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THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GRAYS HARBOR ADVENTIST  
CHRISTIAN SCHOOL, a Washington  
non-profit organization, GREG G.  
BOGDANOVICH, an individual, MARY  
LAFOREST, an individual, and BRUCE  
KELLY, an individual, on behalf of  
themselves and all others similarly situated,

Plaintiff,

v.

CARRIER CORPORATION, a Delaware  
corporation,  
Defendant.

Case No. C05-5437 RBL

**[PROPOSED] ORDER (1) GRANTING  
PRELIMINARY APPROVAL TO THE  
PROPOSED SETTLEMENT; (2)  
PROVISIONALLY CERTIFYING THE  
PROPOSED SETTLEMENT CLASS; (3)  
APPROVING THE PROPOSED NOTICE  
PLAN AND FORMS OF NOTICE; AND (4)  
SCHEDULING THE FINAL FAIRNESS  
HEARING**

Date: Nov. 20, 2007  
Time: 8:30 a.m.  
Courtroom: B  
Judge: Hon. Ronald B. Leighton

1 The parties have submitted for this Court's review a proposed Class Action Settlement  
2 Agreement resolving all claims in this action against Defendant Carrier Corporation. Having  
3 conducted a hearing regarding the reasonableness of proceeding with the proposed Settlement  
4 and having reviewed the Settlement Agreement, Plaintiffs' Motion for an Order Granting  
5 Preliminary Approval to the Proposed Class Action Settlement, and the files and records of this  
6 case, the Court now FINDS, CONCLUDES, and ORDERS as follows:

7 **I. CERTIFICATION OF SETTLEMENT CLASS**

8 This Court previously certified a statewide litigation class of Washington consumers.  
9 Case 3:05-cv-05437-RBL, Doc. No. 100 (May 1, 2007) (hereinafter "WA Class Cert. Order").  
10 Solely for the purpose of effectuating the proposed Settlement, Plaintiffs have proposed  
11 conditional certification of the following Settlement Class under Federal Rule of Civil Procedure  
12 23 (the "Class"):

13 All individuals and entities in the United States who currently own  
14 a Carrier 90% high efficiency condensing furnace manufactured  
15 between January 1, 1989 and the date of final approval of the  
16 Settlement and equipped with a polypropylene-laminated secondary  
17 heat exchanger, and former owners of such furnaces whose  
18 furnaces experienced CHX failure. Excluded from the Class are: (i)  
19 all persons to the extent that they properly and timely opt out  
20 pursuant to the Settlement agreement in this matter; (ii) the judge to  
21 whom this action is assigned and any member of the judge's  
22 immediate family; (iii) government entities; and (iv) all claims for  
23 personal injury, wrongful death, or emotional distress.

20 This Rule 23 Class alleges four causes of action: actionable misrepresentation, breach of express  
21 warranty, violation of the Washington consumer statute, and unjust enrichment. Specifically, the  
22 Class alleges that starting in 1989, Carrier began manufacturing and selling high efficiency  
23 condensing furnaces with a defective condensing heat exchanger ("CHX"). Plaintiffs allege that  
24 Carrier was aware of this alleged defect and concealed that fact and the fact that the CHX would  
25 not last the expected and warranted 20-year period.

26 Carrier maintains that its CHXs made of PPL-coated steel are not defective. In support,  
27 Carrier submitted data from its warranty database which Carrier asserts show that only 1.6% of its  
28 CHXs made of PPL-coated steel in furnaces sold nationally since 1989 have actually failed.

1 Carrier contends that the failure rate on the CHXs in the Team 40 furnaces made since 1993 will  
2 be less than 5% over a 20 year period. Carrier maintains that this is lower than the rate of failure  
3 on CHXs in furnaces made out of stainless steel made by competitors. Carrier also contends that  
4 it has lived up to its limited warranty, providing free parts but not free labor, just as the warranty  
5 explicitly provided.

6 The Court hereby FINDS and CONCLUDES that the proposed nationwide Class satisfies  
7 all of the requirements for certification under Rule 23(a) and Rule 23(b)(3). Provisional  
8 certification of a nationwide class is appropriate in part because Carrier does not object to class  
9 certification in the context of this Settlement. The Court takes guidance in its consideration of  
10 certification issues from *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998).

11 **Numerosity:** This Court has already ruled that a class of Washington consumers is  
12 sufficiently numerous to satisfy the numerosity requirement. (WA Class Cert. Order 3.) The  
13 parties agree that some three million U.S. consumers nationwide purchased the furnaces at issue  
14 in this matter and that tens of thousands of those consumers paid to repair or replace their  
15 furnaces as a direct result of CHX failure. As such, the Class is sufficiently numerous  
16 (approximately 3 million persons) that joinder is impracticable.

17 **Common Questions of Law and Fact:** The test for common questions of law and fact is  
18 “qualitative rather than quantitative—one significant issue common to the class may be sufficient  
19 to warrant certification.” See *Olson v. Tesoro*, 2007 WL 2703053 \*2 (W.D. Wash. Sept. 12,  
20 2007) (citing *Dukes v. Wal-Mart, Inc.*, 474 F.3d 1214, 1225 (9th Cir. 2007)). As this Court  
21 previously found, the members of the Class share common issues of fact and law regarding (1)  
22 whether the CHXs were defective; (2) whether Carrier knew or should have known about the  
23 defect; (3) whether Carrier had a duty to disclose that defect; (4) whether Carrier concealed that  
24 defect from the class; (5) whether the facts that were allegedly not disclosed were material; and  
25 (6) whether the alleged failure to disclose violated the Washington Consumer Protection Act.  
26 (WA Class Cert. Order 3.)

27 **Typicality:** Representative claims are typical of the class claims if they are “reasonably  
28 coextensive with those of the absent class members.” *Dukes*, 474 F.3d at 1232 (citing *Hanlon*,

1 150 F.3d 1011, 1020). As this Court found in ruling on Plaintiffs' motion for certification of a  
2 Washington litigation class, the named Plaintiffs' have asserted claims which are typical of the  
3 other class members' claims in that each class member (1) owns or owned a Carrier high-  
4 efficiency furnace, (2) alleges that Carrier concealed a known defect in the CHX, and (3)  
5 allegedly suffers injury from a defective furnace that will fail prematurely. (WA Class Cert.  
6 Order 3-4.)

7 **Adequacy:** The named Plaintiffs are adequate representatives of the Class they  
8 represent, since their interests are co-extensive with those of Class members, and, as this Court  
9 previously ruled in certifying a statewide litigation Class in this matter, the Plaintiffs have  
10 retained experienced counsel to represent them. (WA Class Cert. Order 4.)

11 **Common Questions Predominate:** As this Court has previously held, "common  
12 questions predominate here. One common question is whether Carrier's furnaces are defective by  
13 design, regardless of any individual factors such as installation, maintenance, or type of fuel used.  
14 Another core issue is whether and when Carrier knew about the defect, and whether it had a duty  
15 to disclose that fact to consumers." (WA Class Cert. Order 5.) Class treatment here, in the  
16 context of the Settlement, will facilitate the favorable resolution of all Class members' claims.

17 **Superiority:** Given the large numbers of Class members and the multitude of common  
18 issues present, use of the class device is also the most efficient and fair means of adjudicating the  
19 claims that arise out of Carrier's alleged misconduct. Class treatment in the settlement context is  
20 superior to multiple individual suits or piecemeal litigation because it greatly conserves judicial  
21 resources and promotes consistency and efficiency of adjudication. For these reasons, the  
22 superiority requirement is satisfied.

23 Because certification of the Rule 23 Class is proposed in the context of a settlement, the  
24 Court need not inquire whether the case, if tried as a class action, would present intractable  
25 management problems. Accordingly, and for the reasons set forth above, the Court hereby  
26 CERTIFIES the Rule 23 Classes under Rule 23(a) and Rule 23(b)(3).

27 **II. APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

28 The Court finds that Class Representatives Grays Harbor Adventist Christian School,

1 Greg Bogdanovich, Mary Laforest, and Bruce Kelly, as well as proposed additional Class  
2 Representatives Mark Neuser, Arlan and Marcia Hinkelmann, Jeff Dougherty, Frank Zinn,  
3 Harvey Opaleski, and James Nogosek have claims typical of absent class members belonging to  
4 the nationwide Class and are adequate representatives of those class members. The Court  
5 appoints all of the above-mentioned Plaintiffs to serve as Class Representatives.

6 The Court finds that Tousley Brain Stephens, PLLC; Lieff, Cabraser, Heimann &  
7 Bernstein LLP; Cullen Weston Pines & Bach LLP; and Heins Mills & Olson PLC have,  
8 separately and collectively, extensive experience and expertise in prosecuting complex class cases  
9 involving defective products. The Court appoints these firms as Class Counsel.

10 **III. PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT**

11 The Court has reviewed the terms of the Settlement Agreement, including the cash  
12 reimbursement and enhanced warranty provisions, the plan of allocation and the release of claims.  
13 The Court has also read and considered the declaration of Kim Stephens in support of preliminary  
14 approval. Based on review of those papers, and the Court's familiarity with this case, the Court  
15 concludes that the proposed Settlement is the result of extensive, arms-length negotiations  
16 between the parties after Class Counsel had investigated the claims and become familiar with the  
17 strengths and weaknesses of Plaintiffs' case. The assistance of an experienced mediator in the  
18 settlement process confirms that the settlement is non-collusive. Based on all of these factors, the  
19 Court concludes that the proposed settlement has no obvious defects and is within the range of  
20 possible settlement approval, such that notice to the Class is appropriate.

21 **IV. APPROVAL OF THE FORM AND MANNER OF DISTRIBUTING NOTICE AND  
22 CLAIM FORM**

23 The Parties have also submitted for this Court's approval a proposed Notice of Proposed  
24 Class Action Settlement ("Long Notice"), an abbreviated notice for publication in newspapers  
25 and magazines ("Publication Notice"), and a proposed Claim Form, each of which the Court has  
26 carefully reviewed. The Court FINDS and CONCLUDES as follows:

27 The proposed Long Notice and Short Notice are sufficient in detail to provide the best  
28 notice practicable under the circumstances. Each of the proposed forms of Notice allows Class

1 members a full and fair opportunity to consider the proposed Settlement. The proposed plan for  
2 distributing the forms of Notice and Claim Form likewise is a reasonable method calculated to  
3 reach as many individuals as reasonably possible who would be bound by the Settlement. The  
4 Independent Claims Administrator will distribute the Long Notice and Claim Form to Settlement  
5 Class members for whom the parties possess mailing addresses by First Class United States Mail.  
6 It is estimated that the mailing will reach approximately 475,000 Class members and that the  
7 publication will reach 80.51% of homeowners nationwide. In addition, Carrier furnace  
8 distributors across the country will receive the Long Notice and a cover letter explaining the  
9 Settlement and asking for their cooperation in reaching affected Class members. A press release  
10 describing the Settlement will be issued nationwide and the Publication Notice will appear in  
11 approximately 979 newspapers in large cities and small towns throughout the country via  
12 weekend newspaper supplements. The forms of Notice and other documents will also be  
13 available online at [www.FurnaceClaims.com](http://www.FurnaceClaims.com). The website will be registered with hundreds of  
14 search engines to ensure that it is easy to find on the web. There is no additional method of  
15 distribution that would be reasonably likely to notify Class Members who may not receive notice  
16 pursuant to the proposed distribution plan.

17 The forms of Notice fairly, plainly, accurately, and reasonably inform Class members of:  
18 (1) appropriate information about the nature of this litigation, the Settlement Class definition, the  
19 identity of Class Counsel, and the essential terms of the Settlement, including the cash  
20 reimbursement available as well as the forward-looking enhanced warranty; (2) appropriate  
21 information about Class Counsel's forthcoming application for attorneys' fees and the proposed  
22 service payments to Class Representatives; (3) appropriate information about how to participate  
23 in the Settlement; (4) appropriate information about this Court's procedures for final approval of  
24 the Settlement, and about Class members' right to appear through counsel if they desire;  
25 (5) appropriate information about how to challenge or opt-out of the Settlement, if they wish to do  
26 so; and (6) appropriate instructions as to how to obtain additional information regarding this  
27 litigation and the Settlement.

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1 Similarly, the proposed Claim Form allows eligible claimants a full and fair opportunity to  
2 submit a claim for proceeds in connection with the Settlement. The Claim Form fairly,  
3 accurately, and reasonably informs potential claimants that failure to complete and submit a  
4 Claim Form, in the manner and time specified, shall constitute a waiver of any right to obtain  
5 cash reimbursement pursuant to the Settlement terms. As such, the proposed plan for distributing  
6 the forms of Notice and Claim Form ("Notice Materials") will provide the best notice practicable,  
7 satisfies the notice requirements of Rule 23(e), and satisfies all other legal and due process  
8 requirements.

9 **V. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

10 **A. Fairness Hearing**

11 The Court hereby schedules a hearing to determine whether to grant final certification of  
12 the Rule 23 Settlement Class and final approval of the Settlement Agreement (including the  
13 monetary and warranty relief, payment of attorneys' fees and costs, and service payments to the  
14 Class Representatives) (the "Fairness Hearing") for April 22, 2008.

15 **B. Deadline to Request Exclusion from the Settlement**

16 Class Members may exclude themselves from, or opt-out of, the Settlement. Any request  
17 for exclusion must be in the form of a written "opt-out" statement sent to the Claims  
18 Administrator. To be effective, any opt-out statement must be sent to the Claims Administrator  
19 via First Class United States Mail, facsimile, or the equivalent, postmarked no later March 21,  
20 2008—which is 30 days after the last appearance of the Publication Notice. Only those Class  
21 Members who request exclusion in the time and manner set forth herein shall be excluded from  
22 the Settlement. Pursuant to Federal Rules of Civil Procedure 23(b)(3) and (c)(2), the terms and  
23 provisions of the Settlement shall have no binding effect on any person who makes a timely  
24 request for exclusion in the manner required by this Order.

25 The Claims Administrator shall date stamp the original of any opt-out statement  
26 and serve copies on both Class Counsel and counsel for Carrier via facsimile and  
27 overnight delivery within five (5) business days of receipt of such statements. Class  
28 Counsel shall file copies of all timely requests for exclusion, not timely rescinded, with



1 the Court prior to the Fairness Hearing.

2 Class Members shall be permitted to withdraw or rescind their opt-out statements  
3 by submitting a “rescission of opt-out” statement to the Claims Administrator. The  
4 rescission of opt-out statement shall include the following language:

5 I previously submitted an opt-out statement seeking exclusion from the  
6 Settlement. I have reconsidered and wish to withdraw my opt-out statement. I  
7 understand that by rescinding my opt-out I may be eligible to receive an award  
8 from the Settlement fund and may not bring a separate legal action against Carrier  
9 Corp. with respect to the Released Claims.

10 The right to rescind a prior opt-out statement extends to Washington residents  
11 who opted out of the statewide litigation Class certified by this Court on May 1, 2007.

12 A Class Member wishing to submit such a rescission statement shall sign and date  
13 the statement and cause it to be delivered to the Claims Administrator no later than April  
14 21, 2008—which is 60 days after the last appearance of the Publication Notice.

15 The Claims Administrator shall stamp the date received on the original of any  
16 rescission of opt-out statement and serve copies on Class Counsel and counsel for Carrier  
17 via facsimile and overnight delivery within five (5) business days of receipt of such  
18 statements. Class Counsel shall file copies of all timely rescissions of opt-out statements  
19 with the Court no later than two (2) business days prior to the date of the Fairness  
20 Hearing.

21 **C. Defendant’s Right to Rescind Agreement**

22 If the number of individuals who opt-out of the Settlement in the manner provided  
23 in this Order exceeds 5,000, Carrier may, at its option, rescind this Settlement. Carrier  
24 must notify Class Counsel of a decision to withdraw in writing within ten (10) calendar  
25 days after receipt of the total number of opt-outs, which will occur after the deadline for  
26 submitting requests for exclusions. If Carrier exercises this option, all of Carrier’s  
27 obligations under the Settlement Agreement shall cease to be of any force and effect, and  
28 the Settlement Agreement and any order entered in connection therewith shall be vacated,  
rescinded, canceled, and annulled, and the parties shall return to the status quo in the



1 Civil Action as if the parties had not entered into the Settlement Agreement. In addition,  
2 in such event, the Settlement Agreement and all negotiations, Court orders, and  
3 proceedings related thereto shall be without prejudice to the rights of any and all parties  
4 thereto, and evidence relating to the Settlement Agreement and all negotiations shall not  
5 be admissible or discoverable in the Civil Action or otherwise.

6 **D. Deadline for Filing Objections to Settlement**

7 Any Class Member who wishes to object to the fairness, reasonableness or  
8 adequacy of the Settlement must do so in writing. Class Members who have timely  
9 objected to the Settlement in writing may also appear at the Fairness Hearing. To be  
10 considered, any objection to the final approval of the Settlement must state the basis for  
11 the objection and be mailed to the Clerk of the Court, Class Counsel, and Counsel for  
12 Carrier, at the addresses provided in the Notice, via First Class United States Mail,  
13 postage prepaid, postmarked no later than March 21, 2008—which is 30 days after the  
14 last appearance of the Publication Notice. Any Class Member who does not timely file  
15 and serve such a written objection shall not be permitted to raise such objection, except  
16 for good cause shown, and any Class Member who fails to object in the manner  
17 prescribed herein shall be deemed to have waived, and shall be foreclosed from raising,  
18 any such objection.

19 If objections are filed, Class Counsel or counsel for Carrier may engage in  
20 discovery concerning the filed objections prior to the Fairness Hearing.

21 **E. Deadline for Submitting Claims Forms**

22 A Class Member who does not opt out may participate fully in the Settlement. To  
23 receive any cash reimbursement, such a Class Member must properly and timely  
24 complete a Claim Form in accordance with the terms of the Settlement Agreement. To  
25 be effective, the Claim Form must be sent to the Claims Administrator at the address  
26 provided in the Notice postmarked no later than August 1, 2008, or electronically  
27 submitted by that date. Failure to postmark a completed Claim Form by the deadline  
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1 shall bar the Class Member from receiving any monetary award pursuant to the proposed  
2 Settlement. Class Members who do not file timely and valid Claim Forms shall  
3 nonetheless be bound by the judgment and release in this action as set forth in the  
4 proposed Settlement Agreement, unless that Class Member timely opts out of the  
5 Settlement.

6 It shall be the sole responsibility of each Class Member who seeks a monetary  
7 award to notify the Claims Administrator if the Class Member changes his or her address.  
8 Failure of a Class Member to keep the Claims Administrator apprised of his or her  
9 address may result in the claim being denied or forfeited.

10 **F. Deadline for Submitting Motion Seeking Final Approval**

11 No later than thirty-five (35) days before the Fairness Hearing, Plaintiffs shall file  
12 a Motion for Final Approval of the Settlement. On or before one week before the  
13 Fairness Hearing, the Parties may file with the Court reply brief(s) responding to any  
14 filed objections.

15 **G. Deadline for Petition for Attorneys' Fees**

16 Class Counsel shall file with this Court their petition for an award of attorneys'  
17 fees and reimbursement of expenses no later than thirty-five (35) days before the Fairness  
18 Hearing. Class Counsel may file a reply to any opposition memorandum filed by any  
19 objector no later than one week before the Fairness Hearing.

20 **VI. PLAINTIFFS' AND CLASS MEMBERS' RELEASE**

21 If, at the Fairness Hearing, this Court grants final approval to the Settlement, the  
22 Named Plaintiffs and each individual member of the Rule 23 Settlement Class who does  
23 not timely opt-out will release claims, as set forth in Settlement Agreement and Claim  
24 Form, by operation of this Court's entry of the Judgment and Final Approval, regardless  
25 of whether he or she submits a Claim Form or receives any share of the Settlement fund.

26  
27 **IN LIGHT OF THE FOREGOING, IT IS HEREBY ORDERED THAT:**

28 1. The proposed Settlement is hereby PRELIMINARILY APPROVED. Final

1 approval is subject to the hearing of any objections of members of the Settlement Class.

2 2. The proposed Settlement Class is provisionally certified for the sole purpose of  
3 effectuating the Settlement.

4 3. Grays Harbor Adventist Christian School, Greg Bogdanovich, Mary Laforest,  
5 Bruce Kelly, Mark Neuser, Arlan and Marcia Hinkelmann, Jeff Dougherty, Frank Zinn, Harvey  
6 Opaleski, and James Nogosek are appointed as Class representatives.

7 4. Tousley Brain Stephens, PLLC; Lieff, Cabraser, Heimann & Bernstein LLP;  
8 Cullen Weston Pines & Bach LLP; and Heins Mills & Olson PLC are appointed as Class  
9 Counsel.

10 5. The Notice Plan is hereby APPROVED as follows:

11 A. The form of the Notice Materials is approved.

12 B. The manner of distributing the Notice Materials is approved.

13 C. Promptly following the entry of this Order, the Claims

14 Administrator shall prepare final versions of the Notice Materials, incorporating into the  
15 Notice the relevant dates and deadlines set forth in this Order.

16 D. Within five (5) days following entry of this Order, the Defendant  
17 shall provide the Claims Administrator a database in a format acceptable to the Claims  
18 Administrator, listing all known Class Members addresses and all known Carrier dealer  
19 addresses.

20 E. Prior to the mailing of the Notice Materials, the Claims  
21 Administrator will update any new address information for potential class members as  
22 may be available through the National Change of Address ("NCOA") database or  
23 equivalent system.

24 F. Within fifteen (15) days of the date of this Order, the Claims  
25 Administrator shall commence mailing, via First Class United States Mail, the Notice  
26 Materials to all known Class Members and Carrier dealers at their last known address or  
27 at the most recent address that may have been obtained through the NCOA.

28 G. The Claims Administrator shall take all reasonable steps to obtain

1 the correct address of any Class Members and/or Carrier dealers for whom the Notice  
2 Materials are returned by the post office as undeliverable and otherwise to provide the  
3 Notice. The Claims Administrator will trace all returned undeliverable Notice Materials  
4 and re-mail to the most recent address available. The Claims Administrator shall  
5 promptly notify Class Counsel and counsel for Carrier of any mail sent to Class Members  
6 that is returned as undeliverable after the first mailing as well as any such mail returned  
7 as undeliverable after any subsequent mailing(s).

8 H. In the event a Claim Form is submitted timely but is deficient in  
9 one or more aspects, the Claims Administrator shall return the Claim Form to the  
10 claimant with a notice explaining the deficiencies and stating that the claimant shall have  
11 forty-five (45) days from the date of the deficiency notice to correct the deficiencies and  
12 resubmit the Claim Form. A copy of the deficiency notice shall be sent to Class Counsel.  
13 If necessary, claimants will be provided a second deficiency notice to correct any  
14 deficiencies concerning resubmitted Claim Forms, which will be governed by the same  
15 timeliness requirements as the first deficiency notice.

16 I. Class Counsel shall provide the Court, at least five (5) days prior to  
17 the Fairness Hearing, a declaration from the Claims Administrator of due diligence and  
18 proof of mailing and publication of the Notice.

19 J. The Claims Administrator shall take all other actions in  
20 furtherance of claims administration as are specified in the Settlement Agreement.

21 6. US Bank is hereby appointed Claims Administrator to carry out the duties  
22 set forth in this Order and the Settlement Agreement.

23 7. Further settlement proceedings in this matter shall proceed according to  
24 the following schedule:

25	March 4, 2008:	Deadline to file Plaintiffs' Motion for Final
26		Approval and Award of Attorneys' Fees
27	March 21, 2008:	Last day to opt out or object to the Settlement
28	April 1, 2008:	Deadline to file Reply Memorandum in Support of

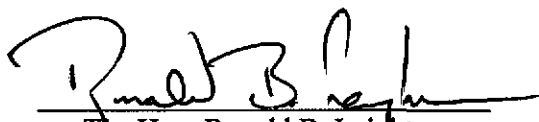
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Final Approval and Award of Attorneys' Fees

April 22, 2008:  
@ 9:00 am (Cmg) Fairness Hearing

IT IS SO ORDERED.

Dated: November 20, 2007

  
The Hon. Ronald B. Leighton  
United States District Judge