No. 18-408

In The
Supreme Court of the United States

KOHN LAW GROUP, INC.,

Petitioner,

v.

AUTO PARTS MANUFACTURING MISSISSIPPI INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Auto Parts Manufacturing Mississippi Inc., a Mississippi corporation with its principal place of business in Guntown, Mississippi, is wholly-owned by Toyota Auto Body Co. Ltd., which is wholly-owned by Toyota Motor Corporation. No person or entity owns ten percent or more of Toyota Motor Corporation stock.

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INTRODUCTION

The petition for writ of certiorari filed on September 27, 2018, is the second petition filed in this interpleader lawsuit, the first having been denied on October 13, 2015. *Noatex Corp. v. Auto Parts Mfg. Miss. Inc.*, 577 U.S. ___, 136 S.Ct. 330, 193 L.Ed.2d 230 (2015). The second petition requests this Court to review *Auto Parts Mfg. Miss. v. Kohn Law Group*, 725 Fed. Appx. 305 (5th Cir. 2018), *see*, App. A., (hereinafter "*Auto Parts II*"), a decision by the Fifth Circuit Court of Appeals that affirmed the district court's contempt ruling against Petitioner and imposition of sanctions as a result of Petitioner's bad faith violation of an interpleader injunction issued pursuant to 28 U.S.C. §2361. Because the second petition, like the first, requests review of the interpleader lawsuit from its inception, and specifically as to whether Respondent was faced with adverse claims to a single stake, an overview of the entire proceedings in the underlying case is necessary, instead of limiting discussion to events after the first denial of certiorari. It is critical to understand that Petitioner's contention that Respondent was not faced with adverse claims and, instead, was faced with non-adverse claims owed on two separate debts, is inaccurate. Instead, it was *because* Respondent was faced with adverse claims to a single stake that Petitioner removed the interpleader lawsuit to, and successfully opposed remand from, federal district court based upon the federal interpleader act, 28 U.S.C. §1335. It was only because of the existence of adverse claims to a single stake that the federal district court

had subject matter jurisdiction under §1335, but for which the interpleader case necessarily would have been remanded to state court, in which event there would have been no federal case that Petitioner could appeal to the Fifth Circuit, whose ruling Petitioner now asks this Court to review.

COUNTERSTATEMENT OF THE CASE

A. Events Prior To Denial Of Kohn's First Certiorari Petition

Respondent Auto Parts Manufacturing Mississippi Inc. ("APMM"), owns an assembly plant in Guntown, Mississippi. Noatex Corporation ("Noatex") was prime contractor on certain construction projects at APMM's plant. Noatex, in turn, hired King Construction of Houston, L.L.C. ("King") as subcontractor. Eventually, Noatex and King became involved in disputes over unpaid invoices submitted by King to Noatex for labor and materials furnished by King. This dispute led to King serving on APMM a document styled "Laborer's and Materialman's Lien and Stop Notice" (the "Stop Notice").[1] "The Stop Notice had the effect of

[1] The Stop Notice invoked both §§85-7-181 and 85-7-131 of the Mississippi Code. Section 85-7-181 was commonly referred to as the Stop Notice statute, while §85-7-131 was known as the Materialman's Lien statute. King could not prevail under both code sections, since §85-7-181 (later repealed) was available only to subcontractors, and §85-7-131 was available only to contractors in a direct contractual relationship with an owner. Accordingly, in its Notice, King took alternative positions, asserting that it was *either* a contractor with a direct contractual relationship with

binding APMM to hold the disputed funds to secure the payments that Noatex allegedly owed to King." *Auto Parts Mfg. Miss. Inc. v. King Constr. of Houston, L.L.C.*, 782 F.3d 186, 188 (5th Cir.), *cert. den. sub nom. Noatex Corp. v. Auto Parts Mfg. Miss.*, 577 U.S. ___, 136 S.Ct. 330, 193 L.Ed.2d 230 (2015) (hereinafter "*Auto Parts I*"). Attached to the Stop Notice were invoices issued by King to Noatex totaling $260,410.15. R.O.A.96-131.[2]

Noatex, then represented by Petitioner Kohn Law Group, Inc. ("Kohn"), reacted to the Stop Notice by filing a complaint against King asking a federal district court to declare Mississippi's Stop Notice statute unconstitutional because it violated Noatex's due process rights by not providing constitutionally required procedural safeguards for a pre-trial attachment (the "Declaratory Case").[3] R.O.A.83-133.

APMM through Noatex, as APMM's agent, and therefore entitled to payment from APMM under §85-7-131, *or* that it was a subcontractor of Noatex entitled to bind in the hands of APMM the payment owed to King by Noatex. Once litigation commenced, King abandoned the alternate theory that it had a direct contractual relationship with APMM and affirmed that its status was that of unpaid subcontractor of Noatex. *See*, App. G at 56, n. 1. *See also*, R.O.A.149, King's Answer and Cross-Claim against Noatex ("King Construction provided labor and materials . . . as a subcontractor to Noatex."); Pet. App. P at 128 at ¶6.

[2] R.O.A. refers to the electronic Record on Appeal in the underlying case, Fifth Circuit Case No. 17-60450.

[3] Specifically, Noatex alleged in its Complaint for Declaratory Judgment:

> 1. King Construction asserts that Noatex supposedly owes $260,410.15 for labor and material that King Construction claims to have provided at the

APMM, faced with two adverse claims to the money bound by King's Stop Notice, turned to the courts for interpleader relief, and on November 15, 2011, filed its Complaint for Interpleader (the "Interpleader Case") in the Chancery Court of Lee County, Mississippi, pursuant to Miss.R.Civ.P. 22, naming Noatex and King as defendants. APMM's interpleader complaint disclaimed any interest in the $260,410.15 bound by King's Stop Notice (the "interpleader fund"), and asked for permanent injunctive relief protecting APMM from the adverse claims for the interpleader fund. R.O.A.28-32.

In December 2011, Noatex, represented by Kohn, removed the Interpleader Case to the district court pursuant to the federal interpleader statute, 28 U.S.C. §1335 (quoted at Pet. 3-4), and the matter proceeded from that point forward pursuant to federal statutory interpleader.

The Declaratory Case and the Interpleader Case were consolidated. On February 2, 2012, APMM deposited the interpleader fund into the district court registry, and on February 6, 2012, APMM moved to be discharged from the Interpleader Case. Noatex

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> request of Noatex. * * * [T]his action seeks the Court's assistance to invalidate the Stop Notice as a matter of federal constitutional Due Process.
>
> * * *
>
> 17. * * * The purchase orders issued by Noatex [to King] requested labor and materials that Noatex would pay King Construction to provide. * * *

R.O.A.84, 87.

opposed APMM's request for discharge. Although admitting that, "Jurisdiction is proper under 28 U.S.C. §1335," R.O.A.646, Noatex argued interpleader was "unnecessary" because (according to Noatex) it was cumulative of Noatex's Declaratory Case. Noatex argued:

> Interpleader is unnecessary (making equitable relief unwarranted) as to the **competing claims that Defendants Noatex and King Construction now assert against the $260,410.15 portion** of Noatex's money that APMM says it has deposited into registry. . . . There is no need for any equitable relief here because the validity of **King Construction's claim against that portion of Noatex's money** is already pending and ripe for decision in the earlier-filed Declaratory Action. . . .
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> * * *
>
> The Court should deny the legally unsupported Motion to Discharge of APMM . . . and should grant Noatex's Motion to Dismiss. . . . Because title is clear, the Court should decree that the Clerk distribute to Noatex the $260,410.15 portion of the amounts that APMM owes to Noatex.

R.O.A.650-651, 656 (emphasis added).

Shortly after APMM filed its Motion for Discharge, King filed a motion to remand the case to state court. Yet again relying on the fact that the elements of §1335 had been met and subject matter jurisdiction existed thereunder *because* of the adverse claims of Noatex

and King to the interpleader fund, Noatex opposed remand. Noatex, represented by Kohn, stated,

> This action lies plainly within this Court's **original jurisdiction** because APMM's complaint (Docket No. 2 in 1:11cv251 [the Interpleader Case]) seeks to interplead $260,410.15, which is "money or property of the value of $500 or more," and **because Noatex and King Construction are two "adverse claimants, of diverse citizenship," who 'are claiming or may claim to be entitled to such money**. . . . 28 U.S.C. §1335.

R.O.A.661 (emphasis added).

On April 12, 2012, the district court ruled Mississippi's Stop Notice statute unconstitutional (the "Stop Notice ruling"), and this was affirmed on appeal. *Noatex Corp. v. King Constr. of Houston, L.L.C.*, 732 F.3d 479, 482 (5th Cir. 2013). The district court also remanded the Interpleader Case to state court without ruling on APMM's Motion for Discharge. The Interpleader Case was eventually returned to the district court eight months later by *sua sponte* Order dated December 5, 2012, after the Fifth Circuit, on Noatex's Petition for Writ of Mandamus, questioned the basis of the remand order. R.O.A.956.

In the interim, Kohn filed a lawsuit in California federal district court against APMM for recovery of the interpleader fund (the "California Case"). Kohn alleged it was owed legal fees of an unspecified amount by Noatex, and that a California statute granted Kohn, as Noatex's creditor, a lien against the interpleader

fund as money owed by APMM to Noatex. Kohn alleged that it had been retained by Noatex to represent Noatex in a

> dispute between King Construction and Noatex. Among other things, that dispute included claims by which King Construction asserted rights in the $260,410.15 amounts that are owed by APMM to Noatex, pursuant to Miss. Code §85-7-181 [the Stop Notice statute] * * * [and] that this action seeks to collect.

R.O.A.1575-1582 at ¶¶8-9.

The California federal district court stayed the California Case, pending resolution of APMM's Interpleader Case. Kohn appealed this decision to the Ninth Circuit, which affirmed the ruling. *Kohn Law Group., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1241 (9th Cir. 2015).

As a result of this additional claim to the interpleader fund, APMM successfully moved to file an Amended Complaint joining Kohn as an additional defendant in the Interpleader Case. Noatex opposed, arguing "the proposed Amended Complaint would be legally meritless . . . [because King's] claim is devoid of substance because the Court's final declaratory ruling . . . vacated the stop notice." R.O.A.1707-1708. The district court rejected Noatex's argument, finding that, notwithstanding the nullification by the Stop Notice ruling of King's statutory stop notice lien, King nevertheless "retains a valid claim to the interpleader funds

under equity principles and remains entitled to any monies it is owed for work provided on the construction project." R.O.A.2040.

Undeterred, Noatex and Kohn filed companion Rule 12(b)(6) motions to dismiss, arguing the Stop Notice ruling nullified King's statutory lien against the interpleader fund, causing there to *no longer* exist any adverse claims to the stake, and leaving Noatex with the only viable claim to it. Neither this motion nor multiple other motions filed by Noatex, later joined by Kohn, for dismissal and/or for distribution of the interpleader fund, was successful.

Around the same time, Noatex and Kohn commenced a new, inconsistent procedural tactic by filing motions seeking arbitration, arguing that Kohn's joinder triggered an arbitration clause in an engagement agreement for legal services between Noatex and Kohn. Noatex and Kohn argued:

> [APMM] must therefore arbitrate its effort to compel Noatex and Kohn Law to confront each other in this action over an alleged conflict that APMM says raises an actual or likely dispute between them. Under the circumstances of this action for interpleader, **King Construction of Houston, LLC must also arbitrate *its claim of asserted equitable rights to the interpleader*.**[4]

R.O.A.2128 (emphasis added).

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[4] *Auto Parts I* upheld denial of the motions for arbitration. *See*, Pet. App. G at 73-78.

Meanwhile, King filed a Motion for Summary Judgment seeking distribution to it of the interpleader fund. App. Q. Kohn and Noatex opposed the motion on the basis that the interpleader fund consisted of money owed by APMM to Noatex. Kohn and Noatex argued:

> **Any rights that King Construction itself may assert in this interpleader action are, themselves, "at best" only "derivative" of Noatex's own right to be paid by APMM.**
>
> * * *
>
> [T]he stop notice only purported to bind money that was otherwise owing from APMM to Noatex. . . .
>
> * * *
>
> **Nevertheless, the judgment [declaring Mississippi's Stop Notice statute to be unconstitutional] did establish that "the freezing of the funds constitutes an interference with a significant property interest." [*Noatex Corp. v. King Constr.*,] 864 F.Supp. 2d at 488. The issue here is identical: does APMM owe money to Noatex? The answer is yes, and King Construction, *as a mere unsecured creditor of Noatex*, has no rights in that property.**
>
> * * *

> King Construction has no rights in the **interpleader funds that APMM deposited in response to the King stop notice**.

R.O.A.2373-2374, 2378, 2382 (emphasis added). The foregoing is yet another of numerous examples of Kohn's recognition before the lower courts that APMM faced adverse claims to the money bound by the Stop Notice, and the interpleader fund constituted the money bound by the Stop Notice.

In support of their joint response to King's Motion for Summary Judgment, Kohn/Noatex submitted a Declaration by Noatex's president stating that APMM owed Noatex the interpleader fund based on certain invoices attached to the response. R.O.A.2365-2369 at ¶¶4, 5, 8 and 9; R.O.A.2452 ("Only Noatex has rights in the $260,410.15."). The total amount of these invoices (hereinafter "the Noatex invoices") was $295,932.61,[5] which exceeded the amount of the interpleader fund. However, as Noatex's president explained,

> The total amount of these invoices was more than $260,410.15. APMM made payments to

[5] Noatex first billed APMM for the Noatex invoices totaling $295,932.61 in a Statement dated December 21, 2011 (approximately one month after APMM filed its interpleader complaint). R.O.A.7311-7312. Noatex described the December 21, 2011, Statement, which listed each Noatex invoice, as "show[ing] that Noatex had sought payment from APMM of amounts that included the *$260,410.15 sum that APMM continues to seek to interplead.*" R.O.A.6961 (emphasis added). As discussed below, this same amount, based on the same Noatex invoices, was again billed to APMM in a Statement dated January 23, 2012, the significance of which will become apparent.

> Noatex in February 2012 that reduced the unpaid balance to $260,410.15 on those invoices.[6]

R.O.A.2368, ¶10.

Finally, on March 3, 2014, almost two and one-half years after filing the Interpleader Case, APMM was discharged as a disinterested stakeholder, and granted permanent injunctive relief pursuant to 28 U.S.C. §2361. The district court enjoined Kohn, King and Noatex "from filing any proceedings against Plaintiff relating to the interpleader fund without an order of this Court allowing the same." Pet. App. I at 96. Three weeks later, the district court denied King's Motion for Summary Judgment and dismissed Kohn as an interpleader defendant, stating:

> At present, Kohn Law Group has no interest in the fund, and any dispute between it and Noatex to the fund is only speculative and hypothetical. * * * [T]he purported lien [on the interpleader fund as payment for unpaid legal fees] will only come into play if Noatex is

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[6] In February 2012, APMM made two payments directly to Noatex: One, for $35,522.46, was paid on the Noatex invoices totaling $295,932.61, and the remaining $260,410.15 was interpleaded. The other payment, for $17,673.51, resolved an extra-contractual dispute between Noatex and APMM. These three amounts – the interpleader fund and the two payments paid to Noatex in February 2012 – total $313,781.56. The significance of the total amount is discussed *infra.*

> found to have rights in the fund, which may or may not happen.

Auto Parts Mfg. Miss. Inc. v. King Constr. of Houston, L.L.C., 2014 U.S. Dist. LEXIS 38305 *15-16 (N.D. Miss. 2014).

And with that, the district court sent the Interpleader Case into its second phase.

In October 2014, Noatex and King settled their adverse claims to the interpleader fund, each agreeing to distribution of one-half of the settlement proceeds. R.O.A.3136-3148. The Settlement Agreement, drafted by Kohn, mischaracterized the claims of Noatex and King as both being directly against APMM, and purported to "reserve" the ability of Noatex and King to pursue APMM notwithstanding the interpleader injunction, stating in part:

> 4. This Agreement does not establish or resolve whether the registry deposit is or ever was owed by APMM, wholly or in part, either to Noatex or to King Construction. APMM is not one of the Parties to this Agreement.
>
> The Parties do agree that the King Construction allocation shall not be deemed or credited as a payment against APMM's debts or other obligations owing to Noatex, as to which Kohn Law holds a lien. * * * [B]oth of the Parties reserve and intend to pursue their separate claims against APMM, including interest.
>
> 5. * * * The Parties do not, however, release or discharge any claims or demands against

> APMM. . . . Each of the Parties expressly reserves its rights to pursue relief from APMM.

R.O.A.3141-3144. In light of the settlement, the district court ordered distribution and dismissed the interpleader lawsuit. App. H.

The Settlement Agreement also referenced Kohn's lien and pending California Case, describing Kohn's lien as against the money APMM owed to Noatex that was bound by the Stop Notice and held in the Mississippi district court's registry, stating:

> G. In a written agreement on October 7, 2011,[7] Noatex granted to Kohn Law a contractual lien against the debts that APMM withheld from Noatex in response to the Stop Notice. APMM deposited the sums in the amount of $260,410.15 into registry in the Interpleader Action on February 2, 2012. . . . * * * **Noatex has asserted that the registry deposit [i.e., interpleader fund] is owed by APMM to Noatex, and that it is therefore encumbered by the lien of Kohn Law.** * * *
>
> H. * * * Nothing in this Agreement is intended to release APMM from any liability, including the liability asserted by Kohn Law in [the California lawsuit]. * * *
>
> I. Noatex has claimed that APMM owes additional debts to Noatex, on top of the

[7] This was the Engagement Agreement between Kohn and Noatex upon which Kohn relied to argue the Interpleader Case had to be sent into arbitration.

> $260,410.15 indebtedness that APMM withheld paying to Noatex as of February 2, 2012.[8] **The lien of Kohn Law *does not* encumber any such additional debts.** * * *

R.O.A.3141-3144 (emphasis added).

The interpleader fund was distributed, and the Interpleader Case was dismissed. Kohn and Noatex jointly appealed the discharge of and injunctive relief granted to APMM as well as the denial of arbitration. The Fifth Circuit affirmed APMM's discharge under §1335, expressly noting that the interpleader injunction was permanent in nature, and affirmed the denial of arbitration. The Fifth Circuit stated it had jurisdiction over the appeal, notwithstanding the settlement of the adverse claims to the interpleader fund, because the interpleader injunction was permanent in nature. 782 F.3d at 191-192 ("[T]he district court issued a permanent injunction that survives the subsequent order of dismissal. * * * Because appellants request vacatur of the permanent injunction, there is still a live issue before this court, and the challenge to the district court's injunctive relief is not moot.").

As noted, Kohn's (and Noatex's) petition to this Court to review *Auto Parts I* was denied on October 13, 2015.

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[8] February 2, 2012, is the date APMM deposited the interpleader fund into the court's registry.

B. Events After Denial Of Kohn's First Certiorari Petition

On September 17, 2015, shortly before the first petition for writ of certiorari was denied, the stay in Kohn's California Case was lifted, and so commenced the next chapter in this needlessly long and complicated interpleader saga.

Instead of voluntarily dismissing the California Case, Kohn violated the interpleader injunction by, *inter alia*, opposing APMM's motion to dismiss Kohn's original complaint, and filing and prosecuting a First Amended Complaint ("FAC") alleging Kohn was not seeking recovery of the interpleader fund (but which, in actuality, did just that).[9] R.O.A.6354-6379, 6380-6398. Specifically, the FAC sought to recover an unspecified amount[10] described as "the unpaid portion of APMM's previously-frozen indebtedness to Noatex . . . [which was] ***unpaid debts that King Construction had frozen by issuing the Stop Notice***." R.O.A.6417-6429 at ¶19) (emphasis added). The FAC alleged that on January 23, 2012, an account was stated between Noatex and APMM under which APMM owed Noatex

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[9] APMM filed a Notice of Non-Opposition, noting the motion to dismiss Kohn's original complaint would be rendered moot, and stating in part, "APMM also does not waive its right to move for sanctions against Kohn for violation of the injunctive relief granted in the Mississippi interpleader lawsuit." R.O.A.6399-6402. The California district court granted Kohn's motion to amend and denied APMM's motion to dismiss as moot. R.O.A.7981-7984.

[10] Kohn later filed a Motion for Summary Judgment requesting the amount of $260,410.15. R.O.A.8144-8173.

the sum of $313,781.56. *See*, n. 5-6, *supra*. Kohn alleged,

> 29. Under the written engagement agreement that Noatex signed on October 11, 2011, Noatex has defaulted on its ordinary business obligations to pay for legal services performed by Kohn Law. Noatex agrees that the money owed to Noatex which King Construction had tried to bind in APMM's hands, by issuing the Stop Notice under §85-7-181 on September 23, 2011, is subject to the lien of Kohn Law as provided in the engagement agreement.
>
> 30. The lien of Kohn Law does not encumber any of APMM's other liabilities that may be owed to Noatex. * * *
>
> 35. To enforce its lien, Kohn Law is now entitled to collect the unpaid balance of the obligations stated in the account of $313,781.56 on January 23, 2012. This is so, because APMM relied upon King Construction's invocation of the disputed Stop Notice under §85-7-181 as one of the reasons for not paying Noatex.

R.O.A.6417-6429, FAC at ¶¶29-30, 34-35. Kohn attached to the FAC, a Statement from Noatex to APMM dated January 23, 2012, for a total amount of $295,932.61, *see*, n. 5-6[11], *supra*, which listed several invoices. R.O.A.6494-6495. Significantly, the invoices listed in this Statement are the *same Noatex invoices* upon

[11] As discussed in n. 5 and 6, *supra*, the invoices totaling $295,932.61, less payment of $35,522.46, equal the interpleader fund of $260,410.15.

which Kohn/Noatex relied in the Interpleader Case to oppose King's Motion for Summary Judgment. R.O.A.2360-2369, 6989-6992, 7142-7161, 7416-7420.

Because Kohn's pursuit of the California Case after the stay was lifted on September 17, 2015, violated the permanent interpleader injunction, APMM filed a Motion to Reopen Case and for Enforcement of Injunction Against Kohn Law Group, Inc. (the "contempt motion"), requesting the Mississippi district court to enforce the permanent interpleader injunction and order Kohn to dismiss its California lawsuit. R.O.A.3388-3390.

On August 23, 2016, the Mississippi district court conducted a day-long hearing on APMM's contempt motion during which both parties submitted exhibits, including pleadings filed in the California Case after the stay was lifted. Robert E. Kohn, president of Kohn, appeared and testified. R.O.A.6210-6319.

Kohn's defense against the contempt motion was based on a new argument, re-urged in the Petition at pages 12, 32-33, contending the Mississippi district court erred in holding Kohn in contempt and imposing sanctions because the FAC "plausib[ly] alleg[ed]" that the interpleader fund was *not* money owed to Noatex that had been bound by King's stop notice and, instead, was money owed by APMM to King based on an independent claim arising from APMM's "direct contract with King."[12] This argument failed because it disregarded

[12] Kohn contended this new assertion was supported by APMM's September 19, 2012, response to one of Noatex's many

the undisputed fact of adverse claims to a single stake and was contrary to the express allegations of the FAC.

On October 6, 2016, the Mississippi district court found Kohn in civil contempt of the permanent interpleader injunction, stating in part:

> [A]ccording to the FAC and motion for summary judgment in the California district court case, Kohn Law Group's sole connection to APMM is through the business relationship between APMM and Noatex, and only then due to the engagement agreement concerning the scope of legal representation by Kohn Law Group of Noatex in the dispute with King Construction. . . .
>
> The subject engagement agreement was made an issue in the interpleader action when Kohn Law Group filed a motion to compel arbitration of their dispute pursuant to the terms of that engagement agreement. The engagement agreement, dated October 5, 2011, provides in pertinent part that Kohn Law Group will "represent [Noatex] as counsel in a dispute

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motions requesting dismissal of the interpleader complaint and distribution of the interpleader fund to Noatex. R.O.A.982. Kohn claimed APMM's September 2012 brief argued the fund was owed to King on a direct contract between APMM and King. There was no contract between APMM and King and APMM did not argue there was. This was a deliberate mischaracterization by Kohn of APMM's argument. Indeed, later, in June 2013, Kohn/Noatex stated, "APMM **has never said** that APMM owes any money to King Construction." R.O.A.7148 (emphasis added). Mischaracterizing an argument made by APMM in 2012 is indicative of the type of oppressive litigation conducted by Kohn.

with [King Construction]," but that "[t]o secure [Noatex's] obligations to [Kohn Law Group], it is further agreed that [Kohn Law Group] shall have a lien upon any claim arising from the subject of this engagement, including without limitation any money, property[,] or other things of value received or to be received (directly or indirectly) pursuant to any settlement or compromise based on such a claim or any award made or to be made in [Noatex's] favor by any tribunal based on such a claim, including any payment or award of costs or attorney fees." *See* Engagement Agreement [139-1] at 1, 4, 5. The dispute stemmed from a contract between Noatex and King Construction arising from their contractor-subcontractor relationship and found a vehicle in the interpleader action.

As stated above, this Court's permanent injunction forbids any attempt to "fil[e] any proceedings against APMM *relating to the interpleader fund* without an order of this Court allowing the same." *See* Ct.'s Order Granting APMM's Mot. Dismiss or Discharge Pl. [236] at 1 (emphasis added). Kohn Law Group's allegations "relat[e] to the interpleader fund"; in fact, the allegation pertaining to the situs of the property in dispute in the California district court case identifies the amount in the interpleader fund as the "only property that is the subject of this action." *See* FAC [66 in 2:12-cv-08063-MWF-MRW] ¶19.

For Kohn Law Group to now claim to this Court that the allegations in its FAC do not

> relate to the interpleader fund is utterly nonsensical. From the roots of the interpleader action before this Court sprung the California district court case. Kohn Law Group has continued to pursue that litigation—which this Court's permanent injunction expressly prohibits. APMM has demonstrated that Kohn Law Group failed to comply with the permanent injunction and has satisfied its burden to show contempt by clear and convincing evidence. The Court's judgments, decrees, and orders must not be a mere filament.

Auto Parts Mfg. Miss. Inc. v. King Constr. of Houston, L.L.C., 235 F.Supp.3d 794, 803-804 (N.D. Miss. 2016) (emphasis and brackets original). Kohn was given the opportunity to purge its contempt by "filing a motion to dismiss with prejudice" the California Case within 30 days. *Id.*

On December 7, 2016, after Kohn failed to purge itself of contempt, and after the Mississippi district court denied Kohn's motion for reconsideration of the contempt ruling, APMM filed a Motion for Imposition of Coercive and Compensatory Sanctions Against Kohn Law Group, Inc. (the "sanctions motion"), seeking coercive sanctions and compensatory sanctions for legal fees and expenses incurred by APMM after the date on which the stay in the California Case was lifted and Kohn re-commenced pursuit of APMM in violation of the interpleader injunction. R.O.A.3388-3390.

By Order and Judgment of June 14, 2017, coercive sanctions[13] and compensatory sanctions were imposed against Kohn. App. B and C. The amount of compensatory sanctions was $373,692.50, the total amount of legal fees and expenses incurred by APMM between September 17, 2015, and the filing of the sanctions motion, both in defending APMM in the California Case and in pursuing the contempt ruling in the interpleader lawsuit.

Kohn appealed to the Fifth Circuit the finding of contempt and imposition of sanctions. Noting that a finding of civil contempt "requires the contemnor to have violated 'a **definite and specific order** of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order,'" the Fifth Circuit affirmed the district court's finding of contempt and imposition of sanctions. *Auto Parts II*, 725 Fed.Appx. at 305 (emphasis added). It is this ruling that Kohn requests this Court to review.

C. Factual Misstatements

The following are some of the factual misstatements in the Petition:

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[13] Coercive sanctions of $100/day were imposed, beginning June 14, 2017, until Kohn purged itself of contempt. R.O.A.6033. On July 6, 2017, Kohn paid coercive sanctions of $2,100.00 and dismissed with prejudice its California lawsuit.

1. "King affirmatively denied being a subcontractor of Noatex (as a [Stop Notice] claim would have required). . . ." Pet. p. 9

Once the Interpleader Case commenced, King never claimed to have been in a direct contractual relationship with APMM or denied having been Noatex's subcontractor. Instead, King abandoned its pre-litigation alternative position under Mississippi's mechanic's lien statute, *see*, n. 1, *supra*, and pursued its adverse claim to the interpleader fund as money owed by APMM to Noatex upon which King had a lien. King's Answer to the Complaint for Interpleader identified itself as Noatex's subcontractor, and asserted a cross-claim against Noatex, as general contractor, for the $260,410.15 owed by Noatex to King. R.O.A.147-157. King's Answer to the Amended Complaint for Interpleader likewise acknowledged it was a subcontractor of Noatex. App. P, ¶5-6.

2. "King and Noatex were both seeking payment from the same deposit by APMM of funds in the amount of $260,410.15. In doing so, however, each was asserting a different debt allegedly owed by APMM. . . ." Pet. p. 6

Again, although King's Stop Notice claimed it was owed $260,410.15 either from Noatex based on a contractor/subcontractor relationship, or from APMM, based on a direct contractual relationship with APMM, once litigation commenced, King's only position was that Noatex owed King, as Noatex's subcontractor,

$260,410.15 on unpaid invoices. King never claimed to be owed $260,410.15 by Noatex and another $260,410.15 by APMM, as Kohn sometimes argued; the total amount of King's claim was $260,410.15 and the claim was prosecuted by King, as subcontractor, against Noatex, its contractor. As noted above, before being added as a party, Kohn filed pleadings on behalf of Noatex removing and successfully opposing remand of the Interpleader Case based on the existence of Noatex's and King's adverse claims, and later argued, after Kohn's joinder as a party, that King was required to arbitrate its equitable lien against the interpleader fund, which equitable lien remained after the nullification of its statutory lien.

3. "APMM then complained that distributing the registry funds pursuant to the King-Noatex settlement . . . would leave APMM unprotected from being sued by [Kohn]. . . ." Pet. p. 11-12

APMM never complained the Noatex/King settlement and distribution of the interpleader fund would leave it unprotected. To the contrary, because it was apparent from the language used in the Settlement Agreement that Kohn intended to continue to pursue APMM for the interpleader fund, in violation of the interpleader fund, simply because the Settlement Agreement said Kohn could do so, "APMM filed a 'motion to reopen and for clarification' that asked the district court to explicitly state that the injunction remains in effect." *Auto Parts I*, 782 F.3d at 190. After *Auto Parts I*

stated that the interpleader injunction was, in fact, permanent, the district court denied APMM's motion as moot. R.O.A.3342.

4. "The [Mississippi] district court issued a 32-page opinion, the gist of which was its conclusion that '[t]he crux' of the FAC in the California action 'is the amount that was frozen by the stop notice, that is, the amount of the interpleader fund.' * * * This analysis was the opposite of the California district court's own interpretation of the [FAC]. . . ." Pet. pp. 16-17

Kohn's reference to the "California district court's own interpretation" of the FAC pertains to that court's ruling denying APMM's Rule 12(b)(6) motion to dismiss the FAC. Kohn implies that the California district court held that the FAC did not pursue the interpleader fund. This is another blatant misrepresentation of the facts.

Instead of giving cover to Kohn for its violation of the injunction, the California district court's ruling held only that, because the FAC *alleged* Kohn was not pursuing the interpleader fund (while simultaneously alleging Kohn was pursuing the money that had been bound by the Stop Notice and deposited in the Interpleader Case), then amendment was not futile. The California district court, applying the low bar for defeating a Rule 12(b)(6) motion, stated "Plaintiff seeks to include *allegations* establishing that it does not wish to recover against the interpleader fund but that it

instead seeks to recoup debts [APMM] purportedly owes to a third party." R.O.A.3784 (emphasis added). The California district court in no way determined that Kohn's self-serving allegations that it was not pursuing the interpleader fund had any merit. To the contrary, the California district court found Kohn's improper characterization of its ruling troublesome enough to refute it, stating in a subsequent order denying Kohn's Motion for Ex Parte Application for Temporary Restraining Order:[14]

> * * * Indeed, the whole point of issuing an interpleader injunction is to force the parties to bring any subsequent disputes that implicate the interpleader funds in the original interpleader court. The Court is not prepared to prevent Defendant from doing exactly that.
>
> In addition, this Court has yet to rule on the merits of the dispute about the funds. Plaintiff repeatedly suggests that this Court's Order granting Plaintiff's unopposed request to file the FAC supports its contention that its claims are unrelated to the interpleader funds. (Application at 6-7; Reply at 5). In that Order, however, the Court merely noted that the amendment to the original Complaint did not appear futile in light of Plaintiff's allegations that its claims are separate from the interpleader funds. (Order Granting Plaintiff's Motion to Amend at 2-3 (Docket No. 65)).

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[14] The unsuccessful *ex parte* motion asked the California district court to prohibit the Mississippi district court from considering APMM's contempt motion.

> Contrary to Plaintiff's insinuations, the Court in no way implied that those allegations have merit.

R.O.A.6861.

REASONS FOR DENYING THE WRIT

I. The Decision Below Does Not Conflict With Other Circuits

Kohn contends that certiorari is warranted to resolve conflicts among the courts of appeals concerning (1) the standard to be applied when judging allegations of civil contempt of an injunction or other non-consent order, (2) the standard of review to be used on appeal of a district court's ruling of contempt, and (3) whether interpleader is allowable when the stakeholder is faced with different, independent debts. There is no circuit split; there is only a misrepresentation by Kohn of facts and case holdings.

A. The Standard Applied In Interpreting The Scope Of A Court Order In A Civil Contempt Proceeding Is Consistent Among The Circuits

Kohn argues there is a split among the circuit courts of appeals as to the standard to be applied by lower courts when judging an allegation of contempt for violation of an injunction or other non-consent order. Kohn contends the First, Second, Fourth and Seventh Circuits follow a "four corners" standard that is

"essentially the same 'four corners' standard that this Court adopted for alleged violations of consent orders in [*United States v.*] *Armour* [*& Co.*], 402 U.S. [673] at 682." Pet. at 21. Kohn also requests this Court to overrule *McComb v. Jacksonville Paper*, 366 U.S. 187 (1949), which recognized that a court order should not be worded "so narrow[ly] as to invite easy evasion." *Id*. at 192.

Armour held that, in the context of consent orders, which are the equivalent of contracts entered by the parties, the "scope of a consent decree was discerned within its four corners, not in reference to what might satisfy the purpose of one of the parties or what might have resulted if the matter had been litigated." 402 U.S. at 682; *see also*, *U.S. v. ITT Cont. Baking Co.*, 420 U.S. 223, 236 (1975) ("[T]he basic import of *Armour* . . . is that, since consent decrees and orders have many of the attributes of ordinary contracts, they should be construed basically as contracts. . . ."). *Armour* is inapposite, since this case deals neither with a consent decree nor a contract.

Kohn's argument, when simplified, is that *McComb* should be overruled and, instead, in cases involving claims of contempt of an injunction or other non-consent court order, a "four corners" standard should be employed, with contempt being available only when the alleged contemnor violates the "*actual* terms of the order itself." Pet. at 20 (emphasis original). According to Kohn, an injunction that prohibited Kohn from "filing any pleadings relating to the interpleader fund" was insufficient to support any ruling of contempt;

instead (Kohn contends), Kohn could have been found in contempt only if the injunction had specifically stated Kohn was prohibited from, *inter alia*, opposing dismissal of the California lawsuit and from filing a First Amended Complaint seeking a judgment against APMM based on the same Noatex invoices that were relied upon by Noatex/Kohn in the Interpleader Case.

None of the cases cited by Kohn recognize such a restrictive test, and Kohn's argument highlights the wisdom of *McComb*, which involved a contemnor that, like Kohn, argued its actions did not violate an injunction because the injunction did not specifically forbid the particular actions taken by the contemnor after the injunction was issued. This Court, showing little patience for such manipulation of the language of a court ruling as an excuse for violation thereof, explained that sanctions were warranted even though the violation by the contemnor was not specifically prohibited by the language of the injunction at issue:

> [The contemnors, enjoined from violating the Fair Labor Standards Act] undertook to make their own determination of what the decree meant. They knew they acted at their peril. For they were alerted by the decree against any violation of specified provisions of the Act.
>
> It does not lie in their mouths to say that they have an immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined. Such a rule would give tremendous impetus to the program of experimentation with disobedience of

the law which we condemned in *Maggio v. Zeitz*, [333 U.S. 56, 68 S.Ct. 401, 92 L.Ed. 476] at 69. The instant case is an excellent illustration of how it could operate to prevent accountability for persistent contumacy. Civil contempt is avoided today by showing that the specific plan adopted by respondents was not enjoined. Hence a new decree is entered enjoining that particular plan. Thereafter the defendants work out a plan that was not specifically enjoined. Immunity is once more obtained because the new plan was not specifically enjoined. And so a whole series of wrongs is perpetrated and a decree of enforcement goes for naught.

That result not only proclaims the necessity of decrees that are not so narrow as to invite easy evasion; it also emphasizes the danger in the attitude expressed by the courts below that the remedial benefits of a decree will be withheld where the precise arrangement worked out to discharge the duty to pay which both the statute and the decree imposed was not specifically enjoined.

We need not impeach the findings of the lower courts that respondents had no purpose to evade the decree, in order to hold that their violations of it warrant the imposition of sanctions. They took a calculated risk when under the threat of contempt they adopted measures designed to avoid the legal consequences of the Act. Respondents are not unwitting victims of the law. Having been caught in its toils, they were endeavoring to extricate themselves.

> They knew full well the risk of crossing the forbidden line. Accordingly whereas here the aim is remedial and not punitive, there can be no complaint that the burden of any uncertainty in the decree is on respondents' shoulders.

366 U.S. at 192.

Although it is necessary that court orders not be "so narrow as to invite easy evasion," contempt lies only in the face of an order that is definite and specific (or, said in other ways, clear and unambiguous, or unequivocal), on the one hand, and not vague or ambiguous on the other hand. Within these reasonable parameters are orders that prohibit or require certain conduct but do not specify the particular ways in which the order's prohibition or command may be violated. This is all that is necessary or should be required. To require a heightened level of specificity, as Kohn advocates and which Kohn (erroneously) contends is required by a "four corners" test, is to invite the "experimentation with disobedience of the law" warned against by *McComb*.

Instead, to test whether a court was both specific or clear and not vague or ambiguous, courts have applied a "reasonably understood" test. This was done in *U.S. v. Saccoccia*, 433 F.3d 19 (1st Cir. 2005), the case described by Kohn as applying a "four corners" test that results in contempt only when a heightened level of specificity is found in the underlying court order. *Saccoccia* involved an injunction prohibiting RICO defendants from "transferring assets that the

government alleged would be forfeitable upon conviction," including $140 million identified in an attachment to the injunction. 433 F.3d at 22. The issue was whether the defendants' attorneys violated the injunction when they received payment from the defendants for legal services. In analyzing a holding of contempt against the attorneys, the First Circuit observed that for a party to have been in contempt of a court order, the order must have been "clear and unambiguous."

Saccoccia[15] addressed the First Circuit's standard in determining whether the scope of an injunction issued under the RICO Act encompassed the conduct of the alleged condemnor, described as follows:

> We focus on the "clear and unambiguous" prong together with the violation prong. This court has, over the years, provided guidance as to how the "clear and unambiguous" requirement should be analyzed. First, "the test is whether the putative contemnor is 'able to ascertain from the four corners of the order precisely what acts are forbidden.'" *Goya Foods, Inc. v. Wallack Mgmt. Co.*, 290 F.3d 63, 76 (1st Cir. 2002) (quoting *Gilday v. Dubois*, 124 F.3d 277, 282 (1st Cir. 1997)). The purpose of this "four corners" rule is to assist the

[15] Of note, *Saccoccia* cited *McComb* for the proposition that "[c]ivil contempt may be imposed to compel compliance with a court order or to compensate a party harmed by non-compliance." 433 F.3d at 27. Similarly, *In re GMC*, 61 F.3d 256, 259 (4th Cir. 1995), also relied upon by Kohn, cited *McComb* when stating, "The appropriate remedy for civil contempt is within the court's broad discretion. *McComb*, 336 U.S. at 193-94."

potential contemnor by narrowly cabining the circumstances in which contempt may be found. It is because "the consequences that attend the violation of a court order are potentially dire," *Project B.A.S.I.C.*, 947 F.2d at 17, that "courts must 'read court decrees to mean rather precisely what they say,'" *id.* (quoting *NBA Properties, Inc. v. Gold*, 895 F.2d 30, 32 (1st Cir. 1990)). As the Supreme Court has written:

> The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. *Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid*.

Int'l Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n, 389 U.S. 64, 76, 88 S.Ct. 201, 19 L. Ed. 2d 236 (1967) (identifying the specificity requirements of Fed. R. Civ. P. 65(d) as relevant to certain contempt inquiries); *see also Sanders v. Air Line Pilots Ass'n, Int'l*, 473 F.2d 244, 247 (2d Cir. 1972). Along the same lines, "we must read any ambiguities or omissions in . . . a court order as redounding to the benefit of the person charged with contempt." *NBA Properties*, 895 F.2d at 32 (second alteration in original) (internal quotation marks and citation omitted).

* * *

> The Order in this case, therefore, must have "*left no reasonable doubt*" that an attorney would be violating its terms were that attorney to accept the post-guilty verdict attorneys' fees in question. *Project B.A.S.I.C.*, 947 F.2d at 17.

433 F.3d at 27-28 (emphasis added).

Saccoccia reversed the contempt ruling because the injunction was ambiguous as to which assets were protected from use. The First Circuit emphasized that the attorneys, before receiving payment for legal services, had "requested clarification from the government, via the district court, as to which of Saccoccia's assets could be used to pay attorneys' fees," so as to avoid violating the injunction *Id.* at 29. (Kohn likewise could have sought clarification before proceeding with the California Case.) The First Circuit noted that the ambiguity of the injunction was reflected by the district court's ruling, on the attorneys' request for clarification, that the government had failed to show that the defendant was left without any assets to pay his attorneys, observing, "If the district court had understood the Order to block all payments of attorneys' fees from whatever source, one would not have expected it to make such a statement." *Id*. at 30.

The circuits employ essentially the same standard when reviewing the scope of a court order in a civil contempt proceeding, though they may identify the standard by different names. Like the First Circuit,

the Second, Eighth and Eleventh Circuits use the term "clear and unambiguous." *See, Derma Pen, LLC v. 4EverYoung, Ltd*., 2018 U.S. App. LEXIS 15047 (10th Cir. 2018); *Ga. Power Co. v. NLRB*, 484 F.3d 1288, 1291 (11th Cir. 2007); *CBS Broad. Inc. v. FilmOn.com, Inc.*, 814 F.3d 91, 98 (2d Cir. 2016); *Imageware, Inc. v. U.S. West Communs.*, 219 F.3d 793, 797 (8th Cir. 2000). The Fourth Circuit uses the synonymous term "clear and unequivocal." *In re GMC*, 61 F.3d at 259. The Seventh Circuit recognizes contempt for violation of an order that "set[ ] forth in specific detail an unequivocal command." *Ferrell v. Pierce*, 785 F.2d 1372, 1378 (7th Cir. 1986), and the Fifth, Sixth and Ninth Circuits require a contempt ruling to be supported by an order that was "definite and specific." *Hornbeck Offshore Servs. L.L.C. v. Salazar*, 713 F. 3d 787, 792 (5th Cir. 2013); *Glover v. Johnson*, 138 F.3d 229, 244 (6th Cir. 1998); *Gifford v. Heckler*, 741 F.2d 263, 265 (9th Cir. 1986).

The circuits also recognize that no order can adequately predict future conduct that may constitute a violation of its terms, and, therefore, those subject to a court order must comply with the reasonably understood terms of the order. As stated in *Saccoccia*, the language of the order "must have 'left no reasonable doubt'" that intended action would violate the order. 433 F.3d at 28. *See also*, *Inst. of Cetacean Research v. Sea Shepherd Cons. Soc'y*, 774 F.3d 935, 953-954 (9th Cir. 2014) (*citing McComb*, court order is subject to reasonable interpretation; unreasonable interpretation, even on advice of counsel, will not save from contempt); *Alley v. United States*, 560 F.3d 1195, 1206-1207 (11th

Cir. 2009) (text of injunction subject to "reasonable interpretation;" injunction that gives "fair warning" of forbidden acts cannot be avoided on mere technicality); *Coca-Cola Co. v. Purdy*, 382 F.3d 774 (8th Cir. 2004) (injunction "must provide a person of ordinary intelligence a reasonable opportunity to understand what is prohibited") (*citing Schenck v. Pro-Choice Network*, 519 U.S. 357, 383 (1997)); *Haskins v. Stanton*, 794 F.2d 1273, 1277 (7th Cir. 1986) (unreasonable interpretation of injunction will support contempt ruling).

Here, the injunction enjoined Kohn "from filing any proceedings against Plaintiff relating to the interpleader fund without an order of this Court allowing the same." Pet. App. 96. This language followed the language of 28 U.S.C. §2361, which states:

> In any civil action of interpleader or in the nature of interpleader under section 1335 of this title [28 USCS § 1335], a district court may issue its process for all claimants and enter its order restraining them from *instituting or prosecuting any proceeding* in any State or United States court *affecting the property, instrument or obligation involved in the interpleader action until further order of the court*.
> * * *

(emphasis added). The question, then, is whether the language of the injunction was sufficient for it to be reasonably understood to prohibit continued prosecution of the California Case. The answer is, yes. As described by Kohn, the interpleader fund was money owed to Noatex that was bound in APMM's hands by

the Stop Notice and against which King had only a derivative claim. Kohn's FAC, as well as Kohn's opposition to APMM's motion to dismiss the FAC, stated that Kohn's lien was only against money that had been bound by King's Stop Notice. It is as simple and as clear as that.

Kohn's argument that the Fifth Circuit employs a "flexibility standard" is an attempt to mask the clarity of the facts and the lower court's ruling. The so-called "flexibility standard" about which Kohn complains comes from the following language in *Hornbeck Offshore Servs. L.L.C. v. Salazar*, 713 F.3d 787, 792 (5th Cir. 2013):

> "A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." [cit. omit.] For civil contempt, this must be established by clear and convincing evidence. * * *
>
> Though the court order must be clear, a court "need not anticipate every action to be taken in response to its order, nor spell out in detail the means in which its order must be effectuated." [cit. omit.] The order must "state its terms specifically; and describe in reasonable detail . . . the act or acts restrained or required," Fed.R.Civ.P. 65(d), but a district court is entitled to a degree of flexibility in vindicating its authority against actions that, while not expressly prohibited, nonetheless violate the reasonably understood terms of the order.

There is no "flexibility standard". Clearly the Fifth Circuit requires a court order to have been definite and specific in order to support a finding of contempt. What Kohn mislabels as a "flexibility standard" is nothing more than the Fifth Circuit's following of this Court's recognition in *McComb* that it is necessary that court orders not be "so narrow as to invite easy evasion." 366 U.S. at 192.

Kohn's petition requests this Court to disavow the reasoned ruling of *McComb* and to, instead, impose an unrealistic standard that no contempt of an injunction can occur unless the action undertaken was expressly and specifically described as being prohibited. The petition should be denied.

B. The Proper Standard Of Review Was Applied In Reviewing The District Court's Ruling Of Contempt

In affirming the sanctions against Kohn, the Fifth Circuit stated as follows:

> We review a district court's decision to impose civil contempt on that basis for abuse of discretion. [*citing Hornbeck*, *supra*]. The district court's finding that the contemnor violated an order must be supported by "clear and convincing evidence," but we accept particular factual determinations as true unless they are clearly erroneous. [cit. omit.]

App. A at 2. Kohn equates the standard employed by the Fifth Circuit in reviewing a *decision* to impose civil

contempt (abuse of discretion) with the standard for reviewing the scope of a court order and whether the alleged contemnor's actions or inactions were in violation thereof (*de novo*). Kohn complains that the Fifth Circuit should have conducted a *de novo* review of the scope of the interpleader injunction as compared against Kohn's continued pursuit of litigation in California after the interpleader injunction was issued, but that the Fifth Circuit instead applied an abuse of discretion standard. It is apparent, however, that the Fifth Circuit did conduct a *de novo* review. The Fifth Circuit stated,

> *We conclude* that Kohn Law violated the district court's injunction, and that injunction was sufficiently clear under our precedent to sustain civil sanctions; even if the district court's injunction did not "expressly prohibit[ ]" [*citing Hornbeck*, *supra*] Kohn Law's conduct, *though we think it did*, we also reject the assertion that this would work a constitutional harm.

Pet. App. A at 3 (emphasis added, cits. omit., brackets original).

Moreover, Kohn made no claim of error regarding the standard of review employed by the Fifth Circuit in its Petition for Rehearing, and should not now be allowed to argue this as error warranting review by this Court.

C. APMM Properly Employed Interpleader In The Face Of Adverse Claims

Kohn's third question presented for review—whether "interpleader [can] be allowed, when the allegedly adverse creditor-claimants are asserting different debts allegedly owed by an interpleading plaintiff," Pet. at ii—is founded upon a premise not present in the Interpleader Case, *i.e.*, that APMM owed separate debts to Noatex and to King, each for $260,410.15, but interpleaded only enough money to satisfy one of the non-adverse debts.

If Kohn's portrayal in the Petition of the claims of King and Noatex were accurate, then APMM agrees interpleader would not have been appropriate. But, as shown above, the portrayal is blatantly inaccurate. It was only because APMM was faced with adverse claims that Kohn, as counsel for Noatex, was able to remove the Interpleader Case and successfully oppose King's request for remand on the basis of subject matter jurisdiction existing under §1335, and to argue that King was required to arbitrate its "derivative" and "equitable" claim for payment owed to King by Noatex.

CONCLUSION

The Petition is replete with mischaracterizations of the facts, rulings in the lower courts, and case law. It does not involve a decision in conflict with decisions of other Courts of Appeals, nor does it involve an

important but unsettled question of federal law. The Petition should be denied.

Respectfully submitted,

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