

Antoinette M. Tease  
ANTOINETTE M. TEASE, P.L.L.C.  
PO Box 51016  
Billings, MT 59105  
(406) 245-5254  
toni@teaselaw.com

Attorney for Defendant  
Fort Peck Paleontology, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

BLACK HILLS INSTITUTE OF  
GEOLOGICAL RESEARCH, INC., a  
South Dakota corporation,

Plaintiff,

vs.

FORT PECK PALEONTOLOGY,  
INC., a Montana corporation, JOHN  
RABENBERG, an individual, DICK  
BARSNESS, an individual, JOHN  
DOE(S), individuals and entities,

Defendants.

Cause No. CV-10-76-GF-SEH

DEFENDANT FORT PECK PALEONTOLOGY, INC.’S  
AMENDED STATEMENT OF UNDISPUTED FACTS  
IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to L.R. 56.1(a), and in support of its Motion for Partial Summary  
Judgment, Defendant FORT PECK PALEONTOLOGY, INC. (“FORT PECK”),

by and through its undersigned counsel, submits the following Statement of Undisputed Facts:

1. On August 12, 1990, Susan Hendrickson, a member of BHI's team, discovered a Tyrannosaurus Rex, which became known as SUE ("the *T. rex* SUE"), on the South Dakota ranch of Maurice Williams. See Peter Larson & Kristin Donnan, *Rex Appeal* 7-10 (2004)<sup>1</sup>; see also *Black Hills Inst. of Geological Research v. S.D. Sch. of Mines and Tech.*, 12 F.3d 737, 741 (8th Cir. 1993).<sup>2</sup>

2. "Since 1969, the United States has held [Maurice William's] ranch land in trust for the sole use and benefit of Williams, an Indian." *Black Hills Inst. of Geological Research v. S.D. Sch. of Mines and Tech.*, 12 F.3d 737, 739 (8th Cir. 1993).

3. BHI's team excavated the fossilized remains of the *T. rex* SUE, from August 14, until September 1, 1990, at which point BHI transported the *T. rex* SUE to the Black Hills Museum of Natural History Foundation, Inc., in Hill City, South Dakota. See Larson & Donnan, *supra*, 48, 74; see also *Black Hills Inst. of Geological Research v. U.S. Dep't of Justice*, 967 F.2d 1237, 1239 n.3 (8th Cir. 1992).<sup>3</sup>

---

<sup>1</sup> Relevant excerpts from the book *Rex Appeal* are attached hereto as Exhibit A.

<sup>2</sup> A copy of this decision is attached hereto as Exhibit B.

<sup>3</sup> A copy of this decision is attached hereto as Exhibit C.

4. From May 14<sup>th</sup> until May 16<sup>th</sup>, 1992, as part of a criminal investigation and pursuant to a search warrant, the *T. rex* SUE was seized, along with the other fossils taken from Maurice Williams' ranch, by the FBI, sheriff's officers, and the National Guard from the Black Hills Institute, and taken to the South Dakota School of Mines and Technology. *See Black Hills Inst. of Geological Research v. S.D. Sch. of Mines and Tech.*, 12 F.3d 737, 739-40, 743 n.6 (8th Cir. 1993); *see also* Larson & Donnan, *supra*, 120-24.

5. In May of 1992, BHI initiated suit to quiet title to the *T. rex* SUE and sought a preliminary injunction for possession of the *T. rex* SUE. *See Black Hills Inst. of Geological Research v. S.D. Sch. of Mines and Tech.*, 12 F.3d 737, 739-40 (8th Cir. 1993).

6. On December 15, 1993, the United States Court of Appeals for the Eighth Circuit ruled that BHI did not have any interest in SUE “[b]ecause [Williams] did not seek the Secretary[ of Interior’s] approval.” The court held that “Williams’ attempted sale to Black Hills is void and...*the United States holds Sue in trust for Williams pursuant to the trust patent.*” *Black Hills Inst. of Geological Research v. S.D. Sch. of Mines and Tech.*, 12 F.3d 737, 742-43 (8th Cir. 1993) (emphasis added).

7. In the same ruling, the Eighth Circuit declared that “[b]ecause the fossil was part of Williams’ trust land and he failed to secure approval for his

attempted sale of the right to excavate it, ...the United States' seizure of the fossil was a proper exercise of its trust status under the [General Allotment Act of 1887].” *Id.* at 743.

8. On July 5, 1996, in a separate but related case, the Eighth Circuit Court of Appeals for the United States affirmed a lower court decision that BHI was not entitled to an equitable lien against Maurice Williams, based on BHI's lack of good faith when excavating the *T. rex* SUE. The Eighth Circuit quoted the lower court as follows:

[The Institute] was willfully blind to the existing statutes and regulations governing Indian trust land. Had [the institute] spent the time necessary to research the law, the only inescapable conclusion would have been that [the Institute] had no right to the fossil without the government's permission.

*Black Hills Inst. of Geological Research, Inc. v. Williams*, 88 F.3d 614, 616 (8th Cir. 1996) (*quoting* Mem. Op. at 8 (D.S.D. Aug. 11, 1995)).<sup>4</sup>

9. “On October 4, 1997, [the Field Museum of Natural History in Chicago, Illinois] purchased and acquired title to the original *T. rex* fossil SUE at a Sotheby's auction for Eight Million Three-Hundred Sixty-two Thousand and Five Hundred dollars (\$8,362,500.00) (including Sotheby's Commission).” Affidavit of Lance Grande (Aug. 18, 2011) (“Grande Aff.”) ¶ 2.<sup>5</sup>

---

<sup>4</sup> A copy of this decision is attached hereto as Exhibit D.

<sup>5</sup> A copy of this affidavit is attached hereto as Exhibit E.

10. Maurice Williams did not “grant any casting or molding rights to the SUE T. rex fossil to Peter Larson or the Black Hills Institute of Geological Research, Inc. In fact, [he] did not grant casting or molding rights to anyone prior to the sale of the fossil to The Field Museum.” Affidavit of Darlene Williams (Aug. 29, 2011) (“Williams Aff.”) ¶ 4.<sup>6</sup>

11. “The Field Museum has never given permission to Peter Larson or the Black Hills Institute of Geological Research, Inc. to make molds or casts of the T.rex fossil SUE.” Grande Aff. ¶ 4.

12. “The only entity or person to which The Field Museum has ever granted such molding or casting rights is Research Casting International Ltd. in Trenton Ontario.” Grande Aff. ¶ 4; *see also* Affidavit of Peter May Aff. (Aug. 31, 2011) (“May Aff.”) ¶¶ 3, 4.<sup>7</sup>

13. On October 11, 2010, “Plaintiff[, acting as author, copyright claimant, and organization with rights and permission,] filed an application to register its copyright[, which was subsequently approved,] in the work entitled ‘SUE T. rex’[, which was first published in June 1, 1992] with the United States Copyright Office[.]” Pl.’s First Amended Compl. and Demand for Jury Trial, ¶¶ 69, 70 (March 9, 2011) (*citing* Copyright Application for SUE T. rex, Black Hills Institute

---

<sup>6</sup> A copy of this affidavit is attached hereto as Exhibit F. Darlene Williams is the widow of ranch owner Maurice Williams. *See* Williams Aff. ¶ 1.

<sup>7</sup> A copy of this affidavit is attached hereto as Exhibit G.

of Geological Research, Inc. (Oct. 11, 2010) attached thereto as ex. “J”). The copyright registration for SUE T.rex subsequently issued.

14. On March 9, 2011, BHI initiated an action for copyright infringement against FPPI, alleging violations of the copyright laws of the United States in connection with the “SUE T. rex.” *See id.* ¶¶ 68-85.

15. It is standard practice among professional paleontologists to obtain permission from the owner of the fossil before making a cast of it. One of the reasons for this practice is to protect the original fossil from damage or destruction. When a fossil owner grants permission to make a cast of the fossil, this granting of permission is documented by a casting rights agreement such as the agreement between the U.S. Army Corps of Engineers and Fort Peck Palenotology, Inc. (“FPPI”) and the agreement between The Field Museum and Research Casting International, Ltd. *See May Aff.*, Exh. A. The casting rights agreement may be a stand-alone agreement or part of a loan specimen agreement. Affidavit of Timothy B. Rowe (Oct. 14, 2011) (“Rowe Aff.”) ¶ 5.

16. BHI not only recognizes the industry standard of a written casting agreement but also practices it, as evidenced by the signed Specimen Loan Agreement with Dr. Keith Rigby<sup>8</sup> (attached as Exhibit A to the Rowe Aff.), which explicitly denied him permission to copy STAN T.rex. In direct conflict with its

---

<sup>8</sup> *See* n.7 below for further information on Dr. Rigby.

own demonstrated practices, BHI did not obtain permission from Maurice Williams to cast his fossil SUE T.rex. *Id.* ¶ 6.

17. The Tyrannosaurus rex fossil specimen known as Peck's Rex is the property of the U.S. government, and is administered by the U.S. Army Corps of Engineers. Affidavit of John Rabenberg (Oct. 13, 2011) ("Rabenberg Aff.") ¶ 2.

18. Beginning in 2001, FPPI entered into discussions with the Corps of Engineers about the terms of the written agreement that would formalize the relationship between FPPI and the Corps of Engineers, and would specifically address the casting of replicas of Peck's Rex, which was in FPPI's possession. *Id.* ¶ 3.

19. In June or July 2002, FPPI staff began molding and casting portions of Peck's Rex. *Id.* ¶ 4.

20. In August or September 2002, a representative of the Corps of Engineers instructed FPPI to suspend its molding and casting operations, because the Corps of Engineers had not yet given FPPI formal permission to mold and cast Peck's Rex. FPPI promptly ceased all molding and casting operations. These facts are reflected on page 1 of the FPPI Board Meeting Minutes for September 12, 2002, a true and correct copy of which is attached as Exhibit "1" to the Rabenberg Aff. *Id.* ¶ 5.

21. In compliance with the instructions from the Corps of Engineers, FPPI did not do any further molding or casting of Peck's Rex for at least three more months, until receiving permission from the Corps of Engineers to resume such operations. The following FPPI Board Meeting Minutes reflect the fact that FPPI had discontinued its molding and casting operations during this period: FPPI Board Meeting Minutes for October 10, 2002 at 1 (a true and correct copy of which is attached as Exhibit "2" to the Rabenberg Aff.); FPPI Board Meeting Minutes for November 14, 2002 at 1 (a true and correct copy of which is attached as Exhibit "3" to the Rabenberg Aff.); and FPPI Board Meeting Minutes for December 12, 2002 at 1 (a true and correct copy of which is attached as Exhibit "4" to the Rabenberg Aff.). *Id.* ¶ 6.

22. Attached as Exhibit "5" to the Rabenberg Aff. is a true and correct copy of the Cooperative Agreement between the U.S. Army Corps of Engineers and Fort Peck Paleontology, Inc., which documented the terms under which FPPI was granted permission to mold and cast Peck's Rex. *Id.* ¶ 7.

Dated: October 20, 2011

/s/ Antoinette M. Tease  
Attorney for Defendant Fort Peck Paleontology, Inc.