

Docket as of March 29, 2005 11:07 pm

Web PACER (v2.4)

U.S. District Court
District of Utah (Central)
CIVIL DOCKET FOR CASE #: 05-CV-254
Lichfield v. Intl Survivors Actio, et al

Filed: 03/24/05
Assigned to: Judge Tena Campbell
Jury demand: Both
Demand: \$0,000
Nature of Suit: 320
Lead Docket: None
Jurisdiction: Diversity
Dkt # in 5th Dist, Wash Cnty : is 050500370
Cause: 28:1332 Diversity-Notice of Removal

ROBERT B. LICHFIELD
 plaintiff

Fred R. Silvester, Mr.
EMAIL
[COR LD NTC]
Spencer C. Siebers
JFAX 9,5322270
[COR]
SILVESTER & CONROY LC
1371 E 2100 S STE 200
SALT LAKE CITY, UT 84105
(801)532-2266

v.

INTERNATIONAL SURVIVORS ACTION
COMMITTEE, a Florida
Corporation
 defendant

SHELBY EARNSHAW, an individual
 defendant

Michael L. Humiston
[COR LD NTC]
23 W CENTER ST
PO BOX 486
HEBER CITY, UT 84032
(435)654-1152

WILLIAM EARNSHAW, an
individual
 defendant

Michael L. Humiston
(See above)
[COR LD NTC]

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
3/24/05	1	Notice of Removal assigned to Judge Tena Campbell Receipt no.: 4681002625 (ekg) [Entry date 03/25/05]
3/24/05	2	Notice of filing [1-1] removal notice by Shelby Earnshaw, William Earnshaw (alt) [Entry date 03/25/05]
3/25/05	--	Clerk's mailing of certificate of acknowledgment of alternative dispute resolution option. Mailed, faxed or emailed to plaintiff Robert B. Lichfield, defendant Shelby Earnshaw, defendant William Earnshaw (ekg) [Entry date 03/25/05]
3/29/05	3	Order dfts to show cause w/in 20 days why case should not be remanded to st ct for lack of subject matter jurisdiction signed by Judge Tena Campbell, 3/29/05 cc:atty (alt) [Entry date 03/29/05]


Case Flags:
JURY

END OF DOCKET: 2:05cv254

PACER Service Center			
Transaction Receipt			
03/31/2005 16:29:43			
PACER Login:	mn0572	Client Code:	
Description:	docket report	Search Criteria:	2:05cv00254
Billable Pages:	2	Cost:	0.16

MICHAEL L. HUMISTON, USB #6749
23 West Center Street
P.O. Box 486
Heber City, Utah 84032
(435) 654-1152

MEDVIN & ELBERG, NJSB #8459
One Gateway Center
Newark, New Jersey 07102
(973) 642-1300

FILED
U.S. DISTRICT COURT
2005 MAR 24 P 3:31
DISTRICT OF UTAH
BY: 
DEPUTY CLERK

Attorneys for Defendants Shelby Earnshaw and William Earnshaw

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ROBERT B. LICHFIELD,
Respondent/Plaintiff,

vs.

**INTERNATIONAL SURVIVORS
ACTION COMMITTEE, Inc.,** a Florida
Corporation, **SHELBY EARNSHAW,**
an individual, **WILLIAM EARNSHAW,**
an individual,
Petitioners/Defendants

NOTICE OF REMOVAL

State Case No. 050500370

Judge Tena Campbell
DECK TYPE: Civil
DATE STAMP: 03/24/2005 @ 15:31:47
CASE NUMBER: 2:05CV00254 TC

TO: The Judges of the Fifth District Court, Washington County, State of Utah

PLEASE TAKE NOTICE that Defendants Shelby Earnshaw and William Earnshaw hereby remove the above-entitled action from the Fifth District Court in and for Washington County, State of Utah, to the United States District Court for the District of Utah pursuant to 28 U.S.C. Sections 1332, 1441 and 1446.

In support of this Notice of Removal, Defendants state:

1

1. On February 22, 2005, Robert B. Lichfield filed a Complaint in the Fifth Judicial District Court of Washington County alleging generally that these defendants engaged in a course of conduct that defamed him, intentionally interfered with his prospective economic advantage, and invaded his privacy. The amount in controversy exceeds \$75,000. A copy of the Complaint is annexed hereto as Exhibit A.

2. The defendants are husband and wife and residents of the State of Virginia. They reside at 12252 Elk Run Church Road, Midland, Va. 22728.

3. Paragraph 1 of Plaintiff's complaint states that Plaintiff resides in Washington County, Utah.

4. The United States District Court for the District of Utah has original jurisdiction over this action pursuant to 28 U.S.C. §1332 because it arises between citizens of different states and the amount in controversy is in excess of \$75,000, exclusive of interest and costs.

5. The Earnshaws first received a copy of the initial pleading in this action, through service or otherwise, no earlier than February 28, 2005 when the Complaint and Jury Demand were served at their home.

6. As of this date, the Earnshaws have not filed a responsive pleading in the action commenced by plaintiff in the Fifth District Court in and for Washington County, State of Utah, and no other proceedings have transpired in that action.

7. The third defendant in this action is a Florida non-profit corporation and to the best of these defendants' knowledge and belief it has not been served.

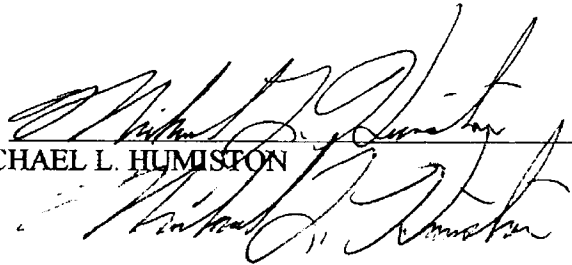
WHEREFORE, defendants Shelby Earnshaw and William Earnshaw pray that the above-captioned matter, now pending against them in the Fifth District Court in and for Washington County, State of Utah, be removed to the United States District Court for the District of Utah.

DATED this 23rd day of March, 2005.

MEDVIN & ELBERG
Attorneys for Defendants Shelby and
William Earnshaw

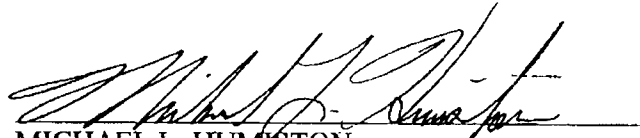
BY: _____
PHILIP ELBERG

MICHAEL L. HUMISTON
Attorney for Defendants Shelby and
William Earnshaw

BY: 
MICHAEL L. HUMISTON

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of the foregoing Notice of Removal to Fred R. Silvester, Esq., Attorney for Plaintiff, at Silvester & Conroy, L.C., 1371 East 2100 South, Suite 200, Salt Lake City, Utah 84105, this 23rd day of March, 2005.

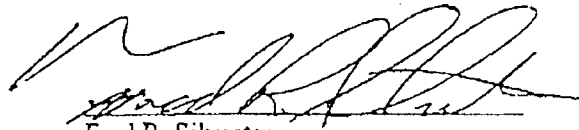


MICHAEL L. HUMSTON

listed above. If you fail to do so, judgment by default may be taken against you for the relief demanded in the complaint. The complaint is on file with the clerk of the court.

DATED this 23 day of February 2005.

SILVESTER & CONROY

Handwritten signatures of Fred R. Silvester and Spencer Siebers.

Fred R. Silvester
Spencer Siebers
Attorneys for Plaintiff

FRED R. SILVESTER, ESQ. (3862)
SPENCER SIEBERS, ESQ. (8320)
SILVESTER & CONROY, L.C.
1371 East 2100 South, Suite 200
Salt Lake City, Utah 84105
Telephone: (801) 532-2266

Attorneys for Robert B. Lichfield

IN THE FIFTH JUDICIAL DISTRICT COURT OF WASHINGTON COUNTY
STATE OF UTAH

ROBERT B. LICHFIELD

Plaintiff,

vs.

INTERNATIONAL SURVIVORS
ACTION COMMITTEE, Inc., SHELBY
EARNSHAW, WILLIAM
EARNSHAW

Defendants.

COMPLAINT AND JURY DEMAND

Civil No.

Judge

Plaintiff Robert B. Lichfield through Silvester & Conroy, L.C. his counsel of record for a cause of action complains and alleges as follows:

FACTS COMMON TO ALL CLAIMS

1. Plaintiff is a resident of Washington County, Utah.
2. Defendants International Survivors Action Committee, Inc. ("ISAC") is a Florida Corporation.
3. Shelby Earnshaw is a resident of Virginia and director of ISAC.
4. William Earnshaw is a resident of Virginia and chief financial officer of ISAC.

3. Shelby Earnshaw is a resident of Virginia and director of ISAC.
4. William Earnshaw is a resident of Virginia and chief financial officer of ISAC.
5. The actions giving rise to plaintiff's causes of action occurred in the States of Utah and Missouri.
6. ISAC through its agents visited Utah with intent to invade the privacy of plaintiff, with intent to interfere with Plaintiff's business relationships, and with intent to interfere with Plaintiff's prospective economic relationships.
7. Defendants have contacted governmental officials in states including Utah, and Missouri for purpose of damaging plaintiff in Utah.
8. Defendants intentionally, or in reckless disregard of the truth, have published false, defamatory and misleading information about plaintiff, on the internet, to business and public officials in any state where they believe plaintiff does or intends to do business, specifically in Utah and Missouri.
9. Defendants' false, defamatory and misleading publications include but are not limited to claims plaintiff has violated criminal laws, and abused or molested children.
10. Defendants' false, defamatory and misleading publications include but are not limited to claims plaintiff's business practices violate the law.
11. Defendants or their agents visited Utah, searched through trash cans, conducted secret surveillance at locations they expected to observe plaintiff, trespassed on private property, talked

with members of plaintiff's community, in violation of plaintiff's privacy.

12. Defendants gathered private business records from the trash at facilities where plaintiff had business relations, took photos of private locations all with the intent to gather materials that might be used to damage plaintiff's business relations.

13. Defendants contacted public officials in Boonville Missouri, and Salt Lake City, Utah and spread false, defamatory and misleading information about plaintiff with the intent to interfere with plaintiff's business relations and with plaintiff's prospective economic interests.

14. Plaintiff has negotiated to purchase real estate in Boonville Missouri and during those negotiations plaintiff became aware that defendants Earnshaw personally and in behalf of ISAC contacted police, city officials and members of the community claiming plaintiff abused children. operated businesses in violation of the law, had been convicted of crimes. These allegations are false.

15. Defendants have also contacted public officials in the State of Utah, claiming plaintiff is a child abuser, and is guilty of other crimes, all of which are false.

16. On information and belief, Defendants have contacted public officials in New York, Iowa, South Carolina, Georgia, and Montana and falsely accused plaintiff of illegal conduct with the specific intent to damage business relations plaintiff has with residents of those states.

17. Defendants know plaintiff is a resident of Utah with his principle place of business in Utah, and have intentionally directed all their actions to cause plaintiff damage in Utah.

information that might be used to interfere with plaintiff's business relations.

27. Defendants or their agents visited Washington County, Utah; Rich County, Utah; Salt Lake County, Utah attempting to gather such information.

28. Defendants or their agents attempted to get lists of plaintiff's business contacts, potential customers, business associates, and to get information regarding property owned, banking relationships, and other protected and proprietary information to use in convincing people not to do business with plaintiff.

29. Defendants in their contacts with public officials in Missouri, Utah and elsewhere, invaded plaintiffs' privacy by publishing false information of a highly offensive nature, knowing it to be false or acting in reckless disregard as to its falsity with the intent to place plaintiff in a false light with those public officials.

29. Plaintiff is entitled to damages for this invasion of privacy and for injunctive relief prohibiting defendants and their agents from further invasions of plaintiff's privacy, personal property, or businesses and enjoining them, and each of them from publishing false information placing plaintiff in a false light.

30. Plaintiff is entitled to punitive damages to punish and deter defendants willful, malicious, and reckless misconduct.

THIRD CAUSE OF ACTION

Intentional interference with prospective economic advantage

for cost and attorney's fees as allowed by law;

for punitive damages;

and for such other and further relief as is just.

Plaintiff demand a jury trial on all issues triable to a jury.

DATED this 22 day of February, 2005

Silvester & Conroy, L.C.

A handwritten signature in black ink, appearing to read "Fred R. Silvester", is written over a horizontal line.

Fred R. Silvester
Spencer C. Siebers
Attorneys for Plaintiff

MICHAEL L. HUMISTON, USB #6749
23 West Center Street
P.O. Box 486
Heber City, Utah 84032
(435) 654-1152

FILED
U.S. DISTRICT COURT

2005 MAR 24 P 3:32

MEDVIN & ELBERG, NJSB #8459
One Gateway Center
Newark, New Jersey 07102
(973) 642-1300

DISTRICT OF UTAH
BY: JA
DEPUTY CLERK

Attorneys for Defendants Shelby Earnshaw and William Earnshaw

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ROBERT B. LICHFIELD,
Plaintiff,

vs.

**INTERNATIONAL SURVIVORS
ACTION COMMITTEE, Inc.,** a Florida
Corporation, **SHELBY EARNSHAW,**
an individual, **WILLIAM EARNSHAW,**
an individual,
Defendants

:
: **NOTICE OF FILING NOTICE
OF REMOVAL**

: State Case No. 050500370

Judge Tena Campbell
DECK TYPE: Civil
DATE STAMP: 03/24/2005 @ 15:31:47
CASE NUMBER: 2:05CV00254 TC

: Judge

TO: **FRED R. SILVESTER, Esq.,**
SILVESTER & CONROY
1371 East 2100 South, Suite 200
Salt Lake City, Utah 84105
Attorneys for Plaintiff

SIR: PLEASE TAKE NOTICE that in the above-entitled action, defendants Shelby Earnshaw and William Earnshaw have this day filed a Notice of Removal, a copy of which is attached hereto, in the Office of the Clerk of the United States District Court for the District of Utah. You are also advised that the defendant, upon filing of said Notice of Removal, filed a copy

2

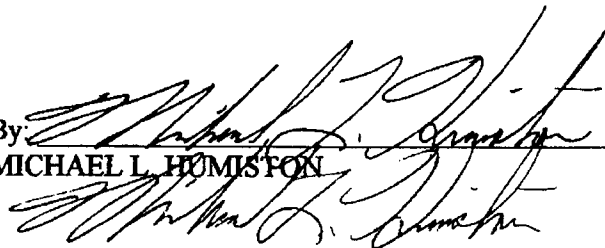
of the Notice with the Clerk of the Fifth District Court in and for Washington County, State of Utah, which has effected this removal, in accordance with 28 U.S.C. § 1446(b).

DATED this 23rd day of March, 2005.

MEDVIN & ELBERG
Attorneys for Defendants Shelby Earnshaw and
William Earnshaw

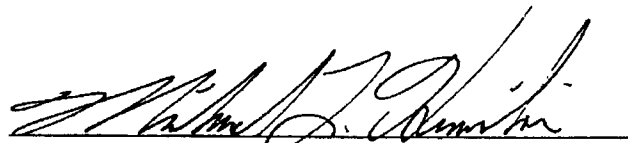
By: _____
PHILIP ELBERG

MICHAEL L. HUMISTON
Attorney for Defendants Shelby Earnshaw and
William Earnshaw

By: 
MICHAEL L. HUMISTON

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of the foregoing Notice of Filing Notice of Removal to Fred R. Silvester, Esq., Attorney for Plaintiff, at Silvester & Conroy, L.C., 1371 East 2100 South, Suite 200, Salt Lake City, Utah 84105, this 23rd day of March, 2005.


MICHAEL L. HUMISTON

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2005 MAR 28 A 10:20
DISTRICT OF UTAH
BY: DEPUTY CLERK

ROBERT B. LICHFIELD,
Plaintiff,

vs.

INTERNATIONAL SURVIVORS ACTION
COMMITTEE, INC., et al,
Defendants.

ORDER

2:05CV254 TC

On March 23, 2005, Defendants Shelby Earnshaw and William Earnshaw removed this action to federal court on the basis of diversity jurisdiction under 28 U.S.C. §1332. Plaintiff has alleged three causes of action arising under state law. Before proceeding, the court must determine whether the exercise of subject jurisdiction is proper in the current action.

A district court may, at any time before final judgment, remand a case if it appears that it lacks subject matter jurisdiction. 28 U.S.C. §1447(c). To properly exercise subject matter jurisdiction over a particular action, there must be complete diversity and the amount in controversy must meet \$75,000.00. 28 U.S.C. §1332. The party invoking the federal court's jurisdiction bears the burden of establishing that the requirements for the exercise of diversity

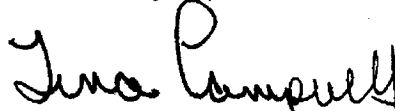
jurisdiction are present. See Martin v. Franklin Capital Corp., 251 F.3d 1284, 1290 (10th Cir. 2001).

In removing this action to federal court, Defendants asserted that there is complete diversity and that the amount in controversy exceeds \$75,000.00. However, review of Plaintiff's initial complaint provides no basis for the asserted amount in controversy. Neither Defendants nor Plaintiff have identified, with any specificity, the amount of damages sought beyond Plaintiff's general prayer for relief. Without an indication that the amount in controversy meets the \$75,000.00 requirement, this court cannot properly exercise jurisdiction.

Within twenty days of the date of this Order, Defendants are ordered to show cause why this case should not be remanded to state court for lack of subject matter jurisdiction. Plaintiff will then have ten days to respond.

SO ORDERED this 29 day of March, 2005.

BY THE COURT:



TENA CAMPBELL
United States District Judge

alt

United States District Court
for the
District of Utah
March 29, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00254

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Fred R. Silvester, Esq.
SILVESTER & CONROY LC
1371 E 2100 S STE 200
SALT LAKE CITY, UT 84105
EMAIL

Michael L. Humiston, Esq.
23 W CENTER ST
PO BOX 486
HEBER CITY, UT 84032