

THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

THEODOR E. HOWLAND and  
GRACE EDNA HOWLAND,

Plaintiffs

vs.

MRS. VIOLET I. PHELPS and  
FIELD CAR AND TRUCK LEASING  
CORPORATION, a Missouri  
corporation,

Defendants

No. 67-C-132  
No. 67-C-133 ✓  
Consolidated under  
No. 67-C-132

**FILED**

FEB -1 1968

DISMISSAL WITH PREJUDICE

NOBLE C. HOOD  
Clerk, U. S. District Court

The parties hereto having filed hereto a stipulation and  
motion for dismissal with prejudice of the above cause;

IT IS ORDERED, that the stipulation is approved and the  
cause is dismissed with prejudice to further action.

*Lisa Daugherty*  
United States District Judge

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

JAMES D. INGRAM,

Plaintiff,

vs.

THOMAS E. JONES and ALLSTATE  
ENTERPRISES, INC.,

Defendants.)

No. 67-C-175

**FILED**

FEB -1 1968

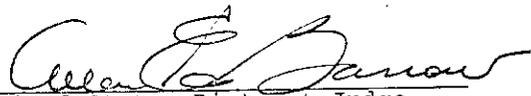
O R D E R

NOBLE C. HOOD  
Clerk, U. S. District Court

NOW, on this 31<sup>st</sup> day of January, 1968, the Court has before it, plaintiff's Motion to Remand the above styled case to the Superior Court of Creek County, Drumright, Oklahoma Division.

The Motion having been duly considered, the Court finds that jurisdiction is lacking in that there is not diversity of citizenship between all the parties.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff's Motion to Remand be sustained.

  
United States District Judge

FILED

FEB - 2 1968

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

NOBLE C. HOOD  
Clerk, U. S. District Court

CHARLES M. ELLENBURG, )  
Plaintiff, )  
 )  
vs. )  
 )  
JERRY B. ROBERTS and )  
GULF OIL CORPORATION, )  
Defendants, )

No. 67-C-92

(CONSOLIDATED)

NORMA FAYE ELLENBURG, )  
Plaintiff, )  
 )  
vs. )  
 )  
JERRY B. ROBERTS and )  
GULF OIL CORPORATION, )  
Defendants. )

No. 67-C-93

ORDER

Upon consideration of the Plaintiffs' Motion For New Trial filed in the above consolidated cases, the Court finds that said Motion should be denied.

The Court carefully read the stipulation and all the evidence presented thereunder to the Court. Based on this the Court arrived at awards to each Plaintiff deemed fair and proper. There is nothing new presented to the Court by the said Motion for New Trial or brief in support thereon.

The Court is fully satisfied that the awards made in this case are fair and proper under the evidence herein. The Court does not agree with the opinion of counsel for the Plaintiffs that the same, or either of them, are inadequate.

The Court does not desire oral arguments on the Motion for New Trial. The Motion for New Trial of the Plaintiffs is denied.

It is so ordered this 1 day of February, 1968.

*Fred Daugherty*  
Fred Daugherty, U. S. District Judge

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

RICHARD D. SMITH, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHN K. VANDERVELDE and )  
 AMERICAN AERO ASSOCIATES, INC., )  
 a corporation, )  
 )  
 Defendants. )

CIVIL ACTION

No. 67-C-52

**FILED**

FEB 5 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

O R D E R

On this 5th day of February, 1968, upon application of plaintiff  
for leave to dismiss without prejudice, as to the defendant American Aero  
Associates, Inc., a corporation, the court finds for good cause shown that  
said permission should be granted and it is so ordered.

*Fred Daugherty*  
UNITED STATES DISTRICT JUDGE

*OK as to form  
Richard D. Smith*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,  
Plaintiff,  
vs.  
368.84 Acres of Land, More or Less,  
Situate in Creek & Tulsa Counties,  
Oklahoma, and Joe Wilson, et al,  
and Unknown Owners,  
Defendants.

CIVIL ACTION NO. 4791

Tract No. D-428

**FILED**

FEB - 6 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

J U D G M E N T

1.

NOW, on this 5<sup>th</sup> day of February, 1968, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on December 26, 1967, and the Court after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

The Court has jurisdiction of the parties and the subject matter of this action.

3.

This judgment applies only to the estate taken in Tract No. D-428, as such estate and tract are described in the Complaint and the Declaration of Taking filed herein.

4.

Service of Process has been perfected either personally or by publication notice as provided by Rule 71A of the Federal Rules of Civil Procedure on all parties defendant in this cause, who are interested in subject tract.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the subject tract of land. Pursuant thereto, on October 14, 1959, the United States of America filed its Declaration of Taking of a certain estate in such tract of land, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

6.

On the filing of the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of the subject tract a certain sum of money, and all of this deposit has been disbursed as set out in paragraph 11 below.

7.

The Report of Commissioners filed herein on December 26, 1967, hereby is accepted and adopted as a finding of fact as to subject tract. The amount of just compensation as to the subject tract as fixed by the Commission is set out in paragraph 11 below.

8.

A certain deficiency exists between the amount deposited as estimated just compensation for subject tract and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out in paragraph 11 below.

9.

The defendants named in paragraph 11 as owners of subject tract are the only defendants asserting any interest in the estate condemned herein, all other defendants having either disclaimed or defaulted. As of the date of taking the named defendants were the owners of the estate condemned herein and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED AND DECREED that the United States of America has the right, power, and authority to condemn for public use the subject tract, as it is described in the Declaration of Taking filed herein, and such property, to the extent of the estate described in the Declaration of Taking filed herein, is condemned, and title thereto is vested in the United States of America, as of the date of filing the Declaration of Taking, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED AND DECREED that the right to receive the just compensation for the estate taken herein in subject tract is vested in the defendants whose names appear below in this paragraph; the Report of

Commissioners of December 26, 1967, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estate taken in subject tract, as shown by the following schedule:

TRACT NO. D-428

Owners:

Paul Spess and Wilma Spess

Award of just compensation pursuant to Commissioners' Report - - -	\$1,200.00	\$1,200.00
Deposited as estimated compensation - - - - -		450.00
Disbursed to owners - - - - -	<u>450.00</u>	
Balance due to owners - - - - -	\$750.00	
Deposit deficiency - - - - -		<u>\$750.00</u>

12.

It Is Further ORDERED, ADJUDGED AND DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the land-owners the deposit deficiency for the subject tract as shown in paragraph 11, together with interest on such deficiency at the rate of 6% per annum from October 14, 1959, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tract in this civil action. Upon receipt of such sum, the Clerk of this Court shall disburse the entire amount on deposit for subject tract jointly, to Paul Spess and Wilma Spess.

ALLEN E. GARROW  
UNITED STATES DISTRICT JUDGE

APPROVED:

Hubert A. Marlow  
HUBERT A. MARLOW  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,  
  
Plaintiff,  
  
vs.  
  
2.50 Acres, More or Less, in Rogers  
Co., Oklahoma, including all accre-  
tions and riparian rights thereto,  
and Nora Thomas Nelson, et al, and  
Unknown Owners,  
  
Defendants.

CIVIL ACTION NO. 67-C-22  
Tract No. 125

FILED  
~~IN OPEN COURT~~

FEB -8 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

J U D G M E N T

1.

On February 6, 1968, this cause as to the captioned tract, came on for pretrial conference before the Honorable Fred Daugherty, Judge of the United States District Court for the Northern District of Oklahoma. The Plaintiff, United States of America, appeared by Hubert A. Marlow, Assistant United States Attorney for the Northern District of Oklahoma. Nora Thomas Nelson, Katy Thomas Smith, and Bill Thomas, each an owner of an undivided 1/5th interest in subject tract, appeared in person. No other owners appeared. After being advised by counsel for Plaintiff and having examined the files in the case, the Court finds:

2.

The Court has jurisdiction of the parties and the subject matter of this action. This Judgment applies only to the estate condemned in the tract shown in the caption above, as such tract and estate are described in the Complaint and the Declaration of Taking filed herein.

3.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause who are interested in the subject tract.

4.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the subject tract, as such tract is particularly described in such Complaint. Pursuant thereto, on February 3, 1967, the United

States of America filed its Declaration of Taking of a certain estate in such described land, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

5.

Simultaneously with filing herein the Declaration of Taking, there was deposited in the Registry of this Court, as estimated compensation for the taking of the subject property, a certain sum of money, none of which has been disbursed, as shown in paragraph 10.

6.

At the pre-trial conference the owners present advised the Court that the sum of \$825.00 was their opinion of just compensation for the estate taken in the subject tract and that the absent owners were in agreement with them. The Plaintiff likewise advised the Court that such sum would be fair and just compensation to all parties.

The Court, therefore, concludes that the sum of \$825.00 should be adopted as the award of just compensation for the estate taken in the subject tract and that the award should be allocated to the respective owners according to their interests, as shown in paragraph 10.

7.

The defendants named in paragraph 10 as owners of subject property are the only defendants asserting any interest in the estate condemned in the subject property, all other defendants having either disclaimed or defaulted; the named defendants were the owners of such estate, as of the date of taking, and as such, are entitled to receive the award of just compensation.

8.

This judgment will create a deficiency in the deposit for the subject tract in the Registry of the Court, as shown in paragraph 10, and the amount of such deficiency should be deposited by the Plaintiff for the benefit of the landowners.

9.

It Is, Therefore, ORDERED, ADJUDGED AND DECREED that the United States of America has the right, power, and authority to condemn for public use Tract No. 125, as such property is particularly described in the Complaint and Declaration of Taking filed herein; and such property, to the extent of the estate

described, and for the uses and purposes described in such Declaration of Taking, is condemned and title thereto is vested in the United States of America as of the date of filing such Declaration of Taking, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim thereto.

10.

It Is Further ORDERED, ADJUDGED AND DECREED that on the date of taking, the owners of the estate condemned herein in the subject property were the defendants whose names appear in the schedule below; the right to just compensation for the estate taken in this property is vested in the parties so named, as their interests appear therein; and the sum of \$825.00 hereby is adopted as the award of just compensation for the estate herein taken in subject property; all as follows, to-wit:

TRACT NO. 125

Owners:

Nora Thomas Nelson - - - - -	1/5 - - - - -	\$165.00	
Katy Thomas Smith - - - - -	1/5 - - - - -	\$165.00	
Johnson Thomas - - - - -	1/5 - - - - -	\$165.00	
Bill Thomas - - - - -	1/5 - - - - -	\$165.00	
Madel Thomas - - - - -	1/15 - - - - -	\$55.00	
Houston Thomas - - - - -	2/75 - - - - -	\$22.00	
Norma Jean Thomas - - - - -	2/75 - - - - -	\$22.00	
Samuel Thomas - - - - -	2/75 - - - - -	\$22.00	
Sarah Jane Thomas - - - - -	2/75 - - - - -	\$22.00	
Daniel Thomas - - - - -	2/75 - - - - -	\$22.00	
Total award of just compensation - - - - -		\$825.00	\$825.00
Deposited as estimated compensation - - - - -			\$648.00
Disbursed to owners - - - - -		<u>None</u>	
Balance due to owners - - - - -		\$825.00	<u>          </u>
Deposit deficiency - - - - -			\$177.00

11.

It Is Further ORDERED that the United States of America shall deposit in the Registry of this Court, in this civil action, the deficiency sum of

\$177.00, and the Clerk shall credit such deposit to Tract No. 125.

When such deficiency deposit be made the Clerk of this Court shall disburse from the deposit for Tract No. 125, to each of the owners listed in paragraph 10 above, the sum shown following his or her name.

*Fred Daugherty*

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UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Hubert A. Marlow

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HUBERT A. MARLOW  
Assistant United States Attorney

jtd

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

ASHLAND OIL & REFINING COMPANY, )  
 )  
 Plaintiff )  
 )  
 -vs- )  
 )  
 PHILLIPS PETROLEUM COMPANY, )  
 )  
 Defendant )

CIVIL No. 67-C-238

**FILED**

FEB 12 1968

ORDER

NOBLE C. HOOD  
Clerk U. S. District Court

This cause came on for consideration by the Court upon the plaintiff's motion for an order to return the file in this case to the District Court for the Southern District of Texas, Houston Division. The plaintiff appeared by Garrett Logan and John M. Imel, of the firm of Martin, Logan, Moyers, Martin & Conway of Tulsa, Oklahoma and by D. J. Bradshaw, of the firm of Fulbright, Crooker, Freeman, Bates & Jaworski of Houston, Texas. The defendant appeared by Richard B. McDermott, of the firm of Boesche, McDermott & Eskridge of Tulsa, Oklahoma and the Court having heard the arguments and statement of counsel and being otherwise well and sufficiently informed is of the opinion that the papers and files in this case which were forwarded by the Clerk of the United States District Court for the Southern District of Texas, Houston Division to the Clerk of the United States District Court for the Northern District of Oklahoma, should be returned to the Clerk of the United States District Court for the Southern District of Texas, Houston Division for the purpose of having such papers before the United States District Judge for the Southern District of Texas, Houston Division, in determining and deciding plaintiff's motion filed in said court for reconsideration of the memorandum and order dated December 4, 1967, and this order should not be considered as a re-transfer of this cause to the Southern District of Texas, Houston Division, or a review of that Court's order of December 4, 1967, but this Court will await the judgment and ruling of the Judge of the District Court for the Southern District of Texas, Houston Division, upon plaintiff's motion to reconsider.

No stay is necessary or in order at this time for the purpose of an interlocutory appeal or for review by mandamus as requested by the defendant, and such request is denied.



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

MARY RUDISELL, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 )  
 JAMES PAUL McFADDEN, )  
 )  
 Defendant. )

Civil Action No. 6613

**FILED**

FEB 13 1968

NOBLE C. HOOD  
STIPULATION FOR DISMISSAL Clerk, U. S. District Court

COME NOW the plaintiff and the defendant and move the Court to dismiss with prejudice the above captioned cause, for the reason and upon the grounds that the cause has been compromised, settled, and resolved.

WHEREFORE, premises considered, the plaintiff and defendant pray that the Court dismiss the above captioned cause with prejudice.

Mary Rudisell  
Mary Rudisell,  
Plaintiff.

BEST, SHARP, THOMAS & GLASS,  
By Joseph M. Best  
Attorneys for Plaintiff.

Ray H. Wilburn  
Ray H. Wilburn,  
Attorney for Defendant.

ORDER

NOW, on this 13<sup>th</sup> day of ~~October~~ February 1968, the above captioned cause, by Order of the Court, is dismissed with prejudice, on stipulation of the parties hereto.

Leitha Robinson  
UNITED STATES DISTRICT JUDGE

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

DEBRA JANE LAMPKIN, a Minor )  
15 years of age, by and through )  
her Father and Next Friend, )  
ROBERT G. LAMPKIN, )

Plaintiff, )

vs. )

JAMES PAUL McFADDEN, )  
Defendant. )

Civil Action No. 6614

**FILED**

FEB 13 1968

STIPULATION FOR DISMISSAL

NOBLE C. HOOD  
Clerk, U. S. District Court

COME NOW the plaintiff and the defendant and move the Court to dismiss with prejudice the above captioned cause, for the reason and upon the grounds that the cause has been compromised, settled, and resolved.

WHEREFORE, premises considered, the plaintiff and defendant pray that the Court dismiss the above captioned cause with prejudice.

Robert G. Lampkin  
Robert G. Lampkin, Individually  
and as Father and Next Friend of  
Debra Jane Lampkin, a Minor.

BEST, SHARP, THOMAS & GLASS,

By Joseph M. Best  
Attorneys for Plaintiff.

Ray H. Wilburn  
Ray H. Wilburn,  
Attorney for Defendant.

ORDER

NOW, on this 13<sup>th</sup> day of February, 1968, the above captioned cause, by Order of the Court, is dismissed with prejudice, on stipulation of the parties hereto.

Luther Robinson  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA.

DOROTHY WASHINGTON, . . . . Plaintiff, )  
vs. ) No. 67-C-211  
SAFEWAY STORES, )  
INCORPORATED, . . . . Defendant. )

**FILED**

FEB 13 1968

DISMISSAL WITH PREJUDICE

NOBLE C. HOOD  
Clerk, U. S. District Court

Comes now the plaintiff, Dorothy Washington, and dis-  
misses the above styled and numbered cause of action with prejudice  
to the bringing of a future action.

Dated this 13<sup>th</sup> day of February, 1968.

Dorothy Washington  
Plaintiff

FARMER, WOOLSEY, FLIPPO & BAILEY

By: Robert J. Woolsey  
Attorneys for Plaintiff

Comes now the defendant, by and through its counsel of  
record, and consents to the dismissal of the above styled and numbered  
cause of action with prejudice to the bringing of any future action.

HUDSON, HEATON & BRETT

By: James R. Brett  
Attorneys for Defendant

IT IS HEREBY ORDERED that the above styled and number-  
ed cause be dismissed with prejudice.

William E. Barron  
UNITED STATES DISTRICT JUDGE

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

United States of America,

Plaintiff,

vs.

Michael L. Ditchkus and  
Clova Irene Ditchkus; and  
Board of County Commissioners  
of Tulsa County, Oklahoma,

Defendants.

Civil No. 68-C-12

Clerk, U. S. District Court

JUDGMENT OF FORECLOSURE

THIS MATTER comes on for consideration on this 3<sup>rd</sup> day of February 1968, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the defendant, Board of County Commissioners of Tulsa County, Oklahoma, appearing by John S. Morgan, Assistant District Attorney, and the defendants, Michael L. Ditchkus and Clova Irene Ditchkus, appearing not.

The Court being fully advised and having examined the file herein finds that personal service was made on the defendant, Board of County Commissioners of Tulsa County, Oklahoma, on January 18, 1968, and the defendants, Michael L. Ditchkus and Clova Irene Ditchkus, on February 2, 1968.

The Court further finds that the defendant, Board of County Commissioners of Tulsa County, Oklahoma, has heretofore filed an Answer disclaiming any right, title and interest in and to the real property which is the subject of this foreclosure proceeding; and

It appearing that said defendants, Michael L. Ditchkus and Clova Irene Ditchkus, have failed to file an Answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the real property described in said mortgage is located in Tulsa, Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma.

The Court further finds that the material allegations of Plaintiff's Complaint are true and correct;

That the defendants, Michael L. Ditchkus and Clova Irene Ditchkus, did on June 1, 1964, execute and deliver to J. S. Gleason, Jr., as Administrator of Veterans Affairs, his mortgage and mortgage note for the sum of \$9,550.00, with interest thereon at the rate of  $5\frac{1}{2}\%$  per annum and further providing for the payment of monthly installments of principal and interest; and

It further appears that the defendants, Michael L. Ditchkus and Clova Irene Ditchkus, made default under the terms of the aforesaid mortgage note and mortgage by reason of their failure to make the monthly installments due thereon on August 1, 1967, which default has continued, and that by reason thereof the defendants are now indebted to the Plaintiff in the sum of \$9,154.32, as unpaid principal, with interest thereon at the rate of  $5\frac{1}{2}\%$  per annum from August 1, 1967, until paid, plus the cost of this action accrued and accruing.

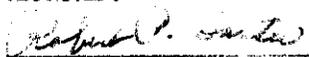
IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Plaintiff, United States of America, have and recover judgment against the defendants, Michael L. Ditchkus and Clova Irene Ditchkus, for the sum of \$9,154.32, with interest thereon at the rate of  $5\frac{1}{2}\%$  per annum from August 1, 1967, until paid, plus the cost of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that upon failure of the defendant to satisfy Plaintiff's money judgment herein, an Order of Sale issue to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisal, the above-described real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, to be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
ROBERT P. SANTEE  
Assistant U. S. Attorney

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

MR. JOHN F. LAIRSON,  
Petitioner,  
vs.  
UNITED STATES OF AMERICA,  
Respondent.

68-C-31

FILED

FEB 1 1968

ORDER

NOBLE C. HOOD  
Clerk, U. S. District Court

The Court has for consideration the Petition for Writ of Declaratory Judgment Seeking Equal Justice, filed by the petitioner herein, and being fully advised in the premises finds:

That heretofore, in Criminal case number 14,420, the Court, on two different occasions the Court advised the petitioner that more than 120 days had expired since the imposition of sentence, and the Court would not modify the sentence imposed because of lack of jurisdiction.

The Court further finds that on November 2, 1967, petitioner filed a motion under §2255, being assigned number 67-C-214, and on November 23, 1967, with John Frank Lairson present and represented by court appointed counsel, a full and complete evidentiary hearing was had on the claims asserted by the petitioner, and said motion was denied.

The petitioner has now filed the instant action, once again complaining concerning the sentence imposed by this Court.

The purpose of the Declaratory Judgment Act is to have a declaration of rights not theretofore determined and not to determine whether the rights theretofore adjudicated have been properly adjudicated. The Act should not be invoked as

a substitute for an appeal, an order the Court has no jurisdiction to grant, nor should a declaratory judgment be granted unless it will terminate the controversy.

This action is in effect a collateral attack on the sentence imposed by this Court on April 4, 1967.

The Court further finds that petitioner relies on Rule 45(c). Rule 45(c) was repealed in 1966. The Court finds that Rule 45(b) of the Federal Rules of Criminal Procedure specifically provides that the Court may not extend the time for taking any action under Rule 35. *Urry v. United States*, 10 Cir., 1963, 316 F.2d 185.

IT IS, THEREFORE, ORDERED that the Petition for Writ of Declaratory Judgment Seeking Equal Justice be and the same is hereby dismissed for the reasons set forth above.

ENTERED this 13<sup>th</sup> day of February, 1968.

  
UNITED STATES DISTRICT JUDGE

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

MILDRED SHOOP, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MARIE HOLLOWAY, )  
 )  
 Defendant. )

CIVIL NO. 67-C-116

**FILED**

FEB 14 1968

JOURNAL ENTRY

NOBLE C. HOOD  
Clerk, U. S. District Court

Now on this 13th day of February, 1968, the above captioned cause comes on for hearing before me, the undersigned Judge, plaintiff appearing in person and by her attorney, Donald Church, defendant appearing by and through her attorneys, Best, Sharp, Thomas & Glass, by Joseph A. Sharp, and the cause being called for trial, the plaintiff having announced ready, defendant having first moved for a continuance by reason of the absence of the defendant, which motion was overruled, said cause proceeded to trial.

A jury was selected, evidence heard, thereafter the parties waived the right to a further trial by jury, and submitted the matter to the Court upon stipulation; and the Court finds that the plaintiff has sustained the allegations in her petition and is entitled to a judgment in the sum of \$10,000.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover against the defendant the sum of \$10,000.00, together with the costs which she has expended in the prosecution of said action.

APPROVED AS TO FORM:

S/Quiter Bohannon  
Judge

Donald Church  
Donald Church, Attorney for Plaintiff

Joseph A. Sharp  
Joseph A. Sharp, Attorney for Defendant

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

HERMINIA VARGAS,  
Plaintiff,  
vs.  
BELL-CREEK, INC., a  
Nebraska Corporation,  
Defendant.

68-C-1 ✓

FILED

FEB 14 1968

ORDER REMANDING

NOBLE C. HOOD  
Clerk, U. S. District Court

The Court, being under a duty at all times to inquire into its jurisdiction, finds:

This case was originally filed in the Superior Court of Creek County, Drumright Division, on December 7, 1967, and was thereafter removed to this Court on January 2, 1968.

The Court finds, after a careful persual of the entire file, and in particular the original petition, and the petition for removal, that jurisdiction in the petition for removal has not been properly alleged.

In the petition for removal, the defendant has alleged the following:

"The plaintiff, Herminia Vargas, is a resident of Kansas City, Kansas, and the defendant is a Nebraska corporation with principal offices in Arlington, Nebraska."

The jurisdictional allegations in the complaint and in the petition for removal do not in any wise allege diversity of citizenship, but only diversity of residence. It is diversity of citizenship and not diversity of residence which gives a federal court jurisdiction in a case where the requisite jurisdictional amount is in controversy. The petition must show the citizenship (or principal place of business of a corporation) at the time of the commencement of the action. A failure to so

state is a fatal defect which cannot be corrected unless an offer to amend is made within the prescribed statutory period for the filing of a petition for removal. 28 U.S.C.A. §1446(b) provides that a petition for removal of a civil action shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading or within thirty days after the service of summons upon the defendant. *Yarbrough v. Blake*, 212 F.Supp. 133. The period of time has long since expired and to permit an amendment beyond the limitation fixed would be to ignore the whole purpose of the act.

Since the file reflects that the citizenship of the parties at the commencement of the action, as well as at the time for petition for removal was filed, was not sufficiently shown, therefore the jurisdiction of the state court was never divested. *Jackson v. Allen*, 132 U.S. 27.

IT IS, THEREFORE, ORDERED that this cause of action be and the same is hereby remanded to the Superior Court of Creek County, Drumright Division.

ENTERED this ~~14th~~ day of February, 1968.

  
UNITED STATES DISTRICT JUDGE

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

JOYCE CAROL BROWN,  
Plaintiff,

vs.

BELL-CREEK, INC., a  
Nebraska Corporation,  
Defendant.

68-C-2

FILED

FEB 14 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

ORDER REMANDING

The Court, being under a duty at all times to inquire into its jurisdiction, finds:

This case was originally filed in the Superior Court of Creek County, Drumright Division, on December 7, 1967, and was thereafter removed to this Court on January 2, 1968.

The Court finds, after a careful persual of the entire file, and in particular the original petition, and the petition for removal, that jurisdiction in the petition for removal has not been properly alleged.

In the petition for removal, the defendant has alleged the following:

"The plaintiff, Joyce Carol Brown, is a resident of Kansas City, Kansas, and the defendant is a Nebraska corporation, with principal offices in Arlington, Nebraska."

The jurisdictional allegations in the complaint and in the petition for removal do not in any wise allege diversity of citizenship, but only diversity of residence. It is diversity of citizenship and not diversity of residence which gives a federal court jurisdiction in a case where the requisite jurisdictional amount is in controversy. The petition must show the citizenship (or principal place of business of a corporation) at the time of the commencement of the action. A failure to so

state is a fatal defect which cannot be corrected unless an offer to amend is made within the prescribed statutory period for the filing of a petition for removal. 28 U.S.C.A. §1446(b) provides that a petition for removal of a civil action shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading or within thirty days after the service of summons upon the defendant. *Yarbrough v. Blake*, 212 F.Supp. 133. The period of time has long since expired and to permit an amendment beyond the limitation fixed would be to ignore the whole purpose of the act.

Since the file reflects that the citizenship of the parties at the commencement of the action, as well as at the time for petition for removal was filed, was not sufficiently shown, therefore the jurisdiction of the state court was never divested. *Jackson v. Allen*, 132 U.S. 27.

IT IS, THEREFORE, ORDERED that this cause of action be and the same is hereby remanded to the Superior Court of Creek County, Drumright Division.

ENTERED this 14<sup>th</sup> day of February, 1968.

  
UNITED STATES DISTRICT JUDGE

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

THOMAS E. ROBERTSON, )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. )  
 )  
 ) ROY L. MORGAN PRODUCTION )  
 ) COMPANY, an Oklahoma corporation, )  
 ) ROY L. MORGAN, an individual, )  
 ) INTERNATIONAL CARBON, INC., an )  
 ) Oklahoma corporation, and )  
 ) CARBON MANAGEMENT, INC., an )  
 ) Oklahoma corporation, )  
 )  
 ) Defendants )  
 ) and Third Party Plaintiffs, )  
 )  
 ) vs. )  
 )  
 ) GENERAL COLLOIDAL CARBON, INC., )  
 ) a corporation, )  
 )  
 ) Third Party Defendant. )

No. 6602

**FILED**

FEB 15 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

O R D E R

Upon consideration of Plaintiff's Motion for New Trial or in the Alternative to Amend Judgment, the Court finds that the Motion for New Trial should be overruled but that the Motion to Amend Judgment should be sustained as set out below.

The Court did not find and conclude in its Memorandum Opinion filed herein that International Carbon, Inc., owned the foreign rights to the patent. This is shown by the following quote from said Memorandum Opinion beginning at the bottom of page 8 thereof:

" \* \* \* However, the evidence is sufficient to establish in International the ownership of the patent involved, and the Plaintiff and General Colloidal should be restrained from interfering with this ownership of

International and to the patent involved in this case and as well the ownership of Management in the foreign patent rights."

In addition, the agreement of April 11, 1964, between the Plaintiff and the Defendant, Roy L. Morgan Production Company provides:

"The First Party (Robertson) agrees to execute and cause to be acknowledged a good and valid assignment unto said new Oklahoma corporation, International Carbon, Inc., for the territory of the United States of America the full exclusive right and title to said invention and the afore-said Letters Patent of the United States therefor . . ." (Underscoring mine)

However, notwithstanding this finding in the Court's Memorandum Opinion and the contract provision as set out above the judgment presented to the Court and approved by all parties as to form, contained the following:

"It is further ordered, adjudged and decreed that International Carbon, Inc., is the full owner of U. S. Letters Patent No. 312745 and the pilot carbon black unit and all foreign patent rights, together with the sole right of management thereof, which are the subject matter of this action; and the plaintiff and his alter ego, General Colloidal Carbon, Inc., the third party defendant herein, are perpetually restrained and enjoined from interfering with such ownership and management."

In view of the foregoing, a corrected judgment should be entered setting out that International Carbon, Inc. owns the said patent rights for the territory of the United States of America, and Carbon Management, Inc. is the owner of the foreign patent rights in said patent. The Court is aware of no reason, and none has been presented to the Court, why Carbon Management, Inc., is not the owner of said foreign patent rights and why it is not capable of owning such rights.

Plaintiffs complain in said Alternative Motion in paragraphs 4, 6, 11, and 12 thereof, that the Court erred in awarding the Defendant, Roy L. Morgan, an individual, a judgment on his crossclaim against the Defendant, International Carbon, Inc. in the amount of \$141,311.93. Plaintiff asserts that this judgment is premature and violates the provisions of the agreement between the Plaintiff and the Roy L. Morgan Production Company, which agreement is dated April 11, 1964, and is Plaintiff's Exhibit No. 1 in the case. It is true that under this agreement Roy L. Morgan Production Company would not be entitled to recover this sum of money from International Carbon, Inc. at this time had its funds been advanced to International Carbon, Inc. But this judgment is not in favor of Roy L. Morgan Production Company but is in favor of Roy L. Morgan, an individual, who the evidence shows and the Court finds personally from his own funds advanced these moneys to and for the benefit of International Carbon, Inc.

Said agreement provides as follows:

" . . . In this connection, it is specifically understood and agreed by the First Party (Robertson) that Second Party, (Roy L. Morgan Production Company) does not by any covenants contained herein, either expressly or impliedly, agree to obligate itself, its directors, officers or employees to personally furnish any of the capital funds for the operation of said new corporation or for any of the purposes for which money is to be raised under the terms of this Agreement. The Second Party itself shall have no obligation whatsoever to pay the aforesaid \$20,000.00 or any of the sums sought to be obtained or arranged for by Second Party under the terms of this Agreement. Second Party's obligation with regard to financing extends only to the exercise of its best efforts to promote or arrange for such financing which it is contemplated will be procured from independent sources through means such as pledging the assets or income of the new corporation."

Thus, it was contemplated and agreed that Roy L. Morgan Production Company would procure needed financing for International Carbon, Inc., from independent sources. Roy L. Morgan Production Company did this by getting the funds from Roy L. Morgan, an indi-

vidual, an independent source as contemplated by the provisions of said agreement. Roy L. Morgan Production Company might not be entitled to reimbursement of funds advanced by it to International Carbon, Inc. until funds are available in International Carbon, Inc. for such reimbursement, but this prohibition does not apply to funds advanced from an independent source such as Roy L. Morgan, an individual, as provided in said agreement.

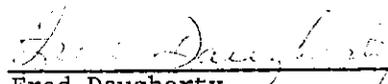
Roy L. Morgan, an individual, as an independent source of funds, advanced and made available to International Carbon, Inc. funds or the equivalent of the value of \$141,311.93. He is therefore entitled to have judgment against International Carbon Co., Inc. for said amount on his said cross-claim. The Court recalls that during the trial the Plaintiff did not take the position that Roy L. Morgan, an individual, was not entitled to recover anything from International Carbon, Inc., on his cross-claim for funds advanced to International Carbon, Inc., but only contested the amount he was entitled to recover. And in the Plaintiffs Alternative Motion now under consideration, the Plaintiff is still agreeable that Roy L. Morgan, an individual, should have a judgment against International Carbon, Inc. for funds he advanced said Company, but only for \$66,431.22 instead of the sum of \$141,311.93, which is the total amount of funds or the equivalent advanced by Roy L. Morgan, an individual, for the benefit of International Carbon, Inc.

As to paragraph 13 of the Alternative Motion in which the Plaintiff claims error on the part of the Court in awarding Roy L. Morgan, a salary of \$2,000.00, the Court states that no such award was made by the Court in this case, and no such figure was allowed or included in arriving at the above mentioned sum of \$141,311.93.

The other matters raised by the Plaintiff in said Alternative Motion have been carefully examined and considered by the Court and each is deemed to be wholly without merit.

Plaintiff's Motion for New Trial is therefore overruled and Plaintiff's Motion to Amend Judgment is sustained to the extent set out above. Counsel for the Defendants and Third-Party Plaintiff will prepare a corrected judgment in conformity with the above, submit the same to counsel for the Plaintiff for approval as to form, and then submit the same to the Court for signature and entry herein.

It is so ordered this 15 day of February, 1968.

  
\_\_\_\_\_  
Fred Daugherty  
United States District Judge

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

HARTFORD ACCIDENT & INDEMNITY )  
COMPANY, A Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SUSAN SNYDER, Administratrix of the )  
Estate of L. E. SNYDER, JR., Deceased, )  
MARJORIE J. SNYDER, BEAULA SNYDER, )  
BILLY H. JONES, JR., and BILLY H. JONES, )  
His Father, EMMIT J. BEAN, Father and Next )  
of Kin of JOSEPH M. BEAN, Deceased, and )  
VIRGINIA GILMORE, Mother and Next of Kin of )  
RICHARD R. GILMORE, Deceased, )  
 )  
Defendants. )

NO. 67-C-109

**FILED**

FEB 19 1968

**NOBLE C. HOOD**  
Clerk. U. S. District Court

ORDER APPROVING SETTLEMENT, DISBURSING FUNDS,  
AND DISMISSING CAUSE OF ACTION

The Court finds the claims of the parties hereto have been settled and compromised in accordance with a Stipulation for Settlement entered into by all of the parties to this action on February 23<sup>rd</sup> 1968.

The Court finds such Stipulation should be approved in all respects and Plaintiff in this cause, Hartford Accident & Indemnity Company, A Corporation, should be exonerated from any further liability under its Policy No. 38 EC 928803 resulting from any legal liability for which Plaintiff might be contractually responsible under such insurance policy, resulting from an automobile collision occurring at the intersection of Fourth Place and Hudson in the City of Tulsa on April 28, 1967, all as set forth more completely in Paragraph II of the Complaint herein filed, and it is

ORDERED, that this action stand dismissed with prejudice, at Plaintiff's cost, upon the payment by Plaintiff to the various Defendants as

follows:

(a)	Susan Snyder, Administratrix of the Estate of L. E. Snyder, Jr., Deceased	\$ 5,600.00
(b)	Marjorie J. Snyder	16,300.00
(c)	Beaula Snyder	100.00
(d)	Billy H. Jones, Jr.	2,000.00
(e)	Billy H. Jones, Sr.	2,000.00
(f)	Emmit J. Bean, Father and Next of Kin of Joseph M. Bean, Deceased	1,000.00
(g)	Virginia Gilmore, Mother and Next of Kin of Richard R. Gilmore, Deceased,	<u>1,000.00</u>
	TOTAL	\$28,000.00

and, it is further

ORDERED, that the Hartford Accident & Indemnity Company, A Corporation be exonerated from any further or future liability resulting from its obligations under its Policy No. 38 EC 928803, issued for the benefit of Josephine C. Jordan, as respects liability created by virtue of an automobile collision occurring at the intersection of Fourth Place and Hudson in the City of Tulsa, on April 28, 1967, and it is further

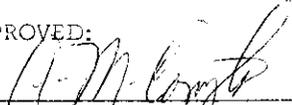
ORDERED, that this cause of action affects only the obligation of the Hartford Accident & Indemnity Company, A Corporation, to the various Defendants, and shall not act as a bar to any further litigation which any or all of such Defendants may see fit to pursue.

DATED this 15th day of February, 1968.



ALLEN E. BARROW  
United States District Judge

APPROVED:



A. M. Covington, Attorney for Hartford  
Accident & Indemnity Company, Plaintiff

WALKER , IVERSON & FARRAR

By *James Odum*  
Attorneys for Susan Snyder,  
Administratrix of the Estate of L. E.  
Snyder, Deceased, Marjorie J. Snyder,  
and Beaula Snyder

HUDSON, WHEATON & BRETT

By *William*  
Attorneys for Billy H. Jones, Jr., and  
Billy H. Jones, His Father

*Emmitt J. Bean*  
EMMIT J. BEAN, Father and Next of Kin  
of Joseph M. Bean, Deceased, Pro Se

RUCKER & TABOR

By *C. E. Tomlin*  
Attorneys for Virginia Gilmore, Mother  
and Next of Kin of Richard R. Gilmore,  
Deceased

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

WAYLAND SMITH,	)
	)
Plaintiff,	)
	)
-vs-	)
	)
EDWIN L. COX, JAKE L. HAMON and	)
ROSMO OIL COMPANY,	)
	)
Defendants and	)
Third Party	)
Plaintiffs,	)
	)
-vs-	)
	)
GRANGER ELECTRIC, INC., a corporation,	)
	)
Third Party	)
Defendant.	)

72, 67-C-99

**FILED**

FEB 16 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

ORDER DIRECTING PLAINTIFF TO MAKE APPLICA-  
TION FOR INTERLOCUTORY APPEAL

Now on this 12th day of February, 1968, the above entitled matter came on for trial; all parties being present and announcing ready, a jury was duly impaneled, opening statements presented, and the plaintiff proceeded with the introduction of his evidence. Thereupon, plaintiff attempted to introduce into evidence his Exhibit No. 2, being the grazing lease under which the plaintiff now holds the grass lands in question, for which damages are sought herein to a portion of said lands by reason of a fire. Objection was made by the defendants to the introduction of said lease insofar as it would enable the plaintiff to recover damages for the full term of said lease.

Whereupon, the court called a recess and out of the hearing of the jury a conference was held whereby the following facts developed:

A. Plaintiff had leased the lands in question, together with other contiguous lands, for approximately thirty years from the same lessor, said parties operating under three-year written leases.

B. That plaintiff's Exhibit 1 was a lease of said lands from April 1, 1963, to April 1, 1966.

C. That plaintiff, at the request of lessor, held over under the terms of the prior lease, without a written lease for the year from April 1, 1966, to April 1, 1967.

D. That the plaintiff holds the lands in question at this time under a written lease from April 1, 1967, to March 30, 1970, which lease on its face is dated March 8, 1967. (Plaintiff's Exhibit 2).

E. That the fire which occasioned damage to a portion of the leased lands occurred on March 1, and March 2, 1967.

The plaintiff made an offer of proof that if the plaintiff, Wayland Smith, the lessee, and Donald J. Stuart, the lessor, were permitted to testify in open court, that they would testify to certain matters pertaining to the above leases, certain oral contracts and negotiations with relationship to when the terms in the lease marked plaintiff's Exhibit 2, were actually agreed upon, and other matters with regard to the intentions of the lessor and the lessee insofar as the leases were concerned, and other matters to explain said leases. Objection to said offer of proof was made by the defendants on the grounds that it was an attempt to vary the terms of written contracts by parol evidence and therefore inadmissible. Said objection was sustained by the court.

The court, upon due consideration, finds that under substantive law existing in the State of Oklahoma, that the plaintiff, as a lessee, should only be entitled to recover damages for the period from March 1, 1967, to March 31, 1967, and that he would not be entitled to any damages to the grass for the term of the lease under which he is presently holding said lands, by reason of the fact that this lease shows on its face to have been executed on March 8, 1967, which was seven days subsequent to the fire which occasioned the damage.

The court further finds that Donald J. Stuart, the lessor, would be the only one entitled to a claim for damages for the period after March 31, 1967, but further, the court recognizes in discussion with counsel, that Mr. Stuart, as the lessor, having executed a new lease to take effect subsequent

to March 31, 1967, for a rental sum greater than the previous lease, that it would appear on the surface that the lessor would have a very difficult time proving any damages, but that it was the court's opinion that the lessee was not entitled to any damages to the grass subsequent to the termination date of his last existing lease, to-wit: March 31, 1967.

The court further finds upon consideration of all factors, that this is a proper set of circumstances for an interlocutory appeal under the provisions of Sec. 1292 (b) of Title 28 of the United States Code, as it is apparent to the court that if the court is in error in its determination of the period of time for which the plaintiff is entitled to damages, that it would necessarily mean that the matter would have to be retried, and the court feels that by the granting of the interlocutory appeal to the plaintiff, that it will save at least an additional trial, and the United States Court of Appeals could prevent this happening by passing on the question of law at this time, before the parties proceed to actual trial.

The court further finds in this connection, that the case will take approximately two days for actual trial, at a great expense to all parties concerned.

The court further finds that upon consideration of all of the relevant issues and facts involved in this action, which have been brought to the attention of this court, together with all equitable considerations, that the determination of the time for which the plaintiff, as the lessee, is entitled to recover damages herein, involves a controlling question of law to which there is substantial ground for a difference of opinion, and that an immediate appeal from the order of this court would materially advance the ultimate termination of the litigation, and the plaintiff is hereby directed to proceed with the filing of an application with the United States Court of Appeals for an order of that court granting permission for the plaintiff to appeal and to have said court determine at this time the question of law involved herein, so that the trial court may proceed with the actual trial of said case, and that the court and parties under the decision of the appellate court, may proceed with their evidence, knowing the proper time for which damages are actually recoverable by the lessee.

The court further finds that trial proceeding should be stayed and the same stricken from the docket, awaiting determination by the United States Court of Appeals on the point of law involved herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT That the proceedings in the above case are hereby stayed; that said case is hereby stricken from the jury docket pending determination by the United States Court of Appeals on the point of law involved herein, if said court grants permission to hear said interlocutory appeal.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT That the determination by this court of the correct rule of law to be applied for determination of the time during which the lessee is entitled to recover damages involves a controlling question of law to which there is substantial ground for difference of opinion, and that an immediate appeal from the order will materially advance the ultimate termination of the litigation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT That plaintiff proceed immediately and within ten days from the date of this order, to file his application with the United States Court of Appeals, for permission for that court to hear said appeal.

ALLEN E. BARROW  
\_\_\_\_\_  
JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DIS-  
TRICT OF OKLAHOMA

APPROVED:

FILES, MAHAN AND WILSON

BY: W. ROBERT WILSON  
Attorneys for Plaintiff

GREEN, FELDMAN AND HALL

BY: WILLIAM S. HALL  
Attorneys for Defendants and  
Third Party Plaintiffs

ARTHUR MEYER  
Attorney for Third Party De-  
fendants

UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

Lois Rolland, . . . Plaintiff, )  
 )  
vs. )  
 )  
Safeway Stores, Inc., a )  
Corporation, . . . Defendant. )

No. 67 C 149

**FILED**

FEB 13 1968

ORDER OF REMAND

NOBLE C. HOOD  
Clerk, U. S. District Court

On this 13th day of February, 1968, there was heard the written and oral motion of the plaintiff requesting permission to amend the prayer herein to the sum of \$10,000.00 and requesting permission to join an additional party defendant, and requesting this matter be remanded to the state court from whence it was removed. This court being advised and aware of the premises, finds, and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that upon the provisions and circumstances set forth in plaintiff's motion this matter is hereby remanded to the District Court of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that The Travelers Indemnity Company be, and is hereby relieved of any and all liability and responsibility upon the removal bond filed herein.

*Allen E. Benson*

U. S. District Judge

Approved:

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Attorney for Defendant

hcb/mh

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

JESSE FOREMAN )  
 )  
 Plaintiff )  
 )  
 vs )  
 )  
 LONZO NEIL SIMMONS, )  
 )  
 Defendant )

CIVIL NO. 67-C-209 ✓

**FILED**

FEB 19 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

STIPULATION OF DISMISSAL WITH  
PREJUDICE

Come now the plaintiff, Jesse Foreman, through her attorney,  
Hughey Baker, and the defendant, Lonzo Neil Simmons, through his  
attorney, Joseph F. Glass, and stipulate that the above captioned  
cause of action be dismissed with prejudice to filing a future action  
herein.

BAKER & BAKER

By: Hughey Baker  
Hughey Baker, Attorney for Plaintiff

BEST, SHARP, THOMAS & GLASS

By: Joseph F. Glass  
Joseph F. Glass, Attorney for Defendant

ORDER

And now on this 13 day of February, 1968, there came on for consideration  
before me, the undersigned Judge of the United States District Court for the  
Northern District of Oklahoma, stipulation of the parties hereto of dismissal,  
the parties having hereto advised the court that all disputes between the  
parties have been settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above  
styled case be, and the same is hereby dismissed with prejudice to the right  
of the plaintiff to bring any future action arising from said cause of action.

Noble C. Hood  
Judge

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

THOMAS E. ROBERTSON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ROY L. MORGAN PRODUCTION COMPANY, )  
 an Oklahoma corporation, et al., )  
 )  
 Defendants and )  
 Third-Party Plaintiffs, )  
 )  
 v. )  
 )  
 GENERAL COLLOIDAL CARBON, INC., )  
 a corporation, )  
 )  
 Third-Party Defendant. )

No. 6602

**FILED**

FEB 21 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

CORRECTED  
JOURNAL ENTRY OF JUDGMENT

Pursuant to the Order of the Court made February 15, 1968, the Journal Entry of the Judgment entered September 19, 1967, is hereby corrected to provide as follows:

NOW on this 19th day of September, 1967, the above entitled matter comes on for trial pursuant to assignment heretofore made, before the undersigned Judge of this Court.

The plaintiff is present in person and by his attorney, David H. Sanders of Sanders, McElroy & Whitten, and witnesses. The defendants and third party plaintiffs appear as follows: Roy L. Morgan Production Company, an Oklahoma corporation, and Roy L. Morgan, an individual, in person and by their attorney, Lewis C. Johnson of Johnson & Fisher, and witnesses; International Carbon, Inc., an Oklahoma corporation, by Tony L. Waller and witnesses; third party defendant, General Colloidal Carbon, Inc., a corporation, by David H. Sanders of Sanders, McElroy & Whitten; and Carbon Management, Inc., an Oklahoma corporation, appears not, but is wholly in default.

All the parties having announced ready for trial and witnesses being first duly sworn, the plaintiff presents his evidence and announces rest. Thereupon the defendants and third party plaintiffs, Roy L. Morgan Production Company, an Oklahoma corporation, Roy L. Morgan, an individual, International Carbon, Inc., an Oklahoma corporation, present their evidence; and thereupon said cause is recessed for further trial to the 24th day of October, 1967, at which time all parties are present or represented as previously shown, and thereupon the defendants present additional evidence and announce rest. The plaintiff thereupon presents evidence in rebuttal and announces rest and the case is closed. Thereupon the court takes said cause under advisement.

Thereafter on the 14th day of December, 1967, the Court being duly advised makes separate findings of fact and conclusions of law as set forth in a separate Memorandum Opinion duly filed herein on the 14th day of December, 1967, which is hereby referred to and made a part of this judgment; and the Court being fully advised in the premises and based upon the special findings of fact and conclusions of law made herein,

ORDERS, ADJUDGES AND DECREES that the plaintiff has failed to sustain the separate causes of action set forth in his Complaint, and the causes of action set forth therein are each hereby adjudged against the plaintiff and the relief sought is denied, and all of the causes of action in the Complaint are hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that on the Third Party Complaint and Counterclaim of Roy L. Morgan Production Company and Roy L. Morgan, individually, against the plaintiff, Thomas E. Robertson, and the defendant, General Colloidal Carbon, Inc., that the evidence of Morgan Production Company and Roy L. Morgan is not sufficient to sustain the allegations and claims for damages, for conspiracy and malicious interference with

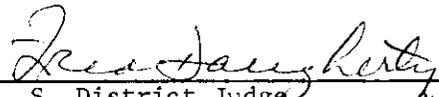
contractual rights, as alleged in Count One of said Counterclaim, and for damages for loss of sales of foreign patent rights as alleged in Count Four of said Counterclaim, and Third Party Complaint, and each is hereby denied and adjudged against Roy L. Morgan Production Company and Roy L. Morgan, individually, and said Third Party Complaint and Counts One and Four are hereby dismissed.

IT IS FURTHER ORDERED, ADJUGED AND DECREED that International Carbon, Inc., is the owner of, (1) the United States Letters Patent No. 3,127,245, and all rights thereto for the territory of the United States of America, and (2) the pilot model carbon black unit, and (3) together with the sole right of management thereof; that Carbon Management, Inc., is the owner of all the foreign patent rights in and to said patented invention; that the plaintiff and his alterego, General Colloidal Carbon, Inc., are hereby perpetually restrained and enjoined from interfering with the ownerships and management of International Carbon, Inc., and of Carbon Management, Inc.

IT IS FURTHER ORDERED, ADJUGED AND DECREED that Roy L. Morgan, defendant and third party plaintiff herein, have and recover judgment upon his cross-claim, as amended, against the defendant, International Carbon, Inc., in the sum of \$141,311.93, with interest at six per cent per annum from this date until paid, for personal funds advanced to International Carbon, Inc., for its use in operating said company, constructing its pilot carbon black unit, and to pay legal expenses of litigation brought or caused by plaintiff herein, and execution is hereby authorized for the recovery thereof, together with costs herein.

Each of the parties are allowed exceptions to the adverse findings, conclusions and judgments herein.

DONE this 21 day of February, 1968.

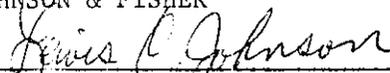
  
U. S. District Judge

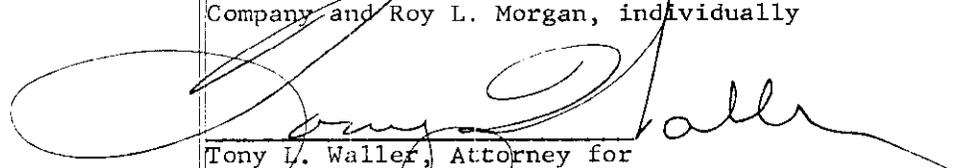
APPROVED AS TO FORM ONLY:

SANDERS, McELROY & WHITTEN

By \_\_\_\_\_  
David H. Sanders  
Attorneys for Plaintiff and  
General Colloidal Carbon, Inc.

JOHNSON & FISHER

By   
Lewis C. Johnson  
Attorneys for Roy L. Morgan Production  
Company and Roy L. Morgan, individually

  
Tony L. Waller, Attorney for  
International Carbon, Inc.

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

LONNIE C. MCGUIRE, JR.,

Plaintiff,

-vs-

GIBBONS ADVERTISING AGENCY,  
INC., an Oklahoma corporation;  
BETTY GIBBONS CODY, individually  
and as Executrix of the Estate of  
Jesse B. Gibbons, Deceased;  
JOHN B. GIBBONS and SHIRLEY  
BROACH,

Defendants.

No. 67-C-124

FILED

FEB 23 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

JUDGMENT OF DISMISSAL

WHEREAS, the court being advised in the premises finds  
that this action should be dismissed with prejudice.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND  
DECREED that on the 2nd day of February, 1968, a dismissal with  
prejudice was filed in this cause and it is, therefore, hereby and by  
these presents ORDERED AND DECREED that this cause be dismissed  
with prejudice, this 23rd day of February, 1968.



JUDGE OF THE UNITED STATES  
DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA.

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

NORTHERN NATURAL GAS COMPANY,  
a corporation,

Plaintiff,

vs.

CECIL R. SULLIVAN and  
BETTY SULLIVAN,

Defendants.

Civil Action  
No. 67-C-171

FILED

FEB 23 1968

MOBLE C. HOOD  
Clerk, U. S. District Court

JUDGMENT

On this 14th day of February, 1968, this cause is heard on motion of plaintiff for summary judgment and defendants' counsel appearing and admitting execution of the contract Exhibit "A" to said motion and note and the truth of the other exhibits to said motion,

IT IS ORDERED that plaintiff, Northern Natural Gas Company, have and recover of the defendants, Cecil R. Sullivan and Betty Sullivan, the sum of \$12,347.00, with attorneys' fees of \$650.00 and costs, to which judgment defendants except.

United States District Judge

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Attorney for Defendants

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

JOHN W. BROWN, )  
Plaintiff, )  
v. )  
JAMES SINGLETON, )  
Defendant. )

**FILED**  
FEB 23 1968  
NOBLE C. HOOD  
Clerk, U. S. District Court.

STIPULATION OF DISMISSAL WITH PREJUDICE

Comes now the plaintiff through her attorney, Loeffler and Allen, and the defendant through his attorneys, Best, Sharp, Thomas & Glass, and stipulate that the above captioned cause of action be dismissed with prejudice to filing a future action herein.

LOEFFLER & ALLEN  
By: John T. Allen III  
Attorneys for Plaintiff

BEST, SHARP, THOMAS & GLASS  
By: Joseph P. Glass  
Attorneys for Defendant

ORDER

And now on this 23 day of February, 1968, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, stipulation of the parties hereto of dismissal, parties hereto having advised the Court that all disputes between the parties have been settled;

IT IS THEREFORE ORDERED, ADJUDGED AND DECIDED that the above styled case be and the same is hereby dismissed with prejudice to the right of the plaintiff to bring any future action arising from said cause of action.

William P. Harrison  
Judge

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

UNITED STATES OF AMERICA,

Libelant,

CIVIL ACTION NO. 68-C-20

vs.

Articles of device consisting of:  
Approximately 15 carrying cases, each  
containing one unlabeled device, bearing  
"U.S. Patent No. 3,050,695," and an  
instruction booklet entitled, "The Way  
To Easy Figure Beauty Care Contrex ---,"  
Approximately 15 carrying cases, each  
containing one device and an instruction  
booklet, labeled in part (main panel of  
device) "Electronic Exerciser," (booklet)  
"Exercise Without Effort,"

Respondent.

FILED

FEB 23 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

DECREE OF CONDEMNATION

This matter comes on for consideration on Motion of the Libelant, United States of America, for Default Judgment, and the Court, having examined the facts herein, finds that the Libel of Information was filed herein on January 24, 1968; that a Motion was duly issued and served by the United States Marshal for the Northern District of Oklahoma on January 24, 1968; that neither Contrex of Tulsa nor any other claimant has appeared or otherwise moved herein.

The Court finds that the Libel of Information allegations are true and correct; that the articles of device and literature described therein and seized by the United States Marshal were misbranded when shipped and while held for sale after shipment in interstate commerce; that such articles of device and literature are within the jurisdiction of this Court; that such articles of device and literature are ineffective, misrepresented, and may cause involuntary contractions and relaxation of muscles and are liable for seizure and disposition pursuant to the provisions of 21 U.S.C. 352(a) and 352(f)(1), and

The Court further finds that the articles of device mentioned herein were misbranded when introduced into and while in interstate commerce and while being held for sale and that said articles of device cannot be salvaged for any useful purpose.

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED BY THE COURT that all of the misbranded articles of device and literature seized and held by the United States Marshal for the Northern District of Oklahoma under and pursuant to the Monition heretofore issued and served herein be and they are hereby ORDERED forfeited to the United States of America and the United States Marshal for the Northern District of Oklahoma is ordered and directed to destroy said articles of device because they cannot be salvaged for any useful purpose.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

*s/ Hubert H. Bryant*

HUBERT H. BRYANT  
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

Mary L. Willhite, . . . Plaintiff, )  
vs. )  
Stella F. Hamilton, . . . Defendant. )

✓  
No. 68 C 34

FILED

FEB 23 1968

*Notice of* DISMISSAL WITH PREJUDICE

NOBLE C. HOOD  
Clerk, U. S. District Court *10*

All issues involved herein having been fully settled and compromised,  
the above case is dismissed with prejudice to the right to bring a future action.

Dated this 22 day of February, 1968.

*[Signature]*  
\_\_\_\_\_  
Plaintiff

*[Signature]*  
\_\_\_\_\_  
Attorney for Plaintiff

*[Signature]*  
\_\_\_\_\_  
Attorney for Defendant

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

Frank J. Hunter, Plaintiff, )

vs. )

Missouri-Kansas-Texas Railroad Company, )  
a corporation, and St. Louis-San Fran- )  
cisco Railway Company, a corporation, )  
Defendants, )

and )

Missouri-Kansas-Texas Railroad Company, )  
a corporation, )  
Defendant and Third Party )  
Plaintiff, )

vs. )

Halliburton Company, a corporation, )  
Third Party Defendant. )

No. 6163 Civil

**FILED**

FEB 27 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

ORDER

Upon consideration of Plaintiff's Motion to Amend and Revise Findings of Fact and Conclusions of Law, the Court finds that the same should be denied.

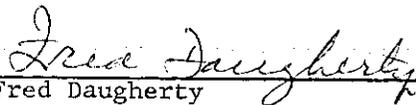
As to Item 1 of the Motion, the Court has found the Plaintiff to have been guilty of contributory negligence with reference to his accident and resulting injury in one or more of the manners specified in the Memorandum Opinion filed herein. This factual determination of contributory negligence on the part of the Plaintiff was based on a consideration of all the evidence before the Court and all the facts and circumstances of the case pertaining to this issue and after hearing the arguments of counsel and perusing all briefs submitted in the case. This, of course, included the claimed emergency.

As to Item 2 of the Motion, the Court made a finding of fact on page 12 of the Memorandum Opinion filed herein that Katy Railroad violated the Safety Appliance Act and was guilty of common law negligence.

This finding was preliminary to a consideration of whether or not the Plaintiff was guilty of contributory negligence. Plaintiff's contributory negligence could only be reached herein upon a finding of primary negligence on the part of Katy Railroad.

The requested amendments or revisions to the Memorandum Opinion of the Court are therefore denied.

It is so ordered, this 27 day of February, 1968.

  
\_\_\_\_\_  
Fred Daugherty  
United States District Judge

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

FRANK J. HUNTER, )  
Plaintiff, )  
vs. )  
MISSOURI-KANSAS-TEXAS RAILROAD )  
COMPANY, a corporation, and )  
ST. LOUIS-SAN FRANCISCO RAILWAY )  
COMPANY, a corporation, )  
Defendants, )

and

No. 6163 Civil

MISSOURI-KANSAS-TEXAS RAILROAD )  
COMPANY, a corporation, )  
A Defendant and )  
Third Party Plaintiff, )  
vs. )  
HALLIBURTON COMPANY, )  
a corporation, )  
Third Party Defendant. )

**FILED**

FEB 27 1968

NOBLE C. HOOD  
Clerk, U. S. District Court

O R D E R

Upon consideration of the Plaintiff's Motion for New Trial and supplemental Motion for New Trial and supporting briefs, the Court finds that both Motions should be denied.

As to Item 1 of the Motion, the Court did not overlook the matter set out therein as shown by the Order of the Court entered this date overruling the Plaintiff's Motion to Amend and Review Findings of Fact and Conclusions of Law.

As to Item 2 of the Motion, the Court believes the findings of fact, conclusions of law and judgment dismissing Plaintiff's action against the Defendants are supported by the great weight of the evidence in the case.

As to Item 3 of the Motion, the Court has not misinterpreted the law applicable to this case. The Court has found the Plaintiff

to have been guilty of contributory negligence in connection with his accident and injury. Under the law, as set out in the Memorandum Opinion of the Court, contributory negligence is a bar to a recovery herein by the Plaintiff. The contributory negligence found by the Court consisted of (1) a failure on the part of Plaintiff to use the safety bar provided for his use while on the brake wheel platform and (2) his moving and mounting the railroad car with known defective brakes or under circumstances when in the exercise of ordinary care the Plaintiff should have known of defective brakes on the car. In the consideration of the defense of contributory negligence asserted by the Defendant, the Court considered all of the circumstances bearing thereon, including the claimed sudden emergency (Plaintiff did not plead the same)<sup>1/</sup> mentioned in said Motion for New Trial. In this connection, a sudden emergency does not, as a matter of law, eliminate the defense of contributory negligence but is a matter to be considered with all the other evidence and bears on the standard of care required of the Plaintiff in the circumstances involved.<sup>2/</sup> In 65A, C.J.S. §123a at pp. 78-79, it is said:

"The rule is well established that, when one is required to act suddenly and in the face of imminent danger, he is not required to act as though he had time for deliberation and the full exercise of his judgment and reasoning faculties. Ordin-

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<sup>1/</sup> Under Oklahoma law, sudden emergency must be affirmatively pleaded. See 19 Okla. L. R. 310-311. However, pursuant to F.R.Civ.P. 15(b), the Court considers this matter as having been pleaded.

<sup>2/</sup> Luper Transp. Co. v. Barnes, (Fifth Cir.-1949), 170 F. 2d 880.

ary care to avoid injury is all that is required, but ordinary care is required; a sudden peril or emergency does not relieve plaintiff of the duty of exercising ordinary care for his own safety. The test is, did he act as a reasonably prudent man would have acted under the same or similar circumstances."  
(Underscoring furnished).

The trier of the facts, therefore, may find that one confronted with a sudden emergency has exercised the required care under the circumstances or may find that notwithstanding the sudden emergency he has not exercised the required care for his own safety and that except for this failure his accident and injury would not have occurred. This rule of law applies to the contributory negligence of the Plaintiff in failing to use the safety bar. This safety or grab bar is to be used by one while riding the brake wheel platform and an ordinarily prudent person would use it in all circumstances and particularly in emergency circumstances. The Court has found from the evidence that the Plaintiff would not have suffered his accident and injury had he made use of the safety bar and not abandoned the same while riding the brake wheel platform and that under the circumstances of the emergency, as claimed by the Plaintiff, the Plaintiff failed to exercise ordinary care for his own safety under the circumstances. An examination of those cases cited by Plaintiff as holding that when a person is confronted with an emergency because of the negligence of another, such person cannot be guilty of contributory negligence as a matter of law, reveals that they do not support such proposition but in fact support the proposition that in an emergency a person is still required to act with ordinary care under those circumstances. This comports with the above quote from Corpus Juris Secundum. In Dickinson v. Erie R. Co., 81 A.104 (N.J., 1911), cited by Plaintiff, the Plaintiff quoted from a portion of the case but neglected to include the following statement in the case:

"All that was required of a person in such an emergency is that he act with ordinary care under the circumstances; it being for the jury to determine whether such an emergency existed, and whether the traveler acted with due care." 81 A. at p. 106.

It is therefore obvious that the New Jersey court thought that contributory negligence was a fact question to be determined even in the presence of an emergency. Plaintiff also cites *Bulliard v. New Orleans Terminal Co.*, 174 So. 659 (La. App.-1937), but in this case the Louisiana court made a factual determination as to whether or not there was contributory negligence in the emergency situation. The Plaintiff states that "the rule is again set out in the case of" *Oklahoma Natural Gas Co. v. McKee*, 121 F. 2d 583 (Tenth Cir.-1941). The Court is unable to find any reference in that opinion to the rule urged by the Plaintiff. To the contrary, the Tenth Circuit in that case held that contributory negligence in an emergency situation is a fact question:

"When in the exercise of ordinary care, the appellee became conscious of the peril, it became his duty to act as a reasonably prudent person would have acted under similar circumstances. (Citations omitted) It is not for the trial court, and certainly not for this Court to say what, under the described circumstances, a reasonably prudent person should have done. Obviously, it became the duty of the jury to judge the reactions and impulses of the human mind." 121 F. 2d at p. 586.

The other cases cited by the Plaintiff likewise do not support the principle of law which the Plaintiff suggests to the Court.

In addition, it is well recognized that if one contributes to bringing about the emergency he may not take advantage of the legal doctrine of sudden emergency. 65A C.J.S. §123 at p. 83; *Shell Oil Co. v. Slade*, 158 F. 2d 518 (Fifth Cir.-1943), cert. den. 320 U.S. 772, 88 L. ed. 462, 64 S.Ct. 75. Under the second factual finding of contributory negligence as above mentioned, the Plaintiff is deemed to

have contributed to the emergency he claims and therefore cannot avail himself of the doctrine. The Plaintiff should not have moved the railroad car with knowledge or under circumstances where he should have known that it had defective brakes. In this connection, under the evidence, the Plaintiff would have discovered defective brakes by attempting to release the same. He is charged with knowledge that he could not move the railroad car with a winch line with the brakes fixed and that the railroad cars are spotted with brakes fixed. The Court actually believes and has found under this finding of contributory negligence that the Plaintiff learned of the claimed defective brakes before he attempted to move the car. This, of course, is based on some direct evidence about the function of railroad car brakes and how cars are spotted and some circumstantial evidence about the activities of Plaintiff. The Plaintiff is the only person who knows what he actually did and his memory while being excellent in all other respects, was incredibly a blank when asked about releasing or attempting to release the brakes on the car involved in his accident. It is noted that he did remember that he released the brakes on the other car which he moved with the winch line immediately before moving the car under which he received his injury. It is, of course, obvious that the Plaintiff would be confessing contributory negligence if he would testify that he attempted to release the brakes on this car as he did on the other car, found that the brakes were defective and then undertook to move the car with a winch line knowing he would have to stop the same with its brakes and while moving mounted the same to apply known defective brakes.

As to Item 4 of the Motion, the Court did not commit error in finding from the evidence as a fact that the Plaintiff released or attempted to release the brakes on said car before he attempted to move the same with the winch line. The undisputed evidence before the Court is that all railroad cars spotted on sidings by the railroad are spotted with the brakes set. It is reasonable to infer from this that the Plaintiff, who was engaged to unload and move these railroad cars, would know this and therefore would release the brakes or attempt to do so before moving a car. He testified that he released the brakes on the other car before he moved the same by winch line but for some unexplained reason he did not recall whether or not he released the brakes on the car involved in this accident. This lack of memory on the part of the Plaintiff is incredible. His memory was perfect on all details as to moving both cars except for this one single but very important matter. From the evidence and all the circumstances, the Court has found that the Plaintiff did attempt to release the brakes or should have as a normally prudent person would have under these circumstances. If the brakes on the car were defective in the manner claimed by Plaintiff, they would not have been operative by undisputed evidence. The Court further has found from the evidence that the Plaintiff in attempting to manipulate the brake wheel and release the brakes on the car with the missing pin, as claimed by the Plaintiff, would have found defective brakes. In these circumstances, the Plaintiff was guilty of contributory negligence in moving the car with this knowledge and again in mounting the same while it was moving to attempt to set defective brakes, or the Plaintiff should have released or attempted to release the brakes before moving the car in which event he would have discovered defective brakes.

As to Item 5 of the Motion, the Court has found from the evidence before it that the brakes on the railroad car involved would not operate with the pin missing, as claimed by the Plaintiff, and that this defective condition would be apparent to anyone attempting to manipulate the brakes. This evidence is undisputed.

As to Item 6 of the Motion, the statements made therein are erroneous. In the first place, the railroad car in question was on the siding near the United States Court House throughout the trial. The Plaintiff's expert, Prof. Barton, did inspect the car at that location. A discussion was had regarding a further inspection of the car by the Plaintiff's expert for the purpose of preparing the expert to present rebuttal expert testimony. The Court did not refuse this additional inspection but offered the Plaintiff an opportunity to make the same. But the request of the Plaintiff for this further inspection was withdrawn, as shown by the record, a pertinent extract of which is attached.

As to Item 7 of the Motion, the Court is not aware of rushing the trial of this case. One late session in a three day trial was held but no objection was made to the same. A session was conducted the next morning with no objection being then raised. The Court believes that no prejudice resulted from the night session. The Court further believes that all parties were given ample time and full opportunity to present all the evidence they wished to present.

As to Item 8 of the Motion, the Court declines to reopen the trial and receive this additional evidence. It does not conform to requirements for reopening the case on the grounds of newly discovered evidence. See Barron and Holtzoff, Federal Practice and Procedure, Vol. 3, pp. 370-374 and pp. 413-415. Where there is lack of diligence in procuring such evidence, there is no basis for granting a motion for a new trial. The only explanation Plaintiff offers for his failure

to present this evidence is that "such failure was inadvertent and caused by the rush" of the trial. If the omission was "inadvertent" then Plaintiff implies that the evidence was available to him at the time of trial.

Evidence which is merely impeaching in character does not afford any basis for reopening a case. Kansas City Southern Ry. Co. v. Cagle, 229 F. 2d 12 (Tenth Cir.-1956), cert. den. 351 U. S. 908, 100 L. ed. 1443, 76 S. Ct. 697. The situation here is similar to that in White Pine Copper Co. v. Continental Insurance Co., 166 F. Supp. 148 (W.D. Mich.-1958):

"An examination of the Steele (an expert) report and the affidavit of Steele indicates that Steele had no more information as to the facts than was available to all of the parties long before the trial of this case. The only real value which Steele's evidence would have for the defendant would be to show that plaintiff had consulted with experts who did not support the theory of the plaintiff as such theory was supported by plaintiff's experts who were produced in court. This does not appear to this Court to be an unusual situation. \* \* \* We find nothing in the Steele report and nothing in the affidavit of Steele which could be defined by the term, 'newly discovered evidence.'" 166 F. Supp. at p. 161.

Defendant's expert testified that the brakes on the car could not be set with the pin missing and that this defect would be readily apparent to anyone trying to operate the brakes. Plaintiff now desires to present the testimony of an expert who says the contrary. No reason for failure to produce this witness at the trial is assigned except the inadvertence of Plaintiff and the rush of trial. This very expert did appear and testified in the case but not on this point. The sole excuse of inadvertence is the very antithesis of diligence and does not constitute a sufficient ground for letting in this evidence at this time. Moreover, it would not produce a different result in the case. English v. Mattson, 214 F.2d 406 (Fifth Cir. 1954).

As to Item 9 of the Motion, the same is denied on the basis of the Order entered herein on Plaintiff's Motion to Amend and Revise Findings of Fact and Conclusions of Law.

As to Item 1 of the Supplemental Motion for New Trial, the Plaintiff is in error in concluding that the Court would apply the same degree of care to the Plaintiff as to a railroad employee who had been given special training in the handling of brakes. In considering the question of contributory negligence on the part of Plaintiff, the Court only considered the Plaintiff in the light of one acting under the same or similar circumstances as the Plaintiff. In this connection, the evidence shows that the Plaintiff was engaged in unloading railroad cars and moving the same with a winch line. The evidence also shows that he released the brakes before moving the first car with the winch line and then he set the brakes on this car after he had moved it to the desired location. The Court has assumed that the Plaintiff would have the same knowledge and would operate in the same manner with reference to the second car that he moved. It is also the undisputed evidence in the case that all railroad cars when spotted on a siding are left by the railroad crew at such location with the brakes fixed or set, and that the Plaintiff in his work in unloading and moving railroad cars would know this as evidenced again by his activities in connection with the first car he moved on the day involved. Thus, the Plaintiff is not correct in concluding that the Court considered the Plaintiff as a trained railroad employee.

As to Item 2 of the Supplemental Motion, this Item is essentially the same as Item 7 of the Motion for New Trial. The Court will refer to Item 7 of the Motion as set out above and merely repeat that

no complaint was made about the hours of holding court. The alleged surprise claimed in the Supplemental Motion is not described and the evidence now desired to be offered after the Court has ruled against the Plaintiff could and should have been introduced at the trial in the exercise of due diligence.

As to Item 3 of the Supplemental Motion, the Court did not lead any party to believe what the Court's ruling would be on the issue of contributory negligence. The record will show that when this matter was argued to the Court at the trial the Court required the parties to submit briefs as to whether contributory negligence on the part of the Plaintiff would or would not bar his recovery against the Katy Railroad. And the parties submitted their briefs. How Plaintiff's counsel could now say that the Court had indicated a decision on this point is beyond comprehension. This claimed error is wholly without merit.

The Court is fully satisfied that all parties had a full, fair and complete hearing. The evidence now desired to be presented by the Plaintiff does not meet the requirements of newly discovered evidence and does not justify the granting of a new trial or the reopening of the evidence in this case nor would it change the result herein. From all the evidence and circumstances of this case, the Court is fully convinced that the Plaintiff was guilty of negligence contributing to his accident and injury. Under the law this bars a recovery herein for the Plaintiff.

Accordingly, the Plaintiff's Motion and Supplemental Motion for New Trial are both overruled and denied this 27 day of February 1968.

(S) Fred Daugherty  
Fred Daugherty  
United States District Judge

1 BY THE COURT: I imagine that we ought to call on  
2 Haliburton now, or we can move one or two ways. We can either  
3 call on the plaintiff for rebuttal or we can hear Haliburton.  
4 It doesn't make any particular difference how we go, as we  
5 are going to hear them all before we get through. So, let  
6 me inquire of both of you, does Haliburton have any evidence  
7 now?

8 BY MR. TABOR: I am not going to put on any evidence  
9 to what he has so far. If he rests, I will rest. If he  
10 doesn't, I am going to wait and see what he puts on.

11 BY THE COURT: Alright, now does the plaintiff have  
12 any rebuttal evidence in the case?

13 BY MR. WEST: The plaintiff rests Your Honor.

14 BY THE COURT: You have no rebuttal?

15 BY MR. WEST: I am sorry, we have no rebuttal.

16 BY THE COURT: Now earlier you were concerned about  
17 your experts seeing the car and I told you I would hear you  
18 on that if you wanted to put on an expert in rebuttal, and  
19 hear you on the matter of the expert seeing the car before  
20 you put him back on.

21 BY MR. WEST: At this time, to save some time, we will  
22 withdraw that request.

23 BY THE COURT: Alright, you don't wish to have an  
24 expert either see the car or testify to it?

25 BY MR. WEST: Well now, if I understand correctly

1 that Frisco and Katy have rested their cases.

2 BY THE COURT: They tell me they have no more  
3 evidence against the plaintiff.

4 BY MR. WEST: Then in that event, we rest.

5 BY THE COURT: You told me that you don't have any  
6 more rebuttal, but I just want to be sure now that you don't  
7 take the position that you can't have the rebuttal of an  
8 expert and the expert to go see the car, because I am giving  
9 you now the opportunity to tell me that you want your expert  
10 to see the car and you want to put him on in rebuttal and I  
11 take it that you do not.

12 BY MR. WEST: We are withdrawing our request.

13 BY THE COURT: Alright.  
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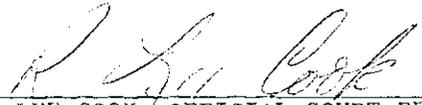
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C E R T I F I C A T E

I, R. Lee Cook, do hereby certify that I am a duly appointed, qualified and acting official court reporter in and for the United States District Court for the Northern District of Oklahoma.

I further certify that the foregoing proceedings were taken by me in my official capacity in stenotype.

I further certify that my said machine shorthand notes were later transcribed and reduced to typewriting under my supervision and that the foregoing is a true and correct typewritten transcription of the proceedings had as aforesaid.

  
R. LEE COOK, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

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

United States of America,

Plaintiff,

CIVIL NO. 67-C-187

vs.

Hugh Mahone, Jr., and Jacqueline L.  
Mahone, husband and wife; and  
Morrison Plumbing Co., a corporation,

Defendants.

**FILED**

FEB 27 1968

ORDER CONFIRMING MARSHAL'S SALE

NOBLE C. HOOD  
Clerk, U. S. District Court

NOW, on this 26 day of February, 1968, there comes on

for consideration the Motion to Confirm Sale made by the United States  
Marshal for the Northern District of Oklahoma on

under an Order of Sale dated January 3, 1968 of the following-described  
property, to-wit:

Lot 16, Block 3, Hartford Hills Addition to  
the City of Tulsa, Tulsa County, State of  
Oklahoma, according to the recorded plat thereof,

and the Court having examined the proceedings of the United States Marshal  
under the said Order of Sale, there being no exceptions thereto and no one  
appearing in opposition thereto, finds that due and legal notice of the  
sale was given once a week for four (4) consecutive weeks prior to the  
date of said sale in the Tulsa Daily Legal News, a newspaper of general  
circulation in Tulsa County, State of Oklahoma, and that on the day  
fixed therein the aforesaid property was sold to the Admin. of Veterans Affairs,  
he being the highest and best bidder therefor.

The Court finds that the sale was in all respects in conformity  
with the law and judgment of this Court and was legal in all respects.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the United  
States Marshal's Sale made pursuant to the Order of Sale heretofore issued  
herein, be, and the same is approved and confirmed.

IT IS FURTHER ORDERED that Doyle W. Foreman, United States  
Marshal for the Northern District of Oklahoma, execute and deliver to the  
purchaser, Admin. of Veterans Affairs, a good and sufficient deed  
for the above-described real property.

APPROVED:

*Arthur Bohannon*  
UNITED STATES DISTRICT JUDGE

*Robert H. Bryant*  
ROBERT H. BRYANT  
Assistant U. S. Attorney

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

WILSHIRE OIL COMPANY OF  
TEXAS, a corporation,

Plaintiff

-vs-

L. E. RIFFE, et al.,

Defendants

No. 5861 - Civil

FILED

FEB 28 1968

JUDGMENT AND ORDER IN AID OF JUDGMENT:  
ASSESSMENT OF DAMAGES

NOBLE C. HOOD  
Clerk, U. S. District Court

This matter comes on before the Court on February 14, 1968, upon Plaintiff Wilshire Oil Company's MOTION FOR ASSESSMENT OF DAMAGES, PURSUANT TO JUDGMENT, AND TAXATION OF COSTS heretofore filed on or about January 10, 1968; and the Court having heard representations and argument by counsel for the respective parties hereto; having heard testimony and having considered certain exhibits; having considered the legal briefs of the parties; and being satisfied in the premises;

The Court finds that six trusts created by L. E. Riffe and his wife for the benefit of their daughters (Riffe Trusts) acquired from A. V. Murray 900 shares of the common stock of Redstone Asphalt and Petroleum Company for a total consideration of \$9,000.00. A. V. Murray had agreed to give to the Riffe Trusts one-half of a commission in the total amount of \$16,050.00 paid to him by Anco Manufacturing Company for his assistance in obtaining for Anco the contract for construction of an asphalt plant for Redstone. The one-half of the said commission, \$8,025.00, was not actually paid to the Riffe Trusts, but was credited upon the purchase price of the Redstone stock. The

balance of the purchase price, \$975.00, was paid in cash by the Riffe Trusts to A. V. Murray.

The Court further finds that the 900 shares of Redstone stock were sold by the Riffe Trusts for \$36,888.59. Thus, after deducting the sum of \$975.00 paid in cash for the stock, \$35,913.59 was the total realized from the sale of the Redstone stock and one-half of the Anco commission.

The Court finds that Plaintiff Wilshire is entitled to have a judgment against Defendant L. E. Riffe in the amount of \$35,913.59 together with interest upon said sum at the rate of 6% per annum from the 31st day of December, 1962 to February 14, 1968, interest being in the amount of \$11,037.14.

The Court finds in connection with the claim of Plaintiff Wilshire for a recovery of a percentage of the salaries and bonuses paid to the Defendant L. E. Riffe during the year in question should be denied and in this connection the Court finds that Defendant L. E. Riffe rendered good and valuable services to the Plaintiff Wilshire during said year. That this Court denied this claim, that is the claim for a percentage of the salaries and bonuses at the end of the trial of the case, which denial was affirmed by the Appellate Court in that the Appellate Court did not reverse the trial Court in this regard.

The Court finds from the evidence presented that Plaintiff Wilshire has expended and paid costs in the amount of \$6,524.23 and that Defendant L. E. Riffe has expended and paid costs in the amount of \$4,736.18 in connection with this action and the appeal thereof. The Court further finds that, of the

said sum expended by Plaintiff, the sum of \$1,121.30 represents costs incurred on appeal to the United States Circuit Court of Appeals for the Tenth Circuit, as shown by the certificate of the Clerk of that Court.

The Court further finds that by virtue of the judgment rendered by the United States Court of Appeals for the Tenth Circuit in this action, Plaintiff Wilshire is entitled to recover the said sum of \$1,121.30 from Defendant L. E. Riffe. The Court finds that, considering all factors of this action and its outcome, in fairness and justice, Plaintiff Wilshire and Defendant L. E. Riffe should each bear and pay the costs respectively incurred, except for those costs of \$1,121.30 accrued on appeal.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the Plaintiff Wilshire have and recover of and from Defendant L. E. Riffe the sum of \$46,950.73, together with the sum of \$1,121.30, or a total of \$48,082.03, for all of which let execution issue.

Dated this 27 day of February, 1968.

(s) Luther Bohannon  
United States District Judge

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

United States of America,

Plaintiff,

vs.

Samuel Howard and Ella Mae  
Howard, husband and wife,

Defendants.

Civil No. 67-C-188

FILED

FEB 21 1968

NOBLE C. HOOD  
Clerk U. S. District Court

JUDGMENT OF FORECLOSURE

THIS MATTER comes on for consideration this 28 day of  
February 1968, the plaintiff appearing by James E. Ritchie, Assistant  
United States Attorney for the Northern District of Oklahoma, and the  
defendants, Samuel Howard and Ella Mae Howard, appearing not, and the  
defendants, Board of County Commissioners of Washington County, Oklahoma  
and the County Treasurer, Washington County, Oklahoma, appearing by  
Lewis B. Ambler, District Attorney.

The Court being fully advised and having examined the file  
herein finds that due and legal service has been made on the defendants,  
Samuel Howard and Ella Mae Howard, by publication in the Bartlesville  
Examiner-Enterprise for six consecutive weeks beginning December 22,  
1967, requiring each of them to answer the complaint filed herein by  
January 22, 1968, and it appearing that said defendants have failed  
to file an answer herein and their default has been entered by the  
Clerk of this Court; and

The Court further finds that the defendants, Board of County  
Commissioners of Washington County, Oklahoma and the County Treasurer,  
Washington County, Oklahoma, have heretofore filed an Answer disclaiming  
any right, title and interest in and to the real property which is the  
subject of this foreclosure proceeding; and

The Court further finds that this is a suit based upon a  
mortgage note and foreclosure on a real property mortgage securing  
said mortgage note and that the real property described in said mort-  
gage is located in Bartlesville, Washington County, Oklahoma, within the  
Northern Judicial District of Oklahoma.

The Court further finds that the material allegations of  
Plaintiff's complaint are true and correct;

That the defendants, Samuel Howard and Ella Mae Howard, did on May 22, 1964, execute and deliver to J. S. Gleason, Jr., as Administrator of Veterans Affairs, their mortgage and mortgage note for the sum of \$6,000.00, with interest thereon at the rate of  $5\frac{1}{4}\%$  per annum and further providing for the payment of monthly installments of principal and interest; and

It further appears that the defendants, Samuel Howard and Ella Mae Howard, made default under the terms of the aforesaid mortgage note and mortgage by reason of their failure to make the monthly installments due thereon on April 1, 1965, which default has continued, and that by reason thereof the defendants are now indebted to the Plaintiff in the sum of \$5,679.83, as unpaid principal, with interest thereon at the rate of  $5\frac{1}{4}\%$  per annum from April 1, 1965, until paid, plus the cost of this action accrued and accruing.

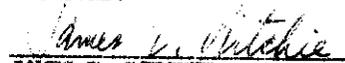
IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Plaintiff, United States of America, have and recover judgment against the defendants, Samuel Howard and Ella Mae Howard, for the sum of \$5,679.83, with interest thereon at the rate of  $5\frac{1}{4}\%$  per annum from April 1, 1965, until paid, plus the cost of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that upon failure of the defendant to satisfy Plaintiff's money judgment herein, an Order of Sale issue to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisalment, the above-described real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, to be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
JAMES E. RITCHIE  
Assistant U. S. Attorney