£6.50

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# THE CASH-LANDRUM FILE

# *CIVIL ACTION NO H84 348*

**ON 29 DECEMBER 1989, BETTY CASH AND COLBY LANDRUM ENCOUNTERED A UFO NEAR HUFFMAN, TEXAS. THE WITNESSES RECEIVED HORRIFIC INJURIES. THIS SPECIAL REPORT CONTAINS THEIR FIGHT IN THE LAW COURTS OF AMERICA TO WIN COMPENSATION.**

**WAS THE UFO A USAF VEHICLE, OR A RECOVERED ALIEN DEVICE?**

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# CIVIL ACTION NO H84 348
# THE CASH-LANDRUM FILE

ON 29 DECEMBER 1980, BETTY CASH AND COLBY LANDRUM ENCOUNTERED A UFO NEAR HUFFMAN, TEXAS. THEIR STORY BECAME LEGENDARY.

SHORTLY BEFORE 9.00PM, WHILST DRIVING A MOTOR VEHICLE, THE COUPLE OBSERVED A DIAMOND-SHAPED UFO HOVERING JUST ABOVE THE SURROUNDING TREE-TOPS. A LOUD NOISE WAS HEARD AND FLAMES WERE SEEN COMING FROM THE OBJECT. THE HEAT FROM THE UFO WAS DESCRIBED AS 'INCREDIBLE'.

THE WITNESSES ALSO REPORTED SEVERAL U.S. MILITARY 'CHINOOK' HELICOPTERS IN THE VICINITY WHICH THEY CLAIMED WERE DIRECTLY OR INDIRECTLY INVOLVED WITH THE GLOWING UFO.

THE WOMEN WERE SUBJECTED TO INTENSE LEVELS OF RADIATION WHICH CAUSED NAUSEA, SICKNESS AND DIARRHOEA. BETTY CASH ALSO SUFFERED FROM LOSS OF HAIR, BREAST CANCER (WHICH LED TO A MASTECTOMY) AND OTHER ILLNESSES. COLBY LANDRUM LOST HER HAIR, AND ALSO SUFFERED TERRIBLY WITH BURN MARKS AND SEVERE SWELLING OF THE EYES.

RESEARCHERS AND LAWYERS WERE ALERTED AND THERE FOLLOWING A LANDMARK CASE IN THE AMERICAN COURTS. THE SUGGESTION WAS, U.S. AUTHORITIES ATTEMPTED TO REMOVE OR TRANSPORT AN ALIEN CRAFT OR A HIGHLY ADVANCED PIECE OF MACHINERY.

AFTER YEARS OF LEGAL WRANGLING AND A LAW-SUIT WHICH TOTALLED MILLIONS OF DOLLARS, THE CASE WAS THROWN OUT ON THE PREMISS THE U.S. GOVERNMENT DID NOT OWN SUCH A VEHICLE.

THE MEDICAL BILL RAN INTO MILLIONS OF DOLLARS, AND THE WITNESSES HAVE SUFFERED MASSIVE FINANCIAL LOSS. SOMETHING UNDOUBTEDLY HAPPENED TO THESE BRAVE WOMEN.

THIS FANTASTIC FILE KNOWN AS *'AN ATTORNEY WORK PRODUCT'* CONTAINS 82 PAGES OF OFFICIAL DOCUMENTS WHICH WERE PREPARED AND WRITTEN DURING THIS HISTORIC CASE. THE FULL DETAILS (IN OUR OPINION) SHOW A GREAT INJUSTICE WAS DONE.

3/1/92

82 Pages

ATTORNEY WORK PRODUCT

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☐ (j)*(2)
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☐ (k)(5)

FOIA:
☐ (b)(1) ☐ (b)(4) ☐ (b)(7)(a) ☐ (b)(7)(d) ☐ Released with excisions
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☐ (b)(3) ☐ (b)(6) ☐ (b)(7)(c) ☐ (b)(7)(f) ☒ Withheld in full

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH, et al | § | |
| | § | |
| Plaintiffs | § | |
| | § | |
| vs. | § | Civil Action No. H-84-348 |
| | § | |
| UNITED STATES OF AMERICA | § | |
| | § | |
| Defendants | § | |

ORDER OF DISMISSAL

CAME ON this day the Motion to Dismiss and/or for Summary Judgment filed by the United States and the Court, having considered the Motion and accompanying Memorandum, and the subsequent pleadings of the parties.

IT IS HEREBY ORDERED that the above noted cause of action is DISMISSED pursuant to Federal Rule of Civil Procedure Rule 12(b)(1), Rule 12(b)(6) and Rule 56.

DONE at Houston, Texas, this 21st day of August, 1986.

UNITED STATES DISTRICT JUDGE

| | | | | | | | | | | | | | | | | |
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PLAINTIFFS

CLOSED 8-21-86

DEFENDANTS

A | BETTY CASH, VICKI LANDRUM, COLBY LANDRUM | UNITED STATES OF AMERICA

CAUSE

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

28 U.S.C. §1346(b), 2671 et seq, Airplane Product Liability
$5,000,000.00

ATTORNEYS


Peter A Gersten Atty in Charge
GAGLIARDI, TORRES & GERSTEN
27 N. Broadway
Tarrytown, N.Y. 10591
(914) 631-1100

Frank A. Conforti
Asst. U.S. Attorney
P.O. Box 61129
Houston, Texas 77208
229-2630

William C. Shead Co- Counsel
William C. Shead Lawfirm
2927 Broadway Boulevard
Houston, Texas 77017
713.649-8944


| CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS | FILING FEES PAID | | | STATISTICAL CARDS | |
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| DATE | NR. | ROSS N STERLIN( PROCEEDINGS H-84-348 |
|---|---|---|
| -18-84 | 1 | ORIGINAL COMPLAINT, filed. |
| -18-84 | | SUMMONS (2) issued |
| 25-84 | 2 | (RNS) MOTION & ORDER PURSUANT TO LOCAL RULE 1, filed. bb<br>Peter A. Gersten is designated as atty in charge for Pltfs'<br>William C. Shead designated as Local Co-counsel. |
| -21-84 | 3 | Pltf's AMENDED COMP., filed.aa Dkt'd 2-27-84 |
| -16-84 | 4 | Deft's MOTION FOR MORE DEFINITE STATEMENT, filed. (no stmt) pg<br>M/D Mar 26, 1984, by Counsel. Dkt'd 3-2 |
| -29-84 | 5 | Pltfs' MORE DEFINITE STATEMENT (construed as RESPONSE to deft's Mot<br>for More Definite Statement, filed. pg Dkt'd 3-3( |
| -5-84 | 6 | ANSWER of Deft, filed. rj Dkt'd 4-11-84 |
| 17-84 | 7 | (RNS) ORDER, filed, parties ntfd. jdc<br>Deft's motion for more definite statement is DENIED. |
| -28-84 | 8 | (RNS) DOCKET CONTROL ORDER, filed. Parties ntfd. pg/vgb Dktd 1-11-<br>Amendments & New Parties Jan 17, 1985<br>Motions Jan 17, 1985<br>Joint PTO Feb 26, 1985<br>Docket Call Mmar 4, 1985, 11:00AM |
| 17-85 | 9 | Deft's UNOPPOSED MOTION FOR EXTENSION OF TIME, filed. vgb<br>Dtkd 1-18- |
| 17-85 | 10 | Deft's MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT, filed.<br>(no stmt) vgb Dktd 1-18-<br>M/D Feb 4, 1985 by Clerk |
| 17-85 | 11 | MEMORANDUM IN SUPPORT OF DEFT'S MOTION TO DISMISS AND/OR<br>FOR SUMMARY JUDGMENT, filed. vgb Dktd 1-18- |
| 17-85 | 12 | UNOPPOSED MOTION FOR A CONTINUANCE OF TIME OF THE DOCKET CALL,<br>filed. vgb Dktd 1-18- |
| 1-85 | 13 | (RNS) ORDER, filed. Parties ntfd. vgb Dktd 2-1-85<br>Pltf's unopposed motion for continuance is GRANTED;<br>Case is reset for Docket Call on Sep 3, 1985, 11:00AM. |
| 0-85 | 14 | Pltfs' REPLY TO DEFT'S MOTION TO DISMISS AND/OR FOR SUMMARY<br>JUDGMENT, filed. vgb Dktd 9-4-85 |
| -85 | 15 | Deft's REPLY, filed. vgb Dktd 9-4-85 |
| 18-85 | 16 | Pltfs' atty's MOTION FOR SUBSTITUTION OF COUNSEL, filed. db<br>M/D Jan 6, 1985 by clerk. dkt'd 12-19-85 |

DC 111A
(Rev. 1/75)

ROSS N. STERLING

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF | DEFENDANT | H-84-348 DOCKET NO. |
|---|---|---|
| BETTY CASH, et al | UNITED STATES OF AMERICA | PAGE ___ OF ___ PAG |

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 1-30-86 | | Rtn'd Pltf's Motion to Continue Deft's Motion to Dismiss, due to non-compliance w/L.R. 14. (no stmnt opp/non-opp) as/wl |
| 2-20-86 | 17 | Pltf's First Amended MOTION TO CONTINUE DEFENDANT'S MOTION TO DISMISS (Opposed) filed. jrl Dktd 2-21-86 M/D Mar 10, 86 by Clerk |
| 2-26-86 | 18 | Deft's Opposition to Pltfs' First Amended Motion to Continue Deft's Motion to Dismiss, filed. jrl Dktd 2-27-86 |
| 5-14-86 | 19 | Deft's MOTION FOR PROTECTIVE ORDER Concerning First Request for Production, filed. jl M/D Jun 9, 86 by Clerk Dktd 5-15-86 |
| 5-28-86 | 20 | (JDA) ORDER, filed. Parties ntfd. jl All discovery is STAYED pending ruling on Motion to Dismiss and/or for Summary Judgment. Dktd 6-3-86 |
| 8-21-86 | 21 | (RNS) DISMISSAL ORDER, filed. Parties ntfd. jlp 1. This cause of action is DISMISSED pursuant to F.R.C.P. Rule 12(b)(1), Rule 12(b)(6) and Rule 56. Dkt'd 8-22-86 |

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH, ET. AL., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| vs. | ) | CIVIL ACTION NO. H-84-348 |
| | ) | |
| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Defendant. | ) | |

PROTECTIVE ORDER

CAME ON this day the Motion for Protective Order filed by the United States and the Court, having considered the Motion and accompanying Memorandum, and the subsequent pleadings of the parties,

It is hereby ORDERED that all discovery in the above noted cause of action is STAYED pending a ruling on the Motion to Dismiss and/or for Summary Judgment pursuant to Federal Rules of Civil Procedure Rules 12(b)(1), 12(b)(6) and 56.

DONE at Houston, Texas, this 28th day of May, 1986.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH et al | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| | § | CIVIL ACTION NO. H-84-3438 |
| v. | § | |
| | § | |
| UNITED STATES OF AMERICA | § | |
| | § | |
| Defendant | § | |

FIRST AMENDED
MOTION TO CONTINUE DEFENDANT'S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, BETTY CASH, VICKI LANDRUM, individually and as guardian ad litem for Colby Landrum, Plaintiffs in the above cause who respectfully moved the court to allow a continuance for further discovery before ruling on the Defendant's Motion to Dismiss or in the alternative Motion for Summary Judgment. As new counsel has been requested to be substituted in this matter, it is necessary that further discovery proceed so that the rights of the parties involved can be protected.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court grant this Motion for Continuance so that further discovery can proceed.

Respectfully submitted,

WILLIAM C. SHEAD

W. C. Shead
2927 Broadway Blvd.
Houston, Texas 77017

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion to Continue Defendant's Motion to Dismiss was mailed to attorney for Defendants as follows:

Frank A. Conforti
Assistant United States Attorney in Charge
P.O. Box 61129
Houston, Texas 77208

on this 13th day of February, 1986.

W. C. Shead

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH et al | § | |
| | § | |
| Plaintiffs | § | |
| | § | |
| vs. | § | CIVIL ACTION NO. H-84-3488 |
| | § | |
| | § | |
| UNITED STATE OF AMERICA | § | |
| | § | |
| Defendant | § | |

AFFIDAVIT OF OPPOSTION TO PLAINTIFF'S
MOTION TO CONTINUE DEFENDANT'S MOTION TO DISMISS

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned affiant, who, being first duly sworn did depose and say as follows:

I, W. C. Shead, am the attorney of record in the above-styled and numbered cause now pending in said court. I am duly licensed to practice law in the courts of the State of Texas. On February 4, 1986, my asociate, Rhonda S. Ross, talked with the Defendant's attorney, Frank A. Conforti, and he stated that he is opposed to Plaintiff's Motion to Continue Defendant's Motion to Dismiss. These facts are made with personal knowledge of the affiant and all facts stated herein are true and correct.

W. C. Shead

SUBSCRIBED AND SWORN TO BEFORE ME on this the 14 day of Feb., 1986.

Gertrude Heafner
Notary Public, State of Texas
Gertrude Heafner
My Commission Expires:
7-20-87

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH et al | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. H-84-348 |
| | § | |
| UNITED STATES OF AMERICA | § | |
| | § | |
| Defendant | § | |

MOTION FOR SUBSTITUTION OF COUNSEL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, RHONDA S. ROSS, of the Law Firm of BARFIELD & ROSS, 3410 Mount Vernon, Houston, Texas 77006, and moves that she be substituted for PETER GERSTEN, 895 Sheridan Avenue, Bronx, New York 10451, as counsel for Plaintiffs, BETTY CASH, VICKI LANDRUM, and COLBY LANDRUM in the above entitled and numbered cause.

Respectfully submitted,

BARFIELD & ROSS

By Rhonda S Ross
Rhonda Shedrick Ross
3410 Mount Vernon
Houston, Texas 77006
(713) 225-9257
State Bar No. 17299600

Consent is hereby given for the substitution of RHONDA S. ROSS of the law firm of BARFIELD & ROSS, as counsel for the Plaintiffs in the above entitled and numbered cause.

Wm. C. Shead

WILLIAM C. SHEAD
Attorney at Law
2927 Broadway Blvd.
Houston, Texas 77017

Betty Cash

BETTY CASH
6831 Grasselli Road, Apt. D
Fairfield, AL 35064

Vicki Landrum

VICKI LANDRUM, Individually
and for the minor,
COLBY LANDRUM
Rt. 1, Box 124
Dayton, Texas 77535

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DISTRICT

BETTY CASH, VICKI LANDRUM, INDIVIDUALLY AND AS GUARDIAN AD LITEM OF COLBY LANDRUM

Plaintiffs,

v.

UNITED STATES OF AMERICA

Defendant

Served U.S. Attorney's Office
Date 9/5/85 Time 11:05 Initials nm

CIVIL ACTION NO. H-84-348

CERTIFICATE-OF-SERVICE

I, William C. Shead, Local Attorney for Plainitffs, do hereby certify that I did personally SERVE the Defendant, UNITED STATES OF AMERICA, with a copy of the REPLY TO DEFENDANT'S MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT on August 30, 1985 by delivery of a copy to the office of the United States Attorney, attention Mr Frank A. Conforti, Assistant United States Attorney, Attorney in charge for Defendant in this case.

Respectfully Submitted,

William C. Shead

William C. Shead
Texas Bar #18168000
2927 Broadway Blvd.
Houston, Texas 77017
A.C. 713
Phones: 649-8944
644-4554

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

rec'd 8/30/85 @ 2:45

BETTY CASH et al :

Plaintiffs, :

v. CIVIL ACTION NO. H-84-348

UNITED STATES OF AMERICA :

Defendant. :

REPLY TO DEFENDANT'S MOTION TO DISMISS
AND/OR FOR SUMMARY JUDGMENT

Now comes the plaintiffs by their attorney, PETER A. GERSTEN, and, in reply to defendant's Motion for Summary Judgment , says that the defendant is not entitled to a dismissal or Summary Judgment for the following reasons:

I. The complaint filed by plaintiffs, when viewed in the light most favorable to plaintiffs, states a claim against the United States upon which relief can be granted.

II. Plaintiffs claim is not barred under the discretionary function exception to the Federal Tort Claims Act.

III. There exists genuine issues of material fact.

In support of its opposition plaintiffs file the accompanying Memorandum of Points and Authorities.

Respectfully Submitted,

WILLIAM C. SHEAD
2927 Broadway Blvd.
Houston, Texas 77017
(713) 649-8944

PETER A. GERSTEN
Attorney in Charge
895 Sheridan Avenue
Bronx, New York 10451
(212) 992-8500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH et al | : | |
| Plaintiffs, | : | |
| v. | : | CIVIL ACTION NO.H-84-348 |
| UNITED STATES OF AMERICA | : | |
| Defendant. | : | |

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

## I. Statement of The Case

Plaintiffs, Betty Cash, Vicki Landrum, and Colby Landrum(through his guardian ad litem Vicki Landrum) bring this action pursuant to 28 U.S.C. § 1346(b) and 28 U.S.C.§§ 2671-2680 seeking money damages for injuries resulting from their encounter with a "UFO" on December 29, 1980.

In the Complaint the Plaintiffs allege that the United States owned and operated an "experimental aerial device of a hazardous nature", which is also identified as"a large unconventional aerial object." In a More Definite Statement filed by plaintiffs, the object is called a "UFO", and a description is provided. Plaintiffs allege that the United States owned and operated the "UFO". Plaintiffs further allege that the United States was negligent in that it allowed the "UFO" to fly over a public road and come in contact with the plaintiffs. Plaintiffs allege that the United States failed to warn the plaintiffs of the "UFO".

## II. Statement of the Facts as Alleged

The following constitutes the facts as alleged by plaintiffs.

At approximately 9:00 P.M. on December 29, 1980, plaintiffs were driving on FM 1485 approximately seven(7) miles outside of New Caney, Texas.

Plaintiffs observed the "UFO" which was emitting a glow, and red and orange flames from its bottom. The "UFO" was the size of a standard city water tank, and is described by Vicki Landrum as oblong with rounded top and a point at the bottom, and by Colby Landrum as diamond-shaped.

The "UFO" hovered at treetop level of 60-80 feet over the roadway.It emitted a "beep-beep" sound and plaintiffs felt intense heat.

As a result of the heat emanating from the "UFO" the inside of the plaintiff's vehicle became very hot. Plaintiffs then exited their vehicle and observed the object for several minutes before re-entering the vehicle. All during this time they experienced intense and excruciating heat from the "UFO" .

On December 27, 1982 plaintiffs filed their administration claims for a total of $20 million in damages. On May 23, 1983 the claims were denied. Reconsideration was sought, and denied on September 2, 1983. On January 18, 1984 the plaintiffs filed this action.

## III. Issues

Whether the complaint filed by plaintiffs, when viewed in a light most favorable to plaintiffs, states a claim against the United States upon which relief can be granted.

Whether the claim of the plaintiffs is barred under the discretionary function exception to the Federal Tort Claims Act. See 28 U.S.C. )2680 (a).

Whether there exists genuine issue of material fact in this action.

## IV. Argument and Authorities

### I. THE COMPLAINT FILED BY PLAINTIFFS STATES A CLAIM AGAINST THE UNITED STATES UPON WHICH RELIEF CAN BE GRANTED.

#### A. There is only one aerial object referred to as a "UFO".

Defendant, in its motion to dismiss, states that "Plaintiffs imply though it is nowhere asserted that the United States owned and operated the 'UFO'. " Plaintiffs allege in there complaint that the defendant owned and operated an "experimental aerial device". It is clear from reading of the complaint in conjunction with plaintiffs More Definite Statement that only one aerial object is involved. An object because of its unusual characteristics defies precise identification. The object is indeed aerial and unconventional and from all appearances experimental. The term"UFO" is used to avoid the possibilit of mischaracterizing the object. The defendant misuses the term to create the impression that no triable issue of fact exists as to whether there existed a legal duty to plaintiffs by the defendant.

#### B. There existed a legal duty owed to the plaintiffs by the defendant.

Defendant contends that there existed no legal duty by defendant to plaintiffs and thus no claim can exist against the defendant. It is clear that if the defendant either owned,

operated or controlled the "UFO" there would exist that legal duty(the descretionary function exception is discussed in point II). Though the existence of a legal duty is a matter of law, the issue of whether the defendant owned, operated or controlled the "UFO" is a question of fact.

In determining a motion to dismiss, the facts alleged in the complaint will be accepted as true. Davis v. Davis. 526 F. 22 1286(5th Circuit 1976) and considered in the light most favorable to plaintiff. Crawford v. City of Houston, 368 F. Supp. 187 (D.D. Texas 1974) Thus, assuming that the "UFO" was an experimental aerial device, one can infer that the defendant owned, operated or controlled the "UFO" and the "UFO" would have the highest security classification.

The defendant contends through affidavits that"the United States neither owned, operated nor controlled the alleged 'UFO' ". Defendant's affidavits are insufficient and should not be considered on the issue of ownership, operation or control of the "UFO". Nowhere in any of the affidavits do the deponents assert that they had the security clearance necessary to obtain this highly classified information. Each and every affidavit offers unsworn,self-serving opinions which are not supported by evidence of the nature and extent of the various searches for "UFO" information. Plaintiffs contend that these affidavits have failed to eliminate all triable issues of fact as to ownership and control.

Once again accepting the facts alleged in the complaint as true, Davis supra, there were approximately two dozen military helicopters, including double rotary CH-47's, in the vicinity of the "UFO". Both the U.S. Army and the U.S. Marines have suffic-

ient number of CH-47's to accomodate the plaintiffs observations. The presence of the helicopters is further evidence that contradicts the defendant's affidavits.* Only in a trial with the right to confront and cross-examine witnesses, can plaintiffs effectively explore and resolve these issues of fact. How can the defendant deny ownership of this "UFO" which was observed in the State of Texas not to far from the City of Houston. How can the defendant deny ownership of this "UFO" without being compelled to reveal the true owner of this clearly hazardous device.

The defendant would have us believe that the "UFO" was a foreign invader or possibly an exterrestial visitor, inferences that would bear more weight if substantiated by evidence There is only one inference that can be drawn from the facts and circumstances of this case....the "UFO" was owned by the defendant. There are no other reasonable hypothesis.

## II. PLAINTIFFS'CLAIM IS NOT BARRED UNDER THE DISCRETIONARY FUNCTION EXCEPTION TO THE FEDERAL TORT CLAIMS ACT.

Assuming that the "UFO" was owned, operated and/or controlled by the defendant,the only reasonable assumption in light of the defendant's lack of an alternate solution, then the negligence attributable to the defendant is in allowing this object to come over a public road. It is clear that this negligence is on the operational level and not the policy level and thus questionable as to whether it falls within the

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*The affidavit submitted on behalf of the U.S. Army does not deny ownership of the helicopters. There was no affidavit submitted on behalf of the U.S. Marines.

discretionary function exception. Furthermore it is contended that the defendant was negligent in failing to warn plaintiffs of this hazardous device, such failure not coming within the discretionary function exception.

The defendant created the danger by allowing this object to come over a public road and in contact with plaintiffs. It is difficult to believe that the defendant is shielded from responsibility when a clearly hazardous device comes into contact with civilians over a public highway with the military present and doing nothing.

III. THERE EXISTS GENUINE ISSUES OF MATERIAL FACT.

Assuming, arguendo that the defendant did not own, nor operate, nor control the"UFO" a legal duty may still be attributable to the defendant. The Restatement (second) of Torts recognises the duty to take affirmative action which includes warning. Section 322 if the Restatement provides that:

> If the actor knows or has reason to know by his conduct, either tortuous or innocent, he has caused such bodily harm to another as to make him helpless and in danger of further harm, the actor is under a duty to exercise reasonable care to prevent such further harm.

Plaintiffs contends that there existed a limited legal duty owed to the plaintiffs by the defendant while the "UFO" was over the public road which the plaintiffs were traveling on. The presence of the helicopters implies knowledge on the part of the defendant of the existence of the "UFO"; knowledge not only of the object, but also of its dangerous propensities and its proximity to the plaintiffs.

Plaintiffs contend that this knowledge of the"UFO" threatening death or great bodily harm to another, which the

defendant might avoid with a little inconvenience, creates a sufficient relationship recognized by every moral and social standard to impose a duty of action.

In this case not only did the defendants vis-a-vis the helicopters, take no action to avoid the danger to the plaintiffs, the defendant also at no time attempted to warn the plaintiffs. The "UFO" was obviously a peril, not only threatening, but actually causing a great harm to the plaintiffs. Assuming, arguendo, that the "UFO" was a true unknown, as implied in defendant's motion, then the United States clearly has known about the obvious threat that "UFO'S" pose for at least 35 years. It must have been this knowledge that warranted the presence of military helicopters.

The plaintiffs pay taxes to the defendant for national defense. Obviously this imposes some type of relationship which reaches the degree of legal duty when the defendant not only knows of the danger but has its military present at that danger and then does nothing to warn the plaintiffs.

## CONCLUSION

For the reasons set forth herein, plaintiff respectfully requests this Court to deny defendant's motion.

Respectfully Submitted,

PETER A. GERSTEN
Attorney in Charge
895 Sheridan Avenue
Bronx, New York 10451
(212) 992-8500

WILLIAM C. SHEAD
2927 Broadway Blvd.
Houston, Texas 77017
(713) 649-8944

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION



BETTY CASH, VICKI LANDRUM
and COLBY LANDRUM

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v.

UNITED STATES OF AMERICA

CIVIL ACTION H-84-348

# ORDER

Came on for consideration Plaintiff's unopposed motion for continuance of the trial setting in this case, and the Court having considered same, it is ORDERED that the motion is GRANTED.

It is further ORDERED that this case is reset for Docket Call on September 3, 1985, at 11:00 a.m., to be called for trial in its numerical order.

DONE at Houston, Texas, this 31st day of January, 1985.

Lee H. Rosenthal
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH, VICKI LANDRUM, INDIVIDUALLY AND AS GUARDIAN AD LITEM OF COLBY LANDRUM | ) | |
| Plaintiffs, | ) | |
| v. | ) | CIVIL ACTION NO. H-84-348 |
| UNITED STATES OF AMERICA | ) | |
| Defendant. | ) | |

MORE DEFINITE STATEMENT

PURSUANT to the Order of this Court dated the 26th day of March, 1984, plaintiffs, through their attorney, PETER A. GERS hereby set forth a more definite statement of the allegations the instant action:

1. The "experimental aerial device" referred to in para 3, 5 and 6 of plaintiffs' complaint, and the "unconventional aerial object," the "aerial object," and the "object, " all referred to in paragraph 4 of plaintiffs' complaint, are all o and the same, and hereinafter will be referred to as the "UFO.

2. On information and belief supplied by the plaintiffs, the UFO appeared to be extremely bright, had red and orange flames emanating from its bottom, and was surrounded by a glow. Plaintiff BETTY CASH could not discern any distinct shape. To plaintiff VICKI LANDRUM the UFO appeared to be oblong with a rounded top and a point at the bottom. To plaintiff COLBY LANDRUM the UFO appeared to be diamond-shaped. Furthermore, w plaintiffs came within 133 ft. of the UFO, they experienced intense heat. The UFO, which now appeared to hover approximate

EXHIBIT A

60-to-80 ft. above the roadway, was the size of a standard city water tank. Lastly, plaintiffs heard a beep-beep sound when in the presence of the UFO.

3. See paragraph "2."

4. Plaintiffs did not observe any markings, numbers, symbo logos, or other designators on the UFO.

5. See paragraph "2." There were no other sounds, smells, visual aspects, or other sensory observations concerning the UFO.

ated: March 23, 1984

Westchester, N.Y.

Respectfully submitted,

PETER A. GERSTEN
Attorney-in-Charge for Plaintif
27 North Broadway
Tarrytown, N.Y. 10591
(914) 631-1100

William C. Shead, Esq.
2927 Broadway Blvd.
Houston, Texas 77017

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH, et al | X | |
| | X | |
| v. | X | CIVIL ACTION NO. H-84-348 |
| | X | |
| UNITED STATES OF AMERICA | X | |
| | X | |
| | X | |

UNOPPOSED MOTION FOR A CONTINUANCE OF TIME OF THE DOCKET CALL

Come now plaintiffs, by and through PETER A. GERSTEN, Esq. and respectfully move this Court for an Order granting a continuance of time of the Docket Call until September 2, 1985.

Plaintiffs submitted Interrogatories on or about April 24, 1984 and as of the date of this motion discovery has not been completed. Plaintiff is thus requesting this six month continuance to allow for the completion of discovery.

Counsel for defendant, MR. FRANK A. CONFORTI, Assistant United States Attorney was contacted by telephone today and stated he has no opposition to this motion.

This is plaintiff's first request for a continuance of time.

Respectfully submitted

/s/ P A Gersten

PETER A. GERSTEN
Attorney in Charge
27 North Broadway
Tarrytown, NY 10591
(914) 631-1100

William C Shead

WILLIAM C. SHEAD, ESQ.
2927 Broadway Blvd.
Houston, TX 77017
(713) 649-8944

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH, VICKI LANDRUM, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR COLBY LANDRUM | § | |
| Plaintiffs | § | |
| V. | § | CIVIL ACTION NO. H-84-348 |
| UNITED STATES OF AMERICA | § | |

ORDER

Defendant's motion for more definite statement is DENIED in view of the response filed by Plaintiffs on March 29, 1984. Plaintiffs' counsel are admonished to read carefully the provisions of Rule 11, Fed.R.Civ.P.

DONE at Houston, Texas, this 17th day of May, 1984.

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

BETTY CASH, VICKI LANDRUM, INDIVIDUALLY AND AS GUARDIAN AD LITEM OF COLBY LANDRUM

Plaintiffs,

v.

UNITED STATES OF AMERICA

Defendant.

Amended Complaint

Civil Action, File Number H-84-34

FIRST COUNT

1. This action arises under the Federal Tort Claims Act, 28 USC 1346 (b) , 2671 et seq., as hereinafter more fully appears. Before this action was instituted, the claims set forth herein was presented to the Department of the Air Force on December 20, 1982. Final denial of these claims, by the Department of the Air Force, was issued on September 2, 1983 and this suit was commenced within six months of said denial.

2. Plaintiff Betty Cash resides at 209 48th Street, Birmingham, Alabama. Plaintiff Vicki Landrum is the grandmother of Colby Landrum and both plaintiffs reside at 506 West Clayton, Dayton, Texas within the Jurisdiction of this Court.

3. During all times herein-after mentioned, defendant owned and operated military CH-47 double rotary type helicopters and an experimental aerial device of a hazardous nature.

4. On the evening of December 29, 1980 plaintiff Betty Cash was driving an automobile with two passengers, plaintiffs Vicki and Colby Landrum. At approximately 9:00 pm on FM Road 1485, 7 miles outside of New Caney, Texas, plaintiffs observed a large unconventional aerial object which was emitting a glow and flames. Plaintiff Betty Cash was forced to stop her automobile when the aerial object blocked the road. The plaintiffs exited the automobile and observed the object as it hovered at treetop level approximately 135 feet from them. The plaintiffs experienced intense and excruciating heat emanating from the object. After several minutes plaintiffs returned to the vehicle and the aerial object ascended. Plaintiffs then observed the object together with many military appearing helicopters, includin several CH 47s double rotary type. The helicopters appeared to be escorting and/or safeguarding the object.

5. At all times hereinbefore mentioned defendant did not use proper care and skill in failing to warn or protect plaintif from said experimental aerial device which was clearly hazardous in nature.

6. At all times hereinbefore mentioned, defendant negligently, carelessly, and recklessly allowed said experimental aerial device to fly over a publicly used road and come in contact with plaintiffs.

7. Solely by reason of defendant's carelessnes and negligence as aforesaid, plaintiff Betty Cash experienced the followi symptoms and injuries: Erythema, acute photophthalmia, impaired vision, dystrophic changes in the nails, stomach pains, nausea,

vomiting, diarrhea, anorexia, loss of energy, lethergy, scarring and loss of pigmentation, excessive hair loss and hair regrowth of a different texture and cancer and removal of right breast. The extent of permanent disability is unknown at this time and the plaintiff's condition is subject to deterioration. The plaintiff has suffered and continues to suffer great pain of body and mind and incurred expenses for medical attention and hospitalization in the sum of TEN MILLION ($10,000,000.00) DOLLARS

8. The aforesaid injuries were caused soley by the defendant, its agents, servants or employees and without any negligence on the part of the plaintiff contribuing thereto.

9. If the defendant were a private person, it would be liable to the plaintiff in accordance with the law of Texas.

WHEREFORE plaintiff Betty Cash demands judgement against defendant, in the sum of TEN MILLION ($10,000,000.00) DOLLARS and costs

SECOND COUNT

10. Plaintiff Vicki Landrum repeats and realleges each and all of the allegations contained in paragraphs 1 through 6 as well as those contained in paragraph 9 of the First Count of this complaint with like effect as if herein fully repeated.

11. As a result of the above mentioned incident, plaintiff Vicki Landrum, experienced the following symptoms and injuries: Photophthalmia, greatly diminished vision, stomach pains, diarrhea anorexia, ulceration of the arms, scarring and loss of pigmentation anychomadesis, hair loss and regrowth of a different texture. The extent of permanent disability is unknown at this time and the plaintiff's condition is subject to deterioration.

The plaintiff has suffered and continues to suffer great pain of body and mind and has incurred expenses for medical attention and hospitalization in the sum of FIVE MILLION ($5,000,000.00) DOLLARS

12. The aforesaid injuries were caused solely by the defendant, its agents, servants, or employees, and without any negligence on the part of the plaintiff contributing thereto.

WHEREFORE Plaintiff Vicki Landrum demands judgement against defendant in the sum of FIVE MILLION ($5,000,000,00) DOLLARS, and costs.

THIRD COUNT

3. Plaintiff Colby Landrum repeats and realleges each and all of the allegations contained in paragraphs 1 through 6 as well as those contained in paragraph 9 of the First Count of this Complaint with like effect as if herein fully repeated.

14. As a result of the above mentioned incident plaintiff Colby Landrum experienced the following symptoms and injuries: erythema, eyes swollen and watery, progressive deterioration of vision, stomach pains, diarrhea, anorexia, weight loss, and an increase in tooth decay. At the time of the incident, the plaintiff became terrified and hysterical. He suffered from nightmares for several weeks thereafter and continues to display extreme anxiety and fear at the sight of helicopters. The extent of permanent disability in unknown at this time and the plaintiff's condition is subject to deterioration. The plaintiff has suffered and continues to suffer great pain of body and of mind exacarbated by his age, and has incurred expenses for medical attention and hospitalization in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

15. The aforesaid injuries were caused solely by the defendant, its agents, servants, or employees, and without any negligence on the part of the plaintiff contributing thereto.

WHEREFORE Plaintiff Colby Landrum demands judgement against defendant in the sum of five million dollars and costs.

Signed: /s/ Peter Gersten

Peter A. Gersten
Attorney in Charge
27 N. Broadway
Tarrytown, N.Y. 10591
(914) 631-1100

William C. Shead
Local Counsel
2927 Broadway Boulevard
Houston, Texas 77017
(713) 649-8944

Served U.S. Attorney's Office
Date 1-18-84 Time 3:35 pm Initials [illegible]

CIV 1 (Rev. 10/82)

# SUMMONS IN A CIVIL ACTION

United States District Court

DISTRICT
SOUTHERN DISTRICT OF TEXAS

DOCKET NO. H-84-248

Betty Cish
Vicki Lindrum
Clay Lindrum
V.
United States of America

TO: (NAME AND ADDRESS OF DEFENDANT)
United States of America
C/o United States Attorney
for the Southern District
P O X 3 5
8th Floor, 515 Rusk
Houston, Texas 77208

YOU ARE HEREBY SUMMONED and required to serve upon

PLAINTIFF'S ATTORNEY (NAME AND ADDRESS)

Peter A. Gerstein
Goglindi, Torres & Gerstein
27 North Broadway
Tarrytown, N.Y. 10591

an answer to the complaint which is herewith served upon you, within Sixty days days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK
JESSE E. CLARK, CLERK

DATE
JAN 18 1984

(BY) DEPUTY CLERK
[signature]

U.S. Department of Justice
United States Attorney

# Notice to Close Legal Case File

## Section I: GENERAL

| Title: | Section: | Case No: |
|---|---|---|
| CIVIL | | 8458 |

Case Title: CASH et al v USA

## Section II: DISPOSITION

*(Per authority of current directive governing disposition of U.S. Attorney record*

1. Destroy after:
   - ☐ 10 years *(case involves no sentence, or sentence of 10 years or less)*
   - ☐ _____ years *(one year after termination of sentence of more than 10 years)*
2. Recommend permanent retention by National Archives and Records Administration, becau *appropriate criteria below)*
   - ☐ This case had a significant impact on statutes, rules or regulations, or law enforcemen
   - ☐ This case or investigation involved an actual or potential breakdown of public order. (e *bances).*
   - ☐ This case was the subject of intense public interest expressed by:
     - ☐ a demonstrated interest of a Congressional committee or the Executive Office of th
     - ☐ a high degree of national media attention.

## Section III: METHOD CLOSED *(Optional use, check as appropriate)*

- ☐ Judgment for Plaintiff
- ☒ Judgment for Defendant
- ☐ Compromise in favor of Plaintiff
- ☐ Compromise in favor of Defendant
- ☐ Acquittal
- ☐ Dismissal
- ☐ Amount collected $
- ☐ Closed without litigation/compromis
- ☐ Closed as uncollectible
- ☐ Conviction
- ☒ *Other (Please specify)* Docket Code JU

## Section IV: CERTIFICATION

I certify that the above case is closed as of this date:

Frank C. Conforti — 12/17/86

*(Signature of U.S. Attorney or Designated Representative)* — *(Date)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH, VICKI LANDRUM, INDIVIDUALLY AND AS GUARDIAN AD LITEM OF COLBY LANDRUM<br><br>Plaintiffs,<br>v.<br><br>UNITED STATES OF AMERICA<br><br>Defendant. | ) | CIVIL ACTION NO. H-84-348 |

MOTION FOR MORE DEFINITE STATEMENT

COMES NOW the United States, by and through Daniel K. Hedges, United States Attorney for the Southern District of Texas and his assistant, Frank A. Conforti, and respectfully moves this Court for an Order pursuant to Federal Rule of Civil Procedure Rule 12(e) directing that a more definite statement of the allegations made by Plaintiffs in the instant action be filed, and in support thereof would show.

1. The complaint alleges that Defendant owned and operated particularly described helicopters and "an experimental aerial device of a hazardous nature."

2. The complaint further alleges that Plaintiffs observed "a large unconventional aerial object."

3. Initially, nowhere in the complaint do Plaintiffs indicate whether the cited "experimental aerial device" and "unconventional aerial object" are one and the same. The complaint is thus vague and ambiguous on this essential point.

4. Secondly, assuming arguendo that the "experimental aerial device" and "unconventional aerial object" are one and the same, Defendant submits that the above "descriptions" are so

vague and ambiguous as to preclude the framing of a responsive pleading.

5. As the Court is aware, the United States, as part of its defense capability, uses an extremely diverse variety of aircraft, any number of which might be considered "unconventional". Further, the United States, both as part of its defense development programs and as part of such endeavors as the space program, designs and tests aircraft which might be considered "experimental." Recent media examples, which come quickly to mind, are the space shuttle and the so-called "stealth" bomber.

6 In light of the above, the United States is unable to properly respond to the complaint without a more definite description of the "experimental aerial device" and/or "unconventional aerial object" allegedly owned and operated by Defendant.

WHEREFORE, premises considered, Defendant moves that the Court issue its Order directing the Plaintiffs to decribe, in reasonable detail, the alleged "experimental aerial device" and "unconventional aerial object". Among the details to be provided should be:

a) the shape or configuration of the object or device:

b) the approximate size of the object or device:

c) whether there were any markings, numbers, symbols, logos, or other designations on the object or device, and, if so, what they were:

d) any other sensory information recalled from the events alleged, i.e. sounds, smells, or visual aspects, relative to the object or device.

Respectfully submitted,

DANIEL K. HEDGES
United States Attorney

By: _____

FRANK A. CONFORTI
Assistant United States Attorney
Attorney in Charge for Defendant
P.O. Box 61129
Houston, Texas 77208
(713) 229-2630

NOTICE OF MOTION

TO: Peter A. Gersten, Esq.
27 North Broadway
Tarrytown, N.Y. 10591

William C. Shead, Esq.
2927 Broadway Boulevard
Houston, Texas 77017

Please take notice that the foregoing Motion for More Definite Statement will be brought before the Court for consideration at 10:00 a.m. on March 26, 1984 or as soon thereafter as the business of the Court will permit.

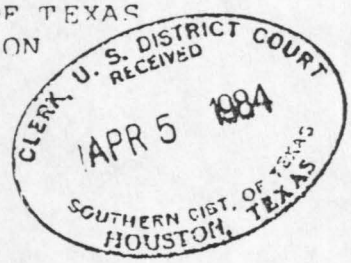
FRANK A. CONFORTI
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that a copy of the Motion for More Definite Statement and Notice of Motion were sent to the parties, in care of the attorneys listed in the notice, via U.S. mail, postage prepaid, this 16 day of March, 1984.

FRANK A. CONFORTI
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|---|---|---|
| BETTY CASH, VICKI LANDRUM, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR COLBY LANDRUM | ) | |
| Plaintiffs, | ) | |
| v. | ) | CIVIL ACTION NO. H-84-348 |
| UNITED STATES OF AMERICA | ) | |
| Defendant. | ) | |

ANSWER

COMES NOW the United States of America, by and through Daniel K. Hedges, United States Attorney for the Southern District of Texas, and his Assistant Frank A. Conforti, and files this its Answer and pleads as follows in the instant action.

FIRST DEFENSE

Responding specifically to the numbered paragraphs in Plaintiff's Amended Complaint, Defendant admits, denies, and avers as follows:

1. The allegations contained in this paragraph are jurisdictional allegations to which no answer is required.

2. The allegations contained in the paragraph are jurisdictional allegations to which no answer is required.

3. The United States admits that it owns and operates CH-47 helicopters. With respect to the remaining allegations of this paragraph, defendant avers that it is without sufficient knowledge or information to form a belief as to the

allegations. To the extent that an answer is required at this time, the allegations are denied.

4. The United States avers that it is without sufficient knowledge or information to form a belief as to the allegations made in the paragraph. To the extent that an answer to such allegations is required at this time, they are denied.

5. Denied.

6. Denied.

7. The United States specifically denies the allegations of this paragraph as to "carelessness" and "negligence". Defendant avers that it is without sufficient knowledge or information to form a belief as to the remaining allegations. To the extent that an answer to such allegations is required at this time, they are denied.

8. Denied.

9. Denied.

10. With respect to the allegations incorporated in this paragraph, Defendant restates its answers to paragraphs 1 through 6, and paragraph 9, as though fully set out herein.

11. Defendant avers that it is without sufficient knowledge or information to form a belief as to the allegations made in this paragraph. To the extent that an answer to such allegations is required at this time, they are denied.

12. Denied.

13. With respect to the allegations incorporated in this paragraph, Defendant restates its answers to paragraphs 1 through 6, and paragraph 9, as though fully set out herein.

14. Defendant avers that it is without sufficient knowledge or information to form a belief as to the allegations made in this paragraph. To the extent that an answer to such allegations is required at this time, they are denied.

15. Denied.

Finally, the United States denies that Plaintiffs are entitled to any of the relief requested in this action. All allegations in Plaintiffs' complaint not specifically admitted herein are denied.

SECOND DEFENSE

Plaintiffs have failed to state a claim upon which relief may be granted.

THIRD DEFENSE

Plaintiffs, by reason of their actions and/or nonaction, assumed the risk of the injuries alleged to have been sustained.

FOURTH DEFENSE

Plaintiffs, by reason of their actions and/or nonaction, were contributorily negligent, and by reason of such contributory negligence the injuries alleged were sustained.

Wherefore, the Defendant requests this Court to deny the Plaintiffs all relief requested in their Original Complaint,

grant the Defendant its costs herein, and for such other additional and further relief to which the Court deems the Defendant to be entitled in law or equity.

Respectfully submitted,

DANIEL K. HEDGES
United States Attorney

By: _____

FRANK A. CONFORTI
Assistant United States Attorney
Attorney-In-Charge
P.O. Box 61129
Houston, Texas 77208
(713) 229-2630

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Original Answer has been forwarded postage prepaid to the following counsel of record:

Peter A. Gersten, Esquire
Attorney-In-Charge for Plaintiff
27 North Broadway
Tarrytown, N.Y. 10591

DONE this the 5 day of April, 1984.

Frank A. Confortí

FRANK A. CONFORTI
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH, et al | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. H-84-348 |
| | § | |
| UNITED STATES OF AMERICA | § | |
| | § | |
| Defendant. | § | |

UNOPPOSED MOTION FOR EXTENSION OF TIME

COMES NOW the defendant, the United States of America, and files this unopposed Motion for Extension of Time and would show the court as follows:

1) Opposing counsel have conferred as to this Motion in accordance with the local rules. The telephone conversations occurred on January 11, 1985, January 14, 1985, and January 16, 1985.

2) This Motion is unopposed.

3) The case at bar seeks damages of Twenty Million Dollars ($20,000,000) and involves allegations of extensive medical damages and of military activities.

4) Preliminary discovery is proceeding, albeit slowing in light of the sheer volume of information under the control of the Department of Defense which must be sifted and compiled.

5) It is anticipated that completion of the initial discovery process can occur by March 1, 1985. Dispositive motions may be appropriate based upon the results.

6) Discovery requests as to medical records are being complied, and it is anticipated that the requested records will

be voluminous and require extensive deposition of expert witnesses.

WHEREFORE, the parties move that the Docket Control Order in this case be amended to extend the date for submission of dispositive and non-dispositive motions, joint pretrial order, and docket call for an additional six (6) months.

Respectfully submitted,

DANIEL K. HEDGES
United States Attorney

By: Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney
P.O. Box 61129
Houston, Texas 77208
(713) 229-2630

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Unopposed Motion for Extension of Time was sent via first class mail, postage prepaid to Peter A. Gersten, 27 North Broadway, Tarrytown, N.Y. 10591, this 17th day of January, 1985.

Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney

NOTICE OF MOTION

TO: Peter A. Gersten, Esq.
27 North Broadway
Tarrytown, New York 10591

Please take notice that the foregoing Motion to Dismiss and/or for Summary Judgment will be brought before the Court for consideration on Monday, January 28, 1985 at 10:00 a.m. or as soon thereafter as the business of the Court will allow.

Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice, Motion to Dismiss and/or for Summary Judgment and accompanying Memorandum of Law were sent via U.S. Mail, postage prepaid, to opposing counsel at the address shown in the Notice this 17th day of January, 1985.

Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH et al | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. H-84-348 |
| | § | |
| UNITED STATES OF AMERICA | § | |
| | § | |
| Defendant. | § | |

MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

## I. Statement of The Case

Plaintiffs, Betty Cash, Vicki Landrum, and Colby Landrum (through his guardian ad litem Vicki Landrum) bring this action pursuant to 28 U.S.C. §1346(b) and 28 U.S.C. §§2671-2680 seeking money damages for alleged injuries resulting from their alleged encounter with a "UFO" on December 29, 1980.

In the Complaint plaintiffs allege that the United States owned and operated an "experimental aerial device of a hazardous nature". The entity is also identified in the Complaint as "a large unconventional aerial object." In a More Definite Statement filed by plaintiffs, the object is called a "UFO". In that same pleading a description of the object or "UFO" is provided. Plaintiffs imply, though it is nowhere asserted, that the United States owned and operated the "UFO". Plaintiffs do allege that the United States was negligent in that it allowed the "UFO" to fly over a public road and come in contact with the plaintiffs. Plaintiffs also allege that the United States failed to warn the plaintiffs of the "UFO".

Filed herewith are the sworn affidavits of Robert W. Sommer, NASA; Colonel William E. Krebs, USAF; Vice Admiral Robert F. Schoultz, USN; and Richard L. Ballard, Office of the Deputy Chief of Staff for Research, Development, and Acquisition, USA. The affidavits establish that the "UFO" allegedly seen by plaintiffs, and which it is alleged was the proximate cause of their asserted injuries, is not, and was not, owned, operated, or in the aircraft inventories of the United States of America nor was such an object under the control of the United States of America or its employees.

On the basis of those affidavits, the United States moves this Court for an Order dismissing the Complaint of plaintiffs with prejudice, or, in the alternative, finding that there exists no genuine issue of material fact, for summary judgment in favor of the defendant.

## II. Statement of the Facts as Alleged

The following constitutes the facts as alleged by plaintiffs.

At approximately 9:00 p.m. on December 29, 1980, plaintiffs were driving on FM 1485 approximately seven (7) miles outside of New Caney, Texas.

Plaintiffs observed the "UFO" which was emitting a glow, and red and orange flames from its bottom. The "UFO" was the size of a standard city water tank, and is described by Vicki Landrum as oblong with rounded top and a point at the bottom, and by Colby Landrum as diamond-shaped.

The "UFO" hovered at treetop level of 60-80 feet over the roadway. It emitted a "beep-beep" sound and plaintiffs felt intense heat at a distance of 135 feet.

The "UFO" was not observed to have any markings, numbers, symbols, logos, or other designators. No other sensory observations (sounds, smells, visual aspects, etc.) were made by the plaintiffs.

As a result of the heat emanating from the "UFO" the inside of plaintiff's vehicle became very hot. Plaintiffs then exited their vehicle and observed the object for several minutes before re-entering the vehicle. All during this time they allegedly experienced intense and excruciating heat from the "UFO".

The "UFO" then ascended, and plaintiff observed it surrounded by "many military appearing helicopters". Plaintiffs assert that several helicopters were double rotary CH-47 type. Plaintiffs conclude that the helicopters were "escorting and/or safeguarding" the object.

On December 27, 1982 plaintiffs filed their administration claims for a total of $20 million in damages. On May 23, 1983 the claims were denied. Reconsideration was sought, and denied on September 2, 1983. On January 18, 1984 the plaintiffs filed this action.

## III. Issues

Whether the complaint filed by plaintiffs, even when viewed in a light most favorable to plaintiffs, fails to state a claim against the United States upon which relief can be granted.

Whether the claim of plaintiffs is barred under the

discretionary function exception to the Federal Tort Claims Act. See 28 U.S.C. §2680(a).

Whether there exists no genuine issue of material fact in this action and the United States is therefore entitled to judgment as a matter of law.

## IV. Preliminary Statement

For the purpose of determining a motion to dismiss, the facts alleged in the complaint will be accepted as true, Davis v Davis 526 F.2d 1286 (5th Circuit 1976), and considered in the light most favorable to plaintiff. Crawford v. City of Houston, 386 F.Supp. 187 (S.D. Texas 1974). However, resolution of the motion to dismiss in no way indicates the pre-disposition by the Court of any issue of contested fact, nor a forecast of the outcome of the case. Davis, supra and Crawford, supra.

By presenting and arguing this motion, therefore, the United States is not admitting, for any purpose other than this motion, the truth or veracity of any of plaintiff's allegations and/or factual assertions which have been denied by the defendant in the records and pleadings filed in this action or which remain unsubstantiated by evidence offered.

## V. Argument and Authorities

Plaintiff brings this action under the Federal Tort Claims Act, 28 U.S.C. §1346(b) and 28 U.S.C. §§2671-2680. Under the Federal Tort Claims Act the question of liability is determined by reference to the law of the state in which the alleged tortious conduct of the defendant, in this case--negligence, occurred. U.S. v. Muniz, 374 U.S. 150, 153 (1963). Accordingly,

the determination of whether the United States was negligent herein must turn upon the prerequisites for a negligence action in Texas. Under Texas law, a plaintiff must prove the existence of a legal duty owed to him by the defendant in order to establish tort liability. Saucedo v. Phillips Petroleum Company, 670 F.2d 634, 636 (5th Cir. 1982), quoting from Abalos v. Oil Dev. Co. of Texas, 544 S.W. 2d 701 (Texas 1976) and Coleman v. Hudson Gas and Oil Corporation, 455 S.W. 2d 701 (Texas 1970). In the absence of such a legal duty, or of injury from its breach, there can be no actionable negligence and hence no legal liability. See Group Life & Health Ins. Co. v Brown, 611 S.W. 2d 476 (Tex. Civ. App. -- Tyler 1980, no writ hist.); McGregor Milling & Grain Co. v. Russo, 243 S.W. 2d 852, 855 (Tex. Civ. App. -- Waco 1951, writ ref. n.r.e) See also Rodriguez v Dipp, 546 S.W. 2d 655, 658 (Tex. Civ. App. -- El Paso 1977, writ ref. n.r.e). The existence of a defendant's duty is a matter of law, distinct from factual matters of breach and consequences. Saucedo, supra; Welch v. Heat Research Corp., 644 F.2d 487 (5th Cir. 1981); Gray v. Baker & Taylor Drilling Co., 602 S.W. 2d 64 (Tex. Civ. App. - Amarillo 1980, writ ref'd n.r.e); Jackson v. Associated Developers of Lubbock, 581 S.W. 2d 208 (Tex. Civ. App. - Amarillo 1979, writ ref'd n.r.e); Frontier Theatres, Inc. v. Brown, 362 S.W. 2d 360 (Tex. Civ. App. - El Paso 1962), rev'd on other grounds, 369 S.W. 2d 299 (Texas 1963).

The position of the defendant, United States of America is that plaintiffs have not shown, and cannot show, the existence of a legal duty owed to them by the defendant. Hence, plaintiffs

have failed to state a cause of action under the Federal Tort Claims Act for which recovery may be granted.

A. Defendant Is Not the Owner of the "UFO", Nor Was the "UFO" in the Custody, Care, or Control of Defendant

As the affidavits attached hereto make clear, the United States neither owned, operated, nor controlled the alleged "UFO". As such, it is axiomatic that no legal duty may result which is attributable to the United States. Nor may actions or omissions, if any, of employees of the United States result in liability. Absent a legally recognized duty, no breach would result. See Smith v United States, 688 F.2d 476, 477 (7th Cir. 1982) Wilcox v Carina Maritime Corp, 586 F.Supp. 1475 (D.C. Tx. 1984).

The Restatement of Torts (Second) at §315 states that a special relationship must exist between the person who causes a harm and the person sought to be held liable or there is no duty to control the conduct of the actor. See also Bergmann v United States, 689 F.2d 789, 796 (8th Cir. 1982). The rule in Texas is the same. See Otis Engineering v Clark, 668 S.W. 2d 307 (9183). Here, it is not a person, but an object defined as a "UFO" by plaintiffs, which allegedly caused the harm. No relationship between the United States and the "UFO" is asserted by plaintiff. Nowhere in the complaint is it asserted that the government owned or operated the "UFO" or controlled its activities in any manner. Indeed, the affidavits attached to this Motion conclusively establish that such a relationship simply did not, and does not, exist.

In the absence of such a relationship, no duty may arise.

Absent such a duty, no claim for relief under Texas law, as required by 28 U.S.C. §1346(b) and 28 U.S.C. §2671-2680, can be stated and the action should be dismissed under FRCP Rule 12(b)(6).

B. The Plaintiffs Are Barred By the Discretionary Function Exception at 28 U.S.C. §2680(a)

Assuming, arguendo, that the United States owned, operated, or otherwise controlled, the "UFO", plaintiffs assert that the government negligently permitted the "experimental aerial device" to fly over a public road and failed to warn plaintiffs that the "experimental aerial device" was clearly hazardous in nature. (Complaint, paragraphs 5 and 6).

Assuming the truth of all plaintiffs' allegations as to the clearly hazardous nature of the "UFO" and as to their own actions, plaintiff's admissions would establish assumption of the risk.[1/] However, a complete bar to any action by plaintiffs, and a bar which is clearly amenable to determination at this juncture, lies in the plaintiff's own allegations and admissions as to this event. With respect to the alleged hazardous nature of the object, it is settled law that the United States may not be held strictly liable for undertaking an ultrahazardous activity. Laird v. Nelms, 406 U.S. 797, at 803, 92 S.Ct. 1899

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1/ While the absolute defense of assumption of the risk has been abolished in Texas, the doctrine retains its viability as to the consideration of a party's appreciation of the risk, and the weighing of this factor in the scale of comparative negligence. See Maxey v. Freightliner Corp., 665 F.2d 1367 (5th Cir. 1982). See also Abalos v. Oil Development Co. of Texas, 544 S.W. 2d 627 (Texas 1976); Farley v. M.M. Cattle Co., 529 S.W. 2d 751 (Texas 1975).

(1972), citing Dalehite v. United States, 346 U.S. 15, at 44-5, 73 S.Ct. 956 (1953).

The holdings in Laird and Dalehite themselves grow out of an exception under the Federal Tort Claims Act to liability for claims:

> ". . .based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. §2680(a).

The question of whether conduct, which must have been by a federal employee, falls under the discretionary function exception is a matter to be decided under federal, rather than state, law. See United States v. Muniz, 374 U.S. 150, 83 S.Ct. 1850 (1963).

Nor can the plaintiffs prevail on a theory that in conducting a discretionary function the government's discretion was abused. The discretionary function exception also applies when an official abuses the discretion, even if malice is alleged. DePass v. United States, 479 F.Supp. 373 (D.C. Md. 1979; Relco Inc. v. Consumer Product Safety Commission, 391 F.Supp. 841 (D.C. Tx. 1975).

Military supersonic flights constitute a discretionary function exception. Abraham v United States, 465 F.2d 881, 883 (5th Cir. 1972) and cases cited therein. Further, the decision to undertake experimental flights has been recognized as the exercise of a discretionary function. William v. United States,

218 F.2d 473, 475 (5th Cir. 1955).[2/] In this case, plaintiffs have themselves admitted that the "aerial device" in issue was "experimental". Subsequent decisions by the Fifth Circuit seemed to narrow the exception. See Moyer v. Martin Marietta Corp, 481 F.2d 585 (5th Cir. 1973); Piggott v. United States, 451 F.2d 574 (5th Cir. 1971). While retaining the discretionary character of the overall decisions to embark on aircraft testing and rocket test-firing, respectively, the Court seemed reluctant to draw such findings with respect to the actual carrying out of the policies by lower-level employees.

Due to the growing number of cased stressing this operational level distinction, the Supreme Court, in a recent decision, examined for the second time the discretionary function exception. United States v. S.A. Empressa de Viacao Aerea Rio Grandense (Variq Airlines) et al, ____ U.S. ____, 104 S.Ct. 2755 (1984). The Supreme Court reaffirmed its decision in Dalehite v. United States, 346 U.S. 15, 73 S.Ct. 956 (1953). The Court pointed out that it would be impossible to define with precision the limits of the discretionary function exception. It did, however, isolate several factors to be used in the analysis of actions by the government to determine whether they fall within the exception. Variq, supra, at 2765. Initially, the Court

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2/ The Fifth Circuit, in Williams, held that an inference by the District Court that a particular flight was of an experimental nature was error, but the Court did not dispute that undertaking experimental flights was a discretionary function. Since plaintiff's pleadings admit the experimental nature of this particular flight, it may be accepted as such.

noted that the nature and quality of the challenged acts must be examined. The Court held that the rank or status of the acting employee does not affect the nature of a challenged action. Second, the Court noted that the exercise of discretion in deciding whether, or how, to regulate conduct of private individuals is clearly within the exception. id. The Court's conclusion that the rank of the acting employee does not change the discretionary nature of a decision is a clear reaffirmation of the decision in Dalehite and an equally clear refutation of the planning level/operational level dichotomy that some Circuits (including the Fifth) had drifted toward.

The conduct complained of here, as asserted by plaintiffs themselves, involves decisions and determinations relating to whether, where, when, and how to proceed with developmental experiments involving aircraft. Such activities plainly involve policy, judgment and decision such as to carry them within the orbit of the discretionary-function exception. See Dalehite, 346 U.S. at 36, 73 S.Ct. at 968. That the implementation of these decisions is carried out by subordinates does not change the nature of the acts or change the extent of the exception. Id; Varig Airlines, supra, at 2765.

Mundane decisions such as where to place a Post Office and when to operate it, whether and how to widen a river channel, and whether and how to conduct a highway project have been determined to be covered by 28 U.S.C. §2680(a). See Doe v. United States, 718 F.2d 1039, 1042 (11th Cir. 1983); Payne v. United States, 730 F.2d 1434, 1436 (11th Cir. 1984); Daniel v. United States, 426

F.2d 281, 282 (5th Cir. 1970). Actions of the nature alleged here by plaintiffs are also within the exception.

Based on the above, the United States would urge dismissal of this action on the basis that any actions taken or omissions of the government fall within the discretionary function exception in 28 U.S.C. §2680(a), that hence this Honorable Court lacks subject matter jurisdiction, and that as a result a dismissal under FRCP Rule 12(b)(1) is appropriate.

C. The Alleged Failure to Warn Is Not Sufficient to State a Claim Upon Which Recovery May Be Predicated

An alternative interpretation of plaintiff's allegations, and one which is consistent with the affidavits submitted in this case, is that the incident did not concern testing of an "experimental aerial device", but that the object was a "UFO" as asserted by plaintiffs. As pointed out supra, in such case the lack of ownership or control by the United States should result in a finding of no duty, and hence no liability.

Even if a limited duty of some sort were found to exist, however, there would still be a bar to plaintiffs' claim. In Grunnet v. United States, 730 F.2d 573 (9th Cir. 1984) the Court examined the government's alleged failure to warn an individual of the dangers posed by the activities in Jonestown, Guyana. The Court pointed out (p.576) that generally there is no affirmative duty to control the conduct of another under California law. The same holds true in Texas jurisprudence. See Otis Engineering v. Clark, 668 S.W. 2d 307 (Tx. 1983). As a result, the Court, while not denying that a decision not to warn was itself within the discretionary function exception, held that failure to warn of

danger in a foreign land would not be actionable for failure to state a claim.

The descriptive term used by plaintiffs themselves for the object in this case is "UFO", and the definition of that term is "unidentified flying object"[3/] The term is, by definition, applicable to an object which is not known or identifiable. Hence, defendants could not have known whether any danger existed or from whence such danger could spring. When evaluating the reasonableness of actions taken by a party in an emergency, Texas law requires that the emergency nature of the situation must be considered. Pavlides v. Galveston Yacht Basin, Inc., 727 F.2d 330 (5th Cir. 1984). Faced with the situation of an unknown object, a governmental determination not to issue a warning, and potentially cause a panic with the known dangers arising from a panic, simply would not constitute negligence in any event. As an additional matter, while the decision not to warn in Grunnet might be argued not to be a discretionary function, it seems clear that such a decision here, under the facts as recited by plaintiffs thereselves, does fall within the exception.

Assuming, arguendo, that the plaintiffs were correct in their assertion that the object they may have seen was a "UFO", what could be more of a discretionary function that a decision by the United States and its armed services on whether and how to react? It must be recalled that plaintiffs themselves concluded

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3/ Random House Dictionary of the English Language, unabridged edition. (1979)

that military aircraft were escorting and surrounding the "UFO". If, as must be done in a motion such as this, the pleadings of plaintiffs are accepted as true (solely for consideration of this motion), then plaintiffs themselves have made the government's case for application of the discretionary function exception. As the Court in Sellfors v United States, 697 F.2d 1362, 1368 (11th Cir. 1983) noted, the weighing of governmental interests and deciding in favor of the less antagonistic approach clearly constitutes the type of discretion reflected in the history of the FTCA.

## VI. Conclusion

In any event, whether for plaintiff's failure to state a claim becuase the United States had no duty to warn in the case, the reasonableness of a decision not to warn, or the discretionary nature of the decision not to warn and the actions taken by the United States, the complaint in this matter should be dismissed.

Respectfully submitted,

DANIEL K. HEDGES
United States Attorney

By: Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney
Attorney in Charge for Defendant
P.O. Box 61129
Houston, Texas 77208
(713) 229-2630

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| BETTY CASH et al | § | |
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| Plaintiffs, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. H-84-348 |
| | § | |
| UNITED STATES OF AMERICA | § | |
| | § | |
| Defendant. | § | |

DEFENDANT'S MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant herein, in the United States of America, by and through Daniel K. Hedges, United States Attorney for the Southern District of Texas, and would move this Court, pursuant to Rules 12(b)(1) and (6), Federal Rules of Civil Procedure, for an Order dismissing this action on the grounds that this Court lacks subject matter jurisdiction over such action and that plaintiffs have failed to state a claim upon which relief can be granted against the defendant United States of America.

In the alternative, the defendant respectfully moves this Court, pursuant to Rule 56, Federal Rules of Civil Procedure, for an Order granting Summary Judgment in favor of the defendant United States of America on the ground that, there being no genuine issue as to any material fact, defendant is entitled to judgment as a matter of law.

Probably one missing page here.

Anders Liljegren
AFU

discretionary, and dismissal of this action under 28 U.S.C. §2680(a) and FRCP Rule 12(b)(1) appropriate.

WHEREFORE, defendant again prays for a dismissal of the instant actions under FRCP Rules 12(b)(1) and/or 12(b)(6).

Sincerely,

HENRY K. ONCKEN
United States Attorney

Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney
P.O. Box 61129
Houston, Texas 77208
713-229-2630

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply was sent via U.S. mail, postage prepaid, to:

Peter A. Gerster
895 Sheridan Avenue
Bronx, N.Y. 10451

and

William C. Shead
2927 Broadway Blvd.
Houston, TX 77017

this 4th day of September 1985.

Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION


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| BETTY CASH, et al | § | |
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| Plaintiffs, | § | |
| | § | |
| vs. | § | CIVIL ACTION NO. H-84-348 |
| | § | |
| UNITED STATES OF AMERICA | § | |
| | § | |
| Defendant. | § | |

REPLY

COMES NOW the United States of America, defendant herein, and files this reply to the pleading by plaintiffs responding, after seven (7) months, to Defendant's Motion to Dismiss and/or for Summary Judgment, and would show as follows:

1. Plaintiffs attempt to confuse the basic issue of the Motion to Dismiss and/or for Summary Judgment by setting up a "strawman" distinction between the "experimental aerial device" cited in the Complaint and the "UFO" cited in the More Definite Statement. Plaintiffs then triumphantly point out that there is only one "object" in the case. The real issue is that, by whatever name the object is called,[1/] the existence of a legal duty to plaintiffs stemming from that object must be shown to have existed. King v. United States, 178 F.2d 320 (5th Cir. 1949). The affidavits attached to defendant's Motion establish, beyond any reasonable question, that the United States did not

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1/ Defendant does find it revealing that the object is termed a UFO by plaintiffs.

own, operate, control, or otherwise contain in the inventories of its armed forces, the object characterized, by plaintiffs, as a UFO. Hence, under Texas law, no duty existed for the United States.

Plaintiff tries to brush aside the four affidavits submitted by defendant, asserting that the affiants did not have "the security clearance necessary to obtain this highly classified information". As an initial matter, each affidavit was executed by the individual responsible for the aircraft inventories and research of their respective organizations. The organizations are NASA, the United States Air Force, the United States Navy, (which includes the U.S. Marine Corps, a branch of the Navy, see 10 U.S.C. §5011 and §5081), and the United States Army. In short, every organization for which such a "highly classified" object might be developed. Next, with respect to plaintiffs' assertion that the affidavits are "unsworn, self-serving opinions", it must be noted that Exhibits 1 and 3 are in fact sworn under oath. Exhibits 2 and 4 are unsworn declarations made under penalty of perjury, as statutorily provided for in 28 U.S.C. §1746. The inescapable conclusion, based on the affidavits submitted by the United States, is that the object, if it existed, was not owned or controlled by the United States; that hence no legal duty can be found against the United States

with respect to such object; and that the United States is therefore entitled to Summary Judgment under FRCP Rule 56 or to a dismissal under FRCP Rule 12(b)(6).

2. Plaintiff next tries to address the discretionary function issue under 28 U.S.C. §2680(a). Plaintiff has apparently failed to grasp the fact that United States v. S.A. Empressa de Viacao Aerea Rio Grandense (Varig Airlines), et al, 104 S. Ct. 2755 (1984) has rejected the operational level/policy level distinction upon which the plaintiff relies. Even assuming that this object was an experimental aircraft, and even further assuming that it was controlled by defendant, the decision of how to conduct experimental flights would clearly be within the discretionary function exception and a dismissal under FRCP Rule 12(b)(1) mandated.

With respect to the question of whether a duty to warn existed, as defendant has already pointed out in its Motion to Dismiss, plaintiffs' claims are still barred. Plaintiffs refer, without any explanation, to "the obvious threat that UFO's pose for at least 35 years." Plaintiffs, they say, "pay taxes to the defendant for national defense". The notion of liability which plaintiffs try to imply does not merit addressing. Rather, defendant would point out that, if the object was an "unknown" to the United States, the actions taken would clearly be, if they relate to national defense as plaintiffs assert,

3. Plaintiffs have previously sought, without success, leave of this Court to re-commence discovery in this case. Defendants object to the dilatory tactics and unconscionable conduct of plaintiffs in attempting once again to cloud the purely legal issues upon which this case rests. Where as here, the case is so obviously barred by operation of law, for defendant to incur the expense of duplicitious and burdensome discovery, for the second time, is simply not justified.

WHEREFORE, defendant moves for entry of a protective order staying all discovery pending the Court's decision on the Motion to Dismiss and/or for Summary Judgment filed January 17, 1985.

Respectfully submitted,

HENRY K. ONCKEN
United States Attorney

By: Frank A Conforti

FRANK A. CONFORTI
Assistant United States Attorney
Attorney for Defendant
Post Office Box 61129
Houston, Texas 77208
(713) 229-2630

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

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| BETTY CASH, ET. AL., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| vs. | ) | CIVIL ACTION NO. H-84-348 |
| | ) | |
| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Defendant. | ) | |

MOTION FOR PROTECTIVE ORDER CONCERNING FIRST REQUEST FOR PRODUCTION

COMES NOW the defendant, United States of America, and moves for the entry of a protective order in this matter, and would show the Court as follows:

1. Much of the information requested is duplicative of the Interrogatories already answered in this case. Those Interrogatories were answered in several installments, the last being March 18, 1985 at which time various objections were made on the basis of vagueness, overbreadth, and undue burden. Those objections are reurged at this time.

2. On January 17, 1985 the United States submitted a Motion to Dismiss and/or for Summary Judgment. Following a review of the pleadings, this Court on September 3, 1985 heard oral argument of the parties. At that time the Court stated that an Order of Dismissal might be forthcoming. In light of the pendency of this dispositive motion, on purely legal grounds, the continuation of protracted "fishing expeditions" every time the plaintiff's obtain new counsel is unduly burdensome and constitutes sheer harassment of defendant.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by U.S. mail, postage prepaid, to:

Peter A. Gersten
895 Sheridan Avenue
Bronx, N.Y. 10451

Rhonda S. Ross
3410 Mount Vernon
Houston, Texas 77006

and

William C. Shead
2927 Broadway Blvd.
Houston, Texas 77017

this 26th day of February, 1986.

Frank A. Conforti
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Betty Cash, Vicki Landrum Individually and as Guardian Ad Litem of Colby Landrum, | ) | |
| Plaintiffs, | ) | Civil Action No. H-84-348 |
| vs. | ) | |
| United States of America, | ) | |
| Defendant. | ) | |

AFFIDAVIT

I, Robert W. Sommer, upon oath, declare and affirm as follows:

1. I am the National Aeronautics and Space Administration (NASA) Deputy Director, Aircraft Management Office. On or about December 29, 1980, I was the Chief of NASA's Aircraft Office.

2. In December 1980, I served as the senior point of contact at NASA Headquarters with NASA centers, government agencies, and non-governmental organizations on matters concerning NASA aircrafts.

3. I have reviewed the documents entitled "Amended Complaint" which, in pertinent part, speaks of an alleged

EXHIBIT 1

"military CH-47 double rotary type helicopters and an experimental aerial device of a hazardous nature," observed by plaintiffs on December 29, 1980, "approximately 9:00 p.m. on FM Road 1485, 7 miles outside of New Caney, Texas;" and "More Definite Statement" which defines the "experimental aerial device" or "object" as an "UFO" and describes the object as follows: "x x x appeared to be extremely bright, had red and orange flames emanating from its bottom, and was surrounded by a glow . . . oblong with a rounded top and a point at the bottom . . . diamond shaped . . . the size of a standard city water tank."

4. I declare that no "object" as described by plaintiffs was, at any time, owned or operated, or was in the inventory or under the control of NASA. I further declare that on December 29, 1980, NASA had under its control one (1) CH-47 helicopter, stationed at the NASA Ames Research Center, Moffett Field, California; on and about December 29, 1980, that helicopter was not flown but remained in the hangar in California and no where near or at the place as alleged in the "Amended Complaint."

I hereby affirm, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Robert W. Sommer

Robert W. Sommer
Deputy Director
Aircraft Management Office
NASA Headquarters
Washington, DC 20546

Sworn to and subscribed before me this 13th day of August, 1984.

Anita R. Karnes

Notary Public
District of Columbia

My commission expires: 1-1-85.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH, VICKI LANDRUM, Individually and as Guardian Ad Litem of COLBY LANDRUM, | ) | |
| Plaintiffs | ) | Civil Action No. H-84-348 |
| v | ) | |
| UNITED STATES OF AMERICA, Defendant. | ) | |

DECLARATION

In accordance with 28 USC section 1746, the following unsworn declaration is made pertaining to the above captioned case:

I am the Chief, Tactical Aeronautical Systems Division, Office of the Deputy Chief of Staff for Systems, Air Force Systems Command, United States Air Force, and have held this position since May 1982. In the above position I am and have been involved in the Air Force programs for the research, development, testing and evaluation of all United States Air Force craft capable of flight.

I have reviewed the document entitled "More Definite Statement" in the above captioned case. That document is incorporated herein and attached hereto as Exhibit A. I have compared the description of the object in Exhibit A with my knowledge of the inventory of all United States Air Force craft capable of flight. No such craft was owned, operated, or in the inventory of the United States Air Force on or about December 29, 1980. Further, I have never seen nor heard of any such craft described in Exhibit A as being associated with the military service.

EXHIBIT 2

I also declare that the CH-47 Helicopter was not in the inventory of the United States Air Force on or about December 29, 1980.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 31 May 1984.

William E. Krebs

WILLIAM E. KREBS, Colonel, USAF
Chief, Tactical Aeronautical
Systems Division
DCS Systems, Air Force Systems
Command

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| BETTY CASH, et al | § | |
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| Plaintiffs | § | |
| | § | |
| vs. | § | Civil Action No. H-84-348 |
| | § | |
| UNITED STATES OF AMERICA | § | |
| | § | |
| Defendants | § | |

OPPOSITION TO PLAINTIFFS' FIRST
AMENDED MOTION TO CONTINUE
DEFENDANTS' MOTION TO DISMISS

COMES NOW the United States of America, opposing what is essentially a motion by plaintiffs to have this Court withhold its ruling on the Motion to Dismiss filed by the United States, and would show the Court as follows:

1) Plaintiffs filed this action on January 19, 1984.

2) The United States moved for a More Definite Statement on March 16, 1984, and filed its Answer on April 5, 1984..

3) On April 24, 1984, plaintiffs submitted a request for extensive discovery. The discovery was provided, after numerous agreements between counsel, on March 18, 1985.

4) On January 17, 1985, the United States filed a Motion to Dismiss and/or for Summary Judgment. Plaintiffs responded on August 30, 1985. A Reply by the United States was then filed on September 4, 1985.

5) At a Docket Call on September 3, 1985, the Court heard oral argument of the parties concerning the Motion to Dismiss. The Court indicated at such time that an Order dismissing the

action on the basis of the purely legal grounds presented in the Motion might be forthcoming.

6) The case, as a matter of law, must be dismissed under FRCP Rule 12(b)(1) and/or Rule 12(b)(6). Plaintiffs' most recent pleading is a transparent effort to confuse the purely legal issues at bar, and to go on a second protracted fishing expedition in this matter. The simple fact is that even if all material facts are viewed favorably to plaintiffs, no grounds upon which this lawsuit may stand exist.

WHEREFORE, the United States respectfully requests that the Court enter its Order granting the Motion to Dismiss filed January 17, 1985.

Respectfully submitted,

Henry K. Oncken
United States Attorney

By: Frank A. Conforti

Frank A. Conforti
Assistant U.S. Attorney
Attorney in Charge
P.O. Box 61129
Houston, Texas 77208
(713) 229-2630

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH, VICKI LANDRUM, INDIVIDUALLY AND AS GUARDIAN AD LITEM OF COLBY LANDRUM<br><br>Plaintiffs,<br><br>v.<br><br>UNITED STATES OF AMERICA,<br><br>Defendant. | ) | CIVIL ACTION NO. H-84-348 |

AFFIDAVIT OF VICE ADMIRAL ROBERT F. SCHOULTZ, USN

AFFIANT, being first duly sworn, states upon his oath as follows to wit;

THAT, I am Vice Admiral Robert F. Schoultz, United States Navy, Deputy Chief of Naval Operations (Air Warfare).

THAT, in this position I am responsible for the supervision of all naval aviation programs, planning, and requirements and the management of aviation-related activities at the service headquarters level for the United States Navy.

THAT, I have knowledge of all aircraft types owned and operated by the United States Navy and their characteristics.

THAT, I have reviewed a document, entitled "MORE DEFINITE STATEMENT", submitted by plaintiffs in this action and attached to and incorporated in this affidavit as Exhibit A.

EXHIBIT 3

THAT, I have compared the object described in Exhibit A with my knowledge of aircraft owned and operated by the United States Navy.

THAT, no aircraft matching the description given in Exhibit A was owned or operated by the United States Navy on December 29, 1980, and no such aircraft is currently owned or operated by the United States Navy.

THAT, I have been a naval aviator for 39 years and I have never heard of, seen, or flown any aircraft matching the description given in a Exhibit A.

FURTHER AFFIANT sayeth not.

ROBERT F. SCHOULTZ
VADM, USN

I, James L. Hoffman, Jr., the undersigned officer, ~~do~~ hereby certify that the foregoing instrument was subscribed and sworn to before me this 7th day of May, 1984, by Vice Admiral Robert F. Schoultz, United States Navy, who is known to me to be a member of the United States Navy on active duty. And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United

States Navy, that by statute no seal is required on this certificate, and same is executed in my capacity as a Judge Advocate under authority granted to me by Art.136, UCMJ; 10 USC 936.

JAMES L. HOFFMAN, JR.
CAPTAIN, JAGC, USN
Office of the Chief
Of Naval Operations

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| BETTY CASH, VICKI LANDRUM, Individually and as Guardian Ad Litem of COLBY LANDRUM, Plaintiffs, | ) | |
| v. | ) | Civil Action No. |
| UNITED STATES OF AMERICA, Defendant. | ) | H-84-348 |

DECLARATION

In accordance with 28 U.S.C. section 1746 the following unsworn declaration is made pertaining to the above captioned case:

I am the Acting Chief, Aviation Systems Division, Office of the Deputy Chief of Staff for Research, Development, and Acquisition, United States Army. Prior to assuming that position this month I was the Deputy Chief, Aviation Systems Division, Office of the Deputy Chief of Staff for Research, Development, and Acquisition, United States Army and had held that position since 1974. I am also an aeronautical engineer having received a Master of Science degree in aeronautical engineering. In the above positions I am and have been responsible for the research, development, testing, and evaluation of

EXHIBIT 4

all Army craft capable of flight and for the Army's aviation procurement appropriation. In these capacities I am and have been familiar with all Army craft capable of flight since 1974.

I have reviewed the document entitled "More Definite Statement" in the above captioned case. That document is incorporated herein and attached hereto as Exhibit A. I have compared the description of the object in Exhibit A with my knowledge of the inventory of all Army craft capable of flight. No such craft was owned, operated, or in the inventory of the United States Army on or about December 29, 1980. Further, I have never seen nor heard of any such craft described in Exhibit A as being associated with the military service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 19 April 1984.

Richard L Ballard

RICHARD L. BALLARD
Acting Chief, Aviation
Systems Division
ODCSRDA