

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
NO. 2:06-CV-49 (F)

BLACKWATER SECURITY)
CONSULTING, LLC, a Delaware Limited)
Liability Company; BLACKWATER)
LODGE AND TRAINING CENTER, INC.,)
a Delaware Corporation,)

Plaintiffs/Petitioners,)

v.)

RICHARD P. NORDAN, as Ancillary)
Administrator for the separate Estates of)
STEPHEN S. HELVENSTON, MIKE R.)
TEAGUE, JERKO GERALD ZOVKO and)
WESLEY J.K. BATALONA,)

Defendant/Respondent.)

EMERGENCY MOTION FOR
RECONSIDERATION AS COURT LACKS
SUBJECT MATTER JURISDICTION

COMES NOW Defendant Richard P. Nordan, as the Ancillary Administrator of the
separate Estates of STEPHEN S. HELVENSTON, MIKE R. TEAGUE, JERKO GERALD
ZOVKO and WESLEY J.K. BATALONA in the above-entitled action, and hereby moves the
Court to reconsider its Order dated April 20, 2007, which denied Defendant's motion to dismiss
and granted Plaintiffs' petition to compel arbitration, in that new evidence was recently revealed
by Blackwater which establishes that there is no diversity of citizenship and that this Court
lacked subject matter jurisdiction over the case to order it to arbitration.

An emergency or expedited consideration of this motion is respectfully requested, as
the arbitration company will be scheduling a preliminary hearing as early as May 14, 2007,
and the parties must know if the case will be dismissed in light of the Court's lack of
jurisdiction, or alternatively, if the arbitration will proceed in a different forum and under

different rules. Concurrently herewith, Defendant filed a Motion to Shorten Time to Respond and Motion for Expedited Hearing or Ruling.

This motion is based on the following grounds:

1. The Court has the inherent authority to reconsider its prior rulings in this case, which is established at common law, as well as under *Federal Rules of Civil Procedure* 60(b) and 54(b).
2. Newly discovered evidence establishes that Plaintiffs' arbitration claim, which it petitioned this Court to compel Defendant to attend, is a claim against Defendant *personally*.
3. As the Plaintiffs and the Defendant are all residents of the State of North Carolina, there is no diversity of citizenship between them, and the Court lacks subject matter jurisdiction over the entire case.
4. Since the Federal Arbitration Act does not create an independent basis for jurisdiction, and since there is no original or diversity jurisdiction, the Court must dismiss the case pursuant to *Federal Rules of Civil Procedure* 12(b)(1).

In support of this motion for reconsideration, Defendant concurrently submits herewith a Memorandum of Law in Support of Emergency Motion for Reconsideration.

WHEREFORE, Defendant, by his undersigned attorneys, moves this Court to reconsider its April 20, 2007 Order, and for a new Order (1) vacating the April 20, 2007 Order, and (2) dismissing the entire action for lack of subject matter jurisdiction.

WHEREFORE, Defendant *alternatively* moves this Court for an Order clarifying its prior Order directing the parties "to proceed with arbitration in the manner provided for in the Service Agreements," by indicating that the parties are ordered to proceed with the arbitration claim (1) from its beginning, including selection of arbitrators, (2) with the American Arbitration

Association (not its International Centre for Dispute Resolution division), and (3) under the AAA Commercial Rules (not the International Arbitration Rules).

This 4th day of May, 2007.

CALLAHAN & BLAINE, APLC

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Emergency Motion for Reconsideration as Court Lacks Subject Matter Jurisdiction** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Kirk G. Warner
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depositing a copy hereof, postage prepaid, in the United States mail, addressed to:

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This the 4th day of May, 2007.

/s/David F. Kirby
David F. Kirby
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