

JAMES NGUYEN,
Complainant,

VS.

DELPHI,
Respondent.

FILE DATED

MAR 24 2006

Indiana State Civil Rights Commission

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER**

On December 11, 2005, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

On December 15, 2005, Complainant, James Nguyen ("Nguyen"), filed Complainant's Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order. On January 18, 2006, Respondent, Delphi filed its Brief In Opposition To Complainant's Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order.

Alpha Blackburn, Chairperson of the ICRC, presided over oral argument on Nguyen's Objections on January 27, 2006. Other Commissioners present were Barry Baynard, David C. Carter (the Vice-Chairperson), and Steven A. Ramos. Commissioners absent were John E. Garcia and Chris Gibson. Nguyen was present and was represented by counsel, Richard L. Darst, Esq. of Indianapolis. Delphi was represented by counsel, Jane Ann Himsel, Esq. of the Indianapolis firm of WOODEN & McLAUGHLIN. Arguments of counsel were heard, questions were asked by members of the ICRC, and the cause was taken under advisement.

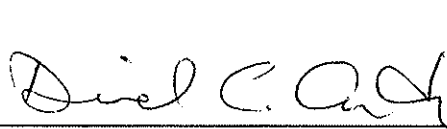
Having carefully considered the foregoing and being duly advised in the premises, the ICRC finds and rules as follows.

1. A party objecting to a proposed decision by an ALJ has the burden of demonstrating an error that affected the result.
2. Nguyen has failed to meet that burden.

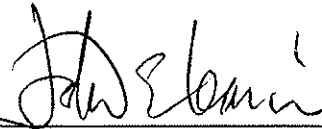
IT IS, THEREFORE, ORDERED

1. Complainant's Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order are **OVERRULED**.
2. The ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

INDIANA CIVIL RIGHTS COMMISSION



COMMISSIONER



COMMISSIONER



COMMISSIONER



COMMISSIONER

Dated: 24 March 2006

To be served by first class mail on the following parties and attorneys of record:

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STATE OF INDIANA
CIVIL RIGHTS COMMISSION

FILE DATED

DEC 12 2005

Indiana State Civil Rights Commission

JAMES NGUYEN,
Complainant,

vs.

DOCKET NO. EMno20110792
EEOC NO. 24FA10078

DELPHI,
Respondent.

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER**

On March 29, 2005, Respondent Delphi filed its Notice Of Completion Of Proceedings At The Federal Trial Court Level And Request For Dismissal Of ICRC Proceedings On The Grounds Of Res Judicata ("REQUEST"). On April 1, 2005, Complainant, James Nguyen ("Nguyen"), filed Complainant's Opposition To Respondent's Notice Of Completion Of Proceedings At The Federal Trial Court Level And Request For Dismissal Of ICRC Proceedings On The Grounds Of Res Judicata ("OPPOSITION"). On October 18, 2005, Delphi filed its Notice Of Delphi Corporation's Filing Of Chapter 11 Bankruptcy Petition.

Having carefully considered the foregoing and being duly advised in the premises, the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Nguyen filed this complaint with the ICRC on November 17, 2000 alleging that his employer, Delphi, was liable for discrimination because of national origin.

The complaint complains of failure to provide assistance, harassment, and failure to pay overtime. COMPLAINT OF DISCRIMINATION (November 17, 2000).

2. Delphi disputes Nguyen's claims. STATEMENT OF FACTS (March 7, 2001).

3. Nguyen elected to file an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e ("Title VII"). SECOND PRE-HEARING ORDER (January 10, 2002). That action was filed in the United States District Court for the Southern District of Indiana ("the federal court").

4. On March 23, 2005, the federal court issued a forty-one (41) page Entry granting Delphi summary judgment in the federal action. This Entry addressed, in detail claims of Nguyen concerning failure to provide assistance, harassment, and overtime. REQUEST, Exhibit A.

5. On the same date, the federal court issued a Judgment in favor of Delphi and against Nguyen.

6. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The ICRC has jurisdiction over the subject matter and the parties

2. This complaint is the same as, or substantially identical to, Nguyen's claim in the federal action in that identical evidence will support the issues raised by the federal action and this complaint.

3. A complaint before the ICRC is barred when it is the same as, or substantially identical to, a prior action in which:

A. A judgment has been rendered by a court of competent jurisdiction;

B. The matters at issue before the ICRC were, or could have been, at issue in the prior action;

C. The prior action was adjudicated between the parties to the complaint before the ICRC; and

D. The judgment in the prior action was rendered on the merits. *Town of Flora v. Indiana Service Corp.*, 222 Ind. 253, 53 N.E.2d 161 (1944); *State, Indiana State Highway Commission v. Speidel*, 188 Ind. App. 453, 392 N.E.2d 1172 (1979); *Johnson v. Indiana Department of Transportation*, ICRC DOCKET NO. EMse93020063 (September 22, 2000); *Worthington v. Lake County Court Division Three*, ICRC DOCKET NO. EMra86121357 (July 19, 1991).

4. Nguyen argues that the doctrine of *res judicata* does not apply to state court motions from federal court summary judgments because the federal and state standards for summary judgment are different, citing *Van Etten v. Fergaras*, 803 N.E.2d 689 (Ind. App. 2004), *transfer denied*, 822 N.E.2d 970 (Ind. 2004). *Van Etten* reversed a trial court's granting of summary judgment because the trial court applied the federal standard. *Van Etten* did not involve *res judicata* at all and no case has been cited holding that a federal summary judgment **cannot** serve as *res judicata* in a state proceeding. It does not seem fair to preclude *res judicata* effect on this basis when it was **Nguyen** who elected to proceed at the federal level.

5. A judgment is final for purposes of *res judicata* whether an appeal is pending, *Buchanan v. Logansport, C. S.W.R. Co.* 71 Ind. 265 (Ind. 1880), or possible. *Amcast Indus. Corp. v. Detrex Corp.*, 45 F.3d 155 (7th Cir. 1995).

6. The elements necessary to apply *res judicata* are all present in this case.

7. The initiation of a Chapter 11 Bankruptcy proceeding does not stay proceedings before the ICRC, at least prior to the point where someone seeks to enforce an order requiring the payment of money because the ICRC proceedings are exempt from the stay under 11 U.S.C. §362(b)(4). *Equal Employment Opportunity Commission v. Rath Packing Company*, 787 F.2d 318. 40 FEP Cases 580 (7th Cir. 1986).

8. Administrative review of this proposed decision may be obtained by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

9. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

ORDER

1. Delphi's REQUEST is **GRANTED**.
2. The Status Conference that had been scheduled for December 14, 2005 is **CANCELLED**.
3. Nguyen's complaint is **DISMISSED**, with prejudice.

Dated: 12 December 2005



Robert D. Lange
Administrative Law Judge

To be served this 12th day of December, 2005 by first class mail on the following parties and attorneys of record:

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