

F I L E D

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

NOV 30 1978

3 MILDRED P. (BARBARA) BISHOP
4 Plaintiff

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

5 v

No. 78-C-433 -B

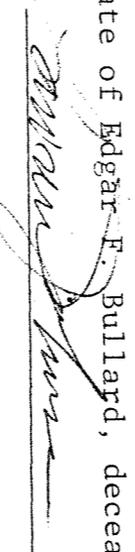
6 THE FIRST NATIONAL BANK AND
7 TRUST COMPANY OF TULSA, OKLAHOMA, et al.
8 Defendants

9 NOTICE OF DISMISSAL

10
11 Comes the Plaintiff, and shows the court that no Answer
12 or motion for summary judgment has been filed by the
13 following named defendants:

14 Howard Bullard
15 Doris Duncan,
16 Jack C. Duncan
17 Bruce G. Duncan.

18 As to these defendants individually, and only individually,
19 the Plaintiff gives notice of dismissal without prejudice
20 pursuant to Rule 41 (a). Plaintiff specifically does not
21 dismiss as to The First National Bank and Trust Company
22 of Tulsa, R. Michael Duncan and Howard B. Bullard III
23 as co-Executors of the Estate of Edgar F. Bullard, deceased.

24
25 
26 attorney for the Plaintiff

27 CERTIFICATE

28 Lawrence Johnson certifies on the 29th of November, 1978
29 he mailed copy of the foregoing to John Athens, First
30 National Tower, Tulsa, Ok 74103

31
32 

LAWRENCE A. G. JOHNSON
ATTORNEY AT LAW
1732 E. 30TH PLACE
TULSA,
OKLAHOMA 74114
(918) 743-3012
743-0459

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

FILED

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAAD TAHA and NAOMI L. TAHA,
his wife,

Defendants.

CIVIL ACTION NO. 78-C-562-B

FILED

NOV 29 1978

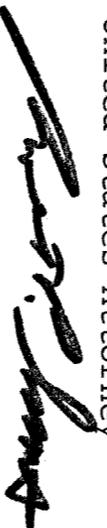
Jack C. Silver, Clerk
U. S. DISTRICT COURT

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff
herein, by and through its attorney, Robert P. Santee, Assistant
United States Attorney for the Northern District of Oklahoma,
and hereby gives notice of its dismissal, pursuant to Rule 41,
Federal Rules of Civil Procedure, of this action, without
prejudice.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

NOV 28 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA
Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Respondent,

v.

MARSHA DALE ADAMS,

Movant.

)	
)	
)	NOS. 78-C-303-B
)	78-C-417-B
)	78-CR-19
)	

ORDER

The Court has for consideration the motion pursuant to 28 U.S.C. § 2255 filed pro se, in forma pauperis, by Marsha Dale Adams. The cause has been assigned civil Case No. 78-C-59-B and docketed in her criminal Case No. 78-CR-19. Further, Movant has filed a second motion pursuant to 28 U.S.C. § 2255 which has been assigned civil Case No. 78-C-417-B and also docketed in her criminal Case No. 78-CR-19. The Court finds that in this latter § 2255 motion, Movant asserts claims with common questions of law and fact as asserted in the first two claims, set out below, in the motion here being considered in Case No. 78-C-303-B. Therefore, Case No. 78-C-417-B should be consolidated pursuant to Rule 42(a), Federal Rules of Civil Procedure, with this Case No. 78-C-303-B.

Movant is a prisoner at the Federal Correctional Institution, Fort Worth, Texas, pursuant to sentence upon her conviction on a plea of guilty to a three-count indictment charging Count One, theft of mail in violation of 18 U.S.C. § 1702; Count Two, forgery in violation of 18 U.S.C. § 495; and Count Three, publishing a forged check in violation of 18 U.S.C. § 495. Her sentence was to 30 months' imprisonment on Counts One and Two, the sentence on Count Two to run concurrently with the sentence on Count One, and on Count Three, the imposition of sentence was suspended and she was placed on probation for a period of three years to follow her incarceration. A special condition of probation was imposed that she make restitution in the sum of \$225.50.

In her § 2255 motion, Movant demands her release from custody and as grounds therefor claims that she is being deprived of her liberty in violation of her rights guaranteed by the Constitution of the United States of America. In particular, Movant claims that:

1. She was denied a speedy trial and due process of law in that the crimes are charged to have been committed on or about October 1, 1975, and the indictment thereon was not returned until February 9, 1978. She asserts that she was prejudiced by this delay because witnesses were not available, and events had dimmed so that she could not remember the facts.

2. She was represented by inadequate counsel.
3. Her plea of guilty was involuntary and unknowing as she was over-medicated on barbituates and the consequences of her plea were not explained to her.

4. The sentence was imposed without proper jurisdiction of the Court.

The Court remembers the plea and sentence of Marsha Dale Adams, and has carefully reviewed the motion, response and file. Being fully advised in the premises, the Court finds that an evidentiary hearing is not required and the § 2255 motions are without merit and should be denied.

Movant's conviction and sentence were rendered on a plea of guilty entered April 4, 1978. She contends as the third ground for her § 2255 motion in Case No. 78-C-303-B that her plea was involuntary and unknowing because she was over-medicated on barbituates and the consequences of a plea were not explained to her. In Case No. 78-C-417-B, consolidated herein, she abandons this claim of an invalid, unknowing plea.

Movant's plea of guilty was taken in full conformity with Rule 11, Federal Rules of Criminal Procedure. Movant was at all times during the plea and sentence in possession of her faculties, able to understand and respond to the Court's questions, she was alert and gave no indication of dull-wittedness, incoherence or intoxication. The charge and maximum possible sentence were explained to her by the Court. See, Transcript Page 7, Lines 17-25. It was carefully determined that her plea of guilty was entered of her own free choice, without force, threat or promise. The Court asked the Movant, "Are you under the influence of or have you had within the last twenty-four hours any liquor, drug or medicine which might in any way affect your ability to understand or participate in these proceedings? The Movant answered, under oath, "No, sir." See, Transcript Page 9, Lines 16-20. Movant's plea of guilty was free and knowing, it was competently and voluntarily entered in full compliance with Rule 11 and constitutional safeguards as clearly appears of record and from this Court's memory of the proceedings. From the Movant's demeanor at plea on April 4, 1978, there is no question that the Movant had sufficient present ability to consult with her lawyer with a reasonable degree of rational understanding and that she had a rational, as well as, a factual understanding of the proceedings against her. Ordinarily, the truth and accuracy of statements made by a Defendant during Rule 11 proceedings are

regarded as conclusive. Hedman v. United States, 527 F.2d 20 (10th Cir. 1975). This Court concludes that Movant has presented no believable reason to disregard the apparent truth of her earlier Rule 11 statements under oath, and the files, records, and this Court's memory of the proceedings are conclusive that she is entitled to no relief. See, Hampton v. United States, 504 F.2d 600 (10th Cir. 1974); Robinson v. United States, 474 F.2d 1085 (10th Cir. 1973). A plea of guilty is a solemn act not to be disregarded because of belated misgivings about the wisdom of the same. United States v. Woosley, 440 F.2d 1280 (8th Cir. 1971); Chaney v. United States, No. 76-1116 Unreported (10th Cir. filed Jan. 4, 1977).

Further, her valid plea of guilty waives all prior non-jurisdictional defects. United States v. Saltow, 444 F.2d 59 (10th Cir. 1969); Acuna v. Baker, 418 F.2d 59 (10th Cir. 1969); United States v. Noonan, 565 F.2d 633 (10th Cir. 1977). The denial of a speedy trial presented as her first claim in both § 2255 motions, consolidated herein, is one of those non-jurisdictional defects waived by the valid plea of guilty. See, United States v. Muller, Nos. 77-1956 and 77-1995 Unreported (10th Cir. filed June 15, 1978). Movant presents the sole conclusory claim that because of the pre-indictment delay witnesses, who are unnamed and what they could testify to unasserted, were not available, and events had dimmed so that she could not remember the facts. This is insufficient to justify the dismissal of an indictment filed well within the applicable statute of limitations, and does not support relief pursuant to § 2255. See, United States v. Marion, 404 U. S. 307 (1971); United States v. Lovasco, 431 U. S. 783 (1977). Especially is this true when the charges are simple and uncomplicated involving the theft of a check from the mail, forgery of that check, and uttering and publishing the check as true.

Her second claim of inadequate counsel, also presented in both § 2255 motions, here consolidated, is equally without merit. Movant's trial counsel has filed an affidavit that he did not to this client, and had never to any client charged with a crime, told the client to plead guilty or that he or she "had to" plead guilty. The Court is familiar with the work of defense counsel and knows him to be an able and experienced attorney who has represented innumerable criminal defendants. Movant stated on the record, under oath, at her plea that she was satisfied with her attorney. See, Transcript Page 8, lines 19-21.

Her fourth claim that the Court lacked jurisdiction to impose sentence is frivolous and totally without merit deserving no further comment. Movants claims in her § 2255 motions are insufficient to contradict her statements at the time of her plea and the affidavit on file and they do not require under the circumstances before the Court an evidentiary hearing. See, Hedman v. United States, Supra.; United States v. Farnsworth, No. 78-1262 Unpublished (10th Cir. Filed Nov. 16, 1978).

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Marsha Dale Adams bearing Case No. 78-C-417-B be and it is hereby consolidated with Case No. 78-C-393-B.

IT IS FURTHER ORDERED that the motions of Marsha Dale Adams to vacate and set aside her convictions and sentences presented in consolidated Cases No. 78-C-303-B and No. 78-C-417-B be and they are hereby overruled and dismissed.

Dated this 28th day of November, 1978, at Tulsa, Oklahoma.



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

F I L E D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

NOV 28 1978

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

RAY MARSHALL, Secretary of Labor, United States Department of Labor,)	
)	
Plaintiff,)	Civil Action File
)	
v.)	No. 77-C-243-B
)	
ANCHOR CONCRETE COMPANY,)	
Defendant.)	

ORDER OF DISMISSAL

The defendant has stipulated that it will comply with the provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.), and has paid the (minimum wages) (and overtime compensation sought by the plaintiff. The parties having entered into a stipulation that this action may be dismissed, it is

ORDERED, ADJUDGED and DECREED that the above styled and numbered cause, *Green v. Anchor Concrete* ~~be~~, and ~~it~~ ^{by} ~~hereby~~ ^{was} ~~is~~, dismissed with costs to be taxed against defendant for which execution may issue.

The dismissal of this action is without prejudice to any independent rights that Garland G. Duke may have under the Act.

Dated this 28th day of November, 1978.

Garland G. Duke
UNITED STATES DISTRICT JUDGE

Approved as to Form and Content:

Richard A. Walker
Attorney for Plaintiff

Garland G. Duke
Attorney for Defendant

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

JOHNNY DOSS,

Plaintiff,

vs.

HILCREST HOSPITAL,

Defendant.

No. 78-C-508-C

F I L E D

NOV 27 1973

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

O R D E R

On October 20, 1978, the Court granted the complainant herein leave to file an action under Title VII of the Civil Rights Act of 1964 without payment of fees, costs, or security. However, no formal complaint has been filed.

Title 42 U.S.C. § 2000e-5(F)(1) requires that a Title VII complainant bring his civil action within 90 days of his receipt of the determination made by the Equal Employment Opportunity Commission with respect to his charge. In the instant case, complainant's 90 days expired on or about November 1, 1978, the EEOC determination being dated August 1, 1978. Subsequent to its Order of October 20, the Court entered a minute order directing complainant to file his formal complaint by November 15, 1978.

Because the complainant has failed to file his complaint within the 90 days allotted by statute, and has further failed to do so within the additional period of time granted by the Court, this cause is hereby dismissed.

It is so Ordered this 27th day of November, 1978.


H. DALE COOK
United States District Judge

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

UNITED STATES OF AMERICA and
KENNETH L. HARRIS, Revenue
Officer, Internal Revenue
Service,

Petitioners,

vs.

PATRICIA A. SINNETT,

Respondent.

No. 78-C-414-B

NOV 27 1978

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

F I L E D

ORDER DISCHARGING RESPONDENT
AND DISMISSAL

On this 27th day of November, 1978, Petitioners'

Motion to Discharge Respondent and for Dismissal came for
hearing and the Court finds that Respondent has now complied
with the Internal Revenue Service Summons served upon her
June 21, 1978, that further proceedings herein are unnecessary,
and that the Respondent, Patricia A. Sinnett should be dis-
charged and this action dismissed upon payment of \$24.00 costs
by Respondent.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY

THE COURT that the Respondent, Patricia A. Sinnett be and she is
hereby discharged from any further proceedings herein and this
action is hereby dismissed upon payment of \$24.00 costs by said
Respondent.


UNITED STATES DISTRICT JUDGE

**NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.**

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

NOV 27 1978

FILED

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

DALE CARTER LUMBER COMPANY,
Plaintiff,
vs.
NCR CORPORATION,
Defendant.

No. 77-C-116-B ✓

ORDER OF DISMISSAL WITH PREJUDICE

The Plaintiff and Defendant having compromised and settled all issues in the action and having stipulated that the Complaint and the action may be dismissed with prejudice, it is therefore; *Consent of* ORDERED, that the Complaint and this *action of* action are, by the Court, dismissed with prejudice to the bringing of another action upon the same cause or causes of action.

Entered this 27th day of November, 1978.


UNITED STATES DISTRICT JUDGE

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

ASIATIC PETROLEUM CORPORATION,
a corporation,

Plaintiff,

vs.

WHITNEY SUPPLY COMPANY,
a corporation,

Defendant.

No. 77-C-522-C

F I L E D

NOV 24 1978

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

ORDER OF DISMISSAL WITHOUT PREJUDICE

All Parties hereto having so stipulated --

IT IS ORDERED, that the above entitled action, including Plaintiff's complaint against Defendant and Defendant's counter-claim against Plaintiff, be and same is hereby dismissed without prejudice and without costs to either party.

DATED this 24th day of November 1978.

W. Dale Cook
UNITED STATES DISTRICT JUDGE

LAW OFFICES

UNGERMAN,

CONNOR,

LITTLE,

UNGERMAN &

GOODMAN

1710 FOURTH NATL.
BANK BUILDING
TULSA, OKLAHOMA

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

F I L E D

NOV 23 1978

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

NEWSPAPER PRINTING CORPORATION,
Agent for World Publishing Company,
a corporation, and the Tulsa Tribune
Company, a corporation; WORLD
PUBLISHING COMPANY, a corporation;
and THE TULSA TRIBUNE COMPANY, a
corporation,

Plaintiffs,

vs.

No. 77-C-202-C

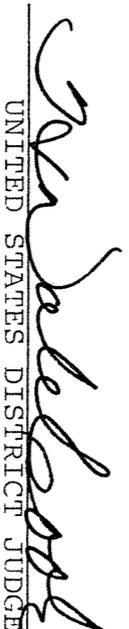
WOOD INDUSTRIES, INC., a corporation,

Defendant.

ORDER OF DISMISSAL OF PLAINTIFFS'
COMPLAINT AND DEFENDANT'S COUNTER-CLAIM

On this 22 day of November, 1978, upon the
written stipulation of the parties for a dismissal with pre-
judice of the plaintiffs' complaint and the defendant's
counter-claim, the Court having examined said stipulation,
finds the parties have entered into a compromise settlement
of all of the claims involved herein, and the Court being
fully advised in the premises finds that the plaintiffs'
complaint against the defendant and the defendant's counter-claim
against the plaintiffs should be dismissed with prejudice.

IT IS THEREFORE ORDERED BY THE COURT that the complaint
of the plaintiffs against the defendant and the counter-claim
of the defendant against the plaintiffs be and the same are
hereby dismissed with prejudice to any future action.


UNITED STATES DISTRICT JUDGE

ENTERED this 27th day of November, 1978.

Cecil S. Barnett

CHIEF UNITED STATES DISTRICT JUDGE

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

IN RE

)
)
) GEORGE WASHINGTON ROGERS and)
) ARLAYNE ELLA ROGERS, Indi-)
) vidually and d/b/a COULTER)
) HOUSE CATERING, COULTER)
) HOUSE RESTAURANT AND CATER-)
) ING, and COULTER HOUSE)
) GROCERY AND CATERING,)

Bankrupts,)

No. 78-C-187-B

)
) ROGERS COUNTY BANK,)
) Claremore, Oklahoma, a Cor-)
) poration,)

)
) Plaintiff-Appellee,)

F I L E D

v.)

NOV 22 1973

)
) GEORGE WASHINGTON ROGERS and)
) ARLAYNE ELLA ROGERS, Indi-)
) vidually and d/b/a COULTER)
) HOUSE CATERING, COULTER)
) HOUSE RESTAURANT AND CATER-)
) ING, and COULTER HOUSE)
) GROCERY AND CATERING,)

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

)
) Defendant-Appellant.)

O R D E R

The Court has for consideration an appeal from the judgment of the Bankruptcy Court and has reviewed the file, the briefs and all of the recommendations concerning the appeal, and being fully advised in the premises, finds:

That the judgment of the Bankruptcy Court should be affirmed for the following reasons:

The sole issues on appeal are whether or not the Bankruptcy Judge erred in ruling:

- (a) That the Bankrupt's answer of "None" to Item 7 (having to do with previous bankruptcies of his Statement of Affairs filed in the Court on December 16, 1975, contrary to the fact of his previous later revealed bankruptcy in 1964, constituted a knowingly and fraudulently made false oath in relation to the

bankruptcy proceedings, an offense punishable as provided in Title 18, U.S.C. Section 152, and a ground for denial of his discharge under Section 14 c (1) of The Bankruptcy Act.

(b) That the Bankrupt's answer of "No" to Item 12 (having to do with transfer of property) of his Statement of Affairs filed in the Court on December 16, 1975, contrary to the fact of his later revealed actual transfer of property within the year preceding the filing of bankruptcy, constituted a knowingly and fraudulently made false oath in relation to the bankruptcy proceedings, an offense punishable as provided in Title 18, U.S.C. Section 152, and a ground for denial of his discharge under Section 14 c (1) of The Bankruptcy Act.

In the Statement of Affairs filed by George Rogers under oath with his voluntary Petition on December 16, 1975, he answered Item 7 (which makes inquiry as to previous proceedings under The Bankruptcy Act by the Bankrupt) "None." After the first meeting of creditors was convened and the Bankrupt examined, on January 20, 1976, he filed an Amended Statement of Affairs in which, in addition to other information not previously given, he answered Item 7 as follows:

"December 1964 - Northern District, Tulsa, Oklahoma Discharged as a bankrupt."

Upon being examined at the continuation of the hearing of the first meeting of creditors, on January 26, 1976, Appellant was questioned concerning the omission from his original Statement of Affairs of the 1964 bankruptcy information, and he testified that he didn't recall that he ever informed his attorney about the previous bankruptcy, nor did he think his

attorney ever asked him about it. Later, at trial on the complaint objecting to discharge, Appellant was asked again concerning the answer of "None" given in his original Statement of Affairs, and, upon that hearing, he testified that he gave that answer upon the advice of his attorney. The attorney did not testify.

In the original Statement of Affairs sworn to and filed on December 16, 1975, by the Appellant, in response to Item 12 of the Statement regarding transfers of property within a year preceding the date of filing, the Bankrupt responded to the question with the word "No." After the beginning of the first meeting of creditors and examination of the Bankrupt, by Amendment filed January 20, 1975, it was disclosed that two Quarter Horse colts had been the subject of gifts made on December 4, 1975, and that two other horses and a tractor had been sold earlier in the year. In addition to this revelation, the amended papers disclosed considerable other information not supplied in the original Statement of Affairs.

Title 18, U.S.C. Section 152, defines the knowingly and fraudulently making of a false oath or account in or in relation to any bankruptcy proceeding as an offense punishable by imprisonment. Section 14 c (1) of The Bankruptcy Act states the ground for denying discharge in bankruptcy as, among other things, when the bankrupt has committed an offense punishable by imprisonment as provided in Title 18, U.S.C. Section 152.

Appellant's basic contention on the Appeal is that the false statements given by him were not material and were lacking in fraudulent intent. This contention, when viewed against the evidence, is not persuasive. The answer given in the original Statement of Affairs with regard to former

bankruptcies was not merely an omission to supply information, it was a clear and unequivocal "None", later shown to be a false answer. Considering the varying testimony he gave in response to questions as to why he responded as he did to the question, his last testimony that he did it on being advised to do so by his attorney, particularly with no corroboration by his attorney, is not creditable.

With regard to the later revelation that the answer "No" to Item 12 (pertaining to transfers) was false, and that the Bankrupt had in fact, contrary to his original Statement of Affairs, disposed of two Quarter Horse colts by gift and sold several other items of property earlier in the year, the Bankruptcy Judge noted that in addition to those matters, a considerable amount of additional information not indicated on the original Statement of Affairs was furnished by the Amendment, and that while those matters were not specifically the subject of this ground for objection, the failure to disclose the transfers appeared to be a part of a pattern of omissions which, as stated in In re Diorio 407 F.2d 1330 (CA 2 1969), can be most kindly described as reckless indifference to the truth, the equivalent of fraud in an action such as this to bar the Bankrupt's discharge.

The questions contained in the Statement of Affairs call for truthful disclosures from a Bankrupt if he is to be entitled to a discharge. See Ittelman v. Hochman, 123 F.2d 723 (CA 2 1941). While the Statutes do not withhold the discharge from a Bankrupt who has testified falsely through error, its benefits are intended only for honest debtors. Those who purposely answer untruthfully concerning material matters propounded upon their examination deserve no favor. In Re Slocum, Appeal of Lederer, 22 F.2d 282 (CA 1927).

With regard to "knowingly and fraudulently", "It is sufficient that the Bankrupt knows what is true, and so know-

ing, willfully and intentionally swears to what is false." In Re Kaufhold, 256 F.2d 181 (CA 3 1958). Materiality of a false oath is not dependent upon whether it has been detrimental to the creditors. In Re Robinson, 506 F.2d 1184 (CA 2 1974) Page 1188. As indicated heretofore, the law lays upon a Bankrupt the positive duty to answer truthfully the questions propounded to him in relation to his bankruptcy proceeding.

Keeping in mind Rule 810 of The Bankruptcy Rules, it is the conclusion of this Court that the Bankruptcy Judge's findings of fact are not clearly erroneous and should be accepted. It is the further conclusion of this Court that the law, when applied to those facts, fully supports the order of the Bankruptcy Judge denying discharge.

IT IS, THEREFORE, ORDERED that the Judgment of the Bankruptcy Court be and is hereby affirmed.

Dated this 22nd day of November, 1978.



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

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

AETNA LIFE AND CASUALTY COMPANY,
Plaintiff,

vs.
ELGER M. CHERRY and LILLIAN WOLARIDGE,
Defendants.

FILED

No. 78-C-494-B

NOV 22 1978

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

ORDER SUSTAINING INTERPLEADER

This cause came on to be heard on this 22 day of November, 1978, and it appearing to the Court that the Court has jurisdiction and that Plaintiff should be discharged from further liability herein and awarded its costs and attorney fees, without prejudice to the rights of the Defendants as to the monies deposited in the registry of the Court by Plaintiff, and it further appearing that Plaintiff has expended as costs in this Court the sum of TWENTY ONE AND 24/100 DOLLARS (\$21.24) and that a reasonable attorney fees for Plaintiff is in the sum of FOUR HUNDRED SEVENTY EIGHT AND 76/100 DOLLARS (\$478.76).

It is therefore ordered that Plaintiff be and it is hereby discharged from any and all liability in this cause as a result of the tender which has made into the registry of this Court and Plaintiff is hereby awarded the sum of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) out of said fund as its allowance for its costs and attorney fees, which allowance shall be paid to Plaintiff by the Clerk of this Court out of such funds on deposit; and such payments, when made, shall be taxed as court costs.

It is further ordered that this Court retain jurisdiction of this cause for the determination of the rights of the respective Defendants in and to the funds on deposit in the registry of the Court, as well as the final taxation of court costs.

Alan S. Bennett
JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

11-22-78
(km)

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

ASIATIC PETROLEUM CORPORATION,
a corporation,

Plaintiff,

vs.

WHITNEY SUPPLY COMPANY,
a corporation,

Defendant.

No. 77-C-522-C

F I L E D

NOV 24 1978

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

ORDER OF DISMISSAL WITHOUT PREJUDICE

All Parties hereto having so stipulated --

IT IS ORDERED, that the above entitled action, including
Plaintiff's complaint against Defendant and Defendant's
counter-claim against Plaintiff, be and same is hereby
dismissed without prejudice and without costs to either
party.

DATED this 24th day of November 1978.

W. Dale Cook
UNITED STATES DISTRICT JUDGE

LAW OFFICES

UNGERMAN,

CONNOR,

LITTLE,

UNGERMAN &

GOODMAN

1710 FOURTH NATL.
BANK BUILDING
TULSA, OKLAHOMA

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

F I L E D

NOV 22 1978

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

SAUNDRA D. MCGEE,
Plaintiff,
vs.
THOMAS SHOWS, INC., A
Foreign Corporation,
Defendant.
NO. 78-C-338-C

APPLICATION FOR DISMISSAL

COMES now plaintiff and defendant and would show the Court that their differences have been compromised and settled and that nothing further remains to be done in this litigation and therefore moves this Court for an order of Dismissal with Prejudice.

Sandra D. McGee
Saundra D. McGee, Plaintiff

Samuel S. Thacker
Attorney for Plaintiff

Joseph M. Beck
Attorney for Defendant

F I L E D

NOV 24 1978

Jack C. Silver, Clerk

U. S. DISTRICT COURT

ORDER OF DISMISSAL

Now on this 24th day of November, 1978, the Court having received an Application for Dismissal from the parties hereto, finds that their differences have been compromised and that this case should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this case be and the same as hereby dismissed with prejudice.

Alvin Dale Cook
UNITED STATES DISTRICT JUDGE

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

F I L E D

NOV 22 1978

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

NEWSPAPER PRINTING CORPORATION,
Agent for World Publishing Company,
a corporation, and the Tulsa Tribune
Company, a corporation; WORLD
PUBLISHING COMPANY, a corporation;
and THE TULSA TRIBUNE COMPANY, a
corporation,

Plaintiffs,

vs.

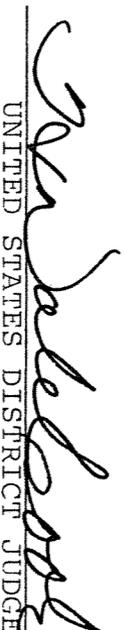
WOOD INDUSTRIES, INC., a corporation,

Defendant.

ORDER OF DISMISSAL OF PLAINTIFFS'
COMPLAINT AND DEFENDANT'S COUNTER-CLAIM

On this 22 day of November, 1978, upon the
written stipulation of the parties for a dismissal with pre-
judice of the plaintiffs' complaint and the defendant's
counter-claim, the Court having examined said stipulation,
finds the parties have entered into a compromise settlement
of all of the claims involved herein, and the Court being
fully advised in the premises finds that the plaintiffs'
complaint against the defendant and the defendant's counter-claim
against the plaintiffs should be dismissed with prejudice.

IT IS THEREFORE ORDERED BY THE COURT that the complaint
of the plaintiffs against the defendant and the counter-claim
of the defendant against the plaintiffs be and the same are
hereby dismissed with prejudice to any future action.


UNITED STATES DISTRICT JUDGE

ENTERED this 29th day of November, 1978.

Cecil B. Barnett

CHIEF UNITED STATES DISTRICT JUDGE

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

IN RE

GEORGE WASHINGTON ROGERS and)
ARLAYNE ELLA ROGERS, Indi-)
vidually and d/b/a COULTER)
HOUSE CATERING, COULTER)
HOUSE RESTAURANT AND CATER-)
ING, and COULTER HOUSE)
GROCERY AND CATERING,)

Bankrupts,)

No. 78-C-187-B

ROGERS COUNTY BANK,)
Claremore, Oklahoma, a Cor-)
poration,)

Plaintiff-Appellee,)

F I L E D

v.)

NOV 22 1973

GEORGE WASHINGTON ROGERS and)
ARLAYNE ELLA ROGERS, Indi-)
vidually and d/b/a COULTER)
HOUSE CATERING, COULTER)
HOUSE RESTAURANT AND CATER-)
ING, and COULTER HOUSE)
GROCERY AND CATERING,)

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

Defendant-Appellant.)

O R D E R

The Court has for consideration an appeal from the judgment of the Bankruptcy Court and has reviewed the file, the briefs and all of the recommendations concerning the appeal, and being fully advised in the premises, finds: That the judgment of the Bankruptcy Court should be affirmed for the following reasons:

The sole issues on appeal are whether or not the Bankruptcy Judge erred in ruling:

- (a) That the Bankrupt's answer of "None" to Item 7 (having to do with previous bankruptcies of his Statement of Affairs filed in the Court on December 16, 1975, contrary to the fact of his previous later revealed bankruptcy in 1964, constituted a knowingly and fraudulently made false oath in relation to the

bankruptcy proceedings, an offense punishable as provided in Title 18, U.S.C. Section 152, and a ground for denial of his discharge under Section 14 c (1) of The Bankruptcy Act.

(b) That the Bankrupt's answer of "No" to Item 12 (having to do with transfer of property) of his Statement of Affairs filed in the Court on December 16, 1975, contrary to the fact of his later revealed actual transfer of property within the year preceding the filing of bankruptcy, constituted a knowingly and fraudulently made false oath in relation to the bankruptcy proceedings, an offense punishable as provided in Title 18, U.S.C. Section 152, and a ground for denial of his discharge under Section 14 c (1) of The Bankruptcy Act.

In the Statement of Affairs filed by George Rogers under oath with his voluntary Petition on December 16, 1975, he answered Item 7 (which makes inquiry as to previous proceedings under The Bankruptcy Act by the Bankrupt) "None." After the first meeting of creditors was convened and the Bankrupt examined, on January 20, 1976, he filed an Amended Statement of Affairs in which, in addition to other information not previously given, he answered Item 7 as follows:

"December 1964 - Northern District, Tulsa, Oklahoma Discharged as a bankrupt."

Upon being examined at the continuation of the hearing of the first meeting of creditors, on January 26, 1976, Appellant was questioned concerning the omission from his original Statement of Affairs of the 1964 bankruptcy information, and he testified that he didn't recall that he ever informed his attorney about the previous bankruptcy, nor did he think his

attorney ever asked him about it. Later, at trial on the complaint objecting to discharge, Appellant was asked again concerning the answer of "None" given in his original Statement of Affairs, and, upon that hearing, he testified that he gave that answer upon the advice of his attorney. The attorney did not testify.

In the original Statement of Affairs sworn to and filed on December 16, 1975, by the Appellant, in response to Item 12 of the Statement regarding transfers of property within a year preceding the date of filing, the Bankrupt responded to the question with the word "No." After the beginning of the first meeting of creditors and examination of the Bankrupt, by Amendment filed January 20, 1975, it was disclosed that two Quarter Horse colts had been the subject of gifts made on December 4, 1975, and that two other horses and a tractor had been sold earlier in the year. In addition to this revelation, the amended papers disclosed considerable other information not supplied in the original Statement of Affairs.

Title 18, U.S.C. Section 152, defines the knowingly and fraudulently making of a false oath or account in or in relation to any bankruptcy proceeding as an offense punishable by imprisonment. Section 14 c (1) of The Bankruptcy Act states the ground for denying discharge in bankruptcy as, among other things, when the bankrupt has committed an offense punishable by imprisonment as provided in Title 18, U.S.C. Section 152.

Appellant's basic contention on the Appeal is that the false statements given by him were not material and were lacking in fraudulent intent. This contention, when viewed against the evidence, is not persuasive. The answer given in the original Statement of Affairs with regard to former

bankruptcies was not merely an omission to supply information, it was a clear and unequivocal "None", later shown to be a false answer. Considering the varying testimony he gave in response to questions as to why he responded as he did to the question, his last testimony that he did it on being advised to do so by his attorney, particularly with no corroboration by his attorney, is not creditable.

With regard to the later revelation that the answer "No" to Item 12 (pertaining to transfers) was false, and that the Bankrupt had in fact, contrary to his original Statement of Affairs, disposed of two Quarter Horse colts by gift and sold several other items of property earlier in the year, the Bankruptcy Judge noted that in addition to those matters, a considerable amount of additional information not indicated on the original Statement of Affairs was furnished by the Amendment, and that while those matters were not specifically the subject of this ground for objection, the failure to disclose the transfers appeared to be a part of a pattern of omissions which, as stated in In re Diorio 407 F.2d 1330 (CA 2 1969), can be most kindly described as reckless indifference to the truth, the equivalent of fraud in an action such as this to bar the Bankrupt's discharge.

The questions contained in the Statement of Affairs call for truthful disclosures from a Bankrupt if he is to be entitled to a discharge. See Ittelman v. Hochman, 123 F.2d 723 (CA 2 1941). While the Statutes do not withhold the discharge from a Bankrupt who has testified falsely through error, its benefits are intended only for honest debtors. Those who purposely answer untruthfully concerning material matters propounded upon their examination deserve no favor. In Re Slocum, Appeal of Lederer, 22 F.2d 282 (CA 1927).

With regard to "knowingly and fraudulently", "It is sufficient that the Bankrupt knows what is true, and so know-

ing, willfully and intentionally swears to what is false." In Re Kaufhold, 256 F.2d 181 (CA 3 1958). Materiality of a false oath is not dependent upon whether it has been detrimental to the creditors. In Re Robinson, 506 F.2d 1184 (CA 2 1974) Page 1188. As indicated heretofore, the law lays upon a Bankrupt the positive duty to answer truthfully the questions propounded to him in relation to his bankruptcy proceeding.

Keeping in mind Rule 810 of The Bankruptcy Rules, it is the conclusion of this Court that the Bankruptcy Judge's findings of fact are not clearly erroneous and should be accepted. It is the further conclusion of this Court that the law, when applied to those facts, fully supports the order of the Bankruptcy Judge denying discharge.

IT IS, THEREFORE, ORDERED that the Judgment of the Bankruptcy Court be and is hereby affirmed.

Dated this 22nd day of November, 1978.



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

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

AETNA LIFE AND CASUALTY COMPANY,
Plaintiff,

vs.
ELGER M. CHERRY and LILLIAN WOLARIDGE,
Defendants.

FILED

No. 78-C-494-B

NOV 22 1978

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

ORDER SUSTAINING INTERPLEADER

This cause came on to be heard on this 22nd day of November, 1978, and it appearing to the Court that the Court has jurisdiction and that Plaintiff should be discharged from further liability herein and awarded its costs and attorney fees, without prejudice to the rights of the Defendants as to the monies deposited in the registry of the Court by Plaintiff, and it further appearing that Plaintiff has expended as costs in this Court the sum of TWENTY ONE AND 24/100 DOLLARS (\$21.24) and that a reasonable attorney fees for Plaintiff is in the sum of FOUR HUNDRED SEVENTY EIGHT AND 76/100 DOLLARS (\$478.76).

It is therefore ordered that Plaintiff be and it is hereby discharged from any and all liability in this cause as a result of the tender which has made into the registry of this Court and Plaintiff is hereby awarded the sum of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) out of said fund as its allowance for its costs and attorney fees, which allowance shall be paid to Plaintiff by the Clerk of this Court out of such funds on deposit; and such payments, when made, shall be taxed as court costs.

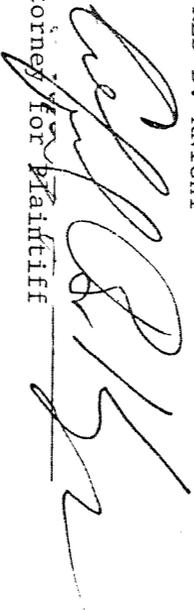
It is further ordered that this Court retain jurisdiction of this cause for the determination of the rights of the respective Defendants in and to the funds on deposit in the registry of the Court, as well as the final taxation of court costs.

Alan B. Baran
JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

11-22-78
km

APPROVED AS TO FORM:

KNIGHT, WAGNER, STUART & WILKERSON
ALFRED B. KNIGHT


Attorney for Plaintiff

MICHAEL L. GREEN


Attorney for Defendant, Elger M. Cherry

FRANK R. HICKMAN


Attorney for Defendant, Lillian Wolardige

F I L E D

IN THE UNITED STATES DISTRICT COURT FOR THE NOV 22 1978
NORTHERN DISTRICT OF OKLAHOMA

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

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 78-C-256-B
DENNIS L. STORM,)	
Defendant.)	

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

UNITED STATES OF AMERICA
 HUBERT H. BRYANT
 United States Attorney


 ROBERT P. SANTEE
 Assistant United States Attorney

F I L E D

NOV 21 1978

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

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

JAMES A. LEE,

Plaintiff,

vs.

No. 78-C-535 B ✓

FRUEHAUF CORPORATION,

Defendant.

DEFAULT JUDGMENT FOR PLAINTIFF
NONAPPEARANCE OF DEFENDANT

The defendant, Fruehauf Corporation, having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, and the default of said defendant having been duly entered, and it appearing that said defendant is not an infant or incompetent person, an affidavit of nonmilitary service having been filed herein, and it appearing by the affidavit of the plaintiff that plaintiff is entitled to judgment herein,

IT IS ORDERED AND ADJUDGED that the plaintiff have and recover from defendant Fruehauf Corporation, the sum of \$270,372.40, with interest thereon at the rate of ten percent per annum from November 21, 1978 until paid, together with costs in the sum of \$19.00.

Dated November 21, 1978.

Jack C. Silver, Clerk

Jack C. Silver
Clerk of the District Court

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

SCHOOL PICTURES, INC., a
Mississippi corporation,
Plaintiff,

v.s.

MEL NEWSOM III, an in-
dividual, and PHOTO HUT
OF OKLAHOMA, INC., an
Oklahoma corporation, a/k/a
Photo Hut, Inc.,
Defendants.

No. 78-C-495-B

F I L E D

NOV 21 1978

JUDGMENT

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

This action came on for ~~trial~~ ^{consideration} before the undersigned

Chief Judge of the United States District Court for the Northern
District of Oklahoma. The plaintiff ~~is represented~~ ^{is represented} by its attorneys
John Barry and Laurence L. Pinkerton of Conner, Winters, Ballaine,
Barry & McGowen and Defendants Photo Hut of Oklahoma, Inc. and
Mel Newsom III ~~is~~ ^{is} pro se.

Trial by jury ~~was~~ ^{is} waived by all ~~parties~~ parties
~~present~~. The Court being fully advised in
the premises, and having examined all pleadings herein, finds as
follows:

1. That the Court has jurisdiction of the parties
hereto and of the subject matter hereof.
2. That the allegations of Plaintiff's Amended
Complaint are true and correct.
3. That Plaintiff School Pictures, Inc. should re-

cover of Defendants Mel Newsom III and Photo Hut of Oklahoma,
Inc. the sum of \$ 31,811.15 with interest thereon at the rate of
10 %, and all costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
Plaintiff School Pictures, Inc. recover of Defendant Mel Newsom
III and Photo Hut of Oklahoma, Inc. the sum of \$ 31,811.15 with

[Signature]
3/17

interest thereon at the rate of 10 %, and all costs of this action.



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

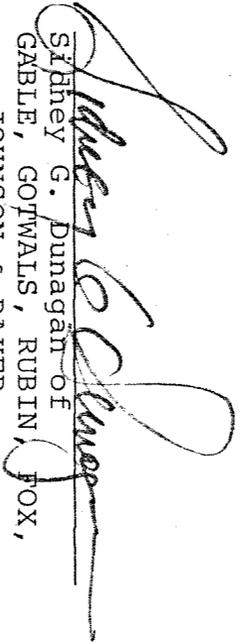
Approved as to form:


Mel Newsom III

PHOTO HUT OF OKLAHOMA, INC.

By 
Mel Newsom III, President


Laurence L. Pinkerton, Attorney
for Plaintiff School Pictures,
Inc.



Sidney G. Dunagan of
GABLE, GOTWALS, RUBIN, FOX,
JOHNSON & BAKER

and

DAWSON, NAGLE, SHERMAN & HOWARD

Attorneys for Defendant
Lockwood Corporation

F I L E D

IN THE UNITED STATES DISTRICT COURT FOR THE NOV 16 1978
NORTHERN DISTRICT OF OKLAHOMA

Jack G. Soper, Clerk
U. S. District Court

UNITED STATES OF AMERICA,

Plaintiff,

vs. CIVIL ACTION NO. 78-C-96-B

LEON SKILLIENS, JR. a/k/a
LEON SKILLEN, JR. a/k/a
LEON SKILLIENS a/k/a
LEON SKILLINS, JR.,
GEORGIA RAMONA SKILLIENS a/k/a
GEORGIE REMONIE SKILLIENS a/k/a
GEORGIA RAMONA SKILLINS a/k/a
GEORGIA R. SKILLIENS,
AMERICAN LOAN AND BROKERAGE, INC.,
SAM HARRIS, TULSA ADJUSTMENT
BUREAU, INC., PATTON LOANS OF
TULSA, INC., COUNTY TREASURER,
Tulsa County, and BOARD OF
COUNTY COMMISSIONERS, Tulsa
County,

Defendants.

NOTICE OF DISMISSAL

COMES NOW the United States of America by and
through its attorney, Robert P. Santee, Assistant United
States Attorney for the Northern District of Oklahoma, and
herewith dismisses this action, without prejudice.

UNITED STATES OF AMERICA
HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

c1

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy
of the foregoing pleading was served on each
of the parties hereto by mailing the same to
them or to their attorneys of record on the
16th day of November, 1978


Assistant United States Attorney

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

JAMES D. RYAN,)
)
Plaintiff,)
)
vs.) No. 78-C-87-B
GRAVES TRUCK LINES, INC.,)
)
Defendant.)

F I L E D

NOV 15 1978

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

ORDER OF DISMISSAL

ON this 15th day of November, 1978, upon the written application of the parties for a Dismissal with Prejudice on the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

Allen B. Barnum
JUDGE, DISTRICT COURT OF THE UNITED
STATES, STATE OF OKLAHOMA

APPROVALS:

SAM C. OLIVER


Attorney for the Plaintiff

ALFRED B. KNIGHT


Attorney for the Defendant.

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

PEARLINE VANN,

Plaintiff,

vs.

FAIRMONT FOODS, d/b/a
U-TOTE'M

Defendant.

Case No. 78-C-169

F I L E D

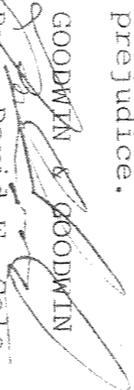
NOV 15 1978

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

MOTION TO DISMISS

COMES NOW the Plaintiff, PEARLINE VANN, by and through her attorneys, GOODWIN & GOODWIN, and hereby moves this Court for an Order dismissing the Plaintiff's claim herein for the reason that the parties have reached a settlement and compromise of the disputed issues herein.

WHEREFORE, premises considered, Plaintiff prays this Court for an Order dismissing the Plaintiff's cause of action against the Defendant with prejudice.

GOODWIN & GOODWIN
By:  David W. Cole
122 North Greenwood Ave.
Tulsa, Oklahoma
918-582-9181/9182

ORDER

This matter coming before the Court on the Plaintiff's Motion to Dismiss. After having reviewed the proceedings herein and on the basis of the settlement and compromise executed by the parties, it is the finding of the Court that the Plaintiff's cause of action against the Defendant, Fairmont Foods, d/b/a U-Tote'M, should be dismissed with prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that due to the settlement reached by the parties herein, the Plaintiff's cause of action *and complaint* against the Defendant, Fairmont Foods

**NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.**

d/b/a U-Tote 'M, is hereby dismissed with prejudice.

Allen G. Burrows

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

APPROVED AS TO FORM
AND CONTENT

[Signature]
James O. Goodwin, Attorney
for Plaintiff

[Signature]
Gerald Donovan, Attorney
for Defendant

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

F I L E D

NOV 15 1978

NOV 15 1978
U. S. DISTRICT COURT

UTICA NATIONAL BANK &)	
TRUST COMPANY, et al.,)	
)	
Plaintiffs,)	
)	77-C-523-B
vs.)	77-C-524-B
)	78-C-61-B
LUMBERMEN'S UNDERWRITING)	
ALLIANCE, et al.,)	
)	
Defendants.)	

Consolidated

ORDER

NOW on this 15th day of November, 1978, there comes before the Court for consideration the Stipulation for Dismissal with Prejudice of the above-entitled consolidated actions. Having reviewed said stipulation and being fully advised in the premises, the Court has determined that the stipulation of the parties should be approved and all of the above-entitled consolidated cases ordered dismissed with prejudice.

and cause of action

IT IS THEREFORE ORDERED that all claims/set forth by any party in all of the complaints and counterclaims in any and all of the above-entitled consolidated actions are hereby dismissed with prejudice to the refiling of same with each of the parties to said actions bearing its own costs and attorneys' fees.


CHIEF JUDGE OF THE UNITED
STATES DISTRICT COURT

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 77-C-536-C.

WILLIAM H. TEDDER,

Plaintiff,

vs.

JUDGMENT

AMERICAN AIRLINES, INC.,
a Delaware Corporation,

Defendant.

This action came on for trial before the Court and a jury, Honorable H. DALE COOK
, United States District Judge, presiding, and the issues having been duly tried and
the jury having duly rendered its verdict,

It is Ordered and Adjudged that judgment is entered for the Plaintiff,
William H. Tedder, and against the Defendant, American Airlines, Inc.,
in the amount of \$7,500.00, and that the Plaintiff recover of the Defendant
his costs of action.

F I L E D

NOV 15 1978

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

Dated at Tulsa, Oklahoma, this 15th day
of November, 1978.


Clerk of Court

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

ROBERT F. VANCE, Individually,)
and ROBERT F. VANCE, d/b/a)
VANCO CONSTRUCTION COMPANY,)
Plaintiff,)

vs.)

No. 76-C-56-C

F I L E D

NOV 10 1978

JAMES W. SMITH, Individually,)
DELTA PIPELINE CONSTRUCTION)
COMPANY, INC., and G. B. BOOTS)
SMITH TRUCKLINE COMPANY, INC.,)
Defendants.)

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

ORDER OF DISMISSAL

NOW on this 1st day of November, 1978, this cause comes on to be heard on the motion of defendant Delta Pipeline Company, Inc. to dismiss the action for failure of plaintiff to prosecute and on the request of plaintiff for a conference in regard to the status of the case; plaintiff appears by his attorney James L. Edgar and defendant appears by its attorneys James L. Kincaid and Craig W. Hoster; upon plaintiff having advised the Court that he can not be ready for trial scheduled November 13, 1978 and having orally requested a continuance of the scheduled trial date, plaintiff and defendant both presented argument and rested; and neither party having anything further to present; and the Court, having reviewed the pleadings and heard statements of counsel and being fully advised in the premises, finds that plaintiff has failed to prosecute this action with diligence.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action should be and it is hereby dismissed for want of prosecution, with costs to defendant Delta Pipeline Company, Inc. All pending motions and applications are therefore rendered moot and for that reason overruled.


H. DALE COOK
United States District Judge

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

NOV 15 1978

F I L E D

DRESSER INDUSTRIES, INC.,
a Delaware corporation,

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

Plaintiff,

vs.

No. 78-C-518-C

CAR-CON DEVELOPMENT CORPORATION,
an Oklahoma corporation,

Defendant.

JUDGMENT OF DEFAULT

Defendant Car-Con Development Corporation has been regularly served with process. It has failed to appear and answer the plaintiff's complaint filed herein. The default of defendant has been entered. It appears from the affidavit in support of entry of default judgment that the plaintiff is entitled to judgment.

IT IS ORDERED AND ADJUDGED that plaintiff recover from defendant the sum of \$17,798.46, with interest thereon at the rate of ten percent per annum from November 14, 1978, until paid, together with the costs of this action.

DATED this 14th day of November, 1978.

Jack C. Silver, Clerk
UNITED STATES DISTRICT COURT CLERK

John D. Brown

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

KATHERINE A. WOODRING,
Plaintiff,

F I L E D

-VS-
NO. 78-C-99-C

NOV 13 1978

THE UNITED STATES OF AMERICA
(U.S. Postal Service),
Defendant.

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

JOURNAL ENTRY OF JUDGMENT

NOW on this 6th day of November, 1978, the above styled and numbered cause comes on for hearing pursuant to and under the provisions of the FEDERAL TORT CLAIMS ACT, 28 U.S.C. 51346(b) and \$2671 et seq. (1948 as amended), and upon the regular docket with lawful notice to all parties. Plaintiff, Katherine A. Woodring, was present and represented by her attorney, C. Jack Maner. The defendant, The United States of America (U.S. Postal Service), was present and represented by its attorney, George Carrisquillo.

On November 7, 1978, and after a full trial on the merits, the Court having fully considered the evidence, listened to arguments of counsel and being fully advised in the premises, thereafter announced its findings of fact and conclusions of law on the ultimate issues as follows:

That plaintiff sustained bodily injury and damages by reason of the negligence of the defendant by and through its agent, servant, and employee, while in the course and scope of his employment;

That the plaintiff was without fault in the premises; and,

That plaintiff is entitled to judgment on her behalf and against the defendant herein, The United States of America (U.S. Postal Service) in the sum of \$96,250.15 as and for damages.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Katherine A. Woodring, have and recover judgment against the defendant, The United States of America, in the sum of

\$96,250.15 together with interest thereon at the rate of $\frac{4}{100}$ per cent per annum from the date of judgment, and for the costs of this action.

Richard L. Book
JUDGE

APPROVED AS TO FORM:

C. Jack Maner
C. JACK MANER
Attorney for Plaintiff

George Carrisquillo
GEORGE CARRISQUILLO
Attorney for Defendant

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

AMERICAN EXCHANGE BANK,

Plaintiff

v.

CIVIL NO. 77-C-525-B

F I L E D

UNITED STATES OF AMERICA,
WILLIAM WILKERSON, individually
and d/b/a BIG RED PAVING COMPANY,
and THE CITY OF MORRIS, OKLAHOMA,

Defendant

NOV 13 1978

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

NOW on this 34 day of November, 1978,

ORDER OF DISMISSAL

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 *cause of* action be, and *and compliance*
the same *are*, hereby dismissed with prejudice to the bringing
of another or future action by the plaintiff herein.

Furthermore, it is ORDERED that money which was paid into
the registry of the Court by the defendant, The City of Morris,
Oklahoma, will be released to the custody of the United States.

W. G. Springer
UNITED STATES DISTRICT JUDGE

APPROVED:

DYER, POWERS, MARSH, TURNER & ARMSTRONG

BOATMAN, LAUB, MARTIN &
SPRINGER

By:

Daniel Doris

By: *Tom J. Laub*

TOM J. LAUB, Attorney for
The City of Morris, Okla.

DANIEL DORIS
Attorneys for Plaintiff
525 South Main, Suite 210
Tulsa, Oklahoma 74103
(918) 587-0141

HUBERT H. BRYANT
United States Attorney

BY:

M. Bruce Peelle

M. BRUCE PEELE
Attorney, Tax Division
Department of Justice
Room 5B27, 1100 Commerce Street
Dallas, Texas 75242
(214) 749-1251

ATTORNEY FOR DEFENDANTS

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

SOUTHWESTERN BELL TELEPHONE
COMPANY,

Plaintiff,

vs.

WILLIAMS ELECTRICAL CONTRACTING
INC., an Oklahoma Corporation,
AL EDMISTON, an individual d/b/a
AL EDMISTON EXCAVATING SERVICE,
MICHAEL MCCAMEY, an individual,
E.A. COWEN CONSTRUCTION, INC.,
an Oklahoma Corporation, and
HTB, INC., formerly HUDGINS,
THOMPSON, BALL & ASSOCIATES,
INC., an Oklahoma Corporation,

Defendants.

No. 77-C-149-B

F I L E D

NOV 13 1978

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

ORDER OF DISMISSAL

On this 13th day of November, 1978, there came on for
consideration in the above-styled and numbered cause the
Stipulation for Dismissal signed by counsel for all of the
parties to this action, and the Court, having been so advised
by counsel for Plaintiff and the Defendants that they have
settled their disputes and desire that this action, including
all claims and cross-claims, be dismissed with prejudice, the
Court finds that this action, including all claims and cross-
claims and the respective causes of action represented thereby
should be dismissed with prejudice.

IT IS THEREFORE ORDERED that the above-styled *causes of*
action, including all claims and cross-claims, and the respective
causes of action represented thereby be, and the same are,
hereby dismissed with prejudice to the refiling of the same as
to all parties.

Dated this 13th day of November, 1978.


CHIEF JUDGE, UNITED STATES
DISTRICT COURT

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUSERS
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

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

JACK KOFAHL,
Plaintiff,

vs.

FEDERAL GAS AND OIL LEASE
SERVICE, INC., a Nevada
corporation, and CARL TOOLE,
Defendants.

No. 77-C-383

F I L E D

NOV 9 1978

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

ORDER

It appearing to the Court that a stipulation for dismissal
has been entered into by the parties to the above action;

It is therefore ORDERED, ADJUDGED AND DECREED that the
above action be dismissed with prejudice to the filing of another
action and that each party bear its own costs.

Dated this 9th day of November, 1978.


Judge of the United States District Court

6. Defendants have proposed adopting other trademarks which would not be confusingly similar with "WOOD-AIRE" and marks such as "BEST-AIRE", "ROSS-AIRE", and "NEW-AIRE", as examples only, are not confusingly similar with Plaintiff's registered trademark "WOOD-AIRE".

7. Defendants shall, prior to January 1, 1979, terminate all usage of any form of the expression "GOOD-AIRE" or any other trademark confusingly similar to "WOOD-AIRE", and further, Defendants shall refrain from mentioning or advertising that they developed the general concept of forced air woodburning fireplaces in such a way that would reflect that they had any connection with development or initial concept of the "WOOD-AIRE FIREPLACE". Defendants shall not use any advertising materials, the designs of which actually show a "WOOD-AIRE" fireplace unit, whether the same be advertising mats or actual pictures of "Wood-Aire Fireplaces"

8. Defendant Jackie D. Ross is enjoined from advertising his past relationship with the Plaintiff Wood-Aire; however, such injunction shall not prohibit Defendant Jackie D. Ross from stating the facts of his prior employment where necessary for personal purposes, such as on employment application forms, or the like.

9. Each party shall bear its own costs, expenses, and attorney fees.

10. Plaintiff shall not make any public announcements or advertisement of the entry of this Decree and Judgment.

11. This Court shall retain jurisdiction of the case to the extent necessary to enforce the injunction herein granted.

12. This Consent Decree and Judgment entered this 9th day of November, 1978.

APPROVED:



James W. Thompson
Paul H. Johnson
Attorneys for Plaintiff


U.S. DISTRICT JUDGE

William S. Dorman, Attorney for Defendants

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

KENNETH L. LOWERY,
Plaintiff,

VS.

GOODYEAR TIRE & RUBBER, CO., INC.,
Defendant.

NO. 78-C-359-B

FILED

NOV - 8 1978

ORDER OF DISMISSAL

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

Now on this 8th day of November, 1978, the joint application for dismissal of the parties comes on for consideration. The Court finds that said cause has been amicably settled and fair and reasonable consideration paid in full settlement, release and satisfaction of the plaintiff's cause of action set forth in the complaint herein, and that the plaintiff has accepted said sum in full satisfaction, release and discharge of his cause of action and the Court finds that said dismissal with prejudice should be approved. *cause of action and complaint*
IT IS THEREFORE ORDERED that this ~~case~~ *be* and the same ~~be~~ *be* hereby dismissed with prejudice. *are*

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

APPROVED:

Don L. Dees
DON L. DEES, Attorney for Plaintiff

Thomas R. Brett
THOMAS R. BRETT, Attorney for Defendant

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

F I L E D

NOV - 8 1978

SANDRA ROBINSON,)
)
 Plaintiff,)
)
 vs.) No. 78-C-222-R
 WALTER PIERCE,)
)
 Defendant.)

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

ORDER OF DISMISSAL

ON this 8th day of November, 1978, 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 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.

Allen & Barnett

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

APPROVALS:

DON L. DEEFS

By: *[Signature]*
Attorney for the Plaintiff

ALFRED B. KNIGHT

By: Attorney for the Defendant.

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO. 78-C-96-B

LEON SKILLENS, JR. a/k/a
LEON SKILLEN, JR. a/k/a
LEON SKILLENS a/k/a
LEON SKILLINS, JR.,
GEORGIA RAMONA SKILLENS a/k/a
GEORGIE REMONIE SKILLENS a/k/a
GEORGIA RAMONA SKILLINS a/k/a
GEORGIA R. SKILLENS,
AMERICAN LOAN AND BROKERAGE, INC.,
SAM HARRIS, TULSA ADJUSTMENT
BUREAU, INC., PATTON LOANS OF
TULSA, INC., COUNTY TREASURER,
Tulsa County, and BOARD OF
COUNTY COMMISSIONERS, Tulsa
County,

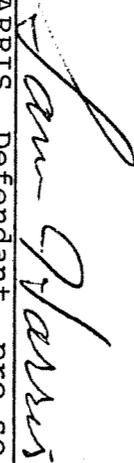
Defendants.

F I L E D
NOV - 6 1978
Jack C. Silver, Clerk
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL

COME NOW the United States of America, by and through
its attorney, Robert P. Santee, Assistant United States Attorney
for the Northern District of Oklahoma; Sam Harris, Defendant,
pro se; and the County Treasurer of Tulsa County and Board of
County Commissioners of Tulsa County, by and through their attorney,
Andrew B. Allen, Assistant District Attorney, and herewith stip-
ulate and agree that this action be and the same is hereby
dismissed, without prejudice.


ROBERT P. SANTEE
Assistant U. S. Attorney
Attorney for Plaintiff


SAM HARRIS, Defendant, pro se


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

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

F I L E D

NOV - 2 1978 *hvv*

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

N. FRANKLYN CASEY and)
MARY HELEN CASEY,)
Plaintiffs,)
vs.)
UNITED STATES OF AMERICA,)
Defendant.)

No. 78-C-13-C ✓

O R D E R

This is an action for a refund of taxes imposed on self-employment income by the terms of Title 26 U.S.C. § 1401. The plaintiffs assert that they are entitled to such refund because they qualify for the exemption for members of certain religious faiths contained in Title 26 U.S.C." § 1402(g)(1), (formerly designated as Section 1402(h)(1)). In the alternative, plaintiffs allege that Section 1402(g)(1) is unconstitutional under the First Amendment. The defendant contends that plaintiffs do not qualify for the exemption and are therefore not entitled to a refund.

Title 26 U.S.C. § 1402(g)(1) provides as follows:

"(g) Members of certain religious faiths.--
(1) Exemption.--Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by--

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof

as the Secretary may require for purposes of determining such individual's compliance with the preceding sentence, and

(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,

and only if the Secretary of Health, Education, and Welfare finds that--

(C) such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver. "

Plaintiffs filed the application referred to in Section 1402(g) (1), and that application was denied. Plaintiff's claim for a refund of self-employment taxes was denied by the District Director of Internal Revenue on the ground that the Believer's Fellowship Church, of which plaintiffs are members, had not been in existence continuously since December 31, 1950, as is required by Section 1402(g) (1).

The defendant presents five questions in its Motion for Summary Judgment:

1. Whether, to qualify for the exemption provided by Section 1402(g) (1), the applicant must belong to a religious sect or division which has established tenets or teachings opposing the acceptance of the benefits of any private or public insurance.
2. Whether the Believer's Fellowship Church has established tenets or teachings which oppose the acceptance of the benefits of any private or public insurance.

3. Whether the requirement of Section 1402(g)(1) that a person claiming an exemption under that Section be opposed to the acceptance of benefits of any private or public insurance has been fulfilled by plaintiffs.

4. Whether the requirement of Section 1402(g)(1)(E) that the sect to which the person claiming the exemption belongs be in existence at all times since December 31, 1950 has been fulfilled by plaintiffs.

5. Whether the requirement of Section 1402(g)(1)(E) that the sect described be in existence at all times since December 31, 1950, is unconstitutional under the First Amendment.

The resolution of the non-Constitutional questions presented is largely a matter of statutory construction.

In regard to defendant's first question it is clear from the wording of Section 1402(g)(1) that an individual will not qualify for the exemption if he simply has some personal objection to receiving insurance benefits. To qualify, an individual must oppose the acceptance of insurance benefits by reason of his adherence to established tenets or teachings of a religious sect or division of which he is a member. Logically then, the religious sect or division must have established tenets or teachings opposing the acceptance of benefits of any private or public insurance. It is clear that the division or sect as well as the individual must have the requisite beliefs. Subsection (1)(C) provides in part that

"[s]uch exemption may be granted . . .
only if the Secretary of Health, Education,
and Welfare finds that --
(C) such sect or division thereof
has the established tenets or teachings
referred to in the preceding sentence
. . . ."

As will appear more fully later, the facts of this case necessarily require a determination as to the meaning of the phrase "any private or public insurance". The defendant

contends that the phrase as it is used in Section 1402(g) (1) means both private and public insurance.

Taxing statutes are to be construed in light of their legislative history. See Comm'r. Int. Rev. v. Estate of Bosch, 387 U.S. 456, 463, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967); United States v. Lake, 406 F.2d 941, 949-50 (5th Cir. 1969). Furthermore, since Section 1402(g) (1) is an exception from a normal taxing requirement, it must be strictly construed and narrowly applied. See Corn Prods. Co. v. Comm'r. Int. Rev., 350 U.S. 46, 52, 76 S.Ct. 20, 100 L.Ed. 29 (1955); United States v. Stewart, 311 U.S. 60, 71, 61 S.Ct. 102, 85 L.Ed. 40 (1940).

The House and Senate committee reports on the Section 1402(g) (1) exemption are essentially the same. The legislative history found in those reports supports the defendant's position. The reports indicate that the opposition must be to both private and public insurance or insurance generally.

"Your committee's bill would permit exemption from the social security self-employment tax of individuals who have conscientious objections to insurance (including social security) by reason of their adherence to the established tenets or teachings of a religious sect (or division thereof) of which they are members

. . . .

. . . . We believe that an exemption from social security taxes with respect to work that is generally covered would be justifiable only in cases where it is amply clear that an individual cannot accept the benefits of insurance, including social security benefits, without renouncing basic tenets of his religion. The exemption we are recommending is designed to be granted in only such cases" (Emphasis added) H. Rep. No. 213, 89th Cong., 1st Sess., p.101 (1965-2 Cum. Bull. 733, 739); S.Rep. No. 404, Part I, 89th Cong., 1st Sess., p.115. (1 U.S.C. Cong. & Adm. News (1965) 1943, 2055-56).

Section 1402(g) (1) was re-enacted by Congress in 1976 without significant change. Its designation was simply changed from 1402(h) (1) to 1402(g) (1). The administrative practice in regard to Section 1402(g) (1) prior to 1976 is therefore deemed to have received congressional approval,

and is further evidence of legislative intent. See Fribourg Nav. Co. Inc. v. Comm'r. Int. Rev., 383 U.S. 272, 283, 86 S.Ct. 862, 15 L.Ed.2d 751 (1966); Cammamaro v. United States, 358 U.S. 498, 510-11, 79 S.Ct. 524, 3 L.Ed.2d 462 (1959). In Revenue Ruling 68-188, 1968-1 Cum. Bull., pp.387-8, the Commissioner interpreted Section 1402(g)(1), or as it was then denominated, Section 1402(h)(1), as follows:

"The question presented is whether the use of the conjunction 'or' rather than the conjunction 'and' in the statutory language 'any private or public insurance' offers the applicant an alternative; that is, whether he may be opposed to receiving the benefits of either private or public insurance, or whether he must necessarily be opposed to receiving the benefits of any insurance, both private and public, of the type described in section 1402(h)(1) of the Act.

A study of the legislative history of section 1402(h) of the Act makes it clear that the intent of the Congress was to make the exemption under section 1402(h) of the Act available to those who were opposed to accepting the benefits of any insurance of the types mentioned whether private or public, and that the use of the word 'or' in the statutory language was not intended to offer an alternative, but rather to indicate the nature of the insurance, that is, whether private or public."

The second and third questions presented by defendant require an application of the facts to Section 1402(h)(1) as it has been construed by the Court. Since the resolution of those questions requires a determination as to the existence and scope of certain tenets or teachings of the Believer's Fellowship Church, the Court regards the deposition testimony of the Reverend Darrell Sanford as highly relevant, he being the pastor and founder of the Believer's Fellowship Church. The Court, of course, has construed the pleadings and all the facts now in the record liberally in favor of the plaintiffs, as it must do upon a motion for summary judgment. See Bruce v. Martin-Marietta Corp., 544 F.2d 442, 445 (10th Cir. 1976); Redhouse v. Quality Ford Sales, Inc., 511 F.2d 230,

As the Court understands Reverend Sanford's testimony, the Believer's Fellowship Church has no statement of faith, as such, in regard to public or private insurance. The members of the Believer's Fellowship Church are taught that it is first the responsibility of the individual to care for himself. If he is unable to do so, it becomes the responsibility of his family, and if they are unable to care for him it then becomes the responsibility of the church to do so. This teaching is derived from the Scriptures. The pastor is the teacher. He imparts the teachings of the Scriptures to the members, but it is up to the individual members how those teachings should be interpreted and applied in their own lives. Members of the Believer's Fellowship Church do not forfeit their membership if they choose not to follow the teachings. Many of the members have taken the teaching in regard to the care of the individual to mean that they must not accept the benefits of any insurance. Reverend Sanford and the plaintiffs are among those who have such conscientious objections to accepting insurance benefits. There are some members, however, who do receive Social Security benefits. The parents of the plaintiff N. Franklyn Casey receive such benefits. There are also some members of the Believer's Fellowship Church who carry private insurance.

There is no doubt that the plaintiffs have honest objections to the acceptance of insurance benefits. However, the Believer's Fellowship Church does not have any "established tenets or teachings" opposing the acceptance of insurance benefits. The teachings which are pertinent to this issue relate to the responsibility for the care of the individual. Whether this teaching requires the non-acceptance of insurance benefits is entirely up to the individual member. This is not the type of objection that Congress had in mind under Section 1402(g)(1). In accepting insurance benefits, a

member would not be "renouncing basic tenets of his religion." See H.Rep. No. 213, 89th Cong., 1st Sess., supra; S.Rep. No. 404, Part I, 89th Cong., 1st Sess., supra.

Furthermore, if the Believer's Fellowship Church does teach the non-acceptance of insurance benefits, this teaching does not relate to insurance generally. The plaintiffs have admitted in their answer to defendant's Interrogatory 13 that the teachings do not oppose the acceptance of private insurance benefits.

In response to the fourth question presented, the plaintiffs direct the Court's attention to the history of the Believer's Fellowship Church. Again Reverend Sanford's deposition is highly relevant and gives a very thorough account of the subject.

The Believer's Fellowship Church traces its origins to certain independent churches that have been in existence since before the Reformation. These churches have been known by various names through the years, including Anabaptists, Politians, Waldenses, Baptists. Characteristics that all these churches had in common were the autonomy of the local church, the Scriptures as the rule of faith and practice, and a specific belief in the sovereignty of God.

In 1969, Reverend Sanford was the pastor of the Hillcrest Baptist Church in Stillwater, Oklahoma. In that year he left the pastorage of that church and organized a campus ministry at Oklahoma State University. The same year, the campus ministry incorporated under the name of Believer's Fellowship Church, and on the last Sunday in April of 1969, the first meeting was held.

The Believer's Fellowship Church is interdenominational, but in tradition is a Baptist church, in the sense that it is autonomous and takes the Scriptures as its rule of faith and practice. Like the Believer's Fellowship Church, the Baptist churches leave the interpretation of the teachings

of the Scriptures to the individual member. Nevertheless, as Reverend Sanford repeatedly emphasized, the Believer's Fellowship Church is independent and is not associated with any larger religious organization.

Based upon these facts, the plaintiffs contend that the Believer's Fellowship Church has "been in existence" since before the Reformation, back to the First Century, A.D. The Court cannot accept this. As was previously noted, Section 1402(g) (1) must be narrowly construed and applied. With this rule in mind, the Court must conclude that the Believer's Fellowship Church has only been in existence since 1969, when it was first organized and incorporated. In reaching this conclusion, the Court is especially impressed by Reverend Sanford's repeated emphasis of the autonomy and independence of his church, which indicates that this church really has no lineage, but is rather a newly created entity.

So in addition to their church not having the requisite tenets or teachings, the plaintiffs have also not satisfied the requirement of Section 1402(g) (1) that the religious sect or division of which they are members be "in existence at all times since December 31, 1950." 26 U.S.C. § 1402(g) (1) (E).

Defendant's fifth question raises constitutional issues which this Court need not and may not consider. It is a settled canon of constitutional adjudication that such questions can be reached only after the adjudication of non-constitutional questions and then only if necessary. See Clay v. Sun Ins. Off. Ltd., 363 U.S. 207, 80 S.Ct. 1222, 4 L.Ed.2d 1170 (1960). Since the defendant is entitled to summary judgment on the basis of the non-constitutional questions presented, the constitutional question need not be reached.

Defendant's Motion to Strike is directed to the affidavit submitted by plaintiffs in opposition to the Motion for Summary Judgment. The Court sees no need to strike the

affidavit, because even when taken into consideration, it is not sufficient to create a factual question which would preclude the granting of summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure. Conclusionary allegations such as those contained in plaintiffs' affidavit do not establish such an issue of fact. See Bruce v. Martin-Marietta Corp., supra; Wagoner v. Mtn. Sav. & Loan Asso., 311 F.2d 403, 406 (10th Cir. 1962).

For the foregoing reasons, it is therefore ordered that defendant's Motion for Summary Judgment is hereby sustained. It is further ordered that defendant's Motion to Strike is hereby overruled.

It is so Ordered this 2nd day of November, 1978.


H. DALE COOK
United States District Judge

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

F I L E D

NOV - 2 1978

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

JERRY D. ROBERTS,)
)
 Plaintiff,)
)
 vs.)
)
 GUY KINKEADE, JR.,)
)
 Defendant.)

O R D E R

On October 16, 1978, the Court entered an order over-
ruling a motion to dismiss filed by the defendant, and
requiring the parties to show cause why this action should
not be remanded to the State court. The Court was concerned
with the defendant's failure to file a certification by the
Attorney General that the defendant was acting within the
scope of his employment at the time of the accident out of
which this suit arose, as is required for removal under
Title 28 U.S.C. § 2679 (d).

The plaintiff has not responded within the ten (10)
days allotted. The defendant has responded that he can show
no reason why this cause should not be remanded, and requests
that the Court effectuate such remand.

It is therefore the Order of the Court that this action
is hereby remanded to the District Court of Tulsa County,
Oklahoma.

It is so Ordered this 2nd day of November, 1978.


H. DALE COOK
United States District Judge

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

EMMETT RAY DANIELS,

Petitioner,

vs.

STATE OF OKLAHOMA, and
PETER A DOUGLAS, et al.,

Respondents.

No. 77-C-392-CV ✓

F I L E D

NOV - 1 1978 *Jm*

O R D E R

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

The Court has before it for consideration the Findings and Recommendations of the Magistrate, in which it is recommended that the Petition for Writ of Habeas Corpus be denied.

After careful consideration of all the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed. In view of the disposition of this case recommended by the Magistrate, the Court hereby overrules the following motions which are still pending: petitioner's Motion to Void Court Order, Motion in Arrest of Judgment, Motion for New Trial and Motion for Summary Judgment and respondents' Motion to Strike.

For the foregoing reasons, it is hereby Ordered that the Petition for Writ of Habeas Corpus is denied.

It is so Ordered this 31st day of October, 1978.

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