UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:97-CV-343-H

AMC OF LOUISVILLE, INC.,
f/k/a ADVANCE MACHINERY COMPANY, INC. PLAINTIFF

V.

CINCINNATI MILACRON INC.,
CINCINNATI MILACRON MARKETING
COMPANY, TIPTON MACHINERY COMPANY,
and JOHN GROVE DEFENDANTS

MEMORANDUM OPINION

After its machine tool distributorship agreement was terminated on October 31, 1996, Plaintiff AMC of Louisville, Inc. ("AMC") sued the terminating manufacturer, Cincinnati Milacron Inc. ("Milacron"), and its marketing division, Cincinnati Milacron Marketing Company ("CM Marketing"), alleging numerous claims sounding in contract and tort. In later amended complaints, Plaintiff also claimed recovery in tort from Milacron's new distributor in the former AMC territories, Tipton Machinery Company ("Tipton"), and one of Tipton's managers and equity owners, John Grove. In its August 18, 1998, Memorandum Opinion and Order, the Court dismissed the claims arising from events in 1991 and 1992, and discussed the legal standards applicable to the later claims. AMC has filed subsequent amended complaints. The various Defendants now move for summary judgments on many of the remaining claims.[1] The Court will outline the material facts before addressing the legal merit of the parties'

[1]The Court addressed Plaintiff's motion for a partial summary judgment as to its claim for breach of contract in Milacron's failure to pay certain service fees (Count VIII) in a separate opinion.

arguments. The Court has had an opportunity to hear discussion of these issues at a conference. The conclusions in this Memorandum Opinion evolve in large part from those discussions and the analysis first suggested in the Court's earlier consideration of these issues.

I.

The Court described much of this case's relevant factual background in its earlier Memorandum Opinion dated August 18, 1998. Most of those events, particularly those taking place in 1991 and 1992, merely establish a basis for AMC's subsequent suspicion regarding later events. As to the later events, the Court has attempted to separate the logical inferences flowing from the actual evidence and what is merely speculation and argument.

Milacron manufactures different types of machine tooling equipment, and sells that merchandise through a direct sales force and a system of geographically assigned independent distributors. Before Milacron gave notice of its termination of AMC's distributorship on October 1, 1996, AMC was the partially exclusive distributor of Milacron goods in all of Indiana and most of Kentucky, and Tipton was the distributor of Milacron goods in all of Ohio and three Kentucky counties outside Cincinnati. Grove was a Tipton executive and owned an equity stake in the Tipton business.[2] In addition to its Milacron line, AMC and Tipton also carried machine tools produced by other manufacturers. The Milacron-AMC distributorship agreement provided for termination by either party upon thirty days written notice:

> **TERMINATION—OBLIGATIONS UPON TERMINATION**
> (b) Either party may terminate this Agreement for any reason (with or without cause) at any time by providing the other party at least thirty (30) days

[2]The alleged circumstances during 1991 and 1992 under which Grove acquired his job and equity stake at Tipton and under which Tipton got distributorship rights in the three Kentucky counties outside Ohio are detailed in the Court's previous opinion. Although legal liability based upon this alleged incident is barred by the statute of limitations as to Tipton and Grove, it could still affect AMC's rights as against Milacron and CM Marketing.

> prior written notice thereof. It is mutually agreed and relied upon hereby that the exercise of such 30 day termination notice provision by Milacron shall not result in, or create any right of compensation or indemnification to [AMC] . . ., notwithstanding any investment in or buildup of facilities, inventory, staffing, or otherwise by [AMC] arising from this Agreement.

Distributorship Agreement, Mar. 19, 1991, at ¶ 15(b).

In August of 1996, Tipton held a weekend golf outing for a number of its suppliers in West Virginia. The golf outing was an annual event, and Milacron executives were among those attending. Plaintiff claims that at the golf outing Tipton and Milacron discussed or reached an agreement to terminate AMC and to grant the AMC territories to Tipton. The record contains no specific evidence of this. Tipton and Grove claim that no business was discussed during the outing.

The reliable evidence of the negotiations between Milacron and Tipton is discrete. In September of 1996, Milacron supported a booth display at the biannual International Machine Tool Show in Chicago Illinois. Many Milacron distributors participated in the booth display, including both Tipton and AMC. According to Milacron's executives, Milacron was considering termination of the AMC distributorship at this time. During the IMT Show, Milacron requested a meeting with Tipton representatives, including Grove. At that meeting, Milacron informed Tipton and Grove that termination of AMC's distributorship was under consideration, and the parties discussed a potential assignment of the territory to Tipton. Milacron identified some reasons for terminating AMC, including poor corporate relations, poor AMC performance, failure by AMC corporate executives to attend the IMT Show, and the possibility that AMC would terminate the contract itself. Specifically, Milacron claim that AMC's executives complained too much or criticized the manufacturer and its products too harshly. AMC asserts

that most of its criticisms were offered by its sole owner, Denis M. Frankenberger, in his capacity as a member of Milacron's Distributor's Council. Moreover, AMC claims that Milacron encouraged Frankenberger, as a representative of the various Milacron distributors, to make criticisms, scrutinize the company, and push for product redesign and redevelopment. The parties' briefs do not detail the precise purposes of the Council, but a representative of Tipton did sit on it at some time.

It is unclear whether Milacron had decided finally to terminate AMC before the IMT Show meeting. AMC argues that, in any event, Milacron was not considering an AMC termination before January 1, 1997, and probably not before the summer of 1997. AMC further contends that Tipton and Grove persuaded Milacron to accelerate the AMC termination to an earlier date. Milacron requested a proposed business plan for Indiana and Kentucky from Tipton. Tipton eventually submitted such a plan. Tipton and Grove flew to Cincinnati for at least two meetings with Milacron before the two companies agreed to Tipton's appointment as the distributor for the former AMC territories. They executed an agreement on October 10, 1996, and the Tipton distributorship commenced November 1, 1996. Milacron had given written notice of termination to AMC on October 1, 1996, so their arrangement was over on October 31, 1996.

II.

Eight substantive claims are pending against Milacron and CM Marketing. Those two Defendants have moved for summary judgment on the first six—breach of express or implied contract, fraud and estoppel, tortious interference with contractual relations, tortious interference with prospective economic advantage, unjust enrichment, promissory estoppel, and breach of the

duty of good faith and fair dealing.[3] Since they are all contract claims, the Court will first consider the breach of contract, unjust enrichment, promissory estoppel, and good faith claims as a group.

Milacron argues that, because the March 19, 1991, distributorship agreement is literally between CM Marketing and AMC, Milacron itself cannot be liable for any of the contract claims.

The Court does not know the precise corporate relationship between Milacron and CM Marketing, and differentiating them seems a fruitless endeavor. Ignoring agency or corporate questions, Milacron argues that its October 1, 1996, notice of intent to terminate the distributorship ended the contract without a breach (and that the 1992 termination of AMC's distributorship immediately outside Cincinnati also gave thirty days notice), so the breach of contract claim must fail. In response, AMC makes three arguments—first, that the thirty-day termination clause is unconscionable; second, that thirty days notice is unreasonable under Kentucky's adopted version of the Uniform Commercial Code ("UCC"); and third, that there was an implied or oral agreement in addition to the written contract, and that the termination violated this additional contract even if it was proper under the express one. The Court finds that the terminations were properly executed after thirty days notice, and that the unambiguous language of the termination provision demands no cause or reason for a termination.

An unconscionable contract is "'one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other.'"

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[3]Counts VII and VIII concern alleged failures of Milacron and CM Marketing to pay certain sales commissions and service fees owed to AMC. This Memorandum Opinion does not address those counts. Plaintiff's "claim" for punitive damages in Count IX is not a true claim, but rather a damages request. Punitive damages are only available if the Plaintiff were to succeed on the substantive claims in Counts II, III, or IV.

Louisville Bear Safety Serv., Inc. v. South Central Bell Tel. Co., 571 S.W.2d 438, 439 (Ky. Ct. App. 1978) (citation omitted); *see also Forsythe v. BancBoston Mortgage Corp.*, 135 F.3d 1069, 1074 (6th Cir. 1997). "The doctrine forbids only one-sided, oppressive, and unfairly surprising contracts, and not mere bad bargains." *Forsythe*, 135 F.3d at 1074. The termination provision of the AMC agreement cannot meet this exacting standard. Because either side could terminate on thirty days notice, the contract is not one-sided. Because AMC's executives were fully aware of the potential effects of the termination provision, they could not be unfairly surprised. And nothing in the clause can be properly characterized as oppressive: Business contractors routinely agree to at-will termination terms, because such terms have the effect of letting market performance regulate conduct and effort under the agreement. AMC was an experienced and sophisticated dealer of machine tool equipment, and had entered into similar distributorships with other manufacturers in the past. The termination clause specifically stated that its provisions would apply "notwithstanding any investment in or buildup of facilities, inventory, staffing, or otherwise by [AMC]." Even knowing and acknowledging the inherent risks, AMC agreed to at-will cancellation of the distributorship, so it cannot now plead unconscionability.

Kentucky's version of the UCC provides for reasonable notice in the absence of a specific time provision. *See* Ky. Rev. Stat. Ann. § 355.2-309 (Michie 1996 & Supp. 1998). Here, of course, the distributorship agreement called for a thirty days notice in the event of at-will termination. More specifically, "[t]ermination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable." Ky. Rev. Stat. Ann. § 355.2-309(3) (Michie 1996 & Supp. 1998). In the

present case, notification was not dispensed, and the parties expressly agreed in writing that thirty days was a reasonable notice of intent to terminate. Thus, the UCC has no application to the contested provision.

Finally, there is no proof that a secondary, oral, or implied distributorship agreement existed between Milacron and AMC whose terms were any different from those of the express agreement between CM Marketing and AMC. While it is true that Milacron completed hundreds of sales directly to AMC, the sales were made by and through AMC's express distributorship agreement with CM Marketing. They do not independently evidence a separate distributorship contract, and the Court will not create one. Therefore, CM Marketing's termination adhered to the agreement's terms, and Plaintiff's breach of contract claim must fail.

AMC's claims for unjust enrichment, promissory estoppel, and violation of the covenant of good faith and fair dealing all share the same basic flaw—they are superceded or excused by the express contract or Milacron's and CM Marketing's proper termination thereof. AMC claims unjust enrichment because an AMC executive served on the Milacron Distributor's Council in connection with the AMC distributorship, prior to the October 1, 1996, termination, and his services in that capacity should have been rewarded with a continued contract. But since "[t]he doctrine of unjust enrichment has no application in a situation where there is an explicit contract which has been performed," the legality of CM Marketing's termination prevents the claim from going forward. *Codell Constr. Co. v. Commonwealth of Ky.*, 566 S.W.2d 161, 165 (Ky. Ct. App. 1977); *see also Tractor and Farm Supply, Inc. v. Ford New Holland, Inc.*, 898 F. Supp. 1198, 1206 (W.D. Ky. 1995).

Similarly, "estoppel cannot be the basis for a claim if it represents the same performance

contemplated under a written contract," and "although Plaintiff[] may have been induced to develop a valuable customer base in their trade area, doing so was a requirement of their signed dealership agreement." *Ford New Holland*, 898 F. Supp. at 1205. Again, the fact that Frankenberger served on the Distributor's Council did not and could not create any promissory obligation for CM Marketing to continue its distributorship beyond the at-will/thirty days notice requirement already contained in the express contract.

And though there may be implied to all contracts a covenant of good faith and fair dealing, "'to act according to the express terms of a contract for which [a party] bargained'" cannot violate such a covenant. *Hunt Enterprises, Inc. v. John Deere Indus. Equip. Co.*, 18 F.Supp.2d 697, 700 (W.D. Ky. 1997) (*quoting Travelers Ins. Co. v. Corporex Properties, Inc.*, 798 F. Supp. 423, 425 (E.D. Ky. 1992)), *aff'd*, 162 F.3d 1161 (6th Cir. 1998); *see also Big Yank Corp. v. Liberty Mut. Fire Ins. Co.*, 125 F.3d 308, 313 (6th Cir. 1997). This rule has a strong basis in policy and reason: If the contract explicitly allows termination under a certain set of conditions and circumstances, there is neither bad faith nor unfairness in allowing one of the parties to terminate in accordance with those terms. To hold otherwise would be against all reason and would wrongly expand the limits of an express bargain.

III.

The Court now considers AMC's three tort claims—fraud, tortious interference with contractual relation, and tortious interference with prospective economic advantage. AMC seems to base its fraud claim on (1) the fact that Milacron encouraged Frankenberger to criticize its product line, then terminated the distributor, in part, because of excessive criticism of its product line, and (2) the fact that the contract required AMC to attend the IMT Show and attempt

sales even though their termination was under active consideration.[4] As the Court outlined in its August 19, 1998, Memorandum Opinion, a fraud claim must allege (1) material misrepresentation, (2) scienter, (3) detrimental reliance, and (4) injury. *See Scott v. Farmers State Bank*, 410 S.W.2d 717, 720 (Ky. 1966); *see also CMI v. Intoximeters, Inc.*, 918 F. Supp. 1068, 1085 (W.D. Ky. 1995).

As to the first set of facts, even assuming that AMC could prove the first three elements, there is no injury. If Milacron baited Frankenberger's criticism only to use it as a reason to terminate the agreement, no harm or injury came of it because Milacron needed no reason to end the distributorship. The arrangement was strictly at will, so no injury could flow from the misrepresentation. As to the second set of facts, AMC has alleged no misrepresentation by the manufacturer. Apart from its thirty-day disclosure obligation, Milacron was under no duty, contractual or otherwise, to inform AMC that termination was under consideration, so its failure to do so cannot constitute a material misrepresentation. *See* William S. Haynes, Kentucky Jurisprudence § 10-4(c) (1987 & Supp. 1999).

The two tortious interference claims cannot succeed against CM Marketing and Milacron. Kentucky's courts have not recognized a claim against a Defendant for interfering with its own contract or prospective business relationship. *See Intoximeters*, 918 F. Supp. at 1079–80; *Ford New Holland*, 898 F. Supp. at 1207. The reason for not recognizing such a version of the tort is apparent from the case at bar—where a contract is terminated in accordance

[4]The Court agrees with Milacron and CM Marketing that AMC's current theory of fraud and that pled in its Fourth Amended Complaint are based on wholly different facts, raising an important issue under Federal Rule of Civil Procedure 9(b). AMC seems to have abandoned its previous fraud theory based on the failure of Milacron to inform AMC of Grove's alleged 1992 scheme to achieve equity and employment in a distributor in exchange for the three Kentucky counties outside Cincinnati. But because AMC's new theory cannot state a claim for fraud, the Court will not address the pleading problems.

with its own provisions, tort liability should not be had. As in the *Intoximeters* case, "the kind of conduct which is theoretically actionable under this new tort may be of an entirely different quality and character than that found in this case." *Intoximeters*, 918 F. Supp. at 1080.[5] Plaintiff suggests no reason why this matter presents a special circumstance for which the self-interference tort should be adopted and extended. Milacron and CM Marketing were integral players in the business relation, so no claim for interference exists. Furthermore, as outlined below, the record fails to demonstrate improper interference by Milacron, CM Marketing, Tipton, or Grove with the AMC distributorship, either as a contract or as a business relationship. And to the extent that there was a commission owed to AMC for a sale that was prepared or solicited during its distributorship, that Milacron encouraged the customer to delay purchase until Tipton took over the territory, and that commission remains unpaid, it is included in Counts VII and VIII, not in a claim for tortious interference.

IV.

AMC asserts two substantive counts against Tipton and Grove: tortious interference with a contractual relationship and tortious interference with prospective business advantage.[6] Tipton and Grove have each moved for summary judgment on both counts.

Because Milacron terminated AMC's distributorship with proper and timely notice, the Court can easily dispense with Plaintiff's claim of tortious interference with contractual

[5]Additionally, Count III would be prohibited because the Court finds that Milacron never breached the distributorship agreement, resulting in no interference with the contract. *See infra*.

[6]Again, Count IX is not a claim, but rather a damages request contingent upon liability under one of AMC's tort claims.

relations. AMC argues that Tipton and Grove interfered with the distributorship agreement existing between AMC and Milacron. An essential element of an interference with contractual relations claim is that the contract was indeed breached. *See Beard v. Carrollton R.R.*, 893 F.2d 117, 123 (6th Cir. 1989) ("Kentucky makes breach of the contract an essential element of the tort."); *Industrial Equip. Co. v. Emerson Elec. Co.*, 554 F.2d 276, 289 (6th Cir. 1977); *Intoximeters,* 918 F. Supp. at 1079; *Carmichael-Lynch-Nolan Adver. Agency, Inc. v. Bennett & Assocs., Inc.*, 561 S.W.2d 99, 102 (Ky. Ct. App. 1977) (Defendant must "procure[] the breach"); *see also* Restatement (Second) of Torts § 766 & cmts. f, g (1977). The Court has already determined that the distributorship contract was not breached because Milacron properly invoked the valid thirty-day at-will termination provision. *See supra*. Thus, the claim against Tipton and Grove for interference with contractual relations must also be dismissed.

Though conceptually similar to Count III, Plaintiff's claim for tortious interference with prospective business advantage does not depend on the breach of an underlying contract. Kentucky has adopted the tort from Section 766B of the Restatement (Second) of Torts, which provides that

> One who intentionally and improperly interferes with another's prospective contractual relation . . . is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relation, whether the interference consists of
>
> (a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or
>
> (b) preventing the other from acquiring or continuing the prospective relation.

Restatement (Second) of Torts § 766B (1977); *see Intoximeters*, 918 F. Supp. at 1080 & n.3; *National Collegiate Athletic Ass'n v. Hornung*, 754 S.W.2d 855, 857 (Ky. 1988). Central to Plaintiff's claim is proof that an interference occurred and of impropriety in Defendants' actions.

See Intoximeters, 918 F. Supp. at 1080; *Ford New Holland*, 898 F. Supp. at 1206–07; *Hornung*, 754 S.W.2d at 858. At a pretrial conference, the Court had an opportunity to thoroughly discuss this particular issue and each party's theories about it.

Kentucky subscribes to the Restatement's definitions and illustrations of interference and impropriety.[7] *See Intoximeters*, 918 F. Supp. at 1080; *Ford New Holland*, 898 F. Supp. at 1206; *Hornung*, 754 S.W.2d at 857–58. And since the definition of "improper" could be highly subjective, past cases and the Restatement help to clarify the limits of proper behavior. The state and federal courts have noted that "no action lies in Kentucky for [tortious interference] unless the inter-meddler employs unlawful means, such as fraud, deceit or coercion." *Henkin, Inc. v. Berea Bank & Trust Co.*, 566 S.W.2d 420, 425 (Ky. Ct. App. 1978); *see also Stratmore v. Goodbody*, 866 F.2d 189, 194–95 (6th Cir. 1989). Unless "the interference is malicious or without justification, or is accomplished by some unlawful means such as fraud, deceit, or coercion," impropriety does not exist. *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 487 (Ky. 1991). In the absence of a bad-faith, illegitimate motive or unlawful or wrongful conduct, there is no tortious interference. *See Hornung*, 754 S.W.2d at 858; *Leo J. Brielmaier Co. v. Newport Housing Auth.*, 173 F.3d 855 (Table), 1999 WL 236193, at **7–**8 (6th Cir. 1999).

Impropriety should not be confused with aggressive, competitive business practices. In *Hornung*, the Kentucky Supreme Court held that, where the NCAA exercised its contractual

[7]The Court may consider "(a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference and (g) the relations between the parties." Restatement (Second) of Torts § 767 (1977).

right to disapprove on-air broadcasters for televised games, it was not improperly interfering in the contract or prospective relationship between the television network and the disapproved broadcaster. Such a business practice was not malicious, and asserting its legitimate interests did not taint the network with impropriety. *See Hornung*, 754 S.W.2d at 857–59. Since "a party seeking recovery must show malice or some significantly wrongful conduct," the pursuit of normal business motives by normal business means would not suffice. And though "malice may be inferred in an interference action by proof of lack of justification," the defendant's profit motive, under the Restatement, was justification enough. *Id.* at 859; *cf. Hunt*, 18 F.Supp.2d at 702–03.

Plaintiff suggests that Tipton and Grove "conspired" to terminate the AMC distributorship. One must assume that at some point Tipton and Grove did coordinate a pursuit of Milacron's Kentucky and Indiana territories. After all, Grove worked for Tipton. However, there is no evidence that any improper motive existed on their parts. Even if one believes that Grove is a liar, cheater, and prone to impropriety, there is no evidence from which to find that he acted on these alleged propensities during 1996. The only evidence shows that Milacron approached Tipton about taking over the AMC territories, and that Tipton submitted a proposed business plan and bargained with Milacron to an eventual distributorship agreement.[8] The bargaining may have even involved persuasion by Tipton for Milacron to accelerate the timing of its termination of AMC. This conduct does not amount to interference, and it is not improper.

That Tipton was a co-member of the Distributor's Council is not evidence of a fiduciary

[8]That Milacron managers attended the golf outing does not tend to prove any material discussions or demonstrate impropriety on Tipton's or Grove's parts, especially since all parties deny discussing business while there.

relationship among the distributors, nor does it imply a code of ethical behavior. AMC and Tipton are both machine tool distributors, so competition between them for exclusive distributorships is a natural result of the market for their services. Based on geographical proximity, they were the most likely potential entrants in each other's markets. AMC cites no support for the proposition that competitors share a fiduciary relationship simply by participating in a council, and there is no evidence that Tipton possessed or used confidential, proprietary information gathered at council meetings to effect or accelerate AMC's termination. None of the facts presented tend to prove an impropriety.

Even if the evidence suggested that Tipton officials approached Milacron during the golf outing, the resulting analysis would not change. The Restatement strengthens this conclusion:

> One who intentionally causes a third person . . . not to continue an existing contract terminable at will does not interfere improperly with the other's relation if
>
> > (a) the relation concerns a matter involved in the competition between the actor and the other and
> > (b) the actor does not employ wrongful means and
> > (c) his action does not create or continue an unlawful restraint of trade and
> > (d) his purpose is at least in part to advance his interest in competing with the other.

Restatement (Second) of Torts § 768(1) (1977). The AMC contract was an at-will agreement. It could be terminated with or without cause and for any or no reason. Tipton had a legitimate interest in promoting its business and securing distributorship arrangements. *See Eastern Ky. Resources v. Arnett*, 892 S.W.2d 617, 619 (Ky. Ct. App. 1995) (pursuit of legitimate interest or right does not amount to impropriety). There is nothing "wrongful" about responding to a manufacturer's requests to meet and discuss a proposed distribution agreement or about offering distribution services in the open market. Nor is there anything wrongful about initiating such

discussions for the same reason.

The tort at issue was never intended to protect at-will contractors from the normal processes of business competition conducted by proper means. *See* Restatement (Second) of Torts § 768 cmt. I (1977) ("The competitor is therefore free, for his own competitive advantage, to obtain the future benefits for himself by causing the termination. Thus he may offer better contract terms . . . and he may make use of persuasion or other suitable means, all without liability."). Beyond its obligation to provide thirty days notice before termination, Milacron was not required to include AMC in future distribution decisions, and nothing about the Tipton-Milacron negotiation process suggests impropriety. And without evidence of improper interference, Plaintiff's claim cannot succeed.[9]

The Court will enter an order consistent with this Memorandum Opinion.

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JOHN G. HEYBURN II
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record

[9]The Court notes that, even if Tipton's and Grove's motions did not succeed on the merits, AMC may have sold its rights to sue them to General Electric Capital ("GEC") in a recent transaction. On November 1, 1997, all intangible assets were transferred to GEC except "accounts receivable" and the claims then pending against Milacron. AMC had yet to assert any claims against Tipton and Grove, so it would appear that Counts III and IV cannot be brought by AMC against them. AMC's argument that these claims might, at some future date, become liquidated and due does not seem correctly to characterize them as "accounts receivable" under any normal definition of that term. But because Plaintiff's tortious interference claims fail on the merits, the Court need not reach this issue.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

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AMC OF LOUISVILLE, INC.,
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V.

CINCINNATI MILACRON INC.,
CINCINNATI MILACRON MARKETING
COMPANY, TIPTON MACHINERY COMPANY,
and JOHN GROVE DEFENDANTS

ORDER

Milacron and CM Marketing have moved for partial summary judgments. Tipton and Grove have moved for full summary judgments. Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that the motion of Milacron and CM Marketing is SUSTAINED as to Counts I, II, III, IV, V, and VI and those claims are DISMISSED WITH PREJUDICE. The motion of Milacron is DENIED as to Counts VII and VIII.

IT IS FURTHER ORDERED that Tipton's and Grove's motions for summary judgments as to Counts III and IV are SUSTAINED and those claims are DISMISSED WITH PREJUDICE. No claims remain against Tipton and Grove.

IT IS FURTHER ORDERED that Tipton's motion in limine to exclude the expert testimony of Michael B. Mountjoy is DENIED as moot.

IT IS FURTHER ORDERED that only Plaintiff's claims in Counts VII and VIII against Cincinnati Milacron Marketing and Cincinnati Milacron Marketing's counterclaims remain. These will be tried commencing February 14, 2000.

IT IS FURTHER ORDERED that all pretrial notices and filings take place on or before **February 7, 2000.**

This _____ day of January, 2000.

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JOHN G. HEYBURN II
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record

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