

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

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

ORVILLE LARRY KAEMPER,)	
)	
vs.)	NO. 75-C-178
)	
STATE OF OKLAHOMA,)	
)	
)	Respondent.

O R D E R

This is a proceeding brought pursuant to the provisions of 28 U.S.C. § 2254 pro se, in forma pauperis, by a State prisoner confined in the Oklahoma State Penitentiary at McAlester, Oklahoma, and he has had two prior petitions before this Court bearing Case No. 74-C-12 and No. 74-C-213, in which the State files, records and transcripts have been reviewed. Petitioner herein attacks the validity of the judgment and sentence imposed by the District Court in and for Tulsa County, State of Oklahoma, in Cases No. CRF-73-400 and No. CRF-73-401. Upon petitioner's plea of guilty, the trial Court made a finding of guilty in Case No. CRF-73-400 of the charge of shooting with intent to kill, after former conviction of a felony, and fixed punishment at 15 years confinement in the Oklahoma State Penitentiary; in CRF-73-401, after a plea of guilty, the trial Court made a finding of guilty to the charge of attempted robbery with firearms, after former conviction of a felony, and fixed punishment at 15 years confinement in the Oklahoma State Penitentiary. The Court further ordered that the sentence imposed in Case No. CRF-73-401 was to run concurrently with the sentence imposed in Case No. CRF-73-400.

Petitioner alleges and the file reflects that petitioner has exhausted the remedies available to him in the Courts of the State of Oklahoma.

Petitioner demands his release from custody and as grounds therefor alleges:

- 1) Point of law and procedural default;
- 2) Null and void guilty plea; and
- 3) Two separate charges stemming from one felony charge or crime.

Petitioner's first allegation is legally insufficient as it is only a bald conclusion unsupported by any factual allegation and may be denied without a hearing. Cassel v. State of Oklahoma, et al., 373 F.Supp. 815 (E.D.Okla. 1973); Martinez v. United States, 344 F.2d 325 (10th Cir. 1965).

Petitioner's second allegation was determined adversely to him on the merits as stated in the Court's Order made and entered on the 19th day of February, 1974, in Case No. 74-C-12 in the United States District Court for the Northern District of Oklahoma, and the petition now under consideration should be denied and dismissed as successive on this issue. Sanders v. United States, 373 U. S. 1 (1963); Walker v. Taylor, 338 F.2d 945 (10th Cir. 1964).

Petitioner's third and final allegation is also without merit. In CRF-73-400, the Petitioner, Orville Larry Kaemper, along with others, was charged with shooting with intent to kill, after former conviction of a felony, one Bob Nelm, in violation of 21 O.S.A. § 652. In CRF-73-401, he was charged in concert with others, with an attempted robbery with a firearm of one Floyd C. Jones of money belonging to Williams Texaco in violation of 21 O.S.A. § 801, which robbery failed in accomplishment by the arrival of a police officer.

It has long been the law, as stated by the United States Supreme Court in Gavieres v. United States, 220 U. S. 338, 342 (1911), that a single act may be an offense against two statutes, and if each statute requires proof of an additional fact which the others do not, an acquittal or conviction under either statute does not exempt the defendant from prosecution or conviction under the other. The law of the State of Oklahoma is in accord as reflected in Ryan v. State, Okl. Cr., 473 P.2d 322 (1970); Tucker v. State, Okl. Cr., 481 P.2d 167 (1971); Buchanon v. State, Okl. Cr., 490 P.2d 1127 (1971); Jennings v. State, Okl. Cr., 506 P.2d 931 (1973).

The petitioner's allegations are unsupported by any factual allegations and are legally insufficient and his petition for writ of habeas

should be denied.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Orville Larry Kaemper be and it is hereby denied and the case is dismissed.

Dated this 19th day of September, 1975, at Tulsa, Oklahoma.



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

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 74-C-249

DALE F. WHITTEN AND CAROL D. WHITTEN,
EMPLOYERS INSURANCE OF WAUSAU,

Plaintiffs,

vs.

GENERAL ELECTRIC COMPANY,
a corporation

JUDGMENT
FILED
SEP 19 1975

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

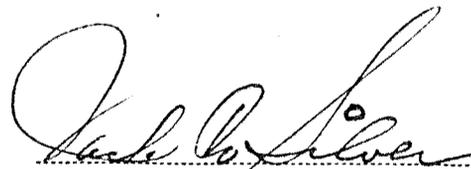
This action came on for trial (hearing) before the Court, Honorable H. DALE COOK

, United States District Judge, presiding, and the issues having been duly tried

(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiffs take nothing and that the defendant recover of the plaintiffs its costs of action.

Dated at Tulsa, Oklahoma, this 19th day
of September, 1975.


Clerk of Court

SEP 19 1975

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

United States of America)
 for the use of Keith)
 Hambleton,)
)
 Plaintiff,)
)
 vs.)
)
 Wood Disposal Company, a)
 Co-Partnership composed of)
 H. E. Wellborn and Walter)
 J. Madalinski, and Fidelity)
 & Deposit Company of Maryland,)
)
 Defendants.)

No. 75-C-250

F I L
 SEP 22
 Jack C. Silver
 U. S. DISTRICT

STIPULATION OF THE PARTIES

The Plaintiff, United States of America for the use of Keith Hambleton, and the Defendants, Wood Disposal Company, a Co-Partnership composed of H. E. Wellborn and Walter J. Madalinski, and H. E. Wellborn and Walter J. Madalinski, individually, and jointly and severally, and Fidelity & Deposit Company of Maryland, a corporation, stipulate and agree, each with the other, subject only to the approval of the Court herein, as follows:

- (1) The action was filed under the provisions of Section 270, et seq., Title 40, United States Code, and the Court has jurisdiction and venue of the parties and the subject matter of the action.
- (2) Wood Disposal Company is a Co-Partnership composed of H. E. Wellborn and Walter J. Madalinski, whose principal office and place of business is San Antonio, Texas.
- (3) Wood Disposal Company, a partnership, entered into a contract with the United States of America for the performance of work on the Kaw Reservior project, and the Defendant, Fidelity & Deposit Company of Maryland, relying upon the Application for Bond marked Exhibit "A" and attached to the Cross-Complaint of the Defendant, Fidelity & Deposit Company of Maryland, made, executed and delivered

the Payment Bond, a copy of which is attached as Exhibit

I hereby certify that the foregoing is a true copy of the original on file in this Court.

Jack C. Silver, Clerk

By R. Miller
 Deputy

A" to the Answer of the Defendant, Fidelity & Deposit Company of Maryland.

- (4) The Plaintiff is entitled to judgment against Wood Disposal Company, a co-partnership composed of H. E. Wellborn and Walter J. Madalinski, and against H. E. Wellborn and Walter J. Madalinski, and all of them, jointly and severally, and against Fidelity & Deposit Company of Maryland on its Bond, all in the sum of THREE THOUSAND, SEVEN HUNDRED AND NO/100 DOLLARS (\$3,700.00) and, in addition thereto, FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) as and for Plaintiff's attorney's fees and, further, the sum of TWENTY-THREE AND 05/100 DOLLARS (\$23.05) as costs herein, making a total judgment of FOUR THOUSAND, TWO HUNDRED TWENTY-THREE AND 05/100 DOLLARS (\$4,223.05).
- (5) The Defendant, Fidelity & Deposit Company of Maryland, a corporation, is entitled to judgment on its Cross-Complaint and Cross-Claim as against Wood Disposal Company, a co-partnership composed of H. E. Wellborn and Walter J. Madalinski, and against H. E. Wellborn and Walter J. Madalinski individually, and all of them jointly and severally, for the sum of FOUR THOUSAND, TWO HUNDRED TWENTY-THREE AND 05/100 DOLLARS (\$4,223.05), being the amount of the judgment hereinabove stipulated by the parties to be entered in favor of the Plaintiff and against the Defendants, Wood Disposal Company, a co-partnership, and the partners thereof, and in addition

thereto, said Defendant, Fidelity & Deposit Company of Maryland, a corporation, is entitled to recover its attorney's fees and court costs incurred herein.

Robert P. Kelly
Kelly & Gambill
P. O. Box 329
Pawhuska, Oklahoma 74056

By: Robert P. Kelly
Robert P. Kelly, Attorney for
the Plaintiff

John R. Richards
Grigg & Richards
Thurston National Building
Tulsa, Oklahoma 74103

By: John R. Richards
John R. Richards, Attorney for
Defendant, Fidelity & Deposit
Company of Maryland

Walter J. Madalinski
San Miguel, Porter, Madalinski,
Mayo & Lee
1616 Tower Life Building
San Antonio, Texas 78205

By: Walter J. Madalinski
Walter J. Madalinski, Attorney
for Wood Disposal Company, a co-
partnership composed of H. E.
Wellborn and Walter J. Madalinski,
and attorney for H. E. Wellborn,
individually, and Walter J.
Madalinski, individually, all
Defendants

United States District Court)
Northern District of Oklahoma) SS

I hereby certify that the foregoing
is a true copy of the original on file
in this Court.

Jack C. Silver, Clerk

By: D. Miller
Deputy

The Court having carefully perused the files, the Government's response, the Petitioner's reply, and being fully advised in the premises, finds that the petition should be treated as a motion pursuant to 28 U.S.C. § 2255, and that there is jurisdiction to proceed herein. A District Court's jurisdiction to release a petitioner from custody is not confined to physical custody, but continues so long as a petitioner may suffer serious disabilities resulting from his conviction. Carafas v. LaVallee, 391 U. S. 234 (1968).

Further, the Petitioner has filed in a separate proceeding, bearing Case No. 75-C-248, instruments involving the same parties as his § 2255 motion and seeking appointment of counsel or money damages in the sum of \$10,000.00 so that he can retain out-of-state counsel, there being no local attorneys with enough "guts" to take his case. It appears that he seeks counsel in Case No. 75-C-248 to represent him in his § 2255 motion bearing Case No. 75-C-171, and the Court finds that Case No. 75-C-248 should be consolidated with this Case No. 75-C-171.

Petitioner's first allegation is clearly without merit. It has long been the law that Congress has power to regulate the overt act of putting a letter into the United States Post Office, and may prohibit, under penalty, such an act done in furtherance of a scheme which Congress regards as contrary to public policy. Badders v. United States, 240 U. S. 391 (1916); Butler v. United States, 53 F.2d 800 (10th Cir. 1931). Therefore, the Petitioner was not tricked by a false charge.

Petitioner's second allegation that he was "sold out" by his counsel is also without merit. That claim is supported by Petitioner's allegation that his counsel improperly handled some matters for him in 1972, which mishandling caused him to plead nolo contendere to the false charge in 1974. The Federal criminal charge was filed in late 1973, and Petitioner was represented throughout the criminal proceedings by retained counsel of his own choice. Simple logic and the record does not support and clearly belies Petitioner's claims in this second allegation.

His third allegation is equally meritless. The file reflects that he has been supplied all information that he requested. Further, even if that were not true, the Act to which he apparently refers is the Public Information Act, 5 U.S.C. §§ 551-559, and pursuant to § 551(B) thereof, the Courts of the United States are specifically not included within the provisions of the Act.

The Court has a clear recollection of this proceeding, and has also reviewed the transcript of the change of plea on January 17, 1974. The Court explained directly to the Petitioner his right to persist in his not guilty plea and have a jury trial, explained the charges, the maximum sentence that could be imposed; and, determined by direct questions to the Petitioner that he changed his plea without coercion, threat, or inducement of any kind, and that he did so voluntarily of his own free choice. Rule 11, F.R.Cr.P., was fully complied with, and the record refutes Petitioner's allegations. As appears at Page 2 of the transcript, the Court asked the counsel for the Defendant, in the Defendant's presence, "Does the defendant know that a plea of nolo contendere in Federal Court is the same as a guilty plea, for purposes of sentencing?" To this question, counsel answered, "Yes, sir. I have fully advised him on that, if Your Honor please." As appears at Page 5 of the transcript, the Court asked the Defendant directly, "You know that it's [nolo contendere plea] the same in Federal Court as a guilty plea and you could receive the same amount of sentence that you could on a guilty plea?" To this question, the Defendant responded, "Yes, sir." There is no requirement for additional explanation of the direct or collateral consequences of a plea. Michel v. United States, 507 F.2d 461 (2d Cir. 1974); United States v. Shuman, 474 F.2d 303 (9th Cir. 1973).

Further, Petitioner makes no showing that he has ever possessed a private investigator's license of any kind, or that he has been deprived of the renewal of any such license due to his Federal conviction. Rather, the information known to the Court from report of his pre-sentence investigation indicates that he earned his livelihood as an auto-body repairman and drill-press operator. Also, he dropped out of school at age

sixteen, after completing the ninth grade at Bixby, Oklahoma, and later obtained a high-school education through the G.E.D. program. He makes no showing that he meets the pre-law aptitude or academic requirements to obtain his "life-long goal of becoming an attorney" or that he has ever been denied entrance to a law school based on his conviction in this Court.

The record and the law on the issues raised by Petitioner clearly bely his bald, conclusory allegations, which obviates the need for a hearing, or the appointment of counsel, and his pleadings wholly fail to support the granting of a monetary award. The causes should be denied and dismissed.

IT IS, THEREFORE, ORDERED that Case No. 75-C-248 be and it is hereby consolidated with this Case No. 75-C-171.

IT IS FURTHER ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Robert Eugene Cotner in Case No. 75-C-171 be and it is hereby denied and the case is dismissed.

IT IS FURTHER ORDERED that Petitioner's request for damages and appointment of counsel in Case No. 75-C-248 be and it is hereby denied and the case is dismissed.

Dated this 18th day of September, 1975, 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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 97.24 ACRES OF LAND, MORE OR)
 LESS, SITUATE IN WASHINGTON)
 COUNTY, STATE OF OKLAHOMA, AND)
 HEIRS OF EDITH SLACK WILSON,)
 ET AL., AND UNKNOWN OWNERS,)
)
 Defendants.)

CIVIL ACTION NO. 73-C-330 ✓

Tracts Nos. 132, 136E-1,
136E-2 and 136E-3

FILED
SEP 18 1975 *mm*

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

AMENDED JUDGMENT AND MEMORANDUM

The Plaintiff, the United States of America, brings this action for the condemnation of 97.24 acres of land. The action involves the taking of the fee simple title to 80 acres designated in the Complaint as Tract No. 132 and the taking of easements for flowage rights to three other parcels of land designated as 136E-1, 136E-2, and 136E-3. The parties stipulated that testimony, if presented by both parties in regard to the value of the flowage easements, would indicate the value to be:

136E-1	\$542.50
136E-2	\$ 60.00
136E-3	\$525.00

Likewise the parties agreed testimony in regard to the value of the mineral inconvenience would indicate said value to be \$145.00.

The issue remaining for determination by the Court is the amount of compensation to be paid the Defendants for the taking of the fee simple to Tract No. 132. Defendants' expert witness, Otis Gore, testified the fair market value of the property to be \$40,000.00. Plaintiff's expert witness, Lance Larey, citing several comparable sales in the area, determined the fair market value to be \$38,000.00. Based upon the testimony presented, the market value of the property is determined to be \$38,000.00.

Defendants contend that in view of the fact that the Defendants, five restricted Indians, enjoy a tax-exempt status in regard to the property, they are entitled to a sum over and above the market value to compensate them for the loss of their tax-exempt status in the property. This issue remains in order to determine the amount of just compensation due.

The judicial ascertainment of the amount that should be paid to the owner of private property taken for public use through exertion of the sovereign power of eminent domain is always a matter of importance for, as said in Monongahela Navigation Co. v. United States, 148 U.S. 312, 13 S.Ct. 622, 37 L.Ed 463 (1892): "In any society the fullness and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the government." The statement in that opinion that "no private property shall be appropriated to public uses unless a full and exact equivalent for it be returned to the owner" aptly expresses the scope of the constitutional safeguard against the uncompensated taking or use of private property for public purposes. Olson v. United States, 292 U.S. 246, 54 S.Ct. 704, 78 L.Ed. 1236 (1934).

Under the Fifth Amendment the owner of land taken by condemnation is entitled to "just compensation." "The key notion is indemnity, measured in money, for the owner's loss of the condemned property." Westchester County Park Commission v. United States, 143 F.2d 688 (2d Cir. 1944). There are various methods for determining what constitutes "just compensation," the most basic of which is fair market value. It is clear from an examination of cases in this area, however, that while Courts may utilize varying criteria in the determination of whether "just compensation" should be measured by the fair market value or another method, and are even divergent as to the elements to be considered in arriving at "fair market value," they all have endeavored to adapt the various methods to the individual factors

presented in each case in an attempt to afford the landowner just compensation. It has been held, for example, that the basis of evaluation is not what the taker gained but rather that which the owner lost. Olson, supra; United States v. Powelson, 319 U.S. 266, 63 S.Ct. 1047, 87 L.Ed. 1390 (1943); Boston Chamber of Commerce v. Boston, 217 U.S. 189, 30 S.Ct. 459, 54 L.Ed. 725 (1910). In United States v. Sowards, 370 F.2d 87 (10th Cir. 1966), the Court stated that the "sovereign must place the owner in as good a position pecuniarily as he would have been had his property not been taken."

Therefore, it is the duty of this Court to determine what amount constitutes "just compensation" to the Defendant Indians for the taking of the restricted tax-exempt property involved in this condemnation and to put them in as good a position pecuniarily as if their property had not been taken.

As stated in 4 Nichols, Law of Eminent Domain, § 12.32(2), pg. 365: "It sometimes happens that one of the features which gives a piece of property its special value would be lost if the property was sold; nevertheless the owner is entitled to the added value which the feature in question gives to his property." Likewise, in 1 Orgel, Valuation Under Eminent Domain, § 45, pg. 215, the writer notes that "the small number of reported decisions dealing with [the admissability of evidence bearing on the peculiar value of the property to its owner] indicate that if the aptitudes are such that they can be readily translated into pecuniary terms, not only will evidence of such aptitude be admitted, but the award of compensation will properly include an allowance in addition to market value as indemnity for the peculiar loss to the owner."

There are few cases dealing with the issue of whether the tax-free status to a landowner should be added to the fair market value in order to determine "just compensation." Only two Federal cases have been found dealing specifically with tax-exempt Indian property.

In United States v. 205.03 Acres of Land, 251 F.Supp. 858 (W.D.Pa. 1966), involving a determination of the amount of just compensation to Defendant Indian landowners for property which they held in a tax-free status, at the trial the Government contended, as they do in the present case, that evidence should be restricted to that of fair market value, no consideration being given to the tax free status, because that is an incident peculiar to the owner -- not to the land. The Court, noting that the market value test is not applied in all cases, determined that the lands in question had no market value in the usual sense, the property being both tax free and restricted, and therefore resort to the best data available to ascertain just compensation was used. The Court held that the Indians were entitled to have the land considered by the Jury with all its benefits and all its restrictions.

In United States v. Certain Parcels of Land in Cattaraugus County, New York, 327 F.Supp. 181 (1970), affirmed 443 F.2d 375 (1970), the determination of just compensation was referred to a commission. The action involved the taking of approximately 10,000 acres of land within the Allegheny Indian Reservation. The evidence before the commission consisted primarily of expert opinion concerning the value of the subject tracts according to the expert's conclusions regarding the highest and best use of the land appropriated. The commission thereafter first determined the actual damages without considering the tax-exempt status and then a higher amount considering the exemption. The Court had instructed the commission:

"In determining fair market value, you are to consider the extent to which the property, including improvements, is exempt from taxation. Your award of just compensation should consider the additional fair market value such property would have had if subjected to taxation . . . "

The Government objected to awarding Defendants any compensation for tax benefits. They relied in part on Westchester Co.

Park Commission v. United States, supra, in which the land condemned was tax exempt, being held by the County as park property. The Court in Westchester first recognized that while the legal concept of market value for the highest and best use of the property condemned is the generally accepted measure of just compensation, this rule is not inflexible or "autocratically absolute." State of Nebraska v. United States, 164 F.2d 866 (8th Cir. 1947). The Westchester Court held that the fact that the lands involved could not be sold or leased without authorization from the State did not preclude the application of the fair market theory. "Neither is the value of the land affected by the fact that, when taken, it was tax exempt." While this statement tends to support the Government's position, in Westchester the Court was not faced with the Defendant County's sustaining of an unreimbursed loss over and above the fair market value by the taking of the tax-free property since any substitute property the County might acquire for park purposes would undoubtedly likewise have been tax exempt.

In United States v. Certain Parcels of Land in Cattaraugus County, New York, supra, the Court held that:

". . . in this case the standard of just compensation cannot be measured by fair market value alone. Indians, who have lost their land by the government taking are reimbursed for the market value alone, have not been made whole, since thereafter they do not own lands which are free from taxation. Anyone who owns property cannot seriously dispute that if he was not required to pay taxes and the property was taken from him, 'just compensation' would only be made if allowances were awarded considering the exemption. Fair market value, determined by a willing buyer and a willing seller, would not reflect that status, since the privilege of being exempt from taxes is not transferable. In such situations, it is the loss to the Indian -- not the gain to the purchaser -- which just compensation must reflect. The concept of fair market value, therefore, as traditionally used, does not reflect the owner's loss. The method used by the commission, by calculating the equivalent of a financial return to the owner by the capitalization method utilized, did reflect that loss in a manner designed to render just compensation to the Indian landowners."

The Court thereafter further considered the Government's contention that the commission erred in failing to take into account the restraint on alienation. The Court noted, however, that the Government "treated the property as if it was not tax exempt and made no offer of any proof whatsoever with regard to any market value taking into consideration the tax-exempt status." Therefore, the Court held that if the amounts attributed to the tax-exempt status by the commission failed to take into account the devaluing factor of the restraint on alienation, that omission resulted from the Government's failure to introduce proof of the subject. The Court further noted that while the restraint could be considered detrimental, the same restraint immunized the land from the claims of creditors.

Both previously cited cases dealing with tax-exempt Indian properties relied in part on a 1912 decision, Old South Ass'n In Boston v. City of Boston, 212 Mass. 299, 99 N.E. 235 (1912), cited as authority in Kimball Laundry Co. v. United States, 338 U.S. 1 (1948). In Old South Ass'n, the land taken was tax exempt as long as it remained in the Petitioner's hands, but would not be tax exempt if sold. The Petitioner appealed from the Court's refusal to charge the jury:

"That in addition to the damages which would be awarded to an ordinary petitioner this petitioner is entitled to such a sum as will in the opinion of the jury compensate it for that feature or special damage contained in its loss by the taking which is created by the charter exemption from taxation of the space taken."

A special verdict was rendered, awarding \$100,000.00, and fixing an additional sum of \$25,000.00 if the instruction quoted above should have been given. The appellate court held that the requested instruction should have been given, and that the petitioner should recover the sum of \$25,000.00 in addition to the market value of the land taken.

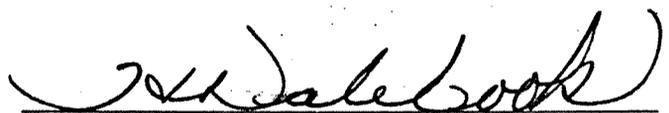
In keeping with the above and with the Supreme Court directive that no private property shall be appropriated unless a full and

exact equivalent for it be returned to the owner, Defendants' loss of the tax-exempt status being readily translatable into pecuniary terms, it is the determination of this Court that the capitalization of the Defendants' tax-exempt status as testified to by their expert, Gerald W. Ashley, should be added to the previously determined market value to afford just compensation.

Mr. Ashley testified regarding two methods used to ascertain the amount of this capitalization. By applying an assessed value of sixteen percent to the \$38,000.00 previously determined to be the value of the 80 acres, and applying the 1974 real estate tax of \$71.04 per \$1,000.00, the taxes for one year would amount to \$431.92. Assuming a seven percent overall or discount rate, a forty-year holding period and a present worth of 1 per period factor (13.331709), the value of income or tax loss would be \$5,758.23.

This amount is, therefore hereby added to the \$38,000.00 making the just compensation for the taking of the surface interest in Tract No. 132, \$43,758.23. Based upon the testimony of Mr. Gordon Romine, which was acceptable to defendants, the value of the minerals under Tract 132 was \$640.00. In keeping with stipulations in regard to the taking of flowage easements, the just compensation for the surface interest in Tract 136E-1 shall be \$542.50, for 136E-2 shall be \$60.00, and for 136E-3 shall be \$525.00. Likewise, based upon stipulation of the parties the loss in value of the mineral estate under these three flowage easement tracts combined was \$145.00. Thus the total award for the 97.24 acres involved herein is \$45,670.73.

It is so Ordered this 18th day of September, 1975.



H. DALE COOK
United States District Judge

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

FILED

SEP 18 1975

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

UNITED STATES FOR THE USE OF)
CONSOLIDATED EQUIPMENT SALES,)
INC.,)

Plaintiff,)

vs.)

No. 75-C-176

WALTER MADALINSKI and H. E.)
WELLBORN, partners doing business)
as WOOD DISPOSAL COMPANY, and)
FIDELITY & DEPOSIT COMPANY OF)
MARYLAND, an insurance corporation,)

Defendants.)

ORDER AND JUDGMENT

Now on this ^{September} ~~18th~~ day of August, 1975, upon joint application of the

Plaintiff and the Defendants, the Court finds that a compromise agreement has been entered into by and between the parties which should be reduced to judgment. The Court having examined the files and the joint application of the parties finds that it has full and complete jurisdiction and venue of the parties and the subject matter of this action. That the Plaintiff, Consolidated Equipment Sales, Inc. is a Texas corporation authorized to do business within the State of Oklahoma. That the Defendants, Walter Madalinski and H. E. Wellborn, are residents of the State of Texas and are partners doing business as Wood Disposal Company. That Fidelity & Deposit Company of Maryland is an insurance corporation not domesticated within the State of Oklahoma. That this cause of action arises under Section 270B of Title 40 USCA, providing that suit shall be brought in the United States District Court for the district in which the contract, subject of the suit was to be performed. That the Defendant, Wood Disposal Company, a co-partnership, entered into a contract with the United States of America, acting through the United States Corps of Engineers under Kaw Reservoir Contract No. DACW56-74-C0083. The Court further finds that the Defendants, Walter Madalinski and H. E. Wellborn, doing business as Wood Disposal Company, and Fidelity & Deposit Company of Maryland, executed a performance and payment bond in favor of the United States Army Corps of Engineers as obligee in a penal sum of \$300,000.00 conditioned as required by

40 USCA 270A, et seq.

The Court further finds that the Plaintiff and the Defendant, Wood Disposal Company, entered into an agreement whereby the Plaintiff leased certain equipment and furnished certain supplies to the Defendant, Wood Disposal Company, for use on the Kaw Reservoir Project. The Court finds that the Plaintiff performed its obligations under the contract and furnished labor and materials in a sum of \$50,000.00.

The Court further finds that the Plaintiff is entitled to judgment for the sum of \$50,000.00 as against Wood Disposal Co., a co-partnership composed of H. E. Wellborn and Walter J. Madalinski, and as against H. E. Wellborn, individually and Walter J. Madalinski, individually, and as against Fidelity & Deposit Company of Maryland, a corporation, on its bond in the sum of \$50,000.00, together with interest from the 18th day of August, 1975, until paid, at the rate of 10% per annum.

The Court further finds that the Defendant, Fidelity & Deposit Company of Maryland, a corporation, is entitled to judgment as against Wood Disposal Co., a co-partnership composed of H. E. Wellborn and Walter J. Madalinski, and as against H. E. Wellborn and Walter J. Madalinski, individually, on its cross-complaint in the sum of \$50,000.00, together with interest thereon at the rate of 10% per annum from date of judgment until paid, together with its costs herein expended.

The Court, therefore, ORDERS, ADJUDGES AND DECREES that the Plaintiff have and is hereby granted judgment as against Wood Disposal Co., a co-partnership composed of H. E. Wellborn and Walter J. Madalinski, and as against H. E. Wellborn and Walter J. Madalinski, jointly and severally, and as against Fidelity & Deposit Company of Maryland, a corporation, all in the sum of \$50,000.00, together with interest at the rate of 10% per annum from the 18th day of August, 1975, until paid, for all of which let execution issue.

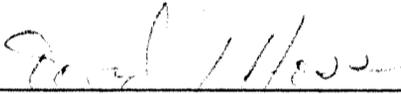
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Defendant, Fidelity & Deposit Company of Maryland, a corporation, have

and it is hereby granted a judgment as against Wood Disposal Co., a co-partnership composed of H. E. Wellborn and Walter J. Madalinski, and as against H. E. Wellborn and Walter J. Madalinski, jointly and severally, in the sum of \$50,000.00 together with interest thereon at the rate of 10% per annum from August 15, 1975, until paid, and for its costs of this action, for which let execution issue.



Allen E. Barrow
United States District Judge

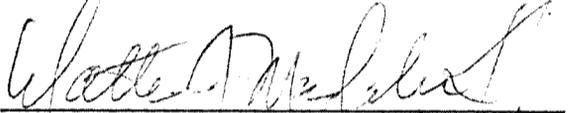
APPROVED:



David L. Noss
Attorney for Plaintiff



John R. Richards
Attorney for Fidelity & Deposit
Company of Maryland, a corporation



Walter J. Madalinski
Attorney for Wood Disposal Co.,
a co-partnership composed of H. E.
Wellborn and Walter J. Madalinski,
H. E. Wellborn, individually and
Walter J. Madalinski, individually

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

RANDOLPH P. NEAL,)
)
 Petitioner,)
)
 vs.) No. 75-C-349
)
 STATE OF OKLAHOMA,)
)
 Respondent.)

FILED
SEP 17 1975

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

ORDER OF DISMISSAL

This is a proceeding brought pursuant to the provisions of Title 28 U.S.C., § 2254, by a state prisoner confined in the Tulsa County Jail at Tulsa, Oklahoma. Petitioner attacks the validity of the judgment and sentence rendered and imposed by the District Court in and for Tulsa County, Oklahoma, in cases which Petitioner has not cited.

Petitioner demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his constitutional rights under the Fourth Amendment to the Constitution of the United States of America. In particular, petitioner claims:

- 1) That he has been incompetent for the past 14 years;
- 2) That he was convicted when incompetent;
- 3) That he has been treated in Vinita, Oklahoma.

Petitioner alleges that he has appealed his convictions but does not show that he has exhausted the remedies available to him in the courts of the State of Oklahoma with respect to the claims herein asserted.

Petitioner was granted leave to proceed herein without prepayment of costs by Order made and entered by the Court on August 1, 1975.

Title 28 U.S.C. § 2254(b) provides:

An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

The Petition for Writ of Habeas Corpus filed by the Petitioner alleges only that he was incompetent at the time of his conviction and sentencing. The State Courts are proper tribunals to determine the competency of the Petitioner. Iverson v. S.D., 480 F.2d 414 (8th Cir. 1973); Bresnahan v. Patterson, 352 F.Supp. 1180 (D.Colo. 1973). Where Petitioner has not exhausted the remedies available in the courts of the State of Oklahoma the Court is without authority to grant a Writ of Habeas Corpus. The Petition for Writ of Habeas Corpus should be and is hereby dismissed for failure to exhaust State remedies.

It is so ordered this 16th day of September, 1975.



H. DALE COOK
United States District Judge

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

AVIATION MATERIALS, INC.,)
A Corporation; GRAHAM LOTT,)
)
Plaintiffs,)
)
)
-vs-)
)
LARRY D. PINNEY, d/b/a)
AEROTRON RADIO SERVICE,)
)
Defendant.)

No. 74-C-156

FILED

SEP 17 1975 *len*

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

ORDER APPROVING SETTLEMENT

This matter comes on for trial on this 17th day of September, 1975, before the undersigned Judge of this Court.

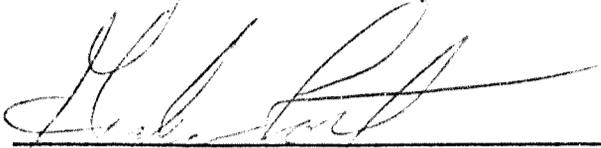
It is agreed between the Parties hereto and their respective Attorneys in the presence of the Court, and subject to approval of the Court, as follows:

1. The Defendant proposes to complete all the repairs to the 1959 Piper Commanche Airplane, N5909P, Serial Number 24-995, that was involved in a crash on November 30, 1973, and pay all sums to and owing Lotero Flying Service.
2. Defendant proposes upon completion of the repairs, to restore the same to the Plaintiff in an air-worthy condition at his expense, within thirty (30) days.
3. Defendant further proposes to pay the Plaintiff, through its' Attorney of Record herein, the sum of One Thousand Dollars (\$1,000.00), together with One Hundred Dollars (\$100.00) per month, for all months, inclusive from December 1, 1973, to the time of the actual payment, which shall be within fifteen (15) days from this date.

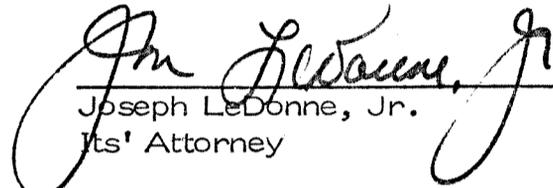
4. Defendant further agrees to the Dismissal With Prejudice
of his action now pending against Plaintiff in Case No. 75-C-124 of this
Court.

DATED this 17th day of September, 1975.

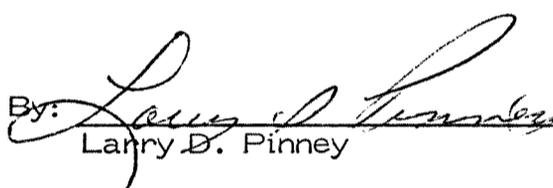
AVIATION MATERIALS, INC.

By: 

Graham Lott, President

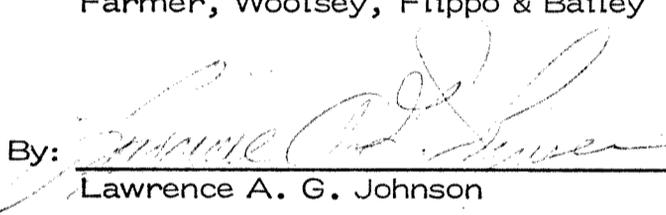

Joseph LeDonne, Jr.
Its' Attorney

LARRY D. PINNEY, d/b/a
AEROTRON RADIO SERVICE

By: 

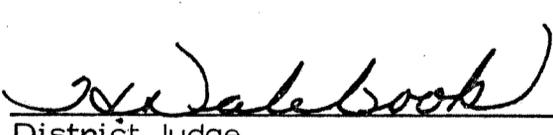
Larry D. Pinney

Farmer, Woolsey, Flippo & Bailey

By: 

Lawrence A. G. Johnson

The foregoing settlement approved and ordered consummated as
therein set forth and Plaintiffs' causes of action declared dismissed with
prejudice.


District Judge

FILED

SEP 17 1975

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. 75-C-191
)
)
JAMES THEADORE INMAN a/k/a)
JAMES T. INMAN, SHIRLEY)
JEAN INMAN, AVCO FINANCIAL)
SERVICES OF OKLAHOMA, INC.,)
COUNTY TREASURER, Tulsa)
County, and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
)
) Defendants.)

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 16th
day of September, 1975, the Plaintiff appearing by Robert
P. Santee, Assistant United States Attorney; the Defendants,
County Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, appearing by Gary J. Summerfield, Assistant
District Attorney; and the Defendants, James Theadore Inman
a/k/a James T. Inman, Shirley Jean Inman, and AVCO Financial
Services of Oklahoma, Inc., appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, James T. Inman and Shirley
Jean Inman were served by publication, as appears from the Proof
of Publication filed herein; that Defendants, County Treasurer,
Tulsa County, and Board of County Commissioners, Tulsa County,
were served with Summons and Complaint on May 15, 1975; and
that Defendant AVCO Financial Services of Oklahoma, Inc., was
served with Summons and Complaint on May 27, 1975, all as appears
from the United States Marshal's Service herein.

It appearing that Defendants, County Treasurer, Tulsa
County, and Board of County Commissioners, Tulsa County, have
duly filed their Answers herein on June 2, 1975, that Defendants,
James T. Inman, Shirley Jean Inman, and AVCO Financial Services
of Oklahoma, Inc., 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 Thirty-three (33), Block Six (6), LAKE-VIEW HEIGHTS AMENDED ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, James T. Inman and Shirley Jean Inman, did, on the 29th day of September, 1972, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,250.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, James T. Inman and Shirley Jean Inman, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 10 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 \$8,894.40 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from November 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, James T. Inman and Shirley Jean Inman, the sum of \$ 29.00 plus interest according to law for personal property taxes for the year(s) 1973 and 1974 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, James T. Inman and Shirley Jean Inman, in rem, for the sum

of \$8,894.40 with interest thereon at the rate of 4 1/2 percent per annum from November 1, 1974, 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 for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, James T. Inman and Shirley Jean Inman, for the sum of \$ 29.00 as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, AVCO Financial Services of Oklahoma, Inc.

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, shall be deposited with the Clerk of the Court to await further order of the Court.

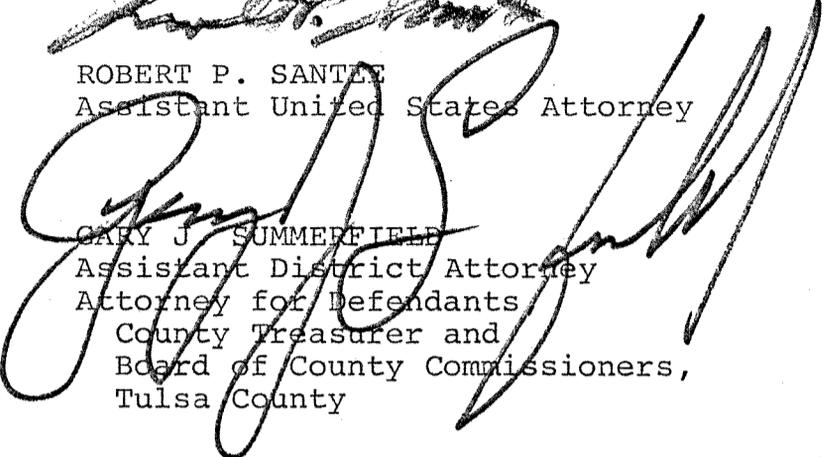
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

W. Allen E. Barrow
United States District Judge

APPROVED



ROBERT P. SANTELY
Assistant United States Attorney



GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants
County Treasurer and
Board of County Commissioners,
Tulsa County

bcs

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

LARRY D. PINNEY,)
)
 Plaintiff,)
)
 vs.)
)
 AVIATION MATERIALS, INC.,)
 A Corporation, GRAHAM LOTT,)
)
 Defedants.)

No. 75-C-124

FILED

SEP 17 1975

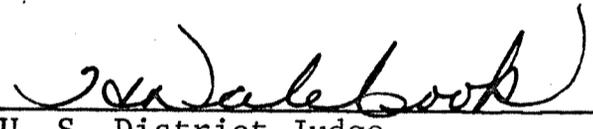
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

Pursuant to compromise settlement this date entered into between the parties hereto, in case no. 74-C-156 of this Court, duly approved by this Court, and to be consumated by the parties, the Court finds that this cause should be dismissed with prejudice.

IT IS THEREFORE ORDERED AND DECREED that this cause be dismissed with Prejudice at Plaintiffs costs.

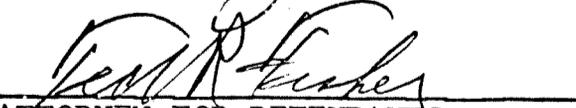
Done this 17th day of September, 1975.



U. S. District Judge

APPROVED:


ATTORNEY FOR PLAINTIFF



ATTORNEY FOR DEFENDANTS

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

ELSIE BEAU and EMMA CARPENTER,)
)
 Plaintiffs,)
)
 vs.) No. 74-C-396
)
 ANNA M. DORRELL and SHERRELL)
 ANN DORRELL,)
)
 Defendants.)

E I L E D
SEP 16 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

SUPPLEMENTAL JUDGMENT

This action came on for non-jury trial before the Court, the Honorable H. Dale Cook, District Judge, presiding. The issues having been duly tried and a decision having been duly rendered, the following Order is entered:

Warranty Deed dated April 4, 1969, recorded in Book 23, at Page 1558 from Roy Dorrell and Nora Dorrell, husband and wife, to Virgil Dorrell, covering Lots 3 and 4, (otherwise described as the W/2 of the SW/4) of Section 18, Township 16 North, Range 10 East, Creek County, Oklahoma, is hereby declared null, void, and is hereby invalidated.

Warranty Deed dated April 4, 1969, recorded in Book 23, at Page 1557, from Roy Dorrell and Nora Dorrell, husband and wife, to Virgil Dorrell, covering the S/2 of the NE/4 of Section 13, Township 16 North, Range 9 East, Creek County, Oklahoma, is hereby declared null and void and is hereby invalidated.

FURTHER ORDERED that Nora Dorrell, the surviving joint tenant, with Roy Dorrell, as far as the above described land is concerned, having deeded the property by General Warranty Deed to the Plaintiffs, Elsie Beau and Emma Carpenter, the Court finds that the Plaintiffs title to said property should be and the same

is hereby quieted as against the claims of the Defendants, or anyone claiming thereunder, and that the Defendants and anyone claiming under them, are hereby enjoined from asserting any right, title, or interest in and to said real property adverse to the rights of the Plaintiffs.

DATED at Tulsa, Oklahoma, this 15th day of September, 1975.

(Signed) H. Dale Cook

H. DALE COOK
United States District Judge

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

ELSIE BEAU and EMMA CARPENTER,)
)
 Plaintiffs,)
)
 vs.) No. 74-C-396
)
 ANNA M. DORRELL and SHERRELL)
 ANN DORRELL,)
)
 Defendants.)

SUPPLEMENT TO JUDGMENT MEMORANDUM

FILED
SEP 16 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

This Supplement to Judgment Memorandum is filed this 15th day of September, 1975, as a supplement to that Judgment Memorandum entered herein on September 9, 1975, and for the purpose of clarifying the legal description of the real property therein described. The Court finds that the Conaway Tract as referred to in the Judgment Memorandum covers a tract of land described as follows:

Lots 3 and 4, (otherwise described as the W/2 of the SW/4) of Section 18, Township 16 North, Range 10 East, Creek County, Oklahoma.

The property described in said Judgment Memorandum as the Killgore Tract is described as follows:

The S/2 of the NE/4 of Section 13, Township 16 North, Range 9 East, Creek County, Oklahoma.

IT IS SO ORDERED this 15th day of September, 1975.

H. DALE COOK (Signed) H. Dale Cook
H. DALE COOK
United States District Judge

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

ELMER GENE MANUEL,

Petitioner,)

vs.)

UNITED STATES OF AMERICA,

Respondent.)

75-C-423
No. ~~70-CR-40~~

FILED

SEP 15 1975

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

MEMORANDUM AND ORDER

Petitioner herein has filed a petition for relief pursuant to 28 U.S.C. §2255. Petitioner is confined in the United States Penitentiary at Leavenworth, Kansas, under a ten-year sentence imposed by Judge Frank G. Theis, of the United States District Court for the District of Kansas, while sitting as a visiting or transferee Judge in the United States District Court for the Northern District of Oklahoma.

Petitioner challenges the validity of his conviction and demands vacation of his sentence. In support of this challenge, he alleges the Court failed to give a cautionary instruction on the limited use of hearsay testimony in proving participation of each defendant in the conspiracy alleged. He further claims the failure to so instruct the jury in his case is plain error under Rule 52(b) of the Federal Rules of Criminal Procedure.

In his petition the petitioner summarizes statements of two witnesses who testified against him at his trial. It is the testimony of these two witnesses which petitioner alleges should have been limited in effect by a hearsay instruction. Briefly, each witness stated he knew petitioner personally; one said he had purchased heroin from petitioner once; one that he had done so three or four times; one witness stated petitioner

had introduced him to a third person from whom he had purchased heroin; and that petitioner had also accompanied the witness on a trip to purchase heroin. None of the statements alleged, however, appear to in any way involve hearsay. Rather, they are direct recitations of the witnesses' own experiences with petitioner, and as such, in no way call for an instruction as to hearsay.

IT IS THEREFORE ORDERED that leave to proceed without prepayment of fees is granted, and the Clerk shall file the pleadings currently lodged.

IT IS FURTHER ORDERED that the action so filed be, and the same is hereby, dismissed.

At Wichita, Kansas, this 11th day of September, 1975.

S/ FRANK G. THEIS

~~FRANK G. THEIS~~
United States District Judge

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

J. R. YOUNG,)
)
Plaintiff,)
)
vs.)
)
HOWMEDICA, INC.,)
a corporation,)
)
Defendant.)

No. 74-C-371

FILED
SEP 15 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 15th day of September, 1975,
the above styled and numbered cause coming on for hearing
before the undersigned, Judge of the United States District
Court within and for the Northern District of Oklahoma, upon
the Stipulation for Dismissal of the plaintiff and defendant
herein; and the Court having examined the pleadings and
being well and fully advised in the premises, is of the
opinion that said cause should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by
the Court that the above styled and numbered cause be and
the same is hereby dismissed with prejudice.

5/ H. Dale Cook.
JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

Gary H. Jay
GARY H. JAY
Attorney for Plaintiff

B. J. Cooper
B. J. COOPER
Attorney for Defendant

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

HORNE SPRAY COMPANY, INC., a)
corporation,)
)
Cross - Petitioner,)
)
vs.)
)
AMCHEM PRODUCTS, INC., a)
foreign corporation,)
)
Defendant.)

No. 75-C-281 ✓

FILED

SEP 15 1975

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

O R D E R

Plaintiff herein, Horne Spray Company, Inc., has filed a Motion to Remand. On January 9, 1975, an action was filed in the District Court of Rogers County, State of Oklahoma, by Rhonda Faye Stewart, against Horne Spray Company, Inc., and Herb Stout alleging that as a result of aerial spraying of herbicides conducted by Horne Spray Company, Inc., on behalf of Herb Stout, plaintiff's home was inundated with spray vapors causing illness and subsequent birth defects. Defendant Horne Spray Company, Inc. thereafter filed an Answer denying the allegations and also cross-petitioned against Amchem Products, Inc., alleging that the chemicals used in the spraying were manufactured by Amchem and that if the chemicals or vapors could cause the damage alleged by plaintiffs, then Amchem should be liable for plaintiffs' damages because it failed to warn defendant Horne Spray Company, Inc., that the chemicals or vapors could cause the injuries alleged and breached its warranty of fitness.

Thereafter, on July 3, 1975, third-party defendant, Amchem Products, Inc., filed a Petition for Removal "of the cause of action asserted against it by cross-petitioner, Horne Spray Company, Inc." alleging diversity of citizenship and jurisdictional amount. Horne Spray Company, Inc., filed a Motion to

Remand on July 23, 1975, "for the reason that the defendant, Amchem Products, Inc., removed only a portion of the entire law suit filed in the District Court of Rogers County. . . . "

Title 28 U.S.C. § 1441(c) states:

"Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the District Court may determine all issues therein, or, in its discretion may remand all matters not otherwise within its original jurisdiction."

The issue before the Court is whether pursuant to 1441(c) a third-party defendant may remove an action when said defendant was not joined by the original Plaintiff and, if so, whether the third-party action, herein, involves a separate and independent claim. A review of the cases dealing with this removal question and the application of 1441(c) reveals that the issue is by no means clearcut.^{1/} As stated by the Court in Harper v. Sonnabend, 182 F.Supp. 594 (S.D.N.Y. 1960): "[I]t is not an exaggeration to say at least on the surface the field luxuriates in a riotous uncertainty."

As noted in Greater New York Mut. Ins. Co. v. Anchor Const. Co., 326 F.Supp. 245 (E.D.Pa. 1971), the right to remove a case from State to Federal Court is a purely statutory right unknown to the common law and is dependent for its existence upon the will of Congress. Therefore, Courts must be guided by principles of strict statutory construction and by the underlying policy considerations relating to removal.

"In the latest revision of Section 1441(c) in 1948, Congress, by adopting the term 'separate and independent claim' as the test for removability under Section 1441(c) in lieu of the prior language, 'separable controversy', clearly evidenced an intent to further limit the right to removal from

1/ The annotation at 8 A.L.R. Fed. 708 entitled Right of Third-Party Defendant to Removal of Action From State to Federal Court Under 28 U.S.C. § 1441 provides a comprehensive discussion of various Court opinions regarding this issue.

State courts. See American Fire & Casualty Co. v. Finn, 341 U.S. 6, 71 S.Ct. 534, 95 L.Ed. 702 (1951). Clearly, therefore, the removal statute must be strictly and narrowly construed to effectuate the salutatory policy of restricting Federal removal jurisdiction. Proteus Foods & Industries, Inc. v. Nippon Reizo Kabushiki Kaisha, 279 F.Supp. 876 (D.C.N.Y. 1967). "Greater New York Mut. Ins. Co. v. Anchor Const. Co., supra.

In addition, this Court recognizes the accepted doctrine of declining jurisdiction in doubtful cases. See e.g. Sequoyah Feed & Supply Co. v. Robinson, 101 F.Supp. 680 (W.D.Ark. 1951); Barnett v. Faber, Coe & Gregg, Inc., 391 F.Supp. 178 (D.C.N.Y. 1968); Young Spring & Wire Corp. v. American Guarantee & Liability Ins. Co., 220 F.Supp. 222 (D.Mo. 1963); Glucksman v. Columbia Broadcasting System, Inc., 219 F.Supp. 767 (D.Cal. 1963).

In 1A Moore's, Federal Practice 2d ed. ¶ 0.167[10], Professor Moore takes the position that the removal statute limits removal, on the basis of a separate and independent claim, to a situation where there is a joinder of claims by the plaintiff, and does not authorize removal by a third-party defendant.

"Section 1441(c) means that the plaintiff cannot preclude the right to remove a removable claim through the device of joining a wholly separate and independent nonremovable claim. We do not, however, believe § 1441(c) was intended to effect removal of a suit, not otherwise within federal jurisdiction, because of the introduction of a third-party claim." Moore's, supra.^{2/}

Following similar reasoning, the Court in Mid-State Homes, Inc. v. Swain, 331 F.Supp. 337 (W.D.Okla. 1971) remanded a case in which the parties attempted to remove a third-party action. The Court stated that as to removal under 28 U.S.C. 1441(c) on the basis that the cross-petition is a separate and

^{2/} The following cases share the views of Professor Moore: Holloway v. Gamble-Skogmo, Inc., 274 F.Supp. 321 (N.D.Ill. 1967); White v. Baltic Conveyor Co., 209 F.Supp. 716 (D.N.J. 1962); Burlingham Underwood, Barron, Wright & White v. Luckenbach S.S. Co., 208 F.Supp. 544 (S.D.N.Y. 1962); Shaver v. Arkansas-Best Freight System, Inc., 171 F.Supp. 754 (W.D.Ark. 1959); Sequoyah Feed & Supply Co. v. Robinson, supra.

independent claim or cause of action from that of the plaintiff against the defendant, although diversity of citizenship and the jurisdictional amount does exist, "it is generally held that neither a third party defendant nor a cross-defendant may remove."

"The reason usually given is that the claim is not one that has been "joined by the original Plaintiff, such being the requirement of 28 U.S.C.A. 1441(c) which is to be strictly construed." Mid-State Home, Inc., v. Swain at 339.

See also Bull v. Big Three, Incorporated, 379 F.Supp. 41 (E.D. Okla. 1974).

Furthermore, as noted in Greater New York Mutual Ins. Co. v. Anchor Const. Co., supra, as a practical matter, the acceptance by a Court of a third-party removal defeats the sound judicial policy of securing the just, speedy, and inexpensive termination of lawsuits. See White v. Baltic Conveyor Co., 209 F.Supp. 716 (D.N.J. 1962). It seems far better for one Court to control the entire lawsuit so that there is consistency and uniformity of result and so that meaningful settlement of the entire suit may be effected. "Piecemeal resolution of related issues by different forums is unsuitable to the ends of substantial justice." Greater New York Mut. Ins. Co. v. Anchor Const. Co., supra.

Additionally, although we need not specifically decide the issue, the Court finds that the claim asserted by Horne Spray Company, Inc., is not a separate and independent claim which would be removable under Section 1441(c). The effect of the chemical spray is a central issue in both cases. In the State Court action defendant, Horne Spray Company, Inc., in its cross-petition against Amchem Products, Inc., prays "that in the event Plaintiffs receive judgment against Defendant, then the Defendant Amchem Products, Inc., should be Ordered to pay said judgment" It is obvious, therefore, that the cross-action sought to be removed herein is dependent and inter-related to the original cause of action.

In light of the above, it is the determination of the Court that Case No. 75-C-281 should be remanded to the District Court of Rogers County, State of Oklahoma.

It is so Ordered this 12th day of September, 1975.



H. DALE COOK
United States District Judge

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 74-C-601 ✓

National Association of Letter Carriers, Branch 1358,

Plaintiff,

vs.

United States Postal Service, and Leon Alexander,

Defendants.

JUDGMENT

FILED

SEP 15 1975

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

This action came on for trial (hearing) before the Court, Honorable H. Dale [unclear], United States District Judge, presiding, and the issues having been duly tried

(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the Plaintiff's request for a restraining order and permanent injunction is hereby denied, and the Defendants shall recover of the Plaintiff their costs of action.

Dated at Tulsa, Oklahoma, this 15th day of September, 1975.

Jack C. Silver
Clerk of Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOHN T. DUNLOP, Secretary of Labor,)
United States Department of Labor,)
Plaintiff)

v.)

T & T TRUCKING, INC., a corporation,)
BILL THARP, individually, presi-)
dent and LLOYD THARP, individually,)
vice-president,)
Defendants)

Civil Action

No. 74-C-399

FILED
SEP 15 1975

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

J U D G M E N T

Plaintiff has filed his complaint against T & T Trucking, Inc., a corporation, Bill Tharp, individually, president, and Lloyd Tharp, individually, vice-president. Thereafter, plaintiff and defendants announced that they have reached an agreement in this matter, and it appearing to the Court that plaintiff and defendants are in agreement that this judgment should be entered, it is therefore,

ORDERED, ADJUDGED and DECREED, that the above styled and numbered cause, insofar as it relates to Lloyd Tharp, be, and it hereby is dismissed. It is further,

ORDERED, ADJUDGED and DECREED that defendants T & T Trucking, Inc., and Bill Tharp and their agents, servants, employees and those persons in active concert or participation with them are permanently enjoined and restrained from violating the provisions of sections 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), hereinafter referred to as the Act, in any of the following manners;

I

Defendants shall not, contrary to the provisions of section 7 of the Act, employ any employee engaged in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than 40 hours unless defendants compensate such employee for employment in excess of 40 hours in a workweek at a rate not less than one and one-half times the regular rate at which such employee is employed.

II

Defendants shall not, contrary to the provisions of section 11(c) of the Act, fail to make, keep and preserve the records required by the Code of Federal Regulations, Title 29, Part 516.

It is further ORDERED, that defendants be enjoined and restrained from withholding payment of overtime compensation in the total amount of \$8,000.000, which the Court finds to be due under the Act to defendants' employees. The provisions of this paragraph shall be deemed satisfied when the defendants deliver to the plaintiff's Regional Solicitor a certified or cashier's check, payable to "Employment Standards Administration, Labor" in the total amount of \$8,000.00. Such payment is ordered to be made within thirty days of the entry of this judgment.

It is further ORDERED, that plaintiff, upon receipt of such certified or cashier's check from the defendants, shall promptly proceed to make distribution, less income tax and social security withholdings, to defendants' employees, or to the legal representative of any deceased person so named. If, after making reasonable and diligent efforts to distribute such amounts to the person entitled thereto, plaintiff is unable to do so because of

inability to locate a proper person, or because of a refusal to accept payment by any such person, plaintiff, pursuant to 28 USC section 2041, shall deposit such funds with the Clerk of this Court. Any such funds may be withdrawn for payment to a person entitled thereto upon order of this Court.

It is further ORDERED, that defendants will pay the costs of this action.

DATED this 12th day of September, 1975.

15/ H. Dale Cook
UNITED STATES DISTRICT JUDGE

Entry of this order is consented and agreed to:

William J. Kilberg
WILLIAM J. KILBERG
Solicitor of Labor

Ronald M. Gaswirth
RONALD M. GASWIRTH
Regional Solicitor

Harvey M. Shapan
HARVEY M. SHAPAN
Attorney

Attorneys for Plaintiff

John A. Cochran
JOHN A. COCHRAN
Attorney for Defendants

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

ELMER GENE MANUEL,

Petitioner,)

vs.)

UNITED STATES OF AMERICA,

Respondent.)

75-C-423

No. ~~70-CR-40~~

FILED

SEP 15 1975

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

MEMORANDUM AND ORDER

Petitioner herein has filed a petition for relief pursuant to 28 U.S.C. §2255. Petitioner is confined in the United States Penitentiary at Leavenworth, Kansas, under a ten-year sentence imposed by Judge Frank G. Theis, of the United States District Court for the District of Kansas, while sitting as a visiting or transferee Judge in the United States District Court for the Northern District of Oklahoma.

Petitioner challenges the validity of his conviction and demands vacation of his sentence. In support of this challenge, he alleges the Court failed to give a cautionary instruction on the limited use of hearsay testimony in proving participation of each defendant in the conspiracy alleged. He further claims the failure to so instruct the jury in his case is plain error under Rule 52(b) of the Federal Rules of Criminal Procedure.

In his petition the petitioner summarizes statements of two witnesses who testified against him at his trial. It is the testimony of these two witnesses which petitioner alleges should have been limited in effect by a hearsay instruction. Briefly, each witness stated he knew petitioner personally; one said he had purchased heroin from petitioner once; one that he had done so three or four times; one witness stated petitioner

had introduced him to a third person from whom he had purchased heroin; and that petitioner had also accompanied the witness on a trip to purchase heroin. None of the statements alleged, however, appear to in any way involve hearsay. Rather, they are direct recitations of the witnesses' own experiences with petitioner, and as such, in no way call for an instruction as to hearsay.

IT IS THEREFORE ORDERED that leave to proceed without prepayment of fees is granted, and the Clerk shall file the pleadings currently lodged.

IT IS FURTHER ORDERED that the action so filed be, and the same is hereby, dismissed.

At Wichita, Kansas, this 11th day of September, 1975.

S/ FRANK G. THEIS

~~FRANK G. THEIS~~
United States District Judge

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

ELMER GENE MANUEL,

Petitioner,)

vs.)

UNITED STATES OF AMERICA,

Respondent.)

75-C-423
No. ~~70-CR-40~~

FILED

SEP 15 1975

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

MEMORANDUM AND ORDER

Petitioner herein has filed a petition for relief pursuant to 28 U.S.C. §2255. Petitioner is confined in the United States Penitentiary at Leavenworth, Kansas, under a ten-year sentence imposed by Judge Frank G. Theis, of the United States District Court for the District of Kansas, while sitting as a visiting or transferee Judge in the United States District Court for the Northern District of Oklahoma.

Petitioner challenges the validity of his conviction and demands vacation of his sentence. In support of this challenge, he alleges the Court failed to give a cautionary instruction on the limited use of hearsay testimony in proving participation of each defendant in the conspiracy alleged. He further claims the failure to so instruct the jury in his case is plain error under Rule 52(b) of the Federal Rules of Criminal Procedure.

In his petition the petitioner summarizes statements of two witnesses who testified against him at his trial. It is the testimony of these two witnesses which petitioner alleges should have been limited in effect by a hearsay instruction. Briefly, each witness stated he knew petitioner personally; one said he had purchased heroin from petitioner once; one that he had done so three or four times; one witness stated petitioner

had introduced him to a third person from whom he had purchased heroin; and that petitioner had also accompanied the witness on a trip to purchase heroin. None of the statements alleged, however, appear to in any way involve hearsay. Rather, they are direct recitations of the witnesses' own experiences with petitioner, and as such, in no way call for an instruction as to hearsay.

IT IS THEREFORE ORDERED that leave to proceed without prepayment of fees is granted, and the Clerk shall file the pleadings currently lodged.

IT IS FURTHER ORDERED that the action so filed be, and the same is hereby, dismissed.

At Wichita, Kansas, this 11th day of September, 1975.

S/ FRANK G. THEIS

~~FRANK G. THEIS~~
United States District Judge

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

ROBERT J. CARAWAY,)
)
 Plaintiff,)
)
 v.)
)
 TIMBERLAKE, INC., et al.,)
)
 Defendants.)
 _____)

No. 72-C-19

FILED
IN OPEN COURT
SEP 12 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

On this 12 day of Sept., 1975, there came on for hearing before the Court pursuant to notice to all interested parties the Application for Judgment in Accordance With Pre-Trial Order filed by Leslie McCown and Chester F. and Phyllis Lenik, representatives of the Intervening Plaintiff Class ("Intervenors"). The Court, having reviewed the Application and having heard the statements of counsel, finds:

1. The Intervenors are entitled to judgment against Heidler Corporation and Timberlake, Inc. in accordance with the stipulation in Paragraph IID of the Pre-Trial Order entered May 9, 1975.
2. All issues set forth in the Pre-Trial Order remaining to be litigated have been resolved.
3. Proofs of Claim have been timely filed by the members of the Intervening Class totaling \$138,608.79 and said claims as filed should be allowed.
4. Proofs of Claim listed in the Application For Approval of Certain Late Filed Claims filed August 25, 1975, were filed subsequent to July 15, 1975, the last date for filing claims as set by the Court, totaling \$8,417.42. The Proofs of Claim were untimely filed through no fault of the individual claimants and said claims as filed should be allowed.

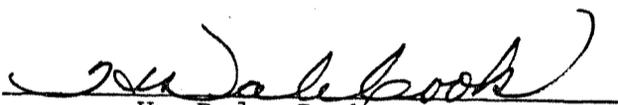
5. The amount of \$15,441.31 representing attorneys' fees and costs of the Intervenor is fair and reasonable, and should be allowed.

IT IS THEREFORE ORDERED:

1. The Proofs of Claims heretofore filed by the members of the Intervening Plaintiff Class, including the late filed claims, are approved and the Court Clerk is directed to accept for filing the claims listed in the Application For Approval of Certain Late Filed Claims;

2. In accordance with Paragraph IID of the Pre-Trial Order, the Intervening Plaintiff Class is entitled to attorney's fees and costs in the amount of \$15,441.31.

3. The Intervening Plaintiff Class have and recover from Heidler Corporation and Timberlake, Inc., the sum of \$147,026.21, together with interest at the rate of ten percent (10%) per annum from January 24, 1972, until paid, plus attorney's fees and costs in the amount of \$15,441.31, all of which constitutes a lien on the property and the proceeds of the sale thereof, the priority of which is governed by this Court's orders previously entered determining the priority of the liens of the various claimants in this action.



H. Dale Cook

United States District Judge

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

INTERSTATE COMMERCE COMMISSION,)
)
) Plaintiff,)
)
 vs.)
)
) KENNETH PLACE DOING BUSINESS AS)
) KENNETH PLACE LEASING COMPANY,)
)
) Defendant)

CIVIL ACTION NO. 75-C-343 ✓

FILED
SEP 12 1975

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

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND PERMANENT INJUNCTION

This cause having come on for consideration by the Court, upon the Complaint of the plaintiff which is represented by its attorney, Simon W. Oderberg, and the subjoined consent of the defendant who is represented by his attorney, Georgia K. Elrod, the Court, upon consideration thereof, now makes and enters the following:

FINDINGS OF FACT

1. This action is brought by the Interstate Commerce Commission under the provisions of 49 U.S.C. 322(b)(1), and under the general laws and rules relating to suits in equity arising under the Constitution and the laws of the United States.
2. That defendant Kenneth Place is an individual residing in West Siloam Springs, Oklahoma, with a mailing address of Route 5, Siloam Springs, Arkansas 72761, and is within the jurisdiction of this Court pursuant to 49 U.S.C. 322(b)(1)
3. That at all times herein mentioned, defendant Place was and is engaged in the transportation of property as a motor carrier in interstate or foreign commerce by motor vehicle for compensation on public highways between points and places throughout the United States, including points in the Northern District of Oklahoma within the jurisdiction of this Court and subject to the provisions of Part II of the Interstate Commerce Act, 49 U. S. Code, Section 301 et seq.
4. That on various dates and numerous occasions, the defendant Place has been and is holding himself out to transport

4/

and has transported polyester resins, these being nonexempt commodities, from Interplastic Corporation at Pryor, Oklahoma, to Amaco at Denver, Colorado, for transportation charges of \$550.00 per shipment.

5. That at all times herein mentioned, there was not in force and there is not now in force with respect to defendant Place a certificate of public convenience and necessity, or a permit, or any other authority issued by the Interstate Commerce Commission authorizing the transportation and operations herein described.

6. The defendant herein is consenting to the entry of these Findings of Fact, Conclusions of Law, and Permanent Injunction for the purpose of terminating this proceeding and avoiding the expense and time involved in the trial of this case. However, this consent is given with the full understanding of the consequences that could result for any future violation of this injunction.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter of this action by virtue of the provisions of 49 U.S.C. 322(b)(1), and under the general laws and rules relating to suits in equity arising under the Constitution and the laws of the United States.

2. The above-described transportation activities of the defendant constitute violations of 49 U.S.C. 303(c) and 306(a) or 309(a), and, as such, are subject to be enjoined by this Court on the application and suit of plaintiff under the express provisions of 49 U.S.C. 322(b)(1).

PERMANENT INJUNCTION

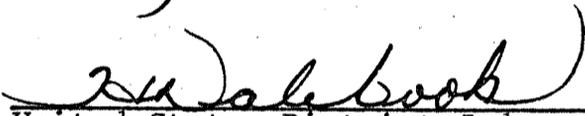
It is hereby ORDERED, ADJUDGED and DECREED that there be judgment in favor of plaintiff, Interstate Commerce Commission, and

(a) That the defendant Kenneth Place doing business as Kenneth Place Leasing Company, his agents, employees, representatives and all persons, firms, companies, and corporations, and

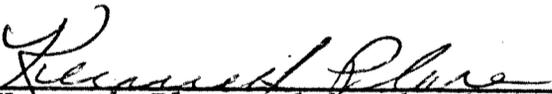
their respective officers, agents, servants, employees and representatives, in active concert or participation with him, be, and he is hereby, perpetually enjoined and restrained from, in any manner or by any device, directly or indirectly, transporting or holding themselves out to transport property other than exempt and nonregulated commodities in interstate or foreign commerce, by motor vehicle, for compensation, on public highways as for-hire, common or contract carriers by motor vehicle, unless and until such time, if at all, as there is in force with respect to said defendant herein and such other persons, firms, companies, and corporations, a certificate of public convenience and necessity, a permit or other form of authority issued by the Interstate Commerce Commission authorizing such transportation; and

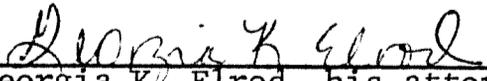
(b) That after one year from date hereof defendant may apply to the Court for the vacation of this Permanent Injunction upon a showing that he has been in compliance therewith during such period.

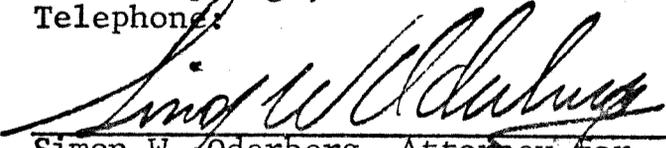
Signed this 12th day of September, 1975.


United States District Judge

The entry of the foregoing is consented to by the defendant and the factual statements therein are admitted to be true and correct.


Kenneth Place, doing business as
Kenneth Place Leasing Company


Georgia K. Elrod, his attorney
P. O. Drawer 580
Siloam Springs, Arkansas 72761
Telephone:


Simon W. Oderberg, Attorney for
Plaintiff
Room 9A27 Federal Building
Fort Worth, Texas 76102
Telephone: 817-334-2837

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

ROBERT J. CARAWAY,

Plaintiff,

vs

TIMBERLAKE, INC., an Oklahoma
corporation, HEIDLER CORPORATION,
a Delaware Corporation, JAMES W.
HEIDLER, ATLAS LIFE INSURANCE CO.,
an Oklahoma Corporation, WARREN L.
ALBERTY, MARGUERETTE J. ALBERTY,
CHARLES ANDREW VANCE and PHYLLIS
N. VANCE,

Defendants.

No. 72-C-19

FILED
IN OPEN COURT
SEP 12 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

This cause came on for hearing upon regular setting this 12th day of September, 1975, the Plaintiff Robert J. Caraway being present by and through his attorney, Sam P. Daniel, Jr.; the Defendants Heidler Corporation and Timberlake, Inc. appearing by and through its attorney James M. Sturdivant; the Defendants and Cross-Plaintiffs Warren L. Alberty and Marguerette J. Alberty (the "Albertys") appearing by and through their attorneys, Pearson, Caldwell & Green; the Defendants and Cross-Plaintiffs Charles Andrew Vance and Phyllis N. Vance (the "Vances") appearing by and through their attorney, James Follens; the Defendant and Cross-Plaintiff, Atlas Life Insurance Company ("Atlas") appearing by and through its attorney, Dickson M. Saunders; the Cross-Defendant, James W. Heidler, appearing by and through his attorney, Robert S. Rizley; and the Intervening Plaintiffs, Leslie McCown and Chester and Phyllis Lenik (the "Intervenors") appearing by and through their attorney, Frederic Dorwart.

The Court after reading the pleadings and stipulations in the pretrial order herein and after hearing argument of counsel,

finds that Charles A. Vance and Phyllis N. Vance shall have judgment against the defendants Timberlake Inc., Heidler Corporation and James W. Heidler, individually, on the original principal amounts of notes executed by them; a promissory note dated December 28, 1970, in the original amount of \$50,000.00 and a note dated December 28, 1970, in the original amount of \$147,350.00, on which there is due and owing on the unpaid balance and accrued interest to January 31, 1975, the sum of \$230,717.01 with interest accruing after January 31, 1975, at the rate of \$49.0668 per day, and an attorney's fee as allowed by the court in the sum of \$18,737.29 and that the notes were secured by a mortgage and is a good and valid third mortgage lien upon the real property set out herein.

The Court finds that in accordance with the Judgment heretofore entered on the 8th day of May, 1975, that the mortgage lien of Charles A. Vance and Phyllis N. Vance is junior and inferior to the first mortgage lien of Atlas Life Insurance Company and the second mortgage lien of Warren L. Alberty. That on the 8th day of May, 1975, the defendants Charles A. Vance and Phyllis N. Vance entered into a stipulation and compromise of the dispute between the Intervenor and Charles A. Vance and Phyllis N. Vance wherein the Intervenor were to have a priority of \$35,000.00 which stipulation after notice of compromise and settlement as provided by the Order of court, was duly approved and entered and the remaining balance of the Intervenor's claims as determined at a future date were to be junior and inferior to the third mortgage lien of Charles A. Vance and Phyllis N. Vance.

The Court further finds that there remains the issue to be determined of the amount of the Intervenor's claims and the allowance of delayed filing of some of the Intervenor's and attorney fees to be allowed to the attorney for the Intervenor and this matter is not ready for judgment.

The Court further finds that because of an issue remaining to be tried with regard to the plaintiff's certain claims contained in plaintiff's Complaint, are also not ready for judgment.

The Court further finds that the rights of the Intervenor and the plaintiff will not be affected by the entry of judgment for the Defendants and Cross-Petitioners Charles A. Vance and Phyllis N. Vance and the reservation of judgment as to the other parties.

The Court further finds that judgment has heretofore been entered on the 8th day of May, 1975, in favor of Atlas Life Insurance Company in the sum of \$77,252.69 with interest at the rate of 10% per annum until paid and attorney's fees and judgment has heretofore been entered for Warren L. Alberty and Marguerette J. Alberty in the sum of \$71,447.80 with interest at 10% per annum until paid, their costs of the action and attorney's fees and that the real estate has been ordered sold and that confirmation of sale is now pending.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That Charles A. Vance and Phyllis N. Vance have and recover judgment of and from the Defendants Timberlake, Inc., Heidler Corporation and James W. Heidler, Individually, for the sum of \$230,717.01 with interest to and including January 31, 1975, and interest accruing thereafter at the rate of \$49.0668 per day and that the same is a good and valid third mortgage lien on the real estate herein.

2. That said property be sold according to law as heretofore ordered and that the proceeds of the sale be applied in the following manner:

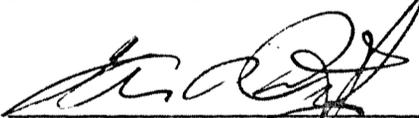
- A. In payment of the costs of sale and the costs of this action accrued and accruing.
- B. In payment to atlas life Insurance Company in the sum of of \$77,252.69 with interest and attorneys fees as hereinbefore adjudged.
- C. In payment to Warren Alberty and Marguerette Alberty in the sum of \$71,447.80 with interest and attorneys fees as hereinbefore adjudged.

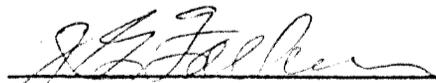
- D. To be deposited with the U. S. District Court Clerk the sum of \$35,000.00 for the use and benefit of the Class Action Intervenors.
- E. In payment to Charles A. Vance and Phyllis in Vance in the sum of \$230,717.01 with interest accruing from January 31, 1975 at the rate of \$49.0668 per day until paid and attorney's fee in the sum of \$18,737.29.
- F. The residue from the proceeds of said sale to be paid into Court to abide the further order of Court.

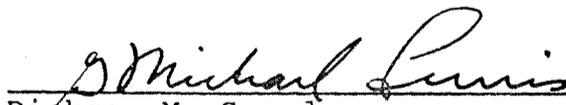
3. That from and after the sale of said land and tenements, under and by virtue of this judgment and decree, that Warren L. Alberty and Marguerette J. Alberty, Charles Andrew Vance and Phyllis N. Vance, the class of the Intervening Plaintiffs, Heidler Corporation and Timberlake, Inc. and Robert J. Caraway, and each of them, and all persons claiming by, or through them since the commencement of this action, be and are forever barred and foreclosed from all lien upon, right, title and interest, estate or equity of or in and to said land and tenements or any part thereof.

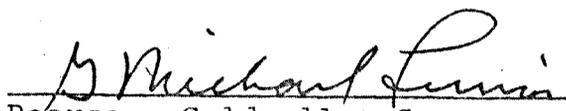

UNITED STATES DISTRICT JUDGE

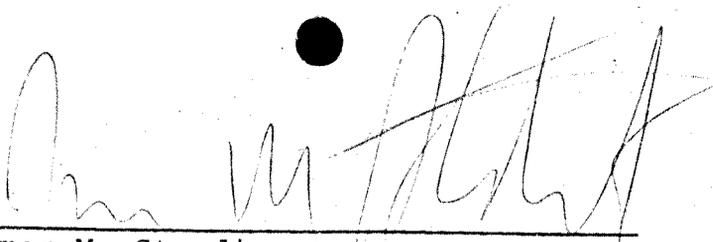
APPROVED AS TO FORM AND CONTENT:


Sam P. Daniel, Jr.
Attorney for Robert J. Caraway


J. G. Follens
Attorney for Charles & Phyllis Vance


for Dickson M. Saunders
Attorney for Atlas Life Insurance Co.


for Pearson, Caldwell & Green
Attorneys for Warren and
Marguerette Alberty



James M. Sturdivant
Attorney for Heidler Corporation
and Timberlake, Inc.



Robert S. Rizley
Attorney for James W. Heidler



Frederic Dorwart
Attorney for Intervening Class

IEU:lch
9/9/75

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

SCHLAGE LOCK CORPORATION, a)
corporation,)
)
Plaintiff,)
)
-vs-)
)
AMERICAN BUILDERS SUPPLY, INC.,)
a corporation,)
)
Defendant.)

No. 75-C-302

FILED
SEP 12 1975

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

JUDGMENT

THIS action came on to be heard in open court on this
_____ day of September, 1975, on motion of the plaintiff for default
judgment pursuant to the Federal Rules of Civil Procedure; and it
appearing to this Court that the Complaint in this action was filed
on the 9th day of July, 1975; that a Summons and Complaint was duly
served upon the defendant as required by law on the 14th day of
July, 1975, and it further appearing to the Court that the defendant
has not appeared in this cause and has not answered the Complaint and
the time for answering the same has expired and that heretofore and
on the 21st day of August, 1975, this Court did enter a Show Cause
Order why the Court should not enter a judgment in conformity with
the Complaint and the copy of the same was mailed to the defendant
and the defendant refused to accept the mail of the same, and the
Court having heard the testimony of a witness examined in open
court, finds that an attorney fee in the sum of \$5,000.00 is a
reasonable fee to be allowed in this matter together with a judgment
for the full amount sued for herein.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by this
Court that plaintiff, Schlage Lock Corporation, a corporation, have
and recover a judgment of and against the defendant, American
Builders Supply, Inc., a corporation, for the principal sum of
\$20,852.16, together with interest at the rate of 8% from the 1st
day of May, 1974, until paid, together with the further sum of

LAW OFFICES
UNGERMAN,
GRABEL &
UNGERMAN

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

\$5,000.00 attorneys fees to be taxed as costs for use and benefit of plaintiff's counsel herein together with judgment for all other costs herein expended.

UNITED STATES DISTRICT JUDGE

FILED

SEP 12 1975

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.)
)
 BOARD OF COUNTY COMMISSIONERS,)
 Ottawa County, Oklahoma, and)
 COUNTY TREASURER, Ottawa County,)
 Oklahoma,)
)
 Defendants.)

CIVIL ACTION NO. 75-C-103 ✓

O R D E R

NOW on this 12th day of September, 1975, there came on for consideration the Motion for Summary Judgment filed by the United States of America on August 5, 1975, which Motion was supported by a Brief. After careful consideration of the Complaint, the Answer thereto, the Motion for Summary Judgment and Brief in Support thereof, and the Response of the Defendants to the Motion for Summary Judgment wherein no exception was taken to the argument and authorities cited in the Brief in Support of the Motion for Summary Judgment, the Court finds that said Motion is well taken and should be granted.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Motion of the Plaintiff, United States of America, for Summary Judgment be and same is hereby granted.

Alan E. Barrow

 UNITED STATES DISTRICT JUDGE

bcs

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 11.30 Acres of Land, More)
 or Less, Situate in Nowata)
 County, State of Oklahoma,)
 and Harris C. Mills, et al.,)
 and Unknown Owners,)
)
 Defendants.)

CIVIL ACTION NO. 73-C-294

Tract No. 1316M

FILED

SEP 11 1975

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

J U D G M E N T

1.

NOW, on this 10th day of September, 1975, 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 June 26, 1975, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

This judgment applies to the entire estate taken in Tract No. 1316M, as such estate and tract are described in the Amended Complaint filed in this case.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Amended Complaint filed herein give the United States of America the right, power and authority to condemn for public use the

subject property. Pursuant thereto, on September 4, 1973, the United States of America filed its Declaration of Taking of a certain estate in such tract of land, and on August 23, 1974 filed an Amendment to Declaration of Taking, and title to the estate described in such Amendment should be vested in the United States of America, as of the date of filing such Amendment.

6.

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

7.

The Report of Commissioners filed herein on June 26, 1975, is accepted and adopted as a finding of fact as to subject tract. The amount of just compensation as to the estate taken in subject tract as fixed by the Commission is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estate taken in subject tract and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendants named in paragraph 12 as owners of the estate taken in subject tract are the only defendants asserting any interest in such estate. All other defendants having either disclaimed or defaulted, the named defendants were (as of the date of taking) the owners of the estate condemned herein and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tract, as it is described in the Amended Complaint filed herein, and such property, to the extent of the estate described in such Amended Complaint is condemned, and title thereto is vested in the United States of America, as of August 23, 1974, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the estate taken herein in subject tract were the defendants whose names appear below in paragraph 12, and the right to receive the just compensation for such estate is vested in the parties so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on June 26, 1975, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estate taken in subject tract, as shown by the following schedule:

TRACT NO. 1316M

Owners:

George Wesley Mills -----	1/3
Harris C. Mills -----	1/3
John A. Mills -----	1/3

Award of just compensation

pursuant to Commissioners' Report ---	\$113.00	\$113.00
Deposited as estimated compensation -----	<u>55.00</u>	
Disbursed to owners -----		<u>None</u>
Balance due to owners -----		\$113.00
Deposit deficiency -----	\$58.00	

13.

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 tract as shown in paragraph 12, in the total amount of \$58.00, together with interest on such deficiency at the rate of 6% per annum from August 23, 1974, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tract in this civil action.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tract to the owners, paying each owner 1/3 of the total deposit.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 9.50 Acres of Land, More)
 or Less, Situate in Nowata)
 County, State of Oklahoma,)
 and Harris Mills, et al.,)
 and Unknown Owners,)
)
 Defendants.)

CIVIL ACTION NO. 73-C-295
Tract No. 1317M

FILED
SEP 11 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

1.

NOW, on this 10th day of September, 1975, 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 June 9, 1975, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

This judgment applies to the entire estate taken in Tract No. 1317M, as such estate and tract are described in the Amended Complaint filed in this case.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Amended Complaint filed herein give the United States of America the right, power and authority to condemn for public use the

subject property. Pursuant thereto, on September 4, 1973, the United States of America filed its Declaration of Taking of a certain estate in such tract of land, and on August 23, 1974 filed an Amendment to Declaration of Taking, and title to the estate described in such Amendment should be vested in the United States of America, as of the date of filing such Amendment.

6.

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

7.

The Report of Commissioners filed herein on June 9, 1975, is accepted and adopted as a finding of fact as to subject tract. The amount of just compensation as to the estate taken in subject tract as fixed by the Commission is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estate taken in subject tract and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendant named in paragraph 12 as owner of the estate taken in subject tract is the only defendant asserting any interest in such estate. All other defendants having either disclaimed or defaulted, the named defendant was (as of the date of taking) the owner of the estate condemned herein and, as such, is entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tract, as it is described in the Amended Complaint filed herein, and such property, to the extent of the estate described in such Amended Complaint is condemned, and title thereto is vested in the United States of America, as of August 23, 1974, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owner of the estate taken herein in subject tract was the defendant whose name appears below in paragraph 12, and the right to receive the just compensation for such estate is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on June 9, 1975, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estate taken in subject tract, as shown by the following schedule:

TRACT NO. 1317M

Owner:

Harris C. Mills

Award of just compensation

pursuant to Commissioners' Report ---	\$95.00	\$95.00
Deposited as estimated compensation -----	<u>40.00</u>	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$95.00
Deposit deficiency -----	\$55.00	

13.

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 owner the deposit deficiency for the subject tract as shown in paragraph 12, in the total amount of \$55.00, together with interest on such deficiency at the rate of 6% per annum from August 23, 1974, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tract in this civil action.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tract to Harris C. Mills.

/s/ Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney

FILED

SEP 11 1975 *mm*

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

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
vs.)
)
) JOE SHOOK and SUE SHOOK,)
) husband and wife,)
)
) Defendants.)

CIVIL ACTION NO. 75-C-359 ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 10th
day of September, 1975, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney for the Northern
District of Oklahoma, and the Defendants, Joe Shook and Sue
Shook, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Joe Shook and Sue Shook,
were personally served with Summons and Complaint on August 12,
1975, and that 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 Promissory Note executed and delivered to the Small
Business Administration dated July 10, 1974, in the principal
amount of \$4,200.00.

The Court further finds that the Defendants, Joe Shook
and Sue Shook, made default under the terms of the aforesaid
Promissory Note by reason of their failure to make payments
thereon and that by reason thereof said Defendants are now
indebted to the Plaintiff in the amount of \$4,200.00, together
with interest accrued thereon in the sum of \$217.58 as of
July 23, 1975, and interest accruing thereafter at the rate of
\$0.5833 per day.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Joe Shook and Sue Shook, for the sum of \$4,200.00, together with interest accrued thereon in the sum of \$217.58 as of July 23, 1975, and interest accruing thereafter at the rate of \$0.5833 per day until paid, plus the costs of this action accrued and accruing.


UNITED STATES DISTRICT JUDGE

APPROVED:



ROBERT P. SANTEE
Assistant United States Attorney

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