



are remedied. During this second contact the LCC representative always encourages the attorneys to contact Jane Bartley at Shook Hardy immediately to either request an extension or notify her that the delinquent PFS is being finished and will be delivered shortly. Some attorneys have additional questions or concerns and they are always encouraged to contact LCC for further guidance.

For the most part, no further action is taken by the LCC until either a second list is sent out by Shook Hardy to the LCC or motions to dismiss are filed. Once this occurs, the new list is cross checked with the previous list and those who are not listed on the second list as assumed to have gotten their PFS in and are removed from further contact. Additional contacts are generally by phone if possible or additional e-mails and faxed letters are sent. In the case of a second letter, the attorneys are told to contact Jane Bartley immediately to work out some agreement in order to avoid dismissal by the court for lack of PFS.

Shook Hardy has provided three (3) different types of lists to the LCC. The most common is the list of Plaintiffs with missing PFS. A second list is one where Defendants have filed motions to dismiss. The third, and most rare list, is where Plaintiffs have failed to provide a signed Medical Authorization Form.

With regard to the instant case, the following chronology occurred:

4/21/2006	Shook Hardy list regarding missing PFS
4/26/2006	E-mail stating missing PFS, attached Shook Hardy Letter, attached LCC letter
4/27/2006	Received e-mail back asking what PFS was
4/27/2006	Sent Word copy of PFS
4/28/2006	Received e-mail stating client would be in on Monday to fill out
5/4/2006	Motion to Dismiss filed by Shook Hardy
5/5/2006	Zimmerman Reed receives copy of PFS
5/12/2006	E-mailed that Medical Authorization was missing
5/19/2006	Gaydos on e-mail from Shook for turned in PFS but missing Medical Authorization form
5/23/2006	Gaydos not on list from Shook Hardy for missing PFS

5/25/2006

Shook Hardy letter to court with accompanying orders granting motions to dismiss, Gaydos not on list

Based on this chronology, LCC believed that the deficiencies in this case had been corrected.

This case was under consideration as a possible representative trial selection. During that process, counsel for Plaintiff was cooperative and responsive. While it is not LCC's responsibility to review each Plaintiff Fact Sheet for completeness, other than as noted above, we were unaware of any deficiency issues that would or should lead to dismissal of the case.

In LCC's opinion, this case is more a matter of difficult communication than it is lack of diligence on part of Plaintiff's counsel. A brief review of Eighth Circuit case law on the subject demonstrates that a dismissal of the kind issued in this case is most akin to a dismissal for failure to prosecute the lawsuit. The standard for such dismissal in this Circuit is:

The "sanction imposed by the district court must be proportionate to the litigant's transgression" and dismissal with prejudice should only be imposed in cases of "wilful disobedience of a court order or persistent failure to prosecute a complaint.

*Doe v. Cassel*, 403 F.3d 986 (8<sup>th</sup> Cir. 2005), citing *Omaha Indian Tribe v. Tract I-Blackbird Bend Area*, 933 F.2d 1462, 1468 (8<sup>th</sup> Cir. 1991). In light of this standard, dismissal with prejudice of this case is too harsh a remedy.

Attached to this affidavit are the following supporting documents:

Tab A: all communications with Plaintiff's counsel in this case

Tab B: examples of communications sent regarding April deficiency list (names redacted)

Tab C: examples of communications sent regarding May deficiency list (names redacted)

Tab D: examples of communications sent regarding August deficiency list (names redacted)

Tab E: examples of motion to compel communications

Tab F: examples of communications sent regarding September deficiency list (names redacted)

FURTHER YOUR AFFIANT SAYETH NOT.

Dated:

s/Ronald S. Goldser  
Ronald S. Goldser

Subscribed and sworn to before me  
this 2<sup>nd</sup> day of October, 2006.

s/Tina M. Olson  
Notary Public