UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KURIAN DAVID, et al. Plaintiffs	CIVIL ACTION No. 08-1220
VERSUS	
SIGNAL INTERNATIONAL, LLC, et al., Defendants	SECTION "E"
Related Cases:	
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff	CIVIL ACTION NO. 12-557
VERSUS	
SIGNAL INTERNATIONAL, LLC, et al., Defendants	SECTION "E"
LAKSHMANAN PONNAYAN ACHARI, et al.,	CIVIL ACTION NO. 13-6218 (c/w 13-6219, 13-6220, 13- 6221, 14-1818)
VERSUS	
SIGNAL INTERNATIONAL, LLC, et al., Defendants	SECTION "E"
RELATED CASE:	
REJI SAMUEL, et al., Plaintiffs	CIVIL ACTION No.14-2811
VERSUS	SECTION "E
SIGNAL INTERNATIONAL, LLC, et al., Defendants	

RELATED CASE:

BIJU MAKRUKKATTU JOSEPH, et al., Plaintiffs — CIVIL ACTION No. 14-2826

VERSUS — SECTION "E"

SIGNAL INTERNATIONAL, LLC, et al., Defendants

Applies To: all cases

MEMORANDUM IN SUPPORT OF BURNETT DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON SIGNAL'S CROSS CLAIM FOR INDEMNITY AND MOTION FOR RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT ON THE BASIS OF CLAIMS PRECLUSION

May it Please the Court,

Signal filed identical Cross Claims for Indemnity in the twelve other cases spawned by the denial of class certification in David, et al vs. Signal International, et al, 08-1220, EDLA (hereinafter "David") as it filed in David. All of Signal's cross claims, except for its claim for indemnity, have been dismissed as res judicata. Signal's claims for indemnity in the David case, as well as in all the related cases, were for non contractual implied indemnity were based on Mississippi law.[1]

Signal has now settled all of the claims against it in all remaining cases by a global

[1] As will be argued below, Signal's cross claims in the Texas cases were transferred to Louisiana under the first filed rule. This Court has already ruled that Louisiana choice of law provisions apply to cases transferred here under the first filed rule. Signal has consistently asserted that its original cross claims in the David case, as well as in the cases transferred from Mississippi, were to be decided under Mississippi law. Under Louisiana choice of law provisions, the policies of the state of Mississippi would be the most seriously impaired if its laws were not applied to Signal's cross claims in ALL cases, as all of Signal's alleged damages occurred in Mississippi, as did all substantive interactions, contacts, and contracts between Signal and Burnett.

settlement entered through a reorganization Chapter 11 Bankruptcy.[2] The settlement amount

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[2] On November 24, 2015, the United States Bankruptcy Court for the District of Delaware issued Findings of Fact and Conclusions of Law Confirming the Debtors First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code, hereinafter referred to as "Confirmation Order". See Exhibit 1. A major part of that reorganization plan was the global settlement by Signal of all claims brought by all plaintiffs in the twelve related cases, including claims for discrimination and retaliation under Section 1981, deprivation of civil rights, intentional infliction of emotional distress, claims by the EEOC under Title VII, claims by Intervenors in the EEOC Title VII, and EEOC claims under Title VII for retaliation, none of which have anything to do with Burnett. See Exhibit 1, Confirmation Order, Exhibit A [sic], Signal Litigation Settlement Trust Distribution Procedures, Section IV, 4.3 (a) - (n)

> Section 6 of the Plan provided for the releases of all claims. In part, it provides,
>
> The transfer to, vesting in, and assumption by the Litigation Settlement Trust of the Litigation Settlement Trust Assets as contemplated by the Plan shall, as of the Effective Date, release all obligations and liabilities of and bar recovery or any action against the Plan Participants, and their Related Parties, for or in respect of all Litigation Claims (and the Confirmation Order shall so provide for such release).

The confirmation order provided in part,

> Each of the release, exculpation, and injunction provisions set forth in the Plan, including without limitation the provisions in Sections 6.C, 6.D,11.D, 11.E, 11.F, 1l.G, 11.H, 11.I, and 11.J of the Plan, is hereby approved in all respects in its entirety, is so ordered and shall be immediately effective on the Effective Date of the Plan without further action or notice by this Court, any of the parties to such releases, exculpation, and injunction provisions or any other party. For the avoidance of doubt, the sole and exclusive remedy of Litigation Claimants on account of Litigation Claims against the Debtors and the Released Parties shall be against the Litigation Settlement Trust, and no such Litigation Claims may be asserted against the Debtors or any Released Party.

Confirmation Order, "Order and Adjudged", ¶ 9 (a).

> "Litigation Claims" were defined in the Confirmation Order as,
> "Litigation Claims" means all Claims against the Debtors or any Released Party by or on behalf of the H-2B Workers and/or any Governmental Employment

is in the range of twenty million to twenty-two million dollars, depending on how soon a certain loan, the major part of a Litigation Settlement Trust Fund, is paid off. Signal has not asserted what amounts it is claiming in indemnity in any of the remaining suits. It is assumed that it will seek complete indemnity for the entire settlement amount, which is neither reasonable nor supported by Mississippi law.

Under Mississippi law two critical prerequisites for the invocation of noncontractual indemnity are (1) the damages which the claimant seeks to shift are imposed upon him as a result of some legal obligation to the injured person; and (2) it must appear that the claimant did not actively or affirmatively participate in the wrong. Baker v. Evans, 123 So.3d 387 (Miss., 2013); J.B. Hunt Transp. Inc. v. Forrest Gen. Hosp., 34 So.3d 1171 (Miss., 2010); Home Ins. Co. v. Atlas Tank Mfg. Co., 230 So.2d 549, 551 (Miss.1970). In order to recover indemnity, the party seeking indemnity MUST establish that 1) it was legally liable to the injured party, 2) paid the amount sought in indemnification under compulsion, and 3) that it was not a joint tortfeasor or also at fault in causing the injury. Southwest Mississippi Electric Power Assn. v. Harragill, 182 So.2d 220 (1966); T & S Express, Inc. v. Liberty Mut. Ins., 847 So.2d 270 (Miss. App., 2003); Minnesota Life v. Columbia Casualty, ___So. 3d ___, NO. 2012CA-00107-SCT, (Miss., May 7, 2015); Alabama Great Southern R. Co. v. Allied Chemical Corp., 501 F.2d 94 (5th Cir., 1974).

> Agency (including the EEOC) arising out of or related to the employment or recruitment of any of the H-2B Workers, excluding, for the avoidance of doubt, the Retained Claims.

Confirmation Order, Finding EE, ¶ 76.

However, when a party has voluntarily settled with the injured person and the payment was not made because of a legal obligation or liability to the injured party, the payment is voluntary and indemnity may not be recovered. Southwest Mississippi Electric Power Assn. v. Harragill, 182 So.2d 220 (1966); Certain Underwriters at Lloyds v. Knostman, 783 So.2d 694 (Miss., 2001); Hartford Casualty Ins. Co. v. Halliburton Co., 826 So.2d 1206 (Miss., 2001); Central Healthcare Serv. v. Citizens Bank, 12 So.3d 1159 (Miss. App., 2009); T & S Express, Inc. v. Liberty Mut. Ins., 847 So.2d 270 (Miss. App., 2003); Alabama Great Southern R. Co., supra.

Signal having voluntarily settled all of the numerous claims against it by all Plaintiffs, it is now completely unable to meet these prerequisites. First and foremost, Signal is unable to show in the remaining cases to which this motion applies, that the settlement with the remaining Plaintiffs was paid under compulsion. Signal elected to settle with all Plaintiffs in the remaining cases, foregoing the affirmative defenses it had raised, and electing not to file a Chapter 7 Bankruptcy. Even to the extent Signal may have been "forced" into bankruptcy by the verdict in "David ", which has not been shown, there was still no need, much less any legal obligation, to settle with all the remaining Plaintiffs in all remaining cases. If Signal had entered into a pure Chapter 7 Bankruptcy, all obligations to all remaining Plaintiffs in all remaining cases would have been absolved by the bankruptcy. As such, its election to go into a reorganization and settle with all Plaintiffs was a voluntary act and not something done under compulsion.

Secondly, Signal cannot establish that what it paid in settlement to the Plaintiffs in all

remaining cases was paid as the result of a legal obligation to them. Signal not only denied liability to any of the plaintiffs, it also pled numerous affirmative defenses, any of which would have exculpated Signal from any liability to Plaintiffs as a result of the alleged conduct of Burnett and Dewan. It affirmatively asserted defenses that Burnett and Dewan were not its agents, that they were both independent contractors, and, alternatively, that if they were found to be its agents, that they exceeded their authority. Similarly, Signal's management testified under oath that Dewan and Burnett were not authorized to make any promises to Plaintiffs, and that it had no knowledge of and did not authorize Burnett or Dewan to promise Plaintiffs that it would sponsor them for green cards. If Signal had gone forth with the remaining cases and been successful in any of its affirmative defenses, it would have no legal obligation to the Plaintiffs. Yet, it voluntarily elected to file for reorganization under Chapter 11 of the U.S. Bankruptcy Code and enter into a global settlement with all Plaintiffs. Just as there was no legal obligation to file for reorganization, as opposed to a Chapter 7 bankruptcy, there was no legal obligation to settle with all remaining Plaintiffs. As such, the global settlement was absolutely voluntary, as was true of the reorganization under a Chapter 11 Bankruptcy.

Moreover, Signal is unable to change its position and assert it would in fact be liable to the remaining Plaintiffs. The most Signal can assert at this point is that it might be potentially liable to Plaintiffs, which is insufficient under Mississippi law to recover indemnity for a settlement. This is not a case where liability is automatically imposed by operation of law on Signal, such as when an individual who is admittedly an employee injures someone thereby

rendering the employer vicariously liable for the acts of its employee. Nor is this a case where Signal's liability to the remaining Plaintiffs has already been adjudicated, leaving only the question of whether Signal was held liable only because of Burnett's and Dewan's conduct. Rather, Signal has to establish in each case that it was legally obligated to Plaintiffs in order to recover indemnity for what it paid in settlement.[3]

If, as Signal has pled, Burnett and Dewan are not its agents, or if they are independent contractors, as Signal has claimed in each of the cases filed against it, then Signal would not be liable to the remaining Plaintiffs for anything said or done by them. Similarly, if Burnett and Dewan were found to be Signal's agents, but acted beyond the scope of their authority, then Signal would still have no liability to Plaintiffs. Signal having asserted affirmative defenses in all of the related cases, and the sworn testimony of its officers denying Burnett or Dewan acted within the scope of any authority, precludes it from now asserting that it would be legally obligated to the Plaintiffs for the amount it paid in settlement, and that it was an involuntary settlement paid under compulsion. Southwest Mississippi Electric, supra ; Certain Underwriters at Lloyds, supra; Hartford Casualty, supra. See also T & S Express, supra. In fact, the Mississippi Supreme Court affirmed summary judgments finding that the indemnitee's denial of liability precluded it from characterizing these critical elements material questions of fact.

A review of these cases establish, as a matter of law, that with Signal having consistently

[3] Of course, Signal would also have to establish that it is not a joint tortfeasor or jointly liable to the Plaintiffs as a result of its own conduct.

denied any liability and then voluntarily settling with all Plaintiffs, it cannot establish the prerequisites critical to its claims for indemnity. Further still, it is now impossible to establish that amounts of the settlement were paid to settle the various claims against Signal because of Burnett's or Dewan's alleged conduct, as opposed to having paid those amounts to settle the claims against it for its own wrong doing.

The global settlement with all Plaintiffs also disposed of the claims that were levied against Signal only - claims for discrimination, violations of the Fair Labor Standards Act, EEOC violations, retaliation, intentional and negligent infliction of mental anguish, and attorney fees. The settlement of those claims, which have nothing to do with Burnett or Dewan's alleged conduct, was driven by the allegations of Signal's own wrong doing. A party whose conduct joins with the conduct of another to cause another party's injury is a joint tortfeasor, and under Mississippi law, not entitled to recover indemnity. To the extent that any of the settlement amount was paid because of Signal's own wrongdoing, Signal cannot recover indemnity because it would then be a joint tortfeasor.

Additionally, Signal must establish that the amounts it paid were reasonable. However, since it is unable to distinguish between what amounts it paid in settlement for its own wrongful conduct, as opposed to the alleged conduct of Burnett or Dewan, it cannot establish that the amounts it paid in settlement of its alleged passive negligence, which it seeks to recover from Burnett and Dewan, were reasonable.

Burnett further asserts that this Court should reconsider it ruling on the issue of claim preclusion as to the last requirement of Signal's claim for indemnity, that being that it was not at fault for any of the damages alleged by Plaintiffs. The second prong of common law indemnity, after establishing that the damages which the claimant seeks to shift were imposed as a result of a legal obligation to the injured person, is that the person seeking indemnity did not actively or affirmatively participate in the wrong. It is this second prong, whether Signal's conduct jointly caused any of the Plaintiffs damages, that was been decided in the David trial. The evidence relating to this required element of Signal's cross claim in all the remaining cases arise out of the same nucleus of operative facts as was presented in David.

Burnett submits that while the first perquisite involving the amount of the particular damages awarded against Signal to individual Plaintiffs, was fact specific to those Plaintiffs, the same is not true of the second element of Signal's cross claim, i.e., whether Signal actively participated in the wrong. That particular issue was not fact specific to any particular Plaintiff, and the evidence presented was not fact specific to any particular Plaintiff. The testimony and evidence presented in David that was related to whether Signal was in any way at fault for the claims leveled against involved Signal's conduct concerning ALL its H-2B workers. These allegations of actively participating in the wrong suffered by all Plaintiffs include, among other things, whether Signal authorized promises of green cards, whether its own employees made such promises in India, whether Signal intentionally kept its true intentions form Plaintiffs, and

whether Schnoor threatened all the H-2B workers with deportation during meetings he scheduled.

There can be no doubt that in all remaining the remaining cases the question as to whether Signal was in any way actively at fault for the claims asserted against it by the remaining Plaintiffs arise out of the same nucleus of operative facts as presented in David. Signal's meeting with and testing of candidates in India, its firing of hundreds of Indian employees without sponsoring them for green cards, failing to assist workers it intended to terminate transferring to other employers, retaliation against those who made complaints, the threats of deportation made to all employees at a general meeting held by Schnoor, forcing all Indian workers to live in man camps, and the deductions from each of the Indian worker's wages was covered at great length in David. These same facts are at issue in each of the remaining cases in determining to what extent Signal bears any responsibility as a joint tortfeasor for Plaintiffs' damages.

Signal cannot retry the issue of its culpability in each of the remaining cases hoping for a different result. It being established that Signal was, at the very least, a joint tortfeasor, undercuts the second leg of its indemnity claim in all the remaining cases. It cannot now establish that it did not actively or affirmatively participate in the wrong. Being unable to establish that it was free of fault, or that is that it committed no wrongs, its claims for indemnity must fall.

Lastly, it is unclear how Signal can assert any right of action whatsoever. Under the Confirmation Order, as of December 14, 2015, the Effective Date under the Plan, Signal and all of its entities were dissolved, "without the need for any filings with the Secretary of State or other governmental official in each Debtor's respective state of incorporation". See Exhibit 1, ¶14. It does not appear that Signal's cross claims were included in either the Litigation Settlement Trust fund or the Liquidation Trust Fund. Irrespective, though, it appears that Signal no longer exists as a corporate entity or a juridic person of any kind. If that is so, it certainly has no legal standing to maintain these cross claims.

Mississippi Law Governs Signal's Cross Claims In All Cases.

This Court expressed concern over which state laws would govern the cross claims transferred to Louisiana by the Texas courts pursuant to the first filed rule. Burnett submits that most, if not all, of this ground has already been covered in both the David case and the Achari case. To the extent any of it has not, the evidence and previous positions taken by Signal clearly establish that Mississippi law should apply to Signal's remaining indemnity claims in the cases transferred from Texas. It would truly be incongruous to apply different state laws to the same claims by Signal, for the same alleged conduct by Burnett, simply because some Plaintiffs decided to sue Signal in Texas. Clearly, the venue chosen by those Plaintiffs has no bearing on the choice of law issue for claims by a corporation domiciled in Mississippi, based on a business relationship it entered into in Mississippi, for damages it claims were incurred in Mississippi, by conduct it claims occurred, at least to some extent, in Mississippi.

Be that as it may, applying the appropriate choice of law provisions of the forum state, the result is the same. Mississippi law governs Signal's cross claims for indemnity in the Texas cases, for exactly the same reasons Mississippi law governs its cross claims in all other cases. Signal's cross claims in all Texas cases were transferred to Louisiana based on the first-filed rule.[4] This Court ruled in the Achari case, Rec. Doc. No. 234, that the principles announced in Van Dusen v. Barrack, 376 U.S. 612,(1964) and Ferens v. John Deere Co., 494 U.S. 516 (1990), did not apply to cases transferred under the first filed rule, and that accordingly, Louisiana's Choice of Law provisions applied. Here, since all of Signal's cross claims were transferred to this Court pursuant to the first filed rule, Louisiana Choice of Law provisions likewise apply.

Applying the Louisiana Choice of Law Provisions, Civil Code Article 3315, 3537, 3542, and 3543, the only two states whose laws might apply to Signal's cross claims for indemnity are Louisiana or Mississippi. For issues pertaining to loss distribution, such as Signal's claim that its losses should be transferred to Burnett under common law principles of indemnity, Civil Code Article 3544 establishes which state's laws should apply in an ordered sequence. Where the parties are domiciled in different states, as is the case herein, the second paragraph provides that the law of the state where the injury occurred shall govern, provided that the local of the

[4] Samuel et al v. Signal International L.L.C. et al, No. 1:13-cv-00323 EDTX, Rec. Doc. No.211; Joseph et al v. Signal International, LLC et al, No. 1:13-cv-00324 EDTX, Rec. Doc. No. 205; Kambala et al v. Signal International LLC et al, No. 1:13-cv-00498 EDTX, Rec. Doc. No. 120; Meganathan et al v. Signal International L.L.C. et al, No. 1:13-cv-00497EDTX, Rec. Doc .No. 102; Marimuthu et al v. Signal International LLC et al, No. 1:13-cv-00499 EDTX. Rec. Doc. No, 133.

injury was foreseeable by the person alleged to have caused the injury, and the law of that state (where the injury occurred) provided a higher standard of financial protection than did the law of the state where the conduct occurred.

If all of the requirements of this second paragraph are not met, then the provisions of Article 3542 would be used to determine the proper state's law to apply. See Revision Comments - 1991, (c), "such cases (where Article 3544 is inapplicable) are, therefore, governed by Article 3542, the residual Article". Under that Article, Civil Code Article 3542, the law of the state whose policies would be most seriously impaired if its laws were not applied are used to govern the dispute. This is determined by evaluating the "strength and pertinence of the relevant policies of the involved states in light of:" 1) the pertinent contacts of each state to the parties and events, 2) the place of conduct and injury, 3) domicile or place of business of the parties, and 4) where the business relationship between the parties was centered. The fact that a person happens to be have been sued in a state other than its domicile is not part of this equation. Nor does that necessarily translate into being the place where the injury occurred.

Based on Signal's previous assertions and representation, under either Civil Code Article 3542 or 3544, the laws of the state of Texas are not implicated whatsoever. Rather, the laws of Mississippi would govern Signal's claims for common law indemnity. The issue of which law governed Signal's cross claims was addressed in David. Ultimately, Mississippi law was applied when undersigned counsel, conceding to many of Signal's arguments, agreed to the application of Mississippi law and so stipulated. See Doc. No. 2143.

It was always agreed that Louisiana Choice of Law provisions applied, being the law of the forum state. In David , Signal always asserted that Mississippi law applied to its cross claims, including its claim for common law indemnity, while undersigned counsel initially took the position that Louisiana law should govern. However, agreeing that Signal's domicile was Mississippi, that Burnett first met with Signal in Mississippi, was hired eventually by Signal in Mississippi under a separate contract, and often traveled to Mississippi at Signal's request to speak with its H-2B workers, undersigned counsel conceded that Mississippi law should apply to all of Signal's cross claims.

The same points and arguments were previously asserted by Signal in its "Supplemental Memorandum of Signal Concerning Choice-of-law to Be Applied to its Crossclaims", Rec. Doc. No. 2055, and Signal's "Response to Rec. Doc. 2075 - Supplemental Memorandum of Signal Concerning Choice-of-law to Be Applied to its Crossclaims", Rec. Doc. No. 2091, which points and arguments equally apply to all of its remaining cross claims, irrespective of the state in which Signal was sued. The major points asserted by Signal were that it was domiciled in Mississippi, the cross claims centered on the business relationship between Burnett and a Mississippi corporation, the injury occurred in Mississippi, as did some of the alleged wrongful conduct, it was foreseeable that the injury would take place in Mississippi, and the policies of Mississippi would be the most seriously impaired if its laws were not applied.

> It is undisputed that in 2006 and or 2007, Burnett formed a lawyer-client relationship with a corporation based in Mississippi. The contacts between this cross-claim and India are too insignificant to merit much attention owing to the fact that this cross-claim touches on the relationship between a lawyer based in

> Louisiana and a corporation based in Mississippi."

Rec. Doc. No. 2055, p.3, emphasis added.

> It is rather article 3543's second case, the case that should involve the application of the law of the place of injury, the rule and solution provided by the second paragraph of article 3543. And the reason why this is the solution that is applicable is, as it, of course, must be, one dictated by the article, namely, because this is very especially the kind of case where "the person whose conduct caused the injury should have foreseen its occurrence [the injury's occurrence] in that state.
>
> Given the client's Mississippi domicile, it was foreseeable that from the cross-claim defendant's breach of the standard of case, injury would occur in the state of Signal's domicile, namely, Mississippi.

Rec. Doc. No. 2055, p. 4, emphasis added.

> Signal's common law indemnity claim against the Burnett Defendants are based on Burnett's conduct which exceeded his authority.
>
> . . .
>
> The financial losses asserted by Signal would occur in Mississippi, and the substantive law of agency which could give rise to the financial losses is that of Mississippi. Therefore, Mississippi law should apply to Signal's common law indemnity claims against the Burnett Defendants.

Rec. Doc. No. 2091, p. 9 - 10, emphasis added.

Thus, Signal asserted that its domicile was in Mississippi, which, in fact, it was at all times during this case and all the events involved. Signal's principle place of business was its Mississippi facility. Signal points to the relationship being between a corporation domiciled in Mississippi and a Louisiana attorney with offices in Mississippi. Signal repeatedly said that the injury occurred in Mississippi, and, given its domicile, that it was foreseeable that is where the injury would occur. Signal asserted that its cross claims for common law indemnity were based on Burnett allegedly exceeding his authority, which invoked the Mississippi laws of agency. Signal's position has always been that the policies of Mississippi would be "most offended if its

laws were not to apply", and accordingly, submitted that Mississippi law should apply to its cross claim for common law indemnity.

Signal's factual assertions as to the relationship between Signal and Burnett are correct. Burnett met first with Signal personnel in Mississippi. The person primarily in charge of the H-2B program was Ronald Schnoor, Signal's Senior Vice President and in charge of Signal's operations in Mississippi, who was based in Mississippi. Burnett and Dewan met with Schnoor in Mississippi after Signal had terminated the contract with Global Resources. The meeting was to discuss the ongoing hiring of foreign workers and their conduct going forward. Burnett was sent a contract by Signal from Mississippi, which he signed and returned to Signal in Mississippi. Signal is domiciled in Mississippi. Burnett is licenced to practice law in Mississippi and does have an office in Mississippi. He initially met with Signal personnel in Mississippi to discuss options for foreign workers, later met with Signal employees in Mississippi to discuss the H-2B program, and on several occasions met with Signal management in Mississippi about their problems with the H-2B workers, where he made presentations to the H-2B workers at Signal's request. Essentially, everything of substance between Signal and Burnett, especially anything done by Burnett on which Signal allegedly relied, centered around Signal's domicile in Mississippi.

Based on the facts of this case, the claims and assertions by Signal, there is simply no basis to even suggest that the policies of Texas would be the most seriously impaired if its laws were not applied to the issue of Signal's cross claim for common law indemnity. Signal has

asserted that its cross claims for common law indemnity were based on Burnett allegedly exceeding the scope of his authority, which, Signal claimed, implicated Mississippi's laws of agency. Indeed, the relationship between Burnett and Signal was initiated in Mississippi, and for the duration of the relationship all substantive contact between the parties centered in Mississippi. This Court has previously ruled that the Mississippi laws of agency governed all agency issues in this case. The fact that Signal once had a facility in Texas, which it elected to shut down, has no effect on where the alleged agency relationship arose and was centered. With agency being the basis of Signal's claim for common law indemnity, and Mississippi's laws of agency governing all of Signal's claims under agency, there can be little doubt that the policies of Mississippi would be most impaired if its laws were not applied to those cross.

The mere fact that Signal was sued in a state other than its domicile by a small portion of all Plaintiffs in this matter, a state where it no longer has a facility, does not even register as an issue in Louisiana's Choice of Law provisions. Nor does the fact Signal was sued in Texas, long after it closed its facility there, alter any of the principal factors in deciding which state's policies would be most effected. This is especially true since it cannot be said that Signal even stands a chance of being held liable for anything in a Texas suit, all of the Texas cases having now been settled by Signal.

Signal has consistently maintained that its injuries occurred in Mississippi, and that it was foreseeable the injuries would be sustained there in that Mississippi was the state of its domicile. In fact, Signal has never claimed that its damages were sustained in Texas. It would be virtually

impossible for Signal to now claim that any injury resulting from the H-2B program was sustained in Texas, much less that it was ever foreseeable that its injury would be sustained in Texas, as Texas was never its domicile. Moreover, as a result of the Chapter 11 Bankruptcy, and the global settlement, Signal's facilities and assets in Mississippi have been sold to a nominal Purchaser. Signal sold its Texas facility some time in 2004, long before its reorganization and global settlement.

Simply put, all indicators under Louisiana Choice of Law provisions point to the laws of Mississippi as governing Signal's common law claims for indemnity.

Settlement Voluntary - Indemnity Not Allowed.

The Mississippi Supreme Court has long held that in order to recover indemnity, the party seeking indemnity must establish that the indemnitee paid the injured person because he was legally obligated to do so and paid under compulsion. A voluntary settlement, where the person seeking indemnity settles a suit in which he has denied liability, is considered a voluntary payment, which cannot be recovered by way of indemnity.

Southwest Mississippi Electric, supra, is one of the earliest cases in which the Mississippi Supreme Court established this principle. Therein the Mississippi Supreme Court affirmed a dismissal of a suit by Southwest Mississippi Electric, (Southwest) for common law indemnity against the company that sold it a truck and the contractor who installed electric brakes in the truck in accordance with Southwest's specifications.

A Southwest employee collided with the rear of another vehicle, seriously injuring the

other driver. The Southwest employee claimed that the brakes had failed when he applied them. Southwest was sued by the driver of the other vehicle, to which it asserted a number of affirmative defenses, including that the brakes were defectively installed and that it was unaware of the defect and there were no means by which it could discover the defective brakes. Notwithstanding these affirmative defenses, Southwest settled the suit against it on the advise of counsel. It then sued the company that sold it the truck and the contractor who had installed the brakes. The lower court sustained a demurrer[5] and dismissed the suit.

The Mississippi Supreme Court finding the settlement by Southwest was voluntary, affirmed the dismissal.

> In short, Southwest alleged that it was guilty of no negligence whatsoever in connection with the collision in which Mrs. Dunn was injured. . . . The authorities hold that to recover indemnity it is necessary for the plaintiff to allege and prove that he was legally liable to the person injured, and consequently, paid under compulsion. Otherwise, the payment is a voluntary one for which there can be no recovery. . . . We hold that the facts alleged in Southwest's declaration show that it was not liable to Mrs. Dunn. The payment made to her was the act of a volunteer, and Southwest may not maintain an action of indemnity. The case turns on the issue of voluntariness of the payments, and we reach no other question.

Southwest Electric, supra at 223.

Minnesota Life v. Columbia Casualty, ___So. 3d ___, NO. 2012CA-00107-SCT, (Miss., May 7, 2015), though not completely on point (the decision also recognized the applicability of an insurance clause), was the latest approval by the Mississippi Supreme Court of the axiom that

[5] Demurrers are no longer used in Mississippi procedure. It was essentially a pleading device similar to what would now be a defense of no cause of action.

a party may not recover indemnity for a voluntary settlement.

> Our general rule is that "an indemnitee must prove payment under compulsion and reasonableness in amount before he may recover." Id. at 585 (citing Hopton Bldg. Maint., Inc., 559 So. 2d at 1014). Minnesota Life cannot show that any payments, fines, or settlements paid were compulsory or that the exorbitant amount paid was reasonable. Minnesota Life voluntary paid money without ever consulting Columbia.

supra at p. 35, emphasis in opinion.

However, Certain Underwriters at Lloyds v. Knostman, supra, and Hartford Casualty v. Halliburton, supra, two separate cases that arose out of the same well blow out, are directly on point. In those two cases the parties seeking indemnity settled cases against them after denying they were liable. In both cases the Mississippi Supreme Court affirmed the summary judgment because the settlement of the underlying suits were voluntary and not paid under compulsion.

In Hartford Casualty, supra, Hartford settled suits filed against its insured as the result of a well blow out. Hartford sought indemnity from Haliburton for the amounts it paid in settlement. It claimed that Haliburton was at fault in causing the well blow out, denying any liability by its insureds, and asserted claims for implied non-contractual indemnity. The Supreme Court, first noted the requirements for implied indemnity.

> We have previously stated that the two "critical" prerequisites of noncontractual implied indemnity in Mississippi are:
>
> > (1) The damages which the claimant seeks to shift are imposed upon him as a result of some legal obligation to the injured person; and
> > (2) it must appear that the claimant did not actively or affirmatively participate in the wrong.

Hartford Casualty, supra at 1216.[6]

The Mississippi Supreme Court then affirmed summary judgment against Hartford, determining that the settlements were voluntary based on the allegations made by Hartford.

> The settlements paid by Hartford were voluntary, and consequently, summary judgment was properly entered against it. In order for Hartford to prevail on its indemnity claim, it must allege and prove that (1) it was legally liable to an injured third party, (2) it paid under compulsion, and (3) the amount it paid was reasonable. (Citations omitted)
> This Court finds that Hartford has failed to establish evidence that it paid under compulsion of law.

Hartford Casualty, supra at 1216.

The Supreme Court noted that Hartford had denied any liability on the part of its insureds, and only admitted that it would be "potentially liable". Referring to its recent decision in Certain Underwriters at Lloyds, supra, the Supreme Court found that Hartford asserting that it was "potentially liable" was insufficient. Importantly, the Court noted that because of the consistent denials of liability it rejected the indemnitee's argument that at trial it would have been able to establish its legal obligation to the injured party.

> This Court, relying on Keys, supra, held that Texas Snubbing's payments were voluntary. Texas Snubbing presented arguments similar to the ones now presented by Hartford. Texas Snubbing asserted that it would have been able to prove that it was legally liable to the injured party and that it paid under compulsion at trial. Id. at ¶ 12. We rejected this argument due to the Texas Snubbing president's consistent denial of liability "or any wrongdoing associated

[6] These prerequisites are, of course, the same as articulated in J.B. Hunt Transp. Inc. v. Forrest Gen. Hosp., 34 So.3d 1171 (Miss., 2010); Home Ins. Co. v. Atlas Tank Mfg. Co., 230 So.2d 549, 551 (Miss.1970), as was briefed during charge conferences with the Court, and on which the jury instructions and jury verdict form were based.

> with the blowout in previous depositions and court proceedings." Id. The scenario in the case now before us is identical.
>
> Hartford has consistently denied any wrongdoing on its part. The furthest departure Hartford makes from this denial is to assert "potential" liability. As discussed above, this is simply not sufficient.

Hartford Casualty, supra at 1218, emphasis in opinion.

As indicated, Certain Underwriters at Lloyds, supra, involved the same well blow out and very nearly the same issue of law, whether the payment of a voluntary settlement is subject to recovery by way of indemnity. Therein, the operator of the well, Tomlinson, hired a snubbing contractor, Texas Snubbing, to perform work necessary to stabilize a well. The well blew out and hydrogen sulfide gas (H_2 S) escaped forcing the evacuation of residents within a three mile radius. The landowners and those exposed to the H_2 S sued Texas Snubbing, along with the operator and other defendants.

Texas Snubbing denied any liability. Its president testified in depositions that it was not at fault, and in answer to a cross claim against it, again denied it was liable for the blow out. Its insurer, Lloyds of London, though, settled the claims against Texas Snubbing without going to trial. Texas Snubbing then sought indemnity from Tomlinson.

The Mississippi Supreme Court, citing Keys v. Rehab. Ctrs., Inc., 574 So.2d 579, 584 (Miss.1990), agreed that in order to recover under a claim for indemnity that Texas Snubbing had to establish that it was legally liable to the injured parties, that it paid under compulsion, and that the amount it paid was reasonable.

> The trial court correctly noted that in order for Texas Snubbing to recover from Tomlinson, Texas Snubbing must prove that (1) it was legally liable to an injured

> third party, (2) that it paid under compulsion, and that (3) the amount it paid was reasonable.

Certain Underwriters at Lloyds, supra at 698.

The Court, noting the constant denial of liability by Texas Snubbing, then found that the settlement was voluntary and affirmed the grant of summary judgment, notwithstanding the argument that a genuine issue of fact existed as to these elements, which it would have proven at trial.

> Additionally, Keys holds that in order for an indemnitee to recover, he must allege and prove he was legally liable to the injured party and paid under compulsion. Keys, 574 So.2d at 584. Texas Snubbing failed to do this. Texas Snubbing argues that it would have proven these elements at trial. However, Jim Hutchings, President of Texas Snubbing, has consistently denied liability or any wrongdoing associated with the blowout in previous depositions and court proceedings. This position is best exemplified by Texas Snubbing's reply to Tomlinson's counterclaim, wherein it again denied liability for any matters concerning the blowout.
>
> Texas Snubbing's hopes of recovery seem to rely upon proving Tomlinson's negligence at trial. Texas Snubbing did not prove any of the necessary elements needed to recover under the theory of contractual liability during the summary judgment hearing, and all parties agreed that it was a question of contractual liability. There is no genuine issue of material fact in question here.
>
> We affirm the trial court's conclusion that Texas Snubbing's voluntary settlements of the underlying cases prevents it from claiming indemnity against Tomlinson as it failed to plead and prove the necessary Keys factors.

Certain Underwriters at Lloyds, supra at 699.

It is important to note that in both Hartford Casualty, supra and Certain Underwriters at Lloyds, supra, as it was in Southwest Electric, supra, the denial of any liability by the party claiming indemnity precluded the ability of the indemnitee from establishing that it was legally

responsible to the injured party, thereby rendering the settlement voluntary. In fact, in Certain Underwriters at Lloyds, the trial court specifically noted that the denial of liability by the indemnitee precluded a shift in its position as to its liability.

> The trial court surmised that in order to state a prima facie case against Tomlinson, Texas Snubbing must plead and prove that it was liable for the underlying claims, reversing its position of consistently denying liability in the underlying negligence suits it voluntarily chose to settle. The trial court found that the facts of this case do not support such a shift . . .

Certain Underwriters at Lloyds, supra at 697.

The Mississippi Supreme Court then agreed with the trial court. After stating that the trial court was correct in holding the Keys factors were a prerequisite for an indemnitee to recover what it paid in settlement, it emphasized that the indemnitee did not and could not establish these as an issue of material fact. The Mississippi Supreme Court determined that the previous denials of liability prevented the indemnitee from establishing that it had a legal obligation to the injured party (the first prong of Keys) as a material question of fact, which would have rendered summary judgment unavailable.

> Texas Snubbing failed to plead these necessary elements and further failed to demonstrate a genuine issue of material fact for trial concerning these elements.Certain Underwriters at Lloyds, supra at 698, emphasis added.

The same is true herein. Signal has steadfastly asserted it has no liability to the Plaintiffs, neither active nor passive liability. In virtually every pleading Signal filed it has consistently denied that it was liable to Plaintiffs, denied that Burnett and Dewan were its agents, or alternatively, if they were Signal's agents, they exceeded the scope of their authority, precluding

a finding of liability on its part. This was also the sworn testimony of Ronald Schnoor and Richard Marler. These constant denials of liability or responsibility to Plaintiffs, both actively and passively, preclude Signal from being able to establish that its payment to Plaintiffs was 1) the result of a legal obligation, or 2) was a payment under compulsion. Signal cannot now try to make those two prerequisites a question of material fact.

Signal's Constant Denial of Passive or Active Liability to Plaintiffs.

Signal's consistent assertions of no liability, as well as the sworn testimony of Ronald Schnoor and Richard Marler, precludes it from now trying to make a genuine issue of material fact as to whether it was legally obligated to Plaintiffs and that the settlement amount was paid under compulsion. The most Signal can now establish is that it could potentially be held liable to the Plaintiffs in the remaining cases. As in Southwest Electric, supra, Certain Underwriters at Lloyds, supra, and Hartford Casualty, supra, Signal has denied any liability to Plaintiffs in each and every case in which it has claimed indemnity. In every case Signal denied that it was guilty of any wrongdoing.

> The damages and injuries claimed to have been suffered by the Indian Workers were caused, in whole or in part, not by any fault, misconduct or alleged, nefarious behavior of Signal . . .

Signal's Fifth Defense, David 08-1220; Achari, 13-6218; Chakkiyattil, 13-6209; Krishanakutty 13-6220; Devassy, 13-6221; Singh, 14-732; Thomas, 14-1818; Samuel, 13-323 EDTX; Joseph, 13-324 EDTX; Meganathan 13-497 EDTX; Kambala 13-498 EDTX; Marimuthu 13-499, emphasis added.

Signal also asserted as affirmative defenses in each and every one of the thirteen cases that Burnett or Dean were not its agents, or if so, that they exceeded their authority.

> Specifically, Michael Pol, Malvern Burnett, and Sachin Dewan; and their respective companies, Global Resources, Inc.; Gulf Coast Immigration Law Center, LLC and the Law Offices of Malvern C. Burnett; and Dewan Consultants Pvt. Ltd a/k/a Medtech Consultants, were either not Signal's agents or were acting outside the scope of their actual, implied, and/or apparent authority. . . . Accordingly, Signal is not, and cannot, be held responsible or liable for the acts of individuals and/or entities that are/were not its agents, or had exceeded the express, implied, or apparent authority of any such person and/or entity

Signal's Sixth Defense, David 08-1220; Achari, 13-6218; Chakkiyattil, 13-6209; Krishanakutty 13-6220 Devassy, 13-6221; Singh, 14-732; Thomas, 14-1818; Samuel, 13-323 EDTX; Joseph, 13-324 EDTX; Meganathan 13-497 EDTX; Kambala 13-498 EDTX; Marimuthu 13-499, emphasis added.

Signal asserted the further affirmative defense in each of these cases that Burnett and Dewan were independent contractors, for whose actions or conduct they could not be liable.

> Any wrongful or illegal acts of any other defendants who had a relationship with Signal were the acts of independent contractors for whom Signal is not responsible. Signal had no knowledge of, and did not condone, support, authorize or approve of, any illegal acts by such independent contractors.

Signal's Twelfth Defense, David 08-1220; Achari, 13-6218; Chakkiyattil, 13-6209; Krishanakutty 13-6220; Devassy, 13-6221; Singh, 14-732; Thomas, 14-1818; Samuel, 13-323 EDTX; Joseph, 13-324 EDTX; Meganathan 13-497 EDTX; Kambala 13-498 EDTX; Marimuthu 13-499, emphasis added.

The sworn testimony of Signal management at the David trial was also that it did nothing wrong, that it did not promise any green cards to any of the Plaintiffs, and never authorized anyone to make such promises, and absolutely did know or authorize anyone to lie or do anything illegal.

> A. Again, I don't think promising or guaranteeing green cards is anything we did or intended to do.
>
> Q. Or even promising to sponsor them for green cards, right?
>
> A. Like I said before, there is conditions. I mean, they would have to be an

> employee. And then those employees that were with us when the H-2B visa process ended were -- you know, applied for permanent residence. We did what we said we were going to do with those individuals who were employees.

Ronald Schoor, trial transcript, Rec. Doc 2343, p.107:15 - 25, emphasis added.

> Q. In the fall of 2006 when the workers were still in India getting ready to make their final payments and get on the plane and fly to the U.S. and to Signal, any promise made to any of those workers that the process would play out for every worker so that Signal would sponsor them for a green card was a false promise, correct?
>
> A. I don't believe so at that time. Given what I've testified, it was our goal to bring in a direct employee for Signal.
> And it was our intent, given all of the things that I've previously testified to, that if the workers did their part -- they were still with us, they didn't quit, they didn't leave, et cetera -- we would apply and sponsor them.
> And we did. We ultimately did. So it was not a false promise. That was our goal. And that was always our goal. And we followed through with that goal.

Ronald Scnoor, trial transcript, Rec. Doc 2343, p.107:15 - 25, emphasis added.

Rather, according to the testimony of Ronald Schnoor and Richard Marler, it was Dewan, Pol, and Burnett making promises without Signal's knowledge or authorization that was the cause of all the Plaintiffs' problems. Schnoor's and Marler's unified testimony and Signal's position throughout the David trial was that anything that may have been told to the Indian workers by Pol, Dewan, or Burnett was not authorized by Signal and said without their knowledge or approval.

Richard Marler agreed to statements attributed to him in Signal press releases, which were read by him to the jury, indicating that Signal was misled and deceived by Pol, Dewan, and Burnett.

A. [As read] "Signal International, a diversified marine construction firm continues with its investigation, which was launched after learning that many of its H-2B workers in India had been deceived by Gulf Coast Immigration Law Center, Indo-America Soft, LLC, J&M Associates, Inc. of Mississippi, Global Resources, Dewan Consultants, Pvt. Ltd., and attorney, Malvern C. Burnett, as had Signal's management.

Richard Marler, trial testimony, Rec. Doc 2351, p. 80:17-23, emphasis added.

A. The core issue regarding the problem confronting the initial inflow of Indian guest workers occurred in India without Signal involvement or knowledge. Stated simply the workers paid Indian U.S .middlemen and U.S. lawyers too much money to get work visas and jobs at Signal. In addition, several workers misrepresented their skills. These workers were also sold a bill of goods regarding obtaining green cards and ultimately perhaps citizenship."

Richard Marler, trial testimony, Rec. Doc 2351, p. 89:18-25, emphasis added.

Schnoor, likewise, was emphatic in his testimony that anything said or done by Dewan, Pol, or Burnett, was not authorized by Signal, and was not anything that Signal would have approved.

Q. Were you ever made aware that Mr. Dewan was counseling Indian candidates for Signal's H-2B visas to lie to the Indian consulate?

A. No, ma'am.

Q. Would you, on Signal's behalf, have authorized such an action?

A. Absolutely not.

Ronald Schnoor, trial testimony, Rec. Doc. 2344 p.69:16- 20

Q. And at any time was Mr. Dewan authorized to promise green cards to Indian workers on Signal's behalf?

A. No, ma'am.

Q. At any time while Mr. Dewan was representing Signal, was he authorized to

act in an unlawful manner on Signal's behalf?

A. No, ma'am.

Ronald Schnoor, trial transcript Rec. Doc. 2344 p. 70:5-11.

Q And by this time certainly you knew that promises had been made to the workers that Signal would sponsor them for green cards; right?

A Yes.

Q And you didn't give any instructions to Mr. Dewan or Mr. Burnett to correct that promise; did you?

A As I indicated earlier, I always understood the process to be H2-B, extension, extension, green cards. I knew the green cards were out there. And I know I discussed with them we couldn't guarantee green cards. That's the US government's, totally.
So, if they were guaranteeing green cards, they were told not to guarantee green cards, because we couldn't do it. Nor could they.

Ronald Schnoor, trial testimony, Rec. Doc. 2318, p. 59: 4-17, emphasis added.

Q. At any time while Mr. Burnett was representing Signal, was he authorized to act in an unlawful manner on Signal's behalf?

A. Absolutely not.

Ronald Schnoor, trial transcript Rec. Doc. 2344 p. 75:22-25

Exactly as the Mississippi Supreme Court found in Hartford Casualty, supra and Certain Underwriters at Lloyd's, supra, Signal cannot now establish the necessary prerequisites to recover indemnity under Mississippi law as a genuine issue of material fact. Signal's position in each of the twelve cases, as it was in the David trial, has always been that it was not and should not be held liable for anything that Dewan and Burnett may have done because Dewan and Burnett were not its agents, or if so, any promise of green cards made by them was beyond the scope of any authority given them. At the trial of any of its cross claims, Signal can take no

other position than its answers and affirmative defenses and can offer no other testimony than was given by its Senior Vice President and Chief Executive Officer, that is, that it is not and should not be liable to any of the Plaintiffs because it never authorized Dewan or Burnett to make promises of green cards, that it had no knowledge that they had done so against its directions, and did not authorize or approve any lies or unlawful conduct.

At the trial of any cross claim, Signal could not suddenly do an about face and try to prove to the jury that it would be liable to all remaining Plaintiffs because Dewan and Burnett were its agents and that it did in fact authorize Burnett and Dewan to make promises of green cards. In fact, if Signal were to do so, it would be admitting it was a joint tortfeasor, which would then destroy its claim for indemnity. At best, Signal can only establish that it could potentially be liable for the acts of Dewan or Burnett. Under Mississippi jurisprudence, this is insufficient to show that it was legally obligated to all Plaintiffs for the amount it paid in settlement.

Similarly, Signal cannot establish that it paid the settlement amount to all remaining Plaintiffs under compulsion. Signal was not forced to undergo a reorganization under Chapter 11 Bankruptcy. That it may have been completely unable to pay the judgment by the first five Plaintiffs in the David trial and, as such, "forced" into bankruptcy, does not mean it was forced to settle with all remaining Plaintiffs. It certainly could have simply gone into a Chapter 7 Bankruptcy, which would have extinguished any liability to all remaining Plaintiffs. That it chose to reorganize, file a Chapter 11 Bankruptcy, and voluntarily settle with all the remaining Plaintiffs, does not equate with the settlement amount being paid under compulsion. This was

a voluntary decision Signal made. As such, Signal cannot establish that it settled with all remaining Plaintiffs under compulsion, the second perquisite to obtain common law indemnity.

Being unable to establish that what it paid in settlement was a legal obligation to the remaining Plaintiffs, and that it did so under compulsion, Signal is unable to establish the prerequisites for common law indemnity as a genuine issue of material fact. Under Mississippi jurisprudence Burnett is entitled to summary judgment on Signal's remaining claim for common law indemnity.

Further, the amount paid by Signal settled all of the claims against it that were based on its own alleged wrongful conduct. These include claims against Signal for harassment under42 U.S.C. § 1981, retaliation claims under 42 U.S.C. § 1981, tort claims for common law intentional infliction of emotional distress, tort claim against Signal for intentional infliction of emotional distress, for which physical injuries were suffered, claims against Signal under 42 U.S.C. §1985 for conspiracy to violate civil rights; claims under the Fair Labor Standards for failure to pay the federal minimum wage for all hours worked held by H-2B Workers, claims by the EEOC Intervenors under Title VII, Title VII, 42 U.S.C. § 2000 et seq., for harassment and/or adverse terms and conditions of employment, and discrimination; EEOC Title VII Retaliation Claims, or that is claims by the EEOC and Plaintiffs-Intervenors for retaliation under Title VII, 42 U.S.C. § 2000 et seq., in the matter of EEOC v. Signal Intel, LLC, No. 12-557, and claims for attorneys' fees and costs. See Exhibit 1, Signal Litigation Settlement Trust Distribution Procedures, Appendix A [sic] to Findings of Fact, ¶4.3 (c)-(n), Conclusions of Law and Order Confirming

Debtors' First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code.

At the trial of its cross claims for indemnity, Signal would have to not only establish that what it paid in settlement was the result of a legal obligation to the injured parties, but also, that what it paid was not because of its own wrongful conduct. If any part of the settlement was because of its own conduct it is not entitled to indemnity because in that case, it is settling for damages its conduct actively caused Plaintiffs. If any of its conduct joined with that of Burnett's or Dewan's to injure the Plaintiffs, it becomes a joint tortfeasor that is not entitled to indemnity.

There is virtually no way for Signal to establish that what it paid in settlement was not because of any wrongful conduct on its part. At best, it can only show that it settled with Plaintiffs because of the possibility that it might be held liable under one or more of all of the Plaintiffs' various claims. This is insufficient under Mississippi law to prove that what it paid to Plaintiffs was because of a legal obligation to Plaintiffs, paid under compulsion, that was not because of its wrongdoing.

Signal Unable to Establish What It Paid in Settlement was Reasonable.

Exactly what amount of the proceeds from the Litigation Settlement Trust will be distributed to each of the Plaintiffs, or the basis for any particular payments is not specified in the Plan. Irrespective of what methodology may eventually be devised, any amounts paid by Signal to settle the claims for which it is solely responsible because of its conduct, would be unreasonable per se as to Signal's claims for common law indemnity against Burnett or Dewan

based on their respective conduct. Signal has not, and will not, be able to establish that the specific amounts paid to any individual Plaintiff was only attributable to Burnett or Dewan alleged conduct, and that such amount is reasonable in light of it settling claims for which only it would be liable because of its sole wrongful conduct.

At best, Signal will only be able to show a very large amount of the settlement was paid to forego litigation of a great number of claims that were brought only against it because of its own alleged wrongful conduct. As to its claims for common law indemnity, which can only be based on damages it was forced to pay because of Dewan's or Burnett's alleged conduct, Signal has not and will not be able to establish the reasonableness of any settlement amount that settles all of the claims against it, including those which were brought only because of its own conduct and wrongdoing. Signal being unable to carry this burden of proof as to exactly what amounts paid to any individual Plaintiff was reasonable, its common law claim for indemnity must fall.

Signal's Wrongdoing Is Res Judicata.

Burnett submits that the last requirement for the recovery of indemnity, that is, that the indemnitee not itself be a joint tortfeasor has been presented to and decided by the jury in David.. This very narrow issue absolutely arises out of the same nucleus of operative facts presented in Signal's cross claim for common law indemnity in David. Nearly all the evidence presented on the question of whether Signal was also at fault involved its conduct as to all of the H-2B workers. In fact, the only vast majority of the evidence of Signal's conduct that was directed to any of the first five David Plaintiffs in particular involved the claims against it for

false imprisonment and intentional infliction of emotional damages to Jacob Joseph Kadakkarappally.

However, the overall evidence of Signal's wrongdoing encompassed its conduct and actions as to all of its H-2B workers. For example, Schnoor testified that Signal never intended to promise the candidates that they would sponsor the every H-2B workers for green cards, as it would depend on whether or not there was a need for the workers. Rec. Doc. 2318, p.41:14-21. This claim, which the jury obviously did not believe, was not specific to the five David Plaintiffs, but, rather, was applicable to all of the H-2B workers whom Signal hired. Likewise, the testimony of William Bingle, a Signal vice president of production, that Dewan was authorized to tell the candidates that Signal would sponsor all H-2B workers, Rec. Doc. 2335, p.61:6 -p.62:19, and admitted that the truth was that Signal did not intend to sponsor "each and every" H-2B worker for green cards, but rather, only do so if Signal had a demand for workers, Rec. Doc. 64:16 - p.65:12, did not relate to just the David Plaintiffs, but rather, was encompassed all the Indian workers whom Signal hired.

Other evidence of Signal's fault being directed to all H-2B workers included Chris Cunningham, Signal's Chief Financial Officer, admitting that Signal's substantial increase in profits in 2007 was because of the H-2B workers, Rec. Doc. 2339, p. 29:15-p.32:15, yet Signal operated the man camp as a profit center, because it collected more from the H-2B workers than its expenses. The evidence that Signal acquiesced to Darrel Schnyder going on a "rat hunt" when he was placed in charge of the man camp, was not directed to just the David Plaintiffs.

Similarly, Schnoor calling a meeting and threatening to shut down the H-2B program, which would result in all the workers being subject to deportation, was evidence of Signal's tortuous conduct toward all H-2B workers.

Whether or not Signal actively or affirmatively participated in the wrong to Plaintiffs was an essential element of its cross claims for indemnity in David, and is an essential element in all the remaining cases. The evidence directed to that question in the remaining claims for indemnity absolutely arise out of the same nucleus of operative facts presented in Signal's claim for indemnity in David, and in fact, constitutes part and parcel of the exact same evidence of Signal's wrongdoing in all remaining cases. The jury in David determined that Signal actively participated in the wrong based on the evidence surrounding all of Signal's actions and conduct. Signal cannot keep presenting that same question to jury after jury, hoping for a different result, simply because the amount of damages it might pay to any particular Plaintiff would be particular to that individual plaintiff. The issue of whether it actively participated in the wrong to all the H-2B workers has been presented and determined.

This is especially true, even more so, now that Signal has settled with all Plaintiffs. Whether it is entitled to recover what it paid in settlement of all claims by all Plaintiffs will depend on whether it actively participated in the wrong to all H-2B workers, as a whole. There is no way that Signal can make presentations of its freedom from any active wrongdoing on a Plaintiff by Plaintiff basis. The evidence, of necessity, has to be centered on Signal's conduct toward all and with all Indian H-2B workers. This evidence for this determination is more than

part of the same nucleus of operative facts, it is the exact same facts and evidence submitted to the jury in David. The facts being the same operative facts as presented in David, and the issue of Signal's wrong doing to all H-2B workers being the same, involving the Signal, Burnett and Dewan, the same parties to Signal's cross claims in David, that determination of that issue is now res judicata. Signal cannot relitigate that part of its claim for indemnity.

Signal No Longer Exist as a Corporate Entity.

Lastly, it seems that Signal no longer exists as a corporate entity or as a juridic person of any type. If Signal no longer exists as a corporate or juridic person, it cannot be an entity capable of maintaining any cause of action. The Confirmation Order specifically provides as follows,

> 14. Continued Corporate Existence. As of the Effective Date, and without the need for any further order of this Court, action, formality or payment of any fees which might otherwise be required under applicable non-bankruptcy laws, each of the Debtors shall be deemed dissolved without the need for any filings with the Secretary of State or other governmental official in each Debtor's respective state of incorporation; provided, however, that notwithstanding the dissolution of such Debtors, the Signal Liquidating Trustee shall be authorized and empowered to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of and consummate the Plan. Such dissolution of the Debtors shall be deemed to have occurred on a "bottom up" basis, with lower tier Debtor Entities being deemed to have dissolved before higher tier Debtor Entities.

Exhibit 1, ¶ 14, emphasis added.

The Notice of (1) Entry of Confirmation Order, (II) Occurrence of Effective Date, and (III) Related Bar Dates, provides that the "Effective Date of the Plan occurred on December 14, 2015." See Exhibit 3, ¶ 2. Thus it would seem that as of December 14, 2015, Signal ceased to

exist as a corporate or juridic person. The Plan provided for two separate Trust Funds, the Litigation Settlement Trust Fund and the Liquidation Trust Fund, into which particular assets were placed for distribution to creditors of Signal, depending on whether those creditors were litigants in David or other general creditors. However, neither trust fund seems to include Signal's cross claims. Be that as it may, Signal can obviously no longer be the entity to maintain any cross claims, as it is no longer in existence. At the very least, it would seem that some other entity must establish that it is a viable person and successor in interest to Signal, has the rights to assert Signal's cross claims, and be substituted as the proper party in interest.

Conclusion.

Signal voluntarily settled all of the claims against it. This included numerous claims against Signal for its own alleged wrongful conduct. Signal has consistently denied that it has any legal obligation to the Plaintiffs. It denied that it should be liable for anything that Burnett and Dewan may have done. Signal denied Burnett and Dewan were its agents, but, alternatively, if they were found to be its agents, assert that they exceeded the scope of their authority. This was maintained by Signal in numerous affirmative defenses in each of the cases in which it was sued, and was the testimony of its management.

Because Signal has consistently denied any liability because of Burnett's or Dewan's conduct, there is no genuine issue of fact as to whether Signal's payment was the result of a legal obligation to the Plaintiffs. Signal has steadfastly denied any legal obligation to Plaintiffs as a result of Burnett's or Dewan's conduct, and cannot now do so. In fact, if it were to do so, it

would establish that it was actively at fault, which would, in and of itself, destroy any claim for indemnity. Either way, Signal no longer has a claim for indemnity. Simply put, now that Signal has settled all the claims against it, it cannot establish that the amount it paid was because of a legal obligation imposed on it, and that it paid the settlement under compulsion.

Moreover, in that Signal's settlement included disposing of claims that were based only on its own wrongful conduct, Signal cannot establish that what it paid in settlement was both a legal obligation to the Plaintiffs, and was not the result of any wrongdoing on its part. The most that Signal would be able to do at trial is assert that it could potentially be held liable to the Plaintiffs on account of Burnett's actions, Dewan's action, its actions, or some combination thereof. This is insufficient under Mississippi law to establish that what it paid in settlement was because of a legal obligation to do so, was paid under compulsion, and was not paid because of any of its own wrongdoing.

Burnett further submits that the last prong of Signal's claim for indemnity has already been decided in the David trial, that is, that Signal's own wrongful conduct contributed to the injuries suffered by all Plaintiffs. That issue, whether Signal's conduct joined with that of Burnett or Dewan to cause any of Plaintiffs injuries is based on the same nucleus of operative facts as was presented in the David trial. Accordingly, it is a thing decided, and that issue cannot now be relitigated.

Lastly, Burnett submits that Signal is no longer a corporate or juridic entity. It being a nonentity, it cannot maintain any legal action. In light of the automatic dissolution of Signal,

some other viable legal entity would need to establish that it is a successor in right to Signal's cross claims, and that it has the rights to assert any claims that Signal may have had. Of course, even were this to happen, that entity would likewise have no right to indemnity under Mississippi law.

Wherefore, Burnett prays that its Motion for summary Judgment be granted, dismissing the cross claims of Signal.

s/ Timothy W. Cerniglia
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel of record electronically through this Court's EM/ECF system, this 23rd day of December, 2015.

s/Timothy W. Cerniglia