

P R O C E E D I N G S

(Call to order of the court.)

THE COURT: Good afternoon. Please be seated.

Where to begin with this?

This is three related cases, not consolidated. The first one, Mary Susan Bell vs. Bell Family Trust, et al., Docket Number 09-1980. The second one, Mary Susan Bell vs. Bell Family Trust, et al., Docket Number 09-1984. And a third one, Mary Susan Bell vs. Jeff Ackermann, et al., Docket Number 09-1985.

I had originally planned to do this differently than we're doing it today because, as you can see and the record should reflect, that which I needed to prepare for this I couldn't even carry in with one hand. I thought we probably ought to do this on the record, so that is why we are here.

So if you would, please, ladies and gentlemen, give me your appearance and let me know in which cases you are appearing of the three.

Ms. Bell, are you here?

MS. BELL: Yes, I am.

THE COURT: Okay. Is the green light on your microphone on, Ms. Bell?

MS. BELL: Yes, it is.

THE COURT: You will need to speak in that microphone. You don't necessarily have to stand. But I will tell you at some point it might be better for you to come to the podium because I

1 can hear you better.

2 MS. BELL: Okay.

3 THE COURT: All right. What's your name, please?

4 MS. BELL: My name is Sue Bell. I'm in pro se
5 capacity, and I'm representing myself in all three cases.

6 THE COURT: All right.

7 MR. DIEBOLD: Judge, Steven Diebold on behalf of Ruby
8 Bell, Mildred Bell, Tonya Bell, Brady Bell, and Cheri Fontenot in
9 the case of 09-CV-1985, which I believe was the only case of the
10 three cases in which those particular defendants were named.

11 THE COURT: That's correct.

12 MR. ACKERMANN: I'm Jeff Ackermann, Your Honor. I'm
13 here on behalf of myself, my law firm, Durio, McGoffin, Stagg &
14 Ackermann. And then in two of the three cases I believe that the
15 Bell Family Trust has been named as a defendant, so I'm here on
16 the bankruptcy estate's behalf.

17 THE COURT: Mr. Ackermann, do you represent the
18 trustee?

19 MR. ACKERMANN: It is my understanding, based upon a
20 filing that I received today in opposition to a motion to dismiss
21 that we filed, that the trustee is not a defendant. I think
22 Ms. Bell has indicated that in her pleading. So to that extent,
23 no. But to the extent that there is some confusion in my mind as
24 to who has been named and who has not been named, to the extent
25 the trustee is involved in those cases, I feel like, yes, I'm

1 here to at least protect his interest until it can be clarified
2 whether or not he is or is not a defendant.

3 THE COURT: Okay. Well, I'm going to go through that
4 in some detail.

5 MR. MARCANTEL: Your Honor, Glenn Marcantel here on
6 behalf of myself. I'm a defendant in all three lawsuits.

7 THE COURT: All right. As is your firm.

8 MR. MARCANTEL: Well, I'm a sole practitioner, so me,
9 myself, and I.

10 THE COURT: All right. Is your firm an LLC?

11 MR. MARCANTEL: No, it is not.

12 THE COURT: Okay. Where to start?

13 This case number one, which is 09-1980, had with it a
14 motion for preliminary injunctive relief to enjoin a writ of
15 garnishment. It was referred here to this judge for issuance of
16 a report and recommendation.

17 There is also a motion for a permanent injunction; a
18 motion to disqualify counsel; a motion for default judgment as to
19 XYZ Insurance Company for the Bell Family Trust; insurance
20 company for attorney Jeffrey Ackermann; XYZ Insurance Company for
21 Durio, McGoffin, Stagg & Ackermann law firm; and a motion to
22 compel, all of which are brought by the plaintiff, Mary Susan
23 Bell.

24 There is also a motion to dismiss that was filed by
25 Jeff Ackermann, the Bell Family Trust, Durio, McGoffin, Stagg &

1 Ackermann law firm, all of which have been referred to me for a
2 report and recommendation.

3 In addition, the district court, Judge Doherty, had
4 issued a stay order as a result of the stay imposed by
5 Section 362 of the bankruptcy court. However, given the nature
6 of these proceedings as it stands now, that order was vacated --
7 that would be Record Document 19 -- pending the issuance of
8 Magistrate Judge Patrick Hanna's report and recommendations as to
9 how these matters should proceed.

10 I note in passing that the basis for jurisdiction in
11 the motion for preliminary and permanent injunctive relief
12 pending final trial disposition is federal question jurisdiction
13 premised on 18 USC, Section 1961, also known as the Racketeer
14 Influenced and Corrupt Organizations Act, or RICO, as well as
15 something that has to do with the Seventh Amendment to the United
16 States Constitution.

17 Also in 09-1980 is a complaint for injunctive,
18 declaratory, and other relief against the defendants; the Bell
19 Family Trust, the law firms representing the Bell Family Trust,
20 attorney Jeff Ackermann, attorney Glenn Marcantel, XYZ insurance
21 carrier for the Bell Family Trust, XYZ insurance carrier for
22 Jeffrey Ackermann and Durio, McGoffin, Stagg & Ackermann, XYZ
23 carrier for Glenn Marcantel and the Marcantel law firm.

24 The essence of this complaint -- and I quote under
25 Article IV entitled Clarification -- this action seeking

1 declaratory and other relief is, quote, primarily, unquote, to
2 examine and determine the unprofessional, wrongful conduct by
3 defendants in obtaining a judgment against Bell, unquote.

4 There is the motion to disqualify attorney and law firm
5 brought by Ms. Bell seeking to discharge Mr. Ackermann as
6 attorney on his own behalf as well as for his law firm in that
7 case.

8 And the injunctive relief, by the way, for record
9 purposes is to get relief from a garnishment that has been issued
10 in conjunction with a bankruptcy proceeding that I will address
11 in more detail shortly.

12 The motion for a default judgment is to ostensibly take
13 a default judgment against an unnamed insurance carrier who, from
14 my review of the record, has never been sued -- I mean served or
15 named.

16 And I think that takes care of number one.

17 MR. ACKERMANN: Your Honor, before you leave 1980, may
18 I add something?

19 THE COURT: No. I'm going to give everybody a chance
20 to speak whatever they wish to speak before we're done because we
21 are having a status conference, but what I'm trying to do,
22 Mr. Ackermann, is create a record of what is all in front of me.

23 MR. ACKERMANN: Okay. There's another motion that I
24 thought maybe hadn't gotten to you yet.

25 THE COURT: The motion to consolidate?

1 MR. ACKERMANN: Yes.

2 THE COURT: Well, I'll take that right now. The motion
3 to consolidate is not going to be addressed today. I am aware
4 that they have been filed.

5 Okay. 09-1984. Mary Susan Bell vs. Bell Family Trust
6 through its representative trustee, Simmons Sandoz, the law firm
7 representing the Bell Family Trust, attorney Jeff Ackermann,
8 attorney Glenn Marcantel, the XYZ insurance carriers for the same
9 entities.

10 This separate complaint contains basically the exact
11 same allegations as in 1980 except this complaint purports to
12 apply to Sue Bell a one-sixth beneficiary interest in house with
13 one acre as opposed to the garnishment. That beneficiary
14 interest in house with one acre, as I read the record, are also
15 part of the judgment issued by the bankruptcy court.

16 The clarification -- or the basis of this complaint
17 that I read previously is also contained in Article IV in that
18 seeking declaratory and other relief is, quote, primarily,
19 unquote, to examine and determine the unprofessional, wrongful
20 conduct by defendants in obtaining judgment against Bell.

21 Pending in 1984 is a motion to disqualify attorney and
22 law firm, the same motion as in 1980 to disqualify Mr. Ackermann;
23 a motion for default judgment against the insurance carriers --
24 and I neglected to mention that also blended into the motion for
25 default judgment is a motion to compel what appears to be the

1 names of the insurance companies brought by the plaintiff -- and
2 a motion to dismiss brought by Mr. Ackermann and the Bell Family
3 Trust.

4 Jurisdiction in that case, 1984, is described in
5 exactly the same manner as in 1980, that being federal question
6 jurisdiction pursuant to RICO and the Seventh Amendment to the
7 United States Constitution.

8 Case number three, 09-1985, is Mary Susan Bell vs.
9 Jeffrey Ackermann, Durio, McGoffin, Stagg & Ackermann law firm,
10 Glenn Marcantel, Glenn Marcantel law firm, Ruby Bell, Mildred
11 Bell, Roy Bell, Tonya Bell, Brady Bell, and Cheri Fontenot. This
12 is a complaint for libel, slander, defamation, fraud, and tort
13 crimes. The basis of jurisdiction in this lawsuit is also
14 18 USC, Section 1961, and the Seventh Amendment to the United
15 States Constitution.

16 Essentially this complaint is seeking damages for
17 libel, slander, defamation alleged by the defendants in
18 conjunction with the bankruptcy proceeding that I will talk about
19 shortly.

20 The motions pending in this particular case are a
21 motion to disqualify attorney and law firm, which would be
22 Mr. Ackermann and his firm; a motion for default judgment, which
23 would be against the unnamed insurance carriers brought by the
24 plaintiff; and a motion to dismiss brought by Mr. Ackermann. And
25 I note that there is no notice of -- no notice of bankruptcy

1 filed in 1985.

2 Ms. Bell, did I get that right?

3 MS. BELL: Yes, Your Honor. I just have one question,
4 I guess. When I filed the suits, there was a question about
5 whether Mr. Sandoz was a defendant, and so they instructed me to
6 address that by filing an amended complaint, which I did.

7 But just for clarification, I never meant to -- nor
8 have I in my way of thinking -- file suit against the Bell Family
9 Trust debtor. In my amended complaint I clarified that I was
10 filing suit against the Trust as an entity. And given how I know
11 my case, I was wondering whether or not the Trust as an entity
12 should be joined to the case.

13 THE COURT: Well, did I otherwise get the recitation
14 correctly because we're going to talk a lot about the Trust as an
15 entity?

16 MS. BELL: I think so except that I have filed an
17 objection and a motion to opposition this morning and a motion
18 for consideration for a continuance. That's probably not before
19 you.

20 THE COURT: That has not made it to my desk.

21 Mr. Diebold, did I miss anything from your perspective?

22 MR. DIEBOLD: I'm sorry, Your Honor?

23 THE COURT: Did I miss anything from your perspective?

24 MR. DIEBOLD: No, Judge.

25 THE COURT: Mr. Ackermann?

1 MR. ACKERMANN: No, sir.

2 THE COURT: Mr. Marcantel?

3 MR. MARCANTEL: No, sir.

4 THE COURT: All right. I have also reviewed in some
5 detail the bankruptcy record, and I want to note for the record
6 that much of the complained of conduct arose out of a bankruptcy
7 proceeding entitled In Re Bell Family Trust, Case
8 Number 02-50477. It happens to also be published.

9 I have checked and have confirmed that the stay that is
10 made applicable by Section 362 of Title 11 has not been lifted.
11 The proceeding has not been closed so that it would have been
12 lifted by a closure of the case. So as it stands right now,
13 there is the distinct possibility, Ms. Bell, that you are in
14 contempt of the bankruptcy court.

15 I am not here today to say what is or is not subject to
16 the stay. That is for Judge Summerhays to do in his court.

17 The stay, Section 362, operates automatically by
18 operation of law. Nobody has to issue an order. When the notice
19 of bankruptcy is filed into the record of a lawsuit, it is
20 stayed. That's what's happened. And it is stayed until such
21 time as the parties involved go to the bankruptcy court, ask the
22 bankruptcy court to lift it to the extent it does or does not
23 involve the Bell Family Trust.

24 As I read case numbers one and two, the Trust is in the
25 case as a defendant, so as I'm sitting here today, this judge is

1 of the belief that the case, unless we reach some other kind of
2 arrangement, is stayed in those two proceedings until such time
3 as Judge Summerhays says it is not.

4 Secondly, I am looking at an order dated December 1 of
5 2008. It's Record Document Number 113 in the bankruptcy court.
6 And it appoints the law firm of Durio, McGoffin, Stagg &
7 Ackermann as well as Glenn Marcantel as attorney for the trustee
8 for the Bell Family Trust.

9 There is a doctrine called the *Barton* doctrine that's
10 been around since the United States Supreme Court talked about it
11 a number of years ago which basically states, Ms. Bell, that you
12 cannot sue these gentlemen for things that they did or did not do
13 in conjunction with the bankruptcy litigation without the
14 permission of the bankruptcy court.

15 So it will be my recommendation, if the case is not
16 completely stayed, that to the extent those gentlemen are
17 defendants in all three of these cases, you will need to go see
18 Judge Summerhays and ask him if he will allow you to proceed
19 against them, whether in this court or any other.

20 I'll also point out that I am a little taken aback --
21 and this is one of the reasons why we're here -- that the
22 bankruptcy litigation went to trial, that there was an adversary
23 proceeding, Docket Number 02-5045, that resulted in a judgment
24 rendered August 1 of 2005.

25 In that judgment Judge Schiff, the bankruptcy court at

1 the time, awarded the Bell Family Trust, and against you, the
2 principal sum of \$162,214.96 which judgment has become final.
3 That judgment was appealed to the Western District of Louisiana
4 in Civil Action Number 05-2008 entitled Mary Susan Bell and Sue
5 Bell Holdings, LLC, vs. W. Simmons Sandoz. Judge Haik affirmed
6 the decision of the bankruptcy court on June 21, 2006.

7 That judgment was taken to the United States Fifth
8 Circuit Court of Appeal, Docket Number 06-30768. A mandate was
9 issued October 11, 2007. And although the judgment was modified,
10 the amount of \$162,214.96, which was awarded in Article I of
11 Judge Schiff's judgment, was upheld. That judgment is final.
12 The remainder of the judgment issued by the bankruptcy court is
13 also final.

14 I also found in the bankruptcy record that motions
15 under Rule 60 of the Federal Rules of Procedure -- Federal Rules
16 of Civil Procedure were filed in the bankruptcy court as well as
17 objections to the garnishment by minute entry dated October 6th,
18 2009. The objections to the garnishment were essentially
19 withdrawn because it indicates to me from the record that the
20 matters were resolved by the parties, and the Rule 60(b) motions
21 appear to have been withdrawn as well.

22 So I'll tell you, Ms. Bell, what I see looking at this
23 is that you have been afforded an opportunity to present all of
24 your issues in the United States Bankruptcy Court, the United
25 States District Court for the Western District of Louisiana, the

1 United States Fifth Circuit Court of Appeal, and in contravention
2 of the stay order, you're filing three new lawsuits in this
3 court, one of which seeks to obtain relief from that garnishment
4 when that precise relief was sought and not obtained in the
5 bankruptcy court.

6 I am not sure whether you understand this, Ms. Bell, or
7 not, so I'm going to explain to you as carefully as I can. This
8 Court is a Court of limited jurisdiction. We can only hear cases
9 that are granted to us by statute primarily in the context of
10 this case.

11 You contend in your complaints that there is federal
12 question jurisdiction under 28 USC, Section 1331, on the basis of
13 a website entry that you contend rises to the level of a RICO
14 violation. In your papers you enclosed a copy of that, and this
15 is Document 2-1 in Case Number 1985, Exhibit D1. And all I see
16 on this website is a reference to the case that is actually
17 reported in the United States Bankruptcy Reporter, In Re Bell
18 Family Trust at 350 BR 700.

19 The second thing you suggest gives this Court
20 jurisdiction is the Seventh Amendment to the Constitution, and
21 what you say in your complaint is not entirely accurate, so I'm
22 going to read it for you.

23 The Seventh Amendment to the Constitution says in suits
24 in common law where the value and controversy shall exceed twenty
25 dollars, the right of trial by jury shall be preserved, and no

1 fact tried by a jury shall be otherwise re-examined in any Court
2 of the United States, than according to the rules of the common
3 law.

4 Under every stretch of the imagination I can come up
5 with I do not find a basis for the Seventh Amendment to confer
6 jurisdiction on the Court.

7 And the reason I'm telling you all of this, Ms. Bell,
8 is I believe that we are in the horns of a dilemma here. One is
9 the case is stayed, and -- the first two cases are stayed. They
10 cannot go anywhere until Judge Summerhays says they can, and I
11 will issue a recommendation to that effect to the district judge.

12 Even if he says that the case is not stayed or he
13 allows the stay to be lifted and you come back here, it will be
14 my first job to find out if subject matter jurisdiction exists in
15 this court. And I've looked in all of these papers -- when I
16 come in here dressed up like this, I am very well prepared. I've
17 looked through all of these papers, everything that's been filed.
18 I don't find subject matter jurisdiction under RICO or under the
19 Seventh Amendment to the Constitution.

20 If I take that away, whether in the first case, the
21 second case, or the third case -- the third case I don't think is
22 stayed, so 1985 would get to stay here but for the fact of the
23 *Barton* doctrine which we're going to talk about in a minute. But
24 if I take that away, the civil RICO and the Seventh Amendment to
25 the Constitution, there is no basis for you to be in this court

1 jurisdiction-wise. Your claims, to the extent they exist, need
2 to be brought somewhere else. They could be brought in any other
3 venue you choose as far as I am concerned, but they can't be
4 brought here.

5 I will tell you that after having read through all of
6 the complaints, A to Z -- and I am certainly not casting any
7 aspersions whatsoever. What I am suggesting to you is your
8 allegations look remarkably like another bite at the apple. That
9 is what I see.

10 A final judgment of a federal court is entitled to be
11 given preclusive effect. You can say all you want that you're
12 not seeking to collaterally attack the judgment of the bankruptcy
13 court, the district court, or the Fifth Circuit Court of Appeal,
14 and I saw you said that, but then throughout your complaint
15 that's exactly what you're trying to do is say I shouldn't have
16 to pay this garnishment, I shouldn't have to give up this
17 property, or I should get damages from these gentlemen for their
18 behavior.

19 Well, you had that crack back with your Rule 60(b)
20 motion, which was also very untimely, and that didn't work
21 either. If these lawyers over here have done anything in
22 violation of the rules of professional conduct as you have
23 alleged, then your remedy for that is the Louisiana Bar
24 Association, Office of Disciplinary Counsel, not this court.

25 These gentlemen that you have sued represented their

1 clients with the exception of Mr. Diebold.

2 You get to sit there and say nothing for a while.

3 Mr. Marcantel and Mr. Ackermann represented their
4 clients in an adversary proceeding, and within the bounds of
5 ethics and professionalism they are entitled to put into the
6 record that evidence which is favorable to their client and try
7 with all of their zeal to keep that which is favorable to you out
8 of evidence. That's why we call it an adversary proceeding.

9 Based on what I saw in the record, it was a very hotly
10 contested adversarial proceeding, and I'm sure that there was a
11 lot of emotion and tempers got heated. Some of the accusations
12 and allegations there and here are quite disturbing to me and are
13 not lightly taken certainly by me or anyone else that's going to
14 read this.

15 So I would caution you because you are subject, even
16 though you're appearing pro se, to the same rules that would
17 govern Mr. Diebold here if he filed this suit against those
18 folks.

19 And I'm going to read that to you because it's
20 important. Every pleading, written motion, and other paper must
21 be signed by at least one attorney of record in the attorney's
22 name or by a party personally if the party is unrepresented.

23 And I'm going to skip a part.

24 By presenting to the Court a pleading, written motion,
25 or other paper, whether by signing, filing, submitting, or later

1 advocating it, an attorney or an unrepresented party certifies
2 that to the best of the person's knowledge, information, and
3 belief, formed after an inquiry reasonable under the
4 circumstances:

5 Number one, it is not being presented for any improper
6 purpose such as to harass, cause unnecessary delay, or needlessly
7 increase the cost of litigation;

8 Two, the claims, defenses, and other legal contentions
9 are warranted by existing law or by a nonfrivolous argument for
10 extending, modifying, or reversing existing law or for
11 establishing new law;

12 Three, the factual contentions have evidentiary support
13 or, if specifically so identified, will likely have evidentiary
14 support after reasonable opportunity for further investigation or
15 discovery; and

16 Four, the denial of factual contentions are warranted
17 on the evidence or, if specifically so identified, are reasonably
18 based on belief or a lack of information.

19 This is what's known as Rule 11, and you've referenced
20 it in your papers. If the Court finds on its own initiative that
21 this has been violated, you can be subject to monetary sanctions.

22 Do you understand that?

23 MS. BELL: Yes.

24 THE COURT: All right. It gets worse.

25 If there is conduct that constitutes misbehavior which

1 is inappropriate to the particular role of the actor, that being
2 yourself, and it rises to the level of obstruction of the
3 administration of justice and is done in the Court's presence or
4 so proximate that it obstructs the administration of justice and
5 there is an intent to obstruct, there are criminal consequences.
6 It can be that bad.

7 The reason I walked in here, Ms. Bell, with this large
8 parcel of paper is I have spent a large amount of time here today
9 for a case that I don't believe belongs in this court even if
10 Judge Summerhays were to lift the stay or even if
11 Judge Summerhays would allow you to proceed against these
12 gentlemen -- Mr. Ackermann and his firm, Mr. Marcantel and his
13 firm -- under the *Barton* doctrine.

14 I believe you had your bite at the apple. I am not
15 ruling on the motion to dismiss. I am suggesting to you that
16 perhaps all of this can go away and you won't have to go confer
17 with Judge Summerhays over lifting the stay or proceeding under
18 the *Barton* doctrine if you dismiss your case voluntarily, because
19 regardless of what Judge Summerhays says, with the exception of
20 case number three, I don't believe this case belongs in this
21 court because there's no jurisdiction.

22 Without regard to what Judge Summerhays says, case
23 number three is still before me. I don't believe there's
24 jurisdiction there, and I will recommend to the Court that it be
25 dismissed. The reason there's no jurisdiction is because having

1 a website with nothing but a reported case as the basis for a
2 RICO claim -- and I could take that page right out of the book.
3 I could have it printed. This lady right here could have it
4 printed for me in less than 30 seconds. It's traveled all over
5 the country anyway. And all that Mr. Ackermann's website
6 suggests is that he was in that case, nothing else, nothing else.

7 The Seventh Amendment doesn't confer jurisdiction. So
8 what you have at that point is what I will call a tort-based
9 claim for which there is no jurisdiction in this federal court.
10 There may be jurisdiction somewhere else, but there's not going
11 to be here. And what I am obligated to do in case number three,
12 1985, is determine on my own whether subject matter jurisdiction
13 exists. Okay? Do you understand me?

14 MS. BELL: Uh-huh.

15 THE COURT: They don't have to file a motion. He
16 doesn't have to file a motion. You don't have to file a motion.
17 All I have to do is look at it and say, oh, do we have the
18 authority to proceed in this case? I have just told you I have
19 looked at it, and my answer is I don't think I have the authority
20 to proceed in this case.

21 So why am I telling you all of this? What are my
22 options here today and what am I going to tell Judge Doherty
23 upstairs when we're finished here today?

24 My options are to tell you that you could save yourself
25 a lot of time and expense by voluntarily dismissing these three

1 lawsuits and taking your chances somewhere else. That's number
2 one.

3 Number two, if you choose not to do that, then I am
4 going to stay 1980 and 1984 until I receive word from the
5 bankruptcy court that the stay has been lifted and that you are
6 allowed to proceed against Mr. Marcantel and Mr. Ackermann.

7 Case number three I am going to recommend be dismissed
8 for lack of subject matter jurisdiction that I have raised on my
9 own motion today for the reasons I've just told you.

10 So what does that mean to you? You've spent a whole
11 lot of time and a whole lot of money not to have gotten anywhere,
12 whereas if you voluntarily dismiss these cases, then I will
13 gladly speak to these gentlemen over there -- they may object to
14 that, but ultimately I think I can help them see the wisdom of my
15 position, and you can go somewhere else to do whatever you wish
16 to do with them. I will suggest to you that there is another
17 forum to do what you are trying to do, and I've already suggested
18 that.

19 If these lawyers behaved unprofessionally and
20 unethically as you allege -- and I promise you, Ms. Bell, if
21 you're making those allegations and they're true, then the Bar
22 Association should hear about them. But I promise you also that
23 if they're not true, don't you file that complaint against these
24 gentlemen because you're mad at them because you lost in the
25 bankruptcy court because you could be sanctioned just as easily

1 for that.

2 Do you understand me?

3 MS. BELL: Yes, Your Honor.

4 THE COURT: All right.

5 MS. BELL: May I ask a few questions?

6 THE COURT: Give me one second.

7 I've had my chance to make my little speech. What I
8 want to do now is I'm going to give each one of the parties here
9 an opportunity to say whatever they wish to say on the record
10 because now you know what I think and I want to know what you
11 think.

12 Go ahead. Why don't you come up to the podium so I can
13 hear you better if you're going to talk for a while.

14 MS. BELL: Your Honor, in everything that I have filed
15 with the Court, I have tried to be really diligent not to
16 misrepresent anything. I guess I misunderstood that 362 was a
17 stay for pre-petition issues.

18 When Judge Doherty issued the minute entry order
19 staying it and then vacated it, I guess I falsely assumed that I
20 didn't have to take any further action, that 362 is interpreted
21 that it would have been for pre-petition issues and my complaints
22 are post-petition. That's one issue.

23 THE COURT: Do you want me to respond to that? Because
24 that's a valid concern.

25 MS. BELL: Yes.

1 THE COURT: Judge Doherty issued the 362 stay order, as
2 she should, when the notice of bankruptcy was filed in the
3 record. That's what I meant earlier. As soon as the notice of
4 bankruptcy was filed in the record -- and it was filed in the
5 first two cases and not the third one -- it operates by operation
6 of law. Nobody has to order anything. She says it's stayed. I
7 called her. I said we're getting ready to have a status
8 conference on this, it will be to everyone's benefit to find out
9 what's going on.

10 It is for Judge Summerhays to say whether what you just
11 told me is accurate or not. If Judge Summerhays says, Ms. Bell,
12 you're absolutely correct, 362 applies to post-petition -- I mean
13 pre-petition conduct only, therefore the stay is lifted as to
14 your claims against these folks in this lawsuit, I will find out
15 about that and then we will lift the stay in this proceeding.

16 And I'm telling you today if that happens, I'm still
17 liable to say there's no subject matter jurisdiction because I
18 believe in my heart of hearts that there isn't. And when I
19 determine subject matter jurisdiction, I don't have to assume
20 anything is true. I have to resolve disputed issues of fact
21 because it goes right to the heart of our authority to hear this
22 case.

23 And what can happen, Ms. Bell, is if we allow it to go
24 forward -- let's say in all three cases we're going to go forward
25 and you go all the way to the United States Fifth Circuit Court

1 of Appeal again -- and they can raise it on their own. They can
2 say there's no subject matter jurisdiction, never has been. That
3 means everything that we did along the way is basically null and
4 void. That's why I'm very concerned about determining that early
5 on in the lawsuit. I hope that helps.

6 Go ahead.

7 MS. BELL: Okay. You said that there were other
8 forums. Where would my declaratory actions -- because my
9 complaints are not seeking to undo the judgment or looking at the
10 outcome. My complaints -- and I believe I have the evidence to
11 support it -- is looking at the actions that drove the outcome.
12 I know I have no recourse against the judgment or the prior
13 judicial system.

14 THE COURT: Well, I'm not supposed to give you legal
15 advice, but let me muse here for a little bit.

16 If a litigant makes an accusation of unethical conduct
17 against a lawyer in my court -- let's say it's not this court --
18 I mean not this case. Just in any case. Someone comes in and
19 says, Judge, that lawyer lied to you. Well, if there's evidence
20 of that, I am obligated to tell the Louisiana State Bar
21 Association. That's who deals with lawyers who don't comply with
22 the rules of professional conduct. Okay?

23 I can't do anything to a lawyer other than turn them in
24 for violating the rules of professional conduct. They have an
25 Office of Disciplinary Counsel that investigates those

1 complaints.

2 What you're asking for, however, is money damages, as
3 best I can tell, and injunctive relief, which I couldn't give you
4 anyway based on what you allege to be unethical conduct. That
5 remedy does not exist in this court.

6 MS. BELL: Would it be existing in any court? Are you
7 telling me that my only resolve is to go to the Louisiana Bar
8 Association?

9 THE COURT: I can't answer that question because that
10 would be giving you legal advice, but you could certainly ask a
11 lawyer.

12 MS. BELL: Well, then I guess that's why they never
13 provided their insurance carrier.

14 And you mentioned that I had never properly served
15 them. I thought that I had properly served them, but I guess
16 that's moot because I went back to one of Mr. Ackermann's
17 services where he served an attorney an XYZ insurance and the
18 attorney made known who the insurance was and he filed a motion
19 to substitute the defendant.

20 THE COURT: Let me give you an explanation about that.

21 I am to disregard fictitious insurance carriers. XYZ
22 is fictitious. The way this works is if you sue Mr. Ackermann
23 and you ask him for his insurance information and he gives it to
24 you, then you amend your complaint, as you have done twice
25 already in these lawsuits, and name Allstate, State Farm, whoever

1 the insurance carrier is, but that's the sequence it has to
2 happen. You can't just say, well, I've served.

3 What I have in front of me on the record right now,
4 Ms. Bell, is a blank line. You're wanting me to give you a
5 default judgment against a blank line and that I cannot do.

6 MS. BELL: Okay. So I realize that I'm obligated in
7 the pleadings and motions that I filed, and I believe that I was
8 very honest, and I attached the record in support of what I
9 thought was wrongful actions that rose to fraud. I'm honest with
10 you, Your Honor. It was misrepresented to the courts.

11 So is it my understanding, given I may not be before
12 you or see you again, that you do not believe that I have a cause
13 of action to look at their wrongful actions in any court of law?

14 THE COURT: I'm not saying in any court. I can't tell
15 you that. I'm telling you in this court there is no jurisdiction
16 to hear those claims.

17 If I keep 1985, the third case, because it's not
18 stayed, the next thing that's going to come out of me is a
19 recommendation that it be dismissed with prejudice because there
20 is no subject matter jurisdiction.

21 If you go back to bankruptcy court in 1980 and 1984 and
22 ask Judge Summerhays to be able to proceed because the stay has
23 been lifted and because you can actually sue these gentlemen over
24 here and you come back over here and he says the stay is lifted,
25 I'm going to have the same recommendation in those two cases,

1 that they be dismissed with prejudice for lack of subject matter
2 jurisdiction because I just don't see it.

3 MS. BELL: So the only way I should proceed forward
4 with trying to lift the stay, if the stay is in place on
5 post-petition issues or pre-petition issues, is if I find another
6 jurisdiction that my case can be heard in.

7 Just to clarify for the record, Ms. McGee (phonetic)
8 filed a Rule 60 and dismissed it quickly because we wanted to be
9 able to move forward with what I'm here on today. The writ was
10 never reviewed before Summerhays. I have never taken up that
11 issue.

12 And I just feel it very unjust, Your Honor, that this
13 significant amount of money is levied upon me when Mr. Ackermann
14 misrepresented what his expert said. The evidence is in the
15 testimony. I understand that there's not going to be any remorse
16 about it. I really thought that I was properly before this
17 court. Otherwise, I wouldn't have spent the money and the time
18 to come before you.

19 THE COURT: I understand.

20 MS. BELL: And I believe that my pleadings are very
21 honest and they've not misrepresented anything and I don't think
22 that I've been treated that way. I really think it's an
23 extremely unfair situation, but when I get to the next gate, I
24 won't have to explain all my actions down here on earth, you
25 know.

1 THE COURT: They've got much broader jurisdiction than
2 I do.

3 MS. BELL: Yes. Good luck to some people having to
4 explain it, you know.

5 Do you have anything else to say?

6 THE COURT: Well, my question to you would be, would
7 you prefer to just voluntarily dismiss all of this, because I
8 truly believe -- and I'm not trying to talk you into anything.
9 If you want to go talk to a lawyer about it, by all means do so,
10 but I'm trying to -- because this is a status conference, I'm
11 trying to figure out a way for this to proceed, the way I
12 proceed, me sitting here today. For it to proceed most
13 economically is for you to voluntarily dismiss all of this. And
14 I'm going to hear from these guys. They may not want you to.

15 But I would like for you to think about that, because
16 if you say I'm going to dismiss my complaints without prejudice,
17 what that means is there's been no binding rulings here today.
18 It just means it's as if this case had not been filed -- or these
19 three cases had not been filed.

20 MS. BELL: And I could pursue other avenues?

21 THE COURT: Yes, ma'am.

22 MS. BELL: Do I have to make this decision right at
23 this moment?

24 THE COURT: No. But I would like for you to do it
25 reasonably soon because I have to stay the actions otherwise.

1 MS. BELL: Okay. So my alternatives are to go to
2 Summerhays, voluntarily dismiss the actions and take it in
3 another area, or just take it to the Louisiana Bar Association?

4 THE COURT: Sounds reasonable to me.

5 MS. BELL: Sounds like the three.

6 Regardless, you believe these do not belong -- these
7 complaints do not belong in this jurisdiction.

8 THE COURT: I do not believe these three complaints
9 belong in this jurisdiction under any set of facts I can come up
10 with.

11 MS. BELL: Can you make any comment as to the case
12 evidence that's been presented to you?

13 THE COURT: No, ma'am, I cannot.

14 MS. BELL: Okay. Well, I think that's it, Your Honor.

15 THE COURT: Mr. Diebold, do you want to say something?

16 Do you need to say something else, Ms. Bell?

17 MS. BELL: Yes, one other thing. Mr. Ackermann has
18 provided me with some interrogatories. I don't know when the
19 deadline date to answer that would be. I have not addressed them
20 because I've got things going on.

21 THE COURT: Mr. Ackermann knows what to do about that.
22 We'll talk about that in a minute.

23 MS. BELL: Okay. Thank you, Your Honor.

24 THE COURT: Mr. Diebold, do you perceive that the Court
25 has jurisdiction?

1 MR. DIEBOLD: No, Your Honor. And I don't know -- I
2 mean, I don't want to belabor the point. Obviously my clients
3 are only involved in the 1985 docket number, and with regard to
4 that one, if the Court is inclined to dismiss the case with
5 prejudice, then -- I mean --

6 THE COURT: I do not see any basis for diversity
7 jurisdiction. They all seem to be citizens of the same state.
8 And the judgment of the bankruptcy court is final. I can't come
9 up with anything that would give me jurisdiction.

10 MR. DIEBOLD: Yes, Your Honor. I would think not, Your
11 Honor.

12 And, you know, it may be moot at this point, but, I
13 mean, even with regard to this case, it seems to be -- I mean,
14 it's hard to address the complaint or to really make sense of it
15 all, but it seems like the vast majority -- or maybe all of it --
16 deals with complaints against Mr. Ackermann and Mr. Marcantel,
17 which, I mean, obviously they're more than capable of defending
18 themselves. But even with that, it's essentially all arguments
19 for -- I mean, essentially they, in representing the bankruptcy
20 trustee, beat the plaintiff in this case. You know, I suppose
21 she doesn't like the results that happened there, but, I mean,
22 those were all final judgments and --

23 THE COURT: Let me ask you this question. If Ms. Bell
24 were to dismiss this suit -- wait a second. You have filed an
25 answer, right?

1 MR. DIEBOLD: Yes, Your Honor.

2 THE COURT: If Ms. Bell moves to dismiss this suit
3 voluntarily without prejudice, do you object?

4 MR. DIEBOLD: I would probably need to talk to my
5 clients about that. I would be inclined to not object if we
6 could basically get it over with quickly.

7 THE COURT: Would you please do that so that when she
8 makes her decision, I can hear from you rather quickly?

9 MR. DIEBOLD: Yes, Your Honor.

10 THE COURT: All right.

11 MR. DIEBOLD: Thank you, Judge.

12 THE COURT: Gentlemen, who wants to go first?

13 Let me ask you right off the bat. Do you think I have
14 subject matter jurisdiction?

15 MR. ACKERMANN: No, Your Honor, for both reasons that
16 you've already expressed.

17 THE COURT: Okay.

18 MR. ACKERMANN: I would like to make a quick comment,
19 but I'd like to first address anything else Your Honor would like
20 to address with me as to the dismissal issue.

21 THE COURT: If she would voluntarily dismiss it without
22 prejudice, would you object?

23 MR. ACKERMANN: That's a really tough decision, Your
24 Honor, because on the one hand --

25 THE COURT: Well, if you want to think about it, you

1 can.

2 MR. ACKERMANN: Okay. I'm going to give that some
3 thought, but it may help for me to say what I'm going to say in
4 addressing this.

5 THE COURT: Go ahead.

6 MR. ACKERMANN: It's hard to hear some of the things
7 that have been said and know that Your Honor has read some of the
8 things that have been said and come before you as my first
9 appearance before you.

10 I'm not going to address each of those things because
11 in my opinion it dignifies them more than I'd like to. I would
12 like to point out, however, that each of the complaints, as I
13 read them, were copied to the Office of Disciplinary Counsel on
14 the certificates of service that were out there. I also believe
15 that they went to the United States Attorney General's Office.
16 If not, the Louisiana Attorney General's office.

17 I would point out that in one of the bankruptcy
18 proceedings -- I believe it was where I applied for my fee and
19 was granted my fee for the adversary proceeding -- Ms. Bell
20 indicated to Judge Summerhays I think at the time that she has
21 reported Mr. Marcantel and I to the United States Attorney's
22 Office and the Office of Disciplinary Counsel.

23 So that's all I'm going to say in terms of the validity
24 of her allegations of unprofessional conduct by Mr. Marcantel and
25 I.

1 The dismissal with prejudice, what I'd like Your Honor
2 to consider, if Your Honor would, would be a short recess after
3 the presentation is done so that perhaps the lawyers can speak to
4 Ms. Bell directly. We don't have the ability to communicate with
5 her directly except in instances like this. I would like to
6 honor Judge Summerhays' last comment in the last hearing that we
7 had to try to wrap the bankruptcy up on a good note and to try to
8 end all of this problem.

9 THE COURT: I would be delighted to facilitate that. I
10 will even allow you the use of my conference room, courtroom, and
11 bad coffee.

12 MR. ACKERMANN: So what I would be proposing to
13 Ms. Bell at that time would be some sort of a resolution that
14 gives her a little something, gives everybody else a little
15 something, and causes the disputes between the parties to go
16 away, because, frankly, I know in my heart of hearts that if a
17 dismissal without prejudice is entered, Ms. Bell is going to
18 state court.

19 THE COURT: Well, if she does that, she has to have the
20 stay lifted still, and she still has to have the *Barton* doctrine
21 resolved either way, right?

22 MR. ACKERMANN: Correct. Now, does Your Honor believe
23 that he could allow Ms. Bell to dismiss without prejudice over
24 objection?

25 THE COURT: I think the rule gives me the discretion.

1 MR. ACKERMANN: Okay.

2 THE COURT: I'll double-check, but I'm pretty doggone
3 sure.

4 MR. ACKERMANN: I was hoping you'd say that because
5 then I would simply like to lodge my objection for the record and
6 leave it up to Your Honor's discretion. I'm very comfortable
7 defending myself going forward. I'm uncomfortable contributing
8 to continuing the burden on this court by this lawsuit and
9 forcing Judge Doherty to rule on a motion that may not be
10 necessary or Your Honor to complete a recommendation. But I feel
11 like for the record if I acquiesce in a voluntary dismissal, it
12 will be held against me when the time comes to face the music
13 again.

14 THE COURT: I understand.

15 MR. ACKERMANN: Thank you, Your Honor.

16 THE COURT: Mr. Marcantel, the first question for you,
17 do you think I have subject matter jurisdiction?

18 MR. MARCANTEL: I would agree with other counsel and
19 for the two reasons you stated that there is not jurisdiction.

20 THE COURT: All right.

21 MR. MARCANTEL: I'm completely aligned with
22 Mr. Ackermann in these matters because we were co-counsel in the
23 adversary proceeding. In fact, I had a motion to dismiss in each
24 cause that I was going to file today, but I'm kind of debating
25 whether I should file that right now because of this conference

1 here, the things you've said as well as what Ms. Bell has said.
2 And I, too, would just enter an objection to a voluntary
3 dismissal if it's without prejudice.

4 THE COURT: Okay. And I'm going to get the rule here
5 in just a second before we recess.

6 Anything else?

7 MR. MARCANTEL: That's it. Thank you.

8 MS. BELL: Your Honor, can I say one more thing?

9 THE COURT: Yes, ma'am. If you'll give me just one
10 second because I hate to quote a rule that I haven't read
11 recently because my memory is getting just short of pathetic.

12 (PAUSE IN PROCEEDINGS)

13 THE COURT: All right. Gentlemen, take a look at 41.
14 You're welcome to use my book if you want.

15 I'll let you look at it, too, if you want. I have
16 multiple books.

17 You wanted to say something, Ms. Bell?

18 MS. BELL: Yes, Your Honor. I just wanted to add one
19 more thing for the record with regard to the bite of the apple --
20 and I certainly respect your opinion.

21 What's been so difficult to deal with in this case is
22 that I had volumes of bench book exhibits that Mr. Ackermann
23 managed to, you know, not have me be able to testify on at the
24 trial, so my complaints are not so much everything that
25 transpired or occurred up until the trial, but the actions that

1 he took in misrepresenting my evidence in the bench books. That
2 turned out to be so harsh in the post-trial reasons.

3 So it just goes back to that my complaints are
4 basically against wrongful actions post-trial because it
5 wasn't -- in my opinion it was not litigated during trial because
6 he denied the opportunity for me to testify on the evidence. I
7 just wanted to add that on the record. Otherwise, you know, the
8 judgment, in my mind, would be sound if the evidence wasn't there
9 in the bench books that was uncontested to contest the things
10 that he said in his post-trial briefs.

11 THE COURT: And, Ms. Bell, I would submit to you that
12 those are the kinds of things that you raise on appeal after the
13 judgment is rendered, and from my review of the record, those
14 things were raised on appeal, which is one of our problems.

15 But be that as it may -- and I may be totally wrong
16 about that. And I'm not saying that you're right, I'm right,
17 you're wrong, I'm wrong, neither one of us. Regardless, let's
18 assume for the sake of our discussion that you're 100 percent
19 accurate. I still do not have the ability, the authority, if you
20 will, given by the Constitution and the Congress to take that
21 issue up in this court. I can't do it.

22 MS. BELL: Thank you, Your Honor.

23 The only other thing that I can tell the Court is the
24 reason of the timing of this is that after the post-trial briefs,
25 I began meeting with different law firms in Baton Rouge who all

1 advised me the same thing, that I couldn't take up an issue of
2 libel, slander, and defamation until the conclusion of the case.
3 It was one of the last attorneys who advised me of that in
4 December of 2007 where he sent me the laws about that, so...

5 THE COURT: Well, don't tell me anything lawyers sent
6 you.

7 MS. BELL: Okay.

8 THE COURT: All right. Do you wish to entertain
9 Mr. Ackermann's suggestion and visit with him a minute? Because
10 I always think that things work out better in conference rooms
11 than courtrooms. I'll be glad to -- like I said, we'll take a
12 recess. I'll give you my jury room, my conference room, my bad
13 coffee, or you can stay in here, whichever you want.

14 But I would encourage you to have this discussion
15 because when we stop talking to one another and let folks like me
16 make decisions, there's always going to be somebody who wins and
17 somebody who loses as you've now found out, so it's best when
18 people talk to one another.

19 Are you willing to do that?

20 MS. BELL: Yes, Your Honor. I would just like one
21 final clarification. You offered me the opportunity to file
22 dismissals without prejudice?

23 THE COURT: A dismissal without prejudice, although it
24 has ramifications, basically means it's as if this case were not
25 filed. Okay? And you've heard these two lawyers say they're

1 going to object. So if you move to file that, I'm going to have
2 to make sure that -- well, (a), Judge Doherty would have to sign
3 them, but I would have to recommend to her that she could or
4 couldn't. That means I'm going to have to explore whether the
5 stay would prevent that from happening which I'm quite willing to
6 do because I'm really just trying to see this thing to a
7 resolution.

8 MS. BELL: Okay. So --

9 THE COURT: I'm not promising you that if you say I'm
10 going to move to dismiss it without prejudice that I can do that
11 if they object. If people don't object, I pretty much -- if
12 nobody opposes things, then who am I to step in unless it's
13 wrong.

14 So why don't we take a recess and you guys can look
15 over Rule 41. I have another book up here if you want to look in
16 this other one. And y'all chat. Do you want to stay in here?
17 You're welcome to. Or if you want to go in my jury room --

18 MR. ACKERMANN: We'd like to stay in here, Your Honor,
19 if that's okay with everybody.

20 THE COURT: Okay. Well, we'll be in recess.

21 (RECESS)

22 THE COURT: Be seated.

23 Were you able to work your differences out?

24 MR. ACKERMANN: We made progress, Your Honor.

25 Ms. Bell -- I think if I'm understanding Ms. Bell, she

1 is not in a position at this time to know whether she wants to
2 voluntarily dismiss her action. I think that kind of obviates
3 Mr. Marcantel's and my need to object or stipulate to it.

4 But if I understand it correctly, Ms. Bell has
5 considered a proposal. She would like to meet with Mr. Sandoz
6 and discuss that or any other proposals with him. It may or may
7 not accomplish a resolution. I'm not sure that helps Your Honor
8 for today's purposes, but that's as good as we got today.

9 THE COURT: Well, here is what I'm going to do. Judge
10 Doherty's minute entry of January 14, 2010, in 1980 -- and I
11 believe that is also made in 84 and 85. Perhaps not. It says
12 the order staying the matter is vacated pending the issuance of
13 my report and recommendation as to how these matters should
14 proceed.

15 Ms. Bell, how much time do you need? Not very much, I
16 hope.

17 MS. BELL: Well, I mean, I have issues that I'm dealing
18 with, Your Honor, that are beyond my control.

19 THE COURT: I understand.

20 MS. BELL: So I would not like to take too long. I
21 really can't say today, but --

22 THE COURT: Here's what I'm going to do.

23 MS. BELL: It's not that I have -- I'm taking your
24 offer very seriously into consideration about voluntary dismissal
25 without prejudice. I have not closed the door to sitting with

1 Mr. Sandoz and seeing if there could be an applicable resolve.
2 And I certainly don't want to hold up this court, but I'm
3 thinking at least three weeks, Your Honor.

4 THE COURT: I'm going to give you until next Friday, a
5 week. That's ten days from today.

6 MS. BELL: I would have to postpone something, Your
7 Honor, that I really can't postpone if I have to live with that
8 deadline.

9 THE COURT: All right. Then I'll do this. I will give
10 you until the 15th of February which happens to be a federal
11 holiday. The 16th the courthouse is closed because of security
12 reasons. In fact, it's really Mardi Gras, but we'll leave it at
13 security reasons. So that gives you two weeks and a day, the
14 17th, to get it in.

15 MS. BELL: Two weeks and a day to reach a resolve with
16 Mr. Sandoz and decide if I'm going to file a motion to voluntary
17 dismiss without prejudice. Do we come back before you on that
18 day or --

19 THE COURT: No. What's going to happen is you're going
20 to send me in writing either a motion to dismiss without
21 prejudice, which you have to send to these lawyers and let them
22 approve it, or I'm going to issue a ruling. The ruling will go
23 to Judge Doherty. You will have time to object to it because all
24 I can do is issue a recommendation. I can tell you that Judge
25 Doherty is likely to follow my recommendation because I've looked

1 at this very, very carefully.

2 And the recommendation I will tell you that I'm going
3 to issue is that 1985 be dismissed with prejudice for lack of
4 subject matter jurisdiction, and that 1980 and 1984 are stayed
5 under 11 USC, Section 362. And I haven't yet decided on *Barton*,
6 but I would likely recommend that it be sent back to the
7 bankruptcy court for leave to proceed against Mr. Ackermann,
8 Mr. Marcantel, and their law firms under *Barton*. I do think that
9 I have the authority to dismiss a case outright under *Barton*, but
10 I'm not prepared to say that today.

11 So if it goes back to the bankruptcy court in 1980 and
12 1984 and he grants leave -- or lifts the stay and we come back
13 here, I'm likely to dismiss it for lack of subject matter
14 jurisdiction in both cases.

15 Does that help you?

16 MS. BELL: I think so.

17 And I think if I'm interpreting 41 correctly is that I
18 would have the right to do the voluntary dismissal without
19 prejudice. I would have an opportunity to have that ruling.

20 THE COURT: Under Rule 41 if the parties stipulate --
21 do you see that in there -- then I can do it without prejudice.
22 If issue has been joined, which all three of these lawyers have
23 joined issue -- that means they've answered and they've otherwise
24 contested your allegations -- and they object, then there are
25 circumstances under which I could dismiss it without prejudice.

1 Jurisdiction I'm not entirely sure.

2 But if that comes up there, y'all are going to have to
3 brief it, and I would prefer to save you that trouble.

4 One way or the other, Ms. Bell, before it's all said
5 and done, either with a lot of trouble or without a lot of
6 trouble, you're going to have to be somewhere else. That's the
7 best I can tell you unless, of course, I get reversed, which that
8 happens, too. I'm not right very often.

9 MS. BELL: I'm sure that's not the case, Your Honor.

10 THE COURT: I would encourage you to speak with
11 Mr. Sandoz. I am a huge believer that you do much better work in
12 the conference room than the courtroom. All right?

13 MS. BELL: All right.

14 THE COURT: Anything else from anybody?

15 All right. We're adjourned.

16 (PROCEEDINGS ADJOURNED.)

17 - - -

18 Certificate

19 I hereby certify this 28th day of July, 2010, that the foregoing
20 is, to the best of my ability and understanding, a true and
21 correct transcript from the record of proceedings in the
22 above-entitled matter.

23

24 /s/ LaRae E. Bourque

25 _____
Official Court Reporter