

**IN THE UNITED STATES COURT FOR THE
WESTERN DISTRICT OF ARKANSAS**

Curtis J Neeley Jr., MFA

Plaintiff

v

CASE NO. 12-5208

US DISTRICT COURT
WESTERN DIST ARKANSAS
FILED

JAN 16 2013

CHRIS R. JOHNSON, Clerk
By

Deputy Clerk

**Federal Communications Commission,
Microsoft Corporation,
Google Inc.**

Defendants

**BRIEF SUPPORTING THE MOTION FOR LEAVE TO
FURTHER AMEND THE AMENDED COMPLAINT**

Introduction

1. The Amended Complaint was only amended as a “*matter of course*” pursuant to FRCP 15(a)(1)(A) due to filing the wrong revision of the revised complaint. No leave was required to be sought like is now sought. There are currently two near-frivolous Motions to Dismiss and one near-frivolous Motion for Rule 11 Sanctions that will soon be resolved. A Summary Judgment Motion will be filed shortly after the Federal Communications Commissions answers or Moves for Dismissal in February. Local Rule 7.2 states that no leave is required to amend filings but Plaintiff now assumes this is referring to filings besides the complaint after reading FRCP 15(a)(2) and noting that there is no Local Rule 15. Plaintiff is *pro se* and believes leave should be requested because the opposing parties have each demonstrated opposition already and the Federal Communications Commission was granted an extension of time motion that was unopposed. Concise rational supporting granting leave to amend to preserve justice will follow.

2. This Leave to Amend will not increase costs for any party besides the Plaintiff and this revision will be completed on or before February 7, 2013 without altering the claims but making them more clear. The Order Granting Leave to Amend the Complaint is prayed to now include denying the three near-frivolous pending motions of dockets (14, 16, 36). The amended complaint of docket #5 and its exhibits are sought included by reference as well as the attached exhibit, “URL wire communications”, to give the public an overview of the history of unregulated wire communications in the interest of disclosing the phenomenal impact this litigation will have on free speech. This action should result in the end of [sic] “open internet”. Responsibility for distant public speech is in the public's interest Unconstitutional “fair-use” and 47 USC §230(c)(1) are not.

ARGUMENT

1. The Plaintiff requested advice from numerous “noted” law professors and numerous “noted” attorneys and yet the confidential suggestions did not include any portion of the prayer and the Plaintiff hoped settling would have occurred. The Supreme Court has limited the damages allowed to single digit multiples of compensatory damages and the Plaintiff failed to list any pecuniary or non-pecuniary damages as would result in absolutely no fiscal award. *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003) held the due process clause usually limits punitive damage awards to less than ten times the size of compensatory damages. Ten times nothing is very little and the Plaintiff will describe the compensatory damages in the amendment. The revision will attempt to describe application of guideposts first noted in *BMW of North America, Inc. v. Gore*, 517 U. S. 559 (1996), as follows.

- (1) The degree of reprehensibility of the defendant's misconduct,
- (2) The disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award.
- (3) The difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

The Court noted these three factors can be over-ridden if "*necessary to deter future conduct*". The Plaintiff shall make it apparent in the prayer to motivate the jury deter future conduct though the 11.6 billion plead initially may simply be ridiculous.

2. *Exxon Shipping Co. v. Baker* (No. 07-219, 2008) established general guideposts for punitive damages in the evenly divided Supreme Court adopted the maximum 1:1 ratio of punitive to compensatory damages as a matter of federal common law when supertankers spill oil after piloted by a drunkard on the high seas or other similar matters.

3. *TXO Production Corp. v. Alliance Resources Corp.*, 509 US 443, (1993) addressed “*unsavory and malicious practices*” not done in “*isolated incident[s]*,” but in a “*pattern and practice*” acting in a consistent manner to “*defraud and coerce those in positions of unequal bargaining power*”. This ruling preceded the *Exxon* ruling and was a plurality of the Court and upheld punitive damages of 526 times actual damages awarded and finding this not “*grossly excessive*” nor violating due process. The **plurality** of the Court refused to “*draw a mathematical bright line*” determining when punitive damages violate the Constitution.

4. Honorable Senator Patrick J. Leahy called the *Exxon* ruling's numerical limitation unjust as follows. This issue is ripe for being re-considered by a changed Supreme Court or Congress.

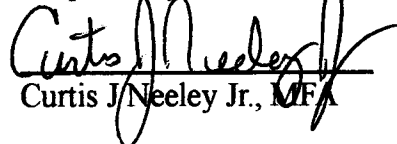
"[Exxon is]...another in a line of cases where this Supreme Court has misconstrued congressional intent to benefit large corporations."

CONCLUSION

1. The Plaintiff's prayer was wholly inadequate to address the “*pattern and practice*” of the corporate Defendants to “*defraud and coerce*” this disabled pauper while being the most irrationally profitable Corporations on Earth. The “*unsavory and malicious*” practices of each Corporate Defendant warrant massive attention spent on the prayer but this was hardly addressed by the Plaintiff. Leave to amend the complaint is prayed allowed as long as no “new” claims are added but so the prayer is more realistic. *Neeley Jr v FCC, et al*, will not conclude until reaching the Supreme Court that has anticipated this issue now for decades. This District Court can now order the beginning of the end to the evil effects of simultaneous wire and radio communications as will remain plead in the more clear Amended Complaint if leave to amend is granted.

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Respectfully Submitted,

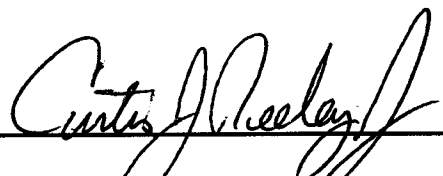

Curtis J. Neeley Jr., MFA

CERTIFICATE OF SERVICE

I, Curtis J. Neeley Jr., MFA, do hereby certify that on January 16, 2013, I filed the forgoing personally. The District Clerk will scan this and make it accessible via CM/ECF. Furthermore; every docket entry of Neeley Jr v FCC et al, (5:12-cv-5208) will be accessible by wire communications perpetually including a free mirror of the District Court Docket with freely provided electronic copies of every filing. The docket will be updated within 24-hours after any paper is filed by Neeley and can be accessed from the following UnRegulated Locations. (URLs)

1. CurtisNeeley.com/FCC/Neeley-Jr_v_FCC-et-al.htm
2. CurtisNeeley.com/FCC/New_GOOG_exhibits
3. CurtisNeeley.com/FCC/New_MSFT_exhibits

URL #1 is the mirror of the Docket. URL #2 is the password protected directory with access to all exhibit files prepared that are not accessible at URL #3. The username for logging in is "adult" and the password is "YeS" and proper case is required. These PDFs are often indecent or obscene and all access is logged.


Curtis J Neeley Jr MFA