IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No: 05-CV-0329-GKF-SAJ**
	)	
TYSON FOODS, INC., et al.	)	
	)	
Defendants.	)	

AFFIDAVIT OF DARREN L. BROWN

I, Darren L. Brown, of lawful age, being first duly sworn upon oath, state:

A. BACKGROUND

1. I am employed by Camp, Dresser and McKee ("CDM"), an environmental consulting firm retained by the Plaintiff, State of Oklahoma ("State") in the above-captioned litigation. I have worked in the environmental consulting field since May 1986. I am a Licensed Geologist in the State of Kansas, and received my Engineer in Training Certification from the State of Colorado in 1984.

2. Since 2006, I have been the project manager of CDM's field work conducted on behalf of the State in the case at bar. I am also acting as an expert witness for the State concerning the adequacy of the field sampling program and standard operating procedures. On May 15, 2008, I submitted an expert report and voluminous considered materials to the Defendants.

3. As part of my project management duties, I have been tasked with facilitating the delivery of discoverable documents and items (such as data sheets, field books, photographs, etc.) to the State's lawyers for production to the Defendants.

4. When I receive discoverable material from field personnel, it is my duty to place that material into a file for submission to the State's lawyers. Through this practice, I have delivered thousands of pages of material to the State's lawyers for timely production to the Defendants.

5. On March 25, 2008, CDM assured counsel for the State, including Louis W. Bullock, that all pending discoverable documents in our files had been submitted for production to the Defendants. And CDM believed this to be true at the time. I now know that we were mistaken. It is now apparent that, as of March 25, 2008, there were six complete 2007 field books and pages from three other 2007 field books that had inadvertently not been produced to Defendants during the normal course of discovery. All but 16 pages of these field books were produced to the Defendants on May 15, 2008 as part of my expert "considered" materials.

B. DISCUSSION

Initial Discovery of Three Field Books

6. On May 15, 2008, the State produced thousands of documents to the Defendants as my expert witness considered materials, including the attached 2007 Bennett Field Book, 2007 Supplemental Fall Sampling Field Book, 2007 Lake Sampling Field Book, Fish Sampling 2007 Field Book, Fish Sampling 2007 Field Book (Mulcrone), IRW Fish Shocking Field Book and Intensive Sampling 2007 Field Book (pp. 1 – 70) (*See* Exs. A-1 – A-3; and A-6 – A-9). On June 9, 2008, it was brought to my attention that part of the 2007

Bennett Field Book (pages 91 through 112) and the entire 2007 Supplemental Fall Sampling Field Book and 2007 Lake Sampling Field Book were not produced prior to May 15. The same 2007 Supplemental Fall Sampling Field Book and 2007 Lake Sampling Field Book were also produced to Defendants on May 15 as part of Dr. Bert Fisher's considered materials. (*See* Fisher00005583_2007; and Fisher00005615_2007).

7. I was first made aware of the possibility that these field books were not previously produced when Lithochimeia, Inc. (Dr. Fisher's consulting firm) found that the 2007 Supplemental Fall Sampling Field Book and 2007 Lake Sampling Field Book had not been Bates-numbered prior to the production of considered materials on May 15. Upon learning this, I checked my records from the same time frame and confirmed that CDM did not submit the 2007 Supplemental Fall Sampling Field Book or 2007 Lake Sampling Field Book to counsel for the State prior to delivery of expert considered materials in May 2008. I also determined that the final 22 pages of the 2007 Bennett Field Book were not submitted to the State until I delivered my expert considered materials in May 2008. The first 90 pages of the 2007 Bennett Field Book were produced to the Defendants on August 7, 2007. (STOK0025793 – 25839 (double-sided pages)).

8. The explanation is as follows. On October 29, 2007, Brian Bennett of CDM sent electronic copies of the completed 2007 Bennett Field Book, 2007 Supplemental Fall Sampling Field Book and 2007 Lake Sampling Field Book to me via email. (Exs. A-4 and A-5).[1] At the time these emails were sent, I was at an appointment outside of the office. I did receive the emails on my PDA device, which resulted in the emails being marked as

[1] What Bennett submitted as the "Lake Event 3 and Broken Bow" Field Book attached to Ex. A-5 is the same field book as the "complete '2007 Bennett' field book" referenced in Ex. A-4. *See* BrownCorr0009417 and BrownCorr0009420. For the purposes of simplicity, I refer to this field book as the "2007 Bennett Field Book" herein.

"read" on my office computer. In the course of trying to catch up with client requests upon my return to the office, I simply forgot to place the field book files into a folder for submittal to counsel for the State. I did not recognize my error until June 9, 2008 (as described above).

Additional Field Books and Field Book Pages

9. Since June 10, 2008, CDM has conducted an additional investigation of our files, at the request of counsel, to ensure that there were not any other documents or items that were inadvertently not produced during the normal course of discovery. After this investigation, CDM discovered the following additional field books were produced to Defendants on May 15, 2008 as part of my considered materials, but were not produced earlier through the normal course of discovery:

- Fish Sampling 2007 Field Book (Ex. A-6) (pages 1 through 26)
- Fish Sampling 2007 Field Book (Mulcrone) (Ex. A-7) (pages 1 through 10)
- IRW Fish Shocking Field Book (Ex. A-8) (pages 1 through 19)
- Intensive Sampling 2007 Field Book (Ex. A-9) (pages 1 through 70)

10. CDM's investigation also revealed that pages 71 through 79 of Biological Sampling Field Book #1 had not been previously produced (Ex. A-10). The first seventy pages had been produced to Defendants on STOK_CD01.

11. Additionally, pages 71 through 77 of the above-referenced Intensive Sampling 2007 Field Book were not produced as part of my considered materials. Those pages are attached hereto as Ex. A-11.

12. CDM's investigation further determined that pages 2 through 5 of IRW Misc. 2007 – 2008 Field Book were submitted to counsel on December 24, 2007, but without a referenced field book cover. (Ex. A-12). Therefore, the material may not have an identifiable

Bates number. Pages 2 through 4 were produced to Defendants on May 15, 2008 as part of my considered materials. *Id.* Pages 4 through 91, along with the field book identification cover, have been produced to Defendants through the normal course of discovery (STOK 53700 - 53715).

13. I received the Fish Sampling 2007 Field Book and Fish Sampling 2007 Field Book (Mulcrone) from field personnel via email in August 1, 2007. August 1, 2007 was an extremely busy day on which I received a total of 11 emails requiring same day action and responses related to the case at bar, as well as another field program in a separate case. It seems that, in all of this activity, these field book files were not placed into the folder for submission to the State. This is why Defendants did not receive these Fish Sampling Field Books until May 15, 2008.

14. I received the IRW Fish Shocking Field Book from field personnel via email on August 13, 2007. This was also a busy day. On August 13, 2007, I was planning the Broken Bow Lake sampling program, as well as addressing issues associated with two additional projects. In the midst of my work, I failed to place the IRW Fish Shocking Field Book file into the proper folder for submittal to the State.

15. I did forward the Intensive Sampling 2007 Field Book, and 11 other field books, to counsel for the State via CD on August 2, 2007. On that same date, I also provided a hard copy of the documents and a list of the documents being submitted. For reasons that I do not know, the Intensive Sampling 2007 Field Book was not included in the list or the hard copy with the other 11 field books. Therefore, when counsel for the State sent the materials to the vendor for copying and Bates-numbering, the Intensive Sampling 2007 Field Book was not included. This is why the Intensive Sampling 2007 Field Book was not produced through

the normal course of discovery. Pages 1 through 70 of the Intensive Sampling 2007 Field Book were produced to Defendants on May 15, 2008 as part of my considered materials. (Ex. A-9). The remaining pages (71 – 77) are attached hereto as Ex. A-11.

16. Pages 71 – 79 of Biological Sampling Field Book #1 were not sent to me until June 21, 2008. This was simply the result of an oversight by the author of these Field Book pages.

17. The sampling events chronicled in the attached field Books and field book pages did not involve bacteria. None of these field books would have been pertinent to the issues raised during the hearing on Plaintiff's Motion for Preliminary Injunction.

Further, affiant sayeth not.

Darren L. Brown 6/27/08

Darren L. Brown