

2. Mr. Akins was considered a business concern. He owns three or four singled family dwellings which he rented as furnished. In partnership with his brother, he owns several rental properties which are rented unfurnished.

3. Akins contends that the renting of the furnished apartments and furnished duplex on the one lot, constitute a separate business apart from the partnership with his brother who owns unfurnished properties for rental, and separate and apart from single family dwellings rented furnished by Mr. Akins.

4. The Authority found that this other rental property made Mr. Akins ineligible to file a claim for the "alternate payment in lieu of all other payments," which is a payment based on the average annual net earnings for the two years preceeding displacement.

5. Mr. Akins was eligible to have all of his furniture and fixtures moved to a location of his choosing or to file a claim for the direct loss of personal property. He selected an appraiser and auctioneer and had the auction set for public sale. On June 11, 1975, the public sale was held and Akins received \$59.34. The Authority paid Akins an additional \$993.75 for a total of \$1,053.09. On July 14, 1975, Robert J. Woolsey, attorney for Akins wrote the Tulsa Urban Renewal Authority concerning Mr. Akins' entitlement to a business relocation payment under 42 U.S.C. §4522c.

6. The Authority found that Akins was ineligible for the "alternate payment in lieu of all other payments".

7. On August 8, 1975, Akins through his attorney, Robert J. Woolsey, "requested a review by the proper administrator". On August 13, 1975, Paul D. Chapman, Executive Director of the Tulsa Urban Renewal Authority held that Akins was ineligible for the minimum alternative payment of \$2,500.00 and advised Woolsey of the grievance procedure..

8. On August 18, 1975, Woolsey requested an oral presentation for his client. An oral presentation was arranged. Atkins was not satisfied with the explanation of the staff of the Tulsa Urban Renewal Authority and a written determination was requested.

9. The Tulsa Urban Renewal Authority put their determination in writing on September 22, 1975, and advised Woolsey that his client could request a review by HUD.

10. On September 25, 1975, Woolsey requested that HUD review the decision of the Tulsa Urban Renewal Authority. On October 15, 1975, HUD responded to the review by concurring with the Tulsa Urban Renewal Authority's determination that Akins is not entitled to "an alternative payment in lieu of moving and related expenses". HUD advised Akins of his right to seek judicial review of his relocation claim.

11. The instant litigation was commenced on November 24, 1975.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Parties have by their agreed pre-trial order stipulated that the remaining issue of law which remains for determination by the Court is:

"The validity of the decision of the Department of Housing and Urban Development in concurring with the Tulsa Urban Renewal Authority's determination that plaintiffs were not entitled to alternative payment in lieu of moving and related expenses."

1. This Court has jurisdiction by virtue of Title 42 U.S.C. §4621, et seq.

2. Title 42 U.S.C. §4622 provides:

"(a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1981, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for--

"(1) actual reasonable expenses in moving himself,

his family, business, farm operation, or other personal property;

"(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

"(3) actual reasonable expenses in searching for a replacement business or farm.

"(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed \$300; and a dislocation allowance of \$200.

"(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than \$2,500 nor more than \$10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term 'average annual net earnings' means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. Publ.L.91-646, Title II, §202, Jan. 2, 1971, 84 Stat. 1895."

3. The scope of review of this Court is limited to whether the finding concerning the eligibility of claimant for an alternate payment under 42 U.S.C. §4622(c) was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

4. The Court finds that the decision by the administrative agency in the instant litigation was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In this connection, the Court has reviewed all of the relevant factors and whether there has been a clear error of judgment.

5. The Court further finds that a rational basis for decision is present in the instant action.

6. There has been no clear evidence submitted to indicate that the administrative agency has not properly performed its official duties.

7. The decision of the Department of Housing and Urban Development should be affirmed.

ENTERED this 30th day of November, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

OKLAHOMA ORDNANCE WORKS)
AUTHORITY, a public trust,)
)
Plaintiff,)
)
v.)
)
SHELTER RESOURCES CORPORATION,)
a Delaware corporation,)
WINSTON DELAWARE, INC., a)
Delaware Corporation, WINSTON)
INDUSTRIES, INC., an Alabama)
Corporation, and FREIBERGER)
AGENCY, INC., a corporation,)
and WOHLREICH & ANDERSON,)
LTD.,)
)
Defendants.)

NO. 75-C-328-C ✓

FILED
NOV 30 1976
U.S. DISTRICT COURT
ph

ORDER OF DISMISSAL

Upon the STIPULATION FOR DISMISSAL of the remaining parties in this cause, the Court hereby ORDERS that the Defendant, Wohlreich & Anderson, Ltd., be dismissed from this cause, with prejudice to any future filing.

DATED, this 30th day of November, 1976.

H. Dale Cook
H. DALE COOK,
UNITED STATES DISTRICT JUDGE

O.K.

DOERNER, STUART, SAUNDERS, DANIEL & LANGENKAMP
R. DOBIE LANGENKAMP
Attorneys for Plaintiff

By R. Dobie Langenkamp
R. DOBIE LANGENKAMP

John R. Richards
JOHN R. RICHARDS
Attorney for Defendant, Freiburger Agency, Inc.

RHODES, HIERONYMUS, HOLLOWAY & WILSON
Attorneys for Defendant, Wohlreich & Anderson, Ltd.

By Russell B. Holloway
RUSSELL B. HOLLOWAY

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO.

PANSY EVANS,
Plaintiff,
vs.

THE CITY OF OWASSO, OKLAHOMA,
a Municipality,

Defendant.

JUDGMENT

76-C-123-B

This action came on for trial (hearing) before the Court, Honorable Howard C. Bratton
, United States District Judge, presiding, and the issues having been duly tried
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the Court finds in favor of the Defendant,
The City of Owasso, Oklahoma, and that the plaintiff take nothing.

FILED

NOV 29 1976

Jack C. Silver, Clerk
DISTRICT COURT

Dated at Tulsa, Oklahoma
of November , 19 76.

, this 29th day

JACK C. SILVER, CLERK

By: Rosanne J. Miller
Deputy Clerk of Court

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

FARMERS INSURANCE COMPANY, INC.,)

Plaintiff,)

-vs-)

GERALD KENTON HIRST, GLENN RAY HIRST,)

ROBERT STEPHEN COOK, NORMAN JONES,)

MID-CONTINENT CASUALTY COMPANY, a)

corporation, and BILLY RUTH,)

Defendants.)

No. 76-C-483-B ✓

NOV 29 1976

JK

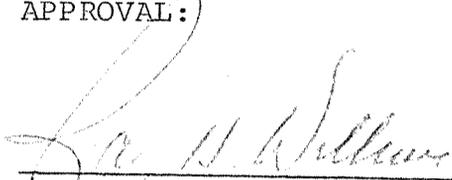
ORDER OF DISMISSAL

ON this 29th day of November 1976, upon the written application of the parties for A Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

Allen E. Bann
JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:



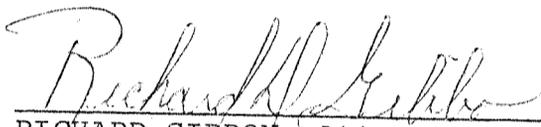
RAY H. WILBURN, Attorney for
Plaintiff and Billy Ruth

FOLIART, MILLS & NIEMEYER

By



D. H. COOK, Attorneys for Gerald Kenton Hirst,
Robert Stephen Cook and Glenn Ray
Hirst



RICHARD GIBBON, Attorney for
Mid-Continent Casualty Company and
Norman Jones

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

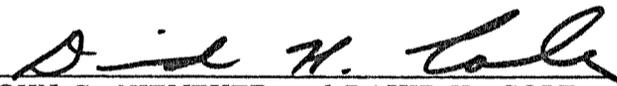
GERALD KENTON HIRST,)
)
 Plaintiff,)
)
 vs.)
)
 BILLY RUTH and NORMAN JONES,)
)
 Defendants.)

NO. 76-C-77-B ✓

FILED
DIV 2 1976
Jack C. Silver, Clerk
DISTRICT CO.

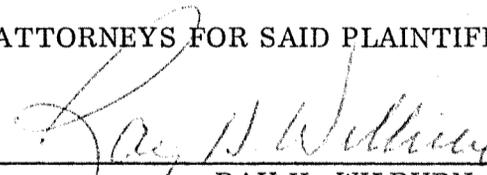
STIPULATION FOR DISMISSAL WITH PREJUDICE

COME NOW the attorneys for the plaintiff and for the defendants, respectively, and hereby stipulate and agree that the above-captioned cause may, upon order of the Court, be dismissed with prejudice to further litigation pertaining to all matters involved herein, and state that a compromise settlement covering all claims involved in the above-captioned cause has been made between the parties and the said parties hereby request the Court to dismiss said action with prejudice, pursuant to this stipulation.



JOHN C. NIEMEIER and DAVID H. COLE
of
FOLIART, MILLS & NIEMEIER
2020 First National Center
Oklahoma City, Oklahoma 73102

ATTORNEYS FOR SAID PLAINTIFF



RAY H. WILBURN
603 Beacon Building
Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANT, BILLY RUTH



RICHARD D. GIBBON
217 Pythian Building
Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANT, NORMAN JONES

NOV 29 1976

ORDER OF DISMISSAL

The above matter coming on to be ~~heard~~ ^{considered} this 29th day of November, 1976, upon the written stipulation of the parties for a dismissal of said action with prejudice, and the Court, having examined said stipulation, finds that the parties have entered into a compromise settlement covering all claims involved in the action, and have requested the Court to dismiss said action with prejudice to any further action, and the Court, being fully advised in the premises, finds that said action should be dismissed pursuant to said stipulation.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff's cause of action ^{and complaint} filed herein against the defendants be, and the same ^{are} ~~is~~ hereby, dismissed with prejudice to any future action.

Allen E. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED:

John C. Niemeier and David H. Cole
JOHN C. NIEMEYER and DAVID H. COLE
Attorneys for Plaintiff

Ray H. Wilburn
RAY H. WILBURN
Attorney for Defendant, Billy Ruth

Richard D. Gibbon
RICHARD D. GIBBON
Attorney for Defendant, Norman Jones

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

AETNA LIFE INSURANCE COMPANY,

Plaintiff,

vs.

LUTHER BREWER, LUCILLE WILLIAMS,
RASHAUN N. BREWER, a minor,
LUTHER R. BREWER, a minor,
KENNETH R. BREWER, a minor, and
DYER MEMORIAL CHAPEL,

Defendants.

NOV 23 1976

75-C-325-B

NOV 23 1976

ORDER OF DISMISSAL

Based on the Findings of Fact and Conclusions of Law entered
the 23rd day of November, 1976, and the payments of the funds on deposit
in accordance with said Findings of Fact and Conclusions of Law,

IT IS ORDERED that this cause of action and complaint be and
the same are hereby dismissed with prejudice, all matters having been
amicably settled between the parties.

ENTERED this 23rd day of November, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

which states, in pertinent part:

"***That as Vice-President and General Manager of Protechnics, Specialties, Incorporated, he has personal knowledge of the fact that said corporation is not doing business in the State of Oklahoma nor has the corporation ever done business in the State of Oklahoma in the past. Further, that as Vice-President and General Manager of Protechnics Specialities, Incorporated, he has personal knowledge of the fact that the defendant corporation has no debts due and owing within the State of Oklahoma, does not maintain an office in the State of Oklahoma is not licensed to do business in Oklahoma, and had no contacts whatsoever with the State of Oklahoma. Deponent further shows that the tortious act which is the basis of this complaint occurred at Fort Chaffee, Arkansas, and not in the State of Oklahoma. Deponent shows that the items produced by the corporation were sold directly to the United States of America and its agent, the Department of Defense, and the corporation could not reasonably anticipated that the items might be used or sold in Oklahoma.***."

In *Fields v. Volkswagon of America, Inc., et al.*, Oklahoma Bar Journal, 47 OBAJ 1675 (Okla. 1976), the Oklahoma Supreme Court said:

"The applicable Oklahoma statute upon which in personam jurisdiction of non-resident defendants is based is 12 O.S. 1971 §1701.3(a)(4). Jurisdiction under the long-arm statute is predicated on foreign state activity which results in forum state harm. The intention in Oklahoma is to extend the jurisdiction of Oklahoma courts over non-residents to the outer limits permitted by the due process requirements of the United States Constitution. The Oklahoma statute gives the courts of Oklahoma personal jurisdiction over any non-domiciliary who can be reached constitutionally as having had sufficient state contacts measured by the jurisdictional yardstick established by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). *Marathon Battery v. Kilpatrick*, 418 P.2d 900 (Okla. 1965), accorded this decision and determined the test of jurisdiction of the court of the State of Oklahoma over a non-domesticated, foreign corporation is not solely or necessarily premised on whether the acts of the corporation amount to doing business within this state, but whether the non-resident has significant contacts with the State. This concept was expanded under *B. K. Sweeney Co. v. Colorado Interstate Gas Co.*, 429 P.2d 759, 763 (Okla. 1967), where the court held the State of Oklahoma may obtain personal jurisdiction over non-resident defendants in suits resulting from voluntary acts or transactions which either directly or indirectly created minimum contacts with the forum state, however limited or transient such contracts may be since the state has a manifest interest in providing effective means of redress when harm is caused within its territory. The result of these decisions is that significant contacts which result in a tortious episode in this state render persons answerable in Oklahoma courts in accordance with Oklahoma laws.

See also Precision Polymers, Inc. v. Nelson, 512 P.2d 811
(Okla. 1973).

The Court finds, based on the entire file that the plaintiff has now shown the necessary minimum contacts to confer jurisdiction and venue on this Court.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss for lack of jurisdiction and venue filed by the defendant be and the same is hereby sustained and this cause of action and complaint are dismissed for lack of jurisdiction and venue.

ENTERED this 23rd day of November, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

DALE KNOTT,
Plaintiff,
vs.
GENERAL AMERICAN TRANS-
PORATION CORPORATION,
Defendant.

)
)
) 75-C-309-B ✓
)
) FILED
)
) NOV 27 1976
)

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

ORDER

The Court has for consideration the Motion to Dismiss for Lack of Jurisdiction over the Person, Insufficiency of Process, Insufficiency of Service of Process and Failure to State a Claim Upon which Relief Can be Granted Under Rule 12(b), the brief in support thereof, and, having carefully perused the entire file, and, being fully advised in the premises, finds:

That said Motion should be sustained.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss for Lack of Jurisdiction over the Person, Insufficiency of Process, Insufficiency of Service of Process and Failure to State a Claim Upon which Relief Can be Granted Under Rule 12(b) be and the same is hereby sustained and T. LUSK WANDS AND BOILERMAKERS, IRON, SHIPBUILDERS, BLACKSMITHS, FORGERS & HELPERS UNION, against whom process was sought to be obtained are hereby dismissed from this action without prejudice.

ENTERED this 32 day of November, 1976.

Allen F. Banner

CHIEF UNITED STATES DISTRICT JUDGE

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Summary Judgment be and the same is hereby sustained.

ENTERED this 22nd day of November, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

NOV 19 1976

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

RAYMOND ALVIN CALDWELL;)
LUCILLE CALDWELL; KARLA K.)
CALDWELL; RONALD R. CALDWELL;)
ROBERT F. FRETWELL and)
SHIRLEY J. FRETWELL,)

Plaintiffs,)

vs.)

No. 73-C-65

SEMCO INDUSTRIES, A Corporation;)
SYSTEMEX CORPORATION, A Corpor-)
ation; ROBERT L. BROOKS; KELLEY)
R. HANEY, SR.; L. E. BROOKS and)
R. L. POPE,)

Defendants.)

Above Cause
Consolidated With

FRANCIS F. SUMMY and CHARLENE)
SUMMY; JOHNNIE SUMMY; JAMES)
E. NUNN and WILLARD CULP, On)
Behalf of Themselves and All)
Others Similarly Situated,)

Plaintiffs,)

vs.)

No. 72-C-54

SEMCO INDUSTRIES, INC.;)
ROBERT L. BROOKS; KELLY R.)
HANEY, SR.; L. E. BROOKS;)
JACQUES SPEE; R. E. HANOCK;)
GAYLE E. WELCHER; R. L. POPE)
and J. R. HOOKER, JR.,)

Defendants.)

ORDER OF DISMISSAL

Now on this 19th day of November, 1976, this matter
coming on for consideration before me, the undersigned Chief
Judge of the United States District Court for the Northern
District of Oklahoma;

IT IS ORDERED, ADJUDGED AND DECREED that Case No. 73-C-65
be, and the same hereby is, dismissed with prejudice as to
defendants Semco Industries, Inc., Systemex Corporation,
L. E. Brooks and R. L. Pope.


Chief Judge of the United States
District Court for the Northern
District of Oklahoma

FILED
IN OPEN COURT

NOV 19 1976

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

IN THE UNITED STATES DISTRICT COURT
FOR

THE NORTHERN DISTRICT OF OKLAHOMA

ST. JOHN'S HOSPITAL & X
SCHOOL OF NURSING, INC., X
Plaintiff, X
vs. X
THE LOMAS & NETTLETON COMPANY, X
Defendant. X

No. 76-C-436-*B*

JUDGMENT FOR DISMISSAL WITH PREJUDICE
AND PERMANENT INJUNCTION

On this day came on to be heard the above-entitled and numbered cause. Plaintiff St. John's Hospital & School of Nursing, Inc. and Defendant The Lomas & Nettleton Company appeared by and through their attorneys of record in open court and announced that an agreement, compromise and settlement had been entered into and that the parties herein seek to have this Court enter this Judgment, that certain Settlement Agreement between Plaintiff and Defendant having been presented to the Court and the Court having considered said document, the pleadings herein, and the evidence presented to the Court in the form of Stipulation for Judgment for Dismissal with Prejudice and Permanent Injunction and otherwise, the Court finds, a jury having been waived, that such Settlement Agreement and Stipulation represent a reasonable agreement of compromise and are hereby approved.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, THAT:

1. Such Settlement Agreement constitutes a reasonable and lawful agreement of compromise respecting the claims alleged or which could have been alleged in Plaintiff's Complaint and Amended Complaint, and which might otherwise be alleged in the future.

2. Plaintiff's Complaint and Amended Complaint are dismissed, in whole and in all parts, with prejudice to the bringing of a like Complaint and Amended Complaint and like causes of action; and

3. Plaintiff, its agents, servants, employees, successors or assigns, are permanently enjoined (a) from attempting to submit or submitting FHA debentures to Defendant in payment of mortgage insurance premiums owed in connection with Defendant's \$40,800,000.00 loan to Plaintiff; (b) from claiming any right to interest or other monetary benefits which might be derived from the deposit and accumulation by Defendant of accruals for FHA mortgage insurance premiums and property and fire insurance premiums received from Plaintiff in connection with such loan; and (c) from instituting any suit at law or equity against Defendant, its agents, servants, employees, successors, or assigns, containing any allegations made by, or which could have been made by Plaintiff herein.

SIGNED AND ORDERED ENTERED this 19th day of November, 1976.



Allen E. Barrow, Chief Judge

APPROVED AS TO FORM:

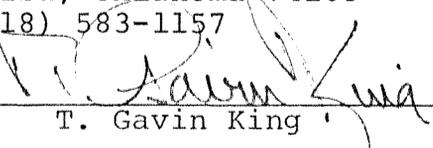
~~THORNTON~~ THORNTON, WAGNER & THORNTON,
a professional corporation
1111 Mid-Continent Bldg.
Tulsa, Oklahoma 74103
(918) 587-2544

By 

David M. Thornton, Jr.

and

GAVIN & KING
913 Petroleum Building
Tulsa, Oklahoma 74103
(918) 583-1157

By 

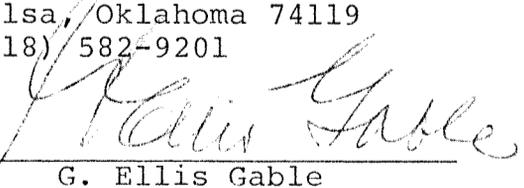
T. Gavin King

ATTORNEYS FOR PLAINTIFF

LOCKE, PURNELL, BOREN, LANEY
& NEELY,
a professional corporation
3600 Republic National Bank Tower
Dallas, Texas 75201
(214) 744-4511

and

GABLE, GOTWALS, RUBIN, FOX,
JOHNSON & BAKER
20th Floor, Fourth National Bldg.
Tulsa, Oklahoma 74119
(918) 582-9201

By 

G. Ellis Gable

ATTORNEYS FOR DEFENDANT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
NOV 1 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

W.J. USERY, JR., Secretary of Labor,)
United States Department of Labor,)
Plaintiff,)
v.)
THE MCINTOSH COMPANY, INC., et al.,)
Defendants.)

Civil Action
No. 75-C-243

FILED
NOV 19 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

DECREE

This action in equity having come on for consideration, and it appearing to the Court that plaintiff and defendants are in agreement that this decree should be entered, and that defendants have delivered to plaintiff a check in the amount of \$6,639.42 which the parties agree and the Court finds to be due under sections 7(a) and 15(a)(2) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §§201-219), hereinafter referred to as the Act, to defendants' 41 employees listed in Schedule A attached hereto in the amounts therein indicated, which by reference is made a part hereof, it is therefore

ORDERED that plaintiff shall proceed promptly to make distribution less social security (Federal Insurance Contributions Act) and income tax withholdings, to defendants' employees listed in Schedule A attached hereto in the amounts therein 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 U.S.C. §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, ADJUDGED and DECREED that defendants The McIntosh Company, Inc., and Robert P. McIntosh, their agents, servants, employees and those persons in active concert or participation with them are permanently enjoined and restrained from violating the provisions of sections 15(a)(2) and (5) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), hereinafter referred to as the Act, in any of the following manners:

I

Defendants shall not, contrary to the provisions of section 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

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

III

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

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

DATED this 19th day of November, 1976.

Cec E. Barow
UNITED STATES DISTRICT JUDGE

Entry of this decree is consented and agreed to:

WILLIAM J. KILBERG
Solicitor of Labor

RONALD M. GASWIRTH
Regional Solicitor

KOTHE, NICHOLS & WOLFE, INC.

WILLIAM E. EVERHEART
Counsel for Employment
Standards

BY:

BY:

Richard L. Barnes
RICHARD L. BARNES
Trial Attorney

Robert A. Fitz
ROBERT A. FITZ
Attorney

Attorneys for Defendants

Attorneys for Plaintiff

SCHEDULE A

C.S. Batchelor	191.85
Allen K. Boggs	4.88
Richard Cavin	60.08
Jesse L. Dorland	73.21
Bill Eslick	160.20
Rick Eslick	97.85
James D. Evans	9.26
Joe Gann	1,343.84
Rick M. Garrouette	20.00
Russell Graves	298.68
Greg Groden	246.13
Terry L. Hayden	36.00
Marshall J. Jackson	11.43
Leland J. James	265.85
Charles D. Keim	155.23
Alan G. Kirkland	415.51
Edwin C. Lay	31.20
James F. McColloch	260.18
John D. McHenry	15.85
Allen McIntosh	3.68
Larry L. McKinney	333.84
Ronnie W. Merry	596.89
Albert L. Poindexter	70.63
Steve Ramsey	30.38
Jerry Ratliff	32.43
Howard S. Reese, Jr.	63.71
Joe Reeves	180.57
Kevin D. Rhode	39.80
William F. Simmons	589.67
Mark O. Spradlin	70.20

Lindy Teague	30.80
Wilbur R. Thompson	52.52
Mark W. Watkins	365.30
Darrell Watson	64.95
Russell M. Wilkinson, Jr.	35.95
Jim Williams	145.90
John Wilson	20.57
Mike Wilson	131.60
Ron M. Wilson	9.76
Emmett Woods	31.17
Jay Young	<u>42.87</u>
TOTAL	\$6,639.42

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

FILED

NOV 19 1976

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

GORDON WHARTON and MELVA)
WHARTON, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
LIFE INVESTORS REALTY CO., MARY)
McDOWELL, and BARBARA HURLBUTT,)
)
Defendants.)

No. 76-C-258-C

ORDER

It appearing to the court that the above-entitled cause has been fully settled, adjusted and compromised, and based on stipulation,

It is hereby ordered and adjudged that the above-entitled cause be, and the same is, hereby dismissed, without cost to either party and with prejudice to the plaintiff.

Dated this 18th day of November, 1976.

J. H. Dalebrook
JUDGE

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

WILLARD GARY ULREY,)
)
 Plaintiff,)
)
 vs.)
)
 ALONZO EVANS,)
 DONNIE R. KELLY, and)
 MISSOURI PACIFIC RAILROAD)
 COMPANY, a corporation,)
)
 Defendants.)
)

No. 76-C-380-B

FILED

NOV 18 1976

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

ORDER OF DISMISSAL

THE COURT, being fully advised in the premises, finds that the parties hereto have filed herein their respective Stipulation of Settlement, and it further appearing to the Court that all issues, claims and controversies between the parties have been heretofore settled,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the above-styled and numbered action is dismissed as to Alonzo Evans, Donnie R. Kelly, and the Missouri Pacific Railroad Company, a corporation, its agents, servants and employees, with prejudice to the Plaintiff's bringing any other or future action; all parties to bear their respective costs incurred herein.

Dated this 18th day of November, 1976.

Allen E. Barrow

Allen E. Barrow, Chief Judge

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

FILED

HOWARD C. MITCHELL and
MYRTLE L. MITCHELL,

Plaintiffs,

vs.

SKELLY PIPE LINE COMPANY,

Defendant.

NOV 17 1976

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

Civil Action
No. 76-C-70-B

ORDER GRANTING PERMISSION TO WITHDRAW
PLAINTIFFS' MOTION TO REMAND
AND DISMISSAL WITH PREJUDICE

For good cause shown, the Plaintiffs are granted permission to withdraw their Motion to Remand this cause to the District Court of Pawnee County, State of Oklahoma.

All the parties to this action having compromised and settled all issues in the action and having stipulated that the Complaint, Counterclaim and this action may be dismissed with prejudice, it is therefore,

ORDERED, that the Complaint, Counterclaim and the causes of action are, by the Court, dismissed with prejudice to the bringing of another action upon the same cause or causes of action.

Entered this 17th day of November, 1976.

Allen E. Brown

UNITED STATES DISTRICT JUDGE

NOV 17 1976

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

GULF INSURANCE COMPANY)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT S. DURAN, SIMEON)
 DURAN AND OTIS S. DURAN)
 d/b/a DURAN AND DURAN,)
 and GERALD REYNEN,)

No. 76-C-545

NOTICE OF PLAINTIFF'S DISMISSAL WITHOUT PREJUDICE

COMES now the plaintiff in the above entitled cause and dismisses this action against the defendants herein, without prejudice, to any further recovery for the damages alleged in the Petition filed herein.

KNIGHT & WAGNER

BY: Stephen C. Wilkerson
Stephen C. Wilkerson
Attorney for the plaintiff, Gulf
Insurance Company

FILED

NOV 17 1976

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

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

TOMMY J. CARTWRIGHT, et al.,

Plaintiffs,

vs.

ATLAS CHEMICAL INDUSTRIES, INC.,
a foreign corporation,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

76-C-577-B

ORDER REMANDING

The Court has for consideration the Motion to Remand of the plaintiffs filed in the instant litigation, and, being fully advised in the premises, finds, that said Motion should be sustained.

IT IS, THEREFORE, ORDERED that this cause of action and complaint be and the same are hereby remanded to the District Court in and for Creek County, Drumright Division, State of Oklahoma.

ENTERED this 17th day of November, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

Defendant claims an attorney fee totaling \$9,140.00. Plaintiff contends that the account sued on was for \$16,253.64 and that they have not been paid by virtue of the judgment against them; that if they had been successful they had asserted an attorney fee in their complaint in the amount of \$4,500.00.

The Court, having carefully perused this file and having considered the testimony at the jury trial, finds that the defendant should be awarded an attorney fee in the sum of \$5,000.00, as the prevailing party.

IT IS, THEREFORE, ORDERED that the Motion to Tax as Costs a Reasonable Attorney Fee for the Defendant is sustained and the defendant is awarded an attorney fee of \$5,000.00 to be taxed as costs.

ENTERED this 17th day of November, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

JACK GADDY,)
)
 Plaintiff,)
)
 -vs-)
)
 BROWN & ROOT, INC.,)
)
 Defendant.)

No. 76-C-225-C

FILED

NOV 16 1976

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

ORDER OF DISMISSAL

Now on this 16th day of November, 1976,
the above styled and numbered cause of action coming on
for hearing before the undersigned Judge, upon the Stipula-
tion for Dismissal of the plaintiff and defendant herein;
and the Court having examined the pleadings and said
Stipulation for Dismissal and being well and fully advised
in the premises, is of the opinion that said cause should
be dismissed with prejudice.

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

W. H. Dale Cook
United States District Judge

APPROVED:

Jack Gaddy
Jack Gaddy, Plaintiff

Coy Dean Morrow
Coy Dean Morrow
WALLACE AND OWENS
Attorneys for Plaintiff

Joe M. Stevens, Jr.
Joe M. Stevens, Jr.
POWELL, BROWN & MAVERICK
Attorneys for Defendant

R. Robert Huff
R. Robert Huff
HUFF AND HUFF, INC.
Attorneys for Defendant

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

FILED
NOV 15 1976 *rem*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

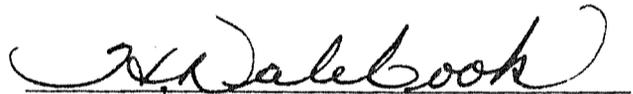
MICHAEL PAUL MOETSCH,)
)
)
Plaintiff,)
)
)
vs.)
)
)
TIMOTHY LEE FLICK,)
)
)
Defendant.)

No. 76-C-112 (C) ✓

ORDER OF DISMISSAL

ON THIS 15th day of November 1976, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any futher action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

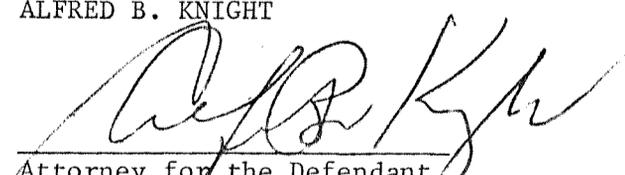

JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

DANIEL BASSETT,


Attorney for the Plaintiff

ALFRED B. KNIGHT


Attorney for the Defendant

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

LAWRENCE CADDY, JR.,)
)
 Plaintiff,)
)
 vs.) No. 75-C-387 - 6 ✓
)
 ST. LOUIS-SAN FRANCISCO RAILWAY)
 COMPANY, A Corporation,)
)
 Defendant.)

FILED

NOV 11 1976 *pm*

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

ORDER ALLOWING DISMISSAL WITH PREJUDICE

NOW on this 12th day of November, 1976, this matter came on before me, the undersigned Judge, upon the joint application of the parties hereto for an order allowing dismissal of this cause with prejudice. The Court, having considered such joint application, which has been executed by the Plaintiff herein, as well as his co-counsel, finds that such joint application should be granted.

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

IT IS FURTHER ORDERED that the parties hereto shall be responsible for payment of their respective court costs and attorneys' fees.

[Handwritten Signature]

JUDGE

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

UTICA NATIONAL BANK & TRUST)
COMPANY, a National Banking)
Association,)
)
Plaintiff,)
)
VS.)
)
FRANK E. FREY, E. H. HOFFMAN,)
T. J. KREATSCHMAN and TOM L.)
WALKER,)
)
Defendants.)

No. 75-C-399

FILED

NOV 12 1976

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

O R D E R

NOW on this 10th day of November, 1976, comes on for hearing the Application for Dismissal with Prejudice and Stipulation filed herein by the Plaintiff and Defendants, T. J. Kreatschman and Tom L. Walker, and the Court, having reviewed the Application and being advised thereon, does hereby find that the Plaintiff and the Defendants, T. J. Kreatschman and Tom L. Walker, have entered into a settlement of the claims of the Plaintiff as against these Defendants and that the Defendants, Walker and Kreatschman, have jointly tendered the sum of \$4,800 to the Plaintiff in full discharge of the Plaintiff's claims against them.

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff's Complaint and cause of action as against only the Defendants, Tom L. Walker and T. J. Kreatschman, be dismissed with prejudice.

12/14 Dale Cook
UNITED STATES DISTRICT JUDGE

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

AUTOMOBILES INTERNATIONAL, INC.,)
AN Oklahoma corporation,)
)
Plaintiff,)
)
-vs-)
)
JOHNNIE LEWIS McALPINE, d/b/a)
Automobiles International;)
AUTOMOBILES INTERNATIONAL, INC.,)
and JOHNNIE LEWIS McALPINE, d/b/a)
Automobiles International Scuderia,)
)
Defendants.)

No. 76 C-244

FILED

NOV 17 1976

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

JOURNAL ENTRY OF JUDGMENT

NOW, on this 28th day of October, 1976, the above matter comes on for hearing before me, the undersigned Judge of the above-entitled Court, pursuant to the setting of the plaintiff's Motion for Default Judgment against the defendant, Automobiles International, Inc. The plaintiff appears by Bradford J. Williams, Jr. of Hall, Estill, Hardwick, Gable, Collingsworth & Nelson, its attorneys, and the defendant, Automobiles International, Inc., appears not, either by an attorney or pro se.

The Court has examined the pleadings, process and file in this cause and, being fully advised in the premises, finds that due and regular service of summons has been made upon said defendant in the time and manner prescribed by law. That as a matter of law, the Court has full and complete jurisdiction of the subject matter and of the defendant, Automobiles International, Inc.

The Court further finds that the defendant, Automobiles International, Inc., has failed to answer plaintiff's Petition in the time provided by law and is thereby in default. Therefore, the Court finds that plaintiff is entitled to have judgment granted on its Motion for Default Judgment as to Counts I and II of its Petition.

The Court further finds that the plaintiff has been and is now extensively engaged in the business of selling and servicing

in commerce sports cars of all types and models, that plaintiff has and does specialize in the selling and servicing of "exotic" sports cars such as Ferrari, Jaguar, Jensen, Lamborghini, and many others. The Court further finds that plaintiff is an authorized Ferrari dealer and is listed as such in the national weekly publication of Autoweek, and that plaintiff also sells parts for sports cars and is an authorized dealer for Honda and Saab automobiles. The Court further finds that plaintiff does business all over the United States and advertises locally through various types of media and nationally in the weekly publication of Autoweek, and that plaintiff has done business for approximately five years and is continuing to do business under the trade name and trademark of Automobiles International, Inc. The Court further finds that plaintiff also uses a trademark and service mark as a logo to designate its business by means of a particular design utilizing the letters "AI" and that plaintiff's trade name, trademarks, and service mark have become uniquely associated with and identify plaintiff throughout the United States.

The Court further finds that said defendant has adopted the trade name, trademark and service mark of the plaintiff for service and sales of the same type of automobiles as are sold and serviced by the plaintiff, and said defendant has done the preceding with actual notice of plaintiff's rights in said trade name, trademarks and service mark. The Court further finds that the defendant, Automobiles International, Inc., has advertised in the national publication of Autoweek, and example of which is listed on Exhibit "B" of plaintiff's Petition, thereby constituting unfair competition and causing the likelihood of confusion, deception, and mistake. The Court further finds that said advertising by said defendant relates to the sale of "exotic" sports cars.

The Court further finds that the plaintiff, Automobiles International, Inc., advertises at various races across the United States, and when the 24 Hours of Daytona Race was held

in Daytona Beach, Florida, during the latter part of January, 1976, one of the named defendants in this action, Johnnie Lewis McAlpine, d/b/a Automobiles International, had some BMW race cars entered in said race, and the mechanics for said Automobiles International had on T-shirts with the same logo as that of the plaintiff as is shown on plaintiff's Exhibit "A", except the "A" was blue and the "I" was red. The Court further finds that all of the defendants named in said action have been operated by one individual, Johnnie Lewis McAlpine, and that the use of the name "Automobiles International" with the same logo as that of the plaintiff is deceptively similar to the trade name and trademark and service mark of the plaintiff.

The Court further finds that the defendant, Johnnie Lewis McAlpine, d/b/a Automobiles International, has a business card which states "Automobiles International, The Sports Car People" and a copy of one of said business cards is on exhibit "C" of plaintiff's Petition. The Court further finds that all of the defendants are operated by said Johnnie Lewis McAlpine, that said Johnnie Lewis McAlpine's business of Automobiles International was incorporated and adopted the name Automobiles International, Inc., thereby superseding Automobiles International. The Court further finds that the plaintiff, for approximately five years, has used the phrase "The Sports Car People" in its advertising such as in newspapers, on stationery, business cards, and on matchbook covers, and that copies of said items are on Exhibit "D" of plaintiff's Petition.

The Court further finds that the plaintiff has been contacted numerous times by people who believe it to be a part of Automobiles International, Inc. in Kansas, and that merchants who have phoned the plaintiff have stated they were told by Automobiles International or Automobiles International, Inc. in Kansas to check with its other store in Tulsa.

The Court further finds that said defendant, with full knowledge of plaintiff's trade name, trademarks, and service mark, has offered the same class of goods and services in

commerce as the plaintiff and that said defendant's use of the trade name, trademarks, and service mark of the plaintiff is a false designation of origin, description, and representation, and constitutes trading on the goodwill of the plaintiff.

The Court further finds that said defendant has been repeatedly requested to cease and desist from the use and infringement of plaintiff's trade name, trademarks, and service mark, but said defendant continues to ignore the plaintiff's requests, thereby causing irreparable injury, for which said defendant must be restrained by the Court to prevent further violation of plaintiff's rights; and the plaintiff is without an adequate remedy at law. The Court further finds that said defendant's acts are in violation of 15 U.S.C. §1125(a).

The Court further finds that by virtue of said defendant's acts as hereinabove enumerated, said defendant has engaged in unfair competition with the plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, Automobiles International, Inc., have a permanent injunction against the defendant, Automobiles International, Inc., in that said defendant, its officers, agents, servants, employees, and attorneys, and all those persons in active concert or participation with it be permanently enjoined and restrained from:

- A. Using the name "Automobiles International", "Automobiles International, Inc." or any confusingly similar designation alone or in combination with other words, as a trademark, service mark, or trade name (component or otherwise) to market, sell, advertise, or identify said defendant's automobiles, parts, accessories, or services thereof, or related products or services;
- B. Infringing in any manner on plaintiff's logo of "AI";
- C. Unfairly competing with plaintiff in any manner whatsoever; and
- D. Causing likelihood of confusion or injury to business

reputation and using symbols, labels or forms of advertising similar to those used by plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that said defendant file with this Court and serve on the plaintiff, within thirty days after the service of this injunction, a report in writing under oath, setting forth in detail the manner and form in which said defendant has complied with this injunction.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that said defendant deliver up to the Court and destroy all devices, literature, advertising and other material bearing the infringing designations.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that said defendant change its name to eliminate the terms "Automobiles International" and "Automobiles International, Inc." therefrom.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that said defendant account to the Court and to the plaintiff for all profits made as a result of its operations and that the plaintiff be awarded from said defendant all of said profits.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff have and recover all of its costs in this suit from the defendant, Automobiles International, Inc., including attorney fees in the amount of \$ 750.00.



JUDGE OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ARLEN J. LOWRANCE,)
)
) Plaintiff,)
)
v.)
)
R. McLAUGHLIN, J. BRYANT,)
and THE CITY OF TULSA, Oklahoma,)
)
) Defendants.)

NO. 76-C-555-C

NOV 11 1976

NOTICE OF DISMISSAL

COMES NOW the plaintiff, ARLEN J. LOWRANCE, and pursuant to the provisions of Rule 41(a) Federal Rules of Civil Procedure, stipulates that the defendant, CITY OF TULSA, Oklahoma be dismissed without order from the Court from the above styled cause.

By: Frank M. Hagedorn
Frank M. Hagedorn
Attorney-at-Law
805 National Bank of Oklahoma Bldg.
Tulsa, Oklahoma 74103
(918) 585 9161

By: P. Thomas Thornbrugh
P. Thomas Thornbrugh
Attorney-at-Law
1201 Mid-Continent Bldg.
Tulsa, Oklahoma 74103
(918) 583 5896

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

We, the attorneys for plaintiff, hereby certify that on the 11 day of November, 1976, we mailed a true and correct copy of the above and foregoing Notice of Dismissal, with postage fully prepaid thereon to J. Bryant and R. McLaughlin, defendants, at 600 Civic Center, Tulsa, Oklahoma 74103, and to Tom Gann, City Prosecutor's office, 600 Civic Center, Tulsa, Oklahoma 74103.

Frank M. Hagedorn

P. Thomas Thornbrugh

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

KENCO ENGINEERING COMPANY,)
)
Plaintiff,)
)
vs.)
)
THE AMERICAN CRUCIBLE)
PRODUCTS COMPANY,)
)
Defendant.)

75-C-486-B ✓

FILED

NOV 11 1976

Jack C. Silver, C. *JK*
DISTRICT CLERK

ORDER

The Court has for consideration Defendant's Motion to Dismiss for Lack of Jurisdiction over the Person, Insufficiency of Service and Improper Venue under FRCP 12(b)2, 3 and 5 and to Strike under Rule 12(f) in its entirety and have carefully perused the entire file, the briefs and all of the recommendations concerning said motion, and being fully advised in the premises, finds:

That Defendant's Motion to Dismiss for Lack of Jurisdiction over the Person, Insufficiency of Service and Improper Venue under FRCP(b)2, 3 and 5 and to Strike under Rule 12(f) should be sustained for lack of jurisdiction over the person of defendant, improper venue, and insufficiency of service of process.

IT IS, THEREFORE, ORDERED that the Motion of Defendant to Dismiss for Lack of Jurisdiction over the Person, Insufficiency of Service and Improper Venue under FRCP 12(b)2, 3 and 5 and to Strike under Rule 12(f) should and the same is hereby sustained.

Dated this 11th day of November, 1976.

Allen E. Brown

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

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

JOE A. WILBURN,)
)
 Plaintiff,)
)
 vs.)
)
 HARRELL MARKETING CORPORATION,)
 a Delaware corporation,)
)
 Defendant.)

FILED

NOV 11 1976

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

Case No. 74-C-605

STIPULATION OF DISMISSAL

COMES NOW the Plaintiff, Joe A. Wilburn, and hereby
dismisses the above cause with prejudice.

DATED this 11th day of ^{November, 1976} ~~December, 1975~~.

JOE A. WILBURN

BY Joe A. Wilburn

MOREHEAD, SAVAGE, O'DONNELL,
McNULTY & CLEVERDON

BY Jack L. McNulty

Jack L. McNulty
Attorneys for Plaintiff
1107 Petroleum Club Building
Tulsa, Oklahoma 74119

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

Joe A. Wilburn,

Plaintiff,

vs.

Harrell Marketing Corporation,
A Delaware Corporation

Defendant.

Case No. 74-C-605

STIPULATION OF DISMISSAL WITH PREJUDICE

Comes now the defendant, Harrell Marketing Corporation, a Delaware Corporation, and dismisses its CROSS COMPLAINT filed in this case on the 27th day of February, 1975. This dismissal is with prejudice to any future action involving the matters alleged in this case. This dismissal to be held in escrow under the terms of the "Stipulation and Settlement Agreement" executed by the said Plaintiff and Defendant and which is of record in this case.

Harrell Marketing Corporation

By

Oliver J. Wilburn
President

Joe A. Wilburn
Attorney for Defendant

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

STEVEN L. SCHLUNEGER,)
)
 Plaintiff,)
)
 vs.)
)
 SOUTHWESTERN BELL TELEPHONE COMPANY)
)
 Defendant.)

FILED

NOV 10 1976

Jack C. Silver, Clerk
No. 76-C-419 DISTRICT COURT

FILED

ORDER OF DISMISSAL

This matter coming on for ^{consideration} ~~hearing~~ on this 10th day of November, 1976, upon the Stipulation for Dismissal entered into by and between the Plaintiff, Steven L. Schluneger, and the Defendant, Southwestern Bell Telephone Company, and upon the joint application of Plaintiff and Defendant for an order of dismissal of the captioned cause, with prejudice to the filing of a future action. Upon said Stipulation and the application of the parties for said Order, and the Court being advised that the parties have settled and compromised the above styled cause:

IT IS ORDERED, ADJUDGED AND DECREED:

1. That the above entitled cause ^{of action & complaint are} ~~is~~ dismissed, with prejudice to the filing of a future action.
2. That no costs shall be taxed against either party, Plaintiff to bear the costs they have expended to date and Defendant to bear the costs it has expended to date.

Allen E. Barrow
United States District Judge

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CIVIL ACTION NO. 76-C-254-C ✓

ANTHONY COZART, MARY H. COZART,)
DR. HOBART C. SANDERS, BOARD)
OF COUNTY COMMISSIONERS, Tulsa)
County, and COUNTY TREASURER,)
Tulsa County,)

Defendants.)

FILED

NOV 10 1976 *hm*

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 9th
day of October, 1976, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; the Defendants,
County Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, appearing by Gary J. Summerfield, Assistant District
Attorney; and the Defendants, Anthony Cozart, Mary H. Cozart,
and Dr. Hobart C. Sanders, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, County Treasurer, Tulsa
County, and Board of County Commissioners, Tulsa County, were
served with Summons and Complaint on June 14, 1976; that De-
fendant, Dr. Hobart C. Sanders, was served with Summons and
Complaint on June 16, 1976, all as appears from the U.S. Marshals
Service herein; and that Defendants, Anthony Cozart and Mary H.
Cozart, were served by publication, as appears from the Proof
of Publication filed herein.

It appearing that Defendants, County Treasurer, Tulsa
County, and Board of County Commissioners, Tulsa County, have
duly filed their Answers herein on June 30, 1976, and that De-
fendants, Anthony Cozart, Mary H. Cozart, and Dr. Hobart C.
Sanders, 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 Seventeen (17), Block Forty (40), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Anthony Cozart and Mary H. Cozart, did, on the 11th day of April, 1975, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,000.00 with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Anthony Cozart and Mary H. Cozart, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$9,937.82 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from October 1, 1975, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Thomas C. Todd and Mary Alice Todd, former owners, the sum of \$ -0- plus interest according to law for personal property taxes for the year(s) _____ and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Anthony Cozart and Mary H. Cozart, in rem, for the sum of \$9,937.82 with interest thereon at the rate of 8 1/2 percent

per annum from October 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 County of Tulsa have and recover judgment, in rem, against Thomas C. Todd and Mary Alice Todd, former owners, for the sum of \$ -0- as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, Dr. Hobart C. Sanders.

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

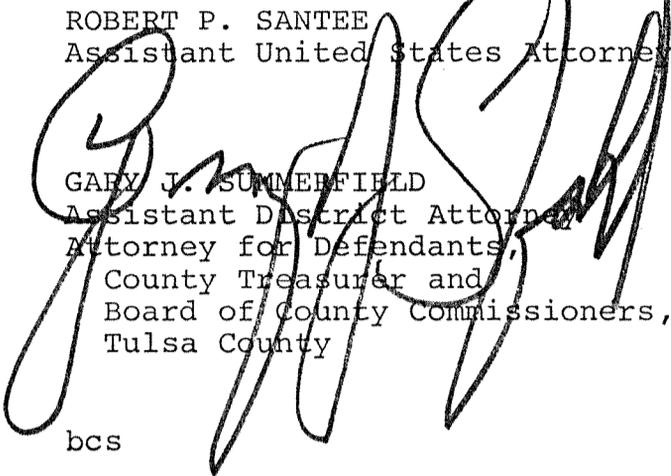
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed 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. SANTEE
Assistant United States Attorney



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

bcs

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

HELEN LUE GILL,)
)
 Plaintiff,)
)
 v.)
)
 OSAGE COUNTY DEPENDENT SCHOOL)
 DISTRICT NO. 55, et al.,)
)
 Defendants.)

No. 74-C-259

FILED

NOV 10 1976

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

ORDER APPROVING DISMISSAL

Upon consideration of the Stipulation of Dismissal With Prejudice filed herein by the parties to this action the Court hereby approves dismissal of the captioned cause of action and complaint with prejudice to any and all further action.

DATED this 10 day of Nov, 1976.

Allen E. Barrow

Allen E. Barrow
United States District Judge

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

JIMMY O. PHIFER,)
)
 Plaintiff,)
)
 vs.)
)
 SUN OIL COMPANY,)
)
 Defendant.)

FILED

NOV 8 1976 K

No. 75-C-460-B ✓

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

O R D E R

This cause coming on before the Court on this 8th day of November, 1976, upon the Application of the Defendant for an Order of Dismissal, and the Court having considered said Application, finds that the same should be granted.

It is ordered by the Court that the Plaintiff's Claims, *causes of action* Complaint and Amended Complaint are hereby Dismissed With Prejudice to the filing of a future action.

It is further ordered by the Court that the Defendant's *cause of action* Claims and Counter-Claim are herewith Dismissed Without Prejudice to the filing of a future action.

Allen E. Barrow
ALLEN E. BARROW
CHIEF UNITED STATES DISTRICT JUDGE

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

PHYLLIS STYVE,)
)
 Plaintiff,)
)
 vs.)
)
 COLBORNE MFG. CO.,)
)
 Defendant.)

No. 76-C-391 (C)

FILED

NOV 5 1976

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

ORDER OF DISMISSAL

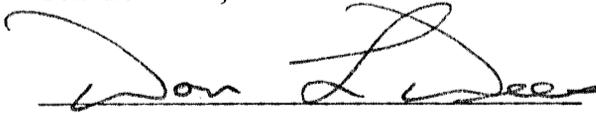
ON this 5th day of November, 1976, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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


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

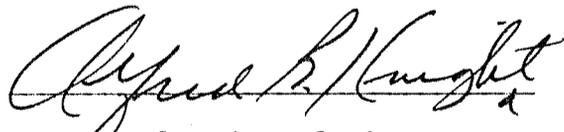
APPROVALS:

DON L. DEES,



Attorney for the Plaintiff,

ALFRED B. KNIGHT,


Attorney for the Defendant.

NOV 5 1976

ph

U. S. DISTRICT COURT

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

DALE HARDZOG

Plaintiff

vs.

No. 76-C-437 - C

HORIZON CORPORATION, a Delaware Corporation, HORIZON PROPERTIES CORPORATION, a Delaware Corporation HORIZON DEVELOPMENT CORPORATION, a Delaware Corporation

Defendants

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

It is stipulated and agreed by and between the plaintiff and defendant Horizon Development Corporation that said cause may be dismissed as to said defendant Horizon Development Corporation without prejudice.

Don L. Smith
Attorney for Plaintiff

Joseph [unclear]
Attorney for Defendant Horizon Development Corporation

FILED

NOV 10 1976

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

ORDER

Pursuant to the stipulation of the parties herein, the above cause is dismissed without prejudice as to the defendant Horizon Development Corporation.

W. Dale Cook
Judge

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

NOV 5 1976

VERDELL BOYD SEXTON, JR.,)
)
) Petitioner,)
)
) v.)
)
) STATE OF OKLAHOMA DEPARTMENT)
) OF CORRECTIONS,)
) Respondent.)

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

NO. 76-C-481-B

O R D E R

The Court has for consideration a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed pro se, in forma pauperis, by a state prisoner presently confined in the Tulsa Community Treatment Center, Tulsa, Oklahoma, by virtue of the Judgment and Sentence rendered in the District Court of Tulsa County, Oklahoma, in Case No. 23682. After plea of guilty to the charge of shooting with intent to kill, the Petitioner was found guilty by the Court and on March 19, 1969, sentenced to a term of five years in the custody of the State Department of Corrections of the State of Oklahoma.

A direct appeal was perfected to the Court of Criminal Appeals of the State of Oklahoma, and on March 10, 1971, the judgment and sentence of the District Court of Tulsa County was affirmed. Sexton v. State, Okl. Cr., 482 P.2d 618 (1971).

Petitioner demands his release from custody and as grounds therefor alleges that he is being illegally detained in violation of his rights as guaranteed by the Constitution of the United States of America. In particular, Petitioner alleges:

- a) Once a man receives his judgment and sentence and is sent to prison and receives his number (83444) and starts his time, the Department of Corrections cannot start and stop his time; and
- b) Five calendar years under the supervision of the Department of Corrections will have been satisfied on November 5, 1976, and I should in fact be released from custody.

Petitioner states in his petition that he has been "under continuous supervision of the Department of Corrections since November 5, 1971, either in prison or on parole." He does not appear to take into consideration that if a prisoner violates the terms of his parole, or probation if that be the case, that it is the rule in both State and Federal jurisdictions that the time free on parole (or probation) is not counted toward service of the sentence. However, even though Petitioner's allegation appears to lack merit, this should first be decided by the Courts

of the State. Petitioner in his response to Item 14, Page 4, of his petition admits that he has not presented the issue submitted to this Court to the State Courts of Oklahoma for determination. Thus, Petitioner has failed to exhaust adequate and available State remedies provided by 22 O.S.A. § 1080, et seq., and 12 O.S.A. § 1331, et seq. No hearing is required, and his petition should be denied, without prejudice, for failure to exhaust state remedies.

In Hoggatt v. Page, 432 F.2d 41 (10th Cir. 1970), at Page 43, the Court stated:

". . . No principle in the realm of Federal habeas corpus is better settled than that state remedies must be exhausted. 28 U.S.C.A. § 2254(b) (c). The principle has been recognized and applied in this Circuit that habeas corpus relief cannot be granted in the courts of the United States for denial of a constitutional right in a state court where the relief is sought in the Federal court upon a ground which was not asserted in the state courts and state remedies have not been fully exhausted." (Citations omitted.)

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Verdell Boyd Sexton, Jr., be and it is hereby denied, without prejudice, and the case is dismissed.

Dated this 5th day of November, 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

FILED

NOV 5 1976

Jack C. Silver, Clerk
DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 -v-)
)
 DANNY ALLEN BUTLER, ET AL.,)
)
 Defendants.)

Civil Action No.
76-C-256 B

JUDGMENT OF FORECLOSURE

THIS MATTER comes on for consideration this 5th
day of November, 1976, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; the defendant
William S. Flanagan, Jr. appearing in his own behalf; and
the defendants Danny Allen Butler and Rhonda Kay Butler
appearing not.

The Court, being fully advised and having examined
the file herein, finds that Danny Allen Butler and Rhonda Kay
Butler were served by publication, as appears from the Proof
of Publication filed herein; and William S. Flanagan, Jr. was
served with Summons and Complaint on July 22, 1976, as appears
from the Marshal's Return of Service filed herein.

It appears that defendant William S. Flanagan, Jr.
has duly filed his Disclaimer on July 30, 1976, and that
defendants Danny Allen Butler and Rhonda Kay Butler have fail-
ed 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, covering the following-
described real property located in Osage County, Oklahoma,
within the Northern Judicial District of Oklahoma:

Lot 1, Block 2, Rustic Hills Second Addition
to the Town of Skiatook, Osage County, Oklahoma.

THAT the defendants Danny Allen Butler and Rhonda Kay Butler did, on the 22nd day of April, 1972, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the amount of \$18,700.00, with 8-1/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants Danny Allen Butler and Rhonda Kay Butler made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued, and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the amount of \$20,588.10 as of July 15, 1976, plus interest from and after said date at the rate of 8-1/4 percent per annum 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 Danny Allen Butler and Rhonda Kay Butler, in rem, for the sum of \$20,588.10, with interest thereon at the rate of 8-1/4 percent per annum from July 15, 1976, 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 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.

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

FILED

NOV 4 1976

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -v-)
)
 ROBERT L. GIBSON, ET AL.,)
)
 Defendants.)

Civil Action No. 76-C-524 B

NOTICE OF DISMISSAL

COMES NOW the United States of America, by and
through Robert P. Santee, Assistant United States Attorney,
and hereby gives notice of its dismissal of the Complaint
filed herein, which dismissal is without prejudice.

Dated this 4th day of November, 1976.

UNITED STATES OF AMERICA

NATHAN G. GRAHAM
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION NO. 74-C-72
)
 152.29 Acres of Land, More or) Tract No. 509ME
 Less, Situate in Osage County,)
 State of Oklahoma, and Osage) (Oil Leasehold Interest Only)
 Tribe of Indians,)
) (Included in D.T. Filed
 Defendants.) in Master File 401-1)

J U D G M E N T

1.

Now, on this 4th day of November, 1976, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of Judgment on the report of Commissioners filed herein on October 19, 1976, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

This judgment applies only to the oil leasehold interest in the estate taken in Tract No. 509ME, as such estate and tract are described in the Complaint filed in this case.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the subject property. Pursuant thereto, on January 29, 1974, the United States of America filed its Declaration of Taking of a certain estate in such tract

of land, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

6.

Simultaneously with filing of the Declaration of Taking, there was no deposit made in the Registry of this Court as estimated compensation for the taking of the oil leasehold interest in the described estate in the subject tract, and no disbursement of any funds has been made to the owner, as set out below in paragraph 12.

7.

The report of Commissioners filed herein on October 19, 1976, is accepted and adopted as a finding of fact as to the oil leasehold interest in subject tract. The amount of just compensation as to the subject property as fixed by the Commission is set out below in paragraph 12.

8.

Since no deposit has yet been made for the taking of the subject property, the full amount of the award for such property, as shown in paragraph 12 below, should be deposited in the Registry of the Court by the Plaintiff.

9.

The defendant named in paragraph 12 as owner of the subject property is the only defendant asserting any interest in such property. All other defendants having either disclaimed or defaulted, the named defendant was (as of the date of taking) the owner of the oil leasehold interest in the estate condemned in Tract No. 509ME, and, as such, is entitled to receive the just compensation awarded by this judgment.

10.

It is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tract, as it is described in the Complaint filed herein, and such property, to the extent of the oil leasehold interest in the estate described in such Complaint is condemned, and title thereto is vested in the United States of America, as of January 29, 1974, and all defendants herein and all

other persons are forever barred from asserting any claim to such interest.

11.

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

12.

It Is Further ORDERED, ADJUDGED and DECREED that the report of Commissioners filed herein on October 19, 1976, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the oil leasehold interest in the estate taken in subject tract, as shown by the following schedule:

TRACT NO. 509ME

(Oil Leasehold Interest Only)

OWNER: George Wallace

Award of just compensation pursuant to Commissioners' report -----	\$800.00	\$800.00
Deposited as estimated compensation ---	None	
Disbursed to owners -----		<u>None</u>
Balance due to owners -----		\$800.00
Deposit deficiency -----	\$800.00	plus interest

13.

It Is Further ORDERED, ADJUDGED and DECREED that the Plaintiff shall deposit in the Registry of this Court the deposit deficiency for the subject tract, as shown above in paragraph 12, in the amount of \$800.00, plus interest on such deficiency, computed at the rate of 6% per annum from January 29, 1974 until the date of deposit of such deficiency and interest.

Upon receipt of the above described deposit the Clerk of this Court shall disburse the full amount thereof, including the accrued interest, to George Wallace.


UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW
Assistant United States Attorney

In the Complaint, the Secretary alleges that since November 25, 1971*, the defendant, Sun Oil Company of Pennsylvania (hereinafter called "Sun"), has wilfully violated and continues to wilfully violate the provisions of the "Age Discrimination in Employment Act of 1967". The Secretary further alleges that this action was commenced after the Secretary's representatives had attempted to eliminate the alleged discriminatory practice or practices through informal methods of conciliation, conference and persuasion, pursuant to the Act.

The file reveals that seven individuals who are former employees of the defendant form the nexus of the present controversy. They are James O. Craig; J. W. Daniels; R. C. Holcomb; John K. McKee; Emory Osgood; George Sokol; and V. P. Tolbert. Attached to the deposition of J. Dean Speer, taken April 21, 1975, is a copy of a document designated "Sunoco Retail Marketing Organization Beginning February 1, 1970", which appears to give certain pertinent information concerning 25 individuals (7 of whom are listed hereinabove). At this juncture, in considering defendant's Motion for Summary Judgment, the Court will deal only with the seven individuals delineated hereinabove.

James O. Craig is listed as J. O. Craig, and he is indicated as being the Assistant Regional Manager, N.E. Region, Framingham, Massachusetts. His age is reflected as 47 and he was terminated on December 9, 1972, with the notation "job eliminated".

J. W. Daniels is indicated as Assistant Regional Manager, Middle Atlantic Region, Valley Forge, Pennsylvania. His age is reflected as 60 and he was terminated on December 1, 1972, with the notation "job eliminated".

R. C. Holcomb is listed as Assistant Regional Manager, N.E. Region, Framingham, Massachusetts. His age is reflected as 62 and he was terminated on September 1, 1971*, with the notation "job eliminated".

*Note: The Secretary alleges violation since November 25, 1971, and Mr. Holcomb was terminated September 1, 1971, some months prior to the November date alleged by the Secretary.

John K. McKee is listed as J. K. McKee, and he is indicated as being the Regional Manager, Central Region, Pittsburgh, Pennsylvania. His age is reflected as 56 and he was retired on December 1, 1972, and replaced by C. L. Hodsdon, age 55.

Emory Osgood is listed as E. M. Osgood, and he is indicated as being the Regional Manager, Western Region, Tulsa, Oklahoma. His age is reflected as 56 and he was retired on December 1, 1972, and replaced by W. W. Neddo, age 57.

George Sokol is listed as G. O. Sokol, and he is indicated as being Assistant Regional Manager, Western Region, Tulsa, Oklahoma. His age is reflected as being 54 and he was terminated on February 28, 1973, with the notation "job eliminated".

V. P. Tolbert is indicated as Regional Manager, Ohio Valley Region, Cincinnati, Ohio. His age is reflected as 55 and he was retired on August 1, 1973, with the notation "Ohio Valley Reg. went out of existence, job eliminated".

Turning now to the deposition of J. Dean Speer, taken April 21, 1975, he testified that he was presently the Area Director for Wage Hour in Little Rock, Arkansas (Dep. 5) and at the time involved in this litigation was the Assistant Area Director, Wage Hour, in Tulsa, Oklahoma (Dep. 5).

Commencing at page 8, he testified:

Q. Would you explain your understanding of the Act's requirement concerning efforts to achieve voluntary compliance through informal methods of conciliation, conference and persuasion? What is your understanding of what is to be done?

A. Well, I think it is just exactly what it says. I think an opportunity is to be given the employer to remedy a given situation without having to agree or admit, if you will, that any discriminatory act has taken place. I think this is what the Act means by conciliation. If you get into a posture of what I refer to as 'finger pointing', you then place the employer in a posture of having to admit a wrong doing if one did exist.

In a conciliation effort, I attempt to advise the employer that I am not interested in determining guilt or lack thereof. I am only interested in resolving a particular situation and I am there to see if we possibly can reach some middle ground that we would be (sic) somewhat satisfactory to the

employer as well as to the employee -- a conciliatory effort.

I think once you depart from there into the area of conference and persuasion in the event the conciliation effort fails and the employer indicates that he is not so disposed to make any attempts to reach middle ground, you must then enter some type of fact finding phase -- or if I feel that at least there is a prima facie indication of possible non-compliance -- and try to determine to some extent what happened.

If the employer remains adamant in his position that he has done nothing improper and does not intend to make any changes in the actions that he has taken, I feel you have to continue to confer with him or advise him periodically of where you are, what you found, listening to any information that he wants to submit to you that might clarify or alter any findings or opinions that you may have formed at that point.

This procedure is on-going until such time as you reach the point where there is nothing more to discuss, all has been said and we -- or I -- may have come to the conclusion that these discriminations did take place. Again, the employer remains adamant in his position that he is not going to make any changes and at that point the only thing I think you can do is advise him that you feel there has been a violative situation and in the event you can't reach agreement on some terms, then you would have to submit the file to other locations, to the Area Director or to the Solicitor's Office is(sic) that is warranted, for any further actions they feel are necessary.

At page 14 of the deposition, Mr. Speer testified that his initial contact with the defendant, Sun, was made by letter dated May 31, 1973, to Mr. Ken Mosly (letter attached to deposition). In pertinent part the letter stated:

"This is to notify you that Emory M. Osgood has advised me that he intends to bring suit against Sun Oil Company of Pennsylvania to seek relief from an alleged discriminatory practice under the Age Discrimination in Employment Act of 1967.

"***I will call at your establishment at 9:00 a.m. on June 5, 1973, to review the circumstances involved in this case and, if possible, to work out some solution consistent with the statute and agreeable to the parties. ***."

Mr. Speer testified (Dep. 16) that he did not meet with Mr. Mosly or other officials of defendant on June 5, 1973, but that the first meeting was June 18, 1973, and that prior to said meeting no investigation was conducted (Dep. 17). His discussion with the Sun officials was limited to Mr. Osgood's case in June of 1973 (Dep. 18).

Commencing at page 19, Mr. Speer testified:

Q. I believe you stated that before the June 18th meeting that you had not conducted any investigation. Yet you stated that you had talked to Mr. Osgood. Is 'investigation' a term of art in the Wage Hour Division?

A. Well, yes, I had contacted Mr. Osgood. I had received his Notice of Intent to Sue. The contact was made with Mr. Osgood to ascertain the background behind his filing of the Notice of Intent to Sue. Of course, before I can go to a company and enter into any conciliatory effort, I must know what the employee or the parties filing the intent to sue are interested in in order to resolve the potential litigation between the two parties.

Contact was made with Mr. Osgood and I did discuss with him his salary. That's how I knew he received the severance pay, what he was interested in, the damage he felt he had incurred as a result of Sun's action, so that I could go to the company and listen to their side and hopefully enter into negotiations to resolve the differences between the two.

Q. Other than your contact with Mr. Osgood, had you done anything else before the June 18th meeting?

A. No.

In discussing a four page document, attached to the deposition, which constitute notes that Mr. Speer made during the June 18th, 1973, meeting, Mr. Speer testified, commencing at page 23:

Q. Also on page 3, there are references to several other individuals: Mr. Sokol, S-o-k-o-l (spelling); Mr. Neddo, N-e-d-d-o (spelling); Mr. Tolbert, T-o-l-b-e-r-t (spelling), and Mr. McKee and Mr. Hodson.

Do you recall how these individuals' names came up; what the discussion was?

A. Yes. In the company's explanation to me of events surrounding Mr. Osgood, ***.

At pages 25 and 26 of the deposition, he testified:

Q. Do you remember about how long this meeting lasted? Was it a couple of hours?

A. I would say approximately two hours.

Q. And would you say that Sun was cooperating with you in providing all this information?

A. Yes.

and he further testified, on page 26:

Q. Did Sun indicate it was willing to meet with you and discuss this further?

A. Yes.

Q. Did you request any additional information from Sun at that time?

A. No, not at that time. Nothing other than the documentation they had already furnished me.

In discussing a letter dated October 1, 1973, from Mr. Speer to Mr. Webster of Sun, Mr. Speer testified:

Q. Mr. Speer, had you any other contact with Sun before you sent this letter on October 1, 1973, other than the June 18, 1973 meeting?

A. No.

Q. Were there any phone conversations that you recall?

A. No. I think the parameters for gaining additional information had been established during the discussion of June 18th in that Mr. Webster asked that any subsequent discussions be undertaken with him. He further indicated at that time, as did Mr. Mosly, as a result of my initial letter, I believe, dated May 31, that any personnel records with respect to management people such as Mr. Osgood would be maintained in the home office and if I desired those I would have to obtain them from that particular location.

and at page 29:

Q. Well, this letter starts out by saying, 'This refers to our discussions of the alleged illegal discrimination with respect to the termination of Emory Osgood', and so on.

I am simply wondering whether there were other discussions after the June 18th meeting that you know of?

A. No. I think that I might want to clarify that. I do think that I telephoned Mr. Webster and advised him that I was writing the letter and the type of information that I would be seeking and that I would be providing him with a format, but there wasn't any discussion of the validity or invalidity or any further expansion of the company's position or anything of this nature. It was just a conversation indicating that this was coming.

On page 31 Mr. Speer testified:

Q. To your knowledge had Mr. Sokol filed the Notice To Sue Letter as of October, '73?

A. To my knowledge, no.

Q. Do you know whether he ever filed a Notice To Sue Letter?

A. To my knowledge, no.

and further:

Q. Again, referring to Defendant's Exhibit Three, in your letter you state that, 'During our last conversation you have indicated that Sun Oil Company is not prepared at this time to make any changes in the actions already taken.'

I take it that you're referring here to the June 18th meeting?

A. Yes.

Q. And the action taken with respect to Mr. Osgood?

A. Yes.

Q. Had you told Sun as of October 1, '73 that there had been a violation of the Age Discrimination Act?

A. No. I don't think so. I feel reasonably sure that I did not make any statement to the effect that 'you have violated the Age Discrimination Act.' We were still in conciliatory posture at that time.

At page 35 of the deposition Mr. Speer indicated that he sent the file to Mr. de Leon's Office (Solicitor's attorney) sometime in December of 1973. At page 36 he testified:

Q. Did you conduct any further investigations by talking to other people?

A. Only to Mr. Osgood and Mr. Sokol.

Q. Did you have any further contact with representatives of Sun after receiving this October 25th letter?

A. Yes. I contacted Mr. Webster in early December of 1973 and indicated to him that I felt some remedial action should be taken with respect to Mr. Osgood and Mr. Sokol. During that discussion, he indicated some surprise at the mention of Mr. Sokol.

When asked for the company's reasons for the decision with respect to Mr. Sokol, he made the statement that it was their decision that Mr. Sokol simply would not perform in the new position ***.

At page 37 he testified that this was the first time (early in December of 1973) that he had discussed Mr. Sokol's "situation with any representative of Sun, and it was in a phone conversation.

Mr. Speer testified, commencing at page 38, that in the December telephone conversation he thought he advised Sun that in cases involving involuntary reitirement that they were required to submit them to the Solicitor's Office for analysis and the like. At page 39 he indicated he received the file back from the "Solicitor's office in July of 1974"--having been sent in December of 1973. In further response to questions, he then testified:

Q. During that period were you involved in the case in any respect? (Referring to the period between December of 1973 when the file was sent and July of 1974 when it was returned--this is comment by the Court.)

A. No.

Q. Were you in contact at all with the Solicitor's Office during this period concerning the file?

A. No.

Q. You were not conducting any further investigation?

A. No.

Mr. Speer testified that the file came back from the Solicitor's Office in July of 1974 (letter of transmittal dated July 31, 1974) with advice and instructions with respect to additional information that the attorneys wanted to develop and Mr. Speer undertook this task. (Dep. 39 and 40). He testified, commencing at page 45, with reference to the contact he made after receiving the file back:

Q. Were you contacting these other individuals with respect to the claims of Mr. Sokol and Mr. Osgood?

A. In part, yes.

Q. In part with respect to claims concerning other individuals?

A. No. Not with respect to claims of other individuals, but with respect to similar actions taken by the company as indicated by material submitted by Mr. Webster to clarify what the circumstances were with regard to those individuals.

If I may make a correction, I don't know how far back we would have to go to make it. You indicated or you asked me --- During the period of time between the June 18th discussion with Mr. Webster and the letter to him asking for the information if I had contacted other than Mr. Osgood. I believe I indicated that another individual came forward. I did contact, make a direct contact with one other person. That was brought to my recollection as a result of going through some of my documents here. I did contact one other person.

Q. Is that a person who made a contact to the Department?

A. No.

Q. So it was Mr. Osgood and another unidentified individual that you contacted before October?

A. Mr. Osgood and two other ones.

Q. Two other ones. All right.

A. Right.

Q. Now, after October 15, 1974, you completed your discussions with eight or so individuals. What did you do next?

A. I advised the Solicitor's Office I had completed the work they had asked me to do.

Q. Who did you advise?

- A. Herb de Leon.
- Q. Did you sent the file back?
- A. No.
- Q. Did you do anything further in this case after you advised Mr. de Leon?
- A. Yes, I got in touch with Mr. Webster and asked for a conference with him.
- Q. Did you contact him by telephone?
- A. Yes.
- Q. Did you simply ask for a conference or did you discuss anything ---
- A. No. I indicated to him that we had completed an investigation limited to the Regional Marketing Managers and the former Assistant Regional Marketing Managers and that we wished -- that we desired a conference with him to discuss the findings.
- Q. You didn't tell him over the phone what your findings were?
- A. No.
- Q. Is it a correct characterization of your investigation that subsequent to July 31 that it was an investigation limited to Regional Marketing Managers and former Assistant Regional Marketing Managers?
- A. Yes.
- Q. When was the meeting set up?
- A. For October the 23rd of 1974.

At this meeting, which took place in Dallas, Texas, Mr. Speer testified that he advised Sun of his findings to the "extent that the company had engaged in age discrimination with respect to individuals in the positions named." He testified that he advised of the names of the individuals and, again, asked if they could come to some resolution of the findings.

On page 49, still discussing the meeting in Dallas, Texas, on October 23, 1974, Mr. Speer testified:

- Q. Could you tell me what you told Mr. Webster with respect to your findings? First, you stated you advised him of the names of individuals that you felt had been discharged in violation of the Act; is that correct?
- A. Yes.
- Q. Who were those individuals?

A. Those individuals named in the Summary of Unpaid Wages contained in Exhibit Five.

Q. Seven individuals?

A. Yes.

Q. So there were five individuals in addition to Mr. Osgood and Mr. Sokol?

A. Yes.

Q. Was this the first time that you had advised Sun that you were conducting any investigation with respect to those five individuals?

A. Yes.

At the bottom of page 50 he testified:

Q. Did you discuss the cases of the seven individuals separately or was it a general description such as you have just given me?

A. Some of them were discussed individually. Mr. Webster indicated he was not in a position to discuss the others.

Q. Do you recall who was discussed individually and who Mr. Webster said that he could not discuss?

A. No, I don't.

Q. Did Mr. Webster indicate why he felt he was not in a position to discuss some of the individuals?

A. Because he did not have the information at hand.

Q. Had any of the other six individuals, other than Mr. Osgood, filed a Notice of Intent to Sue with the Department of Labor?

A. With the Department of Labor?

Q. The Secretary.

OFF THE RECORD DISCUSSION

Then the witness, Mr. Speer said, yes. Picking up the questions and answers at page 52 of the deposition:

Q. Who had filed a Notice To Sue?

A. James Daniels.

Mr. Speer then testified that the Notice To Sue of James Daniels was filed May 21, 1974, in Philadelphia and that the Philadelphia regional office notified Sun in Philadelphia on May 29, 1974, and that said notice was addressed to "Sun Oil Company". Continuing with a discussion of the meeting in Dallas, Texas, in October, 1974, Mr. Speer testified, commencing at page 53 of the deposition:

Q. After you described your findings to Mr. Webster and discussed some of these cases individually, what happened at the meeting, if anything further?

A. We asked Mr. Webster or I asked Mr. Webster if he would be agreeable to making some resolution of these cases. I specifically asked if he would consider re-employment of the seven individuals in question, and that he consider compensation for damages through lost income that these individuals suffered during the period of time that they had been displaced from Sun.

Mr. Speer then testified:

Q. Did Mr. Webster respond to your statement concerning re-employment damages?

A. He indicated at that time he was not in a position to enter into any agreements with us -- including myself and Mr. de Leon, who was present at the conference. We indicated that -- he indicated that he would like to go back and review the matter and discuss it with us at some subsequent period. We advised Mr. Webster that the running of the Statute of Limitations was to begin with respect to a number of these individuals and that we were perfectly willing to continue in negotiations with he or someone else in Sun Oil Company if Sun would provide us with a waiver of Statute of Limitations so as not to further erode any compensations that the employee might be entitled to.

Q. What date were you talking about in terms of the imminent running of the Statute of Limitations?

A. The Statute would begin running, I believe, on November 1st -- December 1st. December 1st of '74.

Q. What was Mr. Webster's response?

A. That he did not have the authority to waive the Statute on behalf of Sun and that he would have to discuss it with general counsel for Sun Oil Company and that he would provide us with an answer in five days.

Q. Did you tell Mr. Webster that because of the Statute of Limitations, you did not have time to conciliate with respect to five individuals who were first mentioned at this meeting?

A. No.

The October meeting lasted approximately an hour or an hour and a half. (Dep. 56)

Mr. Speer then testified:

Q. What happened following the meeting with respect to the Statute of Limitations?

A. Not having heard from Mr. Webster, I contacted him on the 5th of November.

Q. This is by telephone?

A. Yes. At that time he indicated he had not received

a reply from the general counsel as to whether or not Sun would agree to waive the Statute.

Q. Is that the substance of the whole conversation?

A. Yes. I simply called to ask or contacted him by telephone to ascertain what Sun's position was going to be. On November 13th, again, not having heard from Mr. Webster, I contacted him and he advised me that he had received an answer from general counsel that they would not agree to the waiver of the Statute to facilitate further negotiations for conciliation.

Q. Did you discuss anything further with him?

A. No. Other than I would refer the file back to the Solicitor's Office as we had advised him at the time--- There was one other thing. During the conversation on October 23rd, we advised Mr. Webster that if we could not reach some agreement for a waiver of Statute that the file would be submitted to the Solicitor's Office and assuming that everyone agreed, the suit would be entered.

Q. In the October meeting and subsequent phone calls, did Mr. Webster at any point indicate that Sun would be unwilling to consider conciliation efforts with respect to the seven individuals?

A. Well, I feel he did so indicate when he would not agree to the waiver of Statute in that it would erode the compensation due the individuals: That we were perfectly willing to enter further conciliatory efforts or negotiations -- whichever terminology you want to use -- if Sun were agreeable to doing so.

By refusing to waive the Statute, I think it was an indication that Sun was refusing to negotiate.

Q. Did Mr. Webster tell you directly that Sun would not consider negotiating further with respect to all or some of the individuals?

A. No.

Q. You told Mr. Webster that if Sun would not waive the Statute, then the suit would be filed?

A. Well, I think that's a little, rather harsh way to put it. I don't think it was ever phrased to him in exactly that terminology. I think the same message was given to Mr. Webster by Mr. de Leon representing the Solicitor's Office.

Q. The same message that if ---

A. That if we could not enter into negotiations and through the waiver of the Statute that the file would be submitted to the Solicitor's Office and we would consider filing a lawsuit.

Q. Did Mr. Webster explain in any way Sun's decision not to waive the Statute of Limitations?

A. No.

Q. Is it a fair summary to say that except for Mr. Osgood and Mr. Sokol that Sun was first notified of the Defendants' (sic) investigation with respect to Mr. Craig, Mr. Daniels, Mr. Holcomb, Mr. McKee and Mr. Tolbert at the October 23rd, '74 meeting?

A. It may be a fair description of my contact with Sun Oil Company with respect to these individuals in the course of -- well, the case with respect to James Daniels and in his notice of intent to sue had previously been discussed with Mr. Webster.

Q. But not by you?

A. Not by me. At that time, as a result of that discussion, Mr. Webster indicated that he did not want to discuss that case any further. There was an inquiry or an investigation, if you will, initiated by the Philadelphia office in which some of these people were also involved. And as a result of discussions between myself and the Compliance Officer in Philadelphia and to avoid an overlap type situation, he agreed to divorce from his inquiries with respect to these individuals any actions that I was taking in my case.

Sun was aware that an investigation was taking place with respect to the Marketing Department.

He further testified, commencing at page 60:

Q. Do you know which individuals he had been in contact with Sun about?

A. He was looking at the Marketing Division of Sun Oil Company as a whole and had requested specific information with respect to personnel files, personnel actions and this type of thing that had transpired since the reorganization began, which was in 1972 and '73.

In response to a question propounded to Mr. Speer as to whether he knew when Mr. Johnson's activities (Compliance Officer in Philadelphia) began, Mr. Speer replied that he was just aware that he was making an investigation in Philadelphia and he did not know if his investigation included contact with Sun concerning conciliation efforts. He further testified that Mr. Johnson's investigation was apparently broader than Mr. Speer's investigation.

Mr. Speer testified, commencing at page 62 of the deposition:

Q. I believe you stated that in the October 23, '74 meeting, that Mr. Webster indicated that he was not at that time in a position to discuss some of the seven individuals because he did not know enough about their situations; is that correct?

A. Yes.

Q. Was this subject ever picked up again? Did you ever

have any further conversations with Mr. Webster about Sun's position with respect to those individuals?

A. No. If you are talking about some subsequent date --

Q. Before the suit was filed.

A. No. The issue between that conference and the time I submitted the file back to Mr. de Leon's office was whether or not Sun would agree to the waiver of the Statute.

Q. You didn't know what Sun's position was with respect to at least some of the seven individuals before the suit was filed?

A. That's correct.

To summarize, a chronological delineation of pertinent dates and events are as follows:

May 29, 1973	Emory Osgood filed his Notice of Intent to Sue with the Department of Labor.
May 31, 1973	Letter from J. Dean Speer, Assistant Area Director, Wage Hour, Tulsa, Oklahoma, to Sun Oil Company requesting a conference for June 5, 1973.
June 18, 1973	Conference between J. Dean Speer and Sun Oil Company representatives, Robert Webster and Ken Mosly. Only former employee discussed was Emory Osgood. Meeting lasted about two hours.
October 1, 1973	Letter by Mr. Speer to Mr. Webster seeking additional information. Mr. Speer testified he might have telephoned Mr. Webster and told him that he was writing the letter.
October 25, 1973	Letter from Mr. Webster to Mr. Speer furnishing information requested in letter of October 1, 1973.
December, 1973	Mr. Sokol, former employee, entered the picture when Mr. Speer contacted Mr. Webster and Mr. Speer first brought up Mr. Sokol's name.
December, 1973	Mr. Speer sent file to the Solicitor's Office.
July 31, 1974	Transmittal letter sending file from Solicitor's Office to Mr. Speer.
October, 1974	Mr. Speer contacted Mr. Webster at Sun to set up a conference in Dallas, Texas.
October 23, 1974	Conference in Dallas, Texas. Present were Mr. Webster, Mr. Speer, and Mr. de Leon. It was at this meeting that seven individual's names were brought up, including the names of Messrs. Osgood and Sokol. The only other individual, beside Mr. Osgood, who filed a Notice of Intent to Sue was Mr. James Daniels, whose notice was dated May 29, 1974, and was filed in Philadelphia. His notice was handled by a Regional Compliance Officer there and the letter was sent to "Sun" in Philadelphia. It was at this meeting that Mr. Webster

was requested to waive the Statute of Limitations on behalf of Sun.

November 5, 1974 Telephone call by Mr. Speer to Mr. Webster to see if Sun had made a determination to waive the Statute of Limitations.

November 13, 1974 Telephone call by Mr. Speer to Mr. Webster. Mr. Webster advised that Sun would not waive the Statute.

November 27, 1974 Suit filed.

The first issue to be determined by the Court is to ascertain whether the claims asserted by the Secretary on behalf of the seven former employees were separate and distinct. Sun contends that notice and consideration of Osgood's case, did not constitute notice or consideration by Sun of the cases of the other individuals and any response by Sun with respect to one case did not foreclose a different response to the other individuals.

This Court finds that notice of the claim of Osgood does not impute knowledge or notice to the defendant of the other resultant claims of the other six individuals

Title 29 U.S.C. §626(b) provides, in pertinent part:

"***Before instituting any action under this section, the Secretary shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion."

The Act was enacted in 1967 for the express purpose of promoting "employment of older persons on their ability rather than age", and prohibiting "arbitrary age discrimination." 29 U.S.C. §621(b); *Burgett v. Cudahy Company*, 361 F.Supp. 617 (USDC Kans. 1973).

The primary responsibility for the enforcement of the Act is vested with the Secretary of Labor, who is empowered to undertake appropriate studies (§624), delegate responsibilities to other agencies (§625(a)), issue appropriate rules and regulations (§628), and make investigations (§626 (a)). The Secretary is also authorized to bring actions to enforce the Act's provisions, thereby preempting an aggrieved individual's right to independently seek relief. 29 U.S.C. §626(d). *Burgett v. Cudahy Company*, supra. But first, the Secretary,

must heed the terms of 29 U.S.C. §626(b).

The unambiguous language of the statute, and the holding of the cases construing the statute, place the emphasis on private settlement without formal litigation.

The House Education and Labor Report (H.R.Rep.No. 805, Cong., 1st Sess.1967, U.S. Code Cong. & Admin.News, p. 2218) said:

"It is intended that the responsibility for enforcement vested in the Secretary *** be initially and exhaustively directed through informal methods of conciliation, conference, and persuasion and formal methods applied only in the ultimate sense. ***."

The leading case in discussing the problem of conciliation and the Age Discrimination in Employment Act of 1967 is Brennan v. Ace Hardware Corporation, 295 F.2d 368 (8th CCA 1974). Commencing at page 378, the Eighth Circuit said:

"We turn now to the specific major issue in this case. The Secretary argues that the efforts of his compliance officer through the two personal meetings and one telephone call constituted substantial compliance with the voluntary compliance requirements of the Act. We disagree.

"An integral part of the Act is the express provision allowing the employer or other organization the opportunity to voluntarily comply with its provisions before legal action is initiated. The introductory Congressional findings and purposes set the spirit and standard to be followed in achieving the enacted goals. Section 621(b) reads in part: 'It is therefore the purpose of this chapter *** to help employers and workers find ways of meeting problems arising from the impact of age on employment.' To achieve the goal of eliminating discriminatory employment practices in relation to age, the Secretary's duties should be seen as aiding also the employer in fulfilling his obligations under the law. In this period in our nation in which governmental regulations permeate many facets of previously unregulated activity, government officials must approach their service with a spirit and an attitude of helpfulness and concern for all persons with whom they deal and not with ambiguity, nonchalance, and heavy-handedness of an all-pervasive federal bureaucracy.

"The Act expressly provides for giving the employer or other organization the opportunity to voluntarily comply with the requirements of the Act. Section 626(b) reads in part: ***. The legislative history of the Act strongly indicates that conciliation, conference, and persuasion must constitute strong, affirmative attempts by the Secretary to effect compliance before resorting to legal action. The House Report makes this clear by stating:

"It is intended that the responsibility for enforcement vested in the Secretary by section 7, be initially and exhaustively directed through informal methods of conciliation, conference, and persuasion and formal methods applied only in the ultimate sense. H.R. No. 805, pp 2213, 2218 (1967)." (Emphasis supplied)

and at page 375:

"In this case, we think that the compliance officer did not fulfill the affirmative burden of exhaustively employing informal methods to allow the Employer the opportunity to comply voluntarily with the Act. Instead of actively pursuing resolution of the conflict, the Secretary let the case lay dormant for almost four months and filed this present action. Specifically, we affirm the District Court's finding that the compliance officer improperly did not inform the Employer that 'back wages' should be paid to Prichard. In order for the Employer to comply voluntarily with the Act, he must know specifically what the Secretary desires him to do in order to reach that result. Persuasion cannot be accomplished if the desired goal is unknown. The Secretary by not informing the Employer that back wages are recoverable under the Act and by later instituting a law suit for such damages is defeating the very purpose of attempting to persuade the Employer to comply with the Act. The Secretary's desires and the requirements of the Act should be clearly explained to the employer or alleged violator."

The Court went on to say "we think that the District Court's finding that the compliance officer did not clearly and affirmatively tell the Employer that the file was in fact being referred to the Secretary for review and possible legal action is not clearly erroneous. The District Court succinctly and perceptively held that "voluntary compliance through conciliation, conference, and persuasion is more likely to be effected when the employer clearly understands that the matter will proceed at a level beyond that of the compliance officer if there is not a voluntary resolution of the dispute."

In connection with the Brennan v. Ace Hardware Corporation case, supra, at page 1 of his Brief in Support of Petition to Set Aside Findings and Recommendations of the Magistrate, the following statement is found:

"With respect to conciliation, as was argued on behalf of the plaintiff at the hearing, plaintiff contends that the case of Brennan v. Ace Hardware Corporation, 495 F.2d 368 (C.A. 8 1974) was improperly decided."

The unambiguous language of the statute indicates that the emphasis is on private settlement and the elimination of age discrim-

ination without formal litigation. *Burgett v. Cudahy Company*, 361 F.Supp. 617 (DC D.Kan. 1973).

In *Dunlop v. Resource Sciences Corp.*, 11 EPD ¶10,827 (N.D. Okla. 1976), the Court said:

"[A]t no time before suit was filed were defendant's officers, management, or counsel advised (1) that Plaintiff had administratively found Defendant in violation of the Age Discrimination Act, or (2) what Plaintiff required of the Defendant to comply voluntarily with the Age Discrimination Act, or (3) that unless Defendant did the things specified by Plaintiff to comply voluntarily with the Age Discrimination Act it would be sued without further notice, nor did Plaintiff (4) request Defendant to bring itself into voluntary compliance with the Age Discrimination Act in regard to his proceeding."

The Court further said in *Dunlop*, supra, referring to the *Brennan* case, supra:

"The District Court found that two personal meetings and one telephone call between a compliance officer from the Department of Labor and the employer along with a four-month interval between the last conversation and the filing of the lawsuit were not sufficient to satisfy the requirements of §626(b). In affirming these findings the Eighth Judicial Circuit concluded that compliance with §626(b) is not a rigid test but a program which must be flexible and responsive to the attitudes of the employer. However, the Circuit agreed with the District Court when it found that active pursuit of voluntary compliance required some type of notification to the violator, 1) of what the Secretary desires the violator to do in order to comply, 2) informing the violator that back wages may be recovered, 3) that the file was being referred to the Secretary for review and possible legal action, and 4) that the violator should be given an opportunity to respond 'to the violations in light of a make whole remedy.' *Brennan* at 375. In the eyes of the District Court, active pursuit of compliance is not allowing a case to lay dormant for four months."

Further it was said in *Dunlop*, supra:

"To conciliate means to reconcile, compromise, placate or otherwise satisfy the grievance of the complainant. To attempt conciliation means to take some affirmative action or to make some reasonable effort to resolve the differences. *** Failure to cooperate in an investigation does not relieve the Secretary of his obligation to attempt conciliation.

"In the case of *John T. Dunlop v. Sandia Corp.*, No. 75-150 (D.N.M. 1975) the District Court stated that the burden to conciliate falls on the Secretary.

"In order to conciliate meaningfully, the Secretary should demonstrate the validity of its claim notwithstanding the fact that the data is available to defendant in its own files."

The Court finds, based on the testimony of J. Dean Speer, Assistant Area Director, Wage Hour, Tulsa, that the plaintiff did not affirmatively comply with the mandate of the Act. The legislative history of the Act strongly indicates that conciliation, conference, and persuasion must constitute strong, affirmative attempts by the Secretary to effect compliance before resorting to legal action. *Brennan v. Ace Hardware Corporation*, supra. Instead of actively pursuing resolution of the conflict, the plaintiff allowed the case to remain dormant for almost eight months (December of 1973 through July of 1974) and did not, even after the file was returned to Mr. Speer (who did, from his own testimony, some additional checking) contact and meet with the defendant until October of 1974, about one month prior to the limitation running.

The circumstances of each case circumscribe the reasonableness of the conciliation on the part of the Secretary.

This Court is in agreement with *Dunlop v. Resource Sciences Corp.* and *Brennan v. Ace Hardware Corporation*, in finding and holding that plaintiff has failed to conciliate the charges of alleged age discrimination as required by Title 29 U.S.C. §626(b) and that attempted conciliation is a jurisdictional prerequisite to maintaining this litigation in this Court.

This Court is aware that the rights of individual employees are affected by the actions of the Secretary in carrying out the mandate of the Act, but the circumstance of the case dictate that the Motion for Summary Judgment be sustained.

Turning to the claim asserted on behalf of R. C. Holcomb, he was retired early on September 1, 1971. (Plaintiff's Answers to Defendant's Interrogatories to Plaintiff-Set No. 1, filed February 26, 1975). Defendant, by Motion for Summary Judgment, has raised the question or defense of Statute of Limitations as to any claim asserted on behalf of R. C. Holcomb. Plaintiff maintains that the retirement of R. C. Holcomb constitutes a "continuing violation".

The Act's statute of limitations provides:

"Any action *** may be commenced within two years

after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued." 29 U.S.C. §255, 626(e).

In *Dartt v. Shell Oil Company* (No. 75-1277, Tenth Circuit, decided July 22, 1976) the Tenth Circuit said:

"Because of the similarities between the ADEA and Title VII of the Civil Rights Act of 1964, courts sometimes refer to interpretations of provisions in Title VII for assistance in defining analogous sections of the ADEA. *Moses v. Flagstaff Brewing Corp.*, 8 Cir., 525 F.2d 92, 94; *Curry v. Continental Airlines*, 9 Cir., 513 F.2d 691, 693; *Goger v. H. K. Porter Co.*, 3 Cir., 492 F.2d 13, 15. ***."

In *Cisson v. Lockheed-Georgia Company*, 392 F.Supp. 1176 (USDC N.D.Ga. 1975) the Court said in a Title VII case:

"In the instant case, plaintiff would have this court in effect adopt a rule which has uniformly been rejected elsewhere that the insertion of the word 'continuing' in the EEOC complaint invariably excuses the untimely filing of that complaint. As noted above, a lay-off or discharge does not give rise to a per se claim of continuing discrimination. This court recognizes the general rule that a layman should be given wide latitude in his efforts to invoke the processes provided by Title VII; strict, over-technical application of the procedural intricacies of the Act is not consistent with its remedial purposes. Conversely, when over-liberal interpretations of EEOC complaints would actually frustrate the intent of Title VII, such interpretations should be rejected. Thus, this court rejects the argument espoused by plaintiff herein that whenever the term 'continuing' is inserted in an EEOC complaint, the court and the EEOC should assume that the plaintiff actually desires to raise claims of discriminatory failure to rehire, repromote, or retransfer, rather than the discharge or demotion claim actually asserted. Such a rule would permit the bypass of orderly EEOC procedures whenever a layoff or discharge occurs and would completely frustrate the purpose of Title VII to foster conciliation by the parties rather than judicial confrontation."

See *Law v. United Air Lines, Inc.*, 519 F.2d 170 (10th CCA 1974) holding denial of employment is not a continuing violation; *Terry v. Bridgeport Brass Company*, 519 F.2d 806 (7th Cir. 1975) holding termination through discharge or resignation is not a continuing violation.

In *Terry v. Bridgeport*, supra, the Court went on to say:

"***to construe loosely 'continuing' discrimination would undermine the theory underlying the statute of limitations. While the continuing discrimination theory may be available to present employees, cf. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), even though on layoff, *Cox v. United States Gypsum Co.*, 409 F.2d 289 (7th Cir. 1969); *Sciaffra v. Oxford Paper Co.*, 310 F.Supp. 891 (D.Me. 1970), we do not think this theory has validity when asserted by a former employee. For such a former employee the date of discharge or resignation is the controlling date under the statute, and a charge of employment discrimination must be timely filed in relation to that date."

In *Olson v. Rembrandt Printing Co.*, 511 F.2d 1228 (8th Cir. 1975), at 1234, the Court said:

"The rationale underlying the allowance of actions for continuing discrimination is to provide a remedy for past actions which operate to discriminate against the complainant at the present time. *Marquez v. Omaha District Dales Office*, 440 F.2d 1157, 1160 (8th Cir. 1971). See *Developments in the Law--Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 Harv.L.Rev. 1109, 1210-12 (1971). Termination of employment either through discharge or resignation is not a 'continuing' violation. It puts at rest the employment discrimination because the individual is no longer an employee.

"As we noted in *Richard*, to construe loosely 'continuing' discrimination would undermine the theory underlying the statute of limitations. While the continuing discrimination theory may be available to present employees, cf. *Griggs v. Duke Power Co.*, 401 U.S. 224 (1971), even though on layoff, *Cox v. United States Gypsum Co.*, 409 F.2d 289 (7th Cir. 1969); *Sciaffra v. Oxford Paper Co.*, 310 F.Supp. 891 (D.Me.1970) we do not think this theory has validity when asserted by a former employee. For such a former employee the date of discharge or resignation is the controlling date under the statute, and a charge of employment discrimination must be timely filed in relation to that date."

It is apparent from the file that any claim for any alleged violation of the Act with respect to R. C. Holcomb was filed more than three years after Mr. Holcomb was retired and is barred by the applicable statute of limitations provided in the Statute.

Based on all of the foregoing, the Court finds that the Motion for Summary Judgment filed by the defendants should be sustained and the objections to the Findings and Recommendations on file herein overruled.

IT IS, THEREFORE, ORDERED that defendant's Motion for Summary Judgment be and the same is hereby sustained and the cause of action and complaint dismissed with prejudice premised on the following grounds:

1. That this Court lacks subject matter jurisdiction or, in the alternative, that the Complaint fails to state a claim upon which relief can be granted as a result of plaintiff's failure to comply with the statutory directive of attempting to effect voluntary compliance through informal methods of conciliation, conference and persuasion pursuant to 29 U.S.C. §626(b) before instituting action; and

2. That the applicable statute of limitations, 29 U.S.C.

§225, 626(e), bars any action or relief claimed on behalf of R. C. Holcomb.

IT IS FURTHER ORDERED that the objections filed by the plaintiff to Findings and Recommendations be and the same are hereby overruled.

ENTERED this 3rd day of November, 1976.

Celia G. Bauer

CHIEF UNITED STATES DISTRICT JUDGE

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

FILED

NOV 3 1976

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

CHARLES L. MOBLEY, JR., MARY)
MOBLEY, and DENNIS A. DUMONT,)
)
Plaintiffs,)
vs.)
)
HOWARD H. CALLAWAY, Secretary)
of the Army; LIEUTENANT GENERAL)
WILLIAM C. GRIBBLE, JR., Chief)
of the Corps of Engineers,)
United States Army; and COLONEL)
JOHN G. DRISKILL, Chief, Tulsa)
District, Corps of Engineers,)
)
Defendants.)

CIVIL ACTION NO. 75-C-173-C

J U D G M E N T

This matter came on for trial on the 1st and 2nd of November, 1976. The plaintiffs, Charles L. Mobley, Jr., Mary Mobley, and Dennis A. Dumont, being represented by Bruce Peterson, attorney, and the defendants, Howard H. Callaway, Secretary of the Army, Lieutenant General William C. Gribble, Jr., Chief of the Corps of Engineers, United States Army, and Colonel John G. Driskill, Chief, Tulsa District, Corps of Engineers, being represented by Nathan G. Graham, United States Attorney for the Northern District of Oklahoma. After trial to the Court and after consideration of the testimony of the witnesses and after consideration of the pleadings and briefs filed herein, the Court finds that the plaintiffs failed to comply with the terms of the lease which plaintiffs had with the defendants. The Court further finds that the defendants properly and with good cause terminated said lease in accordance with its terms as a result of such failure on the part of the plaintiffs to comply with the lease.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the plaintiffs' Complaint and Cause of Action be and the same is hereby dismissed.



UNITED STATES DISTRICT JUDGE

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

CITIZENS AND SOUTHERN FACTORS, INC.,
a corporation,

Plaintiff,

Vs.

FURNITURE FAIR, INC., a corporation,
and MILO A. EICHHORN,

Defendants.

Civil Action
No. 76-C-78-C

FILED
NOV 3 1976

Jack C. Silver, Clerk
DISTRICT COURT

JUDGMENT

NOW on this 3rd day of November, 1976, there comes on for hearing before the undersigned Judge, the above entitled matter. The Plaintiff appeared by its attorney of record, Gatra Marvin, for Ungerman, Grabel & Ungerman, and the Defendants appeared by their attorney of record, James v. Collins for Robinson, Boese and Davidson.

Thereupon, the Court finds that the respective counsels have previously stipulated and agreed to the fact that a Judgment is to be entered for the Plaintiff and against the Defendants in the principal sum of \$10,024.00. The Court further finds that the parties have stipulated that Plaintiff is entitled to an award for attorneys fees in the sum of \$1,000.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Plaintiff have and is hereby granted a Judgment against the Defendant in the principal sum of \$10,024.00, and attorneys fees in the sum of \$1,000.00, and all the costs of this action. For all of which let execution issue.

/s/ H Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

UNGERMAN, GRABEL & UNGERMAN

By Gatra Marvin
Attorneys for Plaintiff

ROBINSON, BOESE & DAVIDSON

By James J. Collins
Attorneys for Defendants

LAW OFFICES
UNGERMAN,
GRABEL &
UNGERMAN
SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

at that time, instructed the jury that the defendant had interposed a Motion for Directed Verdict and that the same had been sustained and that said case was ordered dismissed, and the jury discharged.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the defendant's Motion for Directed Verdict is sustained by and for the reasons as set out above in this Order, and that said case is ordered dismissed as to the defendant herein.

IT IS SO ORDERED THIS 2 DAY OF Nov., 1976.

H. Dale Cook

H. Dale Cook
United States District Judge

APPROVED AS TO FORM:

Allen M. Smallwood
Attorney for Plaintiff

Allen B. Pease
Attorney for Defendant
201 West Fifth Street, Suite 400
Tulsa, Oklahoma 74103
Phone: (918) 583-1115

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

UNIGARD INSURANCE COMPANY,)
)
Plaintiff,)
)
vs.)
)
JOHN MICHAEL STUDER, EDNA LANDRUM)
and WILLIAM LANDRUM, and COUNTRYSIDE)
CASUALTY COMPANY,)
)
Defendants.)

NO. 73-C-147

FILED

NOV 2 1976

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

JUDGMENT ON MANDATE AFTER APPEAL

Pursuant to the Opinion rendered by the Court of Appeals for the Tenth Circuit in Case No. 75-1357, Unigard Insurance Company, Plaintiff-Appellee, v. John Michael Studer and Countryside Casualty Company, Defendants-Appellees, and Edna Landrum and William Landrum, Defendants-Appellants, on June 25, 1976, and the Mandate thereafter entered thereon judgment is hereby entered in favor of John Michael Studer, Edna Landrum and William Landrum against Unigard Insurance Company, decreeing that Unigard Insurance Company's Policy No. AD12491, effective August 7, 1972 and issued to William J. Studer, Jr., was in full force and effect on August 27, 1972, and that the liability insurance coverage provided by said policy applied to the accident of August 27, 1972, and that the said Unigard Insurance Company is obligated to indemnify John Michael Studer for any legal liability that he may have to Edna or William Landrum, by reason of the accident of August 27, 1972 to the extent of the insurance coverage provided by said policy, which coverage is \$50,000/100,000 for bodily injury liability, and \$10,000.00 for property damage liability.

Judgment is further entered in favor of Countryside Casualty Company, decreeing that they have no coverage and are not obligated to indemnify or defend any claim arising out of the accident of August 27, 1972.

DATED this 2nd day of November, 1976.



ALLEN E. BARROW
Chief United States District Judge

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

H. BROOKS GUTELIUS, JR.,
Plaintiff,
vs.
JOSEPH J. SOLON,
Defendant.

CIVIL ACTION
NO. 75-C-261-B ✓

FILE

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

ORDER

The Court has for consideration defendant's Motion for Summary Judgment in its entirety and has carefully perused the entire file, the briefs and all of the recommendations concerning said Motion, and being fully advised in the premises, finds:

That the defendant's Motion should be sustained for the reason that the period of limitations applicable to the plaintiff's cause of action expired prior to the commencement of this action.

IT IS, THEREFORE, ORDERED that the Motion of defendant for summary judgment should be, and is hereby, sustained.

DATED This 2nd day of ^{November}~~October~~, 1976.

Allen E. Benson
Chief United States District Judge