

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAR 31 1981 *AM*

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

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 78-C-154-E ✓
	)	
vs.	)	This action applies to all
	)	interests in the estate taken
218.14 Acres of Land, More or	)	in:
Less, Situate in Osage County,	)	
State of Oklahoma, and Henry	)	Tracts Nos. 114-1, 114-2,
C. Kohlmeyer, et al., and	)	114E-1 and 114E-2
Unknown Owners,	)	
	)	
Defendants.	)	This is Master File #405-3.

J U D G M E N T

1.

NOW, on this 21<sup>st</sup> day of March, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Amended Commissioner's Report filed herein on February 26, 1981, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

This judgment applies to the entire estates condemned in Tracts Nos. 114-1, 114-2, 114E-1 and 114E-2, as such estates and tracts are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, on April 7, 1978,

the United States of America filed its Declaration of Taking of certain estates in such tracts of land, and title to such property should be vested in the United States of America as of the date of filing such instrument.

6.

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

7.

The Amended Commissioner's Report filed herein on February 26, 1981, is accepted and adopted as findings of fact as to subject tracts. The amount of just compensation for the estates taken in the subject tracts, as fixed by the Commission, is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estates taken in subject tracts and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

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

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tracts, as such tracts are

described in the Complaint filed herein, and such property, to the extent of the estates described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of April 7, 1978, and all defendants herein and all other persons are forever barred from asserting any claim to such estates.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the estates taken herein in subject tracts were the defendants whose names appear below in paragraph 12, and the right to receive the just compensation for such estates is vested in the parties as set forth in such paragraph.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Amended Commissioner's Report filed herein on February 26, 1981, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property, as shown by the following schedule:

TRACTS NOS. 114-1, 114-2, 114E-1 & 114E-2

OWNERS:

Henry C. Kohlmeyer and  
Opal M. Kohlmeyer (H&W, J.T.)  
subject to a mortgage held by  
The Federal Land Bank of Wichita.

Since the filing of this case the deposit was disbursed jointly to the owners and mortgagee. The said mortgagee has acknowledged satisfaction of the mortgage and has disclaimed any further interest in the subject property.

Award of just compensation pursuant to Amended Commissioner's Report -	\$129,420.00	\$129,420.00
Deposited as estimated compensation ---	92,500.00	
Disbursed to owners -----		<u>92,500.00</u>
Balance due to owners -----		\$ 36,920.00 plus interest
Deposit deficiency -----	\$ 36,920.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for the subject tracts as shown in paragraph 12, in the total amount of \$36,920.00, together with interest on such deficiency at the rate of 6% per annum from April 7, 1978 until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tracts in this civil action.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tracts, jointly,

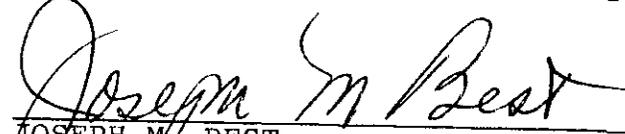
To -

Henry C. Kohlmeyer and  
Opal M. Kohlmeyer.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

  
JOSEPH M. BEST  
Attorney for Defendants

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAR 31 1981 *Agm*

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

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-79-E ✓
	)	
vs.	)	Tract No. 239M
	)	
923.79 Acres of Land, More or	)	All interests in the estate
Less, Situate in Washington	)	taken <u>except</u> all oil and gas
County, State of Oklahoma, and	)	leasehold interests
Richard Kane, et al., and	)	
Unknown Owners,	)	
	)	
Defendants.	)	(Included in D.T. Filed in Master File #400-14)

J U D G M E N T

1.

NOW, on this 31<sup>st</sup> day of March, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on March 2, 1981, and the Court, after having examined the files in this action and being advised by counsel for the parties, finds that:

2.

This judgment applies to the entire estate condemned in Tract No. 239M, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property

described above in paragraph 2. Pursuant thereto, on Feb. 13, 1979, the United States of America filed its Declaration of Taking of a certain estate in such tract of land, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

6.

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

7.

The Report of Commissioners filed herein on March 2, 1981, hereby is accepted and adopted as a finding of fact as to subject tract. The amount of just compensation for the estate taken in the subject tract, as fixed by the Commission, is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estate taken in subject tract and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendant named in paragraph 12 as owner of the estate taken in subject tract is the only defendant asserting any interest in such estate. All other defendants having either disclaimed or defaulted, the named defendant was (as of the date of taking) the owner of the estate condemned herein and, as such, is entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority

to condemn for public use the subject tract, as such tract is described in the Complaint filed herein, and such property, to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of February 13, 1979, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

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

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on March 2, 1981, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property, as shown by the following schedule:

TRACT NO. 239M

OWNER: Richard Kane

Award of just compensation pursuant to Commissioners' Report -----	\$221,000.00	\$221,000.00
Deposited as estimated compensation -	51,308.00	
Disbursed to owners -----		<u>51,308.00</u>
Balance due to owners -----		\$169,692.00
Deposit deficiency -----	\$169,692.00	plus interest

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owner the deposit deficiency for the subject tract as shown in paragraph 12, in the total amount of \$169,692.00, together with interest on such deficiency at the

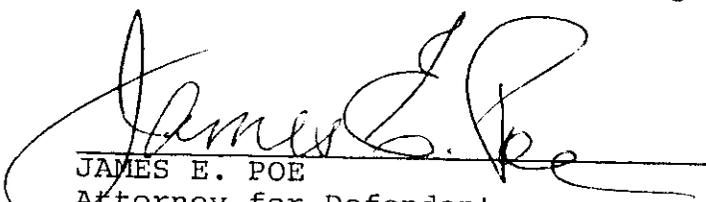
rate of 6% per annum from February 13, 1979, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tract in this civil action.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tract to Richard Kane.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

  
JAMES E. POE  
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**MAR 31 1981**

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

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-83-E
	)	
vs.	)	Tract No. 268M
	)	
40.00 Acres of Land, More or	)	All interests in the estate
Less, Situate in Washington	)	taken <u>except</u> the Oil and
County, State of Oklahoma,	)	Gas Leasehold Interest.
and Richard Kane, et al., and	)	
Unknown Owners,	)	
	)	
Defendants.	)	Included in D.T. filed in Master File #400-14)

J U D G M E N T

1.

NOW, on this 3 day of March, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on March 2, 1981, and the Court after having examined the files in this action and being advised by counsel for the parties, finds that:

2.

This judgment applies to the entire estate condemned in Tract No. 268M, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the subject property,

Pursuant thereto, on February 13, 1979, the United States of America filed its Declaration of Taking of a certain estate in such tract of land, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

6.

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

7.

The Report of Commissioners filed herein on March 2, 1981, hereby is accepted and adopted as a finding of fact as to subject tract. The amount of just compensation for the estate taken in the subject tract, as fixed by the Commission, is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estate taken in subject tract and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

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

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tract, as it is described in the

Complaint filed herein, and such property, to the extent of the estate described in such Complaint is condemned, and title thereto is vested in the United States of America, as of February 13, 1979, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

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

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on March 2, 1981, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estate taken in subject tract, as shown by the following schedule:

TRACT NO. 268M

OWNERS:

Richard Kane ----- 1/2  
 C. W. L. McCrory ----- 1/4  
 Nell McCrory ----- 1/4

Award of just compensation pursuant to Commissioners' Report -----	\$12,500.00	\$12,500.00
Deposited as estimated compensation --	3,275.00	
Disbursed to owners -----		<u>3,275.00</u>
Balance due to owners -----		\$ 9,225.00 plus interest
Deposit deficiency -----	\$ 9,225.00	

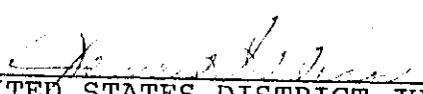
13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for the subject tract as shown in paragraph 12, in the total amount of \$9,225.00,

together with interest on such deficiency at the rate of 6% per annum from February 13, 1979, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tract in this civil action.

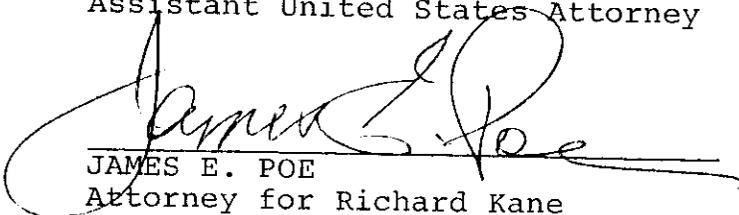
After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tract as follows:

Richard Kane ----- 1/2  
C. W. L. McCrory ----- 1/4  
Nell McCrory ----- 1/4.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

  
JAMES E. POE  
Attorney for Richard Kane

  
FRANK E. TURNER  
Attorney for C. W. L. McCrory and  
Nell McCrory

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

COMMUNICATION ASSOCIATES, INC.,  
an Oklahoma Corporation,

Plaintiff,

vs.

BELL & HOWELL COMPANY, an  
Illinois Corporation,

Defendant and Third-  
Party Plaintiff,

vs.

TELEX COMPUTER PRODUCTS, INC.,  
and TELEX SERVICE CORPORATION,

Third-Party Defendants.

vs.

AMPEX CORPORATION, a  
California Corporation,

Fourth-Party Defendant.

79-C-412-<sup>E</sup>~~D~~

**FILED**

**MAR 31 1981**

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

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 31<sup>st</sup> day of March, 1981, it is  
ordered that upon the stipulation of dismissal pursuant to  
Rule 41(a)(1)(ii) signed by all parties to this action and  
filed herein on the 30<sup>th</sup> day of March, 1981, the  
above entitled cause is and the same is hereby dismissed, each  
party to bear its own costs and attorney's fees.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

CLOYCE K. BOX, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THE FOURTH NATIONAL BANK )  
OF TULSA, OKLAHOMA, )  
 )  
Defendant. )

NO. 80-C-80-E

**FILED**

MAR 31 1981

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

ORDER OF DISMISSAL

Pursuant to the stipulation of the parties that the above-entitled action be dismissed with prejudice, the Court finds that this action should be dismissed with prejudice.

IT IS SO ORDERED this 31<sup>st</sup> day of March,  
1981.

By JAMES O. ELLISON  
\_\_\_\_\_  
JAMES O. ELLISON  
DISTRICT JUDGE

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

MARY LOU MCGILBRA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE WESTERN CASUALTY )  
 and SURETY COMPANY, )  
 )  
 Defendant. )

NO. 80-C-434-C ✓

**FILED**  
MAR 27 1981  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

ON This 27<sup>th</sup> day of March, 1981, upon the written application of the parties for A Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

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

APPROVALS:

JAMES R. GOTWALS

*James R. Gotwals*  
Attorney for Plaintiff,

ALFRED B. KNIGHT

*Alfred B. Knight*  
Attorney for Defendant.

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

FILED

MAR 27 1981 *pt*

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

DARYL WAYNE PARKER, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 80-C-619-BT ✓  
 )  
 JUDGE JAY DALTON, et al., )  
 )  
 Defendants. )

O R D E R

This case comes before the Court on a Motion to Dismiss by each of the defendants and a Motion for Summary Judgment by the pro se plaintiff. The defendants in this action are a District Judge, an Assistant District Attorney, and an Assistant Court Clerk. The plaintiff brings this action for a Judgment and Sentence on Plea of Guilty executed by Judge Jay Dalton which amended a previous Judgment and Sentence on Plea of Guilty Concurrent with Foreign Jurisdiction for the same offenses executed by Judge Raymond W. Graham. The second Judgment and Sentence deletes language specifying that the term of incarceration to be served by plaintiff should be concurrent with any term of incarceration plaintiff is required to serve for a separate anticipated federal offense. For the reasons set out below, defendants' Motion to Dismiss is hereby sustained. Consequently, plaintiff's Motion for Summary Judgment is rendered moot and is hereby denied.

It is settled law that an absolute immunity from prosecution defeats a suit under 42 U.S.C.A. §1983 at the outset so long as the official's actions were within the scope of the immunity. See Imbler v. Pachtman, 424 U.S. 409, 419 n.13 (1976). Therefore, the issue before the Court is whether the scope of the immunity available to each of the three officials encompasses the actions taken by each of the officials in the present case.

For purposes of a motion to dismiss it must be assumed that the plaintiff can prove the allegations of the complaint. See Rousselle v. Perez, 293 F.Supp. 298 (E.D. La.1968) Consequently, for purposes of this motion each of the allegations of the plaintiff shall be taken as true and the question of whether defendants enjoy immunity from a suit under §1983 must be answered in the context of these assumed facts.

District Judge Jay Dalton is alleged to have deprived plaintiff of his civil rights by amending a previous judgment and sentence order by deleting a provision permitting plaintiff to serve his state sentences concurrently with any sentence received for a violation of his federal parole. However, the Supreme Court has held:

"A judge will not be deprived of immunity because the action he took was in error, was done maliciously or was in excess of his authority; rather he will be subject to liability only when he acted in the 'clear absence of all jurisdiction.'" Stump v. Sparkman, 435 U.S. 349 (1978).

In the present case, the District Court is empowered to review all orders issued by the Court. See Hawkins v. Hurst, 467 P.2d 159 (Okla. 1970) Consequently, the facts do not evidence a "clear absence of all jurisdiction" and the judge is entitled to absolute immunity for his actions. Therefore, since District Judge Jay Dalton enjoys absolute immunity in the present case, the Motion to Dismiss of defendant Dalton is hereby sustained.

Plaintiff alleges that Assistant Court Clerk of Tulsa County, Bill Brightmire, violated plaintiff's constitutional rights and is subject to a suit under 42 U.S.C.A. §1983 by signing and filing the amended Judgment and Sentence signed by District Judge Dalton. However, a court clerk enjoys the same immunity as the judge when performing a ministerial function at the direction of the judge. See Williams v. Wood, 612 F.2d 982 (5th Cir.1980) In the present case the processing of the order

of Judge Jay Dalton was no more than the performance of a ministerial function. Therefore, defendant Brightmire enjoys the same absolute immunity from prosecution under §1983 as that enjoyed by Judge Jay Dalton. Consequently, the Motion to Dismiss of defendant Brightmire is hereby sustained.

Plaintiff alleges that the actions of Assistant District Attorney Ben Baker constituted a violation of plaintiff's constitutional rights and is subject to vindication under 42 U.S.C.A. §1983. Plaintiff alleges that defendant Baker initiated the signing of the amended order by Judge Jay Dalton. However, the same considerations of public policy that underlie the common law rule of absolute immunity of a prosecutor from a suit for malicious prosecution likewise dictate absolute immunity under §1983. Imbler v. Pachtman, District Attorney, 424 U.S. 409 (1976). As the Court stated in Imbler, "We conclude that the considerations outlined above dictate the same absolute immunity under §1983 that the prosecutor enjoys at common law." In the present case, Assistant District Attorney Ben Baker was acting within the scope of his authority to appear at the amending of plaintiff's sentence by Judge Jay Dalton. Consequently, defendant Baker was acting in pursuance of a criminal prosecution and accordingly enjoyed absolute immunity in the performance of his duties. Therefore, the Motion to Dismiss by defendant Baker is hereby sustained.

It should be noted that in sustaining the defendants' Motion to Dismiss in the present case the Court is not denying plaintiff relief from the situation in which he allegedly finds himself. Plaintiff alleges that he is presently serving two concurrent State sentences and is faced with the possibility of a subsequent federal sentence which would significantly lengthen his period of incarceration. Plaintiff further alleges that the agreed upon sentence was to

be in a federal institution according to the provisions of state law. This claim is more properly brought as a habeas corpus action attacking the "fact or duration of the prisoner's confinement." See Johnson v. Hardy, 601 F.2d 172 (5th Cir. 1979) The Court notes that in fact on November 7, 1980 plaintiff filed a habeas corpus action in Tulsa County District Court based upon the facts alleged in this lawsuit. This state action will resolve the issue as to whether the amendment to plaintiff's judgment and sentence was proper. Therefore, plaintiff's claim is not lost by the dismissal of the present action.

IT IS SO ORDERED .

ENTERED this 27<sup>th</sup> day of March, 1981.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

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

**MAR 27 1981**

JIM HALSEY COMPANY, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TOMMY OVERSTREET, )  
 )  
Defendant. )

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

No. 80-C-33-B

O R D E R

The matter came on for pre-trial conference, hearing on supplement to record, and renewed motion to dismiss filed by the defendant on March 5, 1981. Plaintiff appeared by its attorneys, John McCormick and Ron Grant, and defendant appeared by his attorney, Thomas Kirby.

This is an action for breach of contract. Defendant entered into what is called the "Halsey-Overstreet" contract, effective December 1, 1972, whereby he employed "Jim Halsey" to represent him as his exclusive manager in all business negotiations and matters relating to defendant's professional career, employment and publicity. The compensation provided in the contract was 20% of defendant's gross yearly earnings. The contract further provided it should be governed by the laws of the State of Oklahoma. Plaintiff alleges, pursuant to the terms of the employment contract, a recording contract was negotiated with ABC/DOT Recording Company, under the terms of which defendant was paid \$75,000.00. Plaintiff sues to recover a 20% fee, or \$15,000.00.

On August 28, 1980, the Court overruled the defendant's Motion to Dismiss for Lack of Personal Jurisdiction. In the same Order the Court provisionally sustained the defendant's Motion to Dismiss, pursuant to F.R.Civ.P. 17(a) and granted plaintiff 15 days to supplement the record with documentary evidence as to the real party in interest. Plaintiff has now supplemented the record, and in his response to the supplement, the defendant has renewed his Motion to Dismiss pursuant to F.R.Civ.P. 17(a).

The record<sup>1/</sup> submitted by plaintiff relates only to services performed by a booking agent. Article 25, Section 2, of the American Federation of Musicians Booking Agent Rules, Regulations & Guidelines [Defendant's Exhibit A] defines a "Booking Agent" as follows:

"For the purpose of these By-Laws, 'Booking Agent' means any person, firm or corporation who for a fee procures, offers, promises, or attempts to procure employment or engagements for musicians whether he or it performs additional services for musicians as artists' manager or personal manager or otherwise..."

On page 8 of the Rules and Regulations it is stated:

"An A.F. of M. member wishing to employ an A.F. of M. signatory agent as his exclusive agent, manager and representative, and an A.F. of M. signatory agent wishing to accept said employment, may negotiate an A.F. of M. agreement for such exclusivity.

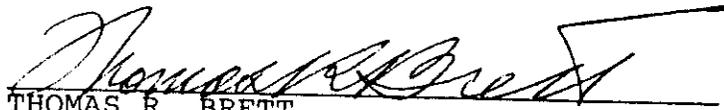
"All such negotiated exclusive agreements must be filed with the International President's Office for approval no later than 30 days from the execution date."

Thus under the American Federation of Musicians Booking Agent Rules, Regulations and Guidelines, an individual or entity is prohibited from providing services as a personal manager and at the same time as booking agent unless specifically approved by the International President's office.

The Court concludes under the documentary evidence supplementing the record defendant contracted with James A. Halsey individually in the "Halsey-Overstreet Contract" and James A. Halsey Company, Inc., performed services of a Booking Agent.

IT IS, THEREFORE, ORDERED the Motion to Dismiss pursuant to F.R.Civ.P. 17(a) is sustained and this case is dismissed without prejudice.

ENTERED this 27<sup>th</sup> day of March, 1981.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

---

<sup>1/</sup> Exhibits A-1 through A-35; Exhibits B-1 through B-24; Exhibits C-1 through C-8; Exhibits D-1 through D-3 and Exhibit E.

**United States District Court**

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 80-C-378-BT

Philip M. Lohman and  
Patricia J. Lohman, Plaintiffs,

vs.

New York Life Insurance Company,  
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, finding for the Plaintiffs.

It is Ordered and Adjudged upon the finding of the jury in favor of the  
plaintiffs, Philip M. Lohman and Patricia J. Lohman, and against the  
defendant, the New York Life Insurance Company, damages are assessed  
in the sum of \$35,000.00, plus interest at the rate of 6% from March  
18, 1980, as prayed for in their complaint filed in the District Court  
of Tulsa County, State of Oklahoma, on June 3, 1980, plus interest  
at the rate of 12% per annum from March 27, 1981, and Plaintiffs are  
awarded costs of the action.

**FILED**

**MAR 27 1981**

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

Dated at Tulsa, Oklahoma, this 27th day  
of March, 1981.

  
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

MAR 26 1981

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

IN RE:	)	
	)	
LEWIS TEMPLE PRICE, JR., a/k/a	)	
LEWIS T. PRICE, JR.,	)	
	)	No. 76-C-841 In Bankruptcy
Bankrupt,	)	
	)	
LEWIS TEMPLE PRICE, JR., a/k/a	)	Civil No. 80-C-465-BT
LEWIS T. PRICE, JR.,	)	
	)	
Plaintiff-Appellee,	)	
	)	
vs.	)	
	)	
C. ROBERT LEIKAM,	)	
	)	
Defendant-Appellant.)	)	

O R D E R

This case came on for oral argument pursuant to Bankruptcy Rule 809 on March 25, 1981. Plaintiff-Appellee appeared by his attorney, R. James Unruh. Defendant-Appellant appeared not and his counsel of record, H. Richard Raskin, appeared not although properly notified of the hearing. The Court finds the Order and Judgment of June 6, 1980 of the Bankruptcy Judge should be affirmed and adopted. On July 20, 1980, the Bankruptcy Judge entered an Order denying Leikam's Motion for Rehearing. On July 18, 1980, Leikam filed his Notice of Appeal to the District Court. On July 18, 1980, the Petition for Review was filed and on July 28, 1980, the Designation of Record was made by defendant/appellant Leikam. The Record on Appeal was filed in this Court on August 14, 1980. On September 17, 1980, Lewis Temple Price, Jr., ("Price") filed an Application to Dismiss for failure of Leikam to comply with Rule 808 of the Rules of Bankruptcy Procedure. On October 6, 1980, Leikam filed his response to the Application to Dismiss. Price filed a reply thereto on October 29, 1980, and on November 4, 1980, the Court entered its Order overruling the Application to Dismiss and granted Leikam until November 20, 1980, to file his brief. On November 25, 1980, Price once again filed a Motion

to Dismiss Appeal for failure of Leikam to comply with the Court's Order and court rules. On January 9, 1981, Leikam was ordered to respond to the Motion to Dismiss by January 16, 1981. On January 16, 1981, Leikam filed his brief in support of Petition for Review. Thereafter, the issues were joined and the matter is now ready for dispositive ruling. The Court finds the second Motion to Dismiss has been rendered moot by the filing of the Brief in Support of Petition for Review of Leikam on January 16, 1981.

Bankruptcy Rule 810 provides:

"Upon an appeal the district court may affirm, modify, or reverse a referee's judgment or order, or remand with instructions for further proceedings. The court shall accept the referee's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the referee to judge of the credibility of the witnesses."

The record for review in this case discloses the following facts.

Price filed a voluntary Petition in Bankruptcy on October 22, 1976. Leikam was listed as a creditor (although not as to the specific debt at issue on this appeal). Price received his discharge on November 23, 1976. The Bankruptcy Judge found Leikam did not dispute that he had actual notice of the pending bankruptcy case by virtue of the order and notice to creditors transmitted by the Bankruptcy Court shortly after the filing of the bankruptcy case.

Leikam failed to file a claim in the bankruptcy proceedings, failed to object to the discharge and did not file a complaint to determine dischargeability of the debt now sought to be enforced.

The file reveals a Judgment was entered in the District Court of Tulsa County, Oklahoma in Case No. C-73-1504 on July 17, 1975, as against "Leikam and Price, Inc.," an Oklahoma corporation. Through garnishment proceedings in that case, Leikam was determined to be individually liable for the

judgment and judgment was entered of record in the case on April 9, 1976 in the amount of \$17,172.00. This Judgment was appealed to the Supreme Court of the State of Oklahoma and the judgment of the lower court was affirmed on October 25, 1977. Leikam satisfied the Judgment on November 14, 1977.

On July 16, 1979, Leikam filed suit against Price for contribution under the provisions of 18 O.S. 1971, §1.175 in the District Court of Tulsa County, Oklahoma, being case number C-79-1512.

On September 11, 1979, the bankruptcy case was reopened and the bankrupt subsequently filed his complaint seeking a determination in bankruptcy and was discharged by the order of the Bankruptcy Judge previously entered in the bankruptcy case.

Leikam filed an answer to the complaint. Price filed a Motion for Summary Judgment and Leikam made no response. A hearing was had before the Bankruptcy Judge on April 17, 1980, and the Bankruptcy Judge took the matter under advisement and granted Leikam until April 30, 1980, to file any additional materials or briefs. No additional materials or briefs were filed by Leikam and the Bankruptcy Court entered judgment on June 6, 1980.

Leikam propounds two propositions in support of his position, i.e., (i) that his claim against Price was unliquidated, no final judgment having been rendered by the Supreme Court of the State of Oklahoma, and, therefore, was not a provable claim in bankruptcy and not dischargeable; and (ii) that the specific debt was not listed on the bankruptcy schedules and therefore was not dischargeable.

The Bankruptcy Act of 1898 (as amended) is applicable to the bankruptcy case filed September 9, 1976. Section 17 of the Bankruptcy Act, as amended June 22, 1938, Ch.575, Sec. 1, 52 Stat. 851, 11 U.S.C. §35 provides in pertinent part:

"A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as ... (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy."

There is no genuine issue as to any material fact that Leikam had notice and actual knowledge of the bankruptcy proceeding of Price.

In 1938 Section 63 of the Bankruptcy Act [formerly 11 U.S.C. §103] which describes the debts which are provable was amended to include "contingent debts and contingent contractual liabilities." 3A Collier on Bankruptcy, 14th Ed., ¶63.01, page 1759.

Also in 1938 Section 57 of the Bankruptcy Act [formerly 11 U.S.C. §93] was amended to provide, in pertinent part:

"...an unliquidated or contingent claim shall not be allowed unless liquidated or the amount thereof estimated in the manner and within the time directed by the court; and such claim shall not be allowed if the court shall determine that it is not capable of liquidation or reasonable estimation or that such liquidation or estimation would unduly delay the administration of the estate or any proceeding under this title."

3 Collier on Bankruptcy, 14th Ed., ¶57.15[3.2] et seq.

Section 63(d) as amended in 1938 [formerly 11 U.S.C. §103] provides a contingent debt may be proved and allowed against the estate of the Bankrupt. Read in conjunction with Section 57, it safeguards the rights of holders of unliquidated or contingent claims who have been unable to obtain an allowance of their claims. 3A Colliers on Bankruptcy, 14th Ed., ¶63.02[2.4].

The Bankruptcy Judge concluded the allowability of the debt or claim of defendant was never called into question due to the defendant's failure to file a proof of claim and that Leikam's claim was simply a debt which was provable under §63 of the Act and as such, was dischargeable.

The Court finds the Findings of Fact of the Bankruptcy Judge are not clearly erroneous and further finds the Order and Judgment of the Bankruptcy Court entered on June 6, 1980, should be adopted and affirmed.

ENTERED this 26<sup>th</sup> day of March, 1981.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

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

WAYNE H. CREASY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WALTERS & WALTERS, INC. )  
 a Texas Corporation, )  
 )  
 Defendant. )

**F I L E D**

**MAR 26 1981**

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

No. 80-C-629-B

ORDER OF DISMISSAL WITHOUT PREJUDICE

Now on this 26 day of March, 1981 the Application of the Plaintiff for Leave to Dismiss his claim for relief without prejudice to any future refiling thereof comes on for consideration by the Court. The Court notes that the parties have entered into a settlement agreement, a copy of which was attached to said application, which, upon performance, will appear to resolve all disputes pending between Plaintiff and Defendant. Accordingly, the Court finds that the Application should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the above entitled cause be, and the same is hereby ordered, dismissed without prejudice to any future refiling hereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE



# United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 78-C-416-BT

AIRE CARDINAL INTERNATIONAL, INC.,  
A California Corporation, Plaintiff,

vs.

UNITED AIR LEASING CORP.,  
Formerly UNITED AIRCRAFT LEASING CORP.,  
an Oklahoma Corporation, 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, finding for the Defendant.

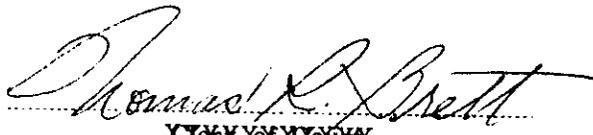
It is Ordered and Adjudged that judgment is hereby granted the defendant, UNITED AIRE LEASING CORP., Formerly UNITED AIRCRAFT LEASING CORP., an Oklahoma Corporation, and against the plaintiff, AIRE CARDINAL INTERNATIONAL, INC., A California Corporation, and the costs of this action.

FILED

MAR 25 1981

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

Dated at Tulsa, Oklahoma, this 25th day of March, 19 81.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**MAR 24 1981**

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

UNITED STATES OF AMERICA,	)	
	)	Civil Action No. 78-C-306-Bt
Plaintiff,	)	
	)	Tracts No. 164-A and
vs.	)	164E-5 through 164E-13
	)	
108.84 ACRES OF LAND, MORE	)	As to the leasehold interest
OR LESS, SITUATE IN	)	only
WASHINGTON COUNTY, STATE OF	)	
OKLAHOMA, and R. J. PATRICK,	)	(Included in D.T. filed in
ET AL., and UNKNOWN OWNERS,	)	master file #400-13
	)	
Defendants.	)	

J U D G M E N T

NOW, on this 23<sup>rd</sup> day of March, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on December 30, 1980, and the Court, after having examined the files in this action and being advised by counsel, finds that:

2.

This judgment applies to the entire estate condemned in Tracts Nos. 164-A and 164E-5 through 164E-13, inclusive, as such estate and tracts are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in Paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, on June 30, 1978, the United States of America filed its Declaration of Taking of a certain estate in such tracts of land, and title to such property

should be vested in the United States of America as of the date of filing such instrument.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the estate taken in the subject tracts certain money, none of which has been disbursed as set out below in Paragraph 11.

7.

The Report of Commissioners filed herein on December 30, 1980, is accepted and adopted as findings of fact as to subject tracts. The amount of just compensation for the estate taken in the subject tracts, as fixed by the Commission, is set out below in paragraph 11.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estate taken in subject tracts and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 11.

9.

The defendants named in paragraph 11 as owners of the estate taken in subject tracts are the only defendants asserting any interest in such estate. All other defendants having either disclaimed or defaulted, the named defendants were (as of the date of taking) the owners of the estate condemned herein and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

It Is, therefore ORDERED, ADJUDGED AND DECREED that the United States of America has the right, power and authority to condemn for public use the subject tracts, as such tracts are described in the Complaint filed herein, and such property, to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of

America, as of June 30, 1978, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED AND DECREED that on the date of taking in this case, the owners of the estate taken herein in subject tracts were the defendants whose names appear below in Paragraph 11, and that each of said defendants has executed unto R. J. Patrick a limited power of attorney, granting unto R. J. Patrick the right and privilege on behalf of each of said defendants, the right to receive the proceeds awarded to them, pursuant to the Report of Commissioners, in Case No. 78-C-306-B, dated December 30, 1980, and ultimately distributed to each of said defendants, after the deduction of all costs of the proceedings, including, but not limited to expert witness fee and legal expenses. That the original powers of attorney are attached hereto, marked Exhibit 1, and by reference incorporated herein and made a part of this judgment as if hereinafter more fully set forth.

TRACTS NOS. 164-A, & 164E-5 thru 164E-13, Incl.

OWNERS:

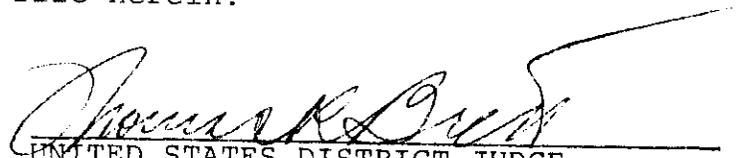
Sorores, Inc.	1/8
Ralph M. Reynolds	1/8
George Fudge	1/16
Stephen Fudge or Gail Fudge	1/16
James Gregg or Janet Gregg	1/16
Eugene Ricciardelli or Jeanne Ricciardelli	1/16
Charles McLaughlin	3/64
Edward Cunningham	3/64
Frederick L. Miles or Norma Miles	1/32
Roberto Quarta	1/32
Richard L. Fudge or Jane Fudge	1/32
Ronald Fudge or Marilyn P. Fudge	1/32
Mario Quarta	1/32
Albino Mari	1/32

Constance M. Johnson	1/32	
William A. Cerretani	1/32	
James G. Hanning	1/32	
Robert Contrino or Gretchen Contrino	1/32	
Michael Ristuccia or Sharon Ristuccia	1/32	
Robert L. Higginbottom	1/32	
Jack E. Tregellas	1/32	
Award of just compensation pursuant to Commissioners' Report -----	\$64,707.24	\$64,707.24
Deposited as estimated compensation -	15,540.00	
Disbursed to owners -----		.00
Balance due to owners -----		64,707.24
Deposit deficiency -----	\$49,167.24	Plus interest

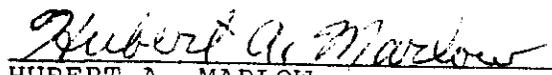
12.

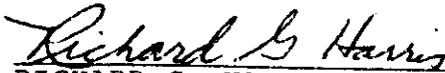
It Is Further ORDERED, ADJUDGED AND DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for the subject tracts as shown in Paragraph 11, in the total amount of \$49,167.24, together with interest on such deficiency at the rate of 6% per annum from June 30, 1978, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tracts in this civil action.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tracts to R. J. Patrick, Trustee for all of the individually named defendants set forth in paragraph 11 of the Journal Entry of Judgment on file herein.

  
 UNITED STATES DISTRICT JUDGE

APPROVED:

  
 HUBERT A. MARLOW  
 Assistant United States Attorney

  
 RICHARD G. HARRIS  
 Attorney for Defendants

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

NEOMA K. ARNOLD, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PATRICIA ROBERTS HARRIS, )  
Secretary of Health and )  
Human Services, )  
 )  
Defendant. )

Case No. 80-C-284-B ✓

FILED

MAR 24 1981 *jm*

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

MEMORANDUM OPINION

Plaintiff, Neoma K. Arnold, brings this action pursuant to 42 U.S.C. §405(g), seeking judicial review of the final administrative decision of the Secretary of Health and Human Services denying her disability benefits provided for in Sections 216(i) and 223, respectively, of the Social Security Act, as amended. 42 U.S.C. §§416(i) and 423.

The record reveals that claimant has undergone two distinct periods of disability. The first period of disability resulted from depression and anxiety beginning August 6, 1972. The period of disability ceased effective November 1974 as a result of her completion of a nine month period of trial work and activity. (TR 11)

The present period of disability resulted from a herniated nucleus pulposus and began March 12, 1976. However, claimant subsequently was denied benefits following improvement in her condition. She filed a request for a hearing on July 27, 1979. After due notice a hearing was held on September 14, 1979 before an Administrative Law Judge, where claimant was represented by counsel. (TR 9) On December 19, 1979, the Administrative Law Judge filed his decision, denying the plaintiff benefits as of December 1978. This decision was affirmed by the Appeals Council and plaintiff thereafter commenced this action requesting judicial review.

An applicant for Social Security Disability Benefits has the burden of establishing her disability. McMillin v. Gardner, 384 F.2d 596 (10th Cir. 1967); Stevens v. Mathews, 418 F.Supp. 881 (W.D. Okl. 1976); Dicks v. Weinberger, 390 F.Supp. 600 (W.D. Okl. 1974); See also Johnson v. Finch, 437 F.2d 1321 (10th Cir. 1971).

The term "disability" is defined in the Social Security Act as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which...has lasted...for a continuous period of not less than 12 months." 42 U.S.C. §§416(i)(1)(A); 423(d)(1)(A); 20 C.F.R. 404.1501(a)(i).

The scope of the Court's review authority is narrowly limited by 42 U.S.C. §405(g). The Secretary's decision must be affirmed if supported by substantial evidence. Gardner v. Bishop, 362 F.2d 917 (10th Cir. 1966); Stevens v. Mathews, supra. Substantial evidence is more than a scintilla. It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389 (1971); Beasley v. Califano, 608 F.2d 1162 (8th Cir. 1979); Stevens v. Mathews, supra. However, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Consolo v. Federal Maritime Commission, 383 U.S. 607 (1966); Stevens v. Mathews, supra.

In conducting this judicial review, it is the duty of this Court to examine the facts contained in the record, evaluate the conflicts and make a determination therefrom 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); Stevens v. Mathews, supra. In this case, the ultimate administrative decision is contained in the Findings of the Administrative Law Judge before whom plaintiff originally appeared. The Findings of the Administrative Law Judge were as follows: (TR 14-15)

1. Claimant testified she was born February 7, 1933, completed a high school education and has previously been employed as a utility operator in a machine shop, wrapper, and graft typer.

2. Claimant met the special earnings requirements of the Act for disability purposes on March 12, 1976, the date of onset of disability, and continues to meet said requirements through the date of this decision.
3. Claimant was found to be disabled commencing March 12, 1976 as a result of a herniated nucleus pulposus and as it was anticipated her disability would not be permanent, the case was diaried for re-examination.
4. The medical evidence shows that beginning October 1978 claimant's impairments had improved and she had the functional capacity to see, hear, grasp, sit, stand and walk alternately for an eight hour period.
5. Said functional capacity would permit claimant to perform jobs of a sedentary nature.
6. Claimant has the residual functional capacity for sedentary work as defined by Section 404.1510(b) of SubPart P, Regulation No. 4.
7. Rule 201.22 of Table 1 of Appendix II, 20 C.F.R. 404.1500 directs that claimant, considering the maximum sustained work capacity, age, education, and work experience be found not disabled.
8. Claimant has no impairment or combination of impairments since October 1978 which would prevent her from engaging in all substantial gainful activity.

The elements of proof which should be considered in determining whether plaintiff has established a disability within the meaning of the Act are: (1) objective medical facts; (2) medical opinions; (3) subjective evidence of pain and disability; and (4) the claimant's age, education and work experience. Hicks v. Gardner, 393 F.2d 299 (4th Cir. 1968); Stevens v. Mathews, *supra*; Morgan v. Gardner, 254 F.Supp. 977 (N.D.Okla. 1966); Meek v. Califano, 488 F.Supp.26 (D. Neb. 1979).

On August 25, 1976 plaintiff filed an application for disability insurance benefits arising out of a herniated nucleus pulposus. Disability benefits were awarded plaintiff beginning March 12, 1976. However, the Bureau of Disability Insurance found that claimant's disability ended in October 1978 and that her last benefits were due for December 1978. (TR 10-11)

Claimant was born February 7, 1933. (TR 101) She completed a high school education and has previously been employed as a utility operator in a machine shop, a wrapper and a graft typer. (TR 11) She testified that she feels she has not recovered from her disability and remains unable to engage in any type of substantial gainful work activity as a result of constant back pain and depression. (TR 42) She further testified that she lives alone with her nine year old adopted boy and spends her time each day merely "laying around." (TR 44)

Claimant's sister, Margaret Fugett, testified that she looks in on her sister every day that her sister does not stay over at her house. She further testified that she performs a number of household duties for claimant including cooking, washing and preparing claimant's adopted nine year old boy for school. (TR 52-53).

In determining the extent of claimant's disability the Administrative Law Judge relied primarily upon the following evidence: The report by David Bell, M.D., describing the condition of claimant's back; report by John C. Dague, M.D., analyzing the claimant's back condition; a discharge report and final diagnosis from Saint Francis Hospital regarding claimant's back condition; a report by Lynwood Heaver, M.D., a psychiatrist, analyzing claimant's mental condition; a report from Jane Phillips Hospital in Bartlesville diagnosing a duodenal ulcer; and a report by Edward K. Norfleet, M.D., a psychiatrist, diagnosing claimant's recent mental condition as a psychoneurotic depressive reaction.

David Bell, M.D., detailed the low back surgery and laminectomy claimant underwent in March 1976. However, Dr. Bell made no prognosis in regard to claimant's long term ability to engage in substantial gainful activity.

John C. Dague, M.D., noted that claimant suffered a reduction of the normal range of motion of the lumbar spine with palpable tenderness in the lower lumbar area. Dr. Dague concluded his report as follows:

"This woman has the usual findings of pain and stiffness in the lower back with left sciatica following low back surgery. The history of residual pain in the calves and swelling of the lower legs is suggestive of a vascular problem, probably phlebitis. Her condition is stabilized in that she will likely remain in her present state indefinitely. She is not in need of additional treatment at present. She does have disability which is of a permanent nature. She is capable only of sedentary level of physical activity." (TR 171)

The report from Saint Francis Hospital revealed that an electromyogram and a myelogram were performed during claimant's periods of hospitalization and both were interpreted as negative. The report concluded that claimant was discharged with a final diagnosis of chronic low back discomfort. (TR 12)

Lynwood Heaver, M.D., in his report of January 20, 1979 focused on claimant's psychological problems. Dr. Heaver's report stated in part:

"From the highlights of her history mentioned above, it is evident that this lady has been carrying a considerable stressful burden for some time; the sudden cut-off of her rather meager income has posed immediate and serious problem for her in survival. It is highly likely therefore that what pain she has been experiencing over the past year or so has been subject to considerable increase in its intensity, duration and distribution by virtue of the emotional overlay implied by the above data.

"I have discussed with her the possibilities that her pain intensity has been aggravated by her emotional problems and stresses. At present she seems to have little or no capacity to either understand or accept this type of formulation. It is conceivable that with a sufficient period of time and repetition of the concept she might be able to manage her pain more successfully and to take more responsibility for some of its component intensities. For the present, however, it would seem to me that any recommendation for extended psychotherapy with a view to relieving her pain is not at present a timely one. She does not seem at present to be chronologically depressed but should that occur in the future it would be well to refer her back to her original psychiatrist, Dr. Norfleet." (TR 182-183)

The report from Jane Phillips Hospital signed by C. L. Johnson, M.D., recites that claimant entered the hospital with a low back syndrome, possibly a recurrent disc disease. The "Progress Notes and Discharge Summary" signed by C. L. Johnson, M.D., on July 30, 1979, states as follows:

"[Claimant] was treated with conservative physiotherapy and traction and leaves the hospital in good condition with no apparent pain. She was found to have a recurrence of her duodenal ulcer while in the hospital and she will be treated on an outpatient basis for this." (TR 198)

The report of Edward K. Norfleet, M.D., provides a history of claimant's mental condition in addition to a current analysis. The report, contained in a letter of September 13, 1979 to attorney Harry V. Rouse provides in applicable part:

"This will inform you that Mrs. Arnold has been seen intermittently by the undersigned since August 7, 1972. She was initially referred to me by Dr. C. E. Woodard and she was hospitalized at Saint Francis Hospital. On that occasion her hospitalization was rather prolonged and rather hectic. To begin with she was flagrantly psychotic when brought to the hospital and she was dismissed with a diagnosis of psychosis, unclassified type. She had done fairly well since then but chiefly, in the main and for the most part, her adjustment has been marginal at best...

"...At the time of my last visit with Mrs. Arnold she appeared to be extremely nervous and it is obvious that she fragments rather easily. She apparently has no suicidal ideation at this point although she has demonstrated such an ideation in the past. She demonstrates no real thinking disorder at this time. She is able to carry thought to its logical conclusion without difficulty. Her affect is noted to be depressed. I have seen her in the past when she was very psychotic. She is not psychotic at this point. She is oriented in all three spheres. I certainly feel that she continues to suffer from a psychoneurotic depressive reaction of some magnitude. It is my further feeling that she will have some difficulty in working with peers and she would have difficulty in carrying out both simple and complex instructions. She continues to have some deficit in focusing attention and she has a deficit in concentration as well. If one talks to her for a long period of time one sees evidence of depersonalization. It is my feeling that logical reasoning for her becomes very difficult also... She obviously does have difficulty in thinking including ability to concentrate and a lack of decisiveness. She is ambivalent as well. She has a rather marked loss of interest with diminished involvement in work and recreation...She distracts rather easily. At this point it is my opinion that this lady suffers with a psychoneurotic depressive reaction of some magnitude. She is not able to work in a competitive work environment at this point. I do not feel that she is going to be substantially rehabilitated. It is my opinion that she can handle money benefits in her own interest..." (TR 192-193)

In assessing the above medical testimony the Administrative Law Judge concluded, "The foregoing medical evidence and testimony are convincing the claimant, beginning October 1978 had regained the ability to perform substantial gainful work activity of a sedentary nature." (TR 13) In assessing the evidence as a whole, including the credibility of the claimant as a witness, the Administrative Law Judge stated, "The Administrative Law Judge is convinced that while claimant may be somewhat depressed as the result of the loss of her Social Security benefits, she has, in fact, demonstrated a capacity to engage in substantial gainful work activity in spite of her depressive tendencies in the past. There is no evidence that claimant's present mental state will continue indefinitely or for a period of time exceeding twelve months, nor is there evidence of severe mental illness which would prevent sedentary work activity if claimant chose to engage in some type of work." (TR 13)

The Court finds that the record clearly supports the conclusion that the claimant's back injury alone does not constitute a disability since it does not prevent gainful activity of a sedentary nature. In this regard, the Court is in agreement with the Administrative Law Judge. However, the Court concludes when claimant's physical infirmity is coupled with her mental condition, the record as a whole does not impel the conclusion that claimant is able to engage in substantial gainful activity. Consequently, the Court finds the record is incomplete and presently does not support the conclusion of the Administrative Law Judge that "Claimant has no impairment or combination of impairments since October 1978 which would prevent her from engaging in all substantial gainful activity." (TR 15)

It is settled law that remand is proper in a social security disability case when evidence gathered by the examiner does not adequately develop the extent of claimant's disability. See e.g. Talifero v. Califano, 426 F.Supp. 1380 (W.D.Mo.1977). In the present case, further evidence is necessary to determine the combined effect of claimant's mental and physical problems.

In brief, plaintiff states that she would be agreeable to a remand of the case for testimony by vocational experts. While choosing to remand the case, the Court declines to narrow the scope of the inquiry to testimony by vocational experts. The issue on remand is whether the combined effect of claimant's physical and mental problems prevents her from engaging in substantial gainful activity.

On remand the burden is on the Government to show that the claimant is capable of engaging in other substantial gainful activity since claimant has previously shown her inability to return to her previous position. Compare Davidson v. Gardner, 370 F.2d 803 (6th Cir. 1966). Under 20 C.F.R. §404.1509(c) the Administrative Law Judge is authorized to take administrative notice of the existence of sedentary jobs which exist in significant numbers in the regions where claimant is capable of performing. However, due to claimant's mental condition, the existence of sedentary jobs in general is not conclusive as to the availability of gainful activity as to this claimant. Therefore, this regulation is not applicable in this case.

This case is hereby remanded to the Administrative Law Judge for further findings and conclusions in accordance with this opinion.

IT IS SO ORDERED.

Entered this 24<sup>th</sup> day of March, 1981.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

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

NEOMA K. ARNOLD,  
Plaintiff,  
vs.  
PATRICIA ROBERTS HARRIS,  
Secretary of Health and  
Human Services,  
Defendants.

Case No. 80-C-284-B

FILED

MAR 24 1981

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

O R D E R

This cause having been considered by the Court on the pleadings, the entire record certified to this Court by the defendant, Secretary of Health and Human Services of the United States of America (Secretary), and after due proceedings had, and upon examination of the pleadings and record filed herein, including the Briefs submitted by the parties, the Court is of the opinion as shown by its Memorandum Opinion filed simultaneously herewith that the final decision of the Secretary is not supported by substantial evidence as required by the Social Security Act.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the case be remanded to the Administrative Law Judge for additional findings in accordance with the Memorandum Opinion of the Court.

DATED this 24 day of March, 1981.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA



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

CLYDE N. BLACKABY,  
SSA/N: 447-30-1349,

Plaintiff,

vs.

PATRICIA HARRIS, Secretary of  
Health, Education, and Welfare  
of the United States of America,

Defendant.

No. 80-C-242-B

**FILED**

**MAR 23 1981**

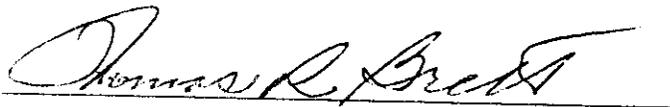
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

This cause having been considered by the Court on the pleadings, the entire record certified to this Court by the defendant, Secretary of Health and Human Services of the United States of America (Secretary), and after due proceedings had, and upon examination of the pleadings and record filed herein, including the briefs submitted by the parties, the Court is of the opinion as shown by its Memorandum Opinion filed simultaneously herewith that the final decision of the Secretary is supported by substantial evidence as required by the Social Security Act, and should be affirmed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the final decision of the Secretary should be and hereby is affirmed.

DATED this 23<sup>rd</sup> day of March, 1981.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA



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

FILED

OPAL SLINKARD; and )  
BILLIE LEE SLINKARD, )  
Executor of the Estate of )  
W.H. SLINKARD, Deceased, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
AETNA LIFE INSURANCE COMPANY )  
a corporation, and TRW, INC., )  
 )  
Defendants. )

MAR 23 1981

Jack C. Silver, Clerk  
U S DISTRICT COURT

NO. 79-C-139-BT

ORDER OF DISMISSAL

ON This 23 day of March, 1981, upon the written application of the parties for A Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

S/ THOMAS R. BRETT  
\_\_\_\_\_  
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

GARRISON, BROWN & CARLSON

By: *Levin R. Garrison*  
Attorney for the Plaintiffs,

RICHARD D. WAGNER  
*Richard D. Wagner*  
Attorney for the Defendant.



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

FILED

ALLAN EDWARDS COMPANY, )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
NORVELL WILDER SUPPLY )  
COMPANY, a Texas corporation, )  
 )  
Defendant. )

MAR 23 1981

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

No. 80-C-137-B ✓

STIPULATED ORDER OF DISMISSAL

IT IS HEREBY STIPULATED, by and between counsel for all parties hereto, subject to the approval of the Court, as follows:

1. The parties have reached an amicable settlement of the claims presented by the Complaint.
2. All claims presented by the Complaint and all claims of Defendant arising from the facts and circumstances as set out in the pleadings shall be dismissed with prejudice as to all parties pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.
3. Each party shall bear its own costs and attorney fees.

DATED this 19 day of March, 1981.

*Frank R. Patton, Jr.*

FRANK R. PATTON, JR.  
Morrel, Herrold, West, Hodgson,  
Shelton & Striplin, P. A.  
4111 S. Darlington, Suite 600  
Tulsa, Oklahoma 74135  
(918) 664-2424

Attorneys for Plaintiff.

*Frederick N. Schneider, III*

FREDERICK N. SCHNEIDER, III  
Boone, Smith, Davis and Minter  
900 World Building  
Tulsa, Oklahoma 74103  
(918) 587-000

Attorneys for Defendant.

SQ ORDERED:

*Thomas L. Britt*  
United States District Judge  
Date: March 23 1981.



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

TERRELL D. PALMER,  
an individual,  
Plaintiff,

vs.

HARRY BECKO and G. W. POLLARD,  
Individuals, d/b/a BECKO  
POLLARD OIL COMPANY,  
Defendants.

RUSSELL BILBY,  
an individual,  
Plaintiff,

vs.

HARRY BECKO and G. W. POLLARD,  
individuals d/b/a BECKO  
POLLARD OIL COMPANY,  
Defendants.

TERRELL D. PALMER,  
an individual,  
Plaintiff,

vs.

HARRY BECKO and G. W. POLLARD,  
individuals d/b/a BECKO  
POLLARD OIL COMPANY,  
Defendants.

TERRELL D. PALMER,  
an individual,  
Plaintiff,

vs.

HARRY BECKO and G. W. POLLARD,  
individuals d/b/a BECKO  
POLLARD OIL COMPANY,  
Defendants.

PAT O'HARA,  
an individual,  
Plaintiff,

vs.

HARRY BECKO and G. W. POLLARD,  
Jr., individuals d/b/a  
BECKO POLLARD OIL CO.,  
Defendants.

No. C-80-413-E ✓

**FILED**

MAR 20 1981 *hm*

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

No. C-80-414-E

No. C-80-415-E

No. C-80-416-E

No. C-80-504-E

STIPULATION FOR DISMISSAL  
WITH PREJUDICE

Plaintiff, Terrell D. Palmer, and Defendants, Harry Becko and G. W. Pollard, Jr., individuals d/b/a Becko Pollard Oil Company, hereby stipulate by and through their respective attorneys that each of Plaintiff's complaints in Case Nos. C-80-413-E, C-80-415-E and C-80-416-E, and each counter-claim of said Defendants in Case Nos. C-80-413-E, C-80-415-E and C-80-416-E be dismissed with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure.

This Stipulation has no effect upon the actions styled Russell Bilby v. Harry Becko, et al., Case No. C-80-414-E, and Pat O'Hara v. Harry Becko, et al., Case No. C-80-504-E, which actions are still pending herein.

So stipulated this 15<sup>th</sup> day of MARCH, 1981.

BLACKSTOCK, JOYCE, POLLARD,  
BLACKSTOCK & MONTGOMERY

By Philip S. Haney  
Philip S. Haney  
Attorneys for Terrell D. Palmer  
515 South Main  
Tulsa, Oklahoma 74103

SNEED, LANG, ADAMS,  
HAMILTON, DOWNIE & BARNETT

By James C. Lang  
James C. Lang  
Attorneys for Defendants  
Fourth Floor  
Six East Fifth  
Tulsa, Oklahoma 74103  
(918) 583-3145

APPROVED:

James C. Lang  
UNITED STATES DISTRICT JUDGE

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

MAR 2 1981 *dt*

LEASE LIGHTS, INC., JACK R. SEAY, d/b/a SEAY ELECTRIC COMPANY, KNIGHT LIGHTS COMPANY, INC., and PROTECTIVE LIGHTING, INC.,  
Plaintiffs,  
vs.  
PUBLIC SERVICE COMPANY OF OKLAHOMA, a corporation,  
Defendant.

No. 77-C-417-E ✓

O R D E R

The Court has before it for consideration at this time Defendant's Motion for Directed Verdict, made pursuant to Rule 50(a), F.R.C.P. Having reviewed the briefs of the parties, the relevant authorities, and having heard the arguments of counsel, the Court concludes that Defendant's motion should be granted.

At the outset, the Court states that it does agree with the general principle argued by Plaintiffs. Summary procedures are always to be viewed with caution and employed with restraint, especially in those cases where the evidence is voluminous and the issues complex. This does not imply, however, that a complex case is somehow immune from the operation of Rule 50; it simply means that the Court must examine the Plaintiffs' evidence with more than the ordinary degree of caution. The Court's responsibility, when presented with a motion such as this, is clear, and cannot be evaded. The standard to be applied is well known and easily stated. The Court must view the evidence in this case in the light most favorable to Plaintiffs, without weighing the evidence or considering the credibility of witnesses, and the motion must not be granted unless the "evidence points all one way and cannot be the basis of reasonable inferences which sustain the position of the non-moving party." Wylie v. Ford Motor Co., 502 F.2d 1292, 1294 (Tenth Cir. 1974); Randolph v. Collectramatic, Inc., 590 F.2d 844, 848 (Tenth Cir. 1979); 9 Wright & Miller, Federal Practice and Procedure § 2524.

The Court will address the Defendant's arguments in the order of their presentation at the oral argument of the motion.

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Defendant first argued that the Plaintiffs' evidence was insufficient to establish any substantial adverse impact upon interstate commerce, a jurisdictional requirement, see, e.g., McLain v. Real Estate Bd. of New Orleans, 444 U.S. 232, 100 S.Ct. 502 (1980); Mortensen v. First Federal Savings and Loan Ass'n, 549 F.2d 884 (Third Cir. 1977). In the McLain case, supra, the Court said:

Although the cases demonstrate the breadth of Sherman Act prohibitions, jurisdiction may not be invoked under that statute unless the relevant aspect of interstate commerce is identified; it is not sufficient merely to rely on identification of a relevant local activity and to presume an interrelationship with some unspecified aspect of interstate commerce. To establish jurisdiction a plaintiff must allege the critical relationship in the pleadings and if these allegations are controverted must proceed to demonstrate by submission of evidence beyond the pleadings either that the defendants' activity is itself in interstate commerce or, if it is local in nature, that it has an effect on some other appreciable activity demonstrably in interstate commerce.

100 S.Ct. at 509.

The Plaintiffs herein contend that the business activity in question is the supplying of outdoor lighting to certain types of customers within the service area served by Defendant. It is not the rental of lights, poles and fixtures, but the rental of illumination. There is no dispute that the Defendant's service area is wholly within the State of Oklahoma. The Court, therefore, must conclude that because the business in question, as defined by the Plaintiffs, is wholly local in nature, the Plaintiffs' burden is to produce evidence which, when viewed in the light most favorable to Plaintiffs, shows that the Defendant's activity has an effect on some other appreciable activity demonstrably in interstate commerce.

In McLain, supra, the Court stated that the effect upon interstate commerce necessary to establish jurisdiction, must, "as a matter of practical economics ... have a not insubstantial effect on the interstate commerce involved." 100 S.Ct. at 511.

Plaintiffs' evidence on this crucial point shows that some of their customers were involved in interstate commerce (a trucking

company, for example), and that substantially all of the components used in the business (lights and poles) were manufactured outside of the State of Oklahoma. There is simply no evidence that the interstate business of Plaintiffs' customers was affected in anyway by any activity of the Defendant; nor is there any evidence that the commerce between the states in lights, poles, and fixtures was adversely affected by any activity of the Defendant. The Plaintiffs' evidence actually shows that this business was increasing steadily during the times in question herein.

The Court, upon its review of the Plaintiffs' evidence, can come to no conclusion other than that Plaintiffs have failed to produce any evidence showing that interstate commerce was adversely affected in any way by the Defendant's activities. There having been a failure to show that jurisdiction exists, this point alone would be sufficient to sustain Defendant's motion.

Defendant also argues that Plaintiffs have failed to establish the claimed relevant market. The Court is of the opinion that "relevant market" is peculiarly a question of fact, and that the Plaintiffs have presented sufficient evidence on this point. Although Plaintiffs' theory of the relevant market may be subject to attack by Defendant, whether the market is as Plaintiffs claim it to be would be submitted to the jury by the Court, were the other elements of the claim present, see, e.g., Cackling Acres, Inc. v. Olson Farms, Inc., 541 F.2d 242 (Tenth Cir. 1976), cert. denied, 429 U.S. 1122, 97 S.Ct. 1158 (1977).

The Defendant also argues that Plaintiffs' evidence is insufficient to establish that Defendant possesses monopoly power in any relevant market. In the Court's view, the Plaintiffs' evidence on this point is sufficient, although perilously close to being a "mere scintilla." Viewing the evidence as it must in considering this matter, the Court concludes that it would be sufficient, on this point, to submit to a jury.

Another contention of Defendant is that Plaintiffs' evidence fails to show any causal connections between the Defendant's activities

and the damages claimed by Plaintiffs. The Court does not believe that the doctrine of res ipsa loquitur can be engrafted upon a Sherman Act case. The simple fact that one business declines while another grows cannot be the basis for holding the latter to answer under the Sherman Act. In this case the Plaintiffs failed to present evidence by which the impact of Defendant's allegedly unlawful acts could be separated from lawful competition, certain of the Plaintiffs' own business decisions, actions taken by customers, and general increases in costs and labor over a period of years. This is not to say that a plaintiff in such a case must explain away all other imaginable causes, for such a requirement would be totally unreasonable. What a plaintiff must do, however, is to present evidence from which a jury could properly infer that a defendant's actions caused the plaintiff's harm. Although a plaintiff may "feel" that he has been harmed by the defendant, such speculation and assumption is not sufficient to allow a jury to return a verdict, and a court would be remiss in allowing such speculation or guesswork to take place. See, e.g., Herman Schwabe, Inc. v. United Shoe Machinery Corp., 297 F.2d 906 (Second Cir.), cert. denied, 369 U.S. 856, 82 S.Ct. 1031 (1962); ILC Peripherals Leasing Corp. v. International Business Machines Corp., 458 F.Supp. 423 (N.D. Cal. 1978).

Defendant's motion for directed verdict on this ground must be granted.

Defendant also raises as one of the grounds for its motion the insufficiency of Plaintiffs' evidence as to proof of the amount of damages sustained. Although the Court does not agree that an exact apportionment of damages claimed to each alleged wrongful act is required, neither does the Court believe that a jury should be allowed to speculate as to the amount of damages sustained. Precision is not required, but speculation is not tolerated, see Bigelow v. RKO Radio Pictures, Inc., 327 U.S. 251, 66 S.Ct. 574 (1946). The Plaintiffs' evidence on this point is extremely weak, but it is there, and it is not so "clearly incredible" as to allow the Court to exclude it from consideration, Wylie v. Ford Motor Co., supra. The Court would submit this issue

to the jury, had the other requirements been met.

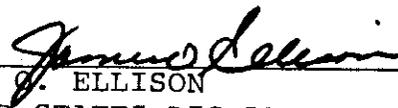
Defendant argued, in addition to the grounds treated above, the lawfulness of the individual acts alleged by the Plaintiffs. It is the Court's view that these are, in reality, but more specific instances subsumed within the general areas already discussed, and there is, therefore, no need to treat each alleged act individually.

Defendant's final argument was that the evidence shows it to be a regulated entity immune from the application of the Sherman Act under Parker v. Brown, 317 U.S. 341, 63 S.Ct. 307 (1943). As the Court understands the law, immunity is a defense to be proved by a defendant, and need not be negated by a plaintiff. Although there is evidence showing that Defendant was and is subject to regulation by the Oklahoma Corporation Commission, this alone does not confer immunity; other facts and circumstances must be present, see, e.g., City of Lafayette v. Louisiana Power and Light Co., 435 U.S. 389, 98 S.Ct. 1123 (1978); Bates v. State Bar of Arizona, 433 U.S. 350, 97 S.Ct. 2691 (1977); Cantor v. Detroit Edison Co., 428 U.S. 579, 96 S.Ct. 3110 (1976); Goldforb v. Virginia State Bar, 421 U.S. 773, 95 S.Ct. 2004 (1975). There being no evidence of the facts and circumstances surrounding the scope and extent of the Corporation Commission's regulation of Defendant, the Court is of the opinion that a ruling on this point would be, at this time, premature. The Court in no way, of course, intimates how it would decide this question were it in a proper posture for ruling.

In accordance with the foregoing discussion of the grounds asserted by Defendant,

IT IS ORDERED that Defendant's motion for directed verdict be, and the same hereby is, sustained.

It is so Ordered this 19<sup>TH</sup> day of March, 1981.

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

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LARRY W. TERRY and )  
 LORA J. TERRY, )  
 )  
 Defendants. )

CIVIL ACTION NO. 80-C-<sup>514-B</sup>~~634-E~~

*[Handwritten initials]*

MAR 20 1981

NOTICE OF DISMISSAL

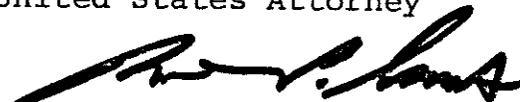
JACK G. SPOTT, CLERK  
U. S. DISTRICT COURT

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 20 day of March, 1981.

UNITED STATES OF AMERICA

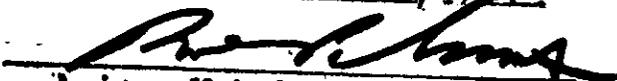
HUBERT H. BRYANT  
United States Attorney



ROBERT P. SANTEE  
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy  
of the foregoing pleading was served on each  
of the parties hereto by mailing the same to  
them or to their attorneys of record on the  
20 day of March, 1981

  
Assistant United States Attorney

**United States District Court**

**MAR 20 1981**

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

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

CIVIL ACTION FILE NO. 80-C-178-BT

Norman Jackson, Plaintiff, and  
Yellow Freight System Inc., Intervenor,

vs.

Ford Motor Company of Dearborn Michigan,  
Defendant.

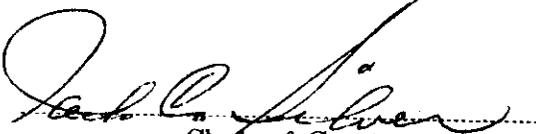
JUDGMENT

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 finding for the Defendant.

It is Ordered and Adjudged that judgment is hereby granted the defendant,  
Ford Motor Company of Dearborn Michigan, and against the plaintiff,  
Norman Jackson, and against the intervenor, Yellow Freight System, Inc.,  
and the costs of this action.

Dated at Tulsa, Oklahoma, this 20th day  
of March, 1981.

  
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

FILED  
MAR 19 1981  
U.S. DISTRICT COURT

GEORGE S. LAMBERT, d/b/a )  
LAMBERT ENTERPRISES, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
E. C. YEGEN, )  
 )  
Defendant. )

No. 80-C-123-BT ✓

J U D G M E N T

Based on the Findings of Fact and Conclusions of Law filed this date, IT IS ORDERED JUDGMENT BE ENTERED as follows:

1. The assignment covered the North Fugate lease dated July 6, 1978, from George S. Lambert, d/b/a Lambert Enterprises to E. C. Yegen, filed of record on July 7, 1978, in Book 4339 at pages 141-142 of the records of the County Clerk of Tulsa County, Oklahoma, covering the following described property:

All of the North Half (N/2) of the Northwest Quarter (NW/4) of Section 32, Township 21 North, Range 13 East, Tulsa County, Oklahoma, containing 80 acres, more or less,

is reformed to read as follows:

(a) After the fourth paragraph's ending on the top portion of the second page the following is to be inserted:

"The carried interest abovementioned is not intended to be an override or net profits interest but is a reservation by party of the first part of a reversionary interest only, with all of his interest and proceeds therefrom to belong to and are hereby assigned to the party of the second part until such time as party of the second part has fully recouped all costs and expenses advanced by party of the second part for the drilling, completion, and operating of the well(s) placed on said lease. At such time as this full recoupment occurs, then and only then does party of the first part, his successors and assigns, receive his carried interest with attendant proceeds therefrom; party of the first part, his successors and assigns, having the continuing obligation to pay his share of all future operating expenses of said lease."

(b) The fifth paragraph in the mid-portion of the second page is to be deleted and the following insertion substituted therefor:

"Now, therefore, for and in consideration of the sum of ten dollars, and other good and valuable considerations including promises made and agreed to herein, together with the conditions, covenants, and agreements hereinafter contained and set forth and to be performed and kept by the parties hereto, their successors and assigns, the said party of the first part does hereby assign, set over, transfer and convey unto said party of the second part, his successors and assigns, all of his working interest (subject to the 3/16ths overriding royalty and subject to and excepting the 1/8th of the 7/8th working interest granted and transferred) in and to the oil and gas mining lease aforesaid, and all the rights thereunder or incident thereto; with party of the first party reserving unto himself, his successors and assigns a reversionary right to have and receive back from party of the second part twenty per cent of that interest hereby conveyed when, and only when, party of the second part has fully recouped all costs and expenses advanced by the party of the second part for the drilling, completion, and operating of the well(s) placed on said lease,"

2. Judgment in favor of E. C. Yegen and against George S. Lambert, d/b/a Lambert Enterprises for failure to assign the agreed working interest in the South Fugate lease in the amount of \$160,200.00, plus interest at the rate of 12% from the date of judgment and the costs of this action without attorneys fees.

ENTERED this 19<sup>th</sup> day of March, 1981.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

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

GEORGE S. LAMBERT, d/b/a )  
LAMBERT ENTERPRISES, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
E. C. YEGEN, )  
 )  
Defendant. )

MAR 19 1981 pt

No. 80-C-123-BT ✓

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for trial on February 24, 1981, on the Counterclaim of E. C. Yegen (hereinafter referred to as "Yegen") against George S. Lambert, d/b/a Lambert Enterprises (hereinafter referred to as "Lambert"). E. C. Yegen appeared in person and by his attorney, Nathan G. Graham. Lambert did not appear in person but did appear by his attorney, Janice Williams of Williams & Williams. The Court heard testimony and after considering the issues and relevant matters makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Shortly before June 30, 1978, Lambert and Yegen entered into an oral agreement by telephone whereby Yegen agreed to advance the costs of drilling wells on Lambert's soil and gas leasehold known as the North Fugate, being described as

All of the North Half (N/2) of the Northwest Quarter (NW/4) of Section 32, Township 21 North, Range 13 East, Tulsa County, Oklahoma, containing 80 acres, more or less.

Lambert had an existing oil and gas lease dated March 31, 1978, from Earnest A. Fugate and Mildred A. Fugate, as Lessors, and Lambert as Lessee. The lease expired June 30, 1978.

2. Lambert commenced drilling operations on the last day prior to the lease's expiration, and used the \$9,000.00 advanced by Yegen for such purpose [Yegen advanced the \$9,000.00 on or about June 30, 1978].

3. Without Yegen's knowledge or consent, Lambert executed an Assignment of Interest in Oil and Gas Lease covering the

North Fugate Lease in favor of Yegen on July 6, 1978, and recorded the assignment on July 7, 1978, in the office of the County Clerk of Tulsa County, Oklahoma, in Book 4339 at pages 141-142.

4. Yegen made demand for the assignment and Lambert told him the assignment was already recorded.

5. The assignment made and recorded by Lambert was deficient in that it did not accurately reflect the agreement of the parties. The parties had agreed shortly before June 30, 1978, that 20% of the 6/8ths working interest in said oil and gas lease to be reserved to Lambert was to be a carried working interest, whereby Yegen was to advance Lambert's share of the cost of drilling upon said lease, but was to hold the carried portion and all proceeds therefrom until Yegen recovered the monies advanced out of production first, and thereafter Lambert and Yegen would jointly own the net working interest and share in costs and receipts in proportion to the 20% interest of Lambert and the 80% interest of Yegen.

6. In addition to the assignment of the North Fugate property, in consideration of Yegen's agreement to advance drilling costs, Lambert agreed to execute and deliver an identical assignment of interest in another oil and gas lease covering 80 acres immediately south the North Fugate known as the South Fugate.

7. Yegen made demand upon Lambert to execute and deliver the assignment of the South Fugate and Lambert refused to make the assignment. Lambert, instead, sold his interests in the South Fugate to others, in violation of the parties agreement.

8. Yegen seeks reformation of the Assignment of July 6, 1978, as to the North Fugate lease and value of the production from the South Fugate lease which he should have received if Lambert has fulfilled the agreement.

9. Three producing wells have now been drilled on the South Fugate lease, having an average daily production of ten barrels of oil. The production from this lease is from the Bartlesville sand formation and daily production in that amount could reasonably be expected for at least two years, if not more. The reasonable value of one barrel of oil, after taxes, from the Bartlesville sand is \$30.00. The reserve calculation employed at this particular location of the Bartlesville producing sand is 1 barrel equals \$30,000.00 in reserves when oil is selling at \$30.00 per barrel. This provides a net recoverable figure for the reserves of the 3 wells in the South Fugate lease of \$300,000.00. By virtue of the failure of Lambert to make the assignment of 60% (80% of 6/8th working interest) of the working interest in the South Fugate lease, Yegen has sustained a loss of \$180,000; discounted to present value at 6% over two years is \$160,200.00.

#### CONCLUSIONS OF LAW

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

1. This Court has jurisdiction of the parties and the subject matter of this suit. 28 U.S.C. §1332.

2. The Assignment dated July 6, 1978, recorded in Book 4339 at pages 141-142 of the office of the County Clerk of Tulsa County, Oklahoma on July 7, 1978 covering:

All of the North Half (N/2) of the Northwest Quarter (NW/4) of Section 32, Township 21 North, Range 13 East, Tulsa County, Oklahoma, containing 80 acres, more or less,

should be reformed to read as follows:

(a) After the fourth paragraph's ending on the top portion of the second page the following is to be inserted:

"The carried interest abovementioned is not intended to be an override or net profits interest but is a reservation by party of the first part of a reversionary interest only, with all of his interest and proceeds therefrom to belong to and are hereby assigned to the party of the second part until such time as party of the second part has fully recouped all costs and expenses advanced by party of the second part for the drilling, completion, and operating of the well(s) placed on said lease. At such time as this full recoupment occurs, then and only then does party of the first part, his successors and assigns, receive his carried interest with attendant proceeds therefrom; party of the first part, his successors and assigns, having the continuing obligation to pay his share of all future operating expenses of said lease."

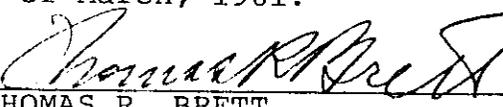
(b) The fifth paragraph in the mid-portion of the second page is to be deleted and the following insertion substituted therefor:

"Now, therefore, for and in consideration of the sum of ten dollars, and other good and valuable considerations including promises made and agreed to herein, together with the conditions, covenants, and agreements hereinafter contained and set forth and to be performed and kept by the parties hereto, their successors and assigns, the said party of the first part does hereby assign, set over, transfer and convey unto said party of the second part, his successors and assigns, all of his working interest (subject to the 3/16ths overriding royalty and subject to and excepting the 1/8th of the 7/8th working interest granted and transferred) in and to the oil and gas mining lease aforesaid, and all the rights thereunder or incident thereto; with party of the first part reserving unto himself, his successors and assigns a reversionary right to have and receive back from party of the second part twenty per cent of that interest hereby conveyed when, and only when, party of the second part has fully recouped all costs and expenses advanced by the party of the second part for the drilling, completion, and operating of the well(s) placed on said lease,"

3. Yegen is entitled to judgment against Lambert for failure to assign the agreed working interest in the South Fugate lease in the amount of \$160,200.00 (the present value of \$180,000 to be paid in two years at 6%).

4. A Judgment will be entered this date in conformity with these Findings of Fact and Conclusions of Law.

ENTERED this 19<sup>th</sup> day of March, 1981.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

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

MAR 19 1981

DYNASAUER CORP., )  
a Missouri corporation, )  
 )  
Plaintiff, )  
 )  
vs. ) NO. 80-C-48-B  
 )  
AMERICAN SAFETY SYSTEMS, INC., )  
an Oklahoma corporation, )  
 )  
Defendant. )

JUDGMENT AS TO DEFENDANT  
AMERICAN SAFETY SYSTEMS, INC.

THIS ACTION was considered by the Court on the 19 day of March, 1981, on Application fo the Plaintiff for the Entry of Default Judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure; it appearing to the Court that the Complaint in this action was filed on February 9, 1981, that Summons and Complaint were duly served on the Defendant, American Safety Systems, Inc. as required by law, it further appearing to the Court that said Defendant has wholly failed to enter its appearance in the action or otherwise plead, and has defaulted, and it further appearing that default was entered against the Defendant on the 17 day of March, 1981, by the Court Clerk, and that no proceedings have been taken by Defendant since entry of his default.

The Court, having reviewed the pleadings, Exhibits and Affidavits on file finds:

1. That the Defendant, AMERICAN SAFETY SYSTEMS, INC. is in default.
2. That Plaintiff is entitled to default judgment in its favor, for the relief prayed for.
3. That Plaintiff is the prevailing party and thereby entitled to an attorney fee award pursuant to Title 12, Oklahoma Statutes, Section 936.

4. That the Court finds, based upon Affidavits on file in the action, a reasonable attorney fee for Plaintiff is \$ 3800<sup>00</sup>.

IT IS ORDERED AND ADJUDGED BY THE COURT, that Plaintiff, DYNASAUER CORP. recover of Defendant, AMERICAN SAFETY SYSTEMS, INC. judgment in the sum of \$15,203.34 with 10% per annum on said sum from July, 1980, until date of judgment, and with interest on the judgment at the rate of 12% per annum until said judgment is satisfied, in accordance with Title 12 Oklahoma Statutes, Section 727(1) and all costs expended in the action.

IT IS FURTHER ORDERED AND ADJUDGED BY THE COURT, that Plaintiff DYNASAUER CORP. recover of Defendant, AMERICAN SAFETY SYSTEMS, INC. judgment for reasonable attorney fees in accordance with Title 12, Oklahoma Statutes, Section 936, determined by the Court to be the sum of \$ 3,800.

S/ THOMAS R DRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAR 18 1981

United States of America, )  
 )  
Plaintiff, )  
 )  
vs. ) CIVIL ACTION NO. 77-C-378-B ✓  
 )  
4.50 Acres of Land, More or ) Tract No. 3603E-4  
Less, Situate in Osage County, )  
State of Oklahoma, and )  
Clifford W. Lemmons, et al., )  
and Unknown Owners, )  
 )  
Defendants. ) (Included in D.T. filed in  
Master File #268-1408)

J U D G M E N T

1.

Now, on this 18<sup>th</sup> day of March, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 3603E-4, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on September 1, 1977, the

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

6.

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

7.

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

8.

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

9.

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

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tract No. 3603E-4, as such tract is

particularly described in the Complaint filed herein; and such tract, to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of September 1, 1977, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

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

12.

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

TRACT NO. 3603E-4

OWNERS:

As of the date of taking this property was owned by Clifford W. Lemmons and Mary D. Lemmons, husband and wife. Since the date of taking Clifford W. Lemmons has died and Mary D. Lemmons has succeeded to his interest, and she therefore is entitled to receive the award of just compensation.

Award of Just Compensation		
pursuant to Stipulation -----	\$600.00	\$600.00
Deposited as estimated compensation ---	400.00	
Disbursed to owners jointly -----		<u>400.00</u>
Balance due to owners -----		\$200.00
Deposit deficiency -----	\$200.00	

13.

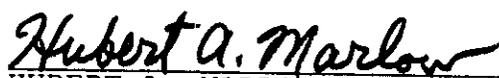
It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this

Court in this civil action, to the credit of subject tract, the deposit deficiency in the sum of \$200.00, and the Clerk of this Court then shall disburse the deposit for such tract as follows:

To: Mary D. Lemmons ----- \$200.00.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

  
ROBERT P. KELLY  
Attorney for Mary D. Lemmons

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAR 18 1981

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 78-C-108-Bt  
 )  
vs. ) This action applies only to  
 ) the Overriding Royalty  
19.12 Acres of Land, More or ) Interest in the Oil and Gas  
Less, Situate in Washington ) Leasehold Interest in:  
County, State of Oklahoma, and )  
C. W. McCrory, et al., and ) Tracts Nos. 218, 218E-1,  
Unknown Owners, ) 218E-2 and 218E-3  
 )  
 ) (Included in D.T. filed in  
Defendants. ) Master File #400-12)

J U D G M E N T

1.

Now, on this 13<sup>th</sup> day of March, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tracts Nos. 218, 218E-1, 218E-2 and 218E-3, as such estate and tracts are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described

in such Complaint. Pursuant thereto, on March 13, 1978, the United States of America filed its Declaration of Taking of such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing the Declaration of Taking.

6.

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

7.

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

8.

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

9.

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

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority

to condemn for public use the tracts listed in paragraph 2 herein, as such tracts are particularly described in the Complaint filed herein; and such tracts, to the extent of the estate described in such Complaint, are condemned, and title thereto is vested in the United States of America, as of March 13, 1978, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

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

12.

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

TRACTS NOS. 218, 218E-1, 218E-2 & 218E-3

(ORRI Only)

OWNERS:

C. W. McCrory ----- 1/2  
(A/K/A C.W.L. McCrory)

Nell McCrory ----- 1/2

Award of Just Compensation		
pursuant to Stipulation -----	\$5,000.00	\$5,000.00
Deposited as Estimated Compensation ---	4,123.00	
Disbursed to Owners -----		<u>4,123.00</u>
Balance Due to Owners -----		\$ 877.00
Deposit Deficiency -----	\$ 877.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court in this civil action, to the credit of subject tracts, the deposit deficiency in the sum of \$877.00, and the Clerk of this Court then shall disburse the deposit for such tracts as follows:

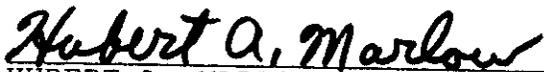
To:

C. W. L. McCrory ----- \$438.50

Nell McCrory ----- \$438.50.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

  
FRANK E. TURNER  
Attorney for Defendants

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

CENTRAL PENSION FUND OF THE INTERNATIONAL )  
UNION OF OPERATING ENGINEERS AND )  
PARTICIPATING EMPLOYERS, )  
OPERATING ENGINEERS LOCAL 101 PENSION FUND, )  
INTERNATIONAL UNION OF OPERATING ENGINEERS )  
AND PIPE LINE EMPLOYERS HEALTH AND WELFARE )  
FUND, )  
OPERATING ENGINEERS LOCAL 101 HEALTH AND )  
WELFARE FUND, )  
CONSTRUCTION INDUSTRY LABORERS WELFARE )  
FUND, LOCAL 101 HOISTING ENGINEERS )  
APPRENTICE AND SKILL IMPROVEMENT FUND, )  
MONTANA OPERATING ENGINEERS - AGC JOINT )  
APPRENTICESHIP AND TRAINING TRUST FUND, )  
COLORADO JOURNEYMEN AND APPRENTICES )  
TRAINING FUND FOR OPERATING ENGINEERS, )  
OPERATING ENGINEERS LOCAL 16 VACATION FUND, )  
OPERATING ENGINEERS LOCAL 101 VACATION )  
FUND, )  
COLORADO OPERATING ENGINEERS VACATION )  
FUND, )  
MONTANA OPERATING ENGINEER - AGC VACATION )  
SAVINGS TRUST FUND, )  
INTERNATIONAL UNION OF OPERATING ENGINEERS, )  
LOCAL UNION NOS. 16, 101 and 627, AFL-CIO, )  
Plaintiffs, )  
vs. )  
MID CENTRAL CONSTRUCTORS, INC., a corporation, )  
Defendant. )

FILED  
MAR 18 1981

CIVIL ACTION  
NO. 80-C-369-B

AGREED JUDGMENT ORDER

THIS MATTER, coming on to be heard upon the Plaintiffs' Complaint, the Defendant's Appearance, the Pleadings filed herein and the Stipulation of the parties to the matters herein set forth, the Court having considered the same and being fully advised in the premises FINDS:

That the Court has jurisdiction of the subject matter hereof and of the parties hereto.

That the Plaintiff Funds are multi-employer pension, health and welfare, apprenticeship, and vacation funds, which funds are administered in accordance with the provisions of the Employment Retirement Income Security Act of 1974

and the Labor-Management Relations Act of 1947, as amended. The additional Plaintiffs are labor organizations as defined in the Labor-Management Relations Act of 1947, as amended.

That the Defendant, an employer of certain beneficiaries of the Trustees of the Plaintiff Funds, is doing business in this judicial district.

That the Defendant is bound by the terms of the collective bargaining agreements attached to the Complaint of the Plaintiffs.

That the Defendant is obligated to make contributions to each of the Plaintiff Funds and to submit dues deductions to certain Plaintiff Unions in accordance with such collective bargaining agreements.

That the Defendant has permitted Plaintiffs to make an audit of its payroll books and records covering the period January 1, 1977, through June 30, 1979.

That upon such audit, it is determined that there is due and owing to Plaintiffs for the period January 1, 1977, through June 30, 1979, the following sums:

<u>NAME OF FUND</u>	<u>AMOUNT DUE</u>
Central Pension Fund	\$ 16,293.00
Operating Engineers Local 101 Pension Fund	856.00
International Union of Operating Engineers and Pipeline Employers Health and Welfare Fund	15,847.51
Operating Engineers Local 101 Health and Welfare Fund	774.00
Construction Industry Laborers Welfare Fund	130.00
Local 101 Hoisting Engineers Apprentice and Skill Improvement Fund	168.40
Montana Operating Engineers-AGC Joint Apprenticeship and Training Trust Fund	83.90
Colorado Journeymen and Apprentices Training Fund for Operating Engineers	45.43
Operating Engineers Local 16 Vacation Fund	21.20
Operating Engineers Local 101 Vacation Fund	1,263.00
Colorado Operating Engineers Vacation Fund	292.05
Montana Operating Engineers-AGC Vacation Savings Trust Fund	41.95
International Union of Operating Engineers Local 16, AFL-CIO	<u>137.00</u>
TOTAL	\$ 35,953.44

That Defendant has failed to timely make all contributions required to be made to the Plaintiff Funds; as provided in the Agreement and Declaration of Trust governing the Funds, Plaintiffs are entitled to recover:

- (a) costs of the audit of the payroll books and records of Defendant, and

- (b) costs and expenses of the Plaintiff Funds, including their reasonable attorneys' fees.

That there is no just cause for delay in the entry of a Judgment Order as to the sum of \$35,953.44 determined due by the audit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

That Plaintiff Central Pension Fund of the International Union of Operating Engineers and Participating Employers recover from the Defendant Mid-Central Constructors, Inc. the sum of \$16,293.00.

That Plaintiff Operating Engineers Local 101 Pension Fund receive from the Defendant Mid-Central Constructors, Inc. the sum of \$856.00.

That Plaintiff International Union of Operating Engineers and Pipeline Employers Health and Welfare Fund recover from the Defendant Mid-Central Constructors, Inc. the sum of \$15,847.50.

That Plaintiff Operating Engineers Local 101 Health and Welfare Fund recover from the Defendant Mid-Central Constructors, Inc. the sum of \$774.00.

That Plaintiff Construction Industry Laborers Welfare Fund recover from the Defendant Mid-Central Constructors, Inc. the sum of \$130.00.

That Plaintiff Local 101 Hoisting Engineers Apprentice and Skill Improvement Fund recover from the Defendant Mid-Central Constructors, Inc. the sum of \$168.40.

That Plaintiff Montana Operating Engineers-AGC Joint Apprenticeship and Training Trust Fund recover from the Defendant Mid-Central Constructors, Inc. the sum of \$83.90.

That Plaintiff Colorado Journeymen and Apprentices Training Fund for Operating Engineers recover from the Defendant Mid-Central Constructors, Inc. the sum of \$45.43.

That Plaintiff Operating Engineers Local 16 Vacation Fund recover from the Defendant Mid-Central Constructors, Inc. the sum of \$21.20.

That Plaintiff Operating Engineers Local 101 Vacation Fund recover from the Defendant Mid-Central Constructors, Inc. the sum of \$1,263.00.

That Plaintiff Colorado Operating Engineers Vacation Fund recover from the Defendant Mid-Central Constructors, Inc. the sum of \$292.05.

That Plaintiff Montana Operating Engineers-AGC Vacation Savings Trust Fund recover from the Defendant Mid-Central Constructors, Inc. the sum of \$41.95.

That Plaintiff International Union of Operating Engineers Local Union No. 16, AFL-CIO recover from the Defendant Mid-Central Constructors, Inc. the sum of \$137.00.

That Plaintiffs further recover from the Defendant the cost of these proceedings to include the sum of \$4,814.08 expended by Plaintiffs for the purpose of making the audit filed in this cause, and the further sum of \$2,037.50 as and for Plaintiffs' just and reasonable attorneys' fees.

Plaintiffs are awarded execution for the collection of the judgments and costs granted hereunder.

The Court hereby retains jurisdiction of this cause and all of the parties hereto for the purpose of enforcing this Order.

ENTER:

  
UNITED STATES DISTRICT JUDGE

JUDGMENT ENTERED ON THE 18<sup>th</sup> DAY OF March, 1981.

WE HEREBY AGREE TO THE ENTRY OF THIS ORDER:

MICHAEL A. CRABTREE  
4115 Chesapeake Street N.W.  
Washington, D. C. 20016  
(202) 362-1000

SUBLETT, McCORMICK & ANDREW

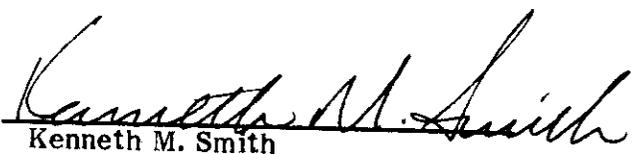
By:   
Stephen L. Andrew  
One Williams Center, Suite 1776  
Tulsa, Oklahoma 74172  
(918) 582-8815

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By:   
H. Wayne Cooper  
1200 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for the Plaintiffs

ROBINSON, BOESE & DAVIDSON

By:   
Kenneth M. Smith  
P.O. Box 0146  
Tulsa, Oklahoma 74101  
(918) 583-1232

Attorneys for Defendant

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

FILED

MAR 18 1981

PT

ORVILLE M. GRIFFIN )  
and CARMELITA GRIFFIN, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
MERRILL LYNCH, PIERCE, FENNER )  
& SMITH, INC., JERRY CLACK )  
and BEN HARNED, )  
 )  
Defendants, )  
 )  
vs. )  
 )  
RONALD T. McDANIEL and )  
BETTY LOU McDANIEL, )  
 )  
Counter-Defendants. )

No. 78-C-620 BT ✓

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on to be heard on the above and foregoing Joint Stipulation for Dismissal with Prejudice filed herein, and, pursuant to the request of the parties herein, the Court finds that all parties' claims and counterclaims involved herein be and the same should be ordered dismissed with prejudice.

IT IS ORDERED by the Court that the causes of Plaintiffs Orville M. Griffin and Carmelita Griffin against Defendants Merrill Lynch, Pierce, Fenner & Smith, Inc., Jerry Clack and Ben Harned be and the same are hereby dismissed with prejudice.

IT IS FURTHER ORDERED, that the causes and counterclaims of Defendants Merrill Lynch, Pierce, Fenner & Smith, Inc., Jerry Clack and Ben Harned against Plaintiffs Orville M. Griffin and Carmelita Griffin be, and the same are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that the causes and counterclaims of Defendants Merrill Lynch, Pierce, Fenner & Smith, Inc., Jerry Clack and Ben Harned against Counter-Defendants Ronald T. McDaniel and Betty Lou McDaniel be, and the same are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that each of the parties bear its separate costs herein.

DONE AND DATED this 18<sup>th</sup> day of March, 1981.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT COURT JUDGE

# United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 75-C-352-BT

Fred Casey and William Casey,  
d/b/a Casey Cattle Co.,  
Plaintiffs,

vs.

George W. Murphy, d/b/a G. M.  
Ranches, and G. M. Charolais, Inc.,  
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, finding for the Defendants.

It is Ordered and Adjudged that judgment is hereby granted the defendants,  
George W. Murphy, d/b/a G. M. Ranches, and G. M. Charolais, Inc., and  
against the plaintiffs, Fred Casey and William Casey, d/b/a Casey Cattle  
Co., and the costs of this action.

FILED

MAR 18 1981

U.S. DISTRICT COURT  
TULSA, OKLAHOMA

Dated at Tulsa, Oklahoma, this 18th day  
of March, 1981.



XXXXXXXXXX

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

M.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
MAR 18 1981  
Jack C. ...  
U.S. Dist. Ct.

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-99-E ✓
	)	
vs.	)	Tract No. 269-Part B, Area 2
	)	
30.00 Acres of Land, More or	)	As to the <u>Overriding Royalty</u>
Less, Situate in Washington	)	<u>Interest</u> only in the oil and
County, State of Oklahoma,	)	gas leasehold interest in
and C.W.L. McCrory, et al.,	)	the estate taken.
and Unknown Owners,	)	
	)	(Included in Amended D.T.
Defendants.	)	filed in Master File #400-14)

J U D G M E N T

1.

Now, on this 18<sup>th</sup> day of March, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 269-Part B - Area 2, as such estate and tract are described in the Amended Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Amended Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described in such document. Pursuant thereto, on February 13, 1979, the

United States of America filed its Declaration of Taking of such described property, and on October 2, 1980 the United States of America filed its Amended Declaration of Taking, and by agreement of the parties, title to the described estate in such property should be vested in the United States of America as of the date of filing the original Declaration of Taking.

6.

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

7.

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

8.

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

9.

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

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority

to condemn for public use the tract listed in paragraph 2 herein, as such tract is particularly described in the Amended Complaint filed herein; and such tract, to the extent of the estate described in such Amended Complaint, is condemned, and title thereto is vested in the United States of America, as of February 13, 1979, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

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

12.

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

TRACT NO. 269-Part B, Area 2 (ORRI Only)

OWNERS:

C. W. L. McCrory ----- 1/2  
 Nell McCrory ----- 1/2

Award of Just Compensation pursuant to Stipulation -----	\$7,500.00	\$7,500.00
Deposited as Estimated Compensation ----	1,859.00	
Disbursed to Owners -----		<u>1,859.00</u>
Balance Due to Owners -----		<u>\$5,641.00</u>
Deposit Deficiency -----	\$5,641.00	

13.

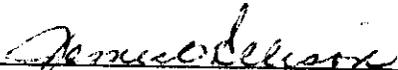
It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court in this civil action, to the credit of subject tract the

deposit deficiency in the sum of \$5,641.00, and the Clerk of this Court then shall disburse the deposit for such tract as follows:

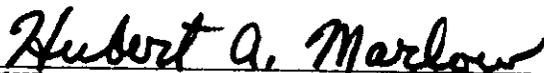
To:

C. W. L. McCrory ----- \$2,820.50

Nell McCrory ----- \$2,820.50.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

  
FRANK E. TURNER  
Attorney for Defendants

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAR 18 1981

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

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-77-E
	)	
vs.	)	Tract No. 217
	)	
16.79 Acres of Land, More or	)	All Interests in the Estate
Less, Situate in Washington	)	Taken <u>Except the Working</u>
County, State of Oklahoma, and	)	<u>Interest</u> in the Oil and Gas
C.W.L. McCrory, et al., and	)	<u>Interest</u>
Unknown Owners,	)	
	)	(Included in D.T. Filed in
Defendants.	)	Master File #400-14)

J U D G M E N T

1.

Now, on this 18<sup>th</sup> day of March, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 217, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described

in such Complaint. Pursuant thereto, on February 13, 1979, the United States of America filed its Declaration of Taking of such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing the Declaration of Taking.

6.

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

7.

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

8.

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

9.

Since the amount deposited as estimated compensation for the estate taken in subject tract and the amount fixed by the Stipulation As To Just Compensation, are the same amount, this judgment will not create any deficiency in the deposit for this case.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the tract listed in paragraph 2 herein, as such tract is particularly described in the Complaint filed

herein; and such tract, to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of February 13, 1979, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

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

12.

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

TRACT NO. 217

(Lessor Interest and ORRI)

OWNERS:

C. W. L. McCrory ----- 1/2  
 Nell McCrory ----- 1/2

Award of Just Compensation pursuant to Stipulation -----	\$12,243.00	\$12,243.00
Deposited as estimated Compensation -----	12,243.00	
Disbursed to Owners -----		<u>12,243.00</u>
Balance Due to Owners -----		NONE
Deposit Deficiency -----	NONE	

James DeLeon  
 UNITED STATES DISTRICT JUDGE

APPROVED:

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

Frank E. Turner  
 FRANK E. TURNER  
 Attorney for Defendants

FILED

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAR 18 1981

Jack C. Smith  
U.S. District Court

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-85-E
	)	
vs.	)	Tract No. 268M
	)	
40.00 Acres of Land, More or	)	As to the <u>Overriding Royalty</u>
Less, Situate in Washington	)	<u>Interest only in the Oil and Gas</u>
County, State of Oklahoma,	)	<u>Leasehold Interest.</u>
and Nell McCrory, et al., and	)	
Unknown Owners,	)	
	)	(Included in D.T. Filed in
Defendants.	)	Master File #400-14)

J U D G M E N T

1.

Now, on this 18<sup>th</sup> day of March 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 268M, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on February 13, 1979, the United States of America filed its Declaration of Taking of such

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

6.

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

7.

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

8.

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

9.

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

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the tract listed in paragraph 2 herein, as such tract is particularly described in the Complaint filed

herein; and such tract, to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of February 13, 1979, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

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

12.

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

TRACT NO. 268M (ORRI Only)

OWNERS:

C. W. L. McCrory -----	1/2	
Nell McCrory -----	1/2	
Award of Just Compensation pursuant to Stipulation -----	\$6,000.00	\$6,000.00
Deposited as Estimated Compensation ----	1,322.00	
Disbursed to Owners -----		<u>1,322.00</u>
Balance Due to Owners -----		<u>\$4,678.00</u>
Deposit Deficiency -----	\$4,678.00	

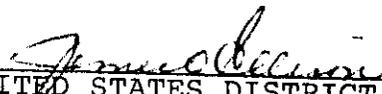
13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court in this civil action, to the credit of subject tract, the deposit deficiency in the sum of \$4,678.00, and the Clerk of this Court then shall disburse the deposit for such tract as follows:

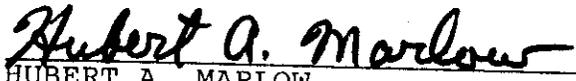
To:

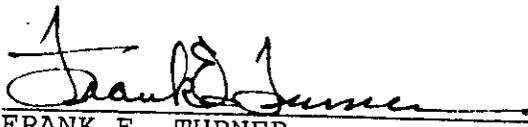
C.W.L. McCrory ----- \$2,339.00

Nell McCrory ----- \$2,339.00.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

  
FRANK E. TURNER  
Attorney for Defendants

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAR 18 1981 *Doym*

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-88-E ✓
	)	
vs.	)	Tract No. 242
	)	
30.00 Acres of Land, More or	)	The <u>Overriding Royalty Inter-</u>
Less, Situate in Washington	)	<u>est only in the Oil and Gas</u>
County, State of Oklahoma, and	)	Leasehold Interest in the
C.W.L. McCrory, et al., and	)	estate taken.
Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #400-14)

J U D G M E N T

1.

Now, on this 18<sup>th</sup> day of March, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 242, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on February 13, 1979, the

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

6.

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

7.

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

8.

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

9.

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

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the tract listed in paragraph 2 herein,

as such tract is particularly described in the Complaint filed herein; and such tract, to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of February 13, 1979, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

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

12.

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

TRACT NO. 242 (ORRI Only)

OWNERS:

C. W. L. McCrory ----- 1/2  
 Nell McCrory ----- 1/2

Award of Just Compensation pursuant to Stipulation -----	\$16,000.00	\$16,000.00
Deposited as estimated Compensation -----	6,168.00	
Disbursed to Owners -----		<u>6,168.00</u>
Balance Due to Owners -----		\$ <u>9,832.00</u>
Deposit Deficiency -----	\$ 9,832.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court in this civil action, to the credit of subject tract, the deposit deficiency in the sum of \$9,832.00, and the Clerk of this

Court then shall disburse the deposit for such tract as follows:

To:

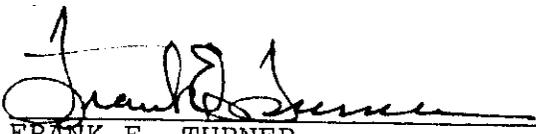
C. W. L. McCrory ----- \$4,916.00

Nell McCrory ----- \$4,916.00.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

  
FRANK E. TURNER  
Attorney for Defendants

# United States District Court

MAR 18 1981

FOR THE

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

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 80-C-104-E

Melvin Houston Adams, Jr. a minor  
by and through his father and next  
of kin Melvin H. Adams.

vs.

Southwestern Bell Telephone Company,  
a domestic corporation

JUDGMENT

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

It is Ordered and Adjudged that the plaintiff take nothing and that the  
defendants recover of the plaintiff their costs of action.

Dated at Tulsa, Oklahoma, this 18th day  
of March, 1981.

James O. Ellison  
James O. Ellison, Judge

Jack C. Silver  
Clerk of Court

FILED

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

MAR 18 1981

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 80-C-589-E
	)	
ZETTA O. AUBREY and	)	
TERES'A TERESA MAY DENNY,	)	
	)	
Defendants.	)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 18th day of March, 1981, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; and, the Defendants, Zetta O. Aubrey and Teres'a Teresa May Denny, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Zetta O. Aubrey, was served with Summons, Complaint and Amendment to Complaint on October 10, 1980, and February 11, 1981, respectively; and, that Defendant, Teres'a Teresa May Denny, was served with Summons, Complaint and Amendment to Complaint on February 13, 1981, all as appears on the United States Marshal's Service herein.

It appearing that the Defendants, Zetta O. Aubrey and Teres'a Teresa May Denny, 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 Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots 7, 8, 9, 10, 11, Block 32, WILLIAMS ADDITION to Wynona, Osage County, State of Oklahoma.

THAT the Defendant, Zetta O. Aubrey, did, on the 2nd day of September, 1977, execute and deliver to the United States of

America acting through the Farmers Home Administration, her mortgage and mortgage note in the sum of \$21,250.00 with 8 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Zetta O. Aubrey, made default under the terms of the aforesaid mortgage note by reason of her failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the sum of \$22,775.50 plus accrued interest of \$3,362.12 as of December 9, 1980, plus interest from and after said date at the rate of \$4.9918 per day, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Zetta O. Aubrey, in personam, for the principal sum of \$22,775.50 plus accrued interest of \$3,362.12 as of December 9, 1980, plus interest from and after said date at the rate of \$4.9918 per day, until paid, 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, Teres'a Teresa May Denny.

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

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

S/ JAMES O. ELLISON

---

UNITED STATES DISTRICT JUDGE

APPROVED

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

MAR 18 1981

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

DART INDUSTRIES, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PLUNKETT CO. OF OKLAHOMA, INC., )  
 )  
 Defendant. )

No. 79-C-200-BT

J U D G M E N T

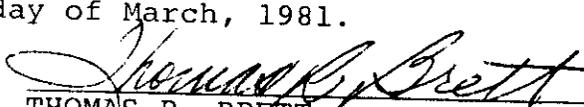
This bifurcated action comes before the Court for final judgment following disposition of the two separate issues involved. On March 14, 1980 this Court ordered pursuant to Rule 42(b) F.R.Civ.P., that the claim of plaintiff, Dart Industries, and the counterclaim of defendant, Plunkett Company, be separated for trial. On April 22, 1980, a jury trial resulted in award for plaintiff, Dart Industries, of \$3,046.75.

On April 29, 1980, this Court assessed damages against defendant, Plunkett Company, in the sum of \$3,046.75 and further awarded plaintiff costs of the action. According to an agreement between the parties, however, the judgment was abated until a final determination of defendant's antitrust counterclaim. In addition, the parties agreed that interest at a rate of 12% on the judgment should run from April 22, 1980, the date of the jury verdict.

The counterclaim of defendant Plunkett Company was disposed of by this Court on summary judgment on March 18, 1981.

Therefore, IT IS ORDERED AND ADJUDGED, the jury having found in favor of the plaintiff and against the defendant on plaintiff's claim, and the Court by summary judgment having found in favor of the plaintiff and against defendant on defendant's counterclaim, the Court assesses damages in the sum of \$3,046.75 for the plaintiff and against the defendant and further that plaintiff be awarded costs of this action. Furthermore, in accordance with an agreement between the parties, the Court assesses a rate of interest of 12% on the judgment to run from April 22, 1980, the date of the jury verdict.

ENTERED this 18<sup>th</sup> day of March, 1981.

  
THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

DOROTHY LINIHAN and  
PAUL LINIHAN,

Plaintiffs,

-vs-

SAFEWAY STORES, INC.,

Defendant,

and

LOIS HOLMES NIX, Executrix  
of the Estate of Don Nix,  
deceased, and CITY REAL  
ESTATE HOLDING CO., a  
corporation,

Third Party Defendants.

FILED  
MAR 18 1981

NO. 79-C-729-E

ORDER REMANDING ACTION TO STATE COURT

The plaintiffs bring this action seeking to recover damages for personal injury allegedly incurred in a fall on the premises of the Safeway Stores, Inc. This action was first brought in the State District Court of Tulsa County, Oklahoma, by plaintiffs against defendants Safeway Stores, Inc., a foreign corporation, and Don Nix, an Oklahoma resident. During the pendency of the action, Don Nix died. Lois Holmes Nix was substituted as a party defendant as the Executrix of the Estate of Don Nix, deceased. On October 31, 1979, a Dismissal Without Prejudice was filed in the Tulsa County District Court releasing Lois Nix as Executrix of the Estate of Don Nix as a party defendant. A copy of this Dismissal was not forwarded to co-defendant Safeway Stores, Inc., at the time of its filing. On December 3, 1979, all parties appeared before the Honorable Judge Beasley on the jury sounding docket. At that time, Paul McGivern, the attorney for Lois Holmes Nix, Executrix of the Estate of Don Nix, announced that his client had been dismissed from the lawsuit. This announcement was made with all parties present by their attorneys. On December 6, 1979, the attorneys for Safeway

Stores, Inc., obtained a copy of the Dismissal Without Prejudice in favor of Dan Nix. This was not a duplicate copy of the Dismissal which had been filed earlier. Plaintiff attorneys did not have a duplicate copy of said Dismissal. The Dismissal given to attorneys for Safeway Stores, Inc., was drawn up specifically for the purpose of providing them with a copy of a Dismissal Without Prejudice in favor of Don Nix for their files. On December 10, 1979, the plaintiff's cause of action against Safeway Stores, Inc., came on for trial before the Honorable Judge Beasley in the State District Court for Tulsa County, State of Oklahoma. A jury was empaneled and evidence presented. At no time did Safeway Stores, Inc., object to the presentation of evidence or the empaneling of a jury or indicate that they intended to remove the case to federal jurisdiction. During the presentation of evidence, one of the plaintiffs' witnesses mentioned the word insurance and the defendant Safeway Stores, Inc., moved for a mistrial. The Court granted a mistrial.

On December 26, 1979, Safeway Stores, Inc., filed a Petition for Removal to the United States District Court for the Northern District of Oklahoma. Removal was effected under 28 U.S.C. 1441 and Safeway Stores, Inc., in their Petition for Removal alleged that removal was proper under 28 U.S.C. 1332 by alleging diversity of citizenship and an amount in controversy in excess of \$10,000.00, exclusive of interests and costs. Safeway Stores, Inc., alleged that they had not received a copy of the Dismissal Without Prejudice in favor of Don Nix until December 6, 1979.

The case is now before the Court on plaintiff's Motion to Remand. Plaintiffs, in their Motion to Remand, alleged that Safeway Stores, Inc., had invoked the jurisdiction of the State District Court of Tulsa County, State of Oklahoma, by allowing the case to proceed to trial after it had become removable without objection and thereby submitted itself to the jurisdiction of the State Court and waived its right to remove the case to federal jurisdiction. Plaintiffs also alleged that the removal was untimely because the case was removed more than thirty days after

it initially became removable to Federal Court.

The right to remove a case from a local forum into Federal Court is solely one conferred by Statute, rather than one which is constitutionally derived. Inasmuch as the removal statutes represent congressionally-authorized encroachments by the Federal Courts into the various state's sovereignties, those provisions must be strictly construed, and their established procedures rigidly adhered to. E.g. Town of Freedom, Oklahoma v. Muskogee Bridge Company, 466 F. Supp. 75, 77-78, (Western District of Oklahoma, 1978). Where there is any substantial doubt concerning jurisdiction of the Federal Court on removal, the case should be remanded and jurisdiction should be retained only where it is clear. Id., 446 F. Supp. at 77.

The general rule is that once a defendant has willingly invoked the jurisdiction of a Court, that defendant is not allowed to repudiate that jurisdiction by removing the case to Federal Court, Ford v. Roxana Petroleum Corporation, 31 F.2d 765, (1929). The controlling factor in determining if a defendant has invoked the jurisdiction of a State Court is whether the defendant has taken any action indicating a submission to State Court jurisdiction. Haun v. Retail Credit Company, 420 F. Supp. 859, (Western District of Pennsylvania, 1976) and Waldron v. Skelly Oil Company, 101 F. Supp. 425 (Eastern District of Missouri, 1951). In the present case, Safeway Stores, Inc., proceeded to trial after they had admittedly received the Dismissal Without Prejudice drawn by plaintiff's attorney. No objection was made to the State Court jurisdiction and Safeway Stores, Inc., did not at the time of trial or prior to trial indicate that they intended to remove the case to federal jurisdiction.

From the pleadings, affidavits and admissions of counsel in open Court, the Court has determined that Safeway Stores, Inc., submitted to State Court jurisdiction by proceeding to trial without indicating their desire to remove the case to Federal Court and without objection to the State Court's jurisdiction. Therefore, the Court finds that this case was improvidently removed. The Court, pursuant to 28 U.S.C. 1447(c),

directs the Court Clerk to remand this case. All other pending motions are referred to the State Court.

ORDERED this 18 day of March, 1981.

*S/* JAMES O. ELLISON

JAMES O. ELLISON  
JUDGE OF THE UNITED STATES DISTRICT  
COURT, NORTHERN DISTRICT

APPROVED AS TO FORM:

*Dennis King*

DENNIS KING  
Attorney for Plaintiffs

*Donald E. Hammer*

DONALD E. HAMMER  
Attorney for Defendant Safeway  
Stores, Inc.

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

JUNE DRAKE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SAFEWAY STORES, INC., )  
 )  
 Defendant. )

No. 80-C-363-BT ✓

**FILED**  
MAR 17 1981 pt  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter came on for non-jury trial on February 24, 1981. Plaintiff appeared by her attorney, Louis W. Bullock, and defendant appeared by its attorney, T.H.Eskridge. The parties announced ready and submitted the case on Stipulation of Facts with attached exhibits. The Court heard oral argument and the matter was submitted for decision.

This is an action brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e. The gravamen of plaintiff's action is the defendant imposed a "dress code" on female Food Clerks without imposing a comparable "dress code" on its male Food Clerks, in violation of §§703(a)(1) and 703(a)(2) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e-2(a)(1) and 2000e-2(a)(2). The Court concludes the plaintiff's contention is without merit.

FINDINGS OF FACT

1. Plaintiff, a female resident of Tulsa, Oklahoma, is employed by Safeway Stores, Inc. as a Food Clerk at its retail store located at 5260 North Peoria, Tulsa, Oklahoma. (Stipulated)
2. Safeway Stores, Inc., is engaged in an industry affecting commerce and has had an excess of 25 employees for each working day in each of 20 or more calendar weeks in the current preceding calendar years. (Stipulated)
3. Plaintiff filed a Complaint with the Equal Employment Opportunity Commission concerning the issues involved in this matter and following an investigation received a "Notice of

Right to Sue." The Complaint filed with the Equal Employment Opportunity Commission was timely filed as provided under 42 U.S.C. §2000e-5(e). (Stipulated)

4. Following the receipt of the "Notice of Right to Sue" this action was timely filed as provided in 42 U.S.C. §2000e-5(f)(1). (Stipulated)

5. There are four classification categories for employees of Safeway Stores, Inc. These are Courtesy Clerks, who perform such details as sacking groceries, carrying out groceries, price checks and other incidental services requested by customers. Food Clerks perform such services as checking and stocking. The other two classifications encompass managerial positions, i.e., Assistant Managers and Managers. (Stipulated)

6. Plaintiff is covered by a Labor Agreement between Safeway Stores, Inc., and Retail Clerks Union, Local No. 73. Paragraph 14.1 of the Labor Agreement provides:

"All uniforms required by the company to be used by employees while they are in retail locations shall be furnished by the company. Wash and wear items to be maintained by the employees."

7. The dress standards for male and female employees is as follows [Attachment to Exhibit 11 to the Stipulation of Facts]:

"Dress Standards - Male Employees

A Safeway tie is to be worn at all times, when the store is open for business. Ties have been provided by the company and must be worn while on duty.

Only dress shirts shall be worn. They should be white or beige, or of a conservative pastel color. No multi colored or sports shirts are allowed.

Trousers must be of a conservative style and solid color preferably brown. They should be reasonably tailored and made of material that will keep a press. Denim jeans and Levis that are faded, patched, bleached, fringed, etc., are not allowed.

A brown apron is provided for Food Clerks, and vest for Courtesy Clerks. ... These uniforms are to be kept clean, neat, free of wrinkles.

A name badge must be worn at all times.

"Dress Standards - Female Employees

A name badge must be worn at all times.

Food Clerks are provided brown pants, an orange top, and a scarf. Customer service or 'Front end' personal(sic) may be provided a brown vest. ... These uniforms are to be kept clean, neat, and free of wrinkles."

In addition, male personnel are given the opportunity to purchase their shirts from a company selected by Safeway at a substantial saving with the price of the shirt deducted from their pay. [Exhibits 6 and 7 to the Stipulation of Facts]

8. Safeway furnished each female Food Checker with two complete uniforms at no cost to the employee and the employee may purchase additional uniforms if desired. [Answer to Interrogatory Number 6, Exhibit 21 to Stipulation of Facts].

9. The scarf which is provided for the female Food Checkers may be worn in three different ways. (Stipulated)

10. Male Assistant Managers are required to wear a dress shirt and Company provided tie. They may at their option wear a brown apron, which is provided by the Company. They are encouraged to wear beige/light brown shirts. (Answer to Interrogatory Number 15, Exhibit 21 to the Stipulation of Facts)  
Male Managers are required to dress in a businesslike manner and wear a Safeway name badge. They are encouraged to wear light brown/beige shirts and Safeway ties. [Answer to Interrogatory Number 30, Exhibit 21 to the Stipulation of Facts]

11. Female Assistant Managers and Managers are required to dress in a businesslike fashion and wear a Safeway name badge. [Answer to Interrogatory Numbers 22 and 37, Exhibit 21 to the Stipulation of Facts]

12. There are male and females assigned to all of the employee classifications maintained by Safeway Stores, Inc. (Stipulated)

13. Defendant's dress code requirements are imposed in an evenhanded manner on all employees with some differences in the appearance requirements for males and females that have only a negligible effect on the conditions of employment opportunity and terms of employment.

## CONCLUSIONS OF LAW

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

1. This Court has jurisdiction of the parties and the subject matter by virtue of §706 of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5 and 28 U.S.C. §§1337 and 1393.

2. Any Finding of Fact that could be considered a Conclusion of Law is hereby incorporated herein.

3. Title 42 U.S.C. §2000e-2 provides:

"(a) It shall be unlawful employment practice for an employer---

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's... sex...; or

"(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely effect his status as an employee, because of such individual's..., sex,..."

Congress put two aspects into the two separate statutory subparagraphs, i.e., (1) focuses on conditions of employment, and (2) focuses on employment opportunity. In many cases the Courts have not distinguished between §703(a)(1) and §703(a)(2). See dissenting opinion of Judge Pell in Carroll v. Talman Federal S. & L. Ass'n of Chicago, 604 F.2d 1028 (7th Cir. 1979), cert.den. 445 U.S. 929, 100 S.Ct. 1316 (1980).

4. In Carroll v. Talman, supra, two sets of employees were performing the same functions and were subject on the basis of sex to two entirely separate dress codes--one including a variety of normal business attire for the men and the other requiring a clearly identifiable uniform for the females. In the instant case the dress code enforced by Safeway is applicable to both men and women. The women are required to wear brown pants, an orange top and a scarf provided at Safeway's expense. The men are required to wear a tie and a brown apron provided at Safeway's expense. They are also directed as to the type and color of trousers and shirts to be worn, although these

are not furnished by Safeway. The Ninth Circuit Court of Appeals has held that "Safeway may promulgate different personal appearance regulations for males and females..." Fountain v. Safeway Stores, Inc., 555 F.2d 753 (9th Cir. 1977). The Court said:

"...It is clear that regulations promulgated by employers which require male employees to conform to different grooming and dress standards than female employees is not sex discrimination within the meaning of Title VII..."

In Fountain, supra, the plaintiff was discharged for failure to wear a tie during working hours.

5. The effort of Safeway to maintain dress regulations that are not overly burdensome to its employees yet still serve to extend an image to its customers which Safeway believes is beneficial to its business does not constitute treatment of the sexes violative of the Act. Fountain v. Safeway Stores, Inc., supra.

6. There has been no violation of §§703(a)(1) and 703(a)(2) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e-2(a)(1) and 2000e-2(a)(2).

7. A Judgment should be entered in favor of Safeway Stores, Inc., and against June Drake.

8. The parties agreed at the hearing had on February 24, 1981, in the event the Court found the issues in the defendant's favor the class action aspect of this litigation would be moot.

9. In its answer Safeway asks for the allowance of attorney fees pursuant to 42 U.S.C. §2000e-5(k). This issue is properly addressed to the sound discretion of the Court. Fountain v. Safeway Stores, Inc., supra, 555 F.2d 753; United States Steel Corp. v. United States, 519 F.2d 359 (3rd Cir. 1975); Van Hoomissen v. Xerox Corp., 503 F.2d 1131 (9th Cir. 1974). The Court declines to award the attorney fee requested. The Court further finds each party should bear their own costs and expenses.

ENTERED this 17<sup>th</sup> day of March, 1981.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

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

JUNE DRAKE,  
Plaintiff,  
vs.  
SAFEWAY STORES, INC.,  
Defendant.

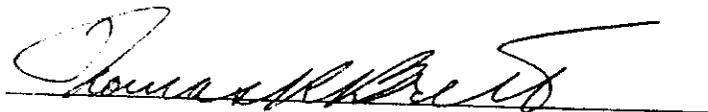
No. 80-C-363-BT ✓

**FILED**  
MAR 17 1981 pt  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

Based on the Findings of Fact and Conclusions of Law filed simultaneously with this Judgment, IT IS ORDERED judgment be entered in favor of the defendant, Safeway Stores, Inc., and against the plaintiff, June Drake, each party to bear their own costs and expenses.

ENTERED this 17<sup>th</sup> day of March, 1981.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
FILED

FEB 20 1981

DOCKET NO. 330

PATRICIA D. HOWARD  
CLERK OF THE PANEL

**FILED**

MAR 17 1981 *rem*

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE SWINE FLU IMMUNIZATION PRODUCTS LIABILITY LITIGATION

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

Lavesta Parks v. United States of America,  
N.D. Oklahoma, C.A. No. 81-C-35-F

81-0604

JAMES F. DAVEY, Clerk

CONDITIONAL TRANSFER ORDER

On February 28, 1978, the Panel transferred 26 related civil actions to the United States District Court for the District of Columbia for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 1,200 additional actions have been transferred to the District of the District of Columbia. With the consent of that court, all such actions have been assigned to the Honorable Gerhard A. Gesell.

It appears from the pleadings filed in the above-captioned action that it involves questions of fact which are common to the actions previously transferred to the District of the District of Columbia and assigned to Judge Gesell.

Pursuant to Rule 9 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 78 F.R.D. 561, 567-68, the above-captioned tag-along action is hereby transferred to the District of the District of Columbia on the basis of the hearings held on January 27, 1978, May 26, 1978, September 29, 1978, November 1, 1978, March 23, 1979 and April 27, 1979, and for the reasons stated in the opinions and orders of February 28, 1978, 446 F. Supp. 244, July 5, 1978, 458 F. Supp. 648, and January 16, 1979, 464 F. Supp. 949, and with the consent of that court assigned to the Honorable Gerhard A. Gesell.

This order does not become effective until it is filed in the office of the Clerk for the United States District Court for the District of Columbia. The transmittal of this order to said Clerk for filing shall be stayed fifteen days from the entry thereof and if any party files a Notice of Opposition with the Clerk of the Panel within this fifteen day period, the stay will be continued until further order of the Panel.

if filed within  
the stay is lifted and  
this order becomes effective

FOR THE PANEL:

THIS IS A TRUE COPY MAR 10 1981

United States District Court  
for the District of Columbia  
A TRUE COPY

*Sana M. Harris*  
Deputy Clerk  
Patricia D. Howard  
Clerk, Judicial Panel on  
Multidistrict Litigation

Patricia D. Howard  
Clerk of the Panel

*Patricia D. Howard*  
Patricia D. Howard  
Clerk of the Panel

By *James F. Davey*  
Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAR 17 1981

70  
Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WHITELOW WILLIAMS and )  
 MARY L. WILLIAMS, )  
 )  
 Defendants. )

CIVIL ACTION NO. 80-C-700-E ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 13<sup>TH</sup> day of March, 1981, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendants, Whitelow Williams and Mary L. Williams, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Whitelow Williams and Mary L. Williams, were personally served with Summons and Complaint on December 13, 1980, and that Defendants have 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 Defendants could have answered or otherwise moved as to the Complaint has expired, that the Defendants have not answered or otherwise moved and that the time for the Defendants 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 Defendants, Whitelow Williams and Mary L. Williams, for the principal sum of \$2,230.22 plus the accrued interest of \$318.82, as of December 31, 1978, plus interest at 3% from December 31, 1978, until the date of Judgment, plus interest at the legal rate on the principal

sum of \$2,230.22 from the date of Judgment until paid.

*James O'Brien*  
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney

ROBERT P. SANTEE *by Hubert A. Marlow*  
Assistant U. S. Attorney

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

CLOYCE K. BOX

Plaintiff,

vs.

THE FOURTH NATIONAL BANK OF TULSA,  
OKLAHOMA

Defendant,

No. 80-C-80-E and ✓  
No. 80-C-81-E  
(Consolidated)

In the Matter of an Application to  
Enforce Administrative Subpoena Duces  
Tecum of the

SECURITIES AND EXCHANGE COMMISSION

Applicant,

vs.

THE FOURTH NATIONAL BANK OF TULSA,  
OKLAHOMA

Respondent.

FILED

MAR 17 1981

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

ORDER

The Court having before it the Motion to Dismiss of the  
SECURITIES AND EXCHANGE COMMISSION, Applicant, and it appearing  
that no further cause of action exists,

IT IS ORDERED that this cause is dismissed pursuant to the  
provisions of Rule 41(a)(2) of the Federal Rules of Civil  
Procedure.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

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

CLOYCE K. BOX

Plaintiff,

vs.

THE FOURTH NATIONAL BANK OF TULSA,  
OKLAHOMA

Defendant,

In the Matter of an Application to  
Enforce Administrative Subpoena Duces  
Tecum of the

SECURITIES AND EXCHANGE COMMISSION

Applicant,

vs.

THE FOURTH NATIONAL BANK OF TULSA,  
OKLAHOMA

Respondent.

No. 80-C-80-E and  
No. 80-C-81-E  
(Consolidated)

FILED

MAR 17 1981

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

ORDER

The Court having before it the Motion to Dismiss of the  
SECURITIES AND EXCHANGE COMMISSION, Applicant, and it appearing  
that no further cause of action exists,

IT IS ORDERED that this cause is dismissed pursuant to the  
provisions of Rule 41(a)(2) of the Federal Rules of Civil  
Procedure.

*James A. [Signature]*  
UNITED STATES DISTRICT JUDGE

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

NELLIE ATKINS ARMSTRONG, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MAPLE LEAF APARTMENTS, LTD. )  
 a Limited Partnership, et al, )  
 )  
 Defendants. )

**FILED**

**MAR 17 1981**

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

CASE NO. 74-C-119

JUDGMENT

In accordance with the opinion and judgment of the United States Court of Appeals for the Tenth Circuit judgment is hereby entered against the plaintiff and in favor of all defendants as provided in the said opinion, and plaintiff's action is hereby dismissed.

(Signed) H. Dale Cook

\_\_\_\_\_  
Judge of the United States  
District Court

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

F I L E D

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

MAR 16 1981

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

WILLIAM B. TANNER COMPANY, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CENTRAL BROADCAST COMPANY, )  
 an Oklahoma corporation, )  
 )  
 Defendant. )

No. 79-C-359-BT

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law entered on February 19, 1981, and the Order filed simultaneously with this Judgment, IT IS ORDERED JUDGMENT BE ENTERED as follows:

1. Judgment in favor of the plaintiff, William B. Tanner Company, Inc., and against the defendant, Central Broadcast Company, in the amount of \$920.40 with interest at the rate of 6% from March 2, 1976, to date of judgment, and at 12% from the date of judgment until paid.

2. Judgment in favor of the plaintiff, William B. Tanner Company, and against the defendant, Central Broadcast Company, in the amount of \$166.00, with interest from the date of judgment until paid at the rate of 12% per annum.

3. An attorney fee in the amount of \$730.10 to be taxed as costs in favor of the plaintiff, William B. Tanner Company, Inc., as well as its docketing fee and marshal's fee for service of process in the amount of \$19.72.

ENTERED this 16<sup>th</sup> day of March, 1981.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

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

F I L E D

MAR 16 1981

WILLIAM B. TANNER COMPANY, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CENTRAL BROADCAST COMPANY, )  
an Oklahoma corporation, )  
 )  
Defendant. )

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

No. 79-C-359-BT

O R D E R

This case came on for hearing on March 6, 1981 on attorney fees and costs pursuant to the Findings of Fact and Conclusions of Law filed herein on February 19, 1981, the Court having reserved entry of judgment pending this determination. Plaintiff appeared by its attorney, William E. Hughes, and defendant appeared by its attorney, Lance Stockwell.

The case arose from an alleged breach of four written contracts, i.e., March 2, 1973, September 30, 1975, December 5, 1975, and May 4, 1978. The Court, in its Findings of Fact and Conclusions of Law, found the September 30, 1975 and December 5, 1975 contracts unenforceable. The Court further found plaintiff was entitled to judgment against the defendant on the March 2, 1973 contract in the amount of \$920.40, with interest at the rate of 6% from March 2, 1976, and on the May 4, 1978 contract in the amount of \$166.00, with costs and attorney fees relative to said agreements.

At the March 6, 1981 hearing plaintiff made an offer of proof on attorney fees of 257.3 hours, or a total fee of \$12,876.00. Defendant's counsel seeks an attorney fee of \$30,000.00. Defendant's counsel stated 262 hours of legal time was required on the case and due to the complexity of the litigation the claimed \$30,000 fee was reasonable. Counsel for plaintiff and defendant stated they had spent an additional 10 hours in preparation for the hearing which they stipulated was reasonable.

Both counsel for plaintiff and defendant stipulated to the reasonableness of the hours spent and the hourly rates claimed. In addition, James L. Kincaid, a practicing Tulsa attorney, testified as to the reasonableness of the fees claimed by defendant's counsel, and in fact testified they were too low.

F.R.Civ.P. 54(d) provides in pertinent part:

"Costs. Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs;..."

Both plaintiff and defendant assert they are the prevailing parties.<sup>1/</sup> It is axiomatic there can be more than one prevailing party where the competing claims of the parties are not an outgrowth of a common nexus.<sup>2/</sup>

Defendant's claim for attorney fees is predicated on 12 O.S. §936<sup>3/</sup> and 28 U.S.C. §1332(b)<sup>4/</sup>.

- 
- <sup>1/</sup> Plaintiff's position is it is the prevailing party as a result of a favorable decision as to the March 2, 1973 and May 4, 1978 contracts, even though its entire claim was not sustained.
- <sup>2/</sup> Defendant contends the four contracts, having been entered into in separate and distinct time frames, constitute separate and distinct claims. Predicated on this theory, it is defendant's position since the Court found the two 1975 contracts unenforceable, it is the prevailing party inasmuch as the 1975 contracts constituted the majority of the monetary claim asserted by plaintiff.
- <sup>3/</sup> "In any civil action to recover on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, or for labor or services, unless otherwise provided by law or the contract which is the subject to the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs."
- <sup>4/</sup> "(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of \$10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff."

A successful party may obtain an award of counsel fees only where expressly authorized by statute or by contract, or where the opponent acted vexatiously or in bad faith. Hall v. Cole, 412 U.S. 1, 4, 93 S.Ct. 1943, 36 L.Ed.2d 702 (1973).

Defendant, without deciding the issue of whether it was a prevailing party, is not entitled to the recovery of attorney fees under 12 O.S. §936 or 28 U.S.C. §1332(b). The Court is of the view the 1975 contract claims asserted in this action do not fall within 12 O.S. §936 permitting the award of an attorney fee to the defendant. Paramount Pictures Corp. v. Thompson, 621 F.2d 1088, 1091 (10th Cir.1980). There is no contention by the defendant that the claim of plaintiff was inflated or brought in bad faith. Thus, the recovery by plaintiff of less than the jurisdictional amount in this case would not bring into operation 28 U.S.C. §1332(b). Stachon v. Hoxie, 190 F. Supp. 185, 186 (W.D.Mich. S.D.1960)

The Court finds, as to plaintiff's claim for attorney fees, it is bound by the contract of March 2, 1973, to 25% of the amount of the award on the promissory note, or \$230.10. Additionally, the Court in its discretion under F.R.Civ.P. 54(b) finds plaintiff should be allowed an additional sum of \$500.00 as an attorney fee for the successful prosecution of the May 4, 1978 contract. Plaintiff is entitled to recover as costs its docketing fee and any marshal's fees for service of process in the total amount of \$19.72 and otherwise the parties are to pay their own respective costs and expenses unless otherwise provided for herein.

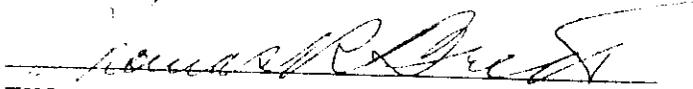
The Court further finds defendant's bill of costs and supplemental bill of costs should be denied.

IT IS, THEREFORE, ORDERED as follows:

1. Defendant's request for attorney fee is denied and its bill of costs and supplemental bill of costs are denied.

2. Plaintiff is allowed an attorney fee of \$730.10 to be taxed as costs, as well as its docketing fee and any marshal's fees for service of process in the amount of \$19.72 to be taxed as costs.

ENTERED This 17<sup>th</sup> day of March, 1981.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAR 13 1981 *PT*

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SAMPSON J. BACKWARD and )  
 KATHY S. BACKWARD, )  
 )  
 Defendants. )

FILED  
J. S. BROWN

CIVIL ACTION NO. 80-C-634-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 13th day of March, 1981.

UNITED STATES OF AMERICA  
HUBERT H. BRYANT  
United States Attorney

ROBERT P. SANTEE *by Hubert A. Marlow*  
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 13<sup>th</sup> day of March, 1981.

Hubert A. Marlow  
Assistant United States Attorney

FILED

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

ROY A. RUDICHUK, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SOUTH RANCH OIL CO., INC. )  
 a Missouri corporation, )  
 )  
 Defendant. )

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

No. 81-C-57-E

DISMISSAL WITH PREJUDICE

COMES NOW Roy A. Rudichuk, Plaintiff herein, and hereby dismisses with Prejudice his Complaint against South Ranch Oil Co., Inc., Defendant herein, with Prejudice.

  
Charles W. Shipley  
of BOESCHE, McDERMOTT & ESKRIDGE  
320 S. Boston, Suite 1300  
Tulsa, Oklahoma 74103  
(918) 583-1777

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Dismissal with Prejudice was mailed to the following by depositing a copy thereof in the United States mail in Tulsa, Oklahoma with postage thereon fully prepaid, this 13 day of March, 1981.

Michael G. Lewis  
Doerner, Stuart, Saunders,  
Daniel and Anderson  
1200 Atlas Life Building  
Tulsa, OK 74103

Veryl L. Riddle  
Bryan, Cave, McPheeters &  
McRoberts  
500 North Broadway  
St. Louis, MO 63102

George C. Bitting  
South Ranch Oil Co., Inc.  
111 South Bemiston Ave.,  
Suite 127  
St. Louis, MO 63105



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

NATIONAL MARINE SERVICE, INC., )  
 a Delaware corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. ) NO. 80-C-24-BT ✓  
 )  
 PETROLEUM TRADING & TRANSPORT COMPANY, )  
 an Oklahoma corporation; MIDLAND )  
 MARINE CORPORATION, a New York corpora- )  
 tion; and PRESTON N. SHUFFORD, )  
 individually and as agent of Midland )  
 Marine Corporation, )  
 )  
 Defendants. )

FILED  
 MAR 13 1981 pl  
 Jack C. Sibley, Clerk  
 U.S. DISTRICT COURT

JOINT MOTION AND ORDER OF DISMISSAL

NOW INTO COURT, through undersigned counsel of record, come all parties to the above-entitled and numbered civil action, and upon advising the Court that the matters forming the basis thereof have been resolved amicably by, between and amongst them, move this Court to dismiss with prejudice the above-entitled and numbered civil action, each party to bear his or its own costs.

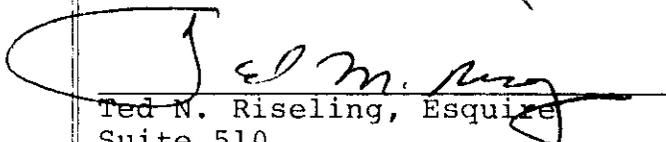
Considering the above and foregoing motion and the reasons given therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that the above-entitled and numbered civil action be, and the same is hereby, dismissed with prejudice, each party to bear his or its own costs.

Tulsa, Oklahoma, this 13<sup>th</sup> day of March, 1981.

  
 UNITED STATES DISTRICT JUDGE

Respectfully submitted,

  
 Ted N. Riseling, Esquire  
 Suite 510  
 1924 South Utica Avenue  
 Tulsa, Oklahoma 74104  
 and  
 STUDENNY, RISELING & GANN,  
 Attorneys for Plaintiff

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

RYDER TRUCK RENTAL, INC., )  
a Florida corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JEFFERSON J. BAGGETT, an )  
individual; B&D TRUCKING )  
INC., an Arkansas corporation, )  
and JAMES A. STEELMAN, d/b/a )  
BEACON TIRE SERVICE, an )  
individual, )  
 )  
Defendants. )

No. 80-C-278-B

**F I L E D**

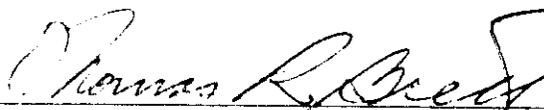
MAR 12 1981

Jack [unclear]  
U. S. DISTRICT COURT

J U D G M E N T

Based on the Findings of Fact and Conclusions of Law filed simultaneously with this Judgment, IT IS ORDERED judgment be entered in favor of plaintiff and against the defendants, declaring the liability insurance provided in the truck rental agreement does not extend coverage to the defendants arising out of an accident occurring on August 21, 1978.

ENTERED this 12<sup>th</sup> day of March, 1981.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

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

ALLEN D. WALTMAN, )  
 )  
 Plaintiff, )  
 )  
 vs. ) NO. 80-C-375-B  
 )  
 BIC PEN CORPORATION, )  
 a foreign corporation, )  
 LIGHTER DIVISION, )  
 Milford, Connecticut )  
 06460, )  
 )  
 Defendant. )

FILED  
MAR 12 1981  
Jack L. ...  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

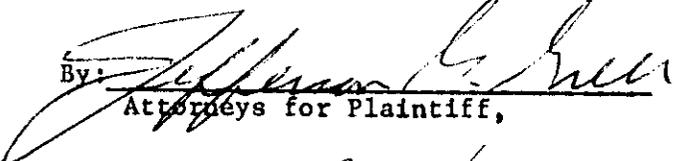
ON This 12<sup>th</sup> day of March, 1981, upon the written application of the parties for A Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

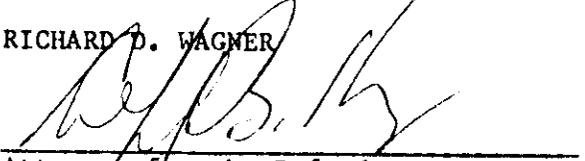
  
\_\_\_\_\_  
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

DENNIS E. BEAUCHAMP AND JEFFERSON GREER

By:   
\_\_\_\_\_  
Attorneys for Plaintiff,

RICHARD D. WAGNER

  
\_\_\_\_\_  
Attorney for the Defendant.



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

ARTHUR DOUGLASS FOSTER )  
 )  
 Plaintiff, )  
 )  
 MICKEY D. WILSON, Trustee in )  
 Bankruptcy, )  
 )  
 Plaintiff - )  
 Appellee, )  
 )  
 vs. )  
 )  
 GENERAL MOTORS ACCEPTANCE )  
 CORPORATION, a corporation, )  
 )  
 Defendant - )  
 Appellant. )

No. 77-C-438-C 17

**FILED**

MAR 11 1981 ✓

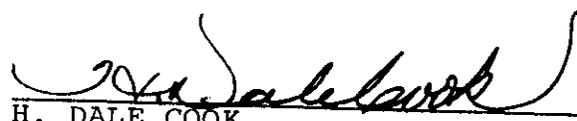
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

This action has been remanded to this Court from the United States Court of Appeals for the Tenth Circuit for further proceedings, pursuant to an opinion of the Oklahoma Supreme Court filed on March 11, 1980 upon certification from the Court of Appeals, and pursuant to the opinions filed herein by the Court of Appeals for the Tenth Circuit.

It is hereby ordered that the action herein be remanded to the United States Bankruptcy Court for the Northern District of Oklahoma for further proceedings consistent with the opinion of the Oklahoma Supreme Court herein and with the opinion herein of the Court of Appeals for the Tenth Circuit.

It is so Ordered this 12th day of March, 1981.

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
AT TULSA

CIVIL ACTION NO. 80-C-649-C ✓

PIPELINE INDUSTRY BENEFIT FUND

PLAINTIFF

VS.

JUDGMENT OF INTERPLEADER

**FILED**

MAR 11 1981 *Agm*

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

PEARL A. WRIGHT  
and  
MILDRED J. MIHALICK

DEFENDANTS

\*\*\*\*\*

The Plaintiff having moved the Court, and the Court having heard the arguments of counsel and being fully advised,

IT IS HEREBY ORDERED that a Judgment of Interpleader be, and it hereby is, entered in favor of the Plaintiff as follows:

1. Upon deposit with the receiver of this Court of \$10,000.00, the Plaintiff is forever discharged from liability under and with respect to the death benefit of Robert J. Wright, deceased, which benefit accrued in connection with Robert J. Wright's participation in the Plaintiff fund.

2. The Defendants, Pearl A. Wright and Mildred J. Mihalick, shall interplead together concerning their claims to the proceeds of the death benefit of Robert J. Wright, and set up whatever claims they have in and to the aforesaid proceeds.

March 12, 1981  
DATE:

*[Signature]*  
JUDGE

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

PIPELINE INDUSTRY BENEFIT FUND, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PEARL A. WRIGHT and )  
 MILDRED J. MIHALICK, )  
 )  
 Defendants. )

NO. 80-C-649-C

**FILED**

MAR 11 1981

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

ORDER GRANTING DEFENDANT  
MIHALICK'S MOTION FOR  
JUDGMENT ON THE PLEADINGS

This cause comes on before the Court on the 12<sup>th</sup> day of March, 1981, upon the Motion of defendant Mihalick for Judgment on the Pleadings in the above entitled cause in her favor. It appearing to the Court that notice of such Motion and the date for hearing on has been given all parties pursuant to Federal Rules of Civil Procedure, 28 U.S.C.. It is further noted by the Court that all parties above named are present by counsel. The Court, after having considered the pleadings filed herein, the Motion of defendant Mihalick and the Brief in support thereof, and the Briefs in response thereto, and after hearing arguments of counsel, finds as follows.

The Court finds that this Court does, pursuant to Section 502 of the Employee Retirement Income Security Act, 29 U.S.C. §1132, have the jurisdiction hereof.

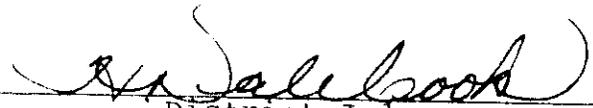
The Court further finds that the pleadings in the above styled and numbered cause are on this date closed.

The Court after having examined the aforementioned pleading, motions, and briefs relating thereto, finds that there is no genuine issue as to any fact material to this

controversy, and that defendant Mildred J. Mihalick, designated primary beneficiary of the death benefits provided under the Pipeline Industry Benefit Fund, all as evidenced by pleadings and the exhibits attached thereto as well as the allegations and admissions within the pleadings, motions and briefs in support thereof, and by virtue thereof, defendant Mildred J. Mihalick is the sole lawful claimant to the death benefit proceeds, as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered herein, such being done hereby, in favor of defendant Mihalick for the Pipeline Industry Benefit Fund death benefit proceeds in the amount of ~~\$10,000.00~~ \$9,934.00.

DATED this 12<sup>th</sup> day of March, 1981.

  
District Judge  
United States District Court  
Northern District of Oklahoma

APPROVED AS TO FORM:

BOYD & PARKS  
Attorneys for Defendant  
Mildred J. Mihalick

By

  
Ed Parks

UNGERMAN, CONNER, LITTLE,  
UNGERMAN & GOODMAN  
Attorneys for Defendant  
Pearl A. Wright

By

  
Allen Klein

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

FILED

MAR 19 1981 *agm*

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROBERT WAYNE BREWER, )  
 )  
Defendant. )

No. 78-CR-128-C ✓

**80-C-396-C**

ORDER

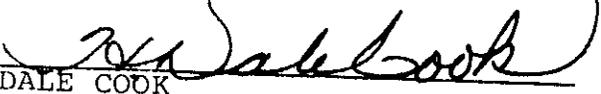
Again before the Court for its consideration is Robert Wayne Brewer's motion for vacation of his sentence pursuant to the provisions of Title 28 U.S.C. §2255.

On September 9, 1980, the Government filed a response to the instant motion. Attached to that response is an affidavit from movant's trial counsel, Mr. Phil Frazier. That affidavit refutes the only remaining ground in support of the present motion, that is, that movant's counsel failed to perfect an appeal from movant's judgment and conviction. On November 12, 1980, the Court on its own motion granted the movant twenty (20) days in which to file an opposing affidavit. To date none has been filed.

Mr. Frazier represents in his affidavit that the movant had expressed to him his desire not to appeal. He therefore prepared a motion to withdraw his appeal at the movant's direction. This motion was not filed. Mr. Frazier states that he made no further filings in behalf of the movant because at about this time another attorney, Mr. Gomer Evans, was appointed by the Tenth Circuit to handle the appeal. These statements stand unrefuted. The Court therefore finds that there is no need for an evidentiary hearing under the circumstances.

For the foregoing reasons, it is therefore ordered that the motion of Robert Wayne Brewer for vacation of his sentence pursuant to Title 28 U.S.C. §2255 is hereby dismissed.

It is so Ordered this 9<sup>th</sup> day of March, 1981.

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

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

FILED

MAR 10 1981

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

ROBERT E. COTNER and People, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
"14th Dist. Court & State" )  
and ATTORNEY GENERAL OF )  
OKLAHOMA, )  
 )  
Defendants. )

No. 80-C-684-C ✓

O R D E R

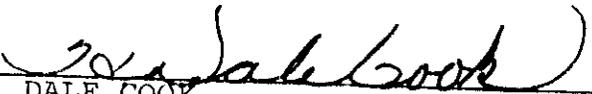
On December 8, 1980, the petitioner filed a Petition for a Writ of Habeas Corpus under 28 U.S.C. §2254 regarding jury selection procedures in State Court in Tulsa County, Oklahoma. Respondents have filed a Motion to Dismiss.

Petitioner's request for a Writ of Habeas Corpus under 28 U.S.C. §2254 is inappropriate since petitioner is not confined pursuant to the judgment of a State court and is not a State prisoner. At the time of the filing of this action, petitioner was a prisoner in the Federal Correctional Institution at Texarkana, Texas on a two-year sentence from the United States District Court for the Western District of Oklahoma, Case No. 80-34-W.

Neither can petitioner file this action pursuant to 28 U.S.C. §2255. The law is clear that Habeas Corpus will not lie if the person seeking the writ is not in the physical custody of the official to whom the writ is directed. Whiting v. Chew, 273 F.2d 885 (4th Cir. 1960); Gregg v. State of Tennessee, 425 F.Supp. 394 (E.D.Tenn. 1976); Braden v. 30th Judicial District Court of Kentucky, 410 U.S. 484, 93 S.Ct. 1123, 35 L.Ed. 443 (1973); Moles v. Oklahoma, 384 F.Supp. 1148 (W.D.Okla. 1974).

Therefore, the petition for a Writ of Habeas Corpus filed herein is hereby dismissed.

It is so Ordered this 9<sup>th</sup> day of March, 1981.

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

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

JAMES PARKER,  
Plaintiff,  
vs.  
JOHN FRANKLIN LOWER,  
Defendant.  
MAUREEN PARKER,  
Plaintiff,  
vs.  
JOHN FRANKLIN LOWER,  
Defendant.

No. 80-C-321-C ✓

FILED

MAR 10 1981 p)

Jack  
U. S. DISTRICT COURT

No. 80-C-320-C

FINDINGS OF FACT

THE COURT FINDS:

1. The plaintiffs Maureen Parker and James Parker are citizens of Oklahoma and reside in Tulsa County, Oklahoma.
2. The defendant John Franklin Lower is a citizen of Colorado and resides in Lakewood, Colorado.
3. The matter in controversy, exclusive of interest and costs exceeds the sum of \$10,000 in each action.
4. That a motor vehicle accident occurred on the 17th day of September, 1978, at approximately 1:15 P.M. at the intersection of South Cincinnati and 13th Streets in Tulsa, Oklahoma, involving a Rancho being driven by the defendant John Franklin Lower in a westerly direction on 13th Street and a Thunderbird being driven by the plaintiff James Parker in a southerly direction on Cincinnati in which latter vehicle the plaintiff Maureen Parker was a passenger.
5. That the plaintiff James Parker was operating his Thunderbird within the legal speed limit and the plaintiff Maureen Parker was exercising ordinary care.
6. That the defendant failed to observe the "Red" traffic lights for Westbound traffic and negligently entered the intersection while the traffic lights were "Red" in violation of Sections 231 and 232 of the Traffic Code of the City of Tulsa, Oklahoma.

7. That the sole and proximate cause of the accident was the negligence of the defendant John Franklin Lower. The Court therefore finds that the defendant was 100% negligent and the plaintiffs 0% negligent.

8. That the plaintiff Maureen Parker sustained injuries to her body as a result of said accident which caused her to incur medical expenses and sustain loss of earnings and other related special damages in the sum of \$8,546.67. The Court further finds said plaintiff suffered pain, discomfort and disability which is measured in damages in the amount of \$8,953.33.

The Court finds that said plaintiff should recover damages from the defendant John Franklin Lower the total sum of \$17,500.

9. That the plaintiff James Parker sustained injuries to his body as a result of said accident which caused him to incur medical expenses and sustain loss of earnings and other related special damages in the sum of \$20,044.66. The Court further finds said plaintiff suffered pain, discomfort and disability which is measured in damages in the amount of \$14,955.34.

The Court finds that said plaintiff should recover damages from the defendant John Franklin Lower the total sum of \$35,000.00.

#### CONCLUSIONS OF LAW

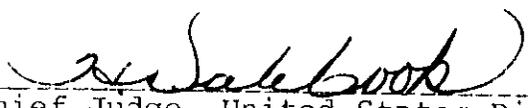
1. This Court has jurisdiction of the parties and subject matter of each action.

2. The accident and resulting damages suffered by each plaintiff was solely and proximately caused by the negligence of defendant each plaintiff was without negligence. That defendant was 100% negligent and each plaintiff 0% negligent.

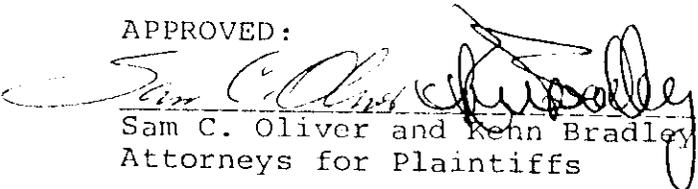
3. Judgment should be entered for the plaintiff Maureen Parker against the defendant in the amount of \$17,500.00.

4. Judgment should be entered for the plaintiff James Parker against the defendant in the amount of \$35,000.00.

Dated this 27th day of February, 1981.

  
\_\_\_\_\_  
Chief Judge, United States District  
Court

APPROVED:

  
\_\_\_\_\_  
Sam C. Oliver and Kenn Bradley  
Attorneys for Plaintiffs

  
\_\_\_\_\_  
John F. McCormick, Jr.  
Attorney for Defendant

MAR 10 1981

GEORGE S. LAMBERT, d/b/a  
COLFAX OIL COMPANY,

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

Plaintiff,

vs.

Case No. 80-C-152-E

LOUIS B. ZAMBON and CLEO S.  
ZAMBON,

Defendants,

STIPULATED ORDER OF DISMISSAL

IT IS HEREBY STIPULATED, by and between counsel for all parties hereto subject to the approval of the Court, as follows:

1. The above entitled action shall be dismissed with prejudice.
2. Each party shall bear his own cost and attorney fees.

Dated: March 5, 1981

Janice O. Williams  
Williams & Williams  
Attorneys at Law  
P.O. Box 157  
Arkadelphia, Arkansas 71923

and

Gordon L. Patten  
Attorney at Law  
3601 East 51st, Suite 105  
Tulsa, Oklahoma 74135  
Attorneys for Plaintiff

BY:

Janice O. Williams  
Janice O. Williams

Philip J. McGowan  
Sanders, McElroy & Carpenter  
Attorneys at Law  
205 Denver Building  
Tulsa, Oklahoma 74119  
Attorney for Defendant

BY:

Philip J. McGowan  
Philip J. McGowan

So Ordered:

/s/ JAMES O. ELLISON

JAMES O. ELLISON  
United States District Judge

Dated: March 10, 1981

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

JAMES PARKER,  
Plaintiff,

vs.

JOHN FRANKLIN LOWER,  
Defendant.

MAUREEN PARKER,  
Plaintiff,

vs.

JOHN FRANKLIN LOWER,  
Defendant.

No. 80-C-321-C ✓

**FILED**

MAR 10 1981

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

No. 80-C-320-C

J U D G M E N T

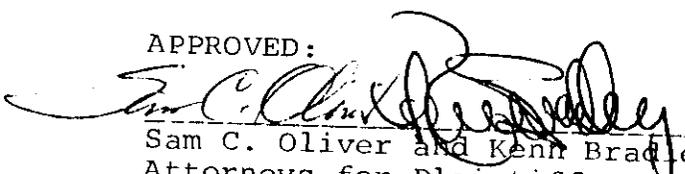
The captioned actions were consolidated for trial and came on for trial the 12th day of February, 1981, before Chief Judge H. Dale Cook, all parties appearing in person and by their respective attorneys of record. Evidence was presented and concluded on the 13th day of February, 1981. The Court heard the evidence and the issues having been duly determined made Findings of Fact and Conclusions of Law and renders a decision;

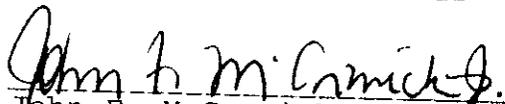
IT IS ORDERED and ADJUDGED that the plaintiff Maureen Parker recover of the defendant John Franklin Lower the sum of seventeen thousand five hundred dollars (\$17,500.00) with interest at the rate of ~~12%~~<sup>10 1/2%</sup> per annum as provided by law and her costs of action in case No. 80-C-320-C; and that the plaintiff James Parker recover of the defendant John Franklin Lower the sum of thirty-five thousand dollars (\$35,000.00) with interest at the rate of ~~12%~~<sup>10 1/2%</sup> per annum as provided by law and his costs of action in case No. 80-C-321-C.

Dated this 27th day of February, 1981.

  
Chief Judge, United States District Court

APPROVED:

  
Sam C. Oliver and Kenneth Bradley  
Attorneys for Plaintiffs

  
John F. McCormick, Jr.  
Attorney for Defendant

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

FILED

MAR - 9 1981

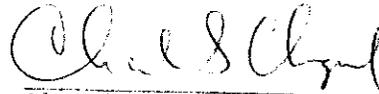
JIM SANDERS FORD,  
a partnership,  
  
Plaintiff,  
  
vs.  
  
FORD MARKETING CORPORATION,  
a corporation, and FORD MOTOR  
COMPANY, a corporation,  
  
Defendants.

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

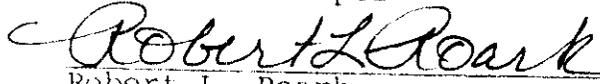
No. 80-C-505-BT

STIPULATION OF DISMISSAL

It is hereby stipulated by and between the Plaintiff,  
Jim Sanders Ford, and the Defendants, Ford Marketing Corpora-  
tion and Ford Motor Company, that the above-captioned case is  
dismissed without prejudice.



Charles S. Chapel



Robert L. Roark

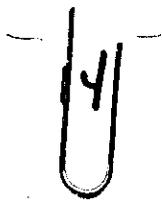
CHAPEL, WILKINSON, RIGGS, ABNEY  
& HENSON

Attorneys for Plaintiff  
502 West Sixth Street  
Tulsa, Oklahoma 74119  
(918) 587-3161

  
Thomas G. Marsh

DYER, POWERS, MARSH, TURNER &  
ARMSTRONG

Attorneys for Defendants  
525 South Main, Suite 210  
Tulsa, Oklahoma 74103  
(918) 587-0414



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

WILLIAM D. BRAMLETT, d/b/a )  
F & E CHECK PROTECTOR SALES )  
COMPANY, )  
Plaintiff, )  
vs. )  
THE HEDMAN COMPANY, a )  
Delaware corporation, )  
Defendant. )

NO. 78-C-462-C ✓

**FILED**

MAR - 6 1981 *pt*

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

ORDER OF DISMISSAL

In accordance with the Joint Stipulation of Dismissal  
Without Prejudice the Court does hereby Order the above captioned  
case dismissed and each party to bear its own costs.

SO ORDERED this 6<sup>th</sup> day of March, 1981.

*W. Salebrook*  
Judge of the District Court

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

LAUREL STEWART, Individually, and ESTEE OIL & GAS, INC., an Oklahoma Corporation,	)	
	)	
	)	
	)	
Plaintiffs,	)	
-vs-	)	NO. 80-C-107-B
	)	
CRAIG R. ARNOLD, Individually, and TRANS-CONTINENTAL ENERGY COR- PORATION, A Texas Corporation,	)	
	)	
	)	
	)	
Defendants and Third Party Plaintiffs,	)	<b>FILED</b>
-vs-	)	MAR - 6 1981
	)	
ROBERT E. SITLER,	)	
	)	
	)	
Third Party Defendant	)	

ORDER OF DISMISSAL

On this 6th day of March, 1981, the above captioned matter came on for consideration of the Court.

Based upon the Stipulation for Dismissal by all the parties;

IT IS ORDERED, ADJUDGED AND DECREED that the above entitled action be and the same hereby is dismissed with prejudice, and that the Counter-Claim and Third Party Complaint of the Defendants (Third Party Plaintiffs) against the Plaintiffs and Third Party Defendant be and the same is hereby dismissed with prejudice, each party to bear his or its own costs.

DATED this 6th day of March, 1981.

S/ THOMAS R. BRETT  
DISTRICT COURT JUDGE

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

JOHN MULKEY, )  
 )  
 Plaintiff, )  
 )  
 vs. ) 68-C-709-C  
 )  
 PENN-AMERICA INSURANCE COMPANY, )  
 )  
 Defendant. )

**FILED**  
**MAR 5 1981**  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL

COMES now the Plaintiff, John Mulkey, and dismisses the above entitled cause, with prejudice, at the cost of the defendants.

DENNIS F. SEACAT

  
Attorney for the Plaintiff

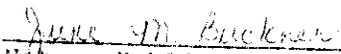
JOHN MULKEY

  
Plaintiff

STATE OF OKLAHOMA )  
 )  
 COUNTY OF <sup>(Okmulgee)</sup> TULSA ) ss:

Before me, the undersigned, a Notary Public in and for said County and State, on this 11<sup>th</sup> day of February, 1981, personally appeared John Mulkey, to me know to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

  
Notary Public

My Commission expires: 3/9/83

APPROVAL:

RICHARD D. WAGNER

\_\_\_\_\_  
Attorney for the Defendants.

FILED

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

MAR 5 1981

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 80-C-113-E
	)	
LARRY A. GULLEKSON,	)	
	)	
Defendant.	)	

O R D E R

The Court has before it for consideration Plaintiff's Motion for Summary Judgment. This is an action to collect indebtedness plus accrued interest. The indebtedness in question arises out of the default of certain Federally Insured Student Loans.

On October 29, 1980, Plaintiff filed a request for admissions, seeking that Defendant admit the genuineness of certain documents, and that Defendant's signature appeared thereon. These documents consisted of student applications for Federally Insured Loans, and the promissory notes connected with these loans. Defendant neither responded to the Plaintiff's request for admission within 30 days, nor did Defendant request any extension for time to respond. Under Rule 36, Fed.R.Civ.Pro., the matters are now admitted for the purposes of this litigation. In addition, the affidavit of Bob Dean, an employee of HEW, which is attached to the Complaint, sets forth Defendant's indebtedness on the notes, Defendant's failure to initiate repayment, the purchase of said notes by HEW, and the amount of principal and interest due as of December 12, 1978. This affidavit stands wholly uncontroverted in any way by Defendant.

Defendant, in Response to Plaintiff's motion for summary judgment, argues that this matter is not proper for such disposition in that Plaintiff is attempting to collect interest on the notes for the period between December, 1974, and December, 1978, and Defendant contends that such interest is not due since no demand for payment was made during that period.

If such a demand is necessary, a matter of material factual dispute would be present, thus precluding summary judgment, see,

e.g., Rule 56, Federal Rules of Civil Procedure; Carter v. Stanton, 405 U.S. 669, 92 S.Ct. 1232, 31 L.Ed.2d 569 (1972); Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); Mustang Fuel Corp. v. Youngstown Sheet & Tube Co., 561 F.2d 202 (Tenth Cir. 1977); Williams Petroleum Co. v. Midland Cooperatives, Inc., 539 F.2d 694 (Tenth Cir. 1976); Redhouse v. Quality Ford Sales, Inc., 511 F.2d 230 (Tenth Cir. 1975); Dzenits v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 494 F.2d 168 (Tenth Cir. 1974). If, on the other hand, such demand is not required, any dispute as to whether demand was or was not made would be irrelevant to this proceeding and would not, therefore, bar summary disposition of this dispute.

Among the documents admitted as genuine pursuant to Rule 36 is the "Promissory Note-Installment". This note, dated December 6, 1974, provides that Defendant, as maker, promises to pay to the lender the sum of \$8,499.29, together with simple interest at the rate of 6.9 percent, in 98 installments of \$86.00, and a last installment of \$71.29, the installments payable commencing January 15, 1975. Defendant's signature appears on the note.

The general rule as to the necessity of a demand for the payment of principal as a prerequisite to the accrual of interest is found in 47 C.J.S. Interest § 46:

In the absence of a special agreement as to interest, or as to the time the debt is to be paid, interest will be allowed on a debt from the time the principal is demanded, if the amount thereof is definite and certain or capable of being made certain by calculation, and, as a general rule, not before.

The general rule is, however, subject to an exception (as is the case with almost all general rules). The text goes on to say:

Generally where the debtor knows what he is to pay, and when he is to pay it, no demand is necessary to start the running of interest from the day the payment should have been made; ...

See also 45 Am.Jur.2d, Interest and Usury, §§ 88-91, 93.

The uncontroverted facts before the Court show that Defendant, as of December 6, 1974 knew the amount he was to pay, and when payments

were due. Payments were to have commenced on January 15, 1975. Under these circumstances, the Court must conclude that no demand was required to start the running of interest, and, therefore any dispute as to whether such demand was made is legally irrelevant. There being no other dispute as to the facts of this case, summary judgment is, in the Court's opinion, appropriate.

IT IS THEREFORE ORDERED that judgment be entered in favor of Plaintiff and against Defendant in the amount of \$5,700.00, plus the sum of \$1,402.64 as accrued interest to December, 1978, plus interest accruing thereafter.

It is so Ordered this 5<sup>th</sup> day of March, 1981.

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

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

FILED

MAR 5 1981

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LARRY A. GULLEKSON, )  
 )  
 Defendant. )

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

No. 80-C-113-E

JUDGMENT

Having considered Plaintiff's Motion for Summary Judgment, and having found that there are no material facts in dispute and that Plaintiff is entitled to judgment as a matter of law,

IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of Plaintiff and against Defendant in the amount of \$5,700.00, plus the sum of \$1,402.64 interest accrued to December, 1978, and interest accruing thereafter to date.

Entered this 5<sup>th</sup> day of March, 1981.

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

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

FILED

MAR 5 1981

WEAVER PERSONNEL, INC., an )  
Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HAMILTON BROTHERS OIL COMPANY, )  
 )  
Defendant. )

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

No. 79-C-638-E ✓

JUDGMENT

It is hereby ordered that the Plaintiff Weaver is not entitled to recover against the Defendant in this action.

It is ordered that Defendant Hamilton is entitled to judgment against Plaintiff Weaver for its properly recoverable costs expended herein.

It is so Ordered this 14<sup>TH</sup> day of March, 1981.

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

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

**F I L E D**

MAR 4 1981

Jack E. Gibson, Jr.,  
U. S. DISTRICT COURT

BETTE G. BRUHN, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 79-C-150-E  
 )  
 McDONNELL DOUGLAS CORPORATION, )  
 a Maryland corporation, )  
 )  
 Defendant. )

JUDGMENT

This action having been tried before the Court and a jury,  
the jury having rendered its verdict for the Plaintiff, and the  
Court having entered its Findings and Conclusions as to damages,

IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered  
in favor of Plaintiff and against Defendant in the amount of  
\$2,276.80, and that Plaintiff recover of Defendant her costs and  
attorney's fees.

Entered this 4<sup>th</sup> day of March, 1981.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 4 1981

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ELVEREZ G. ALLEN, )  
 )  
Defendant. )

CIVIL ACTION NO. 80-C-407-E

DEFAULT JUDGMENT

This matter comes on for consideration this 4<sup>TH</sup> day of March, 1981, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Elverez G. Allen, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Elverez G. Allen, was personally served with Summons and Complaint on August 12, 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, Elverez G. Allen, for the principal sum of \$638.00 (less the sum of \$100.00 which has been paid) plus the accrued interest of \$245.91 as of January 4, 1980, plus interest at 7% from January 4, 1980, until the date of Judgment, plus interest at the legal rate on the principal sum of \$638.00 from the date of Judgment until paid.

*James Allison*  
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA  
HUBERT H. BRYANT  
United States Attorney  
*[Signature]*  
ROBERT P. SANTEE  
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAR 4 1981

Jack [unclear] [unclear]  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WARREN C. POWELL, ) No. 80-C-297-E  
KATHLENE L. POWELL, now )  
PENNINGTON; and )  
DAVID PENNINGTON, )  
 )  
Defendants. )

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 4<sup>th</sup>  
day of March, 1981, the Plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney; and the Defendants, Warren C.  
Powell, Kathlene L. Powell, now Pennington, and David Pennington,  
appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendants, Kathlene L. Powell, now Pennington  
and David Pennington, were served with Summons and Complaint on  
July 30, 1980 and May 29, 1980, respectively, as appears from the  
United States Marshal's Service herein; that Defendant Warren C.  
Powell was served by publication as shown on Proof of Publication  
filed herein.

It appearing that the Defendants, Warren C. Powell,  
Kathlene L. Powell, now Pennington, and David Pennington, 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 Delaware County, Oklahoma, within the Northern  
Judicial District of Oklahoma:

Lot 4, in Block 1 of John Cox First Addition  
to the Town of Grove, Oklahoma, according to  
the official plat thereof.

THAT the Defendants, Warren C. Powell and Kathlene L. Powell, now Pennington, did, on the 12th day of July, 1978, execute and deliver to the Farmers Home Administration, their mortgage and mortgage note in the sum of \$24,700.00 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, Warren C. Powell and Kathlene L. Powell, now Pennington, 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 \$24,892.13 as unpaid principal plus accrued interest of \$4,650.10 as of February 24, 1981, plus interest on the principal sum of \$24,892.13 at the rate of 8 1/2 percent per annum from February 24, 1981, 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, Warren C. Powell and Kathlene L. Powell, now Pennington, <sup>/ in personam</sup> ~~for~~ the principal sum of \$24,892.13, plus accrued interest of \$4,650.10 as of February 24, 1981, plus interest on the principal sum of \$24,892.13 at the rate of 8 1/2 percent per annum from February 24, 1981 until paid, 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 David Pennington.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's

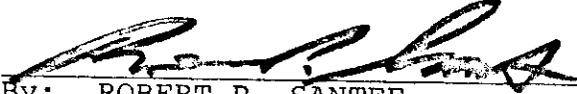
money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, subject to outstanding taxes which are a lien on this property, with appraisement the real property and apply the proceeds thereof in satisfaction 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.

S/ JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED

HUBERT H. BRYANT  
United States Attorney

  
By: ROBERT P. SANTEE  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 3 1981 *nd*

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JIM D. CLAY, )  
 )  
 Defendant. )

Jack E. Sibley, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 80-C-565-E ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 7<sup>th</sup> day of March, 1981, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Jim D. Clay, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Jim D. Clay, was personally served with Summons and Complaint on October 8, 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, Jim D. Clay, for the principal sum of \$575.89 (less the sum of \$75.00 which has been paid) plus the accrued interest of \$170.32 as of August 22, 1979, plus interest at 7% from August 22, 1979, until the date of Judgment, plus interest at the legal rate on the principal sum of \$575.89 from the date of Judgment until paid.

UNITED STATES OF AMERICA  
HUBERT H. BRYANT  
United States Attorney

*Robert P. Santee*  
ROBERT P. SANTEE  
Assistant U. S. Attorney

*James E. Sibley*  
UNITED STATES DISTRICT JUDGE

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

**E I L E D**

MAR 3 1981 *Agm*

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

LOFFLAND BROTHERS COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WELDON J. ROUGEAU, )  
 )  
Defendant. )

No. 79-C-221-E ✓

O R D E R

The Court initially has before it Plaintiff's motion for order of contempt alleging that Defendant did not comply with the Order of this Court on November 13, 1980. The requested documents have been delivered and the motion of Plaintiff for order of contempt is hereby overruled.

The Court has before it for consideration Defendant's Motion to Remand this matter to the Department of Labor. The Plaintiff has responded and both parties have filed briefs in support of their respective positions.

Plaintiff is a worldwide drilling contractor headquartered in Tulsa. In 1971, the Department of Interior established the WRO-OEO to enforce an executive order relating to employment opportunity programs. The Department of Labor set forth requirements for government contractors to comply with the executive order. The Plaintiff was inspected and the WRO-OEO issued a show cause order stating that the Plaintiffs were not in compliance. The Plaintiff alleges the WRO-OEO demanded that Plaintiff use illegal guidelines for compliance. A conciliation meeting was held in addition to hearings on the matter. On January 18, 1977, Formal Rule Making Regulations were adopted by the Department of Labor. On April 21, 1977, the Administrative Law Judge made his recommended decision. On July 18, 1977, the Acting Director of the Office of Hearings and Appeals made his decision. That decision was subject to approval by the Director of OFCCP. During the time it had been sent to that Director for final approval, in October of 1978, new regulations were published which removed from the Director approval authority. The Secretary of Labor now issues the final decision.

The Defendant basically takes the position in his motion to remand that a final decision was not made because under the October 20, 1978, regulations only the Secretary of Labor has the authority to issue the final administrative order. The Defendant states that there is no final administrative order for the Court to review, and that it is not for the Court to attempt to anticipate what action, if any, the Secretary of Labor might take upon review of the proposed decision of the Director of OFCCP and of the administrative record.

The Plaintiff takes the position that the agency action is final and subject to review by the Court at this time. The Plaintiff alleges the final order was entered on July 18, 1977, by the Director under the authority of existing regulations at that time.

The problem facing the Court is that the Director of OFCCP had yet to give his approval of the final administrative decision before it technically became final.

It is well established that administrative remedies must be exhausted to avoid premature interruption of the administrative process.

"The administrative agency is created as a separate entity and invested with certain powers and duties. The courts ordinarily should not interfere with an agency until it has completed its action or else it has clearly exceeded its jurisdiction." (Notions of administrative autonomy require that the agency be given a chance to discover and correct its own errors.) McKart v. U.S., 395 U.S. 185, 89 S.Ct. 1657, 23 L.Ed.2d 194 (1969).

See also Wright & Miller, Civil: § 3940.

This Court is concerned that if under the Administrative Procedures Act there is any question that the administrative process is not complete, then this Court should not proceed. If this Court were to deny the motion for remand and proceed to trial, appeal being taken, then it could be remanded to the administrative agency for review and subsequently the case would come back to this Court. The idea of oppressive delay comes to mind. The problem, as this Court views it, is the issue of whether

or not a final decision was made, has not been determined. The Director had yet to make a final decision according to the regulations when the regulations were changed. Even if the only matter lacking was the Director's approval or disapproval, that still seems to be clearly a prerequisite to a final decision. In St. Regis Paper Co. v. Marshall, 591 F.2d 612 (Tenth Cir. 1979) the court stated:

"Even assuming that final agency action is at issue here, since further and adequate administrative relief has been requested but not exhausted, the ripeness element fails and the courts need not entertain the action."

The Tenth circuit in that case spoke to the reasons for the exhaustion doctrine and that agency action must not only be "final" but the controversy must also be "ripe" in order to protect the agency from premature judicial interference, citing Abbott Laboratories v. Gardner, 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed.2d 681.

The Administrative Procedure Act does embody a determination by Congress to subject decisions of government agencies to review by the courts. U.S. Lines Inc. v. Federal Maritime Commission, 584 F.2d 519, (Fourth Cir. 1978) 189 U.S.App. D.C. 361; 5 USCA § 551-559. However, the interest in postponing judicial review of an administrative action is strong if the challenged agency position is not in fact the agency's final position. Continental Air Lines Inc. v. C.A.B., 522 F.2d 107, 173 U.S.App. D.C. 1 (Fourth Cir. 1975). The deeply rooted policy of federal courts is against piecemeal appeals and in favor of allowing the administrative proceedings to run their course without judicial interference. State of N.Y. v. U.S., 568 F.2d 887, appeal after remand 600 F.2d 349 (Second Cir. 1977).

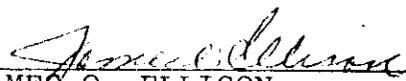
A remand in this case does not call for a total review and further lengthy administrative action, but only for the Secretary to issue a final decision. Under the new regulations, the Secretary of Labor is to make the final decision. This Court feels that in the interest of justice and to insure the question of jurisdiction that the case should be remanded to the Secretary of Labor to make his determination. The decision of the Director of the Office of Hearings and Appeals was to take effect and become the Final Decision

when it was approved by the Director of OFCCP, Department of Labor. Therefore the final decision would become effective on the date the Director of OFCCP, gave his approval to it under 43 CFR § 4.792 and 41 CFR 60-3030(b). It is the opinion of this Court that the decision was not a final decision without the approval of the Director, Office of Federal Contract Compliance, Department of Labor. See 43 CFR 4.792. Therefore, since this Court sees the decision of the Director as procedurally deficient, then this Court believes the appropriate action of the Court is to remand to the agency.

THEREFORE IT IS THE ORDER OF THIS COURT that this case be remanded to the Secretary of Labor for review of the decision of the Administrative Law Judge pursuant to 41 CFR 60-1.26(d), 41 CFR 60-30.27, 30.28 and 30.30.

IT IS FURTHER ORDERED That the motion of Plaintiff for order of contempt is hereby overruled.

It is so Ordered this 3<sup>RD</sup> day of March , 1981.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 3 1981

JACKSONVILLE  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FRANKLIN A. MCKINLEY, )  
 )  
Defendant. )

No. 80-C-566-B

ORDER OF DISMISSAL

NOW, on this 2 day of March, 1981, there came on for consideration the Motion for Order of Dismissal filed herein. The Court finds this action, based on such Motion, should be dismissed.

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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

**FILED**

Feb 2 1981

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 80-C-659-B
	)	
ROGER C. GUSTAFSON,	)	
	)	
Defendant.	)	

DEFAULT JUDGMENT

THIS matter comes on for consideration this 27<sup>th</sup>  
day of February, 1981, the plaintiff appearing by  
Paula S. Ogg, Assistant United States Attorney for the Northern  
District of Oklahoma, and the defendant, Roger C. Gustafson,  
appearing not.

The Court being fully advised and having examined  
the file herein finds that defendant, Roger C. Gustafson,  
was personally served with Summons and Complaint on November 24, 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 this is a suit brought  
by the United States of America for the recovery of forfeitures  
and for an injunction under the Packers and Stockyard Act.

The Court further finds that defendant, Roger C.  
Gustafson, is now, and at all times material herein was, engaged  
in the business of a dealer, buying and selling livestock  
in commerce.

The Court further finds that following an Order  
issued by an Administrative Law Judge of the U.S. Department  
of Agriculture (Exhibit "A" of Complaint), defendant knowingly  
failed to obey the provisions of said Order, and thereafter  
purchased livestock in commerce as a dealer and issued checks  
in the total sum of \$2,500, in purported payment for livestock

purchased in commerce, without having and maintaining sufficient funds on deposit in the bank account upon which they were drawn to pay such checks when presented, and failed to remit, when due, the full purchase price of such livestock.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that plaintiff have and recover judgment against defendant, Roger C. Gustafson, for the sum of \$2,500, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant, Roger C. Gustafson, his agents and employees, directly or indirectly, through any corporate or other devise, are permanently enjoined from violating the provisions of the Order of the Secretary of Agriculture (Exhibit "A" of Complaint).

*By Thomas R. Brett*  
UNITED STATES DISTRICT JUDGE

APPROVED:

*Paula S. Ogg*  
PAULA S. OGG  
Assistant United States Attorney