

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-239-C
	)	
vs.	)	Tract No. 301ME
	)	
28.05 Acres of Land, More or	)	Oil leasehold interest only
Less, Situate in Osage County,	)	
State of Oklahoma, and Andover	)	
Oil Company, et al., and	)	
Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

FILED

FEB 29 1980

ORDER

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

NOW, on this 29 day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$140.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 79-C-241-C  
 )  
vs. ) Tract No. 415ME  
 )  
82.55 Acres of Land, More or ) Oil Leasehold Interest Only  
Less, Situate in Osage County, )  
State of Oklahoma, and Andover )  
Oil Company, et al., and )  
Unknown Owners, )  
 )  
Defendants. ) (Included in D.T. filed in  
Master File #405-8)

FILED

ORDER

FEB 29 1980

NOW, on this 29<sup>th</sup> day of February, 1980, the S. DISTRICT COURT  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

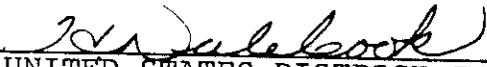
It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 413.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-254-C
	)	
vs.	)	Tract No. 307ME
	)	
31.30 Acres of Land, More or	)	Oil Leasehold Interest Only
Less, Situate in Osage County,	)	
State of Oklahoma, and W. R.	)	
Bruce Development Company,	)	
et al., and Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-84 J L E D

FEB 29 1980,

O R D E R

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

NOW, on this 29<sup>th</sup> day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 620.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 79-C-270-C  
 )  
vs. ) Tract No. 311ME  
 )  
4.35 Acres of Land, More or ) Oil Leasehold Interest Only  
Less, Situate in Osage County, )  
State of Oklahoma, and South- )  
land Drilling Corporation, et )  
al., and Unknown Owners, )  
 )  
Defendants. ) (Included in D.T. filed in  
Master File #405-8)

**FILED**

FEB 29 1980

ORDER

Jack C. Silver, Clerk  
The District Court

NOW, on this 29 day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

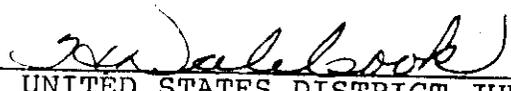
It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 44.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 79-C-272-C  
 )  
vs. ) Tract No. 311ME  
 )  
4.35 Acres of Land, More or )  
Less, Situate in Osage County, ) Overriding Royalty Interest  
State of Oklahoma, and Dyco ) in the Gas Leasehold Interest  
Petroleum Corporation, et al., )  
and Unknown Owners, )  
 )  
Defendants. ) (Included in D.T. filed in  
Master File #405-8)

**FILED**

ORDER

FEB 29 1980

NOW, on this 29<sup>th</sup> day of February, 1980, the J. C. DISTRICT COURT <sup>John C. Silver, Clerk</sup>  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$5.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
 Plaintiff, ) CIVIL ACTION NO. 79-C-274-C  
 )  
 vs. ) Tract No. 312ME  
 )  
 77.50 Acres of Land, More or ) Oil Leasehold Interest Only  
 Less, Situate in Osage County, )  
 State of Oklahoma, and Charles )  
 Goodall, et al., and Unknown )  
 Owners, )  
 )  
 Defendants. ) (Included in D.T. filed in  
 Master File #405-8)

FILED

1-30-80 1980

ORDER

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

NOW, on this 29<sup>th</sup> day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief, in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 872.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 79-C-276-C  
 )  
vs. ) Tract No. 314ME  
 )  
38.65 Acres of Land, More or ) Oil Leasehold Interest Only  
Less, Situate in Osage County, )  
State of Oklahoma, and Western )  
Resources Development, Inc., )  
et al., and Unknown Owners, )  
 )  
Defendants. ) (Included in D.T. filed in  
Master File #405-8)

**FILED**

ORDER

FEB 29 1980

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

NOW, on this 29<sup>th</sup> day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 765.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-292-C
	)	
vs.	)	Tract No. 318ME
	)	
20.25 Acres of Land, More or	)	Oil and Gas Leasehold
Less, Situate in Osage County,	)	Interests Only
State of Oklahoma, and Arrow-	)	
head Exploration Company, a	)	
Partnership, et al., and	)	
Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

**FILED**

ORDER

FEB 29 1980

NOW, on this 29<sup>th</sup> day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

1st C. Silber, Clerk  
DISTRICT COURT

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

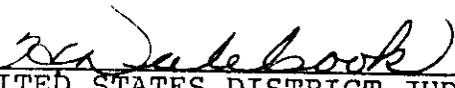
It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 570.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
 Plaintiff, ) CIVIL ACTION NO. 79-C-294-C  
 )  
 vs. ) Tract No. 319ME  
 )  
 9.45 Acres of Land, More or ) Oil and Gas Leasehold  
 Less, Situate in Osage County, ) Interests Only  
 State of Oklahoma, and Charles )  
 Goodall, et al., and Unknown )  
 Owners, )  
 )  
 Defendants. ) (Included in D.T. filed in  
 Master File #405-8)

FILED

FEB 29 1980

ORDER

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

NOW, on this 29<sup>th</sup> day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

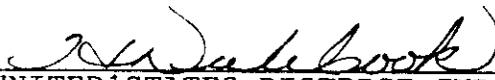
It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 183.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 79-C-296-C  
 )  
vs. ) Tract No. 402ME  
 )  
160.00 Acres of Land, More or ) Working Interest Only in the  
Less, Situate in Osage County, ) Oil and Gas Leasehold Interest  
State of Oklahoma, and Robert )  
Lauer, et al., and Unknown )  
Owners, )  
 )  
Defendants. ) (Included in D.T. filed in  
Master File #40578)

FEB 29 1980

ORDER

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

NOW, on this 29<sup>th</sup> day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

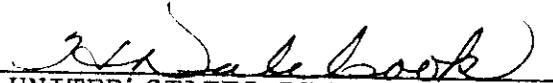
It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 3,500.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-297-C
	)	
vs.	)	Tract No. 402ME
	)	
160.00 Acres of Land, More or	)	Overriding Royalty Interest
Less, Situate in Osage County,	)	Only in the Oil and Gas
State of Oklahoma, and Charles	)	Leasehold Interest
S. MacDonald, et al., and	)	
Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #40578)

**FILED**

FEB 29 1980

ORDER

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

NOW, on this 29<sup>th</sup> day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 500.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
)  
Plaintiff, ) CIVIL ACTION NO. 79-C-299-C  
)  
vs. ) Tracts Nos. 424ME-1 and  
) 424ME-2  
)  
41.15 Acres of Land, More or )  
Less, Situate in Osage County, ) Working Interest Only in the  
State of Oklahoma, and Robert ) Oil and Gas Leasehold Interests  
Lauer, et al., and Unknown )  
Owners, )  
)  
Defendants. ) (Included in D.T. filed in  
Master File #405-8)

**FILED**

3029 1980

ORDER

J. V. C. Silver, Clerk  
DISTRICT COURT

NOW, on this 29<sup>th</sup> day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 129.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-300-C
	)	
vs.	)	Tracts Nos. 424ME-1 and
	)	424ME-2
41.15 Acres of Land, More or	)	
Less, Situate in Osage County,	)	Overriding Royalty Interest
State of Oklahoma, and Charles	)	Only in the Oil and Gas
S. MacDonald, et al., and	)	Leasehold Interest
Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

**F I L E D**

FEB 29 1980

O R D E R

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

NOW, on this 29<sup>th</sup> day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

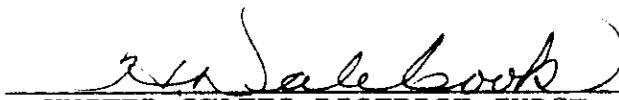
It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 50.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-316-C
	)	
vs.	)	Tracts Nos. 406ME and 406ME-2
	)	
26.58 Acres of Land, More or	)	Working Interest Only in the
Less, Situate in Osage County,	)	Oil Leasehold Interest
State of Oklahoma, and Service	)	
Drilling Company, et al., and	)	
Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-78)

**FILED**

FEB 29 1980

O R D E R

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

NOW, on this 29<sup>th</sup> day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

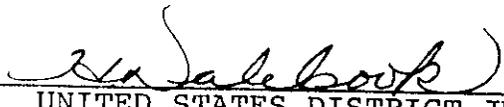
It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 511.50

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
 Plaintiff, ) CIVIL ACTION NO. 79-C-317-C  
 )  
 vs. ) Tracts Nos. 406ME and 406ME-2  
 )  
 26.58 Acres of Land, More or ) Overriding Royalty Interest  
 Less, Situate in Osage County, ) Only in the Oil Leasehold  
 State of Oklahoma, and Joan ) Interest  
 Skelly Stuart, et al., and )  
 Unknown Owners, )  
 ) (Included in D.T. filed in  
 Defendants. ) Master File #405-8)

FILED

FEB 29 1980

ORDER

Jack W. Smith, Clerk  
U. S. DISTRICT COURT

NOW, on this 29<sup>th</sup> day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

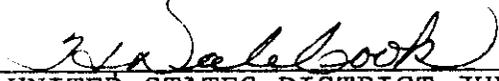
It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 16.50

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 79-C-327-C  
 )  
vs. ) Tract No. 417ME  
 )  
130.00 Acres of Land, More or ) Oil Leasehold Interest Only  
Less, Situate in Osage County, )  
State of Oklahoma, and Golden )  
Oil Company, et al, and )  
Unknown Owners, )  
 )  
Defendants. ) (Included in D.T. filed in  
Master File #405-87) **FILED**

FEB 29 1980

ORDER

John D. Sizer, Clerk  
U. S. DISTRICT COURT

NOW, on this 29<sup>th</sup> day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

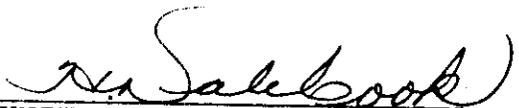
It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 3,412.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-319-C
	)	
vs.	)	Tract No. 410ME
	)	
137.50 Acres of Land, More or	)	Oil Leasehold Interest Only
Less, Situate in Osage County,	)	
State of Oklahoma, and William	)	
D. Witcraft, et al., and	)	
Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8.)

FILED

FEB 20 1980

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

ORDER

NOW, on this 29<sup>th</sup> day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

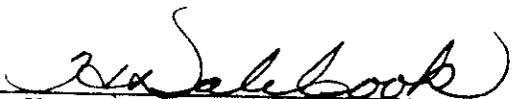
It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 16,222.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-329-C
	)	
vs.	)	Tract No. 418ME
	)	
23.20 Acres of Land, More or	)	Oil Leasehold Interest Only
Less, Situate in Osage County,	)	
State of Oklahoma, and William	)	
Smith, a/k/a Wm. N. Smith, et	)	
al., and Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

**FILED**

FEB 29 1980

ORDER

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

NOW, on this 29<sup>th</sup> day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

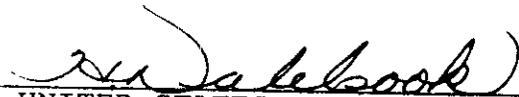
It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$2,709.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
 Plaintiff, ) CIVIL ACTION NO. 79-C-331-C  
 )  
 vs. ) Tract No. 419ME  
 )  
 10.00 Acres of Land, More or ) Oil Leasehold Interest Only  
 Less, Situate in Osage County, )  
 State of Oklahoma, and Cal-Mac, )  
 Inc., et al., and Unknown )  
 Owners, )  
 ) (Included in D.T. filed in  
 Defendants. ) Master File #405-8

**F I L E D**

1980 FEB 29 1980

Jack B. Smith, Clerk  
U. S. DISTRICT COURT

O R D E R

NOW, on this 29<sup>th</sup> day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 198.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 79-C-335-C  
 )  
vs. ) Tract No. 422ME  
 )  
50.15 Acres of Land, More or ) Oil Leasehold Interest Only  
Less, Situate in Osage County, )  
State of Oklahoma, and Cal-Mac, )  
Inc., et al., and Unknown )  
Owners, )  
 )  
Defendants. ) (Included in D.T. filed in  
Master File #405-8)

FILED  
FEB 29 1980  
Jack C. Sizer, Clerk  
U.S. DISTRICT COURT

O R D E R

NOW, on this 29<sup>th</sup> day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 9,993.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 79-C-333-C  
 )  
vs. ) Tract No. 421ME  
 )  
5.00 Acres of Land, More or ) Oil Leasehold Interest Only  
Less, Situate in Osage County, )  
State of Oklahoma, and Cal-Mac, )  
Inc., et al., and Unknown )  
Owners, )  
 )  
Defendants. ) (Included in D.T. filed in  
Master File #405-8)

I L E D

FEB 29 1980

O R D E R

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

NOW, on this 29<sup>th</sup> day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
 Plaintiff, ) CIVIL ACTION NO. 79-C-337-C  
 )  
 vs. ) Tract No. 425ME  
 )  
 12.40 Acres of Land, More or ) Oil Leasehold Interest Only  
 Less, Situate in Osage County, )  
 State of Oklahoma, and Cal-Mac, )  
 Inc., et al., and Unknown )  
 Owners, )  
 ) (Included in D.T. filed in  
 Defendants. ) Master File #405-8) **I L E D**

FEB 19 1980

O R D E R

Jack O. [unclear], Clerk  
U. S. DISTRICT COURT

NOW, on this 29<sup>th</sup> day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

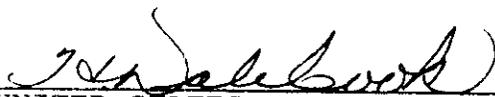
It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 9,246.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-339-C
	)	
vs.	)	Tract No. 420ME
	)	
92.00 Acres of Land, More or	)	Oil and Gas Leasehold
Less, Situate in Osage County,	)	Interests Only
State of Oklahoma, and Golden	)	
Oil Company, et al., and	)	
Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

FILED

ORDER

1980 1980

NOW, on this 29<sup>th</sup> day of February, 1980, the Court <sup>1980 1980</sup> considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

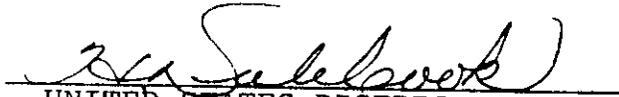
It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 747.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-342-C
	)	
vs.	)	Tract No. 403ME-1
	)	
160.00 Acres of Land, More or	)	Overriding Royalty Interest
Less, Situate in Osage County,	)	Only in the Gas Leasehold
State of Oklahoma, and Dyco	)	Interest
Petroleum Corporation, et al.,	)	
and Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

O R D E R

NOW, on this 29<sup>th</sup> day of February, 1980, the Court  
considers the Motion To Dismiss filed in this action by the  
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having  
been served with a copy of Plaintiff's motion, has made no objec-  
tion to such motion.

For good cause shown, in the Plaintiff's brief in  
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry  
of this Court when this action was filed, should be refunded to  
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this  
action hereby is dismissed, without prejudice to the filing of a  
new case to condemn the subject property in the event that Congress  
should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the  
Declaration of Taking on which this action was based is hereby  
declared void and held for naught insofar as such Declaration of  
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that  
Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$ 321.00

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-345-C
	)	
vs.	)	Tract No. 409ME
	)	
91.58 Acres of Land, More or	)	Overriding Royalty Interest
Less, Situate in Osage County,	)	Only in the Gas Leasehold
State of Oklahoma, and Dyco	)	Interest
Petroleum Corporation, et al.,	)	
Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8).

FILED

FEB 29 1980

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

O R D E R

NOW, on this 29<sup>th</sup> day of February, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

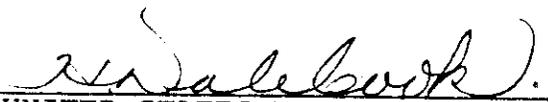
It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which

has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$17.00

  
UNITED STATES DISTRICT JUDGE

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

ROY H. OWENS, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 80-C-78-C  
 )  
 MARSHA SHARP, )  
 )  
 Defendant. )

FILED

FEB 29 1980

ORDER

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

Now before the Court for its consideration is the plaintiff's Motion to Dismiss. Good cause being shown, it is therefore ordered that the plaintiff's Motion is sustained, and plaintiff's Complaint is hereby dismissed.

It is so Ordered this 29th day of February, 1980.

  
\_\_\_\_\_  
H. DALE COOK  
Chief Judge, U. S. District Court

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

GLORIA C. PHILLIPS, as surviving )  
heir of HOMER R. PHILLIPS, )  
deceased, and GLORIA C. PHILLIPS )  
as next friend of RUTH ESTELLE )  
PHILLIPS and DAVID RAY PHILLIPS, )  
minors, surviving heirs of HOMER )  
R. PHILLIPS, deceased, )  
Plaintiffs, )

v. )

FIREMAN'S FUND AMERICAN LIFE )  
INSURANCE COMPANY and JOHN )  
HANCOCK MUTUAL LIFE INSURANCE )  
COMPANY, )  
Defendants. )

FEB 28 1980

Jan 1980  
U. S. DISTRICT COURT

No. 79-C-128-C

ORDER OF DISMISSAL

Upon the stipulation of Plaintiffs and Defendants, the Court hereby orders that the above-referenced matter be dismissed with prejudice to Plaintiffs' claims asserted therein and that each party shall pay her or its own court costs. Furthermore, the Court hereby orders that Defendants and their surety, Oklahoma Surety Company, be released from any obligation arising by virtue of their removal bond filed herein.

DATED this 28 day of February, 1980.

S. Thomas R. Britt  
UNITED STATES DISTRICT JUDGE

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

FEB 28 1980

THE UNITED STATES OF AMERICA  
Ex rel, LECO MATERIALS, INC.,  
an Oklahoma corporation,

Plaintiff,

-vs-

FEDERAL INSURANCE COMPANY,  
a New Jersey corporation, and  
GUY H. JAMES CONSTRUCTION CO.,  
an Oklahoma corporation,

Defendants.

Jack C. ...  
U. S. DISTRICT COURT

No. 79-C-232-B

ORDER OF DISMISSAL

On this 28 day of February, 1980, upon stipulation of the parties through their respective counsel of record, and by reason of a settlement entered into between the parties the Court finds that the above-styled and numbered cause should be and is hereby dismissed.

S/ Thomas R. Britt  
UNITED STATES DISTRICT JUDGE

APPROVED:

James E. Poe  
JAMES E. POE  
Attorney for Plaintiff

Karen L. Howick  
KAREN L. HOWICK  
Attorney for Defendants

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

FEB 28 1980

JAN  
U. S. DISTRICT

RANDY ROSCOE,	)	
	)	
Plaintiff,	)	
	)	
V.	)	Case Number 79-C-373-BT
	)	
GLEN CODDINGS, Sheriff,	)	
and	)	
RON REVARD, Deputy Sheriff,	)	
Washington County,	)	
Bartlesville, Oklahoma,	)	
	)	
Defendants.	)	

ORDER OF DISMISSAL

Now on this 28 day of February, 1980, the above matter comes on for consideration of parties request for dismissal of this action. The Court having reviewed the requests, finds that this complaint and cause of action should be dismissed with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the complaint and cause of action in this case are dismissed with prejudice.

DATED THIS 28 day of February, 1980.

Thomas R. Brett  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

FEB 28 1980

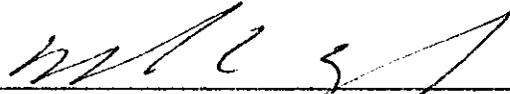
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

MOHAMMAD ARSHAD, )  
 )  
 Plaintiff, )  
 )  
 - vs - ) Civil Action No.  
 ) 79-C-219-D  
 FAIRMONT FOODS COMPANY, )  
 )  
 Defendant. )

OF  
STIPULATION FOR DISMISSAL WITH PREJUDICE

COMES NOW the above-named parties, by and through their respective attorneys, and stipulate and agree that the above-entitled action be, and the same hereby is, discontinued, and the Complaint herein dismissed with prejudice as to the Defendant, FAIRMONT FOODS COMPANY, for the reason that the said parties have reached, and entered into, a settlement agreement.

DATED this 28<sup>th</sup> day of February, 1980.



MICHAEL E. YEKSAVICH  
Attorney for Plaintiff  
MOHAMMAD ARSHAD



STEPHEN L. ANDREW  
Attorney for Defendant  
FAIRMONT FOODS COMPANY

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

TONIE KA WALKER, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 77-C-418-C  
 )  
 CITY OF CLAREMORE, )  
 )  
 Defendant. )

FILED

FEB 28 1980

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

J U D G M E N T

The Court on February 27, 1980, filed its Findings of Fact and Conclusions of Law which are hereby incorporated herein and made a part of its Judgment.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Judgment be entered in favor of the defendant City of Claremore in accordance with this Court's Findings of Fact and Conclusions of Law.

It is so Ordered this 28 day of February, 1980.

  
H. DALE COOK  
Chief Judge, U. S. District Court

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

TONIE KA WALKER, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 77-C-418-C  
 )  
 CITY OF CLAREMORE, )  
 )  
 Defendant. )

**FILED**

FEB 27 1960

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

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This is an action in which the plaintiff seeks redress of her rights under Title 42 U.S.C. §2000e et seq. (hereinafter Section 2000e). Plaintiff alleges that because of her sex, she was not given the same consideration as male applicants in applying for a job as police officer with defendant City of Claremore (hereinafter Claremore). Plaintiff seeks the following relief in vindication of the alleged denial of her rights:

- (1) Injunctive relief enjoining defendant City of Claremore and its agents from continuing or maintaining any policy, practice, custom, or usage of denying, abridging, conditioning, or otherwise interfering with plaintiff's rights to equal employment opportunities as secured by Section 2000e.
- (2) Injunctive relief enjoining Claremore, its agents, or those acting in concert, from maintaining, sanctioning, and authorizing a policy or practice of discriminating against plaintiff because of her sex with respect to hiring, assessing compensation, promotions, job assignments, and other terms, conditions, and privileges of employment for position of police officer.
- (3) Declaratory judgment that plaintiff is entitled to have her application considered ahead of other applicants for the position of police officer and is entitled to be hired with back pay, if she can establish that she would have been hired, but for her sex, at the time of her original application and that she was financially disadvantaged by not having been hired at such time.

(4) Costs, including reasonable attorney fees.

After considering the pleadings, the testimony, the exhibits admitted at trial, and all of the briefs and arguments presented by counsel for the parties, and being fully advised in the premises, the Court enters the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. In August, 1975, plaintiff Tonie Ka Walker sought employment with the defendant Claremore, a municipal corporation under the laws of the State of Oklahoma. The job plaintiff sought was that of police officer. At the time of her August, 1975, application, plaintiff was a twenty-two year old high school graduate with supplemental training in karate. She had no other formal educational or law enforcement training; however, as of August 25, 1975, she was enrolled as a full-time student at Claremore Junior College, where she completed two semesters before leaving school in May, 1976.

As part of her application for employment, plaintiff filled out a "short form" application. She was told at the time that the police department was temporarily out of the "long forms".

2. In practice, defendant Claremore has no standard procedure for receiving and processing applications for police department employment, nor did it have a standard procedure for interviewing and hiring applicants.

The police chief would recommend his choice of applicants to the city council, who would then meet to consider those recommended for employment. The police chief's recommendation was derived from a meeting of the ranking officers (Lieutenant and above), when all applications would be discussed. Specific considerations included the ability

to handle a firearm (although prior experience with firearms wasn't necessary -- training was available), the ability to handle the public, the applicant's background, education, and work history. Also, officers had to be twenty-one years old and have graduated from high school.

There was no standard procedure for posting notices of job vacancies, and when posted, job qualifications were not listed. Interviews with applicants were conducted by various department employees, sometimes at the police station and sometimes at restaurants or on the street. Questions asked at the interviews varied with the applicant. Particular questions asked of plaintiff that are not customarily asked of male applicants were how she would respond to the objections of the spouse of a male patrolman she might be assigned with, and how she would handle a male officer if he "made a pass" at her. Two other interview questions raised by plaintiff at trial were why the applicant was interested in Claremore instead of a larger city, and whether the applicant was able to carry a drunk up a flight of stairs; but these questions were not aimed necessarily at plaintiff on the basis of gender. The "why Claremore" question was routinely asked of all applicants in an attempt to ferret out those who might not remain long in Claremore, and the "capability of carrying drunks" question was more directed at plaintiff's physical ability than her sex. (Plaintiff listed her height as five feet three inches on her application. See Defendant's Exhibit No. 13.)

3. Plaintiff initially applied on or about August 7, 1975. She first came to the office of Mayor Harry H. Powers, and talked to him for approximately twenty minutes. He inquired why she didn't seek employment in larger cities such as Dallas, and also asked whether she could handle the drunks and fights a police officer would encounter. The purpose for these latter questions was that Claremore used

one-person patrols. Plaintiff later discussed employment with Dewey A. Johnson, then Chief of Police in Claremore, who interviewed her at the police station on the first Friday of September, 1975. Chief Johnson found it difficult to interview plaintiff because she was aggressive and gave him the impression that he was the one being interviewed. He concluded that her attitude was not good.

There were no long forms available at the time plaintiff applied. When they were available later, Chief Johnson told his dispatcher to inform plaintiff that the forms were available, and a form for plaintiff was put on the bulletin board in the dispatcher's office. Plaintiff testified that she never received such a form, but Lt. Jerry Prather testified he saw plaintiff's completed long form application in the dispatcher's office. No completed form for plaintiff was introduced as evidence at trial and this Court therefore concludes that none exists. Defendant's exhibits reveal that two male applicants did not complete long forms. The first long form evidenced by defendant's exhibits is that of Alan Dale McClung, submitted August 19, 1971, (Defendant's Exhibit No. 7). The applications of Jerry C. Harris, submitted March 1, 1973, (Defendant's Exhibit No. 27) and William R. Cole, submitted May 24, 1974, (Defendant's Exhibit No. 28) are on the short form. Plaintiff has raised no challenge to the validity or completeness of the record of applications submitted by defendant.

4. In the summer and fall of 1975, plaintiff made numerous prowler complaints to the police, sometimes as many as four or five a week. Both Captain Perry and Lt. Prather had answered several prowler calls at plaintiff's residence, but no evidence of a prowler was ever found.

5. Plaintiff was a student at Claremore Junior College in the fall of 1975, and was enrolled in a class taught by Captain Mickey Perry of the Claremore Police Department. On

more than one occasion, plaintiff wore a firearm to class in a holster, and gave the excuse to classmates it was pursuant to her duty as an auxiliary deputy for the Rogers County Sheriff's Office. Several students complained to Captain Perry, and he conferred with Rogers County Sheriff Amos Ward about plaintiff's wearing the gun to class. Thereafter, plaintiff no longer wore the firearm to class.

6. In October, 1975, a vacancy occurred on the Claremore police force. Chief Johnson and his ranking officers met for about two hours at a local motor court restaurant to discuss approximately nine applicants, including plaintiff and Roy Dowden. Dowden's qualifications were ninety hours of college, service as a special deputy sheriff, eighteen months as an auxiliary police officer, and military service in Vietnam. The discussion about plaintiff brought out that she was now attending classes at Claremore Junior College and serving as an auxiliary deputy for the sheriff of Rogers County, Oklahoma, Amos Ward. Two of the officers knew plaintiff personally; one of them, Lt. Roark, was listed as a reference for plaintiff. Lt. Roark, however, did not recommend her as an officer, questioning her ability under stress.

Captain Perry advised plaintiff's personality was not conducive to police work. Lt. Prather states that plaintiff should not be hired.

After considering the applicants, the police board unanimously recommended Roy Dowden, who was subsequently hired.

7. A similar procedure was followed for the review of applications for three positions that opened after Dowden's hiring. The qualifications of the people hired then were as follows:

Cliffton Lee Braughton was 29 at the time of application

and graduated from high school in 1965. He served two years active duty with the U. S. Army and was honorably discharged. He had approximately 40 hours college work completed at Claremore Junior College. Chief Johnson, and an assistant chief and a captain had interviewed him, and believed that he had a good attitude, was quiet, and a good listener, a quality they found useful in police work. He was hired on January 1, 1976. (See Defendant's Exhibit No. 20.)

Chester M. Baldwin was 27 at the time of his application and had graduated from high school in 1966. He was arrested in 1964 for running away from home and was released. Between October, 1966 and August, 1975, Baldwin held fifteen jobs, four of which were as a barber. His job at the time of application was as a store clerk at a Git-N-Go convenience store in Tulsa, Oklahoma. He was never in military service. The interviewers felt he had a good personality and a good attitude. He was hired by the Claremore Police Department on April 1, 1976. (See Defendant's Exhibit No. 22.)

Robert Lee Jones was 26 years old at the time of his application. He graduated from high school in 1966 and was then attending Claremore Junior College. Jones received an undesirable discharge from the United States Navy on July 27, 1969, for being absent without leave. He received two weeks restriction to ship as punishment. The Undesirable Discharge was later changed to a General Discharge. In July, 1975, Jones joined the National Guard, and was serving with it on the date of application. At that time, he was working for the Soil Conservation Service for Rogers County. The reviewing police officers concluded that Jones had a good attitude, a good employment record, and was able to work with the public. He was hired on June 16, 1976. (See Defendant's Exhibits No. 23-24.)

The defense exhibits show that for the October, 1975, vacancy, there were nine active applications; for the

January 1, 1976 vacancy, there were fourteen active applications; for the April 1, 1976 vacancy, there were sixteen active applications; and for the June 16, 1976 vacancy, there were fifteen applications. Plaintiff was the sole female applicant, and there have been no female applicants since then.

8. Claremore had an affirmative action program for hiring women and racial minorities, as of February 2, 1976. (See Defendant's Exhibits No. 5, 6). Part of the motivation for drafting the affirmative action plan was to qualify Claremore for a grant from the federal government. Chief Johnson made efforts to hire women and blacks as police officers by promoting the concept at civic group meetings, and requesting that Captain Perry "keep an eye open" for promising female students at Claremore Junior College. Captain Perry attempted to interest some of his female students in a job with the Claremore Police Department, but they accepted jobs with the Tulsa Police Department instead. The testimony establishes that Claremore has a problem attracting female and minority applicants because of its low pay scale, lack of opportunity, and other limitations of a smaller city.

As to his opinion on a woman's ability to perform the duties of a police officer, Chief Johnson considers health, not size, the important factor; and he believes that intelligence is more important than strength.

Claremore has never hired a woman police officer. No woman other than the plaintiff has ever applied for a police officer position with the Claremore Police Department.

9. In November, 1975, after Mr. Dowden was hired instead of plaintiff, the National Organization of Women filed a third-party complaint with the Equal Employment Opportunity Commission designating plaintiff as the aggrieved

party and alleging a violation by defendant of plaintiff's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 et seq.

On July 18, 1977, plaintiff was advised that the United States Attorney General found reasonable cause to believe that a violation of the Act had occurred and that the Commission had been unable to achieve voluntary compliance through the conciliation process. The Attorney General thereafter declined to institute legal action against defendant and on July 18, 1977, plaintiff received a right to sue letter from the Attorney General advising her that she was entitled to initiate a civil action in the United States District Court as provided by §2000e-5(f).

On October 7, 1977, plaintiff filed a timely complaint in this Court within the 90-day limitation as set forth in the right to sue letter received from the Attorney General.

#### CONCLUSIONS OF LAW

1. This is a cause of action under Title VII of the Civil Rights Act of 1964, Title 42 U.S.C. §2000e et seq.
2. This Court has jurisdiction under Section §2000e-5(f).
3. Refusal or failure to hire a person on the ground of sex is expressly an unlawful employment practice under Section 2000e-2(a)(1).

In order to establish a prima facie case of sex-based discrimination under §2000e, the following must be shown:

- (1) that plaintiff belongs to a group protected by Title VII;
- (2) that she applied and was qualified for a job for which the defendant employer was seeking applicants;
- (3) that despite her qualifications she was rejected; and,
- (4) that after her rejection, the position remained

open and the employer continued to seek applications from persons of plaintiff's qualifications.

Once this test is satisfied, plaintiff has established a prima facie case of sex-based discrimination and the burden then shifts to defendant to provide a legitimate, non-discriminatory reason for the refusal to employ. The burden then shifts back to plaintiff to establish that defendant's reasons are mere pretext and that sex discrimination was the real reason.

This test was originally devised for race discrimination cases in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), and translated to sex discrimination cases in East v. Romine, Inc., 518 F.2d 332, 337 (5th Cir. 1975). See also Downey v. A. H. Belo Corp., 402 F.Supp. 1368, 1372 (N.D.Tex. 1975); Saracini v. Missouri Pacific R.R. Co., 431 F.Supp. 389, 392 (E.D.Ark. 1977).

4. Various evidentiary means are available to establish a complainant's prima facie case, two of which are statistical evidence of a class's disproportionately low representation on the employer's work force, Kaplan v. International Alliance of Theatrical & Stage Employees, Etc., 525 F.2d 1354 (9th Cir. 1975), and employer practices that are inherently or systematically discriminatory against given classes of people. See Albemarle Paper Co. v. Moody, 422 U.S. 405, 95 S.Ct. 2362, 45 L.Ed.2d 280 (1975); Kaplan, supra; White v. California Paperboard Corp., 564 F.2d 1073 (4th Cir. 1977). Plaintiff asserts both of these to prove her case, but her presentation fails to convince this Court that such discrimination was directed against her.

Plaintiff's statistical argument is that since August, 1975, Claremore has not employed a woman as a police officer. Plaintiff continues that

[w]here a Plaintiff's presentation reveals a significant statistical disparity between

the percentage of women in the work force and on the companies [sic] employment rooster [sic] the employer is obligated to explain away that showing or else have inference of discrimination drawn against it. (Citations omitted).

Plaintiff's Trial Brief, filed April 14, 1978, p.2. Given that plaintiff's assertion is correct, defendant has no trouble explaining the statistical disparity. Defendant asserts in its Proposed Findings of Fact, filed April 17, 1978, that plaintiff's is the only application by a female for the position of police officer that Claremore has ever received. This was reasserted in defendant's closing argument in the hearing on June 15, 1979, and supported by defendant's exhibits, of which plaintiff's is the only one submitted by a woman.

However, plaintiff does respond that the paucity of female applicants is due to defendant's recruiting procedures, which, she argues, assure that women are not aware of vacancies. It is true that defendant has no standard procedure for advertising vacancies, but defendant's informal recruitment procedures were not aimed at excluding women, nor did they have the effect of excluding women. Chief Johnson sought to use female police science students at Claremore Junior College as interns riding in patrol cars. This attempt was interceded by the Claremore City Attorney who believed a program to use any such students, male or female, was unauthorized. Chief Johnson also gave a speech at the local Optimist Club on Claremore's efforts in recruiting women and blacks to the police force. Captain Mickey Perry was told by Chief Johnson to "keep an eye open" for promising female police science students in his classes at Claremore Junior College, and Perry did attempt to recruit two such women, but both accepted higher paying jobs with the City of Tulsa Police Department. Claremore's low pay scale is an additional reason why qualified women

applicants have not applied in Claremore.

Defendant's Exhibit No. 5 reveals additional evidence of Claremore's willingness to hire female officers--it is an affirmative action plan assuring that all "hiring, promotions, salary levels, and work assignments shall not discriminate against any person because of race, color, creed, nationality, religion, or sex . . ." and outlining a program to implement minority and female recruitment.

It is true, however, that defendant drew up this affirmative action plan, at least in part, in order to qualify for a federal grant. This creates the inference that defendant's affirmative action rhetoric could be mere pretext disguising sex-based discrimination (See McDonnell Douglas v. Green, supra, 411 U.S. at 804; Downey, supra, 402 F.Supp. at 1372) and this inference shifts the burden to defendant to show that sex discrimination was not the basis for plaintiff's not being hired. Id.

It is the view of this Court, however, that ample reasons were offered justifying defendant's failure to hire plaintiff. In the first vacancy for which plaintiff was considered (October, 1975), she was competing with nine other applicants, one of whom was Roy Dowden, who was twenty-nine years old, had ninety hours of college, had been a special deputy sheriff and for eighteen months an auxiliary police officer, and was a Vietnam veteran. At that time, plaintiff was twenty-two years old, had no hours of college but was in her first semester at Claremore Junior College, had been an auxiliary deputy for Sheriff Ward, and had six months of karate training. Objectively, Dowden was the better qualified.

The subjective comparison is more telling. In her interview with Chief Johnson, plaintiff was aggressive and difficult to interview. Plaintiff's classmates at Claremore

Junior College complained to the instructor, Mickey Perry, about incidents in which plaintiff wore a firearm to class, purportedly in her role as an auxiliary deputy. Perry conferred with Sheriff Ward, and the incident did not re-occur. Perry and Lt. Prather made numerous visits to plaintiff's residence to answer prowler complaints made by plaintiff, sometimes as often as four or five times a week, and once twice in one evening. Finally, plaintiff's reference in her application, Lt. Roark, questioned her ability to perform under stress, and did not recommend that she be hired. Roy Dowden, on the other hand, was perceived as personable and mature, and was unanimously recommended by the police board.

Plaintiff was not the only applicant penalized for personality and attitude. Notations appearing on the applications of several others reveal the following:

- (1) Gary Lynn Rohr: not good prospect, personality and attitude.  
(Defendant's Exhibit No. 8)
- (2) David Glen Taylor: attitude not good.  
(Defendant's Exhibit No. 9)
- (3) David Delmer Nickles: personal background not conducive at time of background investigation.  
(Defendant's Exhibit No. 18)
- (4) Russell Price Lagers: attitude poor.  
(Defendant's Exhibit No. 25)

Certainly attitude and personality are important criteria in selecting police officers. In fact, Dowden and each of the three applicants hired after him were perceived by the police board as having personalities suitable for dealing with the public. Chief Johnson said particularly of Braughton that he had a good attitude, was quiet, and a good listener, adding that an officer must be able to listen to people's problems.

Plaintiff was considered fairly for each position, but in each case a more qualified candidate was hired and the position closed. Plaintiff's argument thus fails the fourth

part of the McDonnell Douglas test: after plaintiff's rejection for each vacancy, the position was filled and no additional applicants for that position were sought.

The Court notes that the evidence does not show plaintiff to be unqualified. She was merely less qualified than the applicants who were hired. Plaintiff does not challenge the qualifications of the people hired, she merely contends that sexual bias prevented her from being hired. But the evidence simply does not support that conclusion. Rather, this Court concludes that the assessment of plaintiff's temperament and attitude by defendant's board of ranking officers was supported by the facts, and that their decision not to hire her was reasonable.

Furthermore, there was never any express declaration by defendant that plaintiff was unqualified for the job. Any shortcomings that defendant imputed to plaintiff that plaintiff's shortcomings appear to have been the result of her immaturity and overeagerness -- she was hardly a year over the minimum hiring age at the time of her application, while the four hired officers averaged just under twenty-eight years old when they applied. Plaintiff has had time to mature and reflect on her attitude, and there appears to be nothing in the findings of this Court or the opinions of defendant's representatives that would permanently blemish her record, or render her forever unqualified as a police officer.

5. As to plaintiff's allegations that failure to furnish her the long form and failure to interview her constitute unlawful employment practices under Section 2000e, this Court finds that they do not. Defendant was able to explain its failure to give her a long form in that such forms were not available. When they later became available, one was set aside for plaintiff, she apparently never filled it out, possibly because she never knew it was

available. But plaintiff was not the only person to fill out only the short form. The long form was available as long ago as August 19, 1971 (See Defendant's Exhibit No. 7); but the applications of Jerry L. Harris (March 1, 1973) (Defendant's Exhibit No. 28) are available only in the short form, suggesting that they never completed the long form. Plaintiff has raised no challenge as to the validity or completeness of the record of applications submitted in defendant's exhibits.

Furthermore, plaintiff suffered no detriment for not having completed the long form -- she was given an interview by both Mayor Powers and Chief Johnson, and was fully considered by the review Board of ranking officers. Defendant's interview procedure was, to say the least, non-standard and informal; but plaintiff's talks with Mayor Powers and Chief Johnson were as much of an interview as was accorded some of the people who were hired, such as Roy Dowden. Failure to have submitted a long form did not prevent plaintiff from being fully considered for the vacancies. Therefore, this Court does not perceive the issues of the long form or the interview as a basis for a Section 2000e complaint in this case.

Dated this 27<sup>th</sup> day of February, 1980.

  
H. DALE COOK  
Chief Judge, U. S. District Court

## APPENDIX

In spite of this Court's finding that plaintiff was not the victim of discrimination, sex-based or otherwise, and that plaintiff was given a fair consideration for employment, the Court deems it advisable to point out what the Court feels are discrepancies in defendant Claremore's hiring practices.

The informal procedures used by Claremore are perhaps typical of smaller cities where familiarity between the hiring body and the general populace is greater. Claremore has no standard procedure for posting notices of vacancies. In the irregular instances that notice is posted, it is not always in the same place, and does not list job qualifications. Word-of-mouth was and is the primary means of advising the public of vacancies. Such methods did not discriminate against plaintiff in that she was a student at Claremore Junior College (C.J.C.) and thus privy to the somewhat restricted advertising of vacancies. Notices were posted at C.J.C., and Captain Mickey Perry solicited the applications of female police-science students there. Plaintiff, however, was simply less qualified than other applicants, based on the reviewing board's reasonable assessment.

However, Claremore's practices are potentially discriminatory as to others. Selective and irregular posting of vacancy notices, word-of-mouth recruiting, and the irregular personal interview procedures used by defendant tend to exclude people either unacquainted with members of the police force or not otherwise having access to information on the vacancies. Such informal methods may lead some applicants to believe that Claremore's procedure for interviewing and hiring police officers is not a fair one. While it is not this Court's opinion that defendant exercised any

ill motives in its recruiting procedures, those procedures are nonetheless ripe for abuse; and this is particularly true as to allegations of discrimination based on sex or race in that such procedures tend to attract friends of current employees and thus preserve the race and gender characteristics of the existing staff. Though there may be no intentional discrimination in such informal procedures, positions that rely on such procedures and continue to be over-represented by whites and/or males have been deemed in violation of Section 2000e. See Spurlock v. United Airlines, Inc., 475 F.2d 216, 218 (10th Cir. 1973); Taylor v. Safeway Stores, Inc., 524 F.2d 263, 271 (10th Cir. 1975). Given a different plaintiff -- one lacking access to Claremore's irregular notice procedures -- defendant might well have been found exercising unfair employment practices under Section 2000e.

Because such a plaintiff was not before the Court in the instant case, the Court can do no more than encourage defendant to adopt standardized recruitment procedures, including the posting of vacancy notices listing job description and qualifications, and utilizing a standard interview procedure. The interview need not ask identical questions of every applicant, but should avoid questions that seem directed at sexual or racial stereotypes; rather, any difference in questions to applicants should be tailored to the individual applicant. The interview should be designed to elicit information that will present a clear picture of each applicant to the review board.

Additionally, this comment is not intended to condemn word-of-mouth recruiting or the solicitation of friends and acquaintances for job vacancies. To the contrary, it is likely that these practices yield a greater number of qualified applicants than general notices to the public. But

these methods should be balanced with ample public notice and standardized, objective interview procedures that provide an equal chance to all to apply and be fairly considered for job openings.

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

FILED

FEB 27 1980 B

WHEEL HORSE SALES, INC., a )  
Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JAMES SPENCE, d/b/a EAST )  
SIDE SALES AND SERVICE, )  
 )  
Defendant. )  
 )

No. 76-C-630-C

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

ORDER DISMISSING ACTION

Now on this 27<sup>th</sup> day of February, 1980, the  
above styled matter coming on before me pursuant to the defendant's  
Motion to Dismiss and the Court being fully advised in the  
premises does hereby find that the defendant has been discharged  
in bankruptcy and that further the debt of the plaintiff was  
discharged in said bankruptcy by the Bankruptcy Judge for this  
district.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the  
Court that the above styled action is dismissed with prejudice.

James C. Silver  
DISTRICT JUDGE

APPROVED AS TO FORM:

Robert E. Manchester  
Robert E. Manchester  
Attorney for Plaintiff

Paul F. McTighe, Jr.  
Paul F. McTighe, Jr.  
Attorney for Defendant

# United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 77-C-249-BT

NATHANIEL GOODMAN,  
Plaintiff,

vs.

PARAGON HOMES, INC., ET AL.  
Defendants.

JUDGMENT

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

It is Ordered and Adjudged that, having found in favor of the Plaintiff, Nathaniel Goodman, and against the Defendants, Paragon Homes Incorporated, Steven B. Platt, Don Estes, and Colletta Brutcher, actual, compensatory or nominal damages are assessed in the amount of \$30,000.00 (Exactly Thirty Thousand Dollars).

~~FILED~~

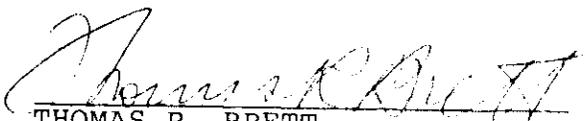
~~MAR 3 1980~~

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

FEB 27 1980

JACK C.  
U. S. DISTRICT

Dated at Tulsa, Oklahoma, this 27th day of February, 19 80.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

  
Clerk of Court  
JACK C. SILVER

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

FEB 26 1980

BARBARA ANN WILLIAMS, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 78-C-576-E  
 )  
 TULSA JUNIOR COLLEGE, Tulsa, )  
 Oklahoma, DR. ALFRED PHILLIPS, )  
 individually and as President )  
 of Tulsa Junior College, DEAN )  
 VAN TREASE, individually and )  
 as Executive Vice President of )  
 Tulsa Junior College, HERMAN )  
 ROBBINS, individually and as )  
 Vice President of Tulsa Junior )  
 College, )  
 )  
 Defendants. )

JUDGMENT

Upon consideration of the pleadings, the transcript of the hearing before the Faculty Review Committee and the Board of Regents of Tulsa Junior College and the briefs presented by counsel for the parties, as is more fully set out in the Findings of Fact and Conclusions of Law filed of even date,

IT IS ORDERED, ADJUDGED AND DECREED that Judgment be and hereby is granted in favor of Defendants and against Plaintiff, Barbara Ann Williams, on Plaintiff's claims in this action.

IT IS SO ORDERED this 26<sup>th</sup> day of February, 1980.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

LINDA BROADWAY, )  
)  
Plaintiff, )  
)  
vs. )  
)  
CONSUMER SAMPLES, INC., )  
an Oklahoma corporation, )  
CHARLES NOLE and )  
MIKE HOWELL, )  
)  
Defendants.)

FILED  
FEB 26 1980  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 79-C-452-C

ORDER

On the foregoing stipulation of the parties herein, filed on the 26<sup>th</sup> day of February, 1980, and on the motion of the Plaintiff by her attorney of record herein,

It is hereby ordered that the above entitled action be, and it hereby is, dismissed without prejudice to either party.

Dated this 26<sup>th</sup> day of February, 1980.

James O. Ellison  
United States District Judge

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

PAUL DENTON and ELLIS J. EASTERLING, )

Plaintiffs, )

vs. )

CONSOLIDATED PIPE AND SUPPLY COMPANY, )  
a foreign corporation, )

Defendant. )

No. 78-C-<sup>553</sup>533-C

FILED  
FEB 26 1980

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

ORDER OF DISMISSAL WITH PREJUDICE

Upon consideration of the Stipulation for Dismissal with Prejudice by plaintiffs, Paul Denton and Ellis J. Easterling, and defendant, Consolidated Pipe and Supply Company, for the dismissal with prejudice of all claims of said plaintiffs against defendant and the counterclaim of defendant against plaintiffs, the Court is of the opinion said stipulation should be allowed and incorporated by order.

IT IS, THEREFORE, ORDERED that all claims of plaintiffs, Paul Denton and Ellis J. Easterling, against defendant, Consolidated Pipe and Supply Company, and the counterclaim of said defendant against plaintiffs in the above-entitled action be, and they hereby are, dismissed with prejudice.

ENTERED this 26 day of February, 1980.

s/H. DALE COOK

\_\_\_\_\_  
H. DALE COOK, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

  
\_\_\_\_\_  
Donald D. Thompson

Thompson & Mitchell, Inc.  
P.O. Box 190  
Sapulpa, Oklahoma 74066

Attorneys for plaintiffs,  
Paul Denton and Ellis J. Easterling

  
\_\_\_\_\_  
Thomas J. Kirby  
Of Counsel:

Huffman, Arrington, Scheurich & Kihle  
Fifth Floor, Oklahoma Natural Building  
Tulsa, Oklahoma 74119  
(918) 585-8141

Attorneys for defendant,  
Consolidated Pipe & Supply Company



# United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 79-C-199-BT

DOUGLAS MARTIN LAWS,  
Plaintiff,

vs.

FIRESTONE STEEL PRODUCTS COMPANY, ETC.,  
Defendant.

JUDGMENT

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

It is Ordered and Adjudged that having found in favor of the Plaintiff and against the Defendant, damages are assessed in the amount of \$293,398.57, plus interest.

FEB 25 1980

FEB 25 1980

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

Dated at Tulsa, Oklahoma, this 25th day of February, 19 80.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

  
Clerk of Court  
JACK C. SILVER

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

DOROTHY KLINERT, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CALVIN ARY, )  
 )  
 Defendant. )

No. 79-C-176-BT ✓

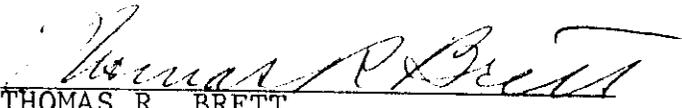
FEB 25 1980 CS

J U D G M E N T

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

On the 19th day of February, 1980, this case came on for jury trial pursuant to regular setting. The parties and their respective counsel of record appeared and announced ready to proceed. A jury of six persons was selected. On the morning of February 20, 1980, following opening statements of counsel, the plaintiff introduced her evidence and then rested. The defendant then moved to dismiss the plaintiff's claim for the reason that when all reasonable inferences were granted to the plaintiff's evidence it was insufficient to establish a prima facie case to submit to the jury. After considering arguments of counsel and authority presented, particularly Safeway Stores, Inc. v. McCoy, 376 P2d 285 and Foster v. Harding, 426 P2d 355, the Court concluded the defendant's motion to dismiss should be sustained.

IT IS THEREFORE ORDERED the defendant's motion to dismiss the plaintiff's claim at the conclusion of the plaintiff's evidence is hereby sustained and judgment is granted for the defendant and against the plaintiff herein.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

2-22-80

**FILED**

**FEB 25 1980**

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

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

ADAMS PETROLEUM ENTERPRISES )  
CORPORATION, a corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CESSNA AIRCRAFT COMPANY, a )  
corporation, and WALSTON )  
AVIATION SALES, INC., a )  
Delaware Corporation, )  
 )  
Defendants. ) NO. 78-C-242-E

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 22<sup>nd</sup> day of February, 1980.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

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

FEB 25 1980

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

GUARDIAN MORTGAGE INVESTORS,	)	
	)	
Debtor,	)	No. 79-B-262
	)	
GUARDIAN MORTGAGE INVESTORS,	)	(Ancillary proceedings
	)	to No. 78-141-BK-J
Plaintiff,	)	District Court, Florida,
	)	Jacksonville Division)
vs.	)	
	)	No. 79-C-663-E
MIDWEST MARBLE COMPANY, et al.,	)	
	)	
Defendants.	)	

O R D E R

This is an appeal of an Order of the Bankruptcy Judge. On August 20, 1979, the Bankruptcy Judge denied Guardian Mortgage Investors' motion for summary judgment. From this adverse ruling, Guardian perfected its appeal to this Court. The Court has before it at this time the Motions to Dismiss Appeal of Defendants Palmer Plumbing, Heating and Air Conditioning Company, Inc., Oil Capitol Sheet Metal, Inc., Auxies-Scott Supply, Inc., Benjamin F. Mott d/b/a Mott Roofing and Sheet Metal Company and Public Service Company of Oklahoma. It is the contention of these Defendants that this appeal should be dismissed for the reason that the Order of the Bankruptcy Judge denying Plaintiff's motion for summary judgment is an unappealable interlocutory order.

Plaintiff is correct in arguing that the general prohibition of interlocutory appeals is not applicable in bankruptcy, e.g., In re Licek Potato Chip Co., 599 F.2d 181, 184 n.5 (Seventh Cir. 1979); see generally 2A Collier on Bankruptcy ¶39.21. There are no restrictions on the kinds of orders of referees in bankruptcy that may be subject to district court review. Bankruptcy Act §39, 11 U.S.C. §67(c); e.g., Sulmeyer v. Pfohlman, 329 F.2d 915 (Ninth Cir. 1964). However, as the court in Good Hope Refineries, Inc. v. Brashear, 588 F.2d 846 (First Cir. 1978) noted,

Interlocutory appeals are allowed in bankruptcy cases, ... but courts and parties are not at

the mercy of indiscriminate appeals from just any order, however lacking in overall significance. Orders so unimportant as to be unappealable have been variously described as ones which lack the "character of a formal exercise of judicial power affecting the asserted right of a party," that do not decide some step in the proceedings ... or which lack "definitive operative finality," ...

588 F.2d at 847 (citations omitted); see also 2A Collier on Bankruptcy ¶39.21 n.4, and the cases cited therein, where it is said: "Decisions since 1938 have affirmed the position that the referee's orders must contain the elements of finality before they are reviewable."

It has also been frequently said that the review of interlocutory orders which may still be effectively dealt with at the final stage of the proceeding is not encouraged. Nearly 65 years ago it was said:

The practice of taking appeals from interlocutory orders is one not to be encouraged. It is the exceptional case where good to any one results from the practice. The evil consequences are to bring about conditions of interminable delays, which are insufferable.

In re Graboyes, 228 F. 574, 575 (E.D. Pa. 1915). In In re Radtke, 411 F.Supp. 105, 106 (E.D. Wis. 1976) the court said:

In various cases, courts have declined to review orders appealed pursuant to section 39(c) when interlocutory orders are at issue. This declination is generally premised upon the fact that substantial delay and disruption often accompanies piecemeal review of interlocutory and procedural rulings.

See also Sulmeyer v. Pfohlman, supra; In re Copeland, 350 F.Supp. 943 (D. Del. 1972).

In order to avoid the problems inherent in piecemeal review of bankruptcy proceedings, the interlocutory order must be an actual determination of some right; appeals of orders which leave the matter for future determination should not be entertained. The Tenth Circuit has spoken on this matter in a relatively recent case, Baldonado v. First State Bank of Rio Rancho, 549 F.2d 1380 (Tenth Cir. 1977):

Much has been written on the problem of interlocutory appeals in bankruptcy proceed-

ings, and there is no need to add to the literature. If this is a "proceeding" in bankruptcy, even with the new complaint procedure, we must hold that the order appealed from did not dispose of a substantive right. General Electric Co. v. Beehive Telecasting Corp., 284 F.2d 507 (10th Cir.). As we said in Sherr v. Sierra Trading Corp., 492 F.2d 971 (10th Cir.): "An interlocutory order to be appealable must have been a determination of some right or duty following hearing." See also Cope v. Aetna Finance Co., 412 F.2d 635 (1st Cir.); and 2 Collier, Bankruptcy, 14th Ed. §24.39.

549 F.2d at 1381.

In the instant case, the Bankruptcy Court's order denying summary judgment has no final effect on any substantive right; the matter still remains to be determined, and may ultimately reach this Court for review from a final determination of the matter. In accordance with the relevant authorities, this appeal should be dismissed.

IT IS THEREFORE ORDERED that this appeal be and the same hereby is dismissed, and this case is hereby remanded to the Bankruptcy Court for such further proceedings as are necessary.

It is so Ordered this 25<sup>th</sup> day of February, 1980.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE



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

FEB 25 1980  
JAC  
U. S. DISTRICT COURT

VIOLA EASTER,  
Plaintiff,  
vs.  
U.S.A.; CECIL D. ANDRUS,  
Secretary of Department of  
Interior; JOSEPH A. CALIFANO, JR.,  
Secretary of H.E.W., INDIAN  
PUBLIC HEALTH SERVICE; DR. JOHN  
DOE and CLAREMORE INDIAN HOSPITAL,  
Defendants.

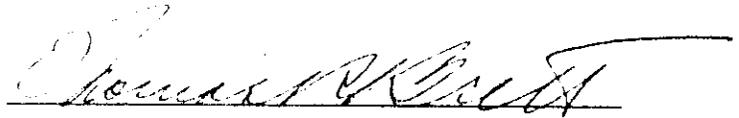
No. 79-C-493-BT

O R D E R

The motion to dismiss on jurisdictional grounds of the defendants came on for hearing on February 20, 1980, pursuant to regular setting. Counsel for the defendants appeared and announced ready to proceed. Although plaintiff's counsel did not appear, plaintiff's counsel advised the Court by telephone that the motion to dismiss of the defendants on jurisdictional grounds was well taken and plaintiff's counsel would not appear to oppose the motion.

After reviewing the matter the Court concluded no proper notice of claim within the two-year period as provided by 28 U.S.C. §§2401 and 2675 had been filed with the appropriate governmental department or agency and, therefore, the Court is without jurisdiction to consider the plaintiff's claim under the Federal Tort Claims Act.

IT IS THEREFORE ORDERED the motion to dismiss of the defendants herein is granted as the Court is without jurisdiction to consider or entertain the claim of the plaintiff.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

2 - 22 - 80

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

FARMERS INSURANCE EXCHANGE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAMES E. BROWN, ADMINISTRATOR OF )  
 THE ESTATES OF WILBURN EARL )  
 NATION, SHEILA NATION AND MICHAEL )  
 BROWN, et al., )  
 )  
 Defendants. )

No. 78-C-400-B

FILED

FEB 25 1980

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

DISMISSAL OF CROSS-COMPLAINT

COMES NOW the Defendant, Tom Wake, as father, surviving heir and next of kin of Diane Wake, deceased, and pursuant to Rule 41(a)(1) dismisses his Cross-Complaint. This Defendant shows to the Court that no Answer or Motion for Summary Judgment has been filed in respect to said Cross-Complaint.

ROBINSON, LOCKE & GAGE

BY: A. Carl Robinson  
A. CARL ROBINSON, Attorney for  
Defendant, Tom Wake, as surviving heir and next of kin of Diane Wake, deceased

CERTIFICATE OF SERVICE

I, A. Carl Robinson, hereby certify that on the 22 day of February, 1980, I mailed a true and correct copy of the above and foregoing Dismissal of Cross-Complaint to the following:

Mr. Ray H. Wilburn  
505 Beacon Building  
Tulsa, Oklahoma 74103  
Attorney for Plaintiff

Mr. William George Meyers  
Suite 2-A  
Ozark Theater Building  
Fayetteville, Arkansas 72701  
Attorney for Kenneth E. Brown  
and Lewis C. Brown

Mr. James E. Evans, Sr.  
529 S. Holcomb  
Springdale, Arkansas 72764  
Attorney for Eddy Scott and Candace  
Scott, Guardians of Mitchell Brown  
and Christopher Nation, Minors

Mr. Gary Carson  
1 McIlroy Plaza  
Suite 210  
Fayetteville, Arkansas 72701  
Attorney for James E. Brown

Mr. James H. Knapp  
201 W. Front Street  
Arlington, Texas 76010  
Attorney for Daisy Anderson

with sufficient postage prepaid thereon.

  
A. CARL ROBINSON

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOSEPH E. MOUNTFORD, )  
 )  
 Defendant. )

CIVIL ACTION NO. 79-C-64-C ✓

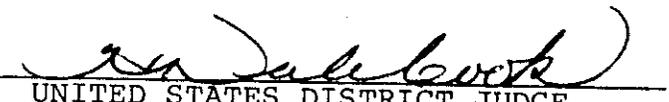
FILED  
FEB 22 1980

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

ORDER OF DISMISSAL

NOW, on this 22<sup>nd</sup> day of February, 1980, there  
came on for consideration the Notice of Dismissal filed herein  
on February 22, 1980, by the Plaintiff, United States of America.  
The Court finds this action, based on such Notice of Dismissal,  
should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that  
this action be and the same is hereby dismissed.

  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE ~~THE~~ **FEB 22 1980**  
NORTHERN DISTRICT OF OKLAHOMA

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ELLA L. CAMPBELL, )  
 )  
 Defendant. )

CIVIL ACTION NO. 79-C-474-C

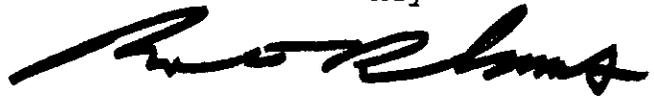
NOTICE OF DISMISSAL

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.

Dated this 22nd day of February, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney



ROBERT P. SANTEE  
Assistant United States Attorney

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

FARMERS ALLIANCE MUTUAL INSURANCE )  
COMPANY, a foreign corporation, )  
 )  
Plaintiff, )

vs. )

JAMES LEON BARLOW, JR., JAMES )  
LEON BARLOW, SR., JOE A WHITE, )  
WILLIAM NEAL BRUNSON and BILL )  
BRUNSON, )  
 )  
Defendants. )

NO. 79-C-164-D

**FILED**  
**FEB 21 1980**

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

J U D G M E N T

On the 20<sup>TH</sup> day of Feb., 1980, this

matter came before the Court upon the Application for Default Judgment of the plaintiff.

The Court finds that this action was commenced on March 16, 1978. Proper service was obtained upon each of the defendants on March 19, 1979, and no appearance was made by defendants, Joe A. White, William Neal Brunson and Bill Brunson, but that defendants, James Leon Barlow, Sr. and James Leon Barlow, Jr., filed an answer to plaintiff's Complaint on May 30, 1979. The Court finds that the plaintiff is a citizen of Kansas, and the defendants are citizens of Oklahoma and residents within this district. The Court, therefore, has jurisdiction and venue over the parties to this action. The Court further finds that said defendants are not currently members of the armed forces of the United States. The Court further finds that the amount in controversy exceeds \$10,000.00 exclusive of costs and interest, and that there is complete diversity between the plaintiff and defendants, and therefore the Court has subject matter jurisdiction over this action.

This action is one for declaratory relief pursuant to 28 U.S.C. §2201 et seq. Plaintiff seeks an adjudication that the defendants are not covered by a policy of automobile liability insurance No. A82779 for injuries allegedly sustained by Joe A. White when he was struck by a vehicle driven by James Leon Barlow, Jr., and owned by Bill Brunson on April 22, 1978.

The Court finds that the allegations of the plaintiff supported by the provisions of the policy attached as an exhibit to the Complaint show that the policy in question was in force from December 12, 1977, to June 12, 1978. Bill Brunson is the named insured under said policy. William Neal Brunson, Bill Brunson's son, was a passenger in said vehicle at the time of said accident. The policy provides:

"PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

- (a) the named insured
- (b) \* \* \*
- (c) any other person while using an owned automobile ... with the permission of the named insured, provided his actual operation ... is within the scope of such permission ...
- (d) any other person ... but only with respect to his ... liability because of acts or omissions of an insured under (a) ... (c) above."

The Court finds that at the time of the accident, James Leon Barlow was the driver of the vehicle which was owned by Bill Brunson. The Court finds that judgment was entered in favor of the plaintiff and against the defendants, William Neal Brunson, Bill Brunson and Joe A. White, on August 24, 1979, and that the allegations contained in plaintiff's Complaint must be taken as true as to those defendants and that they are not covered under the policy of insurance written by the plaintiff.

The Court further finds that the plaintiff served interrogatories on the defendants, James Leon Barlow, Sr. and James Leon Barlow, Jr., on July 10, 1979. On September 17, 1979, after informal attempts under local Rule 14(d) to resolve the discovery dispute failed, plaintiff filed a Motion to Compel Discovery which was sustained by the Court on October 23, 1979. The Court ordered that the interrogatories be answered on or before November 7, 1979. No answers were

filed and the plaintiff filed a Motion for Default Judgment for failure to respond to discovery on November 23, 1979. The Court ordered defendants, James Leon Barlow, Sr. and James Leon Barlow, Jr., to respond to that Motion for Default Judgment on or before December 5, 1979, by minute order. No response has been filed and the Court has been advised that the defendants, James Leon Barlow, Sr. and James Leon Barlow, Jr., do not wish to respond to plaintiff's interrogatories or to plaintiff's Motion for Default Judgment. The Court, therefore, finds that judgment should be and is hereby entered in favor of the plaintiff and against the defendants, James Leon Barlow, Sr. and James Leon Barlow, Jr., by default.

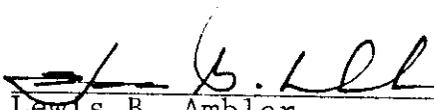
The Court further finds that Joe A. White has filed suit in the District Court of Washington County, Oklahoma, Case No. C-78-380 against William Neal Brunson, James Leon Barlow, Sr. and James Leon Barlow, Jr., for injuries allegedly received in the accident of April 22, 1978.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the policy of insurance written by plaintiff No. A82779 does not provide any coverage for injuries allegedly sustained by Joe A. White on April 22, 1978, in that the policy does not provide coverage as a result of those injuries or that accident to James Leon Barlow, Sr. and James Leon Barlow, Jr. Therefore, plaintiff has no obligation to defend James Leon Barlow, Sr. or James Leon Barlow, Jr., or settle or pay any judgment against James Leon Barlow, Sr. or James Leon Barlow, Jr. in favor of Joe A. White arising out of Case No. C-78-380 filed in the District Court of Washington County, Oklahoma, or any other action which involves the defendants, James Leon Barlow, Sr. and James Leon Barlow Jr., for the injuries allegedly sustained by Joe A. White on April 22, 1978 in said accident.

IT IS SO ORDERED this 20 day of Feb., 1980.

  
United States District Judge

APPROVED:

  
\_\_\_\_\_  
Lewis B. Ambler of

SONTAG & AMBLER  
415 South Dewey, Suite 206  
Bartlesville, Oklahoma 74003

Attorneys for Defendants, James  
Leon Barlow, Jr. and James Leon Barlow, Sr.

  
\_\_\_\_\_  
Larry D. Ottaway of

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

Attorneys for Plaintiff

**United States District Court**

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**FEB 2 1980**

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

CIVIL ACTION FILE NO. 79-C-186-BT

TINA NORENE ROSS, Administratrix  
of the Estate of Robert B. Ross,  
vs. Plaintiff,

LIGON SPECIALIZED HAULERS, INC.,  
A Foreign Corporation, ET AL.

**JUDGMENT**

This action came on for trial before the Court and a jury, Honorable

, United States District Judge, presiding, and the issues having been duly tried and

the jury having duly rendered its verdict, for the Defendants, after finding Plaintiff 100% negligent.

It is Ordered and Adjudged that the Plaintiff take nothing and that Defendants, Ligon Specialized Haulers, Inc., Commercial Standard Insurance Company, Beard and Crady Trucking Company, Inc., and Darrell G. Hogan, recover of the Plaintiff, their costs of action.

Dated at Tulsa, Oklahoma, this 20th day of February, 1980.

*Thomas R. Brett*  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*Jack C. Silver*  
Clerk of Court  
JACK C. SILVER

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

FILED

FEB 20 1980

LEHIGH STECK - WARLICK, INC. )  
a Corporation )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CONSUMER SAMPLES, INC. an )  
Oklahoma Corporation, and )  
POWER MONEY, INC., an )  
Oklahoma Corporation )  
 )  
Defendant. )

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

No. 79-C-610-E

NOTICE OF DISMISSAL

The plaintiff dismisses without prejudice its action  
and complaint against the defendant, Power Money, Inc.

Dated: February 20, 1980.



Lance Stockwell  
of BOESCHE, McDERMOTT & ESKRIDGE  
320 South Boston, Suite 1300  
Tulsa, Oklahoma 74103  
(918) 583-1777

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of  
Dismissal was mailed to Neil E. Bogan, 201 West Fifth Street,  
Suite 400, Tulsa, Oklahoma 74103, by depositing a copy thereof  
in the United States mails in Tulsa, Oklahoma with first-class  
postage thereon prepaid, this 20th day of February, 1980.



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

**FILED**

**FEB 19 1980**

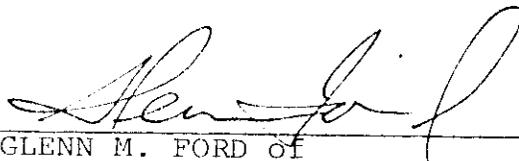
**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

WALTER E. HELLER & COMPANY, )  
a corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PRIORITY INTERNATIONAL )  
CORPORATION, )  
 )  
Defendant. )

No. 79-C-356-~~FE~~

Notice OF DISMISSAL BY PLAINTIFF

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, plaintiff hereby dismisses its Complaint against the defendant, Priority International Corporation, without prejudice to plaintiff's right to reassert the claims set forth therein.

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

ATTORNEYS FOR PLAINTIFF

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

FILED

FEB 19 1980

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOHNNY R. JONES, a/k/a JOHNNY )  
JONES, ALARICE A. JONES, a/k/a )  
ALARICE ANN JONES, FRANK D. )  
MOSKOWITZ, PEDIATRICS, INC., )  
BOARD OF COUNTY COMMISSIONERS, )  
Tulsa County, Oklahoma, and )  
COUNTY TREASURER, Tulsa County, )  
Oklahoma, )  
 )  
Defendants. )

CIVIL NO. 79-C-695-E ✓

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 19th  
day of February, 1980, the Plaintiff appearing by Robert  
P. Santee, Assistant United States Attorney; and the Defendants,  
County Treasurer, Tulsa County, Oklahoma, and Board of County  
Commissioners, Tulsa County, Oklahoma, appearing by its attorney,  
John F. Reif, Assistant District Attorney; and, the Defendants,  
Johnny R. Jones, a/k/a Johnny Jones, Alarice A. Jones, a/k/a Alarice  
Ann Jones, Frank D. Moskowitz, and Pediatrics, Inc., appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendant, Alarice A. Jones, a/k/a Alarice  
Ann Jones was served with Summons, Complaint, and Amendment to  
Complaint on November 29, 1979 and January 4, 1980, respectively;  
that Defendant, Pediatrics, Inc., was served with Summons, Complaint,  
and Amendment to Complaint on November 29, 1979 and December 27, 1979,  
respectively; that Defendant, Frank D. Moskowitz, was served with  
Summons, Complaint, and Amendment to Complaint on December 1, 1979  
and December 27, 1979, respectively; that Defendant Johnny R. Jones,  
a/k/a Johnny Jones, was served with Summons, Complaint, and Amendment  
to Complaint on December 29, 1979 and January 8, 1980, respectively;  
that Defendants, County Treasurer, Tulsa County, Oklahoma, and Board  
of County Commissioners, Tulsa County, Oklahoma, were served with

Summons, Complaint, and Amendment to Complaint on December 27, 1979, all as appear on the United States Marshal's Services herein.

It appearing that the Defendants, County Treasurer, Tulsa, County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, have duly filed its answers herein on January 16, 1980; and that the Defendants, Johnny R. Jones, a/k/a Johnny Jones, Alarice A. Jones, a/k/a Alarice Ann Jones, Frank D. Moskowitz, and Pediatrics, Inc., 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 Thirty-four (34), Block Forty-one (41)  
VALLEY VIEW ACRES SECOND ADDITION to the  
City of Tulsa, County of Tulsa, State of  
Oklahoma, according to the recorded plat  
thereof, less and except the Easterly  
twenty-six (26) feet thereof, which was  
conveyed to the City of Tulsa for purpose  
of a drainage improvement project.

THAT the Defendants, Johnny R. Jones and Alarice A. Jones, did, on the 7th day of December, 1977, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$11,750.00, with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Johnny R. Jones and Alarice A. Jones, 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 \$11,634.77, as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from February 1, 1979, 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, Johnny R. Jones and Alarice A. Jones, the sum of \$ 0 - plus interest according to law for personal property taxes for the year(s) 1979 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, Johnny R. Jones and Alarice A. Jones, in personam, for the sum of \$11,634.77, with interest thereon at the rate of 8 1/2 percent per annum from February 1, 1979, 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, Johnny R. Jones and Alarice A. Jones, for the sum of \$ 0 - as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Frank D. Moskowitz and Pediatrics, Inc.

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

of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

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

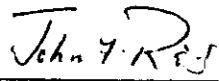
  
UNITED STATES DISTRICT JUDGE

APPROVED

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney

  
BY: ROBERT P. SANTEE  
Assistant United States Attorney

  
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

CONCORDIA DEVELOPMENT COMPANY, )  
INC., a subsidiary of TRAMMELL )  
CROW-AGRI COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CLARK EQUIPMENT & CONSTRUCTION )  
COMPANY, INC., a/k/a HAROLD CLARK )  
MACHINER & CONSTRUCTION COMPANY, )  
an Oklahoma corporation, )  
 )  
Defendants, )  
 )  
THE HARTFORD INSURANCE GROUP, )  
 )  
Garnishee. )

FILED

FEB 19 1980

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

NO. 76-C-591

J U D G M E N T

This action having been tried to this Court in a non-jury trial on February 6, 1980, and the Court having found the issues in favor of The Hartford Insurance Group, garnishee, and against the plaintiff, Concordia Development Company, Inc.,

IT IS HEREBY ORDERED that judgment be entered in this action in favor of garnishee, The Hartford Insurance Group, and against the plaintiff, Concordia Development Company, Inc.

s/H. DALE COOK

---

H. DALE COOK, CHIEF JUDGE OF THE  
UNITED STATES DISTRICT COURT

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

NORDSTROM AGENCY, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PAUL E. BAKER, )  
 )  
Defendant. )

No. 79-C-719-B

**FILED**  
**FEB 19 1980**  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

For good cause shown, this action is hereby dismissed  
without prejudice.

S/ THOMAS R. BRETT

\_\_\_\_\_  
Judge

**FEB 15 1980**

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

**FILED**  
FEB 15 1980

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAMES PATRICK MEADOWS, JOYCE )  
 VIRGINIA MEADOWS, ROSA LEE )  
 PEARCE, OWASSO LUMBER COMPANY, )  
 a Corporation, and O. C. )  
 LASSITER, Attorney-at-Law, )  
 )  
 Defendants. )

CIVIL ACTION NO. 79-C-523-BT ✓

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 15<sup>TH</sup>  
day of February, 1980, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney; the Defendant, Owasso  
Lumber Company, a Corporation, appearing by its attorney, Steven M.  
Harris; and, the Defendants, James Patrick Meadows, Joyce Virginia  
Meadows, Rosa Lee Pearce, and O. C. Lassiter, Attorney-at-Law,  
appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendants, James Patrick Meadows and  
Joyce Virginia Meadows, were served by publication as shown on  
the Proof of Publication filed herein; that Defendant, Rosa Lee  
Pearce, was served with Summons and Complaint on August 18, 1979;  
that Defendant, O. C. Lassiter, Attorney-at-Law, was served with  
Summons and Complaint on August 20, 1979; and, that Defendant,  
Owasso Lumber Company, a Corporation, was served with Summons and  
Complaint on October 19, 1979; all as appears on the United States  
Marshal's Service herein.

It appearing that the Defendant, Owasso Lumber Company,  
a Corporation, has duly filed an Application for Dismissal on  
November 13, 1979, and that an Order was filed on November 14,  
1979, dismissing this Defendant from this action; and, that  
Defendants, James Patrick Meadows, Joyce Virginia Meadows, Rosa  
Lee Pearce, and O. C. Lassiter, 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 Thirty-Three (33), Block Three (3), NORTHRIDGE ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, James Patrick Meadows and Joyce Virginia Meadows, did, on the 20th day of October, 1960, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,545.00 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 Defendant, Rosa Lee Pearce, was the grantee in a deed from Defendants, James Patrick Meadows and Joyce Virginia Meadows, dated March 8, 1972, filed March 20, 1972, in Book 4008, Page 507, records of Tulsa County, wherein Defendant, Rosa Lee Pearce, and Junior Don Pearce assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, James Patrick Meadows, Joyce Virginia Meadows, and Rosa Lee Pearce, 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 \$4,567.00 as unpaid principal with interest thereon at the rate of 5 1/2 percent per annum from December 20, 1978, 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, James Patrick Meadows and Joyce Virginia Meadows, in rem, and Rosa Lee Pearce, in personam, for the sum of \$4,567.00 with interest thereon at the rate of 5 1/2 percent per annum from December 20,

1978, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, O. C. Lassiter, Attorney-at-Law.

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

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

  
UNITED STATES DISTRICT JUDGE

2 - 15 - 80

APPROVED

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney

  
BY: ROBERT P. SANTEE  
Assistant United States Attorney

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

FILED

APPEAL NO. 79-C-573-

FEB 15 1980

IN RE )  
TULSA CRUDE OIL PURCHASING COMPANY, )  
Debtor, )  
MULL DRILLING COMPANY, INC., )  
Appellant, )  
ROBERT J. STANTON, Trustee, )  
Appellee. )

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

Bk. No.  
72-B-108

STIPULATION AND ORDER OF DISMISSAL

Upon the stipulation of the parties to this appeal it is agreed that such appeal shall be and now is dismissed. The cost of the appeal shall be assessed to the Appellant.

IT IS SO ORDERED, this 15 day of February, 1980.

*S/ Thomas R. Bett*  
JUDGE

APPROVED BY:

MARTIN, PRINGLE, FAIR, DAVIS & OLIVER  
320 Page Court, 220 W. Douglas  
Wichita, Kansas 67202

By *Paul B. Swartz*  
Paul B. Swartz  
Attorneys for Appellant

BOONE, SMITH, DAVIS & MINTER  
900 World Building  
Tulsa, Oklahoma 74103

By *Reuben Davis*  
Reuben Davis  
Attorneys for Appellee

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR THE **FEB 15 1980**  
NORTHERN DISTRICT OF OKLAHOMA

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

ROBERT LEE ASBERRY, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 NORMAN B. HESS, Warden, )  
 Oklahoma State Penitentiary )  
 and JAN ERIC CARTWRIGHT, )  
 Attorney General of Okla- )  
 home, et al., )  
 )  
 Respondents. )

No. 79-C-451-BT

O R D E R

The Court has for consideration the Findings and Recommendations of the United States Magistrate. No objections have been filed by either party.

The Court has carefully perused the entire file, including all transcripts, documents and pleadings, and, being fully advised in the premises, finds:

That the Findings and Recommendations of the United States Magistrate should be adopted and affirmed with the following modifications:

The Court, after reviewing the entire file finds that an evidentiary hearing is not necessary to resolve the questions raised by the plaintiff in this Habeas Corpus action. Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed. 2d 770 (1963). [To be inserted on page 2 between paragraphs 2 and 3 thereof.]

That the language contained on page 5 of said Recommendations, commencing with the first full sentence on said page ["This claim is also without merit, etc." and ending with the quotation from Mathis v. People of State of Colorado, 425 F.2d 1165] be stricken and the following language inserted in lieu thereof:

The standard of review for Federal Courts in Habeas Corpus proceedings (§2254) was recently stated in Jackson v. Virginia, 47 LW 4883 (June 28, 1979). The Court finds the evidence in the record, though circumstantial, is sufficient to permit the trier of fact to conclude beyond a reasonable doubt the existence of

every element of the offense charged and the guilt of the defendant. The Court further finds no constitutional infirmity in the State Court conviction.

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus be denied.

ENTERED this 12 day of Feb, 1980.

A handwritten signature in cursive script, reading "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

FEB 15 1980

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

STAN ORLOSKI, DOYLE L. ALEXANDER, )  
FRED TILLIE, ALLEN SPURGEON, and )  
WILLIAM DON ROGERS, Individually )  
and as Representatives of a class )  
of persons, )  
Plaintiffs, )

v. )

No. 79-C-168-E

RONALD A. PATTON, LINDA D. PATTON, )  
COFFEYVILLE LIVESTOCK SALES )  
COMPANY, INC., a corporation, and )  
THE FIRST NATIONAL BANK OF FREDONIA, )  
KANSAS, a National Banking )  
Association, )  
Defendants, )

v. )

COFFEYVILLE STATE BANK, )  
Third-Party )  
Defendant. )

STIPULATION AND ORDER OF  
DISMISSAL WITH PREJUDICE

The Third Party Plaintiff The First National Bank of Fredonia, Kansas, and the Third Party Defendant Coffeyville State Bank, having stated and stipulated to the Court that the Third Party Complaint of The First National Bank of Fredonia, Kansas against the Third Party Defendant Coffeyville State Bank, and each and every claim for relief asserted therein against the Third Party Defendant Coffeyville State Bank, may be dismissed with prejudice, each party to bear its own costs, and the Court being fully advised, IT IS ORDERED that the Third Party Complaint of The First National Bank of Fredonia, Kansas insofar as it pertains to and asserts claims against the Third Party Defendant Coffeyville State Bank and each and every claim asserted by the Third Party Plaintiff, First National Bank of Fredonia, Kansas against the Third Party Defendant Coffeyville State Bank be and the same are hereby dismissed with prejudice to the bringing of a future action thereon and that each party hereto shall bear its own costs.

DATED this 15<sup>th</sup> day of February, 1980.

S/ JAMES O. ELLISON

United States District Judge

PRO SE LITIGANTS IMMEDIATELY  
UPON RECEIPT.

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

**FILED**

FEB 15 1980

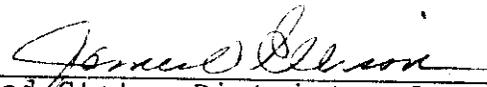
VERA I. BAPTIST, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 OKLAHOMA STEEL CASTINGS )  
 COMPANY, INC., and MARMON )  
 INDUSTRIES, INC., )  
 )  
 Defendant. )

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

No. 78-C-356-*EE*

O R D E R

NOW on this 15<sup>th</sup> day of February, 1980, pursuant to the stipulation of the parties herein as set out in the pre-trial order entered by this Court on November 1, 1979, the Defendant Oklahoma Steel Castings Company, Inc., is hereby dismissed as a party to this matter.

  
United States District Judge

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

ROBERT K. BELL ENTERPRISES, )  
INC., an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 79-C-40-C  
 )  
CONSUMER PRODUCT SAFETY )  
COMMISSION, et al., )  
 )  
Defendants. )

FILED

FEB 16 1980

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

O R D E R

The Court now considers plaintiff's Motion for Summary Judgment and defendants' Motions to Dismiss and for Summary Judgment. Affidavits and other evidence have been presented by both parties, and pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, defendants' Motion to Dismiss for failure to state a claim will be merged into defendants' Motion for Summary Judgment.

This is an action seeking various forms of declaratory and injunctive relief as a result of the attempt of defendant Consumer Product Safety Commission (hereinafter "Commission") to gather certain information about an aerial tramway known as the Sky Ride, manufactured by von Roll, Ltd. of Bern, Switzerland, and owned and operated by plaintiff Robert K. Bell Enterprises, Inc., at its amusement park in Tulsa, Oklahoma.

Plaintiff's argument has basically two propositions: that the defendant Commission lacks jurisdiction over plaintiff's amusement park operations, and that the Consumer Product Safety Act (15 U.S.C. §§2051 et seq., hereinafter "the Act") violates the Fourth Amendment's search and seizure concepts in that it permits a search and inspection of plaintiff's records without a search warrant. The Court will first examine the jurisdictional question.

I. Is The Sky Ride A Consumer Product?

Plaintiff's contention that the Commission lacks jurisdiction is based on the argument that amusement park rides in general and the von Roll Sky Ride in particular are not consumer products within the meaning of the Act. Plaintiff's particular points in support are that:

1. The legislative intent is contrary to defendants' position in that

a. the original wording focused on household products, and

b. the later enlargement to "items not reaching the consumer by sale" was intended to reach free sample distributions, not amusement park rides, and that the "free sample enlargement included the concept that the product must be capable of being purchased by the consumer."

2. Defendants' position is inconsistent with the Congressional debate to exclude mobile homes, and the Sky Ride is more closely analogous to mobile homes than it is to toasters or irons, which are the products that Congress cited as typical of the Act's intended scope.

3. Defendants' language in construing the statute is contrary to the language of the statute.

a. The "personal use" requirement of the Act precludes coverage of the Sky Ride since the passenger has no control over the ride and is merely a passive participant.

b. The "industrial product exception", which stated that a product such as an electric drill that would not be covered by the Act if used on the job by a trained worker would be covered for home use, does not encompass the Sky Ride since the passenger again does not exercise sufficient

control of the product to meet the intention of this exception.

4. The defendants' definition of consumer product is not in harmony with the Act as a whole.

a. The "free sample provision", authorizing the Commission to obtain samples at manufacturers' cost for testing indicates that the Sky Ride is not within the Act since free samples of the Sky Ride are impossible. Plaintiff states that the free sample provisions are mandatory.

b. Under defendants' construction, if passengers are consumers, then plaintiff is a retailer; but such a conclusion is inconsistent with the language of the Act.

c. Definitions of consumer product found in other statutes are inconsistent with defendants' position.

5. The Sky Ride at plaintiff's amusement park is used by patrons primarily for transportation. Thus, even the Chance case (see infra), which held amusement park rides within the Act, would have precluded coverage of plaintiff's Sky Ride as a transportation device outside the Act.

6. Plaintiff's position is supported by the California federal court decision in Walt Disney Productions & Walt Disney World Co. v. United States Consumer Product Safety Commission, Civil No. 79-0170-LEW (Px), (C.D.Calif. April 20, 1979).

After reviewing the statutory language and history, the cases, and the arguments of the parties, this Court concludes that plaintiff's Sky Ride is a consumer product within the coverage of the Act and defendants' jurisdiction. The Act defines consumer product as

...any article, or component part thereof,

produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include--

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer....

15 U.S.C. §2052(a)(1). Subparagraphs (B) through (I) following the above, specify excluded items.

Discussing the range of products covered by this definition, a District of Columbia federal court stated:

The most unequivocal expression of congressional intent to be gleaned from the legislative history of the Act is that the definition of "consumer product" be construed broadly to advance the Act's articulated purpose of protecting consumers from hazardous products. The report of the Senate Committee on Commerce, for example, points out that, rather than attempting "to catalogue those items included within the concept of 'consumer product,'" the Act's drafters chose to delineate the concept by excluding particular items from its range. S.Rept.No. 749, 92d Cong., 2d Sess. 12 (1972).

Consumer Product Safety Commission v. Chance Manufacturing Co., 441 F.Supp. 228, 231 (D.D.C. 1977). The Chance case concerned the Consumer Product Safety Commission's jurisdiction over an amusement park ride known as the "Zipper", consisting of a boom that rotated 360° and twelve cars attached to the boom at equidistant points. Unlike the Sky Ride in the instant case, the Zipper did not move its passengers from one point to another; it was a fixed ride where the passengers boarded and unloaded at the same place. In contrast, plaintiff's Sky Ride covers approximately a one-third mile course over plaintiff's amusement park and the Tulsa State Fair grounds. The Chance court found that the Zipper satisfied two requisites for coverage by the Act: one, that it was produced or distributed for the personal use, consumption or enjoyment of a consumer, and two, that it was sold, used,

consumed or enjoyed in or around a residence, a school, in recreation, or otherwise. Noting that the consumer-passenger did not have the right to control the Zipper, and that the consumer's relationship to the Zipper was little more than "an abstract right to occupy an amusement device", the court found that it was the intent of Congress, at least in part, that jurisdiction turn on the extent to which consumers are exposed to the product, rather than their participation in its control or operation. 441 F.Supp. at 232-233. Thus, the personal use limitation turned on use by consumers, not control by consumers. The court also found that "in recreation" was a distinct area of regulation, rather than a modified type of household or school use. Id. at 233.

Thus, as to plaintiff's argument that the Act does not apply generally to amusement park rides, this Court is satisfied that plaintiff's first three points (1 through 3, supra) are countered by the Chance holding. While the legislative intent does encompass household products, as plaintiff's evidence indicates, it is not limited to them, as Chance illustrates. Plaintiff's argument is that because Congress rejected inclusion of mobile homes within the Act, it would reject coverage of amusement park rides. The Congressional reference (during debate) to "toasters and irons" as typical of consumer products is not typical of the broad range of products covered by the Act, which includes both fireworks and artificial athletic field turf, as well as toasters and irons. Furthermore, amusement park rides fit neatly into the recreation coverage of the Act, while mobile homes do not fit into any current area of the Act's coverage.

Plaintiff's third point, that defendants' position is contrary to the language of the statute, is clearly refuted by the Chance court analysis of personal use, of the industrial product exception (Id. at 231-232), and of the recreational

area of coverage.

Plaintiff's fourth point is that defendants' position is inconsistent with the Congressional view of consumer products as illustrated by the language of this Act and other statutory provisions. First, plaintiff argues, the Act's free sample provision cannot be realized in the regulation of amusement park rides, and they must therefore be outside the Act. However, contrary to plaintiff's assertion that the free sample testing provision is mandatory, the Commission's authority to obtain samples for testing is merely that -- authority. The Commission is not required to test products. Furthermore, as defendants note, it would be possible for the Commission to obtain samples of operating parts of the Sky Ride for testing. The Court is thus unpersuaded by this argument.

Plaintiff also argues that if passengers in the Sky Ride are consumers, then plaintiff must be a retailer, which conflicts with the Act's definition of a retailer as "a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such a person to a consumer". Title 15 U.S.C. §2052(a)(6). In this Court's view, plaintiff Bell fits very well into this definition. The Sky Ride was delivered and sold to plaintiff for purposes of distribution to a consumer. The fact that consumers do not take the Sky Ride home, or take any possession of it, does not negate the fact that its function was distributed to them, much in the same way that the function of artificial athletic field turf is distributed to consumers of that product.

Finally, plaintiff asserts that the definition of consumer product in other legislation defeats defendants' position. Plaintiff cites the Magnuson-Moss Warranty Act of 1975, 15 U.S.C. §§2301 et seq., in which consumer product is defined as "any tangible personal property which is distributed

in commerce and which is normally used for personal, family, or household purposes..." 15 U.S.C. §2301(1), quoted in Plaintiff's Brief in Response, filed April 5, 1979, p.28 (emphasis plaintiff's). Turning first to the phrase emphasized by plaintiff, the Court would note that amusement park recreation would certainly appear to be a personal or family purpose. And while the remainder of the definition does seem inconsistent with defendants' position, the Court finds the limited scope of a statute dealing with warranties hardly convincing as a limitation on a statute concerned with safety, addressing products used by consumers as well as bought by them, and products retained by the purchaser and used by other consumers, such as artificial turf.

Plaintiff next argues that, even if the Chance decision is correct, amusement park rides are covered by the Act and the very wording of Chance excludes plaintiff's Sky Ride.

Plaintiff quotes the following passage from Chance:

Similarly, any effort by the Commission to regulate such other forms of conveyance as elevators, escalators, subways, and trains, could find no support in the holding above; even if an individual's use of such conveyances constituted "personal use, consumption or enjoyment," a question on which we express no opinion, the contextual clause of the definition would require that the use of the product be "in or around . . . a household or residence, a school, in recreation, or otherwise." While the word "otherwise" might be applied to cover vitually any use of a product, such an obliteration of jurisdictional limits derives no discernible support from the legislative history. In contrast to a ride on a subway or elevator, which almost always is taken for the ulterior purpose of reaching a destination, a ride on the Zipper machine is an end in itself. Because one rides the Zipper machine for its own sake and for the pleasure and thrill resulting therefrom, and not for any other purpose, it is used "in recreation." (Id.)

Plaintiff's Brief in Support, filed April 5, 1979, p.29.

Plaintiff then asserts that the Sky Ride is used almost solely during the Tulsa State Fair at which time visitors use the Sky Ride for transportation purposes from plaintiff's

premises to the fairgrounds, and that since the ride is used as a conveyance rather than an amusement, it is analogous to an elevator or subway, which were excluded in the dicta of Chance. In its response, defendants dispute that the Sky Ride is a conveyance, noting the manufacturer's promotion for the ride as "excitement...anywhere...anyplace...amusement parks...zoo, fairs, exhibitions, or other tourist attractions...Skyrides provide a unique method of moving people, while at the same time giving them a new exciting experience...a Skyride can be a major attraction in itself." Defendants' Brief, filed April 23, 1979, p.18. Defendants also assert that plaintiff's supporting affidavit from Robert K. Bell is self-serving and dubious in that it claims that a \$1 million device would be used only during the state fair, and only for transportation over a one-third mile course.

From the evidence offered on this issue, the Court must concur with defendants. As to whether the Sky Ride is used for transportation or amusement, plaintiff's only evidence is its assertion in Robert K. Bell's affidavit that he estimates that one-third of the fair's visitors use the Sky Ride for transportation. Bell does not state whether the other two-thirds use the Sky Ride, and if so, what they use it for. More importantly, Bell does not state how he arrived at his estimate that any of the riders used the Sky Ride for transportation across the fairgrounds. Bell states that plaintiff is doing business as Bell's Amusement Park, that it operates amusement park rides, and that the von Roll Sky Ride is one of those rides. This infers support for defendants' contention that the Sky Ride is offered as an amusement, and with only Bell's undocumented "estimate" that one-third of the fairgoers use the device for transportation, the Court finds that the Sky Ride is primarily an amusement attraction in an amusement park full of similar attractions.

Plaintiff also directs the Court's attention to Disney, supra, a case holding that an identical von Roll tramway in California was not within the Commission's jurisdiction. In so ruling, the Disney court went against the Chance decision. The Disney decision rested on the following legal conclusions: (1) that Congress intended the Act to be limited to products "capable of production or distribution for sale to an individual"; (2) that the "free sample provision" of the Act inferred a coverage of products for which it was "practicable to obtain a sample..."; (3) that coverage was limited to products that might be owned and/or operated by consumers; and (4) that the "ride apparatus as a whole is not produced 'for the personal use, consumption or enjoyment of a consumer.'"

Subsequent to the Disney decision, a Texas federal court considered the same issue on the same device and reached an opposite result. See The State Fair of Texas v. U. S. Consumer Products Safety Commission, Civil No. CA-3-79-1367-G (N.D.Tex., Dallas Div. 1979). Considering the Disney court's statement on the free sample provision, the State Fair court noted that if the ability to be sampled were required of a consumer product within the Act, there would have been no need to expressly exempt aircraft from the Act's coverage. State Fair, supra, at 13. The court also noted that components of the Sky Ride were conceivably available for sample and testing.

As for the other holdings in Disney, this Court notes their inconsistency with Chance, and observes the minimal consideration of legislative history in Disney compared to that in Chance. Accordingly, this Court will follow the apparently more thoroughly researched and better-reasoned decision in Chance, supported by the decision in State Fair.

## II. The Constitutionality of the Act

Plaintiff additionally argues that the Act's authorization

for searches, inspections, and seizures (including constructive searches), investigations, and access to records, violates the Fourth Amendment of the Constitution in that the Act does not require the Commission to obtain a warrant, and does not require any prior showing of probable cause. Plaintiff also argues that the Act's authorization for criminal and civil penalties, also without requiring the Commission to obtain a warrant, are further violations of the Fourth Amendment.

Plaintiff's arguments here are also unpersuasive. Defendant Commission cites its authority for the information sought from plaintiff in this case as 15 U.S.C. §2076, which provides in pertinent part:

(a) The Commission may, by one or more of its members or by such agents or agency as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same matter. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) The Commission shall also have the power--  
(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

\* \* \*

(3) to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized

under paragraph (3) of this subsection;  
The Tenth Circuit, discussing the power and limits of  
administrative investigation, has stated:

The law governing the limits on the administrative power of investigation has evolved from the earlier judicial condemnation of fishing expeditions to that of enforcement of the subpoena power "if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant." *United States v. Morton Salt Co.*, 338 U.S. 632, 652, 70 S.Ct. 357, 369, 94 L.Ed. 401 (1950). All that is now required is that the investigation be for a lawfully authorized purpose. *United States v. Morton Salt Co.*, *supra*. In *United States v. Powell*, 379 U.S. 48, 85 S.Ct. 248, 13 L.Ed.2d 112 (1964), the United States Supreme Court held that an investigation by the Internal Revenue Service into a question of fraudulent falsification of tax returns need not be based upon something in the nature of probable cause. The Court there said:

"We . . . hold that the Government need make no showing of probable cause to suspect fraud unless the taxpayer raises a substantial question that judicial enforcement of the administrative summons would be an abusive use of the court's process, predicated on more than the fact of re-examination and the running of the statute of limitations on ordinary tax liability." 379 U.S. at 51, 85 S.Ct. at 251.

*Equal Employment Opportunity Commission v. University of New Mexico*, 504 F.2d 1296, 1302-03 (10th Cir. 1974).

Plaintiff endeavors to show that the Supreme Court guidelines in this area have changed, citing *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816, 56 L.Ed.2d 305 (1978), where the Supreme Court held that inspections of commercial premises by the Occupational Safety and Health Administration (OSHA) without a warrant violated the Fourth Amendment, and that a warrant would henceforth be required. However, contrary to plaintiff's inference from *Marshall v. Barlow's*, the Supreme Court also held that its requiring a warrant for OSHA inspections did not mean that warrantless search provisions in other regulatory statutes are unconstitutional. The Court stated that:

[t]he reasonableness of a warrantless search, however, will depend upon the specific enforcement needs and privacy guarantees of each statute..... In short, we base today's opinion on the facts and law concerned with OSHA and do not retreat from a holding appropriate to that statute because of its real or imagined effect on other, different administrative schemes.

436 U.S. at 321-22.

Applying the above cases to the instant facts, this Court discerns no abusive process, mentioned in Powell, in the Commission's collection of information of plaintiff's repair and maintenance records on the von Roll Sky Ride; nor is any unconstitutional encroachment on plaintiff's privacy apparent in this case. The Commission's efforts are a valid exercise of its authority pursuant to a legitimate purpose.

As to plaintiff's complaint concerning the Act's authorization of criminal and civil sanctions, the Court notes that plaintiff has not been faced with the imposition of those penalties, therein failing the injury-in-fact requirement of Association of Data Processing v. Camp, 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970); plaintiff thus lacks standing to assert this argument.

### III. The Quashing of the Commission's Inspection Warrant in State Fair v. U. S.

Finally, this Court would note certain holdings in State Fair, supra, that weren't at issue in this action. While that case held that the Texas State Fair's von Roll tramway (identical to Bell's Sky Ride) was a consumer product within the Act, it also sustained State Fair's motion to quash the Commission's inspection warrant on the grounds that State Fair was not within the scope of the Commission's inspection powers. The facts were that an accident had occurred involving the ride, and the Commission sought an on-site inspection; its authority was 15 U.S.C. §2065. The court held that the Commission had made no

showing that State Fair had "manufactured" the ride within the meaning of §2065 (including the concept of assembling the ride, which the court stated had also not been done by State Fair); that no showing had been made that State Fair was responsible for the ride's distribution into commerce; and that no showing had been made that State Fair was a factory, warehouse, or establishment where an inspection was authorized. Without the above being established, the court concluded, no inspection was authorized.

In the instant case, the Commission seeks only the production of information pursuant to 15 U.S.C. §2076, which authorizes the Commission "to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe" and "to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties" (emphasis added). The limitations on which the State Fair decision turned are not present here. The Commission is authorized to seek this information from "any person", and Bell's status as a manufacturer or assembler, or as a factory, warehouse, or establishment for inspection purposes is irrelevant here. Making no pronouncement on the merit of the State Fair decision on the Commission's on-site inspection authority, this Court finds that the State Fair holding on that point has no bearing on this case.

For the foregoing reasons, plaintiff's motion for summary judgment is overruled on all points, and defendants' motion for summary judgment is sustained on all points.

It is so Ordered this 15<sup>th</sup> day of February, 1980.

  
H. DALE COOK  
Chief Judge, U. S. District Court

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

HESS OIL VIRGIN ISLANDS )  
CORP., a United States )  
Virgin Islands corporation; )  
FEDERAL INSURANCE COMPANY, )  
a New Jersey corporation; )  
and INSURANCE COMPANY OF )  
NORTH AMERICA, a Pennsylvania )  
corporation, )  
Plaintiffs, )

v. )

NO. 75-C-383-C ✓

UOP, INC., a Delaware )  
corporation, WORD INDUSTRIES )  
PIPE FABRICATING, INC., an )  
Oklahoma corporation; and )  
FISHER CONTROLS COMPANY, )  
a subsidiary of Monsanto )  
corporation, a Delaware )  
corporation, )  
Defendants, )

v. )

THE LITWIN CORPORATION, )  
a corporation, )  
Third Party )  
Defendants. )

v. )

HESS OIL VIRGIN ISLANDS )  
CORP., a United States )  
Virgin Islands corporation; )  
FEDERAL INSURANCE COMPANY, )  
a New Jersey corporation; )  
and INSURANCE COMPANY OF NORTH )  
AMERICA, a Pennsylvania )  
corporation. )

**FILED**  
**FEB 14 1980**  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

This cause came on for hearing on February 8, 1980, on the Motion of The Litwin Corporation for Discontinuance and Dismissal of the Third Party Complaint of UOP, Inc., and the Court having heard the argument of counsel and being fully advised, the Motion of Litwin to dismiss the Third Party Complaint brought against it by UOP is hereby sustained.

It is so ordered this 14<sup>th</sup> day of February, 1980.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
NO. 78-C-449-C

PIPELINE INDUSTRY BENEFIT FUND

PLAINTIFF

VS.

JUDGMENT OF INTERPLEADER

MARY FOSTER WHITEMAN AND  
SANDRA WELCH

**FILED**

FEB 14 1980

DEFENDANTS

*NO*

\* \* \* \* \*

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

The plaintiff having moved the Court, and the Court having heard the arguments of Counsel and being fully advised,

IT IS HEREBY ORDERED that Judgment be, and it hereby is, entered as follows: (1) The defendant Mary Foster Whiteman and the defendant Sandra Welch are required to interplead their respective claims to the account of the decedent Robert W. Foster, which claims shall be tried at the time and place previously assigned and noticed by this Court. (2) The plaintiff Fund is required to deposit with the ~~Receiver~~ <sup>clerk</sup> of this Court the sum of \$20,000 as the total amount due to the beneficiary of the decedent Foster's account with the plaintiff Fund.

It is further ordered and adjudged that the plaintiff Fund be discharged of any further liability as to the decedent Foster's account upon making the above-described deposit.

JUDGE

*John Dale Book*

DATE

February 14, 1980

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

**FILED**

FEB 13 1980

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

GENE SALTSMAN, )  
)  
Plaintiff, )  
)  
vs. )  
)  
FIBREBOARD CORPORATION, )  
et al. )  
)  
Defendant )

No. C-79-616-BT ✓

DISMISSAL OF OWENS-ILLINOIS, INC., AS PARTY DEFENDANT

COMES NOW Plaintiff, GENE SALTSMAN, and dismisses OWENS-ILLINOIS, INC., as a Party Defendant in the above captioned cause, and in support thereof, states that said OWENS-ILLINOIS, INC., was named as a Party Defendant in Plaintiff's Amended Petition, but that addition of OWENS-ILLINOIS, INC. as a Party Defendant, was made in error.

*Silas Wolf*  
\_\_\_\_\_  
SILAS WOLF, JR.  
Co-Counsel for Plaintiff  
Suite 550, 111 North Peters  
Norman, Oklahoma 73069  
(405) 329-1115

MARLIN THOMPSON  
Co-Counsel for Plaintiff  
712 Division Street  
Orange, Texas 77630  
(713) 883-9396

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing Dismissal was mailed this 8th day of February, 1980, to Mr. Jack R. Durland, Jr., Crowe, Dunlevy, Thweatt, Swinford, Johnson & Burdick, 17th Floor, Liberty Tower, 100 Broadway, Oklahoma City, Oklahoma 73102.

*Silas Wolf*  
\_\_\_\_\_  
SILAS WOLF, JR.

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

FILED  
FEB 13 1980

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DANIEL L. CASE, )  
 )  
 Defendant. )

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

CIVIL ACTION NO. 80-C-11-E

DEFAULT JUDGMENT

This matter comes on for consideration this 13<sup>th</sup>  
day of February, 1980, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney for the Northern  
District of Oklahoma, and the Defendant, Daniel L. Case, appearing  
not.

The Court being fully advised and having examined  
the file herein finds that Defendant, Daniel L. Case, was  
personally served with Summons and Complaint on January 5, 1980,  
and that Defendant has failed to answer herein and that default  
has been entered by the Clerk of this Court.

The Court further finds that the time within which  
the Defendant could have answered or otherwise moved as to  
the Complaint has expired, that the Defendant has not answered  
or otherwise moved and that the time for the Defendant to  
answer or otherwise move has not been extended, and that Plaintiff  
is entitled to Judgment as a matter of law.

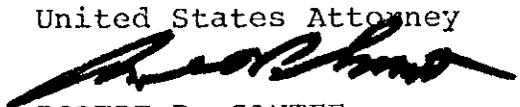
IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that  
the Plaintiff have and recover Judgment against Defendant, Daniel L.  
Case, for the principal sum of \$850.07, plus interest at the legal  
rate from the date of this Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney

  
ROBERT P. SANTEE  
Assistant U. S. Attorney

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

DONALD K. PETERSON, an )  
individual, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BARTLESVILLE AMERICAN )  
PUBLISHING COMPANY, an )  
Oklahoma Corporation, )  
 )  
Defendant. )

No. 80-C-27-C

**FILED**  
**FEB 12 1980**  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

The Court has for consideration this Joint Stipulation of Dismissal With Prejudice, and being fully advised in the premises, finds:

IT IS ORDERED that the Joint Stipulation of Dismissal With Prejudice is hereby approved pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

DATED this 12<sup>th</sup> day of February, 1980.

  
UNITED STATES DISTRICT JUDGE

G. Michael Lewis, Esquire  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
1200 Atlas Life Building  
Tulsa, Oklahoma 74103  
Tel: (918) 582-1211

Of Counsel:

D. Paul Weaver, Esquire  
Kimmel, Crowell & Weaver  
Suite 1104  
2001 Jefferson Davis Highway  
Arlington, Virginia 22202  
Tel: (703) 521-1320

Attorneys for Plaintiff

FILED  
FEB 12 1980  
Jack L. Silver, Clerk  
U. S. DISTRICT COURT

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

BEATRICE FOODS CO.	)	
a Corporation of Delaware	)	
	)	
Plaintiff	)	
	)	Civil Action No. 79-C-730-C
v.	)	
	)	JUDGMENT WITH CONSENT ANNEXED
LAND YACHTS INTERNATIONAL,	)	
INC.	)	
a Corporation of Oklahoma	)	
	)	
Defendant	)	

Upon stipulation of Plaintiff and Defendant,  
Plaintiff by its complaint herein having alleged infringement  
of its trademark, LAND YACHT, by Defendant, and having  
alleged acts of unfair competition by Defendant, and Defendant  
having acknowledged such infringement and unfair competition,  
it is hereby

ADJUDGED, ORDERED AND DECREED as follows:

(1) This Court has jurisdiction over the above named parties and the subject matter of this action pursuant to title 28, U.S.C. Sections 1338(a) and 1338(b). Jurisdiction further exists under the provision of 15 U.S.C. Sections 1114(a), 1121, 1125(a) and 1391.

(2) Plaintiff's Federal trademark registration, as specified in paragraph 7 of the complaint, Registration No. 813,845, was duly and legally issued to Plaintiff, and Plaintiff was at the time of filing of this action and still is the owner of said trademark registration. Moreover, Plaintiff is the owner of the trademark LAND YACHT as applied to house trailers.

(3) Defendant, LAND YACHTS INTERNATIONAL, INC., admits the validity of said trademark registration and the allegation of infringement of said trademark as stated in Count 1 of the complaint.

(4) Defendant, LAND YACHTS INTERNATIONAL, INC., admits the acts of unfair competition as stated in Count 2 of the complaint.

(5) Defendant has agreed to cease and desist from all further acts of infringement or unfair competition pursuant to an agreement between the parties which is annexed hereto and marked Exhibit A.

(6) Defendant, LAND YACHTS INTERNATIONAL, INC., its officers, agents, servants, employees, attorneys, and any and all persons in active concert or participation with it, are permanently enjoined from the distribution, advertising, use, and/or sale of products bearing or including the name LAND YACHTS, or LAND YACHT, or any trade name or trademark confusingly similar thereto in connection with reconditioned highway coaches for use as motor homes, motor homes, house trailers or any other products likely to be associated as to source or origin with Defendant's house trailers, and is further enjoined from the use of the trade name "Land Yachts International, Inc.", or any other name in which the words LAND YACHTS or LAND YACHT or any other name similar thereto appears.

(7) This judgment is extended in its operation and effect to the respective parties, their assigns and legal representatives.



UNITED STATES DISTRICT JUDGE

STIPULATION

IT IS HEREBY STIPULATED by and between Plaintiff and Defendant in the above-identified action that the foregoing judgment may be entered in such action, and the same is hereby approved in form and in substance by Plaintiff and

Defendant and their respective attorneys. LAND YACHTS INTERNATIONAL, INC. agrees that the foregoing judgment may be entered without further notice to it, and that when the judgment is entered the service of a copy thereof upon their subscribing attorney shall be deemed to be served upon them, and LAND YACHTS INTERNATIONAL, INC., has waived and does hereby waive findings and conclusions and any and all right of appeal from said judgment.

LAND YACHTS INTERNATIONAL, INC.

By *Richard Hob*

Dated: 1/28/80

Title: Geny Pres.

Dated: 4/22/80

*Frederick L. Boss, Jr.*  
Frederick L. Boss, Jr.  
Attorney for Defendant

BEATRICE FOODS CO.

By *Alvin*

Dated: 2/5/80

Title: President, Airstream Division

Dated: 2/11/80

*G. Michael Lewis*  
G. Michael Lewis  
Attorney for Plaintiff

Dated: 2/1/80

*D. Paul Weaver*  
D. Paul Weaver  
Attorney for Plaintiff

SETTLEMENT AGREEMENT - EXHIBIT A

WHEREAS, BEATRICE FOODS CO., a corporation organized and existing under the laws of Delaware, located and doing business at 120 South La Salle Street, Chicago, Illinois 60603, is the Plaintiff in Civil Action No. 79-C-730-C, alleging acts of trademark infringement and unfair competition; and

WHEREAS, LAND YACHTS INTERNATIONAL, INC., a corporation organized and existing under the laws of the State of Oklahoma, with its principal place of business at 2570 South Harvard, Tulsa, Oklahoma 74114 is the Defendant in said action; and

WHEREAS, the parties are mutually desirous of settling and disposing of the controversy between them as reflected in said Civil Action No. 79-C-730-C;

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings hereof, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

(1) Defendant agrees to execute the judgment and decree with consent annexed to which this agreement is appended and to be bound by the terms and conditions thereof.

(2) Defendant agrees that it will cease all further usage of its trade name and trademark within thirty (30) days after the date of the signing of this agreement.

After that date no reconditioned buses may be sold by Defendant and no advertising materials distributed, having the trademark LAND YACHTS INTERNATIONAL, INC., and no further usage of the trade name LAND YACHTS INTERNATIONAL, INC. will be made thereon, or associated therewith in any form. Defendant further agrees that it will within the aforesaid thirty (30)day period file such documents with the appropriate agency of the State of Oklahoma as may be required to change its corporate name to eliminate therefrom the expression LAND YACHTS or any other name or mark similar thereto.

(3) Each of the parties hereto is to bear its own costs and attorneys fees.

(4) Plaintiff hereby waives its claim for damages against Defendant for all acts specified in the complaint up to the date of this agreement.

(5) This agreement and the Judgment and Decree with Consent Annexed to which it is appended constitutes the entire agreement between the parties.

(6) This agreement is to be construed in accordance with the laws of the State of Oklahoma. Defendant hereby agrees to submit, without objection, to the jurisdiction of the Federal District Court for the Northern District of Oklahoma for enforcement of this agreement and any provisions thereof.

(7) This agreement is binding upon the signatories hereto, their heirs, successors, legal representatives and assigns.

BEATRICE FOODS CO.

Date: 2/6/80  
~~1/29/80~~

By *[Signature]*  
Title: Attorney General  
Arstream Division

LAND YACHTS INTERNATIONAL, INC.

Date: 1/28/80

By *[Signature]*  
Title: pres

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

FILED

FEB 12 1980

Jack L. Sirey, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ANDREW WILSON, JR., )  
 )  
 Defendant. )

CIVIL ACTION NO. 79-C-511-C

DEFAULT JUDGMENT

This matter comes on for consideration this 12<sup>th</sup> day of February, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Andrew Wilson, Jr., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Andrew Wilson, Jr., was personally served with Summons and Complaint on December 17, 1979, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

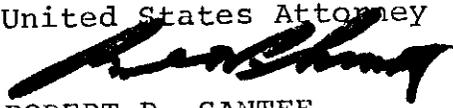
The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Andrew Wilson, Jr., for the sum of \$694.46, plus interest and the costs of this action accrued and accruing.

W. H. Dale Cook  
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney



ROBERT P. SANTEE  
Assistant U. S. Attorney

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

**F I L E D**

FEB 11 1980

LOWELL E. CURTIS and THELMA M. )  
CURTIS, husband and wife, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ALPHONSE S. VANNI, an individual; )  
and FARMERS INSURANCE COMPANY, )  
INC., a foreign corporation, )  
 )  
Defendants. )

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

NO. 78-C-499-E

ORDER OF DISMISSAL

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

DATED this 11th day of February, 1980.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FILED

Feb 11

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JANICE J. GARDNER, )  
 )  
 Defendant. )

JAC. S. DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 79-C-473-~~P~~E

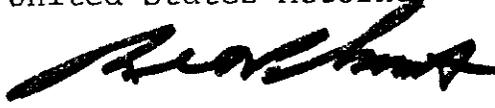
NOTICE OF DISMISSAL

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.

Dated this 11th day of February, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney



ROBERT P. SANTEE  
Assistant United States Attorney

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

FILED  
FEB 11 1980  
JACK L. BRYANT  
U. S. DISTRICT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LE ANN L. SAMPLE, )  
 )  
Defendant. )

CIVIL ACTION NO. 79-C-492-*RE*

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.

Dated this 11th day of February, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney



ROBERT P. SANTEE  
Assistant United States Attorney

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

FILED  
FEB 8 1980

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

EMERGICARE AMBULANCE SERVICE )  
INC., a corporation, )

Plaintiff, )

vs. )

No. 79-C-641-BT ✓

SOUTHWESTERN BELL TELEPHONE )

COMPANY, a corporation; THE )

CITY OF CLAREMORE, OKLAHOMA, )

a municipal corporation; THE )

BOARD OF COUNTY COMMISSIONERS )

OF ROGERS COUNTY, STATE OF )

OKLAHOMA; ELIZABETH GORDON, )

Mayor of the City of Claremore, )

OKLAHOMA; ELMER McGUIRE, )

individually and as a County )

Commissioner of Rogers County, )

State of Oklahoma, )

Defendants. )

O R D E R

The initial issue before the Court is a question of subject matter jurisdiction, i.e., whether this Court, in the absence of diversity of citizenship, has jurisdiction over the purported claims asserted by the plaintiff.

Plaintiff asserts federal jurisdiction under the Communications Act of 1934, 47 U.S.C. §207, for a conspiracy to violate 47 U.S.C. §202.

47 U.S.C. §202(a) provides:

"(a) It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

47 U.S.C. §207 provides:

"Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies."

The Complaint contains three counts. Count One deals with an alleged conspiracy by all of the defendants to do certain acts which would result in the termination of an agreement entered into between plaintiff and the defendants, City of Claremore and Rogers County, for plaintiff to provide emergency medical services and ambulance service. Plaintiff alleges that one of such acts was the unjust discrimination in service provided to plaintiff, to-wit: The "wrongful and illegal termination of service for which plaintiff had contracted and paid." Count One seeks damages in the sum of \$313,000.00, plus attorney fees and costs. Count Two realleges the allegations of Count One and states that plaintiff stood ready, willing and able to perform the obligations of the contract until the defendant, Southwestern Bell, acting in concert with the other named defendants, illegally caused certain telephone service of plaintiff to be terminated. Count Two seeks damages of \$353,000.00. Count Three realleges the allegations of Counts One and Two and further states that the defendant, Elmer McQuire (McGuire), individually and in his official capacity as a County Commissioner of Rogers County, made certain defamatory statements to a newspaper concerning plaintiff and as a result of said statements, plaintiff has suffered "both financial loss, loss of reputation in the community, and has been prevented from transacting its business." Count Three seeks judgment against the defendants, McGuire and the County of Rogers in the sum of \$300,000.

The pivotal question for determination is subject matter jurisdiction of the claim asserted against the defendant, Southwestern Bell Telephone Company.

The Communications Act of 1934 was enacted for the "purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities and reasonable charges." 47 U.S.C. §151.

The Act does not apply to "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier."

47 U.S.C. §152(b)(1).

The Communications Act, §§206, 207, provides that a suit may be brought in federal court for damages resulting from a common carrier's violation of specific provisions of the Act, 47 U.S.C. §§206, 207. In the absence of specific violations, the Act does not expressly grant a remedy for negligence or breach of contract in the rendition of communications service. No such remedy can be inferred by the Act. 47 U.S.C. §207 does not confer jurisdiction on this Court for negligence or breach of contract. Ivy Broadcasting Co. v. American Tel. & Tel. Co., 391 F.2d 486, 489 (2nd Cir. 1968).

It is plaintiff's contention that the services and facilities of the defendant, Southwestern Bell, are interstate and not intrastate in character and that it rented telephone equipment which was connected into the interstate exchange and in fact it made and received long distance calls in the ordinary course of its business.

This Court is not of the view that the intent and purpose of the Communications Act of 1934 was to confer jurisdiction on this Court to determine local disputes between subscribers for telephone service and the provider of such services in a situation such as the one in the instant litigation.

It is obvious from the complaint that the primary purpose of the telephone service was to permit the plaintiff to receive telephone calls to provide emergency medical service and ambulance service to the City of Claremore (located in Rogers County) and the County of Rogers, within the confines of the State of Oklahoma. The mere fact that plaintiff might have utilized the telephone service at times for long distance purposes does not divest the service rendered of its intrastate character.

In North Carolina Util. Com'n v. F.C.C., 537 F.2d 787 (4th Cir. 1976), cert. den. 434 U.S. 874, 98 S.Ct. 222, 54 L.Ed.2d 154, the Court said:

"We have no doubt that the provisions of section 2(b) deprive the Commission of regulatory power over local services, facilities and disputes that in their nature and effect are separable from and do not substantially affect the conduct or development of interstate communications..."

There is no showing in the complaint that the conduct complained of by plaintiff has a substantial impact on interstate communication as envisioned by the Communications Act of 1974.

The Court, therefore, finds that it lacks subject matter of the claim asserted under the Communications Act of 1974.

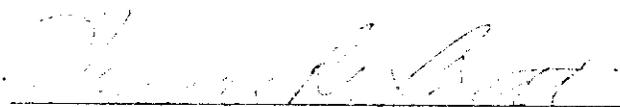
Plaintiff has raised no alleged alternative theory of federal common law cause of action. Cf. *Ivy Broadcasting Co. v. American Tel. & Tel. Co.*, supra, 391 F.2d 486, 489.

There being no jurisdiction under the Communications Act of 1934, there is no pendent jurisdiction of the other claims asserted by the plaintiff.

The Court, having found lack of subject matter jurisdiction, need not dispose of the theory of failure to state a claim, subject matter jurisdiction being dispositive of the action.

IT IS, THEREFORE, ORDERED that the Motions to Dismiss of the defendants for lack of subject matter jurisdiction be and the same are hereby sustained and the Complaint is hereby dismissed.

ENTERED this 7 day of ~~January~~<sup>Feb</sup>, 1980.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

FEB 7 1980

MARLENE J. PIERCE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 NORDAM, an Oklahoma partnership, )  
 )  
 Defendant. )

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

No. 78-C-75-E ✓

JUDGMENT

Upon Defendant's Motion for Summary Judgment, the Court, having considered the deposition, affidavit and pleadings on file, and having heard the arguments of counsel, as is more fully set out in the Memorandum Opinion filed this same date, finds no material issues of fact to be present, and finds Defendant to be entitled to judgment in its favor as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that judgment be, and hereby is, granted in favor of Defendant Nordam and against Plaintiff Marlene J. Pierce.

It is so Ordered this 7<sup>th</sup> day of February, 1980.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT COURT

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

MARTHA MILFORD, )  
 ) No. 79-C-151  
 Plaintiff, )  
 )  
 vs. )  
 )  
 YELLOW FREIGHT SYSTEM, INC., )  
 a corporation, and WILLIAM )  
 FRAZIER, )  
 )  
 Defendants. )

FILED

FEB 6 1980

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

ORDER OF DISMISSAL

NOW on this 6th day of <sup>February</sup> ~~January~~, 1980, upon consideration of the joint Application of the parties hereto for an Order of Dismissal With Prejudice of Plaintiff's actions pending herein, I, the undersigned Judge of the United States District Court for the Northern District of Oklahoma, do enter this Order dismissing Plaintiff's actions with prejudice to refiling same.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's actions pending herein are hereby dismissed with prejudice to refiling same.

151 Thomas R. Britt  
UNITED STATES DISTRICT JUDGE  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

COMMODITY OPTION CORPORATION, )  
an Oklahoma corporation, )  
Plaintiff )

vs. )

PUTS AND CALLS, INC., a )  
California corporation, and )  
PUTS AND CALLS OF OKLAHOMA, )  
INC., an Oklahoma corporation, )  
Defendants )

FEB 6 1980

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

CASE NO. 73-C-44  
(and 73-C-51, consolidated  
into 73-C-44)

ORDER OF DISMISSAL

NOW on this \_\_\_\_\_ day of January, 1980, the above matter comes on for review and consideration of Plaintiff's and Defendants' Application to Dismiss. The Court having reviewed the official Court records contained herein and having reviewed the Application, finds that Case No. 73-C-44 and Case No. 73-C-51, both consolidated into Case No. 73-C-44, should be dismissed accordingly.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that Case No. 73-C-44 and Case No. 73-C-51, both consolidated into Case No. 73-C-44, including complaints and cross claims, are hereby dismissed.

S/ THOMAS R. BRETT

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

APPROVED:

\_\_\_\_\_  
WILLIAM R. MOSS  
Attorney for Plaintiff

\_\_\_\_\_  
RICHARD T. SONBERG  
Attorney for Defendants



Court with instructions to remand the case to the Secretary. Ohler v. Secretary of H.E.W. of U.S., 583 F.2d 501 (10th Cir. 1978). An order was entered by this Court on October 30, 1978 remanding the case to the Secretary in accordance with the mandate of the Tenth Circuit Court of Appeals.

ADMINISTRATIVE HISTORY OF PLAINTIFF'S CLAIM FOLLOWING THE REMAND PURSUANT TO MANDATE OF THE TENTH CIRCUIT COURT OF APPEALS:

On October 23, 1979, the Appeals Council rendered its decision (TR-22-28) after considering the original record and additional evidence submitted after remand. Plaintiff's claim for benefits was denied by the Appeals Council.

Plaintiff has now filed a Motion for Summary Judgment and the matter is in a posture for dispositive determination by this Court.

PURPOSE OF THE ACT:

The purpose of Title VI is, in part, to provide benefits for coal miners who are totally disabled by pneumoconiosis. 30 U.S.C. §901. The Secretary of Health, Education and Welfare is charged with the responsibility of administering claims filed before December 31, 1973. 30 U.S.C. §924. The Secretary is also charged with the responsibility of promulgating regulations for the administration of the program. 30 U.S.C. §921. These regulations are found at 20 C.F.R. §§410.101 et seq. There are certain presumptions relating to a determination of the existence of pneumoconiosis established by the Act. 30 U.S.C. §921. These presumptions are repeated in the Secretary's regulations. 20 C.F.R. §§410.401 et seq.

JUDICIAL REVIEW:

Judicial review of administrative denials of applications for benefits under Title IV is conducted pursuant to 42 U.S.C. §405(g). Under this section the Secretary's decision must be affirmed if supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971). The evidence supporting the

administrative ruling must be sufficient to withstand a directed verdict. Consolo v. Federal Maritime Commission, 383 U.S. 607, 86 S.Ct. 1018, 16 L.Ed.2d 131 (1966); NLRB v. Columbian Enameling and Stamping Co., 306 U.S. 292, 59 S.Ct. 501, 83 L.Ed. 660 (1939). The possibility that inconsistent conclusions can be drawn from all the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Consolo v. Federal Maritime Commission, *supra*; NLRB v. Nevada Consolidated Copper Corp., 316 U. S. 105, 62 S.Ct. 960, 86 L.Ed. 1305 (1942).

In conducting an administrative review, this Court is required to examine the facts contained in the administrative record, evaluate the conflicts, and make a determination whether the facts support the several elements which make up the ultimate administrative decision. Heber Valley Milk Co. v. Butz, 503 F.2d 96 (10th Cir. 1974); Nickol v. United States, 501 F.2d 1389 (10th Cir. 1974) Judicial review is limited to an inquiry as to whether there is substantial evidence in the record as a whole to support the final decision of the Secretary. Hedge v. Richardson, 458 F.2d 1065 (10th Cir. 1972).

BLACK LUNG BENEFITS REFORM ACT OF 1977:

In remanding this case, the Tenth Circuit Court of Appeals said at page 506 (Ohler v. Secretary of H.E.W. of U.S., 583 F.2d 501):

"As evidence of the intentions of Congress the Black Lung Reform Act of 1977, 92 Stat. 95, 103-105, adds 30 U.S.C. §945, which will permit this claimant, if he should lose the present appeal, the right to have his claim reconsidered again by HEW on the record, or at claimant's option, to have it referred to the Secretary of Labor if he wishes to present additional medical or other evidence in support of his claim of disability."

The Federal Coal Mine Health & Safety Act contemplated that after a limited period of payments by the federal government, responsibility for the payment of black lung benefits was eventually to be born by the coal industry. 30 U.S.C. §901. Congress thus established two separate benefit programs. Under Part B, 30 U.S.C. §§921-925, the federal government would pay benefits to disabled miners who filed claims on or before June 30, 1973. The program under Part B was to be administered by HEW. Under Part C, 30 U.S.C.

§§931-940, responsibility for the payment of benefits with respect to claims filed after December 31, 1973, was placed upon the coal industry with the Secretary of Labor administering the program. Armstrong v. Califano, 599 F.2d 1282 (3rd Cir. 1979).

The 1972 amendment liberalized the standards to be applied in adjudicating the claims and created a number of presumptions facilitating proof of claims.

The Black Lung Reform Act of 1977 hereinabove referenced was enacted. 20 CFR §410.704(c) provides:

"(c) Effect of review of a pending part B claim under the BLBRA of 1977 on the pending claim. Part B claims pending before the Social Security Administration or the courts will continue to be processed under the old law at the same time that these claims are being reviewed by the Social Security Administration, at the claimant's request, under the BLBRA of 1977. Claimants would then have two separate and independent claims for benefits pending..."

The instant case is a review of a Part B claim under the 1969 Act, and the 1972 amendments thereto, and the Court will not consider the claim under the provisions of the 1977 Act. Treadway v. Califano, 584 F.2d 48 (4th Cir. 1978); Hill v. Califano, 592 F.2d 341 (6th Cir. 1979).

DECISION OF THE APPEALS COUNCIL AFTER REMAND:

In the instant case, after remand, the final administrative decision is evidenced by the Decision of the Appeals Council. (TR 22-28)

The Appeals Council determined that the plaintiff was not entitled to black lung benefits and made the following findings (TR 27):

"The Appeals Council makes the following findings with respect to the period prior to July 1, 1973, as to the claimant's entitlement to black lung benefits under Part B, Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended:

1. The claimant filed an application for black lung benefits on October 20, 1972.
2. The claimant was employed in the Nation's coal mines at least 15 years.
3. The credible evidence, including x-ray interpretations, pulmonary function and blood gas studies, and other relevant evidence, does not demonstrate the presence of pneumoconiosis or a totally disabling chronic respiratory or pulmonary impairment which could give rise to the presumption of total

"disability due to pneumoconiosis on or before June 30, 1973, or which could reasonably be related back to the pertinent period."

ISSUE TO BE DETERMINED:

The issue to be determined is whether the HEW findings are supported by substantial evidence.

CRITERIA FOR ESTABLISHMENT OF BENEFITS:

To establish entitlement to black lung benefits under the 1969 Act, as amended in 1972, plaintiff has the burden of showing "(1) that he is a coal miner, that he is totally disabled due to pneumoconiosis, and that his pneumoconiosis arose out of employment in the Nation's coal mines." 20 C.F.R. §410.410(b). Pneumoconiosis is defined as a "chronic dust disease of the lung arising out of employment in the nation's coal mines" or "any other chronic respiratory or pulmonary impairment." See 20 C.F.R. §§410.110(o)(1) and (2) and 410.401(b)(1) and (2). If the claimant can establish a specified number of years of coal mine employment, he will establish a presumption that he is totally disabled due to pneumoconiosis, but this presumption is rebuttable. 30 USC §903(c).

Plaintiff may establish his entitlement to black lung benefits under the Secretary's regulations by qualifying under either the interim or the permanent and adjudicatory rules contained therein.

In order to establish entitlement through the interim regulations found in 20 C.F.R. §410.490, plaintiff must provide either a chest x-ray, biopsy or autopsy establishing the existence of pneumoconiosis according to the standards of 20 C.F.R. §410.428 or a ventilatory study establishing the presence of a chronic respiratory or pulmonary disease which meets the certain specified values indicated in the table of 20 C.F.R. §410.490(b)(1)(ii).

Plaintiff may establish his entitlement to benefits under the permanent criteria set out in 20 C.F.R. §410.414. Said section provides three methods of establishing the existence of pneumoconiosis. The first is by chest x-ray, biopsy or autopsy pursuant to the provisions of 20 C.F.R. §410.428. 20 C.F.R. §410.414(a). The second method, found in 20 C.F.R. §410.414(b) provides a claimant with fifteen years of coal mining experience

is entitled to a presumption that he is totally disabled due to pneumoconiosis if he can provide other evidence establishing the existence of a totally disabling chronic respiratory or pulmonary impairment. 20 C.F.R. §§410.412, 410.422 and 410.426 are referenced therein. §410.412 defines total disability. §410.422 indicates the general criteria to be used in determining total disability. §410.426(b) sets out a table of ventilatory study values whereby a claimant may establish a totally disabling respiratory or pulmonary impairment. These criteria are more stringent than the interim criteria used in 20 C.F.R. §410.490(b)(1)(ii).

The third means by which plaintiff may establish he is entitled to black lung benefits under the permanent criteria is indicated in 20 C.F.R. §410.414(c). This section provides a finding of total disability may be made if plaintiff can establish pulmonary impairment through other relevant evidence and that such impairment arose out of employment in a coal mine. In this section "other relevant evidence" includes medical tests, medical history, evidence submitted by the miner's physician or his spouse's affidavits. This provision requires the showing of a disabling chronic respiratory impairment.

PLAINTIFF'S BACKGROUND:

Plaintiff was born January 6, 1908 and has a fifth grade education. The Administrative Law Judge originally found that "[T]he claimant alleges that he has worked in the coal mining industry for approximately 30 years and it appears that he last worked in the mining industry around 1948." (Orig. TR 16). Plaintiff was last substantially gainfully employed in 1971.

The Tenth Circuit Court of Appeals stated that claimant had more than 15 years in coal mining to qualify him for the most favorable presumptions as to disability under the law and regulations governing black lung benefit claims. Ohler v. Secretary of H.E.W. of U.S., 583 F.2d at 503.

MEDICAL EVIDENCE AS DELINEATED BY THE TENTH CIRCUIT COURT OF APPEALS FROM ORIGINAL RECORD:

1. A medical report dated December 18, 1973, by John S. Highland, M.D., showing Ohler had morning coughing and phlegm

problems, shortness of breath and pulmonary emphysema. It recorded Ohler's height as 67 inches.

2. A medical report of H. Wendelkin, M.D., dated February 2, 1973, indicating morning phlegm, all day coughing, shortness of breath and very mild emphysema. Lungs were said to be clear with normal excursion and heart normal (apparently from listening, not based upon x-ray). Ohler's height was recorded as 67 inches.

3. An x-ray report dated February 2, 1973, interpreted by Meyer W. Jacobson, M.D., as normal with no active disease and negative for pneumoconiosis. Pulmonary function studies of the same date, apparently interpreted by Dr. Jacobson showed FEV<sub>1</sub> was 2.5 liters and MVV was 55.8 liters.

4. Pulmonary function studies dated October 29, 1974, taken at the Oklahoma State Sanatorium by Glen P. Dewberry, M.D., showing FEV<sub>1</sub> was 2.0 liters, without listing any MVV. The report stated a diagnosis of "pulmonary insufficiency due to chronic restrictive and obstructive pulmonary disease." There was reference to an x-ray of the same date, but no interpretation is shown. Ohler's height was listed in this report as 69 inches.

5. Medical report dated April 14, 1975, by Dr. Frank L. Bradley, diagnosed Mr. Ohler as suffering from pneumoconiosis and cor pulmonale. The report referred to an x-ray report, to pulmonary function tests showing FEV<sub>1</sub> of 2.39 liters and MVV of 51 liters, and to other data. This report listed Ohler's height as 68 inches.

ADDITIONAL MEDICAL EVIDENCE SUBMITTED AND CONSIDERED BY THE APPEALS COUNCIL SUBSEQUENT TO REMAND:

Plaintiff's true height is 68 inches. (ER 54)

Plaintiff submitted the following medical evidence for consideration by the Appeals Council:

(A) The April 14, 1975 report of Dr. Frank Bradley hereinbefore referenced.

(B) A medical report dated September 21, 1979, by Dr. Frank Bradley. Dr. Bradley did not repeat the pulmonary function tests

determining that they were of "little or no value in making a diagnosis of coal-miner's pneumoconiosis." There is no indication in the report that x-rays were taken. His revised diagnosis after re-examination was:

- (1) Coal-miner's pneumoconiosis with early complications;
- (2) Cardiac insufficiency from number (1);
- (3) Cardio-Respiratory Impairment 100% for gainful occupation.

Dr. Bradley concluded the condition was irreversible and that there was no treatment.

(C) Dr. Earl M. Woodson rendered a report dated September 5, 1979.

He stated as to the spirogram:

"The spirogram is the best of three attempts and was made with good cooperation. Vital capacity predicted 4.0 liters per minute (sic), observed 3.10 liters per minute. 1 second VC predicted 2.9 liters per second, observed 2.39 liters per second. 1/2 second VC predicted 2.1 liters per second, observed 1.86 liters per second. MVV predicted 103 liters per minute, observed 51 liters per minute. Blood gas analysis; pCO<sub>2</sub> 33 mm/Hg. p. o<sub>2</sub> 78 mm/Hg. Blood count normal."

He commented on the X-ray:

"X-ray: right lung; There is emphysema in the apex with some extension shows some interstitial fibrosis with a few small nodular opacities with one large opacity. The lower third shows more dense interstitial fibrosis, bronchial thickening and numerous small and large smooth and irregular opacities. The hilum on the right side also shows many large fibrotic opacities. Left lung; This lung also shows some alveolar destruction (sic) in the apex. From the middle lung field to the base there is increasing density of interstitial fibrosis, bronchial thickening and numerous small smooth opacities. The cardiac silhouette is enlarged with a prominence of the right ventricle."

His diagnosis was:

1. Impaired vision,
2. Cataract of the left eye,
3. Chronic otitis media,
4. Impaired hearing,
5. Arthritis of the right and left shoulder,
6. Osteoarthritis of the cervical, dorsal and lumbar spine;
7. Arthritis of the right and left knee,
8. Chronic bronchitis,
9. Heart enlargement downward, to the left,
10. Arteriosclerotic heart disease with angina pectoris,

11. Valvular heart disease involving the mitral valve,
12. Emphysema,
13. Coal miner's pneumoconiosis,
14. Numbness of the right left hip and ankle,
15. Sciaticia-right due to old fracture of the right ankle,
16. Large umbilical (sic) hernia,
17. Limp on right leg, due to P O fracture of right ankle.

Dr. Woodson further stated the heart ailments and the heart disease were secondary to coal miner pneumoconiosis; the emphysema and coal miner's pneumoconiosis have existed since prior to January 1, 1973, and the emphysema and coal miner's pneumoconiosis were not amendable (sic) to present day therapy. Prognosis was unfavorable.

The decision of the Appeals Council reveals that after remand, chest X-rays were obtained and forwarded to Jerome F. Wiot, M.D., a Board-certified radiologist and certified "B" X-ray reader for rereading separately and in series. Dr. Wiot's reports reveal: The April 14, 1975 X-ray was unreadable because it was on micro-film. (TR 63) The October 29, 1974 X-ray was acceptable and showed no pneumoconiosis; no suspect cor pulmonale; no enlarged heart abnormality. (TR 64) The February 2, 1973 X-ray was unreadable. (TR 65)

The Appeals Council referred the record to Dr. Wilder P. Montgomery, a medical consultant to the Office of Hearing Appeals. Dr. Montgomery rendered a report dated August 18, 1979 (TR 67-68). From the record now before the Court, it appears that Dr. Montgomery did not have available the medical information submitted by plaintiff subsequent to his report (Reports of Dr. Bradley dated September 21, 1979, and Dr. Woodson dated September 5, 1979).

Dr. Montgomery evaluated plaintiff's ventilatory studies and found that the February 2, 1973 test revealed an FEV<sub>1</sub> of 2.5 liters and concluded that said value did not meet the listing for a miner with a height of 68 inches.<sup>1</sup>

---

1 To demonstrate a chronic respiratory disease predicated on ventilatory studies the studies must show a value equal to or less than that provided in 20 C.F.R. §410.490(b)(1)(1977). The criteria set forth is

Height of Claimant	FEV <sub>1</sub>	MVV
68 inches	2.4	96

He noted that Dr. Bradley reported on April 2, 1975, that plaintiff's FEV<sub>1</sub> was 2.39 liters and his MVV was 51 liters per minute. Dr. Montgomery concluded the spirometric tracing reproduction furnished showed no meaningful curves and that a review of the study for validity was not possible. He did state:

"...However, considering that an FEV<sub>1</sub> 5 months before the expiration date for Social Security jurisdiction (June 30, 1973) was 2.5 liters, and considering that .083 liter is said to be the average rate of decrease in the FEV<sub>1</sub> in chronic obstructive lung disease, it would be my feeling that on June 30, 1973, the claimant showed no equivalence with the appropriate figures as listed in the Table in Paragraph 410.490. Considering the figure of 2.39 liters obtained on April 2, 1975, I would again come to the conclusion of no equivalence with the Table on June 30, 1973, or before."

Dr. Montgomery's report further stated:

"On physical examination in April 1975, there was some diminution in the breath sounds and the breath sounds in the middle lobe areas were also said to be roughened and tubular. In the lower third, fine moist rales were heard. Expansion of the chest was limited but equal. It was suspected that there was some cardiac enlargement; what aroused the suspicion was not stated. The claimant appeared to have difficulty breathing while sitting and talking. On blood gas analysis the PCO<sub>2</sub> was 33 mmHg., and the PO<sub>2</sub> was 78 mmHg., demonstrating no hypoxemia. The somewhat decreased carbon dioxide tension suggested hypoventilation which could have been one of the causes of the claimant's apparent difficulty in breathing. On chest X-ray the heart was said to be enlarged with prominence of the right ventricle. The examiner commented 'Cor pulmonale is another fact of the physical examination that lends support to the following diagnosis(sic).' The physical findings suggest heart or lung disease or both. They are not adequate for a diagnosis of cor pulmonale. Cor pulmonale may be suspected from chest X-ray findings. The pulmonary function study on April 2, 1975, showing a value for the FEV<sub>1</sub> of 2.39 indicates that the value reported for the FEV<sub>1</sub> (2.0 liters) on October 29, 1974 (Exhibit AC-1), in an undocumented study, probably does not represent maximal effort on the part of the claimant at that time.

On physical examination on December 18, 1973 (Exhibit 11), the claimant's lungs were clear. It was felt that there was normal excursion, and it was felt that the heart was normal. Thus, the abnormal physical findings noted in 1975 cannot be related to June 30, 1973.

Returning to the study of February 2, 1973, the vital capacity was 3.2 liters or 81 percent of the predicted, and the FEV<sub>1</sub> was 2.5 liters or 78 percent of the vital capacity. Table II in Guides to the Evaluation of Respiratory Impairments as published by the American Medical Association, November 22, 1965, indicates

"normal FEV<sub>1</sub> values for a man of 65 years and 68 inches, is 2.76 liters. Thus, at 2.5 liters, the claimant displayed an FEV<sub>1</sub> of 90 1/2 percent of the predicted. An FEV<sub>1</sub> of 78 percent of the total vital capacity or 90 1/2 percent of the predicted FEV<sub>1</sub> is essentially normal and demonstrates no significant impairment of breathing ability. Considering also that a limited arterial blood gas study as late as 1975 displayed no impairment it is my opinion that on or before June 30, 1973, there was no indication that the claimant had any significant impairment of respiration."

#### PRIOR BENEFITS:

The Appeals Council took note of the fact that at one time plaintiff received social security disability benefits and was awarded disability benefits by the Veterans Administration. Such awards of benefits are not binding on the Appeals Council. 20 CFR §410.470; cf. Mindrell v. Weinberger, 511 F.2d 1102 (10th Cir. 1975); Cupps v. Secretary of Health, Education and Welfare (unpublished opinion rendered Dec. 21, 1979, 10th Cir., #78-1677).

#### CONCLUSION

The Appeals Council found that the requirements for entitlement under the interim criteria were not met on the basis of chest x-rays or pulmonary function tests. Failing the interim criteria, plaintiff can still prove total disabling pneumoconiosis under the permanent rule (referred to by the Appeals Council as the continuing criteria). It was the judgment of the Appeals Council plaintiff also failed to meet the continuing criteria.

The Court finds that the only medical evidence submitted (reports of Drs. Wendelkin and Jacobson) dealing with the plaintiff's condition prior to the cut-off date for the Secretary's responsibility for the administration and payment of benefits under the Act did not conclude plaintiff had a chronic pulmonary disease or was disabled thereby. All other evidence submitted came into existence after the cut-off date (June 30, 1973) and is conflicting.

On the one hand there is the evidence of the reports of Drs. Wiot and Montgomery, neither of whom ever examined or saw the plaintiff, but examined and re-evaluated previous medical reports,

x-rays and test information. On the other hand, plaintiff has submitted medical reports of two physicians who have recently seen and examined the plaintiff and rendered opinions that relate back prior to the cut-off date of June 30, 1973.

30 U.S.C. §§911 (c)(4), 923(b) expressly state no claim for benefits shall be denied solely on the basis of chest X-rays negative for pneumoconiosis. Ohler v. Secretary of H.E.W. of U.S., supra, at 506.

20 CFR §410.424(b) permits the Secretary to designate one or more physicians relative to the question of medical equivalence. Thus a physician appointed by the Secretary would be authorized to render an independent opinion on the evidence. cf. Clarke v. Mathews, 420 F.Supp. 1050 (USDC Md. 1976); Richardson v. Perales, supra.

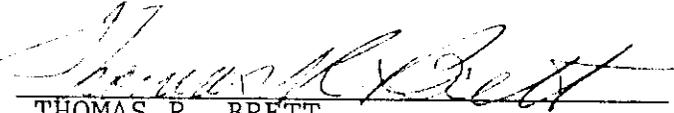
In Palusco v. Matthews, 573 F.2d 4, 10 (10th Cir. 1978) the Court stated:

"Those courts, supra, [Padavich v. Mathews, 561 F.2d 142 (8th Cir. 1977); Humphreville v. Mathews, 560 F.2d 347 (8th Cir. 1977); Talley v. Mathews, supra; Ingram v. Califano, 547 F.2d 904 (5th Cir. 1977); Begley v. Mathews, 544 F.2d 1345 (6th Cir. 1976)] have recognized that it is often difficult to prove that a miner is suffering from black lung disease. It is well-established medically that pneumoconiosis is a progressive disease which frequently defies diagnosis. (See, 1972 U.S. Code Congressional and Administrative News, pp. 2313-2320). There is no single effective method that can be used in diagnosing its presence. Thus, it was recognized by Congress that negative chest X-rays are not always definitive proof of absence of the disease. 30 U.S.C. §921(c)(4). Because of the progressive nature of the disease and the difficulty in making accurate diagnosis, many miners who were in fact disabled as a result of black lung disease were denied compensation. In recognition of this difficulty the circuit opinions heretofore cited have ameliorated the harsh position that total disability must be unqualifiedly shown to have existed as of June 30, 1973, by adopting the position that medical evidence obtained after that date can be used in determining eligibility dating back to June 30, 1973. Medical evidence obtained after the cut-off date is to be considered relevant in ascertaining when disability commenced. Humphreville, supra, at 350. Medical evidence obtained at any time is pertinent if it relates back to prove that black lung disease was present as of June 30, 1973. Ingram, supra, at 908. If it can be shown, through use of mathematical probabilities and relevant medical opinion, that the disease was present on June 30, 1973, then medical evidence obtained after that date will be accepted. Begley, supra, at 1354. Thus, throughout these opinions moves the underlying theme that a miner will be deemed eligible if it is probable that he was disabled as of June 30. This probability gives rise to a presumption which can be rebutted by HEW."

The Court finds based on the entire record the findings of the Appeals Council are supported by substantial evidence and are based upon the correct legal standards. The Court, therefore, finds that the plaintiff is not entitled to black lung benefits under 30 U.S.C. §901 et seq.

IT IS, THEREFORE, ORDERED that the plaintiff's Motion for Summary Judgment be and the same is hereby overruled and that judgment be entered in favor of the defendant and against the plaintiff.

ENTERED this 5 day of Feb., 1980.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



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

FILED

FEB 5 1980

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
EDITH D. CREASON, )  
 )  
Defendant. )

CIVIL ACTION NO. 79-C-652-B

DEFAULT JUDGMENT

This matter comes on for consideration this 15<sup>th</sup> day of ~~January~~ <sup>February</sup> 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Edith D. Creason, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Edith D. Creason, was personally served with Summons and Complaint on December 19, 1979, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Edith D. Creason, for the sum of \$730.00, plus the accrued interest of \$256.53, as of August 9, 1979, plus interest at 7%, from August 9, 1979, until the date of Judgment, plus interest at the legal rate on the principal sum of \$730.00, from the date of Judgment until paid.

S/ Thomas P. Bell  
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney  
Robert P. Santee  
ROBERT P. SANTEE  
Assistant U. S. Attorney

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

HYDRO CONDUIT CORPORATION, )  
)  
)  
Plaintiff, )  
)  
)  
vs. )  
)  
)  
JAMES W. MILLER, d/b/a MILLER )  
CONSTRUCTION COMPANY, UNITED )  
STATES FIDELITY AND GUARANTY )  
COMPANY, a Maryland corporation, )  
)  
)  
Defendants, )  
)  
)  
vs. )  
)  
)  
THE CITY OF BROKEN ARROW, )  
OKLAHOMA, )  
)  
)  
Defendant and Third )  
Party Plaintiff, )  
)  
)  
vs. )  
)  
)  
BENHAM-BLAIR & AFFILIATES, INC., )  
a Delaware corporation, d/b/a )  
W. R. HOLWAY AND ASSOCIATES, )  
)  
)  
Third Party Defendants. )

No. 76-C-154-B *filed*

**FILED**  
FEB 5 1980 *jm*  
Jack E. Silver, Clerk  
U. S. DISTRICT COURT

FINAL JUDGMENT

This cause came on for hearing on this 28th day of January, 1980, upon the various motions and applications of the parties which have been filed subsequent to the findings of fact and conclusions of law made by the Court after the trial of this cause on November 8, 1979, at which time James W. Miller appeared by his attorney, David H. Sanders; the City of Broken Arrow, Oklahoma, appeared by its attorney, Ray Wilburn, and Benham-Blair & Associates, Inc. appeared by its attorney, Harry Crowe. The

Court, after having heard and considered the testimony of witnesses sworn and examined in open court and having reviewed the files, transcript, and exhibits, and having heard the argument of counsel and being fully advised in the premises, finds that the findings of fact made and entered by the Court on November 8, 1979, should be modified in that the judgment that the defendant, James W. Miller, should have and recover from the defendant, The City of Broken Arrow, Oklahoma, should be reduced in that damages awarded for the loss of the use of the crane in the sum of \$45,000.00 should be reduced to \$22,500.00 and that it was the intention of the Court to award the City of Broken Arrow, Oklahoma, a credit for remedial work done in deeping the line in shale and for expenses incurred by The City of Broken Arrow, Oklahoma, in cleaning out the mud caused by Miller leaving the sewer end pipes open and that the Court has concluded that the sum of \$38,000.00 should be credited to The City of Broken Arrow, Oklahoma, for remedial work for which Miller is liable to it. That in addition to the \$19,550.00 heretofore credited to The City of Broken Arrow, Oklahoma, an additional sum of \$60,500.00 should be credited to The City of Broken Arrow, Oklahoma, for a total of \$80,050.00, reducing the full recovery of \$209,494.74 in favor of Miller and against The City of Broken Arrow, Oklahoma, to a net recovery of \$129,445.74 for which judgment should be entered in favor of Miller and against The City of Broken Arrow, Oklahoma.

The Court further finds that the defendant, James W. Miller, is ordered and directed to take over and defend The City of Broken Arrow, Oklahoma, in an action instituted in the District Court of Tulsa County, Oklahoma, by John M. Clark and Linda Ann Clark, as plaintiffs, and W. R. Holway and Associates, a division of Benham-Blair & Affiliaties, Inc., Miller Construction Company, and City of Broken Arrow, a muncipal corporation, as defendants, Cause No. C-75-2569, and shall defend "any matter

or thing arising from the Contractor's carrying on or manner of doing the work, or any act or omission on his part relative to the performance of his duties hereunder, and shall pay any and all judgments recovered by any and all persons for damages growing out of the execution of the work covered by this contract, whether such judgment or judgments be against the City, or any of its officers, agents or employees", without prejudice to the claims of Miller against The City of Broken Arrow, Oklahoma, if any he has, under Article XV of said contract.

The Court further finds that Miller is entitled to recover judgment of and from The City of Broken Arrow, Oklahoma, for a reasonable attorney's fee in the sum of \$25,000.00 and for its costs herein expended.

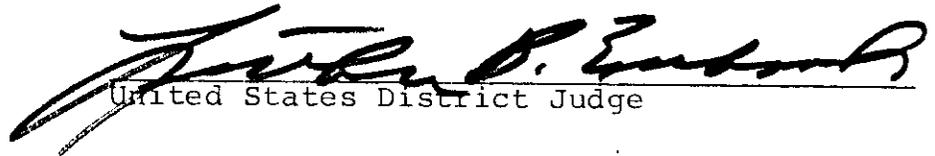
The Court further finds that judgment in favor of The City of Broken Arrow, Oklahoma, and against the third party defendant, Benham-Blair & Affiliates, Inc. should, likewise, be reduced from the sum of \$45,000.00 to the sum of \$22,500.00. The Court finds that the application and claim of The City of Broken Arrow, Oklahoma, for attorney's fees as against third party defendant, Benham-Blair & Affiliates, should be denied.

The Court further finds that all motions for modifications of the findings of fact entered herein on November 8, 1979, and request for additional findings of fact and conclusions of law except as herein sustained today, shall be overruled and that a final judgment should be rendered as hereinabove set forth.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that the defendant, James W. Miller, d/b/a Miller Construction Company, have and recover a judgment of and from the defendant, The City of Broken Arrow, Oklahoma, for the sum of \$129,445.74, with interest thereon at the rate of 6% per annum from February 2, 1976, until January 28, 1980, and thereafter at the rate of 12% per annum until paid in full.

and for the further sum of \$25,000.00 as attorney's fees and costs of this action.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED by the Court that third party plaintiff, The City of Broken Arrow, Oklahoma, have and recover a judgment of and from third party defendant, Benham-Blair & Affiliates, Inc., a Delaware corporation, d/b/a W. R. Holway and Associates, for the sum of \$22,500.00, with interest thereon at the rate of 12% per annum until paid in full, and for costs of this action.

  
United States District Judge

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

WALTER EUGENE HALL,  
Plaintiff,  
vs.  
W. B. YORK, a police  
officer with the City of  
Tulsa Police Department,  
Defendant.

No. 77-C-507-B

FILED

FEB 5 1980

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

O R D E R

This is an action by plaintiff seeking redress for the alleged violation of his civil rights [42 U.S.C. §1983]. Plaintiff alleges that on September 12, 1977, during the evening hours, the defendant, W. B. York, a police officer with the City of Tulsa, with other unknown officers of the Police Department, detained and arrested the plaintiff. Plaintiff further contends that at the time of his arrest he was kicked and shoved by the officers and when requested to cease, W. B. York struck or kicked plaintiff in the small of his back.

Plaintiff seeks compensatory damages in the amount of \$25,000 and punitive damages in a like amount.

The defendant, W. B. York, has filed a Motion for Summary Judgment. The Court has considered the entire file, all exhibits and affidavits of the parties, and the briefs submitted, and finds the Motion for Summary Judgment should be sustained for the following reasons.

The following facts are uncontroverted:

(i) Plaintiff was arrested by Officer J. R. Sale and Cpt. Gantt at 1:40 A.M., on the morning of September 13, 1977, at 11th and Yorktown in the City of Tulsa, Oklahoma. [Arrest Report and Supplemental Offense Report, Exhibits 1 and 2 attached to affidavit of Gordon L. Thompson, Captain, Commander of the Records Division.]

(ii) Officer W. B. York, was working the third shift from 3:30 P.M., until 11:30 P.M., on September 12, 1977. At 7:25 P.M.

on the evening of September 12, 1977 he received a call to go to 5318 East 11th Street in order to take reports pertaining to an alleged assault with a deadly weapon. Upon arrival he prepared a Miscellaneous Crime Report signed by Charles W. Papen, Manager of the Bellaire Motel; a Supplemental Crime Report, and a Suspect Supplemental Crime Report. He also obtained a statement from Mr. Papen's wife, one Jeneane Papen. [Affidavit of W. B. York]

(iii) At the conclusion of his shift Officer York returned home and remained off duty until 3:30 P.M., the next day. [Affidavit of W. B. York]

(iv) Plaintiff filed the instant action on the basis of information he allegedly received from the Public Defender assigned to represent him in the criminal proceedings arising out of his arrest. [Affidavit of Walter Eugene Hall]

(v) Officer W. B. York was not the officer who arrested the plaintiff nor did he participate in the actual arrest.

The movant has the burden of proving there is no genuine issue as to any material fact. F.R.Civ.P. 56(c). The movant has the burden of proving there is no genuine issue of any material fact, Adickes v. Kress & Co., 398 U.S. 144, 157 (1970), and must show entitlement to summary judgment beyond a doubt. Madison v. Deserte Livestock Co., 574 F.2d 1027, 1037 (10th Cir.1978) The opposing party must come forward to show the existence of a fact issue, unless the affidavit of the movant, standing alone, would be insufficient to sustain a directed verdict. Stevens v. Barnard, 512 F.2d 876, 878 (10th Cir. 1975)

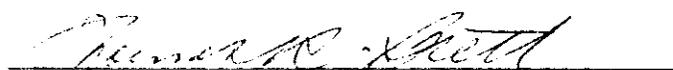
In considering a motion for summary judgment, the materials presented by the parties must be viewed in the light most favorable to the party opposing the motion. United States v. Diebold, Inc., 369 U.S. 654 (1962); McClelland v. Facticeau (10th Cir., Nov. 19, 1979), #77-1709.

The Court finds that the affidavit filed by the plaintiff does not controvert the evidence submitted by the defendant that he was not an arresting officer and was not in fact on duty at the time of the alleged incident.

The Court, therefore, finds that the defendant's Motion for Summary Judgment should be sustained, there being no genuine issue of material fact.

IT IS SO ORDERED.

ENTERED this 5 day of February, 1980.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

WALTER EUGENE HALL,

Plaintiff,

vs.

W. B. YORK, a police  
officer with the City of  
Tulsa Police Department,

Defendant.

No. 77-C-507-B

FILED

FEB 5 1980

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

JUDGMENT

Based on the Order filed this date, IT IS ORDERED that judgment be entered in favor of the defendant, W. B. York, and against the plaintiff, Walter Eugene Hall.

ENTERED this 5 day of February, 1980.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

FEB 5 1980

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

SKYMART AVIATION, INC., a Montana )  
corporation, and NATIONAL )  
AVIATION UNDERWRITERS, INC., )  
Plaintiffs, )  
vs. )  
AIR-KARE CORPORATION, an )  
Oklahoma corporation, )  
Defendant. )

No. 76-C-416-E ✓

O R D E R

This case was tried to a jury on December 3-4, 1979. Plaintiffs alleged that Defendant held a certain aircraft as a bailee for hire, and that during the term of this bailment, the aircraft was damaged by hail as a result of Defendant's failure to exercise ordinary care for the protection of the bailed property. In the Pre-trial Order, the parties stipulated and agreed that National Aviation Underwriters, Inc. was a proper party plaintiff, pursuant to its subrogation rights. The jury returned a verdict in favor of Plaintiffs and against Defendant, and assessed damages in the sum of \$15,000.00.

The Court now has before it for consideration Defendant's motion for new trial. In its motion, Defendant argues that the verdict is contrary to the law and the evidence, and that the evidence presented at trial is totally insufficient to sustain the verdict.

The Court's power to grant a new trial is governed by Rule 59, Fed.R.Civ.Pro. Rule 59(a)(1) provides that "a new trial may be granted ... for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States." See generally 6A Moore's Federal Practice ¶¶59.05[1], 59.05[2].

As to Defendant's contentions that certain rulings of the Court, and the giving of certain instructions to the jury, were erroneous, it suffices to say that at the time it took those actions, the Court believed its rulings and instructions to be correct,

and, after reviewing the file, the Court still believes so.

Defendant also argues that the evidence is insufficient to sustain the verdict. When the Court believes that the verdict is against the weight of the evidence, a new trial is proper, e.g., Holmes v. Wack, 464 F.2d 86 (Tenth Cir. 1972). However, the burden is upon the movant in a motion for new trial to demonstrate that "the verdict was clearly or overwhelmingly against the weight of the evidence." Prebble v. Brodrick, 535 F.2d 605, 617, (Tenth Cir. 1976). In the instant case, the Court is of the opinion that the evidence is sufficient to support the verdict.

Accordingly, the Court concludes that Defendant's Motion for New Trial should be denied.

IT IS THEREFORE ORDERED that Defendant's Motion for New Trial be, and the same hereby is, denied.

It is so Ordered this 5<sup>d</sup> day of February, 1980.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED  
FEB 4 1980  
Jack J. Silber, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Sharron M. Hodge, )  
 )  
Defendant. )

CIVIL ACTION NO. 79-C-577-QE

DEFAULT JUDGMENT

This matter comes on for consideration this 4th  
day of January, 1980, the Plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney for the Northern District of  
Oklahoma, and the Defendant, Sharron M. Hodge, appearing not.

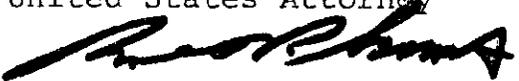
The Court being fully advised and having examined  
the file herein finds that Defendant, Sharron M. Hodge, was  
personally served with Summons and Complaint on January 4, 1980,  
and that Defendant has failed to answer herein and that default  
has been entered by the Clerk of this Court.

The Court further finds that the time within which  
the Defendant could have answered or otherwise moved as to the  
Complaint has expired, that the Defendant has not answered or  
otherwise moved and that the time for the Defendant to answer  
or otherwise move has not been extended, and that Plaintiff  
is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that  
the Plaintiff have and recover Judgment against Defendant,  
Sharron M. Hodge, for the principal sum of \$1,300.00, plus the  
accrued interest of \$253.60, as of August 30, 1979, plus interest  
at 7%, from August 30, 1979, until the date of Judgment, plus  
interest at the legal rate on the principal sum of \$1,300.00 from  
the date of Judgment until paid.

S/ JAMES O. ELISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney  
  
ROBERT P. SANTEE  
Assistant U. S. Attorney

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

FILED

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SHARON A. ISOM, )  
 )  
 Defendant. )

FEB 4 1980

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

CIVIL ACTION NO. 79-C-649-RE

DEFAULT JUDGMENT

This matter comes on for consideration this 4th  
day of January, 1980, the Plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney for the Northern District of  
Oklahoma, and the Defendant, Sharon A. Isom, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendant, Sharon A. Isom, was personally  
served with Summons and Complaint on December 28, 1979, and  
that Defendant has failed to answer herein and that default  
has been entered by the Clerk of this Court.

The Court further finds that the time within which  
the Defendant could have answered or otherwise moved as to the  
Complaint has expired, that the Defendant has not answered or  
otherwise moved and that the time for the Defendant to answer  
or otherwise move has not been extended, and that Plaintiff  
is entitled to Judgment as a matter of law.

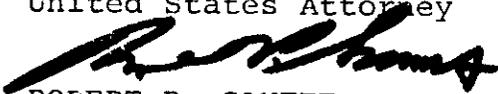
IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that  
the Plaintiff have and recover Judgment against Defendant,  
Sharon A. Isom, for the principal sum of \$837.89, plus the accrued  
interest of \$183.20, as of September 6, 1979, plus interest  
at 7% from September 6, 1979, until the date of Judgment, plus  
interest at the legal rate on the principal sum of \$837.89, from  
the date of Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney



ROBERT P. SANTEE  
Assistant U. S. Attorney

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

FEB 6 1980

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOAN M. WHELAN, )  
 )  
 Defendant. )

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

CIVIL ACTION NO. 79-C-510-B

DEFAULT JUDGMENT

This matter comes on for consideration this 13<sup>th</sup>  
day of ~~January~~ <sup>February</sup>, 1980, the Plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney for the Northern District of  
Oklahoma, and the Defendant, Joan M. Whelan, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendant, Joan M. Whelan, was personally  
served with Summons and Complaint on December 18, 1979, and  
that Defendant has failed to answer herein and that default  
has been entered by the Clerk of this Court.

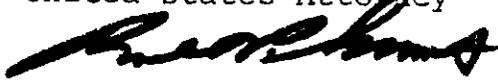
The Court further finds that the time within which  
the Defendant could have answered or otherwise moved as to the  
Complaint has expired, that the Defendant has not answered or  
otherwise moved and that the time for the Defendant to answer  
or otherwise move has not been extended, and that Plaintiff  
is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that  
the Plaintiff have and recover Judgment against Defendant,  
Joan M. Whelan, for the principal sum of \$2,000.00, plus the  
accrued interest of \$292.60, as of July 23, 1979, plus interest  
at 7% from July 23, 1979, until the date of Judgment, plus interest  
at the legal rate on the principal sum of \$2,000.00, from the  
date of Judgment until paid.

St Thomas C. Brett  
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney



ROBERT P. SANTEE  
Assistant U. S. Attorney