

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 94-60212
Summary Calendar
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B.L. SIMPSON, and
KENNETH TEETER, SR.,

Plaintiffs-Appellants
Cross-Appellees,

versus

LITTON INDUSTRIES, INC.,
EMPLOYEES' HEALTH/LONG TERM
DISABILITY PLAN,

Defendant-Appellee
Cross-Appellant.

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Appeals from the United States District Court for the
Southern District of Mississippi
(91-CV-304)

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(August 22, 1994)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.*

PER CURIAM:

The district court gave thorough and careful consideration to
this case, writing four memorandum opinions. The parties agree

* 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should not be published.

that the standard of review is abuse of discretion. Had we decided the matters *ab initio* we might be inclined to reach a different result on quantum of and/or liability for attorney's fees, but that is not the test, and, of course, we cannot have the feel for the case that the district court had. While resolution of the appeal and cross-appeal is not free from doubt, we are ultimately unable to conclude that the district court abused its discretion; hence, we affirm both as to plaintiffs' appeal and defendant's cross-appeal. Clearly, however, plaintiffs' appeal is not frivolous under FED. R. APP P. 38, and we deny defendant's motion for costs and fees thereunder. Finally, we deplore the vastly disproportionate expenditure of attorney and judicial resources on this matter, the essentially minor underlying controversy in which had settled so long before the overwhelming majority of such resources were expended.

AFFIRMED.