

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

STEPHEN MARSHALL GABARICK

CIVIL ACTION

VERSUS

NO. 08-4007

REF: ALL CASES

LAURIN MARITIME (AMERICA), INC.

SECTION: "B" (4)

ORDER AND REASONS

The Court, having considered the motion to dismiss all claims of claimants represented by the Plaintiffs/Claimants Steering/Liaison Committee Group ("PSC") and associated counsel with prejudice and to re-deposit certain funds into the Registry of the Court related to the claimants represented by the PSC Group, hereby enters the following order:

**IT IS HEREBY ORDERED** that: Any and all claims asserted by or on behalf of the following claimants be and are hereby **DISMISSED, WITH PREJUDICE**, with each party to bear its own costs and attorneys' fees:

1.) Abdullah, Jakeel; 2.) Abdullah-Hunt, Liteefah; 3.) Adams, Sandra; 4.) Aldridge, Willie; 5.) Alfonso, Lynn (Alynn) Sr.; 6.) Anderson, Joyce P.; 7.) Andrews, Johnny; 8.) Augillard, Emile; 9.) Badon, Jacolby; 10.) Bailey, Johnniemae; 11.) Banks, Charles R.; 12.) Banks, Florence L.; 13.) Banks, Travis C.; 14.) Barrouse, Bradley; 15.) Barrouse, Tricia; 16.) Barthelmy, Junior (Junius); 17.) Battiste (Batiste), Kerry; 18.) Blake, Ron; 19.) Bourgeois, Gauge; 20.) Brady, Gaynell; 21.) Brister, Idrick E.; 22.) Brister, Vicky L.; 23.) Brooks, China; 24.) Brooks, Larry; 25.) Brooks,

Laurie B.; 26.) Brooks, Linda; 27.) Brooks, Thelma; 28.) Brooks-Smith, Lavinia; 29.) Brown, Antoinette M.; 30.) Brown, Lolitta M.; 31.) Brown, Norrie Y.; 32.) Camel, K'C; 33.) Carter, Davenisha; 34.) Carter, Da'Vion; 35.) Carter, Denise M.; 36.) Carter, Raheen; 37.) Carter, Sean; 38.) Chambers, Archie; 39.) Chatmon, Lenox; 40.) Clark, Kelly; 41.) Clark, Rodney; 42.) Clark, Tayler; 43.) Clark, Timothy; 44.) Cole, Helen B.; 45.) ColeJohnson, Wanda A.; 46.) Cooper, Nakeisha; 47.) Cooper, Nickolate M.; 48.) Crawford, David; 49.) Crawford, Jarlene; 50.) Daniels, Christen; 51.) Daniels, Denise A.; 52.) Daniels, Michala; 53.) Daniels, Rhonda D.; 54.) Darby, Jerry Jr.; 55.) Davis, Climer B.; 56.) Davis, Horace R.; 57.) Davis, Lateef A.; 58.) Davis, Major L.; 59.) Depron, Austin; 60.) Depron, Australia; 61.) Diaz, Barry L.; 62.) Dobard, Rachel; 63.) Dobard, Rafael Sr.; 64.) Dobard, Rafeal (Rafael) Jr.; 65.) Dobard, Raja A.; 66.) Dodson, Peter; 67.) Dodson, Shawanda; 68.) Dorsey, Thaddeus; 69.) Drawsand, Learence; 70.) Edmond, Michael; 71.) Ellis, Chyna; 72.) Ellis, Daniel; 73.) Ellis, Daniel Jr.; 74.) Ellsworth, Artina V.; 75.) Ellsworth, Marshall Jr.; 76.) Felton, Sa'les; 77.) Felton, Savoie; 78.) Fobbs, Brandi M.; 79.) Fobbs, Merage; 80.) Fobbs, Patricia A.; 81.) Fortune, Kewana; 82.) Fountain, Ruth; 83.) Fox, Roy; 84.) Frazier, Phillip; 85.) Gillum, Arthur Jr.; 86.) Gillum, Deshawn L.; 87.) Givens, Jerry; 88.) Gordon, Nathan P.; 89.) Gordon, Simone Y.; 90.) Goudeau, Lawanda N.; 91.) Graves, Gayle; 92.) Green, George; 93.)

Grison, Carrie N.; 94.) Grison, Douglas; 95.) Hadley, Catrena M.;  
96.) Haley, Richard; 97.) Hawkins, Leroy; 98.) Haynes, Clyde A.;  
99.) Hills, Samuel; 100.) Hingle, Daniel; 101.) Holloway, Virgie  
R.; 102.) Howard, Corey; 103.) Hubbard, Corinne; 104.) Hubbard,  
Larrell; 105.) Irvin, Mark A.; 106.) Irvin, Marshauiona; 107.)  
Irvin, Sherral; 108.) Jackson, Jimmy; 109.) Jackson, Leslie J.;  
110.) Jasper, Jerome L.; 111.) Johnson, Brandon C.; 112.) Johnson,  
Doral G.; 113.) Johnson, Jonah A.; 114.) Johnson, Joyce; 115.)  
Johnson, Kathleen; 116.) Johnson, Keith S.; 117.) Johnson, Lawjahn;  
118.) Johnson, Malaika; 119.) Johnson, Marquis; 120.) Johnson,  
Precious A.; 121.) Johnson, Robert; 122.) Johnson, Shandrell D.;  
123.) Johnson, Shannon M.; 124.) Johnson, Stone; 125.) Johnson,  
Terrel J.; 126.) Johnson, Tracy L.; 127.) Jones, Frank R.; 128.)  
Jones, Lenita; 129.) Jones, Lana M.; 130.) Knox, Claudia; 131.)  
Knox, Craig Jr.; 132.) Knox, Jordan; 133.) Knox, Rashad; 134.)  
Lamothe (Lamonte), Adolph; 135.) LaRocca, Johnny; 136.) LaRocca,  
Mindy; 137.) LaRose, Eric; 138.) Lebanks, Ronterries M.; 139.)  
Levy, Alberta; 140.) Lewis, Tia; 141.) Lofton, Amero; 142.)  
Lombard, Clarence S.; 143.) London, Chris; 144.) Lowery, Beryl M.;  
145.) Lowery, John H.; 146.) Lucas, Donna; 147.) Lucas, Richard;  
148.) Mable, James; 149.) Macon, Vernita R.; 150.) Marshall, Devan;  
151.) Marshall, Devin; 152.) Marshall, Devon; 153.) Martin, I'sani;  
154.) Martin, Juanita; 155.) Martin, Juvanda; 156.) Martin, Niccon  
D.; 157.) Martin, Tailajah; 158.) Mason, Claude; 159.) McElveen,

Mellany; 160.) Miller, Trinity; 161.) Minor, Cherry; 162.) Murphy, Giselle; 163.) Murphy, Robert C.; 164.) Myles, Douglas; 165.) Nichols, Glayds; 166.) Nixon, Darian A.; 167.) Nixon, Melvin; 168.) Nixon, Sherrie; 169.) Nixon, Yolanda; 170.) Owens, Charlotte M.; 171.) Owens, Durkeia; 172.) Owens, Veshauiona; 173.) Parker, Diane; 174.) Payton, Barbara A.; 175.) Perkins, Delrone; 176.) Porter, Aaron; 177.) Ramos, Alexis; 178.) Ramos, George; 179.) Ramos, Geraldine; 180.) Ramos, Janiyyra; 181.) Ramos, Shantell A.; 182.) Reynolds, Rudell; 183.) Richardson, Gregory; 184.) Richardson, Kawanda T.; 185.) Richardson, Monica; 186.) Robinson, Alice; 187.) Seals, Price Antoine R.; 188.) Smith, Antoinette D.; 189.) Smith, Clarence III; 190.) Smith, Pamela P.; 191.) Smith, Sullivan; 192.) Smith, Sullivan Sr.; 193.) Smith, Tommy E.; 194.) Snaer, Terome; 195.) Snaer, Trinette; 196.) Stokes, Taineshia K.; 197.) Sylvia, Jeanell; 198.) Sylvia, Martin; 199.) Tate, Kim Depron; 200.) Tate, Louis; 201.) Taylor, Rashika L.; 202.) Taylor, Victory W.; 203.) Teel, Kelly Jr.; 204.) Tervalon, Barbara B.; 205.) Theodore, Brandon M.; 206.) Theodore, Damien T.; 207.) Theodore, Denise; 208.) Theodore, Derell D.; 209.) Theodore, Kirsten; 210.) Thomas, Bobby P.; 211.) Thomas, Cyndi A.; 212.) Thomas, Stanley; 213.) Thomas, Wilbert Sr.; 214.) Tillery, Hortense R.; 215.) Treadway, Austin; 216.) Treadway, Clifton; 217.) Treadway, Haley; 218.) Turner, Barry; 219.) Turner, Capacine; 220.) Turner, Mark A.; 221.) Turner, Ta'lesia; 222.) Turner, Trai; 223.) Tyler, Murry; 224.)

Tyler, Nida; 225.) Viel, Donald B.; 226.) Viel, Evia M.; 227.) Wallace, Daja; 228.) Ward, Rakieyah; 229.) Washington, Jacqueline A.; 230.) Wells, Ernest (Richard); 231.) West, Decola; 232.) West, Tori; 233.) White, Carolyn J.; 234.) White, Isiah; 235.) Williams, Errol F.; 236.) Williams, Gwendolyn B.; 237.) Williams, Reco Jr.; 238.) Williams, Robert; 239.) Wilson, Clyde; 240.) Wilson, Cory; 241.) Brown, Mathilda; 242.) Clark, Etta; 243.) Clark, Thomas; 244.) Garcia, Alfonso; 245.) Gillet, Hazzert; 246.) Gillet, Rita; 247.) Glover, Bernadette; 248.) McGee, George; 249.) Miller, Joseph; 250.) Sicard, Austin; 251.) Stewart, Dejon; 252.) Stewart, Essence; 253.) Tiffany, Dupree; 254.) Turner, Traci; and 255.) Williams, Eleina.

**IT IS FURTHER ORDERED** that the PSC, through its Chairman, Joseph M. Bruno, be and is hereby authorized and directed to re-deposit the sum of \$8,287.50 into the interpleader fund on deposit in the Registry of the Court in C.A. No. 08-4156, which sum represents the return of settlement funds for the 15 claimants represented by the PSC Group who did not execute releases, namely the claimants identified as nos. 241 through 255 above. Accordingly, the Clerk of Court is hereby authorized and directed to receive the sum of \$8,287.50 from the PSC and Mr. Bruno, and to deposit said funds into the Registry of the Court in Civil Action No. 08-4156, where the funds are to be held subject to further orders of the Court. The Clerk of Court shall also

re-allocate the sum of \$1,462.50 from the PSC set aside to the main interpleader fund in C.A. No. 08-4156.

Pursuant to ordered procedures, movant shows that 240 PSC claimants have executed Receipt and Release Agreements and should therefore be dismissed with prejudice. The remaining 15 claimants have not executed Receipt and Release Agreements within the 90-day time period provided for in this Court's November 16th order, and therefore should also be dismissed with prejudice. (Rec. Doc. No. 1413-3, p.3).

No opposition has been filed to the instant Motion.

#### **LAW AND ANALYSIS**

##### **A. Standard of Review**

In a case in which the motion deals with issues outside of the pleadings, the court should to "treat the motion as one for summary judgment and to dispose of it as required by Rule 56." *Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1283 (5th Cir. 1990), citing *Carter v. Stanton*, 405 U.S. 669, 671 (1972)). Rule 56 of the Federal Rules of Civil Procedure provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits" affirmatively show that there is no genuine issue of

material fact. *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 398 (5th Cir. 2008); *Washburn v. Harvey*, 504 F.3d 505, 508 (5th Cir. 2007).

Inferences of fact should be drawn in a light most favorable to the non-moving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A party opposing a motion for summary judgment must set forth specific facts showing that there are genuine issues of material fact to be presented at trial. See Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby Inc.*, 477 U.S. 247-48 (1986).

## **B. Analysis**

"Although federal courts possess the inherent power to enforce agreements entered into in settlement of litigation, the construction and enforcement of settlement agreements is governed by the principles of state law applicable to contracts generally." *E. Energy, Inc. v. Unico Oil & Gas, Inc.*, 861 F.2d 1379, 1380 (5th Cir. 1988) (internal quotation marks omitted). Pursuant to La. C.C. art. 3072, "A compromise shall be made in writing or recited in open court, in which case the recitation shall be susceptible of being transcribed from the record of the proceedings." The Fifth Circuit has held that a sixty-day dismissal order satisfies the requirement that a settlement be in writing. *Mull v. Marathon Oil Co.*, 658 F.2d 386, 388 (5th Cir. 1981); see also *Morrow v. Am. Bank & Trust Co.*, 397 F.Supp. 803, 810 (M.D.La. 1975), *aff'd*, 547 F.2d

309 (5th Cir. 1977) (holding "writing" requirement to be satisfied when plaintiff's attorney announced a case as settled).

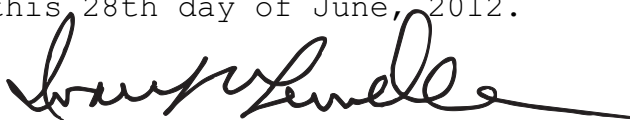
On November 16, 2010 an order was issued giving the Claimants 90 days from the receipt of settlement funds to obtain executed Release and Receipt Agreements. (Rec. Doc. No. 1073, p.3). The Order further provided that proceeds remaining in the possession of counsel after 90 days are to be returned to the Registry of the Court and that any Claimant/Plaintiff not completing the settlement documents within the 90-day period shall have his or her claim dismissed with prejudice. (*Id.*).

The pleadings before us now contain no reason to deviate from the Court's prior Order. Furthermore, there is no dispute that fifteen claimants have not executed release agreements. Lastly, no opposition has been filed to the instant motion.

**CONCLUSION**

Therefore, 1) Any and all claims asserted by the 255 PSC claimants are dismissed, with prejudice, each party to bear its own costs and attorney fees; 2) The PSC shall deposit \$8,287.50 into the interpleader funds; and 3) The Clerk will reallocate \$1,462.50 to the main interpleader fund.

New Orleans, Louisiana, this 28th day of June, 2012.



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UNITED STATES DISTRICT JUDGE