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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 81-186

BUFFALO RESOURCES CORPORATION

PLAINTIFF,

VS:

PETRO SERVICES, INC.,
and EVAN J. "TONY" FOGARTY

DEFENDANTS,

VS:

COLUMBIA GAS TRANSMISSION
DEFENDANT CORPORATION

ADDITIONAL
DEFENDANT
ON COUNTERCLAIM

SUPPLEMENTAL MEMORANDUM OPINION AND ORDER

* * * * *

In reviewing the pleadings, evidence and statements of counsel for the parties hereto, the Court finds that, at all times set forth in the complaint, the defendant, Evan J. "Tony" Fogarty, was a non-resident of the State of Kentucky. His performance of contract, employment, duties and services on the wells in the State of Kentucky were sufficient transactions of business in the State of Kentucky to satisfy the minimum contacts of International Shoe v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945) and the provisions of the Kentucky Long Arm Statute, KRS 454.210(2)(a) 1. The Court finds that summons under this statute was promptly served upon the Secretary of State, who in turn promptly forwarded it by certified mail, return receipt requested, to Evan J. "Tony" Fogarty,

1320 Oakwood Road, Charleston, West Virginia. The envelope containing that summons was returned to the Secretary of State marked "unclaimed". Pursuant to Davis v. Wilson, 619 S.W. 2d 709, Ky. 1980, Fogarty was properly served under KRS 454.210. However, accepting that in personam jurisdiction may be acquired without actual notice does not a fortiori create a rule that a showing of no actual notice may not constitute good cause sufficient to warrant, on a case by case basis, the setting aside of a judgment based thereon. Cox v. Rueff Lighting Co., 589 S.W. 2d 606, Ky. 1979.

The defendant, Evan J. "Tony" Fogarty, being properly before the Court and having failed to appear and defend the motion of the plaintiff, Buffalo Resources Corporation, for a default judgment is well taken and GRANTED. The said plaintiff is entitled to judgment against said defendant for such amount as shown by the evidence to be due it as damages. By reason of evidence presented upon the issues contained in the pleadings, the Court finds that the plaintiff, Buffalo Resources Corporation, was damaged by reason of overcharge, at the special instance and request of the defendant, Evan J. "Tony" Fogarty, in the sum of Fifty Thousand Twelve and 50/100 (\$50,012.50) Dollars. The said plaintiff was damaged by reason of the 10 percent payments received by the defendant prime contractor from the sub-contractor in the sum of Sixteen Thousand Two Hundred Nineteen and 22/100 (\$16,219.22) Dollars. The overcharge damages brought about by acts of the prime contractor defendant do not have a nexus with the overcharge damages brought about by acts of the sub-contractor defendant.

On the 21st day of January, 1983, this Court entered a Memorandum Opinion and Order giving the parties 30 days leave to file memoranda of points and authorities as to why or why not judgment should be entered pursuant to said Memorandum Opinion. The defendant filed a motion to strike a portion of plaintiff's memorandum contesting

the validity of defendant's counterclaim, which was filed prior to the Court's Memorandum Opinion. The plaintiff filed a response to the motion to strike.

The Court is of the opinion and finds that, in the absence of evidence establishing all of the elements comprising commercial bribery under Kentucky law, a mere solicitation of funds by a prime contractor from a sub-contractor is not sufficient to taint the entire performance of said contract so that a third-party beneficiary of such contract can deny benefits and liabilities received by way of such contract on the ground of illegality. The motion to strike is DENIED.

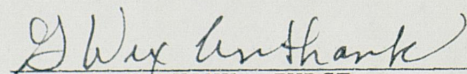
No evidence being presented as to the defendant, Columbia Gas Transmission Corporation, the counterclaim of the defendant, Petro Services, Inc., should be DISMISSED as to said defendant.

Considering the evidence in its entirety, the Court cannot find that it has such character as to justify an award of punitive damages.

The request for oral arguments in support of the memoranda of points and authorities is DENIED.

IT IS ORDERED that judgment will be entered pursuant to the Memorandum Opinion and Order dated the 21st day of January, 1983, and this Supplemental Memorandum Opinion and Order.

This 24th day of February, 1983.


G. WIX UNTHANK, JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 81-186

BUFFALO RESOURCES CORPORATION

PLAINTIFF,

VS:

PETRO SERVICES, INC.,
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DEFENDANTS,

VS:

COLUMBIA GAS TRANSMISSION
DEFENDANT CORPORATION

ADDITIONAL
DEFENDANT
ON COUNTERCLAIM

FINAL JUDGMENT

* * * * *

Pursuant to a Memorandum Opinion, dated the 21st day of January, 1983,
and a Supplemental Memorandum Opinion dated the 24th day of February, 1983,

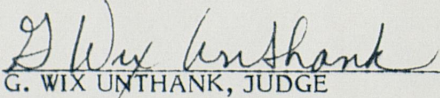
IT IS ORDERED:

- (a) That judgment be and the same hereby is entered in favor of the plaintiff, Buffalo Resources Corporation, and against the defendant, Petro Services, Inc., for Nineteen Thousand Nine Hundred Seventy-one and 50/100 (\$19,971.50) Dollars;

- (b) That judgment be and the same hereby is entered in favor of the defendant, Petro Services, Inc., upon its counterclaim, against the plaintiff, Buffalo Resources Corporation, for Forty-Eight Thousand Two Hundred Fifteen and 09/100 (\$48,215.09) Dollars;
- (c) That judgment be and the same hereby is entered in favor of the plaintiff, Buffalo Resources Corporation, and against the defendant, Evan J. "Tony" Fogarty, for Sixty-six Thousand Two Hundred Thirty-one and 72/100 (\$66,231.72) Dollars and costs;
- (d) That judgment be and the same hereby is entered in favor of the defendant, Columbia Gas Transmission Corporation, and against the defendant, Petro Services, Inc., dismissing the counterclaim against the defendant, Columbia Gas Transmission Corporation.

This is an action wherein more than one claim for relief is presented and multiple parties are involved. This judgment is a judgment upon all claims of all parties and there is no just reason for delay. The clerk is directed to enter this judgment as a FINAL JUDGMENT.

This 24th day of February, 1983.


G. WIX UNTHANK, JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 81-186

BUFFALO RESOURCES CORPORATION

PLAINTIFF,

VS:

PETRO SERVICES, INC., et al

DEFENDANTS,

VS:

COLUMBIA GAS TRANSMISSION
CORPORATION

ADDITIONAL
DEFENDANT
ON COUNTERCLAIM.

MEMORANDUM OPINION AND ORDER

* * * * *

The COMPLAINT herein sets forth an alleged cause of action, in six counts, between plaintiff Buffalo Resources Corporation, and defendants Evan J. "Tony" Fogarty and Petro Services, Inc.

COUNT NUMBER ONE is in tort for fraud and deceit. It charges a conspiracy between the defendants and a non-defendant, Sherwood Spencer. The purpose of the conspiracy is to deceive and defraud the plaintiff; it was effected by false and fraudulent charges and invoices.

COUNT NUMBER TWO is in contract and demands a rescission of such contract and restitution. The contract in controversy is a contract between defendants Fogarty and Petro Services. Fogarty, a petroleum engineer, was hired by plaintiff as an independent contractor to complete specific gas and oil wells for a stated fee. Petro Services, Inc., is a service specializing in completion services on oil and gas wells after the drilling phase. Plaintiff is a real party in interest by reason of being a third-party beneficiary of such contract.

COUNT NUMBER THREE is for an accounting of all funds received and disbursed by the defendants.

COUNT NUMBER FOUR is a claim for punitive damages by reason of said acts being willful, wanton and with a reckless disregard of the rights of the plaintiff.

COUNT NUMBER FIVE is for a breach of warranty brought about by substitution of used materials for new materials. This pleading was subsequently abandoned.

COUNT NUMBER SIX is in contract and against the defendant, Fogarty. It seeks rescission of a contract between plaintiff and this defendant.

The ANSWER of the defendant, Petro Services, Inc., denies the allegations of the specific counts of the complaint and counter-claims for the balance due and owing upon the services rendered the plaintiff pursuant to the request of defendant Fogarty and plaintiff's employee, Spencer. Petro alleges a direct contract with plaintiff and brings in Columbia Gas as a third-party defendant on its counter-claim.

The defendant, Fogarty, did not appear at the trial nor was any direct evidence presented on his behalf. The plaintiff contends that defendant Fogarty is before the Court pursuant to Rule 4 of the Federal Rules of Civil Procedure. This rule is cognizant of the provisions of the Kentucky Long Arm Statute, KRS 454.270. Plaintiff caused the Secretary of State (Kentucky) to mail a copy of the complaint and summons to the last known address of the defendant, 132 Oakwood Avenue, Charleston, West Virginia, which was returned to the Secretary unopened and marked "unclaimed".

PLAINTIFF'S EVIDENCE

Plaintiff is a California business enterprise. Investors provides finances and it engages in exploration of oil and gas with such funds. It has been in this activity for several years. The present action represents the first venture in the Appalachian (Kentucky-West Virginia) area. This venture encompassed the location, drilling and completion of seven wells in the Kentucky-West Virginia area: two gas wells in West Virginia, Western Lands Numbers One and Two; four gas wells in Johnson County, Kentucky, Daniels, Salyers, Skaggs and Williams; one oil well in Morgan County, Kentucky, the Fannin well. All gas wells were producers; however, the the oil well was a dry hole. The focal points of this action are: a claim for damages for an alleged substitution of used casing in the Daniels and Skaggs wells for invoiced new casing; defendant's services on the Williams well required remedial work; unnecessary services and charges on the Fannin, Salyers, Western Lands Number One and the Williams wells.

In establishing its Appalachian District Office, the plaintiff employed and obtained from the offices of Columbia Gas the services of a geologist, Sherwood Spencer.

The geologist was placed in charge of the district office. The plaintiff contracted, with Evan J. "Tony" Fogarty, as an independent contractor, for services as a petroleum engineer. Fogarty was placed in charge of the field. The defendant, Petro Services, Inc., is a service company specializing in completion services. The services of Petro were contracted and negotiated by Fogarty. The services were approved by Fogarty and Spencer before transmittal to the plaintiff's California office.

The evidence reflects payments by Petro to Fogarty during the months of January, February, March and April, 1981, at a rate of ten percent of the amount billed by Petro for its services in a total sum of \$16,219.22. A payment was made by Fogarty to Spencer during the month of February, 1981, for the sum of \$2,000. The majority of casing used in the wells was obtained by plaintiff from McJunkin Corporation by separate transaction. However, some casing was supplied by Petro Services and all the invoices for this casing was for new casing. A witness, Skip Cantrell, a drilling operator, observed used casing being delivered to the Daniels well by a truck with Petro Services signs on door. He recognized the driver as a Petro employee. He observed used casing being enclosed in the completion of the Daniels and Skaggs wells. Plaintiff utilized the testimony of two expert witnesses, John M. Foster and Alfred Cline. These experts are of the opinion that used casing should never be used; assuming that used casing has been used there is a potential danger. To replace the used pipe would require an expenditure of \$20,000 per well or the total sum of \$40,000. However, the value of the repairs exceeds the fair and reasonable market value; therefore, the resulting damage from used casing in the Daniels and Skaggs wells is \$35,515.20.

Expert Foster by way of personal observation and examination of records in evidence opined that a packer⁽¹⁾ in the Williams well was improperly placed. This resulted in water damage to the producing formation requiring remedial work in the sum of \$70,106.15. The diaries of the operators of the service rigs together with the invoices of Petro Services were placed in evidence as exhibits and expert Cline opined that unnecessary services and charges were made upon the wells as follows: Williams \$28,101.50; Fannin \$20,361; Salyers \$3,071; Western Lands Number Two \$18,450.50. The total amount of overcharges are \$69,984.

The plaintiff closed-in-chief and the Court, upon motion of the defendant, made a finding that, considering the evidence in a light most favorable to the plaintiff, a prima facie case was established upon the issues of conspiracy, substitution of materials, remedial work and unnecessary charges, and that the defendant had the burden of going forward.

DEFENDANT'S EVIDENCE

Sherwood Spencer was not involved in a conspiracy; his services were wrongfully terminated. Because of wrongful termination he has bad feelings toward the plaintiff. He, the geologist, located and designated the site for the seven wells in the project; subsequently, six of these wells were producers. After Fogarty deceived everyone and departed, the geologist supervised the completion of two of these wells. Originally he had the opinion that the Williams well was a water well or dry-hole. This decision had

(1) A sealing plug inserted around the outside of the casing is to prevent leakage of waters and other subcutaneous matters into the producing areas of the well.

the approval and concurrence of his usual supervision in the California office. This decision was subsequently overruled by higher executive authority; moreover, the "remedial" work on the well resulted in a fracturing or stimulation of a much larger producing formation than the original production formation. Consequently, the fact it subsequently became a producer was not because of a fault in the original project but because of the stimulation of a larger producing formation.

Spencer did not hire nor engage the services of Fogarty. He was aware that plaintiff was seeking a petroleum engineer. He suggested to Fogarty that he submit his resume. He assumed the California office would investigate before approval in the same manner as it did when it hired him as geologist. Through the observation of mail matter (invoices and checks) passing through the district office he became aware that Petro made payments to Fogarty. He did not discuss this with the California office. He did indicate his approval of the invoices of Petro by putting his initials thereon. Fogarty being in charge of the field, he, as office manager, assumed they were proper. He made spot checks of the wells and always observed that the employees of Petro were working. The weather and terrain compounded problems in the completion of the wells, therefore, it was not unusual for the project to exceed the budget in time and finances. After a discussion with Potts and Taubman, supervisors in the California office, he, as district manager, made the decision and issued the order for Petro to abandon the Williams well. Fogarty and his girl friend lived at Spencer's home for approximately five and one-half months. The payment by Fogarty to Spencer was for rent at the rate of \$20 per day. This was less than the total rent due; when Fogarty disappeared he left owing him money. Cantrell

informed him that some used pipe had been placed in two of the wells. He examined the wells and could not determine whether or not used casing had been installed. He called Petro and it denied using any second-hand casing.

Freshwater, one of the partners of Petro, was approached by Fogarty and advised that it was customary to pay the engineer a ten percent consulting fee. Freshwater advised Fogarty that he would get back with him. During this period Freshwater and Mann, the owners of Petro were engaged in a frolic of their own; that is, they were engaged in the drilling and completion of wells in which each had personal interests. They decided it would be to the best of their interests that if Fogarty would supervise their rigs and they could utilize their individual attentions to their own personal projects; it was on this basis that they agreed to make the payment. Invoices and checks were made for the services and sent to various addresses requested by Fogarty. These services and this expense were used as a business deduction in Petro's income tax. They relied upon the promises and representation of Fogarty because they utilized their time working on their personal projects. Petro submitted no unnecessary charges for the purpose of recovering any payment made to Fogarty. All its services were performed at the request of Fogarty or Spencer.

Utilizing the testimony of pipe supplier, truck drivers and personnel, Petro denies that used casing was substituted for new casing in the Daniels and Skaggs wells. New casing accumulates rust as it lays in the yard before sale; it is sometimes very difficult to distinguish between new and used casing. Assuming there may be a joint or two of used casing there is no danger, because cement is packed around the pipe to prevent

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Resources Corporation. Moreover, notwithstanding the finding that Petro received payment and submitted invoices for services not performed, the Court finds that same was not done with a conspiratorial nor individual intent to deceive and defraud.

The standard of proof in the ordinary civil case is that which produces a reasonable belief in the probability of the material facts necessary to establish the issue in controversy. A second standard may be noted in civil cases involving fraud and the like; it generally may be characterized by the use of the term "clear and convincing". Conrad, Modern Trial Evidence, Volume II, Section 938.

The Court will employ the first standard and characterize this less stringent standard to establish a claim by a "preponderance of the evidence" merely means to prove that the claim is more likely so than not so. United States Fifth Judicial Circuit, Pattern Instructions, Instruction No. 7a.

A conspiracy is a combination or agreement of two or more persons to bring about an illegal act or a lawful act in an illegal manner. Because it is often difficult to show an express agreement, circumstantial evidence may be used to infer a conspiracy. Maggiore v. Bradford, 310 F. 2d 519, 6 C.A. 1962. Although such circumstances may be considered in connection with other proof, mere similarity of conduct among various persons, and the fact they may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy. In order to establish proof that a conspiracy existed it must be shown, by a preponderance of the evidence that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding on a common plan.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy does not thereby become a conspirator. The term "kickback or bribe" was held to the light of judicial reasoning by Circuit Judge Cornelia G. Kennedy, United States Sixth Circuit Court of Appeals, while a District Judge in U. S. v. Weingarden, 468 F. Supp. 410, E.D. Mich. 1979. Such various terms as forced, exacted, and clandestine payments on conditions have been used to epitomize a "kickback". For purposes herein, this Court would characterize a "kickback" as a gift or tribute in consideration of past favors and/or future expectations.

At the conclusion of Plaintiff's evidence the Court considered Fogarty's original demand for payment as indicative of a kickback because of the absence, at that time, of an explanation by Fogarty or otherwise. However, the explanation that defendant, Petro, i.e., Freshwater and Mann, did not accede to the demand but made a counter-offer to make a payment for a service which would have been of real value to the defendant is probative evidence that there wasn't the mutual understanding or agreement or common intent necessary for a conspiracy. Additionally, the defendant avows no payment was exacted, forced, clandestine, nor conditioned upon the receipt of expectation of past or present favors. Supportive of defendant's contention is the fact that invoices and checks were made for the services to be rendered by Fogarty. These were used by defendant in the preparation of its income tax as a bona fide business expense. Considering same within the standard, it is more likely so than not, it is the opinion and finding of the Court that the prior inference, arising from Fogarty's demand and defendant's payment, is rebutted by defendant's explanation and probative evidence.

At the conclusion of plaintiff's evidence the Court considered the payment by Fogarty to Spencer in the sum of \$2,000 as indicative of a participation in a kickback scheme. However, the defendant's explanation that the project was short-termed, during this period Fogarty lived in the home of Spencer, the payment was for rent, this rate of rent is reasonable, rebuts and negates such inference.

The evidence of all the parties reflect that Fogarty was a flim-flam man. He was morally deficient and displayed erratic and eccentric behavior. He did not discriminate in his flim-flamming. He represented himself as a petroleum engineer. He imposed, deceived and betrayed a friend, Spencer, and his employer, the plaintiff, Buffalo Resources. His frequent changes of address and erratic and eccentric behavior seemingly infers that he did not want one hand to know what the other was doing. Therefore, the Court is unable to find a common, mutual and agreed plan in existence, among and between the defendants and Spencer, to deceive and defraud the plaintiff, Buffalo Resources.

The Court finds that plaintiff has failed to establish, by a preponderance, of the evidence that Petro and/or its employees acting within the scope of their employment substituted used casing in the place of the invoiced new casing in the Daniels and Skaggs wells.

Without reiterating the evidence previously set forth in this opinion, the record reflects that plaintiff's evidence is the unsubstantiated testimony of an executive vice-president, in-the-field, for a drilling company that there was used casing in these wells and expert witness to the effect that if there was used casing there is a possible and definite damage.

The evidence of defendant is a denial by various witnesses substantiated by records.

The Court finds the substantiated evidence of the defendant to be more credible.

Notwithstanding same, plaintiff's evidence, on cross-examination, reflects that weak spots may occur in both new or used casing and the danger of a weak spot is a possible danger rather than a probable danger; therefore, the Court is unable to find that a possible injury is the proximate cause of a probable damage. In the event an unforeseeable weak spot is detected the solution is to insert a smaller diameter pipe inside the weak spot and in a reasonable adjacent area rather than replacing the entire pipe; therefore, the amount of damage, if any, is speculative.

The Court finds that the work on the Williams well, after it was declared by Spencer a water-well or dry-hole wasn't remedial work for a primary fault. This additional work was performed at the instance and request of the plaintiff to acquire information consistent with the purpose of the project. The inference of fault arising from the fact that the additional work brought about a producer is off-set by the fact that the additional work explored new territory.

By reason of the testimony of experts, parties and their agents and employees, the Court finds that errors were made in the billings by Petro to the plaintiff, Buffalo Resources, Inc., on the Williams, Fannin, Salyers and Western Lands No. 2, wells.

The errors in billings and/or billings for excessive time on the WILLIAMS well are as follows:

3/25/81, excessive time	\$ 276.00
3/30/81, error	900.00
3/30/81, error	80.00
3/31/81, error	900.00
3/31/81, error	80.00
4/06/81, excessive time	276.00
4/07/81, excessive time	322.00
4/08/81, excessive time	276.00
4/09/81, excessive time	276.00
4/10/81, excessive time	276.00
4/14/81, error	375.00
4/15/81, excessive time	375.00
4/20/81, excessive time	80.00
5/11/81, excessive time	240.00
5/14/81, error	337.50
5/18/81, excessive time	80.00
5/19/81, error	800.00
5/19/81, error	90.00
5/21/81, excessive time	520.00
5/26/81, excessive time	<u>160.00</u>
Total billings in error and/or for excessive time	<u><u>\$6,719.50</u></u>

The errors in billings and/or billings for excessive time on the FANNIN well are as follows:

2/21/81, excessive time	\$ 375.00
2/14/81, excessive time	760.00
2/23/81, error	552.00
2/25/81, error	75.00
3/02/81, error	375.00
3/02/81, error	150.00
3/08/81, excessive time	200.00
3/11/81, excessive time	138.00
3/12/81, excessive time	138.00
3/19/81, excessive time	92.00
3/20/81, excessive time	92.00
3/21/81, error	190.00
3/22/81, error	<u>260.00</u>
Total billings in error and/or for excessive time	<u>\$3,397.00</u>

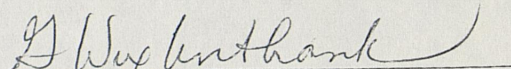
The errors in billings and/or billings for excessive time on the SALYERS well are as follows:

2/27/81, error	<u>\$ 900.00</u>
Total billings in error and/or for excessive time	<u>\$ 900.00</u>

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The parties are given 30 days from the date of entry of this order to present to the Court memoranda of points and authorities, together with argument, as to why judgment should or should not be entered pursuant to this memorandum opinion and order.

This the 21st day of January, 1983.


G. WIX UNTHANK, JUDGE

TO: Judge
FROM: Donald
DATE: 11-8-82
RE: 81-186

Buffalo Resources Corp. v. Petro Services, Inc. and Tony
Fogarty v. Columbia Gas Transmission Corp.

PTC, Tuesday, 11-9-82, at 10:00 a.m.

Synopsis: This is an action to recover damages against Petro & Fogarty in relation to plff's oil & gas drilling operations in Johnson & Morgan Counties in Ky., and in Putnam County, West Va.

Plff alleges that defendant's negligence resulted in the damages. Plff's action against defendant Fogarty apparently never got off the ground, as it seems service was never had against him.

Time Schedule: Discovery deadline was 9-15-82; however, the Court allowed the defendant to inspect a well after that date, with a later ruling on the admissibility of the evidence obtained. Subsequently, it happened that the well could not be inspected after all.

Pending Motions: Defendant Petro Services moved the Court on 10-26-82 to allow it to file an amended answer setting forth an additional defense (Item 58).

Comments: Compliance with standing orders.

1. Plff has filed the following items:
 - a. designation of expert witnesses
 - b. PTC memo
 - c. list of witnesses
 - d. list of stipulated facts
2. Dft Petro Services has filed the following:
 - a. designation of expert witnesses
 - b. PTC memo
3. Columbia Gas has tendered a PTC memo on 11-5-82.

11:30

PRELIMINARY CONFERENCE: Buffalo-Resources v. Petro Services, et al.

Jurisdiction of this action is based on diversity, and personal jurisdiction is founded on the Kentucky Long Arm Statute (KRS 454.210).

This is an action for conspiracy to defraud plaintiff, breach of contract, breach of warranties, and rescission and restitution. Plaintiff alleges that Petro paid Fogarty kickbacks for goods and services rendered to plaintiff by Petro; that Petro supplied unnecessary goods and services; that Petro supplied used materials instead of new materials. Petro has counterclaimed against plaintiff and Columbia Gas for goods and services rendered without receipt of payment. Petro has also crossclaimed against Fogarty- for account of goods, etc. Petro also seeks to enforce payment by foreclosing Mechanics and Materialmens Liens.

This is similar to National Amusements (dare I say the words?) but much simpler. Defendant Petro thinks it can be tried in 4-5 days.

PENDING MATTERS: Both ~~parties~~ Petro and Buffalo have filed the required preliminary memos. The other parties have not done so, and it appears that Fogarty cannot be found. Right now, there is nothing to rule on. There may be a question of which state law applies (Ky. or W.Va.), but the law is pretty clear in favor of applying Kentucky law.

Satch 4/27/82

ASSIGNED FOR PRELIMINARY CONFERENCE AT PIKEVILLE, KENTUCKY
ON May 5, 1982 AT 11:30 A.M.
~~MARCH 26, 1982~~ AT ~~9:30 A.M.~~

PIKEVILLE CIVIL ACTION NO. 81-186

BUFFALO RESOURCES CORPORATION

Greenebaum, Doll & Mc-
Donald
William J. Baird, III

VS:

PETRO SERVICES, INCORPORATED;
EVAN J. "TONY" FOGARTY and
COLUMBIA GAS TRANSMISSION CORP.

C. Gibson Downing
Kay, Casto & Chaney

PRELIMINARY CONFERENCE.

9/11/81	#1	COMPLAINT
9/25/81	#4	SUMMONS w/Marshal's return served on Anita Bradshaw for Sec. of State on 9/22/81
11/13/81	#10	ANSWER, COUNTERCLAIM & CROSSCLAIM of deft, Petro Services, Inc.
11/25/81	#12	SUMMONS w/Marshal's return served on Anita Bradshaw for Columbia Gas Transmission Corp. on 11/16/81
	#13	SUMMONS w/Marshal's return served on Anita Bradshaw for Evan J. "Tony" Fogarty on 11/19/81
12/7/81	#14	REPLY of plff, to Counterclaim
12/23/81	#18	REPLY/ANSWER of additional deft Columbia Gas Transmission Corp. to Counterclaim/third party Complaint
2/16/82	#23	MOTION of deft, Petro Services, Inc., for Protective Order w/affidavit in support thereof
4/21/82	#31	PRELIMINARY CONFERENCE MEMO of plff.
	#32	PRELIMINARY CONFERENCE MEMO of deft, Petro Services

15 Sept 82