STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
At a session of the Public Service Commission held at its office in Jefferson City on the 15th day of October, 2014

Jimmie E. Small,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. EC-2015-0058
	)	
Union Electric Company d/b/a Ameren Missouri	)	
	)	
Respondent.	)	

ORDERS FOR SMALL FORMAL COMPLAINT, DENYING MOTIONS TO DISMISS, AND SETTING TIME FOR FILING

Issue Date: October 15, 2014 Effective Date: October 15, 2014

The Commission is denying the motion to dismiss of Union Electric Company d/b/a Ameren Missouri ("Ameren") and denying Staff's motion to dismiss with prejudice. The Commission is ordering Staff to file a redacted version of the recommendation. The Commission is also setting a date by which any party may file a motion for summary determination.

A. Filings and Redaction

The complaint charges Ameren with refusal to reconnect. Jimmie E. Small filed the complaint.[1] Ameren filed an answer and motion to dismiss.[2] Staff filed a recommendation

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[1] Electronic Filing and Information System ("EFIS") No. 1, filed on August 29, 2014.

[2] EFIS No. 9, *Answer and Motion to Dismiss*, filed on October 2, 2014.

to decide the more credible version of the facts. If the facts determinative of a claim or defense ("material facts") are established beyond a genuine dispute without an evidentiary hearing, there is no need for the hearing. That procedure is summary determination. In a motion for summary determination, the moving party establishes material facts by affidavit or evidence that would be admissible at a hearing. If no party raises a genuine dispute as to those facts, by counter-affidavit or other evidence that would be admissible at a hearing, then the law may entitle the moving party to a favorable ruling.[11]

Therefore, Ameren's Motion to Dismiss is denied, but the Commission will set a date for any party to file a motion for summary determination. If this action does not reach resolution by summary determination, then the Commission will issue a procedural schedule.

THE COMMISSION ORDERS THAT:

1. Staff's motion to dismiss with prejudice is denied.

2. Ameren Missouri's *Motion to Dismiss* is denied.

3. The complaint shall proceed under the small formal complaint process.

4. Any motion for summary determination from any party shall be filed no later than October 30, 2014.

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[11] 4 CSR 240-2.117(1); ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 380-82 (Mo. banc 1993). That case discusses Missouri Supreme Court Rule 74.04, to which the Commission's regulation on summary determination is sufficiently similar to make cases interpreting the rule helpful. Johnson v. Mo. Bd. of Nursing Adm'rs, 130 S.W.3d 619, 626 (Mo. App., W.D. 2004).

5. This order is effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney, Hall, and Rupp, CC., concur.

Jordan, Senior Regulatory Law Judge

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Updated: June 28, 2010

commission shall determine what changes, if any, shall be made in the record after a review of the suggested corrections and any objections.

(8) A party may request that the commission reopen the record for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing a motion to reopen the record for the taking of additional evidence. The motion shall assert the justification for taking additional evidence including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed Sept. 6, 1985, effective Dec. 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.115 Stipulations and Agreements

PURPOSE: This rule prescribes the procedure when a nonunanimous stipulation and agreement is presented to the commission.

(1) Stipulations and Agreements.

(A) The parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case. A stipulation and agreement shall be filed as a pleading.

(B) The commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.

(2) Nonunanimous Stipulations and Agreements.

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing.

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

(E) A party may indicate that it does not oppose all or part of a nonunanimous stipulation and agreement.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed June 9, 1987, effective Sept. 15, 1987. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 26, 2002, effective Nov. 30, 2002.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.116 Dismissal

PURPOSE: This rule prescribes the conditions under which the commission or an initiating party may dismiss a case or by which any party may be dismissed.

(1) An applicant or complainant may voluntarily dismiss an application or complaint without an order of the commission at any time before prepared testimony has been filed or oral evidence has been offered by filing a notice of dismissal with the commission. Once evidence has been offered or prepared testimony filed, an applicant or complainant may dismiss an action only by leave of the commission, or by written consent of all the parties.

(2) Cases may be dismissed for lack of prosecution if no action has occurred in the case for ninety (90) days and no party has filed a pleading requesting a continuance beyond that time.

(3) A party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a public hearing, prehearing conference, hearing, or mediation session.

(4) A case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.117 Summary Disposition

PURPOSE: This rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.

(1) Summary Determination.

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

(C) Not more than thirty (30) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary

Westlaw.

591 S.W.2d 134
(Cite as: 591 S.W.2d 134)

Missouri Court of Appeals, Western District.
UNION ELECTRIC COMPANY, ACF Industries, Inc., et al., and ABEX Corporation, et al., Appellants,
v.
PUBLIC SERVICE COMMISSION of the State of Missouri and Commissioner Alberta Slavin, Respondents.

No. WD 30791.
Oct. 29, 1979.
Motion for Rehearing and/or Transfer to Supreme Court Denied Dec. 3, 1979.
Application to Transfer Denied Jan. 15, 1980.

Public utility and several indnstrial intervenors filed petition for writ of prohibition seeking to prohibit Public Service Commission member from participating in certain proceeding involving rate design for utility. Same parties sought to prohibit Commission from allowing member to participate. The Circuit Conrt, Cole County, Byron L. Kinder, J., denied both petitions and entered summary judgment in favor of member and Commission by quashing preliminary rule previously issued, and utility and industrial intervenors appealed. The Court of Appeals, Turnage, J., held that: (1) member, who became party to case pending before her as member of Commission, should be disqualified from judging her own case, under common-law rule, applicable to quasi-judicial officers, that no man was to be a judge in his own cause, and such was so even though member was only one of five commissioners who had yet to make final order in certain case; (2) absent a legislative procedure for disqualification of a member of Commission, courts will exercise their power to disqualify a member npon showing that a member is a party to a pending case, or is interested or prejudiced in case; and (3) every party is entitled to have his case considered by Commission consisting only of persons who are not interested or prejudiced in cause and who are not parties to cause and prohibition is available to serve this right.

Affirmed in part, reversed in part and remanded with directions.

West Headnotes

[1] Judgment 228 ⇐183

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k183 k. In General. Most Cited Cases
When matters outside pleadings are presented to court and not excluded the motion for judgment on pleadings is treated as one for summary judgment. V.A.M.R. Civil Rule 55.27(b).

[2] Public Utilities 317A ⇐147

317A Public Utilities
317AIII Public Service Commissions or Boards
317AIII(A) In General
317Ak145 Powers and Functions
317Ak147 k. Statutory Basis and Limitation. Most Cited Cases
(Formerly 317Ak6.2)
Public Service Commission is administrative body created by statute and has only such powers as are expressly conferred by statute and reasonably incidental thereto.

[3] Public Utilities 317A ⇐142

317A Public Utilities
317AIII Public Service Commissions or Boards
317AIII(A) In General
317Ak142 k. Appointment or Election, and Qualification and Tenure. Most Cited Cases
(Formerly 317Ak3)
Where certain person was party to first case, and by subsequent order of Public Service Commission, after such person became a Commission member, second case was opened and all parties to first

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1 of 1 DOCUMENT

Sarah Illig; Gale Illig, for Themselves and as Representatives of a Similarly Situated Persons, Appellants, v. Union Electric Company, Appellee.

No. 10-3488

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

652 F.3d 971; 2011 U.S. App. LEXIS 18173

June 15, 2011, Submitted
August 31, 2011, Filed

PRIOR HISTORY: [**1]
Appeal from the United States District Court for the Eastern District of Missouri.
Illig v. Union Elec. Co., 2010 U.S. Dist. LEXIS 115175 (E.D. Mo., Oct. 29, 2010)

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant landowners sued appellee electric company in Missouri state court for inverse condemnation and trespass. The company removed the case to the United States District Court for the Eastern District of Missouri, which granted the company's motion to dismiss. The landowners appealed.

OVERVIEW: A railroad which held a right-of-way across the landowners' property had entered into a license agreement allowing the company to install electrical transmission poles and lines along the railroad line. The right-of-way was converted to a public trail under the National Trails System Act of 1968, 16 U.S.C.S. § 1241 et seq. The railroad sold the right-of-way to a trail operator and assigned to the operator the license agreement with the company. The landowners claimed that the company's use of and presence on the property exceeded the scope of the easements created by the Trails Act. The court of appeals agreed with the district court that the landowners' claims were time-barred. The claims accrued when a Notice of Interim Trail Use or Abandonment (NITU) was issued, not on the later date when the railroad formally transferred its easement. Once the NITU was issued, the company's license was no longer valid under Missouri law because it could no longer be used for "railroad purposes." Sufficient notice was provided of the issuance of the NITU. The landowners did not state a claim for continuing trespass, as they did not allege repeated intrusions onto the property.

OUTCOME: The district court's judgment was affirmed.

CORE TERMS: trail, trespass, license, railroad, notice, right-of-way, easement, inverse condemnation, statutes of limitations, abandonment, exemption, railroad purposes, interim, railroad line, causes of action, ascertainment, conversion, terminated, landowner, repeated, accrue--, deed, Trails Act, continuing trespass, railbanking, discontinue, negotiate, abandon, accrued, property interests

LexisNexis(R) Headnotes

Transportation Law > Rail Transportation > Rails to Trails
[HN1] Pursuant to the National Trails System Act of 1968, 16 U.S.C.S. § 1241 et seq., through a process known as "railbanking," a railroad may negotiate with a state, municipality, or private group (the trail operator) to assume financial and managerial responsibility for operating a railroad right-of-way as a recreational trail.

Transportation Law > Rail Transportation > Rails to Trails
[HN2] The typical railbanking process begins when a rail carrier files an abandonment application or a request for an

STATE of Missouri ex rel. Raymond BLOOMQUIST, D.O., Relator,

v.

The Honorable Nancy L. SCHNEIDER, Respondent.

No. SC 88456.

Supreme Court of Missouri, En Banc.

Jan. 15, 2008.

Rehearing Denied Feb. 19, 2008.

Background: Doctor sued for medical malpractice filed petition for writ of prohibition, challenging trial court's denial of doctor's motion to dismiss.

Holding: The Supreme Court, En Banc, Laura Denvir Stith, J., held that statute tolling statute of limitations on claims against defendants who were residents of Missouri at the time the cause of action accrued, but who changed their residence before the expiration of the statute of limitations, imposed an unconstitutional burden on interstate commerce, overruling *Poling v. Moitra*, 717 S.W.2d 520.

Writ granted.

1. Prohibition ⇐1, 5(1)

A writ of prohibition is appropriate if it is necessary to preserve the orderly and economical administration of justice, or to prevent usurpation of judicial power.

2. Prohibition ⇐5(2)

Prohibition can be an appropriate remedy where a trial court erroneously permits a claim that is barred by the statute of limitations to proceed to trial.

3. Commerce ⇐80

Limitation of Actions ⇐4(2)

Statute tolling statute of limitations on claims against defendants who were residents of Missouri at the time the cause of action accrued, but who changed their residence before the expiration of the statute of limitations, imposed an unconstitutional burden on interstate commerce; overruling *Poling v. Moitra*, 717 S.W.2d 520. U.S.C.A. Const. Art. 1, § 8, cl. 3; V.A.M.S. § 516.200.

4. Commerce ⇐8(1)

The Commerce Clause of the United States Constitution arrogates to the federal government exclusive authority to regulate interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

5. Commerce ⇐12

With few exceptions, a legislature may not by statute impose an undue burden on interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

6. Commerce ⇐54.1, 80, 80.10

Where a state denies ordinary legal defenses or like privileges to out-of-state persons or corporations engaged in commerce, the state law will be reviewed under the Commerce Clause to determine whether the denial is discriminatory on its face or an impermissible burden on commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

7. Commerce ⇐56

In all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate differential treatment of in-state and out-of-state interests that benefits the former and burdens the latter. U.S.C.A. Const. Art. 1, § 8, cl. 3.

8. Statutes ⇐63

The general rule is that unconstitutional statutes are void ab initio.

9. Courts ⇐100(1)

Solely prospective application of a decision holding a statute unconstitutional is the exception not the norm because it involves judicial enforcement of a statute

Missouri Revised Statutes

Chapter 516
Statutes of Limitation

←516.110 Section 516.120.1 516.130→

August 28, 2014

What actions within five years.

516.120. Within five years:

(1) All actions upon contracts, obligations or liabilities, express or implied, except those mentioned in section 516.110, and except upon judgments or decrees of a court of record, and except where a different time is herein limited;

(2) An action upon a liability created by a statute other than a penalty or forfeiture;

(3) An action for trespass on real estate;

(4) An action for taking, detaining or injuring any goods or chattels, including actions for the recovery of specific personal property, or for any other injury to the person or rights of another, not arising on contract and not herein otherwise enumerated;

(5) An action for relief on the ground of fraud, the cause of action in such case to be deemed not to have accrued until the discovery by the aggrieved party, at any time within ten years, of the facts constituting the fraud.

(RSMo 1939 § 1014)

Prior revisions: 1929 § 862; 1919 § 1317; 1909 § 1889

(2001) Subdivision (4) of section applies to inverse condemnation actions seeking compensation for damage to personal property. Shade v. Missouri Highway and Transportation Commission, 69 S.W.3d 503 (Mo.App.W.D.).

(2005) Replevin action with five-year limitations period applies for return of seized weapons legally possessed by owner and not used in commission of crime. Elam v. Dawson, 156 S.W.3d 807 (Mo.App.W.D.).

Top

Missouri General Assembly

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(8) Except when authorized by an order of the commission, the commission will not entertain any discovery motions, until the following requirements have been satisfied:

(A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion; and

(B) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

AUTHORITY: section 386.410, RSMo Supp. 1998. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.100 Subpoenas

PURPOSE: The commission may issue subpoenas for the production of witnesses and records. This rule prescribes the procedures for requesting and issuing subpoenas.

(1) A request for a subpoena or a subpoena *duces tecum* requiring a person to appear and testify at the taking of a deposition or at a hearing, or for production of documents or records shall be filed on the form provided by the commission and shall be directed to the secretary of the commission. A request for a subpoena *duces tecum* shall specify the particular document or record to be produced, and shall state the reasons why the production is believed to be material and relevant.

(2) Except for a showing of good cause, a subpoena or subpoena *duces tecum* shall not be issued fewer than twenty (20) days before a hearing.

(3) Objections to a subpoena or subpoena *duces tecum* or motions to quash a subpoena or subpoena *duces tecum* shall be made within ten (10) days from the date the subpoena or subpoena *duces tecum* is served.

(4) Subpoenas or subpoenas *duces tecum* shall be signed and issued by the secretary of the commission, a commissioner or by a law judge pursuant to statutory delegation authority. The name and address of the witness shall be inserted in the original subpoena or subpoena *duces tecum* and a copy of the return shall be filed with the secretary of the commission. Subpoenas or subpoenas *duces tecum* shall show at whose instance the subpoena or subpoena *duces tecum* is issued. Blank subpoenas shall not be issued.

(5) If there is a failure to comply with a subpoena or a subpoena *duces tecum* after objections or a motion to quash have been determined by the commission, the commission by its counsel or the party seeking enforcement may apply to a judge of the circuit court of the county in which—the hearing has been held, is being held, or is scheduled to be held, or where the witness resides or may be found—for an order enforcing the subpoena or subpoena *duces tecum*.

AUTHORITY: section 386.410, RSMo Supp. 1998. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.*

**Original authority: 386.410, RSMo 1939 amended 1947, 1977, 1996.*

4 CSR 240-2.110 Hearings

PURPOSE: This rule prescribes the procedures for the setting, notices, and conduct of hearings.

(1) The commission shall set the time and place for all hearings and serve notice as required by law. Additional notice may be served when the commission deems it to be appropriate.

(2) The presiding officer may order continuance of a hearing date for good cause.

(A) When a continuance has been granted at the request of the applicant or complainant, the commission may dismiss the case for failure to prosecute if it has not received a request from the applicant or complainant that the matter be again continued or set for hearing within ninety (90) days from the date of the order granting the continuance.

(B) Failure to appear at a hearing without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown.

(3) When pending actions involve related questions of law or fact, the commission may order a joint hearing of any or all the matters at issue, and may make other orders concerning cases before it to avoid unnecessary costs or delay.

(4) The presiding officer shall establish a procedural schedule through one (1) or more procedural orders in which the hearing and conference dates are set, date for filing testimony and pleadings are set, and any other applicable procedural parameters are established as determined necessary by the presiding officer or agreed to by the parties.

(5) The order of procedure in hearings shall be as follows, unless otherwise agreed to by the parties or ordered by the presiding officer:

(A) In all cases except investigation cases, the applicant or complainant shall open and close, with intervenors following the staff counsel, or his designee, and the public counsel in introducing evidence; and

(B) In investigation cases, the staff counsel, or his designee, shall open and close.

(6) A reporter appointed by the commission shall make a full and complete record of the entire proceeding in any formal hearing, or of any other hearing or proceeding at which the commission determines reporting is appropriate.

(7) Suggested corrections to the transcript of record shall be offered within ten (10) days after the transcript is filed, except for good cause shown. The suggestions shall be in writing and shall be filed in the official commission file. Objections to proposed corrections shall be made in writing within ten (10) days after the filing of the suggestions. The commission shall determine what changes, if any, shall be made in the record after a review of the suggested corrections and any objections.

(8) A party may request that the commission reopen the record for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing a motion to reopen the

Department of Energy
Southwestern Power Administration
One West Third Street
Tulsa, Oklahoma 74103-3502

MAR 12 2015

Jimmy Small
606 West Highway 2
Milton, Iowa 52570

Dear Mr. Small:

Per your request during our telephone conversation Monday, March 9, 2015, regarding the license for Union Electric Company, dba Ameren UE to operate Bagnall Dam on Lake of the Ozarks in Missouri, I am enclosing the following document downloaded from the Federal Energy Regulatory Commission's Web site at http://www.ferc.gov/industries/hydropower/gen-info/licensing/issued-licenses.asp:

Docket # P-459-128
Order Issuing New License
March 30, 2007

As we discussed, Southwestern has no jurisdiction over Ameren UE. All future inquiries related to Ameren UE's operation of Bagnall Dam should be addressed directly to Ameren UE or to the Federal Energy Regulatory Commission.

Sincerely,

Elizabeth J. Nielsen
Public Utilities Specialist

Enclosure

7 *See, e.g., Dudek v. Thomas & Thomas Attys. & Counselors at Law, LLC,* 702 F.Supp.2d 826, 833 (N.D.Ohio 2010); *Herkert v. MRC Receivables Corp.*, 655 F.Supp.2d 870, 875–76 (N.D.Ill.2009); *Jenkins v. General Collection Co.*, 538 F.Supp.2d 1165, 1172 (D.Neb.2008); *Kimber v. Federal Financial Corp.*, 668 F.Supp. 1480, 1487 (M.D.Ala.1987); *cf. Freyermuth v. Credit Bureau Servs.*, 248 F.3d 767, 771 (8th Cir.2001) ("*in the absence of a threat of litigation or actual litigation,* no violation of the FDCPA has occurred when a debt collector attempts to collect on a potentially time-barred debt that is otherwise valid.") (emphasis added; citing with approval *Kimber*).

8 Nor does Midland assert the "bona fide error" defense found in 15 U.S.C. § 1692k(c) ("A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error."). The Court expresses no opinion as to the applicability of the bona fide error defense in this case.

9 Plaintiff alternatively argues that even if New Jersey law applies, the proper statute is the four-year limit for U.C.C. actions, N.J.S.A. 12A:2–725, rather than the six-year common law contract action limit. The Court does not reach this argument.

10 *Cert. denied,* —— U.S. ——, 130 S.Ct. 1058, 175 L.Ed.2d 884 (2010).

11 A true conflict between New Jersey and Pennsylvania law exists because if Pennsylvania law applies Midland's suit was time-barred but if New Jersey law applies, it was not.

12 The actual credit agreement is not in the record. Plaintiff states that the agreement did not contain choice-of-law provision. (Pl.'s Brief in Support of her Motion for Partial Summary Judgment, p. 10)

13 Midland's principal place of business is San Diego, California. It is a Delaware limited liability company.

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Choice of Law is Iowa.
05/20/2014
JES