

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40131

JAMES E. HELMICK,

Plaintiff-Appellant,

versus

ADOBE RESOURCES CORPORATION,

Defendant,

SANTA FE ENERGY RESOURCES, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Louisiana
(92-CV-963)

(June 9, 1995)

Before JOLLY and BENAVIDES, Circuit Judges, and FITZWATER*,
District Judge.

PER CURIAM:**

After a study of the briefs, and after a review of the record,
and after hearing oral arguments of the parties, we conclude that

*United States District Judge, Northern District of Texas,
sitting by designation.

**Local Rule 47.5 provides: "The publication of opinions that
have no precedential value and merely decide particular cases on
the basis of well-settled principles of law imposes needless
expense on the public and burdens on the legal profession."
Pursuant to that Rule, the court has determined that this opinion
should not be published.

federal jurisdiction is established in this case. In order to establish jurisdiction, we need not decide whether the facts here present an ERISA claim under the analysis of Fontenot v. NL Industries, Inc., 953 F.2d 960 (5th Cir. 1992), because it is clear that diversity jurisdiction exists. Furthermore, we need not decide whether this case is properly decided under the principles of ERISA law because any right to object thereto has been waived by the parties who explicitly tried the case as an ERISA case, and who continue to insist that this case is properly subject to ERISA principles.

In this light, our further consideration leads us to conclude that the plan administrator did not err in holding that the severance plan applied only to involuntary terminations, nor did the administrator abuse his discretion in concluding that Helmick declined employment with Santa Fe for voluntary reasons.

The judgment of the district court upholding the plan administrator's decision in this case is therefore

A F F I R M E D.