

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE No. 75-C-341-C

MADGE L. NANCE,

Plaintiff,

vs.

GROUP HOSPITAL SERVICE, an Oklahoma Corporation, d/b/a Blue Cross and Blue Shield of Oklahoma,

Defendant.

JUDGMENT

This action came on for trial before the Court and a jury, Honorable H. Dale Cook, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, in favor of the Defendant;

It is Ordered and Adjudged that the Plaintiff take nothing and that the Defendant recover of the Plaintiff its costs of action.

FILED

MAR 30 1976

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

Dated at Tulsa, Oklahoma, this 30th day of March, 19 76.

[Signature] Clerk of Court

adopted by the Appeals Council (Tr. 5). This action was then reinstated or reopened.

An applicant for Social Security disability insurance benefits has the burden of establishing that he was disabled on or before the date on which he last met the statutory earnings requirements. McMillin v. Gardner, 384 F. 2d 596 (Tenth Cir. 1967). For purposes of Plaintiff's claim "disability" means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or which can be expected to last a continuous period of not less than 12 months. 42 U.S.C. §§416(8) and 423. The scope of this Court's review authority is defined by 42 U.S.C. §405(g). The Secretary's decision must be affirmed if supported by substantial evidence. Gardner v. Bishop, 362 F. 2d 917 (Tenth Cir. 1966); 42 U.S.C. §405(g). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 28 L.Ed. 2d 842, 91 S.Ct. 1420 (1971). Substantial evidence is sufficient evidence to justify, if the trial were to a jury, a refusal to direct a verdict where the conclusion sought to be drawn from the evidence is one of fact for the jury.^{1/} Substantial evidence is less than the weight of the evidence, and the possibility of drawing two inconsistent

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In considering a motion for directed verdict the Court should view all evidence in the light most favorable to the party against whom the motion is made. A verdict should be directed only when the evidence and all the inferences to be drawn therefrom are so patent that the minds of reasonable men could not differ as to the conclusions to be drawn therefrom. Oldenburg v. Clark, 489 F. 2d 839 (Tenth Cir. 1974).

conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Consolo v. Federal Maritime Com., 383 U.S. 607, 16 L.Ed. 2d 131, 86 S.Ct. 1018 (1966).

In conducting an administrative review it is the duty of this Court to examine the facts contained in the administrative record, evaluate the conflicts and make a determination therefrom whether the facts support the several elements which make up the ultimate administrative decision. Nickol v. United States, 501 F. 2d 1389 (Tenth Cir. 1974); Heber Valley Milk Company v. Butz, 503 F. 2d 96 (Tenth Cir. 1974).

In this case the ultimate administrative decision is evidenced by the July 31, 1975 "Hearing Decision" of the Administrative Law Judge (Tr. 7-14). This decision was, simply stated, that the Plaintiff might not be expected to return to his former work, but that he could engage in other substantial gainful activity which existed in the National economy. The issue before the Court is whether this decision is supported by substantial evidence. The elements of proof which should be considered in determining whether Plaintiff has established a disability are: (1) objective medical facts; (2) medical opinions; (3) subjective evidence of pain and disability; and (4) background, work history and education. Hicks v. Gardner, 393 F. 2d 299 (Fourth Cir. 1968). If the evidence establishes that a claimant is, by reason of a disability as defined by the Act, unable to do his former work, the burden of proof shifts to the Secretary to come forward with evidence of the reasonable availability to the claimant of other work which he is able to do. Kirby v. Gardner, 369 F. 2d 302 (Tenth Cir. 1966);

Trice v. Weinberger, 392 F. Supp. 1193 (N.D. Ga. 1975). The relevant evidence contained in this file will be reviewed below.

MEDICAL EVIDENCE

In a report dated February 6, 1973 a Dr. Frank Lewis stated that he had examined Plaintiff numerous times from July 11, 1972 to January 4, 1973 as a result of back pain following minor trauma. Slow recovery was noted. At the last examination Plaintiff was found to be free of pain most of the time but it was noted that physical activity such as lifting, stooping, prolonged sitting or standing caused recurrent pain. Dr. Lewis found that Plaintiff was totally disabled for his former work which was hard physical labor but indicated Plaintiff could do some job that did not involve prolonged standing, lifting, or stooping. (Tr. 192-195).

In a report dated July 12, 1973 a Dr. Robert Roundsaville stated that he had examined Plaintiff and found marked right paraspinal muscle spasm and tenderness in the mid-line of the lumbrosacral area. Motion forward and to the sides was limited. X-ray revealed narrowing at L-5 and S-1. Herniated nucleus polposus at L-5 and S-1 was diagnosed. Dr. Roundsaville stated that Plaintiff was disabled to do his former job and that he should be considered to be disabled. (Tr. 199-200).

An unsigned report from Orthopedic Specialists in Tulsa dated May 16, 1973 states that Plaintiff was limited in motion to the front and sides. Tenderness and muscle spasm of the back was found. X-rays of the lumbar spine were in normal limits.

A lumbar myelogram was performed on June 7, 1973. Degenerative disc disease in L-5 and S-1 was diagnosed. (Tr. 201).

In a report dated November 28, 1973 a Dr. Harry Livingston stated that he had followed Plaintiff since May 1973 for chronic pain in the lower back. This doctor apparently performed the June 7, 1973 myelogram. Plaintiff was treated with traction and exercises. He would progress at times and regress at other times. Degenerative disc disease was diagnosed. (Tr. 204).

In a report dated August 16, 1974 a Dr. Stowell stated that Plaintiff was seen on August 16, 1974. Limited motion in the lower back was found. Gross exaggeration of the problem was noted. Reflexes were equal and active. Plaintiff was nervous and tense. Leg raises were normal. X-ray was normal except for narrowing of the L-5 disc interspace. No evidence of atrophy, paralysis, tremor or weakness in the lower back was found. The diagnosis was ligamentous strain, lumbar, chronic with superimposed psychomatic overlay. No functional limitation was found. (Tr. 205-206).

In a report dated September 24, 1974 a Dr. John Dague stated that he had examined Plaintiff on September 24, 1974. Plaintiff moved slowly and deliberately in an exaggerated manner. Plaintiff was not in pain but stated he had a pulling feeling in his back. Chronic lumbar myofascitis and anxiety state were diagnosed. Dr. Dague felt that Plaintiff could carry on a moderate degree of manual labor. (Tr. 207-208).

Salvatore Russo, a Phd in clinical psychology, both testified and submitted a report. Dr. Russo examined Plaintiff on two occasions. Plaintiff was found to have a dull normal I.Q. His educational level tested out to: spelling 3.3 grades, arithmetic 5.3, and reading 4.8. He suffered from anxiety and depression. Dr. Russo concluded that due to Plaintiff's state of depression and anxiety he would have difficulty in performing a job but that if he took therapy first he could do a job. (Tr. 51-69, 222).

VOCATIONAL DATA

Plaintiff testified that he got to the 9th grade in school (Tr. 107). He last worked in 1972. This work consisted of cutting pipe into precise lengths. He held this job for 8 years. Before that he worked for 2 years as a janitor in the same establishment. Previous to that Plaintiff worked as a truck driver and loader in a junk yard, as a tire changer and in a service station. (Tr. 109-116). At the time of the initial hearing Plaintiff was taking some theology courses at Oral Roberts University (Tr. 88) but had given up this pursuit by the time of the second hearing.

At the second hearing a vocational expert testified as to Plaintiff's ability to engage in substantial gainful activity. This individual stated that, assuming Plaintiff's impairments only interfered with his ability to work to the point of being a nagging irritation instead of being a positive disability, Plaintiff had sufficient skill to do certain types of work and that such work existed in the Tulsa area. The vocational expert stated that Plaintiff could do bench

assembly type work or that he could work as an extruder operator, a light material handler or a deburring machine operator. The vocational expert further testified that, assuming Plaintiff could squat, stoop and kneel with only moderate discomfort and lift up to 25 pounds there was a whole range of light jobs which he could perform. These would include custodial work, service station work and work as a watchman. The vocational expert further testified that the jobs he enumerated existed in substantial numbers in the Tulsa area (Tr. 141-145).

SUBJECTIVE EVIDENCE

At the first hearing Plaintiff testified that he was unable to do work around the house but that he walked for exercise (Tr. 79). Plaintiff testified that he was able to take care of his personal needs (Tr. 82). Plaintiff testified that he was unable to work because of the condition of his back and legs (Tr. 93).

At the second hearing Plaintiff testified that he was injured in 1962 or 1963 when pinned between two trucks but that he recovered from this injury (Tr. 112-113). Plaintiff testified that his back ached continuously and that he took medication for the pain (Tr. 118-120). There was no corroboration of Plaintiff's testimony.

CONCLUSION

The Secretary's decision is supported by substantial evidence. There is no question but that Plaintiff is suffering from degenerative disc disease and that he may be disabled for

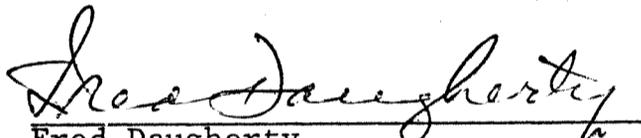
the performance of ordinary manual labor. However, it is also clear that Plaintiff retains the capacity to perform sedentary work and that such work exists in the Tulsa area. There is a sufficient conflict in the medical evidence to allow a reasonable mind to conclude that Plaintiff is not, by reason of his back impairment, disabled from the performance of light or sedentary work. There is some indication that Plaintiff, by reason of his psychological problems, would have difficulty in performing a job. The clinical psychologist who testified as to Plaintiff's mental state testified that it would be difficult for Plaintiff to remain on a job in his then present mental state. However, the medical doctors who examined Plaintiff while noting anxiety or psychomatic overlay did not find that Plaintiff would, by reason of his mental problems, be unable to work.

The opinions of medical experts are merely advisory, the question of a plaintiff's disability being a question of fact for determination by the finder of facts. However, such opinions are very persuasive and are not to be rejected arbitrarily. Collins v. Richardson, 356 F. Supp. 1370 (E.D. Tenn. 1972). In this case there is sufficient conflict in the testimony to justify the Secretary's finding that Plaintiff was not disabled by reason of his mental impairment. The psychologist merely stated that it would be difficult for Plaintiff to hold a job. No medical doctor found this to be the case. The Administrative Law Judge had the opportunity to observe both the psychologist and the Plaintiff. It is the Secretary's task to weigh and credit evidence. On this state of the record it was not error for the Secretary to find that Plaintiff was not disabled from sedentary work by reason of mental impairments.

The vocational expert testified that a person of Plaintiff's education and work experience would be able to perform a number of light and sedentary jobs which existed in the Tulsa area economy. As the Administrative Law Judge found that Plaintiff was not disabled from the performance of light or sedentary work, the Secretary's decision that Plaintiff was able to perform substantial gainful activity is supported by the testimony of the vocational expert.

In view of the foregoing the decision of the Defendant appealed from herein should be affirmed. A Judgment based on this decision will be entered this date.

Dated this 23 day of March, 1976.


Fred Daugherty
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

March 23, 1976

JACK C. SILVER
CLERK

Dr. James Emory Seasholtz
52585 Base Street
New Baltimore, Michigan 48047

Mr. R. L. Davidson, Jr.
900 Sooner Federal Bldg.
Tulsa, OK 74103

Mr. Larry A. McSoud
Center Office Building
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Mr. David Holland
801 NBT Building
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Mr. Dwayne C. Pollard
Mr. Rooney McInerney
1304 Petroleum Club Bldg.
Tulsa, OK 74119

Re: Case No. 73-C-62
Dr. James Emory Seasholtz
vs
Nellie K. Stover, et al

Gentlemen:

Please be advised that the following Minute Order was entered by U. S. District Judge Allen E. Barrow on this date:

"Based on the order heretofore entered affirming the Special Master's Report and the order authorizing the Clerk to pay out the cashier's check, and the Court having been advised that this matter has been settled and the plaintiff having heretofore filed his Dismissal With Prejudice,

IT IS ORDERED that this cause of action is dismissed with prejudice."

Very truly yours,

Jack C. Silver, Clerk

By:

L. Mitman
Deputy Clerk

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE A. H. ROBINS CO., INC. "DALKON SHIELD" IUD PRODUCTS LIABILITY LITIGATION

75-C-478-B
CLERK OF THE PANEL

Mark Timothy Burns and Tennie Blanche Burns v. A. H. Robins Co., Inc., et al., N.D. Oklahoma Civil Action No. 75-C-478-B

FILED

MAR 19 1976

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

CONDITIONAL TRANSFER ORDER

On December 8, 1975, after notice and hearing the Panel transferred 53 related civil actions to the United States District Court for the District of Kansas for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time more than 40 additional actions have been transferred to the District of Kansas. With the consent of that court all such actions have been assigned to the Honorable Frank G. Theis.

It appears from the pleadings filed in the above-captioned action that it involves questions of fact which are common to the actions previously transferred to the District of Kansas and assigned to Judge Theis.

Pursuant to Rule 9 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 65 F.R.D. 253 (1975), the above-captioned tag-along action is hereby transferred on the basis of the hearing held on July 25, 1975, and for the reasons stated in the opinion and order of December 8, 1975, ___ F. Supp. ___, and with the consent of that court assigned to the Honorable Frank G. Theis.

This order does not become effective until it is filed in the office of the Clerk for the United States District Court for the District of Kansas. The transmittal of this order to said Clerk for filing shall be stayed fifteen days from the entry thereof and if any party files a Notice of Opposition with the Clerk of the Panel within this fifteen-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

Patricia D. Howard

Patricia D. Howard
Clerk of the Panel

No objection having been received during the time, the stay and this order shall remain in effect on

MAR 15 1976

Patricia D. Howard
Chief of the Panel

FILED

MAR 18 1976

ARTHUR G. JOHNSON, Clerk

By Arthur G. Johnson Deputy

3.

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

FILED

MAR 19 1976 T

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
-v-)
)
JERRY D. COLSON, ET AL,)
)
Defendants.)

Civil Action No. 75-C-534 ✓

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 19th
day of March, 1976, the plaintiff appearing by Robert P. Santee,
Assistant United States Attorney, and the defendants, Jerry D.
Colson, Sharon L. Colson, and Oscar R. Cummins, appearing not.

The Court, being fully advised and having examined
the file herein, finds that Jerry D. Colson and Sharon L. Col-
son were served by publication, as appears from Proof of Publi-
cation filed herein, and that Oscar R. Cummins was served with
Summons and Complaint on December 3, 1975, as appears from the
Marshal's Return of Service filed herein.

It appearing that the said defendants have failed
to answer herein and that default has been entered by the
Clerk of this Court.

The Court further finds that this is a suit based
upon a mortgage note and foreclosure on a real property mort-
gage 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 Nineteen (19), Block Fourteen (14),
Mohawk Ridge, an Addition to the City of
Tulsa, Tulsa County, State of Oklahoma,
according to the recorded plat thereof.

THAT the defendants, Jerry D. Colson and Sharon L.
Colson, did, on the 7th day of December, 1974, execute and

deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the amount of \$11,250.00, with 9-1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants, Jerry D. Colson and Sharon L. Colson, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than eleven months last past, which default has continued and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the amount of \$11,302.42 as unpaid principal, with interest thereon at the rate of 9-1/2 percent per annum from May 1, 1975, until paid, plus the cost of this action, accrued and accruing.

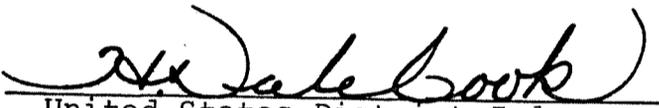
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Jerry D. Colson and Sharon L. Colson, in rem, for the sum of \$11,302.42, with interest thereon at the rate of 9-1/2 percent per annum from May 1, 1975, plus the cost of this action, accrued 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 plaintiff have and recover judgment, in rem, against defendant Oscar R. Cummins.

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 appraisal 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.


United States District Judge

APPROVED.



ROBERT P. SANTEE
Assistant United States Attorney

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

INDEPENDENT SCHOOL DISTRICT)
NUMBER ONE OF TULSA COUNTY,)
OKLAHOMA,)
)
Plaintiff,)
)
vs.)
)
CASPAR W. WEINBERGER, Secretary)
of Health, Education & Welfare,)
)
Defendant.)

No. 75-C-324

FILED

MAR 19 1976

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

O R D E R

The Court has before it for consideration and for final determination plaintiff's Motion for Summary Judgment and Defendant's Motion to Dismiss or in the alternative for Judgment on the Pleadings. Each of the parties has filed briefs in support of their motions, and briefs in opposition thereto have been filed in response. In addition, The League of Women Voters has filed a brief as amicus curiae. On January 16, 1976, a hearing was held in regard to plaintiff's Application For Preliminary Injunction, at which time both parties presented evidence going to the merits of the case. Based upon a thorough examination of the briefs filed and of the applicable law, and after careful consideration of the evidence presented, the Court makes the following determination.

JURISDICTION

In the original Complaint, plaintiff alleged jurisdiction pursuant to 28 U.S.C. § 1346. Plaintiff now seeks to be allowed to amend its Complaint to allege jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1361. Title 28 U.S.C. § 1653 provides that defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts. Further, Rule 15, Federal Rules of Civil Procedure, states that leave to amend

pleadings shall be freely given when justice so requires. Plaintiff is, therefore, granted leave to amend its Complaint.

Title 28 U.S.C. § 1331 provides in pertinent part that the district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the value of \$10,000.00 and arises under the Constitution or laws of the United States. In Board of Education, Cincinnati, v. Department of Health, Education and Welfare, 396 F.Supp. 203 (S.D. Ohio 1975), the plaintiff challenged HEW's determination that plaintiff was ineligible for E.S.A.A. funds. The court held that it had jurisdiction under its federal question jurisdiction, 28 U.S.C. 1331(a). The court in Kelley v. Metropolitan County Board of Education, Tennessee, 372 F.Supp. 528 (M.D. Tennessee 1973), involving a third-party action in regard to the Emergency School Assistant Program, stated that it was clear that the claim was one which "arises under" the Constitution and laws of the United States. In Kelley, however, jurisdiction pursuant to 28 U.S.C. § 1331 was lacking because the jurisdictional amount requirement was not met.

Defendant contends that plaintiff has failed to specifically allege the jurisdictional amount. However, the evidence presented at the hearing on January 16, 1976, clearly shows that the amount in controversy exceeds \$10,000.00.

Therefore, it is the determination of the Court that the Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331.

FACTUAL BACKGROUND

The plaintiff herein, Independent School District Number One of Tulsa County, Oklahoma, brings this action challenging the validity of certain actions taken by the defendant, the Secretary of Health, Education and Welfare, through its Office of Education, in connection with the processing and awarding of

grant applications under the Emergency School Aid Act, 20 U.S.C. 1601 et seq. for the school year 1975-76. Plaintiff alleges that the Office of Education failed to follow its own regulation in administering its 1975-76 grant (hereinafter referred to as E.S.A.A. III) and plaintiff further alleges that the actions taken by defendant were arbitrary and capricious, and contrary to law.

The purpose of the Emergency School Aid Act, as stated by Congress, 20 U.S.C. 1601(b)(1)-(3), is to meet the special needs incident to the elimination of minority group segregation; to encourage the voluntary elimination of minority group isolation in elementary and secondary schools; and to aid school children in overcoming the educational disadvantages of minority group isolation. This purpose was implemented by granting eligible school districts federal funds with which to carry out programs serving these purposes. The entire statutory program was funded yearly by Congress according to a statutory formula. 20 U.S.C. 1603. Under this formula, the State of Oklahoma was allocated \$1,262,080 for basic grants for the 1975-76 school year, E.S.A.A. III.

The Act requires that, in approving applications for funding, the Assistant Secretary for Education must take into account those criteria contained in 20 U.S.C. 1609(c); and in evaluating the applications submitted by the various school districts within a state, is required to compare the districts in regard to relative need and quality of proposed programs. The individual school districts within a state, therefore, compete with each other for the basic grants.

In order for the Assistant Secretary to evaluate relative needs within a particular state, the regulations promulgated under the Act require that the application of each school district be graded, and that point scores be given for the various factors included in 20 U.S.C. 1609(c). The final composite score for each

competing school district is ascertained by adding those points accumulated under subsection (a) of 45 C.F.R. 185.14, for objective criteria, known as statistical points, and those points accumulated under subsection (b) for Education and Programic criteria, known as quality points.

In order to be eligible for funding, the application must meet the requirements set forth in the statute and regulations, and must set forth programs, projects or activities which show sufficient promise of achieving the purpose of the Act. 45 C.F.R. 185.14(c)(2). Before an application may be finally approved, it must receive a minimum quality score and a minimum composite score. The minimum scores for E.S.A.A. III are contained in the regulations at 40 F.R. 20660, May 2, 1975.

The Act, however, also provides that the Assistant Secretary shall not finally disapprove an application without affording the applicant an opportunity to modify its application. 20 U.S.C. 1609(d)(2). In order to comply with this provision, the Office of Education established a procedure for granting E.S.A.A. funds in funding cycles. By regulation, 40 F.R. 20660, May 12, 1975, the Assistant Secretary provided that not less than 20 percent of the state's apportionment for basic grants would be placed in a reserve fund to provide for resubmitted applications.

E.S.A.A. I and II

In administering the funds for the E.S.A.A. I (school year 1973-74) and E.S.A.A. II (school year 1974-75) programs, in effect four cycles were established: a first cycle, a "mini" resubmit cycle, a second cycle, and a reallocation cycle. The determination was made in both E.S.A.A. I and E.S.A.A. II to distribute $66\frac{2}{3}$ percent of the basic grant funds in the first cycle, and $33\frac{1}{3}$ percent of the funds was withheld to be distributed in the second cycle. At the beginning of the first funding cycle, after the applications were graded and received

composite scores, all the applications, including those not attaining a minimum quality and composite score, were placed in rank order according to the composite score by the Project Officer, and were sent to the Regional Commissioner for review. The Regional Commissioner then made a recommendation to the Office of Education in Washington on every application. The Office of Education reviewed them and issued a decision memorandum to the Regional Director as to which projects would be funded in the first cycle. The applications were funded in rank order, provided the applicant had met the minimum score requirements. Funding proceeded down the list in order of rank until the point was reached where the amount requested by the school district next in line exceeded the amount of funds remaining in the first cycle. Those applicants for which only partial funding was available were not immediately funded. However, subsequently, in the "mini" resubmit cycle utilized in E.S.A.A. I and II, these schools were allowed to resubmit their applications revised downward to the amount of funds remaining in the first cycle, so long as the amount remaining was 75 percent of the amount initially applied for. After this "mini" cycle, applicants who ranked below the schools funded and also those who had not met the minimum quality points requirements, were allowed to amend their applications and resubmit them for the second cycle. All of these applications were then re-evaluated and again ranked according to score. Thereafter the funds were distributed according to rank until the fund was exhausted.

Certain states fulfilled all of their requirements in the first funding cycle and had no need for the remaining funds. These funds were, therefore, granted to other states and distributed in a reallocation cycle to school districts which had received only partial funding, pursuant to the "75 percent rule", in order to fund them 100 percent.

The distribution of the grants pursuant to this procedure

of providing a first cycle, a "mini" resubmit cycle, a second cycle, and a reallocation cycle took from four to six months.

E.S.A.A. III

The procedures were modified somewhat in the E.S.A.A. III funding program as a result of the limited time available in which to disburse the funds. In the Congressional appropriation bill for fiscal year 1975, there was no money appropriated for Emergency School Aid. Thereafter, the supplemental appropriation bill was passed and again no money was appropriated for E.S.A. In April, 1975, in a supplemental supplemental bill, the House appropriated \$75,000,000.00 for E.S.A. and the Senate appropriated \$236,000,000.00 and this went to the conference committee. Although the Office of Education did not know what the final budget would be, the Department made a decision in April to proceed to take applications, because it knew the authority of the continuing resolution ended on June 30, 1975, and any money not obligated on June 30 would return to the treasury. The Department also knew it took a school district at least thirty days to prepare an application. Therefore, it published notice on April 11, 1975, that the deadline for receipt of applications for E.S.A. would be May 23, 1975. On May 23, several applicants arrived at the Regional Office hand-carrying their applications between five and thirty minutes late. When this was brought to the attention of the Commissioner of Education in Washington, a decision was made to extend the deadline to June 2, 1975. (It does not appear that any of the Oklahoma school districts filed applications after May 23, 1975.)

Because of the limited time available to disburse the anticipated funds, several procedural changes were made from those implemented in E.S.A.A. I and II. First, the requirement

for a presite grant review by the Program Officer to verify information and ensure the school district's management capability was eliminated. Also, the time allocated for the Regional Director to review the applications was reduced from thirty days to five days. The time given state departments of education to respond to applications was likewise reduced to five days.

Due to the limited time available, it was also determined that the "mini" resubmit cycle utilized in E.S.A.A. I and II, whereby a school district could revise its application downward to the amount of funds available at the end of the first cycle as long as the amount was 75 percent of that originally requested was eliminated. Further, because of the limited time and the elimination of the resubmit cycle, the determination was also made to allocate more money to the first cycle, so that the school districts would have a larger fund for which to compete initially. Therefore, 80 percent of the anticipated funds were allocated to the first cycle, and 20 percent to the second cycle.

In the first cycle of E.S.A.A. III, the applications were ranked as they had been in E.S.A.A. I and II. The funds were disbursed according to this ranking, until insufficient funds remained in that cycle to fully fund the next-ranking applicant. No applicants were partially funded and any application which could not be totally funded was placed in fiscal hold. A school district whose request could not be fully funded was notified by telephone that it was in fiscal hold and that its application would be reconsidered in the second cycle. Such an applicant could either amend its application or "stand" on its original application. All applications were then again ranked for the second cycle, and the funds were disbursed according to rank until the funds were exhausted.

The plaintiff, Independent School District Number One of Tulsa County, Oklahoma, received funding under E.S.A.A. I of

approximately \$724,000.00. Tulsa received approximately \$595,000.00 under E.S.A.A. II. With these funds, the Tulsa School District implemented programs designed to provide assistance to children who were impacted by the integration program in the area of cognitive skills and also to provide beneficial approaches to these skills through counseling, human relations services and assistance to parents and students who would be directly affected by the desegregation of the schools.

In 1975, \$1,262,080.00 was apportioned to Oklahoma for E.S.A.A. III basic grants. Pursuant to the reservation of funds requirement, 20 percent of that amount, \$252,416.00 was reserved for the second funding cycle, leaving \$1,009,664.00 available for funding in the first cycle. Tulsa received a composite score of 68-1/4 in the first cycle. Four school districts ranked above Tulsa on the first cycle and received grants totalling \$331,845.00 leaving a balance of \$677,819.00. Tulsa's request as revised was \$782,425.00, or \$104,606.00 more than the amount remaining at the end of the first cycle. Tulsa was therefore notified that its application had been placed in fiscal hold and that it could amend its application by a specific date, if it wished, to attempt to increase its quality score for the second funding cycle.

When the point was reached in the first funding cycle where the funds remaining were not sufficient to fully fund Tulsa, the remaining \$677,819.00 was placed with the \$252,416.00 previously reserved under the 20 percent reservation of funds regulation. In addition, funds in the amount of \$178,002.00 acquired in reallocation from other states which had fulfilled all their requirements in the first funding cycle and had no need for the remaining funds were added to Oklahoma's allocation. Therefore, the total funds available for the second cycle in Oklahoma for E.S.A.A. III were \$1,108,237.00.

In the first cycle, the Oklahoma City School District

application achieved a composite score of 70-1/2 points. It failed, however, to attain a minimum quality score, and therefore did not qualify for funding in the first cycle. Oklahoma City, as well as eleven other districts which did not qualify in their first submissions, was informed that it was required to amend and resubmit its application in order to attain the minimum score required in order to be ranked for the second funding cycle.

Oklahoma City did amend and resubmit its application. Tulsa did not amend and relied on its original application. The process of ranking the school districts was again carried out for the second funding cycle. In the second funding cycle, Oklahoma City ranked first with 91-1/2 composite points; the Porter School District ranked second with 71-1/2 composite points; and Tulsa ranked third with 68-1/4 points. Based upon this ranking, Oklahoma City was awarded \$1,066,045.00 and Porter received the remaining funds of \$32,192.00.

ISSUES OF LAW

Were Actions Contrary to Regulations

In its Motion for Summary Judgment, plaintiff first contends that the failure of the defendant to grant plaintiff the funds remaining in the first funding cycle was contrary to 45 C.F.R. § 185.14(c)(2). This regulation states in pertinent part:

"In applying the criterion set out in this subparagraph, the Assistant Secretary shall award funds to applicants from a State (whose applications meet such requirements and are of sufficient promise to warrant approval) in the order of their ranking on the basis of the criteria set out in this section until the sums allotted to such State for the purposes of this subpart have been exhausted."

As stated, in the first funding cycle, after the funds were awarded in order of ranking to the top four school districts, \$677,819.00 remained. Tulsa's request as revised was \$782,425.00. Tulsa contends that it should have been allowed to resubmit, as

it had done in previous years, to seek the \$677,819.00 pursuant to the 75 percent rule; and further that the regulation required that the funds in the first funding cycle should have been exhausted.

As stated, in E.S.A.A. I and II the Office of Education provided for a "mini" resubmit cycle for those applicants who could only be partially funded in the first funding cycle, but the exhaustion of the remaining funds in the first funding cycle by partially funding the next-ranked school district was not automatic. In determining whether a school district should be partially funded, the Office of Education had to examine the resubmitted request to determine whether the applicant could effectively carry out its programs with the remaining funds. This was the basis for the decision in E.S.A.A. I and II that no applicant would be partially funded if the remaining funds were not at least 75 percent of the amount originally requested.

Title 20 U.S.C. § 1609 provides that one of the criteria for approval of applications is "the degree to which the program, project, or activity to be assisted affords promise of achieving the purpose of this chapter." Similarly, 45 C.F.R. § 185.14(c)(2) provides that the Assistant Secretary is not required to approve any application that does not meet the requirements of the Act or which sets forth a program, project or activity of such insufficient promise for achieving the purposes of the Act that its approval is not warranted. This requirement that the applicant show that it is able to carry out an effective program with the funds awarded, militates against a finding that the regulation, 45 C.F.R. 185.14(c)(2) should be held to require that the funds remaining in the first funding cycle should be exhausted.

As stated, Title 45 C.F.R. 185.21(c)(2) requires that the funds appropriated by Congress be awarded to applicants until the sums have been exhausted. For this reason, at the conclusion of the second funding cycle, the Porter school district was

awarded the balance of the funds remaining, even though it was thereby only partially funded. While such partial funding must occur at the conclusion of all funding in order to exhaust the appropriated funds in accordance with 45 C.F.R. 185.21(c)(2), such partial funding of a school district regardless of whether it can carry out an effective program should be limited to the conclusion of the program and not be required at the end of the first cycle.

Clearly the regulation does not require that all the funds available be exhausted in one funding cycle, because of the following provisions of 20 U.S.C. § 1609:

"The Assistant Secretary shall not finally disapprove in whole or in part any application for funds submitted by a local educational agency without first notifying the local educational agency of the specific reasons for his disapproval and without affording the agency an appropriate opportunity to modify its application."

An examination of the statutes and of the regulations indicates, therefore, that the Assistant Secretary was required to withhold a portion of the appropriation in order to afford an opportunity to a school district to modify its application. Further, the Assistant Secretary could not properly grant funds unless the school district could carry out an effective program, except that at the conclusion of the distribution of the appropriation, the funds appropriated had to be exhausted. Therefore, it is the determination of the Court that defendant's failure to exhaust the funds available in the first funding cycle was not contrary to statutory provisions or the regulations promulgated thereunder.

Were Actions Arbitrary and Capricious

Title 5 U.S.C. § 706 provides that a reviewing court shall hold unlawful and set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In applying this statute, the court in Sabin v. Butz,

515 F.2d 1061 (10th Cir. 1975) stated:

"Review under this provision of the A.P.A. provokes inquiry whether the administrative decisions were based on a consideration of all the relevant factors and whether there was a clear error of judgment. Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency. The court's function is exhausted where a rational basis is found for the agency action taken."
(cites omitted)

See also Glass v. United States, 506 F.2d 379 (10th Cir. 1974).

As stated in Mourning v. Family Publications Service, Inc., 411 U.S. 356, 93 S.Ct. 1652, 36 L.Ed. 2d 318 (1973):

"That some other remedial provision might be preferable is irrelevant. We have consistently held that where reasonable minds may differ as to which of several remedial measures should be chosen, courts should defer to the informed experience and judgment of the agency to whom Congress delegated appropriate authority."

Therefore, while this Court may feel that the agency might have adopted a more equitable procedure, the only determination to be made by this Court is whether there was a rational basis for the agency's actions.

The evidence clearly shows that due to the conduct of Congress, defendant reasonably anticipated that only a very limited amount of time would be available in which to distribute an appropriation, if passed by Congress. Faced with the apparent deadline of June 30, 1975, the agency determined that the procedures followed in E.S.A.A. I and II had to be modified. The decision was therefore made to eliminate, among other procedures, the "mini-resubmit" cycle. At the same time, and because of the elimination of the resubmit cycle and the time limitation, the agency decided to allocate 80 percent to the first funding cycle rather than the 66-2/3 percent which was allocated in E.S.A.A. I and II. The Court finds there was a rational basis for the procedural changes adopted by the agency in light of the factual situation. Further, the Court notes that had the procedures

utilized in E.S.A.A. I and II been adopted for E.S.A.A. III, the plaintiff would not have been funded. If 66-2/3 percent had been allocated to the first funding cycle approximately \$832,972.00 would have been made available. As stated, four school districts ranked above Tulsa in the first cycle and they were awarded grants totalling \$331,845.00, leaving a balance remaining of approximately \$501,127.00. The revised request of Tulsa was \$782,425.00. Tulsa would not have received funding, therefore, because the amount remaining would not have been 75 percent of the amount requested.

Plaintiff discusses at some length the telephone conversation of June 5, 1975, between Edward Kelson, the Equal Educational Opportunity Program Officer, and Roger Eugene Kruse, Director of Federal Programs for the Tulsa Public Schools. Plaintiff contends that in this conversation Mr. Kruse was only told to reduce Tulsa's overall request, taking into consideration the exceptions that the Regional Office had made to the original application. In response to this request, Tulsa did submit a modified or amended narrative and budget reducing the original request from \$850,000.00 to \$781,000.00. Mr. Kelson testified, however, that when he called Mr. Kruse, he informed Mr. Kruse that the Tulsa application had been placed in fiscal hold and that Tulsa had an opportunity to resubmit an amended application for the second funding cycle if it so desired, and also that Tulsa should submit the revised budget. Mr. Kelson testified further that he informed Mr. Kruse that the deadline for resubmitting an amended application for the second funding cycle was June 16, 1975, at 4:30 p.m.

Based upon the testimony and the evidence submitted by both parties in regard to the conversation, the Court finds that Mr. Kruse was informed of the fact that the Tulsa application was placed in fiscal hold and that Tulsa had the option of amending its application. Furthermore, even if Mr. Kruse had not been so informed, no evidence was presented to indicate that if

Tulsa had amended its application it could have increased its quality points above the 91-1/2 composite score of Oklahoma City.

PUBLIC POLICY CONSIDERATIONS

The Tulsa School District undoubtedly has done a fine job in utilizing the funds provided by the E.S.A.A. I and II programs. As pointed out by the amicus curiae brief filed by The League of Women Voters of Tulsa, Inc., the Tulsa School District established several highly successful programs to meet the needs of the school children in this area in overcoming educational disadvantages and minority group isolation. Unfortunately, many of these beneficial projects cannot be continued without E.S.A.A. III funds. The Court also, however, recognizes that the funds in controversy are meeting similar needs in the Oklahoma City School District. That district has also, no doubt, implemented programs to meet the special needs incident to the elimination of minority group segregation and discrimination.

The parties having presented all the evidence in this matter and the case having been submitted for final determination by the Court upon the pleadings, briefs filed herein, and the evidence presented at the hearing held January 16, 1976, it is the determination of the Court that the procedures established by the defendant were neither contrary to the regulations nor arbitrary and capricious. Plaintiff's Motion for Summary Judgment is therefore overruled. Defendant's Motion to Dismiss is hereby sustained.

It is so Ordered this 19th day of March, 1976.


H. DALE COOK
United States District Judge

FILED

MAR 18 1975

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

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

MARK H. SCHNEIDER,)
)
 vs.) Petitioner,)
)
 RICHARD CRISP, Warden, et al.,)
) Respondents.)

NO. 75-C-406 ✓

O R D E R

The Court has for consideration a pro se, in forma pauperis, proceeding brought pursuant to the provisions of 28 U.S.C. § 2254 by a State prisoner confined in the Oklahoma State Penitentiary, McAlester, Oklahoma. Petitioner attacks the validity of the judgment and sentence imposed by the District Court of Pawnee County, Oklahoma, in Case No. CRF-71-30. After a plea of not guilty to the charge of attempted rape, the petitioner was tried by a jury and upon a finding of guilty of the lesser included offense of assault with intent to commit a felony, he was, on the 6th day of December, 1972, sentenced to three years confinement and directed to pay a fine of \$500.00.

Petitioner sought post-conviction relief of said judgment and sentence and on the 16th day of September, 1974, the District Court of Pawnee County, Oklahoma, entered its Order denying the requested relief. An appeal was perfected and on the 15th day of July, 1975, the Court of Criminal Appeals of the State of Oklahoma rendered its opinion affirming the judgment and sentence of the District Court of Pawnee County, Oklahoma. Schneider v. State, Okl. Cr., 538 P.2d 1088 (1975). Petitioner subsequently filed a petition for rehearing and on the 8th day of August, 1975, the Court of Criminal Appeals of the State of Oklahoma entered its Order denying said petition for rehearing. Petitioner alleges that he has exhausted all remedies available to him in the Courts of the State of Oklahoma.

Petitioner demands his release from custody and as grounds therefor alleges that he is deprived of his rights under the Constitution of the United States of America. In particular, petitioner alleges:

1. That he was denied a speedy trial;
2. That the instructions by the trial Court were improper and prejudicial; and
3. That improper statements were made by the prosecuting attorney at the time of trial.

Petitioner in his first allegation states that he was denied a "speedy trial" in violation of his rights under the Sixth Amendment to the Constitution of the United States of America. This allegation is not supported by the record. A careful review of the record reveals that petitioner was arrested on the 25th day of July, 1971, and was subsequently brought to trial on the 4th day of December, 1972, approximately 20 months later. The question of whether the petitioner has been afforded his constitutional right to a speedy trial requires consideration of the various related and relevant facts.

In the case of Barker v. Wingo, 407 U. S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), the Supreme Court of the United States of America in addressing itself to the issue of "Speedy Trial" stated at page 530:

"The approach which we accept is a balancing test, in which the conduct of both the prosecution and defendant are weighed . . ."

"A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can do little more than identify some of the factors . . . Length of delay, the reason for the delay, the defendant's assertion of his right, and the prejudice to the defendant."

Continuing at page 533, the Court states:

"We regard none of the four factors identified above [length of delay, reason for delay, defendant's assertion of his right, and prejudice to the defendant] as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process. But, because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution."

In light of this authority and under the circumstances of this case, the record conclusively shows that petitioner was provided with as expeditious a trial as possible. A careful review of the record in this case reflects that during the 20 month interim period, the petitioner changed attorneys three times, appeared in two preliminary hearings, and was granted three jury docket changes at his request over the objection of the State. The record also establishes that at no time did petitioner interpose a demand for speedy trial and further shows that petitioner was free on bond for the majority of the time prior to trial. The record reflects that petitioner was not deprived of his constitutional right to a speedy trial and has in effect waived this right by his own actions.

Petitioner's second allegation is that he was denied due process of law as guaranteed by the Constitution of the United States of America in that the trial Court's instructions were inadequate. This claim is based on the fact that the trial Court instructed on the crime of attempted rape, assault with intent to commit a felony, and assault and battery, as lesser included offenses. It appears from the record that petitioner may not have exhausted his State remedies as to the specific basis asserted here regarding the trial Court's instructions, however, he did present objections to instructions to the State appellate Court, and this Court has before it the complete transcript and instructions, and giving the petition the broad interpretation required, the Court finds that the issue should be treated herein. Collateral relief is not available to set aside a conviction on the basis of erroneous jury instructions unless the error had such an effect on the trial as to render it so fundamentally unfair that it constitutes a denial of a fair trial in a constitutional sense. Lorraine v. United States, 444 F.2d 1 (10th Cir. 1971). This Court perceives no such infirmity in this case. It is clear that the giving of said instruction is authorized by the law of the State of Oklahoma. Woodruff v. State, Okl. Cr., 125 P.2d 211 (1942). The record in this case reflects that petitioner's claim relating to the instructions of the trial Court fails to raise an issue of constitutional magnitude.

Petitioner in his third allegation asserts that his constitutional right of Due Process as guaranteed by the Constitution of the United States of America was denied when the prosecuting attorney commented on his failure to produce certain witnesses. Also, petitioner asserts that improper questions directed toward him during cross-examination, regarding his pre-trial silence, violated his constitutional right to remain silent.

The record discloses that the acts by the prosecuting attorney complained of were comprised of questions asked of the petitioner on cross-examination. The questions asked were properly objected to by petitioner's attorney and said objections were sustained by the Court, and no answers were given. Other than the testimony as shown at pages 164-65 and at 196 of the transcript of the trial proceedings, the record is silent as to petitioner's allegation. The Court is of the belief, considering the record in this case in its entirety, with the overwhelming sufficiency

of evidence to support the verdict, that the questions asked were harmless beyond a reasonable doubt in the circumstances of this trial and did not constitute constitutional error. See, Chapman v. State of California, 386 U. S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967).

Moreover, where a State Supreme Court fully and adequately considered a State prisoner's Federal claims on appeal and in post-conviction proceedings, no further evidentiary hearing is necessary in Federal habeas corpus proceedings. Dhaemers v. State of Minnesota, 456 F.2d 1291 (8th Cir. 1972). The Oklahoma Court of Criminal Appeals has fully, adequately, and accurately considered petitioner's propositions and Federal claims, and the record reveals that no further evidentiary hearing in this matter is necessary and that petitioner is not entitled to relief. Putnam v. United States, 337 F.2d 313 (10th Cir. 1964); Maxwell v. Turner, 411 F.2d 805 (10th Cir. 1969); Cranford v. Rodriguez, 512 F.2d 860 (10th Cir. 1975).

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Mark H. Schneider be and it is hereby denied and the case is dismissed.

Dated this 18th day of March, 1976, 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

BERKEY COLORTRAN, INC.,)
Plaintiff,)
v.)
WALTER S. BREWER, Et al,)
Defendants.)

NUMBER: 75-C-410-c

FILED

NOTICE OF DISMISSAL BY PLAINTIFF

MAR 17 1976 *jm*

TO: Gene P. Dennison
and
Robert M. Butler,
ATTORNEYS FOR DEFENDANTS

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

PLEASE TAKE NOTICE that the Plaintiff discontinues
the above-entitled action and dismisses the Complaint without
prejudice.

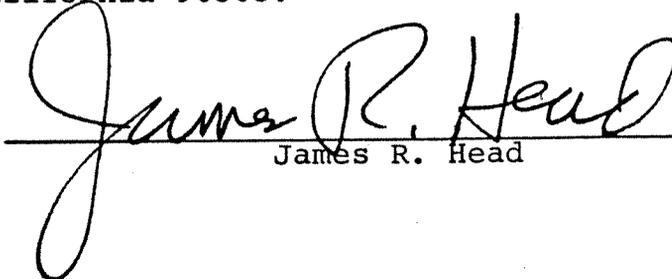
DATED this 15th day of March 1976.



James R. Head
ATTORNEY FOR PLAINTIFF
212 Beacon Building,
Tulsa, Oklahoma 74103
(918) 584-4187

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that, on the 15th day of March
1976, the undersigned mailed a true and correct copy of the
foregoing NOTICE OF DISMISSAL BY PLAINTIFF to GENE P. DENNISON
and ROBERT M. BUTLER, 124 South Denver, Tulsa, Oklahoma 74103,
Attorneys for Defendants, and to WARREN M. McCONNICO, 4815
South Harvard, Suite 350, Tulsa, Oklahoma 74135, Attorney for
Trustee-in-Bankruptcy, and to DON B. FINKELSTEIN, 700 South
Flower Street, Suite 508, Los Angeles, California 90017, and
GERALD TARLOW, Tarlow and Tarlow, 3812 Sepulveda Boulevard,
Suite 400, Torrance, California 90505.



James R. Head

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

Jack C. Silver, Clerk

EUGENE ANTHONY NOLAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER

RECEIVED	U. S. DISTRICT COURT
	NO. 75-C-247
	MAR 18 1976
U. S. ATTORNEY	

obtained from US atty office 3-28-76

This Court has herein for consideration a motion pursuant to 28 U.S.C. § 2255 of Eugene A. Nolan falling pursuant to regular case assignment to me, Allen E. Barrow, Chief Judge, United States District Court for the Northern District of Oklahoma.

Respondent has filed a motion for reassignment to the Honorable Fred Daugherty on grounds that the § 2255 motion is based on conviction by jury of Eugene A. Nolan in criminal Case No. 14,406 prosecuted in 1966 and 1967 in this Northern District of Oklahoma in which Judge Daugherty was the trial and sentencing Judge.

Petitioner responds requesting Government's motion for reassignment be denied on grounds that this § 2255 proceeding is a new civil case and assignment in the sentencing District is principally a matter of logistics, in which the Chief Judge has the duty and responsibility for case assignments.

It is my clear recollection that, at and near January 8, 1975, the time of the robing of the Honorable H. Dale Cook, the new resident Judge in this Northern District of Oklahoma, Judge Daugherty most explicitly and emphatically stated that he would no longer accept any civil cases in this District and would promptly transfer a number of cases then pending and assigned to him to Judge Cook.

I am informed by the Court Clerk that this § 2255 proceeding under consideration was originally filed in the criminal case, CR 14,406, and that it was correctly returned by Judge Daugherty with the instruction to counsel that it be filed as a civil action. It was so filed as this Case No. 75-C-247 and it fell to me. I am told by the Court Clerk, Jack Silver, that he was phoned by Judge Daugherty who stated that he would accept the assignment of the civil action. I informed Mr. Silver that there was undoubtedly some misunderstanding and to ask Judge Daugherty to phone me, as we had signed an Order stating that he should receive no case assignments after January, 1975, from this District, and I could not believe

that he had asked for a specific case. My purpose was to make sure of his wishes so that if he wished to take the § 2255 motions filed in his cases, we could change the assignment Order. To date Judge Daugherty has not called regarding this subject. Although I have every confidence in Judge Daugherty's motives, under such circumstances, the propriety of assigning this case to him, since he asked for it, could be questioned, even though it has been the usual procedure that the trial and sentencing Judge handle § 2255 motions in a case he tried. However, as provided by our Local Court Rules, that is to be done "if possible" and it is not a mandatory procedure, particularly where an assignment Order signed by all the Judges of this District agreed that he should have no further assignments. See, Attachment I. The Judges have taken all precautions to prevent attorneys from "Judge shopping" and we can do no less for "case shopping".

Further, it was the procedure in 1966 and has been since, until January 8, 1975, that I, as Chief Judge, impanel all grand juries and receive their reports. Judges Bohanon and Daugherty assisted with the criminal trials, but pleas, and pre-trial motions, were handled by me prior to turning some cases over for trial only by Judges Bohanon or Daugherty.*

In the criminal Case No. 14,460, challenged by Eugene A. Nolan, I find from personal recollection that I spent equally as much time, if not more, on this proceeding than did Judge Daugherty, which is supported by a review of the criminal file as follows:

1. On September 14, 1966, the grand jury reported the indictment filed against Leroy Dale Hines and Eugene Anthony Nolan, and bail was set at \$15,000 each defendant by Judge Barrow.
2. On September 15, 1966, Defendant Hines was permitted to transfer \$15,000 surety bond posted before the Commissioner to bond in this Cr. 14,406 by Judge Barrow.
3. On September 19, 1966, Defendant Nolan filed bond.
4. On September 27, 1966, Defendant Hines was arraigned and granted 45 days to file motions by Judge Barrow.
5. On October 11, 1966, Defendant Nolan was arraigned, pled not guilty to Counts 1 and 2, and he was granted 60 days to file motions by Judge Barrow.

6. On April 19, 1967, hearing was held and defendants' motions to adopt were sustained; defendants' motions for an Order staying all proceedings and for continuance were overruled by Judge Barrow.

7. On April 20, 1967, hearing was held and defendants' motions for discovery and inspection were held moot; defendants' motions to suppress were sustained as to all evidence except tapes legally obtained by the Telephone Company. Defendant Hines motion for relief from misjoinder and/or prejudicial joinder of offenses was overruled. Defendant Nolan's motion for severance as to Counts 3, 4, 5 and 6 was overruled, and his motion for severance for trial was overruled. Defendants' motions to recuse were overruled, all by Judge Barrow.

8. On April 24, 1967, an evidentiary hearing was held on motions to quash indictment by Judge Barrow.

9. On April 27, 1967, the continuation of the evidentiary hearing on defendants' motions to quash indictment and to strike venire and entire jury list was held and overruled. Defendants' motions to suppress evidence as to telephone tapes were overruled, and the defendants were permitted to listen to the tapes in the custody of the Court Clerk with presence of counsel or their agents under protective Order of the Court. Defendants were also permitted to make copies of the telephone tapes. All by Judge Barrow. This was the first time since 1929 that hearings of this length had been required on criminal pre-trial motions.

10. On May 3, 1967, the Court's Order was entered that various and several motions filed by defendants be sustained in part and overruled in part, and the cause was set for jury trial on Monday, May 22, 1967, at 9:30 a.m. by Judge Barrow.

11. On May 10, 1967, a further hearing was held on motions, and defendants supplemental motion for discovery and inspection and to suppress, were overruled. Defendants' motions for enlargement of the protective Order relating to joint exhibits Nos. 6 through 40, inclusive, were overruled by Judge Barrow.

12. On May 19, 1967, Defendant Leroy Dale Hines withdrew his plea of not guilty and entered plea of nolo contendere to Counts 3 and 5 of the indictment. The Government's objection to the nolo contendere plea was overruled, and Defendant Hines' nolo contendere plea to Counts 3 and

5 was accepted. Defendant Nolan reinstated his motion for severance which the Court sustained, and Counts 1 and 2 of the indictment were severed from Counts 3, 4, 5 and 6, and the defendants were severed for trial. These severance motions were reinstated with the agreement of the Government. The jury trial of Eugene A. Nolan was set for Wednesday, May 22, 1967, at 9:30 a.m. The sentence of Leroy Dale Hines was passed to Wednesday, June 7, 1967, at 10:00 a.m. All by Judge Barrow. Mandamus was filed attempting to stop the trial, but the Tenth Circuit Court of Appeals through the late Honorable Orie L. Phillips refused and the case continued.

13. At this stage of the proceedings, the trial of Eugene A. Nolan, by agreement with Judge Daugherty, was assigned to him.* On May 24, 1967, Judge Daugherty overruled Defendant Nolan's motion to dismiss and to quash and jury trial was commenced and held on May 24, 25, 26 and 27, 1967, with a verdict of guilty returned on Counts 1 and 2 of the indictment.

14. On June 7, 1967, Defendant Leroy Dale Hines appeared before Judge Barrow for sentence and the Government requested that Counts 1, 2, 4 and 6 be non-prossed as to Defendant Hines. The Court accepted the Government's recommendation, and dismissed Counts 1, 2, 4 and 6 as to Defendant Hines. After Edward T. Joyce, Assistant Attorney General of the Department of Justice, Washington, D. C., a member of the Organized Crime Task Force, stated to the Court that Defendant Hines was not a part of organized crime as they contended with respect to Defendant Nolan, the Court placed Defendant Hines on three years probation on Count 3, with the condition that he not associate with any known members of organized crime, and on Count 5 a \$10,000.00 fine was imposed, and it was made a condition of probation on Count 3 that the fine be paid within the period of one year. All by Judge Barrow. See, Attachment II.

15. On June 28, 1967, Judge Daugherty overruled the motion of Eugene A. Nolan for new trial and sentenced him to, on Count One, four years imprisonment and a fine of \$10,000.00, and on Count Two, four years imprisonment and a fine of \$10,000.00, consecutive to the sentence in Count One. Defendant Nolan was granted 60 days to pay the fines. The sentence was Ordered consecutive to the sentence imposed in the United States District Court, Southern District of Texas, or any other Court. Defendant Nolan

was advised of his right to appeal and his appeal bond was fixed at \$15,000.00 cash or surety.

16. On November 2, 1970, the mandate of the Tenth Circuit Court of Appeals was issued affirming the conviction of Eugene A. Nolan. When Certiorari was denied by the Supreme Court of the United States, the defendant was directed to report to the United States Marshal within ten days. On November 16, 1970, defendant failed to appear and arrest warrant was issued by Judge Daugherty. Defendant Nolan's bond was forfeited by Order of the Court dated December 15, 1970.

17. Defendant Nolan was picked up in 1974, and pled guilty to the bond jumping indictment returned by a grand jury reporting to Judge Barrow. In this separate case, No. 71-CR-21, handled by Judge Barrow, Defendant Nolan was sentenced to 36 months, six months in a jail-type institution, and the remainder of the sentence suspended and the defendant placed on probation for 30 months. It was a condition of probation that defendant repay the Ajax Bonding Company for their loss by bond forfeiture when defendant failed to appear in CR 14,406.

18. Defendant Nolan was delivered to the United States Penitentiary, Leavenworth, Kansas, on April 16, 1974, to start service of his sentence in CR 14,406, and this case was closed.

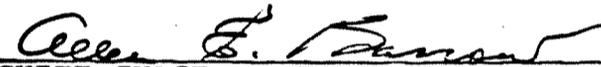
It has seemed provident to set forth the chain of pertinent events herein because there have been newspaper articles in regard to these proceedings asserting "behind-the-scenes" controversy; a "disparity in even-handed justice" for Nolan and a co-defendant, Leroy Dale Hines; and in which the reporter purportedly quoted "court sources", "all court sources", and "one high-level federal source". Under such circumstances it is proper to set out the record and let it speak for itself proving that these proceedings were handled in the commonplace, customary, ordinary and usual procedure, and that they are in no way suspect. It is indeed unfortunate when the work of the Court is presented to the public inferentially and inaccurately, buttressed by purported quotations of phantom "court sources." It seems that we have never had so great a need for a competent, responsible press, and yet we are so often informed by the sensationalism of a headline seeking ambition rather than fact. Nevertheless, the Court can rely on its record, and conduct its duties and

responsibilities undaunted by the contumacy and aspersions of ill-informed critics.

The Court finds that both Judge Barrow and Judge Daugherty are thoroughly familiar with the criminal proceedings in Case No. 14,406 that the full and complete record and transcripts of the proceedings are available and before the Court, and either Judge may competently handle the § 2255 motion under consideration herein. Since Judge Daugherty is accepting no civil assignments from this District, the motion for reassignment should be overruled.

IT IS, THEREFORE, ORDERED that the motion for reassignment of this cause be and it is hereby overruled.

Dated this 18th day of March, 1976, at Tulsa, Oklahoma.


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

*See, Attachment III.

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

FILED

MAY 15 1975 J.

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

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

No. 14,406 ✓

LEROY DALE HINES,

Defendant,

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HAD ON JUNE 7, 1967

SENTENCING

BEFORE THE HONORABLE ALLEN E. BARROW, Judge Presiding

APPEARANCES:

Mr. Edward Joyce, United States Attorney, Department of Justice, Washington, D.C., and Mr. Lawrence A. McSoud, United States Attorney, Northern District of Oklahoma, appeared on behalf of the Plaintiff.

MR. L.K. Smith, Attorney at Law, Tulsa, Oklahoma, appeared on behalf of the Defendant.

LARRY E. MARKS
UNITED STATES COURT REPORTER
TULSA, OKLAHOMA

ATTACHMENT II

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America versus Leroy Dale Hines.

Mr. Smith?

MR. SMITH: Yes, sir.

THE COURT: Mr. McSoud? Mr. Joyce?

Are both of you going to participate?

MR. McSOUD: I think so, Your Honor.

THE COURT: All right.

MR. McSOUD: Is your true and correct name Leroy Dale Hines?

DEFENDANT HINES: Yes, sir.

MR. McSOUD: And, Mr. Hines, you are represented by Mr. L.K. Smith, who has represented you throughout these proceedings, is that correct?

DEFENDANT HINES: Yes, sir.

MR. McSOUD: If the Court please, this matter is on for sentencing; the Defendant having previously entered pleas of guilty to Counts Three and Five within the indictment. Nolo Contendere, he plead, your Honor.

THE COURT: Mr. Smith was just getting ready to correct you. Nolo Contendere.

Then you are ready to proceed?

MR. SMITH: Yes, sir.

THE COURT: The Government is ready to proceed?

1 MR. McSOUD: Yes, sir.

2 THE COURT: Mr. Newt Scott, would you
3 give the presentence report on Leroy Dale Hines.

4 OFFICER SCOTT: Your Honor, Mr. Hines is
5 49 years old. He was born in Arkansas City, Kansas. Lived
6 there during his formative years. He has been in Tulsa for
7 about the past 20 years.

8 He's a graduate of high school; has about a year and
9 a half of college work. He's in good health.

10 He has been twice married; having three children by his
11 first wife. That marriage ended in divorce. He's currently
12 separated from his second wife.

13 During the past 20 years, while residing in Tulsa, he
14 has operated a number of clubs or sporting parlors here. He
15 has an extensive misdemeanor arrest and conviction record
16 having to do with gambling activities in the City of Tulsa.

17 The details of this offense were outlined, or at least
18 portions of it purportedly were outlined, in another trial in
19 this district, along with the investigative file, indicating
20 that Mr. Hines dealt in interstate activities having to do
21 with gambling.

22 Mr. Hines, in interview with Howard Scott, indicated
23 that he had, indeed, carried on the activities with which he
24 was charged for a number of years in furthering his local
25 activities, being unaware that he was violating Federal Statute

1 H does have some assets. has the community
2 resources of having financial assets, living in an area with
3 which he is familliar.

4 I have got little else to report at this time.

5 I would make this addendum, Your Honor. There have
6 been letters mailed both to the Probation Office and the
7 Court's attention from responsible citizens here in Tulsa,
8 among them a C. Dorrough, Paul Schultz, Ray Siegfried, Tom
9 Grant, Jr., giving character references for Mr. Hines.

10 I make that as an open statement so that the Defense
11 counsel and prosecution both are aware that these letters
12 were mailed and received, and they speak in good regard for
13 Mr. Hines.

14 THE COURT: Mr. McSoud?

15 MR. McSOUD: We have nothing to add, Your
16 Honor. I think the Court is familliar with the factual cir-
17 cumstances involved in the case because of the pretrial
18 hearings and other matters involved.

19 I don't know if Mr. Joyce has anything to add. Do you
20 Mr. Joyce?

21 MR. JOYCE: I have nothing to add, Your
22 Honor.

23 THE COURT: All right. I think it would
24 help the Court, before I call on Mr. Smith, the Court is
25 aware of these four other counts. What is the disposition

1 of those. I think I take notice of those.

2 MR. JOYCE: Your Honor, we would move,
3 now, to present the four counts after the sentencing is over.

4 THE COURT: Well, I would rather that
5 be done before sentencing is over.

6 MR. JOYCE: It doesn't really --

7 THE COURT: In other words, I want all
8 the information of the Court available, Mr. Joyce, before
9 I sentence in the record; up till then -- the plea of guilty,
10 as I understand, has already been accepted by the Court,
11 Nolo Contendere. Now, if there are four other counts, if
12 that is the intent, then I want to know prior to sentencing.

13 MR. JOYCE: Well, we will move to now
14 dismiss the four counts.

15 MR. McSOUD: Those are Counts One, Two,
16 Four and Six.

17 THE COURT: All right. The Court does
18 accept the recommendation of the District Attorneys Office
19 on those four counts, and that leaves before this Court,
20 then, the two counts to which the Defendant has entered a
21 plea.

22 MR. McSOUD: Three and five.

23 THE COURT: Three and five. And three
24 and five are "using the mails to promote gambling," in Count
25 Three; and Count Five, "using mails between Chicago, Illinois,

1 and Tulsa, Oklahoma," in Count Five, and Count Three being
2 between Los Angeles and Tulsa. Right?

3 MR. JOYCE: That's right.

4 THE COURT: All right, Mr. Smith.

5 MR. SMITH: Well, if the Court please,
6 this Court is immanently aware of this case, having had the
7 duty to pass upon numerous motions that were filed as Pretria
8 Motions here; heard arguments for some week regarding the
9 various motions that were made; and, I might say, that now
10 we are down to the point where we have for consideration only
11 two counts of the indictment that all the motions were
12 directed toward. These two counts, as I understand it now,
13 are the only matters before Your Honor, and the only matters
14 for determination.

15 There are, naturally, things that can be properly said
16 about a charge or a federal criminal statute at a hearing
17 such as this that would not necessarily be relevant in the
18 determination of guilt or innocence of that same statute. I
19 think it is important to note this statute under which Mr.
20 Hines has entered his plea of Nolo Contendere is a statute,
21 without holding me to the dates, passed somewhere around 1961
22 or '62.

23 Essentially, what he was charged with is this: He has
24 held a Federal Gambling Stamp, as this Court is probably
25 aware, for a period of time. Prior to the time the 18, U.S.C

1 1952, was passed, which is the statute under which he has
2 entered his plea here, there were times when he would order,
3 in the mail, a sheet of paper which had printed on it nothing
4 except -- and this is just a letter size sheet of paper --
5 which would have the names of ball teams printed on it.
6 Nothing more.

7 Now, that is the nature and the essence of the charge
8 to which the plea has been made. One charge was that these
9 matters came to him through the mail from Los Angeles,
10 California, and another from Chicago, Illinois.

11 As I say, a matter such as this, I think, is relevant
12 in a determination at the time of sentence. These pieces of
13 paper, these form sheets, what-have-you, would cost virtually
14 nothing to order. They are capable of being ordered by
15 anyone in this room. It is not a violation of the law, as
16 I understand it, for the manufacturer to make and print and
17 dispurse these.

18 I feel that the Court is entitled to know what kind of
19 thing we are talking about here. We are talking about a
20 transfer in the mail of sheets upon which the names of ball
21 teams are printed. That is essentially what we are discussing
22 I do not mean by this statement to indicate that Mr. Hines,
23 nor I, fail to recognize that under the interpretation of
24 other Courts of this statute, if these are used in a business
25 establishment in which a gambling operation is carried on,

1 that it would be a violation. Yes, it would be. And,
2 accordingly, we recognize that by our plea. But, it is sig-
3 nificant to note that we don't deal here with a situation
4 which connotes, to me, a lack -- lack of regard for moral
5 turpitude at all. I think that we must recognize that there
6 are, indeed, differences in offenses. This offense would
7 carry the same length of time, as far as a maximum sentence,
8 as would the other four counts that have now been dismissed
9 this morning.

10 I might say this. Before the passage of this statute,
11 this would not have been a violation; that which had always
12 been done, not only by this man, but it could have been done
13 I could have ordered these, others in the community do, I
14 understand, obtain these form sheets, not for use in business
15 establishments having to do with gambling, of course, that
16 being the crux of the charge.

17 But, suddenly upon the passage of this statute, this
18 became a violation. It's not a defense to the guilt or
19 innocence that he did not know that it was a violation, but
20 it should be an extremely important, relevant, factor in
21 determining what sentence should be imposed.

22 I'm quite sure that I can say, without any fear of
23 contradiction, that had Mr. Hines known that this rather
24 innocuous act was a violation, it most definitely would have
25 been discontinued. It was certainly not that important to

1 him, in any respect.

2 Now, enough of that. I would like to say to the Court
3 that in the seven, eight, nine months that I have worked with
4 Mr. Hines in regard to this case, I have been very impressed
5 and I'm very certain that I can report to the Court, as an
6 officer of this Court, that Mr. Hines is a thoroughly honest
7 individual. I regard his integrity extremely highly. I am
8 quite sure that he is not a man who would be inclined, in
9 any respect, to violate the criminal law of the state or
10 the federal except for this one area; this area of gambling
11 and bookmaking. He has no previous felony convictions of
12 any sort; of any kind at all. He has served his country in
13 a very normal fashion, I think.

14 He was born and raised just north of here in Arkansas
15 City; attended high school; attended college; served in the
16 armed forces very honorably and with declaration; and has
17 not indicated, in anyway, himself to be a criminal person,
18 as I think of it. The misdemeanor charges are confined soley
19 to gambling arrests and charges over the years. They are
20 all of that nature.

21 Now, I further feel that I can very candidly tell the
22 Court and say to the Court that I regard that which he has
23 here plead guilty to, and that which he has done, as not
24 justifying an institutional sentence from this Court. I do
25 not feel it is justified here. I think that this man is

1 deserving of this Court's leniency.

2 I have, quite candidly, informed Mr. Hines that the
3 activity which gave rise to this charge must be discontinued.

4 I'm quite positive he understands it, and it shall be dis-
5 continued, if I am to believe him, and I do. I regard his
6 word as extremely good, as I say.

7 I think this Court would, under these facts, under
8 these circumstances, particularly under the conclusions that
9 I have drawn and have made over these months, I think this
10 man is deserving of this Court's leniency without the imposi-
11 tion of an institutional sentence.

12 I doubt that I have anything further which I could add
13 which would be of help to the Court.

14 THE COURT: All right.

15 Mr. Hines, what do you have to say in your behalf
16 before the Court imposes sentence?

17 DEFENDANT HINES: Nothing, sir, except I would
18 appreciate any lenience he Court could see fit to give.

19 HE COURT: Well, I have studied this
20 quite thoroughly, and, as you say, I had almost a week of
21 motions involving this case with a co-defendant, and I heard
22 the details of it, and I have seen the action here of a
23 Nolo Contendere plea and dismissal of four others.

24 I have noticed that this man does not have a previous
25 felony conviction. This is true, I assume. The record

1 speaks the record I have before me.

2 Is this true?

3 MR. SMITH: That is true.

4 THE COURT: I have the F.B.I. sheet, as

5 you know, and it doesn't show a felony conviction, nor does

6 the Tulsa Police Department, but one wouldn't have to be

7 very observing to realize he's a gambler.

8 MR. SMITH: True.

9 THE COURT: He's licensed, and the

10 Federal Government provides for licensing -- that is a stamp;

11 a Revenue Stamp. He has always, as I take it, had a Federal

12 Revenue Stamp. So, that isn't involved in this charge.

13 One of the charges dismissed, as I see here, was one
14 where possibly a wrong address was given for application for
15 a stamp. Is that not right?

16 MR. McSOUD: No, that was not in this
17 case.

18 MR. SMITH: That was not in this case.

19 THE COURT: Well, what is the status of
20 that?

21 MR. SMITH: Well, I really am not posi-
22 tive.

23 MR. McSOUD: There has been no indictment
24 in that case. It involves a matter completely outside the
25 indictment in this case.

1 MR. SMITH: There has been no indictment
2 in this case, nor has there been an information filed in it.

3 THE COURT: Well, it appears on my F.B.I.
4 sheet.

5 MR. JOYCE: There was a complaint filed
6 and an arrest made on that.

7 THE COURT: In other words, there has
8 been no action in that at all?

9 MR. JOYCE: Been no further action.

10 MR. McSOUD: No further action.

11 THE COURT: And that was based on the
12 wrongful address, I understand, for a waging stamp?

13 MR. JOYCE: That's correct.

14 THE COURT: That is neither here nor
15 there. He's not been before the Court.

16 MR. SMITH: No, and, in all probability,
17 Your Honor, will probably never be.

18 THE COURT: I have concluded, in listen-
19 ing to all the information before this Court, all the Proba-
20 tion Officer has been able to find for the Court, which has
21 been, I say, quite thorough, and the letters he mentioned
22 from different citizens, the Court recognizes, and all the
23 Federal Courts do, the character witnesses. They speak of
24 him and think of him, interestingly enough, as a Tulsa busine
25 man. And I liken, somewhat, his situation to what I used to

1 feel about bootleggers when this state was dry. If we didn't
2 have people that wanted to gamble, there wouldn't be an
3 occasion to have a bookie. If we didn't have people that
4 wanted to drink, my contention was, there wouldn't be an
5 occasion for bootleggers.

6 But, the thing that impresses me more about your plea
7 for mitigation, in this instance, contrasting it with the
8 other charge of the co-defendant in this case, is I think that
9 the Court certainly, through all the information that has
10 come to the Court's information, through all the hearings in
11 Court, through all the hearings of the motions, addressing
12 themselves to the Court by the Department of Justice to the
13 Assistant Attorney General, who is here, and the U.S. District
14 Attorney here in this Court, has been that this Court feels
15 this man is not linked to organized crime. I have now made
16 that determination. I don't think he is. He denies it,
17 you deny it, and I have nothing affirmative to counteract
18 this denial. In fact, on the contrary, evidence presented to
19 this Court, or comes to this Court's attention, is that he is
20 not linked to organized crime, and I might say to you, Mr.
21 Hines, if this Court thought for one moment that you were
22 linked, in any way, to organized crime, the Mafia, the Costra
23 Nostra, and the related arms of that operation; gambling,
24 prostitution, narcotics and et cetera; I think the plea for
25 mitigation here would be an idle gesture on the part of

1 counsel. I think you have been strictly local, from what I
2 can learn. Any interstate has been, as your counsel explained
3 in the mailing of a letter or getting some bets, or one thing
4 and another; odds on football games or basketball or whatever
5 you said -- baseball games.

6 But, there is no doubt -- We are not going into
7 whether or not you should have entered a plea of Nolo Contendere.
8 That is here. So, you are not saying as to your wisdom
9 or knowledge in the affirmance of your plea.

10 But, I do want it clearly understood that the Court
11 has determined, now, through the study, that you are not
12 linked to organized crime, but I want it clearly understood
13 by you, too, that if the Court thought for a moment you were,
14 I wouldn't even be discussing this thing right now.

15 DEFENDANT HINES: Yes, sir.

16 THE COURT: Because I have seen the
17 evils of it already, and there are so many things that the
18 public, I think, doesn't even know yet involved in the
19 organized crime; the ramifications of the thing. I don't
20 think you have been involved in any of the violence that
21 emanates from those organizations, including threats and
22 deaths. I think you have been strictly in association with
23 the co-defendant, who was apparently linked with it and has
24 been found linked, apparently, by you placing money for your
25 bettors here in Tulsa, and by the necessary association in

1 that bet you have been linked into that situation.

2 Now, the Court allowed severance of those two, and
3 the other co-defendant went to trial and has been found
4 guilty.

5 Now, if there is any view other than that which the
6 Court has stated, I would like to know. If the Department
7 of Justice thinks there is a linkage, for the Court's benefit,
8 with organized crime, I would like to know it. This is what
9 I have determined through all the hearings that there is not
10 a linkage here. But, if the Department of Justice has a
11 different view, I would like to know it, because I want to
12 impose the sentence accordingly.

13 MR. McSOUD: I would have to concede to
14 Mr. Joyce on that aspect, Your Honor, if he has any statement.

15 THE COURT: He might want to concede
16 to you.

17 MR. JOYCE: Your Honor, we have no
18 information that directly links Mr. Hines with the Costra
19 Nostra or the Mafia, other than through his gambling associa-
20 tions. I think that --

21 THE COURT: Well, Mr. Joyce, are you
22 saying to the length that I had determined, then; the associa-
23 tion being the placing of bets that would be the linkage, that
24 he had taken here, to that extent?

25 MR. JOYCE: Insofar as he was dealing

1 with others around the United States in his gambling activities
2 that is the only connection that I know of with organized
3 crime, per say. We have no information about Mr. Hines other
4 than that.

5 THE COURT: Very well.

6 Mr. Hines, you are probably as close as you have ever
7 been to being racked up. You were awfully borderlined, and I,
8 even with your experience in having been around the mulberry
9 bush in your activities, I should think that you would benefit
10 from this experience; that you had an awfully close call to
11 a serious situation here.

12 DEFENDANT HINES: Yes, sir.

13 THE COURT: And I certainly am for the
14 Department of Justice in their complete push -- and there is
15 a push on, obviously, and I am for them completely -- for
16 the routing out of all of this organized crime and the many
17 ramifications associated with it; the many facets associated
18 with it. It is a sore in the democracy's side, Mr. Joyce,
19 as far as I'm concerned, and it's festering. But, when you
20 associate with those, even to the extent that you did, you
21 almost got involved, and you better stay local in nature,
22 un-incorporated, and if you obey the federal law -- that is
23 all that is before me -- but you have been awfully borderlined
24 and in your behalf, I might add, in being consistent, I have
25 always given credence to a man that comes before me with an

1 avoidance of felonys. It is true that you have plenty of
2 charges of the nature of your business, namely gamblene, but
3 that wasn't a violation of federal law and it wasn't a felony.
4 It was treated -- it was apparently looked upon as a fine for
5 gambling.

6 DEFENDANT HINES: Yes, sir.

7 THE COURT: But you have -- you have
8 entered a plea in this case to those charges, although they
9 would be -- as Mr. Smith tried to even make them smaller than
10 the plea, almost, the letters and got back a baseball game --
11 but I don't look at it as that innocent. I don't quite go
12 along that far with you.

13 But, I do see where you have avoided this association,
14 and that you were involved to the extent that you state you
15 were, before this Court, on a Nolo Contendere plea on the
16 two counts.

17 Having that in mind, and having in mind the fact that
18 four other cases were involved against you, and only two
19 counts involved in this; one of mailing a letter to Los
20 Angeles and one mailing a letter to, I believe it was,
21 New York, the Court is going to suspend the imposition of
22 sentence and place you on three years probation.

23 How many counts do I have here?

24 MR. SMITH: Two.

25 MR. JOYCE: Two counts, Your Honor.

1 THE COURT: On Count One --

2 MR. McSOUD: Three and five.

3 THE COURT: Three and five.

4 In Count Three and in Count Five. In Count Five I am
5 going to fine you the sum of \$10,000.00, and as a condition
6 to your probation, on the payment of that \$10,000.00, to be
7 paid within one year. One of the conditions of probation,
8 Mr. Hines, and I might say this to you, Mr. Smith knows me
9 well enough, he has been here as an Assistant District
10 Attorney, it might be better for you if the Court sentences
11 you today than if you go out here and violate this probator
12 because I will tell you right now, I won't have any hesitanc
13 in throwing the book at you if you violate the probation,
14 because that was confidence of the Court. It is not a matte
15 of right that you have.

16 So, I hope you explain the seriousness of this.

17 One of the conditions of the probation is that you.
18 in no manner whatsoever associate with, do business with,
19 or link yourself with, in any manner, interstate with any
20 organized crime; the Mafia or Costra Nostra.

21 DEFENDANT HINES: Yes, sir.

22 THE COURT: Is that understood?

23 MR. SMITH: Yes, sir.

24 THE COURT: That is the judgment of
25 this Court. I hope you prove this Court ro be right.

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DEFENDANT HINES: Thank you, sir.

MR. SMITH: Thank you, Judge.

(PROCEEDINGS CLOSED)

A TRUE AND CORRECT TRANSCRIPT

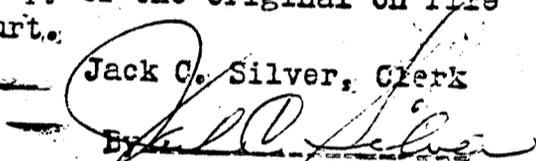
CERTIFIED:


Larry E. Marks
U.S. Court Reporter
Northern District of Oklahoma

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


Deputy

UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

FILED

DEC - 5 1966

IT IS ORDERED THAT:

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

The civil cases shall be divided as follows:

Judge Bohanon	1 case in 5
Judge Daugherty	1 case in 5
Judge Barrow	3 cases in 5.

The Clerk will assign such civil cases when filed in the above numerical sequence and follow such sequence in rotation. Any Judge desiring to transfer a case assigned to him, for any reason including companion cases, will effect the transfer with the Judge to receive the case. The Clerk will furnish each Judge shortly after the first of each month a list of the cases assigned during the previous month. This assignment procedure will be kept confidential.

The criminal business shall be handled as follows:

Judge Barrow shall empanel all Grand Juries and receive their reports. Judges Bohanon and Daugherty will assist Judge Barrow in the trial of criminal cases as arranged between the Judges for each jury docket.

Dated and effective this 2nd day of December, 1966.

Ruth Bohanon
Judge

Fred Daugherty
Judge

Allen E. Barrow
Judge

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 [Signature]
Deputy

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

MAR 17 1976

EUGENE ANTHONY NOLAN,)
)
 vs.) Petitioner,)
)
 UNITED STATES OF AMERICA,)
) Respondent.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT
NO. 75-C-247

O R D E R

The Court has for consideration the motion pursuant to 28 U.S.C. § 2255 on behalf of Eugene Anthony Nolan, a prisoner in the United States Penitentiary, Leavenworth, Kansas. He was found guilty by jury on September 14, 1966, in Case No. CR 14,406, of an indictment charging in Count One conspiracy to use facilities in interstate commerce to carry on a business enterprise involving gambling in violation of the laws of the States of Oklahoma and Louisiana in violation of 18 U.S.C. § 371; and in Count Two of using interstate telephone lines between Oklahoma and Louisiana to promote, manage, carry on and facilitate the promotion, management and carrying on of an unlawful business enterprise involving gambling in violation of the laws of the States of Oklahoma and Louisiana in violation of 18 U.S.C. §§ 1952 and 2. On June 28, 1967, he was sentenced on Count One to four years imprisonment and fine of \$10,000; and on Count Two to four years imprisonment and fine of \$10,000, consecutive to the sentence in Count One. He was released on an appeal bond of \$15,000 cash or surety, and upon affirmance of the conviction by the Tenth Circuit Court of Appeals and denial of Certiorari by the Supreme Court of the United States, he failed to appear as ordered to start service of his sentence. He remained a fugitive for seven years before being taken into custody, and he was delivered to the United States Penitentiary to start service of the said sentence on April 16, 1974.

As grounds for the § 2255 motion, petitioner asserts the following:

1. Newly discovered evidence requiring the vacation of Judgment and a new trial.
2. The indictment, trial, and conviction of the Defendant on the separate counts of conspiracy in Count One and a Substantive Offense which was the object of the conspiracy in Count Two constituted double jeopardy and thus denied the Defendant due process of law.
3. The Court lacked jurisdiction to try and convict the Defendant on the substantive charge in Count Two.
4. The evidence does not support a finding of guilt with regard to all the material allegations of the Government's charge against this Defendant.

5. The sentence imposed was too severe and inconsistent with the basic principles of equal protection of the law.
6. Defendant was denied effective assistance of counsel in violation of the Sixth Amendment of the United States Constitution.
7. The Court had no jurisdiction to try, convict and sentence the Defendant for the reason that the prosecutor in the case was never specifically appointed by the Justice Department as required by law.

The Court will consider each assertion in the Order presented by the petitioner except that assertions Nos. 2, 3 and 7, regarding the Court's jurisdiction, will be considered together.

On the first issue presented that a new trial should be granted on the basis of allegedly newly discovered evidence, the Court finds that the affidavits offered are mere hearsay, and at most would be impeaching, if that, of some of the trial evidence, and nothing more. It is most assuredly not a confession by a stranger absolving petitioner of guilt, nor is it newly discovered since it was known and raised at trial. The purported newly discovered evidence comes long after the two-year period of limitation for a motion for new trial under Rule 33, Federal Rules of Criminal Procedure, and it is even more suspect in that it comes after the statute of limitation has run on the charges in the indictment. The defendant's brother, as well as a co-defendant, whom he now infers will come forward and tell the truth, did not testify during his trial based on their assertion of their constitutional right against self-incrimination, and it does not appear that their testimony would be helpful to the defendant at this time. The petitioner fails to comprehend that the charges on which he stands convicted are (1) conspiracy and (2) aiding and abetting in the use of interstate telephone facilities to carry on an unlawful gambling activity. He is charged in the conspiracy with two named co-conspirators "and with others to the Grand Jury unknown." Once the conspiracy and an overt act in furtherance thereof are proved, as a review of the transcript shows clearly was done in the criminal prosecution, it is not necessary to prove that the petitioner actually spoke to or even knew other co-conspirators. All that need be proved is that the petitioner with understanding of the unlawful character of the agreement or conspiracy, with specific intent, knowingly assisted for the purpose of furthering the unlawful undertaking. He thereby becomes a willful participant and a conspirator.

On the second count, petitioner should remember that he is charged with aiding and abetting, and to be an aider and abettor requires that a defendant associate himself with the illegal venture, participate in it as something he wishes to bring about, and that he seek by action to make it succeed. He is then punishable as a principal once the proof establishes the commission of the offense by someone, regardless of whether the petitioner directly committed the act constituting the offense. The proof at trial, as supported by the transcripts, is more than ample to support petitioner's convictions on Count One and Two of the indictment as charged. His assertion of newly discovered evidence under the charges and proof, the Court finds to be frivolous and incredible. Therefore, the assertion does not require an evidentiary hearing and it is without merit.

On petitioner's assertions two, three, and seven, the Court finds that the double jeopardy claim in issue two was considered on direct appeal and found to be without merit. The allegation need not again be considered here. Nevertheless, a review of the record shows that the claim is clearly without merit. See, Nolan v. United States, 423 F.2d 1031 (10th Cir. 1970) and cases cited therein, cert. den. 400 U. S. 848; United States v. McGowan, 423 F.2d 413 (4th Cir. 1970); United States v. McLeod, 493 F.2d 1186 (7th Cir. 1974); Iannelli v. United States, 420 U. S. 770 (1975). The jurisdictional issue in assertion three is without merit. Count Two of the indictment charges the use of interstate telephone lines in furtherance of illegal gambling under the laws of the States of Oklahoma and Louisiana. The charge may properly be prosecuted in any District in which the offense against the United States was begun, continued, or completed. 18 U.S.C. § 3237(a). The jurisdictional issue in assertion seven is also without merit. The petitioner's attention is called to page 89, Vol. I, Record on Appeal No. 9730, filed January 15, 1968, consisting of the affidavit of Edward T. Joyce that he was appointed and directed by the Attorney General of the United States to assist the United States Attorney for the Northern District of Oklahoma in the Grand Jury presentation which resulted in the indictment in Case No. CR 14,406. Even if this were not so, petitioner makes no claim or showing of prejudice by the presence of the special attorney's appearance before the grand jury. Therefore, failure to make an objection on this ground prior to trial pursuant to Rule

12(b), (f), Federal Rules of Criminal Procedure, results in the issue being waived. United States v. Coppola, 526 F.2d 764 (10th Cir. 1975).

On petitioner's fourth assertion that there was insufficient evidence to support the verdict, that has been previously considered on direct appeal and decided against the petitioner as appears at page 1047 Nolan v. United States, supra. The transcripts clearly show that the jury's verdict of guilty was not so devoid of evidentiary support that a due process issue is raised. This issue is without merit. Lorraine v. United States, 444 F.2d 1, 2 (10th Cir. 1971); Williams v. United States, 371 F.2d 536 (10th Cir. 1967).

On assertion five, the sentence imposed is within the statutory limits, and thereby invulnerable. United States v. Winn, 411 F.2d 415 (10th Cir. 1969) cert. den. 396 U. S. 919. Under these circumstances, this issue is not cognizable in a § 2255 motion.

On the sixth assertion alleging that petitioner was denied effective assistance of counsel, the Court upon careful review of the record finds this allegation without merit. As was stated in Frand v. United States, 301 F.2d 102 (10th Cir. 1962), " . . .the constitutional right to the effective assistance of counsel does not vest in the accused the right to the services of an attorney who meets any specified aptitude test in point of professional skill. And common mistakes of judgment on the part of counsel, common mistakes of strategy, common mistakes of trial tactics, or common errors of policy in the course of a criminal case do not constitute grounds for collateral attack upon the judgment and sentence by motion under the statute." This Court after a thorough review of the entire record in light of petitioner's specific contentions, finds that the trial was by no means a farce, sham, mockery of justice, or shocking to the conscience of the Court. Lorraine v. United States, supra; United States v. Roche, 443 F.2d 98 (10th Cir. 1971).

The Court being fully advised in the premises by the conducting of all pre-trial proceedings, as well as from a careful review of the trial transcripts, finds that the § 2255 motion of Eugene Anthony Nolan should be overruled.

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Eugene Anthony Nolan be and it is hereby overruled and denied, and the

case is dismissed.

Dated this 16th day of March, 1976, at Tulsa, Oklahoma.


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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

W. J. USERY, JR., Secretary of Labor,)
(Successor to John T. Dunlop),)
United States Department of Labor,)
)
Plaintiff)
)
v.) Civil Action)
)
ALUMINUM WINDOW PRODUCTS COMPANY, INC.,) No. 75-C-389)
REPUBLIC GLASS COMPANY, INC., VEGA)
ALUMINUM WINDOW PRODUCTS, INC.,)
and BOB POOL,)
)
Defendants)

E I L E D

MAR 17 1976

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

JUDGMENT

Plaintiff has filed his complaint against the defendants. 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 defendant, Bob Pool, his agents, servants, employees and those persons in active concert or participation with him 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

Defendant Bob Pool 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 defendant 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

Defendant Bob Pool 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 Bob Pool, Aluminum Window Products Company, Inc., Republic Glass Company, Inc., and Vega Aluminum Window Products, Inc., be enjoined and restrained from withholding payment of overtime compensation in the total amount of \$2,000.00, which the Court finds to be due under the Act to defendants' employees, together with interest at the maximum legal rate. 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 \$200.00, within ten days of the entry of this judgment, and pay the balance by delivery of certified or cashier's checks, payable to "Employment Standards Administration, Labor", in the amounts and the time herein set forth:

Payment of \$1,800.00 in 18 equal consecutive monthly installments of \$100.00, without interest, with the first installment being due and payable on or before April 1, 1976, and the remaining installments being due and payable on or before the same day of each succeeding month thereafter until all installments have been paid.

It is further ORDERED, that plaintiff, upon receipt of such certified or cashier's checks from the defendants, shall promptly proceed to make distribution, less income tax and social security

withholdings, to defendants' employees entitled thereto, 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.

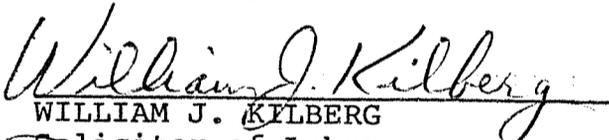
It is further ORDERED that this action, insofar as it relates to an injunction against future violations of the Act by the corporate defendants, Aluminum Window Products Company, Inc., Republic Glass Company, Inc. and Vega Aluminum Window Products, Inc., be and the same is hereby dismissed.

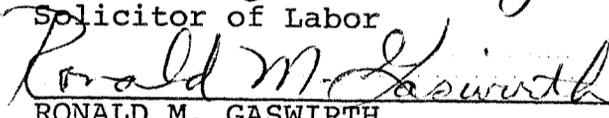
It is further ORDERED, that defendants will pay the costs of this action.

DATED this 17 day of March, 1976.

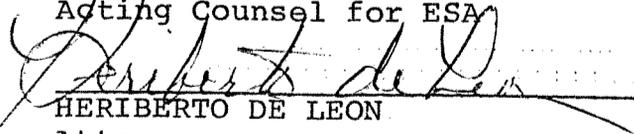

UNITED STATES DISTRICT JUDGE

Entry of this order is consented and agreed to:

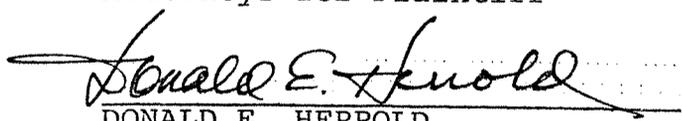

WILLIAM J. KILBERG
Solicitor of Labor


RONALD M. GASWIRTH
Regional Solicitor


WILLIAM E. EVERHEART, III
Acting Counsel for ESA


HERIBERTO DE LEON
Attorney

Attorneys for Plaintiff


DONALD E. HERROLD
Attorney for Defendants

Security National Bank of Enid, and that said litigation encompassed the same issues as in the present case.

Said Motion was overruled on June 27, 1972.

Thereafter, and on September 14, 1972, plaintiff filed an application for default with the Clerk of the Court, and the Clerk entered default on that same date.

On October 19, 1972, plaintiff filed a Motion for Judgment by Default to be heard by the Court.

On November 3, 1972, Nelson Auction Service, Inc., filed an application to file answer out of time and set aside the default. It was for the first time in these pleadings that the that the assertion was made by Nelson Auction Service, Inc. that the proper party had not been sued.

In the interim, it appears that the Garfield County action was dismissed.

On August 14, 1972, an Order was filed by the Court, wherein among other things, the Court granted plaintiff leave to correct the name of defendant from Nelson Auction Service, Inc., to Nelson International, Inc. By the same order the Court granted plaintiff default judgment against Nelson International, Inc., on the issue of defendant's liability to plaintiff for conversion of a 1968 Auto-Car truck tractor. The case was set for hearing on the amount of damages to be awarded.

On September 11, 1973, Nelson Auction Service, Inc., moved the Court to vacate the order entered on August 14, 1972. At this time Nelson Auction Service, Inc., set forth the following grounds:

1. That it is the sole defendant sued in the cause;
2. That no appearance had been entered for Nelson International, Inc., by any attorney;
3. That Nelson Auction Service, Inc., and Nelson International, Inc., are separate corporations;
4. That the information received by Joel L. Wolgemuth, attorney for plaintiff, was predicated on erroneous information received by him from the Clerk in the office of the Secretary of State.

5. That Nelson Auction Service, Inc. was incorporated in the State of Texas on February 16, 1962, and its name was changed to E.M.S. Agency, Inc., in Texas on January 31, 1972.

6. On February 6, 1969, a separate corporation, H.A.N. Enterprises, Inc., was incorporated in Texas and its name was changed to Nelson Auction Service, Inc., on February 24, 1969. Its name was further changed to its present name of Nelson International, Inc. on May 11, 1970.

On October 18, 1973, plaintiff moved for an order adding Nelson International, Inc., as a party defendant.

On June 26, 1974, the Court entered its order vacating the order entered on August 14, 1973, granting the motion for default judgment against Nelson Auction Service, Inc., and amending the caption in the cause to substitute "The E.M.S. Agency, Inc., formerly Nelson Auction Service, Inc.", in lieu of Nelson Auction Service, Inc.

On July 2, 1974, the Court granted plaintiff's motion to add Nelson International, Inc., as a party defendant, and an amended complaint was filed that date.

On August 13, 1974, Nelson International, Inc. filed its answer to the amended complaint. As a part of its answer, Nelson International, Inc., set up a judgment obtained in the District Court of Tulsa County, Oklahoma, by plaintiff against B & T Trucking Company, Inc., and other defendants, in the amount of \$6,565.13.

On October 15, 1974, plaintiff filed its motion for partial summary judgment against the defendant, Nelson International, Inc. On December 6, 1974, Nelson International, Inc., filed its response to plaintiff's motion.

On December 23, 1974, Nelson International, Inc. filed a Motion for Summary Judgment, predicated on the ground that plaintiff's claim for relief is barred by the Oklahoma Statute of Limitations and that plaintiff's claim for relief is barred by its prior money judgment and by the judgment of the District Court of Garfield County, Oklahoma, denying plaintiff any relief.

The Magistrate recommended that defendant's Motion for Summary Judgment be sustained, finding that the cause of action was barred by the Oklahoma Statute of Limitations, and that Rule 15)c) of the Federal Rules of Civil Procedure had not been satisfied to allow relation back to March 15, 1972 of the amendment.

Objections by plaintiff were duly filed and it is in this posture that the case now comes on for consideration by this Court.

At the outset, the Court notes that Mr. Jack Brady, of Dallas, Texas, who has represented all defendants throughout this litigation, presently represents Nelson Auction Service, Inc. (the original defendant) and Nelson International, Inc.

The Court, additionally notes that Mr. Brady did not raise the defense that the wrong party had been sued until November 23, 1972, shortly after the expiration of the statute of limitations and four months after the motion to dismiss had been overruled.

Plaintiff contends as follows:

1. That both Nelson International and Nelson Auction Service have their offices at 6060 North Central Expressway, Dallas, Texas;
2. That Mr. Jim Short of Dallas, Texas is the President of both corporations;
3. Both corporations have the same agent for service of process;
4. Both corporations are represented by Mr. Jack Brady of Dallas, Texas, who is also an incorporator of both corporations;
5. That the officers and directors of both corporations are substantially similar.

The above contentions are cited in support of plaintiff's argument on notice and the identity of interest doctrine.

Nelson International has responded to said contentions as follows:

1. Nelson Auction Service, Inc. (now The E.M.S. Agency, Inc.) and Nelson International, Inc., do not share the same offices in Dallas, Texas;
2. Jim Short is not President of both corporate defendants.

That he has not been President of Nelson Auction Service, Inc. (The E.M.S. Agency, Inc.) since 1971, and was not president of said defendant, Nelson International, when this action was commenced on March 15, 1972. That the affidavit of William C. Archer, reflects the following statement:

"After the election of new directors and new officers in 1971, there were no common directors and officers, with the single exception of myself (William C. Archer), in Nelson Auction Service, Inc. and Nelson International, Inc. These two corporations are owned by different stockholders and managed and controlled by different individuals."

3. That while both corporate defendants have the same agent for service of process, such agent was a corporate professional service agent used by countless corporations for out-of-state representation and thus, this is not the type of identity which imparts notice to a second corporation when the first corporation is served with process.

4. That the fact that Jack Brady now represents Nelson International, Inc., in this cause, after initially representing Nelson Auction Service, Inc., or even that he was an incorporator of both corporations, if such be a fact (there being nothing in the pleadings, exhibits or affidavits on file to show who were the incorporators of Nelson Auction Service, Inc.), does not establish an identity of interest between the two corporations.

5. That the officers and directors of Nelson Auction Service, Inc., and of Nelson International, Inc. are not substantially similar.

There is much discussion in the briefs concerning correspondence wherein the name of Nelson International, Inc. was mentioned and the fact that in the proposed answer submitted with the Motion for Leave to File Answer on November 3, 1972, the name Nelson International Inc. was used on nine different occasions.

Plaintiff, in its brief in support of its objections to the Recommendations of the Magistrate cites the following facts, taken from the Affidavit of William C. Archer, a common officer of both corporations:

1. Nelson Auction Service, Inc. had the right to conduct business under the name of "Nelson Auction Service International";

2. Nelson Auction Service International, Inc. was the predecessor to Nelson Internatinal, Inc.

3. Some of the former stockholders of Nelson Auction Service, Inc. purchased stock with Archer in Nelson Auction Service International Inc. and some of those individuals were elected officers and directors of Nelson Auction Service, Inc.

4. William Archer, the author of the affidavit, was a common officer of Nelson International, Inc. and Nelson Auction Service, Inc.

Nelson International, Inc., in its brief alleges the contrary.

Due to this dispute over the affidavit, the Court has perused the affidavit and finds the following statements made under oath by Mr. Archer:

"Nelson Auction Service, Inc. was a Texas corporation, incorporated in February of 1962. It conducted its business in Texas and in other states, including Oklahoma, in which it qualified to do business on May 20, 1965. I helped to organize H.A.N. Enterprises, Inc., a Texas corporation, incorporated on February 6, 1969. This corporation, in February of 1969, purchased from Nelson Auction Service, Inc. certain assets, including the right to conduct business under the name of "Nelson Auction Service International". Upon the completion of that transaction, H.A.N. Enterprises, Inc. changed its corporate name to Nelson Suction Service International, Inc. Some of the former stockholders of Nelson Auction Service, Inc. also purchased stock with me in Nelson Auction Service International, Inc., and some of those individuals were elected officers and directors of Nelson Auction Service International, Inc. The transaction with Nelson Auction Service, Inc. required that company to change its corporate name after a reasonable period of time, and on January 31, 1972, by an amendment to its charter, its name was changed to The E.M.S. Agency, Inc.

"Within about 15 months after becoming Nelson Auction Service International, Inc. this company shortened its corporate name to Nelson International, Inc. by a charter amendment on May 11, 1970, in order to avoid any confusion and to better represent the business image of the company.

"In the latter part of 1970, almost all of the stockholders of Nelson Auction Service, Inc., sold their stock to a third party, and these sellers included all of the stockholders of Nelson International, Inc. who had previously retained any stock ownership in Nelson Auction Service, Inc. at the time of the transaction in February of 1969. Shortly thereafter, in January of 1971, new directors were elected for Nelson Auction Service, Inc., replacing all of the former directors who were then associated with Nelson International, Inc. This new board also in 1971 elected new officers for that corporation.

"After the sale of stock in 1970, there were no common owners of stock in Nelson Auction Service, Inc. and Nelson International, Inc. After the election of new directors and new officers in 1971, there were no common directors and officers, with the single exception of myself, in Nelson Auction Service, Inc. and Nelson International, Inc. These two corporations are owned by different stockholders and managed and controlled by different individuals.

"After the transaction of February, 1969, Nelson Auction Service, Inc. conducted very little business, and subsequently, changed the nature of its business activities, following which a formal change of its corporate name to The E.M.S. Agency, Inc. was accomplished by amending the charter in January of 1972.

"The E.M.S. Agency, Inc. does not share office space at 6060 North Central Expressway, Dallas, Texas, with Nelson International, Inc."

The Court, initially, then must determine the questions of notice and identity of interest doctrine, and relation back.

Rule 15(c) of the Federal Rules of Civil Procedure provides, in pertinent part:

"Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him"

Under said rule, amendments that merely correct technical deficiencies or expand or modify the facts alleged in the earlier pleading meet the Rule 15(c) test and will relate back. The rationale of the relation back rule is to ameliorate the effect of the statute of limitations. The standard for determining whether amendments qualify under Rule 15(c) is not simply an identity of transaction test. The Courts also inquire into whether the opposing party has been put on notice regarding the claim or defense raised by the amended pleading. *Kimbro v. U. S. Rugger Co.* (D.C. Conn., 1958) 22 F.R.D. 309; *Bethlehem*

Fabricators, Inc. v. British Overseas Airways Corp. (2nd CCA, 1970) 434 F.2d 840.

Since 1966, Rule 15(c) has expressly provided that an amendment changing the parties relates back to the date of the original pleading if certain conditions are satisfied. The Advisory Committee stated, with reference to Rule 15(c) that said Rule 15(c) was "amplified to state more clearly when an amendment of a pleading changing the party against whom a claim is asserted (including an amendment to correct a misnomer or misdescription of a defendant) shall relate back to the date of the original pleading."

The Tenth Circuit Court of Appeals said in Travelers Indemnity Co. v. U.S. for Use of Construction Specialties Co. (1967) 382 F.2d 103, 106:

"The 1966 amendment simply clarifies, by explicitly stating, the permissive procedure and its appropriate safeguards which have existed under Rule 15(c) since its promulgation."

If the prerequisites of Rule 15(c) are satisfied and if the amended claim arose out of the same conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, then any amendment changing a party against whom a claim is asserted will relate back.

When an amendment merely involves correcting a misnomer and does not entail the actual "changing" of the parties, it would be allowed as a matter of course as long as it satisfied the standard in the first sentence of Rule 15(c) and without regard to the special requirements of the second sentence of the subdivision. Thus, when the plaintiff seeks to correct the name or description of a defendant, the amendment will relate back provided the proper defendant was served and the party before the court is the one plaintiff intended to sue. Wright & Miller, Federal Practice, page 513.

Identity of interest generally means that the parties are so closely related in their business operations or other activities that the institution of an action against one serves to provide notice of the litigation to the other.

The relationship needed to satisfy the identity of interest tests exists between a parent and a wholly owned subsidiary or

or between related corporations whose officers, directors, or shareholders are substantially identical and who may have similar names or conduct their business from the same offices. Identity of interest also has been found between past and present forms of the same enterprise.

If the originally named defendant or the party sought to be added either knowingly allows plaintiff to think he has sued the proper party or actually misleads him as to the identity of the party that should be held responsible, the new defendant will be estopped from asserting a statute of limitations defense.

In *Archuleta v. Duffy's Inc.* (10th CCA, 1973) 471 F.2d 33, the Court said:

"***Although this court is committed to the general proposition that it will not allow technicalities to defeat the proper administration of justice, e.g., *Travelers Indemnity Co. v. United States for Use of Construction Specialties Co.*, 10 Cir., 382 F.2d 103, and will allow misnomers to be amended and relate back as a matter of course, *Wynne v. United States for Use of Mid-States Waterproofing Co.*, 10 Cir., 382 F.2d 699, the court is equally committed to the necessity of distinguishing between misnomers and substitution of parties. *Graves v. General Insurance Corp.*, 10 Cir., 412 F.2d 583. The trial court has here allowed a substitution of parties by amendment. Such amendment can relate back to the date the complaint was filed only if the provisions of Rule 15(c) are met.

"Plaintiff has not by amendment changed the factual content of his complaint and has thus met the compulsion of the first sentence of Rule 15(c). And the trial court correctly found that defendant has suffered no prejudice in fact, a partial requirement under the rule's second sentence.

"However, this latter sentence further requires that the party added 'knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him'. This has been said to be analogous to an estoppel test, Professors Wright and Miller summing it up as:

"Thus, when plaintiff merely misdescribes defendant and serves the party really intended to be named in the complaint, that party certainly has knowledge of the misnomer and the quoted portion of the rule has been satisfied. Similarly, when plaintiff names an incorrect party but serves the person attempted to be sued, the latter is considered to have notice of plaintiff's mistake and the amendment will qualify under Rule 15(c). In other contexts, the courts probably will apply something akin to a reasonable man test to determine whether the party 'should have known' he was the one intended to be sued. 6 Wright & Miller, *Federal Practice and Procedure*, §1498, at 515 (footnotes omitted).

The Court went on to say:

"We cannot say that knowledge of the existence of a potential action constitutes, per se, reasonable grounds for notice of the institution of an action. The Ninth Circuit has reached a similar conclusion stating:

"In our opinion, 'action' as used in Rule 15(c) means a lawsuit, and not the incident giving rise to a lawsuit. The relevant words are 'notice of the institution of the action'. A lawsuit is instituted; an incident is not."

In *Simmons v. Fenton* (7th CCA, 1973) 480 F.2d 133, the Court said:

"An adequate consideration of the basic principles to be applied in cases involving a change or alteration of the parties to an action pursuant to Rule 15(c) has been furnished by Judge Grubb ***: 'Thus, amendment with relation back is generally allowed in order to correct a misnomer or defendant where the proper defendant is already in court and the effect is merely to correct the name under which he is sued. But a new defendant cannot normally be substituted or added by amendment after the statute of limitations has run.' Similar interpretations of Rule 15(c), with numerous citations in support, are to be found in *Archuleta v. Duffy's Inc.*, 10 Cir., 471 F.2d 33, 35 (1973) ***"

"The second sentence in Rule 15(c) was added by amendment in 1966, 383 U.S. 1029, 1044. This amendment has been the subject of our present consideration. It appears to incorporate precisely the holding in *Martz v. Miller Brothers Co.*, D.Del., 244 F.Supp. 346. As was pointed out in *Martz*, state statutes of limitations are frequently geared to the filing of a complaint. This appears to be so in Illinois. However, Rule 15(c) is geared to notice. The party to be substituted must receive notice of the action 'within the period provided by law for commencing the action against him.' Following *Martz*, given the facts in this case, it is apparent that Doris J. Fenton had no notice until after the statute of limitations had run. She could not have had notice that a suit had been filed against her until she heard about it."

At page 7 of its brief, plaintiff's counsel makes the following statement:

"In any event, there has been no showing of inexcusable neglect on the part of plaintiff's counsel. While it is true that plaintiff's counsel did receive, prior to the expiration of the two-year period, correspondence from attorneys for Security National Bank of Enid wherein it was stated that the auction sale was conducted by 'Nelson International', it is also true that the purchaser of the tractor at the auction wrote a letter to plaintiff's counsel stating that the auctioneer was 'Nelson Auction Service'. *** Moreover, the representation by counsel for NAS in its motion to dismiss that Seucirty was a necessary part confirmed plaintiff's brrief that the proper defendant had been named. The confusion in names should be reviewed within the perspective that NAS had the right to conduct business under the name 'Nelson Auction Service International'---which is the exact name of NI's predecessor.

Based on the foregoing law and recitation of applicable facts, the Court finds:

That the plaintiff had sufficient notice prior to the time it amended its complaint and substituted parties to be charged with knowledge that the party against whom they should assert their claim was Nelson International, Inc. and not Nelson Auction Service, Inc.

Exhibits attached to the various pleadings reflect that Nelson International, Inc. was referred to many, many times in connection with the transaction that is the subject matter of the instant litigation.

The mere fact that the same attorney represents the two entities involved herein, does not, in this Court's judgment, impute knowledge and notice of the kind contemplated by Rule 15(c) of the Federal Rules of Civil Procedure.

This Court could go on at length with examples, as reflected by the file, of the conveyance to plaintiff and/or counsel of the posture of Nelson International, Inc. in the present litigation. The file is replete with such examples.

Based on the foregoing, the Court finds that the Motion for Summary Judgment filed by Nelson International, Inc. should be sustained on the ground of limitations. This being the finding of the Court, the Court need not go into other issues raised by said Motion for Summary Judgment or Plaintiff's Motion for Partial Summary Judgment or the question raised concerning the Third-Party Defendant.

IT IS, THEREFORE, ORDERED that the Motion for Summary Judgment filed by Nelson International, Inc. be and the same is hereby sustained.

ENTERED this 8th day of March, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

". . . Subsequently on the 28th day of January, 1969, this Court committed him to the State Hospital at Vinita for psychiatric observation and examination for a period not to exceed ninety days. The Court will possibly recall that on April 4, 1969 that we received a reply from Dr. B. F. Peterson, who is Superintendent of Eastern State Hospital, indicating that they had completed their examination of the patient and were ready to return him to the jurisdiction; that they were of the opinion that he was not psychotic at that time; that he was able to distinguish between right and wrong, and that they felt that he would be able to adequately assist legal counsel in his own behalf.

"Subsequently, Mr. Boone [Ass't. District Attorney, Washington County, Oklahoma] had occasion to discuss this matter with Dr. Peterson. The conversation took place in Nowata the last week or so. Mr. Peterson again indicated that he did not feel that the defendant was psychotic or that he was legally insane under the laws of the State of Oklahoma; that he felt that he was mean and he felt that where this particular deceased, Alvin D. Smith, was concerned that the same thing would happen. Possibly the rest of society had little to worry about. But the combination of ingredients between this defendant, Alvin LeRoy Fowler, and the deceased, Alvin D. Smith, was such that it happened. And Dr. Peterson indicated that he felt that the defendant really had little regret for what had happened."

Mr. Harris, defense counsel, stated to the Court, starting at page 17 of the plea and sentence transcript, that the defense also had the defendant examined by three psychiatrists and psychologists, who found the defendant sane.

In United States Ex Rel. Curtis v. Zelker, 466 F.2d 1092 (2nd Cir. 1972) Cert. den. Curtis v. Zelker, 410 U. S. 945, the Court stated at page 1099, as summarized in headnote 7 at page 1093:

"Where less than two months prior to the murder, defendant had been examined for two weeks by a psychiatrist and had been found merely to be sociopathic and following court-ordered psychiatric study immediately after crime defendant had been found to be without a legally cognizable mental defect and capable of understanding proceedings against him, a further judicial inquiry into defendant's competency or sanity at the time of offense was not constitutionally required before accepting a plea of guilty."

The record in this case conclusively shows that petitioner's plea of guilty was voluntary and intelligent as shown by the transcript of proceedings at time of plea and sentencing. At pages 4 and 5 of the transcript, the following questions were asked and answers given:

"THE COURT: No. That's true. But in entering a plea, Mr. Fowler, the crime as charged is murder. And so you either plead guilty or not guilty to the crime as charged.

THE DEFENDANT: Yes, Sir.

THE COURT: Whether you went there with that intent, as the District Attorney points out, it is immaterial if that intent was formed sometime before the actual shooting took place. So, again, I would ask you how you plead to the charge?

THE DEFENDANT: Guilty, Sir.

THE COURT: Have any threats been made against you or any promises made to you to induce you to enter a plea of guilty?

THE DEFENDANT: No, Sir.

THE COURT: You do so of your own free will and for the sole and only reason you did do the acts as alleged in the information?

THE DEFENDANT: Yes, Sir.

THE COURT: You do so with the knowledge that under the laws of the State punishment is either life imprisonment or death in the electric chair?

THE DEFENDANT: Yes, Sir."

When a guilty plea is intelligently and voluntarily and knowingly entered and the accused is represented by competent counsel, a guilty plea in State Court is not subject to collateral attack by way of Federal habeas corpus proceedings. Moore v. Rodriguez, 376 F.2d 817 (10th Cir. 1967); Mahler v. United States, 333 F.2d 472 (10th Cir. 1964) Cert. den. 379 U. S. 993.

The authority cited by petitioner in support of his application clearly reflects different sets of facts and it is not relevant in the instant case. The record in this cause, which has been carefully examined, conclusively shows that petitioner's allegation is without merit and that he is not entitled to the relief sought. Therefore, there is no necessity for this Court to hold an evidentiary hearing. Putnam v. United States, 337 F.2d 313 (10th Cir. 1964); Maxwell v. Turner, 411 F.2d 805 (10th Cir. 1969); Cranford v. Rodriguez, 512 F.2d 860 (10th Cir. 1975).

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Alvin LeRoy Fowler be and it is hereby denied and the case is dismissed.

Dated this 8th day of March, 1976, 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

THE AETNA CASUALTY & SURETY
COMPANY,

Plaintiff,

vs.

THE BURGUNDY COMPANY, INC.,
ALPHA PROPERTIES, INC.,
BURGUNDY MILL & LUMBER
SUPPLY, GARY HARKREADER,
CHRISTI HARKREADER,
CHARLES O. HUBBY,

Defendant.

No: 75-C-402

E I L E D
MAR 5 1976
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

Plaintiff's Complaint involved one cause of action wherein the Aetna Casualty and Surety Company pleaded among other things that the Burgundy Company, Inc., executed a contract with the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, acting for and on behalf of Oklahoma State University of Agriculture and Applied Science. The date of the contract was December 12, 1974 and the contract price was \$205,062.00. The plaintiff further pled that the Burgundy Company defaulted on that contract and failed and neglected to pay the suppliers for material in the amount of \$51,579.28 and that it is estimated an additional \$8,976.00 is necessary for the completion of the job. That a General Contract of Indemnity was made, executed and delivered by the Burgundy Company, Inc., Alpha Properties, Inc., Burgundy Mill & Lumber Supply, with personal indemnitors of Gary Harkreader, Christie Harkreader, and Charles O. Hubby wherein the principals and indemnitors shall indemnify and exonerate Aetna Casualty and Surety Company from and against any and all loss and expense of whatever kind, including interest, court costs and counsel fees which may incur or sustain as a result or in connection with the furnishing of any Bond or the enforcement of this agreement.

This action came on for a pretrial conference, before the Honorable H. Dale Cook, District Judge, on January 8, 1976, at which time Jerry R. Nichols, Attorney for the Defendants Gary Harkreader and Christie Harkreader and Gene D. Daubert, Attorney for the Defendants, The Burgundy Company, Inc., Alpha Properties, Inc., Burgundy Mill and Lumber Supply and Charles O. Hubby confessed judgment in favor of the plaintiff on behalf of their respective clients, and each of them, in the amount of SIXTY THOUSAND FIVE HUNDRED FIFTY FIVE AND 28/100 DOLLARS (\$60,555.28), with attorney's fees in the sum of TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$2,500.00) together with interest at the maximum legal rate from the date of this judgment until fully paid and all costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above stated allegations are found to be true and the plaintiff should be and is hereby granted judgment in its favor and against the defendants The Burgundy Company, Inc., Alpha Properties, Inc., Burgundy Mill and Lumber Supply, Gary Harkreader, Christi Harkreader and Charles O. Hubby, and each of them individually, for the sum of SIXTY THOUSAND FIVE HUNDRED FIFTY FIVE AND 28/100 DOLLARS (\$60,555.28), attorney's fees in the sum of TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$2,500.00), together with all the costs of this action and interest from the date of this Judgment at the maximum legal rate until fully paid.



H. Dale Cook, Judge of the District
Court of the Northern District of
Oklahoma

APPROVAL AS TO FORM:


Jerry R. Nichols, Attorney for
Gary Harkreader and Christi Harkreader


Gene D. Daubert, Attorney for the
Burgundy Company, Inc. Alpha Properties,
Inc., Burgundy Mill & Lumber Supply,
and Charles O. Hubby

John B. Stuart, Attorney for the
Plaintiff, Aetna Casualty & Surety Company

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 5 1976

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

CHICK NORTON LEASING CO., INC.,)
)
 Plaintiff,)
)
 vs.)
)
 WAYNE A. REID,)
)
 Defendant.)

No. 75 C-471

JOURNAL ENTRY OF JUDGEMENT

On the 24th day of February, 1976, this case came on for Non-jury Trial before the undersigned Judge. The Plaintiff, CHICK NORTON LEASING CO., INC., appeared by its General Manager, William H. Dysart, and its attorney, Leslie S. Hauger, Jr., and the Defendant, WAYNE A. REID, appeared in person and by his attorney, William C. Kellough of Blackstock, Joyce, Pollard, Blackstock & Montgomery.

After opening statements, the Plaintiff called William H. Dysart and the Defendant, WAYNE A. REID, as its witnesses, testimony was received therefrom, both direct and by cross-examination, and the Plaintiff rested.

The Defendant called, as his only witness, Dorothy Reid, who was examined by the Defendant's attorney, cross-examination was waived, and both parties rested.

Wherefore, after due consideration of the premises and testimony given in open Court, the Court finds as follows:

That the parties hereto entered into a lease agreement for a certain 1973 Cadillac El Dorado, and that pursuant to said lease the Defendant had possession of said automobile from March 24, 1973, to April 1, 1975.

That when the automobile was returned the Defendant was in arrears on lease payments in the sum of \$377.00, and is liable to the Plaintiff therefor.

That when the automobile was returned to the Plaintiff the odometer on the automobile read 17,254 miles, and pursuant to the practice of the Plaintiff and 15 U.S.C. 1988, the Defendant executed an Odometer Mileage Statement stating that the automobile had 17,254 actual miles on it, said statement not, in fact, being true.

That the subject automobile had been driven a distance well in excess of 17,254 miles and further that the Defendant personally had disconnected the odometer and turned back the mileage therein with the intent to defraud the Plaintiff.

That subsequent to the return of the subject automobile by the Defendant, the Plaintiff discovered that the subject automobile had been driven well in excess of 17,254 miles, confronted the Defendant with such discovery, and verified that such was a fact.

That because the Plaintiff could not certify the actual mileage on the automobile, the value of the automobile was substantially reduced and was sold by the Plaintiff, after notifying the Defendant, for the sum of \$3,000.00.

That the value of the subject automobile would have been \$5,275.00 if the Plaintiff could have certified the mileage to a subsequent transferor, and therefore, the Plaintiff suffered damage due to the odometer tampering by the Defendant in the amount of \$2,275.00.

That pursuant to 15 U.S.C. 1989, which reads, in part
"(a) Any person who, with intent to defraud, violates any requirement imposed under this title [15 U.S.C. 1981-1991] shall be liable in an amount equal to the sum of-

(1) three times the amount of actual damages sustained of \$1,500.00, whichever is the greater";
the Defendant is liable to the Plaintiff for \$6,825.00 which is three times the \$2,275.00 damages sustained.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff, CHICK NORTON LEASING CO., INC., is awarded judgment against the Defendant, WAYNE A. REID, in the amount of

\$7,202.00, interest thereon at the rate of ten percent (10%) per annum and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to 15 U.S.C. 1989 the Plaintiff is awarded an attorney's fee for the benefit of its attorney against the Defendant, the amount to be determined by the Court after evidence has been presented in support thereof by the Plaintiff. The Plaintiff is given five (5) days from date of judgement to file its Affidavit, the Defendant is given five (5) days thereafter to reply, and if a party desires a hearing a request for same shall be made upon filing its Affidavit or Reply.

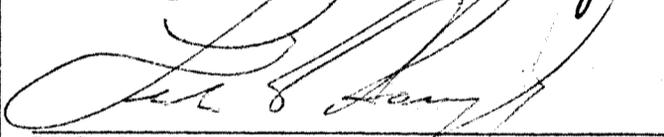


H. DALE COOK, JUDGE OF THE DISTRICT
COURT

APPROVED AS TO FORM:



WILLIAM C. KELLOUGH
Attorney for Defendant



LESLIE S. HAUGER, JR.
Attorney for Plaintiff

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RICHARD B. SHAW,)
)
Plaintiff,)
)
-vs-)
)
CHARLES J. DAVIS, ISLA B.)
DAVIS, JOHN T. FORSYTHE,)
SHIRLEY R. FORSYTHE, E. W.)
CALVERT, MELVA CALVERT,)
R. JAMES STILLINGS, AND)
HANNAFORD CONSTRUCTION,)
COMPANY, INC.,)
)
Defendants.)

No. 75-C-376

FILED
MAR 1976
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration defendants', except Hannaford Construction Company, Inc., Motion to Dismiss in its entirety and have carefully perused the entire file, the briefs and all of the recommendations concering said motion, and being fully advised in the premises, finds:

That the defendants', except Hannaford Construction Company, Inc., motion should be granted for the reason that the assignment of Hannaford Construction Company, Inc. to Richard B. Shaw was improperly or collusively made or joined to invoke the jurisdiction of this court within the meaning of Section 1359 of Title 28 of the United States Code and that this Court is without jurisdiction for lack of diversity of citizenship.

IT IS THEREFORE, ORDERED that the motion of defendants, except Hannaford Construction Company, Inc. should and is hereby granted.

Dated this 4th day of ^{March}~~February~~, 1976.

Allen E. Brown
Chief United States District Judge

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

UNITED STATES OF AMERICA,
Plaintiff,
vs.

No. 76-C-15-8 ✓

AN ARTICLE OF FOOD CONSISTING
OF 133 BURLAP BAGS, MORE OR
LESS, LABELED IN PART:

(bag)
"NET WT. 50 LBS. HHH BRAND
EXTRA LARGE PECANS, HINES
NUT COMPANY, DALLAS, TEXAS",

Defendant.

FILED
MAR 5 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

DECREE OF CONDEMNATION

On January 15, 1976, a libel of information against the above described article was filed in this Court on behalf of the United States of America by the United States Attorney and the Assistant United States Attorney for this District. The libel alleges that the article proceeded against is a food which was shipped in interstate commerce and is adulterated in violation of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 342 (a)(3)). Pursuant to Monition issued by this Court, the United States Marshal for this District seized said article on January 20, 1976. Thereafter, Safeway Stores, Incorporated, of Tulsa, Oklahoma, intervened and filed claim to said article.

Claimant consents that a decree, as prayed for in the libel, be entered condemning the article under seizure.

The Court being fully advised in the premises, it is on motion of the parties hereto:

ORDERED, ADJUDGED, AND DECREED that the said article under seizure is adulterated in violation of 21 U.S.C. 342 (a)(3), and is therefore hereby condemned pursuant to 21 U.S.C. 334(a); and it is further

ORDERED, ADJUDGED, AND DECREED, pursuant to 21 U.S.C. 334(e), that the United States of America shall recover from

said Claimant court costs and fees, and storage and other proper expenses, as taxed herein, to-wit, the sum of \$ 31.64 and

Claimant having petitioned this Court that the condemned article be delivered to it pursuant to 21 U.S.C. 334(d), it is further

ORDERED, ADJUDGED, AND DECREED that the United States Marshal of this District shall release said article from his custody to the custody of Claimant for the purpose of bringing said article into compliance with said Act if Claimant, within twenty (20) days from the date of this decree (a) pays in full the aforementioned court costs and fees, and storage or other proper expenses of the proceeding herein, and (b) executes and files with the Clerk of this Court a good and sufficient penal bond with surety in the sum of Nine Thousand Five Hundred Seventy-six Dollars (\$9,576.00), approved by this Court, payable to the United States of America, and conditioned on the Claimant's abiding by and performing all the terms and conditions of this decree and of such further orders and decrees as may be entered in this proceeding; and it is further

ORDERED, ADJUDGED, AND DECREED that:

1. After the filing of the bond in this Court the Claimant shall, at its own expense, cause the article to be shipped to the Hines Nut Company plant at Dallas, Texas. When the article arrives at the Hines Nut Company in the Dallas, Texas, plant, Claimant shall give written notice to the Dallas District, Food and Drug Administration, Department of Health, Education, and Welfare, 3032 Bryan Street, Dallas, Texas 75204, that the article has arrived and that Claimant is prepared to bring it into compliance with said Act under the supervision of a duly authorized representative of the Department of Health, Education, and Welfare.

2. Claimant shall at all times, until the article has been

released by a duly authorized representative of the Department of Health, Education, and Welfare retain intact the entire lot of goods comprising the article for examination or inspection by said representative, and shall maintain the records or other proof necessary to establish the identity of said lot to the satisfaction of said representative.

3. The Claimant shall not commence reconditioning operations until it has received authorization to do so from a duly authorized representative of the Department of Health, Education, and Welfare.

4. The Claimant shall at no time, and under no circumstances whatsoever, ship, sell, offer for sale, or otherwise dispose of any part of said article or of the article into which it is converted until a duly authorized representative of the Department of Health, Education, and Welfare shall have had free access thereto in order to take any samples or make any tests or examinations that are deemed necessary, and shall in writing have released such article for shipment, sale or other disposition.

5. Within thirty (30) days from the date of the filing of the bond in this Court, Claimant shall complete the process of reconditioning said article at the Hines Nut Company, Dallas, Texas, plant under the supervision of a duly authorized representative of the Department of Health, Education and Welfare.

6. The Claimant shall abide by the decisions of said duly authorized representative of the Department of Health, Education, and Welfare, which decision shall be final. If Claimant breaches any conditions stated in this decree, or in any subsequent decree or order of this Court in this proceeding, Claimant shall return the article immediately to the United States Marshal for this District at Claimant's expense, or shall otherwise dispose of it pursuant to an order of this Court.

7. The Claimant shall not sell or dispose of said article

of any part thereof in a manner contrary to the provisions of the Federal Food, Drug and Cosmetic Act, or the laws of any state or territory (as defined in said Act) in which it is sold or disposed of.

8. The Claimant shall compensate the United States of America for cost of supervision at the rate of \$8.00 per hour per representative for each hour actually employed in the supervision of the conversion process, as salary or wage; where laboratory work is necessary, at the rate of \$10.00 per hour for such laboratory work; where subsistence expenses are incurred, at the rate of \$25.00 per day per person for such subsistence expenses. Claimant shall also compensate the United States of America for necessary traveling expenses and for any other necessary expenses which may be incurred in connection with the supervisory responsibilities of said Department of Health, Education, and Welfare.

9. If requested by a duly authorized representative of the Department of Health, Education, and Welfare, Claimant shall furnish to said representative duplicate copies of invoices of sale of the released article, or shall furnish such other evidence of disposition as said representative may request.

The United States Attorney for this District, upon being advised by duly authorized representative of the Department of Health, Education, and Welfare, that the conditions of this decree have been performed, shall transmit such information to the Clerk of this Court, whereupon the bond given in this proceeding shall be cancelled and discharged; and it is further

ORDERED, ADJUDGED, AND DECREED that if the Claimant does not avail itself of the opportunity to repossess the condemned article in the manner aforesaid, the United States Marshal for this District shall retain custody of said article pending the issuance of an order by this Court regarding its disposition; and it is further

ORDERED, ADJUDGED AND DECREED that this Court expressly retain its jurisdiction to issue such further decrees and orders as may be necessary to the proper disposition of this proceeding, and that should the Claimant fail to abide by the formal terms and conditions of this decree, or of such further order or decree as may be entered in this proceeding, or of said bond, the said bond shall on motion of the United States of America in this proceeding be forfeited and judgment entered thereon.

Entered at Tulsa, Oklahoma, this 4th day of March, 1976.

Walter J. Banner
CHIEF UNITED STATES DISTRICT JUDGE

We hereby consent to the entry of the foregoing decree:

Robert L. Hunt
ASSISTANT UNITED STATES ATTORNEY

L. D. Hammer
PROCTOR FOR CLAIMANT

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

ALVIN LEE JENKINS,

Plaintiff,

vs.

TULSA COUNTY DISTRICT COURT
THE STATE OF OKLAHOMA
(Don E. Austin),

Defendant.

76-C-5

FILED

MAR 5 1976

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

ORDER
SUSTAINING THE MOTIONS TO DISMISS AND DISMISSING CAUSE OF
ACTION AND THE COMPLAINT

The Court has for consideration the Motion to Dismiss filed by Leslie R. Earl, Jr. and the Motion to Dismiss filed by Don E. Austin, Clerk of the District Court of Tulsa County, Oklahoma, the briefs in support thereof, and, being fully advised in the premises, finds:

That the plaintiff issued summons issued to Leslie R. Earl, Jr., Public Defender, and Don E. Austin, Clerk of the District Court of Tulsa County, Oklahoma, and they have timely filed their motions to dismiss.

On February 9, 1976, a minute order was entered directing the plaintiff to respond to said Motions 10 days thereafter.

Turning to the parties listed by the plaintiff in the style of the case, the Court finds:

1. That State is not amenable to suit under the civil rights statute; the District Court is not amenable to suit under the civil rights statute.

In his complaint, plaintiff alleges violations of Sections 1983 and 1985 of the Civil Rights Act and certain constitutional amendments.

The crux of his complaint reveals that he is complaining that he has been deprived certain transcripts for an appeal. He states he wrote Don Austin, the Clerk of the Court for said transcripts and did not receive them. There is no allegation whatsoever against

R. Earl, Jr., the Public Defender.

The Court finds that said complaint does not comply with the requirements of Rule 8(a)(2).

The Court finds that Don Austin can avail himself of the judicial immunity doctrine to shield him from liability of a civil nature in that his acts are performed in his official capacity as the Clerk of the Court.

The Court finds that no cause of action is stated against Don Austin or Leslie R. Earl, Jr.

The Court further finds that the plaintiff has not responded to the Motions to Dismiss as ordered by the Court.

IT IS, THEREFORE, ORDERED that the Motions to Dismiss be and the same are hereby sustained and the cause of action and complaint are hereby dismissed.

ENTERED this 5th day of March, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

The questions, thus to be considered by this Court on the present motion are as follows:

1. Upon consideration of all the facts, would harm result to either party as a result of the granting or denial of the stay; and
2. Were there probable grounds for an appeal to protect rights which might be prejudiced by the refusal to grant the stay.

The Court has considered the various contentions of both litigants and finds that the above referenced questions must be answered in the negative, relative to the contentions of the plaintiff.

Plaintiff will not be foreclosed from any of its rights by virtue of the lack of a stay; but it is necessary in order to protect the integrity of the defendant to allow it to proceed in the normal course of its activities pending the resolution of the question presented by the appeal.

IT IS, THEREFORE, ORDERED that the Plaintiff's motion for injunction pending appeal be and the same is hereby denied.

ENTERED this 5th day of March, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MONA G. KEITH,

Plaintiff,

-vs-

SOUTHWESTERN POWER ADMINISTRATION,
AN AGENCY OF THE UNITED STATES,

Defendant.

E I L E D

MAR 5 1976

Jack C. Silver, Clerk

No. 75-C-570

ORDER FOR DISMISSAL

The motion of plaintiff for dismissal of the above-entitled action with prejudice came on regularly for hearing on _____, 1976;

And it appearing that defendant in his answer makes no counterclaim against plaintiff and will not be substantially prejudiced by a dismissal; therefore,

IT IS ORDERED that the above-entitled action be, and it is hereby, dismissed with prejudice.

Dated March 5, 1976.

District Judge

Richard D. Beeby
Attorney for Plaintiff
8545 East 28th Place
Tulsa, Oklahoma 74129

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

DYCO PETROLEUM CORPORATION,
Plaintiff,

v.

SPARKS DRILLING COMPANY,
formerly Osage Drilling Company,
Defendant.

No. 75-C-314-C

E I L E D

MAR 5 1976

Jack C. Silver, Clerk

U. S. DISTRICT COURT

ORDER OF DISMISSAL

and cause of action

IT IS ORDERED that the plaintiff's Complaint and defendant's Counterclaim in this action both be dismissed with prejudice pursuant to stipulation between the parties.

Given under my hand this 5th day of March, 1976.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM J. USERY, JR., (Successor to)
John T. Dunlop), Secretary of Labor,)
United States Department of Labor,)
)
Plaintiff)
)
v.)
)
THE RESOURCE SCIENCES CORPORATION,)
a Corporation,)
)
Defendant)

Civil Action ✓
No. 74-C-316

FILED

MAR 5 1976

Jack C. Silver, Clerk
U.S. District Court

PARTIAL DISMISSAL WITH PREJUDICE

COMES NOW Plaintiff and dismisses with prejudice all its issues and causes of action alleged in this proceeding against Defendant which are based upon the sex discrimination provisions of Section 6 of the Fair Labor Standards Act, with respect to employees Norman Freeze and Victor Houser, upon failure to pay overtime compensation under Section 7 of the Fair Labor Standards Act, with respect to employees Sharon Chesser Collins and Sally Martin Cotten and Section 11(c), and upon the record-keeping requirements of the Fair Labor Standards Act. The sole issue and cause of action in this proceeding not hereby dismissed with prejudice, which issue has been left to be decided by the Court, and has been decided by Orders dated January 23, 1976 and February 13, 1976, is the questions of the discharge of Victor Houser under the Age Discrimination in Employment Act.

Dated this 26th day of February, 1976.

William J. Kilberg
WILLIAM J. KILBERG
Solicitor of Labor

Ronald M. Gaswirth
RONALD M. GASWIRTH
Regional Solicitor

William E. Everheart
WILLIAM E. EVERHEART
Acting Counsel for ESA

Richard L. Collier
RICHARD L. COLLIER
Attorney

ATTORNEYS FOR PLAINTIFF

Partial Dismissal With Prejudice
Approved:

HALL, ESTILL, HARDWICK, GABLE,
COLLINGSWORTH & NELSON, INC.

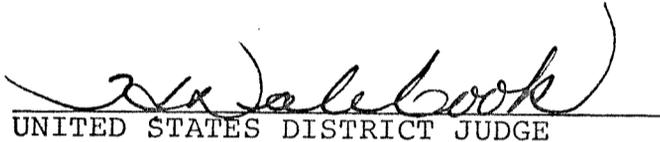
By:



Harry L. Seay III
805 National Bank of Tulsa Bldg.
Tulsa, Oklahoma 74103
(918) 585-9161

ATTORNEYS FOR DEFENDANT

The foregoing Partial Dismissal With Prejudice by Plaintiff is hereby approved and allowed this 5th day of ^{March} ~~February~~, 1976.


UNITED STATES DISTRICT JUDGE

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

LYNN CLYMA,)
)
Plaintiff,)
)
vs.)
)
MISSOURI-KANSAS-TEXAS RAILROAD)
COMPANY, a corporation,)
)
Defendant and)
Third-Party Plaintiff,)
)
vs.)
)
THE CITY OF TULSA, OKLAHOMA,)
a municipal corporation,)
)
Third-Party Defendant.)

No. 73-C-312-B ✓

FILED
MAR 12 1976 *ph*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

MODIFICATION OF JUDGMENT ON GENERAL
VERDICT AFTER REMITTITUR

This action came on for trial before this Court and a jury, the Honorable Allen E. Barrow, U. S. District Judge presiding, and the issues having been duly tried and the jury having duly rendered its verdict in the amount of \$146,129.00, and the Court having ordered a new trial in said action unless said Plaintiff file with the Clerk of the Court within seven (7) days, a written consent to reduce the verdict to \$85,000.00 inclusive of costs, and said consent having been duly signed, acknowledged and filed with said Clerk,

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff recover of the Defendant Missouri-Kansas-Texas Railroad Company the sum of \$85,000.00 inclusive of costs with interest thereon from date, at the rate of ten percent (10%) per annum.

DATED this 12th day of March, 1976.

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

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

EDUCATIONAL DEVELOPMENT CORPORATION,)
)
Plaintiff,)
)
vs.)
)
THE ECONOMY COMPANY,)
)
Defendant.)

No. 73-C-256

E I L E D

MAR 11 1976

Jack C. Silver, Clerk
U S DISTRICT COURT

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 decision having been duly rendered, the following Order is entered:

IT IS ORDERED AND ADJUDGED that the Plaintiff take nothing and that the action be dismissed on the merits.

Dated at Tulsa, Oklahoma, this 11th day of March, 1976.



H. DALE COOK
United States District Judge

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HOSIE L. MILLER a/k/a HOCIE LEE MILLER
a/k/a HOSIE MILLER a/k/a HOSIL MILLER,
GENEVA A. MILLER a/k/a GENEVA MILLER
a/k/a GENEVA ANN MILLER,
THE BETTY CLAIRE SHOP, INC.,
DORMAN STITES d/b/a DORMAN HOME SUPPLIES,
AMERICAN STATE BANK, A CORPORATION,
MID-PORT INVESTMENT CORP.,
SURETY LOAN SERVICE, INC.,
COUNTY TREASURER, TULSA COUNTY,
BOARD OF COUNTY COMMISSIONERS, TULSA COUNTY.)

Defendants.

Civil Action No. 75-C-494^v

FILED

MAR 11 1976

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 20 day of February, 1976, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney, the defendants Board of County Commissioners and County Treasurer, Tulsa County, appearing by their attorney Andrew B. Allen, Assistant District Attorney, the defendant Mid-Port Investment Corp. appearing by their attorney William B. Lee, the defendant Betty Claire Shop, Inc. appearing by their attorney William R. Grimm, the defendant American State Bank appearing by Arlie E. Piguet, and the defendants Hosie L. Miller, Geneva A. Miller, Dorman Stites d/b/a Dorman Home Supplies, and Surety Loan Service appearing not.

The Court being fully advised and having examined the file herein finds that the defendant Hosie L. Miller a/k/a Hocie Lee Miller a/k/a Hosie Miller a/k/a Hosil Miller was served with Summons and Complaint on November 12, 1975, and was served with Summons and Amendment to Complaint on January 12, 1976; that the defendant Dorman Stites d/b/a Dorman Home Supplies was served with Summons and Complaint on November 4, 1975, and was served with

Summons and Amendment to Complaint on December 30, 1975; that the defendant Surety Loan Service, Inc. was served with Summons and Complaint on November 4, 1975, and was served with Summons and Amendment to Complaint on December 17, 1975; and the defendant Geneva A. Miller was served with Summons and Complaint on November 4, 1975; and was served with Summons and Amendment to Complaint on January 6, 1976; that the defendant American State Bank, A Corporation was served with Summons and Complaint on November 4, 1975, and was served with Summons and Amendment to Complaint on December 30, 1975; that the defendant The Betty Claire Shop, Inc. was served with Summons and Complaint on November 4, 1975, and was served with Summons and Amendment to Complaint on December 17, 1975; that the defendant Mid-Port Investment Corp. was served with Summons and Complaint on November 18, 1975, and was served with Summons and Amendment to Complaint on December 17, 1975; and that the Board of County Commissioners and the County Treasurer were served with Summons, Complaint and Amendment to Complaint on December 17, 1975.

It appearing that the American State Bank has duly filed its Disclaimer herein on November 18, 1975; that the Betty Claire Shop, Inc. has duly filed its Answer and Cross Complaint on November 25, 1975; that the defendant Mid-Port Investment Corp. has duly filed its Disclaimer on December 9, 1975; that the County Treasurer and the Board of County Commissioners have duly filed their Answer on January 5, 1976; and that the defendants Hosie L. Miller, Geneva A. Miller, Dorman Stites d/b/a Dorman Home Supplies and Surety Loan Service 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 Nineteen (19), Block Seven (7),
Suburban Acres Second Addition to
the City of Tulsa, County of Tulsa,
State of Oklahoma, according to the
recorded plat thereof

THAT the defendants, Hosie L. Miller and Geneva A. Miller, did, on the 4th day of October, 1972, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the sum of \$10,500.00, 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 the defendants Hosie L. Miller and Geneva A. Miller made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$10,190.02, as unpaid principal, with interest thereon at the rate of 4-1/2 percent per annum from December 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that The Betty Claire Shop, Inc. is entitled to judgment against Hosie L. Miller a/k/a Hocie Lee Miller a/k/a Hosie Miller a/k/a Hosil Miller and Geneva A. Miller a/k/a Geneva Miller a/k/a Geneva Ann Miller in the amount of \$327.39, plus interest at the rate of 18 percent per annum from April 25, 1974, until paid, plus attorney's fees in the amount of \$150.00, plus accrued court costs, but that such judgment would be subject to and inferior to the first mortgage lien of the plaintiff herein.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from defendants Hosie L. Miller and Geneva A. Miller, the sums of 19.80 for the year 1974, and the sum of 16.68 for the year 1975, for personal property taxes, 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 Hosie L. Miller and Geneva A. Miller, in personam, for the sum of \$10,190.02, with interest thereon at the rate of 4-1/2 percent per annum from December 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 Betty Claire Shop, Inc have and recover judgment against the defendants Hosie L. Miller and Geneva A. Miller, in the amount of \$327.39, plus interest at the rate of 18 percent per annum from April 25, 1974, until paid, plus attorneys fees in the amount of \$150.00, plus accrued court costs, as of the date of this judgment, 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 County of Tulsa have and recover judgment, in rem, against defendants, Hosie L. Miller and Geneva A. Miller, for the sum of \$36.45 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 the defendants Dorman Stites d/b/a Dorman Home Supplies and Surety Loan Service, 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.

Cecil E. Bruner

UNITED STATES DISTRICT JUDGE

APPROVED:

Robert P. Santee
ROBERT P. SANTEE
Assistant United States Attorney

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

William R. Grimm
WILLIAM R. GRIMM
Attorney for Defendant, Betty
Claire Shop, Inc.

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

E. R. MCKEE and RUTH MCKEE,

Plaintiffs,

vs

GENE HOPKINS, SHARON HOPKINS,
ET AL.,

Defendants.

NO. 75-C-373

FILED

MAR 10 1976

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

J U D G M E N T

NOW on this 10th day of March, 1976, this cause came on for hearing upon plaintiffs' Motion for Default Judgment as against the defendants, Ralph Grimmer and Amanda B. Grimmer, and upon examination of the file, it is found that the defendants, Ralph Grimmer and Amanda B. Grimmer, have been personally served with summons by the United States Marshall on August 15, 1975, and have failed to plead or answer and are, therefore, adjudicated in default and judgment should be granted in favor of the plaintiffs, E. R. McKee and Ruth McKee, and against the defendants, Ralph Grimmer and Amanda B. Grimmer, for the sum of \$112,280.85.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that the plaintiffs, E. R. McKee and Ruth McKee, have and recover judgment of and from the defendants, Ralph Grimmer and Amanda B. Grimmer, for the sum of \$112,280.85.

Dated this 10th day of March, 1976.

Jack C. Silver
Clerk of the United States
District Court

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

GERALD C. ANGUS and CARMEN)
ANGUS, individually and as)
husband and wife,)

Plaintiffs,)

vs.)

SOUTHWESTERN BELL TELEPHONE CO.,)
INC., a corporation, and PATRICK)
B. FOWLER, agent, servant or)
employee of Southwestern Bell)
Telephone Co., Inc.,)

Defendants.)

No. 75-C-408

FILED

MAR 10 1976

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

ORDER

The Court has considered the plaintiffs' Motion to Remand, the defendant, Patrick A. Fowler's Motion to Dismiss and the defendant, Southwestern Bell Telephone Company's Motion to Dismiss in their entirety and has carefully perused the file, the briefs and all of the recommendations concerning said motions, and being fully advised in the premises, finds as follows:

That plaintiffs' Motion to Remand should be overruled for the reason that the joinder of the resident defendant is neither proper nor necessary to any claim for relief asserted by plaintiffs and that removal of this cause is proper under 28 USCA §1441 (c).

Defendant, Patrick A. Fowler's Motion to Dismiss should be granted for the reason that the Complaint fails to allege facts sufficient to constitute a cause of action against said defendant.

Defendant, Southwestern Bell Telephone Company's Motion to Dismiss should be overruled for the reason that there are sufficient allegations to state a claim against the defendant Southwestern Bell Telephone Company upon which relief could be granted.

IT IS, THEREFORE, ORDERED that the motion of plaintiffs to remand should be and hereby is overruled, the motion of defendant, Patrick A. Fowler to dismiss should be and hereby is granted, the motion of defendant Southwestern Bell Telephone Company should be and hereby is overruled.

Dated this 10th day of March, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

We can do little more than identify some of the factors . . . Length of delay, the reason for the delay, the defendant's assertion of his right, and the prejudice to the defendant."

and, continuing at page 533 with the statement that:

"We regard none of the four factors identified above as either a necessary or sufficient condition to the finding of a deprivation of the right of a speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process."

The Court in Barker v. Wingo, supra, at page 532 further states:

"Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because of the inability of a defendant adequately to prepare his case skews the fairness of the entire system."

The Oklahoma Court of Criminal Appeals has thoroughly examined the matter in Bauhaus v. State, supra, and this Court, upon further review and examination concurs that the delay in bringing petitioner to trial in Tulsa County, Oklahoma, did not result in violation of his constitutional right to a speedy trial and did not prejudice his rights or impair the preparation of his defense to the charges.

Petitioner has made myriad assertions of error in the course of pursuing his second allegation. However, these assertions are all related to what petitioner has deemed improper interrogation of witnesses, primarily petitioner's own alibi witness, and purportedly prejudicial arguments and comment of the prosecutor. Again, the Oklahoma Court of Criminal Appeals has exhaustively surveyed the points raised by petitioner and his authorities before concluding, at page 444 of Bauhaus v. State, supra, that:

"Although there are respects in which the conduct of the prosecutor cannot be condoned, we hold against this proposition as there is no error sufficiently prejudicial to require reversal.

In conclusion, we observe that the record is free of any error which would justify modification or reversal."

This Court has carefully scrutinized the records and transcripts and has in turn viewed each instance cited by petitioner and his authorities

as well as surveying the entire case. This Court finds that petitioner's assertions are not supported by the full record and the authorities cited are clearly distinguishable or are inapplicable under the facts. The Court also finds that, although the prosecutor's conduct in some respects may not have been of the highest standard for trial attorneys, there was no error sufficiently prejudicial cited by petitioner when viewed on the evidence and the record to warrant the relief demanded.

Moreover, where a State Supreme Court fully and adequately considered a State prisoner's Federal claims on appeal and in post-conviction proceedings, no further evidentiary hearing is necessary in Federal habeas corpus proceedings. Dhaemers v. State of Minnesota, 456 F.2d 1291 (8th Cir. 1972). The Oklahoma Court of Criminal Appeals has fully, adequately, and accurately considered petitioner's propositions, and his Federal claims and the record reveals that no further evidentiary hearing in this matter is necessary and that petitioner is not entitled to relief. Putnam v. United States, 337 F.2d 313 (10th Cir. 1964); Maxwell v. Turner, 411 F.2d 805 (10th Cir. 1969); Cranford v. Rodriguez, 512 F.2d 860 (10th Cir. 1975).

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of James Scott Bauhaus be and it is hereby denied and the case is dismissed

Dated this 10th day of March, 1976, 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

FILED

MAR 9 1976

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JERRY EVATT,)
)
Defendant.)

CIVIL NO. 76-C-84 - B

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law
filed in this civil action on the 9th day of March, 1976,

It is therefore, ORDERED, ADJUDGED and DECREED that
the Defendant, Jerry Evatt, his officers, agents, principal,
servants, employees, attorneys and all persons in active concert
or participation with him, are permanently enjoined from inter-
fering in any way with the ingress and egress of the oil and gas
lessee, Leonard, Palm and Cook Exploration, an Oklahoma partner-
ship, its officers, agents servants, employees and contractors
for the purpose of drilling and production operations including
laying and maintaining a pipeline and erection and maintenance
of an electric line on electric poles on any of the real property
described as follows, to-wit:

The NW/4 NW/4 and Lot 1, of Section 9,
T. 23 N., R. 3 E., in Osage County, State
of Oklahoma,

and this injunction shall remain in full force and effect until
such time as the oil and gas mining lease, described in the
Findings of Fact filed herein, shall expire by operation of law.

It is further ORDERED that the Defendant, Jerry Evatt,
pay the costs of this proceeding to the Plaintiff, United States
of America.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

removal, a citizen of the State of Georgia.

The Court, further reaffirms and readopts its prior order entered herein on October 6, 1975.

Title 28 U.S.C.A. §1441, provides:

"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 Court finds that plaintiff has stated a separate and independent claim or cause of action against the defendants, Swan, Smith and Mitchell, which would be removable if sued on alone. The allegations against Swan, Smith and Mitchell are identical to the allegations asserted in the original action brought in this court and later dismissed by plaintiff.

The only new allegation is the dissolution of Sealco, Inc., which the Court originally found, in its order of October 6, 1975, should, in the Court's discretion, be remanded to the State Court, as provided by Title 28 U.S.C.A. §1441.

IT IS, THEREFORE, ORDERED that the Objections to Findings and Recommendations of the Magistrate and Order of the Court and Motion for Hearing filed by the plaintiff be and the same are hereby overruled.

IT IS FURTHER ORDERED that the Order of this Court entered on October 6, 1975, remain in full force and effect as the Order of this Court.

ENTERED this 9th day of March, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 9 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JERRY EVATT,)
)
Defendant.)

CIVIL NO. 76-C-84-B

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing, at 10:30 A.M. on Thursday, March 4, 1976, on the Plaintiff's Motion for Preliminary Injunction. The Plaintiff, United States of America, appeared by Hubert A. Marlow, Assistant United States Attorney for the Northern District of Oklahoma. The Defendant, Jerry Evatt, did not appear in person and no attorney or other person appeared for him.

Pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, the Court accelerated the hearing on preliminary injunction with a hearing on the merits.

In view of the hearing, the Court has considered the following factors in determining whether a preliminary and permanent injunction should issue:

(1) Whether there is a strong showing that Plaintiff is likely to prevail on the merits of the case; (2) whether Plaintiff will suffer irreparable harm if the preliminary injunction and permanent injunction are denied; (3) whether the Defendant will suffer harm if the preliminary injunction and permanent injunction are issued; and (4) whether the public interest will be served in granting the preliminary injunction and permanent injunction. After reviewing the pleadings filed in this case and having considered the evidence, the Court makes the following findings of facts and conclusions of law:

FINDINGS OF FACTS

1. The Defendant, Jerry Evatt, was personally served with notice of the hearing set for March 4, 1976. Such service was made by Deputy United States Marshal Frederick R. Strike, at 8:15 P.M. on February 27, 1976.

2. The Defendant, Jerry Evatt, has never filed any document in this case either in person or by attorney and did not appear at the hearing set for March 4, 1976, either in person or by attorney.

3. The Osage Tribe of Indians is the owner of the oil, gas, coal and other minerals under the following described property, to-wit:

The NW/4 NW/4 and Lot 1, of Section 9,

T. 23 N., R. 3 E., in Osage County, Oklahoma.

Hereinafter this described property will be referred to as the subject property.

4. On October 20, 1975, the Osage Tribe of Indians granted to Leonard, Palm and Cook Exploration, an Oklahoma partnership, an oil and gas mining lease for three years from the date of approval thereof, and as long thereafter as oil and/or natural gas is produced in paying quantities, which lease covered the subject property. This lease was approved by an agent of the Department of Interior on November 21, 1975.

5. One Yvonne Colombe Evatt owns the surface only of the subject property and the Defendant, Jerry Evatt, is her tenant and in possession of said property.

6. On or about December 23, 1975, the above-named lessee announced a location for drilling an oil and gas well on the subject property and applied to the Osage Indian Agency for a permit to drill such well, which was designated as Well No. 9-A.

7. On December 29, 1975, the aforesaid application of the said lessee was approved by the Osage Indian Agency and a drilling permit was issued by the Agency to the lessee.

8. Subsequent to the issuance of the said drilling permit the aforesaid lessee tendered three hundred dollars (\$300.00) to Yvonne Colombe Evatt, the owner of the surface of the subject property, as the commencement fee for drilling the aforesaid Well No. 9-A.

9. On January 13, 1976, and at all times subsequent thereto, the Defendant, Jerry Evatt, has refused to allow the aforesaid lessee ingress to the subject property for the purpose of drilling the said Well No. 9-A.

10. There is a current shortage of petroleum products which has stimulated drilling and production activity nationwide in aid of our energy crisis. The Court is aware that such activity has and is creating a shortage of drilling rigs and drilling crews so that time is of the essence in cases such as this.

CONCLUSIONS OF LAW

1. The United States of America is a proper party Plaintiff to this action in that it acts as trustee or guardian for the Osage Tribe of Indians, the owner of the oil, gas, coal and other minerals under the subject property.

2. This Court has jurisdiction over the person of the Defendant and the subject matter of this action.

3. Service of both the summons in this case and the notice of the hearing set for March 4, 1976, was valid, and the Defendant, Jerry Evatt, is wholly in default in this case.

4. The surface owner of the subject property and her tenant hold such property subject to a statutory reservation of minerals thereunder in the Osage Tribe of Indians (34 Stat. 539, as amended) and the regulations for the mining and production of such minerals promulgated by the Secretary of Interior reported in 25 CFR Section 183.1 et seq., as revised July 22, 1974.

5. The oil and gas mining lease granted by the Osage Tribe of Indians to Leonard, Palm and Cook Exploration, an Oklahoma partnership, (as particularly described in Finding of Fact No. 4)

was a valid and subsisting lease on January 13, 1976, and has remained so at all times subsequent thereto, up to and including the present date.

6. The regulations promulgated by the Secretary of the Interior, contained in 25 Code of Federal Regulations, Sections 183.19 and 183.20, as revised July 22, 1974, are valid regulations promulgated by the Secretary pursuant to Federal statutes authorizing such action by him, and are controlling law in the factual situation found in this case.

7. The above-cited regulations provide that before commencing a drilling operation a lessee shall tender to the surface owner in Osage County, Oklahoma, commencement money in the amount of \$300.00 for each well, after which such lessee shall be entitled to immediate possession of the drilling site.

8. The oil and gas lessee of the subject property and the Osage Tribe of Indians have complied with the above-cited regulations of the Secretary of the Interior, and said lessee is entitled to possession of the subject property for its drilling operations.

9. The denial by the Defendant, Jerry Evatt, of ingress to and possession of the subject property by the aforesaid lessee is a violation of the rights of the said lessee and the Osage Tribe of Indians as set forth in the above-cited regulations of the Secretary of the Interior.

10. If the requested injunction does not issue, the Osage Tribe of Indians will suffer irreparable harm in that they will be deprived of the benefits of their mineral interests reserved to them by Congress.

11. The above-cited regulations of the Secretary of the Interior do not preclude recovery of damages by the surface owner, but instead protect his rights by providing the procedure for ascertainment of his damages, if any, caused by the lessee's operations. The commencement fee required by the regulations does not fix the amount of damages, but rather is used as a credit toward payment of the total damages, if any, since such damages

cannot be ascertained until after completion of a well as a serviceable well or dry hole or completion of the drilling operation. In any event, the Defendant has an adequate remedy at law and will suffer no harm if the injunction be issued.

12. The public interest will be served by granting the injunction in that the public has a vital interest in the production and conservation of energy.

13. A permanent injunction should be issued against the Defendant in this case.

Entered this 9th day of March, 1976.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

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

CHARLES C. BAKER, et al,)	
)	
Plaintiffs,	)	No. 72-C-334 ✓
	)	No. 72-C-335
vs.	)	No. 72-C-338
	)	No. 72-C-417
CENTRAL AND SOUTH WEST	)	Consolidated
CORPORATION, et al,	)	Under
	)	No. 72-C-334
Defendants.)	

FILED

MAR 9 1976

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

ORDERS AND JUDGMENT OF DISMISSAL

These consolidated causes come before the Court for decision of various Motions which are delineated in the Court's separate Findings of Fact and Conclusions of Law made and filed this date. With reference to said Motions,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiffs' Motions to Remand are denied, and the Court retains jurisdiction of all causes of action attempted to be stated in the Petition, including both the second, third, fourth and sixth causes of action, which are removable as a matter of right under 28 U.S.C. §1441(c), as well as the first, fifth and seventh causes of action, retention of which is discretionary with the Court under 28 U.S.C. §1441(c).

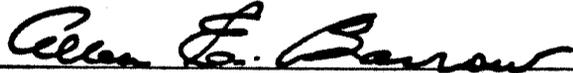
2. Plaintiffs' "Application for Leave of Court to File Amended Petition, District Court of Rogers County - Further Leave to File Amendment to Petition Herein" is sustained.

3. The Motions to Dismiss of the defendants United States Steel Corporation, Public Service Company of Oklahoma, Transok Pipeline Company, Central and South West Corporation,

Panhandle Construction Company, Paul A. Mills, an individual, d/b/a Moody Engineering Company, and the Kendall Company, all of which Motions have been adopted by the defendant R. H. Fulton, Inc., and all of which Motions, by agreement of counsel, have been considered as being directed to the plaintiffs' Petition, as amended by Amendment to Petition, are sustained.

4. The Findings and Recommendations of Magistrate are sustained (except as modified herein or in the Court's separate Findings of Fact and Conclusions of Law), and plaintiffs' Objections to Findings and Recommendations of Magistrate are overruled.

5. These consolidated actions are hereby dismissed as to all defendants with prejudice to re-filing, so long as the Findings and Order of the Corporation Commission of the State of Oklahoma entered in Cause No. 24319, Gerald H. Barnes, etc., Applicant v. Transok Pipeline Company, Respondent, now on appeal in Case No. 45994, Gerald H. Barnes, Staff Counsel for the Corporation Commission of Oklahoma, on behalf of Mr. and Mrs. Charles Baker, et al, Appellants v. Transok Pipeline Company, Appellee, now pending before the Supreme Court of the State of Oklahoma, remain in full force and effect, and are not altered in any material respect pertaining to the basic finding that the pipeline is safe, properly designed and constructed in substantial compliance with applicable safety standards and regulations.


ALLEN E. BARROW
Chief Judge
United States District Court for
the Northern District of Oklahoma

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

CHARLES C. BAKER, et al,)	
)	
Plaintiffs,	)	No. 72-C-334 ✓
	)	No. 72-C-335
vs.	)	No. 72-C-338
	)	No. 72-C-417
CENTRAL AND SOUTH WEST	)	Consolidated
CORPORATION, et al,	)	Under
	)	No. 72-C-334
Defendants.)	

FILED

MAR 9 1976 K

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These consolidated causes (all being removal actions filed by different defendants in the same state court case) come on for decision on this 9th day of March, 1976, upon plaintiffs' Objections to Findings and Recommendations of Magistrate. The Findings and Recommendations in question were rendered by the Magistrate, after extensive briefing and oral argument by counsel for the parties, upon the following Motions:

1. Plaintiffs' Motions to Remand (filed in all four cases);
2. Motion of Defendant United States Steel Corporation to Dismiss;
3. Motion of Defendants Public Service Company of Oklahoma and Transok Pipeline Company to Dismiss;
4. Motion of Defendant Central and South West Corporation to Dismiss;
5. Motion of Kendall Company to Dismiss as set forth in its Answer;
6. Plaintiffs' "Application for Leave of Court to File Amended Petition, District Court of Rogers County - Further Leave to File Amendment to Petition Herein";
7. Motion of Defendant Panhandle Construction Company to Dismiss;
8. Motion of Defendant Paul A. Mills, an Individual, d/b/a Moody Engineering Company, to Dismiss;

9. The various Motions to Dismiss were adopted by the Defendant R. H. Fulton, Inc.

Supplemental briefs have been filed in connection with the plaintiffs' Objections to Findings and Recommendations of Magistrate, and these have been considered and studied at length by the Court, together with the briefs originally submitted to the Magistrate, the pleadings and other contents of the Court file.

Preliminarily, the Court would comment that for reasons which will become apparent below, it has for some time stayed its hand in ruling on this matter in the hope that an early decision might be forthcoming in Case No. 45994, Gerald H. Barnes, Staff Counsel for the Corporation Commission of Oklahoma, on behalf of Mr. and Mrs. Charles Baker, et al, appellants, vs. Transok Pipe Line Company, appellee, now pending before the Supreme Court of the State of Oklahoma. The Court was of the view that having the benefit of the Oklahoma Supreme Court's decision would expedite the ultimate disposition of these cases, and reduce the chances of multiple litigation. Additionally the Court considered general principles of comity and abstention. See, on a somewhat related question, the dissenting opinion of Judge Brown in W. S. Ranch Company v. Kaiser Steel Corporation, 388 F.2d 257, 262 (10th Cir. 1968), reversed, 391 U.S. 593, 20 L.Ed.2d 835, 88 S. Ct. 1753 (1968).

The Court is now of the view, however, that it should no longer postpone its ruling in these cases. The appeal before the Oklahoma Supreme Court involves a long and complicated record; the fact questions presented are technical, and require an evaluation of complex evidence, much of which is

expert. It is unclear how much longer the review process will require in that case. The Court feels that the parties to these actions deserve, and the administration of justice requires, that a ruling be issued at this time.

The Court makes the following Findings of Fact:

1. These consolidated cases are all removal actions involving the same state court case, which was brought as a class action seeking to recover compensatory damages and punitive damages on behalf of certain named individuals "... and all other parties similarly situated along or near [the] TRANSOK PIPELINE COMPANY ... [natural gas] transmission pipeline from Ames, Oklahoma to Oologah, Oklahoma"

2. The defendants consist of the owner of the pipeline in question (and its parent corporations), the contractors who constructed the pipeline, and certain suppliers of materials or services used in constructing the pipeline.

3. The Petition, while being overly long, verbose, repetitive, and shot through with irrelevancies, apparently attempts to state seven causes of action, each for more than \$10,000 exclusive of interest and costs, as follows: all causes of action are predicated on voluminous allegations that the pipeline is unsafe; the first cause of action lies jointly against the owner and its parent corporations on theories of trespass, nuisance, and creation of an ultra-hazardous condition; the second through seventh causes of action are alleged respectively against the supplier of the steel pipe (second cause of action), a testing company (third cause of action), the construction contractors (fourth cause of action), a second testing and inspection company (fifth cause of action), a supplier of protective

plastic wrapping material (sixth cause of action), and a third testing company (seventh cause of action); the second through seventh causes of action appear to be predicated on the theories of breach of warranty, strict liability, negligence, products liability and/or defective workmanship.

4. After removal petitions were filed in this Court in Case Nos. 72-C-334, 72-C-335 and 72-C-338, but before the removal petition was filed in Case No. 72-C-417, the plaintiffs filed an "Amended Petition" in the state court. The sole purpose of this "Amended Petition" is to allege that the defendant (and petitioner for removal in Case No. 72-C-417) Paul A. Mills, d/b/a Moody Engineering Company, is doing business as an individual, and not, as had originally been alleged, as a corporation named "Moody Engineering Company". Without ruling on the propriety or effectiveness of this "Amended Petition" (filed, as it was, after three removal petitions had been filed in this Court), all further references herein to the Petition will include the allegations of the "Amended Petition", since they go only to the form of business organization of one of the parties defendant, and since, as set forth below, that defendant has filed a Motion to Dismiss attacking the in personam jurisdiction of this Court.

5. There is complete diversity of citizenship and jurisdictional amount between plaintiffs on the one hand, and the respective defendant or defendants named in each of the second, third, fourth and sixth causes of action. The defendant or defendants named in each of said causes of action have filed removal petitions, and plaintiffs have filed motions to remand. There are thus presented questions of whether the second, third, fourth and sixth causes of action are removable

as a matter of right under 28 U.S.C. §1441(c) as being separate and independent claims or causes of action, and if so (as to one or more of said second, third, fourth or sixth causes of action), whether the Court should exercise its discretion and retain jurisdiction of the entire case under 28 U.S.C. §1441(c).

6. In this Court, the plaintiffs have filed an "Application for Leave of Court to File Amended Petition, District Court of Rogers County - Further Leave to File Amendment to Petition Herein". This "Application" is a rather transparent attempt to defeat removal by amending the Petition so as to lump together all causes of action against all defendants, and thereby delete any "separate and independent claim or cause of action". Regardless of its disposition of this "Application", the Court must, under familiar principles, rule on the question of remand and removability based on the pleadings as of the time the case was properly removed. 28 U.S.C. §§1441(c), 1447(c); Brown v. Eastern States Corporation, 181 F.2d 26, 28-9 (4th Cir. 1950); Jacks v. Torrington Company, 256 F.Supp. 282 (D. S.C. 1966). See also Hazel Bishop, Inc. v. Perfemme, 314 F.2d 399 (2nd Cir. 1963); Espino v. Volkswagen de Puerto Rico, Inc., 289 F.Supp. 979 (D. Puerto Rico 1968); Marsh v. Tillie Lewis Foods, Inc., 257 F.Supp. 645 (W.D. S.D. 1966).

7. The Petition contains the following allegations, among others:

a) That the pipeline in question was constructed in the latter part of 1970 and early 1971;

b) That preliminary to construction, the owner, Transok Pipeline Company ("Transok") obtained the necessary right-of-way for the pipeline in question; that in some instances, this right-of-way was acquired involuntarily by eminent domain, and in other instances, was acquired voluntarily in the form of easements acquired in lieu of

condemnation (The Court notes that under Oklahoma law, a condemnor must first attempt to acquire the property interest in question by voluntary settlement with the land owner in lieu of condemnation, see 66 O.S.A. §§52-3); the Court also takes notice of the reported decision of the condemnation action against the plaintiffs Charles and Dorothy Baker, see Transok Pipeline Company v. Adams, 488 P.2d 1256 (Okla. 1971);

c) That in January, 1971, the plaintiffs Charles and Dorothy Baker initiated a proceeding before the Oklahoma Corporation Commission, challenging the safety of the pipeline, and seeking an Order enjoining its use and operation; that on July 28, 1972, after a three week trial on the merits of the safety issue, the Corporation Commission found the pipeline safe and denied the injunctive relief sought by the complainants; that it is this decision which is presently on appeal to the Oklahoma Supreme Court in Case No. 45994.

8. In addition to money damages, the instant action, which was filed after the Oklahoma Corporation Commission issued its decision, also seeks to enjoin use and operation of the pipeline. The pipeline has apparently operated without incident since issuance of the Corporation Commission's decision in July of 1972; in any event, no safety-related incidents have been brought to the attention of the Court.

9. Numerous defendants have filed motions to dismiss on subject matter jurisdictional grounds. Their argument is that the Oklahoma Corporation Commission has exclusive jurisdiction to adjudicate, and in fact has adjudicated, the merits of the safety of the pipeline in question; that with the pipeline having been found to be safe and properly constructed, all damages to which the plaintiffs are entitled have in fact been

paid in condemnation proceedings, or in voluntary settlements in lieu of condemnation; and that the plaintiffs have not stated a claim for relief, either injunctive or for money damages, against any of the defendants. Additionally, the defendants argue that all issues sought to be adjudicated by plaintiffs in this action have already been adjudicated in the Corporation Commission proceeding, and this action is barred on the theories of res judicata or collateral estoppel. Lastly, the defendants Central and South West Corporation and Paul A. Mills, an individual, d/b/a Moody Engineering Company, move to dismiss upon the grounds that this Court lacks in personam jurisdiction as to them, for the reason that no basis exists for the assertion of long-arm jurisdiction.

10. In connection with the Corporation Commission proceeding, the Report of Referee (some 18 pages in length), together with the Commission's Findings and Order (some 7 pages in length), are attached as exhibits to the Motion to Dismiss of the defendants Transok and Public Service Company of Oklahoma. It is clear from these lengthy documents, analyzing the evidence heard by the Corporation Commission, that the question of safety of this pipeline was fully and meticulously litigated in an adversary proceeding. The Commission heard many witnesses, most of them expert, and the testimony of some 22 of them is summarized in the Referee's Report. The record comprised some 2300 pages. The Referee's Report touches on most, if not all, of the specific complaints concerning the pipeline's safety which are included in the Petition in this Court. Likewise, the Commission's own Findings and Order cover these same issues.

The concluding Finding of the Corporation Commission

Referee is as follows:

"The overwhelming preponderance of the evidence is that the pipeline is a safe pipeline and substantially complies with the requirements of the Pipeline Safety Code as adopted by the Corporation Commission of Oklahoma.

"The Referee therefore recommends that the Application of Complainants be denied and dismissed."

The Referee's Report was found by the full Commission to be "proper and correct and should be affirmed". The Commission made further additional Findings, which in pertinent part are as follows:

"The Commission finds that the line was designed and constructed in a safe manner and substantially complies with the applicable safety regulations. The Commission finds that the hydrostatic test completed on the pipeline in November, 1970, proved its integrity and showed that the line, as of that date, was safe for its intended use."

As an added precaution, the Corporation Commission required that the pipeline be hydrostatically tested at a pressure of 1.5 times its maximum operating pressure for a 24 hour period some time between July 1, 1975 and December 31, 1975, and similarly tested at each five year interval thereafter.

CONCLUSIONS OF LAW

1. Removal jurisdiction (which is judged on the pleadings as of the time of removal - see Finding Number 6 above) exists under Title 28 U.S.C. §1441(c), in that there are separate and independent claims or causes of action stated in the second, third, fourth and sixth causes of action set forth in plaintiffs' petition, together with diversity of citizenship and jurisdictional amount as to each such separate and independent claim or cause of action; Climax Chemical Company v. C. F. Braun & Co., et al, 370 F.2d 616 (10th Cir. 1966). As to the

remainder of plaintiffs' action, the Court concludes that it should exercise its discretion and retain jurisdiction there-
over, in that the remaining causes of action involve questions of law and fact which are common and overlapping with those contained in the second, third, fourth and sixth causes of action, and retention of the entire case by the Court will avoid a multiplicity of litigation, will achieve a savings of time and expense for the parties, attorneys, Court personnel and potential witnesses involved, and generally will result in a savings of judicial time, energy and expense in litigating this matter. Plaintiffs' Motions to Remand should therefore be denied.

2. Plaintiffs' "Application for Leave of Court to File Amended Petition, District Court or Rogers County - Further Leave to File Amendment to Petition Herein" should be granted.

3. The subject matter jurisdiction of this Court in a removal action is derivative, i.e., this Court can exercise only such jurisdiction as could the state court from which these consolidated actions were removed, and no more. Lambert Run Coal Co. v. Baltimore & Ohio Railroad Co., 258 U.S. 377 (1921); Beckman v. Graves, 360 F.2d 148 (10th Cir. 1960); Grand River Dam Authority v. Parker, 40 F.Supp. 82 (N.D. Okla. 1941).

4. Under Oklahoma law, the Corporation Commission has exclusive subject matter jurisdiction to determine the safety of the pipeline in question. 52 O.S.A. §§5 et seq.; 17 O.S.A. §52; Oklahoma Constitution, Article IX, §§18 to 20; State ex rel Oklahoma Natural Gas Co. v. Hughes, 204 Okla. 134, 227 P.2d 666 (1951); Oklahoma Natural Gas Co. v. White Eagle Oil Co., 312 P.2d 879 (Okla. 1957); Southwestern Natural Gas Co. v. Cherokee Public Service Co., 172 Okla. 325, 44 P.2d 945 (1935); cf.

Shell Oil Co. v. Keen, 355 P.2d 997 (Okla. 1960), construing 52 O.S.A. §87.1

5. The Oklahoma Corporation Commission has, in response to the complaint of plaintiffs Charles and Dorothy Baker, exercised its exclusive jurisdiction to determine the safety of this pipeline, and in a full and complete adversary trial of the merits, has found the pipeline safe, properly and safely designed and constructed in substantial compliance with applicable safety regulations and standards. This decision is currently on appeal to the Oklahoma Supreme Court.

6. Assuming the pipeline to be safe, as the Corporation Commission has found, the plaintiffs have already received all money damages to which they are entitled in the various condemnation actions and settlements in lieu of condemnation consummated in connection with acquisition of the necessary pipeline right-of-way, and the damages alleged in this proceeding are not actionable. A judgment in a condemnation proceeding is conclusive as to all damages which were or might have been included in the award. Graham v. City of Duncan, 354 P.2d 458 (Okla. 1960). This same rule applies if the property interest in question is obtained by voluntary settlement in lieu of condemnation, instead of by an adversary condemnation proceeding. Poston v. City of McAlester, 132 Okla. 4, 268 P. 1110 (1928). Damages recoverable in condemnation proceedings include the impairment or depreciation in value of remaining land owned by the condemnee and not taken; and the annoyance and/or inconvenience inherent in the enterprise for which the property interest was condemned. Grand River Dam Authority v. Gray, 192 Okla. 547, 138 P.2d 100 (1943); Cities Service Gas Co. v. Huebner, 200 Okla. 521,

197 P.2d 985 (1948); Cities Service Gas Co. v. Williams, 200 Okla. 525, 198 P.2d 204 (1948); and Oklahoma Gas and Electric Co. v. Kelly, 177 Okla. 206, 58 P.2d 328 (1936).

7. Operation of a safe pipeline, properly and safely designed and constructed in substantial compliance with applicable safety standards and regulations, does not constitute an actionable taking from persons living near the pipeline but whose property is not traversed thereby. Damage must be specific and not general to be actionable, and persons living near a safe pipeline but whose property is not crossed by it suffer "... no other or different kind of grievance or damage than such as is common to the general public, and [they] ... cannot recover". Choctaw, O. & W. Ry. Co. v. Castanien, 23 Okla. 735, 102 P. 88 (1909).

8. Operation of a safe pipeline, properly designed and constructed in accordance with applicable safety regulations and standards, on right-of-way lawfully acquired for just compensation pursuant to applicable state condemnation law, does not constitute actionable nuisance or trespass. 50 O.S.A. §4; E. I. Du Pont De Nemours Powder Co. v. Dodson, 49 Okla. 58, 150 P. 1085 (1915); Weaver v. Bishop, 174 Okla. 492, 52 P.2d 853 (1935); see also 58 Am.Jur.2d, Nuisances §228; Anno. - Pipeline as Nuisance, 75 A.L.R. 1325; Humble Pipe Line Co. v. Anderson, 339 S.W.2d 259, 265 (Tex. 1960).

9. The case of Greyhound Leasing & Financial Corporation v. Joiner City Unit, 444 F.2d 439 (10th Cir. 1971) is inapplicable and distinguishable for the following reasons, among others: First, in the Greyhound Leasing case, the Orders and Findings of the Oklahoma Corporation Commission were not being challenged nor otherwise subject to collateral attack. As

Judge Seth put it:

"This is not a collateral attack on any order of the Commission as no order is drawn in issue. The defendant seeks to have the general administrative powers and machinery protect it from liability in these proceedings, but no party is urging that the orders of the Commission are wrong or challenging them indirectly."
444 F.2d at 445 (emphasis supplied).

In the present case the Petition, as amended by Amendment to Petition, is replete with allegations on virtually every page that the pipeline is unsafe in one or more particulars, and is clearly an attempt to re-litigate the entire safety issue. Second, in the Greyhound Leasing case, the Court was of the opinion that private property had been taken for private use in violation of Article II, §23, of the Oklahoma Constitution. In the case at bar, however, the takings have been for public use pursuant to the exercise of lawfully delegated condemnation authority. The public nature of the takings and Transok's power of eminent domain may not be questioned. Transok Pipeline Company v. Adams, supra. Since the takings here have been for public use, all compensation required under law has already been paid. This was not true in the Court's view in Greyhound Leasing, where the taking had been for private use and no compensation paid.

10. The plaintiffs in these consolidated actions cannot prevail in the face of the Findings and Order of the Corporation Commission of the State of Oklahoma. So long as said Findings and Order remain in full force and effect, and are not altered in any material respect pertaining to the basic finding that the pipeline is safe, properly designed and constructed in substantial compliance with applicable safety standards and regulations, plaintiffs' Petition, as amended by Amendment to Petition, fails to state a claim for relief and is wholly groundless.

11. Plaintiff's Petition, as amended by Amendment to Petition, does not state a claim upon which relief can be granted against any of the defendants on any of the causes of action alleged.

12. The Motions to Dismiss for lack of subject matter jurisdiction, and because the Petition, as amended by Amendment to Petition, fails to state a claim for relief, should be sustained. The Findings and Recommendations of Magistrate should be sustained (except as modified herein or in the Court's separate Orders and Judgment of Dismissal entered this date), and the Objections thereto should be overruled.

13. The Court is not required to reach nor does it pass upon the defense of res judicata and/or collateral estoppel, nor the defense of lack of in personam jurisdiction under the Oklahoma long-arm statutes raised by the defendants Central and South West Corporation and Paul A. Mills, an individual, d/b/a Moody Engineering Company.



ALLEN E. BARROW
Chief Judge
United States District Court for
the Northern District of Oklahoma

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

CHAMPLIN PETROLEUM COMPANY,
a Delaware corporation,

Plaintiff,

vs.

No. 74-C-320

DONALD C. INGRAM;
JOHN C. INGRAM;
TRUST B CREATED BY THE LAST WILL AND
TESTAMENT OF JAY P. WALKER, DECEASED,
and THE FIRST NATIONAL BANK AND TRUST
COMPANY OF TULSA, ROSS T. WARNER and
HORACE D. BALLAINE, as Trustees
thereof;
TRUST C CREATED BY THE LAST WILL AND
TESTAMENT OF JAY P. WALKER, DECEASED,
and THE FIRST NATIONAL BANK AND TRUST
COMPANY OF TULSA, ROSS T. WARNER and
HORACE D. BALLAINE, as Trustees
thereof;
CHARITABLE TRUST CREATED BY PARAGRAPH
6 OF ARTICLE I OF THE LAST WILL AND
TESTAMENT OF JAY P. WALKER, DECEASED,
and THE FIRST NATIONAL BANK AND TRUST
COMPANY OF TULSA, ROSS T. WARNER and
HORACE D. BALLAINE, as Trustees
thereof;
DONNA JO COOPER;
MARTHA WALKER STURTEVANT TRUST and
THE FIRST NATIONAL BANK AND TRUST
COMPANY OF TULSA, as Trustee thereof;
GUY O. MARCHANT;
CAROL JEAN WALKER, a minor, and
JUDITH WALKER, Guardian of her
Estate;
MARTHA WALKER STURTEVANT;
WARNER INVESTMENT COMPANY, an Oklahoma
corporation;
NONA C. SHUDDE ANNUITY TRUST and
DOUGLASS D. HEARNE, as Trustee
thereof; and
THE ESTATE OF W. F. KNODE, DECEASED,
and MARGARET KNODE and RALPH WILL,
Executors thereof;

Defendants.

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

J U D G M E N T

This action was filed as a complaint for interpleader pursuant to Title 28, United States Code, § 1335. Plaintiff, Champlin Petroleum Company, is a Delaware corporation organized

and existing under the laws of the State of Delaware. The defendants, Donald C. Ingram; John C. Ingram; Donna Jo Cooper; Carol Jean Walker, a minor; and Judith Walker, guardian of her estate; are residents within the United States Judicial District for the Central District of California. The defendants, Trust B Created by the Last Will and Testament of Jay P. Walker, deceased, and the First National Bank and Trust Company of Tulsa, Ross T. Warner and Horace D. Ballaine, as Trustees thereof; Trust C Created by the Last Will and Testament of Jay P. Walker, deceased, and the First National Bank and Trust Company of Tulsa, Ross T. Warner and Horace D. Ballaine, as Trustees thereof; Charitable Trust Created by Paragraph 6 of Article I of the Last Will and Testament of Jay P. Walker, deceased, and the First National Bank and Trust Company of Tulsa, Ross T. Warner and Horace D. Ballaine, as Trustees thereof; Martha Walker Sturtevant Trust and the First National Bank and Trust Company of Tulsa, as Trustees thereof; and Warner Investment Company, an Oklahoma corporation; are residents within the United States Judicial District for the Northern District of Oklahoma. The defendants, Nona C. Shudde Annuity Trust and Douglass D. Hearne, as Trustee thereof; are residents within the United States Judicial District for the Western District of Texas. The defendant, Martha Walker Sturtevant, is resident within the United States Judicial District for the Eastern District of Missouri. The defendants, the Estate of W. F. Knode, Deceased, and Margaret Knode and Ralph Will, Executors thereof; are residents in Calgary, Alberta, Canada. The defendant, Guy O. Marchant, is resident within the United States Judicial District for the Western District of Oklahoma. The plaintiff, Champlin Petroleum Company, has deposited in this Court an amount in excess of \$500.00. The Court finds that the parties are citizens of the jurisdictions alleged as residency and that the citizenship of two or more of the adverse claimants is diverse as provided by Title 28, U.S.C., § 1332. The jurisdic-

tional requirements have been met and therefore the Court has jurisdiction to hear this matter. Under Title 28, U.S.C. § 1397, venue is proper in this Court as at least one or more of the claimants reside in the Northern District of Oklahoma.

Plaintiff, Champlin Petroleum Company, (hereinafter "Champlin"), is the operator but is not a working interest owner. Defendants, Donald C. Ingram and John C. Ingram, (hereinafter "Ingrams"), are royalty interest owners. All of the other defendants are gas working interest owners. The case was tried before the Court on February 9, 1976, with all the parties present or represented by counsel. All parties having rested, the case is ready for disposition on the merits. In considering the merits of this case, the Court has considered the entire record and is fully advised in the premises.

This case centers on a dispute concerning the correct interpretation of two clauses of a Supplemental Lease and Agreement entered into on September 3, 1941, between Donald M. Ingram, Trustee (Trustee by instrument dated December 23, 1933) as lessor and the Process Oil Company as lessee. (Plaintiff's Exhibit #2). Donald M. Ingram, now deceased, was the father of the defendant Ingrams. The disputed clauses pertain to the payment of royalties and are part of paragraph eight of the Supplemental Lease and Agreement. Clause 8(b) provides in part:

"(b) As of June 1, 1941, Lessor reserves and Lessee agrees to pay to the Lessor a one-tenth (1/10) part of the gross proceeds of all gas, condensate, distillate, gasoline or other liquid hydrocarbon substances produced or extracted from gas produced from all the leased lands. 'Gross proceeds' shall mean all the proceeds from the sale of gas or the products thereof from the leased lands, less taxes as herein provided to be paid by Lessor and less any commission required to be paid in connection with the sale of products. * * * * "

Clause 8(c) provides in part:

"(c) On gas, including gas, casinghead gas or other gaseous substances (condensate or distillate referred to in (b) above not included) produced from said land and sold

off the said premises or in the manufacture of gasoline or other products thereof, Lessor reserves and Lessee agrees to pay one-eighth (1/8) part of the market value at the well of the gas so sold and (or) used off the premises, provided that on gas sold at the wells, the royalty shall be one-eighth (1/8) of the amount realized from such sale."

Under the Supplemental Lease and Agreement, Process Oil Company agreed, as lessee, to operate and maintain a re-cycling plant on the premises for the purpose of processing the gas and extracting liquids and products. On February 8, 1943, Process Oil Company, with the consent of Donald M. Ingram, Trustee, entered into a Gas Sales, Processing and Sales Agreement with the Chicago Corporation. (Plaintiff's Exhibit #4). The Chicago Corporation merged with Champlin Refining Co. on December 31, 1956. The surviving corporation was named Champlin Oil and Refining Co. and was later changed to Champlin Petroleum Company. Under the Gas Sales, Processing and Sales Agreement the Chicago Corporation (now the plaintiff herein) agreed among other things to pay the royalty owner his royalty from the gas working interest owner's share of the proceeds and thereafter pay the balance of the proceeds to the working interest owners. Under this agreement the plaintiff is responsible for disbursing the proceeds from the sale of products and liquid hydrocarbons extracted, separated and saved from gas (hereinafter "product proceeds") and the proceeds received from the sale of all residue gas (hereinafter "residue proceeds").

"Residue gas" as defined in the Supplemental Lease and Agreement means "gas which has been passed through Lessee's processing plant" (Plaintiff's Exhibit #2 page 7). "Residue gas" is that gas which remains after the mainstream has been run through a plant and liquids and other hydrocarbons have been extracted. After the mainstream of gas is processed through the re-cycling plant, the substance remaining is called "residue gas", and is also known as "dry gas" or "tailgate gas". (As used

herein "residue gas", "dry gas" and "tailgate gas" are synonyms.) The "residue gas" is either returned to the formation and utilized as an absorbing agent for the purpose of aiding in the removal of crude material from the well or is sold in the market if the market price of "residue gas" is high or the formation has been exhausted of its crude material. It is the proper distribution of the revenue (residue proceeds) received from the sale of "residue gas" that is in dispute.

The defendant Ingrams claim that the royalty interest owners are entitled to one-eighth (1/8) of the residue proceeds in accordance with paragraph 8(c) of the Supplemental Oil and Gas Mining Lease. All of the remaining defendants (working interest owners) claim that the defendant royalty interest owners are entitled to only one-tenth (1/10) of the residue proceeds in accordance with paragraph 8(b) of the Supplemental Oil and Gas Mining Lease.

The defendant Ingrams argue that clause 8(c) applies to the distribution of residue proceeds by virtue of a straightforward interpretation of the January 31, 1936, Oil and Gas Mining Lease between John Clarence Ingram and Donald M. Ingram, Trustees, lessor, and W. F. Knode, Trustee, lessee (Plaintiff's Exhibit #1), the Supplemental Lease and Agreement (Plaintiff's Exhibit #2), the Assignment of Lease from Process Oil Co. to The Chicago Corporation, (Plaintiff's Exhibit #3), the Gas Sales, Processing and Sales Agreement dated February 8, 1943, (Plaintiff's Exhibit #4), and various other Exhibits which relate to subsequent division orders and questions between various persons concerning the interpretation of clauses 8(b) and 8(c). The Ingrams point out that paragraph 3(a) and (b) of the Oil and Gas Mining Lease dated January 31, 1936, provides for a one-eighth (1/8) royalty for all oil and gas. The Ingrams argue that the Supplemental Lease and Agreement is weighted with the concern of the parties

regarding the construction of a re-cycling plant and the removal of liquid hydrocarbons. Their contention is premised on the statement found on page one of the Supplemental Lease and Agreement which states in part:

"WHEREAS, Lessee has drilled upon the above described real property certain gas wells (as hereinafter defined) and has operated or caused to be operated a re-cycling plant for the absorption and condensation of gasoline, distillate and other liquid hydrocarbons from gas produced from the leased lands; . . . ",

and clause 8(d) which states in part:

"(d) Lessor shall receive royalties as provided in sub-paragraphs (b) and (c) above, regardless of the percentages which may be paid to Lessee or its assigns by Pintas Gas Products Company, a corporation, or by any party extracting or processing for Lessee the products therein referred to. * * * "

In addition the Ingrams look to the portions of the Purchase Contract and Processing Agreement Between The Chicago Corporation and Process Oil Company dated February 8, 1943, (Plaintiff's Exhibit #4), which pertain to the producing and processing of gas. The Ingrams contend that this agreement indicates that the primary concern of The Chicago Corporation and Process Oil Company was the processing of liquid hydrocarbons and the re-cycling of "residue" or "tailgate" gas back into the formations in order to extract more gas from the formations. Under this agreement The Chicago Corporation (now plaintiff) receives 55% of the proceeds from the sale of liquids or condensates and 50% from the sale of the residue or dry gas, and Process Oil Company (now working interests) receives 45% less 1/10th for the sale of liquids and 50% less 1/10th for the sale of residue gas. The main contention of the Ingrams is that "residue gas" was treated as a special category by the Supplemental Lease and Agreement and the agreements surrounding the extraction and processing of residue gas and therefore clause 3(c) was supplied to provide a one-eighth (1/8) distribution on residue proceeds. The argument follows that the special attention given to residue proceeds

explains the purpose of having two separate clauses pertaining to royalties on gas. In taking the Ingrams' argument to its logical conclusion there would have been little need for clause 8(c) if the royalty on "residue proceeds" was to be paid at the same rate as product proceeds under clause 8(b).

The plaintiff and working interest owners argue that clause 8(b) of the Supplemental Lease and Agreement (Plaintiff's Exhibit #2) provides for the payment of one-tenth (1/10) royalty on the proceeds of products and residue gas so long as the main-stream was processed by Process Oil Company (prior to 1943) or by The Chicago Corporation or the plaintiff (after 1943) under the Lease Agreement and not sold at the well. Plaintiff and working interest owners contend that clause 8(c) was made a part of the Supplemental Lease and Agreement of 1941 in order to provide royalty payments on gas which was sold to third parties before processing. Plaintiff and working interest owners contend that since Process Oil Company was required to process gas without cost to Donald M. Ingram, Trustee, under the Supplemental Lease and Agreement of 1941, clause 8(b) of that agreement provided for a royalty payment of one-tenth (1/10) of the proceeds of all the products as well as one-tenth (1/10) of the proceeds of the residue gas. Since the value of the processed gas is greater than the value of the raw gas at the well, an advantage accrued to the Trust over which Donald M. Ingram was Trustee in having the gas processed rather than sold at the well. Plaintiff and working interest owners conclude that, since the value of the processed gas is greater than the value of gas at the well and since the trust was not burdened with the cost of processing, the Trustee was paid one-tenth (1/10) royalty on the products and residue. However, in the event that the gas was sold at the well, the value was less and no processing cost was levied resulting in a royalty payment of one-eighth (1/8). This interpretation of the disputed provisions of the Supplemental Lease and

Agreement shows the need for two separate clauses in regard to the payment of royalties. Plaintiff and working interest owners conclude that residue proceeds must be payable under clause 8(b) because no residue gas is apparent where the gas is not processed but rather sold at the well under the provisions of clause 8(c).

The term "residue gas" or its synonyms are not found in either 8(b) or 8(c) of the Supplemental Lease and Agreement. As applied to "residue gas" clauses 8(b) and 8(c) are ambiguous and do not by their terms clearly reflect the intent of the parties in regard to the payment of royalties on "residue gas." Where a contract is susceptible to two constructions the Court will adopt a construction which is reasonable and probable. See National Sur. Corp. v. Western Fire and Indem. Co., 318 F.2d 379 (5th Cir. 1963). Where the contract is not clear or where the meaning is doubtful the Court may consider the acts of the parties and interpret the disputed provisions in accordance with the construction placed upon them by the parties. See Esso Intern., Inc., v. S.S. Captain John, 443 F. 2d 1144 (5th Cir. 1971); Fowler v. Penn. Tire Co., 326 F.2d 526 (5th Cir. 1964); Skaggs v. Heard, 172 F.Supp. 813 (S.D.Tex. 1959).

The exhibits submitted and made a part of the record clearly show that The Chicago Corporation and its successor (plaintiff herein) paid and that Donald M. Ingram, Trustee and his successors (Ingrams herein) accepted the royalty payment on gas in the amount of one-tenth (1/10) of 8/8ths from 1943 until 1974 when the Ingrams initiated litigation in the 94th District Court of Nueces County, Texas. In a letter from Process Oil Company to Donald M. Ingram, Trustee, dated April 8, 1943, the royalty payment is stated to be one-tenth (1/10). (Plaintiff's Exhibit #12). In 1943, Donald M. Ingram executed a Gas and Condensate Division Order wherein the division of interest was stated to be one-tenth (1/10) of 8/8ths of all gas including natural gasoline, condensate, and other products that may be

condensed, absorbed or separated out of or from gas. (Plaintiff's Exhibit #7D). From 1944 until 1965 Donald M. Ingram, Trustee, received statements from The Chicago Corporation and Champlin which indicate that the royalty payment on gas and products was one-tenth (1/10). (Plaintiff's Exhibit #8). In 1965 the Ingrams executed a Gas and Condensate Division Order which provides for a 5% division of interest for Donald C. Ingram and a 5% division of interest for John C. Ingram on all gas, including natural gasoline, condensate, and other products that may be condensed, absorbed or separated out of or from gas. (Plaintiff's Exhibit #18).

At trial the Ingrams testified that they signed the division orders because their father, Donald M. Ingram, had advised them that it was alright to sign the orders and that they knew nothing about the distribution of royalties. From 1965 until 1974 the Ingrams received royalty statements which indicate the royalty payment to be one-tenth (1/10) on product and residue proceeds. (Plaintiff's Exhibit #11). For a period of thirty (30) years the royalty payment has been a one-tenth (1/10) part of the gross proceeds of all gas including "residue gas" produced or extracted from gas. "Gross Proceeds" is defined in clause 8(b) to include "all the proceeds from the sale of gas or the products thereof from the leased lands" less taxes and commissions as stated. The construction placed on clause 8(b) of the Supplemental Lease and Agreement by the parties to the agreement was that residue proceeds were to be paid at the rate of one-tenth (1/10) of 8/8ths and that clause 8(b) governed such payment of residue proceeds. This is convincing support for a finding by the Court that the parties intended that clause 8(b) of the Supplemental Lease and Agreement be applied in determining the proper distribution of proceeds derived from "residue" or "dry gas."

A reasonable construction of the ambiguous terms of the Supplemental Lease and Agreement leads to the conclusion that the

parties intended that clause 8(b) apply in the event that gas and products are produced or extracted by the plaintiff from gas produced (removed) from the leased premises. Clause 8(c) does not speak in terms of liquid hydrocarbon substances "produced or extracted from gas" produced from all the leased lands but rather refers to gas "produced" (removed) from said land and sold off the premises. Therefore clause 8(b) makes reference to production (processing) after the gas is produced (removed) from the leased premises. A reasonable interpretation of the Supplemental Lease and Agreement of 1941 leads to the conclusion that the parties to this agreement were concerned about the operation of a re-cycling plant as a means of processing gas and gas products. The Oil and Gas Mining Lease of 1936 provided for payment of one-eighth on both oil and gas. (Plaintiff's Exhibit #1). The 1936 agreement did not include terms concerning the operation of a re-cycling plant. In providing for the distribution of royalties, it is logical that the parties included clause 8(b) in the 1941 agreement to cover payment for processed gas and residue and that clause 8(c) was intended to govern when gas was not processed by the plaintiff. With some variation clause 8(c) of the Supplemental Lease and Agreement is very similar to clause 3(b) of the Oil and Gas Mining Lease of 1936. In 1941 the parties provided for royalties on processed gas and products by drafting clause 8(b). It is reasonable to assume that they would have specifically exempted "residue gas" from the one-tenth (1/10) royalty if they had desired to provide a royalty of one-eighth (1/8) on residue gas. As the royalty interest owners have suggested, the 1941 agreement addresses itself to the re-cycling operation. Where the parties have emphasized royalties on processed gas, it is unlikely that they would have overlooked a specific reference to residue gas if they had desired to provide a one-eighth (1/8) royalty.

For the reasons stated herein it is the finding and conclusion

of the Court that clause 8(b) of the Supplemental Lease and Agreement of 1941 governs the payment of royalties on "residue gas" and that the payments heretofore deposited in this Court in accordance with the complaint for interpleader are the property of the working interest owners as described herein. Having so interpreted the disputed clauses of the 1941 agreement, the Court has no need and therefore declines to examine the theories of account stated, estoppel, laches and the statute of limitations in regard to the claim that Champlin acted in a fiduciary capacity.

The plaintiff seeks a permanent injunction forbidding the defendants from instituting or prosecuting any proceeding in any State or United States court affecting the adversely claimed residue proceeds. "In an interpleader action, however, in personam jurisdiction extends only to the fund deposited with the court." Knoll v. Socony Mobil Oil Co., 369 F.2d 425, 429 (10th Cir. 1966). The jurisdiction of this Court over these parties does not encompass a jurisdictional base for issuing a permanent injunction and such request is denied.

The plaintiff has requested relief in the form of attorney's fees and costs. Attorney's fees and costs may be awarded in interpleader actions. Travelers Indem. Co. v. Israel, 354 F.2d 488 (2nd Cir. 1965); Equitable Life Assurance Soc. of U.S. v. Rose, 248 F.Supp. 937 (D. Colo. 1965); Paul Revere Life Ins. Co. v. Riddle, 222 F.Supp. 867 (E.D.Tenn. 1963). The parties have not briefed the law in regard to whether attorney's fees and costs should be awarded in this case. No testimony has been presented as to the proper amount to be awarded if any. Therefore, the Court reserves ruling on this question and will consider such request upon proper application which must be made within ten (10) days of the date of this Order.

It is so Ordered this 16th day of March, 1976.

H. Dale Cook
H. DALE COOK
United States District Judge

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

RETA LANE, As Administratrix of)
the Estate of DELBERT MAYBERRY,)
Deceased,)

Plaintiff)

vs)

ST. LOUIS-SAN FRANCISCO RAILWAY)
COMPANY, A Foreign Corporation,)

Defendant)

No. 74-C-275 ✓

FILED

MAR 18 1976

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

ORDER OF DISMISSAL

On this the 18th day of March, 1976, upon application of
plaintiff for dismissal of the above entitled cause with prejudice,
said cause is hereby dismissed with prejudice.


United States District Judge

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

SAFECO INSURANCE COMPANY OF)
AMERICA, a corporation,)

Plaintiff,)

vs.)

CLEM WHOLESale Grocer, INC.,)
an Arkansas Corporation,)
PAUL LOCKE and R. L. SCHULER,)

Defendants.)

No. 75-C-445 ✓

FILED

MAR 15 1976

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

JUDGMENT FOR ATTORNEY'S FEES

This cause came on for hearing on this 15th day of March, 1976, upon the application of plaintiff for an attorney's fee. The Court finds that the contract of indemnity provides that the plaintiff is entitled to recover all expenses, including attorney's fees, and that the sum of \$1,500.00 is a reasonable attorney's fee and that judgment should be entered in favor of the plaintiff and against the defendants, Clem Wholesale Grocer, Inc. and Paul Locke, for the sum of \$1,500.00 and that R. L. Schuler has taken bankruptcy in the interim and, hence, no judgment should be entered against him.

BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, Safeco Insurance company of America, a corporation, have and recover judgment of and from the defendants, Clem Wholesale Grocer, Inc., and Paul Locke, for the sum of \$1,500.00.


UNITED STATES DISTRICT JUDGE

FILED
MAR 15 1976

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

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

ALBERT GLENN REED,)
)
vs.) Petitioner,)
)
STATE OF OKLAHOMA, et al.,)
) Respondents.)

NO. 75-C-393 ✓

O R D E R

This is a pre se, in forma pauperis proceeding brought pursuant to the provisions of 28 U.S.C. § 2254 by a State prisoner confined in the Oklahoma State Penitentiary at McAlester, Oklahoma. Petitioner attacks the validity of the judgment and sentence imposed by the District Court of Tulsa County, State of Oklahoma, in Case No. CRF-69-330. Therein, he was found guilty by jury of the charge of murder in the first degree, and when the jury was unable to assess punishment, he was on the 9th day of May, 1969, sentenced by the Court to life imprisonment in the Oklahoma State Penitentiary.

Petitioner has filed a prior Petition for Writ of Habeas Corpus on issues not here involved in this United States District Court for the Northern District of Oklahoma, and on the 7th day of June, 1973, the Court in Case No. 72-C-280 made and entered its Order denying said Writ.

In the matter now before the Court, petitioner demands his release from custody and as grounds therefor alleges that:

His constitutional rights to due process and equal protection of the law were violated by the manner in which the judgment and sentence were made and entered in his conviction and sentence in the District Court of Tulsa County, State of Oklahoma.

The proper procedure to challenge the jury's failure to assess punishment under 21 O.S. (1961) § 707 is by direct appeal. Kimmel v. Wallace, Okl. Cr., 370 P.2d 844 (1962). The transcript of the proceedings at the time of sentencing conclusively shows that petitioner in open Court, while represented by counsel, and after being fully advised of his rights to appeal the judgment and sentence, knowingly and willfully waived such rights. (T. pages 5 through 7) Petitioner's leave of the Court of Criminal Appeals of the State of Oklahoma to file a direct appeal out of time was denied in Case No. A-15835.

The file reflects that the District Court of Tulsa County, Oklahoma, did on the 24th day of September, 1971, deny petitioner's application for

post-conviction relief, affirmed by the Court of Criminal Appeals of the State of Oklahoma in Case No. A-17052. Petitioner again sought post-conviction relief in the District Court of Tulsa County, Oklahoma, and said application was, on the 24th day of June, 1975, denied. On appeal therefrom, the Court of Criminal Appeals of the State of Oklahoma in Case No. PC-75-380 affirmed the District Court's denial. The file reflects that petitioner has exhausted the remedies available to him in the Courts of the State of Oklahoma.

A study of the file, including respondent's response, the transcript of proceedings at time of sentencing and interpretation by the Court of Criminal Appeals of the State of Oklahoma of 21 O.S. (1961) § 707 clearly shows that petitioner's allegation is without merit.

Title 21, O.S. (1961) § 707, provides:

"Every person convicted of murder shall suffer death, or imprisonment at hard labor in the State penitentiary for life, at the discretion of the jury. Upon trial of an indictment for murder, the jury, if they find the defendant guilty, must designate in their verdict whether he shall be punished by death or imprisonment for life at hard labor, and the judgment of the court shall be in accordance therewith. But upon a plea of guilty the court shall determine the same."

In interpreting the foregoing Statute, the Court of Criminal Appeals of the State of Oklahoma in the case of Davis v. State of Oklahoma, 1 P.2d 824 (1931) stated in Syllabus of the Court at Headnote 5:

"The trial court should not receive a verdict finding the accused guilty of murder unless such verdict further designates whether the accused shall be punished by death or imprisonment for life at hard labor. If the trial court does receive a verdict of guilty of murder which does not designate the punishment, only life imprisonment, the minimum punishment fixed by law, can be assessed."

The Court further stated at page 828:

". . . It is evident, however, that the primary purpose of the statute was that the death penalty in a trial for murder, where a plea of not guilty is interposed, should not in any event rest with the trial court, but could be assessed only upon the verdict of the jury, designating the death penalty. If the punishment should be life imprisonment, the same solemnity would not be required to assess the punishment, and it need be designated in the verdict only for the purpose of excluding the death penalty, the only other possible punishment. . . ."

The record in this case conclusively shows that petitioner is not entitled to relief. The law of the State of Oklahoma, until the Statute was repealed in 1973, was that under 21 O.S. (1961) § 707 either death or life

imprisonment was the sentence to be imposed upon a conviction of murder. If the jury failed to exact punishment, the Court was required to impose the lesser sentence of life imprisonment. The law was followed in the matter before the Court.

Federal habeas corpus is only designed to make certain that one convicted in a State criminal proceeding has not had his rights under the Constitution of the United States abridged. Hopkins v. Anderson, 507 F.2d 530 (10th Cir. 1974). The Court finds that the issue presented by petitioner does not raise a cognizable constitutional question in the circumstances before the Court. An evidentiary hearing is not required herein. Putnam v. United States, 337 F.2d 313 (10th Cir. 1964); Maxwell v. Turner, 411 F.2d 805 (10th Cir. 1969); Cranford v. Rodriguez, 512 F.2d 860 (10th Cir. 1975).

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Albert Glenn Reed be and it is hereby denied and the case is dismissed.

Dated this 5th day of March, 1976, at Tulsa, Oklahoma.


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

FILED
NOV 15 1941

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

W. J. USERY, JR., Secretary of Labor,)
(Successor to John T. Dunlop))
United States Department of Labor,)
)
Plaintiff)
)
v.)
)
NOBLE L. WOODROW, an individual,)
doing business as WOODY'S CORNER,)
)
Defendant)

Civil Action

No. 75-C-172 ✓

J U D G M E N T

Plaintiff has filed his complaint against Noble L. Woodrow. Thereafter, plaintiff and defendant announced that they have reached an agreement in this matter, and it appearing to the Court that plaintiff and defendant are in agreement that this judgment should be entered, it is therefore,

ORDERED, ADJUDGED and DECREED that defendant, his agents, servants, employees and those persons in active concert or participation with him are permanently enjoined and restrained from violating the provisions of sections 15(a)(2), 15(a)(4), 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

Defendant shall not, contrary to the provisions of section 6 of the Act, pay any employees 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, wages at rates less than the rates required by section 6 of the Act.

II

Defendant shall not, contrary to sections 12 and 15(a)(4) of the Act, employ oppressive child labor, as such term is defined in section 3(1) of the Act, in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act.

III

Defendant 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 defendant compensates 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.

IV

Defendant 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 defendant be and is enjoined and restrained from withholding payment of overtime compensation and minimum wages in the total amount of \$3,750.00, which the Court finds to be due under the Act to defendant's employees, named in the attachment A hereto, which by reference is made a part hereof.

The provisions of this order shall be deemed satisfied when the defendant delivers to the plaintiff 12 cashier's or certified checks, payable to "Employment Standards Administration, Labor", in the amounts at the time herein set forth:

Payment of \$3,750.00 in 12 equal consecutive monthly installments of \$312.50, with the first installment being due and payable on or before March 1, 1976, and the remaining installments being due and payable on/or before the same day of each succeeding month thereafter until all installments have been paid.

VI

It is further ORDERED, that plaintiff, upon receipt of such certified or cashiers' checks from the defendant, shall promptly proceed to make distribution, less income tax and social security withholdings, to defendant's employees named herein in the amounts indicated, 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 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 defendant will pay the costs of this action.


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

William E. Everheart
WILLIAM E. EVERHEART
Acting Counsel for ESA

Harvey M. Shapan
HARVEY M. SHAPAN
Attorney

Attorneys for Plaintiff

Jeff Nix
JEFF NIX
Attorney for Defendant

Noble L. Woodrow
NOBLE L. WOODROW
Defendant

A T T A C H M E N T "A"

Billy Bishop	\$ 183.75
Carol Edwards	50.63
Opal Gaines	697.50
Eulala Hughs	5.00
Valerie Lynn Hey	24.00
Calvin McNair	1,310.48
Lynn Taylor	309.38
Ronald Toothman	64.13
Francis Van Horn	464.25
Bob Wayne	<u>640.88</u>
	\$ 3,750.00

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

NATIONAL BANK OF TULSA,)
a National Banking Association,)
)
Plaintiff,)

vs.)

Civil Action

KINCAID INDUSTRIES, INC., a corporation;)
BOLLINGER CORPORATION, a corporation;)
MORTON J. GREENE; THOMAS R. ALLEN, JR.;)
and ANNE S. GREENE,)
)
Defendants,)

No. 74-C-325 ✓

and)

KINCAID INDUSTRIES, INC., a corporation;)
BOLLINGER CORPORATION, a corporation;)
MORTON J. GREENE; and THOMAS R. ALLEN, JR.,)
)
Third Party Plaintiffs,)

E I L E D
MAR 15 1976
Jack C. Silver, Clerk
U.S. DISTRICT COURT

and)

THOMAS HELTON; LORNA F. HELTON;)
LUTHER M. McMATH; and JOYCE M. McMATH,)
)
Third Party Defendants.)

ORDER DISMISSING THIRD PARTY PLAINTIFFS'
CAUSES OF ACTION AND THIRD PARTY DEFENDANTS'
COUNTER-CLAIM WITH PREJUDICE

NOW, on this 15th day of March, 1976, there
having been presented to the undersigned United States District
Judge for the Northern District of Oklahoma the Settlement
Agreement entered into by and between the parties hereto on the
26th day of February, 1976, and the Joint Application of the
Third Party Plaintiffs to dismiss with prejudice their various
causes of action as against the Third Party Defendants, and the
Application of the Third Party Defendants to dismiss with pre-
judice their Counter-Claim as against the Third Party Plaintiffs,
and the Court having heard the argument of counsel in support of
said Application finds that an Order should issue therein in
compliance with said Application.

IT IS THEREFORE ORDERED BY THIS COURT that
the various causes of action filed herein by the Third Party
Plaintiffs as against the Third Party Defendants, be, and the
same are hereby dismissed with prejudice.

IT IS FURTHER ORDERED BY THIS COURT that
the Counter-Claim of the Third Party Defendants filed herein as

against the Third Party Plaintiffs, be, and the same is hereby
dismissed with prejudice.


United States District Judge

APPROVED:

UNGERMAN, GRABEL & UNGERMAN

By 
Attorneys for Third Party Plaintiffs

HARRIS, GLADD & DYER

By 
Attorneys for Third Party Defendants

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

RICHARD W. PENNEY, SR.,)
)
 Petitioner,)
)
 vs.)
) Case No. 76-C-106-B ✓
 THE HONORABLE ROBERT EDMISTON,)
 SPECIAL JUDGE OF THE TULSA)
 COUNTY DISTRICT COURT, AND)
 DAVE FAULKNER, TULSA COUNTY)
 SHERIFF,)
)
 Respondents.)

FILED
MAR 12 1976
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS

This matter coming on before me, the undersigned Judge, upon the Petitioner's request to dismiss his Petition for Writ of Habeas Corpus filed herein on the 10th day of March, 1976, and the Court being fully satisfied in the premises,

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus be, and it is hereby, dismissed without prejudice.


ALLEN E. BARROW
JUDGE OF THE U. S. DISTRICT
COURT

CERTIFICATE OF MAILING

I, James O. Goodwin, certify that on the 11th day of March, 1976, I mailed a true and correct copy of the above and foregoing ORDER to: Mr. Ken Cunningham, Assistant District Attorney, Tulsa County Courthouse, Tulsa, Oklahoma, with sufficient postage thereon fully prepaid.

James O. Goodwin

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

W. J. USERY, JR., Secretary
of Labor, United States
Department of Labor,

Plaintiff,

vs.

D. B. PRODUCTS, INC.,

Defendant.

)
)
)
) 76-C-90
)
)
)
)
)
)
)
)

FILED

MAR 12 1976

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

ORDER DISMISSING COMPLAINT AND
CAUSE OF ACTION

This matter came on for hearing before the Court on this 10th day of March, 1976, on the Order to Show Cause sought by the plaintiff, and the Court having heard all of the evidence and testimony adduced, and, being fully advised in the premises, finds:

That the defendant has voluntarily consented to the inspection sought by the plaintiff.

IT IS, THEREFORE, ORDERED that the cause of action and complaint be and the same are hereby dismissed.

ENTERED this 12th day of March, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

MACHINERY LOCATORS, INC.,
an Oklahoma Corporation,

Plaintiff,

v.

INDUMA, S.P.A., INDUSTRIA LOM-
BARDA MACCINE ATTREZZAMENTI, S.P.A.,
an alien corporation incorporated
under the laws of Italy; NEW
HAMPSHIRE INSURANCE COMPANY, a
foreign corporation doing
business in Manchester, New
Hampshire; AMERICAN INTERNATIONAL
UNDERWRITERS, CORP., a foreign
corporation doing business in
New York, New York, THE TEXAS
AND PACIFIC RAILWAY COMPANY, a
foreign corporation with principal
place of business in St. Louis,
Missouri,

Defendants.

No: 75-C-556 -B

FILED

MAR 12 1976

Jack C. Silver, Clerk
U S DISTRICT COURT

ORDER OF DISMISSAL

ON this 12 day of March, 1976, upon the
written application of the parties for a Dismissal without Prejudice
of the Complaint and all causes of action, the Court having
examined said application, finds that said parties have agreed
that this matter may be dismissed without prejudice and have
requested the Court to dismiss said Complaint without prejudice
to any future action, and the Court being fully advised in the
premises, finds that said Complaint should be dismissed pursuant
to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court
that the Complaint and all causes of action of the plaintiff filed
herein against the defendants be and the same hereby is dismissed
without prejudice to any future action.

Allen E. Barron

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

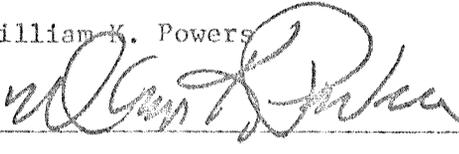
APPROVAL:

Alfred B. Knight

By: Alfred B. Knight

Attorney for the Plaintiff

William K. Powers



Attorney for the Defendant, Texas
and Pacific Railway Company

John H. Tucker



Attorney for the Defendant, New
Hampshire Insurance Company

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

HARTFORD FIRE INSURANCE)
COMPANY,)
)
Plaintiff,)
)
vs.)
)
CHARLES V. SMITH and)
PAULINE JANE NARD,)
)
Defendants.)

NO. 75-C-491

FILED
MAR 12 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

Now on this 12th day of March, 1976, this cause comes on in its regular order, pursuant to assignment, to be heard on the Motion for Default Judgment of the plaintiff, and the Court having reviewed the file, having examined the Complaint and the Entry of Default and Motion for Default Judgment, having examined the Exhibits introduced in said cause, ~~having heard the witnesses sworn and examined in open~~ *A.D.C.* Court and being fully advised in the premises, finds that all of the allegations of plaintiff's Complaint are true and correct, and that the defendants are justly indebted to the plaintiff in the amount of \$39,948.39.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that plaintiff have and recover judgment against the defendants, Charles V. Smith and Pauline Jane Nard, jointly and severally in the principal amount of \$39,948.39, with interest thereon to accrue at the rate of 6% per annum from August 8, 1973, until the date of this judgment, and interest is further to accrue at the rate of 10% per annum from the date of this judgment until judgment is fully paid with the costs in this case to be taxed against the defendants, said costs being in the further amount of \$71.48, all for which let execution issue.

L. H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

RS/ Robert J. Petrick
ROBERT J. PETRICK of

FENTON, FENTON, SMITH, RENEAU & MOON
405 Midland Center - P. O. Box 1638
Oklahoma City, Oklahoma 73101
(405) 235-4671

Attorneys for Plaintiff

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

JERRY L. BRUCE, et al.,)
)
 Plaintiffs,)
)
 -vs-)
)
 AMOCO PIPELINE COMPANY,)
)
 Defendant.)

Civil Action

No. 75-C-385

FILED
MAR 12 1976

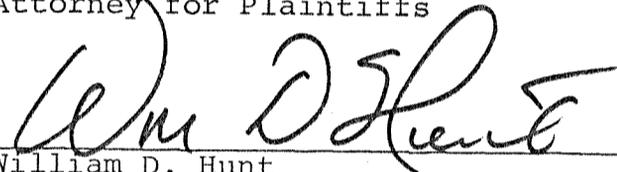
Jack C. Silver, Clerk
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

It is hereby stipulated that the above entitled action by plaintiff's against defendant, including, without limitation, all the claims therein or claims that may be, are hereby dismissed with prejudice and without costs.



Bruce Gambill
Attorney for Plaintiffs



William D. Hunt
Attorney for Defendant

3/8/76
CW

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CIVIL ACTION NO. 75-C-372-B)

DOROTHY PEPPER SECONDINE, a/k/a)
DOROTHY SECONDINE, a/k/a DOROTHY)
I. SECONDINE, ROY WAYNE HESS,)
a/k/a ROY HESS, JANIE VIOLA HESS,)
PLANNED CREDIT, INC., now GULF)
SOUTH CORPORATION, UNIVERSAL CIT)
CREDIT COMPANY, now CIT FINANCIAL)
SERVICES, INC., ROBERT B. CARTER,)
d/b/a BERRY CARTER COMPANY, a)
corporation, BEARDEN COMPANY, a)
corporation, ACME PLUMBING AND)
HEATING, INC., a corporation,)

Defendants.)

FILED

MAR 12 1976

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 12th
day of March, 1976, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and the Defendants, Dorothy
Pepper Secondine, a/k/a Dorothy Secondine, a/k/a Dorothy I.
Secondine, Roy Wayne Hess, a/k/a Roy Hess, Janie Viola Hess,
Planned Credit, Inc., now Gulf South Corporation, Universal
CIT Credit Company, now CIT Financial Services, Inc., Robert B.
Carter, d/b/a Berry Carter Company, a corporation, Bearden
Company, a corporation, and Acme Plumbing and Heating, Inc., a
corporation, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Dorothy Pepper Secondine,
a/k/a Dorothy Secondine, a/k/a Dorothy I. Secondine, and Planned
Credit, Inc., now Gulf South Corporation, were served by publica-
tion as shown on the Proof of Publication filed herein; Roy
Wayne Hess, a/k/a Roy Hess, was served with Summons, Complaint,
and Amendment to Complaint on August 15, 1975, and January 20,

The Court further finds that Defendants, Roy Wayne Hess, a/k/a Roy Hess, and Janie Viola Hess, were the grantees in a deed from Defendant, Dorothy Pepper Secondine, dated July 22, 1974, filed July 22, 1974, in Book 4129, Page 616, records of Tulsa County, wherein Defendants, Roy Wayne Hess, a/k/a Roy Hess, and Janie Viola Hess, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Dorothy Pepper Secondine, Roy Wayne Hess, a/k/a Roy Hess, and Janie Viola Hess, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$7,498.74 as unpaid principal with interest thereon at the rate of 5 1/2 percent per annum from September 1, 1974, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Dorothy Pepper Secondine, Roy Wayne Hess, a/k/a Roy Hess, and Janie Viola Hess, in rem, for the sum of \$7,498.74 with interest thereon at the rate of 5 1/2 percent per annum from September 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 Plaintiff have and recover judgment, in rem, against Defendants, Planned Credit, Inc., now Gulf South Corporation, Universal CIT Credit Company, now CIT Financial Services, Inc., Robert B. Carter, d/b/a Berry Carter Company, Bearden Company, and Acme Plumbing and Heating, 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.



UNITED STATES DISTRICT JUDGE

APPROVED:



ROBERT P. SANTEL
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 12 1976

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

U.J. USERY, JR., Secretary of Labor)
(Successor to John T. Dunlop))
United States Department of Labor)
Plaintiff)
v.)
VERNON PRICE, doing business as)
Upright Drywall Company)
Defendant)

CIVIL ACTION

NO. 73-C-269

J U D G M E N T

In accordance with the agreed Findings of Fact and Conclusions of Law signed and entered in this action on the 12 day of March, 1976, it is:

ORDERED, ADJUDGED, and DECREED that defendant, its officers, agents, servants, employees, and all others persons acting or claiming to act in his behalf and interest be, and hereby are, permanently enjoined from violating provisions of 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, (29 U.S.C. 201, et seq.), hereinafter referred to as the Act in any of the following manners:

I

Defendant shall not, contrary to sections 7 and 15(a)(2) of the Act, employ any employee 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, within the meaning of the Act, for a work-week longer than 40 hours, unless such an employee receives compensation for his employment in excess of such hours at a rate not less than one and one half times the regular rate at which he is employed.

II

Defendant shall not, contrary to sections 11(c) and 15(a) (5) of the Act, fail to make, keep and preserve adequate and accurate records of the persons employed by him and of the wages, hours and other conditions and practices of employment maintained by him, as prescribed by regulations issued by the Administrator of the Employment Standards Administration, United States Department of Labor (29 U.S.C., Part 516).

It is further ORDERED, that the defendant be, and he hereby is restrained from withholding payment of overtime compensation and interest in the total amount of \$58,000.00 which the court finds is due under the Act, to the employees named in Exhibit A which is attached hereto in the amounts indicated. The provisions of this order shall be deemed satisfied when the defendant delivers to the plaintiff cashier or certified checks, payable to "Employment Standards Administration-Labor", in the amounts and the time herein set forth:

Payment of \$58,000.00 in 36 equal consecutive monthly installments of \$1,611.11, with the first installment being due and payable on/or before the 31st day of March, 1976, and the remaining installments being due and payable on/or before the same day of each succeeding month thereafter until all installments have been paid.

It is further ORDERED, that plaintiff, upon receipt of such certified or cashier's check from the defendant, shall promptly proceed to make distribution, less income tax and social security withholdings, to defendant's employees named herein in the amounts indicated, 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 defendant will pay the costs of this action.

DATED this 12 day of March,
1976.

Allen E. Brown
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

Heriberto de Leon
HERIBERTO de LEON
Acting Counsel for OSHA

Allen L. Prince
ALLEN L. PRINCE
Attorney for Plaintiff

Jeff Nix
JEFF NIX
Attorney for Defendant

Thomson Price

So1 Case No. 00492

EXHIBIT "A"

<u>NAME</u>	<u>AMOUNT</u>	<u>INTEREST</u>
Conception Aquirro	\$ 44.39	\$ 7.26
Rickie D. Arnold	179.34	8.96
Bill Binge	15.92	.54
Jack Blankenship	287.25	29.44
Joe Blankenship	25.11	2.55
Larry Glenn Boggs	40.18	2.70
Dwain Bolin	11.60	1.16
Floyd Boline	57.35	5.95
Ronnie	71.85	7.19
Henry Brannon	246.34	50.45
Jessie Lee Brewer	74.99	3.17
Jim L. Brown	17.73	.23
Pat Buchanan	1,137.23	39.79
Thomas E. Burke	20.09	.93
Odis (Otis?) Butler	1,423.43	120.99
Otis Butler Jr.	105.84	4.71
Steve Butler	181.56	21.79
Jim Cameron	234.33	17.54
Zane Campbell	93.45	15.37
Ronnie Carter	70.72	7.42
Dewayne Caudle	36.74	3.79
Bill Chase	103.70	4.64
Tom Christmas	10.91	.70
Donald Clary	96.58	9.66
Steve Cochran	63.84	5.10
Andrew J. Comer	15.45	1.62
Donald G. Cordova	182.95	4.09
Tony Cordova	233.49	10.43
Don Critser	66.69	10.97
Jim Critser	132.73	3.24
Oscar Cummings	29.38	4.79
Morgan Daugherty	114.45	16.53
Dewey David	95.12	13.75
Larry Davis	5.79	.23
Kevin Day	9.27	.39
Jim Dean	19.68	3.40
Oscar Derrick	106.30	4.71
Mike Detrick	120.47	5.33
Jimmy Dean Dickey	36.02	1.00
Bob Diekman	145.14	9.43
Jack Dikel	6.95	.85
Kenneth Dikel	52.54	5.49
Charles Donelly	50.48	8.27
J.W. Doss	36.51	4.71
Bill Dowdy	209.95	17.77
David Dresher	145.90	10.20
Jim Drumright	550.95	41.26
Keith Drumright	53.48	2.32
Jack Dubbs	46.36	1.62
Ronnie Eberle	1,216.13	97.27
Buck Edwards	320.73	46.43
Jimmy H. Ellis	65.09	2.86
Jim Elmore	10.82	1.31
Dewayne Farrell	21.44	4.33
Allen Femincore	4.29	.39
Gary Fisher	122.84	5.79
Jim Floyd	9.27	.39
Gene Forsythe	80.76	13.29
James Fraley	14.39	1.47
Larry Francis	74.17	7.03
Jr. Logan Freadle	222.46	36.70
John Furr	1,038.15	119.37

Johnny Furr	69.65	7.26
Lloyd Furr	244.61	12.83
Ricky Furr	50.39	2.63
Steven Gabbard	32.17	6.57
Charlie Garcia	6.31	.62
Don Giles	4.84	.46
Mike Gilpin	102.70	16.92
Gregg Ginarish	63.90	2.86
David Goodacre	18.18	1.85
J.F. Goodacre	1,296.60	207.44
Ray Gordon	15.45	1.62
Jack Grady	25.38	2.63
Ronnice W. Gray	257.76	12.21
Randy Hackathorn	32.25	2.55
Edward Hagan	7.48	.77
H.B. Hall	84.31	8.81
Jerry Hall	440.51	63.82
S.Dennis Hall	531.10	26.50
Rory Hanebank	124.58	7.11
Chris Hanewinkle	47.73	4.94
Hank Hanewinkle	37.63	3.94
Paul Hanewinkle	72.61	5.41
Gene Haner	34.00	6.95
Charles Harper	101.13	13.60
Glenn Harris	658.40	108.63
Everett Harvey	3,082.19	354.39
Wayne Harvey	42.45	4.40
Steve Hays	19.15	6.18
Kenny Heath	20.28	1.70
Thomas L. Hembree	1,727.27	216.25
Ray Hensen	14.88	1.55
Jon Holden	5.31	.15
Walt Holley	49.71	2.16
Don Hooper	225.16	25.88
Jim Howard	45.68	2.01
William F. Howard	74.63	12.28
Lonny Hudson	108.16	10.28
Tom Hudson	16.22	1.00
Jerry Hughart	654.70	98.20
Jim Hughart	590.94	85.68
Joe Hughart	203.00	19.78
Dwain Hughes	37.24	3.09
Johnny Ivy	29.36	1.85
Don Johnson	97.49	17.15
Don Jones	31.25	2.45
Marvin Jones	133.11	17.92
Steve Julius	853.15	51.15
James R. Keaton	228.69	10.28
Arron Keesee	237.19	24.88
David Keigley	217.78	22.79
David Keeley	10.79	.85
Steve Kelley	76.49	7.03
Max Kennedy	12.45	2.55
Brent Kinkade	82.40	3.48
Lloyd Klengenberg	10.43	.93
Frank Laffoon	2,033.64	233.87
John Lamb	515.46	97.89
Joe Lang	7.73	.93
Gene Lee	176.84	18.54
Orval Lee	402.01	46.20
Larry Leigh	301.50	24.80
Donald Linville	553.32	91.24
George Lock	50.28	10.28

Jerry Lovins	217.77	16.30
Millard E. Lovins	171.13	15.76
Delvin Lumpkin	19.42	39.48
Gary Maddox	922.39	71.47
John W. Maddox	2,785.82	341.26
Cath Masterson	9.27	.54
Jimmy Masterson	5.41	.23
John Masterson	82.09	3.86
Sam Masterson	1,122.61	123.46
Tommy J. Masterson, Jr.	1,378.41	113.65
Dickie R. Masterson	66.68	5.95
Steve Mattison	76.97	8.04
Randy McCage	83.35	8.11
David McCray	8.56	.77
Warren McKnight	41.22	1.70
Mike McNeal	109.52	4.64
A.R. Meadows	446.50	64.67
Jim Meadows	9.57	1.00
Larry Metcalf	27.81	1.93
Thomas Metcalf	70.59	5.10
Glen Miller	27.97	4.56
Marvin Miller	29.86	4.87
Bruce Mize	786.82	62.89
Dale E. Mize	64.32	2.70
Jerry Moore	196.17	26.42
Randy Morton	13.32	1.39
Glenn Mosteller	13.33	1.00
Ted Alan Mosteller	13.52	.54
Ronnie Mowery	54.31	8.88
John Nail	853.59	110.95
Sam Nail	62.58	7.65
Bob Naff	598.87	104.76
Bill Nye	10.04	.85
Charles Nye	17.77	.77
Dean Osborne	69.77	11.28
Loren Pahsetopah	6.81	.70
Larry Parker	44.20	1.93
Henry Peal	671.68	97.35
David Peterson	176.93	9.27
Tony Phillips	877.07	127.17
Steve Pitchford	27.81	3.40
Lew Prickett	18.54	2.16
Kenny Purkey	6.95	.85
Charles Ray	15.53	2.55
Glen Reid	10.04	1.08
Jack Rhodes	5.42	.54
Walter B. Rodgers	69.53	3.24
Walter L. Rodgers	26.08	1.85
Eddie Rogers	1,646.72	172.83
Morris Rogers	335.73	52.00
Walt Rogers	587.02	67.45
Tom Roley	355.70	24.88
Darrell Rollins	70.50	8.42
Thomas Roland	212.85	22.87
Ronald Salvars	35.00	3.48
David Saxton	366.41	41.18
Terry Schultz	42.49	4.02
Dean Scroggins	70.31	7.49
Bob See	25.11	2.63
Rickey Selz	11.36	1.16
Larry Shaw	21.63	1.93
Paul Simmering	210.24	28.35

Chester E. Skinner	24.14	2.09
Norman E. Skinner	18.25	6.80
Calvin Smith	672.47	105.85
Gary Smith	90.22	14.83
Jim Smith	228.06	21.71
James Stephens	325.72	47.21
Richard Stevenson	18.50	.62
Ron Stewart	82.65	3.71
Courtney Stice	46.85	2.09
Frank STinson	14.20	.62
Rick E. Stringer	1,897.76	232.40
Bob Stroo	17.00	2.01
Douglas Summers	482.39	30.13
Jerry Swift	54.08	1.85
Toney Talley	33.03	1.08
Larry Tate	16.26	.15
Rich K. Taylor	192.92	29.36
Don Tillery	233.50	40.79
Kenneth Troutman	19.66	4.02
Tim A. Turley	823.20	55.55
David Waldorf	58.06	5.95
William F. Walker	18.11	.23
James Walters	30.66	3.17
Bob Weatherly	34.77	4.25
Don Welch	1,791.34	205.98
Francis Shinery	147.72	15.45
John H. Whinery	90.03	8.04
Grayson White, Jr.	82.33	3.63
John Whitaker	12.36	1.08
John Williams	13.91	1.08
Mark Williams	69.58	3.12
Ivan Wolfe	562.60	37.93
Larry J. Wright	14.39	.15
	<u>\$52,286.77</u>	<u>\$5713.23</u>

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

PECAN & AGRICULTURAL EQUIPMENT,)
INC., a Corporation,)
)
Plaintiff,)
)
vs.)
)
LOCKWOOD CORPORATION, a)
Delaware Corporation,)
)
Defendant,)
)
and)
)
JOE A. IHLE,)
)
Additional Party Defendant)
to Counterclaim.)

No. 74-C-286 ✓

FILED
MAR 5 1976
Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

This matter came on for trial on February 17, 1976; the plaintiff and additional party defendant appeared by Loeffler & Allen, by David H. Loeffler and David H. Loeffler, Jr., and Hall, Estill, Hardwick, Gable, Collingsworth & Nelson, by Fred S. Nelson and Stephen R. Clark; and defendant appeared by Dawson, Nagle, Sherman & Howard and Gable, Gotwals, Rubin, Fox, Johnson & Baker, by Sidney G. Dunagan and John R. Barker. During the course of the proceedings, the plaintiff corporation announced to this Court that it had reached a settlement and compromise with the defendant corporation as to plaintiff's Third, Fourth, Fifth and Sixth Counts or Causes of Action. The defendant corporation announced that it had reached a settlement and compromise of its Counterclaim against the plaintiff corporation and additional party defendant Joe A. Ihle.

The terms of the above settlement and compromise agreement between the parties were announced to the Court as follows:

1. The plaintiff corporation dismissed with prejudice its Third Cause of Action and the claim for a loss of \$4,856 in profits for its failure to receive the delivery of certain pecan harvesters from the defendant corporation; the plaintiff

corporation dismissed with prejudice its Fourth Cause of Action in the amount of \$9,963 for which the plaintiff corporation claimed the defendant corporation was indebted to it as a result of the plaintiff's sale of equipment for the defendant during the calendar year 1973; the plaintiff dismissed with prejudice its Fifth Cause of Action under which the plaintiff claimed the defendant was indebted to the plaintiff for the storage of certain equipment from January 16, 1974 through September 16, 1974; the plaintiff dismissed with prejudice its Sixth Cause of Action which requested an accounting of Lockwood products sold by dealers other than the plaintiff within the State of Oklahoma and any claim of a lien on such equipment or on any equipment of the defendant Lockwood Corporation in the State of Oklahoma; and plaintiff agreed and will pay to the defendant corporation the sum of \$2,000.

2. The defendant Lockwood Corporation announced to this Court that in return for the actions of the plaintiff corporation in seeking a settlement and compromise as to the above causes of action, the defendant Lockwood Corporation will dismiss with prejudice its Counterclaim in the sum of \$30,751.68, which it claimed to be due and owing to it for machinery, parts and freight purchased from the defendant by the plaintiff over a three-year period; the defendant corporation did further agree to cancel, void and prevent the negotiation of a check of February 11, 1974, made payable by the plaintiff corporation to the defendant corporation in the sum of \$6,143.83.

3. The parties did further announce to the Court, as a part of their settlement and compromise agreement to the above counts or causes of action, each would bear its own attorneys fees and costs as to those counts or causes of action dismissed.

After hearing the announcements of counsel for the respective parties and the terms of the settlement and compromise agreement, this Court finds that the settlement and

compromise agreement as to plaintiff's Third, Fourth, Fifth and Sixth Counts or Causes of Action and defendant's Counterclaim against the plaintiff corporation and additional party defendant Joe A. Ihle should be and is hereby approved.

IT IS THEREFORE ORDERED by this Court that the Third, Fourth, Fifth and Sixth Causes of Action by the plaintiff are dismissed with prejudice to the bringing of a future action thereon; that the defendant's Counterclaim against the plaintiff corporation and the defendant Joe A. Ihle is hereby dismissed with prejudice to the bringing of a future action thereon; that the plaintiff corporation and additional party defendant Joe A. Ihle shall pay to the defendant corporation the sum of \$2,000 by no later than March 23, 1976; that each party hereto shall bear its own attorneys fees and costs as to any claim it might have against the other party in regard to plaintiff's Third, Fourth, Fifth and Sixth Count or Cause of Action and defendant's Counterclaim against the plaintiff and additional party defendant Joe A. Ihle; and this Court does further order that the Delivery Bond, Bond Number 2543675, filed with this Court on September 10, 1974 is released and the Principal, Lockwood Corporation, and Surety, Safeco Insurance Company of America, are fully exonerated from any liability thereon.

This Order does not include this Court's consideration of the merits of plaintiff's First, Second or Seventh Causes of Action or the rights of the respective parties thereunder.

DATED this 5th day of ~~February~~^{March}, 1976.

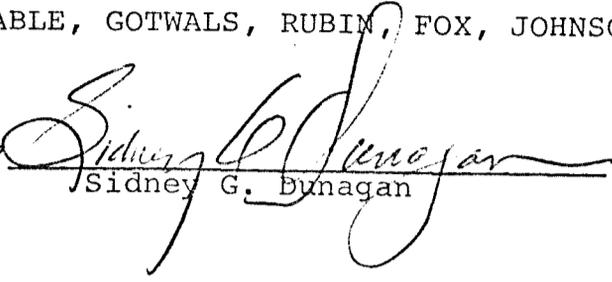

H. Dale Cook
United States District Judge

APPROVED AS TO FORM:

DAWSON, NAGLE, SHERMAN & HOWARD

and

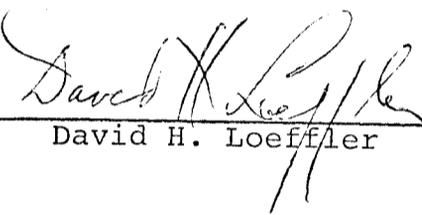
GABLE, GOTWALS, RUBIN, FOX, JOHNSON & BAKER

By 
Sidney G. Dynagan

HALL, ESTILL, HARDWICK, GABLE, COLLINGSWORTH & NELSON

and

LOEFFLER & ALLEN

By 
David H. Loeffler

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

KARL KELSO, d/b/a KELSO
DRYWALL COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 74-C-266 ✓

E I L E D

MAR 5 1976

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

O R D E R

Now on this 5th day of March, 1976, there came on
for consideration the Stipulation of the Plaintiff and the
Defendant to dismiss the Complaint and the Counterclaim with
prejudice, each party to bear its own costs.

NOW IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED
and costs of action
that the Complaint and Counterclaim herein be and the same are
hereby dismissed with prejudice, each party bearing its own
costs.

W. J. Wallock
UNITED STATES DISTRICT JUDGE

bcs

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

WHEATLEY COMPANY,)

Plaintiff,)

vs.)

Civil Action No. 75-C-239 ✓

CROWN VALVES, INCORPORATED)

and NICHOLAS RYLANDER,)

Individually,)

ROBINSON OILFIELD SPECIALTIES)

(1968) Ltd; STREAM-FLO)

VALVES, LTD., J. DUNCAN)

McNEILL, Individually, and)

LAWRENCE I. OLSON, Indivi-)

dually)

Defendants.)

FILED
MAR 5 1978
Jack C. Silver, Clerk
U.S. DISTRICT COURT

CONSENT DECREE

WHEREAS, Plaintiff and Defendants in the above-identified action have resolved their differences by a Settlement Agreement between them, which agreement included the voluntary joinder and submission to the court's jurisdiction of the additional Defendants Robinson Oilfield Specialties (1968) Ltd., Stream-Flo Valves, Ltd., J. Duncan McNeill, and Lawrence I. Olson, and said Plaintiff and Defendants now desire to consent to a judgment without trial.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiffs Motion to Join Robinson Oilfield Specialties (1968) Ltd., Stream-Flo Valves, Ltd., J. Duncan McNeill, and Lawrence I. Olson as additional party Defendants is hereby granted.
2. That this Court has jurisdiction of the subject matter of this action, and that the parties have submitted to the jurisdiction of the Court for the purposes of entry of this Judgment.
3. That the Plaintiff is the owner of United States Patent Nos. 3,817,277; 3,186,724; 2,918,934; and, 2,888,950 and that said patents are valid and subsisting.

4. That Plaintiff is the owner of various technical data relating to valves including drawings, specifications, and a catalogue entitled "Stream-Flo Valves".
5. That Defendants' have utilized said technical data and distributed a catalogue entitled "Crown Valves Incorporated" to customers in the United States of America soliciting the sale of valves which would infringe some of Plaintiff's patents.
6. That Defendants' catalogue is essentially a duplicate of Plaintiff's catalogue.
7. That Defendants have designed and built patterns and molds which are now in the possession of foundries in the United States of America, which patterns and molds may be utilized to produce valves which could infringe some of Plaintiff's patents.
8. That Defendants, and each of them, and their officers, directors, agents, heirs, employees, assigns and those acting in concert are enjoined from any and all use in the United States of America of the technical data, catalogues and patents of Plaintiff.
9. That Defendants, and each of them, and their officers, directors, agents, heirs, employees, assigns and those acting in concert are enjoined from any and all further use in the United States of America of the catalogue entitled "Crown Valves Incorporated", and the patterns and molds, which catalogue and patterns and molds were designed and prepared largely from technical data and information derived from Plaintiff.
10. That Defendants' affirmative defenses are dismissed, with prejudice.
11. That the Writ of Attachment issued to Plaintiff is herewith vacated.
12. That the Courts Order requiring the Plaintiff to post an Attachment Bond is hereby vacated.

13. That no damages are awarded to Plaintiff.

14. That all court costs are assessed against Defendants and each of the parties shall bear its own attorney's fees and other expenses of this action.

Date March 5, 1976 Wm Dale Cook
United States District Judge

Approved and Consented To:

Cox, Smith, Smith, Hale & Guenther Incorporated

By Donald R. Comuzzi
Donald R. Comuzzi
500 National Bank of Commerce Bldg.
San Antonio, Texas 78205

Kothe, Nichols & Wolfe, Inc.

By Richard L. Barnes
Richard L. Barnes
124 East Fourth Street
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFF

By William S. Dorman
William S. Dorman
1401 National Bank of Tulsa Bldg.
Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANTS

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

ANNE M. McDONALD, CARL J. LARSON,
DON W. JENKINS, CORNELIUS JOHN
TUCKER, R. B. GILES, FRED A. K.
GILES, and WILLIAM MULLINS,
Plaintiffs,

vs.

LAWRENCE N. HURWITZ, NORMAN H.
RASKIN, ALAN N. ALPERN, HERBERT
J. SMOKLER, HARLEQUIN MANAGEMENT
CORPORATION, ABERDEEN POWER, INC.,
UTICA NATIONAL BANK & TRUST COMPANY
and ABERDEEN PETROLEUM CORPORATION,
Defendants.

No. 73-C-261

FILED
IN OPEN COURT

MAR 4 - 1976

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

ORDER APPROVING SETTLEMENT AND FIXING COMPENSATION

75
72

THIS CAUSE came on for hearing on this 4th day of March, 1976, upon the joint application of counsel for the plaintiffs and counsel for the defendants, Lawrence N. Hurwitz and Norman H. Raskin for approval by the Court of a proposed settlement of this cause and upon the Application of counsel for the plaintiffs for allowance of compensation. The plaintiffs appearing by their attorneys, Royce H. Savage and L. K. Smith, and the defendants appearing by their attorney, Jack R. Givens of Jones, Givens, Brett, Gotcher, Doyle & Bogan, Inc., *and the defendant Aberdeen Petroleum Corporation appearing by its counsel Ronald Rayner*
The Court, after hearing statements of counsel and the testimony under oath of Royce H. Savage, Robert W. McDowell and J. Jerry Dickman, finds:

1. The plaintiffs have heretofore dismissed, with approval of the Court, as to the defendants, Alan N. Alpern, Herbert J. Smokler, Harlequin Management Corporation and Utica National Bank and Trust Company. The defendant, Aberdeen Power, Inc. is a defendant in the case only because of its prior ownership of the Class "B" stock of Aberdeen Petroleum Corporation. The defendant, Aberdeen Petroleum Corporation (APC), is a nominal defendant since this is a derivative action brought by the plaintiffs as stockholders of Aberdeen for the benefit of that corporation.

2. The Adobe Oil and Gas Corporation of Midland, Texas, pursuant to a tender offer, became the owner of all of the outstanding Class "B" stock and a majority of the Class "A" stock of APC as of December 31, 1974. A change of management of APC occurred at that time as a result of the acquisition of such stock by Adobe, who now controls APC. The issues which remain in the case are whether there should be an accounting to APC by Hurwitz and Raskin and a money judgment rendered against them for such amount as might be found to be due and owing.

3. The defendants, Hurwitz and Raskin, do not admit that there is any merit to the claims asserted against them by plaintiff. All parties have agreed upon a settlement of such claims in consideration of the payment to the Clerk of this Court in the sum of \$61,000.00 to be disbursed by Order of the Court.

4. Notice of this hearing was properly given to all of the stockholders of record of Aberdeen Petroleum Corporation in conformity with the Order of the Court setting the above described Application for hearing on this date. Proof of compliance with the Order of the Court in respect to notice to the stockholders of this hearing is made by the affidavit of P. M. Welch, Secretary of Aberdeen Petroleum Corporation, which was presented in open Court and filed in this cause.

5. The proposed settlement of all claims asserted by plaintiffs on behalf of APC for the sum of \$61,000.00 is fair and reasonable and such settlement is in furtherance of the best interests of the stockholders of APC. No objection has been made, either in writing or in open Court, to such proposed settlement.

6. The Court further finds from the evidence presented that Royce H. Savage and L. K. Smith, in the filing and prosecution of this cause, have rendered services of great value to Aberdeen Petroleum Corporation. The reasonable value of the services rendered by counsel for the plaintiffs is the sum of

7/1.
\$25,000.00.

Counsel for the plaintiffs have advanced for expenses in this litigation the sum of \$1,178.15 for which they should be reimbursed.

IT IS THEREFORE ORDERED as follows:

1. That the proposed settlement of the claims made in this cause against the defendants, Hurwitz and Raskin, for the sum of \$61,000.00 be approved and the case will be dismissed with prejudice as to them and Aberdeen Power, Inc. upon payment of such amount to the Clerk of this Court.

7R
7D
2. That the Clerk of the Court pay to Royce H. Savage and L. K. Smith from the funds so deposited the sum of \$25,000.00 for legal services performed by them, and in addition, the sum of \$^{1425.65}~~1,178.15~~ to reimburse them for expenses advanced by them, and that the remainder of such sum be paid to Aberdeen Petroleum Corporation; provided, however, that if the Clerk of the Court collects any interest earned on the Certificate of Deposit in the principal sum of \$61,000.00 which counsel for defendants has stated he intends to deliver and endorse to said Clerk, such interest collected over and above the sum of \$61,000.00 shall be paid over to Jack R. Givens, as escrow agent for such defendants.

Lred Daugherty
UNITED STATES DISTRICT JUDGE

Royce H. Savage
ROYCE H. SAVAGE

L. K. Smith
L. K. SMITH

Attorneys for the Plaintiffs

JONES, GIVENS, BRETT, GOTCHER, DOYLE
& BOGAN, INC.

Jack R. Givens
Jack R. Givens

Attorneys for the Defendants

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

NATIONAL GYPSUM COMPANY,)
)
Plaintiff,)
)
v.)
)
AMERICAN MOBILE HOMES OF)
OKLAHOMA, INC., d/b/a)
AMERICAN MOBILE HOME SALES,)
)
Defendant.)

No. 75-C-367

FILED

MAR 4 1976

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

CONSENT JUDGMENT

WHEREAS, upon representations of counsel for plaintiff, National Gypsum Company and from counsel for the defendant, American Mobile Homes of Oklahoma, Inc. d/b/a American Mobile Home Sales, it appears that the parties to this cause have effected settlement out of court under the terms of which defendant admits the existence of a prior common law trademark "American" used by the plaintiff in regard to the sale of mobile homes; and defendant has agreed, in exchange for the waiver of any claim by the plaintiff for past damages, to cease any further use of the word "American" in conjunction with its name and its mobile home sales business as of March 1, 1976; defendant has further agreed that this Court may enter an injunction effective March 1, 1976 prohibiting any further use by the defendant of the word "American" in conjunction with the sale of mobile homes.

NOW, THEREFORE, IT IS ADJUDGED AND DECREED:

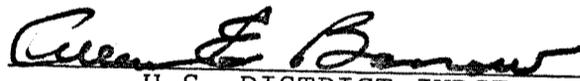
1. THAT this Court has jurisdiction of this matter and the parties to this action.

2. THAT the defendant, American Mobile Homes of Oklahoma, Inc., its officers, agents, servants and employees, and each of them are hereby enjoined, effective March 1, 1976, from any further use of the word "American" in conjunction with the sale of or in connection with any mobile home merchandise not emanating from the plaintiff and from using any words or letters which in any way assimilate the mark "American" or any other letters or designs which in any way assimilate plaintiff's trademark "American" in its trade name and in connection with the manufacture or sale of mobile homes.

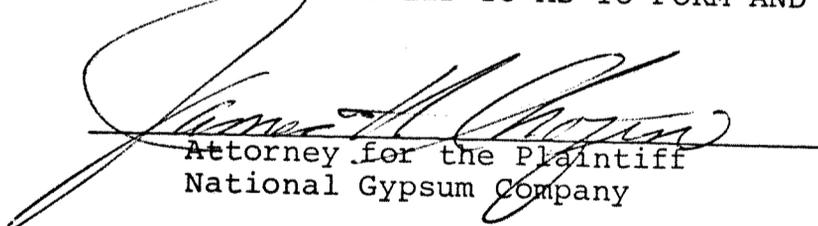
3. THAT the plaintiff's claims of unfair competition and violation of the Oklahoma Deceptive Trade Practices Act are hereby dismissed without prejudice.

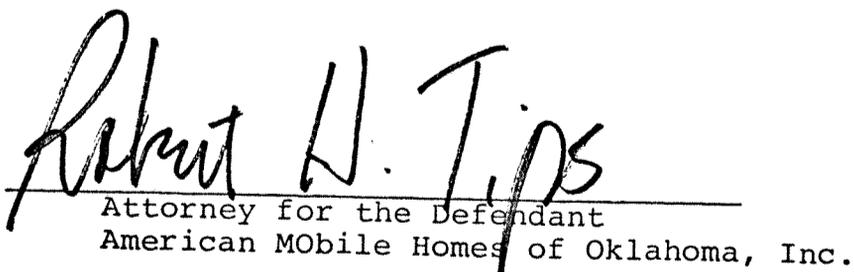
4. THAT each of the parties of this cause bear their own costs and attorney's fees.

DONE AND ENTERED at Tulsa, Oklahoma, this 4th day of March 1976.


U.S. DISTRICT JUDGE

APPROVED AND AGREED TO AS TO FORM AND SUBSTANCE:


Attorney for the Plaintiff
National Gypsum Company


Attorney for the Defendant
American MOBILE Homes of Oklahoma, Inc.

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

GEORGE L. SCRUGGS, JR., d/b/a
Chem-Quip Company, a sole
proprietorship,

Plaintiff,

vs.

WABECO COMPANY, INC., a corpora-
tion, and JOHN S. BEEBE, JR.,
and A. WAYNE BROWN, individually
and as directors,

Defendants.

No. 75-C-344

FILED

MAR 4 1976

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

ORDER

The Court has for consideration the motions to dismiss for lack of jurisdiction of each of the three defendants in their entirety and has carefully perused the entire file, the briefs and all of the recommendations concerning said motions, and being fully advised in the premises finds:

That the defendants' motions should be sustained for the reason that none of the defendants had sufficient minimum contact with the State of Oklahoma concerning the subject matter of the action to be subject to jurisdiction of courts in the State of Oklahoma under 12 Okla. Stat. § 187 and § 1701.01 et seq.

IT IS, THEREFORE, ORDERED that the motions of Wabeco Company, Inc., John S. Beebe, Jr., and A. Wayne Brown should be and are hereby sustained and the complaint and this action are hereby dismissed for lack of jurisdiction.

Dated this 4th day of March, 1976.

Allen E. Bonner
CHIEF UNITED STATES DISTRICT JUDGE

Form Approved:

181 Richard K. Holmes
Richard K. Holmes,
Attorney for Plaintiff

181 D.E. Hammer
D. E. Hammer,
Attorney for Defendants

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

LIZZIE MAE INGLE,)
)
Plaintiff,)
)
vs.)
)
UNITED STATES OF AMERICA;)
The Unknown Heirs, Executors,)
Administrators, Trustees,)
Devises and Assigns, if any,)
of Bruce Morgan, deceased;)
and THE STATE OF OKLAHOMA,)
ex rel, OKLAHOMA TAX)
COMMISSION,)
)
Defendants.)

CIVIL ACTION NO. 76-C-19

FILED

MAR 4 1976

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

PLAINTIFF'S NOTICE OF
DISMISSAL WITHOUT PREJUDICE

Plaintiff, Lizzie Mae Ingle, by and through her attorneys
of record, Blackstock Joyce Pollard Blackstock & Montgomery, by
William C. Kellough, hereby dismisses the above action without
prejudice.

BLACKSTOCK JOYCE POLLARD
BLACKSTOCK & MONTGOMERY

By

William C. Kellough
William C. Kellough
300 Petroleum Club Bldg.
Tulsa, Oklahoma 74119
(918) 585-2751

Attorneys for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of March, 1976, I caused
a true and correct copy of the foregoing Dismissal to be mailed
to Robert P. Santee, Assistant United States Attorney, Federal
Court House, Tulsa, Oklahoma 74103, with sufficient postage prepaid
thereon.

William C. Kellough
WILLIAM C. KELLOUGH

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

L. A. Horton d/b/a
Horton's Electrical Center,
Plaintiff,

vs.

Steven H. Janco, William R.
Satterfield, Richard S. Sudduth,
Micheal L. O'Donnell d/b/a Aci Hi
Construction Company, Anchor Concrete
Company, Tom Dolan Heating Company,
Lights of Tulsa Inc., Matt Collins
E/b/a World Wide Mechanical and United
States of America,
Defendants.

FILED ²
MAR 2 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT
Civil No 75-C-182

ORDER OF DISMISSAL

On this 10th day of February, 1976, comes the
said plaintiff by his attorneys, Rollins and Combs, and there-
upon, it is ordered by the Court that this cause be and the
same hereby is dismissed at cost of plaintiff, without prejudice
to his right to bring a new action in this behalf, in so far
as said cause of action relates to Micheal O'Donnell d/b/a
Aci Hi Construction Company and Matt Collins d/b/a World Wide
Mechanical.

Allen E. Barnew

Judge