

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(MIAMI DIVISION)

---

ALLAPATTAH SERVICES INC., ET AL. :  
CASE NO. 91-00986-CIV-GOLD/SIMONTON  
: SPECIAL MASTER THOMAS E. SCOTT, JR.

PLAINTIFFS :

v. :

EXXON CORPORATION, :  
STATES' COUNSEL'S FURTHER  
: SUBMISSION, ON THE SECOND  
DEFENDANT : AND THIRD MOTIONS FOR  
SUMMARY JUDGMENT TO DISMISS

---

RUSSEL A. CLINE, :  
CLAIMS, AFTER HEARINGS ON  
JUNE 20, 2007

PLAINTIFF :

v. :

THE GARDEN CITY GROUP, INC., :  
DEFENDANT :

---

TO: HON. THOMAS E. SCOTT, JR., SPECIAL MASTER

The Special Master conducted hearings on June 20, 2007, regarding Claim 1674 (James Claybar), Claims 1695 and 1715 (Rachel Bivens and Elizabeth Mills for W. T. Owen), Claim 2573 (Clary H. Smith), and Claim 3257 (Thomas R. Melvin for DeFazio Express), and the claimants appeared telephonically and gave sworn testimony at the hearing. States' Counsel, having participated in person and telephonically at the hearing, questioned the claimants and argued their positions. At the conclusion of the hearings, the Special Master directed that any further submissions regarding these claims be provided within one week of the date of the hearings, *i.e.*, on or before June 28, 2007.

States' Counsel, relying upon and incorporating herein all prior submissions and arguments with respect to these and all other claims, hereby make the following submissions regarding each of the claims identified herein, above:

**1. James Claybar, Claim 1674:**

The Claimant testified that he purchased gas Humble Oil, then Esso and finally Exxon during the period from the early 1960's (" '60, '64, '62, somewhere in there") until approximately 1997. He also testified that he does not have any records to support his claim of purchases of motor fuel from Exxon during the class action period (March 1, 1983 through August 28, 1994) as his records were destroyed in two floods in October and November 2002. The Claimant had no independent recollection of the amount of motor fuel he purchased from Exxon during the class period.

The Claimant is unable to provide any proof regarding the status of his station, whether it was a direct-served station under an applicable sales agreement with Exxon, or the volume or other measure of the amount of motor fuel allegedly sold during the class period. A thorough search of Exxon's records has not uncovered the existence of any direct-served station associated with the Claimant either under his name or at the address provided by him in the Proof of Claim or his testimony.

Based on the foregoing, States' Counsel respectfully requests that Claim 1674 be dismissed with prejudice.

**2. Rachel Bivens and Elizabeth Mills, Claims 1695 and 1715:**

These Claimants are the daughters of the deceased dealer, W. T. Owen. They testified that both of their parents passed away in 1994, and they inherited the gas station. Each of the Claimants confirmed that the motor fuel was delivered to the station in trucks that

bore the name "Exxon." However, neither testified that they knew that the trucks were owned by Exxon or that they were delivering Exxon motor fuel under a direct-served sales agreement with Exxon. The Claimants also testified that they were aware of substantial records regarding the operation of the station, but neither of them knew the time period covered by the records or the contents of the records. They also testified that they only kept the records for "the required seven years." One Claimant testified that she recalled Peoples Oil, a distributor, began delivering fuel to the station in the "90's"- the other Claimant could not say when she remembered Peoples Oil started to deliver to the station. In addition, testimony was given that records of motor fuel purchases did not exist because Peoples Oil had a fire in which the records were destroyed.

Further testimony revealed that the Claimants did not participate in the operations or management of the station, did not order fuel, did not pay bills, and did not know when the relationship with Peoples Oil commenced. The Claimants have offered no evidence regarding the volume of purchases of motor fuel or other evidence by which a calculation of the amount of damages could be calculated.

For the foregoing reasons, States' Counsel respectfully requests that Claim 1695 and Claim 1715 be dismissed with prejudice.

**3. Clary H. Smith, Claim 2573:**

The record regarding this claim includes the September 1982 agreement regarding termination of the direct-served relationship in 1982, and a change over to a distributor-served relationship in that year. The Claimant is not certain of his awareness of the agreement, but agrees that he could have entered into it. When asked about documentation regarding the nature of the alleged relationship with Exxon, the Claimant

stated that the records were in the possession of Robbins Oil and Henderson Oil, both distributors. The Claimant maintains that he commenced his distributor-served relationship in 1988, not 1982 as reflected in the agreement and the business records maintained by Exxon.

At the hearing, the Claimant testified that he had a second station located at Union and Pine in Spartanburg, South Carolina. States' Counsel conducted an exhaustive search of the Exxon databases in order to determine the existence of any direct-served station at this newly revealed location. The search did not reveal the existence of such a station, as with the search regarding the location at 2165 South Pine Street, Spartanburg.

The Claimant was unable to provide any evidence regarding the volume of motor fuel purchased during the class period.

Based on the foregoing, States' Counsel respectfully request that Claim 2573 be dismissed with prejudice.

**4. DeFazio Express, Claim 3257:**

Thomas R. Melvin appeared telephonically as Claimant at the hearing. He testified that DeFazio Express was a trucking company that purchased motor fuel for use in its trucks. He did not know, but believed that Exxon was one of the companies from which fuel was purchased. The Claimant testified that the motor fuel purchased by DeFazio Express was consumed by that entity and not resold to motorists.

The testimony reveals that Claimant was not a direct-served station.

For the foregoing reasons, States' Counsel respectfully requests the dismissal of Claim 3257 with prejudice.

Dated: June 27, 2007

Respectfully submitted,

States' Counsel



By: \_\_\_\_\_  
A. Richard Ross, *Pro Hac Vice*  
James E. Cecchi, *Pro Hac Vice*  
Carella Byrne Bain Gilfillan Cecchi  
Stewart & Olstein PC  
5 Becker Farm Road  
Roseland, New Jersey 07068  
Tel. 973-994-1700  
Fax. 973-994-1744  
[ross@carellabyrne.com](mailto:ross@carellabyrne.com)  
[jcecchi@carellabyrne.com](mailto:jcecchi@carellabyrne.com)

-and-

Dennis O'Hara  
Nicholas Christin  
Jordan Cohen  
Wicker Smith O'Hara McCoy Graham &  
Ford PA  
2900 Middle Street  
Miami, Florida 33133  
Tel. 305-448-3939  
Fax. 305-441-1745  
[dohara@wickersmith.com](mailto:dohara@wickersmith.com)  
[jcohen@wickersmith.com](mailto:jcohen@wickersmith.com)  
[nchristin@wickersmith.com](mailto:nchristin@wickersmith.com)

By: \_\_\_\_\_/s/Jordan Cohen\_\_\_\_\_  
Jordan Cohen

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 27, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system that will send a notice of electronic filing to counsel of record, and sent a courtesy copy by mail to:

Eugene E. Stearns  
Mark Dikeman  
Mona Markus  
Stearns Weaver Miller Weissler Alhadeff & Sitterson PA  
Museum Tower, Suite 2200  
Miami, Florida 33130  
Fax 305-789-3395  
Also via E-mail

Garden City Group, Inc.  
105 Maxess Road  
Melville, New York 11747  
Fax 631-470-5100

George L. Waas, Special Counsel  
Office of the Attorney General  
State of Florida  
PL-01 The Capitol  
Tallahassee, Florida 32399-1050