tapes or other tangible objects or materials which you have supplied to any expert witness you expect to testify at trial.

RESPONSE TO REQUEST FOR PRODUCTION NO. IV: There are no documents within Fluor's possession, custody, or control that are responsive to this request, and Fluor objects to producing otherwise responsive documents that are protected by the by the attorney-client privilege or the work product doctrine.

V.

Copies of any photographs, maps, plats, diagrams, drawings or other documents regarding the incident scene, the persons involved in the incident, injuries sustained by the plaintiffs, injuries sustained by the defendants, or any aspect of this litigation.

RESPONSE TO REQUEST FOR PRODUCTION NO. V: There are no documents responsive to this request that are within Fluor's possession, custody, or control, other than personnel documents reflecting the status changes of the plaintiffs' employment, which either already have

been produced or will be produced at a mutually convenient time and place.

VI.

Copies of all personnel reports, insurance claim forms or other such account, written or verbal (if preserved), of the occurrence which is the subject of this lawsuit, regardless of whether such report was made by you or someone acting on your behalf, or whether said report was made by any other person, but which is accessible to you, your attorney, or any other person acting on your behalf.

RESPONSE TO REQUEST FOR PRODUCTION NO. VI: There are no documents responsive to this request within Fluor's possession, custody, or control, and Fluor objects to producing otherwise responsive documents that are protected by the attorney-client privilege or the work product doctrine.

VII.

Any and all documents, instruments, tangibles or other items whatsoever which you will tender into evidence at a trial of the issues of this lawsuit.

RESPONSE TO REQUEST FOR PRODUCTION NO. VII: Fluor has not yet determined what evidence it will introduce at the trial of this matter.

VIII.

All documents substantiating or in anywise [sic] supporting any defense designated by defendants in its answer filed in this cause.

RESPONSE TO REQUEST FOR PRODUCTION NO. VIII: Fluor will produce non-privileged documents that are responsive to this request and within its possession, custody, or control at a mutually convenient time and place.

IX.

A copy of any letters, reports, memoranda or other documents portraying the opinions of any experts consulted by you in connection with any aspect of this litigation.

RESPONSE TO REQUEST FOR PRODUCTION NO. IX: There are no documents responsive to this request within Fluor's possession, custody, or control, and Fluor objects to producing otherwise responsive documents that are protected by the attorney-client privilege or the work product doctrine.

X.

Copies of any photographs, maps, plats, diagrams, drawings or other documents regarding the incident scenes, the people involved in the termination of each plaintiff, injuries sustained by each plaintiff, the reasons or justifications claimed by the defendant, or any aspect of this litigation.

RESPONSE TO REQUEST FOR PRODUCTION NO. X: Fluor will produce documents that are responsive to this request, within its possession, custody, or control, and not privileged at a mutually convenient time and place.

XI.

Copies of all documents referenced in your discovery responses or evidencing or concerning any of same.

RESPONSE TO REQUEST FOR PRODUCTION NO. XI: These already have been produced or will be produced at a mutually convenient time and place.

XII.

Copies of all reports of private investigators or other surveillance personnel of any activities of any party or witness, and copies of any photograph, video tapes or other preservations [sic] of any activities of any such person so surveilled [sic], and copies of all notes or preservations of impressions or observations of any surveillor.

RESPONSE TO REQUEST FOR PRODUCTION NO. XII: Fluor does not have within its possession, custody, or control any documents responsive to this request. Fluor reserves all objections that might be available to it in the course of supplementing this response in accordance with Rule 26.

XIII.

Copy of the most recent published annual report of the defendant.

RESPONSE TO REQUEST FOR PRODUCTION NO. XIII: Fluor objects to Request for Production No. XIII as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Dated: November 24th, 2003.

Respectfully submitted,

FLUOR DANIEL SERVICES CORPORATION,
Defendant.

By:

Steven J. Allen
Steven J. Allen, One of Its Attorneys

OBJECTIONS BY:

Steven J. Allen, MSB #8910
Amy M. Klotz, MSB #99616
BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
Post Office Drawer 119
Jackson, Mississippi 39205
(601) 948-3101 - Telephone
(601) 960-6902 - Facsimile
Counsel for Fluor Daniel Services Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day forwarded a true and correct copy of the foregoing document via United States mail, first-class, postage prepaid, to the following counsel of record:

Thomas Q. Brame, Jr.
Post Office Box 301
Bay Springs, Mississippi 39422

This the 24th day of November, 2003.



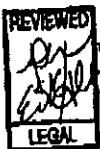
Steven J. Allen

STATE OF CALIFORNIA
COUNTY OF ORANGE

BEFORE ME, the undersigned authority, did on this day personally appear Joanna M. Oliva, known to me to be the person whose name is subscribed to the foregoing instrument, who after being duly sworn upon his oath did state:

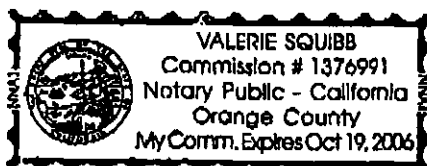
I, JOANNA M. OLIVA, have read the forgoing, Fluor Daniel Services Corporation's Responses to Plaintiffs' Amended First Interrogatories and Request for Production of Documents Propounded Unto the Defendant, Fluor Daniel Services Corporation, and First Set of Interrogatories and Requests for Production of Documents of James Williams, Reggie Williams, Ralph V. Scott and Hardy Gordon, Propounded Unto the Defendant Fluor Daniel Services Corporation, and know its contents.

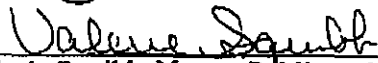
I am an officer of Fluor Daniel Services Corporation, which is a party to this action, and I am authorized to make this verification for and on its behalf. I make this verification for that reason. None of the contents of the foregoing document are within my personal knowledge or the personal knowledge of any other single person at Fluor Daniel Services Corporation, but rather, the information was obtained from multiple sources by Fluor Daniel Services Corporation's employees and agents. Therefore, based on information and belief, but only that, I declare that the matters stated in the foregoing document are true, correct and complete.




JOANNA M. OLIVA

SUBSCRIBED AND SWORN TO before me on this the 21st day of Nov, 2003, to certify which witness my hand and seal of office.




Valerie Squibb, Notary Public and for
Orange County, California

My Commission Expires: Oct. 19, 2006

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Verification

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THOMAS G BRAME JR

PAGE 02

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
JASPER COUNTY, MISSISSIPPI

GENE JONES and ASHLEY CRAFT

Thomas Brame

PLAINTIFFS

VS.

FILED
JASPER COUNTY, MISS.

CIVIL ACTION NO. 13-0036

MAY 04 2004

FLUOR DANIEL SERVICES CORPORATION
AND RUDY AMAROSHERRY BRELAND
CIRCUIT CLERK

DEFENDANT

PLAINTIFFS MOTION TO COMPEL DEFENDANT
TO RESPOND TO WRITTEN DISCOVERY

Comes now the Plaintiff, GENE JONES ET AL, by and through counsel, and respectfully moves this Court to enter its Order Compelling the Defendant, Fluor Daniels Service Corporation, to appropriately and fully respond to the discovery requests propounded unto it, and in support of same would show the following facts and matters, to wit:

I.

That under the date of August 22, 2003, Plaintiffs served on Defendant their *Amended First Interrogatories and Requests For Production of Documents Propounded unto the Defendant, Fluor Daniels Services Corporation*, a true copy of which is attached hereto as Exhibit "A" and incorporated herein by in toto.

II.

That on November 24, 2003, defendant served on Plaintiff's Attorney its *Fluor Daniel Services Corporation's Responses to Plaintiffs' Amended First Interrogatories and Requests for Production of Documents Propounded Unto The Defendant Fluor Daniel Services Corporation, and First Set of Interrogatories and Requests For Production of Documents of James Williams, Reggie Williams, Ralph V. Soot and Hardy Gordon, Propounded Unto the Defendant, Fluor Daniel Services Corporation*. That a true and correct copy of same is attached hereto as Exhibit "B" and incorporated herein by reference in toto.

EXHIBIT

H

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THOMAS Q BRAME JR

PAGE 03

III.

That the Defendants answers as a whole are vague, evasive, and did not comply with the requirements of the Mississippi Rules of Civil Procedures regarding discovery cooperation and disclosures. Of thirty requests for production and interrogatories propounded unto Defendant in this first set, some twenty-two were met with objections or answers which were not fully responsive.

IV.

PLAINTIFF'S FIRST INTERROGATORY NUMBER VI requested information concerning other legal actions in which Fluor Daniels Services Corporation was involved, which is reasonably calculated to lead to discoverable information, especially in so far as any litigation concerning allegations similar to those raised by these Plaintiffs is concerned. This requested information falls within the scope and purview of Rule 26 of the Mississippi Rules of Civil Procedures, and the answers should be compelled by this Honorable Court.

V.

PLAINTIFF'S FIRST INTERROGATORY NUMBER IX sought the identity of trial witnesses. This information obviously is relevant, material and fully discoverable, nonetheless Fluor Daniels did not disclose trial witnesses. Plaintiff is entitled to an order compelling the defendant to promptly disclose, the complete identities of all of its trial witnesses.

VI.

PLAINTIFF'S FIRST INTERROGATORY NUMBER XII sought all facts which support Defendants Affirmative Defenses. Defendant's simply answered "many of these facts appear in the transcripts of Plaintiffs depositions", and indicated that Flour Daniels would supplement. The specific facts which support each of the Defendant's Affirmative Defenses are obviously relevant and material, and fully discoverable. Furthermore, Plaintiff is entitled to accurate responses as to the particular facts on which

11/30/2004 03:23 7644355

THOMAS G BRAME JR

PAGE 04

Defendant travels. Defendants answer as presented simply does not comply with the discovery requirements of the Mississippi Rules of Civil Procedures, and Defendant should be compelled to give specific appropriate answers to all objective interrogatories, including this one.

VII.

PLAINTIFF'S FIRST INTERROGATORY NUMBER XIV sought information about the very heart of this lawsuit, a detailed narrative account of all reasons and justifications for the termination of each of these several Plaintiffs. This lawsuit is about wrongful termination, and therefore the facts sought by this interrogatory are relevant, material and appropriate for disclosure. Defendant's answer referred to another interrogatory which simply said the Plaintiff : were not fired for any fault reasons, and generally referred to Plaintiff's deposition testimony and indicated it would supplement. Once again the Defendant's answers are evasive, vague, and not in compliance with the requirements for discovery disclosures. Defendant's should be compelled to give complete and fully and detailed responses to Interrogatory Number XIV.

VIII.

PLAINTIFF'S FIRST INTERROGATORY NUMBER XVI sought the net worth of the Defendant, and net earnings. This information is material, relevant and seeks information required for proof at trial in the punitive damage phase, by applicable law. Nonetheless, the Defendant refused to answer same, and the Defendant should be compelled to answer, or otherwise provide this information in form appropriate to the Courts usual practice to preserve these issues and have same readily available for Plaintiff's use at trial in the punitive damages phase of the proof.

IX.

PLAINTIFF'S INTERROGATORY NUMBER XVII sought the identity of all other persons on the subject job which the Defendant had terminated for a period of six weeks before the first Plaintiff was discharged, until the end of the period ending six weeks after the last Plaintiff was discharged. Again this lawsuit is about wrongful discharge and wrongful employment practices, and this information is therefore relevant and reasonably calculated to lead to relevant information. Same is therefore discoverable and this

Honorable Court should compel the Defendant to answer same.

X.

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION NUMBER I sought production of any statements taken from any witness concerning any aspect of this litigation. This information is not necessarily work product; also this information is not necessarily attorney client privileged information. The Defendant failed to produce any documents in connection therewith. Plaintiff contends that the Defendant should be compelled to produce any documents or statements taken by any one other than its Attorney; and should also be required to identify any statements taken by its attorney, so that the Court can determine whether or not the attorney client privilege would preclude disclosure, and whether or not the attorney work product doctrine would preclude the disclosure. Any information not precluded on those two grounds as objected to by Defendant should be compelled produced promptly.

XI.

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION NUMBER II sought reports made regarding any aspects of this litigation, for in-house record keeping, insurance reporting or other means. Defendant failed to make any disclosures and objected on the attorney client privilege and work product doctrine. Again if any documents are not directly work product or attorney client privileged communications, then they should be produced. Plaintiff respectfully moves this Honorable Court to compel their production. As to any documents which the Defendant contends are privileged or otherwise not discoverable, Plaintiffs move this Honorable Court for an order compelling their identity and description to the Plaintiff; and an in camera review of same by the Court to determine whether they are in fact privileged.

XII.

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION NUMBER VII sought documents, instruments and tangibles which would be tendered into evidence. Obviously this information is relevant material and designed to lead to discoverable information, and the Defendant should be compelled to respond to same.

XIII.

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION NUMBER VIII sought documents supporting any defense designated by the Defendant, and Defendant indicated that they would produce non-privileged documents. Plaintiff respectfully submits that these documents sought are relevant and material, and discoverable, and an order should be entered compelling the Defendant to produce all of same. As previously requested, Plaintiff's move this Honorable Court to compel the Defendant to fully identify, to the Plaintiff, any documents which it contends are not discoverable, and to produce same to the Court for an in camera review to determine their discoverability.

XIV.

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION NUMBER X sought maps, plats, diagrams, drawings or other documents regarding the incident scenes, the people involved in the termination of each Plaintiff, injuries sustained by each Plaintiff, the reasons or justifications claimed by the Defendant for termination of each Plaintiff, or any other aspect of this litigation. The Defendant simply indicated that it would produce a response, but to date has not produced same. Plaintiffs hereby move this Honorable Court to enter its order compelling the Defendant to produce the same within a definite, designated time, and Plaintiffs hereby offer to pay any reasonable copy expenses incurred.

XV.

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION NUMBER XI sought copies of documents referenced in discovery responses of the Defendant, and Defendant's answer was simply that same "would be produced", but to date has not been produced. Plaintiffs respectfully move this Honorable Court for an order compelling the production of same at a definite designated time, and hereby offer to pay all reasonable copy costs associated therewith.

XVI.

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION NUMBER XIII sought a copy of the annual report of the Defendant, which will exhibit net worth and other pertinent information necessary to

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THOMAS G BRAME JR

PAGE 07

Plaintiff's proof in connection with its case for punitive damages. This information is relevant to the issues of the lawsuit, and required by the Plaintiff's in its case for punitive damages, and an order should be entered compelling the Defendant to respond to same

XVII.

PLAINTIFF'S SECOND REQUEST FOR PRODUCTION NUMBER I requested payroll records, personnel files and other documents in the Defendants possession concerning Rudy Amaro. Defendant has to date failed to produce any such document. The allegations of the complaint are centered around Rudy Amaro in his capacity as an employee of the Defendant, including a multitude of alleged wrongful acts in his capacity as crew chief over Plaintiffs for the Defendant corporation. The Defendant's handling of these matters, it's discipline, if any, of Rudy Amaro, and all other aspects of their handling of this situation, insofar as they relate to Rudy Amaro, are both relevant and material and are calculated to lead to further relevant and material information, and should be compelled produced to Plaintiff by this Honorable Court. That a true and correct copy of Plaintiff's Second Request for Production is attached hereto as Exhibit "C", and the Defendants response to same is attached hereto as Exhibit "D". That both of said documents are incorporated herein by reference in toto.

XVIII.

That counsel for Plaintiffs has expended considerable time and effort in the preparation and prosecution of this *Motion to Compel*, necessitated because of Defendant's failure to adequately respond to discovery; that Plaintiff's are entitled to recovery of reasonable fees and expenses brought in the preparation and prosecution of this action, including but not limited to attorney's fees.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully moves this Honorable Court to enter its Order Compelling the Defendant to Respond to Discovery as herein set forth; and to award unto Plaintiffs reasonable fees and expenses in the preparation prosecution of this action.

Resp. S.b.
Thomas Brame

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
JASPER COUNTY, MISSISSIPPI

GENE JONES, ASHLEY CRAFT,
JAMES WILLIAMS, REGGIE WILLIAMS,
RALPH V. SCOTT and HARDY GORDON

PLAINTIFFS

VS.

CIVIL ACTION NO. 13-0036

FLUOR DANIEL SERVICES CORPORATION
AND RUDY AMARO

DEFENDANT

**PLAINTIFFS' SECOND MOTION TO COMPEL DEFENDANT
TO RESPOND TO WRITTEN DISCOVERY REQUESTS**

Comes now the Plaintiffs, GENE JONES, ET AL, by and through counsel, and respectfully moves this Honorable Court to enter its Order compelling the Defendant, Fluor Daniel, to meaningfully respond to discovery heretofore propounded unto it, and in support of same would show the following facts and matters, to-wit:

I

Plaintiffs served their *Plaintiff's Amended First Interrogatories and Request for Production of Documents to the Defendant, Fluor Daniel Services Corporation*, on August 22, 2003. A true copy of this document is attached hereto as Exhibit "A" and incorporated herein by reference.

II

Under date of November 24, 2003, Fluor Daniel Services Corporation responded to this discovery. A true copy of the discovery responses of the Defendant is attached hereto as Exhibit "B" and incorporated herein by reference.

III

Plaintiff contends that the Interrogatory responses of the Defendant were inadequate, and this court should enter its Order compelling the Defendant to properly respond to same within ten days of this date.



Plaintiff particularly complains of the following:

IV

INTERROGATORY NO. 9: Sought the identity of trial witnesses, but Defendant did not disclose the names of any trial witnesses. This information is obviously relevant, material and within the scope of permissible discovery and Fluor Daniel Service Corporation should be compelled to promptly provide this information to Plaintiff.

V

INTERROGATORY NO. 12: Sought the facts which support the Affirmative Defenses pled by Defendant. Defendant bears the burden of proof on its Affirmative Defenses. The facts supporting them are relevant, material and within the permissible scope of discovery. Defendant should be compelled to respond to this Interrogatory fully within ten days.

VI

INTERROGATORY NO. 16: Sought the net worth of the Defendant Corporations net earnings at the end of the most recent physical year, but Defendant failed to produce same. Plaintiff contends that this information is relevant, material and within the permissible scope of discovery, because Plaintiff has sought punitive damages in this matter. Defendant should be compelled to provide this information, or to do so under seal to the Court consistent with the Court's usual practice concerning this matter.

VII

REQUEST FOR PRODUCTION NO. 2: Sought copies of reports made regarding any aspect of this litigation, and Defendant objected in part but agreed to provide any documents not objected to. Plaintiffs contend that this information is relevant, material and within the permissible scope of discovery, and Defendant should be compelled to immediately provide same. This pleading further serves as request that copies of said documents be immediately produced to Plaintiffs; and gives notice that Plaintiffs agree to pay any reasonable copying charges if required.

VIII

REQUEST FOR PRODUCTION NO. 5: Sought copies of any photographs, maps, plats, diagrams, drawings or other documents regarding the incident scenes, the persons involved in this litigation, or any other aspect of this litigation. Defendant answered that there were no documents responsive to this request other than personnel documents on the Plaintiffs, and offered to produce them at a mutually convenient time and date but never has produced them. Plaintiffs contend that this information is relevant, material and within the permissible scope of discovery, and Defendant should be compelled to immediately provide same. This pleading further serves as request that copies of said documents be immediately produced to Plaintiffs; and gives notice that Plaintiffs agree to pay any reasonable copying charges if required.

IX

REQUEST FOR PRODUCTION NO. 7: Sought all documents, instruments, tangibles or other items which would be tendered into evidence at trial. Fluor Daniel did not provide any such documents. This information is relevant, material and within the permissible scope of discovery, and that Plaintiff is entitled to same. Defendant should be compelled to produce this information to Plaintiff in no more than ten days after the hearing of this Motion.

X

REQUEST FOR PRODUCTION NO. 8: Sought documents substantiating or supporting any Affirmative Defense advanced by the Defendant. Defendant responded that it would produce non-privileged documents at a mutually convenient time but has not yet done so. Plaintiffs contend that this information is relevant, material and within the permissible scope of discovery, and Defendant should be compelled to immediately provide same at a time no more than ten days after the date of the hearing of this Motion.

XI

REQUEST FOR PRODUCTION NO. 10: Sought photographs, maps, plats, diagrams, drawings and other documents regarding the incident scene, and such documents pertaining to any aspect of this

litigation. Again Defendant indicated that it would produce same at a mutually convenient time but has never done so. Plaintiffs contend that this information is relevant, material and within the permissible scope of discovery, and Defendant should be compelled to immediately provide same at a time no more than ten days after the date of the hearing of this Motion.

XII

REQUEST FOR PRODUCTION NO. 11: Sought copies of all documents referenced in Defendant's discovery responses, or evidencing such discovery responses, and Defendant answered only that they were produced or would be produced at a mutually convenient time and place, but have not yet been produced. Plaintiffs contend that this information is relevant, material and within the permissible scope of discovery, and Defendant should be compelled to immediately provide same at a time no more than ten days after the date of the hearing of this Motion.

XIII

REQUEST FOR PRODUCTION NO. 13: Sought the most recent published annual report of the Defendant, but Defendant objected to the production of same and refused to provide it. This information is relevant material, within the scope of discovery, and Defendant should be compelled to produce same at a time no more than ten days after the hearing of this Motion, or alternatively to produce same under seal at trial consistent with the Court's usual order concerning this matter.

XIV

On July 29, 2003, Plaintiffs submitted their **PLAINTIFF'S SECOND INTERROGATORY AND REQUEST FOR PRODUCTION PROPOUNDED UNTO DEFENDANT, FLUOR DANIEL SERVICES CORPORATION**. A copy of this document is attached hereto as Exhibit "C" and incorporated herein by reference. This Request for Production sought personnel files, and other documents concerning Rudy Amaro, including all documents or papers in Defendant's possession on this individual. Defendant refused to respond to same and to date has not produced the requested documents. This information is relevant,

material and reasonably calculated to lead to further discoverable information and admissible evidence. Plaintiff contends that Defendant should be required to produce this entire claim file at a time no more than ten days after the hearing on this Motion. That a true and correct copy of Defendant's answer is attached hereto as Exhibit "D" and incorporated herein by reference.

XV

Finally, Plaintiff propounded its third single Interrogatory to the Defendant under date of September 9, 2003, seeking the date of discharge of Rudy Amaro, the reasons for his discharge, whether he filed a grievance or objection to the discharge, and information concerning the initial hiring of Mr. Amaro. A copy of this document is attached hereto as Exhibit "E" and incorporated herein by reference. Defendant has failed and refused to answer any portion of this Interrogatory. Again the information is relevant, material and within the permissible scope of discovery, and Defendant should be compelled to answer all of same at a time no more than ten days after the hearing of this Motion.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully move this Honorable Court to enter its Order compelling the Defendant to provide all information herein above referenced at a time no more than ten days after the hearing of this Motion.

Respectfully submitted,

GENE JONES, et al

BY: _____



THOMAS Q. BRAME, JR.,
Attorney for Plaintiffs

NOTICE OF MOTION HEARING


TO: Honorable Steven J. Allen
Attorney at Law
240 Third Avenue West
Hendersonville, North Carolina 28739

Please take notice, that Thomas Q. Brame, Jr., Attorney for Plaintiffs, will call up the heretofore filed *Plaintiff's Motion to Compel Defendant to Respond to Written Discovery Requests* before Honorable Robert G. Evans, Circuit Court Judge, commencing at 10:00 o'clock a.m. on the 11th day of January, A.D., 2008, in the Main Courtroom at the Courthouse in Mendenhall, Simpson County, Mississippi. You are invited to attend and take such part as you desire.

Respectfully submitted,

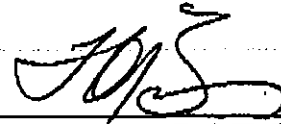
GENE JONES, et al, Plaintiffs

By: _____


THOMAS Q. BRAME, JR.,
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Thomas Q. Brame, Jr., attorney for Plaintiffs, do hereby certify that I have this day served on Honorable Steven J. Allen, a true and correct copy of the above foregoing instrument by telephone facsimile machine to 1-828-693-0177, and have this day deposited in the United States Mail, postage prepaid, a true and correct copy of same addressed to said attorney at 240 Third Avenue West, Hendersonville, North Carolina 38739, all on this the 4th day of January, A.D. 2008.



THOMAS Q. BRAME, JR.

THOMAS Q. BRAME, JR.
The Brame Law Firm
2781 Highway 15
Post Office Box 301
Bay Springs, Mississippi 39422
Telephone: (601) 764-4355
Facsimile: (601) 764-4356
Mississippi State Bar Number 4287