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**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY**

LEN WALLACE,

Plaintiff,

vs.

NORMAN HAYES, MAGTRAC BOLUS  
PARTNERSHIP, GERALD HILL, LUCILLE  
HILL, JACK HEYNEMAN, JOHN  
HEYNEMAN, and RODNEY J. HAYES,

Defendants.

Cause No. DV 01-0882

Judge Gregory R. Todd

**ORDER**

This matter came on for hearing on January 18, 2013, on Plaintiff's Motion for Remand to Arbitrator for Final Determination and on the Court's show cause motion why Rule 11 sanctions should not be imposed against the Plaintiff and Plaintiff's attorney. Present were Tyler S. Wirick (Wirick) representing the Plaintiff, T. Thomas Singer (Singer) representing the Defendants and also present were Norman Hayes and Rodney Hayes. Conspicuously absent was Plaintiff Len Wallace (Wallace). This was in spite of the Court's initial order of March 12, 2012, as well as its Order of November 5, 2012, which ordered all parties and counsel to personally appear.

The primary argument of Wallace is that the arbitration award was not and has never been final. A major problem with Wallace's argument is that both a Judgment

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1 and Amended Judgment were signed on August 10, 2004, and a Notice of Entry of  
2 Judgment was also executed (See Court dockets 106, 107 and 108). Not only did  
3 Wallace have a chance to appeal the issue of the finality of the judgment in his first  
4 appeal (2005 MT 253, 329 Mont. 23, 124 P.3d 110) which was decided on October 18,  
5 2005, Wallace had five (5) other chances to raise said issue in his five (5) subsequent  
6 appeals to the Montana Supreme Court. At no time did he raise this issue.  
7

8         Significantly, in direct contradiction in Wallace's motion and brief in support of  
9 Alternate Motion for Relief from Judgment filed on May 22, 2006 (Court docket 177),  
10 Wallace argued that not only had judgment been entered but it had been satisfied and  
11 released (page 5). This was because of the incredible position taken by Wallace that he  
12 could unilaterally and without authority file a satisfaction of judgment on behalf of  
13 MagTrac Bolus, LLC for the \$2.5 million dollar judgment that was awarded personally  
14 against him in the arbitration award and judgment. The \$2.5 million dollar damages  
15 were for "his intentional misappropriation and conversion of property rights belonging to  
16 the company." (§ 4 of Award in Arbitrator's Decision and Award). So when it fit  
17 Wallace's position to claim there was a judgment, he did it, but for all other reasons he  
18 appears to consistently say there was not a judgment. Wallace however is bound by  
19 judicial estoppel from now claiming, six (6) years later, that there is not a judgment.  
20  
21

22         But Wallace has and continues to argue that issues regarding the Linseth patent  
23 should justify whatever relief Wallace demands. Wallace has often argued that the  
24 Linseth patent proceedings in South Dakota should trigger a different result in Montana  
25 (See in particular Plaintiff's Brief in Support of Alternate Motion for Relief from Judgment

1 of May 22, 2006, Court docket 177). At pages 7 and 8 of said brief, Wallace argued that  
2 "... the decision of the circuit court {of South Dakota} has effectively reversed any  
3 determination that MagTrac owned or had any rights in the Linseth patent." Wallace  
4 goes on to argue that the arbitrator in this case had his assumptions proven wrong and  
5 said assumptions were not actually litigated.  
6

7 But the Montana Supreme Court, in Wallace's second appeal decided August 14,  
8 2007, as 2007 MT 194 N (¶¶ 8 and 9), focused on Wallace's arguments about the South  
9 Dakota litigation regarding the Linseth patent. The Montana Supreme Court affirmed  
10 the District Court and at paragraph 14 concluded by saying "It is manifest on the face of  
11 the briefs and record before us that settled Montana law clearly controls the legal issues  
12 and that the district court correctly interpreted the law."  
13

14 A further argument that Wallace has made and continues to make in his  
15 reference to the alleged non-finality of the arbitrator's award is his consistent quoting of  
16 the Order Granting Stay of Further Proceedings signed by arbitrator Stuart S. Healy  
17 (Healy) on August 18, 2003. This was less than three (3) weeks after the July 31, 2003,  
18 Arbitrator's Decision and Award. Arbitrator Healy recognized that a South Dakota  
19 Circuit Court decision regarding the Linseth patent could affect the arbitration decision  
20 and award that he had made. Healy did order that further proceedings in this arbitration  
21 were to be "stayed pending a final decision by the circuit court judge" in South Dakota.  
22

23 However, Wallace continues to argue that Healy's order of August 18, 2003,  
24 makes the arbitration award specifically conditioned on a future event and therefore it is  
25 not final. This is in spite of the Final Report and Order of arbitrator dated December 23,

1 2003. In said Final Report and Order, Healy revisited the history of the matter between  
2 the months of August and December 2003. Healy concluded with supplemental  
3 findings and conclusions of which number 1 states:

4 "Notwithstanding the uncertain status of proceedings in  
5 the Linseth litigation in South Dakota, there is no just  
6 reason why the arbitration proceedings in this case  
should be further delayed."

7 The final order of said Final Report and Order of Arbitrator from Healy ratified and  
8 confirmed in all respects the arbitrator's decision and award of July 31, 2003. It also  
9 "ordered that the stay and suspension of proceedings ordered by the arbitrator on  
10 August 18, 2003, as modified and extended by Order Modifying Stay, is hereby  
11 removed." Although Wallace may not agree, and obviously does not agree, there was a  
12 final arbitration award on December 23, 2003. The August 18, 2003, order was  
13 superseded on December 23, 2003, and has had no force and effect since that time.  
14 To continue to argue through countless motions and briefs in over eight (8) years of  
15 litigation that the August 18, 2003, arbitration order is and continues to be controlling  
16 alone justifies Rule 11 sanctions.  
17

18  
19 In scene four (4) of the 1975 film *Monty Python and the Holy Grail*, King Arthur  
20 sees the Black Knight fighting the Green Knight. King Arthur congratulates the Black  
21 Knight for vanquishing the Green Knight and offers him a place at King Arthur's round  
22 table. The Black Knight holds his sword and makes no response until King Arthur tries  
23 to cross the bridge. The Black Knight refuses to step aside and says, "None shall  
24 pass." Then a confrontation occurs:  
25

1 "Arthur: I have no quarrel with you, good Sir Knight, but  
2 I must cross this bridge.  
3 Black Knight: Then you shall die.  
4 Arthur: I command you as King of the Britons to stand aside!  
5 Black Knight: I move for no man.  
6 Arthur: So be it!  
[hah]  
[parry thrust]  
[Arthur chops the BLACK KNIGHT's left arm off]"

7 Wallace had a chance to appeal this Court's Order of July 31, 2007, which  
8 adopted the report of the receiver with recommendations for the dissolution of MagTrac  
9 Bolus, LLC. The Montana Supreme Court affirmed on July 15, 2008, in 2008 MT 248,  
10 344 Mont 523, 191 P.3d 365. This was Wallace's third appeal.

11 Wallace also appealed from this Court's Order of October 24, 2007, which denied  
12 Wallace's Motion to Lift Injunction and granted Hayes' counter-motions (Court docket  
13 204). The Supreme Court, in an order decided December 9, 2008, as 2000 MT 415 N,  
14 348 Mont. 371, 211 P.3d 204 (Table), specifically refuted Wallace arguments regarding  
15 the Linseth patent and the District Court orders. It concluded in paragraph 12 by stating  
16 that, "It is manifest on the face of the briefs and record before that this appeal is without  
17 merit because the legal issues are clearly controlled by settled Montana law which the  
18 district court correctly interpreted." One cannot help but again recall the same scene  
19 from *Monty Python and the Holy Grail* where, even though the Black Knight had his left  
20 arm chopped off, he not only continued to fight King Arthur, but he dismissively taunted  
21 King Arthur:  
22  
23

24 "Arthur: Now stand aside, worthy adversary.  
25 Black Knight: 'Tis but a scratch.  
Arthur: A scratch? Your arm's off!

1 Black Knight: No it isn't.  
2 Arthur: Well, what's that then? (BLACK KNIGHT looks  
3 at bleeding stump)  
4 Black Knight: I've had worse.  
5 Arthur: You liar!  
6 Black Knight: Come on, you pansy!  
[hah]  
[parry thrust]  
[Arthur chops the BLACK KNIGHT's right arm off]"

7 This Court awarded Hayes Defendants attorney's fees on June 18, 2009 (Court  
8 docket 259) and Wallace appealed. In Wallace's fifth appeal, the Supreme Court  
9 affirmed said decision on August 4, 2010, in 2010 MT 170 N, effectively removing  
10 Wallace's other arm.

11 Evidently thinking the rulings of this Court and the Supreme Court were mere  
12 legal scratches, Wallace *pro se*, filed on November 15, 2010, his motion and  
13 memorandum regarding release of protective order and alleged fraud. This Court  
14 denied said motions on March 8, 2011(Court docket 279), where this Court concluded  
15 by saying:  
16

17 "In spite of court orders and decisions of the Montana  
18 Supreme Court and other state courts, Wallace filed  
19 his lengthy motion in November 2010, as well as now  
20 this motion for clarification. By this order, Wallace is  
21 put on notice that any and all future pleadings or filings  
22 of any kind may subject him to any applicable remedies  
23 regarding Rule 11 of the Montana Rules of Civil Procedure.  
24 Wallace cannot claim ignorance of the existence of said  
25 rule and the ramifications for violation of said rule by any  
future court action on his part. To save Wallace the time  
of finding a copy of Rule 11, a copy of said rule is attached  
to this order."

In affirming the District Court and denying Wallace's sixth appeal on September 20,

1 2011, in 2011 MT 237 N, the court stated:

2 "Res judicata 'prevents a party from re-litigating a matter  
3 that the party has already had an opportunity to litigate,'  
4 and it 'bars not only issues which were previously litigated,  
5 but also issues that could have been litigated in the prior  
6 proceeding.'" *Hollister v. Forsythe*, 277 Mont. 23, 27, 918  
P.2d 665, 667 (1996).

7 After chopping off the Black Knight's two arms, Arthur obviously thought he had  
8 defeated the Black Knight. But he was mistaken:

9 "Arthur: Victory is mine!

10 [kneeling]

11 We thank thee Lord, that in thy merc-

12 [hah]

13 Black Knight: Come on then.

14 Arthur: What?

15 Black Knight: Have at you!

16 Arthur: You are indeed brave, Sir Knight, but the fight  
17 is mine.

18 Black Knight: Oh, had enough, eh?

19 Arthur: Look, you stupid bastard, you've got no arms  
20 left.

21 Black Knight: Yes I have.

22 Arthur: Look!

23 Black Knight: Just a flesh wound.

24 [bang]

25 Arthur: Look, stop that.

Black Knight: Chicken! Chicken!

Arthur: Look, I'll have your leg. Right!

[whop]"

21 With no legal arms and only one legal leg, Wallace continued to be undeterred  
22 and tried to find a friendlier forum. The cumulative court orders against him were  
23 presumably perceived as only legal flesh wounds. So even before the decision of the  
24 Montana Supreme Court on the sixth appeal of September 20, 2011, Wallace, through  
25 Wirick, filed a Complaint and Demand for Jury Trial in the United States District Court

1 for the District of Montana in the Billings division. This case was encaptioned "Len  
2 Wallace and Pamela Wallace, husband and wife vs. Norman Hayes, MagTrac Bolus,  
3 LLC, Rodney and Jane Doe Hayes, and Jane Joes 1-20." It is Cause No. CV-11-84-  
4 BLG-RFC. The Complaint alleged five (5) counts that included material breach of  
5 contract, unilateral mistake and failure of consideration. The fourth count is to set aside  
6

7 the Montana State Court judgment on the basis that the arbitration award had either  
8 been substantially altered or outright mooted therefore constituting fraud. The fifth  
9 count was to set aside the Montana State Court judgment as it was a non-final  
10 arbitration award. Singer represented the defendants in the above-said Federal Court  
11 action and filed a motion to dismiss and a motion for sanctions on January 3, 2012.  
12

13 Not satisfied that six (6) Montana Supreme Court decisions and at least as many  
14 District Court decisions had resulted in defeat and that a Federal Court action was to be  
15 filed, Wirick and Wallace, on January 30, 2012, filed a Motion to Remand to Arbitrator  
16 for Final Determination along with a memorandum and six (6) affidavits which primarily  
17 referenced South Dakota Circuit Court decisions (See Court dockets 286-297).  
18

19 In Wallace's Memorandum in Support of Motion to Remand to Arbitrator of  
20 January 30, 2012 (Court docket 297), Wirick argues that only final arbitration decisions  
21 can be confirmed by a court and reduced to judgment. Wirick and Wallace again argue  
22 that the August 18, 2003, arbitration order makes the arbitration order expressly  
23 conditioned on a future event and therefore it is not final.  
24

25 In this case, Wallace and Wirick have legally and figuratively had more than their  
legal arms and legs chopped off and have repeatedly made the same arguments over



1 the years. But the year 2012 produced even more bizarre events. In Wallace's  
2 Memorandum to Remand to Arbitrator for Final Decision (Court docket 297) of January  
3 30, 2012, he still argued that the arbitration award was not final and was mooted by the  
4 South Dakota Circuit Court judgment.

5  
6 Similar arguments were made in the Federal Court case, but they were quickly  
7 rebuffed by Judge Cebull by an order granting the Hayes' motion to  
8 dismiss and ordering Rule 11 sanctions. This is an eleven (11) page order dated March  
9 5, 2012 (See Court docket 309). Wallace's motions were denied first because of the  
10 Rooker-Feldman doctrine that prohibited federal courts from exercising appellate review  
11 over state court judgments. Judge Cebull then discussed *res judicata* and said:

12  
13 "Further, because the Montana Supreme Court has already  
14 ruled twice that challenges to the judgment confirming the  
15 arbitration award are barred by *res judicata*, 2011 MT 237  
N, ¶ 11, 2007 MT 194 N, ¶¶ 8, 9, 14, this court need not  
revisit the issue."

16 Judge Cebull went on to state that Rule 11 sanctions must be granted in the  
17 matter. Judge Cebull stated, "Most importantly, Wallace was on notice over four years  
18 ago that challenges to the arbitration award were barred by *res judicata*" (See 2005 MT  
19 253 and 2007 MT 194 N). Judge Cebull, at the bottom of page 10 of his order,  
20 specifically spoke of Wirick when he said:

21  
22 "With respect to Wallace's counsel, either he did not make  
23 himself familiar with the prior orders of the various courts who  
24 have dealt with this dispute or, even worse, he chose to ignore  
25 them. Counsel should have concluded this action was frivolous  
before it was filed, but his failure to make that conclusion when  
defendants presented him with an advance copy of the motion  
pursuant to Rule 11(c)(2) demonstrates objective incompetence."

1 Mimicking the Black Knight, Wallace and Wirick then filed a motion to alter or  
2 amend the Federal Court's order dismissing the complaint. Judge Cebull concluded his  
3 denial of said motion by stating, "Plaintiff's counsel is wasting the court's time, attention,  
4 and resources, in protracting the proceedings in a manner lacking any conceivable  
5 justification."  
6

7 Despite the numerous orders and opinions that had severed nearly all of  
8 Wallace's and Wirick's legal limbs, they still had not had enough, just like the Black  
9 Knight as he stood on his last leg and continued to mock King Arthur:

10 "Black Knight: Right, I'll do you for that!

11 Arthur: You'll what?

12 Black Knight: Come 'ere!

13 Arthur: What are you going to do, bleed on me?

14 Black Knight: I'm invincible!

15 Arthur: You're a loony.

16 Black Knight: The Black Knight always triumphs!

17 Have at you! Come on then.

18 [whop]

19 [King Arthur chops the BLACK KNIGHT's

20 other leg off]

21 Black Knight: All right; we'll call it a draw.

22 Arthur: Come, Patsy.

23 Black Knight: Oh, oh, I see, running away then.

24 You yellow bastards! Come back here

25 and take what's coming to you. I'll bite

your legs off!"

26 Like the Black Knight, Wallace and Wirick not only refuse to accept defeat, but even  
27 without limbs they keep trying to bite off King Arthur's legs.

28 Bleeding from the loss of legal arms and legs in not only state court, but also  
29 federal court, Wallace and Wirick continued their action in this Court. In the spring of  
30 2012, Wallace and Wirick attempted to interject a letter from Healy dated April 16, 2012

1 (Court docket 308), as well as a portion of a deposition of Healy taken by Wallace *pro*  
2 *se* in his Idaho bankruptcy action (Court docket 319). Wirick requested judicial notice  
3 be taken of Healy's letter of April 16, 2012 (Court docket 306). Wirick continued to  
4 argue that "the arbitrator's decision clearly was contingent upon the outcome of that  
5 litigation and his 'final' award is not 'final' for purposes of terminating his authority."  
6

7 (See Court docket 312).

8 Although Idaho attorney Arthur Bistline (Bistline) submitted an affidavit filed on  
9 January 30, 2012 (Court docket 290) which included a two (2) page letter from Healy  
10 dated July 18, 2011, Bistline and Wirick misconstrued in their affidavit the plain  
11 language of Healy. Healy was responding to a three (3) page letter he wrote to Wallace  
12 dated April 16, 2012, where he said, "statements attributed to me from the phone  
13 conference of that date {July 18, 2011 with Arthur Bistline} are 'incomplete' and  
14 'misleading.'" Healy goes on to say:

16 "More troublesome is Mr. Bistline's assertion in the motion to  
17 the effect that I agree with the premise that 'the arbitration has  
18 never been completed and I am willing to do so'. This is clearly  
19 a misrepresentation of my position. I feel that the arbitration  
20 was concluded with my final report and order of December 23,  
21 2003. I will of course reopen proceedings if directed to do so  
22 by Judge Todd." (Exhibit A to Court docket 312).

21 On top of Bistline's intentional mischaracterizations of Healy's positions, Wallace and  
22 Wirick's attempt to interject Bistline's legal opinions even though Bistline is not licensed  
23 to practice law in Montana. See Section 37-61-201, M.C.A. Bistline "determined the  
24 course of action to remedy the injustice being visited upon the Wallace's" and then tried  
25 to get seven (7) or eight (8) Montana attorneys to "assist with the case." When Wirick

1 came on board as "local counsel," and "once we came up with a plan, my entire office  
2 has been focused on preparing documents in Idaho and Montana State Courts as well  
3 as Montana Federal Court." (Emphasis supplied) (Court docket 290).

4 In spite of Healy's 2012, letter, Wirick continues to insist that he and Wallace  
5 were not intentionally misrepresenting the substance of the telephone conference from  
6 July 2011. Wirick continued, on May 7, 2012 (Court docket 311), in his response to  
7 Rule 11 sanctions by saying that just because an award is entitled final does not make it  
8 final and "It is beyond dispute that the order of the arbitrator was not final." The doctrine  
9 of *res judicata* has previously been referred to by this Court and the Montana Supreme  
10 Court in the case of *Hollister v. Forsythe, supra*. Another Montana case has stated:  
11

12 "Once there has been full opportunity to present an issue  
13 for judicial decision in a given proceeding...the determination  
14 of the court in that proceeding must be accorded finality as  
15 to all issues raised or which fairly could have been raised,  
16 else judgments might be attacked piecemeal and without  
end." *Wellman v. Wellman* (1982) 198 Mont. 42, 45-46,  
643 P.2d 573, 575.

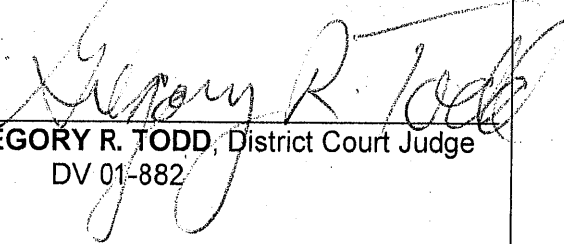
17 If there have ever been attacks that have been piecemeal and without end, this case is  
18 a clear demonstration. Wallace and Wirick have run out of legal arms and legs to chop  
19 off, yet they continue to bleed and bite and refuse to accept defeat. Enough is enough.  
20

21 Rule 11 sanctions are more than appropriate in this matter as all four (4) criteria  
22 of Rule 11(b), M.R.Civ.P., have been found. There can be no other explanation than  
23 this continued litigation by Wirick and Wallace is causing unnecessary delay, needless  
24 increase in the cost of litigation and incredible harassment to the Hayes'. There is no  
25 justification or argument that can be made for any factual or legal argument made by

1 Wallace or Wirick. The factual contentions of Wallace and Wirick have no evidentiary  
2 support.

3 The nature of the sanction in Rule 11(c)(4) is the most important matter in this  
4 case. Monetary awards and implications have not deterred Wallace and Wirick. A  
5 nominal sum of \$500 is assessed as an amount that must be paid by both Wallace and  
6  
7 Wirick to T. Thomas Singer on behalf of the Hayes'. But the most appropriate decision  
8 and the order of this Court is that there shall be no further action or pleading filed by  
9 Wallace or Wirick or any representative of Wallace or Wirick regarding any issue that  
10 can or could have been raised in the past regarding any issues in this case without prior  
11 Court approval. The End.

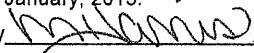
12 DATED this 30<sup>th</sup> day of January, 2013.

13  
14   
15 HON. GREGORY R. TODD, District Court Judge  
16 DV 01-882

17 Cc: Tyler S. Wirick, Attorney for Plaintiff  
18 T. Thomas Singer, Attorney for Defendants Hayes  
19 Stuart S. Healy, Arbitrator

20 CERTIFICATE OF SERVICE

21 This is to certify that the foregoing was duly served  
22 by U.S. mail or by hand the parties or their attorneys  
23 of record at their last known address this 30<sup>th</sup> day  
24 of January, 2013.

25 By   
Judicial Assistant To Hon. Gregory R. Todd

