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WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE, LOUISIANAUNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

DIAMOND SERVICES CORP.

CIVIL ACTION NUMBER: 10-0177

VERSUS

JUDGE DOHERTY

OCEANOGRAFIA S A DE C V, ET AL.

MAGISTRATE JUDGE HILL

**RULING ON APPEAL**

Currently pending before the Court is an Appeal of a discovery ruling, filed by defendants Candies Families Investments, LLC, Otto Candies LLC, and Zurich American Insurance Co. [Doc. 38]. By way of the appeal, defendants urge this Court to overrule the November 3, 2010 ruling [Doc. 34] of the magistrate judge permitting plaintiff to conduct limited discovery pertaining “to those issues reasonably directed to the pending motions to dismiss. . . .”<sup>1</sup> Additionally, defendants seek modification of the magistrate judge’s ruling stating Cindy Galpin Martin, an associate with the law firm of Harris & Rufty, LLC, represented defendant Oceanografia S.A. de C.V. at the telephone conference held on November 3, 2010. Defendants argue neither Ms. Martin nor Harris & Rufty represents Oceanografia in this matter.

With respect to defendants’ second objection, the record appears to reflect that neither Ms. Martin nor Harris & Rufty represents Oceanografia in this matter, as defendants argue. With respect to the defendants’ argument that discovery should not have been allowed with respect to the pending motions to dismiss, this Court notes the magistrate judge’s ruling contains no findings of fact upon

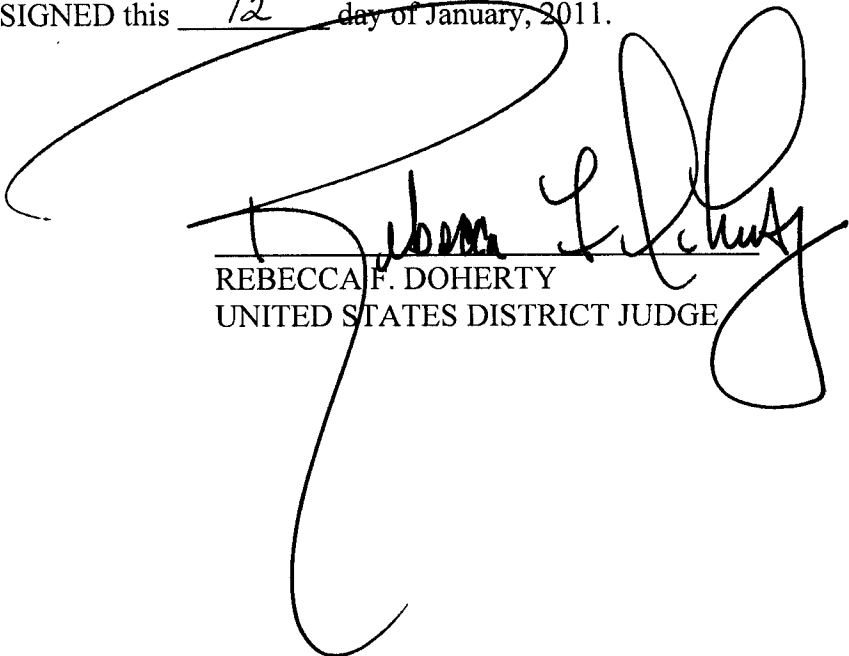
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<sup>1</sup> The motions to dismiss referenced herein are three motions to dismiss filed by defendants Candies Families Investments, LLC, Otto Candies LLC, and Zurich American Insurance Co. [Docs. 19, 22 & 23].

which this Court could make a determination as to whether the decision was “clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a). Additionally, after reviewing the record in this matter, this Court notes during oral argument on the motions to dismiss, conducted on January 5, 2011, the magistrate judge struck certain documents attached by plaintiff to its opposition briefs in connection with the motions to dismiss [Doc. 50]. The magistrate judge’s ruling striking the attachments contains no written reasons. Notwithstanding the lack of written reasons supporting the striking of the attachments, to the extent the magistrate judge will not consider the attachments filed by plaintiff in response to the motions to dismiss, it appears the arguments raised by defendants in their appeal may be moot.

For the forgoing reasons, this matter is REMANDED to the Magistrate Judge for clarification of his November 3, 2010 ruling [Doc. 34]. Should the Magistrate Judge’s ultimate ruling remain unchanged, defendants may re-urge their appeal should they find it necessary to do so. Accordingly, the Clerk of Court is hereby INSTRUCTED to terminate the pending Appeal. [Doc. 38]

THUS DONE AND SIGNED this 12 day of January, 2011.



REBECCA F. DOHERTY  
UNITED STATES DISTRICT JUDGE

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TO CMB/A/mcl