

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-06-185-R
)	
LANGSTON UNIVERSITY, ex rel., THE)	
BOARD OF REGENTS FOR THE)	
OKLAHOMA STATE UNIVERSITY AND)	
AGRICULTURAL AND MECHANICAL)	
COLLEGES, a state agency,)	
)	
Defendant,)	
)	
and,)	
)	
BARBARA J. CRAIG, Ph.D.,)	
)	
Additional Party Plaintiff)	
and Intervenor.)	

**INTERVENING PLAINTIFF'S MOTION TO CLARIFY
AND/OR STRIKE SETTLEMENT AGREEMENT AND MOTION
FOR EXTENSION OF ADMINISTRATIVE CLOSING ORDER**

Additionally Party Plaintiff and Intervenor Barbara Craig ("Craig") submits the following motion to clarify and/or strike the settlement agreement, and further moves this Court to extend the time on the administrative closing order to resolve these issues. In support of her motion, Craig states as follows:

1. On September 11, 2007, this case was set for a settlement conference before Magistrate Judge Doyle W. Argo. The parties appeared, and an apparent settlement was reached. However, following the settlement conference it was discovered that Craig had received incorrect information that she relied upon in

settling the matter.

2. As part of the negotiations in this matter, Craig inquired about the unused leave she had accumulated throughout her tenure at Langston University. Specifically, she was inquiring into if and how she could utilize the extra leave she had acquired to enhance her retirement benefits.

3. It was relayed from Defendant Langston University to Craig through Magistrate Judge Argo that Craig had maxed out in her leave and that she would be unable to utilize that leave to increase her retirement benefits. Based upon this representation, Craig agreed to one of the terms of the settlement agreement, namely that her leave would be transferred to her husband who had used all of his available leave because of a serious illness.

4. Craig also relied upon this representation and the monetary repercussions it would have upon her and her husband to agree to the amount of the settlement which would be paid in one lump sum.

5. Following the settlement conference, Craig contacted the Teachers' Retirement System for Oklahoma and was notified that she could indeed utilize her accumulated leave to obtain another year of service and increase her retirement benefits.

6. Additionally, Craig expressed concerns about whether her husband would be able to be placed on long-term disability if he was to resign as a result of the settlement agreement. Langston told Craig at that time that her husband was not

even eligible for long-term disability coverage because of his age.

7. Craig indicated at the conference that she was agreeing to the terms subject to an opportunity to look into the long-term disability coverage for her husband. She has since discovered, pursuant to a conversation with the long-term disability insurance carrier, that her husband is eligible for long-term disability, that his age was not a barrier to coverage, and that he would have to be an active employee to receive coverage. In other words, Langston was incorrect in its representations, and the resignation as part of the settlement adversely affects Craig's husband's coverage.

8. Had Craig been given the correct information at the time of the settlement conference, she would not have agreed to the settlement as it currently stands.

9. Furthermore, after the settlement was believed to have been reached on September 11, 2007, this Court entered an administrative closing order for forty-five (45) days. [Docket No. 72]. This time frame expires on October 26, 2007, and at that time the case will be dismissed with prejudice. Because of the developments as set forth herein, Craig requests that the administrative closing order be extended for an additional sixty (60) days until all issues can be resolved and the parties can enter into a formal settlement agreement.

10. Craig brings this motion to clarify the terms of the settlement agreement based upon the misrepresentation set forth herein, and asks this Court to strike the

settlement agreement since this representation led to Craig's consent to the agreement by mistake. She further states as follows:

Argument and Authorities

It is clear that under Oklahoma law, apparent consent is not real or free when obtained through mistake. 15 O.S. § 53. The factual circumstances of this suit show that the mistaken representation at the settlement conference was a mistake of fact. This is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consists in an "unconscious ignorance or forgetfulness of a fact past or present, material to the contract" or "[b]elief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed." See 15 O.S. § 63.

In the present situation, Langston either forgot the applicable provisions on unused leave or believed that the representation was true, when it, in fact, was not. Whatever the reason for the mistake, Craig relied upon it and asks that the settlement agreement be stricken or rescinded. A party to a contract may rescind the agreement "[i]f the consent of the party rescinding...was given by mistake..." 15 O.S. § 233. Based upon the incorrect representation by Langston, Craig entered into the settlement agreement as it currently stands by mistake. She asks this Court to strike the settlement agreement for this reason.

WHEREFORE, Intervening Plaintiff Barbara Craig respectfully requests that this Court strike the settlement agreement entered on September 11, 2007, because

of the mistake of fact upon which Craig relied in agreeing to the settlement.

Dated this 19th day of October, 2007.

Respectfully submitted,

WARD & GLASS, L.L.P.

s/Scott F. Brockman

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CERTIFICATE OF MAILING

This is to certify that on this 19th day of October, 2007, a true and correct copy of the above and foregoing was electronically transmitted to the Clerk of the Court using ECF System for filing and transmittal of a Notice of Electronic Filing was electronically sent to the following counsel of record:

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S/Scott F. Brockman

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