

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

RICK FRUGE

CIVIL ACTION

VERSUS

HARTFORD FIRE INSURANCE CO.,
MARKETTECHTS MEDIA, LLC AND
RICHARD LEECE

NO. 10-498-RET

RULING AND ORDER

Local rule 7.4 of the Middle District of Louisiana requires that memoranda in opposition to a motion be filed within twenty-one (21) days after service of the motion. The rule provides as follows:

LR 7.4 Response and Memorandum

Each respondent opposing a motion shall file a response, including opposing affidavits, memorandum, and such supporting documents as are then available, within 21 days after service of the motion. Memoranda shall contain a concise statement of reasons in opposition to the motion, and a citation of authorities upon which the respondent relies. For good cause appearing therefor, a respondent may be required to file a response and supporting documents, including memoranda, within such shorter or longer period of time as the court may order, upon written ex parte motion served on all parties.

The Motion to Dismiss for Lack of Subject matter Jurisdiction (Doc. No. 12) filed by defendant, Hartford Fire Insurance Company, in the present case was filed September 16, 2010, and the certificate of service verifies that a copy of the pleading was mailed electronically by the Clerk of Court to all parties who have registered to

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receive electronic notification and delivered either by facsimile, by hand delivery, or by placing same in the U.S. Mail, properly addressed and postage prepaid to all counsel of record and those represented in *forma pauperis* who are not registered to receive notice electronically, on September 16, 2010. Even allowing for slow mail travel, more than twenty-one days have elapsed since the service of this motion, and no memorandum in opposition to the motion has been submitted.

Accordingly, this motion is deemed to be unopposed, and further, after reviewing the record, the court finds that the motion has merit. Defendant has set forth sufficient evidence showing that plaintiff was an employee of Market Tech Media Corporation and that plaintiff was in the course and scope of his employment at the time of the accident. Further, defendant has shown that plaintiff's exclusive remedy is provided by Louisiana Worker's Compensation Act. Plaintiff's amended complaint does not set forth any allegations sufficient to invoke the intentional tort exception to the Louisiana Worker's Compensation Act. Plaintiff has not submitted any evidence and/or argument to contradict defendant's evidence. Therefore,

IT IS ORDERED that the defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction is hereby GRANTED.

Any response to this ruling, based on the appropriate Federal Rule of Civil Procedure shall be filed within seven days and must be accompanied by an opposition memorandum to the original motion.

On review of the pleadings filed along with the opposition, the court, at its

discretion, may assess costs, including attorney's fees, against the moving party, if the court deems that such a motion was unnecessary had a timely opposition memorandum been filed. See Fed. R. Civ. P. 16, 83. A statement of costs conforming to L.R. 54.3 shall be submitted by all parties desiring to be awarded costs and attorney's fees no later than seven (7) days after the filing of any motion.

Baton Rouge, Louisiana, this 4th day of May, 2011.



**RALPH E. TYSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**