

U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
FEB 14 2007
CHARLENE J. KENNEDY, CLERK
BY _____ DEPUTY

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

JAMES D. MCDONALD, ET AL.,
AND PAULA T. MCDONALD,

CASE NO. 05-00892-NPO

DEBTORS.

CHAPTER 7

QUITMAN WAYNE AINSWORTH

PLAINTIFF

VS.

ADVERSARY NO. 05-00118-NPO

JAMES D. MCDONALD

DEFENDANT

MEMORANDUM OPINION DISMISSING
AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBTS
AND OF THE DEBTORS

On November 1, 2006, there came on for trial (the "Trial") the Amended Complaint to Determine Dischargeability of Debts and of the Debtors¹ (Adv. Dk. No. 12) (the "Amended Complaint") filed by Quitman Wayne Ainsworth ("Ainsworth") and the Response to Amended Complaint to Determine Dischargeability of Debts and of the Debtors (Adv. Dk. No. 10) (the "Response") filed by James D. McDonald (the "Debtor") in the above-styled adversary proceeding. Joseph E. Roberts, Jr. represented Ainsworth, and Eileen N. Shaffer represented the Debtor. The Court, having considered the pleadings and the testimony, exhibits and arguments of counsel presented at Trial, as well as the post-trial briefs submitted by the parties, finds that the Amended

¹ Although the title of the Amended Complaint includes the word "Debtors," the caption of the adversary proceeding and the body of the Amended Complaint make clear that Ainsworth is proceeding only against James D. McDonald. Consequently, the Court makes no findings as to Paula T. McDonald in this Memorandum Opinion.

Complaint is not well taken and should be dismissed. Specifically, the Court finds as follows:²

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding. This matter is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I) and (J). Notice of the Amended Complaint was proper under the circumstances.

Facts

Ainsworth was employed by the Debtor and the Debtor's brother in their farming and trucking operation. At the Trial, Ainsworth testified that on the day that he was hired, and while standing beside a Freightliner truck, the Debtor and his brother told Ainsworth, "You're covered under the insurance." (Trial Tr. at 36). Ainsworth further testified, "So I would have figured that would have been workman's comp." (Trial Tr. at 36). Ainsworth stated that he therefore believed he "would be covered if I was in any kind of accident" (Trial Tr. at 36-37). However, Ainsworth admitted that neither the Debtor nor his brother specifically mentioned workers' compensation insurance, and that he just "figured I would be covered." (Trial Tr. at 43-44). Ainsworth also acknowledged that he did not have any other conversations with the Debtor about workers' compensation insurance. (Trial Tr. at 44-45). The Debtor testified that he never made any representation to Ainsworth regarding workers' compensation coverage. (Trial Tr. at 17, 30, 51-52).

On February 10, 1994, while driving one of the Debtor's trucks, Ainsworth was involved in a traffic accident in which two people died. Following the accident, Ainsworth experienced stress, anxiety and nightmares, and sought a doctor's care. Thereafter, on August 6, 1996, Ainsworth filed

² The following constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

an Amended Petition to Controvert (the “W.C. Petition”) with the Mississippi Workers’ Compensation Commission (the “Commission”) alleging that he had sustained work-related injuries while employed by the Debtor.

On February 22, 2005, the Debtor filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code.³ Thereafter, on March 4, 2005, the Commission rendered an opinion on Ainsworth’s W.C. Petition. The Commission found that Ainsworth sustained work-related injuries on February 10, 1994, while employed by the Debtor, and that Ainsworth is permanently and totally disabled. *See* “Exhibit A.” The Commission ordered the Debtor to pay 1) workers’ compensation benefits to Ainsworth in the amount of \$243.75 each week, beginning February 10, 1994, and continuing for 450 weeks, and 2) penalties and interest on any due and unpaid compensation benefits from the due date of each installment of such benefits.

Ainsworth thereafter initiated this adversary proceeding against the Debtor by filing the Amended Complaint wherein he contends that the Debtor is precluded from discharging the debt established by the Commission’s opinion because he committed fraud or defalcation while in a fiduciary capacity in the context of 11 U.S.C. § 523(a)(4).⁴ The Debtor filed his Response which

³ Hereinafter, all code sections refer to the United States Bankruptcy Code located at Title 11 of the United States Code, unless otherwise noted.

⁴ In the Amended Complaint, Ainsworth alleges the debt established by the Commission’s opinion is excepted from discharge pursuant to § 523(a)(2), (4), (6) and (15), and that the Debtor is not entitled to receive a discharge pursuant to § 727. At Trial, Ainsworth informed the Court that he would seek an exception to discharge only under § 523(a)(4). (Trial Tr. at 5, 7). Moreover, the parties agreed to try only the issue of liability, with damages to be determined at a later date, if necessary. (Trial Tr. at 8-12).

Additionally, despite the pending objection to discharge pursuant to § 727 set forth in this adversary proceeding, a Discharge of Debtor (Dk. No. 14) (the “Discharge”) erroneously was entered in the main bankruptcy case. By separate order, the Court will set aside the Discharge until the time for filing a notice of appeal of this Memorandum Opinion and corresponding Final

set forth general denials. The parties agree that the Debtor did not have workers' compensation insurance in effect on the date that Ainsworth sustained his injuries.

Discussion

Ainsworth maintains that the Debtor committed fraud or defalcation while acting in a fiduciary capacity by leading Ainsworth to believe that the Debtor maintained workers' compensation insurance when no such insurance was in place. Section 523(a)(4) provides, in pertinent part:

(a) A discharge under section 727. . . . does not discharge an individual debtor from any debt - -

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny⁵

For a debt to be denied a discharge under § 523(a)(4), "the plaintiff must show that 1) the debtor was acting in a fiduciary capacity towards the plaintiff, 2) the debtor was involved in a fraud or defalcation involving the plaintiff, and 3) his or her debt arose from the debtor's fraud or defalcation." Barcelona v. Vizzini (In re Vizzini), 348 B.R. 339, 346 (Bankr. E.D. La. 2005) (citing Angelle v. Reed (In re Angelle), 610 F.2d 1335, 1338-41 (5th Cir. 1980)). Furthermore, the plaintiff seeking to deny a debtor the discharge of a debt pursuant to § 523(a)(4) must prove by a preponderance of the evidence that the debt is nondischargeable. Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991); RecoverEdge L.P. v. Pentecost, 44 F.3d 1284, 1292 (5th Cir.

Judgment has expired.

⁵ "The phrase 'while acting in a fiduciary capacity' clearly qualifies the words 'fraud or defalcation' and not 'embezzlement' or 'larceny'; the implication is that the discharge exception applies even when the embezzlement or larceny was committed by someone not acting as a fiduciary." 4 Collier on Bankruptcy, ¶ 523.10[1][d] (Matthew Bender 15th Ed. Rev. 2006).

1995).

Addressing the first element, whether the Debtor was acting in a fiduciary capacity, the Court of Appeals for the Fifth Circuit has stated. “[T]he concept of fiduciary under § 523(a)(4) is narrower than it is under the general common law. Under § 523(a)(4), ‘fiduciary’ is limited to instances involving express or technical trusts.” Miller v. J.D. Abrams, Inc. (In re Miller), 156 F.3d 598, 602 (5th Cir. 1998) (quoting Texas Lottery Comm’n v. Tran (In re Tran), 151 F.3d 339, 342 (5th Cir. 1998)); Hollingsworth & Co. v. Nored (In re Nored), 302 B.R. 833, 841 (Bankr. N.D. Miss. 2003) (mere fact that state law places two parties in relationship that may have some characteristics of a fiduciary relationship does not necessarily mean that the relationship is a fiduciary one under § 523(a)(4), which requires the existence of express or technical trust).

While “constructive trusts or trusts *ex malificio* thus also fall short of the requirements of § 523(a)(4),” a statutory trust “can satisfy the dictates of § 523(a)(4).” In re Tran, 151 F.3d at 342. Yet, it is not enough that a statute purports to create a trust by use of the terms “trust” or “fiduciary.” Id. Rather, “[A] statutory trust must (1) include a definable *res* and (2) impose ‘trust-like’ duties.” Id. at 343; *see also* In re Vizzini, 348 B.R. at 346 (citing In re Angelle, 610 F.2d at 1340-41) (“Under applicable Fifth Circuit jurisprudence, trusts can be created by statute if the statute creates a traditional trust structure including separate record keeping for the trust funds, a statutory scheme for the payout of such funds, a settlor, a trustee, and beneficiaries.”). Moreover, “[t]he question of whether a state statute creates the type of fiduciary relationship required under § 523(a)(4) is one of federal law.” In re Tran, 151 F.3d at 343 (citing In re Angelle, 610 F.2d at 1341).

Mississippi law provides that an “employer liable under this chapter to pay compensation shall insure payment of such compensation by a carrier authorized to insure such liability in this

state unless such employer shall be exempted from doing so by the commission.” Miss. Code Ann. § 71-3-75(1) (2006). The Mississippi statute does not purport to create a trust by use of the terms “trust” or “fiduciary.” Furthermore, the statute does not include a definable *res* nor impose “trust-like” duties upon an employer. Rather, Mississippi Code Annotated § 71-3-75(1) merely imposes a duty upon an employer to insure payment. Accordingly, “this Court cannot find that such a statutory obligation [to maintain workers’ compensation insurance] rises to the level of creating a fiduciary relationship of trust on the part of the employer for the benefit of the employee.” Sellers v. Parks (In re Sellers), 352 B.R. 66, 68 (Bankr. W.D. La. 2006).

In fact, “cases have consistently held that an employer with an obligation to obtain workers’ compensation insurance does not serve as a fiduciary for the employee.” Parker v. Grzywacz (In re Grzywacz), 182 B.R. 176, 177 (Bankr. E.D. Mich. 1995); *see also* Smith v. Wheeler (In re Wheeler), 317 B.R. 783, 789 (Bankr. N.D. Iowa 2004) (citing Urological Group, Ltd. v. Petersen (In re Petersen), 296 B.R. 766, 786 (Bankr. C.D. Ill. 2003)) (“[A]n employee/employer relationship is generally insufficient to constitute a fiduciary relationship under § 523(a)(4).”); Hilliard v. Peel (In re Peel), 166 B.R. 735, 738 (Bankr. W.D. Okla. 1994) (“Clearly, an employer normally is not a trustee for its employees. . . .”); Carter v. Verhelst (In re Verhelst), 170 B.R. 657, 661 (Bankr. W.D. Ark. 1993) (“Bankruptcy cases have consistently held that an employer with an obligation to obtain workers’ compensation . . . does not serve as a fiduciary for the employee.”); Holt v. France (In re France), 138 B.R. 968, 971 (Bankr. D. Colo. 1992) (Colorado’s Workmen’s Compensation Act did not create trust so as to establish fiduciary relationship between debtor and employee within meaning of exemption from discharge for fraud of fiduciary); Workers’ Compensation Trust Fund v. Collins (In re Collins), 109 B.R. 541, 543 (Bankr. D. Mass. 1989) (debtor was not acting in

fiduciary capacity for purposes of § 523(a)(4) when he neglected to provide workers' compensation coverage for employee). Consideration of the foregoing cases persuades the Court that the Debtor was not acting in a fiduciary capacity for Ainsworth's benefit.⁶

Given the Court's finding that Ainsworth failed to establish that a fiduciary relationship existed between the parties, the Court need not decide whether a fraud or defalcation occurred. Nevertheless, in an effort to address fully Ainsworth's § 523(a)(4) claim, the Court observes that although he alleged in the Amended Complaint that the Debtor had committed fraud, presumably by misrepresenting to Ainsworth that workers' compensation insurance was in place, the credible evidence presented at the Trial demonstrated that the Debtor did not make any such representation. Moreover, "[f]raud requires some intent." Schwager v. Fallas (In re Schwager), 121 F.3d 177, 185 (5th Cir. 1997) (quoting 2 David G. Epstein et al., Bankruptcy § 7-28 at 368 (1992)); In re McDaniel, 181 B.R. 883 (Bankr. S.D. Tex. 1994) (for purposes of § 523(a)(4), fraud involves intentional deceit). Ainsworth failed to demonstrate that the Debtor harbored any intent to withhold from Ainsworth information regarding workers' compensation coverage. Rather, the testimony at the Trial revealed that Ainsworth simply assumed that such insurance was in place.

Additionally, Ainsworth alleged in the Amended Complaint that the Debtor committed defalcation while acting in a fiduciary capacity. "Defalcation refers to a failure to produce funds entrusted to a fiduciary and applies to conduct that does not necessarily reach the level of fraud, embezzlement or misappropriation." 4 Collier on Bankruptcy, ¶ 523.10[1][b] (Matthew Bender, 15th Ed. Rev. 2006). In the Fifth Circuit, defalcation involves financial misconduct by a fiduciary and

⁶ At the Trial, the parties agreed that the issue of whether the Debtor was required to provide workers' compensation coverage would not be tried. (Trial Tr. at 8-9).

is subject to a recklessness standard. In re Schwager, 121 F.3d at 185. At the Trial, Ainsworth failed to produce any evidence establishing that the Debtor recklessly committed any type of financial misconduct.

Based on the foregoing, Ainsworth has failed to demonstrate by a preponderance of the evidence that the debt established by the Commission's opinion is nondischargeable pursuant to § 523(a)(4). Accordingly, the Court finds that the Amended Complaint is not well taken and should be dismissed.⁷

A separate final judgment consistent with this Memorandum Opinion will be entered by this Court in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

DATED this the 14th day of February, 2007.



NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

⁷ In light of the Court's finding that the debt established by the Commission's opinion is not excepted from discharge pursuant to § 523(a)(4), the Court need not determine the amount of damages.

MISSISSIPPI WORKERS' COMPENSATION COMMISSION

MWCC NO. 96 02093-F-6617-D

QUITMAN WAYNE AINSWORTH

CLAIMANT

VS

JIMMY MCDONALD FARMS
MCDONALD TRUCKING, INC.

EMPLOYER

REPRESENTING CLAIMANT:

Joseph E. Roberts, Jr., Esquire, Jackson, Mississippi

OPINION OF THE ADMINISTRATIVE JUDGE

On February 12, 1996, Quitman Wayne Ainsworth filed a Petition to Controvert alleging that he had sustained a work-related injury on February 10, 1994, while in the employ of McDonald Trucking, Inc.. In response, McDonald Trucking, Inc., on March 7, 1996, filed an answer denying that it had ever employed Mr. Ainsworth.

Then on August 6, 1996, Mr. Ainsworth filed an Amended Petition alleging that on the date of the injury he had been employed by Jimmy McDonald Farms. On January 30, 1998, the Commission received a letter from J. Hal Ross, Esq., stating that he represented Jimmy McDonald who had not had worker's compensation coverage on the date of the alleged injury. (No answer was filed in response to the Amended Petition.)

Nearly two years later on December 30, 1999, Mr. Ainsworth filed the Claimant's Pretrial Statement. Then on October 31, 2001, Mr. Ross filed a Motion For Leave to Withdraw as Attorney of Record for health reasons, which was granted on November 9, 2001.

After more than four months, Mark K. Tullos, Esq., filed on March 29, 2002, his Entry of Appearance as the attorney for Jimmy McDonald Farms and McDonald Trucking, Inc.. Exactly six months later on September 29, 2003, Mr. Tullos filed a Motion to Withdraw as Counsel, citing a

EXHIBIT A

conflict of interest. The Motion was granted on January 9, 2004. Since that time no other attorney appeared for the Employer, and the Employer never filed a Prehearing Statement.

Because Jimmy McDonald; Jimmy McDonald Farms; and, McDonald Trucking, Inc., did not appear at the appointed time on September 27, 2004, at the Mississippi Workers' Compensation Commission Building in Jackson, Mississippi, the Administrative Judge conducted a hearing pursuant to Procedural Rule 7.¹ Considering all of the credible evidence, the Administrative Judge finds that Mr. Ainsworth is permanently and totally disabled.

Issues

These issues were identified at the hearing:

1. Whether Mr. Ainsworth sustained a work-related injury on February 10, 1994;
2. Mr. Ainsworth's average weekly wage on February 10, 1994;
3. The existence and extent of temporary disability attributable to the injury;
4. The date of maximum medical improvement;
5. The existence and extent of permanent disability attributable to the injury;
6. The reasonableness and necessity of certain medical treatment; and,
7. Whether the Statute of Limitations bars this claim.

Summary of Relevant Evidence

1. Quitman Wayne Ainsworth

On February 10, 1994, while employed by Jimmy McDonald Farms and driving a truck filled with sawdust, Quitman Wayne Ainsworth was involved in a traffic accident, in which two people died. After the accident Mr. Ainsworth experienced stress and nightmares,

¹ After the hearing the record remained open until October 11, 2004.

for which he sought treatment from Dr. David Clark.

When Mr. Ainsworth attempted to return to driving a truck, he suffered visual and auditory hallucinations. Eventually he was able to resume truck-driving, but he is unable to drive by himself or in the rain. For those reasons, Mr. Ainsworth's wife now drives with him.

Mr. Ainsworth quit school in the seventh grade and is illiterate. He has spent his entire working life driving trucks. He began working for the Employer more than a year and a half before the accident, and at the time of the accident, he earned an average of \$400.00 a week. Mr. Ainsworth does not know how much he earns now because he has a very poor memory.

Mr. Ainsworth believes that he cannot work, except for driving a truck. He still sees Dr. Webb.

2. Deborah Ainsworth

Deborah Ainsworth, who is married to the Claimant, saw Mr. Ainsworth in the hospital after the accident. Although he was not physically injured, he was very upset. Indeed, Mrs. Ainsworth had never before seen him in such a state.

Because of his stress, anxiety, and nightmares, Mr. Ainsworth started seeing Dr. Clark, and since then the Claimant has had constant care for his stress. He also visited the Regional Mental Health Center in Raleigh and has been treated by Dr. Webb since 1999.

Now Mr. Ainsworth still suffers from nightmares, and heavy traffic and rain bother him when he drives. He cannot drive a truck by himself. When he tries, he becomes "jumpy" and thinks he will have an accident. For that reason Mrs. Ainsworth and the Claimant take turns driving every two hours. Mr. Ainsworth averages earning \$300.00 a

week.

Mrs. Ainsworth believes that the Claimant cannot work by himself at any job. In addition, he is illiterate.

3. Accident Report

According to a Mississippi Uniform Accident Report² prepared by the Scott County Sheriff's Office, Mr. Ainsworth was involved in a motor vehicle accident on February 10, 1994, while in the employ of McDonald Trucking, Inc..

4. Dr. Mark C. Webb

Dr. Mark C. Webb, a board certified psychiatrist, testified through his deposition³ and medical records.⁴ Dr. Webb began treating Mr. Ainsworth on July 20, 1999, and was still treating him when Dr. Webb's deposition was taken on September 23, 2003. During that period Mr. Ainsworth's condition had not improved.

In Dr. Webb's opinion, Mr. Ainsworth has post-traumatic stress syndrome resulting from the traffic accident on February 10, 1994. Dr. Webb further opined that because of that condition Mr. Ainsworth is permanently and totally disabled from all employment. Although Dr. Webb was aware that Mr. Ainsworth, with his wife's help, drove a truck, the physician specifically stated that the Claimant should not drive a truck because of his psychological condition.

Findings of Fact and Conclusions of Law

Based on the testimony of Mr. and Mrs. Ainsworth and on the opinion of Mr.

² Claimant's Exhibit 2; Accident Report Dated February 10, 1994.

³ Claimant's Exhibit 1; Deposition of Dr. Mark C. Webb.

⁴ Claimant's Exhibit 2; Medical Records of Dr. Mark C. Webb.

Ainsworth's treating physician, Dr. Webb, the Administrative Judge finds by clear and convincing proof that Mr. Ainsworth sustained a work-related injury on February 10, 1994, while employed by Jimmy McDonald Farms. The Administrative Judge further finds that on the date of the injury, Mr. Ainsworth's average weekly wage was \$400.00.

As to the extent of disability in this case, Dr. Webb advised the Claimant not to work (and specifically not to drive a truck), and found the Claimant to be permanently and totally disabled. Disregarding the advice of his doctor, Mr. Ainsworth, a man of very limited education, attempted to return to the only work that he had ever known - driving a truck; and, yet but for the extraordinary assistance of his wife, Mr. Ainsworth would not be able to drive a truck and, consequently, would not be able to obtain employment in the competitive labor market. In addition, common sense indicates that it is highly unlikely that any reasonable employer, having been fully informed of Dr. Webb's opinions, would hire Mr. Ainsworth.⁵

For those reasons Mr. Ainsworth's situation is analogous to the aptly named "odd-lot doctrine:"

Under the odd-lot doctrine total disability may be found in the case of workers who, while not altogether incapacitated for work, are so handicapped that they will not be employed regularly in any well-known branch of the labor market. The essence of the test is the probable dependability with which claimant can sell his or her services in a competitive labor market, undistorted by such factors as business booms, sympathy of a particular employer or friends, temporary good luck, or the superhuman effort of the claimant to rise above crippling handicaps.⁶

⁵ "[T]he Commission is called upon to apply 'common knowledge, common experience and common sense' when weighing the evidence." Stuart v. Janssen Pharmaceuticals, Inc., MWCC NO. 99 02117-G-4897, p. 11 (August 21, 2001); 2001 WL 1012138 at 5 (quoting Vardaman Dunn, Mississippi Workers' Compensation, Section 271 (3d ed. 1982)(footnote omitted).

⁶ Arthur Larson and Lex K. Larson, Larson's Workers' Compensation Section 83.01.

The Administrative Judge, therefore, finds that under the peculiar facts of this case Mr. Ainsworth's post-injury wages do not reflect his post-injury wage-earning capacity. Indeed, based on Dr. Webb's opinions; Mr. Ainsworth's age, education, and experience; and, other occupational factors, the Administrative Judge finds that Mr. Ainsworth is permanently and totally disabled and, accordingly, is entitled to permanent total disability benefits of \$243.75 a week,⁷ beginning on the date of the injury, February 10, 1994, and continuing for 450 weeks.

Turning to the issue of medical treatment, the Administrative Judge finds that the medical services, rendered to Mr. Ainsworth in connection with this injury by Drs. Clark and Webb and the other medical providers, were reasonable and necessary; and, thus, are obligations of the Employer.

As to the last issue of the Statute of Limitations, the injury occurred on February 10, 1994, and usually the two-year Statute in Section 71-3-35 would have run on February 10, 1996; however, the Administrative Judge takes administrative notice of the fact that February 10, 1996, was a Saturday. For that reason the Statute would not have run until the following Monday, February 12, 1996, when Mr. Ainsworth filed his Petition. In other words, this claim is not barred by the Statute because Mr. Ainsworth filed on the last day of the period. At any rate, the Statute of Limitations is an affirmative defense that is waived if not raised by the Employer, Austin v. Baldwin Piano & Organ Co., MWCC NO. 00 02816-G-7833-A and NO. 00 02548-G-7780-A (March 10, 2003); 2003 WL 22598565 at 9, and here the Employer never pled the Statute as a defense.

⁷ Ordinarily, Mr. Ainsworth's permanent total disability weekly benefits would be two-thirds of his average weekly wage of \$400.00, or \$267.57; however, that figure must be reduced to the maximum weekly benefits for an injury occurring in 1994, or \$243.75.

ORDER

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Employer shall pay workers' compensation benefits to the Claimant as follows:

1. Permanent total disability benefits in the amount of \$243.75 each week, beginning on February 10, 1994, and continuing for 450 weeks; and,
2. Penalties and interest on any due and unpaid compensation benefits from the due date of each installment of such benefits.

IT IS FURTHER ORDERED AND ADJUDGED that the Employer shall provide reasonable and necessary medical supplies and services as required by the nature of the Claimant's injury and the process of recovery therefrom, pursuant to Miss. Code Ann. Section 71-3-15 and the Medical Fee Schedule.

IT IS FURTHER ORDERED AND ADJUDGED that McDonald Trucking, Inc., is dismissed as a party to this claim.

SO ORDERED this the 4th day of March, 2005.



Mark Henry
MARK HENRY
ADMINISTRATIVE JUDGE

Jo Ann McDonald
Jo Ann McDonald, Commission Secretary
MWCC NO. 96 02093-F-6617-D