

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

AFFIDAVIT OF MICHAEL GASSAWAY
AND CARL HUGHES

Come now Michael Gassaway and Carl Hughes, of lawful age, upon oath and depose and state as follows:

1. That they were counsel of record for Plaintiff in the trial of this case in the United States District Court for the Western District of Oklahoma.

2. That they were present throughout the course of the trial of this case including in camera proceedings relating to the jury instructions which were ultimately given to the trial jury in this case.

3. That affiants were also both present at the oral argument before the Supreme Court of the United States on January 8, 1985.

4. That at the oral argument before the Supreme Court of the United States the appellate counsel for the City of Oklahoma City, Burck Bailey, represented to the Court that a particular objection to the Court's instructions was voiced to the trial court in an off the record discussion during the trial of this case and that therefore the trial court was well aware of the City of Oklahoma City's objection to the instruction presently at issue.

5. That counsel have searched their recollection for

the specifics of the instruction conferences held in this case. Counsel would represent that to the best of their recollection the following occurred:

a) That the trial court advised all counsel that its proposed instructions were prepared and that counsel were invited to discuss these proposed instructions with his law clerk.

b) That counsel for Plaintiff, Michael Gassaway and counsel for the City of Oklahoma City, Richard Mahoney, did meet with Judge West's law clerk for the purpose of resolving objections to instructions. That counsel, Carl Hughes, was present most of the time during these conferences. Affiants cannot recall Dan Brummet, a counsel for the City of Oklahoma City, being present at the instruction conference although he may have been.

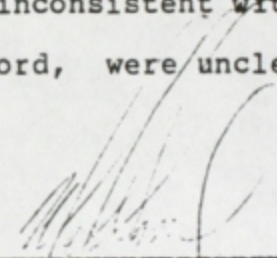
c) That the parties did meet with Judge West's law clerk and whatever objections the City of Oklahoma City had to the instructions were worked out at the conference among the above named counsel.

d) That it was always understood among counsel for both parties that in the event any objections remained that they should be clearly and expressly voiced on the record at the appropriate time after the instructions had been given but prior to the time the case was submitted to the jury. That this is the standard practice in the Western District of Oklahoma and was adhered to in this case.

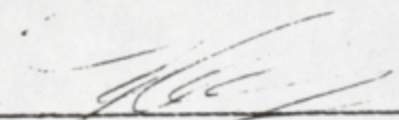
e) That the City of Oklahoma City, through Richard Mahoney did agree to all of the Court's instructions in the case. Initially the City of Oklahoma City did object to Plaintiff's requested instructions, however, to the extent that those instructions were modified and given, the City of Oklahoma City's objections were abandoned or withdrawn.

f) That a second but shorter instruction conference was held with Judge West. At that time the City did not avail itself of the opportunity to object to any instruction but in fact agreed to the instructions that the Court proposed to give to the jury.

6. That the instructions, as agreed to by the City of Oklahoma City were given to the jury in this case as illustrated by the transcript of the proceedings. That the statements of Dan Brummet, which are contained in the record (and quoted at footnote 62, p. 45 of Respondent's brief) and the City now claims to be an objection to the instructions simply did not and does not rise to that dignity. The statements of Brummet were inconsistent with the position of Mahoney stated off the record, were unclear and served no benefit to the Court.

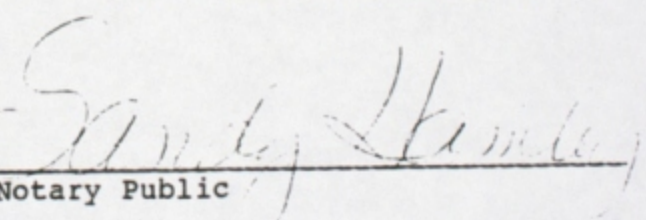


MICHAEL GASSAWAY



CARL HUGHES

Subscribed and sworn to before me this 15 day of
January, 1985.



Notary Public

My Commission Expires:

12/17/85