

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-143

UNITED STATES OF AMERICA,

Plaintiff-Respondent

v.

B.C. ENTERPRISES, INC. d/b/a ARISTOCRAT TOWING;
ARISTOCRAT TOWING, INC.,

Defendants-Petitioners

ON PETITION FOR INTERLOCUTORY APPEAL PURSUANT TO
28 U.S.C. 1292(B) FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

ANSWER FOR THE UNITED STATES
AS RESPONDENT

On March 11, 2010, the district court entered an order in this case denying defendants' motion for judgment on the pleadings. The district court correctly held that the United States may sue for damages to enforce 50 U.S.C. App. 537, a provision of the Servicemembers' Civil Relief Act (SCRA). In so holding, the district court relied primarily on this Court's decision in *United States v. Arlington County*, 326 F.2d 929 (4th Cir. 1964), which held that the United States has right to enforce a similar provision in a previous version of the SCRA. The district court also certified its order for interlocutory appeal pursuant to 28 U.S.C. 1292(b). On March 18, 2010, defendants timely petitioned this Court for

permission to appeal pursuant to that statute.

A case involving this same provision of the SCRA, *Gordon v. Pete's Auto Service of Denbigh, Inc.*, No. 09-2393 (4th Cir.), is now pending before this Court. *Gordon* presents a related issue – *i.e.*, whether an individual servicemember may sue for damages under 50 U.S.C. App. 537. Given the pendency of that related case, this Court may wish to exercise its discretion to decide the issue presented in this case now. For this reason, the United States does not oppose the petition for interlocutory appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 29, 2010, an electronic copy of the ANSWER FOR THE UNITED STATES AS RESPONDENT was transmitted to the Court by using the appellate CM/ECF system.

I further certify that the following counsel of record are CM/ECF participants and will be served electronically:

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