

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

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 627; UNITED BROTH-
ERHOOD OF CARPENTERS and JOINERS OF
AMERICA, LOCAL 2008; LABORERS INTER-
NATIONAL UNION OF NORTH AMERICA,
LOCAL 524,

Plaintiffs,

vs.

COLONEL VERNON PINKEY, DIRECTOR,
TULSA DISTRICT CORPS OF ENGINEERS;
UNITED STATES ARMY CORPS OF ENGI-
NEERS, TULSA DISTRICT,

Respondents.

FILED
MAY 21 1971
JOHN H. POE, Clerk
U.S. DISTRICT COURT

NO. 71-C-130

O R D E R

The Court has before it an action for declaratory judgment, and for a temporary restraining order; and, being always required to look into its jurisdiction, directed at hearing on May 11, 1971, the parties to submit briefs thereon.

Plaintiffs are three labor organizations, unincorporated associations "which exist for the purpose of representing employees and members and dealing with employers with respect to wages, hours and working conditions of those employees and members" and bring this action for themselves and "for and on behalf of their respective individual members." Plaintiff's allege that some of their employers will be bidders on the federally financed Kaw Dam project in Osage and Kay Counties, Oklahoma, and that such employer-contractors' bids cannot be competitive with other bidding contractors until it is ascertained whether the provisions of the Davis-Bacon Act, T. 40 U.S.C. § 276(a) et seq., are applicable to the construction contracts to be let on this project. The named defendants are Colonel Vernon Pinkey, Director, Tulsa District Corps of Engineers, and the United States Army Corps of Engineers, Tulsa District.

Plaintiffs, Unions and for their members, seek the Court's Order restraining defendants from awarding any construction contract relating to the federally financed Kaw Dam project in Osage and Kay Counties, Oklahoma. Plaintiffs further seek a declaratory judgment that the provisions of the Davis-Bacon Act are applicable to all construction

contracts let by respondents in connection with the construction of said Kaw Dam project; and, ask the Court to declare void Proclamation No. 4031 issued February 23, 1971, by the President of the United States, which declared a national emergency and suspended the application of the Davis-Bacon Act to all contracts entered into on or subsequent to the date thereof. Plaintiff's contend such Proclamation created an exemption to provisions of the Davis-Bacon Act by Executive Order, and such presidential act was in violation of the Constitution of the United States in that the President exercised powers reserved to the legislative branch of the Federal Government pursuant to Article I, Section 1, and that his act is an encroachment upon and usurpation of legislative power in contravention of the separation of power concept embodied in the Constitution.

Bids were solicited March 15, 1971, by defendants on the Kaw Dam project and a bid awarded May 10, 1971.

The Court upon careful perusal of the briefs and pleadings herein, and being fully advised in the premises finds that the temporary restraining order should be overruled and denied, and that the cause of action should be dismissed for lack of jurisdiction, i.e., the complaint, excluding conclusions of law and unwarranted inferences of fact, is inadequate to state a claim upon which relief can be granted; the plaintiffs lack standing to sue having failed to show a legal right or a legally protected interest, or a duty owed to them by the officer or agency charged, or that they are a person suffering legal wrong or adversely affected or aggrieved by agency action within the meaning of the relevant statute alleged, T. 40 U.S.C.A. § 276(a) et seq.; and, the suit is one against the United States without its consent.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the temporary restraining order be and it is hereby overruled and denied, and the cause of action be and it is hereby dismissed.

Dated this 27th day of May, 1971, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE

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

LINDSEY S. GOLDMAN, d/b/a
LINDSEY S. GOLDMAN LATH
AND PLASTER,

Plaintiff,

vs.

GEORGE A. FULLER COMPANY,
a Corporation,

Defendant.

LINDSEY S. GOLDMAN, d/b/a
LINDSEY S. GOLDMAN LATH
AND PLASTER,

Plaintiff,

vs.

GEORGE A. FULLER COMPANY,
a Corporation,

Defendant.

No. 71-C-139

FILED

MAY 27 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

No. 71-C-143

ORDER CONSOLIDATING

SUA SPONTE,

IT IS ORDERED that cause number 71-C-143 be consolidated
with cause number 71-C-139.

ENTERED this 27th day of May, 1971.

John H. Poe
UNITED STATES DISTRICT JUDGE

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

United States of America,

Plaintiff,

Civil Action No. 70-C-324

vs.

An article of food consisting of 141
cases, more or less, each containing
12 cartons, of an article labeled in
part:

(carton)

"Tiger's Milk Mixes Instantly in
Drinks or Foods Tiger's Milk Brand
Nutrition Booster Net Wt. 20 Oz.
***Vitamins *** Pantothenic Acid 11
mgs. ** *** Biotin 11 mcgs. ** ***
Minerals *** The need in human nutri-
tion has not been established,"

Defendant.)

FILED
MAY 24 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

DEFAULT DECREE OF CONDEMNATION

NOW, on this 21st day of May, 1971, this matter comes on for
consideration, the plaintiff, United States of America, being represented by
Robert P. Santec, Assistant United States Attorney for the Northern District
of Oklahoma, and it appearing that process was issued herein and returned
according to law and notice of seizure of the above-described article of food
was given according to law and that no persons have appeared or interposed a
claim before the return date named in said process;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the article of
food so seized be condemned as forfeited to the United States and that the
United States Marshal for the Northern District of Oklahoma do forthwith
dispose of the same by destruction and make return of his action to this Court
and,

IT IS FURTHER ORDERED that the United States of America shall pay all
costs of this proceeding.

Lester Bohannon
UNITED STATES DISTRICT JUDGE

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

LOYD BURKDOLL,

Plaintiff,

vs.

JIM STROBLE,

Defendant.

CIVIL ACTION NO. 69-C-271

FILED

MAY 24 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

JUDGMENT BY CONSENT

THIS CAUSE COMING ON TO BE HEARD on this 19th day of May, 1971, and the parties being present by their attorneys, Charles B. Lutz, Jr. for the Plaintiff, and John M. Mee for the Defendant; and it appearing to the Court that the Defendant has been duly served with summons and complaint in this action and that the Court has jurisdiction of this action; and it further appearing that the Defendant, by his Attorney, has agreed that the Plaintiff may have judgment entered in Plaintiff's favor in this action in the amount of Eight Thousand and One Hundred Eighty-Seven and 15/100 Dollars (\$8, 187. 15), with interest at eight percent (8%) until paid, and the costs of this suit in the amount of \$42. 00; and the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff have and recover from the Defendant the sum of Eight Thousand One Hundred Eighty-Seven and 15/100 Dollars (\$8, 187. 15), with interest at eight percent (8%) until paid, and the costs of this suit in the amount of Forty-Two Dollars (\$42. 00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that execution on this judgment is stayed until February 1, 1972.

Dated: 21
5/25 1971

Lrea Jougherty
UNITED STATES DISTRICT JUDGE

APPROVED:

Charles B. Lutz, Jr.
Charles B. Lutz, Jr., Attorney for Plaintiff

John M. Mee
John M. Mee, Attorney for Defendant

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

EDMUND W. SCHEDLER,)
)
Plaintiff,)
)
-vs-)
)
YELLOW FREIGHT SYSTEM, INC.,)
)
Defendant.)

NO. 70-C-315

FILED

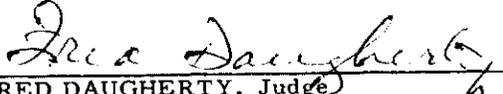
MAY 24 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

The parties having stipulated for dismissal, IT IS ORDERED
BY THE COURT that this action is hereby dismissed.

DATED this 24 day of May, 1971.


FRED DAUGHERTY, Judge
United States District Court

PLAINTIFF: [Name]
vs.
DEFENDANT: [Name]

FILED
MAY 24 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

VERIFICATION OF DISMISSAL

This matter came on for hearing upon joint stipulation of plaintiff and defendant for an order dismissing this case, with prejudice, and the Court being advised as to the reasons therefor.

That this case has been fully settled between the parties hereto, and that plaintiff has received and accepted from defendant a sum in full settlement, release and satisfaction of plaintiff's cause of action, and the Court after due consideration, finds that said Dismissal should be approved.

IT IS THEREFORE ORDERED that the cause of action of plaintiff herein be, and the same is hereby dismissed, with prejudice, at the cost of defendant.

DATED this 21st day of May, 1971.

[Signature]
[Name]
Clerk of Court

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

ODIE LEE REED,)	
)	
Petitioner,)	
vs.)	No. 71-C-41
)	
RAY H. PAGE, Warden,)	
Oklahoma State Penitentiary,)	
)	
Respondent.)	
DANNY RAY LAMB,)	
)	
Petitioner,)	
vs.)	No. 71-C-63
)	
LOZIER BROWN,)	
)	
Respondent.)	

E I L E D
MAY 24 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

J U D G M E N T

These consolidated cases came on for consideration by the Court after hearing argument of counsel and upon consideration of the Briefs submitted by each party, and upon the agreement of all of the parties concerned that the cases be submitted for decision by the court upon the Briefs and arguments.

Petitioners in each case appeared by William S. Dorman, Esquire, and Frederick P. Gilbert, Esquire, both of Tulsa, Oklahoma; and the respondent appeared by Larry Derryberry, Attorney General of the State of Oklahoma, and H. L. McConnell, Assistant Attorney General.

Each petitioner originated his respective case by filing a Petition for Writ of Habeas Corpus (28 USCA §2254) in the United States District Court seeking release from a judgment and sentence imposed on him by the State of Oklahoma for the commission of a felony. It appears that each petitioner has exhausted his state remedies and is contending in this Court that his Constitutional rights have been violated in that the Oklahoma Statute by which jurisdiction to try and punish each petitioner for his misdeeds is unconstitutional and invalid. The Oklahoma Statute in question is 10 O.S. Supp. §1101. This statute, among other things, provides:

"(a) The term 'child' means any male person under the age of sixteen (16) years and any female person under the age of eighteen (18) years."

Petitioners contend that this statute is unconstitutional because its purpose and effect is to cloak girls 16 and 17 years of age accused of illegal misconduct with the protective and lenient civil jurisdiction of the juvenile process of the courts of the State of Oklahoma, while at the same time relegating

like-aged boys accused of similar misconduct to be tried and punished as adult offenders under the Criminal Code of Oklahoma; that punishment for adults is far greater and graver than delinquency punishment under the Juvenile Code and hence the punishment for 16 and 17 year old boys as adults is invidiously unequal punishment based solely on sex of the offenders, and is repugnant to the Equal Protection and Due Process clauses of the Fourteenth Amendment. Petitioners further contend that the assailed statute entails the additional penalty of disfranchisement for the unfavored sex under the Oklahoma Constitution, Article III, Section 1; and is further void as repugnant to the Nineteenth Amendment of the United States Constitution. Petitioners further contend that the Oklahoma Statute also violates their voting rights and is in conflict with the Civil Rights Act of 1964.

The Oklahoma Court of Criminal Appeals in Danny Ray Lamb and Odie Lee Reed vs. State of Oklahoma, 475 P.2d 829 upheld the Oklahoma statute as against the charge made by these petitioners that it violated their United States Constitutional rights under the Fourteenth Amendment.

The Court is of the opinion, and so holds, that the Oklahoma Legislature in enacting the statute complained of had a Constitutional right to consider sex as a material factor and to make the classification set out in the statute, and had the Constitutional right to make the classification on the basis of special considerations to which women were considered to be naturally entitled. In Lamb and Reed, supra. the Court of Criminal Appeals of Oklahoma said:

"As we view the situation, the statute exemplifies the legislative judgment of the Oklahoma State Legislature, premised upon the demonstrated facts of life; and we refuse to interfere with that judgment."

Having reached the conclusion that 10 O.S. 1969 Supp. §1101 is Constitutional, and does not violate any of petitioners' Constitutional rights, it is unnecessary to discuss the other claims made by petitioners.

It is the judgment of the Court that the Petition for Writ of Habeas Corpus of Odie Lee Reed in Case No. 71-C-41 should be, and the same is hereby denied; it is the judgment of the Court that the Petition for Writ of Habeas Corpus of Danny Ray Lamb in Case No. 71-C-63 should be, and the same is hereby denied.

Dated this 21st day of May, 1971.

Luther Bohannon
United States District Judge

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

ODIE LEE REED,)
)
) Petitioner,)
 vs.) No. 71-C-41
)
) RAY H. PAGE, Warden,)
) Oklahoma State Penitentiary,)
) Respondent.)

DANNY RAY LAMB,)
)
) Petitioner,)
 vs.) No. 71-C-63
)
) LOZIER BROWN,)
) Respondent.)

FILED
MAY 24 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

J U D G M E N T

These consolidated cases came on for consideration by the Court after hearing argument of counsel and upon consideration of the Briefs submitted by each party, and upon the agreement of all of the parties concerned that the cases be submitted for decision by the court upon the Briefs and arguments.

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Each petitioner originated his respective case by filing a Petition for Writ of Habeas Corpus (28 USCA §2254) in the United States District Court seeking release from a judgment and sentence imposed on him by the State of Oklahoma for the commission of a felony. It appears that each petitioner has exhausted his state remedies and is contending in this Court that his Constitutional rights have been violated in that the Oklahoma Statute by which jurisdiction to try and punish each petitioner for his misdeeds is unconstitutional and invalid. The Oklahoma Statute in question is 10 O.S. Supp. §1101. This statute, among other things, provides:

"(a) The term 'child' means any male person under the age of sixteen (16) years and any female person under the age of eighteen (18) years."

Petitioners contend that this statute is unconstitutional because its purpose and effect is to cloak girls 16 and 17 years of age accused of illegal misconduct with the protective and lenient civil jurisdiction of the juvenile process of the courts of the State of Oklahoma, while at the same time relegating

like-aged boys accused of similar misconduct to be tried and punished as adult offenders under the Criminal Code of Oklahoma; that punishment for adults is far greater and graver than delinquency punishment under the Juvenile Code and hence the punishment for 16 and 17 year old boys as adults is invidiously unequal punishment based solely on sex of the offenders, and is repugnant to the Equal Protection and Due Process clauses of the Fourteenth Amendment. Petitioners further contend that the assailed statute entails the additional penalty of disfranchisement for the unfavored sex under the Oklahoma Constitution, Article III, Section 1; and is further void as repugnant to the Nineteenth Amendment of the United States Constitution. Petitioners further contend that the Oklahoma Statute also violates their voting rights and is in conflict with the Civil Rights Act of 1964.

The Oklahoma Court of Criminal Appeals in Danny Ray Lamb and Odie Lee Reed vs. State of Oklahoma, 475 P.2d 829 upheld the Oklahoma statute as against the charge made by these petitioners that it violated their United States Constitutional rights under the Fourteenth Amendment.

The Court is of the opinion, and so holds, that the Oklahoma Legislature in enacting the statute complained of had a Constitutional right to consider sex as a material factor and to make the classification set out in the statute, and had the Constitutional right to make the classification on the basis of special considerations to which women were considered to be naturally entitled. In Lamb and Reed, supra. the Court of Criminal Appeals of Oklahoma said:

"As we view the situation, the statute exemplifies the legislative judgment of the Oklahoma State Legislature, premised upon the demonstrated facts of life; and we refuse to interfere with that judgment."

Having reached the conclusion that 10 O.S. 1969 Supp. §1101 is Constitutional, and does not violate any of petitioners' Constitutional rights, it is unnecessary to discuss the other claims made by petitioners.

It is the judgment of the Court that the Petition for Writ of Habeas Corpus of Odie Lee Reed in Case No. 71-C-41 should be, and the same is hereby denied; it is the judgment of the Court that the Petition for Writ of Habeas Corpus of Danny Ray Lamb in Case No. 71-C-63 should be, and the same is hereby denied.

Dated this 21st day of May, 1971.

Luther Bohannon
United States District Judge

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

UNITED STATES OF AMERICA and
JOHN D. HEENEY, Special Agent,
Internal Revenue Service,
Petitioners,)
vs.)
LORENE C. BILLINGSLEY,
Respondent.)

CIVIL ACTION NO. 71-C-147

FILED
MAY 24 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER

NOW ON this 22 day of May, 1971, there came on for consideration the motion of the petitioners, United States of America and John D. Heeney, Special Agent, Internal Revenue Service, to consolidate the above-captioned action with the case of William L. Mills, Jr., Plaintiff, vs. Lorene Billingsley, Defendant, No. 71-C-87, United States District Court for the Northern District of Oklahoma. The Court finds that such motion is well taken.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that case No. 71-C-147, styled United States of America and John D. Heeney, Special Agent, Internal Revenue Service, Petitioners, vs. Lorene C. Billingsley, Respondent, be consolidated with case No. 71-C-87, styled William L. Mills, Jr., Plaintiff, vs. Lorene C. Billingsley, Defendant.

APPROVED:

UNITED STATES DISTRICT JUDGE

G. DOUGLAS FOX
Attorney for Lorene C. Billingsley

JAMES O. ELLISON
Attorney for Lorene C. Billingsley

PAUL R. HODGSON
Attorney for William L. Mills, Jr.

MAX F. FELDNER
Attorney for William L. Mills, Jr.

NATHAN G. GRAHAM
United States Attorney
Attorney for Petitioners, United States of America, et al.

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

DAISY MOORE, Plaintiff,)
vs.)
SAFEWAY STORES, INC.,)
a corporation, of Sapulpa,)
Oklahoma, Defendant.)

No. 70-C-49

FILED
MAY 20 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER

This case came on for jury trial after regular setting on the 11th day of May, 1971. The plaintiff appeared through her counsel, L. G. Hawkins, and the defendant appeared through its counsel, Jones, Givens, Brett, Gotcher & Doyle by Thomas R. Brett; both sides announcing ready to proceed with the trial. A jury of twelve men and women was selected and sworn to try the issues of the case. After opening statements of counsel, the plaintiff proceeded to introduce testimony of various witnesses, and at the conclusion of which the plaintiff rested. The defendant then interposed a motion to dismiss the case for the reason the plaintiff's proof had not established a prima facie case of negligence against the defendant under the laws of the State of Oklahoma. After reviewing applicable legal authorities and hearing statements of counsel, the Court concluded the motion to dismiss of the defendant should be sustained because the plaintiff's proof had failed to establish a cause of action against the defendant.

IT IS, THEREFORE, ORDERED the motion to dismiss of the defendant herein to the plaintiff's evidence is hereby sustained. IT IS FURTHER ORDERED the defendant is granted judgment against the plaintiff with costs to the plaintiff. The plaintiff excepted to the order of the court and announced her intention to appeal the ruling of the court to the Court of Appeals of the Tenth Circuit.

5/19/1971

Little Bohannon
United States District Judge

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

MATTHEW "PETE" WILLIAMS,

Petitioner,

vs.

RAY H. PAGE, Warden, Oklahoma
State Penitentiary, McAlester,
Oklahoma,

Respondent.

NO. 71-C-159

FILED

MAY 20 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has for consideration a pro se petition for writ of habeas corpus filed by Matthew "Pete" Williams, and transferred to this Court from the 10th Circuit Court of Appeals pursuant to T. 28 U.S.C.A. § 2241. Petitioner is confined in the Oklahoma State Penitentiary serving a life sentence entered upon a plea of guilty to murder, Case No. 19,653.

A habeas corpus petition, No. 69-C-225, essentially verbatim to this present petition, was denied November 20, 1969, by Order of the Honorable Luther Bohanon of the United States District Court for the Northern District of Oklahoma. This previous denial was based on a review of the petitioner's full and complete records and transcript of an evidentiary hearing ordered in a State of Oklahoma habeas corpus proceeding, No. A-14,728, reported at 448 P.2d 292 (Okla. 1968).

The Court finds that the petition for writ of habeas corpus should be denied. In this present, successive petition, there are no new grounds presented for consideration; all the grounds alleged have been heretofore presented to and determined against the petitioner. Further, this Court has carefully reviewed the transcript of the State proceedings within, and the United States District Court file No. 69-C-225, and this Court is satisfied that the ends of justice will not be served by entertaining this second and subsequent petition which merely reiterates the same issues previously presented and determined. Maxwell v. Turner, 411 F.2d 805 (10th Cir. 1969); Sanders v. U.S., 373 U.S. 1 (1963).

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Matthew "Pete" Williams be and the same is hereby denied.

Dated this 19th day of May, 1971, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE

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

Ken F. Mans, individually and on behalf)
of all persons employed by Sunray DX Oil)
Company and Sun Oil Company as of the)
date of merger of these two companies,)

Plaintiffs,)

vs.)

Sunray DX Oil Company and)
Sun Oil Company,)

Defendants.)

Case No. 70-C-140 Civil

FILED
MAY 20 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER

Plaintiff proceeds in this case alleging the existence of a class of persons of which he claims to be representative, seeking relief in the form of damages and injunctions under 15 U.S.C.A. §§1, 15, 18, 22 and 26. Plaintiff's claims are as follows:

1. 15 U.S.C.A. §1. Plaintiff claims that Defendants' agreement by which their merger was effected is a per se violation of this statute because it restrains trade by eliminating a potential employer, creating a division of markets and fixing prices.
2. 15 U.S.C.A. §15. Plaintiff alleges that his right of employment is his business or property which is protected by this statute from direct injury by Defendants' alleged violations of the antitrust laws. The injury to his claimed business or property is stated to be his loss of employment by sunray after the merger when Plaintiff refused to accept employment at a higher salary in another city.
3. 15 U.S.C.A. §18. Plaintiff alleges that Defendants' merger substantially lessens competition and tends to create a monopoly, principally because of the concentration of economic power which resulted from the merger.

4. 15 U.S.C.A. §22. Plaintiff claims, and Defendants do not dispute, that venue exists in the Northern District of Oklahoma.

5. 15 U.S.C.A. §26. Plaintiff claims that injunctive relief in the form of divestiture is proper in order to put an end to the violations of the antitrust laws alleged to have occurred because such relief is the only method by which competition existing prior to the merger may be recaptured.

Both Plaintiff and Defendants have moved for summary judgment. Their Motions seek adjudication of the following issues, among others: (1) Whether Defendants' merger is a per se violation of 15 U.S.C.A. §§ 1 and 18, and (2) Whether Plaintiff has standing individually and as representative of the claimed class to maintain this action under 15 U.S.C.A. §§ 15 and 26.

Plaintiff alleges that he was employed by Sunray for a number of years. For the last fourteen years, Plaintiff was employed in Tulsa, Oklahoma selling tank car loads of refined oils to industrial consumers. After the Defendants' merger, Plaintiff was offered employment by the Defendants in Dallas, Texas at a greater salary than he was then earning in Tulsa. When Plaintiff refused to transfer to Dallas, his employment was terminated. Plaintiff alleges that the Defendants' action cost his retirement benefits which would have vested within three years and his salary for the three years. Plaintiff further alleges that Defendants refused to pay him severance benefits in the approximate amount of \$21,000.^{1/} Defendants by Answer admit Plaintiff's employment and the offers of comparable employment in other cities but deny that they deprived him of three years' pay, retirement benefits or severance pay.

^{1/}

The Court would parenthetically note that claims for unpaid compensation due an employee may not be asserted in an antitrust suit according to Nichols v. Spencer International Press, Inc., 371 F. 2d 332 (Seventh Cir. 1967).

It is essential to Plaintiffs' case that a violation of the antitrust laws be shown. None of the parties dispute this principle. Thus, the first and perhaps paramount issue presented by the Plaintiffs' Motion is whether the merger constitutes, as Plaintiff claims, a per se violation of 15 U.S.C.A. §§ 1 and 18. It is Plaintiff's thesis in his briefs that mere bigness alone is a per se violation of these statutes. Plaintiff apparently recognizes that no court has so held for, after an interminable discussion of the legislative history, purpose and development of the antitrust laws, he urges this Court to make the "bold move" to establish this concept as decisional precedent, thus anticipating what he thinks the Supreme Court will surely do. Such a move by this Court would not only be "bold", it would also be unsupportable. This Court is disposed to follow the pronouncements of the Supreme Court, not predict them. The Supreme Court has said:

"The law, however, does not make the mere size of a corporation, however impressive, or the existence of an unexercised power on its part, an offense, when unaccompanied by unlawful conduct in the exercise of its power. United States v. United States Steel Corp. 251 U.S. 417, 451, 64 L. ed. 343, 353, 8 A.L.R. 1121, 40 Sup. Ct. Rep. 293." United States v. International Harvester Co., 274 U.S. 693 at page 708, 71 L. ed. 1302 at page 1310, 47 Sup. Ct. 748 (1927).

The Court has found nothing in reported cases which would detract from such a clear pronouncement.^{2/} The plaintiff in United States v. Manufacturers Hanover Trust Co., 240 F.Supp. 867 (NY 1965), also a merger case, urged this same contention, to which the dis-

^{2/}

And the method used to achieve bigness through the vehicle of merger was attacked in United States v. International Harvester Co., supra, without success.

strict court responded in the following fashion:

"Arguments based on size, big or little, appeal not to reason or fairness but to emotion and prejudice. The government's [plaintiff's] cries may stir resonant chimes in some ears, but they strike a gong of alarm in ours. Daily experience in the trial court teaches that such pleas generally mask a meritless case and, if anything, compel an examination of the evidence with special scrutiny and cold objectivity lest our oath of office become a hollow mockery and equal justice for the rich and the poor alike an empty platitude. That is no doubt the premise underlying the rule that absolute size (wealth) standing alone proves nothing violative of the antitrust laws. Were this a jury trial we would be bound to give such an instruction, and surely we can do no less than observe the law ourselves."
240 F. Supp. 867 at page 928.

The cases cited by the court in footnote 165, 240 F. Supp. 867 at page 928 fully support its remarks. The combined size alone of the merged Defendants nor the method used to achieve such size are not enough to authorize summary judgment for Plaintiff.

Plaintiff's allegations of price fixing and division of markets, ordinarily per se violations of the antitrust laws, are unsupported by any factual assertions; they are mere legal conclusions. In addition, they are denied by Defendants and in any event must be considered as issues which if properly developed would contain material facts as to which there is a dispute among the parties. Summary judgment for Plaintiff cannot be predicated on his "bare bones" allegations of price fixing and division of markets and in no event where such allegations are denied by Answer.

The next question is Plaintiff's standing to sue. This is raised by Defendants and their contention that he has no such standing is urged by them as ground for summary judgment. Plaintiff's substantive right of action, if any, is created by 15 U.S.C.A.

§§ 15 and 26, the former statute allowing recovery of treble damages and the latter statute permitting injunctive relief. The issue of standing to sue generally depends on whether a Plaintiff from a causation standpoint has suffered a "direct" rather than an "incidental" injury as a result of some violation of the antitrust laws by a Defendant or whether the business or property of a Plaintiff is in the "target area" of a Defendant's unlawful act. Billy Baxter, Inc. v. Coca-Cola Co., 431 F.2d 183 (Second Cir. 1970). The latter proposition may be quickly dealt with for without a moment's hesitation it must be concluded that Plaintiff's employment with Defendant Sunray was not within the "target area" of the alleged anticompetitive result of the merger of the Defendants. It is undisputed that Plaintiff's employment was desired after the merger for he was offered three job opportunities all of which he rejected.

In attempting to analyze the great variety of language used by the Courts to describe a "direct" injury, Von Kalinowski concludes that:

"Whatever these verbal diversities may be, what the courts have done is to formulate a test of proximate cause, leaving for judicial determination in each case whether a particular plaintiff should be barred as being only distantly hurt." 2 Von Kalinowski, Antitrust Laws and Trade Regulation §11.04 [1][e], footnote 43, at page 11-32. (Emphasis supplied.)

Plaintiff contends that his injury is direct, in that the merger eliminated one possible employer from the market for his services. Defendants contend that the proximate and direct cause of Plaintiff's injury, if any, was his own choice not to transfer to another city, for which he was terminated in that his services were no longer needed in Tulsa, the Plaintiff having no contract of employment for any period of time or for any place. Plaintiff opposes this

contention stating that his services were no longer needed in Tulsa because of the merger and thus the merger was the direct and proximate cause of his injury.

Plaintiff's case is not like those involving blacklisting, Radovich v. National Football League, 352 U.S. 445, 1 L. ed. 2d 456, 77 S. Ct. 390 (1957), nor "no switch" agreements, Nichols v. Spencer International Press, Inc., 371 F.2d 332 (Seventh Cir. 1967), nor commission sales agents, Dailey v. Quality School Plan, Inc., 380 F.2d 484 (Fifth Cir. 1967). There is no suggestion whatever that Plaintiff has been blacklisted for employment by anyone, including the Defendants nor that there is any agreement between the Defendants or anyone else to not employ each other's employees for a period of time, and Plaintiff does not claim to be a commission sales agent with a competitive territory upon which his earnings depend, even in part. Plaintiff claims only to be a salaried employee.

Recently, in Wilson v. Ringsby Truck Lines, Inc., 320 F. Supp. 699 (Colo. 1970), Judge Arraj held that employees who alleged that their earnings were diminished by reason of claimed antitrust violations of their employer could have standing to sue their employer and denied the employer's motion to dismiss. That case may be distinguished from the case at hand in several ways. First, Judge Arraj had before him only the narrow question of the legal sufficiency of plaintiff's action on a motion to dismiss whereas the questions presented here on summary judgment motions require this Court to treat with the legal and factual sufficiency of Plaintiff's case as the same has been developed since it was filed. Each case must stand on its own facts and the facts concerning Plaintiff's alleged direct injury here are not in dispute and are deemed controlling of the legal result. Next, the matter of "proximate

cause" as related to direct injury was not developed in the Colorado case, whereas, it has been fully developed herein.^{3/} Finally, the Court is of the opinion that Judge Arraj has rejected the teaching of our Circuit in Nationwide Auto Appraisers Service, Inc. v. Association of Casualty and Surety Companies, 382 F.2d 925 (Tenth Cir. 1967) by reading the direct injury requirement out of the case. Federal statutory law did not supplant the common law but incorporated it. 1 Von Kalinowski, Antitrust Laws and Trade Regulation §1.02, pp. 1-21 to 1-34. Absent any clear expression on the part of Congress in 15 U.S.C.A. §15 or our Circuit that the familiar principle of proximate cause should be eliminated from antitrust actions under 15 U.S.C.A. §15, this Court is not willing to do so. Therefore, assuming, but without deciding, that Plaintiff's employment with Sunray was a property right within the meaning of 15 U.S.C.A. §15, Nichols v. Spencer International Press, Inc., supra, the undisputed facts of the termination of his employment do not establish that such termination was the direct and proximate result of the Defendants' merger as a matter of law. Plaintiff himself states he could have continued in employment had he transferred to Dallas. However, he attempted to impose on Sunray the condition that he remain in Tulsa, a right he did not possess by contract or otherwise. Even in the absence of Defendants' merger he could have been required to transfer to another city or he could have been terminated. The Court concludes that his stated desire as to the place of his employment was the proximate cause of his termination of employment as a matter of law.

^{3/}

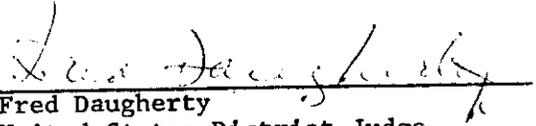
That "proximate cause" may be a question of law under certain circumstances and thereby make a case ripe for summary disposition see Haworth v. Mosher, 395 F.2d 566 (Tenth Cir. 1968).

Summary disposition of Plaintiff's standing to sue in this case is in order. In Nationwide Auto Appraisers, supra, our Circuit affirmed a summary disposition by this Court of an antitrust claim on the basis that direct injury had not been shown by the pleadings and matters offered in support thereof. Summary proceedings have long been recognized as an appropriate vehicle for disposition of the standing to sue question. SCM Corporation v. Radio Corporation of America, 407 F.2d 166 (Second Cir. 1968); Productive Inventions v. Trico Products Corp., 224 F.2d 678 (Second Cir. 1955). The undisputed facts now before the Court do not reveal a direct and causal connection between the Defendants' merger and the alleged injury to Plaintiff as a matter of law.

Other issues raised by the parties need not be treated with in view of the result reached by the Court on the controlling issue of standing to sue.

Defendants' Motion for Summary Judgment is granted and Plaintiff's Motion for Partial Summary Judgment is denied. Counsel for Defendants is requested to prepare an appropriate judgment for entry herein and submit the same to the Court within fifteen (15) days of the date hereof.

It is so ordered this 20 day of May, 1971.


Fred Daugherty
United States District Judge

United States
IN THE DISTRICT COURT IN AND FOR ~~WALTER COUNTY~~ *Northern District*
STATE OF OKLAHOMA

HELEN GIBSON,)
)
 Plaintiff,)
)
 vs.)
)
 SEARS, ROEBUCK & COMPANY,)
 a corporation,)
)
 Defendant.)

No. C-70-2439 ³⁶⁴

E I L E D
MAY 19 1971 TM
JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

It appearing to the court that all issues of law and fact in the above captioned case have been fully compromised and settled. The cause is hereby dismissed with prejudice.

Luther Bohannon
UNITED STATES DISTRICT JUDGE

APPROVED:

ROGERS, ROGERS & JONES
N. Franklyn Casey
By: N. Franklyn Casey
Attorney for Plaintiff

MILSTEN AND MOREHEAD
David R. Milsten
By: David R. Milsten
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

Case No. 71-121

Plaintiff,

Case No. 71-121

Elliott Richardson, Secretary of
Health, Education, and Welfare,
United States of America,

Defendant.)

FILED
MAY 14 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER

NOW, on the 14th day of May, 1971, there came on for consideration the motion of the defendant, Elliott Richardson, Secretary of Health, Education, and Welfare, to award this case to the defendant for further administrative action pursuant to Section 205(g) of the Social Security Act, as amended, 42 U.S.C., 405(g). This Court finds such motion is well taken.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that this case is awarded to the defendant, Elliott Richardson, Secretary of Health, Education, and Welfare, for further administrative action as indicated above.

J. Lawrence Bohannon
UNITED STATES DISTRICT JUDGE

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

SHARON KAY HOLMES,)
)
) Plaintiff,)
 vs.) No. 68-C-224
)
 JAMES WALTER WACK,)
)
) Defendant.)

FILED
MAY 18 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

J U D G M E N T

This action came on for trial before the Court and jury, Honorable Luther Bohanon, United States District Judge, presiding and the issues having been duly tried and the jury having duly rendered its verdict, in favor of the defendant and against the plaintiff.

IT IS ORDERED AND ADJUDGED that the judgment is for the defendant and against the plaintiff, and the costs of this action are to be assessed against the plaintiff.

Dated at Tulsa, Oklahoma this 17th day of May, 1971.

Luther Bohanon

United States District Judge

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 70-C-390
vs.)	
)	TRACT NO. 1321M
20.00 ACRES OF LAND, MORE OR)	
LESS, SITUATE IN NOWATA COUNTY,)	(E 1/2, SW 1/4, SE 1/4
STATE OF OKLAHOMA, and DONALD P.)	16-26-16 Nowata County
OAK, et al., and unknown owners,)	Oklahoma)
)	
Defendants.)	

FILED
MAY 18 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER

The Court has very carefully reviewed the Complaint of the United States of America, the Affidavit of Thaddeus R. Beal, Acting Secretary of the Army; the Notice of Trial before the Commissioners on May 20, 1971, and the Answer of the defendant, Donald P. Oak and the relief prayed for in said Answer that this Court now order absolutely withdrawing; annulling; vacating; and expunging all orders and decrees heretofore entered in this cause purporting in anywise, presently or in the future, to effect or to authorize the transfer to, or the vesting in plaintiff of any title, right of possession or control over the land claimed by the defendant.

The Court finds that the said prayer of the defendant should be denied, and

IT IS SO ORDERED.

Dated this 17th day of May, 1971.

Luther Bohannon
United States District Judge

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

SAMMIE A. RIGGS,)
)
 Plaintiff,)
)
 v.)
)
 BRITISH COMMONWEALTH)
 CORPORATION, a Texas corpo-)
 ration, JAMES LOVELL, W. N.)
 WRAY, JR., and IVAN HALL,)
)
 Defendants.)

CIVIL ACTION NO. 69-C-272

FILED
MAY 17 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER

It is ordered that the Counterclaim of Defendant, British Commonwealth Corporation, be dismissed without prejudice, with each party to bear its own costs.

Dated this 17th day of May, 1971.


United States District Judge

Division, advised plaintiff that the conclusion of the Hearing Examiner denying the relief requested had been approved. In this same letter the Appeals Council advised plaintiff of her statutory right of review before the District Court of the United States in the Judicial District in which plaintiff resides. On June 26, 1970, the plaintiff filed her complaint in the United States District Court for the Northern District of Oklahoma requesting review of the Hearing Examiner and Appeals Council ruling.

The proceedings in this case disclose that plaintiff's hearing commenced at 1:05 p.m. on August 15, 1969, and was not concluded until 2 p.m. on the same day. The claimant was not represented by counsel at this hearing and at the opening of the hearing, the Examiner advised plaintiff of her right to be represented by counsel if she so desired. The following testimony was taken at the commencement of the hearing:

"Examiner: Now Mrs. Gardner, before we begin to take the testimony in your case I will explain this type of hearing to you. Did you know that you could have employed an attorney to represent you had you wanted to?

Claimant: Yes, I did.

Examiner: We don't deem that necessary but we want you to know that you have that right and we want to give you an opportunity to exercise that right if you so desire. So I assume that you being here without an attorney, and having known that you could have employed one, you are ready to proceed with your hearing without one?

Claimant: Yes, sir.

Examiner: Now the purpose of this hearing is to give you an opportunity to present your case to someone who had no previous contact with it. I am a Hearing Examiner with the Bureau of Hearing and Appeals of the Social Security Administration. I am not associated with any of the administrative agencies that have been making decisions in your case heretofore, therefore, I had no knowledge of or contact with your case until after you filed a request for hearing before a Hearing Examiner. Thus, as we proceed with the case, I will ask you certain questions and will expect you to answer them truthfully, accurately and directly. My decision will be based upon the evidence received of record in the hearing which will consist of the documentary evidence admitted and the testimony heard.***

At the time I received the file in your case I caused certain documents in the file to be marked as Exhibits numbered 1 to Number 22 inclusive. Now these documents which I am having reference to are the ones which were briefly explained

to you by the reporter, or hearing assistant, before we started the hearing. I feel that these documents should be received in evidence and made a part of the record in your case in order to give the Hearing Examiner a full and complete knowledge of all the facts involved. In going over these Exhibits did you find any of them that you have any objection to?

Claimant: Well, of course, there was just a brief run-through there, I didn't really see any of them -- I don't know what they had to say.

Examiner: They were explained, what the instruments were; do you have any questions about any of them?

Claimant: No, as I say, unless it would be Dr. John Capehart's. This is the one, as you know, the proof that this disability did exist prior to -- it has to come from this office, but he tells me personally that he gave dates and everything else on the last report that he sent in here and this -- I have to take his word for it, I don't know. I did ask, I believe in that letter that I wrote, for copies which I believe I had a right to have and didn't receive them.

Examiner: You went to see Dr. Capehart on May 14, 1969?

Claimant: Oh, I was there last month.

Examiner: Well, I am talking about the report he was going to send in. When was that?

Claimant: It should have been after May, I would say. Now I have been in his office -- I was there in his office about two weeks ago, three weeks ago, I don't know -- its just been recently.

Mrs. Hefner: She goes at least once a month. (This witness is the mother of Claimant.)

Claimant: And sometimes twice a month, but that's when he asked me -- he was very surprised and I wrote to him and asked him to send me a letter to bring with me today but I haven't heard from him, I don't know whether its in the mail somewhere or what.

Examiner: Well, he lists here in this report -- he has prepared his report in longhand and if anybody can write poor longhand its usually a doctor.

Claimant: Well, I know that, that's what makes them a doctor, isn't it?

Examiner: Hypoglycemia and hypothyroidism and adrenalism and grand mal; he says all those things and the diagnosis that he gives here -- well, does that give you -- now we don't want to get involved into a long drawn out conversation because I am going to have you testify in a little while but I want to find out if that helps you on that report? You wanted to know what he reported and that's what I was trying to find out for you. Now do you have any objections to any of these documents being received in evidence?

Claimant: Oh, no, sir.

Examiner: Then we will let the records show Exhibits numbered 1 through 22 are received in evidence without any objection on the part of the Claimant. Now did you bring any documentary evidence with you that you want to introduce or would like to have placed in the file of your case?"

The Court finds that 20 C.F.R. §404.927 is pertinent to the facts in this case and said section reads as follows:

"The hearing examiner shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the hearing examiner believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing examiner may adjourn the hearing or, at any time prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence."

The Court finds that it is evident that the Claimant in this case was denied this procedure. She was given a matter of a few minutes to examine the exhibits and although she objected to what was presented to her, the examiner appears to have ignored her statement that she had not examined the exhibits admitted but had only briefly glanced at them.

The hearing examiner's duty is clearly set forth in *Hennig v. Gardner* (U.S.D.C. N.D. Texas, 1967) 276 F.Supp. 622, 624, 625. In this case the Court makes the following statement:

"Administrative hearings under the Social Security Act are not advisory proceedings. *Ihnen v. Celebrezze*, D.S.D., 1963, 223 F.Supp. 157; *Blanscet v. Ribicoff*, W.D. Ark., 1962, 201 F.Supp. 257, and representation by counsel is not a prerequisite to insure ultimate fairness in the proceedings. However, in administrative proceedings in which rights and privileges are in issue and the guiding hand of counsel is not present to advocate their existence, a duty devolves on the hearing examiner to scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts surrounding the alleged claim of right or privilege. The hearing examiner is entrusted with a broad discretion in the conduct of the administrative hearing and a failure of the hearing to produce a full airing of the facts in issue may well be attributed to an abuse of that discretion."

The Court finds that subsequent to the conclusion of the hearing the examiner forwarded to Dr. Thomas N. Lynn, University of Oklahoma Hospital, Oklahoma City, a questionnaire requesting his opinion as to the condition of claimant as disclosed by the evidence admitted by the examiner and covered by Exhibits 1 through 22. The Court finds, in this connection, that Dr. Lynn did at no time examine this claimant or even have a conversation with her. The first question propounded to Dr. Lynn and the answer given is as follows:

"Please state whether, in your opinion any further medical examinations are needed to determine the nature and extent of Mrs. Gardner's impairments, and if so, please advise as to the type of examinations, in your opinion, are needed.

"Answer: This lady needs a good general examination with special attention to the questions of (1) does she actually have a seizure disorder and (2) does she actually have adrenal cortical insufficiency.

"These examinations may involve hospitalization. In my opinion the evidence presented in the accompanying folder substantiates almost nothing and I strongly suspect that most of this lady's complaints are psychogenic."

Apparently, the examiner, in arriving at his decision, ignored the advice and recommendation of his own doctor.

In Cohen v. Perales (5th CCA, 1969) 412 F.2d 44, the court said:

"*** At the hearings, the examiner offered and introduced into evidence, over the objections of claimant's attorney, a number of unsworn medical reports of doctors who had examined the claimant but who were not present at either hearing and did not testify. The claimant objected to this evidence on the ground it was hearsay and its admission deprived him of the right to be confronted by witnesses who were against him and of the right to cross-examine them. The examiner overruled the objections and received the reports in evidence.

"The examiner also allowed a Dr. Lewis A. Leavitt to testify over the objection of claimant. He had been flown from Houston to San Antonio by H.E.W. to testify as an expert in the case. He had never examined the claimant and his testimony consisted of his 'interpretation' of the medical reports of the absent doctors mentioned above. The claimant objected to this testimony because it was hearsay and because the witness' answers were not confined to hypothetical questions. Actually, he was not asked any hypothetical questions. The examiner allowed this witness to 'interpret' the reports of the absent doctors in such a way as to indicate that claimant was not disabled." (page 47)

Further, the Court stated:

"Applying these principles to the case before us, it is clear that the hearsay reports of the absent doctors were admissible in evidence before the hearing examiner. This is also true with respect to the testimony of the so-called 'expert' Dr. Leavitt. However, this leaves the secretary with nothing but uncorroborated hearsay which the claimant has objected to, on which to base his decision. Under the decisions, such evidence is not substantial evidence. This is especially true in view of the fact that on the other side of the case we have the live and direct legal testimony of the claimant and his doctor which supports his claim. The trial court was correct in his remarks in the record that if he was called upon to render a final judgment in the case, he would render it for the claimant and against the Secretary, because the only probative evidence in the case that was not hearsay and that was substantial was in favor of claimant. We agree that he would have been justified in entering judgment for the claimant for disability benefits in view of the foregoing and based on the law announced by the courts in other similar cases."

In its opinion, the Court cites Hays v. Gardner (4th CCA, 1967) 376 F.2d 517, the Court in that case making the following finding:

***There a Social Security Administration doctor, named Dr. Glendy did not examine the claimant but based his testimony that the claimant was not disabled on an examination of the medical record. The claimant and the doctor who had been treating her testified she was disabled. The court held that Dr. Glendy's testimony was not substantial evidence. *** We reach the conclusion that, *** the opinion of a doctor who never examined or treated the claimant cannot serve as substantial evidence to support the Secretary's finding." (Emphasis supplied)

In this case the claimant was examined by three reputable physicians residing in the City of Tulsa, they being Dr. Maurice Capehart, Dr. John Capehart, and Dr. William J. Osher, all of whom agreed that claimant was suffering from the disability alleged and that said disabilities had their onset on or prior to June 30, 1967.

The Court in the Cohen case, supra, makes the following comments:

"It appears from the facts in many of the foregoing cases, as well as in the one before us, and we assume in those cases being held in abeyance by the trial court, that there is wide spread practice by hearing examiners of having testifying doctors accompany them, and, in a manner of speaking 'ride the circuit' with them, for the purpose of examining medical records and reports of claimants and then testifying as experts, with or without a cursory examination of the claimants as to their disability. This procedure should be frowned upon, if not eliminated altogether. Such testimony is not substantial evidence, and, if objected to, will not, standing alone, support a decision of the examiner adverse to the claimant. This is especially true when such testimony is in conflict with that of the claimant and his doctor who has not only examined him but has also treated him over a long period of time."

The Court finds that the defendant in its brief filed in support of Motion for Summary Judgment states under the heading "Issue" as follows:

"The issue in this case is whether there is substantial evidence in the record to support the decision of the Secretary that the plaintiff failed to establish that she was disabled within the meaning of the Social Security Act at any time on or before June 30, 1967, when she last met the special earnings requirements of the Act for disability purposes."

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

United States of America,

Plaintiff,

vs.

Darwin R. Bayliss and
Emma L. Bayliss, husband
and wife,

Defendants.

Civil No. 71-C-29

FILED

MAY 17 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER CONFIRMING MARSHAL'S SALE

NOW on this 17 day of May, 19 71,

there coming on for hearing Motion of the Plaintiff, United States of America, to confirm the sale of real property made by the United States Marshal for the Northern District of Oklahoma, on May 10, 1971, under an Order of Sale dated March 26, 1971, and issued in this cause out of the Office of the Court Clerk for the United States District Court for the Northern District of Oklahoma, of the following described property, to-wit:

**Lot Twenty-Seven (27), Block Fifty-Seven (57),
Valley View Acres Third Addition to the City of
Tulsa, Tulsa County, Oklahoma, according to the
recorded plat thereof,**

and the Court having examined the proceedings of the United States Marshal under the aforesaid Order of Sale and no one appearing in opposition thereto and no exceptions having been filed, finds that due and legal notice of the sale was given by publication once a week for at least four (4) weeks prior to the date of sale in the _____

Tulsa Daily Legal News

a newspaper published and of general circulation in the County of Tulsa, State of Oklahoma, and that on the day fixed therein the above-described property was sold to the Administrator of Veterans Affairs, it being the highest and best bidder therefor.

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

IT IS WHEREFORE ORDERED, ADJUDGED and DECREED that the United States Marshal's Sale and all proceedings under the Order of Sale issued herein, be and the same are hereby approved and confirmed.

IT IS FURTHER ORDERED that Harry Connolly, United States Marshal for the Northern District of Oklahoma, make and execute to the purchaser, the Administrator of Veterans Affairs, a good and sufficient Deed for such premises.

IT IS FURTHER ORDERED that after the execution and delivery of the Deed to the purchaser by the United States Marshal for the Northern District of Oklahoma, the purchaser is hereby granted possession of the property against any or all persons now in possession.

/s/ Allen E. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Robert P. Santee
ROBERT P. SANTEE
Assistant U. S. Attorney

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

S. HARRY TANNER and
DORTHEA D. TANNER,

Plaintiffs,

-vs-

KENNEDY INVESTMENTS, INC., an
Oklahoma corporation; and
EDWARD B. KENNEDY,

Defendants.

FILED

MAY 11 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

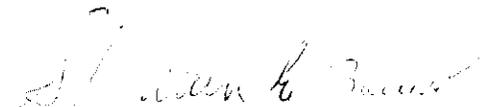
No. 70-C-213

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 10th day of May, 1971, there comes before the Court the Motion to Dismiss with Prejudice filed this date by the plaintiffs, which motion is approved and consented to by the defendants. It, therefore, appears to the Court that the above captioned civil action should be dismissed with prejudice.

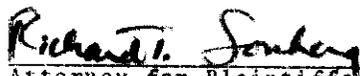
NOW, THEREFORE, IT IS HEREBY ORDERED by the Court that the plaintiffs' Motion to Dismiss with Prejudice is granted and the above captioned civil action is hereby dismissed with prejudice.

DATED this 10th day of May, 1971.

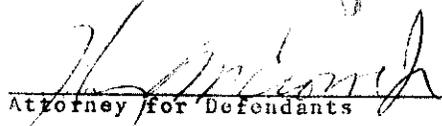


U. S. District Judge

APPROVED AS TO
FORM AND CONTENT:



Attorney for Plaintiffs



Attorney for Defendants

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

S. HARRY TANNER and
DORTHEA D. TANNER,

Plaintiffs,

-vs-

KENNEDY INVESTMENTS, INC., an
Oklahoma corporation, and
EDWARD B. KENNEDY,

Defendants.

FILED
MAY 10 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

No. 70-C-213

MOTION TO DISMISS WITH PREJUDICE

Come now the plaintiffs, S. Harry Tanner and Dorthea D. Tanner, by their attorney, Richard T. Sonberg, and move the Court pursuant to Rule 41 of the Federal Rules of Civil Procedure to dismiss the above captioned civil action with prejudice.

DATED this 10th day of May, 1971.

APPROVED:

Richard T. Sonberg
Richard T. Sonberg,
Attorney for Plaintiffs

Harry M. Crowe, Jr.
Harry M. Crowe, Jr.,
Attorney for Defendants

CERTIFICATE OF MAILING

This will certify that I mailed true and correct copy of the above and foregoing Motion to Dismiss with Prejudice filed in the above captioned case to Harry M. Crowe, Jr., attorney for defendants, at his office at Southland Financial Center, Tulsa, Oklahoma, this 10th day of May, 1971.

Richard T. Sonberg
Richard T. Sonberg

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

JACK L. HORACEK,

Plaintiff,

vs.

ATLANTIC RICHFIELD COMPANY,
a corporation,

Defendant.

No. C70-65

FILED
MAY 10 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

JUDGMENT

This action came on for trial on May 5, 1971 before the Court and a jury, Honorable Fred Daugherty, District Judge, presiding, and the plaintiff having presented his evidence and rested, the Court, on motion of the defendant, determined that upon the facts and the law the plaintiff had shown no right to relief,

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant Atlantic Richfield Company recover of the plaintiff Jack L. Horacek its costs of action; IT IS FURTHER ORDERED that this judgment shall not be effective or be entered on the docket until it has been signed and filed with the Clerk of the United States District Court for the Northern District of Oklahoma.

Fred Daugherty
District Judge

FORM APPROVED:

W. M. ...
Attorney for Plaintiff

W. E. ...
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

vs.

20.00 Acres of Land, More or Less,
Situate in Rogers County, State of
Oklahoma, and Jean Martin, et al,
and Unknown Owners,

Defendants.

CIVIL ACTION NO. 69-C-174

TRACT NO. 452M

Lessor interest only

FILED

MAY 10 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

J U D G M E N T

1.

NOW, on this ^{6th} 10th day of MAY, this matter comes on for disposition on application of plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for plaintiff, finds:

2.

This judgment applies only to the lessor interest in the estate condemned in Tract No. 452M as such estate and tract are described in the Complaint and the Declaration of Taking filed in this action.

3.

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

4.

Service of process has been perfected either personally, or by publication notice, as provided by Rule 71A of 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 herein give the United States of America the right, power, and authority to condemn for public use the interest described in Paragraph 2 herein. Pursuant thereto, on July 23, 1969, the United States of America filed its Declaration of Taking of such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing the Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the registry of this Court, as estimated compensation for the taking of a certain estate in the lessor interest in subject tract a certain sum of money, and none of this deposit has been disbursed, as set out below in Paragraph 12.

7.

On the date of taking in this action, the owners of the lessor interest in the estate taken in subject tract were the defendants whose names are shown below in Paragraph 12. Such named defendants are the only persons asserting any interest in such property. All other persons having either disclaimed or defaulted, such named defendants are entitled to receive the just compensation awarded by this judgment.

8.

The owners of the lessor interest in the estate taken in the subject tract and the United States of America have executed and filed herein a stipulation as to just compensation wherein they have agreed that just compensation for such interest is in the amount shown as compensation in Paragraph 12 below, and such stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for the lessor interest in the estate taken in the subject tract and the amount fixed by the stipulation as to just compensation, and the amount of such deficiency should be deposited for the benefit of the owners. Such deficiency is set out below in Paragraph 12.

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 tract named in Paragraph 2 herein, as such tract is particularly described in the Complaint and Declaration of Taking filed herein; and such tract, to the extent of the lessor interest in the estate 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 interest are forever barred from asserting any claim to such interest.

11.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that on the date of taking, the owners of the lessor interest in the estate condemned herein in subject tract were the defendants whose names appear below in Paragraph 12, and the right to receive just compensation for such described interest is vested in the parties so named.

12.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the stipulation as to just compensation, mentioned in Paragraph 8 above, is hereby confirmed; and the sum therein fixed is adopted as the award of just compensation for the lessor interest in the estate condemned in subject tract as follows:

TRACT NO. 452M
(Lessor interest only)

Owners:

Glenn H. Chappell	1/3	
Jean Martin	1/36	
Annie Laurie Winter	1/36	
Emma E. Dobbins	1/36	
Mary Benjamin	7/12	
Award of just compensation pursuant to stipulation	\$400.00	\$400.00
Deposited as estimated compensation	200.00	
Disbursed to owners		None
Balance due to owners		<u>\$400.00</u>
Deposit deficiency	<u>\$200.00</u>	

13.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the United States of America shall deposit in the registry of this Court, in this Civil Action to the credit of Tract No. 452M, the deficiency sum of \$200.00, and the Clerk of this Court then shall disburse from the deposit for the subject tract, the balance due to the owners as follows:

Glenn H. Chappell	\$133.34
Jean Martin	11.11
Annie Laurie Winter	11.11
Emma E. Dobbins	11.11
Mary Benjamin	233.33

APPROVED:

Hubert A. Marlow
HUBERT A. MARLOW

Assistant United States Attorney

Victor Tolpelt
UNITED STATES DISTRICT JUDGE

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

TELESCO INTERNATIONAL CORPORATION.)

Plaintiff,)

vs.)

No. 70-C-41)

DISAN ENGINEERING CORPORATION OF OKLAHOMA,)
DISAN ENGINEERING CORPORATION and DISAN)
ENGINEERING CORPORATION OF TEXAS,)

Defendants.)

FILED

MAY 7 - 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER FOR DISMISSAL WITH PREJUDICE

The Court has for consideration the Dismissal With Prejudice filed by the Plaintiff and, being fully advised in the premises, finds that said Dismissal should be granted.

IT IS THEREFORE ORDERED that the above entitled cause of action and complaint be and the same are hereby dismissed with prejudice, each party to bear his own costs.

United States District Judge

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

FILED

MAY 5 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

BRIDES SHOWCASE INTERNATIONAL, INC.,)
a Connecticut corporation,)
)
Plaintiff,)
)
vs.)
)
JOSEPH S. JONDAHL and ALPHA GENERAL)
CORPORATION, an Oklahoma corporation,)
)
Defendants.)

Civil Action File
no. 71-C-4

ORDER OF DEFAULT JUDGMENT AGAINST DEFENDANTS
JOSEPH S. JONDAHL and ALPHA GENERAL CORPORATION

NOW, on this 6th day of May, 1971, there comes before the Court for its consideration the motion previously filed by the Plaintiff for a default judgment against Defendant, Joseph S. Jondahl, and to establish damages in a default judgment against the Defendant, Alpha General Corporation. The Plaintiff was present by and through its attorneys, Houston, Klein & Davidson. Neither the defendant, Alpha General Corporation, an Oklahoma corporation, nor the individual Defendant, Joseph S. Jondahl, was present in person or by counsel, it appearing to the Court that such defendants are hiding themselves to avoid service of process, and their present whereabouts is unknown to the Court.

Whereupon, the Court reviewed the motion filed herein by the plaintiff for default judgment against the Defendant, Joseph S. Jondahl, and it is the determination of the Court that it has good and proper jurisdiction over the subject matter herein and also in personam jurisdiction over the Defendant, Joseph S. Jondahl, by reason of summons served upon him by publication, since Joseph S. Jondahl is no longer present at his last known business and residential addresses in Oklahoma, and it further appearing that said Joseph S. Jondahl has absconded

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

EARL H. LEWIS and JOHN C. LEWIS,)
)
 Plaintiffs,)
-vs-)
)
 REPUBLIC INDUSTRIES, INC.,)
)
 Defendant.)

No. 70-C-289 ✓

FILED

MAY 6 1971 *m*

JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 5th day of ~~April~~ ^{May}, 1971, come the plaintiffs,
Earl H. Lewis and John C. Lewis, by their attorney, Glenn F.
Prichard, and the Court having heard the statements of counsel and
being fully advised in the premises,

FINDS that a settlement has been effected between the parties
hereto and that this action should be dismissed with prejudice.

It is therefore

ORDERED, ADJUDGED AND DECREED that this cause be and the same
is hereby dismissed with prejudice at cost of plaintiffs.

Sutton Robinson
Judge of the U. S. District Court

APPROVED:

EARL H. LEWIS and JOHN C. LEWIS

By *Glenn F. Prichard*
Glenn F. Prichard, Attorney
for Plaintiffs

REPUBLIC INDUSTRIES, INC.

By *James E. Moody, Vice Pres*
Defendant

UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

SOUTHEASTERN ENTERPRISES, INC.,)
NATIONAL DIVERSIFIED INDUSTRIES, INC.)
and AZALEA MEATS, INC.,)

Plaintiffs,)

vs.)

No. 69-C-251 ✓

JIMMIE J. RYAN, ELLIOTT FORBIS,)
RAYMOND CONARD, H. G. BILL DICKEY,)
KENNETH PARKER, BENNIE C. GARREN,)
JAMES G. RODGERS, CALVIN WAGGENER,)
HOMER KOON, REX R. RUDY, MIKE O'CONNOR)
and WILLIAM PARKHURST,)

Defendants.)

FILED
MAY 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

This cause coming on before me, the undersigned Judge, this 3rd day of May, 1971, for hearing on the motion for default judgment of the Plaintiffs against the Defendant, Jimmie J. Ryan, and the Plaintiffs appearing by their attorney, Jack R. Givens, and by Mr. Ira Weinstein and the Defendant Ryan having not appeared, but being wholly in default, although given due and legal notice of such hearing; and the Court having thus found said Defendant Ryan in default and the Court having heard the statement of counsel and the sworn testimony adduced in behalf of the Plaintiffs, for good cause shown finds that the Plaintiffs, Azalea Meats, Inc. and National Diversified Industries, Inc. are entitled to judgment against such Defendant Ryan in the amount prayed in their petition in the sum of \$1,085,000.00, but he should be given credit on the same in the sum of \$569,000.00 received by the Plaintiffs from one A. D. Griffith and other defendants in this action who were or might be joint tort-feasors with the Defendant Ryan in respect to the acts set forth in the complaint and amendments thereto in this action; the Court further finds that the Plaintiffs, Azalea Meats, Inc. and National Diversified Industries, Inc. should have judgment entered as against the Defendant Jimmie J. Ryan in the sum of \$516,000.00; the Court further finds that the Plaintiff, Southeastern Enterprises, Inc., should not recover judgment in this cause for the reason that its prayer was merely alternative in nature to the prayer of Plaintiffs, Azalea Meats, Inc. and National Diversified Industries, Inc., and it would be entitled to recover only if

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

Civil No. 71-C-10

Samuel Lee Horey and
Gloria Ann Horey,

Defendants.

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 5 day of May, 1971, and the defendants, Samuel Lee Horey and Gloria Ann Horey, appearing in person.

The Court being fully advised and having examined the affidavits herein finds that legal service by publication was made upon the defendants, Samuel Lee Horey and Gloria Ann Horey, as appears by Proof of Publication filed herein on May 3, 1971, requiring each of them to answer the complaint filed herein not later than April 28, 1971, 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 this suit is based upon a mortgage note and foreclosure of 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 Western Judicial District of Oklahoma.

That the defendants, Samuel Lee Horey and Gloria Ann Horey, did, on October 7, 1969, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note for the sum of \$15,050.00, with interest thereon at the rate of 8% per annum and further provided for the payment of monthly installments of principal and interest; and

It further appears that the defendants, Samuel Lee Horey and Gloria Ann Horey, made default under the terms of the aforesaid mortgage note and mortgage by reason of their failure to make the monthly installments due thereon for more than eight (8) months prior to February 1, 1971, and that by reason thereof the defendants are now indebted to the Plaintiff in the sum of \$15,050.00, with interest thereon at the rate of 8% per annum from the date of default, to-wit: March 1, 1970, until paid.

The Court therefore finds that the real property which is the subject of this suit is described as follows:

Lot Twelve (12), Block Two (2), Skyline Subjts Addition, as Subdiv in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Plaintiff, United States of America, have and recover judgment against the defendants, Samuel Lee Horey and Gloria Ann Horey, for the sum of \$10,200.00, with interest thereon at the rate of 3% per annum from June 9, 1970, until paid, plus the cost of this action accrued and accruing, plus the sum of \$32.00 expended for Abstracting Fees.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that upon failure of the defendants, Samuel Lee Horey and Gloria Ann Horey, to satisfy Plaintiff's aforesaid judgment herein, an Order of Sale shall issue to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisement, the real property described herein which is the subject of this suit, 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 F. SANTEL

Assistant U. S. Attorney

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

THE TELEX CORPORATION,)
A Delaware Corporation,)
)
Plaintiff,)
vs.)
)
AIRESEARCH AVIATION COMPANY,)
A division of the Garrett)
Corporation, A California)
Corporation,)
)
Defendant.)

No. 70-C-314

FILED
APR 1971
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

J U D G M E N T

Based upon, and in accordance with, the Findings of Fact and Conclusions of Law this day filed with the Clerk of this Court, it is

THE JUDGMENT OF THE COURT that the plaintiff, The Telex Corporation, a Delaware Corporation recover of and from the defendant, AiResearch Aviation Company, a division of the Garrett Corporation, a California corporation, the sum of \$207,500.00, together with interest at the rate of 6 percent per annum from the 15th day of September, 1970, to the date of the entry of this Judgment, and thereafter on the total amount due on the date of entry of this Judgment at the rate of 10 percent per annum until paid; the plaintiff is likewise entitled to judgment, and judgment is hereby entered in favor of the plaintiff and against the defendant in the sum of \$ _____ as and for attorney's fees provided by the laws of the State of Oklahoma to be taxed as costs in this case, and

Costs are awarded to the plaintiff.

Dated this 28 day of April, 1971.

Handwritten notes:
The plaintiff is entitled to judgment and costs against the defendant.
The court has awarded judgment and costs to the plaintiff.

Walter B. Baker
United States District Judge