

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

FILED

APR 29 1977

CITY OF LAMAR, MISSOURI,)
AND CITY OF FULTON, MISSOURI,)
)
Plaintiffs,)
)
v.)
)
CECIL D. ANDRUS, et al.,)
)
Defendants.)

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

Civil Action Nos.

75-C-216-C
76-C-374-C

STIPULATION OF SETTLEMENT

For the purpose of settling these actions, it is hereby stipulated between the parties, as follows:

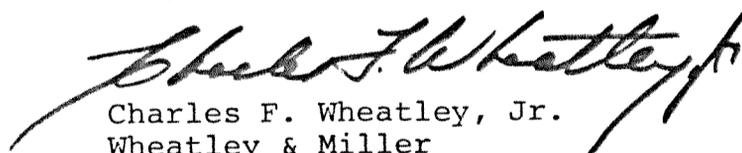
1. These suits were initiated by plaintiffs City of Lamar and City of Fulton, Missouri, seeking a declaratory order and other relief because of the expiration of their firm power contracts with the defendant Southwestern Power Administration, an agency of the defendant Department of Interior.
2. The defendants have agreed to enter new firm power contracts with each of the plaintiffs, copies of which are attached hereto.
3. The plaintiff City of Lamar has been provided with power by defendant Southwestern Power Administration since the expiration of its prior firm power contract on July 14, 1974, for which a dispute has arisen over the proper amount of payment. The parties agree to settle the outstanding unpaid bills for power and energy furnished by the Southwestern Power Administration to the City of Lamar during the period July 1974 through March, 1977 for the amount of \$148,682.56. It is agreed that the amount currently deposited by the City of Lamar in the escrow account with the Court, together with accumulated interest to the effective date of the Lamar contract set forth in paragraph 2 above, shall be paid over

forthwith to the defendant Southwestern Power Administration in part payment of the amount due hereunder and that the City of Lamar shall pay the remaining amounts due hereunder directly to SPA in equal installments over a consecutive eighteen month period, beginning May 1, 1977, with interest on the unpaid balance at the rate of one-half percent (1/2%) per month. It is also agreed that any additional amounts billed by SPA to the City of Lamar for periods beyond March, 1977 and prior to the start of service under the contract with the City of Lamar referred to in paragraph 2 will be paid currently by that City on the basis of the amounts billed by SPA.

4. The parties agree that the settlement set forth herein provides the basis for the complete and final settlement of these actions and any actions arising out of the defendants' prior refusal to renew the plaintiffs' firm power contracts with the defendant Southwestern Power Administration. The parties agree that these actions may be dismissed forthwith, with prejudice, and that such dismissal is without prejudice to the rights of the plaintiffs with respect to the contracts referred to in paragraph 2.

5. The parties agree that an Order shall be entered forthwith dismissing these actions, with prejudice, and that this Stipulation of Settlement shall be made a part thereof.

Respectfully submitted,



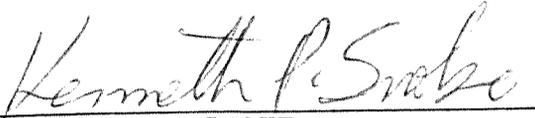
Charles F. Wheatley, Jr.
Wheatley & Miller
1112 Watergate Office Building
2600 Virginia Avenue, N.W.
Washington, D. C. 20037

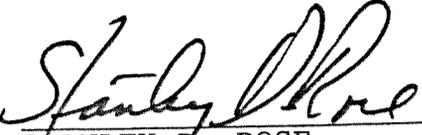
Attorney for Plaintiffs

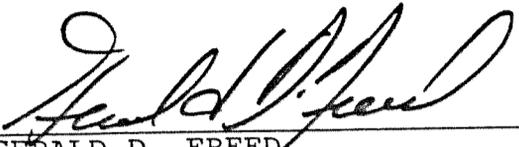


BARBARA ALLEN BABCOCK
Assistant Attorney General,
Civil Division

NATHAN G. GRAHAM
United States Attorney


KENNETH P. SNOKE
Assistant United States Attorney


STANLEY B. ROSE


GERALD D. FREED


JOHN N. HANSON

Attorneys, Department of Justice
Attorneys for Defendants

PROPOSED SPA-LAMAR CONTRACT
Re: Lamar v. Kleppe
75-C-216-C
USDC/ND OK.
Conf. St. Louis, Mo.
March 25, 1977.

UNITED STATES
DEPARTMENT OF THE INTERIOR
SOUTHWESTERN POWER ADMINISTRATION

CONTRACT NUMBER
14-02-0001-1678

POWER SALES CONTRACT

Between

UNITED STATES OF AMERICA

and

THE CITY OF LAMAR, MISSOURI

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UNITED STATES
DEPARTMENT OF THE INTERIOR
SOUTHWESTERN POWER ADMINISTRATION

POWER SALES CONTRACT

Between

UNITED STATES OF AMERICA

and

THE CITY OF LAMAR, MISSOURI

THIS CONTRACT, made and entered into this 29th day of April, 1977, by and between the UNITED STATES OF AMERICA, as represented by the Administrator, Southwestern Power Administration, a bureau of the Department of the Interior (hereinafter "SPA"), and THE CITY OF LAMAR, MISSOURI, a municipal corporation organized and existing under the laws of the State of Missouri, acting through its duly authorized officials (hereinafter "Lamar");

WITNESSETH, That

WHEREAS, under Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890; 16 U.S.C. 825s), the Secretary of the Interior is authorized to transmit and dispose of electric power and energy generated at reservoir dam projects under the control of the Department of the Army in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles, at rates confirmed and approved by the Federal Power

Article I, Section 1

Commission, and with preference in the sale of such power and energy given to public bodies and cooperatives; and

WHEREAS, pursuant to the said Section 5 of the Flood Control Act of 1944, the Secretary of the Interior has designated SPA as the agency to market electric power and energy generated at the following reservoir dam projects:

Beaver	Eufaula	Sam Rayburn
Blakely Mountain	Fort Gibson	Stockton
Broken Bow	Greers Ferry	Table Rock
Bull Shoals	Keystone	Tenkiller Ferry
Clarence Cannon	Narrows	Harry S. Truman
Dardanelle	Norfork	Webbers Falls
DeGray	Ozark	Whitney
Denison	Robert S. Kerr	

WHEREAS, under the said Section 5 of the Flood Control Act of 1944, Lamar is granted a preference in the sale and disposition of power and energy by SPA;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto contract and agree as follows:

ARTICLE I

DEFINITIONS

Section 1. System of Lamar. The term "System of Lamar", as used herein, shall mean the transmission and related facilities owned and operated by Lamar.

Section 2. System of SPA. The term "System of SPA", as used herein, shall mean the transmission and related facilities owned by the United States, and the transmission and related facilities owned by others in which capacity is by contract available to and utilized by SPA for the delivery of power and energy to Lamar under this Contract.

Section 3. Contract Year. The term "Contract Year", as used herein, shall mean the twelve-month period beginning on June 1 of each calendar year and extending through May 31 of the following year.

Section 4. Month and Billing Period. The terms "month" and "billing period", as used herein, shall mean the period beginning on the first day and extending through the last day of each calendar month.

Section 5. Uncontrollable Force. The term "Uncontrollable Force", as used herein, shall mean any force which is not within the control of the party affected, including, but not limited to, failure of water supply, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, or restraint by a court of general jurisdiction, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid.

ARTICLE II

SALE OF FIRM POWER AND
ASSOCIATED ENERGY BY SPA

Section 1. Sale of Firm Power. SPA shall sell and deliver, and Lamar shall purchase and receive, the quantities of hydroelectric power (hereinafter "Firm Power") set forth below, with quantities of associated energy (hereinafter "Firm Energy") as provided under Section 5 of this Article II:

- | | | |
|-------|--|-----------|
| (i) | From start of service through
May 30, 1977 - | 9,000 kw |
| (ii) | During the period June 1, 1977,
through May 30, 1979 - | 10,000 kw |
| (iii) | During the period June 1, 1979,
through May 30, 1981 - | 11,000 kw |
| (iv) | During the Contract Year beginning
June 1, 1981, and thereafter during
the term of this Contract - | 12,000 kw |

Section 2. Definitions Applicable to Sale of Firm Power. The following definitions shall apply to the purchase and sale of Firm Power by Lamar under this Contract:

- (i) The "Firm Contract Demand" for any month shall be the maximum rate in kilowatts at which SPA is obligated during such month to deliver Firm Energy to Lamar as set forth in Section 1 of this Article II.
- (ii) The "Firm Actual Demand" for any month shall be the number of kilowatts equal to the sum of the highest coincidental 30-minute integrated demands recorded during such month at the points of delivery set forth in Section 1 of Article III, hereof.

- (iii) The "Firm Billing Demand" for any month shall be either the "Firm Contract Demand" or the "Firm Actual Demand" for such month, whichever is greater.

Section 3. Limitation on Purchase and Sale of Firm Power. (a) It is recognized by the parties hereto that the quantity of Firm Power available to SPA for marketing is limited by the generating capability and operating characteristics of the reservoir dam projects for which SPA has been designated marketing agency. It is expressly understood and agreed, therefore, that SPA shall not be obligated to sell and deliver, and that Lamar shall not be entitled to purchase and receive, a quantity of Firm Power in excess of 12,000 kilowatts, as set forth in Section 1 of this Article II.

(b) The parties hereto shall from time to time, at the request of either party, undertake engineering studies to establish load growth projections on the System of Lamar. If any such engineering studies and load growth projections show that Lamar's total system requirements will exceed 12,000 kilowatts, Lamar covenants and agrees that it will promptly by contract obtain the right to purchase and receive, from sources of power supply other than SPA, such quantities of power and associated energy as will thereafter be required to fulfill such total system load requirements in excess of 12,000 kilowatts.

(c) If at any time Lamar's "Firm Actual Demand" is greater than 12,000 kilowatts, Lamar shall promptly either -

- (i) reduce its requirements for Firm Power by permanently disconnecting from the System of Lamar power load with a maximum annual demand

at least equal to the quantity by which such "Firm Actual Demand" exceeds 12,000 kilowatts, or

- (ii) by contract obtain the right to purchase and receive, from sources of power supply other than SPA, such quantities of power and energy as will be thereafter required to fulfill Lamar's total system load requirements,

so that Lamar's "Firm Actual Demand" will not thereafter exceed 12,000 kilowatts. If Lamar does not promptly take such action as may be necessary to fulfill the requirements of this Subsection (c), SPA may, at its option, discontinue the delivery of power and energy under this Contract upon thirty days' advance written notice to Lamar, and such discontinuance shall continue until such time as Lamar demonstrates to the satisfaction of SPA that it has, in fact, fulfilled such requirements. Discontinuance of service by SPA to Lamar as herein provided shall not relieve Lamar of its liability for the minimum monthly billing based upon the "Firm Contract Demand" during the period of such discontinuance.

Section 4. Increase in Firm Contract Demand. If at any time, or from time to time, the "Firm Actual Demand" is less than 12,000 kilowatts but greater than the "Firm Contract Demand" set forth in parts (i), (ii), or (iii) of Section 1 of this Article II, the number of kilowatts equal to such "Firm Actual Demand" shall become the "Firm Contract Demand" under Section 1 of this Article II beginning on the first day of the billing period following one month after the end of the billing period during which such "Firm Actual

Demand" was established by Lamar, unless within thirty days after the end of the billing period during which such "Firm Actual Demand" was established, SPA notifies Lamar in writing that, in the sole judgment of SPA, additional quantities of Firm Power are not then available for utilization under this Contract, in which event Lamar's "Firm Contract Demand" shall remain either the "Firm Contract Demand" provided under Section 1 of this Article II, or the greatest "Firm Contract Demand" previously established by Lamar, whichever is greater.

Section 5. Sale of Firm Energy. (a) SPA shall sell and deliver, and Lamar shall purchase and receive, such quantities of Firm Energy as may be required by Lamar to fulfill its system load requirements.

(b) If at any time Lamar obtains by contract the right to purchase and receive energy from a source of power supply other than SPA, the quantity of Firm Energy which SPA is obligated to sell and deliver each month, and which Lamar is entitled to purchase and receive, shall be computed to be a quantity which parallels the load factor and load pattern of the System of Lamar during such month.

Section 6. Rates and Charges for Firm Power and Firm Energy.

(a) Lamar shall compensate SPA each month for Firm Power and Firm Energy purchased during the preceding billing period at the rates and under the terms and conditions set forth in Rate Schedule "F-1", a copy of which is attached to this Contract identified as Exhibit "1", and by this reference

made a part hereof. It is understood and agreed that the rates and/or terms and conditions set forth in the said Rate Schedule "F-1", with the confirmation and approval of the Federal Power Commission, may be increased, decreased, modified, superseded, or supplemented, at any time, and from time to time, and that if so increased, decreased, modified, superseded, or supplemented, the new rates and/or terms and conditions shall thereupon become effective and applicable to the purchase and sale of Firm Power and Firm Energy under this Contract in accordance with and on the effective date specified in the order of the Federal Power Commission containing such confirmation and approval.

(b) SPA shall promptly notify Lamar if the rates and/or terms and conditions set forth in the said Rate Schedule "F-1", or the then applicable rate schedule, have been modified, increased, decreased, superseded, or supplemented. If the cost of Firm Power and Firm Energy purchased by Lamar under this Contract is thereby increased, and if Lamar does not wish to continue to purchase Firm Power and Firm Energy at such increased cost, Lamar shall within six months after receipt of such notice notify SPA in writing of its election to terminate this Contract in its entirety, such termination to be effective on the first day of the billing period specified by Lamar, but not later than twelve months from the date of such notice to SPA. Firm Power and Firm Energy purchased by Lamar during the period until the effective date of such termination shall be paid for at the new rates and/or terms and conditions as confirmed and approved by the Federal Power Commission.

ARTICLE III

POINTS OF DELIVERY AND METERING

Section 1. Points of Delivery. Power and Energy purchased by Lamar under this Contract shall be delivered by SPA to Lamar at the following points of interconnection between the System of SPA and the System of Lamar:

- (i) On the 69 kv side of Lamar's South Substation (Substation #1); and
- (ii) On the 69 kv side of Lamar's North Substation (Substation #2).

Section 2. Metering. (a) Power and energy delivered by SPA to Lamar under this Contract shall be metered at the point or points of delivery. Lamar shall have the right to install checkmeters at the point or points of delivery.

(b) Each meter used under this Contract shall be read on or about the last day of each billing period by an authorized representative of SPA, and may be simultaneously read by a representative of Lamar, if Lamar so elects.

(c) Metering equipment shall be inspected and tested at least once each year by the party responsible therefor, and at any time upon reasonable request by either party. Metering equipment found to be defective or inaccurate shall be repaired and readjusted or replaced. A meter shall be considered inaccurate if it is found to deviate from an accurate standard meter in excess of one-half of one percent when tested at one hundred percent of load or one percent when tested at ten percent of load. If any inspection or test discloses an error exceeding two percent (2%), correction based upon the inaccuracy found shall be made

of the records of electric service furnished since the beginning of the billing period immediately preceding the billing period during which the test was made, and such correction when made shall constitute full adjustment of any claim between the parties hereto arising out of such inaccuracy of metering equipment.

ARTICLE IV

ACCOUNTING, BILLING, AND PAYMENT

Section 1. Billing by SPA. SPA shall maintain an accurate record of the power and energy delivered to Lamar under this Contract. On or before the twentieth day of each month SPA shall prepare and mail to Lamar a billing statement setting forth in necessary detail the amount owed for Firm Power and Firm Energy purchased by Lamar during the preceding billing period.

Section 2. Payment by Lamar. (a) Billing statements rendered by SPA pursuant to Section 1 of this Article IV shall be due and payable within 30 days from the date of receipt thereof by Lamar, at:

Office of the Administrator
Southwestern Power Administration
P. O. Drawer 1619
Tulsa, Oklahoma 74101.

(b) If Lamar fails to pay any amount due under this Contract, except with regard to a billing statement the accuracy or the amount of which is in good faith disputed, SPA may, at its option, discontinue the

delivery of power and energy under this Contract upon ninety days' prior written notice, unless payment of the amount due is made within such ninety-day period; Provided, That, for purposes of this Subsection (b) and Subsection (c), below, the phrase "good faith disputed" is not intended, nor shall it be construed, to excuse or justify the failure to make timely payment of any amount due SPA under this Contract if such failure is based upon or involves a question or dispute regarding the validity or applicability of an SPA rate schedule which has been duly confirmed and approved by the Federal Power Commission. Such discontinuance by SPA of the delivery of power and energy, as hereinbefore provided, shall not relieve Lamar of liability for the minimum SPA rate schedule charges based upon the Firm Contract Demand during the period of such discontinuance, and the rights granted SPA herein shall be in addition to all other remedies available to SPA, either at law or in equity, for the breach of any of the provisions of this Contract.

(c) If Lamar fails to pay any bill on or before the due date, except that portion of any billing statement which is in good faith disputed by Lamar, an interest charge of one percent (1%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter as further liquidated damages, an interest charge of one percent (1%) of the principal sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

ARTICLE V

GENERAL PROVISIONS

Section 1. Facilities Furnished by SPA. SPA shall furnish, install, maintain, and operate, or cause to be furnished, installed, maintained, and operated, such facilities and equipment, including metering equipment, as may be reasonably necessary to deliver and meter the power and energy purchased by Lamar, and to assure reasonable protection to the System of Lamar.

Section 2. Facilities Furnished by Lamar. Lamar shall furnish, install, maintain, and operate such facilities and equipment as may be reasonably necessary to enable Lamar to receive power and energy at the point of delivery, and to assure reasonable protection to the System of SPA. Plans for the installation of protective equipment shall be submitted to SPA for approval before such equipment is installed, but such approval, if granted, shall not constitute a guaranty or waiver by SPA with regard to the adequacy thereof.

Section 3. Character of Service. Power and energy purchased by Lamar shall be delivered by SPA as three-phase alternating current, at a frequency of approximately 60 cycles per second, and at a nominal voltage of 69,000 volts.

Section 4. Continuity of Service. Power and energy purchased by Lamar under this Contract shall be furnished continuously and/or as scheduled except for interruptions or curtailments in service caused by an Uncontrollable Force, or by operation of devices installed for system protection, or by the necessary installation, maintenance, repair, and replacement of equipment. Such interruptions or reductions in service, as hereinbefore set forth, shall not constitute a breach of this Contract, and neither party shall be liable to the other for damages resulting therefrom. Except in case of an emergency, each party shall give the other reasonable advance notice of temporary interruptions or curtailments in service necessary for such installation, maintenance, repair, and replacement of equipment, and shall schedule such interruptions or curtailments so as to cause the least inconvenience to the parties hereto.

Section 5. Power Factor. Lamar shall take power and energy at the point of delivery at such power factor as will best serve its system at such point, except that Lamar shall normally maintain a power factor of not less than ninety percent (90%) lagging. Lamar shall not impose a power factor on the System of SPA which will result in an overload or impairment of such system, or which will interfere with the delivery of power and energy by SPA to its other customers. If the power factor imposed at the point of delivery by Lamar is such as to overload facilities or to impair

the service of SPA to its other customers, SPA shall have the right to open, or cause Lamar to open, such interconnecting switches as may be necessary to eliminate such overload or impairment of service.

Section 6. Reliability and Adequacy of Service. Electric service rendered by SPA under this Contract shall meet accepted standards of reliability and adequacy. If questions are raised concerning the quality of service, factual data shall be obtained with respect to the character of such service and appropriate corrective or remedial action shall be promptly taken by the party at fault.

Section 7. Reports and Information. Each party hereto shall furnish to the other such reports and information concerning its operations under this Contract as the other party may reasonably request from time to time.

Section 8. Right of Installation and Access. (a) Each party hereto grants to the other permission to install, maintain, and operate, or cause to be installed, maintained, and operated, on its premises any and all terminal equipment and associated apparatus and devices necessary in the performance of this Contract.

(b) Each party hereto shall permit duly authorized representatives and employees of the other party to enter upon its premises for the purpose of reading or checking meters, inspecting, testing, repairing, renewing, or

exchanging any or all of the equipment owned by the other party located on such premises, or for the purpose of performing any other work necessary in the performance of this Contract.

Section 9. Right of Removal. Any and all equipment, apparatus, devices, or facilities, placed or installed, or caused to be placed or installed, by the parties hereto on or in the premises of any of the other parties shall be and remain the property of the party owning and installing such equipment, apparatus, devices, or facilities, regardless of the mode or manner of annexation or attachment to real property of the other, and upon the termination of this Contract the owner thereof shall have the right to enter upon the premises of the other and shall, within a reasonable time, remove such equipment, apparatus, devices, or facilities.

Section 10. Construction Standards. The parties hereto shall construct, maintain, and operate their respective transmission and related facilities in accordance with standards and specifications at least equal to those provided by the National Electrical Safety Code of the United States Bureau of Standards. Nothing contained in this Contract shall be construed to render SPA or Lamar liable for any damage to property or injury to persons, including agents and employees of the other, arising out of or resulting from the operation and maintenance of the other's transmission and related facilities.

Section 11. Mutual Assistance by Contracting Parties. Assistance in the emergency maintenance and utilization of their respective systems, not otherwise provided for in this Contract shall be rendered by SPA and Lamar in accordance with the following terms and conditions:

- (i) If, in the maintenance or utilization of their respective transmission systems and related facilities for the purposes of this Contract, it becomes necessary by reason any emergency or extraordinary condition for Lamar or SPA to request the other to furnish personnel, materials, tools, and equipment, for the maintenance or modification of, or other work on, such transmission systems and related facilities to insure continuity of power and energy deliveries, the party requested shall cooperate with the other and render such assistance as the party requested may determine to be available. The party making such request, upon receipt of properly itemized bills, shall reimburse the party rendering such assistance for all costs and expenses properly and reasonably incurred in rendering such assistance, including not to exceed ten percent thereof for administrative and general expenses, such costs and expenses to be computed on the basis of current charges or rates used by the party rendering assistance in its own operations.
- (ii) No laborer or mechanic in the employ of Lamar performing any of the work contemplated by this Section shall be required or permitted to work in excess of eight hours in any workday or in excess of forty hours in any workweek at the site of such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this Section.
- (iii) The wages of each laborer or mechanic employed by Lamar in the performance of any of the work contemplated by this Section shall be computed

on the basis of a standard workday of eight hours and a standard workweek of forty hours, and work performed in excess of eight hours in any workday or forty hours in any workweek may be permitted only upon the condition that each laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any workday or in excess of forty hours in any workweek, whichever is the greater amount of overtime hours.

- (iv) For each violation of this Section a penalty shall be imposed upon Lamar in the amount of ten dollars (\$10) for each laborer or mechanic for each calendar day in which such laborer or mechanic is required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours upon said work without receiving compensation computed in accordance with this Section, and all penalties thus imposed shall be withheld for the use and benefit of the United States.
- (v) Work performed under this Section 11 is subject to the provisions of the Contract Work Hours Standard Act (Public Law 87-581, 76 Stat. 357-360).

ARTICLE VI

EFFECTIVE DATE, TERM, CONTINGENCIES

Section 1. Effective Date and Term of Contract. (a) This Contract shall become effective as of the date of its execution by the parties hereto, and shall remain in force and effect until midnight, May 31, 1987, unless sooner terminated as provided in Subsection (b), below, or in other provisions of this Contract.

(b) SPA or Lamar may, at its sole option, terminate this Contract as of the first day of the Contract Year beginning on June 1, 1978, or as of the first day of any Contract Year thereafter, upon not less than six months'

advance written notice to the other party, and this Contract shall ipso facto terminate and be without further force and effect as of the first day of the Contract Year specified in such notice, except that the rights of the parties hereto, if any, which may have accrued prior to such effective date of termination shall be and hereby are preserved.

Section 2. Start of Service. The delivery of power and energy under this Contract shall begin on the first day of the month following the date of its execution by the parties hereto, or at such earlier date as may be agreed to in writing by the parties hereto.

Section 3. Availability of Funds to SPA. (a) This Contract and all rights and obligations hereunder, and the expenditure of funds by SPA under the provisions hereof, are expressly conditioned and contingent upon the Congress making the necessary funds available to enable SPA to carry out the provisions of this Contract, and if the Congress fails to make such funds available, this Contract shall ipso facto terminate and have no further force or effect as of the last day of the fiscal year for which the Congress had previously made funds available, and Lamar hereby releases SPA from any and all liability for failure to perform and fulfill its obligations under this Contract for that reason.

(b) No obligation contained herein for the future payment of money by SPA shall be binding upon or enforceable against SPA unless and until the Congress makes funds available out of which such obligation or liability can be paid.

delivery of Firm Power and Firm Energy by SPA to Lamar, and the designation by SPA of points of interconnection as points of delivery under Section 1, Article III, hereof, are conditioned and contingent upon the use by SPA of transmission and related facilities owned by others under rights granted SPA in that certain contract dated March 28, 1962, Interior Contract No. 14-02-0001-1002, between the United States and Associated Electric Cooperative, Inc., of Springfield, Missouri (hereinafter "SPA-Associated Contract"). Lamar hereby acknowledges that it is familiar with the terms and conditions of the SPA-Associated Contract, and that SPA has offered, if requested, to furnish a copy thereof to Lamar.

(b) If at any time the SPA-Associated Contract, for any reason, is terminated, rescinded, cancelled, or rendered inoperative, then and in that event, this Contract ipso facto shall terminate and be without further force and effect as of the effective date of such termination, rescission, cancellation, or being rendered inoperative, except that the rights of the parties hereto, if any, which accrued prior to such effective date shall be and hereby are preserved. Such termination of this Contract shall be without penalty to either party hereto, and SPA and Lamar hereby release the other party from any and all liability for failure to perform and fulfill its obligations under this Contract for that reason.

Section 5. Termination for Breach. If either party hereto breaches a material provision of this Contract, the other party, at its option, may terminate this Contract upon thirty days' prior written notice of its intention to do so, and this Contract shall ipso facto terminate at the end of such thirty-day period unless within that period such violation is corrected. If, however, such violation is corrected but damages are claimed by the offended party for such violation, then such termination shall be effective thirty days after the amount of such damages has been finally fixed by a federal court of competent jurisdiction, unless within that period such damages or amounts are paid by the offending party to the other. Neither party hereto, however, shall be considered to be in default or breach with respect to any obligation under this Contract if prevented from fulfilling such obligation by reason of an "Uncontrollable Force". Either party unable to fulfill any obligation under this Contract by reason of an Uncontrollable Force shall remove such inability with all possible dispatch.

Section 6. Remedies of Parties. Except as otherwise specifically provided, nothing contained in this Contract shall be construed to abridge, limit, or deprive any of the parties hereto of any means of enforcing any remedy, either at law or in equity, for the breach of any of the provisions hereof.

Section 7. Waivers. Waiver at any time of rights with respect to a default or any other matter arising in connection with this Contract shall not be deemed to be a waiver with respect to any subsequent default or matter.

Section 8. Notices. Any written notice, demand, or request, required or authorized under this Contract shall be deemed properly given to or served on SPA if mailed to:

Office of the Administrator
Southwestern Power Administration
P. O. Drawer 1619
Tulsa, Oklahoma 74101.

Any such notice, demand, payment, or request shall be deemed properly given to or served on Lamar if mailed to:

Mayor
City of Lamar
Lamar, Missouri 64759.

The designation of the persons to be notified, or the address of such persons, may be changed at any time by either party.

Section 9. Transfer of Interest by Lamar. No voluntary transfer of this Contract or of the rights of Lamar hereunder shall be made without the written approval of the Secretary of the Interior; Provided, That any successor to or assignee of the rights of Lamar whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of this Contract to the same extent as though such

successor or assignee were the original contractor hereunder; and Provided further, That the execution of a mortgage or trust deed, or judicial or foreclosure sale made thereunder, shall not be deemed voluntary transfers within the meaning of this Section.

ARTICLE VII

STANDARD PROVISIONS

Section 1. Provisions Relative to Employment. (a) As used in Subsection (b), below, the term "contractor" shall mean Lamar; "contracting officer" shall mean the Administrator, Southwestern Power Administration, or his designated representative; and "agency" shall mean the Southwestern Power Administration.

(b) During the performance of this Contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the

contracting officer setting forth the provisions of this Equal Opportunity clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures

authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(c) In the performance of any part of the work contemplated by this Contract, Lamar shall not employ any person undergoing sentence of imprisonment at hard labor.

Section 2. Officials Not to Benefit. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.

Section 3. Covenant Against Contingent Fees. Lamar warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Lamar for the purpose of securing business. For breach or violation of the warranty the United States shall have the right to annul this Contract without liability or in its discretion to add to the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE VIII

RESALE OF ELECTRIC ENERGY

Section 1. Distribution Principles. The parties hereto agree and understand that the purpose of making low cost, federally generated power available is to encourage the most widespread use thereof, and Lamar therefore agrees:

(a) That the benefits of federally generated power shall be made available at fair and reasonable terms to all of its consumers at the lowest possible rates consistent with sound business principles.

(b) That it will, to the extent that different rules are not prescribed by State laws or by State or Federal agencies, maintain proper

books of account in accordance with the system of accounts prescribed for public utilities and licensees by the Federal Power Commission.

(c) That it will furnish for the information of the Administrator of SPA copies of schedules of resale rates in effect on the date of execution of this Contract, and will also furnish for information of the Administrator of SPA schedules of resale rates hereafter adopted.

(d) That it will provide the Administrator of SPA an annual statement indicating the financial operations of Lamar's system, and indicating that the charges to consumers are consistent with the principles set forth in paragraph (a) hereof.

(e) That it will publish annually a report in a newspaper of general circulation in the area served by Lamar and will include in such report the operating and financial data of Lamar's electric distribution system, setting forth in detail the gross revenues and disposition thereof. The first of such reports shall be published on or before the 1st day of September following the date service is initiated under this Contract, and annually thereafter. In lieu of the published annual report, Lamar may furnish such information by mailing copies of the annual report to each of its consumers and a copy to the Administrator, SPA.

Section 2. Sales at Wholesale. Lamar will encourage its wholesale customers to implement the distribution principles of Section 1(a) of this Article VIII, and whenever a wholesale customer contract is executed, modified, or amended, will include in such contract arrangements similar to this set forth in Section 1(a) of this Article.

IN WITNESS WHEREOF, the parties hereto have executed this Contract in several counterparts as of the day and year first above written, each of which shall constitute an original.

UNITED STATES OF AMERICA

Dominic D. Tommasett
By Acting Administrator

Southwestern Power Administration

Approved as to Legal
Form and Sufficiency

Augustus D. ...
Regional Solicitor - Tulsa
Department of the Interior

ATTEST:

THE CITY OF LAMAR, MISSOURI

By *Curtis Bonney*
Title *City Clerk*

By *Gerald W. Gilkey*
Title *Mayor*

I, Curtis Bonney, certify that I am the Clerk of the governing board of the aforementioned Municipality, and that Gerald W. Gilkey, who signed this Agreement was then the executive officer of the said governing board and authorized under law to sign the said Agreement, and the said Agreement was duly signed by him, for and on behalf of the governing board of the said Municipality by authority of law, and is within the scope of the powers of the said governing board and executive officer.

(SEAL)

Curtis Bonney

UNITED STATES
DEPARTMENT OF THE INTERIOR
SOUTHWESTERN POWER ADMINISTRATION

RATE SCHEDULE F-1

SCHEDULE OF RATES FOR WHOLESALE FIRM POWER SERVICE

Effective:

During the period from November 30, 1971, and extending not later than November 30, 1976, in accordance with the Orders of the Federal Power Commission dated November 30, 1971, May 31, 1974, July 3, 1975, February 9, 1976, and August 17, 1976 (Docket No. E-7172).

Available:

In the area served by the Southwestern Power Administration (Government).

Applicable:

To wholesale power customers who, by contract, purchase firm power service.

Amount of Energy with Firm Power Service:

Energy associated with firm power service will be made available in such amounts as the customer may require, except that when such customer utilizes an auxiliary source of power supply, in conjunction with service purchased from the Government, the Government may limit the amount of energy furnished so that the total obligation of the Government to provide service during each billing period is proportionate to the contract demand as related to the customer's system annual maximum power requirement, and such obligation of the Government shall generally parallel the normal load factor and load patterns of such customer's system load. The procedures for metering and determining the amount of power and energy delivered shall be established in a written operating agreement.

Character and Condition of Service:

Alternating current, approximately sixty cycles per second, single or three phase. Power and energy will be delivered at such point or points of delivery and at such voltage or voltages as are specified by contract.

Monthly Rates:

DEMAND CHARGE: \$1.60 per kilowatt of billing demand.

ENERGY CHARGE: \$0.002 per kilowatt-hour for the first 150 kilowatt-hours per kilowatt of billing demand.

\$0.003 per kilowatt-hour for the next 290 kilowatt-hours per kilowatt of billing demand.

\$0.005 per kilowatt-hour for energy in excess of the first 440 kilowatt-hours per kilowatt of billing demand.

Adjustments for Conditions of Service:

(a) A discount of \$0.10 per kilowatt of billing demand per month will be allowed on the total monthly charge for firm power service if delivery of power and energy is made from the 69 kilovolt, 138 kilovolt, or 161 kilovolt transmission facilities owned or leased by the Government and if transformation and substation facilities are required at the point of delivery and are furnished by the power customer at no cost to the Government.

(b) A discount of \$0.40 per kilowatt of billing demand per month will be allowed on the total monthly charge for firm power service if delivery of power and energy is made from, and at the voltage of, the 138 kilovolt or the 161 kilovolt transmission facilities owned or leased by the Government, or at low or intermediate voltages from substations directly connected to such transmission facilities, and if the Government is thereby relieved of additional transmission costs.

Minimum Bill:

\$1.60 per month per kilowatt of contract demand less applicable discounts for conditions of service.

Contract Demand:

The contract demand will be the maximum rate in kilowatts which the Government is, by contract, obligated to deliver energy to the customer.

Billing Demand:

The billing demand for any month will be, as specified by contract, either (i) the contract demand or the highest thirty-minute integrated demand recorded during such month, whichever is the greater, or (ii) the contract demand or the highest scheduled demand during such month, whichever is the greater.

Adjustment for Billing Demand:

For Reduction in Demand:

In the event of one or more reductions in customer's demand during any billing period, each of which continues for two hours or more, due to the inability of the Government to supply the contract demand, the billing demand for such period shall be reduced for each such reduction in demand by an amount equal to the reduction in demand (in kilowatts) times the ratio that the number of hours of each such reduction bears to the total number of hours in such billing period.

For Power Factor:

None. The customer normally will be required to maintain a power factor at the point of delivery of not less than ninety percent (90%) lagging.

CONTRACT NUMBER
14-0001-1677

PROPOSED SPA-FULTON CONTRACT
Re: Fulton v. Kleppe
76-C-374-C
USDC/ND OK.
Conf. St. Louis, Mo.
March 25, 1977.

UNITED STATES
DEPARTMENT OF THE INTERIOR
SOUTHWESTERN POWER ADMINISTRATION

POWER SALES CONTRACT

Between

UNITED STATES OF AMERICA

and

THE CITY OF FULTON, MISSOURI

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UNITED STATES
DEPARTMENT OF THE INTERIOR
SOUTHWESTERN POWER ADMINISTRATION

POWER SALES CONTRACT

Between

UNITED STATES OF AMERICA

and

THE CITY OF FULTON, MISSOURI

THIS CONTRACT, made and entered into this 29th day of April, 1977, by and between the UNITED STATES OF AMERICA, as represented by the Administrator, Southwestern Power Administration, a bureau of the Department of the Interior (hereinafter "SPA"), and THE CITY OF FULTON, MISSOURI, a municipal corporation organized and existing under the laws of the State of Missouri, acting through its duly authorized officials (hereinafter "Fulton");

WITNESSETH, That

WHEREAS, under Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890; 16 U.S.C. 825s), the Secretary of the Interior is authorized to transmit and dispose of electric power and energy generated at reservoir dam projects under the control of the Department of the Army in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles, at rates confirmed and approved by the Federal Power

Article I, Section 1

Commission, and with preference in the sale of such power and energy given to public bodies and cooperatives; and

WHEREAS, pursuant to the said Section 5 of the Flood Control Act of 1944, the Secretary of the Interior has designated SPA as the agency to market electric power and energy generated at the following reservoir dam projects:

Beaver	Eufaula	Sam Rayburn
Blakely Mountain	Fort Gibson	Stockton
Broken Bow	Greers Ferry	Table Rock
Bull Shoals	Keystone	Tenkiller Ferry
Clarence Cannon	Narrows	Harry S. Truman
Dardanelle	Norfork	Webbers Falls
DeGray	Ozark	Whitney
Denison	Robert S. Kerr	

WHEREAS, under the said Section 5 of the Flood Control Act of 1944, Fulton is granted a preference in the sale and disposition of power and energy by SPA;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto contract and agree as follows:

ARTICLE I

DEFINITIONS

Section 1. System of Fulton. The term "System of Fulton", as used herein, shall mean the transmission and related facilities owned and operated by Fulton.

Section 2. System of SPA. The term "System of SPA", as used herein, shall mean the transmission and related facilities owned by the United States, and the transmission and related facilities owned by others in which capacity is by contract available to and utilized by SPA for the delivery of power and energy to Fulton under this Contract.

Section 3. Contract Year. The term "Contract Year", as used herein, shall mean the twelve-month period beginning on June 1 of each calendar year and extending through May 31 of the following year.

Section 4. Month and Billing Period. The terms "month" and "billing period", as used herein, shall mean the period beginning on the first day and extending through the last day of each calendar month.

Section 5. Uncontrollable Force. The term "Uncontrollable Force", as used herein, shall mean any force which is not within the control of the party affected, including, but not limited to, failure of water supply, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, or restraint by a court of general jurisdiction, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid.

ARTICLE II

SALE OF FIRM POWER AND
ASSOCIATED ENERGY BY SPA

Section 1. Sale of Firm Power. SPA shall sell and deliver, and Fulton shall purchase and receive, 3,000 kilowatts of hydroelectric power (hereinafter "Firm Power"), and such quantity of associated energy (hereinafter "Firm Energy") as is provided under Section 4 of this Article II.

Section 2. Definitions Applicable to Sale of Firm Power. The following definitions shall apply to the purchase and sale of Firm Power by Fulton under this Contract.

- (i) The "Firm Contract Demand" for any month shall be 3,000 kilowatts.
- (ii) The "Firm Billing Demand" for any month shall be the "Firm Contract Demand".

Section 3. Limitation on Purchase and Sale of Firm Power. It is recognized by the parties hereto that the quantity of Firm Power available to SPA for marketing is limited by the generating capability and operating characteristics of the reservoir dam projects for which SPA has been designated marketing agency. It is expressly understood and agreed, therefore, that SPA shall not be obligated to sell and deliver, and that Fulton shall not be entitled to purchase and receive, a quantity of Firm Power in excess of 3,000 kilowatts, as set forth in Section 1 of this Article II.

Section 4. Sale of Firm Energy. It is recognized that the Firm Energy purchased by Fulton from SPA under this Contract will be utilized by Fulton to supplement thermal energy available from the generating plant owned and operated by Fulton and/or thermal energy purchased by Fulton from sources of power supply other than SPA. It is therefore understood and agreed that SPA shall sell and deliver, and Fulton shall be entitled to purchase and receive, quantities of Firm Energy each month which in sum total shall not exceed the number of kilowatt-hours computed under the formula -

$$FE = 3,000 \times (H \times 0.42),$$

with the factors defined as follows:

FE = The maximum number of kilowatt-hours of Firm Energy which SPA is obligated to sell and deliver, and which Fulton may purchase and receive, during any particular month.

H = The total number of hours in such month.

Section 5. Scheduling of Firm Energy. Firm Energy purchased by Fulton shall be delivered by SPA as scheduled by Fulton, but at a rate not to exceed 3,000 kilowatts, in accordance with the following terms and conditions:

(i) On or before the 15th day of each month Fulton shall prepare and submit to SPA a written estimated schedule for the delivery of Firm Energy during the following month.

(ii) On or before Friday of each week Fulton shall prepare and submit to SPA a written schedule for the delivery of Firm Energy during the following week.

Such schedules may be changed by Fulton at any time, and from time to time, upon reasonable advance notice to SPA, each such change to promptly confirmed in writing by Fulton.

Section 6. Rates and Charges for Firm Power and Firm Energy.

(a) Fulton shall compensate SPA each month for 3,000 kilowatts of Firm Power and for the quantity of Firm Energy scheduled and received during the preceding month at the rates and under the terms and conditions set forth in Rate Schedule "F-1", a copy of which is attached to this Contract identified as Exhibit "1", and by this reference made a part hereof. It is understood and agreed that the rates and/or terms and conditions set forth in the said Rate Schedule "F-1", with the confirmation and approval of the Federal Power Commission, may be increased, decreased, modified, superseded, or supplemented, at any time, and from time to time, and that if so increased, decreased, modified, superseded, or supplemented, the new rates and/or terms and conditions shall thereupon become effective and applicable to the purchase and sale of Firm Power and Firm Energy under this Contract in accordance with and on the effective date specified in the order of the Federal Power Commission containing such confirmation and approval.

(b) SPA shall promptly notify Fulton if the rates and/or terms and conditions set forth in the said Rate Schedule "F-1", or the then applicable rate schedule, have been modified, increased, decreased, superseded, or supplemented. If the cost of Firm Power and Firm Energy

Article III, Section 1

purchased by Fulton under this Contract is thereby increased, and if Fulton does not wish to continue to purchase Firm Power and Firm Energy at such increased cost, Fulton shall within six months after receipt of such notice notify SPA in writing of its election to terminate this Contract in its entirety, such termination to be effective on the first day of the billing period specified by Fulton, but not later than twelve months from the date of such notice to SPA. Firm Power and Firm Energy purchased by Fulton during the period until the effective date of such termination shall be paid for at the new rates and/or terms and conditions as confirmed and approved by the Federal Power Commission.

ARTICLE III

POINT OF DELIVERY AND METERING

Section 1. Point of Delivery. Power and energy purchased by Fulton under this Contract shall be delivered by SPA to Fulton at the 69 kv point of interconnection between the System of SPA and the System of Fulton.

Section 2. Metering. (a) Power and energy delivered by SPA to Fulton under this Contract shall be metered at the point of delivery. Fulton shall have the right to install a checkmeter at the point of delivery.

(b) Each meter used under this Contract shall be read on or about the last day of each billing period by an authorized representative of SPA, and may be simultaneously read by a representative of Fulton, if Fulton so elects.

(c) Metering equipment shall be inspected and tested at least once each year by the party responsible therefor, and at any time upon reasonable request by either party. Metering equipment found to be defective or inaccurate shall be repaired and readjusted or replaced. A meter shall be considered inaccurate if it is found to deviate from an accurate standard meter in excess of one-half of one percent when tested at one hundred percent of load or one percent when tested at ten percent of load. If any inspection or test discloses an error exceeding two percent (2%), correction based upon the inaccuracy found shall be made of the records of electric service furnished since the beginning of the billing period immediately preceding the billing period during which the test was made, and such correction when made shall constitute full adjustment of any claim between the parties hereto arising out of such inaccuracy of metering equipment.

ARTICLE IV

ACCOUNTING, BILLING, AND PAYMENT

Section 1. Billing by SPA. SPA shall maintain an accurate record of the power and energy delivered to Fulton under this Contract. On or before the twentieth day of each month SPA shall prepare and mail to Fulton a billing statement setting forth in necessary detail the amount owed for Firm Power and Firm Energy purchased by Fulton during the preceding billing period.

Section 2. Payment by Fulton. (a) Billing statements rendered by SPA pursuant to Section 1 of this Article IV shall be due and payable within 30 days from the date of receipt thereof by Fulton, at:

Office of the Administrator
Southwestern Power Administration
P. O. Drawer 1619
Tulsa, Oklahoma 74101.

(b) If Fulton fails to pay any amount due under this Contract, except with regard to a billing statement the accuracy or the amount of which is in good faith disputed, SPA may, at its option, discontinue the delivery of power and energy under this Contract upon nonety days' prior written notice, unless payment of the amount due is made within such nonety-day period; Provided, That, for purposes of this Subsection (b)

and Subsection (c), below, the phrase "good faith disputed" is not intended, nor shall it be construed, to excuse or justify the failure to make timely payment of any amount due SPA under this Contract if such failure is based upon or involves a question or dispute regarding the validity or applicability of an SPA rate schedule which has been duly confirmed and approved by the Federal Power Commission. Such discontinuance by SPA of the delivery of power and energy, as hereinbefore provided, shall not relieve Fulton of liability for the minimum SPA rate schedule charges based upon the Firm Contract Demand during the period of such discontinuance, and the rights granted SPA herein shall be in addition to all other remedies available to SPA, either at law or in equity, for the breach of any of the provisions of this Contract.

(c) If Fulton fails to pay any bill on or before the due date, except that portion of any billing statement which is in good faith disputed by Fulton, an interest charge of one percent (1%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter as further liquidated damages, an interest charge of one percent (1%) of the principal sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

ARTICLE V

GENERAL PROVISIONS

Section 1. Facilities Furnished by SPA. SPA shall furnish, install, maintain, and operate, or cause to be furnished, installed, maintained, and operated, such facilities and equipment, including metering equipment, as may be reasonably necessary to deliver and meter the power and energy purchased by Fulton, and to assure reasonable protection to the System of Fulton.

Section 2. Facilities Furnished by Fulton. Fulton shall furnish, install, maintain, and operate such facilities and equipment as may be reasonably necessary to enable Fulton to receive power and energy at the point of delivery, and to assure reasonable protection to the System of SPA. Plans for the installation of protective equipment shall be submitted to SPA for approval before such equipment is installed, but such approval, if granted, shall not constitute a guaranty or waiver by SPA with regard to the adequacy thereof.

Section 3. Character of Service. Power and energy purchased by Fulton shall be delivered by SPA as three-phase alternating current, at a frequency of approximately 60 cycles per second, and at a nominal voltage of 69,000 volts.

Section 4. Continuity of Service. Power and energy purchased by Fulton under this Contract shall be furnished continuously and/or as scheduled except for interruptions or curtailments in service caused by an Uncontrollable Force, or by operation of devices installed for system protection, or by the necessary installation, maintenance, repair, and replacement of equipment. Such interruptions or reductions in service, as hereinbefore set forth, shall not constitute a breach of this Contract, and neither party shall be liable to the other for damages resulting therefrom. Except in case of an emergency, each party shall give the other reasonable advance notice of temporary interruptions or curtailments in service necessary for such installation, maintenance, repair, and replacement of equipment, and shall schedule such interruptions or curtailments so as to cause the least inconvenience to the parties hereto.

Section 5. Power Factor. Fulton shall take power and energy at the point of delivery at such power factor as will best serve its system at such point, except that Fulton shall normally maintain a power factor of not less than ninety percent (90%) lagging. Fulton shall not impose a power factor on the System of SPA which will result in an overload or impairment of such system, or which will interfere with the delivery of power and energy by SPA to its other customers. If the power factor imposed at the point of delivery by Fulton is such as to overload facilities or to impair

the service of SPA to its other customers, SPA shall have the right to open, or cause Fulton to open, such interconnecting switches as may be necessary to eliminate such overload or impairment of service.

Section 6. Reliability and Adequacy of Service. Electric service rendered by SPA under this Contract shall meet accepted standards of reliability and adequacy. If questions are raised concerning the quality of service, factual data shall be obtained with respect to the character of such service and appropriate corrective or remedial action shall be promptly taken by the party at fault.

Section 7. Reports and Information. Each party hereto shall furnish to the other such reports and information concerning its operations under this Contract as the other party may reasonably request from time to time.

Section 8. Right of Installation and Access. (a) Each party hereto grants to the other permission to install, maintain, and operate, or cause to be installed, maintained, and operated, on its premises any and all terminal equipment and associated apparatus and devices necessary in the performance of this Contract.

(b) Each party hereto shall permit duly authorized representatives and employees of the other party to enter upon its premises for the purpose of reading or checking meters, inspecting, testing, repairing, renewing, or

exchanging any or all of the equipment owned by the other party located on such premises, or for the purpose of performing any other work necessary in the performance of this Contract.

Section 9. Right of Removal. Any and all equipment, apparatus, devices, or facilities, placed or installed, or caused to be placed or installed, by the parties hereto on or in the premises of any of the other parties shall be and remain the property of the party owning and installing such equipment, apparatus, devices, or facilities, regardless of the mode or manner of annexation or attachment to real property of the other, and upon the termination of this Contract the owner thereof shall have the right to enter upon the premises of the other and shall, within a reasonable time, remove such equipment, apparatus, devices, or facilities.

Section 10. Construction Standards. The parties hereto shall construct, maintain, and operate their respective transmission and related facilities in accordance with standards and specifications at least equal to those provided by the National Electrical Safety Code of the United States Bureau of Standards. Nothing contained in this Contract shall be construed to render SPA or Fulton liable for any damage to property or injury to persons, including agents and employees of the other, arising out of or resulting from the operation and maintenance of the other's transmission and related facilities.

Section 11. Mutual Assistance by Contracting Parties. Assistance in the emergency maintenance and utilization of their respective systems, not otherwise provided for in this Contract shall be rendered by SPA and Fulton in accordance with the following terms and conditions:

- (i) If, in the maintenance or utilization of their respective transmission systems and related facilities for the purposes of this Contract, it becomes necessary by reason any emergency or extraordinary condition for Fulton or SPA to request the other to furnish personnel, materials, tools, and equipment, for the maintenance or modification of, or other work on, such transmission systems and related facilities to insure continuity of power and energy deliveries, the party requested shall cooperate with the other and render such assistance as the party requested may determine to be available. The party making such request, upon receipt of properly itemized bills, shall reimburse the party rendering such assistance for all costs and expenses properly and reasonably incurred in rendering such assistance, including not to exceed ten percent thereof for administrative and general expenses, such costs and expenses to be computed on the basis of current charges or rates used by the party rendering assistance in its own operations.
- (ii) No laborer or mechanic in the employ of Fulton performing any of the work contemplated by this Section shall be required or permitted to work in excess of eight hours in any workday or in excess of forty hours in any workweek at the site of such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this Section.
- (iii) The wages of each laborer or mechanic employed by Fulton in the performance of any of the work contemplated by this Section shall be computed

on the basis of a standard workday of eight hours and a standard workweek of forty hours, and work performed in excess of eight hours in any workday or forty hours in any workweek may be permitted only upon the condition that each laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any workday or in excess of forty hours in any workweek, whichever is the greater amount of overtime hours.

- (iv) For each violation of this Section a penalty shall be imposed upon Fulton in the amount of ten dollars (\$10) for each laborer or mechanic for each calendar day in which such laborer or mechanic is required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours upon said work without receiving compensation computed in accordance with this Section, and all penalties thus imposed shall be withheld for the use and benefit of the United States.
- (v) Work performed under this Section 11 is subject to the provisions of the Contract Work Hours Standard Act (Public Law 87-581, 76 Stat. 357-360).

ARTICLE VI

EFFECTIVE DATE, TERM, CONTINGENCIES

Section 1. Effective Date and Term of Contract. (a) This Contract shall become effective as of the date of its execution by the parties hereto, and shall remain in force and effect until midnight, May 31, 1987, unless sooner terminated as provided in Subsection (b), below, or in other provisions of this Contract.

(b) SPA or Fulton may, at its sole option, terminate this Contract as of the first day of the Contract Year beginning on June 1, 1978, or as of the first day of any Contract Year thereafter, upon not less than six months'

advance written notice to the other party, and this Contract shall ipso facto terminate and be without further force and effect as of the first day of the Contract Year specified in such notice, except that the rights of the parties hereto, if any, which may have accrued prior to such effective date of termination shall be and hereby are preserved.

Section 2. Start of Service. The delivery of power and energy under this Contract shall begin on the first day of the month following the date of its execution by the parties hereto, or at such earlier date as may be agreed to in writing by the parties hereto.

Section 3. Availability of Funds to SPA. (a) This Contract and all rights and obligations hereunder, and the expenditure of funds by SPA under the provisions hereof, are expressly conditioned and contingent upon the Congress making the necessary funds available to enable SPA to carry out the provisions of this Contract, and if the Congress fails to make such funds available, this Contract shall ipso facto terminate and have no further force or effect as of the last day of the fiscal year for which the Congress had previously made funds available, and Fulton hereby releases SPA from any and all liability for failure to perform and fulfill its obligations under this Contract for that reason.

(b) No obligation contained herein for the future payment of money by SPA shall be binding upon or enforceable against SPA unless and until the Congress makes funds available out of which such obligation or liability can be paid.

Section 4. Contingency Related to SPA-Associated Contract. (a) It is recognized that the System of Fulton is not interconnected with transmission facilities owned and operated by the United States, and that the delivery of Firm Power and Firm Energy by SPA to Fulton, and the designation by SPA of a point of interconnection as the point of delivery under Section 1, Article III, hereof, are conditioned and contingent upon the use by SPA of transmission and related facilities owned by others under rights granted SPA in that certain contract dated March 28, 1962, Interior Contract No. 14-02-0001-1002, between the United States and Associated Electric Cooperative, Inc., of Springfield, Missouri (hereinafter "SPA-Associated Contract"). Fulton hereby acknowledges that it is familiar with the terms and conditions of the SPA-Associated Contract, and that SPA has offered, if requested, to furnish a copy thereof to Fulton.

(b) If at any time the SPA-Associated Contract, for any reason, is terminated, rescinded, cancelled, or rendered inoperative, then and in that event, this Contract ipso facto shall terminate and be without further force and effect as of the effective date of such termination, rescission, cancellation, or being rendered inoperative, except that the rights of the parties hereto, if any, which accrued prior to such effective date shall be and hereby are preserved. Such termination of this Contract shall be without penalty to either party hereto, and SPA and Fulton hereby release the other party from any and all liability for failure to perform and fulfill its obligations under this Contract for that reason.

Section 5. Termination for Breach. If either party hereto breaches a material provision of this Contract, the other party, at its option, may terminate this Contract upon thirty days' prior written notice of its intention to do so, and this Contract shall ipso facto terminate at the end of such thirty-day period unless within that period such violation is corrected. If, however, such violation is corrected but damages are claimed by the offended party for such violation, then such termination shall be effective thirty days after the amount of such damages has been finally fixed by a federal court of competent jurisdiction, unless within that period such damages or amounts are paid by the offending party to the other. Neither party hereto, however, shall be considered to be in default or breach with respect to any obligation under this Contract if prevented from fulfilling such obligation by reason of an "Uncontrollable Force". Either party unable to fulfill any obligation under this Contract by reason of an Uncontrollable Force shall remove such inability with all possible dispatch.

Section 6. Remedies of Parties. Except as otherwise specifically provided, nothing contained in this Contract shall be construed to abridge, limit, or deprive any of the parties hereto of any means of enforcing any remedy, either at law or in equity, for the breach of any of the provisions hereof.

Section 7. Waivers. Waiver at any time of rights with respect to a default or any other matter arising in connection with this Contract shall not be deemed to be a waiver with respect to any subsequent default or matter.

Section 8. Notices. Any written notice, demand, or request, required or authorized under this Contract shall be deemed properly given to or served on SPA if mailed to:

Office of the Administrator
Southwestern Power Administration
P. O. Drawer 1619
Tulsa, Oklahoma 74101.

Any such notice, demand, payment, or request shall be deemed properly given to or served on Fulton if mailed to:

Superintendent of Utilities
City of Fulton
Fulton, Missouri 65251.

The designation of the persons to be notified, or the address of such persons, may be changed at any time by either party.

Section 9. Transfer of Interest by Fulton. No voluntary transfer of this Contract or of the rights of Fulton hereunder shall be made without the written approval of the Secretary of the Interior; Provided, That any successor to or assignee of the rights of Fulton whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of this Contract to the same extent as though such

successor or assignee were the original contractor hereunder; and Provided further, That the execution of a mortgage or trust deed, or judicial or foreclosure sale made thereunder, shall not be deemed voluntary transfers within the meaning of this Section.

ARTICLE VII

STANDARD PROVISIONS

Section 1. Provisions Relative to Employment. (a) As used in Subsection (b), below, the term "contractor" shall mean Fulton; "contracting officer" shall mean the Administrator, Southwestern Power Administration, or his designated representative; and "agency" shall mean the Southwestern Power Administration.

(b) During the performance of this Contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the

contracting officer setting forth the provisions of this Equal Opportunity clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures

authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(c) In the performance of any part of the work contemplated by this Contract, Fulton shall not employ any person undergoing sentence of imprisonment at hard labor.

Section 2. Officials Not to Benefit. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.

Section 3. Covenant Against Contingent Fees. Fulton warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Fulton for the purpose of securing business. For breach or violation of the warranty the United States shall have the right to annul this Contract without liability or in its discretion to add to the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE VIII

RESALE OF ELECTRIC ENERGY

Section 1. Distribution Principles. The parties hereto agree and understand that the purpose of making low cost, federally generated power available is to encourage the most widespread use thereof, and Fulton therefore agrees:

(a) That the benefits of federally generated power shall be made available at fair and reasonable terms to all of its consumers at the lowest possible rates consistent with sound business principles.

(b) That it will, to the extent that different rules are not prescribed by State laws or by State or Federal agencies, maintain proper

books of account in accordance with the system of accounts prescribed for public utilities and licensees by the Federal Power Commission.

(c) That it will furnish for the information of the Administrator of SPA copies of schedules of resale rates in effect on the date of execution of this Contract, and will also furnish for information of the Administrator of SPA schedules of resale rates hereafter adopted.

(d) That it will provide the Administrator of SPA an annual statement indicating the financial operations of Fulton's system, and indicating that the charges to consumers are consistent with the principles set forth in paragraph (a) hereof.

(e) That it will publish annually a report in a newspaper of general circulation in the area served by Fulton and will include in such report the operating and financial data of Fulton's electric distribution system, setting forth in detail the gross revenues and disposition thereof. The first of such reports shall be published on or before the 1st day of September following the date service is initiated under this Contract, and annually thereafter. In lieu of the published annual report, Fulton may furnish such information by mailing copies of the annual report to each of its consumers and a copy to the Administrator, SPA.

Section 2. Sales at Wholesale. Fulton will encourage its wholesale customers to implement the distribution principles of Section 1(a) of this Article VIII, and whenever a wholesale customer contract is executed, modified, or amended, will include in such contract arrangements similar to this set forth in Section 1(a) of this Article.

IN WITNESS WHEREOF, the parties hereto have executed this Contract in several counterparts as of the day and year first above written, each of which shall constitute an original.

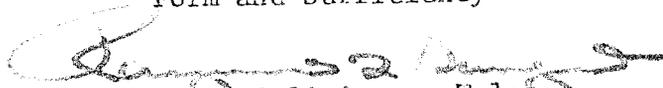
UNITED STATES OF AMERICA



By _____
Acting Administrator

Southwestern Power Administration

Approved as to Legal
Form and Sufficiency



Regional Solicitor - Tulsa
Department of the Interior

ATTEST:

THE CITY OF FULTON, MISSOURI

By Evelyn Hopkins

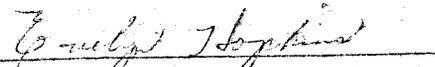
Title City Clerk

By W. C. Murphy

Title Mayor

I, Evelyn Hopkins, certify that I am the City Clerk of the governing board of the aforementioned Municipality, and that W. C. Murphy, who signed this Agreement was then the executive officer of the said governing board and authorized under law to sign the said Agreement, and the said Agreement was duly signed by him, for and on behalf of the governing board of the said Municipality by authority of law, and is within the scope of the powers of the said governing board and executive officer.

(SEAL)


Evelyn Hopkins, City Clerk

UNITED STATES
DEPARTMENT OF THE INTERIOR
SOUTHWESTERN POWER ADMINISTRATION

RATE SCHEDULE F-1

SCHEDULE OF RATES FOR WHOLESALE FIRM POWER SERVICE

Effective:

During the period from November 30, 1971, and extending not later than November 30, 1976, in accordance with the Orders of the Federal Power Commission dated November 30, 1971, May 31, 1974, July 3, 1975, February 9, 1976, and August 17, 1976 (Docket No. E-7172).

Available:

In the area served by the Southwestern Power Administration (Government).

Applicable:

To wholesale power customers who, by contract, purchase firm power service.

Amount of Energy with Firm Power Service:

Energy associated with firm power service will be made available in such amounts as the customer may require, except that when such customer utilizes an auxiliary source of power supply, in conjunction with service purchased from the Government, the Government may limit the amount of energy furnished so that the total obligation of the Government to provide service during each billing period is proportionate to the contract demand as related to the customer's system annual maximum power requirement, and such obligation of the Government shall generally parallel the normal load factor and load patterns of such customer's system load. The procedures for metering and determining the amount of power and energy delivered shall be established in a written operating agreement.

Character and Condition of Service:

Alternating current, approximately sixty cycles per second, single or three phase. Power and energy will be delivered at such point or points of delivery and at such voltage or voltages as are specified by contract.

Monthly Rates:

DEMAND CHARGE: \$1.60 per kilowatt of billing demand.

ENERGY CHARGE: \$0.002 per kilowatt-hour for the first 150 kilowatt-hours per kilowatt of billing demand.

\$0.003 per kilowatt-hour for the next 290 kilowatt-hours per kilowatt of billing demand.

\$0.005 per kilowatt-hour for energy in excess of the first 440 kilowatt-hours per kilowatt of billing demand.

Adjustments for Conditions of Service:

(a) A discount of \$0.10 per kilowatt of billing demand per month will be allowed on the total monthly charge for firm power service if delivery of power and energy is made from the 69 kilovolt, 138 kilovolt, or 161 kilovolt transmission facilities owned or leased by the Government and if transformation and substation facilities are required at the point of delivery and are furnished by the power customer at no cost to the Government.

(b) A discount of \$0.40 per kilowatt of billing demand per month will be allowed on the total monthly charge for firm power service if delivery of power and energy is made from, and at the voltage of, the 138 kilovolt or the 161 kilovolt transmission facilities owned or leased by the Government, or at low or intermediate voltages from substations directly connected to such transmission facilities, and if the Government is thereby relieved of additional transmission costs.

Minimum Bill:

\$1.60 per month per kilowatt of contract demand less applicable discounts for conditions of service.

Contract Demand:

The contract demand will be the maximum rate in kilowatts which the Government is, by contract, obligated to deliver energy to the customer.

Billing Demand:

The billing demand for any month will be, as specified by contract, either (i) the contract demand or the highest thirty-minute integrated demand recorded during such month, whichever is the greater, or (ii) the contract demand or the highest scheduled demand during such month, whichever is the greater.

Adjustment for Billing Demand:

For Reduction in Demand:

In the event of one or more reductions in customer's demand during any billing period, each of which continues for two hours or more, due to the inability of the Government to supply the contract demand, the billing demand for such period shall be reduced for each such reduction in demand by an amount equal to the reduction in demand (in kilowatts) times the ratio that the number of hours of each such reduction bears to the total number of hours in such billing period.

For Power Factor:

None. The customer normally will be required to maintain a power factor at the point of delivery of not less than ninety percent (90%) lagging.

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 FORTY-ONE FIREARMS,)
)
 Defendant.)

FILED
IN OPEN COURT

APR 29 1977

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

No. 76-C-453 ✓

ORDER FOR SALE OF FORTY-ONE FIREARMS

NOW, on this 29th day of April, 1977, it being shown to the Court by plaintiff that a Petition for Remission and Mitigation of Forfeiture filed herein by George Robert Thomas has been approved on certain conditions by the Attorney General, the Court finds that there are no issues remaining for litigation and this action should be concluded.

IT IS THEREFORE ORDERED that Plaintiff's Complaint for forfeiture be denied; that the Petition for Remission and Mitigation of Forfeiture of George Robert Thomas be granted.

IT IS FURTHER ORDERED that the forty-one (41) firearms which are the subject of this action, which are presently in the custody of the U.S. Marshal for this District, be sold by the U.S. Marshal to an authorized purchaser.

IT IS FURTHER ORDERED that all costs of the sale and any other costs and expenses incurred by plaintiff be deducted from the proceeds of the sale and the remaining proceeds paid to petitioner George Robert Thomas.


UNITED STATES DISTRICT JUDGE

property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Fifteen (15), Block Fourteen (14), VALLEY VIEW ACRES ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Ronnie Jay Lord and Cheryl Ann Lord, did, on the 28th day of February, 1974, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,000.00 with 6 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Bernadine Porter, was the grantee in a deed from Defendants, Ronnie Jay Lord and Cheryl Ann Lord, dated November 28, 1975, filed December 3, 1975, in Book 4193, Page 2132, records of Tulsa County, wherein Defendant, Bernadine Porter, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Ronnie Jay Lord, Cheryl Ann Lord, and Bernadine Porter, 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 \$9,693.01 as unpaid principal with interest thereon at the rate of 6 percent per annum from August 1, 1976, 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, Ronnie Jay Lord, Cheryl Ann Lord, and Bernadine Porter, in rem, for the sum of \$9,693.01 with interest thereon at the rate of 6 percent per annum from August 1, 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. 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

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 UNITED STATES FIDELITY AND)
 GUARANTY COMPANY, a Maryland)
 Corporation,)
)
 Defendant.)

76-C-157 ✓
No. CIV-76-157-BOH

FILED

APR 28 1977 JSM

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

J U D G M E N T

This cause came before the Court April 27, 1977, on plaintiff's and defendant's Motions for Summary Judgment. Having carefully reviewed the entire record in this case, including the pleadings, briefs and arguments of counsel, the Court has concluded that there is no genuine issue in this case as to any material fact and that the defendant is entitled to a Judgment in its favor as a matter of law. (Rule 56, Federal Rules of Civil Procedure)

Plaintiff's claim for relief arises out of the assignment of a chose in action for the alleged breach of an insurance contract. Plaintiff alleges liability predicated on defendant's refusal to defend two actions prosecuted against defendant's insured, Fenix & Scisson, Inc. Defendant's insured, a contractor of the Atomic Energy Commission, provided architect-engineer services for drilling and mining operations conducted on Amchitka Island, Alaska, and was twice sued as a result of accidents occurring during the course of such operations. Subsequent to defendant's refusal to defend its insured one of the lawsuits was successfully defended but at a cost of \$28,184.93, and the other suit was disposed of at a total cost of \$43,027.77. Plaintiff United States, as assignee of the insured's claims against defendant, seeks a total recovery of \$71,212.70.

The insurance policy at issue provided in pertinent part:

Article I required U.S.F.&G. to:

". . . pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of

- A. bodily injury or
- B. property damage

to which this insurance applies, caused by an occurrence, and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent. . . ."

The separate exclusionary clause stated that:

". . . the insurance does not apply to bodily injury or property damage arising out of any professional services performed by or for the Named Insured, including:

- 1. the preparation or approval of maps, plans, opinions, reports, surveys, designs or specifications and
- 2. supervisory, inspection or engineering services." (emphasis supplied)

In addition to the facts delineated above, the record discloses that the material, uncontroverted facts are as follows:

1. The two lawsuits defendant refused to defend involve claims of bodily injury arising out of professional services performed by defendant's insured.
2. Specifically, the two lawsuits involved allegations of negligence in defendant's specifications, designing, supervision and inspection of the aforementioned Amchitka Island project.

Based on the entire record discussed above in part, the Court concludes that the exclusion clause of the insurance policy in question, when applied to the facts of the Amchitka Island lawsuits previously discussed, clearly establishes an absence of any potential liability on the part of defendant United States Fidelity and Guaranty Company. An insurer is not obligated to defend a groundless suit when it would not be liable under its policy contract for any recovery had therein. United States Fidelity and Guaranty Company v. Reinhart, 171 F.2d 681 (10th Cir. 1948). Where provided for in the insurance policy, an insured should have the benefit of the insurance company defending any claim on which such company reasonably might be liable. If a policy is ambiguous, or the insurer's liability uncertain, the insurer should defend. See Conner v. Transamerica Insurance Company, 496 P.2d 770 (Okla. 1972). The policy at issue in this case discloses no intent on the part of the parties that the insurer should defend in the absence of any potential liability on its part, and it would be surprising if such an arrangement were agreed to. Forcing insurance companies to defend actions in which they possess no real interest would leave every settlement reached or plaintiff's verdict won vulnerable to the charge that the suit was not defended in good faith.

IT IS HEREBY ORDERED that pursuant to Rule 56 of the Federal Rules of Civil Procedure summary judgment is granted in favor of defendant United States Fidelity and Guaranty Company and against plaintiff United States of America, at plaintiff's cost.

Dated this 28th day of April, 1977.


UNITED STATES DISTRICT JUDGE

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

WELLS ALUMINUM, INC.,)
)
Plaintiff,)
)
vs.)
)
GATEWAY INDUSTRIES, INC.,)
)
Defendant.)

No. 75-C-118 ✓

FILED

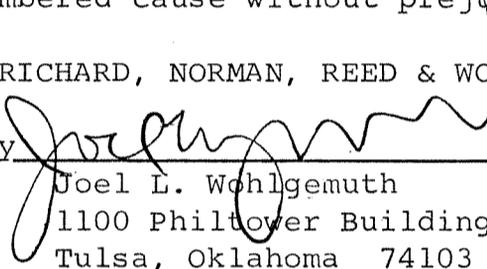
APR 27 1977 R

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

NOTICE OF DISMISSAL

The plaintiff, Wells Aluminum, Inc., pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, does hereby dismiss the above-styled and numbered cause without prejudice.

PRICHARD, NORMAN, REED & WOHLGEMUTH

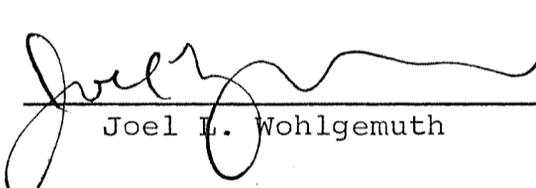
By 

Joel L. Wohlgemuth
1100 Philtower Building
Tulsa, Oklahoma 74103

Attorneys for the Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 26 day of April, 1977, I mailed a true and exact copy of the foregoing instrument to Mr. Irvine Ungerman, attorney for the defendant, Ungerman, Grabel, and Ungerman, Sixth Floor, Wright Building, Tulsa, Oklahoma 74103.


Joel L. Wohlgemuth

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

LARRY JAMES GAMBLE, #89865,)
)
) Petitioner,)
)
 vs.)
)
 STATE OF OKLAHOMA, et al.,)
)
) Respondents.)

No. 76-C-452-C ✓

FILED

APR 26 1977

ORDER

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

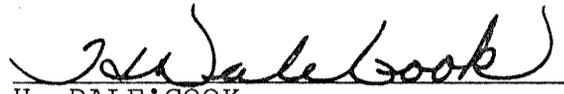
On March 31, 1977, this Court entered an Order granting a writ of habeas corpus in behalf of petitioner and ordering the State of Oklahoma to release petitioner from State custody if he was not afforded a new trial within ninety (90) days. Respondents filed a Notice of Intent to Appeal on April 11, 1977; and petitioner now moves the Court to order him released upon his own recognizance pursuant to Rule 23(c) of the Federal Rules of Appellate Procedure.

Rules 23(c) of the Federal Rules of Appellate Procedure provides:

"Pending review of a decision ordering the release of a prisoner in such a [habeas corpus] proceeding, the prisoner shall be enlarged upon his recognizance, with or without surety, unless the court or justice or judge rendering the decision, or the court of appeals or the Supreme Court, or a judge or justice of either court shall otherwise order."

On April 12, 1977, this Court entered an order granting respondents' Application for Stay of the issuance of the writ of habeas corpus pending a ruling by the Tenth Circuit Court of Appeals on respondents' appeal. Therefore, the Court has "otherwise ordered" under Rule 23(c) of the Federal Rules of Appellate Procedure; and petitioner's motion is hereby overruled.

It is so Ordered this 25th day of April, 1977.



H. DALE COOK
United States District Judge

FILED

APR 25 1977

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

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

WILLIAM M. DECKER and
MARGARET DECKER JENKINS,

Plaintiffs

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL NO. 76-C-424-C

JUDGMENT

This action came on for trial before the Court and a jury, Honorable H. Dale Cook, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, it is hereby

ORDERED AND ADJUDGED that the plaintiffs take nothing, that the action be dismissed on the merits, and that the defendant, United States of America, recover of the plaintiff, William M. Decker, its costs of action.

DATED at Tulsa, Oklahoma, this 25th day of April, 1977.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

SANDS AND TYLER

BY: *O. Jan Tyler*
O. JAN TYLER
2030 Republic National Bank Tower
Dallas, Texas 75201

ATTORNEYS FOR PLAINTIFF

NATHAN G. GRAHAM
United States Attorney

By: *Fred W. Schwendimann*
FRED W. SCHWENDIMANN
Attorney, Tax Division
Department of Justice
Room 8B37, 1100 Commerce Street
Dallas, Texas 75242

ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE **I L E D**
NORTHERN DISTRICT OF OKLAHOMA

APR 25 1977

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 -v-)
)
 ERNEST L. BIGGS, JR., ET AL.,)
)
 Defendants.)

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

Civil Action No.
76
75-C-158 B

JUDGMENT OF FORECLOSURE

THIS MATTER comes on for consideration this 25th
day of April, 1977, the plaintiff appearing by
Robert P. Santee, Assistant United States Attorney, and the
defendant J. L. Alls appearing by his attorney, David R.
Poplin, the defendant Laura Robinson d/b/a Hicks Robinson
Agency, appearing by her attorney, Leslie S. Hauger, Jr.,
the defendant J.D. Edwards, D.O. appearing by his attorney,
Fred A. Pottorf, the defendant Oklahoma Tax Commission appear-
ing by its attorney, Clyde E. Fosdyke, and the defendants
Ernest L. Biggs, Jr., Beth A. Biggs, James T. Feemster, Judy
C. Feemster; National Car Rental System, Inc., a Nevada cor-
poration; Jesse M. Long d/b/a Jesse's Truck Stop; Oklahoma
State Bank & Trust Co., Vinita, Oklahoma; and State of Okla-
homa, ex rel, District Court of Craig County, Oklahoma, appear-
ing not.

The Court, being fully advised and having examined
the file herein, finds that J. L. Alls was served with Summons
and Complaint on April 13, 1976, and with Summons and Amendment
to Complaint on June 17, 1976; that James T. Feemster and Judy
C. Feemster were served with Summons and Complaint on April 13,
1976, and with Summons and Amendment to Complaint on June 23,
1976; that National Car Rental System, Inc., a Nevada corporation,

was served with Summons and Complaint on April 12 and April 16, 1976, and with Summons and Amendment to Complaint on June 14, 1976; that Jesse M. Long d/b/a Jesse's Truck Stop, was served with Summons and Complaint on April 20, 1976, and with Summons and Amendment to Complaint on July 6, 1976; that Oklahoma State Bank & Trust Co., Vinita, Oklahoma, was served with Summons and Complaint on April 13, 1976, and with Summons and Amendment to Complaint on June 17, 1976; that Laura Robinson, d/b/a Hicks Robinson Agency, was served with Summons and Complaint on April 9, 1976, and with Summons and Amendment to Complaint on June 16, 1976; that State of Oklahoma, ex rel, District Court of Craig County, Oklahoma, was served with Summons and Complaint on April 13, 1976, and with Summons and Amendment to Complaint on June 17, 1976; that Oklahoma Tax Commission was served with Summons, Complaint, and Amendment to Complaint on June 16, 1976; and that J.D. Edwards, D.O., was served with Summons, Complaint, and Amendment to Complaint on July 15, 1976; all as appears from the Marshal's Returns of Service filed herein; and that Ernest L. Biggs, Jr. and Beth A. Biggs were served by publication, as appears from Proof of Publication filed herein.

It appears that J. L. Alls; Laura Robinson, d/b/a Hicks Robinson Agency; and Oklahoma Tax Commission have filed their Answers; that J.D. Edwards, D.O. has filed his Disclaimer; and that Ernest L. Biggs, Jr., Beth A. Biggs, James T. Feemster, Judy C. Feemster, National Car Rental System, Inc., a Nevada corporation; Oklahoma State Bank & Trust Co., Vinita, Oklahoma; Jesse M. Long d/b/a Jesse's Truck Stop; and State of Oklahoma, ex rel, District Court of Craig County, Oklahoma, 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, covering the following-described real property located in Craig County, Oklahoma, within the Northern Judicial District of Oklahoma:

The Westerly 150 feet (being the same as the West Half) of Lots 1 and 2 in Block 3 in the Town of Big Cabin, Oklahoma, according to the United States Government Survey and approved plat thereof.

THAT the defendants Ernest L. Biggs, Jr. and Beth A. Biggs did, on the 29th day of October, 1970, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the amount of \$11,600, with 7-1/4 percent interest per annum and further providing for the payment of annual installments of principal and interest; said note being co-signed by J.L. Alls.

THAT the defendants Ernest L. Biggs, Jr. and Beth A. Biggs did, on the 3rd day of April, 1973, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the amount of \$1,300, with 7-1/4 percent interest per annum, and further providing for the payment of annual installments of principal and interest.

The Court further finds that the defendants James T. Feemster and Judy C. Feemster, on November 6, 1973, signed an Assumption Agreement, wherein they assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Ernest L. Biggs, Jr., Beth A. Biggs, and J.L. Alls were released from personal liability on the above-described notes by instrument dated November 6, 1973, which instrument was executed on behalf of the United States of America, Farmers Home Administration, by Wiley C. Harrison, County Supervisor.

The Court further finds that the defendants James T. Feemster and Judy C. Feemster made default under the terms of the aforesaid mortgage note by reason of their failure to make annual installments due thereon, which default has continued, and that by reason thereof, the above-named defendants are now indebted to the plaintiff, on the first-mentioned note, in the amount of \$12,751.28 as of May 15, 1976, plus interest from and after said date at the rate of 7-1/4 percent per annum, until paid, plus the cost of this action, accrued and accruing.

The Court further finds that the defendants James T. Feemster and Judy C. Feemster made default under the terms of the aforesaid mortgage note by reason of their failure to make annual installments due thereon, which default has continued, and that by reason thereof, the above-named defendants are now indebted to the plaintiff on the second-mentioned note, in the amount of \$1,386.33 as of May 15, 1976, plus interest from and after said date at the rate of 7-1/4 percent per annum, until paid, plus the cost of this action, accrued and accruing.

The Court further finds that there is due and owing to the Oklahoma Tax Commission from defendant James T. Feemster the sum of \$1,200.29 and that Oklahoma Tax Commission 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.

The Court further finds that there is due and owing to Laura Robinson d/b/a Hicks Robinson Agency from defendants James T. Feemster and Judy C. Feemster the sum of \$305.30 plus attorney's fees of \$125.00, plus costs, and that Laura Robinson d/b/a Hicks Robinson Agency should have judgment, in personam, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants

James T. Feemster and Judy C. Feemster, in personam, for the sum of \$12,751.28, with interest thereon at the rate of 7-1/4 percent per annum from May 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 the plaintiff have and recover judgment against defendants James T. Feemster and Judy C. Feemster, in personam, for the sum of \$1,386.33, with interest thereon at the rate of 7-1/4 percent per annum from May 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 the Oklahoma Tax Commission have and recover judgment, in rem, against defendant James T. Feemster for the sum of \$1,200.29, 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 Laura Robinson d/b/a Hicks Robinson Agency have and recover judgment, in personam, against defendants James T. Feemster and Judy C. Feemster for the sum of \$305.30 plus attorney's fees of \$125.00, plus costs, 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 National Car Rental System, Inc., a Nevada corporation; Jesse M. Long d/b/a Jesse's Truck Stop; Oklahoma State Bank & Trust Co., Vinita, Oklahoma; and State of Oklahoma, ex rel, District Court of Craig County, Oklahoma.

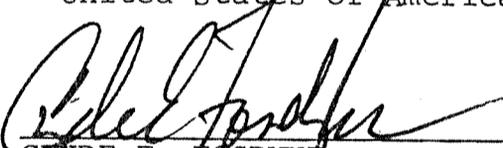
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property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

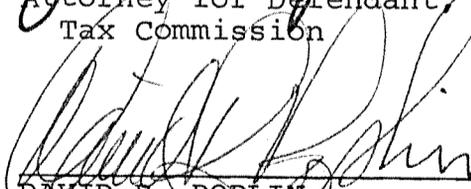
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants, and each of them, and all persons claiming under them since the filing of the complaint herein, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

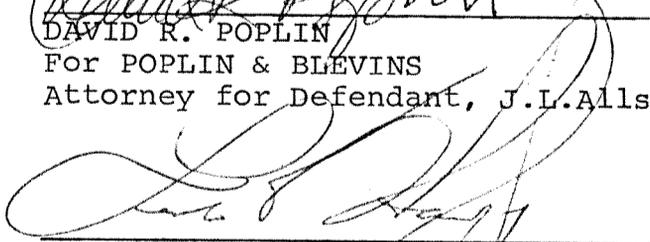

United States District Judge

APPROVED:


ROBERT P. SANTEE
Assistant United States Attorney
Attorney for Plaintiff,
United States of America


CLYDE E. FOSDYKE
Attorney for Defendant, Oklahoma
Tax Commission


DAVID R. POPLIN
For POPLIN & BLEVINS
Attorney for Defendant, J.L. Alls


LESLIE S. HAUGER, JR.
Attorney for Defendant, Laura
Robinson d/b/a Hicks Robinson
Agency

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

FILED

APR 25 1977

UNITED STATES OF AMERICA,)
)
 Plaintiff)
)
 v.)
)
 ROBERT E. BAKER,)
)
 Defendant)

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

CIVIL NO. 76-C-147-B

ORDER OF DISMISSAL

In accordance with the agreement of the parties and for
good cause shown, it is hereby
ORDERED that the ^{cause of action and} complaint of the plaintiff, United
States of America, be and ^{they are} ~~it is~~ hereby dismissed and that
each party bear its own costs.

ENTERED this 25th day of April 1977.

Allen E. Baron
UNITED STATES DISTRICT JUDGE

CONSENTED AND AGREED TO BY:

NATHAN G. GRAHAM
United States Attorney

By: William W. Guild
WILLIAM W. GUILD
Attorney, Tax Division
Department of Justice
Room 8B37, 1100 Commerce Street
Dallas, Texas 75242
(214) 749-1251

ATTORNEY FOR PLAINTIFF

Irvin E. Ungerman
IRVINE E. UNGERMAN
Wright Building
Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANT

DEFENDANTS

DESCRIPTIVE DESIGNATION

Larry D. Stuart

Assistant District Attorney, Craig County, Oklahoma, since January, 1975.

Southwestern Bell Telephone Company

Telephone Company

John Doe

Unknown police officer, Vinita, Oklahoma.

The designations and description of the various defendants are recited in plaintiff's complaint and amended complaint, except for the two defendants whose descriptive designations were obtained from plaintiff's deposition.

COMPLAINT

The basic allegations of plaintiff's complaint, together with excerpts of pertinent language from exhibits attached to said complaint, and amended complaint, reveal the following:

August 14, 1974---Harold Morgan, Assistant District Attorney, threatened to cause a sanity hearing to be held concerning the mental condition of the plaintiff. October 11, 1974--Kenneth McDonald procured and had drawn by Jess O. Walker, Undersheriff, a Petition for Commitment of Plaintiff, pursuant to 43 O.S. §55. This petition is Exhibit "1" to plaintiff's amend complaint and reveals the following. It was filed October 11, 1974. The allegations in support of the petition were: (1) "has been a patient in Eastern State Hospital in about 1960"; (2) "calls on the phone and sometimes won't talk"; (3) "Has threatened to burn down ex-husband's house"; and (4) "Stole his dog". In the printed form the following language is found: "That the condition of said person is such that it is not* necessary that _____ be taken into custody and detained pending final hearing of this petition". At the bottom of the form the following words appear: "*(Strike inapplicable words)." On the same date Judge William J. Whistler signed an Order for Hearing Petition for Order of Admission to Hospital. Said order provided that notice of such hearing be issued by the Court Clerk and served by the Sheriff upon the person named as allegedly mentally ill,

etc. This is Exhibit "2" to the amended complaint. On October 11, 1974, Judge Whistler, signed an "Order of Detention", Exhibit "3" to the amended complaint of plaintiff. Noted in handwriting at the bottom of the exhibit is the following: "Delivered Joan McDonald to E.S.H. Oct-11-74-Jess Walker". On the same day Judge Whistler entered an order entitled "Appointment of Sanity Commission" (Exhibit "4" to the amended complaint), and appointed Dr. P. L. Hays, M.D., Dr. Ray Thompson, D.O. and James Pendergrass, Legal Member. The order required said parties to file, under oath, their findings on or before the date set for hearing of said petition, to-wit: the 23rd day of October, 1974, except that the Legal Member of the Commission was to file his certificate following the hearing of said petition. Again, on the same date, a "Notice of Hearing" was signed by Judge Whistler and the Sheirff's Return reflects service of said Notice on Joan McDonald, the plaintiff, on October 11, 1974. Said return was signed by Jess O. Walker, and is Exhibit "5" to the amended complaint filed by the plaintiff. Exhibit "6" to the amended complaint is a Dismissal of the matter, and states as follows, being dated, October 23, 1974:

"Now on this 23rd day of October, 1974, this matter having been heard by a sanity commission herein, and the sanity commission finds that the respondent herein is not mentally ill, and that the same should be dismissed.

"IT IS THEREFORE THE ORDER, JUDGMENT AND DECREE OF THE COURT THAT THE Respondent herein, Joan McDonald, be and she hereby is ordered to be discharged from the Eastern State Hospital, in Vinita, Oklahoma, and the case be dismissed."

Said Order was signed by Judge Whistler.

With reference to these exhibits, the plaintiff maintains that the actions were without probable cause of justification; that it was unnecessary that plaintiff be taken into custody and detained; that the Order for Hearing Petition for Order of Admission to Hospital and Order of Detention were on the basis of the ex parte statements of Jess O. Walker; that she was not personally

served with a copy of the petition or notice of the hearing; that while Emmett Hull attempted to serve her with a copy of the petition that Floyd Moss wilfully grabbed said petition denying her the notice of said hearing required by statute. Plaintiff avers that on the basis of the Order alone she was confined in Eastern State Hospital from October 11, 1974, to October 23, 1974, and that at all times she was sane.

Plaintiff further alleges that during her detention at Eastern State Hospital, John Doe, the unknown police officer, under the direction of Robert M. Thompson, Chief of Vinita Police Department, on October 12, 1974, did illegally search plaintiff's house without a warrant and without consent; that said unknown police officer was confronted by the owner of the house and landlord, Clyde Walker, and said police officer was not able and did not produce a valid search warrant.

Plaintiff further alleges that on December 4, 1974, Kenneth McDonald called her and asked her to drive to his farm; that plaintiff did so and proceeded down a dead-end public county road in front of the McDonald farm; that McDonald blocked her passage down and out of said road with his truck; that he fired several rounds of ammunition from a double-barreled shotgun in front of her car; that he kept her pinned down in her car for about one hour until such time as Floyd Moss, Sheriff; Emmett Hull, Deputy Sheriff; Joe Davenport, Deputy Sheriff; and Jess O. Walker, Undersheriff, arrived, having been summoned by Kenneth McDonald, and that said persons arrested plaintiff without a warrant and at such time plaintiff alleges she was not committing a misdemeanor in the presence of the "Sheriffs". She was subsequently transported to the County Jail. Plaintiff avers that she was held during December 4, 1974, and on the next day, Harold D. Morgan, Assistant District Attorney, caused to be filed against the plaintiff "a Breach of the Peace" on a defective information (Exhibit "7" to plaintiff's amended complaint). Exhibit

"7" reflects the following charge:

"***did then and there wilfully, unlawfully, and wrongfully disturb the peace and quiet of one Kenneth McDonald, by then and there going to his residence where she had been forbidden to go, because she is under a peace bond; that she was there on several occasions, ran over his farm dog with a motor vehicle, all of which was calculated to arouse the said Kenneth McDonald to anger and to cause a breach of the peace, at the McDonald residence located 1 mile east, 1 mile north, and 3/4 mile east of Vinita, in Craig County, Oklahoma."

Plaintiff avers that she was confined in the County Jail in Vinita, Oklahoma, for two days and that her brother, Clifford F. Taylor, posted a \$200.00 property bond and she was released from confinement and the pending charges were dismissed on motion of the State on April 10, 1975.

She alleges that for the past year Harold Morgan, acting in his official capacity as Assistant District Attorney, filed charges several times against the plaintiff, i.e.: On December 5, 1974, he filed Breach of the Peace Charges (Exhibit "7" to plaintiff's amended complaint); December 11, 1974--Reckless Driving Charges. Plaintiff alleges that on 3 different occasions she requested Harold Morgan to file charges against Kenneth McDonald, to-wit: (1) In August, 1974, requested charges for Mistreatment of a Dog; (2) In October of 1974, attempted to have charges filed that Kenneth McDonald did maliciously and wilfully strike plaintiff's car with his car from the side and front; (3) Also, in October, 1974, McDonald maliciously and wilfully tore the lock off plaintiff's front door. In each instance plaintiff alleges that Morgan did not file the charges. Plaintiff avers at one time Harold Morgan stated that no charges would be filed until either Kenneth McDonald or plaintiff were killed.

Plaintiff then avers that prior to January of 1975, an illegal wiretap was placed upon her telephone by Southwestern Bell Telephone Company. That utilizing the information obtained from the wiretap, criminal charges were filed by Larry D. Stuart,

Assistant District Attorney, upon the complaint of Archie Jones, on January 29, 1975, for making obscene, threatening and harassing telephone calls. (Exhibit "8" to plaintiff's amended complaint). That a warrant was issued on February 4, 1975, as a result of the illegal wiretap and plaintiff was arrested and falsely confined in Craig County Jail for a period commencing February 4, 1975, until February 10, 1975. That said charge was dismissed on Motion of the State on April 10, 1975. Plaintiff avers that when said calls were made she was not in fact home.

This Court has gone into great detail concerning the allegations of the plaintiff's complaint in view of the Motions presently pending before the Court for determination.

The Court additionally notes that plaintiff's amended complaint remains the same as the original complaint, save and except for the addition of Larry D. Stuart, Assistant District Attorney, as a party defendant, and allegations concerning his alleged participation in the filing of the criminal charges against the plaintiff on January 29, 1975.

Heretofore, the Court sustained the Motion to Dismiss of Southwestern Bell Telephone Company for failure to state a claim, and said Company is no longer a party to the instant litigation.

Turning to the Motion to Dismiss and Answer to the original complaint filed by the defendant, Archie Jones, the Court finds that the Magistrate recommended that the Motion be overruled for failure to prosecute due to a misunderstanding in connection with a hearing on said motion. The Court never acted on said Recommendation and said defendant, Archie Jones, in the interim, filed an answer and Motion to Dismiss as to the amended complaint.

The following Motions to Dismiss have been filed and are presently pending:

1. Motion to Dismiss filed by the defendant, Archie Jones;
2. Motion to Dismiss of defendant, Harold Morgan;

3. Motion to Dismiss of the defendant, Larry D. Stuart.

On March 30, 1977. the Court entered a "Notice" notifying the parties that pursuant to Rule 56 of the Federal Rules of Civil Procedure, since the Court would consider extraneous materials submitted by the parties that said Motions to Dismiss would be converted and treated as Motions for Summary Judgment.

The Court will first consider the Motion of the Defendant, Archie Jones. The unrefuted affidavit of the defendant, Archie Jones, attached to his brief submitted November 14, 1975, reveals the following:

"That he is one of the defendants named in Case No. 75-C-469, styled Joann McDonald, Plaintiff, vs. Jess O. Walker, et al., defendants, pending in the United States District Court for the Northern District of Oklahoma.

"That the Complaint in said case alleges that the said Archie Jones, acting in an official capacity under color of state law did willfully and with malice conspire unlawfully with the defendant, McDonald, to deprive plaintiff of her rights secured by certain specified amendments to the United States Constitution.

"That said Archie Jones states, under oath, that during the entire period of the said alleged conspiracy described in said Complaint, did not at any time hold any office, whether federal, state or local, nor had any official capacity with any governmental agency, and therefore, did not and could not have conspired in any official capacity under color of state law with the said defendant, McDonald, or any other person."

The plaintiff testified in her deposition taken February 9, 1976, in pertinent part, as follows:

Page 17:

A. All right. Well, I started getting accused of making a lot of phone calls. They were supposed to have been obscene and harassing and --

Q. Excuse me. But who was accusing you?

A. Well, the first I knew about it was, I guess, when the telephone company started calling me. My ex-husband, Kenneth McDonald, his uncle [Jones] had made several accusations and his brother had made several; he had made many hisself(sic); and then the phone company started calling me and telling me that I was going to have to quit using this telephone for these purposes, and I told them I was not using that phone for those purposes. ***

Page 24:

- Q. And the telephone company wasn't the one that signed the complaint against you?
- A. No.
- Q. All right. So what you are saying then, as your complaint states, is that you were arrested because of information from the telephone company?
- A. Because of complaints that were made.
- Q. Now, who made the complaints?
- A. Well, Archie Jones, my ex-husband's uncle.
- Q. Do you know specifically what he complained of?
- A. Just of harassing and obscene phone calls.
- Q. Who did he make that complaint to?
- A. Well, I assume Mr. Stuart.
- Q. He went to the district attorney?
- A. I think so.
- Q. And he is the one that made the complaint?
- A. Yes, he is.
- Q. Why would he do that?
- A. Well, he didn't like me. The whole family didn't like me.

Page 28:

- Q. I am trying to zero in on what it is that we have to talk about and I am trying to eliminate all the other issues. Now, you indicated that the information from the alleged wiretap was utilized by defendant Morgan in prosecuting the complaint made by defendant Archie Jones. How did Mr. Morgan get that information?
- A. Well, I don't know if Harold Morgan was still up there or Mr. Stuart had taken over that office at that time.
- Q. Well, how did the prosecutor get that information?
- A. Archie Jones went up there, I assume.
- Q. Now, Archie Jones doesn't work for the telephone company, does he?
- A. No, he doesn't.

Q. Is he in any way connected with the telephone company?

A. Not that I know of.

Q. Mr. Jones is the one that filed the complaint?

A. He is.

Q. And you were arrested because of Mr. Jones' complaint?

A. Yes, I was.

Page 52 in discussing who made the telephone calls (a friend named Linda Mosley and her children)

A. Well, they just said that they had made calls on my phone.

Q. Did they tell you who they called?

A. Well, they had called Kenneth's brother a time or two and Linda had called her mother-in-law several times.

Q. Did they call Archie Jones?

A. I don't recall whether they specifically named Archie as one they had called on not.

Q. Why were they calling these people?

A. I don't have any idea; just to --

Q. To harass them?

A. Well, I don't know what their reasons were. Linda was quite an active girl and she got quite a kick out of doing things like that.

Q. Why did they call your ex-husband's brother?

A. I wouldn't know; just to aggravate him.

Page 54:

Q. Did you ask them if they had called Archie Jones?

A. No, I don't recall asking them specifically if they had called Archie.

Q. At that time, did you know you were accused of making harassing calls to Mr. Jones?

A. Well, I didn't know I was accused of making calls to Mr. Jones until I was arrested for it.

Q. At the time you were arrested, did you talk to either your daughter or Linda about the possibility that they might have made the calls?

A. Not at the time, no.

- Q. Did it enter your mind that they might have made the calls?
- A. Well, yes, I thought about it.
- Q. Then why didn't you ask them?
- A. Well, I didn't have the opportunity to right away.
- Q. Did you tell the police or the district attorney --
- A. No.
- Q. -- someone else might have made the calls?
- A. No.
- Q. Why not?
- A. Because they pretty well had their mind made up that I was doing all the bad things.

Page 57:

- Q. Mrs. McDonald, I hope I won't be too long on this, but we are talking about the telephone calls that were made to the Archie Jones residence. Now, I have a few questions. Have you yourself ever made any phone calls to the Archie Jones residence?
- A. I called Mrs. Jones one time and talked to her.
- Q. Have you ever made phone calls to that residence of a harassing or obscene nature?
- A. No, never.
- Q. Now, have you ever made calls to Kenneth McDonald, your ex-husband, of a harassing or obscene nature?
- A. No.
- Q. Have you ever made phone calls to his brother, Marvin McDonald, of a harassing or obscene nature?
- A. No, I have not.
- Q. Do you know whether or not Mrs. Mosley or your daughter have?
- A. Only what they told me.
- Q. Have they told you they have made these phone calls?
- A. Yes, they did.

and further on page 58:

- Q. Mrs. McDonald, I have a couple more. Did Mrs. Mosley and your daughter tell you that they had made these harassing telephone calls from your telephone?
- A. Yes.

In Hohensee v. Dailey, 383 F.Supp. 6 (USDC, M.D.Pa. 1974)

it was stated by the Court:

"§1983 of the Civil Rights Act guarantees to every person who is a citizen of the United States and within the jurisdiction thereof the 'rights, privileges, or immunities secured by the Constitution and laws.' Suit against one said to be depriving a person of his rights under the Constitution or laws of the United States may only proceed against a defendant said to be acting 'under color of any statute, ordinance, regulation, custom, or usage' of any state. Reading Plaintiff's complaint as liberally as possible the Plaintiff does not allege that the State of Pennsylvania was in any way involved in the supposed deprivation of his Constitutional rights by the Defendants. At most Hohensee may be interpreted as claiming that the Defendants have utilized the State law to his detriment. The mere fact that an individual utilizes state process against another does not make the actor's conduct cognizable as state action. Gibbs et al. v. Titelman et al., 502 F.2d 1107 (3d Cir., filed August 1, 1974). A private party may be brought under the purview of §1983 when a plaintiff alleges a conspiracy between that private party and one acting under color of state law. At the least a Petitioner must allege active cooperation by the state in the private party's conduct in order for state action to be present. Gilmore et al. v. City of Montgomery, Ala. et al., 417 U.S. 556 (decided June 17, 1974); Phillips et al. v. Trello et al., 502 F.2d 1000 (3d Cir., filed July 26, 1974)." (Emphasis supplied)

There is no showing in the complaint, the pleadings, or the deposition of the plaintiff of any conspiracy between the defendant, Archie Jones and one acting under color of state law so as to bring said Archie Jones within the purview of §1983 of Title 42 U.S.C.

The Court, therefore, finds that the Motion to Dismiss for failure to state a claim as to the defendant, Archie Jones, should be sustained.

The Court will now turn to the Motion to Dismiss filed by the defendant, Harold Morgan, for failure to state a claim. The file reveals that Harold Morgan was an Assistant District Attorney until January, 1975, serving Craig County, Oklahoma. The acts complained of by the plaintiff appear to have occurred during the tenure of Mr. Morgan as Assistant District Attorney. The Court further finds that the acts and conduct of said defendant were within the scope of his authority. The Court, therefore, finds that the Motion to Dismiss of Harold Morgan should be sustained.

Imbler v. Pachtman, 427 U.S. 409 (1976).

The final and last Motion to Dismiss to be discussed and determined by the Court is the Motion of the defendant, Larry D. Stuart. The complaint alleges that Larry D. Stuart, was an Assistant District Attorney for Craig County, Oklahoma, commencing in January, 1975. He became an Assistant District Attorney on January 6, 1975. The allegations by the plaintiff as to this defendant, all occurred during the time he was such Assistant District Attorney and was acting within the scope of his authority, and the Motion to Dismiss should be sustained. Imbler v. Pachtman, 427 U.S. 409 (1976)

IT IS, THEREFORE, ORDERED that the Motions to Dismiss of the defendants, Archie Jones, Harold Morgan and Larry D. Stuart, be and the same are hereby sustained for failure to state claim.

ENTERED this 25 day of April, 1977.



CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATE DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Civil Action, File Number 75-C-394-C

ALAN BAETJER RUSSO,)
)
 Plaintiff,)
)
 v.)
)
 LYNN L. JONES, ROBERT A. CHANCE,)
 J. L. PARSONS, JIM SHERL, SAM)
 KEIRSEY and THE CITY OF TULSA,)
 Tulsa, Oklahoma, a municipal)
 corporation,)
)
 Defendants.)

Judgment

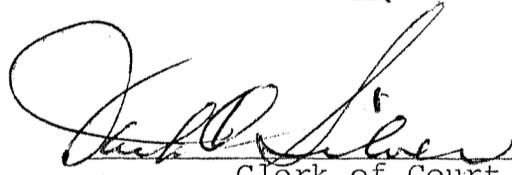
FILED
 APR 22 1977
 Jack P. Silver, Clerk
 U. S. DISTRICT COURT

This action came on for trial before the Court, the Honorable J. Dale Cook, United States District Judge, presiding, and the issues having been duly tried, the Court finding that Plaintiff's actions provoked any actions by the Defendants and that the Defendants, under the circumstances, acted at all times in good faith and with reasonable force with no intent to injure the Plaintiff, and a decision having been duly rendered,

It is Ordered and Adjudged

that the Plaintiff take nothing by reason of his action herein and that said action be dismissed on the merits as to all named Defendants.

Dated at Tulsa, Oklahoma, this 22 day of April, 1977.


 Clerk of Court

approved.
J. Dale Cook
U.S. Dist. Judge

FILED

APR 22 1977

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

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

SMOKEY'S OF TULSA, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
AMERICAN HONDA MOTOR COMPANY,)
INC.,)
)
Defendants.)

No. 76-C-622

MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COMES NOW the plaintiff and voluntarily moves for
dismissal of this action without prejudice to further action
thereon pursuant to FRCP 41 (a) 2.

FARMER, WOOLSEY, TIPS & GIBSON
INCORPORATED

By _____
LAWRENCE A. JOHNSON

Attorneys for Plaintiff

FILED
APR 26 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Now on this 26 day of April, 1977, this action is
dismissed without prejudice to any further action thereon pursuant
to FRCP 41 (a) 2.

(Signed) H. Dale Cook

JUDGE

CERTIFICATE OF MAILING

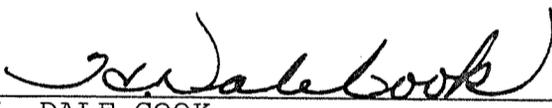
I, Lawrence A. Johnson, do hereby certify that on the
_____ day of April, 1977, I mailed a true and correct copy of the
above and foregoing Motion and Order to Roland N. Smoot, 9th Floor,
800 Wilshire Building, Los Angeles, California 90017, by placing
same in the U.S. mail with postage thereon fully prepaid.

LAWRENCE A. JOHNSON

exception to this exhaustion requirement if it is shown ". . . that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner." Petitioner does not allege an absence of available State remedies, and the ineffectiveness of State relief cannot be established if no attempt is made to obtain that relief. Daegele v. Crouse, 429 F.2d 503 (10th Cir. 1970); Whiteley v. Meacham, 416 F.2d 36 (10th Cir. 1969); Morehead v. State of California, 339 F.2d 170 (9th Cir. 1964). Petitioner admits that he has made no attempt to obtain any form of relief under the provisions of Title 22 O.S. § 1141.1 et seq.

Therefore, because remedies available to petitioner in the Courts of the State of Oklahoma have not been exhausted, the Petition for Writ of Habeas Corpus is hereby dismissed, and the application for temporary restraining order is hereby denied.

It is so Ordered this 18th day of April, 1977.



H. DALE COOK
United States District Judge

3 ✓

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
vs.) CIVIL ACTION NO. 76-C-375-C
)
BILL L. BASHAM, CHERYL E. BASHAM,)
MIKE SANDERS, MARY SANDERS,)
COUNTY TREASURER, Washington)
County, Oklahoma, and BOARD OF)
COUNTY COMMISSIONERS, Washington)
County, Oklahoma,)
)
) Defendants.)

FILED

APR 18 1977

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

STIPULATION OF DISMISSAL

COME NOW the United States of America by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and County Treasurer, Washington County, and Board of County Commissioners, Washington County, by and through their attorney, Willard Boone, Assistant District Attorney for Washington County, State of Oklahoma, and hereby stipulate that the above-captioned action be dismissed.

Dated this 18th day of April, 1977.

UNITED STATES OF AMERICA

NATHAN G. GRAHAM
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney



WILLARD BOONE
Assistant District Attorney
Washington County, Oklahoma

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

HESS OIL VIRGIN ISLANDS)
CORPORATION, a United States)
Virgin Islands Corporation,)

Plaintiff,)

vs.)

No. 75-C-383-C ✓

UOP PROCESS DIVISION, a)
division of UNIVERSAL OIL)
PRODUCTS COMPANY, a Delaware)
corporation; WORD INDUSTRIES)
PIPE FABRICATING, INC., an)
Oklahoma corporation; and)
FISHER CONTROLS COMPANY, a)
subsidiary of Monsanto Corpora-)
tion, a Delaware corporation,)

Defendants,)

vs.)

THE LITWIN CORPORATION,)

Third Party Defendant.)

FILED

APR 18 1977 740

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

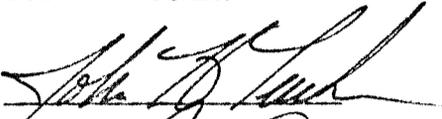
ORDER SUSTAINING MOTION FOR SUMMARY
JUDGMENT OF FEDERAL INSURANCE COMPANY AND
INSURANCE COMPANY OF NORTH AMERICA TO CLAIM
OF LITWIN

On the 7th day of October, 1976, the Plaintiffs Insurance Company of North America and Federal Insurance Company filed herein its Motion to Dismiss the Claim of Litwin under Rule 12(b)(6), F.R.C.P., Title 28, U.S.C. As matters outside the pleadings were submitted and considered by the Court without objection, and each party granted opportunity to submit any additional evidence and neither party being desirous of introduction of additional matters, said Motion is hereby treated as one for Summary Judgment and is sustained as provided by said Rule 12 (b) and Rule 56, F.R.C.P, Title 28, U.S.C.

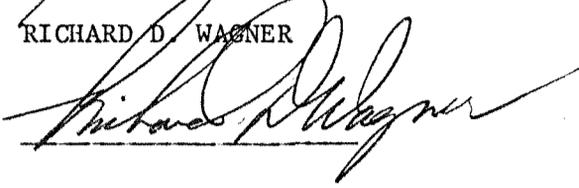

UNITED STATES DISTRICT JUDGE,
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS: *as to form*

JOHN H. TUCKER

A handwritten signature in cursive script, appearing to read "John H. Tucker", written over a horizontal line.

RICHARD D. WAGNER

A handwritten signature in cursive script, appearing to read "Richard D. Wagner", written over a horizontal line.

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

LIBERTY INVESTORS LIFE INSURANCE)
COMPANY,)
)
Plaintiff,)
)
vs.)
)
B. CYRIL ROGERS, et al.,)
)
Defendants.)

No. 72-C-409

FILED

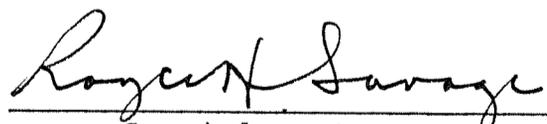
APR 15 1977/vm

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

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW on this 15th day of April, 1977, upon consideration of the Motion and Stipulation for Dismissal Without Prejudice presented to the Court by the plaintiff, Liberty Investors Life Insurance Company, and defendants Robert L. Studebaker and Robert Organ, and being fully advised in the premises, the Court has determined that the parties are entitled to the relief requested in said Motion.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that this cause of action be dismissed only as against defendants Robert L. Studebaker and Robert Organ, without prejudice to its refiling, and that plaintiff and both of said defendants each bear their own respective costs herein, including attorneys' fees.


Special Master

RECEIVED

5 1977

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

U. S. ATTORNEY

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.)
)
BILL WHITE CHEVROLET COMPANY,)
)
Defendant.)

CIVIL ACTION NO. 76-C-507-B
FILED

APR 15 1977

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

STIPULATION OF DISMISSAL

COME NOW the United States of America by and through
its attorney, Robert P. Santee, Assistant United States Attorney
for the Northern District of Oklahoma, and Bill White Chevrolet
Company, defendant, by and through its attorney, H. I. Aston,
and hereby stipulate and agree that this action is dismissed.

Dated this 4th day of April, 1977.

NATHAN G. GRAHAM
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney



H. I. ASTON
Attorney for Defendant
Bill White Chevrolet Company

bcs

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

FILED

APR 14 1977

WESTINGHOUSE ELECTRIC
CORPORATION, a Pennsylvania
corporation,

Plaintiff,

vs.

AMERICAN LAUNDRY DISTRIBUTING
CO., INC., an Oklahoma
corporation, FRED WASHINGTON
and PATRICIA WASHINGTON,

Defendants.

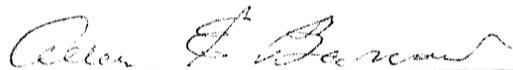
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. C-75-88-B

ORDER OF DISMISSAL

The parties having filed a Stipulation of Dismissal voluntarily dismissing with prejudice the above-styled cause against Defendants Fred Washington and Patricia Washington,

IT IS HEREBY ORDERED that the above-styled cause *of action & complex* against Defendants Fred Washington and Patricia Washington *is are* dismissed with prejudice.



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

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

DOUGLAS W. SELLS and)
NORMA L. SELLS, Husband and)
Wife, Individually and as)
Surviving Father and Mother)
For and On Behalf of the Heirs,)
Executors and Administrators)
of the Estate of Prentiss)
Douglas Sells, Deceased,)
)
Plaintiffs,)
)
vs.)
)
THE UNITED STATES OF AMERICA)
and THE CITY OF SAND SPRINGS,)
OKLAHOMA, a municipal corporation,)
)
Defendants.)

FILED
APR 14 1977 *pen*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 77-C-27-C ✓

O R D E R

Plaintiffs bring this action pursuant to the Federal Tort Claims Act, Title 28 USC § 2671 et seq., alleging that the joint negligence of the defendant United States and the defendant City of Sand Springs (City) resulted in the death of their minor son, Prentiss Douglas Sells. The jurisdiction of this Court is invoked under Title 28 USC § 1346. Specifically, plaintiffs allege that the United States Army Corps of Engineers was responsible for the erection of certain dam facilities on the Arkansas River in Tulsa County, Oklahoma which resulted in the creation of Keystone Lake. Plaintiffs allege that there are actually two dams, the primary dam and the so-called low water dam, each of which contains gates to permit the passage of water through the dams. Between these two dams there is a smaller lake to which there is public access. Plaintiffs' son drowned while attempting to rescue a companion who had been pulled beneath the surface of this smaller lake, allegedly as a result of a sudden flow of water caused by opening the gates of one of the dams. Plaintiffs allege that the Corps of Engineers was negligent

282 F.Supp. 175 (N.D. Ohio 1967), the plaintiff brought suit against the United States and the City of Cleveland, alleging that both had been negligent in allowing certain property to be vandalized. Although the Complaint was dismissed against the City for failure to state a cause of action, the Court noted that dismissal would have been proper in any event because

"[t]he joinder of the defendant United States of America as a co-defendant, charged as a tortfeasor under the Federal Tort Claims Act . . . cannot collaterally bestow federal jurisdiction on a negligence claim against the defendant City of Cleveland. It is nevertheless essential that there be diversity of citizenship or other basis for federal jurisdiction of plaintiff['s] . . . suit against the defendant City of Cleveland in federal court." Id. at 181.

The following cases also support dismissal of individual defendants in the absence of any independent jurisdictional grounds:

Falk v. United States, 264 F.2d 238 (6th Cir. 1959); Pacific Freight Lines v. United States, 239 F.2d 191 (9th Cir. 1956); United States v. Dooley, 231 F.2d 423 (9th Cir. 1955); Benbow v. Wolf, 217 F.2d 203 (9th Cir. 1954); Carvelli v. United States, 174 F.Supp. 377 (E.D.N.Y. 1959); Desert Beach Corporation v. United States, 128 F.Supp. 581 (S.D. Calif. 1955); Sullivan v. United States, 120 F.Supp. 217 (N.D. Ill. 1954).

The case relied upon by plaintiffs to support their position, Jacobs v. United States, supra, appears to be one of the few instances, if not the only one, in which a federal court has applied the concept of ancillary jurisdiction to retain jurisdiction over non-diverse individual co-defendants under the Federal Tort Claims Act. The Court in that case noted that the same set of operative facts could involve twelve plaintiffs and numerous defendants and concluded that, under the unusual facts present, judicial "economy and efficiency" dictated that the entire action should be litigated in one forum. This Court does not find similar unusual circumstances to be present in the instant case. Generally, the application of ancillary jurisdiction

to party joinder is limited to aggregating claims to satisfy the jurisdictional amount. 7 Wright & Miller, Federal Practice and Procedure § 1659.

"Because the jurisdictional amount requirement is statutory in character and the diversity of citizenship and federal question requirements are constitutionally based, the use of ancillary or pendant jurisdiction to overcome the latter type of subject matter jurisdiction defect is more difficult to justify." Id.

It is the opinion of the Court that the majority rule, limiting the jurisdiction of federal courts over individual co-defendants under the Federal Tort Claims Act, should be applied in this case. Therefore, defendant City of Sand Springs' motion to dismiss is hereby sustained.

It is so Ordered this 14th day of April, 1977.



H. DALE COOK
United States District Judge

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

EDITH PAULINE SMITH,)
)
) Plaintiff,)
)
-vs-)
) Case No. 76-C-177-C
)
LaBARGE, INC., a)
foreign corporation,)
)
) Defendant.)

Case No. 76-C-177-C

FILED

APR 13 1977

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

ORDER OF DISMISSAL

Now on this 13th day of April, 1977, this matter came before me, the undersigned Judge, on the Stipulation of Dismissal, signed by all parties in the above-entitled cause. And the Court, being fully advised in the premises, and upon consideration of such Stipulation of Dismissal, finds that said action should be dismissed with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Stipulation of Dismissal heretofore executed by all parties in this cause be accepted and that this action be and the same hereby is dismissed with prejudice to the filing of a new action at a later date.

W. Dale Cook
United States District Judge

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL B. SOLI, BEVERLYE W.
SOLI, LLOYD D. VANN, B. JOYCE
VANN, GERALDINE HILL, if living
or if not, her unknown heirs,
assigns, executors, and
administrators, BOBBY SMITH d/b/a
FURNITURE HUT, MERCANTILE BANK & TRUST
CO., A CORP., MAJOR HILL, COUNTY
TREASURER, TULSA COUNTY, AND BOARD OF
COUNTY COMMISSIONERS, TULSA COUNTY,

Defendants.

FILED

APR 12 1977

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

No. 75-C-504-C

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 11th day
of April, 1977, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney, and the defendants,
Mercantile Bank & Trust Co., A Corp., appearing by its attorney,
William (Don) Evans, County Treasurer, Tulsa County, and the
Board of County Commissioners, appearing by their attorney
Gary J. Summerfield, Assistant District Attorney, and the
defendants Michael B. Soli, Beverlye W. Soli, Lloyd D. Vann,
B. Joyce Vann, Geraldine Hill, if living or if not, her unknown
heirs, assigns, executors and administrators, Bobby Smith d/b/a
Furniture Hut, and Major Hill, appearing not.

The Court being fully advised and having examined the
file herein finds that the defendants Major Hill, Geraldine Hill,
if living or if not, her unknown heirs, assigns, executors, and
administrators, B. Joyce Vann and Lloyd D. Vann, were served by
publication as shown on the Proof of Publication filed herein on
March 11, 1976 and January 28, 1977; that the defendants County
Treasurer, Tulsa County, and the Board of County Commissioners,
Tulsa County, Oklahoma, were served with Summons and Complaint
on November 6, 1975, and Summons and Amendment to Complaint on

September 22, 1976; that the defendant Mercantile Bank & Trust Co., A Corp., was served with Summons and Complaint on November 7, 1975, and Summons and Amendment to Complaint on September 22, 1976; that the defendant Bobby Smith d/b/a Furniture Hut was served with Summons and Complaint on November 7, 1975, and Summons and Amendment to Complaint on September 22, 1976; that the defendant Michael B. Soli was served with Summons and Complaint on December 3, 1975, and Summons and Amendment to Complaint on October 15, 1976; and that the defendant Beverlye W. Soli was served with Summons and Complaint on December 3, 1975, and Summons and Amendment to Complaint on October 6, 1976.

It appearing that the defendants County Treasurer, and Board of County Commissioners, Tulsa County, Oklahoma have duly filed its answers herein on November 18, 1975; and that the defendant Mercantile Bank & Trust Co., A Corp. has duly filed its Disclaimer herein on November 13, 1975, and September 27, 1976; and that the defendants Michael B. Soli, Beverlye W. Soli, Lloyd D. Vann, B. Joyce Vann, Geraldine Hill, if living or if not, her unknown heirs, assigns, executors and administrators, Bobby Smith d/b/a Furniture Hut and Major Hill 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 District of Oklahoma:

Lot Thirty (30), Block Seven (7), in
FAIRHILL 2nd ADDITION, a Sub-Division
to the City of Tulsa, Tulsa County,
Oklahoma according to the recorded plat thereof

THAT the defendants Michael B. Soli, and Beverlye W. Soli, did, on the 7th day of July, 1969, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the sum of \$13,250.00, with 7-1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants Lloyd D. Vann and B. Joyce Vann are the grantees in a deed from Michael B. Soli and Beverlye W. Soli, dated October 20, 1971, filed October 22, 1971, in Book 3990, Page 422, records of Tulsa County, Oklahoma, wherein Lloyd D. Vann and B. Joyce Vann agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that the defendant, Geraldine Hill, is the grantee in a deed from Lloyd D. Vann and B. Joyce Vann, dated December 10, 1973, filed January 8, 1974, in Book 4102, Page 772, records of Tulsa County, Oklahoma, wherein Geraldine Hill agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that the defendants, Michael B. Soli, Beverlye W. Soli, Lloyd D. Vann, B. Joyce Vann, and Geraldine Hill, if living or if not, her unknown heirs, assigns, executors, and administrators, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$12,471.46, with 7-1/2 percent interest per annum from February 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 defendant Geraldine Hill, if living or if not, her unknown heirs, assigns, executors and administrators, the sum of \$ 80.76 plus interest according to law for personal property taxes for the year(s) 1974-76 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.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from defendants Michael B. Soli and Beverlye W. Soli, the sum of \$ 10.70 plus interest according to law for personal property taxes for the year 1971 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.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from defendants Lloyd D. Vann and B. Joyce Vann, the sum of \$ 9.72 plus interest according to law for personal property taxes for the year 1973 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, Lloyd D. Vann, B. Joyce Vann, Geraldine Hill, if living or if not, her unknown heirs, assigns, executors, and administrators, in rem, and Michael B. Soli and Beverlye W. Soli, in personam, for the sum of \$12,471.46, with interest thereon at the rate of 7-1/2 percent per annum from February 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 defendant Geraldine Hill, if living or if not, her unknown heirs, assigns, executors and administrators, for the sum of \$ 80.76 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 County of Tulsa have and recover judgment, in rem, against the defendants Michael B. Soli and Beverlye W. Soli, for the sum of \$ 10.70 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 County of Tulsa have and recover judgment, in rem, against the defendants Lloyd D. Vann and B. Joyce Vann, for the sum of \$ 9.72 as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that

such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendants Bobby Smith d/b/a Furniture Hut and Major Hill.

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

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


UNITED STATES DISTRICT JUDGE

APPROVED:



ROBERT P. SANTEE,
Assistant U.S. Attorney



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

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

FILED

APR 12 1977

pk

MARGARET HOWARD,)
)
 Plaintiff,)
)
 vs.)
)
 K-MART, a Division of S. S.)
 KRESGE COMPANY, a Foreign)
 Corporation, and TULSA-MINGO)
 and 21st, a Joint Venture,)
)
 Defendants.)

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

No. 76-C-471-C

STIPULATION OF DISMISSAL WITH PREJUDICE

By agreement hereof, the plaintiff, Margaret Howard, does in fact agree to dismiss her cause of action with prejudice against the defendants, K-Mart, a division of S. S. Kresge Company, a foreign corporation, and Tulsa-Mingo and 21st, a joint venture.

RUCKER, TABOR, McBRIDE & HOPKINS, INC.

JEFFREY A. KING

BY:

Jeffrey A. King
Attorneys for the Plaintiff
Post Office Box 1439
Tulsa, Oklahoma 74101

APPROVED AS TO FORM:

Dana A. Rogers by W. Michael Hill
Attorney for K-Mart, a division
of S.S. Kresge Company

Richard B. Knight
Attorney for Tulsa-Mingo and
21st, a joint venture

jh

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

MARGARET HOWARD,)
)
 Plaintiff,)
)
 vs.) No. 76-C-471-C
)
 K-MART, A DIVISION OF S. S.)
 KRESGE COMPANY, a foreign)
 corporation, and TULSA-MINGO)
 AND 21ST, a joint venture,)
)
 Defendants.)

FILED

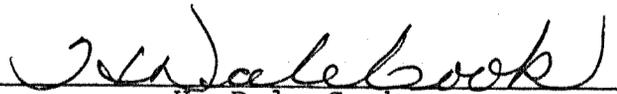
APR 7 1977

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

ORDER

On the 1st day of April, 1977, pursuant to the regular setting of the Pretrial Conference, the plaintiff appeared by her counsel, Rucker, Tabor, McBride & Hopkins, Inc. and Jeffrey A. King; and K-Mart, a division of S. S. Kresge Company, a foreign corporation, appeared through its attorney, Dan A. Rogers; and Tulsa-Mingo and 21st, a joint venture, appeared through its attorney, Dan Wagner; that the plaintiff orally argued her Motion for Dismissal Without Prejudice as to Tulsa-Mingo and 21st, a joint venture, which was sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the plaintiff's Motion to Dismiss Without Prejudice Tulsa-Mingo and 21st, a joint venture, shall be sustained.



H. Dale Cook
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
) CIVIL ACTION NO. 76-C-338-C
 vs.)
) This action applies only to
 3.10 Acres of Land, More or) the Oil Leasehold Interest
 Less, Situate in Osage County,) in the estate taken in:
 State of Oklahoma, and Sidney)
 Gore, et al., and Unknown) Tract No. 526ME
 Owners,)
) (Included in D.T. filed in
 Defendants.) Master File #401-2)

J U D G M E N T

1.

Now, on this 6th day of April, 1977, this matter comes on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 526ME, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

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 property described in said Complaint. Pursuant thereto, on June 24, 1976,

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APR 7 1977

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

the United States of America filed its Declaration of Taking of a certain estate in such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

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

7.

On the date of taking in this action, the owner of the estate taken in subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the estate taken in such tract. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estate condemned in subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject property and the amount fixed by the Stipulation As To Just Compensation; and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED AND DECREED that the United States of America has the right, power, and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

11.

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

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the estate condemned in subject property as follows:

TRACT NO. 526ME

OWNER: Sidney Gore

Award of just compensation pursuant to Stipulation -----	\$100.00	\$100.00
Deposited as estimated compensation -----	50.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$100.00
Deposit deficiency -----	\$ 50.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this

Court, in this Civil Action, to the credit of subject property, the deficiency sum of \$50.00, and the Clerk of this Court then shall disburse the deposit for subject tract as follows:

To Sidney Gore ----- \$100.00.

D. H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

Hubert A. Marlow
HUBERT A. MARLOW
Assistant United States Attorney

FILED

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

APR 7 1977 J.

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

THE CHASE MANHATTAN BANK, (National Association), et al.,)
)
Plaintiffs,)
)
vs.)
)
HOME-STAKE PRODUCTION COMPANY, et al.,)
)
Defendants.)

M.D.L. 153 ✓
74-C-151

ORDER OF FINAL JUDGMENT UNDER RULE 54(b)
UPON ORDER OF CIVIL CONTEMPT
AGAINST B. A. PARKHURST

NOW on this 5th day of April, 1977,
there comes before this Court the motion filed on behalf of
B. A. Parkhurst under Rule 54(b) of the Federal Rules of
Civil Procedure requesting that the Order of Civil Contempt
entered herein against said B. A. Parkhurst on June 24,
1976, be certified as a final judgment.

WHEREUPON, the Court finds that there are numerous
claims, counterclaims and cross-claims in this multidistrict
civil litigation, and that the contempt proceedings against
said B. A. Parkhurst are ancillary to the principal issues
herein;

The Court further finds that there is no express
reason for delay in declaring said Order of Civil Contempt
to be a final adjudication of the issues contained in said
contempt proceeding;

The Court further finds that the attorneys of re-
cord for Home-Stake Production Company Deferred Compensation
Trust, which defendant stands to benefit from compliance
with said order of contempt, have expressed no objection to

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

FILED

APR 4 1977

TULSA GENERAL DRIVERS, WAREHOUSEMEN,)
AND HELPERS LOCAL NO. 523,)
)
Plaintiff,)
)
v.)
)
FABRICUT, INC.,)
)
Defendant.)

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

No. 76-C-34(B)

ORDER

The Court has for consideration the Findings of Fact and Conclusions of Law of the Special Master, and having carefully perused the entire file and being fully advised in the premises finds:

That the Findings of Fact and Conclusions of Law of the Special Master are not clearly erroneous, and the ten days having expired with no objections thereto having been filed, the Court hereby adopts and confirms said Findings of Fact and Conclusions of Law.

IT IS HEREBY ORDERED:

1. That the Plaintiff's Petition is hereby denied.
2. That each party should bear its own attorneys' fees.

IT IS SO ORDERED this 4th day of April, 1977.

Allen F. Banon
Judge, U. S. District Court

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APR 4 1977

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

RAY MARSHALL, Secretary of Labor,
(Successor to W. J. Usery, Jr.)
United States Department of Labor,

Plaintiff,

v.

INTERSTATE MOTOR FREIGHT SYSTEM, a
corporation,

Defendant.

CIVIL ACTION FILE

No. 76-C-438 B

ORDER OF DISMISSAL

This cause came on for consideration upon the stipulation of the parties, and it appearing to this Court that the defendant represents that it has complied, and will continue to comply, with the applicable provisions of the Age Discrimination in Employment Act of 1938, as amended (29 U.S.C. 621 et seq.), hereinafter referred to as the Act, that the defendant paid to the plaintiff the amounts stipulated, which the Court finds to be a fair and equitable settlement regarding defendant's former employee, Paul A. G. Nelson, under the Act to date of this order, and the Court being otherwise fully advised in the premises, it is,

ORDERED, ADJUDGED and DECREED that ^{Cause of} ~~this~~ ^{and complaint} ~~action~~ be, and the same hereby is, dismissed, with each party bearing its own costs, and it is further

ORDERED that upon receipt by plaintiff of the amount as provided in this order, he shall promptly proceed to make distribution to the person named in said stipulation of the parties or to the legal representative of the person so named if he should become deceased. If after making reasonable and diligent efforts to disburse said amount to the person entitled thereto,

plaintiff is unable to do so because of inability to locate the proper person, or because of a refusal to accept payment of any such person, he shall, as provided in 28 U.S.C. 2041, deposit such unpaid funds with the Clerk of this Court. Any of such funds may be withdrawn for payment to a person entitled thereto upon order of this Court.



UNITED STATES DISTRICT JUDGE

FILED

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

APR 1 1977

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

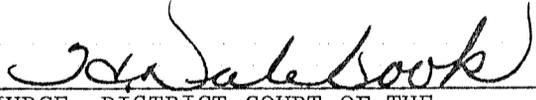
CLARENCE W. WILLIAMS,)
)
 Plaintiff,)
)
 vs.)
)
 NABISCO, INC., a corporation;)
 NATIONAL BISCUIT COMPANY, a)
 corporation; and DONALD RAY)
 WILEY,)
)
 Defendant.)

NO. 76-C-529-C

ORDER OF DISMISSAL

ON this 1st day of April, 1977, upon the written application of the parties for a Dismissal with Prejudice for 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.

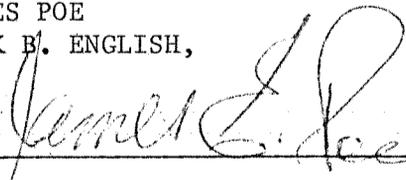
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendants be and the same hereby is dismissed with prejudice to any future action.



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

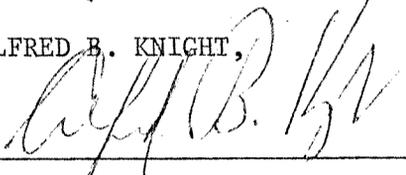
APPROVAL:

JAMES POE
JACK B. ENGLISH,

By: 

Attorneys for the Plaintiff

ALFRED B. KNIGHT,



Attorneys for the Defendants.