

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

ASTRO CORPORATION,  
an Oklahoma corporation,  
  
Plaintiff,  
  
vs.  
  
GILCREASE HILLS DEVELOPMENT  
CORPORATION, an Oklahoma  
corporation,  
  
Defendant.

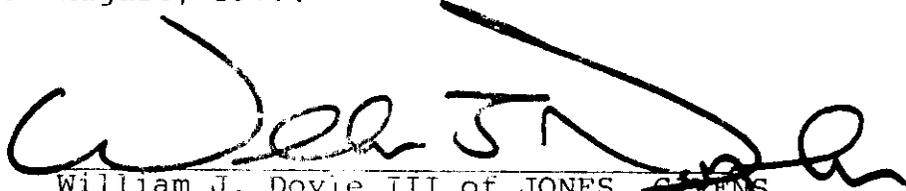
No. 72-C-84

FILED  
AUG 31 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

STIPULATION FOR DISMISSAL

Come now the plaintiff and the defendant, and hereby stipulate that the plaintiff's <sup>action</sup> ~~action~~ <sup>is</sup> ~~is~~ <sup>complaint</sup> ~~complaint~~ against the defendant may be dismissed without prejudice to the bringing of another action for the same, each party to go hence with their own costs.

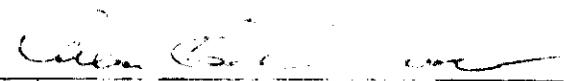
DATED this 31st day of August, 1973.

  
William J. Doyle III of JONES, GIVENS,  
BRETT, GOTCHER, DOYLE & ATKINS  
Attorneys for Plaintiff  
1700 Fourer National Bank Building  
Tulsa, Oklahoma 74119

FILED  
AUG 31 1973  
U. S. DISTRICT COURT

  
C. B. McDolett, Jr., of HOLLIMAN,  
LANGHOLZ, RUNNELS & DORWART  
Attorneys for Defendant  
2700 Fourer National Bank Building  
Tulsa, Oklahoma 74119

APPROVED:

  
United States District  
Court Judge

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

ASHLAND OIL, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 67-C-238  
 )  
 PHILLIPS PETROLEUM COMPANY, )  
 )  
 Defendant. )  
 )  
 and )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Intervenor. )

**FILED**  
AUG 31 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER TO CORRECT JUDGMENT AND OPINION

Pursuant to motion by Ashland Oil, Inc., plaintiff, filed August 22, 1973, to make corrections to the Judgment and Opinion in accordance with the provisions of Rule 60 (a) F.R.C.P., wherein a hearing was held before the Court August 27, 1973, and all parties were represented by counsel, and argument having been held, the Court does hereby find the following clerical mistakes arising from oversight or omission and being aware that notice of appeal was filed August 22, 1973, but that the appeal has not been docketed, does hereby Order, Adjudge, and Decree that the following corrections be made to the Judgment and Opinion filed August 13, 1973:

I

Paragraph I of the Judgment to be corrected to read as follows:

"1. IT IS ORDERED, ADJUDGED AND DECREED by the Court that plaintiff Ashland Oil, Inc., shall have judgment against defendant Phillips Petroleum Company in the amount of \$1,402,800.91 together with accruing interest as provided by law from date of judgment, until paid, for helium sold and delivered during the ten-year period ending December 31, 1972."

II

The heading of Column H of the Opinion on Page 8 be corrected to read as follows:

"Periods (Yrs.) at interest to July 1, 1973."

III

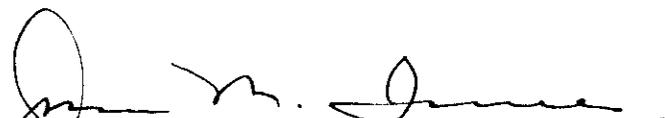
Matter of Law, paragraph (a) on page 14 of the Opinion be corrected to read as follows:

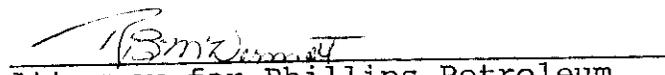
"(a) That plaintiff, Ashland, should have judgment against defendant, Phillips, for helium extracted for the ten-year period from 1963 to December 31, 1972, together with yearly interest thereon at the rate of 6% per annum ending June 30, 1973, in the total amount of \$1,402,800.91."

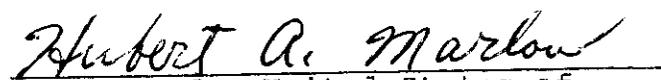
SO ORDERED this 28 day of August, 1973.

Luther Bohanon  
United States District Judge

Approved as to Form:

  
Attorney for Ashland Oil Inc.,  
Plaintiff

  
Attorney for Phillips Petroleum  
Company, Defendant

  
Attorney for United States of  
America, Intervenor

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

NATIONAL TRAILER CONVOY, INC., )  
 )  
 ) Plaintiff, )  
 )  
 ) and )  
 )  
 ) MORGAN DRIVE AWAY, INC., )  
 ) and TRANSIT HOMES, INC., )  
 )  
 ) Intervening Plaintiffs, )  
 )  
 ) vs. )  
 )  
 ) INTERSTATE COMMERCE )  
 ) COMMISSION, UNITED STATES OF )  
 ) AMERICA and CHANDLER TRAILER )  
 ) CONVOY, INC., )  
 )  
 ) Defendants. )

No. 72-C-239 ✓

**FILED**

AUG 31 1973 ✓

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

DISSENTING  
MEMORANDUM OPINION ~~AND ORDER~~

The undersigned Judge is in receipt of the Memorandum Opinion and Order prepared and submitted by Hon. William J. Holloway, Jr. in the above captioned case, to which I dissent.

My views are set out as follows:

On September 8, 1972, this cause came on for consideration by the Court upon the petition and application of National Trailer Convoy, Inc., the original plaintiff, and Morgan Drive Away, Inc., and Transit Homes, Inc., intervening plaintiffs, seeking an interlocutory injunction against the defendants, Interstate Commerce Commission, United States of America, and Chandler Trailer Convoy, Inc., to restrain them from authorizing operations under a certificate of public convenience and necessity issued to the defendant, Chandler Trailer Convoy, Inc. (ICC Docket No. 114004, Sub No. 66, Chandler Trailer Convoy, Inc., Extension - 49, Motor Carrier Cases, ICC 436) and any reissuance of a certificate of public convenience and necessity by the defendants in said docket pending final determination by this Court.

The Court heard arguments and admitted certain exhibits and affidavits pertaining to the application for interlocutory injunction, and

It was developed at the hearing that a full and complete

record of the proceedings before defendant, Interstate Commerce Commission, was unavailable for filing and for consideration, and

It was also brought out before the Court that plaintiff-petitioner and the intervenors have pending before the Interstate Commerce Commission timely, adequate and proper pleadings for the introduction of additional evidence vital to a fair and proper determination of this cause.

Equitable considerations, under all of the circumstances presented, and in the absence of a full record and the further testimony sought to be offered by petitioner and intervenors, requires that the interlocutory injunction being sought should be granted to avoid irreparable injury to some of the parties or to the public.

The record before the Court clearly establishes that irreparable injury to the plaintiff and intervenors will follow if the certificate of public convenience and necessity remains in force so as to permit Chandler Trailer Convoy, Inc., to commence operations; and if Chandler Trailer Convoy, Inc., is permitted to commence operations, it will expend large sums of money, and if ultimately it is determined that the certificate was wrongfully issued, then Chandler will suffer irreparable injury.

Weighing and balancing the equities and the very important public interest factor involved, it is believed that the certificate issued should not become effective and that the application of plaintiff and intervenors for an interlocutory injunction should be granted; further this cause should be remanded to the defendant, Interstate Commerce Commission, to hear further evidence from the plaintiff and intervenors and for reconsideration of this entire cause and the wisdom of granting or denying a certificate of public convenience and necessity.

~~IT IS SO ORDERED.~~

Dated this 29<sup>th</sup> day of August, 1973.

  
LUTHER BOHANON  
UNITED STATES DISTRICT JUDGE

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

---

NATIONAL TRAILER CONVOY, INC. )  
Plaintiff, )  
and )  
MORGAN DRIVE AWAY, INC., )  
and TRANSIT HOMES, INC., )  
Intervening Plaintiffs, )  
v. )  
UNITED STATES OF AMERICA, and )  
INTERSTATE COMMERCE COMMISSION, )  
Defendants, )  
and )  
CHANDLER TRAILER CONVOY, INC., )  
Intervening Defendant. )

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CIVIL ACTION  
NO. 72-C-239 ✓

**FILED**

AUG 31 1973 ✓

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Leonard A. Jaskiewicz and William J. Grove, Washington, D.C.;  
Fred Rahal, Jr., and Charles C. Baker, Tulsa, Oklahoma (Grove,  
Jaskiewicz and Gilliam, Washington, D. C., and Gable, Gotwals, Hays,  
Rubin & Fox, Tulsa, Oklahoma, of counsel, on brief) for Plaintiff,  
National Trailer Convoy, Inc.

William J. Lippman, Washington, D. C., and Pat Malloy, Tulsa,  
Oklahoma (Singer and Lippman, Washington, D. C., of counsel,  
on brief) for Intervening Plaintiff, Morgan Drive Away, Inc.

Wilmer B. Hill, Washington, D. C., and Carl D. Hall, Jr., Tulsa, Okla-  
homa (Hill & Ames, Washington, D. C.; Hall & Sublett, Tulsa, Oklahoma,  
and Mitchell King, Jr., Greenville, South Carolina, of counsel, on brief)  
for Intervening Plaintiff, Transit Homes, Inc.

Nathan G. Graham, United States Attorney, Tulsa, Oklahoma (Thomas  
E. Kauper, Assistant Attorney General, and John H. D. Wigger, Attorney,  
Department of Justice, Washington, D. C., on brief) for Defendant,  
The United States of America

Seymour Glanzer, Attorney, Interstate Commerce Commission,  
Washington, D. C. (Fritz R. Kahn, General Counsel, Interstate Commerce  
Commission, Washington, D. C., on brief) for Defendant, Interstate  
Commerce Commission

Harold G. Hernly, Arlington, Virginia, Samuel P. Daniel, Jr.,  
Lawrence P. Chambers, Jr., and James R. Jones, Tulsa,  
Oklahoma (Wrape and Hernly, Arlington, Virginia, Doerner, Stuart,  
Saunders, Daniel & Langenkamp, and Holliman, Langholz, Runnels &  
Dorwart, Tulsa, Oklahoma, of counsel, on brief) for Intervening  
Defendant, Chandler Trailer Convoy, Inc.

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Before HOLLOWAY, Circuit Judge, BARROW, Chief Judge of the  
Northern District of Oklahoma, and BOHANON, District Judge

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HOLLOWAY, Circuit Judge

MEMORANDUM OPINION AND ORDER

This suit seeks to enjoin and set aside an order of the Interstate Commerce Commission (the Commission) granting a motor carrier certificate. 28 U.S.C.A. §§ 1336 and 2321. A three-judge court was convened as required by 28 U.S.C.A. § 2325. The principal order of the Commission under attack is that granting a certificate for additional authority for secondary movement of mobile homes by Chandler Trailer Convoy, Inc. (Chandler), 114 M.C.C. 436. Additional orders denying motions for further hearing and other relief are also challenged. We conclude that the Commission's order is supported by the record and that the Commission committed no error and we deny relief.

Chandler is a motor carrier specializing in transportation of mobile homes. At the time it applied for the additional authority in dispute, it was authorized to transport mobile homes in secondary movements from Newport, Arkansas, and points within ten miles of it, and Jacksonville, Arkansas, to points in the United States and from points in the United States (including Alaska but excluding Hawaii) to points in Arkansas. Through these Arkansas gateways Chandler could operate between any points in the continental United States, including Alaska, in making secondary movements. Chandler also had substantial authority for initial movements of mobile homes. The plaintiff herein, National Trailer Convoy, Inc. (National), and intervening plaintiffs, Morgan Drive Away, Inc. (Morgan) and Transit Homes, Inc. (Transit), are competitors of Chandler. These three companies (the protestants) have had virtually unlimited nationwide authority for secondary movements of mobile homes since 1946 and have been the only carriers with such authority.

After the order granting Chandler's additional authority and entry

of other orders under attack, this suit was commenced. An application for an interlocutory injunction was heard and denied, with one judge dissenting. The hearing on the merits was consolidated with that on the interlocutory injunction. We have considered the arguments, the briefs and the administrative record, and this memorandum and order will state our conclusions and constitute the judgment herein.

The issues can conveniently be discussed under three general propositions to which we turn:

- (1) whether the Commission erred in denying petitions for reopening, reconsideration and similar relief;
- (2) whether the findings and order of the Commission are supported by the record as a whole and adequate as a basis for the Commission's determination; and
- (3) whether unfitness of Chandler for the authority is shown by the record so as to bar the granting of the certificate.

1. The Commission's rulings denying reconsideration and rehearing.

The report of the Commission granting the certificate in question was served November 22, 1971. Orders by a member of the Commission extended until January 31, 1972, the time for filing a petition for reconsideration, rehearing or reargument. In January, 1972, National filed a petition for reconsideration and reopening; Morgan filed a petition for reconsideration; and Transit filed a petition for reopening and reconsideration. Chandler also petitioned for reconsideration for reasons not material here. The protestants' petitions were denied by an order served June 8, 1972. The Commission's order stated that the findings of Division I were in accordance with the evidence and law and that no sufficient or proper cause appeared for reopening the proceeding

for reconsideration or granting any of the other relief sought.

On June 30, 1972, National asked leave to file a further petition for reconsideration, additional evidence being tendered therewith, which was denied and rejected on July 7, 1972, for the reason that the June 8 order had administratively finalized the proceeding, and that no sufficient or proper cause appeared for accepting the pleadings or for further consideration.

On July 7 Transit filed a petition for reopening and reconsideration and Morgan sought reopening and further hearing. On July 10 Morgan and Transit were advised by a staff letter that their petitions were rejected because the proceeding was administratively final and not the proper subject for such petitions. On that day the certificate issued to Chandler. Morgan and Transit, by letter, petitioned the Commission for review and reconsideration of the Commission's action on their petitions and requested adjudication of them. National commenced this suit on July 13, and a temporary restraining order was entered and remained in effect until August 11.

On July 28 the Commission by order denied the letter petitions of Morgan and Transit and reaffirmed the letter rejections on July 10 of their earlier petitions. The July 28 order denied the petitions for the reasons that they had been properly rejected after the proceeding was administratively final and was not the proper subject of a petition for rehearing, reargument or reconsideration; that the time for filing such petitions had expired January 31; that prior petitions for reconsideration had not requested leave to introduce additional evidence; that the requests to introduce additional evidence had been examined, and if the record were reopened it did not appear a change in the findings would be warranted; and that there was no sufficient or proper cause for further consideration.

The protestants argue that following the June 8, 1972, order they were entitled under the Commission's rules to file petitions for rehearing, reargument or reconsideration within thirty days, relying on 49 C. F. R. § 1100.101 (1972 Supp.). They say that their petitions filed in July were timely under the rule; that the Commission improperly rejected them without considering and disposing of them on the merits; and that, therefore, the certificate was issued improperly on July 10 before the disposition of the pending petitions, and null and void under § 17(8) of the Act, 49 U. S. C. A. § 17(8).

We are satisfied that the Commission's orders were proper and in compliance with the rules. § 1100.101 does provide a thirty-day time limitation for petitions for rehearing, reargument or reconsideration. However, the "decision or order" from which the time ran was the decision served on November 22, 1971. Those petitions timely filed thereafter and still pending were denied by the order served on June 8, 1972. We cannot agree with the protestants that with the order of June 8, the time began to run again for another round of petitions. Instead we accept the Commission's position that such an application of the rule would frustrate the public interest. Since the timely petitions filed as of right were considered and disposed of before issuance of the certificate on July 10, the Commission's grant of the authority on that date was not in violation of the Act, despite the filing of the other petitions. See *Atlanta-New Orleans Motor Freight Co. v. United States*, 197 F. Supp. 364, 371 (N. D. Ga.).

As a discretionary matter the Commission could have reopened the proceeding under its rules. See 49 C. F. R. § 1100.101(e). The proof sought to be adduced on reopening concerned the continuing decline in secondary movements. And it would have shown a new regulation extending the reasonable pickup time for movements of the Department of Defense (DOD) traffic, which is said to bear on whether shipment delays shown by Chandler were a valid consideration. In essence the argument for reopening is that the record was stale and that the Commission abused its discretion in not reopening to admit proof of the changed conditions.

We are satisfied there was no abuse of discretion in the Commission's determination not to prolong the proceeding. If such reasons were permitted to force reopening to bring the proof down to date, there would be little hope that the administrative process could ever be consummated. *United States v. Interstate Commerce Commission*, 396 U.S. 491, 520-21; *United States v. Pierce Auto Lines, Inc.*, 327 U.S. 515, 535; *Interstate Commerce Commission v. Jersey City*, 322 U.S. 503, 514-15. This proceeding does not involve the special circumstances where reopening was held to be required in *Blue Bird Coach Lines, Inc. v. United States of America*, 328 F. Supp. 1331 (W.D.N.Y.).

We are persuaded there was no procedural error or abuse of discretion affecting the validity of the certificate or requiring any of the Commission's orders to be disturbed.

2. The sufficiency of the record to support the Commission's findings and order.

The detailed findings of the Hearing Examiner and of the Commission are stated in the Commission's Report, 114 M.C.C. 436, and need not be repeated.

In arriving at its conclusion the Commission differed with the Examiner as to the consideration to be given to testimony by individual shippers, and in particular by accepting proof from seven of them who were in the employ of the DOD. While accepting the evidentiary findings of the Examiner, the Commission made additional findings based on proof of all such individual shippers, assessed the significance of their complaints as more serious than did the Examiner, and granted the certificate.

In essence the Commission attached greater weight to proof by the individual shippers than had the Examiner. It noted that while the individuals might have obtained better service by contacting more carriers, the evidence showed that all the protestants had been called for service at different times by different shippers, with delays and inadequacies occurring in service by each protestant. Furthermore the Commission received testimony of seven individual military personnel which the Examiner had rejected. This proof covered different areas of the country where the witnesses had described delays and inadequacies in service. And the DOD additionally submitted proof by a one-month table on the need for additional service which, taken with testimony of individuals, was found adequate by the Commission as support for the application.

The protestants argue that the proof relied on by the Commission was wholly insufficient to support the nationwide authority granted, relying on Adolph L. Hintze Common Carrier Application, 107 M. C. C. 348, and similar cases. Under Hintze they say that the Commission's rule is that existing carriers are entitled to all the traffic they can adequately, efficiently and economically handle, before authority for a competitive service is granted. They contend that the proof of delay and inadequacy in the services by the individuals and the DOD was insufficient, as the Examiner had found, and press numerous other arguments on insufficiency of the proof to support the Commission's findings and conclusions.

We cannot agree. In giving weight to the testimony by individual shippers as to their complaints, without requiring as strict a standard of proof as is exacted from other regular shippers, the Commission followed persuasive authorities. See Lonnie Wood Common Carrier Application, 86 M. C. C. 45; Bell Transportation Co., Inc., Extension, Florida, 96 M. C. C. 264; Chandler Trailer Convoy, Inc., Extension - 49 States, 114 M. C. C. 436. We cannot say that it was improper to give weight to such proof by individual shippers. Moreover proof is

not required for each and every point involved in supporting an application for extended authority. *Hudson Transit Lines, Inc., v. United States*, 314 F. Supp. 197, 202 (D. N. J.); *Transit Homes, Inc. v. United States*, 299 F. Supp. 950, 955 (D. S. C.); *Atlanta-New Orleans Motor Freight Co. v. United States*, 197 F. Supp. 364, 368-69 (N. D. Ga.).

It is true that the proof was not detailed and strong as to the inadequacy of service and the need for new authority throughout the entire nation as granted. Nevertheless, we cannot say that there was not substantial evidence for the Commission's finding that present and future public convenience and necessity required the new operation by Chandler.

On consideration of the proof as a whole, including that of the individual shippers and the DOD, we are satisfied there is substantial evidence supporting the Commission's findings, and this determination is as far as we may go. *Interstate Commerce Commission v. Jersey City*, supra; *Virginian R. Co. v. United States*, 272 U. S. 658, 663. The determination of the public interest is the business of the Commission under the very terms of the statute. See 49 U. S. C. A. § 307(a); *United States v. Pierce Auto Lines*, supra. Our function is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done and we may not substitute our view in that respect if the Commission's order has support in the record and applicable law, as we feel it does here. *United States v. Pierce Auto Lines*, supra at 536. And the fact that the Commission adopted the findings of the Examiner as to the underlying facts, but made supplemental findings and conclusions differing from his, does not make the Commission's decision arbitrary or unlawful. *Eazor Express, Inc. v. United States*, 218 F. Supp. 393, 395 (W. D. Pa.).

Thus we cannot agree with the various arguments attacking the sufficiency of the record to support the findings or the adequacy of the findings themselves. The findings and order sufficiently reveal the essential basis of the Commission's judgment. *Alabama Great Southern R. R. Co. v. United States*, 340 U. S. 216, 228; *Greater Boston Television Corp. v. F. C. C.*, 444 F. 2d 841, 852 (D. C. Cir.), cert. denied, 403 U. S.

923. In sum we conclude that the Commission's order is supported by the record as a whole and by adequate findings and conclusions.

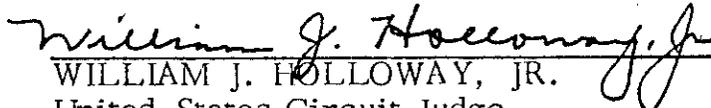
3. The fitness of Chandler  
for a certificate.

The protestants contend the certificate should not have issued because of record proof of Chandler's unfitness to perform the services, relying on *Kroblin Regrigerated Xpress, Inc. v. United States*, 197 F. Supp. 39 (N. D. Ia. ). They point to Chandler's maintenance of unauthorized affiliation with a company owned by Mr. Chandler's brother; the routing of the Chandler traffic without observance of the Arkansas gateways; and the falsification by drivers of their logs to conceal this practice.

The Examiner and the Commission rejected these contentions. It was found that no predicate existed for a finding that the businesses of Mr. Chandler and his brother were subject to a common control since Mr. Chandler had no stock or monetary interest, direct or indirect, in the operation of his brother's company. Further it was found that positive remedial steps had been taken by Chandler to rectify the situation as to observing the Arkansas gateways. A new employee was charged with supervision to insure observance of the traffic routes.

We are persuaded that the record amply supports the findings of the fitness of Chandler. The past conduct is no bar to a certificate and the determination of fitness rests with the Commission. *Bray Lines, Inc. v. United States*, 353 F. Supp. 1240, 1249 (W. D. Okla. ); *Armored Carrier Corp. v. United States*, 260 F. Supp. 612, 614-15 (E. D. N. Y. ), aff'd, 386 U. S. 778.

We conclude that none of the grounds asserted justifies setting aside the Commission's order and that all relief should be and is denied and the action is hereby dismissed.

  
WILLIAM J. HOLLOWAY, JR.  
United States Circuit Judge

  
ALLEN E. BARROW, Chief Judge  
Northern District of Oklahoma

LUTHER L. BOHANON Dissents  
United States District Judge

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

DORIS ANN WHITETAIL PARKER, et al., )  
 )  
Complainants, )  
 )  
vs. ) 70-C-373  
 )  
JOHN PAPPAN, Superintendent of the )  
Osage Indian Agency, et al., )  
 )  
Defendants, )  
 )  
RAYMOND RED CORN, et al., )  
 )  
Intervenors. )

**FILED**  
AUG 29 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

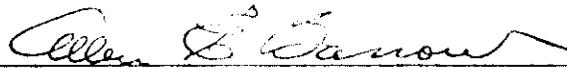
ORDER

The Court has for consideration the Motion for New Trial and Reconsideration filed by the Complainants, the Reply of Loretta La Puma, and, being fully advised in the premises, finds:

That said motion and reply should be overruled.

IT IS, THEREFORE, ORDERED that the Motion for New Trial and Reconsideration filed by Complainants and the Reply of Loretta La Puma, be and the same are hereby overruled.

ENTERED this 29 day of August, 1973.



CHIEF UNITED STATES DISTRICT JUDGE

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

UNIGARD INSURANCE COMPANY, a  
foreign insurance corporation,

Plaintiff,

vs.

M.F.A. MUTUAL INSURANCE COMPANY,  
a foreign insurance corporation,  
JOHN MICHAEL STJDER, EDNA  
LANDRUM AND WILLIAM LANDRUM,

Defendants.

73-C-147 ✓

FILED

AUG 29 1973

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER SUSTAINING MOTION OF M.F.A. INSURANCE  
COMPANY TO DISMISS: ORDER GRANTING APPEARANCE OF COUNTRY-  
SIDE CASUALTY COMPANY; ORDER GRANTING PLAINTIFF  
LEAVE TO AMEND ITS COMPLAINT INSTANTER;;  
AND ORDER ALLOWING COUNTRYSIDE  
CASUALTY COMPANY TO ANSWER

For reasons set forth in the consideration the above captioned  
motions, the Court, being fully advised in the premises finds:

That the motion of M.F.A. should be sustained and M.F.A.  
should be dismissed.

That Countryside Casualty Company should be allowed to  
enter its appearance.

That leave to amend should be granted and its complaint  
instanter.

That the answer contained in the answer of M.F.A. should  
be considered the answer of Countryside Casualty Company.

IT IS SO ORDERED.

Witness my hand and seal of the Court this 29th day of August, 1973.

*[Handwritten signature]*



Further, the transcripts before the Court do not show that Richard Dale Lawson was arrested and in custody at the time of the questioned "show-up" pursuant to such Ordinance, but that his arrest perhaps "could have been" pursuant to an "ex-con register order." There is no showing that an action was ever filed or prosecution had against this petitioner pursuant to such City Ordinance, thereby precluding as moot the necessity of its consideration herein.

The Court further finds, from a detailed examination of the testimony in the transcripts of the State Court proceedings, that the evidence affirmatively discloses that the courtroom identification of the defendant was made as a result of the observation by the witness on the night he was robbed rather than on the basis of photographs shown to him within the week or his view of the defendant at the police station two days later.

The Court finds from the totality of the circumstances that the view by the witness of the photographs and his personal view of the defendant at the police station prior to the initiation of the criminal proceeding upon which defendant was convicted were not so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. Rather, the Court finds from its examination of the transcripts that the in-Court identification by the witness had a sound basis in personal observation with an opportunity to view the defendant in a face-to-face, close proximity confrontation for a period of time, which although short, was quite long enough to fix the features of the defendant on his mind in well-lighted, familiar surroundings. The record is clear that at the trials the witness retained in his memory the image of the defendant in person at the time of the offense. He gave the police the description of his assailant the night of the robbery. Within a week, from a group of well over 200 similar type "mug-shots", he chose only one, the defendant. At the encounter at the police station, he stated, "The man that robbed me is in that room there." He testified in all Court appearances that his in-Court identification was based on the night of the robbery and not upon any pictures or post-robbery confrontation with the accused. From the transcripts before this Court it is clear that at no time has the witness waived or doubted that the defendant, petitioner before this Court, is the person who committed the crime for which conviction and imprisonment

resulted. The testimony of this witness has been unwaivering although subjected to repeated direct and cross-examination on this issue.

The Wade-Gilbert per se exclusionary rule is not applicable to pre-indictment confrontations as we have here before the Court. Kirby v. Illinois, 406 U. S. 682 (1972).

Although this Court does not approve such "accidental" identification procedure as here involved, the Court finds in the totality of the circumstances before the Court that the constitutional errors under consideration were harmless beyond a reasonable doubt.

The Court, therefore, finds that the petition for writ of habeas corpus of Richard Dale Lawson can be determined summarily without a hearing, as requested by the petitioner, that the motion for bail should be overruled, and that the petition for writ of habeas corpus should be denied and dismissed.

IT IS, THEREFORE, ORDERED that the Petitioner's motion for bail be and it is hereby overruled.

IT IS FURTHER ORDERED that this petition for writ of habeas corpus can be determined summarily without the necessity of an evidentiary hearing in this Court, and that the habeas corpus petition of Richard Dale Lawson be and it is hereby denied and dismissed.

Dated this 27th day of August, 1973, at Tulsa, Oklahoma.

  
CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

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

TERRI LYNN JONES, a minor, by )  
and through her father and )  
next friend, LARRY E. JONES, )  
and LARRY E. JONES and JANICE )  
JONES, individually, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
DAVID CASTLE MAY, )  
 )  
 )  
Defendant. )

No. 73-C-17

**FILED**  
AUG 29 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER SUSTAINING DEFENDANT'S MOTION TO DISMISS

The Court has for consideration the Motion to Dismiss filed by the Defendant, DAVID CASTLE MAY, the Brief in Support thereof, the affidavit of the Defendant, DAVID CASTLE MAY, and, being fully advised in the premises, FINDS:

That when said Motion was filed, the Plaintiff's attorney was notified by the United States District Court Clerk that the Court had entered a Minute Order on February 14, 1973, granting the Plaintiff 10 days from that date within which to file a response to said Motion. No requests for extension have been filed by the Plaintiff, and the Plaintiff has not responded to the Motion to Dismiss.

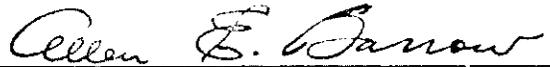
The Court has fully considered the entire file and finds, from the Complaint, that the Plaintiffs are citizens of the State of Oklahoma, and that the Defendant is a citizen of the State of Missouri, and that the alleged accident occurred in Greene County, Missouri. The Court has carefully examined Title 12 O.S. Section 187 and Title 12 O.S. Section 1701.03, the Long Arm, in personam statutes presently in effect in the State of Oklahoma. There is no showing that the tortious act complained of occurred within the

confines of the State of Oklahoma, but to the contrary, the Plaintiff alleges that the alleged incident occurred in the State of Missouri. There is no showing that the Defendant has any property located within the State of Oklahoma, or has the minimum contact as set forth in *International Shoe Company v. State of Washington*, 326 U.S. 310 (1945).

The Court, therefore, finds that it is without jurisdiction over the Defendant and over the subject matter and that service of process under the in personam Long Arm statutes was not sufficient to invoke the jurisdiction of the Court over the Defendant and the subject matter of the instant litigation.

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Dismiss be, and the same is, hereby sustained and that the Complaint and cause of action are hereby dismissed.

ENTERED this 20<sup>th</sup> day of August, 1973.



Allen E. Barrow  
Chief Judge, United States District  
Court for the Northern District  
of Oklahoma

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

CONSTANCE JEAN MILLER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FREDERICK OLIVER GLOVER, )  
 )  
 Defendant. )

No. 73-C-83 ✓

ORDER SUSTAINING DEFENDANT'S  
MOTION TO DISMISS

**FILED**  
AUG 29 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

The Court has for consideration the Motion to Dismiss filed by the Defendant, the Brief in Support thereof, and, being fully advised in the premises, finds:

That when said Motion was filed, the Plaintiff's attorney was notified by the United States District Court Clerk that the Court had entered a minute order on April 23, 1973, granting the Plaintiff 10 days from that date within which to file a response to said Motion. Thereafter, and on May 7, 1973, the Plaintiff filed a Motion for an additional 15 days to respond. On May 8, 1973, the Court entered its Order granting the Plaintiff 15 days within which to respond. No further requests for extensions have been filed by the Plaintiff, and the Plaintiff has not responded to the Motion to Dismiss.

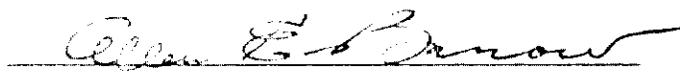
The Court has fully considered the entire file and finds, from the Complaint, that the Plaintiff is a citizen of the State of Oklahoma, and that the Defendant is a citizen of the State of Iowa and that the alleged accident occurred in Coffeyville, Kansas. The Court has carefully examined Title 12 O.S. Section 187 and Title 12 O.S. Section 1701-03, the Long Arm in personam statutes presently in effect in the State of Oklahoma. There is no showing

that the tortious act complained of occurred within the confines of the State of Oklahoma, but to the contrary, the Plaintiff alleges the alleged incident occurred in the State of Kansas. There is no showing that the Defendant has any property located within the State of Oklahoma, or has the minimum contact as set forth in International Shoe Company v. State of Washington, 326 U.S. 310 (1945).

The Court, therefore, finds that it is without jurisdiction over the Defendant and over the subject matter and that service of process under the in personam Long Arm statutes was not sufficient to invoke jurisdiction of the Court over the Defendant and the subject matter of the instant litigation.

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Dismiss be, and the same is hereby, sustained and the Complaint and cause of action are hereby dismissed.

ENTERED this 27 day of August, 1973.



Allen E. Barrow  
Chief Judge, United States District  
Court for the Northern District  
of Oklahoma

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 ) CIVIL ACTION NO. 73-C-205  
 vs. )  
 )  
 )  
 DAVID U. BURWELL and )  
 PATSY V. BURWELL, )  
 )  
 Defendants. )

FILED  
AUG 27 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 27th day of August, 1973, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the defendants, David U. Burwell and Patsy V. Burwell, appearing not.

The Court being fully advised and having examined the file herein finds that David U. Burwell and Patsy V. Burwell were served with Summons and Complaint on July 23, 1973, as appears from the Marshal's Return of Service herein, and

It appearing that the said defendants have failed to 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 following described real property is located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Seven (7), Block Five (5), LAZY H Addition, an Addition to the City of Sapulpa, Creek County, Oklahoma, according to the recorded plat thereof.

THAT the defendants, David U. Burwell and Patsy V. Burwell, did, on the 23rd day of April, 1971, execute and deliver to Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$11,250.00 with 7 1/2 percent interest per annum, and further providing for the payment

of monthly installments of principal and interest; and

The Court further finds that the defendants, David U. Burwell and Patsy V. Burwell, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$11,177.19 as unpaid principal, with interest thereon at the rate of 7 1/2 percent interest per annum from May 1, 1972, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, David U. Burwell and Patsy V. Burwell, in personam, for the sum of \$11,177.19 with interest thereon at the rate of 7 1/2 percent interest per annum from May 1, 1972, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff by taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisalment the 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, all of 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 United States Attorney

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
TULSA DIVISION

**FILED**  
AUG 27 1973

TROY LEE NEWTON,	)	Jack C. Silver, Clerk
	)	U. S. DISTRICT COURT
	)	
vs.	)	No. 73-C-268
	)	
UNITED STATES OF AMERICA,	)	
	)	Respondent.
	)	

ORDER DENYING MOTION  
UNDER 28 U.S.C. 2255

There has been filed with the Clerk of the Court and referred to the undersigned as sentencing judge, the motion of Troy Lee Newton for discharge from the sentence previously imposed in Case No. 70-CR-40, on the ground that the Court, in sentencing, ordered the sentence imposed under Title 18 U.S.C. Section 174, rather than Title 21 U.S.C. 174. Attached to the motion is the copy of page 47 of the transcript of the proceedings which indicates that the Court referred to Title 21 as Section 21, upon which reference petitioner further bases his claim for relief.

The Court has considered the petition and the written one-page brief in connection therewith, and finds that it should be denied, for the reason that the basis claimed for an illegal sentence is clearly unsubstantial. It appears that in his remarks the Court erroneously referred to Title 18 U.S.C. 174, rather than Title 21 U.S.C. 174, which latter was the section under which defendant was convicted of the offenses for which he was tried. Such reference was an inadvertence and a technical or typographical error only, not going to the merits of the matter. The record indicates that the Assistant United States Attorney, Ben Baker, called this to the Court's attention and that the Court did

correct it. The record indicates that the intent of the Court was that the defendant be sentenced under 21 U.S.C. 174, and the Court finds that the journal entry of commitment as to this defendant did so correctly reflect the section under which the sentence was made. Neither typographical errors or slips of the tongue made by the sentencing judge automatically give a validly convicted defendant a key to the jail.

IT IS HEREBY ORDERED AND ADJUDGED that the petitioner's motion under 28 U.S.C. 2255 be, and it is hereby, denied and overruled.

At Wichita, Kansas, this 23rd day of August, 1973.



United States District Judge

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

ROGER C. MYERS, d/b/a  
ROMYCO STERO,

Plaintiff,

vs.

AMPEX, INC., a California Corporation;  
HARRY FOX LICENSING AGENCY, INC., a  
New York Corporation; CAPITOL RECORDS,  
INC., a New York Corporation; AMERICAN  
BROADCASTING CORP., a New York Corp.;  
COLUMBIA BROADCASTING SYSTEM, INC., a  
New York Corporation; R.C.A. CORP.,  
a/k/a RADIO CORPORATION OF AMERICA,  
a Delaware Corporation; JOHN F. STILL,  
Delaware, Oklahoma; KENNETH PALMER,  
d/b/a KENNETH PALMER STEREO TAPE CO.,  
Lawton, Oklahoma,

Defendants.

73-C-48

**FILED**

AUG 24 1973

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

The instant litigation was commenced February 21, 1973, by a pro se complaint by plaintiff for a declaratory judgment. The following defendants have never been served with process: Ampex, Inc.; Harry Fox Licensing Agency, Inc.; R.C.A. Corp. a/k/a Radio Corporation of America; John F. Still. The following defendants were served with process and have filed answers and motions to dismiss, to-wit: Capitol Records, Inc.; American Broadcasting Corp; Columbia Broadcasting System, Inc. Defendant, Kenneth Palmer was duly served by process on February 27, 1973, but has never made an appearance in the litigation presently before the Court.

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure the cause of action and complaint should be dismissed as to the defendants, Ampex, Inc.; Harry Fox Licensing Agency, Inc.; R.C.A. Corp., a/k/a Radio Corporation of America; and John F. Still, for failure to prosecute.

Turning to the Motions to Dismiss filed by the defendants, Capitol Records, Inc.; American Broadcasting Corp.; and Columbia

Broadcasting System, Inc., the Court finds that the complaint filed herein by plaintiff is frivolous and not based upon a valid premise. The Court further finds that the complaint is palpably lacking in substance and does not state a claim for relief that is proper under the Federal Rules of Civil Procedure. The Court further finds that the plaintiff has failed to answer within the time allowed by the Federal Rules of Civil Procedure interrogatories propounded to him by the defendants as filed and sent by certified mail.

Turning to the defendant, Kenneth Palmer, who was served in this litigation, but has not appeared, it would seem that said defendant was in default. On August 20, 1973, plaintiff, pro se filed an instrument of record denominated "Motion for Judgement". The Court further notes that on March 16, 1973, plaintiff, pro se, filed a general Motion for Default. On July 24, 1973, plaintiff, pro se, filed a Motion to Strike All Answers and Responses and Move for Default. The grant or denial of a motion for entry by the court of a default judgment lies within the sound discretion of the trial court. The Court, in exercising its discretion, may properly consider such factors as the following: whether the defendant's failure to plead or otherwise defend is largely technical; whether the plaintiff will be prejudiced, and, if so, the extent thereof; whether the entry of the default judgment would result in injustice. The Court finds, in this connection, that the entry of default judgment would result in injustice to the defendant, Kenneth Palmer. Moreover, since the Court has heretofore indicated that the complaint does not state a claim for relief and is frivolous and not based upon a valid premise, it would be iniquitable to enter a default judgment.

IT IS, THEREFORE, ORDERED that this cause of action and complaint be and the same are hereby dismissed with prejudice to the filing of a subsequent action.

ENTERED this 23rd day of August, 1973.

Allen L. Barron

CHIEF UNITED STATES DISTRICT JUDGE

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

BOARD OF TRUSTEES, PIPELINE  
INDUSTRY BENEFIT FUND,

Plaintiff,

vs.

OHIO PIPE LINE CONSTRUCTION  
COMPANY,

Defendant.

No. 73-C-211

**FILED**  
AUG 23 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT BY DEFAULT

The Summons and the Complaint in the above entitled action, having been duly served on the Defendant, and the Defendant is in default for failure to appear in this action, and the Plaintiff has filed a Motion for Default Judgment and an affidavit of the amount due; it is

ORDERED that judgment be entered in favor of the Plaintiff above named, and against the Defendant above named, in the sum of \$585.07, with interest thereon at the legal rate, attorney's fee in the amount of \$250.00, together with costs in the sum of \$18.00.

DATED at Tulsa, Oklahoma, this 23 day of August, 1973.

BY THE COURT:

  
United States District Judge

C  
O  
P  
Y

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

NORTHLAND DAY CARE AND CHILD DEVELOPMENT )  
CENTERS, INC., an Oklahoma Corporation, )  
d/b/a 3R'S DAY CARE AND CHILD DEVELOPMENT )  
CENTER; and THE BOARD OF DIRECTORS, as )  
individuals: MONICA M. COWAN, EMMA )  
BREWER, J. WESLEY BUTLER, GROVER BREWER, )  
LIZ M. BUTLER, CALLIE WEST, CORINE WHITE, )  
ELLEN S. MARTIN, and BERTHA BROCK, )

Plaintiffs, )

vs. )

No. 73-C-170 )

DEPARTMENT OF INSTITUTIONS, SOCIAL AND )  
REHABILITATIVE SERVICES OF THE STATE OF )  
OKLAHOMA, L. E. RADER, J. HARRY JOHNSON, )  
LUCILLE FARRIS, EFFIE HUDSON, FLORENCE )  
FRANK, FRANCIS BORELLI, CHARLES CAYWOOD, )  
HILMA DUEY, M. GILLIDETTE, T. F. )  
SPRETTTER, B. S. BURCHETT, D. D'APOLLONIO, )  
G. BORGAES, M. HAMILTON, JUDY STARR, )  
GLADINE MARTIN, J. KELLY, C. WARD, BARBARA )  
FARHA, M. McCORKEL, P. ELIAS, K. BURGESS, )  
P. McDONALD, PAUL WALKER, T. R. McCULLAGH, )  
M. McPHAIL, M. S. MAPES, JACQUELINE ROACH, )  
MAXINE MARTIN, NORA NICHOLSON, PAULINE )  
MAYER, JEANE COMSTOCK, N. R. TIMMONS, )  
and MAURINE KELLY; all as individuals )  
and in their respective official capa- )  
cities, )

Defendants. )

**FILED**  
AUG 23 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

Upon motion by the plaintiffs, and agreement between the parties, the above styled and numbered cause is hereby dismissed without prejudice.

  
LUTHER BOHANON, UNITED STATES  
DISTRICT JUDGE

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

RUBY JEWELL RENTIE, )  
 )  
 Plaintiff, )  
 )  
 vs. ) NO. 73-C-50  
 )  
 EVELYN HILLS SHOPPING CENTER, INC., )  
 A Foreign Corporation, )  
 )  
 Defendant. )

ORDER OF DISMISSAL

**FILED**  
AUG 17 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ON this 16<sup>th</sup> day of August, 1973, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

*Luther Bohanon*

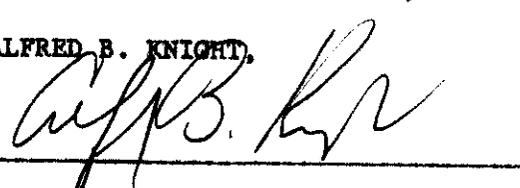
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

STEPHEN C. WOLFE,

  
Attorney for the Plaintiff,

ALFRED B. KNIGHT,

  
Attorney for the Defendant.

**FILED**

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

AUG 17 1973

Jack C. Silver, Clerk  
**U. S. DISTRICT COURT**

JAMES HENRY DIGGS,	)
	)
Petitioner,	)
	)
vs.	)
	)
UNITED STATES OF AMERICA,	)
	)
Respondent.	)

NO. 73-C-203

O R D E R

The Court has for consideration an instrument filed pro se, in forma pauperis by James Henry Diggs. Therein petitioner states that he is imprisoned at the Oklahoma State Penitentiary pursuant to a judgment and sentence in the Tulsa County District Court, Oklahoma, which Court he alleges violated every right petitioner has been guaranteed by the Constitution of the United States. Although he lists eleven such violations, the Court finds his assertions are bald conclusions, unsupported by allegation of facts showing how, in what way, or by whom these violations were perpetrated upon him. The instrument is thereby insufficient as a habeas corpus petition and should be dismissed without prejudice. Martinez v. United States, 344 F.2d 325 (10th Cir. 1965) and Atkins v. State of Kansas, 386 F.2d 819 (10th Cir. 1967).

Further, an indispensable party in such proceeding is the person having custody of the body of the petitioner and the proper party respondent, so long as the petitioner is confined in the Oklahoma State Penitentiary, McAlester, Oklahoma, is the Warden, Park J. Anderson, and not the United States of America.

IT IS, THEREFORE, ORDERED that the petition herein is denied and dismissed, without prejudice, to a petition being refiled naming the proper parties and setting forth factual allegations, if any, in support of asserted constitutional violations.

Dated this 17th day of August, 1973, at Tulsa, Oklahoma.

  
 CHIEF JUDGE, UNITED STATES DISTRICT  
 COURT FOR THE NORTHERN DISTRICT OF  
 OKLAHOMA



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

ALBERTA Y. COLES,  
Plaintiff,

vs.

CASPAR WEINBERGER,  
SECRETARY OF HEALTH,  
EDUCATION AND WELFARE,  
Defendant.

)  
)  
)  
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)  
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)  
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)  
)

**FILED**  
AUG 16 1973 *hm*  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT  
72-C-455 ✓

ORDER

The Court has for consideration the Motion for Summary Judgment filed by the defendant and the Motion for Summary Judgment filed by the plaintiff and the briefs submitted by the parties, the transcript on file, and, being fully advised in the premises, finds:

That this is an action brought under Section 205(g) of the Social Security Act, 42 U.S.C. §405(g), to review a final decision of the Secretary of Health, Education and Welfare denying plaintiff's application for a period of disability and disability insurance benefits under the provisions of sections 216(i) and 223, respectively, of the Social Security Act, as amended.

Section 216(i) of the Social Security Act provides for the establishment of a period of disability, and section 223 of the Act provides for the payment of disability insurance benefits where the requirements specified therein are met.

Section 223(d)(1) of the Social Security Act, as amended, defines "disability" (except for certain cases of blindness) as "the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." Section 223(d)(2)(A) further provides that "an individual (except a widow, surviving divorced wife, or widower for the purposes of section 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

Section 223(d)(3) further states, "For the purposes of this subsection, a 'physical or mental impairment' is an impairment that results from anatomical or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

The claimant's earnings record was found, by the Examiner, to reflect that the special earnings requirement of the Act for disability purposes were met through March 31, 1975.

The issue before the Court in this case is whether the decisions of the Secretary that the claimant did not establish "disability" as defined by the Social Security Act, as amended, at any time prior to the issuance of the decision of the Hearing Examiner is supported by substantial evidence.

The evidence adduced before the Hearing Examiner reflects that Alberta Y. Coles was born February 6, 1923, at Denver, Colorado. The evidence further reflected that she went through the 11th grade in school, but did not graduate. Claimant was married, but her husband passed away in 1971.

Plaintiff's work record is as follows: She started working away from home in 1945. She worked at a steel company. She was employed by Gates Rubber Company in the fan belt department, making fan belts on a machine, for about one year. She then stayed home and had children. She then worked for Millers Market as a grocery checker. She was employed by Tabasco during the war making shells and was so employed for approximately three years. Then she stayed home and had another child. After that she worked as a checker at Safeway for about 12 years, off and on. She checked about six hours a day and stocked shelves about two hours each day. She quit working in December, 1969, and has not worked since.

The disabilities claimed by plaintiff are back, leg and blood problems, as disclosed by her Request for Hearing.

The Examiner considered medical and nonmedical evidence. In his decision he extensively summarized the medical evidence, and the Court feels no need to delineate it at this juncture.

The Hearing Examiner heard the testimony of a Vocational Expert. Thereafter, in his decision, the Hearing Examiner properly designated specific lines of work in the immediate area where plaintiff could be gainfully employed.

The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive. 42 U.S.C. 405(g) Richardson v. Perales (1971) 402 U.S. 389, at 401. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, supra.

The burden of proving disability, by acceptable evidence, for social security purposes rests with the claimant. Johnson v. Finch (10th CCA, 1971) 437 F.2d 1321.

The Court must examine the record as a whole if it is to properly make a determination as to whether substantial evidence exists. Gardner v. Bishop (10th CCA, 1966) 362 F.2d 917; Travis v. Richardson (10th CCA, 1970) 434 F.2d 225.

The Courts are not to abdicate their traditional functions in reviews of administrative determinations. The agencies likewise have given a balanced consideration to all the testimony on each particular issue presented, and if this is not done, the failure will be apparent on application of the substantive evidence test. Universal Camera Corp. v. NLRB (1950) 340

U.S. 475; Travis v. Richardson, supra.

The evaluation of the testimony and the findings of fact are for the administrative agency to make, based upon the entire evidence before it. Although a court might not reach the same result were it to make the decision originally, if the decision is supported by substantial evidence, it must be upheld. This decision by the Secretary is so supported, and the Motion for Summary Judgment filed by defendant should be sustained and the Motion for Summary Judgment of the plaintiff overruled.

IT IS, THEREFORE, ORDERED that the Motion for Summary Judgment of defendant be and the same is hereby sustained and the Motion for Summary Judgment of the Plaintiff be and the same is hereby overruled.

ENTERED this 16 day of August, 1973.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

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

KATHERINE RUTLEDGE,

Plaintiff,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY, a Corporation,

Defendant.

No. 73-C-64

**E I L E D**

AUG 16 1973

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this 16 day of August, 1973, there comes on before the Court for its consideration the "Joint Stipulation of Dismissal With Prejudice", filed herein by the parties to this civil action pursuant to Rule 41(a) of The Federal Rules of Civil Procedure. Said joint stipulation is signed by the attorneys of record for the Plaintiff and the Defendant.

WHEREUPON, it is the order of the Court that the above captioned civil action is hereby dismissed with prejudice with the respective parties to bear their own costs herein incurred.

William L. ...  
JUDGE

APPROVED AS TO FORM:

James B. ...  
Attorney for Plaintiff

J. R. ...  
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 29.99 ACRES OF LAND, MORE OR )  
 LESS, SITUATE IN NOWATA COUNTY, )  
 STATE OF OKLAHOMA, AND JULIAN W )  
 GLASS, JR., AND UNKNOWN OWNERS, )  
 )  
 Defendants.)

CIVIL ACTION NO. 71-C-57

Tract Nos. 1531M and 1532M

**FILED**

AUG 15 1973

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 71-C-58

Tract Nos. 1534M and 1546M

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 30.00 ACRES OF LAND, MORE OR )  
 LESS, SITUATE IN NOWATA COUNTY, )  
 STATE OF OKLAHOMA, AND HARLEY )  
 PRICE, ET AL., AND UNKNOWN )  
 OWNERS, )  
 )  
 Defendants.)

J U D G M E N T

Now, on this 15<sup>th</sup><sup>1.</sup> day of August, 1973, 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 July 16, 1973, and 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 to the entire estate taken in Tract Nos. 1531M, 1532M, 1534M, and 1546M as such estate and tracts are described in the Complaints filed in these cases.

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 the subject tracts.

5.

The Acts of Congress set out in paragraph 2 of the Complaints filed herein give the United States of America the right, power and authority to condemn the subject property for public use. Pursuant thereto, on March 8, 1971, the United States of America filed its Declaration of Taking of a certain estate in such tracts of land, which was the date of taking thereof. Simultaneously therewith, Plaintiff deposited \$1,979.00 in the Registry of this Court as estimated compensation for the taking of said estate, none of which has been disbursed. Therefore, title to such property should be vested in the United States of America as of March 8, 1971.

6.

The Report of Commissioners filed herein on July 16, 1973 is hereby accepted and adopted as findings of fact as to the subject tracts, wherein the amount of just compensation as to the estate taken therein is fixed by the Commission at \$10,942.25.

7.

The Defendants named in paragraph 11 as owners of the estate taken in the subject tracts are the only Defendants asserting any interest in such estate; all other Defendants having either disclaimed or defaulted. The Court further finds that there was a subsisting oil and gas lease on these tracts on the date of taking. Said named Defendants were the owners of various interests in the estate condemned herein as of the date of taking and, as such, are entitled to receive the just compensation awarded by this judgment according to their respective interests as set out in paragraph 11 below.

2.

8.

This judgment creates a deficiency between the amount deposited as estimated just compensation for the estate taken in the subject tracts and the amount fixed by the Commission and adopted by the Court as just compensation; therefore, a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 11.

9.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the United States of America has the right, power and authority to condemn for public use the subject tracts, as they are described in the Complaints filed herein, and such property, to the extent of the estate described in such Complaints, is condemned and title thereto is vested in the United States of America, as of March 8, 1971, which was the date of taking thereof, and all Defendants herein and all other persons are forever barred from asserting any claim to such estate.

10.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that on the date of taking in these cases, the owners of the various interests in the estate taken herein in the subject tracts were the Defendants whose names appear below in paragraph 11 with the interest owned by each also shown therein and the right to receive the just compensation for such estate is vested in the parties so named; and, there was a subsisting oil and gas lease on these tracts on the date of taking.

11.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the Report of Commissioners filed herein on July 16, 1973, is hereby confirmed and the \$10,942.25 therein fixed is adopted

3.

as the award of just compensation for the estate taken in the subject tracts, which is allocated and should be disbursed according to the following schedule:

CIVIL ACTION NO. 71-C-57  
(Tract Nos. 1531M & 1532M)

and

CIVIL ACTION NO. 71-C-58  
(Tract Nos. 1534M & 1546M)  
COMBINED AS TO THE WORKING INTEREST

OWNER: HARLEY PRICE

AWARD OF JUST COMPENSATION PURSUANT TO COMMISSIONERS' REPORT . . . . .	\$8,473.25
DISBURSED TO OWNER . . . . .	NONE
BALANCE DUE TO OWNER . . . . .	\$8,473.25
DEPOSITED AS ESTIMATED COMPENSATION:	
(71-C-57 - \$ 68.00)	
(71-C-58 - \$242.00) . . . . .	\$ 310.00
DEPOSIT DEFICIENCY . . . . .	<u>\$8,163.25</u>
	Plus 6% interest from March 8, 1971

CIVIL ACTION NO. 71-C-57  
(Tract Nos. 1531M & 1532M)  
AS TO THE LESSOR (ROYALTY) INTEREST

Owners	Interest	Share of Award	Previously Disbursed	Balance Due
Julian W. Glass, Jr., ) Trustee for: ) Eva Payne Glass ) Ernest Frances ) 1/2 Bradfield ) Julian W. Glass, Jr.)		\$159.50	None	\$159.50
Harley Price	1/2	\$159.50	None	\$159.50
AWARD OF JUST COMPENSATION PURSUANT TO COMMISSIONERS' REPORT . . . . .				\$319.00
DEPOSIT OF ESTIMATED COMPENSATION . . . . .				<u>\$255.00</u>
DEPOSIT DEFICIENCY . . . . .				\$ 64.00
				Plus 6% interest from March 8, 1971

CIVIL ACTION NO. 71-C-58  
(Tract Nos. 1534M & 1546M)  
AS TO THE LESSOR (ROYALTY) INTEREST

These two tracts were communitized as to the Royalty Interest by Agreement between the owners which is recorded in

Book 382 at Page 35 in the office of the County Clerk of Nowata County, Oklahoma. By the terms thereof the Glass Trust receives 77.52% of the royalty; the Reed Trust, 11.24%; and, the Harmon Foundation, 11.24%. Said Agreement applies to the oil production portion of the mineral interest (royalty interest) award made by the Commissioners herein which is \$648.00. The residual value portion of the mineral interest (royalty interest) award by the Commissioners is \$150.00 and it will be allocated and distributed according to the mineral ownership rather than the communitization agreement.

Owners	Interest	Share of Award	Previously Disbursed	Balance Due
Julian W. Glass, ) Jr., ) Trustee for: ) Eva Payne Glass ) Ernest Frances ) Bradfield ) Julian W. Glass, ) Jr. )	77.52% of Oil Production All of Residual Value in Tract 1534M	\$502.32   \$100.00	None   None	   \$602.32
James A. Arnold ) and ) Glenn H. Chappell, ) Trustees for: ) H. W. Reed Trust )	11.24% of Oil Production $\frac{1}{2}$ of Residual Value in Tract 1546M	\$ 72.84   \$ 25.00	None   None	   \$ 97.84
Julia J. Harmon, ) Hugh Conine, ) George L. Hangs, ) George W. Lee, ) L. A. Leffler ) and The First ) National Bank of ) Nowata, TRUSTEES ) of the Pearl M. ) and Julia J. ) Harmon Foundation)	11.24% of Oil Production $\frac{1}{2}$ of Residual Value in Tract 1546M	\$ 72.84   \$ 25.00	None   None	   \$97.84

AWARD OF JUST COMPENSATION PURSUANT TO  
COMMISSIONERS' REPORT:

Oil Production . . . . .	\$648.00
Residual Value . . . . .	\$150.00
	<u>\$798.00</u>

DEPOSIT OF ESTIMATED COMPENSATION . . . . . \$798.00

CIVIL ACTION NO. 71-C-58  
 (Tract Nos. 1534M & 1546M)  
AS TO OVERRIDING ROYALTY INTEREST 3/8 of 7/8

Owners	Interest	Share of Award	Previously Disbursed	Balance Due
James A. Arnold and Glenn H. Chappell, Trustees for: H. W. REED TRUST	1/2 (3/16)	\$676.00	None	\$676.00
Julia J. Harmon, Hugh Conine, George L. Hanks, George W. Lee, L. A. Leffler and The First National Bank of Nowata, TRUSTEES of the Pearl M. and Julia J. Harmon Foundation	1/2 (3/16)	\$676.00	None	\$676.00

AWARD OF JUST COMPENSATION PURSUANT TO COMMISSIONERS' REPORT . . . . .	\$1,352.00
DEPOSIT OF ESTIMATED COMPENSATION . . . . .	\$ 616.00
DEPOSIT DEFICIENCY . . . . .	\$ 736.00
Plus interest from March 8, 1971	

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 owners the deposit deficiency for the subject tracts as shown in paragraph 11 in the total amount of \$8,963.25 together with interest on such deficiency at the rate of 6% per annum from March 8, 1971, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for the subject tracts in this action.

13.

IT IS FURTHER ORDERED that when the deposit required by paragraph 11 above has been made by the Plaintiff, the Clerk of this Court shall then disburse, from the deposit in these cases, the balance due the respective owners with all accrued interest, according to the schedule in paragraph 11 above.

/s/ Fred Daugherty

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Jack M. Short

JACK M. SHORT  
 Assistant United States Attorney

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

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 )  
 )  
 ) vs. )  
 )  
 )  
 ) ARTICLES OF FOOD consisting of a )  
 ) commingled lot of approx. 1,179 cans )  
 ) of soup bearing the Wolferman label, )  
 ) consisting of Vichyssoise Potato )  
 ) and Leek, Beef Consomme Jellied, )  
 ) Black bean with Sherry, Chicken )  
 ) Broth Condensed, Chicken Broth with )  
 ) Rice, Chicken Broth with Noddles, )  
 ) Chicken Consomme New England Style, )  
 ) Clam Chowder, Consomme Madrilene, )  
 ) Onion Soup with Sherry Wine, Chicken )  
 ) a-la-King and Welsh Rarebit; and )  
 )  
 ) Approx. 91 cans of various kinds of )  
 ) soups bearing the Bon Vivant label, )  
 ) including shrimp bisque, mushroom )  
 ) soup, consomme jellied and others )  
 ) in 13 oz. and other size cans, of )  
 ) which the following are representa- )  
 ) tive labels: )  
 ) (can) )  
 ) "Wolferman's---Vichyssoise Potato )  
 ) and Leek---Distributed by Fred )  
 ) Wolferman, Inc., Kansas City, Mo.--- )  
 ) or )  
 ) (can) )  
 ) "Bon Vivant---Shrimp Bisque --- )  
 ) packed by Bon Vivant Soups, Inc., )  
 ) Newark, N. J.---" )  
 )  
 ) Defendant. )

CIVIL ACTION NO. 71-C-320

FILED

AUG 14 1973 *hm*

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

DEFAULT DECREE OF CONDEMNATION

On September 7, 1971, a Complaint for Forefeiture against the above described articles was filed on behalf of the United States of America. The Complaint alleges that the articles proceeded against are foods which were adulterated when introduced into and while in interstate commerce in violation of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C., 334(a), within the meaning of 21 U.S.C., 342(a)(3), in that they are unfit for food in that some cans are defective and abnormal which is indicative of contamination and spoilage, and in that the manufacturing procedures used did not assure proper sealing of the cans or adequate heat treatment of

the sealed cans to prevent contamination and spoilage; and 21 U.S.C., 342(a)(4), in that they have been prepared, packed and held under conditions whereby they may have become contaminated with filth or whereby they may have been rendered injurious to health.

Pursuant to Warrant for Arrest of Property issued by this Court, the United States Marshal for this District seized said articles on September 16, 1971.

It appearing that process was duly issued herein and returned according to law; that notice of the seizure of the above-described articles was given according to law; that Fred Wolferman, Inc., has voluntarily withdrawn its Claim and Answer heretofore filed in this case; and that no other persons have appeared or interposed a claim before the return day named in said process;

NOW, therefore, on Application of Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, for a Default Decree of Condemnation, the Court being fully advised in the premises, it is

ORDERED, ADJUDGED, AND DECREED that the default of all persons be and the same are entered herein; and it is further

ORDERED, ADJUDGED, AND DECREED that the articles so seized are adulterated within the meaning of 21 U.S.C., 342(a)(3) and 342(a)(4), as alleged, and pursuant to 21 U.S.C., 334, are condemned and forfeited to the United States, and it is further

ORDERED, ADJUDGED, AND DECREED that the United States Marshal in and for the Northern District of Oklahoma do forthwith destroy the seized articles and make return to this Court.

Dated this 14th day of August, 1973.

  
UNITED STATES DISTRICT JUDGE

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

ASHLAND OIL, INC., )  
 )  
 ) Plaintiff, )  
 vs. )  
 ) )  
 PHILLIPS PETROLEUM COMPANY, )  
 ) )  
 ) Defendant. )  
 and )  
 ) )  
 UNITED STATES OF AMERICA, )  
 ) )  
 ) Intervenor. )

No. 67-C-238 ✓

FILED  
AUG 16 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

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Gerald Sawatzky and Stanley G. Andeel, Wichita, Kansas; Jay W. Elston of Fulbright, Crooker & Jaworski, Houston, Texas; and John M. Imel of Martin, Logan, Moyers, Martin & Conway, Tulsa, Oklahoma, Attorneys for Plaintiff.

Richard B. McDermott of Boesche, McDermott & Eskridge, Tulsa, Oklahoma, and Don L. Jemison, Phillips Petroleum Company, Bartlesville, Oklahoma, Attorneys for Defendant.

Floyd L. France and Dennis A. Dutterer, Department of Justice, Washington, D. C.; and Nathan G. Graham, United States Attorney, Tulsa, Oklahoma, Attorneys for Intervenor.

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O P I N I O N

Before LUTHER BOHANON, United States District Judge

This action was initially instituted in the United States District Court for the Southern District of Texas, and was later, by proper proceedings transferred to this Court for trial and disposition. Ashland Oil and Refining Company (hereinafter referred to as Ashland) originally claimed the right to recover moneys from Phillips Petroleum Company (hereinafter referred to as Phillips) representing an alleged deficiency in payments for sale of natural gas under the jurisdiction of the Federal Power Commission. Ashland also asserted claims against Phillips to be paid for helium contained in the jurisdictional mass of natural gas, and which was extracted from the natural gas stream by Phillips under contract with the United States of America through the Department of Interior, Bureau of Mines.

The Court has diversity jurisdiction and federal question jurisdiction, 28 U.S.C.A. §§ 1331(a) and 1332.

Ashland abandoned its claim against Phillips for deficiency payments for sale of natural gas under the jurisdiction of the Federal Power Commission by reason of proceedings before the Federal Power Commission, and an appeal from its order (Ashland Oil and Refining Company v. FPC, 421 F.2d 17, 6th C.A.). Consequently, the only claim remaining for trial and determination by this Court is Ashland's claim for recovery of the reasonable value of helium contained in the natural gas stream delivered by Ashland to Phillips.

Plaintiff Ashland acquired all of the interests of United Producing Company which had entered into a contract with Phillips Petroleum Company on November 8, 1945 (amended Oct. 1, 1950 & June 27, 1956) providing for the sale of natural gas from 15 wells located in Sherman County, Texas. These same parties entered into another gas purchase agreement on April 15, 1953, (amended June 27, 1956) providing for the sale of natural gas from three wells in Hansford County, Texas. These agreements were properly filed with the Federal Power Commission as provided by law and rate schedules

were fixed for the sale of said gas. These filings were required under the Natural Gas Act (15 U.S.C. §§ 717 et seq.) because Ashland's deliveries to Phillips constituted sales of natural gas for resale in interstate commerce. Ashland succeeded to all the rights and interest of United Producing Company. All of the wells above referred to are subject to the contract between Ashland, as successor to United Producing Company, and Phillips Petroleum Company, and Phillips Petroleum Company extracted helium which was contained in the natural gas stream as delivered by Ashland to Phillips.

Ashland's contention is that the title to the helium in the contained natural gas did not pass to Phillips under the gas purchase contracts and if and when Phillips elected to extract the helium from the natural gas stream, plaintiff Ashland was entitled to payment therefor from Phillips for the reasonable value of such helium less certain costs of extraction, and other deductions hereafter referred to.

The defendant contends that when it purchased the gas stream from Ashland, it purchased all of the elements thereof including the helium, and inasmuch as Phillips paid Ashland the Federal Power Commission rate for the gas delivered to Phillips, Phillips became the owner of the entire stream, including the helium, and therefore, is not liable in any sum to Ashland for the helium extracted. Further, Phillips presents the defense of Statute of Limitations claiming that if liable, they are liable only for the helium extracted from the natural gas for two years prior to the filing of this action and thereafter; further Phillips claims that by reason of payment to Ashland for the natural gas, plaintiff is barred by the defenses of accord and satisfaction, and to require payment now would be a violation of the Fifth Amendment to the Constitution of the United States.

The United States of America by Order of the Court was assigned as a party defendant.

Findings:

1. Helium is an unusual element; it is a gas which is inert and noncombustible and is the second lightest element known. Helium is so inert that it will not chemically react or combine with other elements and thus remains as helium forever. It is tasteless, colorless, odorless and invisible. For a more complete description of helium, its unusual characteristics, its uses, and where found, etc., see Northern Natural Gas Co. v. Grounds, 441 F.2d 704 (10 C.A.) and in the Opinion of District Judge Wesley E. Brown, 292 F.Supp 619 (D. C. Kas).

2. The United States of America, through the Department of Interior and the Bureau of Mines of the Department, recognizing the need for the conservation of this rare material and its scarcity, and its need for defense purposes and other important uses, Congress enacted the Helium Act Amendments of 1960 (50 U.S.C. §§167 et seq) authorizing the United States to enter into a program of conservation of helium for future use; under this program, private companies negotiated contracts with the United States of America through the Department of Interior, Bureau of Mines, to construct plants for the extraction of helium from natural gas streams, then being produced from the Hugoton-Panhandle area; otherwise, this valuable material would be lost at the burner tip of the ultimate user of the gas and discharged into the air as residue.

3. Prior to 1961, the United States Government, with minor exceptions for a short time, was the sole extractor and source of commercial helium. It controlled and fixed the price of all wholesale sales of helium.

4. Pursuant to the authority granted by Congress, the United States entered into five long-term helium purchase contracts with four companies, one of which was Phillips Petroleum Company, which contracted on November 13, 1961, with the United States to sell a helium gas mixture from two plants it proposed to build, the Sherman Helium Plant and the Dumas Helium Plant. These plants were

constructed so as to extract for delivery and sale to the government a helium gas mixture (crude helium) which was to consist of at least 50% helium under the contract requirements, the remainder being essentially nitrogen. Under this contract, the United States agreed to pay a base price of \$10.30 per m.c.f. (thousand cubic feet) of contained helium in the crude product, which price was subject to escalation in accordance with the contract. The base price was also subject to escalation in the event Phillips was required to pay third parties "for the acquisition of helium."<sup>1</sup> Specifically, under the contract between the United States and Phillips, producers of commingled helium such as Ashland and the mineral or royalty owners, being third parties, and if they were entitled to recover from Phillips the reasonable value of the helium produced from the commingled gas Phillips was required to pay under paragraph 7.4 of the contract, part 2 of the unit price only approximately \$3.00 per m.c.f. and the United States under the contract was required to reimburse or indemnify Phillips for any excess of \$3.00 per m.c.f. which Phillips was required to pay. This was an important part of the contract because it indemnified Phillips against required payments to third persons of the amount in excess of \$3.00 per m.c.f. and thus gave the United States the right to purchase this helium for a lesser sum than, no doubt, otherwise would have been required.

5. The United States took delivery of the helium gas mixture from Phillips and transported it through its own pipeline to storage in government-owned storage facilities at Cliffside Field near Amarillo, Texas. From there it can be withdrawn as needed, and purified to grade A helium (99.995% pure helium) in government-owned plants at approximately \$2.00 per m.c.f. helium.

6. Under the contracts the government agreed to take all of the helium produced up to certain amounts, and the government sold grade A helium at wholesale F.O.B. its helium plants for

\$35.00 per m.c.f. and has done so since the fall of 1961. All Federal departments and agencies were required to purchase their helium needs from the United States at this price. The Bureau of Mines has the statutory authority and responsibility to fix the price at whatever level is necessary to pay for costs associated with the helium conservation program, including any additional payments which may be required to be paid by the United States as a result of this case.

7. Beginning in 1961, several private helium plants have been built to sell pure helium in the private commercial market. Although the government price for its helium has remained at \$35.00 per m.c.f., the prices for which helium has sold on the private market from 1963 through 1972 have ranged from \$35.00 to approximately \$20.00 per m.c.f. Such prices are wholesale prices and the only market prices for sale of helium in the United States during the period in question.

8. The Court finds the fair and reasonable value of grade A helium during the periods here involved was \$20.00 per m.c.f.

9. Recognizing the benefit to United States and the importance of paragraph 7.4 of the United States-Phillips helium contract, the Associate Solicitor of the Division of Mineral Resources of the Department of the Interior, and who approved the contract provision, correctly described it as an escalation in price:

"This provision in effect provides for escalation in price when the cost of the raw material increases." (Pls. Ex. 39, p.3)

10. By reason of the above escalation provision in the contract, the United States was able to obtain a base price substantially lower than would otherwise have been possible.

11. There was no known wellhead price fixed for the helium gas in the gas stream, and it was and is impractical and uneconomical to attempt to extract the helium gas at the wellhead.

This can only be done economically through large plants with large volumes of gas to process.

12. The gas stream delivered by Ashland to Phillips contained all of the natural gas liquids, such as butane, propane and pentanes plus, which Phillips extracts and did extract from the feed gas and markets these gases in liquid form. Because these rich liquids are in concentrated form (about 10% of the volume of the total feed gas stream), Phillips has been able to extract and market substantial additional quantities of such liquids, above and beyond what its existing gasoline plants would be able to extract at a substantial savings in cost. These additional liquids are in substance a by-product of the helium plant operation.

13. Experts who testified in the trial of this case estimate that the Texas Panhandle, Southwestern Kansas and Western Oklahoma constitute 99% of the free world's known commercial reserves of helium. This area is known as the Hugoton Field, and Ashland wells which deliver gas to Phillips are in this field.

14. To arrive at the reasonable wellhead value of Ashland's helium delivered to Phillips, there should be deducted from the value those costs incurred by Phillips in extracting and delivering the helium and also the cost of purification. In determining these costs, the total costs of the helium plant itself should be credited and reduced by a fair allocation of a portion of such costs to the incremental, or additional liquids, which the helium plant generates. This can equitably be done by calculating a fair share of the incremental benefits accruing to Phillips in its natural gas liquids operation as a direct result of the helium plant operation. Failure to assign a portion of helium plant costs to the incremental liquids operation would inequitably burden the helium plant with substantial costs which are incurred and which result in the production of the incremental liquids.

15. After allowing for the following deductions, the Court finds that the reasonable value of the helium delivered by

Ashland to Phillips is shown in the following table. The deductions referred to include:

- (a) All helium plant costs, including a 10% rate of return to Phillips on its stockholder equity;
- (b) The incremental liquids benefit which should be applied to reduce costs of the helium plant;
- (c) \$2.00 per m.c.f. for purification.

16. The Court finds and is of the opinion that the following table shows the reasonable cost of extracting the helium, the reasonable value of helium on a yearly basis from the Ashland gas delivered to Phillips and further shows the volume of helium per m.c.f. extracted by Phillips for the ten year period in question and the total value thereof; likewise it shows the interest computed at 6% per annum for the total recovery of helium delivered by Ashland and recovered by Phillips and the total amount of money judgment plaintiff is entitled to recover:

Reasonable Value Calculations

A	B	C	D	E	
Helium Plant Costs (Plt's Ex. 61 & 62, line 10)	Liquid Benefit Credit (Plt's Ex. 61 & 62, line 12)	Net Helium Cost (Column [a] less [b])	Minimum Value for Crude Helium Grade A Helium Value less \$2.00 / mcf Purification Cost	Reasonable Value of Helium Delivered by Ashland to Phillips (Column [d] less [c])	
SHERMAN HELIUM PLANT					
1963	\$4.82	\$1.01	\$3.81	\$18.00	\$14.19
1964	3.53	.10	3.43	18.00	14.57
1965	4.06	.27	3.79	18.00	14.21
1966	4.09	.45	3.64	18.00	14.36
1967	4.94	1.06	3.88	18.00	14.12
1968	4.22	1.16	3.07	18.00	14.94
1969	4.50	.82	3.68	18.00	14.32
1970	5.16	2.20	2.96	18.00	15.04
1971	5.31	4.29	1.02	18.00	16.98
1972	5.52	3.97	1.55	18.00	16.45
DUMAS HELIUM PLANT					
1963	5.93	.00	5.93	18.00	12.07
1964	5.46	.78	5.68	18.00	12.32
1965	5.91	1.01	4.90	18.00	13.10
1966	5.55	.31	6.24	18.00	11.76
1970	7.89	1.04	4.85	18.00	13.15
1972	6.39	1.58	4.81	18.00	13.19

Reasonable Value Calculations  
(Continued)

	F	G	H	I	J
	Vol. of Ashland Helium Ex- tracted by Phillips (Plt's Ex. 14 & 15, Sch. 3)	Total Reasonable Value of Ashland Helium Ex- tracted by Phillips Awarded to Ashland	Periods (Yrs.) at Interest (to July 1, 1972)	Interest at 6% per year	Total Recovery By Ashland
SHERMAN HELIUM PLANT					
	m.c.f.				
1963	7,791	\$110,554.29	9 1/2	\$63,015.95	\$173,570.24
1964	8,076	117,667.32	8 1/2	60,010.33	177,677.65
1965	3,997	127,847.37	7 1/2	57,531.32	185,378.69
1966	7,521	108,001.56	6 1/2	42,120.61	150,122.17
1967	5,757	81,288.84	5 1/2	26,825.32	108,114.16
1968	6,742	100,725.48	4 1/2	27,195.88	127,921.36
1969	6,033	86,392.56	3 1/2	18,142.44	104,535.00
1970	5,460	82,118.40	2 1/2	12,317.76	94,436.16
1971	5,944	100,929.12	1 1/2	9,083.62	110,012.74
1972	6,082	100,048.90	1/2	3,001.47	103,050.37
TOTAL					<u>\$1,402,800.91</u>
DUMAS HELIUM PLANT					
1966	431	5,238.38	6 1/2	2,042.97	7,281.35
1967	950	11,704.00	5 1/2	3,862.32	15,566.32
1968	949	12,431.90	4 1/2	3,356.61	15,788.51
1969	890	10,466.40	3 1/2	2,197.94	12,664.34
1970	681	8,955.15	2 1/2	1,343.27	10,298.42
1971	444	5,856.36	1 1/2	527.07	6,383.43

17. The Court finds that the attorneys for plaintiff have expended many hours prosecuting this lawsuit against the defendant and are entitled to be paid the total attorneys fees as set out below:

Jay W. Blason firm Houston, Texas	1039 hours at \$50.00 1059 hours at \$35.00	\$ 52,950.00 37,065.00
Cerald Sawatzky firm Wichita, Kansas	550 hours at \$50.00 275 hours at \$35.00	27,500.00 9,625.00
John M. Inel firm Tulsa, Oklahoma	201.4 hours at \$50.00	<u>10,070.00</u>
TOTAL		<u>\$137,210.00</u>

The Court finds that the plaintiff Ashland should have judgment against the defendant Phillips for attorneys fees in the total amount of \$137,210.00 for the services as above specified.

19. The Court finds that Ashland has prosecuted this lawsuit for the total helium contained in the gas stream from its respective gas wells delivered by Ashland to Phillips; that in prosecuting this lawsuit the plaintiff Ashland has incurred and paid the following expenses which are not chargeable to the defendant Phillips, but were reasonable and necessary and should be paid on the basis of one-half by Ashland and one-half by the landowners mineral owners, otherwise royalty owners.

WITNESS:

Leo Garvia  
326 Oklahoma Mortgage Bldg.  
Oklahoma City, Oklahoma

Professional Services	1969:	\$ 2,810.40	
	1973:	<u>7,260.95</u>	\$10,071.35

Troupe, Kehoe, Whiteaker  
& Kent  
Certified Public Accountants  
2900 Power & Light Bldg.  
Kansas City, Missouri

Professional Services	\$24,600.00	
Travel Expenses	1,332.73	
Duplicating	<u>425.00</u>	\$26,378.73

Tulsa Reporting Service  
526 Mayo Building  
Tulsa, Oklahoma

Depositions: May, 1973	\$ 277.15	
Transcript: June, 1973	<u>4,386.00</u>	\$ 4,963.15

Interrogs, Inc.  
2439 Bank of the Southwest Bldg.  
Houston, Texas 77002

Depositions: April, 1973	\$ 552.00	\$ 552.00
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Fulmer, Sheekin, Powers &  
Eberhardt  
Suite 400  
Ch. National Bank Bldg.  
Olathe, Kansas

	<u>1968</u>	<u>1973</u>	<u>1973</u>	
Travel	\$157.12		\$3,028.25	
Long Distance		\$51.90	252.00	
Cost Reporting				
Depositions			2,335.00	
Postage		.93	19.21	
Duplicating			<u>434.40</u>	
TOTAL	\$157.12	\$51.97	\$6,106.50	\$ 6,270.59

Martin, Logan, Meyers,  
 Martin & Conway  
 National Bank of Tulsa Bldg.  
 Tulsa, Oklahoma

Expenses: (7-1-69 thru 12-31-72)

Duplicating	\$ 5.90	
Long Distance	37.31	
Travel	<u>17.80</u>	\$ 75.11

Ashland Oil, Inc.

Employee Travel Expense

	<u>1972</u>	<u>1973</u>	
Ray Althouse		\$137.50	
J. C. Coogan		150.23	
B. J. White		101.02	
D. W. Cox	<u>\$179.03</u>	<u>405.39</u>	
	\$179.03	\$894.41	\$ 1,015.44

Fulbright, Crooker &  
 Jaworski  
 Bank of the Southwest Bldg.  
 Houston, Texas

	<u>1965</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
Long Distance	85.79	283.96	36.30	175.72	13.20	62.59	141.86	195.52
Duplicating	70.76	294.20	550.45	1,105.01	21.00	18.00	214.32	160.30
Filing Fees		25.00		15.00				
Travel		303.72	114.24	1,371.17	123.00	120.50	1,327.77	1,283.63
Printing				1,079.01	89.82			
Freight				11.30				
Secretarial				50.38			15.92	
Total	156.55	906.88	721.09	4,708.08	250.02	200.09	1,699.87	1,639.45

Total Expenses	\$10,202.01	
Less Amounts Incurred in Connection with FPC Proceedings	<u>1,922.59</u>	\$ 8,359.12
TOTAL OF ALL EXPENSES INCURRED		<u>\$57,685.49</u>

The Court finds that the Plaintiff expended \$57,685.49 in the prosecution of this lawsuit which is not assessable or taxable as costs against the defendant, Phillips, and that these costs should be divided equally between plaintiff and landowners, mineral owners (hereinafter referred to as royalty owners), and from the contribution made by plaintiff, Ashland, to royalty owners first there shall be deducted one-half of the cost above stated as paying the cost assessable to royalty owners.

19. The Court finds from a review of the pleadings, the Complaint, Amended Complaint, Statement of Facts, the exhibits and testimony that Ashland has brought, prosecuted and maintained this action on its own behalf and on the behalf of the royalty

owners for the delivery of helium in the methane gas stream on a per well-head basis from the inception of the production of helium to June 30, 1972. The Court takes judicial knowledge of the oil and gas leases executed by royalty owners in favor of the lessee and the assignee of the lessee, and that at the time of entering into each of the respective oil and gas leases, no thought of helium rights was considered by either lessee or lessor; that no consideration passed from one to the other for any helium rights; that the helium as contained in the gas was an undecanted commodity except that the lessee had the exclusive right to enter upon the lessor's property and drill and produce gas from said premises; that the exclusive right to drill and produce gas is a perpetual right vested in the lessee so long as oil and gas is produced in paying quantities from the premises by Ashland or its assigns.

The Court finds that the helium hereinabove referred to is and was the sole property of the royalty owners subject to the exclusive right of Ashland to drill and produce gas which contained helium and that their rights are equal and that the proceeds to be derived from the sale of helium should be equally divided between Ashland and the royalty owners and therefore the judgment herein rendered in favor of the plaintiff, Ashland, and against the defendant, Phillips, should be divided equally between Ashland and the royalty owners and on the basis of the payments heretofore made by Ashland to the royalty owners for gas produced and sold to Phillips and transported in interstate commerce under the regulations of the Federal Power Commission; and that Ashland shall first deduct from the royalty owners' portion of the gas one-half of the costs of prosecuting this action. The equal division between lessor and lessee of the proceeds from the gas is required on equity; otherwise the windfall would fall 7/8 to Phillips and 1/8 to the royalty owners, which would be unconscionable and an unjust enrichment to Phillips.

Conclusion of Law

This litigation is based primarily on the 1960 Act of Congress known as the Helium Act Amendments of 1960 (50 U.S.C. §§ 167 et seq.) where the United States was authorized and directed to enter into a program of conservation of helium for future use.

The evidence is convincing to this Court that the United States, through the defendant, Phillips, and by reason of the Helium Act, confiscated the helium of the plaintiff and royalty owners rather than acquiring it by condemnation; nevertheless, the taking was in the nature of condemnation, and the reasonable value of the helium plus interest is property that the United States was obligated to pay the reasonable value of said helium in excess of \$3.00 per m.c.f. which Phillips was required to pay for the helium all as provided by their contract.

The Court concludes that the law contained in Northern Natural Gas Co. v. Grounds, supra, governs this case in the matter of reasonable value of helium and the obligation of the defendant to pay that value, and no other authorities need be cited.

Further the United States Court of Appeals for the Tenth Circuit laid down certain guidelines for trial courts in Toraco Inc. v. Phillips Petroleum Company, \_\_\_\_\_ F.2d \_\_\_\_\_ (opinion filed July 13, 1973). Here the Court said:

"We have here another controversy over helium. The basic background is outlined in our decision in the Consolidated Helium cases. See Northern Natural Gas Company v. Grounds, supra. We there held that lessee-producers of natural gas could recover the reasonable value of helium obtained as a result of interpleader proceedings by the government's purchases of helium from helium extraction companies and parent pipeline companies.

\*

In consolidated cases we considered the status of the pipeline companies separately. Companies that they were entitled under their gas purchase contracts to receive the entire gas. \_\_\_\_\_ at the Federal Energy Commission service \_\_\_\_\_ and said that 'private contract law and the principles applicable to it are not controlling.' (emphasis added)

\* \* \*

No good purpose would be served by repeating our analysis of the Natural Gas Act and the 1960 Helium Act amendments. We hold that, \* \* \*

\* \* \* the incorporation of the Natural Gas Act and of the 1960 amendments to the Helium Act to obtain a symmetrical whole requires the conclusion that the PPC service rates do not apply to deny recovery for the contained helium which is processed in the separation plants.

\* \* \*

We thought that we made plain that we did not allow recovery on the application of any principles of equity, see 441 F.2d at 719-720, but on the ground that satisfactory utility regulation does not permit a utility rate to be used to obtain a commodity which is not within the contemplation of that rate.

\* \* \*

We reject defendant's assertion that Consolidated Helium was an interim decision. The Supreme Court denied certiorari, 404 U.S. 951, 1053, and 1065. The decision is final and is the law of this circuit. We say nothing on plaintiff's claim that Consolidated Helium is res judicata on the issues presented here. We are concerned with jurisdiction, not with the merits.

\* \* \*

In Consolidated Helium we pointed out that there are over 30,000 persons receiving income from helium bearing natural gas produced by over 500 lessee-producers under thousands of leases.

\* \* \*

The problems relating to the recovery of the value of the helium content of natural gas traveling in interstate commerce have arisen because of, and under, Federal statutes. Plaintiff asserts rights under those statutes and is entitled to sue in federal court. We believe the federal courts have jurisdiction under 28 U.S.C. § 1331(a)."

The Court concludes as a matter of law that the plaintiffs are entitled to a legal rate of interest because of the taking. See St. Paul Mercury Indemnity Co. v. United States, 201 F.2d 57 (C.A. 10); T. & M. Transp. Co. v. B. W. Anstruck Chemical Co., 158 F.2d 909 (C.A. 10); Louisiana & Lake and Bay Railway Co. v. Export Drum Co., 359 F.2d 311 (C.A. 5); Jacobs v. United States, 290 U. S. 13, 78 L.Ed. 142 (1933).

The Court said in Northern Natural Gas Company, supra:

"The right of the lessor-producers to interest and the amount thereof, on the sum which the District Court may adjudge to be due and owing to them shall be determined by the District Court subject to review by this court."

The Court concludes as a matter of law that the plaintiff's attorneys are entitled to be paid by the defendants a reasonable attorneys' fee. See United States Fidelity & Guar. Co. v. Hendry Corporation, 391 F.2d 13 (C.A. 5); Rayd Callan, Inc., v. United States, 328 F.2d 505 (C.A.5).

In T. F. Scholes, Inc. v. United States, 295 F.2d 366 at 370 (C.A. 10) the Court said:

"The fixing of reasonable attorneys fees rested in the sound judicial discretion of the court. . . ."

In Texas Gas Corporation v. Monkezer, 326 S.W.2d 944 (Tex. Civ. App.) it was held that gas and distillate delivered by appellees and processed in a plant was "material furnished", and an award of attorneys' fees was upheld.

The Court concludes as a matter of law that the plaintiff is entitled to judgment as follows:

(a) That plaintiff, Ashland, should have judgment against defendant, Phillips, for helium extracted for the ten-year period from 1963 to June 30, 1972, together with yearly interest thereon at the rate of 6% per annum ending June 30, 1972, in the total amount of \$1,402,800.91.

(b) That plaintiff should have judgment for attorneys' fees, otherwise professional services rendered by plaintiff's attorneys in the prosecution of this action in the amount of \$137,210.00.

(c) That the royalty costs should be paid one-half of the proceeds derived from the sale of helium less one-half of the expenses of \$57,635.49 incurred and paid by Ashland in the prosecution of this action and not chargeable to the defendant Phillips.

(d) That the prayer of the intervenor United States of America is denied.

An appropriate judgment will be entered as herein provided.

Dated this 15<sup>th</sup> day of August, 1973.

FOOTNOTES

1. "In addition to all other amounts payable under this contract Buyer shall pay to Seller such amounts, except as hereinafter provided, that Seller shall pay subsequent to the date of this contract, directly or through an affiliated company, to parties other than itself or an affiliated company for the acquisition of interests in the natural gas, as defined herein, or for any interests in such helium. Any such payments to qualify for inclusion hereunder shall be made only with the consent of Buyer, and the payment of this paragraph 7.4 Buyer shall be deemed to have consented to any and all such payments in satisfaction or settlement of any claims to helium in the natural gas, as defined herein, or to any interests in such helium that have been judicially determined in favor of any claimants by any Federal court or the highest appellate court of any state. Further, Buyer shall be deemed to have consented to any and all such payments under circumstances similar to any such judicially determined claim if such payments are made generally in accordance with the findings, principles, and conclusions of any such judicial determination. The amounts that Buyer shall be required to pay to Seller in accordance with this paragraph shall not include an amount to be calculated applicable to each such acquisition equal to twenty-nine (29) per cent of the weighted average of part two of the unit price or unit prices in effect during the time covered by such acquisition multiplied by the volume in MCF of helium in the natural gas, as defined herein, covered by such acquisition."

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

ASHLAND OIL, INC., )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 PHILLIPS PETROLEUM COMPANY, )  
 )  
 Defendant. )  
 and )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Intervenor. )

No. 67-C-238 ✓

FILED

AUG 21 1973

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

Based upon the Memorandum Opinion, Findings of Fact and Conclusions of Law filed herein this day, the Court enters the following judgment:

1. IT IS ORDERED, ADJUDGED AND DECREED by the Court that plaintiff Ashland Oil, Inc., shall have judgment against defendant Phillips Petroleum Company in the amount of \$1,402,800.91 together with accruing interest as provided by law from June 30, 1972, until paid, for helium sold and delivered during the ten-year period ending June 30, 1972.

2. IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that plaintiff Ashland Oil, Inc. shall have judgment against the defendant Phillips Petroleum Company in the amount of \$137,210.00 together with accruing interest as provided by law from the date of this Judgment until the Judgment is paid as reasonable attorneys' fees in the prosecution of this action.

3. IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Ashland Oil, Inc., on receipt of the payment of the helium together with interest thereon, as provided in item (1) above, shall deduct therefrom its expenses of prosecution in the amount of \$57,685.49 and pay to its royalty owners on the basis of payments heretofore made to its royalty owners for gas sold and delivered and transported in interstate commerce one-half of said helium receipts together with its one-half of the accrued and accruing interest.

4. IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the defendant Phillips Petroleum Company pay the usual and ordinary costs of this litigation as provided by the Federal Rules of Civil Procedure.

5. IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the prayer of the Intervenor, United States of America, be, and the same is hereby denied. The defendant Phillips Petroleum Company has made no claim for relief as against the United States of America.

Dated this 10<sup>th</sup> day of August, 1973.

*Robert G. Phillips*  
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA and )  
ESTLE MOONEY, Internal Revenue )  
Officer, Internal Revenue Service, )  
 )  
 ) Petitioners, )

vs. )

JOE B. DAY, )

Respondent. )

Civil No. 73-C-141

**FILED**

AUG 13 1973

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER DISCHARGING RESPONDENT  
AND DISMISSAL

On this 13<sup>TH</sup> day of August, 1973, Petitioners' Motion To Discharge Respondent And For Dismissal and Respondent's prayer for discharge contained in his Answer and Response came for hearing and the Court finds that Respondent has now complied with the Internal Revenue Service Summons served upon him January 31, 1973, that Petitioners have joined in Respondent's prayer for discharge, that further proceedings herein are unnecessary and that the Respondent, Joe B. Day, should be discharged and this action dismissed upon payment of \$51.44 cost by Respondent.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the Respondent, Joe B. Day, be and he is hereby discharged from any further proceedings herein and this action is hereby dismissed upon payment of \$51.44 costs by said Respondent.

*Fred Garabaly*

UNITED STATES DISTRICT JUDGE

APPROVED:

*JACK M. SHORT*

JACK M. SHORT  
Assistant United States Attorney

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

WILLIE JEAN LEWIS WASHINGTON, )  
 )  
 ) Petitioner, )  
 )  
 vs. )  
 )  
 ) PARK J. ANDERSON, Warden, )  
 ) Oklahoma State Penitentiary, )  
 )  
 ) Respondent. )

NO. 73-C-148

FILED

AUG 10 1973

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

THE COURT, having examined the files and records of this cause together with the response of respondent and the Report of the United States Magistrate concerning the same, and being fully advised in the premises, FINDS:

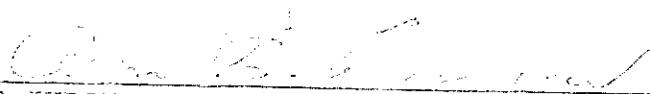
1. Petitioner's allegation that she was denied effective assistance of counsel is insufficient and not sustained by the record as it is unsupported by factual allegations.
2. Petitioner's allegation that the jury impaneled to try cause in State Court was improper is without merit.
3. Petitioner's allegation that the murder weapon was not introduced in evidence is without merit.
4. Petitioner's allegation that a state witness testified falsely is insufficient to confer jurisdiction on this Court. The petitioner does not allege or prove what testimony was false, that such testimony was knowingly and intentionally used by the State to obtain the conviction or that such testimony was material.

IT IS, THEREFORE, ORDERED:

1. Petition for Writ of Habeas Corpus is denied and the case is dismissed.
2. That the Clerk of this Court furnish to petitioner a copy of this Order together with the Report of the United States Magistrate.

3. That the Clerk of this Court furnish respondent a copy of this Order together with the Report of the United States Magistrate by mailing the same to the Attorney General of the State of Oklahoma, State Capitol Building, Oklahoma City, Oklahoma.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1973.

  
\_\_\_\_\_  
CHIEF JUDGE, UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA.





Section 223(d)(1) of the Social Security Act, as amended, defines "disability" (except for certain cases of blindness) as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." Section 223(d)(2)(A) further provides that "an individual (except a widow, surviving divorced wife, or widower for the purposes of section 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

Section 223(d)(3) further states, "for purposes of this subsection, a 'physical or mental impairment' is an impairment that results from anatomical or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

The claimant's earnings record was found, by the Examiner, to reflect that the special earnings requirements of the Act for disability purposes were met from a time prior to March 26, 1973, the date of alleged "disability" onset, and that those requirements continued to be met thereafter through at least June 30, 1972.

The issue before the Court in this case is whether the decisions of the Secretary that the claimant did not establish a "disability" as

defined in the Social Security Act, as amended, at any time prior to the issuance of the decision of the Hearing Examiner is supported by substantial evidence.

The evidence adduced before the Hearing Examiner reflects that Werdna D. Goforth was born June 17, 1938, at Yale, Oklahoma. The evidence further reflected that she has a ninth grade education and subsequently took a course in insurance sales. It was further shown that she had been married on two occasions, her second marriage being in December, 1957. (TR 52)

The Examiner considered medical and nonmedical evidence, and all documents on file, and the testimony of Dr. Bates, a vocational expert.

Claimant's work background and experience consisted of working in a grocery store, selling insurance, employment in garment factories and clerking in a liquor store. She testified she worked two years as a stocker, clerk, and checker at a grocery. Approximately ten years before the hearing she worked about one year as an insurance salesman, operating out of the company office at Tulsa, Oklahoma, but selling in the Yale area. Her application reflected that she had worked for Munsingwear, Hominy, Oklahoma, from February, 1964, to April 15, 1969, and for Diener-Chandler Mills, Chandler, Oklahoma, from August, 1969, to January 9, 1970. She testified that at these two establishments she was employed as a power cutter. After leaving Diener-Chandler, claimant obtained employment at a liquor store at Cushing, Oklahoma and worked there from January 15, 1970 to February 23, 1970.

The disabilities claimed by plaintiff are heart condition, high blood pressure, asthma and pleurisy.

The Hearing Examiner, in his decision, extensively summarized the medical evidence, and the Court feels no need to delineate it at this juncture.

As stated before, a vocational expert testified as to the types of employment available for claimant and the Hearing Examiner properly

Synthesized the evidence and vocational findings.

The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive. 42 U.S.C. 405(g) Richardson v. Perales (1971) 401 U.S. 389, at 401. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Richardson v. Perales, supra.

The burden of proving disability, by acceptable evidence, for social security purposes rests with the claimant. Johnson v. Finch (10th CCA, 1971) 437 F2d 1321.

The Court must examine the record as a whole if it is to properly make a determination as to whether substantial evidence exists. Gardner v. Bishop (10th CCA, 1966) 362 F2d 917; Travis v. Richardson (10th CCA, 1970) 434 F2d 225.

The Courts are not to abdicate their traditional functions in reviews of administrative determinations. The agencies must likewise have given a balanced consideration to all the testimony on each particular issue presented, and if this is not done, the failure will be apparent on application of the substantial evidence test. Universal Camera Corp. v. NLRB (1950) 340 U.S. 474; Travis v. Richardson, supra.

The evaluation of the testimony and the findings of fact are for the administrative agency to make, based upon the entire evidence before it. Although a court might not reach the same result were it to make the decision originally, if the decision is supported by substantial evidence, it must be upheld. This decision by the Secretary is so supported, and the Motion for Summary Judgment filed by defendant should be sustained.

IT IS, THEREFORE, ORDERED that the Motion for Summary Judgment of defendant be and the same is hereby sustained.

ENTERED this 7 day of April, 1973.



CHARLES JAMES DISTRICT JUDGE

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

LARRY LAVELL SAYLOR, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 PARK J. ANDERSON, Warden )  
 )  
 Respondent. )

✓ FILED  
73-C-184  
AUG 8 1973 J.  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

THE COURT, having examined the files and records of this case together with the Initial Report of the United States Magistrate concerning the same, and being fully advised in the premises, finds that the alleged errors stated by petitioner and as set forth in the report of the United States Magistrate do not establish a basis for habeas corpus relief.

IT IS, THEREFORE, ORDERED:

1. That the Petition for Writ of Habeas Corpus is denied.
2. That a copy of this order be mailed by the Clerk of this Court, together with a copy of the Initial Report of the United States Magistrate to the petitioner.

Dated this 8th day of August, 1973.

Alan L. Brown  
CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA.

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

CARLTON J. GILFORD, )  
 )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
 CONTINENTAL AIRLINES, INC., )  
 a corporation, )  
 )  
 ) Defendant. )

No. 72-C-208 ✓

**FILED**  
AUG 8 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

Based on the Order entered this date, judgment is hereby entered in favor of the Defendant, Continental Airlines, Inc., and against the Plaintiff, Carlton J. Gilford, and the cause of action and complaint are hereby dismissed for lack of jurisdiction.

ENTERED this 7 day of August, 1973.

Wm. F. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

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

EVA LUCILLE MERCALF, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ELLIOT L. RICHARDSON, Secretary of )  
 the Department of Health, Education, )  
 and Welfare, )  
 )  
 Defendant. )

No. 72-C-123 ✓

**FILED**  
AUG 8 1973

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

This action came on for consideration on the Motion for Summary Judgment filed by the defendant. The original action was for a review of the Hearing Examiner's decision, Department of Health, Education and Welfare, entered November 17, 1971, and the action of the Appeals Council examining the Examiner's decision dated February 7, 1972, all as provided by 42 U.S.C.A., Section 405(g), and in conformity with the Order entered this date,

THE JUDGMENT AND DECISION of the Hearing Examiner, as the final decision of the Secretary of Health, Education and Welfare, is hereby affirmed.

ENTERED this 7 day of August, 1973.

*Allen E. Barrow*

CHIEF UNITED STATES DISTRICT JUDGE

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

ROSCOE CURTIS MONTGOMERY,            )  
  )  
  )                    Petitioner,            )  
  )  
vs.                                        )                    No. 73-C-84  
  )  
WARDEN ANDERSON,                    )  
  )  
  )                    Respondent.            )  
  )

**FILED**  
AUG 8 1973  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

The Court, having examined the files and records of this proceeding, including the transcript of proceedings in the District Court of Tulsa County, Oklahoma, and the response, filed herein by respondent and the Third Report of the United States Magistrate, and being fully advised in the premises finds:

1. The Petitioner has exhausted the remedies available to him in the Courts of the State of Oklahoma.
2. An evidentiary hearing is not required.

The petition filed herein and the records and files examined by the Court conclusively show that the petitioner is not entitled to relief. The alleged grounds for relief do not constitute a violation of petitioner's Federal Constitutional rights as a matter of law or they have been previously and correctly factually determined against petitioner.

IT IS THEREFORE ORDERED:

That the petition for habeas corpus filed herein is denied and the case dismissed.

A copy of this Order be mailed by the Clerk of this Court to the petitioner together with a copy of the Third Report of the United States Magistrate.

That the Clerk of this Court furnish to respondent a copy of this Order, together with a copy of the Third Report of the United States Magistrate by mailing same to the Attorney General of the State of Oklahoma.

That the Clerk of the Court return the transcript of the proceedings in Case No. A-17,517 to the Clerk of the Court of Criminal Appeals for the State of Oklahoma as requested by the Order of the presiding Judge of the Court of Criminal Appeals State of Oklahoma, filed July 11, 1973.

Signed this 8<sup>th</sup> day of August, 1973.

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

FILED  
AUG 7 1973

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
vs. ) CIVIL ACTION NO. 73-C-137 ✓  
 )  
 )  
JACOB A. JONES, ET AL., )  
 )  
 )  
Defendants. )

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 7<sup>th</sup> day of August, 1973, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the defendants, Jacob A. Jones, Elsie Faye Jones, and Craig R. Tweety, appearing not.

The Court being fully advised and having examined the file herein finds that Jacob A. Jones and Elsie Faye Jones were served with Summons and Complaint on May 6, 1973; that Craig R. Tweety was served with Summons and Complaint on May 1, 1973, all as appear from the Marshal's Return of Service herein, and

It appearing that the said defendants have failed to 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 following described real property is located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot One (1), Block Six (6), LAZY "H" ADDITION, an Addition to the City of Sapulpa, in Creek County, State of Oklahoma, according to the recorded plat thereof.

THAT the defendants, Jacob A. Jones and Elsie Faye Jones, did, on the 3rd day of October, 1970, execute and deliver to Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$12,000.00 with 8 1/2 percent interest

per annum, and further providing for the payment of monthly installments of principal and interest; and

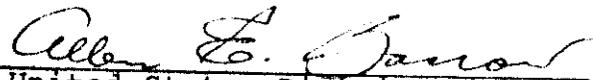
The Court further finds that the defendants, Jacob A. Jones and Elsie Faye Jones, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$11,924.94 as unpaid principal, with interest thereon at the rate of 8 1/2 percent interest per annum from February 3, 1972, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Jacob A. Jones and Elsie Faye Jones, in personam, for the sum of \$11,924.94 with interest thereon at the rate of 8 1/2 percent interest per annum from February 3, 1972, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff by taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisement the 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, all of 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 United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
JAN 21 1971  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 180.00 ACRES OF LAND, MORE OR )  
 LESS, SITUATE IN NOWATA COUNTY, )  
 STATE OF OKLAHOMA, AND FRED C. )  
 SUMMERS, INC., ET AL., AND )  
 UNKNOWN OWNERS, )  
 )  
 Defendants. )

CIVIL ACTION NO. 71-C-102

Tract Nos. 1404M, 1406M,  
1407M, 1408M,  
1409M, and  
1414M

LESSOR (ROYALTY) INTEREST ONLY

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 60.00 ACRES OF LAND, MORE OR )  
 LESS, SITUATE IN NOWATA COUNTY, )  
 STATE OF OKLAHOMA, AND FRED )  
 SUMMERS, INC., ET AL., AND )  
 UNKNOWN OWNERS, )  
 )  
 Defendants. )

CIVIL ACTION NO. 71-C-103

Tract Nos. 1411M and 1412M

LESSOR (ROYALTY) INTEREST ONLY

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 60.00 ACRES OF LAND, MORE OR )  
 LESS, SITUATE IN NOWATA COUNTY, )  
 STATE OF OKLAHOMA, AND YETTA )  
 ROSENBLUM, ET AL., AND )  
 UNKNOWN OWNERS, )  
 )  
 Defendants. )

CIVIL ACTION NO. 71-C-104

Tract No. 1413M

LESSOR (ROYALTY) INTEREST  
and OVERRIDING ROYALTY INTEREST  
ONLY

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 60.00 ACRES OF LAND, MORE OR )  
 LESS, SITUATE IN NOWATA COUNTY, )  
 STATE OF OKLAHOMA, AND AARON )  
 GLADYS CLAGGETT, ET AL., AND )  
 UNKNOWN OWNERS, )  
 )  
 Defendants. )

CIVIL ACTION NO. 71-C-105

Tract No. 1416M

LESSOR (ROYALTY) INTEREST ONLY

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CIVIL ACTION NO. 71-C-106  
 )  
 40.00 ACRES OF LAND, MORE OR ) Tract No. 1417M  
 LESS, SITUATE IN NOWATA COUNTY, )  
 STATE OF OKLAHOMA, AND MAX ) LESSOR (ROYALTY) INTEREST ONLY  
 RANDALL, ET AL., AND UNKNOWN )  
 OWNERS, )  
 )  
 Defendants. )

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CIVIL ACTION NO. 71-C-107  
 )  
 130.00 ACRES OF LAND, MORE OR ) Tract No. 1418M  
 LESS, SITUATE IN NOWATA COUNTY, )  
 STATE OF OKLAHOMA, AND FRED C. ) LESSOR (ROYALTY) INTEREST ONLY  
 SUMMERS, INC., ET AL., AND )  
 UNKNOWN OWNERS, )  
 )  
 Defendants. )

J U D G M E N T

1.

Now, on this 31<sup>st</sup> day of August 1973, 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 March 21, 1973, and the Court, after having examined the file 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 lessor (royalty) interest in the entire estate taken in Tract Nos. 1404M, 1406M, 1407M, 1408M, 1409M, 1414M, 1411M, 1412M, 1413M, 1416M, 1417M, and 1418M as such estate and tracts are described in the Complaint filed in these cases, except the overriding interest in Civil Action No. 71-C-104, Tract 1413M to which this Judgment also applies.

2.

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 the subject tracts.

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 the subject property for public use. Pursuant thereto, on April 2, 1971, the United States of America filed its Declaration of Taking of a certain estate in such tracts of land, which was the date of taking thereof. Simultaneously therewith, Plaintiff deposited \$3,494.00 in the Registry of this Court as estimated compensation for the taking of said estate, part of which has been disbursed. Therefore, title to such property should be vested in the United States of America as of April 2, 1971.

6.

The Report of Commissioners filed herein on March 21, 1973, is hereby accepted and adopted as findings of fact as to the subject tracts, wherein the amount of just compensation as to the lessor (royalty) interest in the estate taken therein is fixed by the Commission at \$5,672.00.

7.

The Defendants named in paragraph 11 as owners of the lessor (royalty) interest in the estate taken in the subject tracts are the only Defendants asserting any interest in such estate; all other Defendants having either disclaimed or defaulted. The Court further finds that there was a subsisting oil and gas lease on these tracts on the date of taking. Said named Defendants were the owners of the lessor (royalty) interest in the estate condemned herein as of the date of taking and, as such,

3.

are entitled to receive the just compensation awarded by this judgment according to their respective interests as set out in paragraph 11 below.

8.

This judgment creates a deficiency between the amount deposited as estimated just compensation for the lessor (royalty) interest in the estate taken in the subject tracts and the amount fixed by the Commission and adopted by the Court as just compensation; therefore, a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 11.

9.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the United States of America has the right, power and authority to condemn for public use the subject tracts, as they are described in the Complaint filed herein, and such property, to the extent of the lessor (royalty) interest in the estate described in such Complaint, is condemned and title thereto is vested in the United States of America, as of April 2, 1971, which was the date of taking thereof, and all Defendants herein and all other persons are forever barred from asserting any claim to such estate.

10.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that on the date of taking in these cases, the owners of the lessor (royalty) interest in the estate taken herein in the subject tracts were the Defendants whose names appear below in paragraph 11 with the interest owned by each also shown therein and the right to receive the just compensation for such estate is vested in the parties so named; and, there was a subsisting oil and gas lease on these tracts on the date of taking.

4.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the Report of Commissioners filed herein on March 21, 1973, is hereby confirmed insofar as it applies to the lessor (royalty) interest in the estate taken herein and the \$5,672.00 therein fixed is adopted as the award of just compensation for the lessor (royalty) interest in the subject tracts, which is allocated and should be disbursed according to the following schedule:

CIVIL ACTION NO. 71-C-102

(Tract Nos. 1404M. 1406M. 1407M, 1408M, 1409M, and 1414M)

These six tracts were pooled into one 180-acre pool by a Pooling Agreement recorded March 12, 1958, in the office of the County Clerk of Nowata County, Oklahoma in Book 396 at Page 394, wherein the royalty from the pool is pro-rated among the owners according to a formula set out therein.

The Commissioners' Report herein awards the just compensation for the lessor (royalty) interest by each tract according to said pro-ration for the oil reserve value to which the residual value of the respective tracts has been added. Therefore, the allocation and distribution of said awards are as follows:

TRACT NO. 1404M

<u>Owners</u>	<u>Interest</u>	<u>Share of Award</u>	<u>Previously Disbursed</u>	<u>Balance Due</u>
George C. Lynde and Cornelia L. Sneed, Co-Executors of the Estate of Elizabeth W. Lynde, Deceased	1/4	\$148.25	None	\$148.25
The Trustees of Iowa College	1/4	\$148.25	None	\$148.25
Max Randall and Leslie J. Coffman	1/2	\$296.50	None	\$296.50

AWARD OF JUST COMPENSATION:  
(Pursuant to Commissioners' Report)

Lessor (Royalty) Interest . . . . .	\$593.00
DEPOSIT OF ESTIMATED COMPENSATION . . . . .	\$350.00
DEPOSIT DEFICIENCY . . . . .	\$243.00
	Plus 6% Interest from April 2, 1971

TRACT NO. 1406M

Owners	Interest	Share of Award	Previously Disbursed	Balance Due
Allene Estlin	All	\$170.00	None	\$170.00

AWARD OF JUST COMPENSATION:  
(Pursuant to Commissioners' Report)

Lessor (Royalty) Interest . . . . .	\$170.00
DEPOSIT OF ESTIMATED COMPENSATION . . . . .	\$100.00
DEPOSIT DEFICIENCY . . . . .	\$ 70.00
	Plus 6% Interest from April 2, 1971.

TRACT NO. 1407M

Owners	Interest	Share of Award	Previously Disbursed	Balance Due
L. F. Merrell	All	\$254.00	None	\$254.00

AWARD OF JUST COMPENSATION:  
(Pursuant to Commissioners' Report)

Lessor (Royalty) Interest . . . . .	\$254.00
DEPOSIT OF ESTIMATED COMPENSATION . . . . .	\$150.00
DEPOSIT DEFICIENCY . . . . .	\$104.00
	Plus 6% Interest from April 2, 1971.

TRACT NO. 1408M

Owners	Interest	Share of Award	Previously Disbursed	Balance Due
--------	----------	----------------	----------------------	-------------

Life Estate 1/5 (\$34.00) distributed as follows:

Minnie Barbara Kennedy, Life Estate	\$ 10.00	None	\$ 10.00
Remainder to:			
John Y. Kennedy	\$ 3.00	None	\$ 3.00
Elizabeth Evans Ache	\$ 3.00	None	\$ 3.00
Elwood M. Kennedy	\$ 3.00	None	\$ 3.00
Josephine Cowgill Jameson	\$ 3.00	None	\$ 3.00
Asa D. Kennedy, Jr.	\$ 3.00	None	\$ 3.00
Frank Scott Kennedy	\$ 3.00	None	\$ 3.00
Frances Kennedy Fink	\$ 3.00	None	\$ 3.00
Leonida Kennedy Dalrymple	\$ 3.00	None	\$ 3.00

TRACT NO. 1408M Cont'd

<u>Owners</u>	<u>Interest</u>	<u>Share of Award</u>	<u>Previously Disbursed</u>	<u>Balance Due</u>
H. Elwood Kennedy, John Yeatman Kennedy and Asa D. Kennedy, Jr., Trustees under the Will of Asa D. Kennedy, Deceased.	4/5	\$136.00	None	\$136.00
AWARD OF JUST COMPENSATION . . . . .				\$170.00
DEPOSIT OF ESTIMATED COMPENSATION . . . . .				\$100.00
DEPOSIT DEFICIENCY . . . . .				\$ 70.00
				Plus 6% Interest from April 2, 1971.

TRACT NOS. 1409M and 1414M

<u>Owners</u>	<u>Interest</u>	<u>Share of Award</u>	<u>Previously Disbursed</u>	<u>Balance Due</u>
Ruth Newby	1/4	\$ 85.00	None	\$ 85.00
Elaine Newby Shepherd	1/4	\$ 85.00	None	\$ 85.00
David Newby	1/4	\$ 85.00	None	\$ 85.00
Rosemary Newby Mullen	1/4	\$ 85.00	None	\$ 85.00
AWARD OF JUST COMPENSATION: (Pursuant to Commissioners' Report)				
Lessor (Royalty) Interest				
Tract No. 1409M . . . . .				.\$170.00
Tract No. 1414M . . . . .				.\$170.00
				<u>\$340.00</u>
DEPOSIT OF ESTIMATED COMPENSATION:				
Tract No. 1409M . . . . .				.\$100.00
Tract No. 1414M . . . . .				.\$100.00
				<u>\$200.00</u>
DEPOSIT DEFICIENCY:				
Tract No. 1409M . . . . .				.\$ 70.00
Tract No. 1414M . . . . .				.\$ 70.00
				Plus 6% on each deficiency from April 2, 1971.

CIVIL ACTION NO. 71-C-103  
(Tract Nos. 1411M and 1412M)

These two tracts were pooled into an 80-acre unit by a Pooling Agreement dated November 25, 1955 and recorded in Book 381 at Page 474 in the office of the County Clerk of Nowata County,

Oklahoma, wherein the royalty from the pool is pro-rated among the owners according to a formula set out therein.

The Commissioners' Report herein awards the just compensation for the lessor (royalty) interest by each tract according to said pro-ration for the oil reserve value to which the residual value of the respective tracts has been added. Therefore, the allocation and distribution of said awards are as follows:

TRACT NO. 1411M

<u>Owners</u>	<u>Interest</u>	<u>Share of Award</u>	<u>Previously Disbursed</u>	<u>Balance Due</u>
William H. Lawrence and Betty Dean Lawrence, Husband and Wife, as Joint Tenants	All	\$184.00	None	\$184.00

AWARD OF JUST COMPENSATION:  
(Pursuant to Commissioners' Report)

Lessor (Royalty) Interest . . . . .	\$184.00
DEPOSIT OF ESTIMATED COMPENSATION . . . . .	\$100.00
DEPOSIT DEFICIENCY . . . . .	\$ 84.00
	Plus 6% Interest from April 2, 1971.

TRACT NO. 1412M

<u>Owners</u>	<u>Interest</u>	<u>Share of Award</u>	<u>Previously Disbursed</u>	<u>Balance Due</u>
L. F. Merrell	All	\$388.00	None	\$388.00

AWARD OF JUST COMPENSATION:  
(Pursuant to Commissioners' Report)

Lessor (Royalty) Interest . . . . .	\$388.00
DEPOSIT OF ESTIMATED COMPENSATION . . . . .	\$200.00
DEPOSIT DEFICIENCY . . . . .	\$188.00
	Plus 6% Interest from April 2, 1971.

CIVIL ACTION NO. 71-C-104  
(Tract No. 1413M)

<u>Owners</u>	<u>Interest</u>	<u>Share of Award</u>	<u>Previously Disbursed</u>	<u>Balance Due</u>
Frank J. Blum and Roselyne Blum	1/2	\$525.00	None	\$525.00

Tract No. 1413M Cont'd

<u>Owners</u>	<u>Interest</u>	<u>Share of Award</u>	<u>Previously Disbursed</u>	<u>Balance Due</u>
Yetta Rosenbloom and Isabel R. Weber	5/2000 of 5/80	\$ .16¢	None	\$ .16¢
Kirby Petroleum Co.	1995/2000 of 5/80	\$ 65.49	None	\$ 65.49
Jane Ann Wilkinson	8/80	\$104.97	None	\$104.97
G. W. D. Ward	4/80	\$ 52.52	None	\$ 52.52
Smiser Investment Co.	13/80	\$170.56	None	\$170.56
Buttram Texhoma Company	10/80	\$131.30	None	\$131.30

AWARD OF JUST COMPENSATION  
(Pursuant to Commissioners' Report)

Lessor (Royalty) Interest . . . . .	\$1,050.00
DEPOSIT OF ESTIMATED COMPENSATION . . . . .	\$ 550.00
DEPOSIT DEFICIENCY . . . . .	\$ 500.00
Plus 6% Interest from April 2, 1971.	

TRACT NO. 1413M  
OVERRIDING ROYALTY INTEREST

<u>Owners</u>	<u>Interest</u>	<u>Share of Award</u>	<u>Previously Disbursed</u>	<u>Balance Due</u>
Yetta Rosenbloom and Isabel R. Weber	5/2000 of 1/16 of 7/8	\$1.00	None	\$1.00

AWARD OF JUST COMPENSATION:  
(Pursuant to Commissioners' Report)

Overriding Royalty Interest . . . . .	\$1.00
DEPOSIT OF ESTIMATED COMPENSATION . . . . .	\$1.00

CIVIL ACTION NO. 71-C-105  
(Tract No. 1416M)

<u>Owners</u>	<u>Interest</u>	<u>Share of Award</u>	<u>Previously Disbursed</u>	<u>Balance Due</u>
Aaron Gladys Claggett Elliot	1/8	\$ 58.50	None	\$ 58.50
Ronald W. Summers	1/8	\$ 58.50	None	\$ 58.50
Mariah Claggett Drake	6/8	\$351.00	None	\$351.00

AWARD OF JUST COMPENSATION  
(Pursuant to Commissioners' Report)

Lessor (Royalty) Interest . . . . . \$468.00  
DEPOSIT OF ESTIMATED COMPENSATION . . . . . \$300.00  
DEPOSIT DEFICIENCY . . . . . \$168.00  
Plus 6% Interest from April 2, 1971.

CIVIL ACTION NO. 71-C-106  
(Tract No. 1417M)

Owners	Interest	Share of Award	Previously Disbursed	Balance Due
Max Randall	1/8	\$ 72.00	None	\$ 72.00
Forest Oil Corporation	27/80	\$194.40	None	\$194.40
Petroleum International Inc.	3/80	\$ 21.60	None	\$ 21.60
Mrs. Charlie N. Coffman and The First National Bank and Trust Company of Tulsa, Trustees under the Will of John L. Coffman, Deceased	1/8	\$ 72.00	None	\$ 72.00
Mrs. Charlie N. Coffman	1/8	\$ 72.00	None	\$ 72.00
Leslie J. Coffman	2/8	\$144.00	\$81.26	\$ 62.74

AWARD OF JUST COMPENSATION:  
(Pursuant to Commissioners' Report)

Lessor (Royalty) Interest . . . . . \$576.00  
DEPOSIT OF ESTIMATED COMPENSATION . . . . . \$325.00  
DEPOSIT DEFICIENCY . . . . . \$251.00  
Plus 6% Interest from April 2, 1971.

CIVIL ACTION NO. 71-C-107  
(Tract No. 1418M)

Owners	Interest	Share of Award	Previously Disbursed	Balance Due
Ruth E. Mason	All	\$1,478.00	None	\$1,478.00

AWARD OF JUST COMPENSATION:  
(Pursuant to Commissioners' Report)

Lessor (Royalty) Interest . . . . . \$1,478.00  
DEPOSIT OF ESTIMATED COMPENSATION . . . . . \$1,118.00  
DEPOSIT DEFICIENCY . . . . . \$ 360.00  
Plus 6% Interest from April 2, 1971.

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 owners the deposit deficiency for the subject tracts as shown in paragraph 11 in the amount of \$2,178.00 together with interest on such deficiency at the rate of 6% per annum from April 2, 1971, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for the subject tracts in this action.

13.

IT IS FURTHER ORDERED that when the deposit required by paragraph 11 above has been made by the Plaintiff, the Clerk of this Court shall then disburse, from the deposit in these cases, the balance due the respective owners with all accrued interest, according to the schedule in paragraph 11 above.

/s/ Fred Daugherty

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UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Jack M. Short

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JACK M. SHORT  
Assistant United States Attorney

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

JAMES A. FORRESTER, DONALD  
HINER, NORVILLE HINER, JR.,  
ROBERT R. SAYERS, ANNAS  
THOMASON, L. A. GATZ, WARREN  
L. MEEKS, JOHN C. MYRE, WARREN  
BLUFSTON, M. G. FUTOR, MRS.  
C. T. BRANDT, SARAH BURKHART,  
HERBERT M. MANN, CHARLES A.  
PARKER, JAMES L. SELSOR and  
A. L. HOFFMAN,

Plaintiffs,

and

LOUIS MARTIN, M.D.,

Intervening Plaintiff,

vs.

ENVIRONMENTAL DYNAMICS, INC.,  
a Delaware corporation,  
FITZGERALD, COWEN & ROBERTS,  
INC., an Oklahoma corporation,  
JOE L. SAMUEL, an individual,  
W. DWIGHT LINDSEY, an individ-  
ual, RUSSELL AND SAXE, RICHARD  
K. MCGEE, deceased, ESTATE OF  
RICHARD K. MCGEE, ELIZABETH  
STOWELL HAGER, now MCGEE,  
BROOKS GUTELIUS, JR., S. L.  
SCHLUNEGER, E. F. FERNEAU,  
J. D. STARTZ and SHARP AND  
COMPANY, CPA's,

Defendants.

FILED

AUG 6 1973

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Case No. 72-C-346 ✓

O R D E R

On stipulation of dismissal filed herein on August \_\_, 1973,  
IT IS ORDERED that this case is dismissed with prejudice as to all  
parties-Defendant. Plaintiffs and Defendants shall bear their own  
costs, including attorney fees.

Dated this 3 day of August, 1973.

*Luther Bohanon*  
Luther Bohanon  
Judge of the District Court

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

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
JOANNE MURDOCH, Administratrix )  
of the Estate of Bruce Gordon )  
Murdoch, deceased, )  
)  
Defendant. )

No. 72-C-360

FILED  
OCT 10 1972  
JOHN C. DALY, JR.  
U. S. DISTRICT COURT

ORDER SUSTAINING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

The Court has for consideration the Motion for Summary Judgment filed by the Plaintiff, the United States of America, and the Response thereto, filed herein by the Defendant, Joanne Murdoch, Administratrix of the Estate of Bruce Gordon Murdoch, deceased, and being fully advised in the premises, FINDS:

At the outset, the Court finds that it has jurisdiction by virtue of 28 USC §1340; 28 USC §1345; and 26 USC §7402.

This is a civil action to reduce to judgment certain federal tax liabilities of Bruce Gordon Murdoch, who died on March 10, 1972, and at the time of his death, he was a resident of Tulsa, Oklahoma. Joanne Murdoch was appointed Administratrix of the Estate of Bruce Gordon Murdoch before the pending Probate proceedings in the District Court for Tulsa County.

On August 4, 1972, the United States filed a proof of claim in the amount of \$1,572.93 in the probate proceeding. The claim does not reflect that it was approved by either the Administratrix or the District Judge in the Probate proceedings.

By the commencement of this action on October 4, 1972, the United States is entitled to recover judgment for assessments, interest and penalties in the amount of \$1,572.93, plus interest and costs.

28 USC §336, Suit on rejected claim provided:

If such claim is rejected, claimant may demand an additional hearing in the District Court of the county court, the order of which will be final and binding on the claimant as to amount, against the executor or administrator, and

3 months after the date of its rejection, if it then be due, ... otherwise the claim is forever barred."

28 USC §337 provides in pertinent part:

"... If the executor or administrator or the judge refuse or neglect to endorse such allowance or rejection for 10 days after the claim has been presented to him, such refusal or neglect is equivalent to a rejection on the 10th day...."

The Court concludes the litigation was timely filed in conformity with the statutes above cited.

The Court finds that the assessment of the Commissioner is only prima facie evidence of the amount due as taxes and if not impeached, is sufficient to justify recovery. U.S. v. Rindskopf (1881) 105 US 418; U.S. v. Lease (CA 2 1966) 346 F2d 696. Therefore, the taxpayer must overcome the presumption of correctness; he must show, demonstrate or establish the assessment to be erroneous; or he has the burden of proving the assessment incorrect. Lease, supra. Taxpayers cannot rest on general denials of tax liability where the United States seeks to recover unpaid taxes. U.S. v. Bottenfield (CA 3 1971) 442 F2d 1007. In the Bottenfield case, the Court said:

"... formal denials and other vague allegations simply did not disclose any genuine issue of material fact and were, therefore, wholly insufficient to prevent the entry of summary judgment." (at 1008)

The Court notes that the Defendant does not address herself to the issue of the correctness of the tax assessment. Furthermore, the Defendant does not object to the notice given or some other defect. Defendant's sole predicate for the dismissal requested in her amended answer and response to the Plaintiff's Motion for Summary Judgment is that the litigation is premature and that the Administratrix does not have funds to pay the judgment sought to be rendered.

It is well settled that a federal court has no jurisdiction to probate a will or administer an estate or entertain any suit that will interfere with the jurisdiction of the res in the probate court. *Statham v. Allen* (1946) 334 U.S. 40; *Wright v. The People* (1917) 246 U.S. 199; *Anderson v. Anderson* (CA 10, 1971) 439 F.2d 1001.

It is equally well established that federal courts do have jurisdiction in probate proceedings to establish claims against an executor's estate as the

General court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the court. *Moham v. Allen*, supra; *Anderson v. Anderson*, supra; *U. S. v. Slate* (DC, Tex. 1969) 394 F.Supp. 380.

In the present case, the only relief sought is a determination of the validity and amount of the tax claims against the decedent's estate. Plaintiff does not seek a judgment which would in any way interfere with the orderly process of the administration of the estate in the probate court, nor does it attempt to deal with the res of the estate or its orderly distribution.

The Court finds, based on the Response and Amended Answer and the Motion for Summary Judgment there is no showing of the existence of a triable issue of fact as to the amount due.

IT IS, THEREFORE, ORDERED THAT the Plaintiff's Motion for Summary Judgment be and the same is hereby sustained, there being no showing of the existence of a triable issue of fact.

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 1973.



CHIEF UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOANNE BURROCH, Administratrix  
of the Estate of Bruce Gordon  
Marboch, deceased,

Defendant.

No. 72-C-360

J U D G M E N T

Based on the Order Sustaining Plaintiff's Motion for Summary Judgment filed this date, IT IS ORDERED that judgment be entered in favor of the Plaintiff and against the Defendant in the amount of \$3,033.06, plus interest and costs.

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 1973.

  
\_\_\_\_\_  
CHIEF UNITED STATES DISTRICT JUDGE

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

AMERICAN HOST CORPORATION,  
Plaintiff,

vs.

OKARK, INC., KIRK LARKIN,  
and JOHN DOE,

Defendants.

No. 72-C-157

FILED

AUG 1 1973

Judge C. S. ...  
U. S. DISTRICT COURT

ORDER

NOW, on this 2 day of August, 1973, upon application of the Defendants, the Defendants' Motion to Dismiss ~~for~~ with prejudice, is hereby granted by order of the Court with costs to the parties *and Defts action per fees in their Counterclaim is dismissed.*

*[Signature]*  
UNITED STATES DISTRICT JUDGE

FILED

AUG 1 1973

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

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

UNITED STATES OF AMERICA,	)	
	)	
	)	Plaintiff,
vs.	)	CIVIL ACTION NO. 73-C-134
	)	
	)	
TONY LEE PEARSON and	)	
MARCIA ALEASE PEARSON,	)	
	)	
	)	Defendants.

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this \_\_\_\_\_ day of July, 1973, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the defendants, Tony Lee Pearson and Marcia Alease Pearson, appearing not.

The Court being fully advised and having examined the file herein finds that Tony Lee Pearson was served with Summons and Complaint on May 3, 1973; that Marcia Alease Pearson was served with Summons and Complaint on May 23, 1973, both as appear from the Marshal's Return of Service herein, and

It appearing that the said defendants have failed to 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 following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Ten (10), Block Forty-eight (48), VALLEY VIEW ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the defendants, Tony Lee Pearson and Marcia Alease Pearson, did, on the 30th day of August, 1971, execute and deliver to Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$11,000.00 with 4 1/2 percent interest per annum, and further providing for the payment

of monthly installments of principal and interest; and

The Court further finds that the defendants, Tony Lee Pearson and Marcia Alease Pearson, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$10,927.01 as unpaid principal, with interest thereon at the rate of 4 1/2 percent interest per annum from January 30, 1972, until paid, plus the cost of this action accrued and accruing.

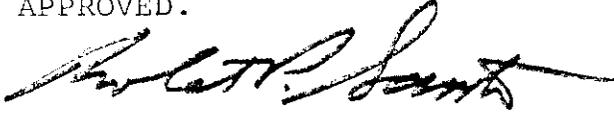
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Tony Lee Pearson and Marcia Alease Pearson, in personam, for the sum of \$10,927.01 with interest thereon at the rate of 4 1/2 percent interest per annum from January 30, 1972, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff by taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisement the 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, all of 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.

A handwritten signature in black ink, appearing to read "Robert P. Santee". The signature is written in a cursive style with a prominent initial "R" and a long, sweeping tail.

ROBERT P. SANTEE  
Assistant United States Attorney