

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

LESTER E. COX MEDICAL)
CENTERS, SPRINGFIELD, MISSOURI)
d/b/a OZARK PROFESSIONAL)
COLLECTIONS,)
)
)
Plaintiff/Counterclaim Defendant,)
)
v.)
)
JOE HUNTSMAN and)
CARY HUNTSMAN,)
)
Defendants/Counterclaim Plaintiffs.)

No. 00-3276-CV-S-DW-ECF

ORDER

Pending before the Court are the parties’ cross-motions for partial summary judgment¹ (Docs.73, 84) on Count I, violation of Missouri’s Merchandising Practices Act, Mo. Rev. Stat. § 407.020 and § 407.025, and Count IV, violation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 et. seq., of Defendants’ second amended counterclaim.

As discussed in an earlier phone conference with the Court, the parties agree that there is no genuine dispute as to the material facts in this case and wish to have the Court resolve Defendants’ FDCPA claim on a motion for summary judgment. After carefully reviewing the various briefs submitted by the parties (Docs. 74, 83, 86, 88, 89 and 90), for the reasons discussed below, the Court GRANTS Plaintiff/Counterclaim Defendant Lester E. Cox Medical Centers SUMMARY JUDGMENT on Count I, and GRANTS Defendant/Counterclaim Plaintiffs Joe and Cary Huntsman SUMMARY JUDGMENT on Count IV.

¹Although Plaintiff/Counterclaim Defendant Lester E. Cox Medical Centers d/b/a Ozark Professional Collections has styled its motion (Doc. 73) as a motion for summary judgment, it only moves to dismiss Counts I and IV. Accordingly, the Court treats the motion as a motion for partial summary judgment.

I. FACTS

The Parties

Defendant Lester E Cox Medical Centers (“Cox Medical Centers” or “Cox”) is a benevolent corporation organized under the laws of the State of Missouri with a principle place of business located at 1423 North Jefferson Avenue in Springfield, Missouri. Cox Medical Centers uses the United States mail, phone, faxes for business purposes and conducts interstate commerce.

Cox Medical Centers is also the registered owner and user of the doing business as designation “Ozark Professional Collections.” Ozark Professional Collections (“OPC”) is not a partnership, Limited Liability Company or corporation organized under the laws of Missouri or any other state. It is a division of Lester E. Cox Medical Centers which is legally registered with the Missouri Secretary of State. There is no corporation, partnership, sole proprietorship or other entity registered with the State of Missouri named “Ozark Professional Collections.” The only registration of “Ozark Professional Collections” with the Missouri Secretary of State’s office is the name “Ozark Professional Collections” used by Cox Medical Centers. The only business OPC engages in is collecting debts.

Plaintiffs Joe Huntsman and Cary Huntsman are natural persons who Cox Medical Centers alleges owe it at least \$827.33, the balance due on a bill for personal medical supplies and services provided to Cary Huntsman.

Cary Huntsman’s Ganglion Cyst Removal

On April 12, 1999, Cary Huntsman had a ganglion cyst removed at Cox Medical Centers in Springfield, Missouri. The procedure consisted of administering a Bier block anesthetic to put Cary

Huntsman's arm to sleep, making an incision over the dorsum or back of the wrist, removing a cyst, sewing the incision up, and applying a dressing. Dr. Newt Wakeman, an orthopedic surgeon, performed the procedure with help from two assistants. The procedure was performed in the operating room at Cox Medical Centers North. The operation was a success, and the quality of the medical care Mrs. Huntsman received is not an issue in this case.

Before undergoing the procedure, Mrs. Huntsman signed an "Authorization to Release Information, Assignment of Benefits and Consent for Treatment" ("Authorization") which set out her financial responsibility, the interest rate that would be assessed if bill was not paid (9%), and an agreement to pay all collection agency costs and/or reasonable attorney fees if the account were placed for collection.

Neither Cary or Joe Huntsman knew what the procedure would cost before Cary Huntsman signed the Authorization. Cox Medical Centers charged Cary Huntsman \$1,683.68 for the procedure. The Huntsmans thought this bill was unreasonable and refused to pay a portion of it, giving rise to the current litigation.

Cox Medical Centers's Bundling System

Prior to 1996 Cox Medical Centers used a sticker based inventory control system for stocking supplies used in surgical procedures. Maintaining accurate records and controlling inventory under this system was difficult because it required entering each individual item used during a surgical procedure into a computer, which was time consuming and expensive. Under this system it took Cox Medical Centers three to five days to post surgical supplies on a client's bill and debit the supplies from inventory.

In 1996 Cox Medical Centers implemented a hospital-wide bundling system for stocking supplies used in surgical procedures. In Cox Medical Centers's bundling system individual items are prepackaged and bundled together to treat a prototype case. Cox assembles its surgical bundles in-house. The surgical unit at Cox Medical Centers retains a list of which bundles are used for each surgery. Prior to a patient's surgery, the doctor's office will call the surgical unit to schedule the procedure and, apparently, they prepare the appropriate bundle. If a doctor routinely uses a product that is not included in a bundle, the doctor will tell the Operating Room Supervisor to have that ready for the doctor in the operating room so that it will be available during the procedure.

Cox Medical Centers charges a patient for the entire bundle of items used in a procedure regardless of whether every item in that bundle is actually used. It is Cox's policy not to indicate which items were and were not used during a procedure. Some items such as sutures, which are packaged doubly wrapped with plastic on the outside and metal foil on the inside, are discarded if they are opened and not used. Other items, such as stainless steel medical equipment, are sterilized, rebundled, and reused regardless of whether or not they are used.

Not every surgical procedure has its own specific bundle. Cox Medical Centers does not have a specific surgical bundle used for a ganglion cyst removal. Surgical bundle 41, which was designed to provide a surgeon with items used in carpal tunnel surgery, was the bundle used to remove Cary Huntsman's ganglion cyst.

Not all of the items in Mrs. Huntsman surgical bundle were used during her surgery. The Huntsmans claim at least \$180.42 worth of her care was totally medically unnecessary and wasteful. Cox Medical Centers argues that all of the care Mrs. Huntsman was billed for was medically necessary for her treatment.

By instituting a bundling system Cox Medical Centers has reduced its administrative costs. Bundling facilitates inventory control, reduces labor, and streamlines the process of ordering, obtaining and dispensing supplies. Under the bundling system there is no lag time in ordering supplies and patients are billed within 48 hours of the supplies being used.

Cox Medical Centers argues this increased efficiency ultimately allows it to lower patients' bills. The Huntsmans argue that, at least in Cary Huntsman's case, bundling was simply a vehicle for the hospital to charge more money.

The Dispute Over Mrs. Huntsman's Bill

The first bill the Huntsmans received for Mrs. Huntsman's surgery was dated April 22, 1999. All subsequent communications with Cox Medical Centers after receipt of this initial bill was between Mr. Huntsman and Cox Medical Centers. Mr. Huntsman opened all correspondence related to this matter, even if it was addressed to Mrs. Huntsman.

Sometime after receiving the initial bill Mr. Huntsman called the hospital's receivables department and spoke with someone named Kathy. He requested that the billing department audit the bill. In response, Kathy told him that they would get back with him.

Soon afterwards, Vicki Williams ("Williams"), a registered nurse employed in Cox Medical Centers's audit office, called Mr. Huntsman back. Williams told Huntsman that she had audited the bill, that everything was fine, and that she could not find any errors. As part of her audit, Williams had reviewed the operative notes and the anesthesiologist's report. Williams concluded that the items on the list were the items documented as used for Cary Huntsman's surgery.

Huntsman asked Williams to explain the bill, particularly the \$1,016.65 charge for surgery supplies. Williams told him that she could not itemize his wife's bill right now, but she could have

the bill broken down and sent to him later. She told him it would take four to five weeks because the hospital does not normally send out itemized prices in their bills.

Huntsman's concern was what was included in "surgery supplies." Williams explained that Dr. Wakeman had ordered the surgery bundle and that when a doctor comes in to do a surgery, he will order certain supplies to be available, and that the patient has to pay for those supplies as part of surgery expenses. She stated that if he had a problem with this bill for supplies he would have to speak to Dr. Wakeman about it. Huntsman did not speak to anyone else at Cox in great detail about this bill.

Around May 7, 1999, Williams sent Huntsman a breakdown of the surgery supplies. He received the list, but it did not have any prices and it still had some miscellaneous charges listed on the statement.

Around June 8, 1999, Mr. Huntsman sent Cox Medical Centers a letter in which he stated that he did not intend to pay his wife's bill until he received a complete itemization statement and break down of each charge on the bill. On July 21, 1999, he sent another letter to Cox Medical Centers stating that he had not heard back from Williams. This letter referred to his June 8, 1999 letter.

On August 12, 1999, Cox Medical Centers sent the Huntsmans a statement reflecting a "***Delinquent Notice***" from Cox on the \$1,683.68 balance. Sometime before October 6, 1999, the Huntsmans paid \$856.35 on the bill. On October 6, 1999, Cox Medical Centers sent the Huntsmans a statement reflecting a balance of \$827.33 and stating that "Your account is seriously past due. This account will be turned over to a collection agency unless paid in full."

On October 28, 1999, Ozark Professional Collections ("OPC") sent the Huntsmans a notice indicating that their account had a balance of \$992.80. This figure was the alleged principle balance owed for medical services plus a 20% collection fee.

Joe Huntsman responded with a letter dated November 18, 1999. In this letter he disputed the debt. When OPC received the letter it contacted Cox Medical Centers billing department to obtain a copy of the medical bill.

On January 21, 2000, OPC sent a second statement reflecting a balance due of \$992.80. Included with this letter was a copy of the bill from Cox Medical Centers. This letter acknowledged that the Huntsmans were disputing the debt. That same day OPC sent a report to Equifax indicated that Cary Huntsman owed Cox Medical Centers a debt. The report indicated that Cary Huntsman disputed the debt.

The Huntsmans responded on January 28, 2000, by writing a letter to Cox Medical Centers requesting that the hospital explain three items in the bill, particularly the charge for “Misc. Anes Supplies.” The letter also asserted that the Huntsmans had sent OPC a letter requesting that they cease communications with them.

On March 1, 2000, John N. Vaughan, an attorney at Lowther & Johnson, sent the Huntsmans a letter stating that the firm had been retained by Cox Medical Centers to collect the entire balance of \$892.00 that was owed to Cox. Vaughan indicated that a lawsuit would be filed if the balance was not paid within 10 days.

Cox Medical Centers filed suit against Joe and Cary Huntsman in the Greene County, Missouri, Associate Circuit Court Division on or about March 14, 2000. The lawsuit was subsequently removed to this Court.

OPC’s Relationship To Cox Medical Centers

OPC collects debts for Cox Medical Centers, another entity that is half-owned by Cox Medical Centers and one other medical facility. Ninety percent (90%) of OPC's business is collecting debts for Cox Medical Centers.

Diane Johnson ("Johnson") is the Collection Manager at OPC. She is paid by Cox Medical Centers. Johnson reports to and is supervised by Larry Pennel, the Chief Financial Officer for Cox Medical Centers. Johnson owned and operated American Professional Collections, a debt collection company, until it was purchased by Cox Medical Centers. Cox Medical Centers then extinguished American Professional Collections as an independent legal entity and turned it into OPC, a division of Cox Medical Centers. Every single person who works at OPC is paid and employed by Cox Medical Centers.

Cox Medical Centers handles most of OPC's administration. Cox Medical Centers does all of the accounting and reconciling of OPC's books. If a worker at OPC is terminated, Cox's Human Resource department sends the COBRA medical coverage notices to the employee. The hospital's Human Resource department also takes care of winding up all employee termination of OPC workers including sick leave, COBRA, and vacation hours. If a worker in Cox Medical Center's OPC division needs approval to take a family or medical leave, he seeks approval from Johnson or other OPC management, but ultimate approval rests with Cox Medical Center's Human Resources department. OPC's mail is picked up from its offices by the Cox's shuttle service and is mailed through the hospital's mail room at 1423 North Jefferson. The shuttle service also brings mail from the hospital to OPC's offices at 210 South Union. Employees who currently work under Johnson's control at OPC's offices can access patient bills at the hospital through a direct link computer. (This system was not in place when collection efforts against Cary Huntsman first began.)

Some of OPC's administration is not performed by, or intertwined with, Cox Medical Centers. OPC leases its own office space at 210 South Union in Springfield, Missouri, a location that is physically separate from the hospital's campus. OPC hires a third party unrelated to Cox Medical Centers to maintain its computers and has its own networking software. OPC's e-mail system is not hooked into the electronic mail system of the entire Cox network.

Furthermore, while OPC follows policies set by Cox Medical Center's Human Resources department, these policies are administered by Johnson. OPC also has some flexibility in deviating from these policies. OPC's management does not have to get Larry Pennel's approval to implement minor changes to its policies and procedures. In addition, OPC management also has the power to terminate personnel.

The OPC Training Manual instructs employees how to respond to inquiries concerning ownership. Page 18 of the manual reads as follows:

INQUIRIES ON "OWNERSHIP"

- Advise Lester E Cox Medical Center if attorney asks you who owns our company.
- If debtors ask who is the owner, advise them we are not authorized to release ownership, but you are welcome to speak with someone in management.

Johnson confirms that if attorneys ask about the ownership of OPC they are to be told "Lester E. Cox Medical Centers," but if a debtor asks who the owner is they are to be told that "we are not authorized to release ownership, but you are welcome to talk with someone in management." Mr. Huntsman did not know that OPC had any affiliation with Cox Medical Centers until after this litigation ensued.

OPC's management has enormous influence over Cox Medical Centers decision whether to sue a particular debtor. The procedures between Cox Medical Centers and OPC for instituting a lawsuit to collect on a debt are as follows: Once the hospital sends a bill over to OPC the hospital ceases all efforts to collect. The hospital does not become involved again until Diane Johnson

recommends that a lawsuit be filed. Johnson is the only person at OPC who can authorize a lawsuit. At that time, the hospital's role is to sign an affidavit authorizing suit. The file is then returned to OPC to forward it on to an attorney's office. Johnson decides when to send a collection matter to Cox Medical Centers' attorneys. Once suit is filed, OPC monitors the status of the lawsuit and works on "keeping the file updated for the hospital."

OPC's Practices Relating to Post-Dated Checks

If a client decides to post date a check it is inputted onto the computer system. The system is set up so that a notification is sent out ten days prior to cashing the check. The checks is then filed in the filing system. Once the notice has been sent and the date of the check comes, the check is transferred over to be deposited.

The Parties' Damages

In its Petition Cox Medical Centers prays for the following relief:

Wherefore, Plaintiff, Lester E Cox Medical Centers, prays judgment against Joe Huntsman and Cary Huntsman, in the sum of Eight Hundred Twenty Seven Dollars and 33 cents (\$827.33), with interest thereon at the rate of Nine percent (9%) per annum from April 22, 1999, and a reasonable attorney fee, for hospital services and medical treatment rendered Cary Huntsman, through April 12, 1999, its costs herein incurred and expended, and for such other and further relief as the Court may deem just and proper.

In paragraph 9 of the Petition Cox Medical Centers indicates it is seeking attorney's fees against Cary Huntsman only.

Joe and Cary Huntsman are seeking "nominal damages, and all consequential damages including their attorneys' fees and costs required to defend themselves" from Cox Medical Centers's

alleged “unreasonable and inflated and medically unnecessary charges.” They seek attorney’s fees and costs as consequential damages under the contract with Cox Medical Centers of at least \$12,165.17 and/or statutorily authorized attorney’s fees of the same amount. The Huntsmans only dispute that \$180.42 of the bill was for medically unnecessary or duplicative items.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where the movant demonstrates that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986). In making this determination, the facts and inferences from those facts are viewed in the light most favorable to the nonmoving party. Fed. R. Civ. P. 56(c); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-90 (1986). To prevail the moving party must prove the absence of a genuine issue of material fact *and* that it is entitled to judgment as a matter of law. Id. (emphasis added).

Once the moving party has met this burden, the nonmoving party may not rest on the allegations in the pleadings but must set forth specific facts by affidavit or other evidence showing that a genuine issue of material fact exists. Fed. R. Civ. P. 56(e); Lower Brule Sioux Tribe v. State of S.D., 104 F.3d 1017, 1021 (8th Cir. 1997). To determine whether the disputed facts are material, courts analyze the evidence in the context of the legal issues involved. Id. Thus, the mere existence of factual disputes between the parties is insufficient to avoid summary judgment; rather, “the disputes must be outcome determinative under prevailing law.” Id. (citations omitted). To establish that a factual dispute is genuine and sufficient to warrant trial, the party opposing summary judgment must show more than some metaphysical doubt as to the material facts. Matsushita, 475 U.S. at 586. Finally, in considering a summary judgment motion the Court is mindful that summary judgment is not a

disfavored procedural shortcut but an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. Celotex, 477 U.S. at 327.

III. DISCUSSION

A. **The Court grants the Huntsmans summary judgment on their FDCPA counterclaim.**

Counterclaim Plaintiffs Joe and Cary Huntsman argue that they are entitled to summary judgment on their FDCPA counterclaim because Cox Medical Centers d/b/a Ozark Professional Collections is subject to the FDCPA and violated multiple provisions of it. Cox Medical Centers argues it is entitled to summary judgment because (1) a creditor is exempt from the FDCPA when using its own employees, such as Vicki Williams, to collect debts; (2) a creditor is exempt from the FDCPA when collecting debts under its own name, which is what the hospital was doing prior to transferring the account to OPC on October 28, 1999; (3) section 1692a(6) of the FDCPA allows a creditor to collect debts under a fictitious “doing business as” name; (4) section 1692f(1) of the FDCPA permits the assessment of collection costs if authorized by the debtor or permitted by law, and Cary Huntsman authorized the hospital to assess collection costs before services were rendered; (5) pursuant to § 1692c(c) a creditor is allowed to send a debtor a letter outlining specifics remedies available to the creditor even when the debtor has asked the debt collector to cease communications; (6) Defendants cannot establish a violation of § 1692e(5) of the FDCPA because under Missouri law a husband is liable for the medical expenses of his wife residing with him; and finally (7) Defendants cannot establish a violation under § 1692f(2) of the FDCPA because it is not a violation of the act to

solicit a postdated check so long as the debt collector notifies debtor within 10 days of its intent to cash the check, and, in the instant case, no postdated check was ever received.

The are two basic questions here, does the FDCPA apply to Cox Medical Center d/b/a Ozark Professional Collections, and if so, did Cox Medical Center d/b/a Ozark Professional Collections violate its provisions.

In order for the FDCPA to apply here four requirements must be met. First, the Huntsmans must be “consumers” within the meaning of § 1692a(3), which they are because they are natural persons alleged to owe a debt to Counterclaim Defendant. Second, there must be a “debt” within the meaning of § 1692a(5), which there is because the debt at issue here arises out of a transaction made for personal or household purposes. Third, pursuant to § 1692a(6) the alleged debt collector must participate in interstate commerce, which Cox Medical Centers does. Fourth and finally, Cox Medical Centers must be a “debt collector” within the meaning of § 1692a(6). The parties hotly dispute this fourth requirement.

As Cox Medical Centers points out, the FDCPA defines a “debt collector” as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). The statute, however, does not end where Cox Medical Centers leaves off. It also states that, “the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.” 15 U.S.C. § 1692a(6). Furthermore, as the Second Circuit observed in a similar case,

Although a creditor need not use its full business name or its name of incorporation to avoid FDCPA coverage, it should use the name under which it usually transacts business, or a commonly used acronym, or any name that it has used from the

inception of the credit relation. Similarly, a creditor's in-house collection division, such as Citicorp's Debtor Assistance, is not considered a debt collector so long as it uses the creditor's true business name when collecting. An in-house collection unit will be exempt from the provisions of the FDCPA if it collects its own debts in the true name of the creditor or a name under which it has consistently done business.

Maguire v. Citicorp Retail Services, Inc., 147 F.3d 232, 235 (2nd Cir. 1998) (internal citations omitted) (holding creditor who attempted to collect debts using a division of the company identified as "Debtor Assistance" in letters to the debtor liable under the FDCPA). Furthermore, in evaluating potential violations courts use an objective standard based on whether the least sophisticated consumer would be deceived by the collection practice. Id. at 236.

In the present case it is painfully obvious from the record that Cox Medical Centers is a creditor who, in the process of collecting its own debts, uses a name other than its usual business name—namely "Ozark Professional Collections"—to indicate that a third party is attempting to collect its debt. Indeed, OPC deliberately tries to avoid telling consumers that it is a division of Cox Medical Centers. Consequently, Cox Medical Centers is a debt collector in the eyes of the statute. Daley v. Povenena Hospital, 88 F.Supp. 2d 881 (N.D. Ill. 2000) (holding hospital using its own employees for in-house collection under a misleading "doing business as" designation liable under the FDCPA).

The Court now turns to whether Cox violated the FDCPA's provisions. Naturally, in light of the above ruling and the facts, the Court finds that by sending two collection letters to the Huntsmans on OPC letterhead, Cox committed two violations of § 1692e(14). Therefore the Court grants Defendants summary judgment on Count IV.

The Court finds no liability, however, on any of the remaining allegations in Count IV. The Court finds no liability for any actions taken by Cox prior to October 28, 1999, because a debtor is exempt from the FDCPA when collecting debts under its own name, which is what the hospital was

doing prior to transferring the account to OPC on October 28, 1999. The Court also finds no liability for any actions taken by Vicki Williams, finding that she never told Joe Huntsman that he could not receive a breakdown of his wife's medical bill. Finally, the Court finds no liability for Cox's filing a lawsuit against Joe Huntsman for reasonable attorney's fees and interest at the rate of 9% from April 22, 1999. The Court agrees with Cox that Cary Huntsman agreed to these provisions prior to undergoing surgery, and that under Missouri law husbands are liable for their wives medical expenses.

B. The Court grants Cox Medical Centers summary judgment on the Merchandising Practices Act counterclaim.

Count I of the Huntsmans' Second Amended Counterclaim seeks civil remedies as provided under the Missouri Merchandising Practices Act, Mo. Rev. Stat. §407.020 and §407.025. Section 407.025.1 states that

Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby *suffers an ascertainable loss* of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by §407.020 may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover *actual damages*.

(emphasis added).

In this case the Huntsmans seek nominal damages and consequential damages. They claim consequential damages in the form of attorney's fees and litigation expenses incurred in defending against Cox Medical Centers's alleged unreasonable charges. They contend these fees and costs are actual damages because they had to hire an attorney to defend themselves from Plaintiff's lawsuit to recover on the alleged debt. (Suggs. in Supp. of Mot. for Partial Summ. J., Doc. 86 at 8.) The Huntsmans do not cite, nor can the Court find, any authority which supports this position.

The Court agrees with Cox Medical Centers that litigation expenses and attorney's fees are not recoverable as actual damages. The Court holds that litigation expenses and attorney's fees are just that, litigation expenses and attorney's fees, *not* damages. While a court may, at its discretion, award a prevailing plaintiff attorney's fees under the Merchandising Practices Act, this does not convert attorney's fees into damages. On the contrary, if the Missouri legislature had meant for attorney's fees to be recoverable as damages, it would not have included the attorney's fees provision in the statute.

The Court also notes that the Huntsmans are only questioning \$180.42 worth of charges on their bill, yet exclusive of interest and collection fees, they still owe \$827.33 on the outstanding balance. Because they owe the hospital more than they claim to have been overcharged, the Huntsmans can hardly claim to have been damaged. On the contrary, accepting everything they allege as true, the Huntsmans are still ahead \$646.91. Consequently they have not suffered any ascertainable loss here, and the Court finds that Count I fails for lack of actual damages and an ascertainable loss.

IV. CONCLUSION

For the reasons outlined above, the Court PARTIALLY GRANTS and PARTIALLY DENIES the pending cross-motions for partial summary judgment (Doc. 73, 84). The Court GRANTS Plaintiff/Counterclaim Defendant Lester E. Cox Medical Centers SUMMARY JUDGMENT on Count I, and GRANTS Defendants/Counterclaim Plaintiffs Joe and Cary Huntsman SUMMARY JUDGMENT on Count IV.

IT IS SO ORDERED.

/s/ DEAN WHIPPLE
Dean Whipple
United States District Judge

Date: August 5, 2003