

DOCKETS

JUL 17 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DIRECTV, Inc.,)
)
 Plaintiff,)
)
 v.)
)
)
 STEPHEN PICKERT, ARMANDO PINA,)
 GEORGE SHAY, THIERRY SPUNG,)
 BOB STENGER, ERIC STORTZ, and)
 ROCCO WEILAND,)
)
 Defendants.)

No. 03 C 3454

Judge MORAN

FILED
03 JUL -2 PM 4:10
CLERK
U.S. DISTRICT COURT

NOTICE OF MOTION

TO: Paul A. Rettberg, Esq.,
QUERRY & HARROW, Ltd.
175 West Jackson Blvd., Suite #1600
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on the 16th day of July, 2003, at 9:00 a.m., or as soon thereafter as this Motion may be heard, I shall appear before the Honorable Judge James B. Moran, or any Judge sitting in his stead in Courtroom 1843, in the Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois, and then and there present Defendant PICKERT's Motion To Drop Defendant or For Severance, a copy of which is served herewith.

Ostojic & Scudder
332 S. Michigan Avenue, # 1024
Chicago, Illinois 60604
Tel. 312/ 913-0860

[Handwritten Signature]

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, on oath state that I served the above and foregoing Notice by mailing a copy to the above listed parties of record and depositing the same in the U.S. Mail at 332 South Michigan Ave., Chicago, Illinois, by 5:00 o'clock p.m. on the ___th day of July, 2003, with proper postage prepaid.

[Handwritten Signature]

SUBSCRIBED AND SWORN TO before me on this 2nd day of July, 2003.

[Handwritten Signature]
NOTARY PUBLIC



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 BOB STENGER, ERIC STORTZ, and)
 ROCCO WEILAND,)
)
 Defendants.)

No. 03 C 3454

Judge MORAN

FILED

03 JUL -2 PM 4:11

CLERK COURT
U.S. DISTRICT COURT

**MOTION TO DROP DEFENDANT PICKERT
OR FOR SEVERANCE OF ALL CLAIMS**

This Defendant STEPHEN PICKERT, by his attorneys Theodore T. Scudder and Dragan Ivetic, moves the Court pursuant to F.Rs.Civ.P. 20(a), 21 & 41(a)(2) for an order dropping him as a party defendant from this case or, in the alternative, for an order severing the claim against him from each of the other claims asserted by Plaintiff against Defendants in this case, on grounds that:

1.) The claim alleged against this Defendant, STEPHEN PICKERT, does not arise out of the same transaction, occurrence or series of transactions or occurrences, as the claims asserted against each of the other Defendants, nor do the claims asserted against this Defendant PICKERT and those asserted against each of the other Defendants involve questions of fact or law (defenses) common to all the Defendants;

2.) The Plaintiff has apparently filed a series of cases, each naming groups of defendants collected alphabetically, for Plaintiff's own convenience and to save filing fees; but without a severance of the claims against each Defendant, this moving Defendant PICKERT will be put to undue effort and expense by each defendant being required to proceed with separate defenses, and may be prejudiced by any inconsistent defenses or by joinder with other defendants; and

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3.) A trial of this action will be delayed and/or prolonged and any jury may be confused if there is a joint trial of the claims asserted against each separate defendant, all to the prejudice of this Defendant PICKERT.

WHEREFORE, this Defendant STEPHEN PICKERT requests that the Court order him dropped as a party defendant or, in the alternative, order a severance of the claim asserted against him from those asserted against the other Defendants.

Respectfully submitted,
STEPHEN PICKERT, Defendant

A handwritten signature in black ink, appearing to read "Theodore T. Scudder". The signature is written in a cursive style with a long horizontal flourish extending to the right.

By:
An attorney for this Defendant

Theodore T. Scudder
and Dragan Ivetic
Ostojic and Scudder
332 S. Michigan Avenue
Suite # 1024
Chicago, IL. 60604
Tel. (312) 913-0860

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PICKERT

JUL 17 2003

DIRECTV, Inc.,

Plaintiff

v.

STEPHEN PICKERT, ARMANDO PINA,

GEORGE SHAY, THIERRY SPUNG,

BOB STENGER, ERIC STORTZ, and

ROCCO WEILAND,

Defendants.)

No. 03 C 3454

Judge MORAN

**DEFENDANT PICKERT'S MEMO OF LAW IN SUPPORT OF
MOTION TO DROP OR SEVER PICKERT AS A DEFENDANT**

This Defendant, STEPHEN PICKERT, by his attorneys, Theodore T. Scudder and Dragan Ivetic, provides the Court with the following citations of legal authority in support of his Motion To Drop him as a Party Defendant or Sever Him from Defendants:

1. Plaintiff's Original Complaint makes allegations as to each of seven named Defendants separately. There is no indication that the Defendants are related in any way, acted together or with a common understanding or in concert with each other, or that their alleged purchases were in any way transactionally related, as required by F.R.Civ.P. 20 & 21. 4 *Moore's Federal Practice*, 3rd ed., 2003, § 20.05[1]; *Androphy v. Smith & Nephew, Inc.*, 31 F.Supp.2d 620,623 (N.D. Ill. 1998) [common questions regarding infringements of same patent, but by different manufacturers/sellers of separate products, so the "transaction requirement has not been met"]; *Beaulieu v. Concord Group Insurance Co.*, 208 FRD 478, 479 (D. N.H. 2002) [distinct torts "committed by different defendants at different times"]

2. In fact, this is one of many cases filed by the same Plaintiff in this and many other federal District Courts in which Plaintiff has apparently arbitrarily selected groups of defendants, usually having surnames with the same initial letter or letters

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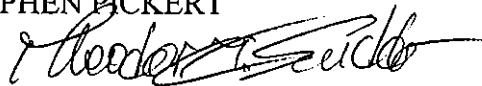
adjacent in the alphabet. (In the Northern District of Illinois, other cases Nos. 03 CV 3459, *Directv, Inc. v. Davidson, et. al.*; 03 CV 3463, *Directv, Inc. v. Montes, et. al.*; 03 CV 3470, *Directv, Inc. v. Tabert, et. al.*; and 03 CV 3499, *Directv, Inc. v. Garbutt, et. al.*)

3. Three of those cases have already been ordered to be filed separately as to each named defendant for the same reasons by Judge Castillo, namely: the *Davidson*, *Montes* and *Garbutt* cases, because the defendants in each are unconnected and “have no central relationship in the same lawsuit.”(Orders each entered *sua sponte* on June 3 2003)

4. This Defendant, STEPHEN PICKERT, expects to prove that the devices he is alleged to have purchased were not operable, so he returned them and never used them. Thus he will experience unnecessary delays, labor and expenses through joinder with parties as to whom there are little or no common facts and/or evidence. More important, he may be prejudiced by joinder with other Defendants who may have kept and/or used similar equipment, or who otherwise present evidence inconsistent with his. *Bailey v. Northern Trust Co.*, 196 FRD 513,517-18 (N.D. Ill. 2000) [prejudice to defendant found in joining unrelated claims of racial employment discrimination]

5. The proper remedy for such misjoinder is either to drop the moving defendant from the case, or to sever his case. 7 Wright, Miller & Kane, *Federal Practice and Procedure*, 3rd ed. 2001, §1684; *Aaberg v. ACandS Inc.*, 152 FRD 498, 501 (D. Md. 1994) [all but first of 1,000 asbestosis claimants ordered dropped from case]

Respectfully submitted.
STEPHEN PICKERT

By: 
Theodore T. Scudder
An attorney for this Defendant

Theodore T. Scudder
and Dragan Ivetic
OSTOJIC and SCUDDER
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