

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**UNITED COMMUNICATIONS
CORPORATION**

PLAINTIFF

V.

NO. 4:08CV03004

AMR INTERNATIONAL, INC.

DEFENDANT

V.

ECOLOGICAL NETWORKING SYSTEMS, LTD, ET. AL

**THIRD PARTY
DEFENDANT**

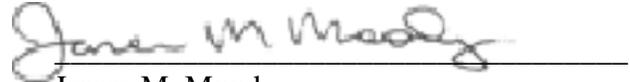
ORDER

On October 16, 2009 the Court entered an Order striking Defendant AMRI's Answer and dismissing AMRI's Counterclaim against UCC and Third Party Claims without prejudice. Judgment was entered in favor of UCC on the same date. On October 20, 2009, UCC filed a motion for reconsideration asking the Court to reconsider the dismissal of AMRI's Counterclaim against it without prejudice. (Docket # 46). UCC argues that AMRI's Counterclaim against it should be dismissed with prejudice. AMRI failed to respond to the motion. For good cause shown, the motion is GRANTED.

The Court finds AMRI's repeated failure to comply with this Court's Orders "willful." Further, AMRI's failure to contact the Court since July, 2009, despite Court Orders to do so constitutes a continued and persistent failure to prosecute its Counterclaim. *See, Smith v. Gold Dust Casino*, 526 F. 3d 402 (8th Cir. 2008). Additionally, the Court finds that AMRI's Counterclaim was a compulsory counterclaim which was required to be asserted and prosecuted in this action. The default judgment in this action bars AMRI from asserting this claim in a subsequent action. *See, Fed. R. Civ. P. 13, Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty*

Group, 973 F. 2d 155, 160 (2nd Cir. 1992) and *Taylor v. City of Ballwin, Mo.*, 859 F.2d 1330, 1333, n. 7 (8th Cir. 1988). Accordingly, the Court finds that AMRI's Counterclaim against UCC should be, and hereby is, dismissed with prejudice.

IT IS SO ORDERED, this 5th day of November, 2009.

A handwritten signature in cursive script, reading "James M. Moody", is written over a horizontal line.

James M. Moody
United States District Judge