

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

COTTRELL, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 1:13-cv-01161-JZL
	)	
J. NIGEL ELLIS, DYNAMIC SCIENTIFIC	)	
CONTROLS, INC., ELLIS LADDER	)	
IMPROVEMENTS, INC., and	)	
ELLIS LITIGATION SUPPORT SERVICES,	)	JURY DEMANDED
	)	
Defendants.	)	

**DEFENDANTS’ MOTION TO DISMISS, OR IN THE ALTERNATIVE,  
TO STRIKE AND/OR TRANSFER**

COMES NOW Defendants J. Nigel Ellis, Dynamic Scientific Controls, Inc., Ellis Ladder Improvements, Inc., and Ellis Litigation Support Services (collectively, “Ellis” or “Defendants”), by and through their undersigned attorneys, and for their Motion to Dismiss, or in the Alternative, to Strike and/or Transfer pursuant to F.R.C.P. 12(b)(3), 28 U.S.C. § 1406(a), and F.R.C.P 12(b)(6), state as follows:

1. Venue for Plaintiff’s claims is improper in the Northern District of Illinois pursuant to 28 U.S.C. § 1391(b).
2. Plaintiff’s Complaint should be dismissed for improper venue pursuant to 28 U.S.C. § 1406(a).
3. In the alternative, this action should be transferred to the Southern District of Illinois where venue is proper pursuant to 28 U.S.C. § 1391(b)(2).
4. Plaintiff’s Complaint should be dismissed pursuant to F.R.C.P. 12(b)(6) for failure to state a claim upon which relief can be granted in that:

- a. Plaintiff's claims are barred by the absolute privilege protecting witness statements made in a judicial proceeding.
  - b. Plaintiff does not plead any facts showing that it detrimentally relied on any alleged wrongful act or omission or that any alleged wrongful act or omission proximately caused the injuries alleged.
  - c. Counts II, III, VI, V, VI and VIII are barred the economic loss doctrine.
  - d. Count VII fails to state a claim of statutory fraud.
5. If not dismissed, the duplicative claims in Counts II and IV and Counts III, V, and VI should be dismissed pursuant to F.R.C.P. 12(b)(f).
6. Defendants' Memorandum in Support of their Motion to Dismiss, or in the Alternative, to Strike and/or Transfer is incorporated by reference herein.

WHEREFORE, Defendants pray that this honorable Court dismiss Plaintiff's claims with prejudice, or, in the alternative, strike portions of the Complaint and transfer this action to the Southern District of Illinois. Defendants further request any and all further relief to which they may be entitled.

Respectfully Submitted,

**SmithAmundsen, LLC**

By: /s/ W. Jeffrey Muskopf  
W. Jeffrey Muskopf - #6244703  
John Bradford Goss - #6199556  
12312 Olive Blvd., Ste. 100  
St. Louis, MO 63141  
Phone: 314-275-1808  
Facsimile: 314-275-1809  
[jmuskopf@salawus.com](mailto:jmuskopf@salawus.com)  
[bgoss@salawus.com](mailto:bgoss@salawus.com)  
Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on May 6, 2013, I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to the following:

John J. Bullaro, Jr.  
Scott R. Sinson  
Bullaro & Carton, P.C.  
200 North LaSalle Street  
Suite #2420  
Chicago, IL 60601

Christopher W. Byron  
Christopher J. Petri  
Byron, Carlson, Petri & Kalb, LLC  
411 St. Louis Street  
Edwardsville, IL 62025

/s/ W. Jeffrey Muskopf