

FILED

OCT 31 1977 10

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

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

IN RE: )  
)  
HOME-STAKE PRODUCTION )  
COMPANY, )  
)  
Debtor, )  
)  
ROY VONFELDT, )  
)  
Plaintiff, )  
)  
vs. )

Bankruptcy No. 73-B-922 ✓

Judge Royce H. Savage as Trustee of the HOME-STAKE PRODUCTION COMPANY, Bankrupt; HOME-STAKE PRODUCTION COMPANY; Lewis E. Abram, M. D.; William L. Acker; Arthur Altvater; American Realty and Oil Corporation; Anderson Fine Arts Foundation; Alfred W. Baldwin; James E. Bent; Frances W. Lent; William P. Booker; Abney Boxley; Walter C. Bradford; Byron A. Case; Trusts of Dartmouth College; DRTMTH Realty and Oil Corporation; Demat Corporation; Devereux Foundation; Ducks Unlimited Inc.; Joanne Dwinell; Ebbitt Realty and Oil Corporation; Mrs. M. S. Fletcher; Paris Fletcher, Esq.; Alex H. Galloway; May Glauberman; Grace Episcopal Church Greenville; Ellsworth S. Grant; Estate of Bowman Gray; Gordon Gray; James L. Harper; Hartford College for Women; Ralph A. Hart; Katharine Heard; Carol B. Hegarty; H. G. Holcombe, Jr.; Holton Realty and Oil Corporation; Human Resources Center; Donald M. Kendall, Kenmur Corporation; Estate of Anthony H. Kolmep; Lawrence Hospital; Estate of H. L. Lawson, Jr.; The Loomis Institute; Mollie Makover; Stanford Makover; Sylvan A. Makover; Thomas Makover; Marfred Production Company; Massachusetts Collect of Pharmacy; John H. McGloon; Memphis University School; M. J. Mitchell M.D.; Oregon College Foundation Inc.; Trustees of Philps Academy; Archie M. Richards; Stuart N. Towe, M.D.; Saddle River Country; St. Johns Episcopal Church; H. A. Schaefer, III; Nancy G. Schaefer; Priscilla G. Schaefer; W. B. Scoville Foundation, Inc.; Shelculdav Corporation; Sobiloff Brothers Inc.; Hugo Sonnenschein, Jr.; Dorothy Spivak; Mary M. Sposeto and William E. Murray; Talcott Stanley; R. W. Stoddard; John S. Tabor; Mark K. Taylor; Tucker-Maxon Oral School; Tusculum College; Oklahoma Foundation Properties, Inc.; University of the South; Milton F. Untermeyer; Virginia Foundation for Independent Colleges; Virginia Polytechnic Institute Education Foundation Inc.; Bowman Gray, III; Frank Christian Gray; Robert D. Gray; Lyons Gray; Peyton Gray; Gordon Gray, Jr.; Burton Craig Gray; Clayland B. Gray; Bernard Gray; Washington and Lee University; M. M. Wheeler; J. M. and Margaret B. White; Elizabeth S. Whiteside; George Williamson; Keith Willis; Yale University; Pricilla M. Wilfley; Albany Law School; American Society for Technion Israel Institute of Rech. Inc.; American Cancer Society; Arizona Realty and Oil Corporation; Arkansas Realty and Oil Corporation; August Preparatory School; Executor of Estate of Ruth H. Axe; Barker Foundation; Theodore R. Bartels; Evelyn T. Bates; Baylor University College of Medicine; Edward B. Benjamin, Sr.; Edward B. Benjamin, Jr.; W. Mente Benjamin; James E. Bent; Frances W. Bent; T. Roland Berner, Curtiss Wright Corporation;

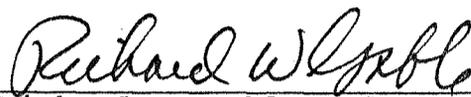
Betz Corporation; Blood Research Foundation; Buckley School CT NY; California Institute of Technical; Case W. Reserve University; Chappaqua Orchestral Association; Childrens Aid and Society for the Prevention of Cruelty to Child of Erie County, New York; Clifton PK CNTR RAPT CH; Lillian D. Cohen; Marcus and Bertha Coler Foundation, Inc.; Community Hospital of Roanoak Valley; Shelvy Cullom Davis; Diocese of Buffalo, New York; James B. Draper; Kenneth C. Ebbitt; Echo Valley Fund; Albert Einstein College of Medicine of Yeshiva University; Fifth Third UN TR CO TRST; First Presbyterian Church; First United Methodist Church; William Flowers; E. H. Frank TRSE for Jared Frank Tausig under TR Indenture DTD 12/24/64; Sybil A. Frank TRSE for Jephtha Tausig under TR Indenture DTD 12/13/63; Helene D. Gorman; John L. Gray, Jr., Esq.; Horace Greeley Educ. Fd. Inc.; Greenfield Hill Congregational Church; John M. Hall; YMCA of Metro Hartford; President & Fellows of Harvard College; President and Fellows of Harvard Law School FD; Highland Park Hospital Foundation; C. M. Hinderer; Island Center of St. Croix LTD; Kaybob Corporation; Joseph S. Kelley; Bartow Kelly; W. Duke Kimbrell; Solene B. Lemann; Leslie College; Mary Mac Namara; William A. Mac Namara, M.D.; John G. Martin; Charles E. Mason, Jr.; Massachusetts Institute of Technology; Mattern, Mattern, Seay & Hayes; Moral Re-Armanent Inc.; William E. Murry; New York University; The Society of the New York Hospital; New Britain Memorial Hospital; Noroton Presbyterian Church; Oregon College Foundation Inc.; Oregon Historical Society; Pinnacle Oil Company; Miss Porters School; Betty S. Price, TRSE for Barbara Jane Leeds; Betty S. Price, TRSE for Wendy E. Leeds; Purnell School; Olive H. Quenelle; St. Edwards University; Salisbury School Inc.; Bankers Trust Company, Executor of Martin Samuels Estate; H. T. Saperston; Herman A. Schaefer; Harry and Ruth Schapiro; Schenedtady TR CO D-1220 TRSE U/D of TR for Schenectady Foundation; Martha S. Scheu; Samuel Scrivemfr, Jr.; John A. Sistro; Mrs. G. M. Smith; Jane Stanley T/F; Peggy Ann Stanley; Stanford University; Unitarian Church of Augusta; University of Bridgeport; University of Nebraska Foundation; University of Pennsylvania; University of Oregon; University of Wisconsin Foundation; University of Miami; Utica College of Syracuse University; J. Parker Van Zandt; William C. Vereen, Jr.; Wadsworth Atheneum; Mary Ann and Charles R. Walgreen; Washington College Academy; Wells College; Wellesley College; Babette W. West; Gertrude G. Wilkinson; Williams College; John E. F. Wood, Esq.; Harry C. Wyatt; St. Pauls Episcopal Church,

Defendants,

DISCLAIMER OF INTERESTS

Donald M. Kendall, H. A. Schaefer III, Nancy G. Schaefer and Priscilla G. Schaefer do hereby disclaim any interest in the properties sought to be reclaimed by Roy Vonfeldt pursuant to his Complaint dated at Russell, Kansas, August 31, 1977, such properties being known as the Gorham Water Flood Project owned by Home-Stake Production Company and situated in Russell County, Kansas.

WHEREFORE, defendants pray that this action be dismissed as to them and that they be relieved of any and all costs.



Richard W. Gable and  
Gable, Gotwals, Rubin, Fox,  
Johnson & Baker  
2010 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119  
Telephone No. (918) 582-9201

Attorneys for Defendants  
Donald M. Kendall, H. A. Schaefer III,  
Nancy G. Schaefer and  
Priscilla G. Schaefer

ORDER OF DISMISSAL

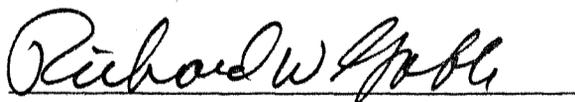
Based upon the above Disclaimer the defendants, Donald M. Kendall, H. A. Schaefer III, Nancy G. Schaefer and Priscilla G. Schaefer, are hereby released and discharged and this action is dismissed as to them.

DATED this 31<sup>st</sup> day of October, 1977.

  
William E. Rutledge  
Bankruptcy Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Disclaimer of Interests and Order of Dismissal was mailed, postage prepaid, to Holland & Rupe, Post Office Box 206, 618 Main Street, Russell, Kansas, 67665, and to Farmer, Woolsey, Tips & Gibson, Mid-Continent Building, Tulsa, Oklahoma, 74103, this 31 day of October, 1977.



10-31-77  
JLS/dm

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

A. C. HIGGINS, )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 CAROL JACKSON, d/b/a EAST )  
 SIDE MOTOR COMPANY, )  
 )  
 Defendant )

No. 77-C-270-C

**FILED**

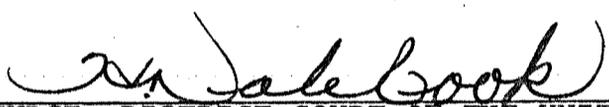
OCT 31 1977

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

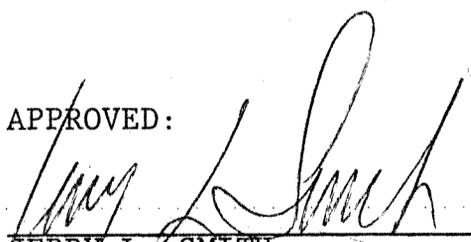
ORDER OF DISMISSAL

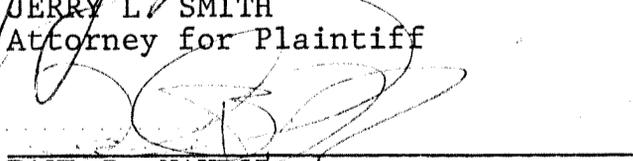
On this 31<sup>st</sup> day of october, 1977, upon the written application of the parties for a dismissal without prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have agreed to dismiss the Complaint without prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dsimissed pursuant to said application.

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

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

APPROVED:

  
\_\_\_\_\_  
JERRY L. SMITH  
Attorney for Plaintiff

  
\_\_\_\_\_  
PAUL B. NAYLOR  
Attorney for Defendant

*dm*

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

HERVEY J. HOWARD,

Plaintiff,

v.

ROCKY MOUNTAIN PRESTRESS,  
INC.,

Defendant.

No. 77-C-327-B

**FILED**

**OCT 31 1977**

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

ORDER

It appearing to the Court that the above-entitled cause has been fully settled and compromised, and based on stipulation of the parties, it is hereby Ordered that the above-entitled cause of action and complaint be and hereby is dismissed with prejudice, with each party to bear its own costs.

Dated this 31<sup>st</sup> day of October, 1977.

Allen E. Bonaw  
U.S. District Court Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

OCT 31 1977

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

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 77-C-374-B
	)	
7.42 Acres of Land, More or	)	Tract No. 303E
Less, Situate in Osage County,	)	
State of Oklahoma, and James	)	
P. Lloyd, et al., and Unknown	)	
Owners,	)	
Defendants.	)	

J U D G M E N T

1.

NOW, on this 31 day of October, 1977, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 303E, 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 tract.

5.

The Acts of Congress set out in paragraph 2 of the Complaint herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on September 1,

1977, the United States of America filed its Declaration of Taking of 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 the Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court, as estimated compensation for the taking of a certain estate in subject tract a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 12.

7.

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

8.

The owners of the subject tract 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 tract 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 the estate taken in subject tract 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 owners. Such deficiency is set out in paragraph 12 below.

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 Tract No. 303E, as such tract is particularly described in the Complaint filed herein; and such tract, to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of September 1, 1977, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

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

12.

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

TRACT NO. 303E

OWNERS:

James P. Lloyd,  
Sandra M. Lloyd,  
Subject to 2 mortgages, owned by  
Tulsa Federal Employees' Credit Union

Award of Just Compensation		
pursuant to Stipulation -----	\$5,936.00	\$5,936.00
Deposited as estimated compensation --	4,375.00	
Disbursed to owners jointly -----		<u>4,375.00</u>
Balance due to owners -----		<u>\$1,561.00</u>
Deposit deficiency -----	\$1,561.00	

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 tract, the deposit deficiency in the sum of \$1,561.00, and the Clerk of this Court then shall disburse the deposit for such tract as follows:

To: James P. Lloyd, Sandra M. Lloyd,  
and the Tulsa Federal Employees'  
Credit Union, jointly, ----- \$1,561.00

*Allen J. Barrow*

UNITED STATES DISTRICT JUDGE

APPROVED:

*Hubert A. Marlow*

HUBERT A. MARLOW

Assistant U. S. Attorney



jurisdiction. Therefore, based on Petitioner's own admission, the cause is premature in the Federal Court.

The State of Oklahoma provides remedies by post-conviction procedure pursuant to 22 O.S.A. § 1080, et seq., and habeas corpus pursuant to 12 O.S.A. § 1331, et seq. There is no principle in the realm of Federal habeas corpus better settled than that adequate and available State remedies must be exhausted, and probability of success is not the standard to determine whether a matter should first be determined by the State Courts. See, Hogatt v. Page, 432 F.2d 41 (10th Cir. 1970). No hearing herein is required and the petition should be denied, without prejudice, for failure to exhaust state remedies.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Charles R. McCroskey be and it is hereby denied, without prejudice, and the case is dismissed.

Dated this 28<sup>th</sup> day of October, 1977, at Tulsa, Oklahoma.

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

GILBERT, SEGALL AND YOUNG  
Elihu Inselbuch, Esq.  
Lowell A. Margolin, Esq.  
430 Park Avenue  
New York, New York 10022  
(212) 644-4000

Attorneys for Plaintiffs  
in Actions Listed Below

FILED  
IN OPEN COURT

OCT 28 1977

JACK C. SILVER, CLERK  
U. S. DISTRICT COURT

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

In Re HOME-STAKE PRODUCTION	)	
COMPANY Securities Litigation	)	<u>M.D.L. No. 153</u>
	)	
	)	74-C-225
	)	74-C-226
	)	74-C-228
	)	74-C-229
	)	74-C-180
	)	74-C-230
	)	74-C-231
	)	
	)	
	)	
	)	

ORDER GRANTING DISMISSAL OF CERTAIN  
ACTIONS AS TO CERTAIN PLAINTIFFS

On the motions of certain plaintiffs herein, identified below, for an Order, pursuant to Rules 21 and 41(a)(2) of the Federal Rules of Civil Procedure, dismissing certain actions as to them, as more fully set forth below, and upon due consideration,

IT IS ORDERED that

(a) The complaint in Civil Action No. 74-C-225 be dismissed as to plaintiff

E.P. Bernuth (deceased)  
without prejudice and without costs.

(b) The complaint in Civil Action No. 74-C-226 be dismissed as to plaintiff

E.P. Bernuth (deceased)  
without prejudice and without costs.

(c) The complaint in Civil Action No. 74-C-228  
be dismissed as to plaintiff

E.P. Bernuth (deceased)  
without prejudice and without costs.

(d) The complaint in Civil Action No. 74-C-229  
be dismissed as to plaintiffs

E.P. Bernuth (deceased)  
George Burgess  
Helen Burgess  
Ralph Hart  
Albert H. Manganelli  
without prejudice and without costs.

(e) The complaint in Civil Action No. 74-C-180  
be dismissed as to plaintiffs

E.P. Bernuth (deceased)  
Joseph A. Buda  
George Burgess  
Helen Burgess  
Albert H. Manganelli  
A.N. Overby  
Roy T. Parker, Jr.  
Erwin Starr  
without prejudice and without costs.

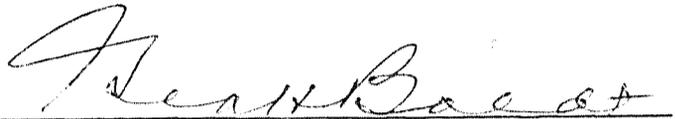
(f) The complaint in Civil Action No. 74-C-230  
be dismissed as to plaintiffs

Joseph A. Buda  
Jack Fine  
John E. Hutchinson, III  
Albert H. Manganelli  
Howard Rubenstein  
without prejudice and without costs.

(g) The complaint in Civil Action No. 74-C-231  
be dismissed as to plaintiffs

Joseph A. Buda  
Phillip Waxberg  
without prejudice and without costs, on condition that all  
counterclaims asserted against them in that action be with-  
drawn.

IT IS HEREBY SO ORDERED this 28<sup>th</sup> day of  
October 1977.



GEORGE H. BOLDT  
Sr. United States District Judge  
Sitting by Designation

GILBERT, SEGALL AND YOUNG  
Elihu Inselbuch, Esq.  
Lowell A. Margolin, Esq.  
Roger D. Lorence, Esq.  
430 Park Avenue  
New York, New York 10022  
(212) 644-4000  
Attorneys for Plaintiffs  
in Actions Listed Below

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

In Re HOME-STAKE PRODUCTION	)	M.D.L. No. 153 ✓
COMPANY Securities Litigation	)	
	)	74-C-224
	)	74-C-225
	)	74-C-226
	)	74-C-227
	)	74-C-228
	)	74-C-229
	)	74-C-180
	)	74-C-230
	)	74-C-231

FILED  
IN OPEN COURT

OCT 28 1977 J.

JACK C. SILVER, CLERK  
U. S. DISTRICT COURT

ORDER GRANTING DISMISSAL OF  
CERTAIN ACTIONS AS TO CERTAIN  
PLAINTIFFS

On the motion of certain plaintiffs herein, for an Order, pursuant to Rules 21 and 41(a)(2) of the Federal Rules of Civil Procedure, dismissing certain actions as to them, as more fully set forth below, and upon due consideration,

IT IS ORDERED that

(a) The complaint in Civil Action No. 74-C-224 be dismissed as to plaintiff

L. L. Ferguson  
without prejudice and without costs.

(b) The complaint in Civil Action No. 74-C-225 be dismissed as to plaintiff

L. L. Ferguson,  
without prejudice and without costs.

(c) The complaint in Civil Action No. 74-C-226 be dismissed as to plaintiff

L. L. Ferguson

without prejudice and without costs.

(d) The complaint in Civil Action No. 74-C-227  
be dismissed as to plaintiff

Hoyt Ammidon

without prejudice and without costs.

(e) The complaint in Civil Action No. 74-C-228  
be dismissed as to plaintiffs

Hoyt Ammidon  
Nicholas A. Marchese

without prejudice and without costs.

(f) The complaint in Civil Action No. 74-C-229  
be dismissed as to plaintiffs

L. L. Ferguson  
Nicholas A. Marchese

without prejudice and without costs.

(g) The complaint in Civil Action No. 74-C-180  
be dismissed as to plaintiff

Nicholas A. Marchese

without prejudice and without costs.

(h) The complaint in Civil Action No. 74-C-230  
be dismissed as to plaintiffs

L. L. Ferguson  
E. D. Hilburn  
J. E. Horak  
Nicholas A. Marchese

without prejudice and without costs.

(i) The complaint in Civil Action No. 74-C-231  
be dismissed as to plaintiffs

Arthur M. Bueche  
Nicholas A. Marchese

without prejudice and without costs, on condition that all counter-  
claims asserted against them in that action be withdrawn.

IT IS HEREBY SO ORDERED this <sup>28<sup>th</sup></sup> day of *October*, 1977.

*George H. Boldt*  
GEORGE H. BOLDT  
Senior United States District Judge  
Sitting by Designation



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

FO-MAC, INC., an Oklahoma )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DAVID A. ROSE, BESSIE MAE )  
ROSE, and SECURITY BANK & )  
TRUST COMPANY, Casper, )  
Wyoming, )  
 )  
Defendants. )

No. 76-C-472-B

FILED

OCT 27 1977

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

ORDER OF DISMISSAL  
WITH PREJUDICE

Upon joint application of the parties for an Order dismissing the above-captioned matter with prejudice, and the Court having been advised that a compromise and settlement has been effected between the parties, it is

ORDERED that this action and the causes of actions set forth in the Complaint of the Plaintiff and the Counterclaim of Defendants David A. Rose and Bessie Mae Rose herein be and the same are hereby dismissed with prejudice, the parties to bear their respective costs and expenses herein.

It is so ordered this 27<sup>th</sup> day of October, 1977.

Allen E. Barrow  
United States District Judge

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

FARMERS INSURANCE COMPANY, INC.,

Plaintiff,

vs.

LANTZ McCLAIN, Administrator of  
the Estate of Gary Watson,  
Deceased, and Marianne Montgomery,

Defendants.

76-C-369-B ✓

FILED

OCT 27 1977 <sup>β</sup>

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

ORDER

The Court has for consideration the defendants' Motion for New Trial, and, having carefully perused the entire file, and being fully advised in the premises finds that said Motion should be overruled.

IT IS, THEREFORE, ORDERED that the defendants' Motion for New Trial be and the same is hereby overruled.

ENTERED this 27<sup>th</sup> day of October, 1977.



CHIEF UNITED STATES DISTRICT JUDGE

FILED

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

OCT 27 1977

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

PATRICIA W. BINGHAM, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RUSSELL BRIDGES, sometimes )  
 known as LEON RUSSELL and )  
 ORAL ROBERTS UNIVERSITY, )  
 )  
 Defendants. )

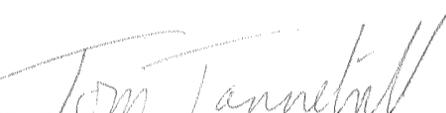
No. 77-C-42-C

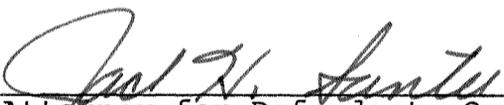
STIPULATION OF DISMISSAL

It is hereby stipulated that the above entitled action  
be and the same is hereby dismissed as to the defendant Oral  
Roberts University, said dismissal being without prejudice.

DATED this 27th day of October, 1977.

  
\_\_\_\_\_  
Attorney for Plaintiff

  
\_\_\_\_\_  
Attorney for Defendant, Russell  
Bridges, sometimes known as  
Leon Russell

  
\_\_\_\_\_  
Attorney for Defendant, Oral  
Roberts University

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

ANN B. HEARNE, now Harris,  
Plaintiff,

vs.

NATIONAL AMERICAN INSURANCE  
COMPANY, A Foreign Corpora-  
tion,  
Defendant.

**FILED**

**OCT 26 1977**

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

NO. 77-C-151-B

ORDER OF DISMISSAL

Upon the application of the plaintiff and for good  
cause shown, this cause of action and Complaint is dismissed  
with prejudice.

Entered this 26th day of October, 1977.

(Signed) Allen E. Barrow

UNITED STATES DISTRICT JUDGE



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

FILED

PETER J. BRENNAN, Secretary of )  
Labor, United States Department )  
of Labor, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
AGRICO CHEMICAL COMPANY, )  
 )  
 )  
Defendant. )

OCT 26 1977

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

Civil Action No. 74-C-417 B

FINDINGS AND ORDER OF THE COURT

This cause came on for hearing on the 30th day of June, 1977 on Plaintiff's Exceptions to Special Master's Report. Plaintiff appeared by its attorney, Heriberto DeLeon and the Defendant appeared by its attorney, William D. Nay of Hall, Estill, Hardwick, Gable, Collingsworth & Nelson. The Court being fully advised in the premises makes the following findings and order.

I. FINDINGS OF FACT

1. Defendant is a Delaware corporation engaged in manufacturing and sale of fertilizer materials. The Defendant was and is an entity which evolved as a result of the acquisition of the fertilizer assets of Gulf Oil Company in 1971 and of Continental Oil Company in 1972.

The Defendant was an employer subject to the Age Discrimination in Employment Act of 1967 (the "Act"). Both of the employees, whose terminations are the subject of this action, were at the time of their termination within the age group protected by the Act.

The Defendant was during the period of time within which the alleged discriminatory acts took place consolidating two very large, and to some extent duplicative, organizations which had been acquired within the immediately preceding two years.

The two terminations involved were not factually connected and are, therefore, treated separately with respect to these findings.

2. Mr. A. Tom Hill was employed by the Defendant as a salesman in the Turf & Garden Division between May 1, 1972

and October 31, 1972. The Turf & Garden Division was an operation of a division of Continental Oil Company prior to such division's acquisition in mid-1972, and was the marketing operation for homeowner and professional turf products.

The Turf & Garden Division was not a profitable operation at the time of its acquisition by the Defendant and was under pressure to perform at a profit, with alternative plans being made at that time as to the disposition of the operation if it did not satisfactorily perform within a very short time frame.

The Turf & Garden Division was extensively reorganized in mid-1972 with a different marketing philosophy in an attempt to become a profitable operation. This reorganization included the establishment of separate sales forces for sales to retail outlets of the homeowner products and sales to distributors of professional products for such uses as golf courses and the redrawing of territories to obtain territories with an acceptable profit potential.

Mr. Bill McMains was the manager and in charge of implementing the reorganization of the sales organization for professional products. The initial decisions in the reorganization were made without regard to specific personnel and only after the plans were made and in the implementation of them were specific personnel decisions made.

In the implementation of the reorganization, Mr. Hill and four other of the 14 salesmen were terminated. Only two of the 14 salesmen were under the age of 40, and one of them was terminated in the reorganization. Included within the group retained were two employees, age 56 and 58, who had been hired within the previous year by Mr. McMains.

Mr. Hill's territory in the State of Virginia was not a profitable territory. As a separate geographic territory, it did not exist after the reorganization, but was consolidated

with another larger and more profitable territory to make a territory with profit potential acceptable to the Defendant.

Mr. Charlie Jordan was an experienced Turf & Garden salesman handling the North and South Carolina Territory for professional sales.

Reasonable and valid business justification, without regard to the age of Mr. Hill, existed for assigning to Mr. Jordan's territory the professional sales business in Virginia. Mr. Jordan's territory was larger, had higher sales and greater profit potential than Virginia and Mr. Jordan was already established there and familiar with the territory and the greater number of customers and potential customers.

Mr. Salmon was an employee of the Turf & Garden Division. He was hired from a competitor for the retail sales effort because of his experience in such competitor's retail program which was very similar to that being undertaken by Defendant. Valid and reasonable business justification, without regard to the age of Mr. Hill, existed for assigning to Mr. Salmon's territory the retail sales business in Virginia.

After the reorganization, Mr. Hill's job no longer existed and no one person was thereafter performing the identical function with the same responsibilities. The job title, description and duties were different after the extensive reorganization.

Although the availability of another territory for Mr. Hill was discussed or mentioned in the meeting between Mr. Hill and Mr. McMains on August 7, 1972, it was not initially presented by the Defendant as a definite offer, partially because Mr. Hill did not express any interest in the initial meeting in that particular job or territory or in relocation. Mr. Hill testified that he was told he was too old. Mr. McMains denied this.

The reasons for not offering the job in a positive manner at the first meeting was a presupposition that Mr. Hill would not want to move from Virginia. This presupposition was based upon Mr. Hill's communicated desire to remain in Virginia, his dislike for certain other parts of the country and his station of life and length of residence in Virginia which included, in part and as a natural result, his age.

The Defendant subsequently determined that it should have let Mr. Hill make the personal decision as to whether he would move, although it was thought that he would refuse the offer of the move to Pennsylvania.

On August 19, 1972, Mr. McMains communicated to Mr. Hill the offer of continued employment with the Defendant in a sales job within the Turf & Garden Division selling professional products in the territory described as Pennsylvania. As a part of such offer, Mr. Hill would be required to physically relocate his residence to the Philly/West Philly area.

The job offer made by the Defendant was a bona fide good faith offer, however, Mr. Hill rejected the offer that was made to him. Although Mr. Hill testified he wanted to retain his residence and commute on weekends, this was not communicated to the Defendant and this possibility, even if communicated would have been rejected as not being within the offer or the Defendant's policies regarding residence of its salesmen. The Defendant made an attempt to find employment for Mr. Hill within its organization which would accommodate his preference for domicile and continued him on the payroll past the initial termination date of August 31, 1972.

The employment decisions made which affected Mr. Hill's employment were based on reasonable factors other than age.

The Defendant did not unlawfully discriminate against Mr. Hill because of his age, either in terminating him or in the reorganization of the Turf & Garden Division which divided Mr. Hill's territory geographically and by class of products, or in offering a relocation to a different territory.

Even after the termination of Mr. Hill, the Turf & Garden Division continued to be unprofitable and within one year (September of 1973) after Mr. Hill's termination, the assets of the division were sold and all of the salesmen employed therein were terminated from employment of the Defendant.

3. Mr. Ralph Willits was within the age bracket protected by the ADEA and was the oldest employee in his particular section. He had been employed by Gulf Oil Company in its fertilizer operations prior to the acquisition in 1971. His job position was one of price coordinator. This job position was eliminated by the Defendant and the residual duties left after elimination of that job function were combined with the functions being performed by other employees.

Although the Plaintiff's position seems to be that Mr. Willits' job was very necessary, no new employee was hired, nor was any employee transferred by the Defendant to fulfill the functions previously being performed by Mr. Willits. The Defendant was in the process of restructuring its entire marketing program which included the closing of a number of field offices and the consolidation of regional offices. The job was eliminated, and there was no need for that position to be filled by a full-time employee.

Age played no part in the decision to terminate Mr. Willits, but such decision was based upon reasonable factors other than age. Although Mr. Willits was eligible for retirement benefits, such played no part in the decision to terminate

him and Plaintiff's assertions to the contrary are unsupported by credible evidence.

The Defendant did not violate the ADEA in terminating Mr. Willits.

## II. CONCLUSIONS OF LAW

The Court has jurisdiction of the parties and of the subject matter of this action pursuant to 29 U.S.C. §§626(c) and 216(b).

Defendant is an employer engaged in an industry affecting commerce within the meaning of 29 U.S.C. §630(b). At all times relevant hereto, Hill and Willits were employees within the meaning of 29 U.S.C. §630(f).

Before commencing an action to enforce the provisions of the ADEA, the Secretary of Labor must first attempt to eliminate any discriminatory practice or practices alleged and to effect voluntary compliance with the requirements of the Act through informal methods of conciliation, conference and persuasion. (29 U.S.C. §626(b)); Brennan v. Ace Hardware Corp., [7 EPD ¶9257] 495 F.2d 368, 374-75 (8th Cir., 1974); Hodgson v. Ideal Corrugated Box Company, [8 EPD ¶9805] (N.D. of W.Va., 1974). The trial court has the power to review the adequacy of the Department's conciliation efforts. Brennan v. Weis Markets, [5 EPD ¶8519]; 5 FEP cases 850 (M.D. Penn., 1973). Because of the other findings, it is unnecessary to determine whether or not the Plaintiff has satisfied the conciliation requirement of §626(b).

The ADEA does not establish a prima facie case of discrimination because of age. Under the ADEA the burden is initially upon the Plaintiff to prove that the employee's age was one factor which, in fact, made a difference in determining whether he would be discharged or retained. Laugeson v. Anaconda Co., [9 EPD ¶9870] 510 F.2d 307, 310, 313 (6th Cir.,

1975). Upon such a showing by the Plaintiff, the burden of coming forward with evidence of valid reason for the employee's discharge shifts to the Defendant. Hodgson v. First Federal Savings & Loan Association, [4 EPD ¶7629] 455 F.2d 818, 822 (5th Cir., 1972). Once the Defendant has come forward with evidence that the employee was discharged because of reasonable factors other than age, Plaintiff must bear the burden of establishing a case of discrimination by a preponderance of the evidence. Bittar v. Air Canada, [9 EPD ¶10,119] 512 F.2d 582, 583 (5th Cir., 1975). Mere conclusiory allegations are not sufficient. The Plaintiff must set forth facts showing that the discharge of the employee was due to his age. D. Loraine v. MEBA Pension Trust [8 EPD ¶9443] 499 F.2d 49, 51 (2nd Cir., 1974), Cert. Denied, [8 EPD ¶9760] 419 U.S. 1009 (1974).

Based on the evidence introduced and on the credibility of the various witnesses, the Plaintiff has failed to carry its initial burden of proving that age was a factor in the discharge of either of the employees concerned. There is no automatic presumption which arises from the fact that Mr. Willits was the oldest employee in the particular section in which he worked. There is no automatic presumption which arises from the fact that a terminated employee is within the protected age group. There is no automatic presumption which arises from the fact that the job functions of a terminated employee are eliminated and/or parceled out among various other employees who may be of a younger age than a terminated employee. This is particularly so when there are valid business reasons for a reorganization which results in the termination of an employee. There is no presumption of discrimination on the basis of such actions.

The only evidence in the record which would support a finding of discrimination against Mr. Willits on the basis of age was the testimony of the Department of Labor's employee, J. Dean Spears, who contended that Ron Stehouwer, the Defendant's personnel manager, told him that "Mr. Willits was terminated because he was the only one eligible for early retirement". Mr. Stehouwer categorically denied making any such statement. There is absolutely no credible evidence in the record which would support a finding of discrimination against Mr. Willits on the basis of age.

The only evidence in the record which would support a finding of discrimination against Mr. Hill on the basis of age is Mr. Hill's version of the conversation with Bill McMains on August 7, 1972 and the deposition testimony of Mr. Hill's brother, Winfield Hill, concerning the August 19, 1972 meeting. Mr. McMains denied making the statements attributed to him. The testimony of Mr. Bayley and of Mr. McMains, the exhibit of the Defendant reflecting the written record of the meetings, and the inconsistencies between Mr. Hill's testimony and that of other witnesses, including those of the Plaintiff, support that there is no credible evidence in the record which would support a finding of discrimination against Mr. Hill on the basis of age.

Moreover, it is noted that even if Plaintiff had carried his initial burden, he failed to prove age discrimination by a preponderance of the evidence. The terminations of both Mr. Hill and Mr. Willits were based on economic, performance, and ability factors which were real, immediate and in good faith, not pretentual.

It is concluded that the statistical evidence presented by the Defendant in regard to both the Defendant's employment statistics in general and those with particular applicability

to Mr. Hill's area of work, supports Defendant's contention that age was not a factor in either of the terminations. See, Laugeson v. Anaconda Co., supra at 319.

It is further concluded that there is no obligation on the part of an employer to find a new position for an employee who has been removed for reasonable business factors other than his age. It is found that the Defendant made considerable efforts to relocate both of the employees and specifically the failure to find a new position for Mr. Hill resulted entirely from his own reluctance to make a geographical relocation.

In accordance with the Findings of Fact and Conclusions of Law made and filed herein, it is, accordingly

ORDERED AND ADJUDGED that the Plaintiff's Exceptions to Special Master's Report be overruled. It is

FURTHER ORDERED AND ADJUDGED that the Plaintiff, Peter J. Brennan, Secretary of Labor, United States Department of Labor, shall take nothing by its Complaint and the Defendant, Agrico Chemical Company, shall be awarded its costs. It is

FURTHER ORDERED AND ADJUDGED that the costs of this action shall be taxed at a later date upon the motion of the Defendant.



UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
 JAMES R. HOLLOWELL, ANNA LEAH )  
 HOLLOWELL, WALDO L. STEELE, JR., )  
 DONNA F. STEELE, WILLIAM H. SMITH, )  
 DIANE SMITH, COUNTY TREASURER, )  
 Tulsa County, Oklahoma, and BOARD )  
 OF COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma, )  
 )  
 ) Defendants. )

CIVIL ACTION NO. 77-C-257-B

FILED

OCT 26 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26th  
day of October, 1977, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney; and the Defendants,  
County Treasurer, Tulsa County, Oklahoma, and Board of County  
Commissioners, appearing by their attorney, Kenneth L. Brune,  
Assistant District Attorney; and, the Defendants, James R.  
Hollowell, Anna Leah Hollowell, Waldo L. Steele, Jr., Donna F.  
Steele, William H. Smith, Diane Smith, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendants, County Treasurer, Tulsa  
County, Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, have been served with Summons and Complaint on  
June 24, 1977; that Defendants, James R. Hollowell and Anna Leah  
Hollowell, were served with Summons and Complaint on July 13,  
1977, as shown on the United States Marshal's Service herein;  
and, that Defendants, Waldo L. Steele, Jr., Donna F. Steele,  
William H. Smith, and Diane Smith, were served by publication  
as shown on the Proof of Publication filed herein.

It appearing that the Defendants, County Treasurer,  
Tulsa County, Oklahoma, and Board of County Commissioners,  
Tulsa County, Oklahoma, have duly filed their answers herein on

July 25, 1977; and, that Defendants, James R. Hollowell, Anna Leah Hollowell, Waldo L. Steele, Jr., Donna F. Steele, William H. Smith, and Diane Smith, 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 upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Four (4), Block Fifty-Six (56), VALLEY VIEW ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, James R. Hollowell and Anna Leah Hollowell, did, on the 11th day of March, 1965, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$12,250.00 with 5 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Waldo L. Steele, Jr. and Donna F. Steele, were the grantees in a deed from Defendants, James R. Hollowell and Anna Leah Hollowell, dated April 12, 1971, filed March 20, 1971, in Book 3969, Page 230, records of Tulsa County, wherein Defendants, Waldo L. Steele, Jr. and Donna F. Steele, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, William H. Smith and Diane Smith, were the grantees in a deed from Defendants, Waldo L. Steele, Jr. and Donna F. Steele, dated September 25, 1974, filed September 26, 1974, in Book 4138, Page 1254, records of Tulsa County, wherein Defendants, William H. Smith and Diane Smith, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, James R. Hollowell, Anna Leah Hollowell, Waldo L. Steele, Jr., Donna F.

Steele, William H. Smith, and Diane Smith, 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 \$9,884.62 as unpaid principal with interest thereon at the rate of 5 1/2 percent per annum from September 1, 1976, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, William H. Smith and Diane Smith, the sum of \$ 9.73 plus interest according to law for personal property taxes for the year(s) 1976 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, James R. Hollowell and Anna Leah Hollowell, in personam, and against Defendants, Waldo L. Steele, Jr., Donna F. Steele, William H. Smith, and Diane Smith, in rem, for the sum of \$9,884.62 with interest thereon at the rate of 5 1/2 percent per annum from September 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 the County of Tulsa have and recover judgment, in rem, against Defendants, William H. Smith and Diane Smith, for the sum of \$ 9.73 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.

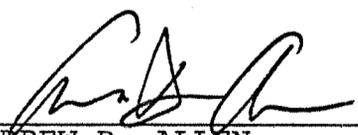
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property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

s/Allen G. Barrow  
UNITED STATES DISTRICT JUDGE

APPROVED

  
\_\_\_\_\_  
ROBERT P. SANTEE  
Assistant United States Attorney

  
\_\_\_\_\_  
ANDREW B. ALLEN  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County

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

ADOLPH CRISP, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 C. L. LEWIS, R. E. CARTNER, JR., )  
 THE CITY OF TULSA, TULSA, OKLAHOMA, )  
 and JACK PURDIE, Chief of Police, )  
 Tulsa, Oklahoma, )  
 )  
 Defendants. )

No. 76-C-571-B

**FILED**

**OCT 26 1977**

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

O R D E R

The Court has for consideration Defendants' Motion to Dismiss and Motion to Strike and after having carefully examined the entire file, the briefs, and the recommendations concerning said Motions, and being fully advised in the premises, finds:

1. That the Defendant City of Tulsa's Motion to Dismiss should be sustained;
2. That the Defendants C. L. Lewis, R. E. Cartner, Jr., and Jack Purdie's Motion to Dismiss should be overruled; and
3. That the Defendants' Motion to Strike should be overruled.

This is a civil rights action commenced pursuant to the provisions of 42 U.S.C., Section 1983, for alleged damages Plaintiff suffered when his constitutional rights were violated during the course of his being arrested on August 16, 1975. In response to Plaintiff's complaint, Defendants have filed a Motion to Dismiss and a Motion to Strike; the Defendant City of Tulsa states that it should be dismissed from this lawsuit for the reason and upon the grounds that, as a municipal corporation and a political subdivision of the State of Oklahoma, it is not a person within the purview of 42 U.S.C., Section 1983 and is, consequently, not a proper party defendant. The remaining

Defendants state that said complaint when viewed in the light most favorable to the Plaintiff, fails to state any acts or omissions on their part which would confer jurisdiction to this Court. All Defendants move to strike from the complaint Plaintiff's prayer for attorney's fees and that such are not authorized in a 42 U.S.C., Section 1983 action.

The law is well settled that a municipal corporation is not a person within the meaning of 42 U.S.C., Section 1983. As the District Court noted in Folk v. Wilson, 313 F.Supp. 727 (D.C. Del. 1970):

"[1] It is undisputed that the City of Wilmington is a municipal corporation in the State of Delaware. It is equally clear that a municipality is not a "person" within the meaning of 42 U.S.C., Section 1983 or Section 1985. Monroe v. Pape, 365 U.S. 167, 81 S. Ct., 473, 5 L.Ed.2d 492 (1961); Egan v. City of Aurora, 365 U.S. 514, 81 S. Ct. 684, 5 L.Ed.2d 741 (1961); United States ex rel. Gittlemacker County of Philadelphia, etc., 413 F.2d 84 (C.A.3, 1969); Spiesel v. City of New York, 239 F. Supp. 106 (S.D.N.Y. 1964), aff'd 342 F.2d 800 (C.A.2, 1965), cert. den. 382 U.S. 856, 86 S. Ct. 109, 15 L.Ed.2d 94 (1965), reh. den. 382 U.S. 922, 86 S. Ct. 295, 15 L.Ed.2d 238 (1965). Obviously, the City is not a proper party defendant in this case under either Section 1983 or Section 1985."

See also, Moore v. County of Alameda, et. al., (1973), 411 U.S. 693, 93 S. Ct. 1785, 36 L.Ed.2d 596, reh den, 412 U.S. 93 S. Ct. 299, 37 L.Ed.2d, 1012; City of Kenosha v. Bruno, (1973), 412 U.S. 507, 93 S. Ct. 2222, 37 L.Ed.2d 109, both cases upholding the rule of law announced in Folk. In light of the law as announced in the foregoing authorities, it is hereby ordered that the Defendant City of Tulsa's Motion to Dismiss be sustained.

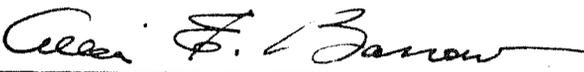
In a civil rights action brought pursuant to the provisions of 42 U.S.C., Section 1983, a plaintiff need only plead those facts necessary to allege a deprivation of a constitutionally secured right arising under the color of state law. Schultz v. Palmberg, 317 F. Supp. 659 (D.C. Wyo. 1970); Mayhugh v. Allen, 371 F. Supp. 1 (D.C. Mo. 1973); Band v. Dentger, 362 F. Supp.

1373, 494 F.2d 302 (C.A.N.Y. 1973); Mimms v. Philadelphia Newspapers, 352 F. Supp. 862 (D.C. Pa. 1972); Gilpin v. Kansas State High School Association, 377 F. Supp. 1233 (D.C. Kansas 1974); Ouzts v. Maryland National Insurance Co., 470 F.2d 790 (C.A. Nev. 1969); York v. Story, 324 F.2d 450, cert. denied 84 S. Ct. 794, 376 U.S. 939 L.Ed.2d 659 (C.A. Cal. 1963). In the present case, as against the Defendants C. L. Lewis, R. E. Cartner, Jr., and Jack Purdie, even though the evidence at trial may prove otherwise, Plaintiff has alleged legally sufficient facts to set forth a cause of action under 42 U.S.C., Section 1983. In light of the foregoing, it is hereby ordered that the Motion to Dismiss of the Defendants C. L. Lewis, R. E. Cartner, Jr., and Jack Purdie should be overruled.

Both the Plaintiff and the Defendant are correct in their statements that an award of attorney's fees in a 42 U.S.C., Section 1983 action is within the inherent power and discretion of the Court. While the circumstances of a case may not justify an award of attorney's fees, nevertheless, such may be requested by the Plaintiff in his complaint, said issue to be determined by the Court only after a consideration of all the evidence presented. Tatum v. Morton, 386 F. Supp. 1308 (D.C. 1974). Thus, it is the Court's finding and order that the Defendants' Motion to Strike Plaintiff's prayer for attorney's fees is premature and should be overruled.

IT IS, THEREFORE, ORDERED that:

1. The Defendant City of Tulsa's Motion to Dismiss be and the same is hereby sustained.
2. The Defendants C. L. Lewis, R. E. Cartner, Jr., and Jack Purdie's Motion to Dismiss be and the same is hereby overruled; and
3. The Defendants' Motion to Strike be and the same is hereby overruled.

  
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

JESSE RAY BROWN, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 77-C-234-C  
 )  
 RICHARD CRISP, Warden, )  
 State Penitentiary; )  
 J. M. SUNDERLAND, Warden, )  
 State Reformatory, )  
 )  
 Defendants. )

**E I L E D**

OCT 26 1977

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

O R D E R

The Court has before it for consideration a Motion to Dismiss Complaint filed herein by the defendants, Richard Crisp and J. M. Sunderland.

Plaintiff brings this action pro se for alleged violation of his civil rights under the Civil Rights Act, 42 U.S.C. § 1983. The movants' names do not appear in the Complaint, except in the caption thereof. Plaintiff does make the following allegations with apparent reference to movants:

"3) That at that time the Warden at the State Penitentiary, did to fact order not only for the use of his department, but for numerous other departments use as well, sets of FINGERPRINT CARDS of the petitioner. Useing (sic) the inmate number 73898.

5) That the Warden at the State Reformatory, did to fact order not only for the use of his department, but for numerous other departments as well, the complete sets of FINGERPRINT CARDS of the petitioner, Useing (sic) the inmate number 23814."

Plaintiff thereafter states that on August 19, 1970 he was issued a full and complete pardon but was subsequently arrested on an "after felony conviction" charge. In his prayer for relief, plaintiff seeks expungement of the charges relating to the pardoned offense and damages in the sum of \$1,000,000, and further that the custodian of the records keep them currently factual.

In a prior Order of the Court dated September 7, 1977 sustaining a Motion to Dismiss of defendant John Rohmiller, the Court noted that under the law of the State of Oklahoma, "a conviction is not wiped out by a pardon, as the pardon by the executive power does not blot out the solemn act of the judicial branch of the government." Kellogg v. State, 504 P.2d 440 (Okla. Cr. 1972). Thus a pardoned felony conviction may be used to increase punishment on a subsequent conviction under the habitual criminal statute in the State of Oklahoma. Kellogg v. State, supra; Scott v. Raines, 373 P.2d 267 (Okla. Cr. 1962). Further, as noted by the Court, a gubernatorial pardon does not relieve disabilities imposed by certain provisions of the Omnibus Crime Control and Safe Streets Act of 1968. Thrall v. Wolfe, 503 F.2d 313 (7th Cir. 1974). The maintaining and dissemination of plaintiff's fingerprints therefore serve a legitimate purpose.

It is the determination of the Court that plaintiff has not set out facts sufficient to state a cause of action against defendants Crisp or Sunderland, and the statements made presumably in regard to these defendants do not constitute allegations which would give rise to a civil rights cause of action. Furthermore, since a valid reason exists for the maintenance of plaintiff's conviction record and fingerprints, it would not be proper for the Court to order an expungement in regard thereto.

Based upon the foregoing it is the determination of the Court that defendants' Motion to Dismiss should be and hereby is sustained.

It is so Ordered this 26<sup>th</sup> day of October, 1977.

  
H. DALE COOK  
United States District Judge

**FILED**

OCT 26 1977

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

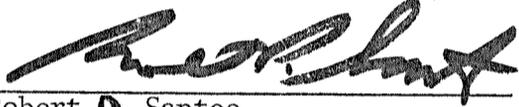
UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MARVIN O. G. ADKINS, a/k/a )  
 Marvin O. Adkins, )  
 DOROTHY MARIE ADKINS, )  
 et al, )  
 )  
 Defendants. )

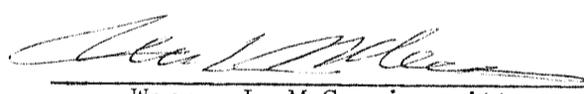
CIVIL ACTION FILE  
No. 77-C-275-C

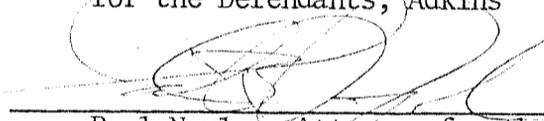
STIPULATION OF DISMISSAL

Pursuant to Rule 41 (a) (1) (ii), the parties who have appeared affirmatively herein stipulate the dismissal of the Complaint and the Cross-Petition of First National Bank and Trust Company of Tulsa, without prejudice, and upon no further conditions.

HUBERT H. BRYANT, U. S. ATTORNEY

BY:   
Robert P. Santee  
Assistant U. S. Attorney

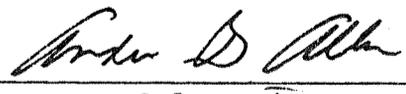
  
Warren L. McConnico, Attorney  
for the Defendants, Adkins

  
Paul Naylor, Attorney for the  
Defendant-Cross-Petitioner, First  
National Bank and Trust Company  
of Tulsa

TREASURER OF TULSA COUNTY

BY: 

BOARD OF COUNTY COMMISSIONERS OF  
TULSA COUNTY

BY:   
Asst. Dist. Atty  
Atty for County

FILED  
IN OPEN COURT

OCT 25 1977 *mm*

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

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

SIKES CORPORATION, )  
a Florida corporation, )  
 )  
Plaintiff, )  
 )  
v. ) No. 77-C-200-B ✓  
 )  
TEXAS WESTERN FINANCIAL CORPORATION, )  
an Illinois corporation, and BRISTOW )  
CARPETS, INCORPORATED, an Oklahoma )  
corporation, )  
 )  
Defendants. )

DECREE OF DEFAULT JUDGMENT

On this 25<sup>th</sup> day of October, 1977 came before me the Motion For Default Judgment filed herein by Plaintiff Sikes Corporation, and having examined the pleadings, affidavits, certificates of service, and other documents of record, the Court finds that Defendant Bristow Carpets, Incorporated has been served with Summons herein but has wholly failed to appear or answer, and is in default and subject to default judgment as provided herein. Being fully advised in the premises, the Court particularly finds as follows:

1. This matter, and the parties, are properly within the jurisdiction and venue of this Court pursuant to 28 U.S.C.A, §1332.

2. Sikes Corporation (hereinafter called "Sikes") is a Florida corporation with its principal office located in Lakeland, Florida. Bristow Carpets, Incorporated (hereinafter "Bristow") is an Oklahoma corporation with its principal office located in Bristow, Oklahoma.

3. On August 1, 1975, Sikes transferred to Bristow, and Bristow obtained from Sikes, Sikes' carpet business along with substantially all the assets of the carpet business that were located in Bristow, Oklahoma.

4. In connection with such transfer Sikes and Bristow entered into the following agreements, among others:

- (a) An Agreement dated July 24, 1975, and amended as of September 10, 1975, providing for the transfer of Sikes' carpet business to Bristow (hereinafter called the "Sikes Agreement");
- (b) A Promissory Note dated August 1, 1975, from Bristow to Sikes in the principal amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000.00) payable to Sikes over several years and subject to acceleration upon any act of default, including voluntary liquidation (hereinafter called the "Sikes Note"). Sikes has received no payment of principal or interest under the Sikes Note, and the entire balance thereof is currently due and outstanding.
- (c) A Sublease dated August 1, 1975 between Sikes, as sublessor, and Bristow, as sublessee (hereinafter called the "Sikes Sublease") by which Bristow assumed various lease obligations of Sikes including leases of both the real property upon which the carpet facility is located and certain equipment of the facility. The Sikes Sublease provides for acceleration of payments in the event of any act of default, including voluntary liquidation. Sikes has received no payment under said sublease since March 15, 1977, and the principal sum of \$2,798,100.00 is currently due and owing to Sikes thereunder.
- (d) A Security Agreement dated August 1, 1975 (hereinafter called the "Sikes Security Agreement") which granted Sikes a security interest in certain

assets of Bristow including equipment, contract rights, inventory, general intangibles, fixtures, finished materials, Bristow's stock in Sikes Corporation of Illinois, Inc., work in progress, proceeds, etc., all in Creek County, Oklahoma. Said secured property is more fully described on Exhibit "A", being Paragraph 1 from the Sikes Security Agreement, and Sikes' security interest thereunder secured payment of both the Sikes Note and the Sikes Sublease, and had been perfected by appropriate recording on December 3, 1975 in the offices of the Oklahoma County Clerk and on December 4, 1975 in the offices of the Creek County Clerk.

5. On or about December 11, 1975, Texas Western executed and delivered to Bristow a "Commitment Letter" which was accepted by Bristow, executed and returned to Texas Western on December 13, 1975. Pursuant to the Texas Western Commitment, certain financing agreements were entered into by Texas Western and Bristow and the following additional documents were executed by the parties:

A. A Factoring Agreement under the terms of which Texas Western agreed to factor accounts receivable of Bristow, make payments to Bristow therefor and establish a factoring reserve.

B. A "Loan and Security Agreement", with an "Inventory Rider" and an "Accounts Rider" and "Addendum".

6. No advances were requested by Bristow or made by Texas Western pursuant to the Inventory Rider to the Loan and Security Agreement nor did Texas Western issue guaranties to trade vendors of Bristow, though discussions regarding the possibility thereof occurred from time to time.

7. In connection with consummating the financing agreements between Bristow and Texas Western heretofore described, and as an inducement to and as a requirement by Texas Western to entering into such financing agreements and doing business with Bristow pursuant thereto, Sikes, Bristow and Texas Western executed a Subordination Agreement dated December 16, 1975, which affected the priorities of Bristow's debts and the security interests in favor of Sikes and Texas Western, as therein set out.

However, Sikes' right to payment from Bristow under the "Sublease" was not subordinated to Texas Western's right to payment.

8. On or about January 28, 1977, Bristow ceased to operate in the ordinary course of business and went into default under the Sikes Note, the Sikes Sublease, and the Sikes Security Agreement by beginning a voluntary liquidation of its assets and committing other acts of default. By letter dated March 2, 1977, Sikes notified Bristow of its defaults under said Sublease, the Note, and Security Agreement, and of Sikes' immediate election to accelerate and recover the outstanding balance due under each such obligation. At all times material hereto, Sikes held, and presently holds, valid, enforceable, and perfected security interests in various assets of Bristow including inventory, intangibles, contract rights, equipment, proceeds, etc., all as more specifically shown in the Sikes Security Agreement and Sikes' Financing Statements.

Sikes' perfected security interests in Bristow's inventory and proceeds secured the entire indebtedness of Bristow to Sikes under both the Promissory Note and Sublease, and Sikes' said perfected security interest in inventory, proceeds, and other collateral of Bristow is currently prior and superior to any other enforceable security interest in such inventory, proceeds, and other collateral of Bristow.

9. By reason of Bristow's default under the Sikes Note, Sikes Sublease, and Sikes Security Agreement, Bristow is presently indebted to Sikes for the accelerated outstanding balance of the obligations due thereunder. Bristow is presently indebted to Sikes under the Sikes Note in the principal amount of \$4,250,000.00, with interest thereon as provided in said Note. Bristow is further indebted under the Sikes Sublease in the principal amount of \$2,798,100.00, and by reason of Bristow's default under the Sikes Sublease and Sikes' notice of termination of said Sublease given to Bristow, Bristow has no further right, title, or interest under the Sikes Sublease, nor any right to possess or encumber the premises and property described in the Sikes Sublease. The total of all such principal indebtedness presently due from Bristow to Sikes is \$7,048,100.00, plus interest, all of which is secured by Sikes' aforesaid security interest. By reason of Bristow's default under the Sublease, and Sikes' notice and election to terminate the Sublease, Bristow has no further right, title, or interest under the Sublease nor any right to possession of the premises covered thereby.

10. The following assignees have disclaimed any claim in conflict with Sikes' said security interest and its right to recover the property covered thereby in this proceeding: Chemical Bank, individually and as agent for the Prudential Insurance Company of America, Newark, New Jersey; Barnett Bank of Jacksonville, N.A., Jacksonville, Florida; The First National Bank of Tampa, Florida; and Flagship Bank of Tampa, Florida, and each of them.

12. Defendant Texas Western will, pursuant to order of this Court, deliver possession of the following assets to Sikes, consisting of factoring reserve retentions, proceeds

of Bristow's accounts and inventory, and uncollected accounts covered by Plaintiff's security interest, in which Texas Western claims no further right, title or interest:

- (1) Cash in the amount of \$401,052.27.
- (2) All uncollected Bristow accounts except for those owned by Texas Western as listed on Exhibit B hereto.

All such assets are secured by the currently prior and first security interest owned by Sikes covering Bristow's inventory, proceeds of inventory, accounts, and factoring reserve retentions, and Texas Western claims no present right, title, or interest thereto. By reason of said security interests, Sikes has an immediate right to possession of all such funds and accounts as its sole property.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Default Judgment be, and it hereby is, entered in favor of Plaintiff and against Defendant Bristow in the amount of \$7,048,100.00, plus prejudgment interest at 6% per annum from and after January 28, 1977, attorneys' fees, court costs, and interest at 10% per annum accruing on said Judgment, and foreclosure of said security interests given by Bristow to Sikes, and the Court finds and determines that Defendant Bristow has no further right, title, or interest in, to, or under the Sikes Sublease, nor any right to possess or encumber the premises and property described therein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the security interests granted by Bristow to Sikes in assets and property described and defined herein and in Exhibit A hereto currently constitute a first and prior lien upon said assets and property, which security interests should be, and hereby are, foreclosed in favor of Plaintiff against Defendant Bristow. The Affidavits before the Court showing no dispute as to the amount owing, and this action being in the nature of a foreclosure action against Defendant Bristow,

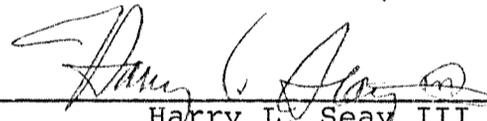
Plaintiff's Complaint is hereby deemed amended to provide such relief and conform to the evidence as to amounts.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Decree of Summary Judgment entered herein in reference to Defendant Texas Western Financial Corporation is incorporated herein by reference and made a part hereof, and Plaintiff has an immediate and prior right to, and is entitled to immediate possession of, said funds in the amount of \$401,052.27 and uncollected Bristow accounts receivable (except for those shown on Exhibit B hereto) which Defendant Texas Western Financial Corporation has been ordered herein to transfer, convey, transfer, and deliver to Sikes.

  
UNITED STATES DISTRICT JUDGE  
FOR THE NORTHERN DISTRICT  
OF OKLAHOMA

APPROVED AS TO FORM:

HALL, ESTILL, HARDWICK, GABLE,  
COLLINGSWORTH & NELSON, P.C.

By   
Harry L. Seay III

ATTORNEYS FOR PLAINTIFF

GABLE, GOTWALS, RUBIN, FOX,  
JOHNSON & BAKER

By   
Richard W. Gable

ATTORNEYS FOR DEFENDANT  
TEXAS WESTERN FINANCIAL CORPORATION



3. Sikes Corporation (hereinafter called "Sikes") is a Florida corporation with its principal office located in Lakeland, Florida. Texas Western previously an Illinois corporation, but now a Delaware corporation has its principal office in Dallas, Texas. Bristow Carpets, Incorporated (hereinafter "Bristow") is an Oklahoma corporation with its principal office located in Bristow, Oklahoma.

4. Under date of August 1, 1975, Sikes transferred to Bristow, and Bristow obtained from Sikes, Sikes' carpet business along with substantially all the assets of the carpet business that were located in Bristow, Oklahoma.

5. In connection with such transfer, on knowledge and belief, Sikes and Bristow entered into the following agreements, among others:

- (a) An Agreement dated July 24, 1975, and amended as of September 10, 1975, providing for the transfer of Sikes' carpet business to Bristow (hereinafter called the "Sikes Agreement");
- (b) A Promissory Note dated August 1, 1975, from Bristow to Sikes in the principal amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000.00) payable to Sikes over several years and subject to acceleration upon any act of default, (hereinafter called the "Sikes Note"). Sikes has received no payment of principal or interest under the Sikes Note, and the entire balance thereof is currently due and outstanding.
- (c) A Sublease dated August 1, 1975 between Sikes, as sublessor, and Bristow, as sublessee (hereinafter called the "Sikes Sublease") by which Bristow assumed various lease obligations of Sikes including leases of both the real property upon which the carpet facility is located and certain equipment of the facility. The Sikes Sublease provides for acceleration of payments in the event of any act of default. Sikes has received no payment under said sublease since March 15, 1977, and the principal sum of \$2,798,100.00 is currently due and owing to Sikes thereunder.

(d) A Security Agreement dated August 1, 1975 (hereinafter called the "Sikes Security Agreement") which granted Sikes a security interest in certain assets of Bristow including equipment, contract rights, accounts, inventory, general intangibles, fixtures, finished materials, Bristow's stock in Sikes Corporation of Illinois, Inc., work in progress, proceeds, etc., all in Creek County, Oklahoma. Said secured property is more fully described on Exhibit "A", being Paragraph 1 from the Sikes Security Agreement, and Sikes' security interest thereunder secured payment of both the Sikes Note and the Sikes Sublease, and had been perfected by appropriate recording on December 3, 1975 in the office of the Oklahoma County Clerk and on December 4, 1975 in the office of the Creek County Clerk.

6. On or about December 11, 1975, Texas Western executed and delivered to Bristow a "Commitment Letter" which was accepted by Bristow, executed and returned to Texas Western on December 13, 1975. Pursuant to the Texas Western Commitment, certain financing agreements were entered into by Texas Western and Bristow and the following additional documents were executed by the parties:

- A. A Factoring Agreement under the terms of which Texas Western agreed to factor accounts receivable of Bristow, make payments to Bristow therefor and establish a factoring reserve.
- B. A "Loan and Security Agreement", with an "Inventory Rider" and an "Accounts Rider" and "Addendum".

7. No advances were requested by Bristow or made by Texas Western pursuant to the Inventory Rider to the Loan and Security Agreement nor did Texas Western issue guaranties to trade vendors of Bristow, though discussions regarding the possibility thereof occurred from time to time.

8. In connection with consummating the financing agreements between Bristow and Texas Western heretofore described, and as an

inducement to and as a requirement by Texas Western to entering into such financing agreements and doing business with Bristow pursuant thereto, Sikes, Bristow and Texas Western executed a Subordination Agreement dated December 16, 1975, which affected the priorities of Bristow's debts and the security interests in favor of Sikes and Texas Western, as therein set out.

9. On or about January 28, 1977, Bristow ceased to operate in the ordinary course of business. Bristow went into default under the Sikes Note, the Sikes Sublease, and the Sikes Security Agreement and by letter dated March 2, 1977, Sikes notified Bristow of its defaults under said Sublease, the Note, and Security Agreement, and of Sikes' immediate election to accelerate and recover the outstanding balance due under each such obligation. Texas Western, after January 28, 1977, under or by reason of its agreements with Bristow accumulated factoring reserves and other funds received from the collections of accounts receivable and/or the sale of inventory which equaled or exceeded the amounts required to offset ~~ANY~~ <sup>ANY</sup> debts owed by Bristow, and did offset such debts of Bristow against such funds. Accordingly, Bristow owes no present indebtedness to Texas Western and Texas Western, therefore, claims no present right of recovery under its security interests in and to Bristow's factoring reserves, inventory, accounts receivable, proceeds and other property arising under the Texas Western Factoring Agreement or any other documents. At all times material hereto, Sikes held, and presently holds, valid, enforceable, and perfected security interests in various assets of Bristow including inventory, intangibles, contract rights, equipment, proceeds, etc., all as more specifically shown in the Sikes Security Agreement, the Sikes Sublease, and Sikes' Financing Statements, which secured the entire indebtedness of Bristow to Sikes under both the Promissory Note and Sublease. Insofar as the present funds in possession of Texas Western are concerned, Sikes' perfected security interest in inventory, proceeds, and other collateral of Bristow is prior and superior to any other enforceable security interest therein.

10. By reason of Bristow's default under the Sikes Note, Sikes Sublease, and Sikes Security Agreement, Bristow is presently indebted to Sikes for the accelerated outstanding balance of the obligations due thereunder.

11. The following purported assignees have disclaimed any claim in conflict with Sikes' said security interest and its right to possession the property covered thereby in this proceeding: Chemical Bank, individually and as agent for the Prudential Insurance Company of America, Newark, New Jersey; Barnett Bank of Jacksonville, N.A., Jacksonville, Florida; The First National Bank of Tampa, Florida; and Flagship Bank of Tampa, Florida, and each of them.

12. At this time, Defendant Texas Western holds in its possession the following assets, consisting of factoring reserve retentions, proceeds of Bristow's accounts and inventory, and uncollected accounts, all of which are covered by the security interests of Sikes and Texas Western.

(1) Cash in the amount of \$401,052.27.

(2) All uncollected Bristow accounts except those owned by Texas Western and listed on Exhibit "B" hereto.

All such assets are subject to the security interest held by Sikes covering Bristow's accounts, inventory, and proceeds of inventory, and since Texas Western claims no present indebtedness secured by its security interests, Sikes has an immediate right to possession of all such funds and accounts by reason of its security interests, to be held, applied or disposed of in accordance with the provisions of the instruments granting the same.

IT IS ORDERED, ADJUDGED AND DECREED that Texas Western's Motion To Dismiss under Rule 12 (b) (6), F.R.C.P., be treated as a Motion For Summary Judgment and that such Motion and the Motion For Summary Judgment of Plaintiff be, and the same are hereby granted, and Defendant Texas Western is hereby ordered to transfer, convey, sign, and deliver possession to

Sikes of said sum of \$401,052.27 and said Bristow accounts receivable assigned to and in the possession of Texas Western excluding those shown in Exhibit "B" attached hereto, to be held, applied and disposed of by Sikes in accordance with the terms and conditions of its various written agreements with Bristow and the law, and that Texas Western is hereby discharged of and from any further liability or duty to both Sikes and Bristow, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other reliefs sought herein by Sikes against Texas Western be, and the same is hereby, denied in all things, and

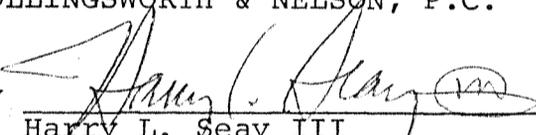
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon satisfaction of the Order herein Texas Western shall be hereby released from all further liability of any nature to Sikes and Bristow Carpets, Incorporated.

  
UNITED STATES DISTRICT COURT  
JUDGE FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:

HALL, ESTILL, HARDWICK, GABLE,  
COLLINGSWORTH & NELSON, P.C.

By

  
Harry L. Seay III  
Attorneys for Plaintiff

GABLE, GOTWALS, RUBIN, FOX,  
JOHNSON & BAKER

By

  
Richard W. Gable  
Attorneys for Defendant,  
Texas Western Financial  
Corporation

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTIE WEST, a/k/a MATTIE  
LEE WEST, TOM R. SHANE,  
HOUSING AUTHORITY OF THE CITY  
OF TULSA, and HENSHAW'S USED  
FURNITURE,

Defendants.

CIVIL ACTION NO. 77-C-261-B

FILED

OCT 25 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 25th  
day of October, 1977, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney; the Defendant, Housing  
Authority of the City of Tulsa, appearing by its attorney,  
Timothy J. Sullivan; and the Defendants, Mattie West, a/k/a  
Mattie Lee West, Tom R. Shane, and Henshaw's Used Furniture,  
appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendants, Mattie West, a/k/a Mattie  
Lee West, Housing Authority of the City of Tulsa, and Henshaw's  
Used Furniture, were served with Summons and Complaint on  
June 30, 1977, all as appears from the U.S. Marshals Service  
herein; and that Defendant, Tom R. Shane, was served by publication,  
as appears from the Proof of Publication filed herein.

It appearing that Defendant, Housing Authority of the  
City of Tulsa, has duly filed its Disclaimer herein on July 20,  
1977, that Defendants, Mattie West, a/k/a Mattie Lee West, Tom R.  
Shane, and Henshaw's Used Furniture, have failed to answer  
herein and that default has been entered by the Clerk of this  
Court.

The Court further finds that this is a suit based  
upon a mortgage note and foreclosure on a real property mortgage

securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eleven (11), Block One (1), CHANDLER-FRATES SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendant, Mattie West, did, on the 13th day of February, 1974, execute and deliver to the Administrator of Veterans Affairs, her mortgage and mortgage note in the sum of \$7,800.00 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, Mattie West, made default under the terms of the aforesaid mortgage note by reason of her failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the sum of \$7,608.06 as unpaid principal with interest thereon at the rate of 6 percent per annum from September 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 Defendant, Mattie West, in personam, for the sum of \$7,608.06 with interest thereon at the rate of 6 percent per annum from September 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 the Plaintiff have and recover judgment, in rem, against Defendants, Tom R. Shane and Henshaw's Used Furniture.

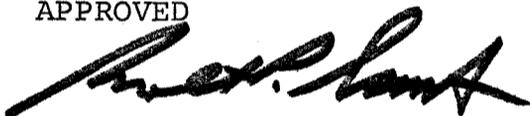
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendant to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding

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, the Defendant and all persons claiming under her 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.

*15/ Allen E. Barrow*  
\_\_\_\_\_  
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. ) CIVIL ACTION NO. 77-C-268-B  
)  
)  
WILLIS A. MURPHY, a/k/a W. A. )  
MURPHY, LOLA MAE JAY MURPHY, )  
MARVEL MURPHY, DUANE RAY, )  
LORETTA LEE RAY, ADOLPHUS D. )  
ORCUTT, JR., TONI K. ORCUTT, )  
ROY D. ROTRAMEL, VERNA CAROL )  
ROTRAMEL, MARVIN RANKINS, )  
SHERRIL RANKINS, MAX D. )  
McCORMICK, LOUIS WILLIAMS, )  
JR., and VICKI WILLIAMS, )  
)  
Defendants. )

FILED

OCT 25 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 25<sup>th</sup>  
day of October, 1977, the Plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney, and the Defendants, Willis A.  
Murphy, a/k/a W. A. Murphy, Lola Mae Jay Murphy, Marvel Murphy,  
Duane Ray, Loretta Lee Ray, Adolphus D. Orcutt, Jr., Toni K.  
Orcutt, Roy D. Rotramel, Verna Carol Rotramel, Marvin Rankins,  
Sherril Rankins, Max D. McCormick, Louis Williams, Jr., and  
Vicki Williams, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendants, Willis A. Murphy, a/k/a  
W. A. Murphy, Lola Mae Jay Murphy, Marvel Murphy, Duane Ray,  
Loretta Lee Ray, Adolphus D. Orcutt, Jr., Toni K. Orcutt, Roy D.  
Rotramel, Verna Carol Rotramel, Louis Williams, Jr., and Vicki  
Williams, were served by publication, as appears from the Proof  
of Publication filed herein; that Defendants, Marvin Rankins  
and Sherril Rankins, were served with Summons and Complaint on  
July 11, 1977; and that Defendant, Max D. McCormick, was served  
with Summons and Complaint on July 5, 1977, all as appears from  
the U.S. Marshals Service herein.

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

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Fifteen (15), Block Two (2), YAHOLA HEIGHTS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Willis A. Murphy and Lola Mae Jay Murphy, did, on the 1st day of September, 1965, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,250.00 with 5 3/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Duane Ray and Loretta Lee Ray, were the grantees in a deed from Defendants, Willis A. Murphy and Lola Mae Jay Murphy, dated June 2, 1970, filed June 3, 1970, in Book 3927, Page 429, records of Tulsa County, wherein Defendants, Duane Ray and Loretta Lee Ray, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Adolphus D. Orcutt, Jr., and Toni K. Orcutt, were the grantees in a deed from Defendants, Duane Ray and Loretta Lee Ray, dated August 10, 1971, filed August 11, 1971, in Book 3980, Page 1130, records of Tulsa County, wherein Defendants, Adolphus D. Orcutt, Jr., and Toni K. Orcutt, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Roy D. Rotramel and Verna Carol Rotramel, were the grantees in a deed from Defendants, Adolphus D. Orcutt, Jr., and Toni K. Orcutt, dated February 20, 1974, filed February 21, 1974, in Book 1107, Page 391, records of Tulsa County, wherein Defendants, Roy D. Rotramel and Verna Carol Rotramel, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Marvin Rankins and Sherril Rankins, were the grantees in a deed from Defendants, Roy D. Rotramel and Verna Carol Rotramel, dated September 27, 1974, filed October 1, 1974, in Book 4139, Page 2, records of Tulsa County, wherein Defendants, Marvin Rankins and Sherril Rankins, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Willis A. Murphy, Lola Mae Jay Murphy, Duane Ray, Loretta Lee Ray, Adolphus D. Orcutt, Jr., Toni K. Orcutt, Roy D. Rotramel, Verna Carol Rotramel, Marvin Rankins, and Sherril Rankins, 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 \$7,549.13 as unpaid principal with interest thereon at the rate of 5 3/4 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, Willis A. Murphy, Lola Mae Jay Murphy, Duane Ray, Loretta Lee Ray, Adolphus D. Orcutt, Jr., Toni K. Orcutt, Roy D. Rotramel, and Verna Carol Rotramel, in rem, and Marvin Rankins and Sherril Rankins, in personam, for the sum of \$7,549.13 with interest thereon at the rate of 5 3/4 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 the Plaintiff have and recover judgment, in rem, against Defendants, Marvel Murphy, Max D. McCormick, Louis Williams, Jr., and Vicki Williams.

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

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

*Walter E. Barrow*  
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 FIDELITY AND )  
GUARANTY COMPANY, a corpora- )  
tion, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
EVERETT S. COLLINS, d/b/a )  
INTERSTATE PAINTING COMPANY, )  
 )  
Defendant. )

No. 77-C-46-C

**FILED**  
OCT 25 1977  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

The Court on October 25, 1977, filed its Order sustaining plaintiff's Motion for Summary Judgment. Based upon the findings set out therein, the Court enters the following Judgment.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Judgment be entered on behalf of the plaintiff, United States Fidelity and Guaranty Company, and against the defendant, Everett S. Collins, d/b/a Interstate Painting Company in the amount of \$109,605.92.

It is so Ordered this 25<sup>th</sup> day of October, 1977.

  
H. DALE COOK  
United States District Judge

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

UNITED STATES FIDELITY AND )  
GUARANTY COMPANY, a corpora- )  
tion, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
EVERETT S. COLLINS, d/b/a )  
INTERSTATE PAINTING COMPANY, )  
 )  
Defendant. )

No. 77-C-46-C

**FILED**  
OCT 25 1977

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

O R D E R

The Court has before it for consideration a Motion for Summary Judgment filed herein by the plaintiff, United States Fidelity and Guaranty Company. In support of said Motion plaintiff has filed exhibits and affidavits. The Court has ascertained the following facts based upon the evidence of record.

On October 24, 1974 the plaintiff, as surety, entered into a bond with the defendant, as principal, and with the Manhattan Construction Company of Muskogee, Oklahoma (hereinafter Manhattan), the principal sum of \$287,529.00 covering the painting and sandblasting of a water purification plant located in Houston, Texas. On November 20, 1975 defendant met with Edgar W. Adams, Resident Surety Claims Manager for the plaintiff, and with the Vice President and Contract Administrator of Manhattan in the office of Manhattan to discuss defendant's performance of the subcontract. On November 25, 1975, John P. Jamison, Vice President of Manhattan wrote defendant a letter "to evidence and confirm the agreements reached during the meeting." In said letter, Manhattan stated that it was recognized during the meeting that defendant had failed to schedule the performance of its works as required by the subcontract and had failed to maintain a satisfactory rate of progress. Manhattan further

stated that defendant had been unable to obtain delivery of essential materials on its own credit and that it had been necessary on previous occasions for Manhattan to pay or to guarantee payment for material and supplies in order to obtain delivery. Manhattan further stated it had been necessary for it to advance money to defendant, at defendant's request, in order for defendant to meet financial obligations. The letter provides:

"It will be in the best interests of Interstate, United States Fidelity and Guaranty and Manhattan if Manhattan shall undertake performance and completion of the subcontract by agreement of the parties, rather than by a formal declaration of default and demand upon the surety for performance."

The letter thereafter states that Manhattan "shall forthwith undertake the performance of the obligations of Interstate under the subcontract on the terms outlined herein." The terms are thereafter specified. The letter concluded by stating that if the letter correctly reflected the agreement which had been reached, the defendant should sign and return it to Manhattan. Defendant did not immediately sign the letter or return it upon receipt. On December 2, 1975 Manhattan sent a telegram to defendant stating:

"Because of your defaults in performance of your subcontract dated July 16, 1974, for paint, painting and sand blasting work on the Houston Water Purification Plant Project, Manhattan will after three days undertake completion of the performance in accordance with the terms of the subcontract and the performance bond of United States Fidelity and Guaranty Co., unless prior to that time you have signed and returned the agreement proposed by my letter of November 25, 1975. The particulars of your default are as stated in my letter and in our several conversations."

Also dated December 2, 1975 is a statement entitled "Addendum" signed by the defendant and attached to Manhattan's letter of November 25, 1975. Said addendum states defendant is reluctant to accept Manhattan's demand "by reason that Manhattan Construction Company is holding \$19,000.00 of an estimate that was paid to Manhattan Construction Company in the amount of \$29,000.00," and further discusses amounts

allegedly due and owing. Although defendant states in the addendum that he does not agree as to any default in their contract, defendant states "upon the taking over by Manhattan Construction Company that they will assume all liability for all the outstanding bills, quarterly reports, unemployment taxes, union expenses and insurance expense." On December 5, 1975 defendant sent Manhattan a statement regarding outstanding withholding and social security amounts which should be forwarded to the Internal Revenue Service in the sum of \$15,626.28. On December 8, 1975 Manhattan sent defendant formal notice that Manhattan was "exercising its right under the subcontract to complete the performance of the work with its own forces and/or forces from other sources." On December 9, 1975 Manhattan sent a letter to plaintiff confirming their telephone conversations concerning the completion of the contract by Manhattan and providing:

"If the total of all such costs shall exceed the balance due under the subcontract, then the excess shall constitute a claim under Bond No. 56-0120-3001-74 of United States Fidelity and Guaranty Company."

The cost incurred by Manhattan in performing the balance of the contract was \$106,605.92, and plaintiff reimbursed and paid Manhattan that amount of money. In addition thereto, it was necessary that Manhattan pay the Painters' Local Union No. 130 the sum of \$7,009.70 for fringe benefits, and plaintiff reimbursed Manhattan \$3,000.00, the full amount of its bond covering such fringe benefits.

The Court recognizes that summary judgment is justified only if no material issue of fact survives the pleadings, affidavits and exhibits of record. Well-Surveys, Inc. v. Perfo-Log, Inc., 396 F.2d 15 (10th Cir. 1968). The trial court is, however, empowered and enjoined to look through transparency to substance. Fischer Construction Co. v. Fireman's Fund Insurance Co., 420 F.2d 271 (10th Cir. 1969).

In support of their respective positions both parties cite 15 O.S. § 427 which provides in pertinent part:

"In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable. \*\*\*

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter, suffered by him in good faith, is conclusive in his favor against the former."

In Response to the Motion for Summary Judgment defendant states that the Answer filed in this case reflects he denies the default of the contract with Manhattan. Defendant further asserts that the record does not reflect that plaintiff requested that the defendant defend himself nor that any lawsuit was ever brought in this matter. However, the contract between the parties provides:

"Fifth, that liability hereunder shall extend to and include all amounts paid by the Company in good faith under the belief that it was or might be liable therefor or that such payments were necessary or advisable to protect any of its rights hereunder or to avoid or lessen its liability or alleged liability. . . ."

This contractual provision creates liability for all amounts paid by the Company in good faith and does not require that a request to defend be made or that liability be judicially determined. As stated in Chicago, R.I. & P.R. Co. v. Dobry Flour Mills, 111 F.Supp. 496 (W.D. Okla. 1953):

"Where liability is clear and a defense to the suit would be unavailing, the indemnitee may discharge a claim or demand against him, with or without notice unless specifically required under the contract, and bring suit for indemnity without waiting for the suit against him to go to trial and judgment."

It is clear from the affidavits and exhibits of record that in the case at bar, both Manhattan and the plaintiff attempted to avoid having to declare a default on the contract and made numerous attempts to consult with defendant in an effort to work out a satisfactory agreement. Defendant was fully informed as to the basis of Manhattan's dissatisfaction. The "addendum" prepared by defendant does not dispute Manhattan's

assertions of failure to properly perform, but merely asserts that certain sums were due and owing. Defendant appears to have acquiesced in the takeover of the project and in fact notified Manhattan as to amounts which defendant owed the Internal Revenue Service, which Manhattan thereafter paid. In a letter to plaintiff dated September 22, 1976 defendant in no way asserts that the parties were not justified in declaring the contract in default and in taking over the project, but merely questions the amounts expended. The letter concludes by stating:

"If at any time you desire for us to sit down together to ascertain the proper expenditures and whatever amount I should owe, we will discuss the same at the proper time." (emphasis added)

Defendant at no time has asserted that plaintiff acted in bad faith in paying the amounts required to complete the project, nor does any evidence of record support such a finding. Clearly the amounts paid by plaintiff were paid in good faith under the belief that it was or might be liable therefor. Under the contract provision previously cited, defendant is therefore liable.

In addition to there being no question that plaintiff acted in good faith, it is also clear that defendant was in default at the time Manhattan took over the project. However, even had the Court determined that the issues of good faith and default were issues of fact which could not be ruled upon pursuant to a motion for summary judgment, another provision of the contract between the parties entitles plaintiff to recover herein. Said provision states:

"Fourth, that the Company shall, at its option and in its sole discretion, have the right to take possession of all, or any part of the work of the said contract, whenever, in its sole discretion, such action is desirable or necessary, and at the expense of the undersigned and each of them to complete, or cause the completion of, any such work, or re-let, or consent to the re-letting or completion of, such contract. . . ."

Pursuant to this provision, the plaintiff at its option and its sole discretion had the right to take possession of the

work and was within its contractual rights to enter into an agreement with Manhattan "to cause the completion" of the work. The defendant agreed that such completion would be "at the expense of the undersigned."

Based upon the foregoing it is the determination of the Court that defendant is liable to plaintiff for the amounts expended by plaintiff to complete the project. In regard to the amounts of liability incurred, the contract provides that "the vouchers or other evidence of such payments or an itemized statement thereof sworn to by an officer of the Company shall be prima facie evidence of the fact and extent of the liability of the undersigned to the Company." Plaintiff has filed exhibits showing its total payment of \$109,605.92 pursuant to the bond agreement. Defendant has filed no evidence to contest the validity or accuracy of the amounts paid.

It is therefore the determination of the Court that plaintiff's Motion for Summary Judgment should be and hereby is sustained. Judgment on behalf of plaintiff is hereby entered in the sum of \$109,605.92 plus interest and costs.

Plaintiff is hereby given fifteen (15) days to file a brief in regard to the appropriateness of an award of an attorney's fee and documentation in support of the amount requested. Defendant shall have ten (10) days thereafter in which to file a Response.

It is so Ordered this 25<sup>th</sup> day of October, 1977.

  
H. DALE COOK  
United States District Judge

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

GILFORD D. DELOZIER )

Plaintiff )

vs. )

No. 76-C-440-C

TEXACO, INC., JOSEPH  
TEICHMAN and DOROTHY  
TEICHMAN )

Defendants )

**FILED**  
OCT 26 1977 *JWT*  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER OF DISMISSAL

ON This 26<sup>th</sup> day of October, 1977, upon the written

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

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

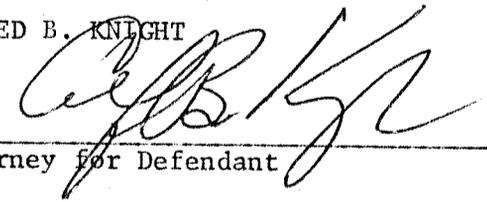
  
\_\_\_\_\_  
JUDGE, DISTRICT COURT OF THE UNITED STATES,  
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

ROSS HUTCHINS

  
\_\_\_\_\_  
Attorney for Plaintiff

ALFRED B. KNIGHT

  
\_\_\_\_\_  
Attorney for Defendant

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

EMILY G. DELOZIER )  
 )  
Plaintiff )

vs. )

No. 76-C-439-C

TEXACO, INC., JOSEPH )  
TEICHMAN and DOROTHY )  
TEICHMAN )  
 )  
Defendant )

FILED

OCT 26 1977 *rm*

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

ORDER OF DISMISSAL

ON This 26<sup>th</sup> day of october, 1977, upon the written

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

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

*W. Salebook*  
\_\_\_\_\_  
JUDGE, DISTRICT COURT OF THE UNITED STATES,  
NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

ROSS HUTCHINS

*[Signature]*  
\_\_\_\_\_  
Attorney for Plaintiff

ALFRED B. KNIGHT

*[Signature]*  
\_\_\_\_\_  
Attorney for Defendant

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

QUEEN VICTORIA BYERS, on behalf )  
of herself and all others )  
similarly situated, )  
 )  
 ) Plaintiffs, )  
 )  
vs. )  
 )  
SOUTHWESTERN BELL TELEPHONE CO., )  
a corporation, )  
 )  
LINDA RUBY, individually and in )  
her capacity as an employee of )  
defendant corporation, )  
 )  
ANNABELLE MATTHEWS, individually )  
and in her capacity as an employee )  
of defendant corporation, )  
 )  
ROBERTA HAFF, individually and in )  
her capacity as an employee of )  
defendant corporation, )  
 )  
CONNIE WILSON, individually and )  
in her capacity as an employee )  
of defendant corporation, )  
 )  
BERNIE WILLIAMS, individually and )  
in his capacity as an employee of )  
defendant corporation, )  
 )  
 ) Defendants. )

No. 76-C-556-C

**FILED**

OCT 21 1977

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

ORDER

On July 27, 1977 the defendants filed a Motion to Dismiss for Failure to Comply With Order, and as basis therefor state that plaintiff had failed to comply with the Order of this Court, dated May 27, 1977, requiring her to either obtain counsel or to proceed pro se. On August 4, 1977, plaintiff wrote a letter to the Court indicating her desire to proceed pro se. Based upon plaintiff's response, the Court hereby overrules defendant's Motion to Dismiss for Failure to Comply With Order of the Court.

Now pending in this action are the Motion of Individual Defendants to Dismiss and the Motion of Defendant, Southwestern Bell Telephone Company to Dismiss. The Court makes the following determination in regard to said Motions.

Plaintiff brings this action alleging jurisdiction under the Fourteenth Amendment, 29 U.S.C. & 623, 42 U.S.C. §§ 1981, 1983, 1985(3), 1986, 2000e-5 and 25 O.S. § 1302. Plaintiff alleges this Court has jurisdiction pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 2000e-5(f). Plaintiff's Complaint alleges that she was employed by defendant Southwestern Bell Telephone Company on February 12, 1975, and that upon reporting for employment the plaintiff, a 49-year old black female, and an Indian male were separated from the other trainees and assigned to be trained by defendant Annabelle Matthews. Plaintiff alleges that during the course of the training defendant Matthews made racially disparaging remarks to the plaintiff. Plaintiff states that during the course of the training period defendant Roberta Haff called the plaintiff to her office and severely criticized her work and expressed doubts as to her competency and further that defendant Haff interfered with plaintiff's training and refused to allow the presence of a union steward during a disciplinary meeting. Plaintiff alleges that on or about March 3, 1975, she was discharged from her job as directory assistance operator trainee by defendant Haff for alleged incompetency. Thereafter, allegedly due to negotiations between Haff and union steward Rosetta Hooks, plaintiff was reinstated and was to receive further training. Plaintiff returned to work on April 21, 1975, and commenced further training. Plaintiff states in the Complaint that three days after training had recommenced she resigned due to undue discriminatory harrassment and interference with her training by defendant Haff and her secondary training instructor defendant Connie Wilson. Plaintiff thereafter filed a complaint with the Community Relations Commission of Tulsa, which issued a determination that there was no probable cause to believe that the defendant corporation had discriminated against the plaintiff. The Community Relations Commission thereafter forwarded plaintiff's complaint to the

State Human Rights Commission which on April 24, 1975 issued a termination of proceedings in the present action. The Human Rights Commission then forwarded plaintiff's complaint to the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act of 1964. Plaintiff states that after investigation the Equal Employment Opportunity Commission found probable cause to believe that the defendant corporation had discriminated against the plaintiff on the basis of race and thereafter issued an "invitation to participate in settlement discussions". Subsequently, on August 4, 1976, the plaintiff received a notice of conciliation failure and notice of right to sue.

Motion of Individual Defendants to Dismiss

The five individual defendants seek dismissal on the ground that none of them was named by plaintiff in her charge filed with the EEOC. Defendants note that on the face of the complaint filed with the EEOC in answer to the question, "Who discriminated against you?", plaintiff listed only "Southwestern Bell Telephone Company (Mr. Fritch, Manager of Commercial Department.)" Defendants rely heavily on the case of Van Hoomissen v. Xerox Corp., 368 F.Supp. 829 (N.D. Cal. 1973) in which the Court stated it did not feel that the liberality with which it could construe 42 U.S.C. 2000e-5(f)(1) stretched so far as to include as defendants seven persons whose only visible common denominator appeared to be their employer. In response to this contention, plaintiff points out that the Court in Van Hoomissen also held that courts should not only consider the allegations made on the face of the complaint, but any attachments thereto in order to determine which parties had been named therein. Plaintiff attaches to her Response to the Motion to Dismiss a copy of the nine-page notarized affidavit of plaintiff which apparently was prepared for the Oklahoma Human Rights Commission and which was attached to the complaint to the EEOC. In said affidavit, all of the individual defendants are named

in some manner except for defendant Bernie Williams. The Court in Van Hoomissen, in determining whether a defendant had been properly named before the EEOC, considered (1) whether plaintiff had notified the EEOC of his charges against the defendants, and (2) whether the EEOC investigation of the charge made by plaintiff should have given notice to the defendants of the investigation and alleged charges pertaining to them. The Court therefore concluded:

"Whether in fact the EEOC did investigate the charges against both men and so notify them is an evidentiary question which can be resolved at the time of trial. If [the defendants] are then able to demonstrate that no such investigation was made, and thus no notice was given prior to the serving of the court suit upon them, they may at that time move again for their dismissal from the case."

In light of the Van Hoomissen case, defendants now state it would seem appropriate at this point to withhold a ruling on the Motion to Dismiss the individual defendants not named originally. Defendants state that if they are able to later demonstrate that no such investigation was made with regard to them and thus no notice given to them, dismissal from the case would be appropriate at that time. The Motion to Dismiss of Linda Ruby, Annabelle Matthews, Roberta Haff and Connie Wilson is therefore overruled, with leave to refile at appropriate time. In regard to individual defendant Bernie Williams, who was in no manner named in the complaint before the EEOC, his motion to dismiss is hereby sustained.

Motion of Defendant Southwestern Bell Telephone Company  
to Dismiss 1983 Action

Title 42 U.S.C. § 1983 creates a cause of action for the deprivation of any action for any rights, privileges or immunities secured by the Constitution and laws, if such deprivation is the result of conduct under color of statute, ordinance, regulation, custom or usage of a state or territory. Thus, state action is clearly an essential element of a claim under this section. Plaintiff contends that defendants'

conduct is "state action" for the reason that defendant is a regulated public utility. Defendant does not dispute the fact that it is a public utility regulated by the Oklahoma Corporation Commission under the authority of the Oklahoma Constitution. Clearly regulation by a governmental body, standing alone, will not convert otherwise private action into action under color of State law. As stated by the Supreme Court in Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974), the inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself. Plaintiff asserts in this case that the defendant company's action constituted "state action", because the services involved were regulated as to tariffs and plaintiff refers to other statutory provisions regarding the regulation of this public utility. It is the determination of the Court that a sufficiently close nexus between the State and the defendant regulated corporation does not exist to warrant considering the actions of the defendant corporation or the individual defendants as actions of the State itself. Defendant company's Motion to Dismiss the Section 1983 cause of action is therefore hereby sustained.

Motion to Dismiss § 1985(3) and § 1986

Defendant company asserts that plaintiff has failed to allege any conduct on the part of defendant company or the individual defendants which would in any way support an allegation of conspiracy. Allegations in regard to an alleged conspiracy require greater specificity and it is not enough merely to state that a conspiracy has taken place. The Court finds that no facts are alleged in the Complaint to support the allegation that the individual defendants or the defendant company participated in conspiratorial conduct. Defendant's Motion to Dismiss the Section 1985 allegations is hereby therefore sustained. Having failed to state a claim under § 1985(3) relating to

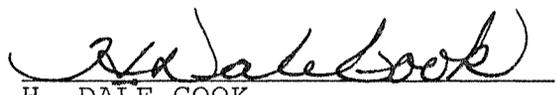
conspiracy to deprive persons of their civil rights, the applicability of § 1986 relating to neglect to prevent such deprivation is likewise subject to dismissal.

Motion to Dismiss Complaint for Failure to Comply with Rule 8

Rule 8 of the Federal Rules of Civil Procedure requires that a claim for relief shall contain (1) a short and plain statement of the grounds upon which the Court's jurisdiction depends, (2) a short and plain statement showing that a pleader is entitled to relief, and (3) a demand for judgment. As stated by defendant it is not enough to merely indicate in a complaint that the plaintiff has a grievance. A sufficient detail must be given so that defendants and the Court can obtain a fair idea of what the plaintiff is complaining about and can see that there is some legal basis for recovery. Although the Complaint in the case at bar can certainly not be characterized as a model of clarity, the Court does not find it so inadequate to justify dismissal pursuant to Rule 8.

Based upon the foregoing it is the determination of the Court that the Motion of Individual Defendants to Dismiss should be overruled at this time as to Linda Ruby, Annabelle Matthews, Roberta Haff and Connie Wilson and is sustained as to Bernie Williams. It is the further determination of the Court that the Motion of Defendant Southwestern Bell Telephone Company to Dismiss is sustained as to alleged violations of 42 U.S.C. § 1983, 1985(3) and 1986, but is overruled in regard to failure to comply with Rule 8, Federal Rules of Civil Procedure.

It is so Ordered this 20<sup>th</sup> day of October, 1977.

  
H. DALE COOK  
United States District Judge

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

FILED

OCT 20 1977

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

TULSA MATCHPLATE COMPANY,  
an Oklahoma corporation,

Plaintiff,

-vs-

FARMERS INSURANCE GROUP,  
a Kansas Corporation,

Defendant.

NO. 77-C-190

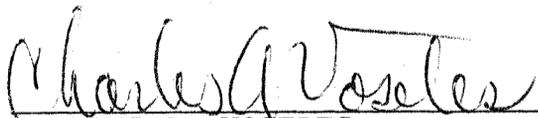
ORDER OF DISMISSAL

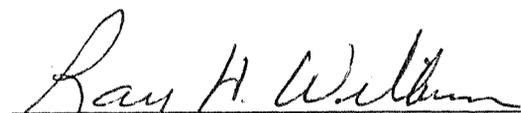
ON this 20<sup>th</sup> day of October, 1977, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint 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 plaintiffs filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
CHARLES A. VOSELES  
Attorney for Plaintiffs

  
RAY H. WILBURN  
Attorney for Defendant

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

**FILED**

MODERN EDUCATION CORPORATION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MAFEX ASSOCIATES, INC., )  
 )  
 Defendant. )

OCT 19 1977

Jack C. Silver, Clerk  
U.S. DISTRICT COURT  
No. 77-C-143

JUDGMENT

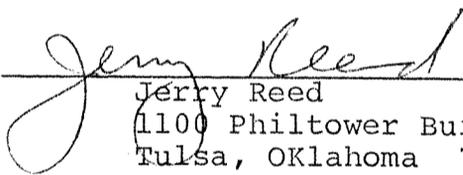
NOW, on this 19<sup>th</sup> day of October 1977, come the parties to this cause by and through their respective attorneys, and file with the Court a Stipulation For Judgment which is hereby received and considered by the Court.

WHEREFORE, judgment is hereby entered in favor of the plaintiff and against the defendant in accordance with the terms and conditions set forth in the Stipulation For Judgment filed herein.

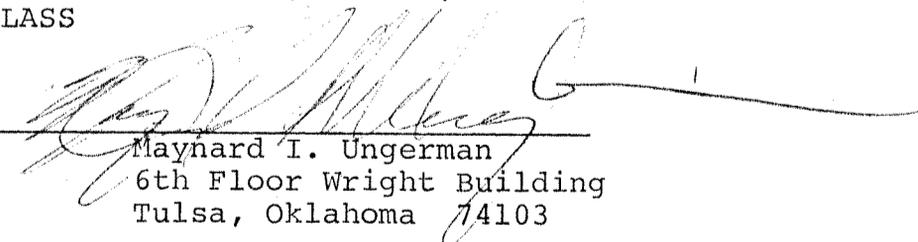
  
CHIEF UNITED STATES DISTRICT JUDGE

APPROVED:

PRICHARD, NORMAN, REED & WOHLGEMUTH

BY   
Jerry Reed  
1100 Philtower Building  
Tulsa, Oklahoma 74103  
Attorneys for Plaintiff

UNGERMAN, UNGERMAN, MARVIN, WEINSTEIN  
& GLASS

BY   
Maynard I. Ungerman  
6th Floor Wright Building  
Tulsa, Oklahoma 74103  
Attorneys for Defendant

OCT 19 1977

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

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

KENNETH GRIFFIN,	)
	)
	)
v.	)
	)
RICHARD A. CRISP, et al.,	)
	)
	)
	)

NO. 77-C-393

Petitioner,

Respondents.

O R D E R

The Court has for consideration the pro se, in forma pauperis petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by the Petitioner, Kenneth Griffin.

Upon review thereof, the Court finds that Petitioner is a prisoner confined at the Oklahoma State Penitentiary, McAlester, Oklahoma, pursuant to conviction on plea of guilty to robbery with firearms and sentence to 25 years imprisonment in Case No. CRF-74-4234 in the District Court of Oklahoma County, Oklahoma City, Oklahoma. The Court finds that the State Court wherein the Petitioner was convicted and sentenced is within the territorial jurisdiction of the United States District Court for the Western District of Oklahoma; and in the furtherance of justice should an evidentiary hearing be required herein, this cause should be transferred pursuant to 28 U.S.C. § 2241(d) to the Western District of Oklahoma.

IT IS, THEREFORE, ORDERED that this cause be and it is hereby transferred to the United States District Court for the Western District of Oklahoma for any necessary hearings and for determination of the petition for writ of habeas corpus of Kenneth Griffin.

Dated this 19<sup>th</sup> day of October, 1977, at Tulsa, Oklahoma.

*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

THE TRAVELERS INSURANCE COMPANY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PANAMA-WILLIAMS, INC., )  
 )  
 Defendant. )

No. 76-C-124-C

**FILED**

**OCT 19 1977**

O R D E R

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

The Court has before it for consideration a Motion for New Trial filed herein by the defendant, Panama-Williams, Inc. In addition, the plaintiff, The Travelers Insurance Company, has filed an Application to Amend Judgment.

In regard to defendant's Motion for New Trial, the brief in support thereof incorporates the briefs previously filed by defendant in this action on the legal issues involved. The Court, likewise, hereby incorporates its previous rulings in regard to the legal issues presented. Based upon the law previously cited and the evidence presented at trial, the Court hereby overrules defendant's Motion for New Trial. The Court notes that in support of its Motion for New Trial, defendant asserts "the Court has left pending defendant's Motion to Certify Question of Law to the Supreme Court of the State of Oklahoma, filed in Open Court May 27, 1977." As reflected on the docket sheet of this case, on September 8, 1977 the case was called for oral argument, at the conclusion of which defendant renewed its Motion to Certify and said motion was overruled by the Court. The Court hereby reaffirms that ruling.

Plaintiff seeks to amend the judgment to provide for pre-judgment interest based upon the provisions of 23 O.S. § 6 and 23 O.S. § 22. However, as stated in Wilcox Oil Co. v. Empire Oil of Texas, 195 F.2d 860 (5th Cir. 1952), "It is

well settled in Oklahoma jurisprudence that interest on an unliquidated account or claim is not recoverable where it is necessary for a judgment to be had to ascertain the amount thereof." In the case of Dick v. Essary, 201 Okla. 196, 203 P.2d 715 (Okla. 1949), cited with approval in Wilcox Oil Co. v. Empire Oil of Texas, supra, the definition of a "liquidated account" was accepted as being "one the amount of which is agreed upon by the parties or fixed by operation of law" and a "liquidated debt" was said to be such "when it is certain what is due and how much is due."

In the case at bar, defendant contended that Gulf Oil Corporation was negligent in that its lines were too low. As previously noted by the Court, the concept of proximate cause is inherent in 63 O.S. § 984 in that the statute provides that if violation results in physical or electrical contact with any overhead high voltage line, the violator shall be liable to the owner for all liability incurred by owner as a result of such contact. An issue was therefore presented in regard to whether the liability incurred by Gulf Oil Corporation was a result of the defendant's violation of 63 O.S. § 981 or whether it was a result of Gulf's own negligence. If negligent conduct on the part of Gulf had been found to be the sole proximate cause of its incurring of liability, or if liability was incurred solely as a result of Gulf's negligence, then the provisions of 63 O.S. § 984 would not have provided plaintiff a remedy. It was the determination of the Court that the evidence presented did not support a finding that Gulf was negligent, and the Court found liability was incurred as a result of the defendant's violation of the statute.

As stated in Smith v. Owens, 397 P.2d 673 (Okla. 1964) quoting from Allison v. Allen, 326 P.2d 1059 (Okla. 1958):

"Interest cannot be recovered upon an unliquidated claim where a trial is necessary in order to ascertain the amount due."

In light of the contested issues of liability presented in this case, it is the determination of the Court that the award of Pre-judgment interest is not proper, and plaintiff's Motion to Amend Judgment is therefore hereby overruled.

It is the further order of the Court that defendant's Motion for New Trial should be and hereby is overruled.

It is so Ordered this 19<sup>th</sup> day of October, 1977.

  
H. DALE COOK  
United States District Judge

10-18-77  
JLS/dm

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

FILED

OCT 19 1977

ph

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

PAUL HAGGERTY,  
Plaintiff

vs.

ACKERMAN, INC.,  
an Oklahoma corporation,  
Defendant

Case No. 77-C-104-C

ORDER OF DISMISSAL

On this 19<sup>th</sup> day of October, 1977, upon the written application of the parties for a dismissal with prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

*W. Dale Cook*  
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

JERRY L. SMITH,

By *Jerry L. Smith*  
Attorney for Plaintiff

BRIAN S. GASKILL,

By *Brian S. Gaskill*  
Attorney for Defendant

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

ESTHER CASTRO SKELLY a/k/a  
ESTHER CASTRO PRESLEY a/k/a  
ESTHER CASTRO and DAVID SKELLY,

Plaintiffs,

-vs-

EDWARD H. LEVI, Attorney General  
of the United States of America,

Defendant.

CIVIL ACTION NO. 76-C-405-C ✓

FILED

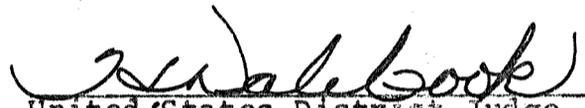
OCT 18 1977 110

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

ORDER DISMISSING ACTION

THE parties herein by and through their attorneys,  
having filed on the 18<sup>th</sup> day of October, 1977, a Stipulation  
for Dismissal of action without prejudice.

IT IS HEREBY ORDERED that the above entitled action  
be and it hereby is, dismissed without prejudice to either party.

  
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the above  
pleading was hand delivered to Robert P. Santee, Assistant United  
States Attorney, on the \_\_\_\_\_ day of October, 1977

  
George Carrasquillo

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**  
OCT 18 1977

IN THE MATTER OF: )

ESTABLISHMENT INSPECTION OF: )

VENETIAN MARBLE OF OKLAHOMA,  
INC., a corporation, )

~~Magistrate's Office~~

~~No. 77~~

~~Case No. 0075M~~

~~M-1301~~

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

77-02419-B

O R D E R

On the 18<sup>th</sup> day of October, 1977, came on to be heard petitioner's and respondent's stipulation and motion to dismiss petitioner's petition for entry, inspection and investigation under the Occupational Safety and Health Act of 1970, and the Court being fully advised in the premises of said motion and having heard respondent's promise and agreement to allow inspection of its workplace by petitioner, it is hereby,

ORDERED that said motion be and it hereby is granted and that petitioner's petition for entry, inspection and investigation under the Occupational Safety and Health Act be and hereby is dismissed.

Signed this 18<sup>th</sup> day of October, 1977.

  
UNITED STATES DISTRICT JUDGE

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

RALPH CHESSER,

Plaintiff,

-vs-

CONTINENTAL OIL COMPANY, a Corporation,

Defendant.

FILED

OCT 18 1977

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

No. 77-C-152-B

ORDER OF DISMISSAL

On this 17th day of October, 1977, the Court has for consideration the Stipulation for Dismissal duly executed and submitted to the Court by counsel for plaintiff and defendant, and based upon such Stipulation for Dismissal, the Court finds that the above styled action should be dismissed with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the above styled ~~matter~~ <sup>*Cause of action & Complaint are*</sup> ~~and same is~~ hereby dismissed with prejudice.

*Allen E. Jones*

Chief United States District Judge

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

G. RICHARD MORRIS, )  
 )  
 Plaintiff )  
 )  
 vs. ) No. 76-C-632  
 )  
 MONTELLO, INC., )  
 )  
 Defendant )

**FILED**

OCT 18 1977

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

ORDER DISMISSING CAUSE OF ACTION AND COMPLAINT

This cause having come on to be considered on the joint motion of Plaintiff and Defendant for the dismissal with prejudice of both Plaintiff's cause of action and Complaint and Defendant's Counterclaim against Plaintiff; it is hereby ordered that Plaintiff's cause of action and Complaint against Defendant be dismissed with prejudice and Defendant's Counterclaim against Plaintiff be dismissed with prejudice, with each party paying its own costs.

DATED: October 18, 1977

  
UNITED STATES DISTRICT JUDGE

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

**FILED**

SHIRLEY LOUISE EPPERLEY, next of )  
kin and Administratrix of the Estate )  
of Cynthia Louise Epperley, Deceased, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
CLIFFORD L. DIXON and LOETTA DIXON, )  
 )  
Defendants. )

OCT 17 1977

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

NO. 76-C-408-C

JOURNAL ENTRY OF JUDGMENT

NOW on this 17<sup>th</sup> day of October, 1977, this cause came on for hearing pursuant to regular assignment, and trial by jury was waived in open Court by the parties hereto. Plaintiff appeared in person and by her attorney, Dale J. Briggs, and defendants appeared by their attorney, Ray H. Wilburn. Both parties thereupon presented their evidence; after oral argument and the Court being fully advised in the premises, the Court finds that said cause is brought by Shirley Louise Epperley, next of kin and Administratrix of the Estate of Cynthia Louise Epperley, deceased and the Court further finds that Cynthia Louise Epperley died and departed her life instantaneously as a result of the accident of May 29, 1975, and without any conscious pain and suffering; and the Court further finds that the parties hereto have entered into an agreed settlement in the sum of TWENTY-FIVE THOUSAND and NO/100 DOLLARS (\$25,000.00), and the Court finds same is reasonable and to the best interest of the Estate of Cynthia Louise Epperley, deceased.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Shirley Louise Epperley, next of kin and Administratrix of the Estate of Cynthia Louise Epperley, deceased, have and recover from the defendants the sum of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) and that she have her costs herein expended.

*Ray H. Wilburn*

JUDGE

APPROVED AS TO FORM:

*Dale A. Briggs*

*Ray H. Wilburn*

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

FRANCIS R. WENDT, )  
 )  
 Plaintiff, )

vs. )

W. R. GRACE COMPANY, )  
 CONSTRUCTION PRODUCTS DIVISION, )

Defendant. )

No. 76-C-125

FILED

OCT 17 1977

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

JOURNAL ENTRY OF JUDGMENT

This case came on for trial on the 26th day of August, 1977, at 9:00 a.m. and both parties announced ready for trial. Plaintiff was present in person and with his attorney, Jack Y. Goree of Whitten, McDaniel, Osmond, Goree and Davies, and Joseph R. Roberts of Rhodes, Hieronymus, Holloway and Wilson. The defendant was present by its representative and its attorney, Jack M. Thomas of Best, Sharp, Thomas and Glass. After opening statements were made the plaintiff put on his case in chief and the case was continued at the end of the day until the 29th day of August, 1977, at which time court reconvened and the plaintiff continued to put on his case in chief. At the conclusion of the plaintiff's case he rested and the defendant elected to put on no evidence and the defense rested at this time also. The jury, after being fully instructed by the court, retired to consider the verdict and on the 30th day of August, 1977, the jury returned a verdict for the plaintiff in the sum of \$23,750.00. The jury further found in its verdict that the plaintiff contributed 49% negligence and the defendant contributed 51% negligence

for a total of 100%. The court accepted the verdict and hereby decreases the total award by 49% and enters judgment against the defendant, W. R. Grace Company, Construction Products Division, for the plaintiff, Francis R. Wendt, in the sum of \$12,112.50 with interest at 10% from August 30, 1977.

DATED this 17<sup>th</sup> day of October,  
1977.

/s/ H. Dale Cook  
JUDGE

WHITTEN, MCDANIEL, OSMOND,  
GOREE AND DAVIES

and

RHODES, HEIRONYMUS, HOLLOWAY  
& WILSON

By Jack V. Goree  
Jack V. Goree

2626 East 21st Street  
Tulsa, Oklahoma 74114

BEST, SHARP, THOMAS & GLASS  
200 Franklin Building  
Tulsa, Oklahoma 74103

By /s/ Jack M. Thomas  
Jack M. Thomas  
Attorneys for Defendant

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

FILED

OCT 17 1977

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

M & M LIMITED, INC.,	]	
	]	
Plaintiff,	]	
	]	
-vs-	]	Civil Action No. 77-C-33-B
	]	
BOB BOLLES and BOB BOLLES,	]	FINAL CONSENT
d/b/a ARROW PRODUCTIONS,	]	
	]	<u>JUDGMENT AND INJUNCTION</u>
Defendants.	]	

It appearing that Plaintiff M & M LIMITED, INC. (hereinafter referred to as Plaintiff), and Defendants BOB BOLLES and BOB BOLLES d/b/a ARROW PRODUCTIONS (hereinafter referred to as Defendants), have entered into an Agreement consenting to settle the above-captioned action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Court has jurisdiction over the subject matter and the parties to this action.

2. Plaintiff is the owner of certain copy-right rights in belt buckles, and particularly in the buckles identified by the following titles, and as shown in Exhibits A--L attached to the Complaint, and has received from the Register of Copyrights the following Certificates of Registration covering such buckles, having complied with all of the provisions of the Copyright Laws pertaining thereto, including notice requirements and deposit of copies:

<u>EXHIBIT NO.</u>	<u>REGISTRATION NO.</u>	<u>TITLE OF WORK</u>
A	GP 101649	Yamaha Belt Buckle
B	GP 101650	Kawasaki Belt Buckle

<u>EXHIBIT NO.</u>	<u>REGISTRATION NO.</u>	<u>TITLE OF WORK</u>
C	GP 101651	z Belt Buckle
D	GP 101652	Honda 4 Belt Buckle
E	GP 101654	BMW Belt Buckle
F	GP 102142	Harley Davidson Skull Belt Buckle
G	GP 102145	Triumph and British Flag Belt Buckle
H	GP 102141	Guzzi Belt Buckle
I	GP 102143	Harley Davidson H1D Belt Buckle
J	GP 102144	Suzuki Belt Buckle
K	GP 102146	Hodaka Belt Buckle
L	GP 102147	Triumph and Chain Belt Buckle

Each of the above Copyright Registrations is valid, subsisting and in full force and effect.

3. Since February 12, 1975, the above listed belt buckles have been manufactured and sold by Plaintiff, and all copies of said copyrighted belt buckles made by Plaintiff under its authority or licenses have been manufactured and marketed in conformity with the provisions of the Copyright Laws of the United States, and in particular, Title 17 of the United States Code.

4. Defendants have, within the last year, sold, offered for sale or distributed certain belt buckles which are identical to or substantially similar to the copyrighted buckles of Plaintiff set forth above (See Exhibit M to the Complaint), and have thereby infringed Plaintiff's copyright rights in its belt buckles.

5. Plaintiff did, at least as early as February of 1975, advertise for sale its original belt buckle designs in several magazines circulated in interstate commerce

and by its own catalog distributed nationwide.

6. Subsequent to Plaintiff's first advertisement and sales of its original belt buckle designs, Defendants published a catalog showing pictures of Plaintiff's belt buckle designs in association with the Defendant ARROW PRODUCTIONS name and an order blank, in which Defendant offered for sale belt buckles which bear Plaintiff's trademark and name, which buckles are inferior in quality to Plaintiff's belt buckles (See Exhibit M to the Complaint).

7. Such use by Defendants of pictures of Plaintiff's products in Defendants' catalog constitutes a misappropriation of a distinguishing characteristic of Plaintiff and constitutes either false designation of origin of Defendants' products or a false representation, in violation of 15 USC 1125(a), to the great damage of Plaintiff and the public.

8. Defendants have advertised and sold belt buckles identical in design and appearance to those offered by Plaintiff, but of inferior quality to Plaintiff's, and have used photographs of Plaintiff's buckles and Plaintiff's name in the advertising and sale of inferior buckles which are likely to confuse and deceive purchasers and obtain the acceptance of Defendants' products based on the merit, reputation and good will of Plaintiff and its products and prior advertising. These acts enable Defendants to compete unfairly with Plaintiff and confuse the public by passing off their products as those of Plaintiff, or authorized or sanctioned by Plaintiff, all to Plaintiff's and the public's irreparable damage.

9. Defendants have, by their use of Plaintiff's belt buckles, designs and photographs, in the sale of their

buckles, passed off their goods as those of Plaintiff; caused a likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of their buckles; caused a likelihood of confusion or misunderstanding as to affiliation, connection or association with or certification by Plaintiff; and have engaged in other conduct which similarly creates a likelihood of confusion or of misunderstanding and which constitutes a violation of Title 78, Oklahoma Statutes, Section 51.

10. Defendants, their officers, agents, servants, employees, attorneys, and all others in active concert and/or participation with them, are hereby perpetually enjoined and restrained from:

(a) directly or indirectly infringing the copyright rights of Plaintiff, in and to its belt buckles, including its Copyright Registrations therefor, as set forth above;

(b) manufacturing, selling, marketing, using, or otherwise disposing of any copies of Plaintiff's copyrighted belt buckles, as identified in paragraph 2 above and in the Complaint herein, or any part, simulation, or any infringing variant of the same such buckles, including offering for sale, advertising or displaying such copies;

(c) making, in any manner whatsoever, any statement or representation or performing any act which is likely to lead the public or individual members of the public to believe that Defendants or their business are in any manner, directly or indirectly, associated or connected with Plaintiff, or that Defendants are authorized by Plaintiff to permit or license use of Plaintiff's buckles;

(d) unfairly competing with Plaintiff or appropriating its property rights in its belt buckles;

(e) falsely designating or representing the source of their products; and,

(f) causing a likelihood of confusion or of misunderstanding as to source, sponsorship, approval, or certification of their goods or as to any affiliation, connection or association of them with Plaintiff, or engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

11. Defendants shall pay to Plaintiff the sum of One Thousand Five Hundred Dollars (\$1,500.00) on or before November 20, 1977, in lieu of any claims for profits and damages which Plaintiff may have against them as a result of their actions.

12. Pursuant to 17 USC 101(d), Defendants shall deliver to counsel for Plaintiff, within 30 days of the entry of this Judgment, any infringing copies of Plaintiff's buckles in their possession or control, together with all molds or other means for making the same, and all plates, matrices, mats, screens, or other means for producing advertisements related to the same.

13. Defendants are hereby required to file with this Court, and to serve on Plaintiff's counsel, within 30 days after entry of this Final Consent Judgment and Injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with this Final Consent Judgment, and particularly paragraph 12.

Date: Oct. 17, 1977

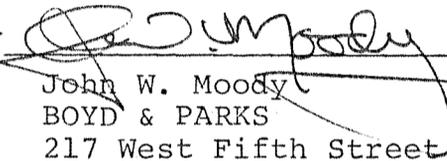
Allen E. Barrow  
Honorable Allen E. Barrow  
United States District Judge

IT IS HEREBY STIPULATED AND AGREED between the parties hereto and their counsel that the foregoing Final Consent Judgment and Injunction may be entered in the above-entitled action.

BOB BOLLES and  
BOB BOLLES d/b/a ARROW PRODUCTIONS

Date: Sept 11, 1977

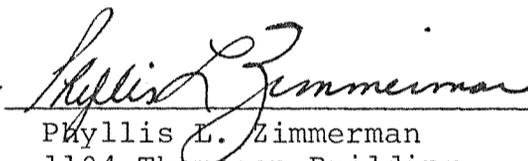
By

  
John W. Moody  
BOYD & PARKS  
217 West Fifth Street  
Tulsa, Oklahoma

M & M LIMITED, INC.

Date: Sept 10, 1977

By

  
Phyllis L. Zimmerman  
1104 Thompson Building  
Tulsa, Oklahoma





4. The Cherokee Nitrogen Company was involved with the manufacture of fertilizer.

5. The plant of the Cherokee Nitrogen Company and the facilities of the National Gypsum Company were on abutting land.

6. On the 17th day of January, 1973, there was a fire that was discovered around 7:30 p.m. and an explosion that occurred around 7:45 p.m. at the Cherokee Nitrogen plant.

7. The plaintiff, at the time of the fire and explosion, was working the 4 p.m. to 12:00 midnight shift for National Gypsum Company.

8. There is no dispute that the fire occurred prior to the explosion involved with the incident concerning plaintiff in this case.

9. There is no dispute that the product of the defendant contains explosive propensities when subjected to extreme heat.

10. Plaintiff and another employee, named Bob Cowan, were standing on the premises of their employer, National Gypsum Company, attempting to put out sparks and pieces of burning debris that the wind was carrying toward and onto the premises of National Gypsum Company. There was no testimony introduced that reflected that plaintiff was ordered to undertake the protection of his employer's property. The fellow employee of plaintiff, Bob Cowan, at the time of the incident, said to plaintiff words to the effect---"Let's get out of here"---when he heard the explosion. Mr. Cowan ran back toward his employer's facility. Plaintiff remained where he was and did not leave when he heard the exclamation of Mr. Cowan.

11. Testimony adduced reflected that plaintiff was knocked off his feet by the force of the explosion.

12. The parties agree that the explosion was a result of the fire; however, there was no testimony, even by the State Fire Marshal who investigated the incident, as to the exact cause of the fire, and no evidence that the fire was the result of negligence on the part of the defendant. Plaintiff did introduce expert testimony that speculated as to the cause of the fire.

13. There was evidence adduced as to the sufficiency of the fire fighting equipment maintained by the defendant, but there was no definitive evidence that the fire could have been extinguished in a shorter period of time or contained or that the explosion would not have occurred if certain equipment had been available.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court makes the following Conclusions of Law.

1. This Court has jurisdiction by virtue of diversity of citizenship and amount in controversy, exclusive of interest and costs.

2. Under Oklahoma law, N-Ren Corporation, as the survivor corporation, after the merger, is liable for all liabilities in this case, if any, of Cherokee Nitrogen Company.

3. This case is not subject to 23 O.S. §11 (comparative negligence), effective August 16, 1973, since the incident complained of occurred on January 17, 1973.

4. The weight of the opinion of an expert is affected by the reasons and facts on which it is based, and the absence of a substantial basis for the opinion renders it of little value. Testimony which is merely speculative or conjectural is of no value. 32 C.J.S. Evidence §569; Downs v. Longfellow Corporation, 351 P.2d 999, 1004 (Ok1. 1960).

5. In speaking of the doctrine of res ipsa loquitur, the Tenth Circuit said in Federal Insurance Co. v. United States, 583 F.2d 300 (10th CCA, 1976) (a case arising in the Western District of Oklahoma):

"\*\*\*The doctrine permits an inference of negligence on the part of defendant sufficient to establish a prima facie case when plaintiff proves: (1) the event is of a kind which ordinarily does not occur in the absence of someone's negligence, (2) the accident was caused by an agency or instrumentality within the exclusive control of the defendant, and (3) the accident was not due to any voluntary action or contribution on the part of the plaintiff."

As stated in Downs v. Longfellow Corporation, supra:

"Before the doctrine of res ipsa loquitur may be invoked to justify the inference of negligence on the part of the defendant, the plaintiff must prove what caused the damage,

and that the 'thing' causing said damage was under the control and management of the defendant or his servants, since the doctrine does not go to the extent of implying that one may, from the mere fact of injury, infer what physical act produced the injury."

6. The Court finds, as a matter of law, under these facts in this case and the existing case law, that the doctrine of res ipsa loquitur is not applicable and plaintiff has not sustained the burden to bring himself within the confines of said doctrine so as to allow him to recover against the defendant on said theory.

7. In determining the duty of the defendant to the plaintiff, the law imposes an obligation of reasonable conduct for the benefit of the plaintiff. Such implied duty must be founded upon a statute or in its absence at common law. This Court has heretofore determined a lack of negligence in the origin of the fire and the inapplicability of the doctrine of res ipsa loquitur to the origin of the fire. In the event a fire happens without negligence, care must in all cases be proportioned to the risk. Appliances for extinguishment of fires should be at hand, for this is a precaution which ordinarily prudent men would adopt for the preservation of their own property. One who is bound to provide, and has in fact provided, reasonable means and appliances for extinguishment of fires (no evidence is adduced to the contrary in conformity with Finding of Act Number 13 hereinabove), cannot be held negligent for the explosion in this case that ensued, absent evidence that said fire would not have caused the explosion had more sophisticated equipment been present and used.

8. The Court concludes, therefore, that Judgment should be entered in favor of the defendant and against the plaintiff.

ENTERED this 14<sup>th</sup> day of October, 1977.

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

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

NEWMAN LANGSTON,  
Plaintiff,

vs.

GLEN H. "PETE" WEAVER, CHARLIE  
DAVIS, KENNETH DeCAMP, GEORGE  
SILVEY, a/k/a GEORGE SILZER,  
JAMES "BUCKY" DUNN, and  
HUGH HORTON,  
Defendants,

No. 77-C-287-B

O R D E R

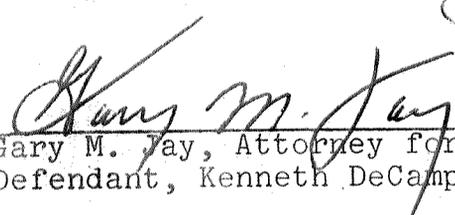
NOW on this 13th day of <sup>Oct.</sup> ~~September~~, 1977, upon the Plaintiff's Application to Dismiss as to the Defendants, Kenneth DeCamp and George Silvey, a/k/a George Silzer, the Court finds, for good cause shown, that the Plaintiff's cause of action as to these two individuals only should be dismissed.

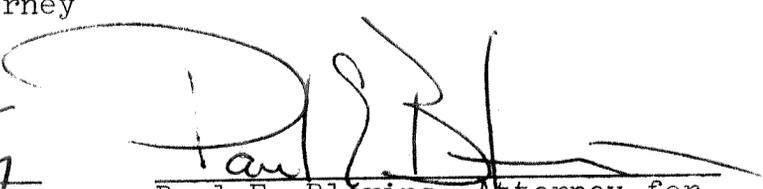
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that for good cause shown, the Plaintiff's cause of action against Kenneth DeCamp and George Silvey, a/k/a George Silzer should be, and is hereby dismissed with prejudice.

  
JUDGE

APPROVED AS TO FORM:

  
Jon B. Wallis, Attorney  
for Plaintiff

  
Gary M. Jay, Attorney for  
Defendant, Kenneth DeCamp

  
Paul E. Blevins, Attorney for  
Defendant, George Silvey, a/k/a  
George Silzer

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

WARD INDUSTRIES, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RICHARD STAIGER and BOARDS, INC., )  
 )  
 Defendants. )

No. 76-C-462-B

FILED

OCT 13 1977

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

JOURNAL ENTRY OF JUDGMENT

Now, on this 13<sup>th</sup> day of October, 1977, the Court being regularly in session, the above entitled cause comes on for hearing on the Amended Complaint of the plaintiff; the Defendant's Answers and Cross-Petition of Boards, Inc., the Stipulation and proposed judgment of the parties, the plaintiff appearing by its attorney of record, W. Neil Wilson, and the defendants appearing by their attorney of record, Brian S. Gaskill, and all parties having announced ready and the jury having been waived in open Court, the Court proceeded to hear stipulations of the parties, the evidence and the cause and finds from the evidence and pleadings as follows:

I

That the defendant, Boards, Inc., is indebted to the plaintiff in the amount of \$90,000.00.

II

That the plaintiff is indebted to the defendant, Boards, Inc., in the amount of \$5,000.00.

III

That the indebtedness owed by the plaintiff, Ward Industries, Inc., to the defendant shall be deducted and set off from and against the indebtedness owed by the defendant, Boards, Inc., to the plaintiff and that judgment shall be rendered for the plaintiff against the defendant, Boards, Inc., in the sum of \$85,000.00.

That the plaintiff is granted leave to dismiss as against the defendant, Richard Staiger, on the cause of action arising in open account. That no other issue, cause or claim plaintiff may have against Richard Staiger is affected thereby.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the plaintiff, Ward Industries, Inc., shall have judgment against the defendant, Boards, Inc., in the sum of \$85,000.00, and that the complaint against Richard Staiger on open account is dismissed.

*Allen E. Barrow*

United States District Judge

APPROVED AS TO FORM AND CONTENT:

*[Handwritten Signature]*  
Attorney for Plaintiff

*[Handwritten Signature]*  
Attorney for Defendant

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

3 JOHN F. RYAN, )  
4 )  
5 Plaintiff, )  
6 vs ) No. 75-C-100-C  
7 CHARLES D. HATFIELD, )  
8 Defendant. )

FILED

OCT 13 1977

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

9  
10 JOURNAL ENTRY OF JUDGMENT

11 This cause came on for hearing on the 3rd day of June,  
12 1977; the Clerk having previously notified counsel of the  
13 setting for pre-trial. Plaintiff appeared neither in person  
14 nor by counsel, and the defendant, Charles D. Hatfield appeared  
15 by Robert J. Woolsey, one of his attorneys, and announced that  
16 David H. Burrow, counsel for plaintiff, had called his office  
17 and left a message, "In the case of Hatfield vs. Ryan, you  
18 can go ahead and move for dismissal in the case". The court  
19 directed his secretary to phone Mr. Burrow in Houston, Texas,  
20 which she did, and reported that she talked directly with  
21 Mr. Burrow and he said that he had been in trial the previous  
22 day and had talked to his client and his client advised him  
23 that he definitely wanted him to go forward and dismiss the  
24 case because of the Judge's limitations put on discovery and  
25 that he had no objections to the dismissal of this case.  
26 Defendant's counsel indicated that he wanted to reserve the  
27 right to move for attorney's fees. The court found that based  
28 on the information from plaintiff's counsel that plaintiff  
29 desired the case to be dismissed and further based upon the  
30 fact that the case had been set for pre-trial and notices  
31 sent to all parties on April 19, 1977 the case would be  
32 dismissed for lack of prosecution upon the request of the  
33 plaintiff and communicated through defendant's counsel in  
34 the Clerk's office.  
35  
36

1           Thereafter, defendant filed a motion for counsel fees  
2 and the cause came on for hearing on the 8th day of September,  
3 1977 at which time the plaintiff appeared by Dan Sullivan,  
4 Attorney at Law, and the defendant appeared in person and by  
5 Robert J. Woolsey, one of his attorneys, and the court after  
6 hearing argument of counsel found that the plaintiff's  
7 purpose was, if not initially became his purpose, to use  
8 the processes in the suit to try and get matters, whatever  
9 they may be, not in any way related to the suit, and having  
10 been denied that, he said "dismiss it". The court found that  
11 the case was prosecuted in bad faith.  
12

13           The court thereupon found that the defendant was entitled  
14 to the payment of a reasonable attorneys' fee in the sum of  
15 \$5,000.00 and assesses attorneys' fees to the plaintiff in  
16 that sum.  
17

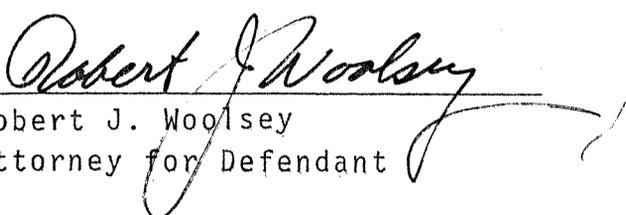
18           The court thereupon dismissed the case without prejudice  
19 for failure to prosecute.

20           IT IS THEREFORE ORDERED, ADJUDGED AND DECREED upon the  
21 court's findings that the plaintiff's cause of action be  
22 dismissed without prejudice and that the defendant have and  
23 recover judgment against the plaintiff, John F. Ryan, for the  
24 sum of \$5,000.00 with interest from this date at the rate of  
25 10% per annum and costs of this action.  
26

27  
28   
29 JUDGE

30 APPROVED AS TO FORM:

31   
32 Dan Sullivan  
33 Attorney for Plaintiff

34   
35 Robert J. Woolsey  
36 Attorney for Defendant

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

LELAND EQUIPMENT COMPANY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SAM SEXTON, JR., )  
 )  
 Defendant. )

No. 77-C-302-C ✓

**FILED**

OCT 13 1977 *hm*

O R D E R

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

The Court has before it for consideration the motion of the plaintiff to dismiss this action without prejudice. An answer to the complaint has been filed, and the dismissal therefore requires an order of the Court. F.R.Civ.P. 41(a)(2). The Court has been advised by counsel for the defendant that defendant does not object to the dismissal of this action.

Therefore, without objection by the defendant, plaintiff's motion to dismiss without prejudice is hereby sustained.

It is so Ordered this 13<sup>th</sup> day of October, 1977.

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



with 6 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

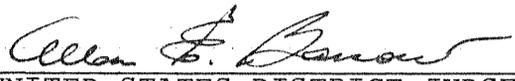
The Court further finds that Defendants, John C. Irons and Frances Irons, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$\$8,423.07 as unpaid principal with interest thereon at the rate of 6 percent per annum from July 14, 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, John C. Irons and Frances Irons, in rem, for the sum of \$8,423.07 with interest thereon at the rate of 6 percent per annum from July 14, 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 appraisal the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

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

MARIE STANLEY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 S. S. KRESGE COMPANY, )  
 )  
 Defendant and )  
 Third Party Plaintiff, )  
 )  
 vs. )  
 )  
 IMPORT ASSOCIATES, INC., )  
 )  
 Third Party Defendant. ) NO. 76-C-633-B

FILED

OCT 12 1977

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

ORDER OF DISMISSAL

Upon the application of the defendant and third party plaintiff, S. S. Kresge Company, and for good cause shown, the cause of action and Third Party Complaint against Import Associates, Inc., is dismissed without prejudice.

Entered this 12th day of October, 1977.

(Signed) Allen E. Barrow

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

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

LEONARD McFARLAND, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 77-C-160-C ✓  
 )  
 I.T.T. CONTINENTAL BAKING )  
 COMPANY, INC., )  
 )  
 Defendant, )

**FILED**

OCT 12 1977 *hm*

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

O R D E R

This is an employment discrimination action, brought pursuant to Title 42 U.S.C. § 2000e et seq. and Title 42 U.S.C. § 1981. The plaintiff, a black man, was employed by the defendant from February 18, 1970 until October 16, 1974, at which time he was discharged. The reason given for his termination was excessive absenteeism. Plaintiff is seeking ". . . a money award in the nature of back pay and front pay due the plaintiff as a result of his having being (sic) assigned to lower paying jobs than those to which white persons were assigned, also, as a result of his having been wrongfully terminated by the defendant Company solely because of his race. . . ." The remainder of plaintiff's allegations relate to a class which he at one time purported to represent. Upon joint application of the parties, the Court on August 3, 1977 dismissed with prejudice all allegations of the complaint which related to the class of black persons which plaintiff sought to represent. Now before the Court is the defendant's motion for summary judgment. On September 15, 1977, the plaintiff was ordered to file a responsive brief within ten days to the defendant's motion for summary judgment. As of this date, such a response has not yet been filed by the plaintiff.

Plaintiff's allegations regarding his assignment to lower paying jobs relates to the system of "bidding" for

positions, which had been established by the collective bargaining agreement between the defendant and the Bakery and Confectionary Workers Union, of which plaintiff was a member. Under this system, the "bidder" with the highest seniority would receive the available position. Plaintiff admitted in his deposition that all positions which he "bid" on and did not receive were awarded to persons whose seniority was higher than his, and he further admitted that all such positions were awarded pursuant to the collective bargaining agreement. These statements of the plaintiff are uncontroverted, and his allegations of discriminatory job assignment are therefore without merit.

In his deposition, plaintiff also named several white employees whose attendance record he considered to be as bad as his was but who had not been discharged. With its motion for summary judgment, defendant has filed the affidavit of Wilson Hervey, the defendant's personnel manager, containing a summary of the absenteeism of the employees named by the plaintiff for the year 1974. The plaintiff was absent a total of 271.2 hours during that year. One employee, Randy Willis, a white man, was absent 198 hours and was discharged along with plaintiff on October 16, 1974. The five remaining employees, none of whom was discharged, were absent 140, 58, 40, 16 and 0 hours during 1974. It is clear that the employee whose rate of absenteeism was the closest to plaintiff's was also discharged, even though he was white and was absent for substantially fewer hours than plaintiff. None of the other employees had rates of absenteeism which approached that of the plaintiff. The plaintiff received written notices of excessive absenteeism and warnings of "more drastic action" on August 19 and 26, 1974. On October 2, 1974, plaintiff was given a three day disciplinary layoff as a result of his attendance and tardiness record. When he did not report for work on October 16, 1974, his employment was terminated. Based upon the plaintiff's deposition and

the uncontroverted affidavit of Wilson Hervey, the Court is led to only one conclusion regarding the reasons for plaintiff's discharge. Plaintiff was discharged by the defendant because of excessive absenteeism and not because of his race.

The Court finds that there is no genuine issue as to any material fact relating to plaintiff's individual allegations, and for the foregoing reasons, defendant's motion for summary judgment is hereby sustained.

It is so Ordered this 12<sup>th</sup> day of October, 1977.



H. DALE COOK  
United States District Judge

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

**FILED**

BOARD OF TRUSTEES, PIPELINE	)
INDUSTRY BENEFIT FUND,	)
	)
Plaintiff,	)
	)
vs.	)
	)
DAVIS INDUSTRIES, INC.,	)
	)
Defendant.	)

OCT 12 1977

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

No. 77 - C - 256

ORDER OF DISMISSAL

NOW on this 12<sup>th</sup> day of October, 197~~6~~<sup>7</sup>, Plaintiff's Motion For Dismissal coming on for consideration and counsel for Plaintiff herein representing and stating that all issues, controversies, debts and liabilities between the parties have been paid, settled and compromised.

IT IS THE ORDER OF THIS COURT that said action be, and the same is, hereby dismissed with prejudice to the bringing of another or future action by the Plaintiff herein.

*Wendell Cook*

\_\_\_\_\_  
District Judge

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

IN THE MATTER OF LAKEVIEW APARTMENTS )  
OF WICHITA FALLS, TEXAS, )  
)  
SANDERS-ENGLAND INVESTMENTS, an Oklahoma )  
General Partnership, )  
)  
Debtor, )  
)  
SANDERS-ENGLAND INVESTMENTS, an Oklahoma )  
General Partnership, )  
)  
Appellant, )  
)  
-vs- )  
)  
MELLON NATIONAL MORTGAGE COMPANY OF )  
OHIO, )  
)  
Appellee. )

FILED

OCT 11 1977

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

NO. 77-C-150-B  
(Bk. No. 77-B-176)

ORDER DISMISSING APPEAL

The parties to this Appeal having agreed that the Appeal of the Bankruptcy Court's judgment dated February 28, 1977, might be dismissed and it appearing to the Court that said agreement is in the proper form and duly authorized by the Rules of Bankruptcy Procedure, Rule 801 (b),

NOW THEREFORE IT IS ORDERED that said Appeal be hereby dismissed.

DATED THIS 11th day of October, 1977.

(Signed) Allen E. Barrow

UNITED STATES DISTRICT JUDGE

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

JO E. BRADLEY, )  
)  
Plaintiff, )  
)  
v. )  
)  
DAVID EASTWOOD and MARGARET )  
EASTWOOD, d/b/a EASTWOOD )  
MANOR NURSING CENTER, )  
)  
Defendants. )

No. 76-C-450-B

**FILED**

**OCT 11 1977**

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

ORDER

The Court has for consideration defendants' Motion for Summary Judgment and has carefully perused the entire file, the briefs and the recommendations concerning said motion and being fully advised in the premises, finds:

That the defendants' Motion for Summary Judgment should be sustained for the reasons stated herein.

Plaintiff's Complaint alleges that at all time material to her action, she was an employee of defendants, David Eastwood and Margaret Eastwood as that term is defined by Section 710 (f) of Title VII of the Civil Rights Acts of 1964, as amended (42 U.S.C. Section 2000e (f)). Plaintiff further alleges that at the time of her employment, the defendants David Eastwood and Margaret Eastwood, d/b/a Eastwood Manor Nursing Center were engaged in the operation of nursing care facilities. Jurisdiction to hear and determine the cause is asserted by virtue of the provisions of Section 706 (f) (3) of the Act. (42 U.S.C. Section 2000e-5 (f) (3)). Plaintiff further alleges that she was employed as a nurses aide and that on or about May 28, 1974, plaintiff's employment was terminated and she was discharged from her employment by the defendants herein because of her sex and because of plaintiff's pregnancy and defendants' discriminatory maternity leave policy in violation of Section 3 of the Act and that consequently plaintiff has suffered economic loss.

Plaintiff further alleges that she duly filed charges of discrimination with the Equal Employment Opportunity Commission and that

when the Commission was subsequently unable to achieve voluntary compliance with the applicable provisions of the Act through conciliation efforts, plaintiff, by letter received from the Commission on May 28, 1976, was given notice of her statutory right to sue in order to remedy the effects of her alleged unlawful discharge.

Plaintiff seeks reinstatement to her former employment with full back pay and reinstatement of all other employment benefits plaintiff would have received, but for her discharge, and seeks further judgment for court costs and attorney's fees incurred by her in prosecution of this action.

Defendants have filed their Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and have alleged that the pleadings, depositions and affidavits on file show that there is no genuine issue as to any material fact regarding the liability of these defendants and that these defendants are entitled to judgment in their favor as a matter of law. In support of their Motion, defendants have filed the affidavit of David Eastwood, defendant, who alleges that he is the president of Ogden Manor Nursing and Rehabilitation Center, Inc., an Oklahoma corporation, in good standing, and that the corporation was at all times material to this action the employer of Jo E. Bradley. Defendant further alleges in his affidavit that the Ogden Manor Nursing and Rehabilitation Center, Inc. paid the wages of Jo E. Bradley during her employment as shown by her wage and tax statement for the year 1974, a copy of the same being attached to the affidavit and incorporated by reference therein. Defendant further states in his affidavit that neither he, David Eastwood, nor his co-defendant, Margaret Eastwood, were or ever have been employers of the plaintiff.

Plaintiff contends in response to the Motion for Summary Judgment that prior to the filing of this action, plaintiff filed for unemployment compensation benefits with the Oklahoma Employment Security Commission, and filed proceedings with the Equal Employment Opportunity

Commission in each instance naming Eastwood Manor Nursing Center and David Eastwood and Margaret Eastwood as respondents. Plaintiff further contends that at no point during any of those proceedings did the parties object to the denomination of the respondent in those proceedings. Counsel for plaintiff further states to the Court that he made a telephone call to the office of the Secretary of State, Corporation Records Division, and was not notified of any listing under Eastwood Manor Nursing Center. Plaintiff further contends that the legal corporation is being used by the defendants as a matter of legal expediency and that the defendants do not conduct their business strictly as a corporation.

The burden is upon the plaintiff to determine the true and correct identity of the defendant in an action filed under the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. Archuleta v. Duffy's, Inc., 471 F.2d 33 (10th Cir. 1973). Plaintiff has correctly identified her wage and tax statement for the year 1974 in her deposition which clearly reflects thereon that the identity of her employer was Ogden Manor Nursing and Rehabilitation Center, Inc., an Oklahoma corporation. This information was available to plaintiff before she commenced proceedings with the Oklahoma Employment Security Commission or the Equal Employment Opportunity Commission. Proceedings before each of those Commissions are administrative in nature and respondents were not represented by counsel in proceedings before the Oklahoma Employment Security Commission. The proceedings conducted by the Equal Employment Opportunity Commission reached only investigatory stages and did not involve these parties defendant in any litigated controversy wherein their identity as employers might logically be raised.

The record in this case is undisputed that Plaintiff's employer at the time of the acts complained of is not named as a defendant in this action and the defendants who are named were not the employers

of the plaintiff. There is no intimation from plaintiff that defendants have engaged in any effort to conceal the identity of the corporation operating the business by which plaintiff was once employed. Plaintiff at all times had in her possession sufficient documentation to establish the true identity of her employer. The naming of the defendants, David Eastwood and Margaret Eastwood, d/b/a Eastwood Manor Nursing Center did not constitute a simple misnomer. The defendants were not misdescribed but were deliberately, although mistakenly, sued. The Court may allow misnomers to be amended and relate back to the date of filing of the complaint. However, the Court must distinguish between misnomers and substitution of parties. Marchuleta, supra at 35. The Court cannot allow substitution of parties by amendments except pursuant to the provisions of Rule 15(c), F.R.C.P., 28 U.S.C.A.

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

Dated this 11<sup>th</sup> day of October, 1977.

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

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

TRI-STATE INSURANCE COMPANY, )  
 )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
 ) NATIONAL HORSE TRAILERS, INC., )  
 ) a dissolved corporation, and )  
 ) LOUIS DAVIS, )  
 )  
 ) Defendants. )

No. 77-C-89-B

FILED

OCT 11 1977

O R D E R

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

NOW on this <sup>11th</sup>~~7th~~ day of October, 1977, upon Application for Order to Dismiss National Horse Trailers, Inc., as Party Defendant and to Amend Complaint in this matter, the undersigned finds that such Application for Order to Dismiss National Horse Trailers, Inc., as Party Defendant and to Amend Complaint should be and hereby is granted.

IT IS THEREFORE ORDERED that the applicant be allowed to serve and file the purposed Amended Complaint and to amend the caption of this action accordingly, that National Horse Trailer, Inc., be dismissed from this action and for any further relief the Court deems equitable and proper.

Allen F. Bannan  
Judge of the United States District Court

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

3 PROFESSIONAL DATA MANAGEMENT, INC., )  
4 a corporation, )  
5 )  
6 Plaintiff, )  
7 vs. )  
8 GREYHOUND COMPUTER CORPORATION, a )  
9 corporation and SORBUS, INC., a )  
10 corporation, )  
11 Defendants. )

No. 76-C-615-C ✓

FILED

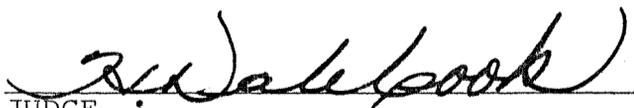
OCT 11 1977

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

12 ORDER OF DISMISSAL WITH PREJUDICE AS  
13 TO THE DEFENDANT, SORBUS, AND ORDER OF  
14 DISMISSAL OF COUNTERCLAIM OF SORBUS AGAINST  
15 PROFESSIONAL DATA MANAGEMENT, INC.

16 NOW on this 11<sup>th</sup> day of October, 1977, it appearing to  
17 the Court that Professional Data Management, Inc., a corporation,  
18 the plaintiff and Sorbus, Inc., a corporation, one of the  
19 defendants, have settled their differences and have filed mutual  
20 dismissals with prejudice of plaintiff's cause of action against  
21 defendant, Sorbus, Inc. and a dismissal with prejudice of the  
22 Counterclaim of Sorbus, Inc., against Professional Data Management  
23 Inc., the plaintiff reserving its right to proceed against the  
24 defendant, Greyhound Computer Corporation,

25 IT IS ORDERED, ADJUDGED AND DECREED that plaintiff's  
26 cause of action and claims against defendant, Sorbus, Inc., and  
27 the Counterclaim of Sorbus, Inc., defendant, against Professional  
28 Data Management, Inc., a corporation, plaintiff, be and the same  
29 are hereby dismissed with prejudice.  
30  
31  
32  
33  
34  
35  
36

  
JUDGE

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

FILED

OCT 11 1977

ST. LOUIS-SAN FRANCISCO RAILWAY)  
COMPANY, A Corporation, )  
 )  
Plaintiff )  
 )  
vs )  
 )  
TULLY L. DUNLAP, JR., d/b/a )  
DUNLAP PROPERTIES, )  
 )  
Defendant )

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

No. 77-C-208-B

ORDER OF DISMISSAL WITH PREJUDICE

The Court having considered the Stipulation for Dismissal entered into between the parties and being fully advised in the premises does hereby order that the above captioned action should be, and the same is, hereby dismissed with prejudice, each party to bear its own cost.

DATED on this the 11th day of October, 1977.

(Signed) Allen E. Barry

\_\_\_\_\_  
United States District Judge

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

PHILLIPS MACHINERY )  
COMPANY, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
YARD-MAN, INC., a )  
Delaware corporation, )  
 )  
Defendant. )

No. 75-C-404-B

**F I L E D**

OCT 11 1977

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

O R D E R

The Court has for consideration Defendant's Motion for Summary Judgment and has carefully reviewed the entire file, the briefs, the cited authorities and the recommendations of the Magistrate concerning said Motion, and being fully advised in the premises, finds:

That the Defendant's Motion for Summary Judgment should be sustained for the reasons stated herein.

This is a diversity action brought pursuant to Title 28 U.S.C. §1332 by Phillips Machinery Company, an Oklahoma corporation (Plaintiff) against Yard-Man, Inc., a Delaware corporation (Defendant). The requisite amount in controversy is present.

In February 1974 the parties entered into a distributorship agreement whereby Plaintiff submitted orders for certain machinery to the Defendant. Defendant, in filling the said orders, would ship the machinery to the Plaintiff in Oklahoma for resale and distribution by the Plaintiff in Oklahoma. Pursuant to the distributorship agreement, the parties conducted business for several months. On December 2, 1974, a purchase order was

submitted by Plaintiff to Defendant. On December 17, 1974, Defendant terminated the agreement effective January 18, 1975, and refused to ship Plaintiff's December 2nd purchase order. After giving notice of termination of the agreement, Defendant entered into a similar distributorship agreement with another Oklahoma company. Plaintiff sues Defendant to recover the profit lost by virtue of Defendant's refusal to fill the December 2nd purchase order.

The contractual provisions pertinent to the dispute between the parties are as follows:

"Paragraph III(1)

"Any other provision of this agreement to the contrary notwithstanding, each order of the Distributor is subject to acceptance by the Manufacturer and the Manufacturer may reject any order in whole or in part for any reason. Filling any accepted order in whole or in part shall be subject to delays caused by a labor dispute, work stoppage, shortage of materials, fire, flood, accident, failure of machinery or equipment, governmental regulations, defense activities, needs of Armed Forces or any other cause whether of the same or of a different nature, it being the intention that no liability shall be incurred by the Manufacturer by reason of its not filling an order in whole or in part even though it may have expressed its intention to do so."

For the purpose of discussion this provision is referred to as the "non-liability clause".

"Paragraph III(11)

"This agreement may be terminated by the Manufacturer or the Distributor at any time by giving 30 days notice in writing to the other one of them by certified United States mail. The Manufacturer shall have no liability or obligation to the Distributor under this agreement after the effective date of its termination, including no liability or obligation with respect to unfilled orders, even though the same were accepted by the Manufacturer prior to the effective date of termination."

For the purpose of discussion this provision is referred to as the "cancellation clause".

In its Motion for Summary Judgment, Defendant urges that the non-liability clause and the cancellation clause are express contractual provisions governing the circumstances of the complaint, which provisions relieve it of any liability for orders accepted but unfilled prior to the effective date of termination.

In opposition to the Motion for Summary Judgment, Plaintiff relies on Jay Dreher Corp. v. Delco Appliance Corp., 93 F.2d 275 (2nd Cir. 1937), and Milton v. Hudson Sales Corp., 313 P.2d 936 (Cal. App. 1957). However, in each of those cases the Court was considering a contract which contained a non-liability clause but which did not contain a cancellation clause. The cases of Studebaker Corporation v. Wilson, 247 F.403 (3rd Cir. 1918), Carpenter v. Oakland Motor Car Co., 23 F.2d 1006 (2nd Cir. 1927), and Ford Motor Co. v. Kirkmeyer Motor Co., 65 F.2d 1001 (4th Cir. 1953), cited by the Defendant in support of its Motion, are more directly in point, as in each case the distributorship contract contained both a non-liability clause and a cancellation clause. The principal case cited by Plaintiff, Jay Dreher v. Delco Appliance Corp., supra, acknowledges this distinguishing feature, stating regarding the cases distinguished:

"there was an unrescinded cancellation clause, and this appears to have been the basis of the decision; they do not count." at 278.

Even if the Jay Dreher rationale could be used to hold the manufacturer liable for unfilled orders in the ordinary course of business, once the contract is terminated, liability for all unfilled orders, accepted or not, is specifically excluded by agreement of the parties. The Court cannot remake the

contract when the business relationship between the parties is complete as to detail and free of ambiguity, and the Court must give effect to this explicit and specific provision.

In re Public Leasing Corp., 488 F.2d 1369 (10th Cir. 1973) (Okla.), British American Oil Producing Co. v. Midway Oil Co., 82 P.2d 1049 (Okla. 1938). Here the contract, in paragraph III(11), provides for the exact circumstance complained of, and the parties agreed that the manufacturer, upon cancellation of the contract, shall have no liability "with respect to unfilled orders". The Court must construe a valid contract according to its explicit terms, and absent an ambiguity, the intentions of the parties must be enforced according to the words used, Humphries v. Amerada Hess, 487 F.2d 800 (10th Cir. 1973), and it cannot be construed contrary to its explicit language, Breeding v. Ritterhoff, 259 P.227 (Okla. 1927).

The language of the contract is not ambiguous as to liability for unfilled and accepted orders at the effective date of termination, and therefore the contract must be interpreted so as to give effect to the words used by the parties to the agreement.

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

Dated this 11<sup>th</sup> day of October, 1977.

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

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

**FILED**

OCT - 5 1977

JACK H. CAMPBELL, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOSEPH A. CALIFANO, JR., )  
 Secretary of Health, Education, )  
 and Welfare, )  
 )  
 Defendant. )

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

No. 75-C-572-B

O R D E R

The Court has for consideration Plaintiff's Motion to Reinstate and has carefully perused the entire file, the briefs and the recommendations concerning said motion, and being fully advised in the premises, finds:

That the Plaintiff's Motion to Reinstate should be overruled for the reasons stated herein.

On December 22, 1975, Plaintiff, through his attorney, filed a complaint in this case seeking review of a final decision of the Secretary of Health, Education, and Welfare, which decision had denied Plaintiff benefits under the Social Security Act. Prior thereto Plaintiff had exhausted his administrative remedies within the Social Security system.

On April 19, 1976, the defendant Secretary of Health, Education, and Welfare filed his answer generally denying Plaintiff's allegations set forth in his complaint.

Thereafter Plaintiff filed on or about May 24, 1976, his Motion to Remand, with Supporting Briefs, to which a response was filed by the defendant on June 2, 1976. On July 8, 1976, the defendant Secretary of Health, Education and Welfare filed his Motion to Affirm, with Supporting Brief, which was responded to by Plaintiff by his Brief filed July 23, 1976. On October 15, 1976, the then Magistrate, Morris Bradford, entered his findings and recommendations wherein he found that Plaintiff's Motion

the then Magistrate, Morris Bradford, entered his findings and recommendations wherein he found that Plaintiff's Motion to Remand was not well taken and recommended such motion be denied, and further found that Defendant's Motion to Affirm should be sustained and recommended that such Motion to Affirm be sustained. The District Court by its order entered October 28, 1976, denied Plaintiff's Motion to Remand and granted Defendant's Motion to Affirm. No appeal therefrom was taken.

On June 1, 1977, Plaintiff filed his Motion to Re-instate, with Supporting Brief. The gist of Plaintiff's Motion and Brief was that the Social Security Administration had now granted Plaintiff disability benefits upon a new application, based upon these same facts upon which the earlier denial of benefits was based.

Defendant filed his Opposition to Plaintiff's Motion to Reinstate on July 12, 1977, wherein the defendant urged that the Social Security Administration's decision to grant Plaintiff disability benefits upon his second application was because Plaintiff's condition had worsened since his initial application and as a result Plaintiff, in July, 1976, was disabled within the meaning of the Social Security Act. The defendant further correctly urged that this Court lacks jurisdiction to consider any aspect of Plaintiff's second claim since the only matter before it is the issue of the decision in Plaintiff's initial claim for disability benefits. 42 U.S.C. Section 405(g).

The Court finds that the scope of judicial review is exclusively related to a consideration of the administrative record before it. Mayhue v. Gardner, 294 F. Supp 853, 856 (D. Kan. 1969), aff'd., 416 F.2nd 1257 (10th Cir. 1969). The administrative record in this case relates only to Plaintiff's initial claim for disability benefits. In 1976, the District Court for the Northern District of Oklahoma considered the administrative record on Plaintiff's first claim and properly determined that the Secretary's denial of Plaintiff's first claim was correct.

IT IS THEREFORE ORDERED that Plaintiff's Motion  
to Reinstate be and is hereby overruled.

Dated this 5<sup>th</sup> day of ~~September~~ <sup>October</sup>, 1977.

*Allen E. Barrow*  
\_\_\_\_\_  
ALLEN E. BARROW, CHIEF JUDGE,  
United States District Court For  
The Northern District of Oklahoma

OCT - 5 1977

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

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

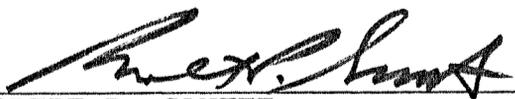
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 77-C-263-C
	)	
	)	
PHILLIP BEATY, a/k/a PHILLIP A.	)	
BEATY, CHERYL BEATY, VERNON	)	
MANOR APARTMENTS, INC., COUNTY	)	
TREASURER, Tulsa County, BOARD	)	
OF COUNTY COMMISSIONERS, Tulsa	)	
County, and UTICA NATIONAL BANK	)	
AND TRUST COMPANY, a Corporation,	)	
	)	
Defendants.	)	

STIPULATION OF DISMISSAL

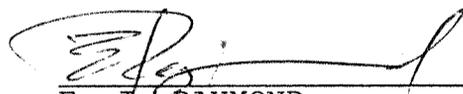
Come now the United States of America, plaintiff, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Board of County Commissioners of Tulsa County and the County Treasurer of Tulsa County, through their attorney, Assistant District Attorney, and Utica National Bank and Trust Company, a corporation, defendant, by and through its attorney, E. J. Raymond, and hereby stipulate and agree that this action be and the same is hereby dismissed.

Dated this 23rd day of September, 1977.

HUBERT A. MARLOW  
Acting United States Attorney

  
ROBERT P. SANTEE  
Assistant United States Attorney

  
ANDREW B. ALLEN  
Assistant District Attorney

  
E. J. RAYMOND  
Attorney for Defendant,  
Utica National Bank & Trust Company

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

FILED

OCT - 5 1977

IRBY SPROUSE, )  
)  
Plaintiff, )  
)  
vs. )  
)  
CONCEPT 21, INC., )  
)  
Defendant. )

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

No. 77-C-45-B

DEFAULT JUDGMENT AND RESTRAINING ORDER

---

This matter having come on to be ~~heard~~ <sup>considered</sup> this 5th day of October  
1977, upon motion for default judgment, the court makes the following  
findings of fact:

(1) The court entered an order in this cause on Sept. 19, 1977, authorizing the plaintiff, Irby Sprouse, to dismiss his cause of action without prejudice and further authorizing the defendant, Concept 21, Inc., to pursue its counter-claim against the plaintiff; that the plaintiff, Irby Sprouse, intends to make no further appearances in this action and is, therefore, consenting to a default judgment being taken against him on defendant's counter-claim.

(2) The court, therefore, further finds that the defendant's allegations contained in paragraph (I) of its counter-claim should be taken as true and accurate; that the plaintiff, Irby Sprouse, and the defendant, Concept 21, Inc. have never entered into a long term relationship of any kind, at any time; that in the process of filling individual purchase orders from the plaintiff, the defendant, Concept 21, Inc., determined that it would not, under any circumstances, be interested in a long term relationship with the Plaintiff and notified the Plaintiff it would not sign or approve the proposed contract and would not fill any additional purchase orders.

That notwithstanding the defendant's express rejection of the proposed contract, the Plaintiff, Irby Sprouse, has continued to operate

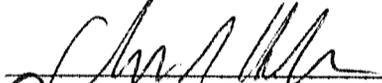
a business under the defendant's name. That he has continued to mis-  
represent to the public at large the nature of his relationship with the  
defendant, thus damaging the defendant's business reputation and credibility;  
that there is no remedy at law available to the defendant, Concept 21, Inc.  
to prevent the continued misuse of the defendant's good name and that  
the defendant, Concept 21, Inc., will be irrevocably harmed unless the  
plaintiff, Irby Sprouse, is restrained, enjoined and prohibited from  
continuing to conduct business in the defendant's name and/or to  
represent to the public that he has some sort of working relationship  
with the defendant.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED  
that the defendant, Irby Sprouse, be and is forever restrained, enjoined  
and prohibited from continuing to conduct business in the defendant's name  
and/or to represent to the public that he has some sort of working rela-  
tionship with the defendant.

  
\_\_\_\_\_

Judge

APPROVAL:

  
\_\_\_\_\_

Charles Holmes, Attorney for Plaintiff

  
\_\_\_\_\_

Patrick J. Malloy III, Attorney for Defendant.

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

CHARLES NESBITT, TRUSTEE IN )  
BANKRUPTCY FOR EUFAULA )  
ENTERPRISES, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FLO MEASUREMENT COMPANY, INC., )  
 )  
Defendant. )

**FILED**

OCT - 5 1977

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

Case No. 77-C-40

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Application for Order of Dismissal with Prejudice and the Dismissal with Prejudice filed herein by the parties herein, the Court does hereby enter its Order of Dismissal with Prejudice of the pending action.

SO ORDERED this 5<sup>th</sup> day of <sup>October</sup> ~~September~~, 1977.

*Allen E. Bonar*  
UNITED STATES DISTRICT JUDGE

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

BOBBY JOE EVANS,  
Petitioner,

v.

C. L. BENSON,  
Respondent,

and

THE ATTORNEY GENERAL OF THE  
STATE OF OKLAHOMA,

Additional Respondent.

No. 77-C-167-C

**FILED**

OCT - 4 1977

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

ORDER

This is a proceeding brought pursuant to the provisions of Title 28 U.S.C. § 2254 by a prisoner now confined in the United States Penitentiary, Leavenworth, Kansas. Respondent has filed a Response, pursuant to an Order of the Court directing it to show cause why the Writ of Habeas Corpus should not be granted.

Petitioner entered a plea of guilty on June 22, 1976 in this court in Case No. 76-CR-65. On July 20, 1976, Chief Judge Allen E. Barrow sentenced petitioner as follows:

"Count One - Five (5) years, to run concurrently with state sentence defendant is now serving.  
Count Two - Five (5) years and further ordered that the defendant may become eligible for parole at such time as the Parole Commission may determine as provided in T. 18, USC, Sec. 4205(b) (2). Sentence imposed in Count Two to run consecutively with sentence in Count One."

Prior to the plea and sentence in Case No. 76-CR-65, petitioner was in custody of the Sheriff of Tulsa County, Oklahoma awaiting prosecution on charges then pending in the District Court of Tulsa County, Oklahoma.

Petitioner alleges that after entering his plea of guilty on the Federal Charges, but prior to being sentenced thereon, petitioner was

returned to the State District Court for sentencing and on July 7, 1976 was sentenced to three (3) Ten (10) year sentences on Tulsa County District Cases Nos. CRF-76-1274, CRF-76-1314 and CRF-76-1315, The sentences to run concurrently with each other.

Petitioner further alleges that on December 3, 1976 he was informed that detainers had been "lodged against him by the State of Oklahoma saying that now they wanted petitioner back upon completion of his federal term."

Petitioner makes application to this Court for a determination that the state custody to which he may be subject in the future under the judgments of the Oklahoma State District Court referred to above will be in violation of the Constitution and laws of the United States. In particular, petitioner claims:

- 1) That the "State of Oklahoma has lost jurisdiction to inflict further punishment on petitioner";
- 2) That the "terms imposed began to run on the day sentenced and petitioner can not be made to piecemeal the sentences imposed";
- 3) That a "sentence can not be run consecutive to a sentence when no such sentence existed to be run consecutive to, when the first sentence was imposed"; and
- 4) That the "form type sentencing used by Oklahoma violated the equal protection of the law."

Petitioner has exhausted the remedies available to him in the courts of the State of Oklahoma with respect to the claims herein asserted.

In his first allegation Petitioner claims that the "State of Oklahoma has lost jurisdiction to inflict further punishment on petitioner."

When a person is convicted of independent crimes in state and federal courts, the question of jurisdiction and custody is one of comity between the two governments and not a personal right of the prisoner. Jones v. Taylor, 327 F.2d 492 (10th Cir. 1964), Cert. den. 377 U.S. 1002, 84 S.Ct. 1937, 12 L.Ed.2d 1051; Carson v. Executive Director, Department of Parole, 292 F.2d 468 (10th Cir. 1961); Hall v. Looney, 256 F.2d 59 (10th Cir. 1958), and Mitchell v. Boen, 194 F.2d 405 (10th Cir. 1952).

In Stamphill v. Johnston, 136 F.2d 291 (9th Cir. 1943),  
the Court stated:

"As pointed out by the Supreme Court in Ponzi v. Fessenden, 258 U. S. 254, 42 S. Pct. 309, 66 L. Ed. 607, 22 A.L.R. 879, the arrangement made between the two sovereigns, the State and Federal Government, does not concern the defendant who has violated the laws of each sovereignty and he cannot in his own right demand priority for the judgment of either."

The Tenth Circuit Court of Appeals stated in Craig v. Hunter, 167 F.2d 721 (10th Cir. 1948):

"In the recent case of Rawls v. United States, 10th Cir. 166 F.2d 532, decided February 28, 1948, we held that the question of conflicting jurisdiction between a State and a Federal Court arose under the rule of comity and conferred no rights whatever upon a defendant who had violated the laws of both sovereigns, and that that was even so if the one sovereign took jurisdiction of the defendant in violation of the rights of the other sovereign and over its protest. Only the offended sovereign could raise the question by asserting its prior rights to the possession of the defendant in an appropriate proceeding."

In Jones v. Taylor, supra, appellant was a prisoner at Leavenworth Penitentiary. He was convicted of a narcotic offense in the United States District Court for the Eastern District of Michigan. His conviction was affirmed on appeal. At the time of his conviction, he was on parole under a Michigan State sentence. He appealed the federal conviction and posted an appeal bond. The State took custody of him as a parole violator to serve the State sentence. After he was released by the State, he was taken into custody on the federal conviction. The Court held therein:

"Appellant asserts that the United States lost jurisdiction to enforce sentence after it permitted the State to take him into custody. The contention has no merit. When a person is convicted of independent crimes in State and Federal Courts, the question of jurisdiction and custody is one of comity between the two governments and not a personal right of the prisoner."

Petitioner next claims that the "terms imposed (by the State Court) began to run on the date sentenced and petitioner can not be made to piecemeal the sentences imposed".

Time of sentence commences to run from the date on which the person is received at the place of service. Anderson v. United States, 405 F.2d 492 (10th Cir. 1969), cert. den. 394 U. S. 065. As noted by the State District Judge in denying post-conviction relief, the petitioner was not committed to the custody of the Department of Corrections. Furthermore, the Judgements and Sentences state that the term of sentences are to begin at the delivery of the defendant to the Department. The State District Court concluded that under the laws of the State of Oklahoma, the defendant had not started the commencement of his term in the state penitentiary and, thus, there was no interruption of service of sentence. Ex parte Holden, 31 Okl. Cr. 133, 237 P. 622 (1925); Ex parte Alexander, 5 Okl. Cr. 196, 133 P. 933 (1911).

A prisoner who has been sentenced in both federal and state court does not have a constitutional right to select which sentence shall be served first. Jacobs v. Crouse, 349 F. 2d 857 (10th Cir. 1965).

Petitioner's third and fourth grounds for relief are also directed at the question of commencement of the term of the sentence imposed by the state district court. Petitioner argues that because of the hold on him by the State of Oklahoma, the term of his sentence in the state case would run consecutive to the federal term he is presently serving; that this is not in accordance with the Judgment and Sentence of the State Court entered July 7, 1976, which stated that he was to be committed to the Department of Corrections of the State of Oklahoma and that the Sheriff of Tulsa County Oklahoma was directed to transport him to the State Penitentiary. Petitioner further argues that the Sheriff did not obey the order but instead delivered him to the federal government and that by such procedures it is left up to the whims of

the Sheriff as to when a state sentence is to commence. Petitioner contends that such procedures or "type of form sentencing can not help but be applied discriminately "and violates the "'equal protection' guaranteed under the Fifth Amendment."

As stated by the Court in Hayward v. Looney 246 F.2d 56, (10th Cir. 1957):

"Either the Federal or a state government may voluntarily surrender its prisoner to the other without the consent of the prisoner. Whether jurisdiction and custody of a prisoner shall be retained or surrendered is a matter of comity and is to be determined by the sovereign having custody.

If the prisoner has violated the law of both sovereigns, he is subject to prosecution by both and he may not complain of or choose the manner or order in which each sovereign proceeds against him." (Citations omitted)

Finally, Petitioner concludes that the State, by such sentencing and commitment procedures is increasing his time "from a total of ten years to a total of twenty years by their using the petitioner as a pawn and denying him of the concurrent sentence imposed by the Honorable Allen Barrow."

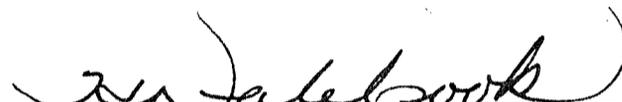
It is apparent from the sentence imposed by Chief Judge Barrow that it was intended that the Five (5) year term imposed on count one of the federal charges was to "run concurrently with state sentence defendant is now serving." However, under the State Court Judgment and the law of Oklahoma, the petitioner had not commenced serving the state sentence at the time he was sentenced on the federal case.

This Court cannot, under the provisions of Title 28 U.S.C. §2254 consider the question of the legality of the federal court

sentence, if in fact there is any basis for challenging that sentence. Sec. 2254 is limited to habeas corpus relief by a person "in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."

For the reasons stated herein, the Petition for Writ of Habeas Corpus is denied.

IT IS SO ORDERED this 30<sup>th</sup> day of September, 1977.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

FILED

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

OCT 4 1977

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

MAGGARD SUPPLY COMPANY, INC., )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
P & M PIPE TESTING, INC., )  
 )  
Defendant. )

No. 77-C-85-B

DISMISSAL WITH PREJUDICE OF  
MAGGARD SUPPLY COMPANY, INC.

COMES NOW the plaintiff above named, and dismisses  
the above captioned cause against P & M Pipe Testing, Inc. with  
prejudice to any further action arising out of the transaction  
which is alleged in the Complaint filed therein.

Frederic N. Schneider III  
Attorney for Maggard Supply Co.,  
Inc.

FILED

OCT - 4 1977

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

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

L. A. HORTON d/b/a	)	
HORTON'S ELECTRICAL CENTER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	75-C-182-B ✓
	)	
STEVEN H. JANCO, et al.,	)	
	)	
Defendants.	)	
	)	
TULSA FABRICATORS AND DISTRIBUTORS,	)	
INC., an Oklahoma corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	76-C-59-B
	)	
STEVEN H. JANCO, et al.,	)	
	)	
Defendants.	)	CONSOLIDATED

DISMISSAL

Comes now the defendant, UNITED STATES OF AMERICA [Farmers Home Administration], by and through its attorney, and dismisses its Counterclaim and Cross-Claim in the above-captioned consolidated cases without prejudice, with costs to be taxed to defendants Steven H. Janco and William R. Satterfield.

HUBERT H. BRYANT  
United States Attorney

  
KENNETH P. SNOKE  
Assistant United States Attorney

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

LINDA A. HALL,

Plaintiff,

vs.

BOARD OF EDUCATION OF TULSA  
INDEPENDENT SCHOOL DISTRICT  
NUMBER ONE, MARY WARNER, RAY  
CONARD, HOBART SANDERS, EUGENE  
HARRIS, JERRY DALE GORDON,  
CURTIS TURNER, CARL D. HALL,  
JR., BRUCE HOWELL, and H. J.  
GREEN,

Defendants.

No. 76-C-516-C

FILED

OCT - 4 1977

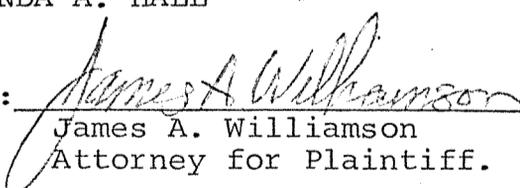
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL  
WITH PREJUDICE

Pursuant to Rule 41(a)(i)(ii), F.R.C.P. all parties who have appeared in this action stipulate to its dismissal with prejudice for the reason that all issues of the case have been settled.

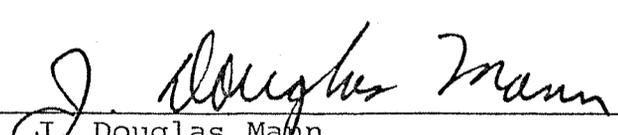
LINDA A. HALL

BY:

  
James A. Williamson  
Attorney for Plaintiff.

BOARD OF EDUCATION OF TULSA INDEPENDENT  
SCHOOL DISTRICT NUMBER ONE, MARY WARNER,  
RAY CONARD, HOBART SANDERS, EUGENE  
HARRIS, JERRY DALE GORDON, CARL D. HALL,  
JR., BRUCE HOWELL

BY:

  
J. Douglas Mann  
FOR ROSENSTEIN, FIST & RINGOLD  
Attorneys for Defendants.

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

**FILED**

OCT 3 1977 *ph*

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

DAVID E. GILKEY, ADMINISTRATOR )  
OF THE ESTATE OF DURWARD M. )  
GILKEY, DECEASED, )

Plaintiff, )

vs. )

WACHTMAN DRILLING COMPANY )  
& GEOLOGICAL & ENGINEERING )  
CONSULTANTS, ET AL., )

Defendants. )

Nos. 75-C-218-C ✓  
75-C-219-C

O R D E R

The Court has before it for consideration a Motion for New Trial filed herein by the plaintiff, David E. Gilkey, Administrator of the Estate of Durward M. Gilkey, deceased.

The Court has carefully considered said Motion and brief in support thereof in light of the evidence presented at trial and the law applicable thereto and finds that the Motion for New Trial should be and hereby is overruled.

It is so Ordered this 3<sup>rd</sup> day of October, 1977.

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

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

TOPPER OIL COMPANY

Plaintiff,

vs.

DIAMOND SHAMROCK CORPORATION,

Defendant,

vs.

ROBERT P. ALVES,

Counter-Defendant

§  
§  
§  
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§  
§

NO. 74-C-439<sup>c</sup>

FILED

OCT - 3 1977

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

STIPULATION AND ORDER OF DISMISSAL

It is hereby stipulated and agreed between the Parties by their respective attorneys of record that the above-entitled cause may be dismissed with prejudice and without costs to any of the Parties.

Dated this 30<sup>th</sup> day of September, 1977.

BOESCHE, McDERMOTT & ESKRIDGE  
1300 National Bank of Tulsa Bldg.  
Tulsa, Oklahoma 74103  
ATTORNEYS FOR PLAINTIFF,  
TOPPER OIL COMPANY and  
COUNTER-DEFENDANT,  
ROBERT P. ALVES

BY:



W. E. NOTESTINE  
Diamond Shamrock Corporation  
P. O. Box 631  
Amarillo, Texas 79173

JAMES L. KINCAID,  
CONNER, WINTERS, BALLAINE,  
BARRY & MCGOWAN  
2400 First National Tower  
Tulsa, Oklahoma 74103

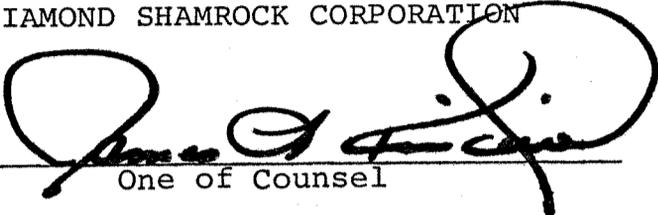
W. M. SUTTON,  
HARLOW SPROUSE  
A. W. SORELLE III  
UNDERWOOD, WILSON, SUTTON,  
BERRY, STEIN & JOHNSON  
P. O. Box 9158  
Amarillo, Texas 79105  
ATTORNEYS FOR DEFENDANT,  
DIAMOND SHAMROCK CORPORATION

FILED

OCT 4 1977

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

BY:

  
One of Counsel

ORDER

Pursuant to the Stipulation of the Parties hereinabove  
set forth, it is hereby,

ORDERED, ADJUDGED and DECREED that the above-entitled  
cause be and the same is hereby dismissed with prejudice and  
without costs to any of the Parties.

SIGNED this 4<sup>th</sup> day of October, 1977.

  
UNITED STATES DISTRICT JUDGE