

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

CRST VAN EXPEDITED, INC.,

Plaintiff,

vs.

J.B. HUNT TRANSPORT, INC.,
JAMES HOWARD, TROY SHAVER,
LARRY ULAND, SHANE VANDEN
HEUVEL, ROBERT L. SIMPSON, II,
and KEITH P. BELL,

Defendants.

No. C 04-79 LRR

ORDER

NOT TO BE PUBLISHED

TABLE OF CONTENTS

I. INTRODUCTION AND FACTUAL BACKGROUND	2
II. PROCEDURAL BACKGROUND	4
A. The Oklahoma Litigation	4
B. The Arkansas Litigation	4
C. The Iowa Litigation	5
III. ANALYSIS	7
A. First-Filed Rule	8
1. Same Issues	12
2. Same Parties	13
B. Transfer Pursuant to 28 U.S.C. § 1404(a)	13
C. Abstention	17
D. Stay	20
1. Res Judicata	22
2. Collateral Estoppel	24

IV. CONCLUSION 27
I. INTRODUCTION AND FACTUAL BACKGROUND¹

The matter before the court is the Motion to Dismiss, Stay, or Transfer (docket no. 58) filed by Defendant J.B. Hunt Transport, Inc. (“J.B. Hunt”). The motion is resisted.

CRST Van Expedited, Inc. (“CRST”) is an interstate motor carrier that transports goods and commodities. CRST hires approximately 2,700 drivers per year and expects to lose approximately 60% to 70% of its drivers in any given year. In response to the trucking industry’s driver shortage, CRST developed a Driver Training Program (“DTP”) to train individuals to become truck drivers for CRST. To complete CRST’s DTP, a student driver must successfully complete driver training school and an additional three and one-half day CRST orientation program. CRST contends it spends a great deal of time training individuals to become truck drivers for CRST and spends in excess of \$10 million to train its new drivers each year.

Upon successful completion of the DTP, CRST requires its drivers to sign a one-year employment contract. Defendants James Howard, Troy Shaver, Larry Uland, Shane Vanden Heuvel, Robert L. Simpson, II, and Keith P. Bell (collectively, the “individual defendants”) entered into one-year employment contracts with CRST. The CRST standard employment contract for drivers provides, in pertinent part, as follows:

2. DUTIES OF EMPLOYEE. Employee agrees that at all times during the term of this Contract, Employee shall devote full time to the performance of Employee’s duties to CRST under this Contract. . . . Employee agrees that Employee will not, directly or indirectly, engage or participate in any

¹ For purposes of deciding this motion, CRST’s allegations, as pled in the Second Amended Complaint, are accepted as true and all reasonable inferences from the allegations are construed in the manner most favorable to CRST. *See Young v. City of St. Charles, Mo.*, 244 F.3d 623, 627 (8th Cir. 2001).

activities at any time during the term of this Contract in conflict with duties under this Contract and/or the best interests of CRST.

* * *

3. TERM OF EMPLOYMENT. The term of CRST's employment of Employee under this Contract shall be for a period of one (1) year commencing as of the Effective Date subject to termination for Due Cause by CRST prior to the end of the term pursuant to Section 4 of this Contract. . . . Employee acknowledges that CRST has made a substantial investment in Employee's driver training and that CRST would be damaged by Employee's failure to complete the term of this contract.

* * *

8. REIMBURSEMENT OF AMOUNT DUE. Employee hereby agrees that if during the one (1) year term of this Contract (1) Employee breaches this Contract, or (2) Employee's employment is terminated for Due Cause, then the total amount of \$3,600.00 will be immediately due and payable by Employee to CRST. It is the intent of the parties that Employee's compliance with the terms of this Contract permits CRST to recoup some of the significant sums of money that CRST has invested to train Employee to perform the driver duties required under this Contract, in the event Employee breaches this Contract or is terminated for Due Cause during the one (1) year term of this Contract.

Prior to the expiration of the one-year term of their employment contracts, each individual defendant accepted a job as a truck driver with J.B. Hunt, a competing trucking company. CRST did not terminate the employment of any of the individual defendants and the individual defendants did not reimburse CRST for their training expenses.

J.B. Hunt, as a part of its driver application process, requested CRST provide it

with the information required by Title 49 of the Code of Federal Regulation on the individual defendants. CRST advised J.B. Hunt of the existence of the individual defendants' one-year employment contracts with CRST and provided J.B. Hunt with a copy of those contracts. CRST believes that the individual defendants continue to drive for J.B. Hunt today.

II. PROCEDURAL BACKGROUND

CRST and J.B. Hunt are currently engaged in litigation in Oklahoma, Arkansas and Iowa.

A. The Oklahoma Litigation

On May 25, 2004, CRST filed a Complaint in the United States District Court for the Western District of Oklahoma against J.B. Hunt and three drivers who previously worked for CRST and now work for J.B. Hunt (the "Oklahoma litigation"). CRST invokes federal court jurisdiction based upon complete diversity of the parties and the fact that more than \$75,000 is in controversy. 28 U.S.C. § 1332. Count I of the Complaint alleges J.B. Hunt committed tortious interference with contractual relations. Count II alleges J.B. Hunt is liable under a theory of tortious interference with prospective economic advantage. Counts III, IV and V allege the three drivers are liable for breach of contract. CRST's prayer for relief requests compensatory and punitive damages and a permanent injunction against J.B. Hunt, enjoining it from "continuing [its] wrongful and tortious solicitation of CRST's employees."

On September 1, 2004, the Hon. Stephen P. Friot, United States District Court Judge for the Western District of Oklahoma, entered a scheduling order setting pretrial deadlines and a trial date of August 8, 2005.

B. The Arkansas Litigation

On June 1, 2004, J.B. Hunt filed a declaratory judgment action against CRST in the

Circuit Court of Benton County, Arkansas (the “Arkansas litigation”). In that action, J.B. Hunt asked the court to enter a declaratory judgment stating J.B. Hunt’s hiring of drivers who signed a one-year employment contract with CRST does not amount to tortious interference with CRST’s contractual relations or prospective business advantage.

On August 9, 2004, J.B. Hunt filed a Second Amended Complaint for Declaratory Judgment against CRST. J.B. Hunt requested a declaratory judgment that its recruitment and employment of drivers under contract with CRST does not constitute tortious interference with CRST’s contractual relations or prospective business advantage. In the event the court were to find J.B. Hunt’s conduct did interfere with contractual relations or a prospective business advantage, J.B. Hunt requested a ruling that its conduct is privileged or justified by competition.

On December 1, 2004, J.B. Hunt filed a Third Amended Complaint against CRST. In the Third Amended Complaint, J.B. Hunt added Count II, alleging CRST violated Arkansas’ Deceptive Trade Practices Act, and Count III, alleging CRST is liable under a theory of abuse of process.

On December 2, 2004, the Hon. Xollie Duncan orally granted CRST’s motion to dismiss J.B. Hunt’s declaratory judgment action. Specifically, Judge Duncan determined the court lacked the authority to determine J.B. Hunt’s rights in relation to a contract between CRST and its drivers because J.B. Hunt had no rights under the contract. On January 27, 2005, Judge Duncan filed an Order dismissing Count I, the declaratory judgment action. Counts II and III were not dismissed.

C. The Iowa Litigation

On June 3, 2004, CRST filed the instant action in the Iowa District Court in and for Linn County against defendants J.B. Hunt, James Howard, Troy Shaver, Larry Uland, and Shane Vanden Heuvel (the “Iowa litigation”). On June 10, 2004, CRST filed a First

Amended Petition, adding Robert L. Simpson, II, and Keith P. Bell as defendants. Count I of the First Amended Petition alleges the individual defendants are liable under a theory of breach of contract. Count II alleges J.B. Hunt is liable under a theory of tortious interference with a contract. Count III alleges J.B. Hunt is liable under a theory of interference with prospective business advantage. Count IV requests temporary and permanent injunctive relief against J.B. Hunt and the individual defendants. In its prayer for relief, CRST seeks compensatory, consequential and punitive money damages, injunctive relief and any additional relief the court deems just and equitable.

On June 17, 2004, J.B. Hunt and the individual defendants removed the case to this court on the basis that this court has diversity subject matter jurisdiction. J.B. Hunt and the individual defendants invoke this court's jurisdiction inasmuch as complete diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000.00. 28 U.S.C. § 1332. CRST is an Iowa corporation with its principal place of business located in Cedar Rapids, Iowa. J.B. Hunt is an Arkansas corporation with its principal place of business located in Lowell, Arkansas. Howard and Venden Heuvel are citizens of Wisconsin. Shaver is a citizen of Illinois. Uland is a citizen of Indiana. Simpson is a citizen of Missouri. Bell is a citizen of Ohio.

On June 25, 2004, CRST applied for a Temporary Restraining Order seeking to bar J.B. Hunt from: (1) tortiously interfering with the one-year employment contracts between CRST and the individual defendants; (2) interfering with CRST's prospective business economic advantage created by CRST's Driver Training Program; and (3) inducing drivers under contract with CRST to breach employment contracts with CRST by use of a systematic and purposeful plan. The court denied CRST's application on July 30, 2004 after a hearing.

On August 4, 2004, CRST filed its Second Amended Complaint, Request for

Hearing and Jury Demand. The only difference between the First Amended Petition and the Second Amended Complaint is that CRST corrected the name of J.B. Hunt in the later filing.²

On November 12, 2004, J.B. Hunt filed the instant Motion to Dismiss, Stay or Transfer. CRST filed its resistance to J.B. Hunt's Motion to Dismiss, Stay or Transfer on December 16, 2004. On January 6, 2005, J.B. Hunt filed its reply brief. On February 23, 2005, CRST filed a surreply. Neither party requested oral argument so the court will decide the motion solely on the briefs. Finding the motion ready for review, the court turns to address its merits.

III. ANALYSIS

J.B. Hunt contends CRST and J.B. Hunt are engaged in identical litigation in several courts and if every court rules on the issues between CRST and J.B. Hunt, the parties may be subject to conflicting rulings. J.B. Hunt moves the court to dismiss the pending action against it or alternatively to transfer the action to the United States District Court for the Western District of Oklahoma for resolution with the Oklahoma litigation, to abstain in favor of the Arkansas litigation, or to stay the action pending resolution of an action CRST filed against another trucking industry competitor, Werner Enterprises, Inc. ("Werner") in California state court.³

² The First Amended Petition identifies J.B. Hunt as "J.B. Hunt Transport Services, Inc." The Second Amended Complaint identifies J.B. Hunt as "J.B. Hunt Transport, Inc."

³ The CRST-Werner litigation was filed in California state court on May 12, 2004 (the "California litigation"). Count I alleges intentional interference with contract. Count II alleges negligent interference with contract. Count III alleges unlawful business practices under California Business and Professions Code §§ 17200 *et seq.* Werner removed the lawsuit to the United States District Court for the Central District of (continued...)

First, CRST responds J.B. Hunt is estopped from raising its first-filed argument after litigating in this forum for five months. If J.B. Hunt is not estopped from making the argument, CRST argues the first-filed rule does not apply in this case because the Oklahoma and Iowa litigations are not parallel due to different defendant drivers being involved in each case. CRST contends the driver defendants are not interchangeable between Oklahoma and Iowa as personal jurisdiction cannot be asserted over each set of drivers in the other litigation. Second, CRST argues J.B. Hunt has failed to show that a transfer of the Iowa litigation would be warranted under 28 U.S.C. § 1404(a). Third, CRST urges the court to deny J.B. Hunt’s motion as it relates to the Arkansas litigation because the Arkansas court dismissed the declaratory judgment action and that litigation currently is not parallel to the Iowa litigation. Finally, CRST maintains there is no legal authority for the court to stay the Iowa litigation while an unrelated California case is decided in the Ninth Circuit Court of Appeals.

A. First-Filed Rule

“In cases of concurrent jurisdiction, the first court in which jurisdiction attaches has priority to consider the case as a matter of federal comity.” *Keymer v. Mgmt. Recruiters, Int’l, Inc.*, 169 F.3d 501, 503 n.2 (8th Cir. 1999) (citing *Northwest Airlines v. Am. Airlines*, 989 F.2d 1002, 1004-05 (8th Cir. 1993)). “Generally, the doctrine of federal comity permits a court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district.” *Orthmann v. Apple River Campground Inc.*, 765 F.2d 119, 121 (8th Cir. 1985). The Eighth Circuit Court of

³(...continued)

California on June 28, 2004. On September 10, 2004, that court dismissed CRST’s claims against Werner with prejudice. On October 8, 2004, CRST appealed the dismissal to the Ninth Circuit Court of Appeals. The case remains pending.

Appeals set forth the doctrine of federal comity, also called the first-filed rule, as follows:

The well-established rule is that in cases of concurrent jurisdiction, “the first court in which jurisdiction attaches has priority to consider the case.” *Orthmann v. Apple River Campground Inc.*, 765 F.2d 119, 121 (8th Cir. 1985). This first-filed rule “is not intended to be rigid, mechanical, or inflexible,” *Orthmann*, 765 F.2d at 121, but is to be applied in a manner best serving the interests of justice. The prevailing standard is that “in the absence of compelling circumstances,” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Haydu*, 675 F.2d 1169, 1174 (11th Cir. 1982), the first-filed rule should apply.

Northwest Airlines, 989 F.2d at 1005 (quoting *United States Fire Ins. Co. v. Goodyear Tire & Rubber Co.*, 920 F.2d 487, 488-89 (8th Cir. 1990)). The purposes of the first-filed rule are to “conserve judicial resources and avoid conflicting rulings.” *Keymer*, 169 F.3d at 503 n.2. Duplicative litigation in the federal courts should be avoided in order to prevent the unnecessary expenditure of scarce judicial resources. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *Missouri v. Prudential Health Care Plan, Inc.*, 259 F.3d 949, 953-54 (8th Cir. 2001).

The first-filed rule applies only where the various pending actions are parallel. *Midwest Motor Express, Inc. v. Cent. States Southeast & Southwest Areas Pension Fund*, 70 F.3d 1014, 1017 (8th Cir. 1995) (quoting *Northwest Airlines*, 989 F.2d at 1006). The Eighth Circuit Court of Appeals has not discussed the meaning of “parallel” in this context. The Sixth Circuit Court of Appeals has determined two actions are parallel only where the parties and issues are identical. *Baskin v. Bath Township Bd. of Zoning Appeals*, 15 F.3d 569, 571-72 (6th Cir. 1994). Even where the two claims arise out of the same basic facts, the proceedings may not be parallel if they contest different aspects of the issue, seek different relief, or do not include all of the same parties. *Id.* at 572. The

Fourth Circuit Court of Appeals considers lawsuits to be parallel “if substantially the same parties litigate substantially the same issues in different forums.” *Al-Abood v. El-Shamari*, 217 F.3d 225, 232-33 (4th Cir. 2000) (quoting *New Beckley Mining Corp. v. Int’l Union, United Mine Workers of Am.*, 946 F.2d 1072, 1073 (4th Cir. 1991)). Pursuant to the first-filed rule, if a parallel action was filed earlier in a different district, a district court has the discretion to dismiss the later action, see *Anheuser-Busch, Inc. v. Supreme Int’l Corp.*, 167 F.3d 417, 419 (8th Cir. 1999), or transfer it, see *Orthmann*, 756 F.2d at 121.

The Eighth Circuit Court of Appeals has identified two “red flags” which may constitute “compelling circumstances,” requiring a court to abandon the first-filed rule in a particular case. *Northwest Airlines*, 989 F.2d at 1007. The first “red flag” is raised where the first-filer was on notice that the second-filer’s lawsuit was imminent. *Id.* The second “red flag” is raised where the first-filed action was for declaratory judgment rather than a suit for damages or equitable relief. *Id.* Other circumstances the Eighth Circuit Court of Appeals has recognized as sufficient to overcome the first-filed rule are: (1) where the first-filer was able to file first only because it misled the second-filer as to its intention to file suit in order to gain the advantage of filing first; and (2) where the second-filed action is a continuation of a legal process already begun in that court. *United States Fire Ins. Co.*, 920 F.2d at 489.

Another exception to the “first-filed” rule is the “balance of convenience and interest of justice” exception. *Terra Int’l, Inc. v. Miss. Chem. Corp.*, 119 F.3d 688, 696 (8th Cir. 1997) (“*Terra II*”) (citing *Terra Int’l Inc. v. Miss. Chem. Corp.*, 922 F. Supp. 1334, 1357-63 (N.D. Iowa 1996) (“*Terra I*”). The “balance of convenience” factors include the following:

- (1) the convenience of the parties, (2) the convenience of the witnesses--including the willingness of witnesses to appear, the ability to subpoena witnesses, and the adequacy of deposition

testimony, (3) the accessibility to records and documents, (4) the location where the conduct complained of occurred, and (5) the applicability of each forum state's substantive law.

Id. (citing *Terra I*, 922 F. Supp. at 1357-61). The “interest of justice” factors include the following:

(1) judicial economy, (2) the plaintiff's choice of forum, (3) the comparative costs to the parties of litigating in each forum, (4) each party's ability to enforce a judgment, (5) obstacles to a fair trial, (6) conflict of law issues, and (7) the advantages of having a local court determine questions of local law.

Id. (citing *Terra I*, 922 F. Supp. at 1361-63). “These [balance of convenience and interest of justice] considerations parallel the factors that courts typically analyze under section 1404(a).” *Id.* (citing *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879-80 (3d Cir. 1995); *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1516 (10th Cir.1991) (in turn quoting *Tex. Gulf Sulphur Co. v. Ritter*, 371 F.2d 145, 147 (10th Cir.1967))).

CRST contends the first-filed rule does not apply in this case because the Oklahoma and Iowa litigations are not parallel. Specifically, CRST avers the litigations do not involve the same parties because each lawsuit names different individual defendants. CRST further contends the United States District Court for the Western District of Oklahoma does not have personal jurisdiction over the Iowa defendants and the United States District Court for the Northern District of Iowa does not have personal jurisdiction over the Oklahoma defendants. Additionally, CRST argues J.B. Hunt’s position in the Oklahoma litigation indicates it believes it is defending its actions specifically as they pertain to the named individual defendants, not J.B. Hunt’s ongoing activity with regard to CRST and its drivers. Therefore, CRST maintains the Oklahoma and Iowa litigations do not involve the same issues.

J.B. Hunt responds CRST and J.B. Hunt are involved in both actions, so the parties

are the same. Furthermore, J.B. Hunt argues the issues in the Oklahoma and Iowa litigations are the same: the complaints contain nearly verbatim factual allegations and claims and CRST has served identical discovery requests on J.B. Hunt in both actions.

1. Same Issues

In order for the first-filed rule to apply, the two actions must involve the same issues. *Orthmann*, 765 F.2d at 121. In the Oklahoma litigation, CRST alleges J.B. Hunt is liable under theories of tortious interference with contractual relations and tortious interference with prospective economic advantage for inducing the three named drivers to breach their employment contracts with CRST. CRST seeks compensatory and punitive damages, attorneys' fees and costs, and "a permanent injunction against J.B. Hunt Transport Services, Inc.'s continuing wrongful and tortious solicitation of CRST's employees." In the Iowa litigation, CRST alleges J.B. Hunt is liable under theories of tortious interference with contracts and interference with prospective business advantage for inducing the individual defendants to breach their employment contracts with CRST. CRST seeks compensatory and punitive damages, attorneys' fees and costs, and a permanent injunction "enjoining [J.B.] Hunt from tortiously interfering with the CRST, Howard, Shaver, Uland, Vanden Heuvel, Simpson and Bell contracts."

Using the standard for parallelism employed by the Sixth Circuit Court of Appeals, the court finds the Oklahoma and Iowa litigations are not parallel because they do not contain identical issues. *See Baskin*, 15 F.3d at 572. Even applying the more lax standard set forth by the Fourth Circuit Court of Appeals, the court finds the Oklahoma and Iowa actions are not parallel because they do not involve substantially the same issues: in each case, the theories of liability are specific as to the particular contracts and particular drivers involved in the case. *See Al-Abood*, 217 F.3d at 232.

2. Same Parties

In order for the first-filed rule to apply, both actions must also involve the same parties. *See Orthmann*, 765 F.2d at 121. The parties do not dispute CRST and J.B. Hunt are involved in the Oklahoma and Iowa litigations. Rather, because the Oklahoma litigation involves defendants not involved in the Iowa litigation and because the Iowa litigation involves defendants not involved in the Oklahoma litigation, the parties' dispute focuses on whether the parties must be identical in both actions or whether the parties must only be substantially similar.

Under the standard for parallelism set forth by the Sixth Circuit Court of Appeals, the Oklahoma and Iowa litigations are not parallel because they do not include *all* of the same parties. *See Baskin*, 15 F.3d at 572. Even if the court reads the "same parties" requirement broadly enough to encompass cases in which the parties are *substantially* similar, as the Fourth Circuit Court of Appeals has done, the result is the same. *See Al-Abood*, 217 F.3d at 232. Although CRST is the only plaintiff in both the Oklahoma and Iowa litigations, the defendants are not substantially similar in the two actions: J.B. Hunt is the only common defendant of four defendants in the Oklahoma litigation and of seven defendants in the Iowa litigation. For the foregoing reasons, the court finds the Oklahoma and Iowa litigations are not parallel, a prerequisite for applying the first-filed rule. As such, the first-filed rule does not apply in this case.

B. Transfer Pursuant to 28 U.S.C. § 1404(a)

Alternatively, J.B. Hunt moves the court to transfer the Iowa litigation to the United States District Court for the Western District of Oklahoma so it may be consolidated with the Oklahoma litigation. CRST contends the United States District Court for the Western District of Oklahoma lacks personal jurisdiction over the individual defendants in this case so transfer is inappropriate.

“For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The party moving to transfer a case pursuant to section 1404(a) bears the burden of establishing that the transfer is warranted. *Terra II*, 119 F.3d at 695. Furthermore, section 1404(a) does not allow a court to transfer a suit to a district which lacks personal jurisdiction over the defendants, even if they consent to suit there. *See Hoffman v. Blaski*, 363 U.S. 335, 343-44 (1960) (holding the power of a district court to transfer an action pursuant to section 1404(a) does not depend on “the wish or waiver of the defendant but, rather, upon whether the transferee district was one in which the action ‘might have been brought’ by the plaintiff”). “Section 1404(a) only authorizes the transfer of an entire action, not individual claims.” *Chrysler Credit Corp.*, 928 F.2d at 1518 (citations omitted); *accord Wyndham Assoc. v. Bintliff*, 398 F.2d 614, 618 (2d Cir. 1968). Section 1404(a) does not authorize a court to transfer part of a case for one purpose while maintaining jurisdiction over part of the case for another purpose. *In re Flight Transp. Corp. Sec. Litig.*, 764 F.2d 515, 516 (8th Cir. 1985). Rather, section 1404(a) “contemplates a plenary transfer” of the case. *Id.*

In their Joint Notice of Removal, J.B. Hunt and the individual defendants allege J.B. Hunt is an entity organized under the laws of Arkansas and having its principal place of business located in Lowell, Arkansas, Howard is a citizen of Wisconsin, Shaver is a citizen of Illinois, Uland is a citizen of Indiana, Vanden Heuvel is a citizen of Wisconsin, Simpson is a citizen of Missouri, and Bell is a citizen of Ohio.

In a lawsuit in which the court’s jurisdiction is based solely on diversity of the parties, “[a] federal court . . . may assume jurisdiction over nonresident defendants only to the extent permitted by the long-arm statute of the forum state and by the Due Process Clause.” *Romak USA, Inc. v. Rich*, 384 F.3d 979, 984 (8th Cir. 2004) (internal quotation

marks omitted) (quoting *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1072 (8th Cir. 2004)). In this case, the proposed forum state is Oklahoma. Therefore, the court will look to Oklahoma’s long-arm statute and the Due Process Clause to determine whether the United States District Court for the Western District of Oklahoma would have personal jurisdiction over the defendants in the Iowa litigation.

Oklahoma’s long-arm statute provides, “[a] court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States.” Okla. Stat. tit. 12 § 2004(F). “The intent of [Oklahoma’s] long-arm statute is to extend the jurisdiction of the Oklahoma courts to the outer limits permitted by the Oklahoma Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.” *Conoco, Inc. v. Agrico Chem. Corp.*, ___ P.3d ___, 2004 WL 2522726 (Okla. Nov. 9, 2004) (citing *Fields v. Volkswagen of Am., Inc.*, 555 P.2d 48, 52 (Okla. 1976)).

“To satisfy due process a defendant must have sufficient minimum contacts with the forum state ‘such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Romak USA, Inc.*, 384 F.3d at 984 (internal quotation marks omitted) (quoting *Dever*, 380 F.3d at 1073 (in turn quoting *Burlington Indus., Inc. v. Maples Indus., Inc.*, 97 F.3d 1100, 1002 (8th Cir. 1996))). “More particularly, there must be ‘some act by which the defendant purposefully avails [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’” *Id.* (internal quotation marks omitted) (quoting *Dever*, 380 F.3d at 1073 (in turn quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958))). “The contacts with the forum state must be more than ‘random,’ ‘fortuitous,’ or ‘attenuated.’” *Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1389 (8th Cir. 1991) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

Furthermore, in a case involving specific personal jurisdiction, “jurisdiction is viable only if the injury giving rise to the lawsuit occurred within or had some connection to the forum state.” *Id.* (quoting *Dever*, 380 F.3d at 1073). “In other words, the cause of action must “arise out of” or “relate to” a defendant’s activities within a state.” *Id.* (quoting *Lakin v. Prudential Sec., Inc.*, 348 F.3d 704, 707 (8th Cir. 2003) (in turn quoting *Burger King Corp.*, 471 U.S. at 472)). In determining whether the United States District Court for the Western District of Oklahoma would have personal jurisdiction over the defendants in the Iowa litigation in the event of a transfer, the court must consider “(1) the nature and quality of [the defendants’] contacts with [Oklahoma]; (2) the quantity of such contacts; (3) the relation of the cause of action to the contacts; (4) the interest of [Oklahoma] in providing a forum for its residents; and (5) [the] convenience of the parties.” *Id.* (quoting *Dever*, 380 F.3d at 1073-74).

With regard to the outer limits permitted by the Oklahoma Constitution, the Oklahoma Supreme Court has opined the following: “When *in personam* jurisdiction over a party is at issue, the record before a court must affirmatively demonstrate the court’s jurisdiction.” *Conoco, Inc.*, 2004 WL 2522726 at *5 (citing *Roberts v. Jack Richards Aircraft Co.*, 536 P.2d 353 (Okla. 1975)). “Where the party is a nonresident, the record must affirmatively demonstrate the minimum contacts required to satisfy due process.” *Id.* (citing *Crescent Corp. v. Martin*, 443 P.2d 111 (Okla. 1968)). The court must be satisfied the nonresident party “had sufficient contacts with [Oklahoma] to assure that traditional notions of fair play and substantial justice would not be offended if [Oklahoma] exercised *in personam* jurisdiction.” *Id.* (citing *Barnes v. Wilson*, 580 P.2d 991 (Okla. 1978)).

In this case, the United States District Court for the Western District of Oklahoma has personal jurisdiction over J.B. Hunt as established by the pending lawsuit in that

forum. However, there is no evidence before the court which indicates the individual defendants in the Iowa litigation have purposely availed themselves of the privilege of conducting activities in Oklahoma, thus invoking the benefits and protections of its laws, and thus becoming subject to *in personam* jurisdiction in Oklahoma. Without such purposeful action by the individual defendants, the court finds the individual defendants lack sufficient minimum contacts with Oklahoma to become subject to *in personam* jurisdiction in that forum. Furthermore, even assuming the individual defendants have sufficient minimum contacts with Oklahoma, the court finds the injury giving rise to the Iowa litigation did not occur within or have some connection to Oklahoma. The record does not affirmatively demonstrate the United States District Court for the Western District of Oklahoma has personal jurisdiction over the individual defendants. Because the United States District Court for the Western District of Oklahoma, the proposed transferee court, lacks personal jurisdiction over the individual defendants, the court may not transfer the case to that venue under 28 U.S.C. § 1404(a).

C. Abstention

As another alternative, J.B. Hunt moves the court to abstain from exercising its jurisdiction in this case in favor of the state court action in Arkansas. CRST points out the declaratory judgment action J.B. Hunt filed in Arkansas has been dismissed and the two remaining counts involve violation of Arkansas' Deceptive Trade Practices Act and abuse of process, which are in no way similar to the Iowa litigation.

The *Colorado River* abstention doctrine, first set forth in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976) ("*Colorado River*"), gives a federal district court the discretion to avoid duplicative litigation in federal court of a matter more properly decided in parallel litigation in state court. *See In re Burns & Wilcox, Ltd.*, 54 F.3d 475, 477 (8th Cir. 1995) ("A parallel state court proceeding is a

necessary prerequisite to use of the *Colorado River* factors.”) (citing *Baskin*, 15 F.3d at 571-72). However, when deciding “whether a federal court should defer to a pending suit in state court, . . . the order in which jurisdiction was obtained, while still a relevant factor in applying the abstention doctrine, is far less apt to be determinative because of the federal court’s ‘virtually unflagging obligation’ to exercise its jurisdiction.” *Smart v. Sunshine Potato Flakes, L.L.C.*, 307 F.3d 684, 687 (8th Cir. 2002) (citing *Colorado River*, 424 U.S. at 817-18). The court’s obligation “does not evaporate simply because there is a pending state court action involving the same subject matter.” *Federated Rural Elec. Ins. Corp. v. Ark. Elec. Coops., Inc.*, 48 F.3d 294, 297 (8th Cir. 1995) (citing *Colorado River*, 424 U.S. at 813-14). The potential for conflicting rulings in the state and federal courts does not justify federal abstention. *Id.* (quoting *Colorado River*, 424 U.S. at 816). On the contrary, “[a]bdication of the obligation to decide cases can be justified under [the abstention] doctrine[s] only in the *exceptional circumstances* where the order to the parties to repair to the State court would clearly serve an important countervailing interest.” *Id.* (modifications and emphasis in original; internal quotation marks omitted) (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr.*, 460 U.S. 1, 14 (1983) (in turn quoting *Colorado River*, 424 U.S. at 813)). This is true “even if diversity of citizenship is the only jurisdictional foundation.” *BASF Corp. v. Symington*, 50 F.3d 555, 557 (8th Cir. 1995) (citing *United States Fidelity & Guar. Co. v. Murphy Oil USA*, 21 F.3d 259, 261 (8th Cir. 1994); *Ins. Co. of Penn. v. Syntex Corp.*, 964 F.2d 829, 834 (8th Cir. 1992)). In determining whether exceptional circumstances exist such that abstention is appropriate, a court must consider the following factors:

- (1) whether there is a res over which one court has established jurisdiction,
- (2) the inconvenience of the federal forum,
- (3) whether maintaining separate actions may result in piecemeal litigation, unless the relevant law would require piecemeal

litigation and the federal court issue is easily severed, (4) which case has priority – not necessarily which case was filed first but a greater emphasis on the relative progress made in the cases, (5) whether state or federal law controls, especially favoring the exercise of jurisdiction where federal law controls, and (6) the adequacy of the state forum to protect the federal plaintiff’s rights.

Id. (quoting *United States Fidelity & Guar. Co.*, 21 F.3d at 263). The “exceptional circumstance” factors listed above are not exhaustive and the factors are not to be mechanically applied. *Id.* “Rather, they are to be pragmatically applied in order to advance the ‘clear federal policy’ of avoiding piecemeal litigation.” *Id.* (citing *Moses H. Cone Mem’l Hosp.*, 460 U.S. at 16).

The court must first determine whether the federal litigation in Iowa and the state litigation in Arkansas are parallel. The court has already set forth the Circuit Courts of Appeals’ definitions of “parallel.” Using the Sixth Circuit Court of Appeals’ standard, the court finds the Arkansas state litigation and Iowa federal litigation are not parallel for purposes of applying the *Colorado River* abstention doctrine. *See Baskin*, 15 F.3d at 572. The parties in the Arkansas and Iowa litigations are not identical: the Iowa litigation includes six individual defendants not involved in the Arkansas litigation. Furthermore, the issues are not identical. The Arkansas litigation, as it presently exists, is a suit brought by J.B. Hunt against CRST, alleging a violation of Arkansas’ Deceptive Trade Practices Act and abuse of process. The Iowa litigation, as it presently exists, is a suit brought by CRST against J.B. Hunt and six individual defendants, alleging breach of contract, tortious interference with contracts, interference with prospective business advantage, and seeking permanent injunctive relief in addition to money damages. Even under the more lax standard employed by the Fourth Circuit Court of Appeals, the court finds the Arkansas state litigation and Iowa federal litigation are not parallel because the issues are not

substantially the same. *See Al-Abood*, 217 F.3d at 232. Even though the two actions arise from the same basic set of facts, the issues and types of relief sought are different. *See id.* Because the two suits are not parallel, a prerequisite to application of the *Colorado River* abstention doctrine, the court finds abstention inappropriate in this case.

D. Stay

As a final alternative, J.B. Hunt moves the court to stay the action pending the Ninth Circuit Court of Appeals' resolution of the California litigation between CRST and Werner. Specifically, J.B. Hunt contends judicial economy and efficiency warrant a stay because the factual allegations CRST made against Werner are the same as the factual allegations CRST asserts in its Second Amended Complaint against J.B. Hunt and the standardized driver contracts at issue in the California litigation are identical to the contracts at issue in the Iowa litigation. J.B. Hunt avers the United States District Court for the Central District of California dismissed with prejudice CRST's claims against Werner, finding CRST could not state a claim for tortious interference based upon the contract between CRST and its drivers. If the Ninth Circuit Court of Appeals decides the case in favor of Werner, J.B. Hunt argues CRST should not be allowed to sue other trucking competitors in other jurisdictions for the same conduct. J.B. Hunt maintains, "consistent with the purpose of res judicata and collateral estoppel," it would be unfair and inconsistent for one federal court to permit one competitor to hire former CRST drivers while another federal court precludes another competitor from doing so, based upon identical contracts.

CRST responds J.B. Hunt has waived the res judicata/collateral estoppel argument because J.B. Hunt failed to plead it as an affirmative defense in its Answer. Even if the argument were not waived, CRST argues the litigation between itself and Werner is not relevant to the Iowa litigation and an adverse outcome would neither act as res judicata in

the CRST-J.B. Hunt litigation nor collaterally estop CRST from suing J.B. Hunt for its allegedly tortious acts. CRST also contends the factual allegations in the California litigation are not the same as the factual allegations in the Iowa litigation: the California litigation involves actions allegedly taken by a different trucking company defendant, different drivers who allegedly breached their contracts with CRST, different claims, and application of a different state's laws.

Federal Rule of Civil Procedure 8(c) requires that all affirmative defenses be pled: "In pleading to a preceding pleading [setting forth a claim for relief], a party shall set forth affirmatively . . . estoppel, . . . [and] res judicata. . . ." Fed. R. Civ. P. 8(c). Thus, an affirmative defense within the meaning of Rule 8(c) must "generally be pled or else [it] may be waived." *Stephenson v. Davenport Comm. Sch. Dist.*, 110 F.3d 1303, 1307 n.3 (8th Cir. 1997) (quoting *Bechtold v. City of Rosemount*, 104 F.3d 1062, 1068 (8th Cir. 1997)). The purpose of the pleading requirement for affirmative defenses in Rule 8(c) "is to give the opposing party notice of the plea of [the affirmative defense] and a chance to argue, if he can, why the imposition of [the affirmative defense] would be inappropriate." *Blonder-Tongue Lab. v. Univ. of Ill. Found.*, 402 U.S. 313, 350 (1971). The court acknowledges that in some cases, the failure to plead an affirmative defense can be harmless, notwithstanding the terms of Rule 8(c). *See Fin. Timing Publ'ns, Inc. v. Compugraphic Corp.*, 893 F.2d 936, 944 n.9 (8th Cir. 1990) (holding, "[w]hen an affirmative defense 'is raised in the trial court in a manner that does not result in unfair surprise, . . . technical failure to comply with Rule 8(c) is not fatal'" (quoting *Allied Chem. Corp. v. Mackay*, 695 F.2d 854, 855 (5th Cir. 1983))).

The court notes J.B. Hunt has amended its Answer, by leave of the court, to include the affirmative defenses of res judicata and collateral estoppel. Therefore, the court finds J.B. Hunt has not waived the affirmative defenses of res judicata and collateral estoppel.

The court turns next to the merits of the two affirmative defenses as they apply to J.B. Hunt's motion to stay the action pending a ruling in the California action from the Ninth Circuit Court of Appeals.

1. Res Judicata

J.B. Hunt first relies upon the doctrine of res judicata in support of its motion to stay the Iowa litigation pending a ruling from the Ninth Circuit Court of Appeals in the California litigation between CRST and Werner. "The preclusion principle of res judicata prevents 'the relitigation of a claim on grounds that were raised or could have been raised in the prior suit.'" *Banks v. Int'l Union Elec., Elec., Technical, Salaried & Mach. Workers*, 390 F.3d 1049, 1052 (8th Cir. 2004) (quoting *Land v. Peterson*, 899 F.2d 737, 741 (8th Cir. 1990)). "[I]t is fundamental that the res judicata effect of the first forum's judgment is governed by the first forum's law, not by the law of the second forum.'" *Canady v. Allstate Ins. Co.*, 282 F.3d 1005, 1014 (8th Cir. 2002) (quoting *Hillary v. Trans World Airlines, Inc.*, 123 F.3d 1041, 1043 (8th Cir.1997)) (internal citation omitted). When the first forum is a federal court sitting in diversity, the first forum's law is the law of the state in which the federal court sits. *See Austin v. Super Valu Stores, Inc.*, 31 F.3d 615, 618 (8th Cir. 1994) (recognizing to satisfy the Full Faith and Credit Clause, a federal court exercising diversity jurisdiction in the second forum must give to the judgment of a federal court exercising diversity jurisdiction in the first forum the same full faith and credit a state court in the second forum would be required to give the judgment of a state court in the first forum, in the absence of an overriding federal interest) (quoting *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575 F.2d 922, 927-28 (D.C. Cir. 1978)).

In this case, the first forum was the United States District Court for the Central District of California. The California federal court's jurisdiction was based on diversity

of the parties and thus it utilized the substantive law of the state of California. Therefore, the court must look to California's law on res judicata to see whether it applies in this case.

Under California law,

[t]he prerequisite elements for applying the [res judicata] doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding.

People v. Barragan, 83 P.3d 480, 492 (Cal. 2004) (internal quotation marks and citation omitted).

In this case, there is no dispute the Ninth Circuit Court of Appeals' ruling in the California litigation will be a final judgment on the merits. There also is no dispute the party against whom the res judicata doctrine is being asserted – CRST – is a party to the prior proceeding, the California litigation. The only dispute revolves around the third requirement: that the claims or issues be identical in the California and Iowa litigations. The issues raised in the California litigation are whether Werner: (1) intentionally interfered with CRST's contracts, (2) negligently interfered with CRST's driver contracts, and (3) violated California's unfair competition law found in California's Business and Professions Code §§ 17200 *et seq.* CRST seeks compensatory and punitive damages, attorneys' fees and costs, and a permanent injunction against Werner,⁴ enjoining its

⁴ The California lawsuit includes 50 unnamed individual defendants, "Does 1-50," and CRST's Complaint purports to seek a permanent injunction against the unnamed defendants as well, although such an injunction preventing their "continuing wrongful and unfair solicitation of CRST's and other competitors' employees" appears nonsensical. (continued...)

“continuing wrongful and unfair solicitation of CRST’s and other competitors’ employees.” In the Iowa litigation, CRST alleges J.B. Hunt is liable under theories of tortious interference with contracts and interference with prospective business advantage for inducing the individual defendants to breach their employment contracts with CRST. CRST seeks compensatory and punitive damages, attorneys’ fees and costs, and a permanent injunction “enjoining [J.B.] Hunt from tortiously interfering with the CRST, Howard, Shaver, Uland, Vanden Heuvel, Simpson and Bell contracts.”

The court finds that although the theories of liability and types of relief sought are the same in the California and Iowa litigations, the lawsuits do not involve the same issues and do not contain identical claims. In each case, the theories of liability are specific as to the particular employment contracts and particular drivers involved in the case. Furthermore, the request for injunctive relief in the California litigation seeks to enjoin Werner from continuing an ongoing pattern of conduct in soliciting CRST’s and other competitors’ employees while the Iowa litigation seeks only to enjoin J.B. Hunt from interfering with the six individual defendants’ contracts. Because the issues raised in the California and Iowa litigations are not identical, the court finds any decision by the Ninth Circuit Court of Appeals in the California litigation between CRST and Werner does not act as *res judicata* in the Iowa litigation.

2. Collateral Estoppel

J.B. Hunt next relies upon the doctrine of collateral estoppel in support of its motion to stay the Iowa litigation pending a ruling from the Ninth Circuit Court of Appeals in the California litigation between CRST and Werner. The application of collateral estoppel in

⁴(...continued)

Therefore, the court assumes CRST intended to request a permanent injunction against only Werner.

diversity cases is determined according to state law. *Liberty Mut. Ins. Co. v. FAG Bearings Corp.*, 335 F.3d 752, 758 (8th Cir. 2003) (citing *Royal Ins. Co. of Am. v. Kirksville Coll. of Osteopathic Med., Inc.*, 304 F.3d 804, 807 (8th Cir. 2002)). “When a federal court is sitting in diversity, the preclusive effect of a prior judgment is determined by the preclusion rules of the forum which provided the substantive law underlying that prior judgment.” *Follette v. Wal-Mart Stores, Inc.*, 41 F.3d 1234, 1237 (8th Cir. 1994) (citing *Hicks v. O’Meara*, 31 F.3d 744, 746 (8th Cir.1994)). The court must apply the prior forum’s substantive law regarding the collateral estoppel effect of the former litigation on the present proceedings. *See Austin*, 31 F.3d at 618 (applying the collateral estoppel law of Louisiana, the prior forum, in subsequent proceeding in federal court in Minnesota); *Follette*, 41 F.3d at 1237 n.1 (recognizing res judicata and collateral estoppel are two aspects of the law of former adjudication and it is impossible to distinguish the two concepts for purposes of determining which forum’s law of issue or claim preclusion applies in the subsequent proceeding); *cf. Canady*, 282 F.3d at 1014 (holding the res judicata effect of the first forum's judgment is governed by the first forum's law). Again, the first forum, the United States District Court for the Central District of California, applied California state law. Therefore, the court must analyze California’s law of collateral estoppel to determine whether it applies in this case.

Under California law, “[i]n general, collateral estoppel precludes a party from relitigating issues litigated and decided in a prior proceeding.” *Gikas v. Zolin*, 863 P.2d 745, 750 (Cal. 1993) (citing *People v. Sims*, 651 P.2d 321, 326 (Cal. 1982); *Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.*, 375 P.2d 439, 440 (Cal. 1962)).

Traditionally, [the California Supreme Court has] applied the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second,

this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.

Id. (internal quotation marks omitted) (quoting *Lucido v. Superior Court*, 795 P.2d 1223, 1225 (Cal. 1990)). The party asserting collateral estoppel bears the burden of proving each of the five threshold requirements. *Lucido*, 795 P.2d at 1225. Even if all five requirements are met, the collateral estoppel doctrine will not be applied if application would not serve the doctrine's underlying key principles. *Gikas*, 863 P.2d at 750 (citing *Lucido*, 795 P.2d at 1226).

In this case, there is no dispute the Ninth Circuit Court of Appeals' ruling in the California litigation will be a final judgment on the merits. There is also no dispute the party against whom the collateral estoppel doctrine is being asserted, CRST, was a party to the prior proceeding, the California litigation. However, a review of the remaining three factors demonstrates application of the doctrine of collateral estoppel is inappropriate in this case. First, the court already has determined the issues in the California and Iowa litigations not identical. Second, the court finds the issues sought to be precluded – whether J.B. Hunt tortiously interfered with the employment contracts between CRST and the individual defendants, whether J.B. Hunt tortiously interfered with CRST's prospective business advantage, and whether CRST is entitled to a permanent injunction enjoining J.B. Hunt from interfering with the individual defendants' contracts with CRST – were not actually litigated in the California litigation. Finally, the issues were not “necessarily decided” in the California litigation; indeed, they were not decided at all. J.B. Hunt has failed to establish all five threshold requirements for applying collateral estoppel. Therefore, the court finds any ruling by the Ninth Circuit Court of Appeals in the

California litigation between CRST and Werner would not collaterally estop CRST from suing J.B. Hunt for its allegedly tortious acts in the Iowa litigation.

Any forthcoming opinion by the Ninth Circuit Court of Appeals will not constitute res judicata as to the parties and issues involved in the Iowa litigation. Furthermore, such ruling will not collaterally estop CRST from suing J.B. Hunt in the Iowa litigation for its allegedly tortious acts. J.B. Hunt offers no legal authority to support a third option: the court should stay the Iowa litigation pending resolution of the California litigation for some other reason “consistent with the purpose of res judicata and collateral estoppel.” The court declines to create such a rule. Therefore, the court finds a stay pending the Ninth Circuit Court of Appeals’ decision in the California litigation is inappropriate.

IV. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED** Defendant J.B. Hunt’s Motion to Dismiss, Stay or Transfer (docket no. 58) is **DENIED**.

SO ORDERED.

DATED this 31st day of March, 2005.



LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA