

FILED

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

JUL 31 1981

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TERRY L. FRAZIER, et. al., )  
 )  
 Defendants. )

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

CIVIL ACTION NO. 80-C-631-B

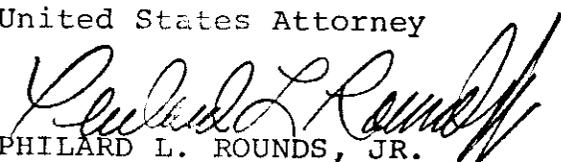
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Philard L. Rounds, Jr., 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 31st day of July, 1981.

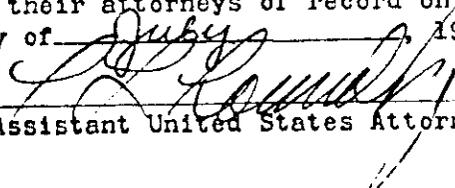
UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

  
PHILARD L. ROUNDS, JR.  
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 31st day of July, 1981.

  
Assistant United States Attorney

# United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

P. DI LEGGE & SON, INC.,  
Plaintiff,

CIVIL ACTION FILE NO. 78-C-428-E

vs.

GREAT NATIONAL CORPORATION,  
Defendant.

JUDGMENT

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

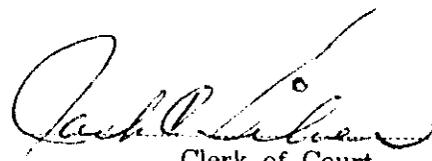
It is Ordered and Adjudged that having found in favor of the Plaintiff, P. Di Legge & Son, Inc. and against the Defendant Great National Corporation assesses actual damages in the amount of \$93,600.00 and punitive damages in the amount of \$46,800.00. Plaintiff to be awarded cost of action.

**FILED**

**JUL 31 1981**

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

Dated at Tulsa, Oklahoma, this 31st day  
of July, 19 81.

  
Clerk of Court  
©

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

JACOB W. FLEMING and )  
HENRIETTA H. FLEMING, )  
husband and wife, )

Plaintiffs, )

v. )

HERB HIATT and SANDY HIATT, )  
doing business as )  
MARANATHA MOTORS, )  
and ARBY BAGWELL, )

Defendants. )

Civil Action  
No. 80-C-287-E

ORDER

The Court, pursuant to the parties' Stipulation of Dismissal of July 17, 1981, hereby dismisses the action with prejudice.

**S/ JAMES O. ELLISON**

\_\_\_\_\_  
JUDGE

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

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

RON R. FUGATE,  
Defendant.

CIVIL ACTION NO. 81-C-334-E

AGREED JUDGMENT

This matter comes on for consideration this 30<sup>th</sup>  
day of July, 1981, the Plaintiff appearing by Paula S.  
Ogg, Assistant United States Attorney for the Northern District  
of Oklahoma, and the Defendant, Ron R. Fugate, appearing pro se.

The Court being fully advised and having examined the  
file herein finds that Defendant, Ron R. Fugate, was personally  
served with Summons and Complaint on July 9, 1981.

The parties agree and consent that judgment may be  
entered against the Defendant, Ron R. Fugate, in the amount of  
\$794.97 (less the sum of \$375.00 which has been paid). Further,  
the Defendant agrees to pay this judgment in regular monthly  
payments of \$25.00 until paid in full.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that  
the Plaintiff have and recover judgment against Defendant, Ron R.  
Fugate, for the principal sum of \$794.97 (less the sum of \$375.00  
which has been paid) plus interest at the legal rate from the  
date of this judgment until paid.

*J. James D. Ellison*  
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

*Paula S. Ogg*  
PAULA S. OGG  
Assistant U.S. Attorney

*Ron R. Fugate*  
RON R. FUGATE  
Defendant

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

FILED  
JUL 23 1981  
JAMES O. ELLISON, CLERK  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. )  
16 FIREARMS, )  
Defendants. )

79-C-612-E

O R D E R

Now on this 28<sup>th</sup> day of July, 1981, the Court having entertained the Motion for dismissal, said motion being by stipulation and joined by all parties thereto does find that said cause should be dismissed.

WHEREFORE, it is hereby adjudged, ordered and decreed that this case, No. 79-C-612-E, is hereby dismissed.

James O. Ellison  
JUDGE JAMES O. ELLISON  
UNITED STATES DISTRICT COURT JUDGE  
FOR THE NORTHERN DISTRICT OF OKLAHOMA.

**UNITED STATES DISTRICT COURT**

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

**TULSA, OKLAHOMA 74103**

JACK C. SILVER  
CLERK

(918) 581-7796  
(FTS) 736-7796

July 28, 1981

Mr. Paul D. Brunton  
Attorney at Law  
1310 South Denver  
Tulsa, Oklahoma 74119

Mr. Maynard I. Ungerman  
Ms. Terry H. Bitting  
Attorneys at Law  
P. O. Box 2099  
Tulsa, Oklahoma 74101

Clerk  
District Court, Washington County  
Washington County Courthouse  
Bartlesville, Oklahoma

Re: 81-C-383-C (# C-81-289)  
John Pickle III v. Natl. Modified  
Midget Association and Mike Bass

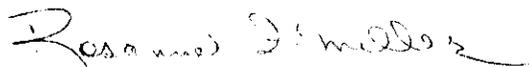
Gentlemen and Ms. Bitting:

This is to advise you that Chief Judge H. Dale Cook entered the following Minute Order this date in the above case:

"The Court finds that the principal place of business of defendant Association is Bartlesville, Oklahoma. Therefore, there is no diversity and the case must be remanded under the statute. IT IS ORDERED that this case is remanded to the District Court of Washington County, Oklahoma, Case No. C-81-289."

Very truly yours,

JACK C. SILVER, CLERK



Deputy

rfm

FILED

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JUL 27 1981 *yc*

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CLARENCE W. ELLIOTT, )  
 )  
 Defendant. )

CIVIL NO. 81-C-225-B ✓

AGREED JUDGMENT

This matter comes on for consideration this 24<sup>th</sup> day of July, 1981, the Plaintiff appearing by Don J. Guy, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Clarence W. Elliott, appearing pro se.

The Court being fully advised and having examined the file herein finds that Defendant, Clarence W. Elliott, was personally served with Summons and Complaint on June 16, 1981.

The parties agree and consent that judgment may be entered against the Defendant, Clarence W. Elliott, in the principal amount of \$1,533.75, plus accrued interest of \$397.99 as of March 25, 1981.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against Defendant, Clarence W. Elliott, for he principal sum of \$1,533.75, plus accrued interet of \$397.99 as of March 25, 1981, plus interest at 7% from March 25, 1981 until the date of Judgment, plus interest at the legal rate from the date of this Judgment until paid.

*Thomas W. [Signature]*

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

*Don J. Guy*  
DON J. GUY  
Assistant U.S. Attorney

*Clarence Elliott*  
CLARENCE W. ELLIOTT, Defendant

FILED

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

JUL 27 1981

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

THE PRUDENTIAL INSURANCE )  
COMPANY OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BETSY MONTGOMERY; JERRY MONTGOMERY, )  
guardian of the estates of )  
Margaret Lynn Montgomery and )  
Michael Ross Montgomery, minors; )  
and DONNA LEE SCHEID, guardian of )  
the persons and estates of )  
Margaret Lynn Montgomery and )  
Michael Ross Montgomery, minors, )  
 )  
Defendants. )

No. 80-C-352-BT

STIPULATION FOR CONSENT DECREE

It is hereby stipulated by and between JERRY MONTGOMERY AND DONNA LEE SCHEID, claimants, that said claimants acknowledge receipt of a copy of the Complaint filed herein and without admitting or denying the allegations of said Complaint, hereby waive all defenses to said Complaint and agree to the entry of final judgment in a form presented to the Court, as follows:

I

Said claimants hereby waive the entry of findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure and consent to the entry by the Court of the final judgment in the form annexed hereto.

II

Pursuant to the terms of a settlement agreement, the parties agree as follows:

That claimant DONNA LEE SCHEID shall withdraw as guardian of the estates of the minor children, MARGARET LYNN MONTGOMERY and MICHAEL ROSS MONTGOMERY in the Chancery Court of Harrison County, Mississippi, Cause No. 74813, and that Evelyn Floyd, Attorney at Law, 310 Hughes Building, Gulfport, Mississippi, be appointed as guardians of the estates of said minor children in said cause, after satisfying any and all requirements imposed by the Court.

That claimant JERRY MONTGOMERY withdraw his claim as guardian of the estates

of said minor children for the funds on deposit herein.

That the cost and attorney fees incurred by the guardians, JERRY MONTGOMERY and DONNA LEE SCHEID, be paid from the proceeds of the funds herein, subject to approval of the Chancery Court of Harrison County, as follows:

1. Attorney fees for BRUCE D. GAITHER in the amount of \$ 387.50 .
2. Attorney fees for STANLEY D. MONROE in the amount of \$ 750.00 .

III

Except for the matters referred to in Paragraph II above, none of the parties hereto will use this stipulation or the judgment as a basis for the institution of any administrative or other legal proceedings.

IV

Neither this stipulation nor the judgment, nor anything contained herein or therein shall constitute evidence or an admission or adjudication with respect to any allegation of the complaint or any fact or conclusion of law with respect to any matter alleged in or arising out of the complaint, except that it is agreed by and between the parties that BETSY MONTGOMERY is barred by operation of Title 84 Oklahoma Statute Section 231 from taking the insurance proceeds herein and further that the said BETSY MONTGOMERY is hereby discharged from this matter for failure to comply with the Court's Orders previously rendered.

V

That the guardian of the estates of the minor children shall take, protect and invest the proceeds hereunder in accordance with the oath of his office, for the use and benefit of the minor children, MARGARET LYNN MONTGOMERY and MICHAEL ROSS MONTGOMERY, only.

VI

No representations or promises of any kind, other than as contained in this stipulation have been made by and between the claimants to induce this settlement agreement for the entry of judgment.

Dated this 26<sup>th</sup> day of June, 1981.



STANLEY D. MONROE  
Attorney for JERRY MONTGOMERY



BRUCE D. GAITHER  
Attorney for DONNA LEE SCHEID

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

**FILED**

**JUL 27 1981**

THE PRUDENTIAL INSURANCE )  
COMPANY OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BETSY MONTGOMERY; JERRY MONTGOMERY, )  
guardian of the estates of )  
Margaret Lynn Montgomery and )  
Michael Ross Montgomery, minors; )  
and DONNA LEE SCHEID, guardian of )  
the persons and estates of )  
Margaret Lynn Montgomery and )  
Michael Ross Montgomery, minors, )  
 )  
Defendants. )

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

No. 80-C-352-BT

JOURNAL ENTRY OF JUDGMENT

NOW on this 24<sup>TH</sup> day of ~~June~~, 1981, the above  
entitled cause comes on before me, the undersigned United States  
District Court Judge. The Court, being advised that the parties  
had reached a settlement herein, pursuant to the terms of a  
Stipulation for Consent Decree attached hereto, the Court finds  
that the following Order should issue:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the  
Court that MARGARET LYNN MONTGOMERY and MICHAEL ROSS MONTGOMERY,  
minors, are children of JAMES E. MONTGOMERY, Deceased.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court  
that pursuant to 38 U.S.C. Section 770(a), the said minor  
children, MARGARET LYNN MONTGOMERY and MICHAEL ROSS MONTGOMERY,  
are contingent beneficiaries, "by law" of the said decedent,  
JAMES E. MONTGOMERY.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court  
that the funds on deposit herein, in the amount of TWENTY-TWO  
THOUSAND SIX HUNDRED NINETY-SIX AND 80/100 DOLLARS (\$22,696.80),  
be paid over directly to the guardian of the estates of the  
minor children in the Chancery Court in and for Harrison County,  
Mississippi, in Cause No. 74813, upon written request of the  
new guardian, Evelyn Floyd, Attorney at Law, 310 Hughes  
Building, Gulfport, Mississippi, for the use and benefit of the  
said minor children.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the attorney fees incurred by the guardians, JERRY MONTGOMERY and DONNA LEE SCHEID, be paid by the guardian, Evelyn Floyd, upon approval of the Chancery Court of Harrison County, Mississippi.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that BETSY MONTGOMERY is barred by operation of Title 84 Oklahoma Statute Section 231 from taking the insurance proceeds herein, and further by her failure to abide by the Orders of the Court heretofore entered.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the terms of the Stipulation for Consent Decree be incorporated herein as if fully set forth herein.

S/ THOMAS R. BRETT

JUDGE OF THE UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

  
STANLEY D. MONROE,  
Attorney for JERRY MONTGOMERY

  
BRUCE D. GAITHER,  
Attorney for DONNA LEE SCHEID

FILED

JUL 27 1981 *jm*

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

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

SAMUEL RAY STOUT, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DAVE FAULKNER, )  
 )  
 Defendant. )

No. 80-C-603-BT ✓

O R D E R

This matter comes before the Court on defendant's Motion to Dismiss for failure to state a claim upon which relief can be granted. For the reasons set forth below, defendant's Motion is hereby sustained.

Plaintiff brings this action under 42 U.S.C.A. §1983. Section 1983 affords equitable and monetary relief against any person who deprives the plaintiff of constitutional rights while acting under the color of law. In applicable part, plaintiff's Complaint asserts as follows:

"4. Plaintiff has been deprived of his civil rights because of an illegal transfer and transport of his person, from the jurisdiction of the defendant to the jurisdiction in which he is presently incarcerated in by the defendant, denying the plaintiff procedural due process, access to the courts, and equal protection.

It is further made known that the defendant had no authority to transport the plaintiff from his jurisdiction across state lines to Texas, denying the plaintiff the right to appeal the decision of the lower court, (if the lower court had ruled?). The acts herein described were matters concerning an extradition of the plaintiff. Plaintiff will make all evidence available to the court upon a hearing. Such actions by your defendant has caused your plaintiff to suffer a deprivation of his civil rights guaranteed by the federal constitution."

In considering defendant's Motion to Dismiss, the Court takes as true the allegations contained in plaintiff's Complaint. Cruz v. Beto, 405 U.S. 319 (1972). As plaintiff is proceeding pro se in forma pauperis, the Court allows a more liberal

standard of pleading than is normally applicable. See e.g. Haines v. Kerner, 404 U.S. 519 (1972). However, the duty to be less stringent with a pro se complaint does not require the Court to conjure up unpled allegations. Hurney v. Carver 602 F.2d 993 (1st Cir. 1979); McDonald v. Hall, 610 F.2d 16 (1st Cir. 1979). As the Supreme Court stated in Conley v. Gibson, 355 U.S. 41, 45-46 (1957), "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

A plaintiff's claim under §1983 must be grounded on the violation of a right of substance and not merely on a theoretical speculation that some right has been infringed. Holmes v. Finney, 631 F.2d 150 (10th Cir. 1980). A federal constitutional question must exist not in mere form, but in substance, and not in mere assertion, but in essence and effect. Id; see also Freeman v. Flake, 448 F.2d 258, 261 (10th Cir. 1971), cert. denied 405 U.S. 1032 (1972).

The Court concludes plaintiff has failed to allege with sufficient specificity an abridgement of his civil rights. Plaintiff alleges defendant "had no authority to transport the plaintiff." However, the documents attached to defendant's brief reveal that the extradition of plaintiff was carried out according to proper statutory procedure. 22 O.S.A. §1141.1 et seq. Included in the documents are a Demand from the Governor of Texas and a Warrant from the Governor of Oklahoma. It appears plaintiff was arrested pursuant to the warrant on March 24, 1980 and duly transported to Houston, Texas.

In brief, plaintiff alleges and defendant does not dispute the extradition process required several attempts to properly effect. Plaintiff further asserts that the initial attempts were invalid for a failure to conform to the requirements of

Texas law. However, plaintiff concedes that he was not incarcerated during the period between the first attempt and plaintiff's ultimate extradition. Therefore, the mere failure to meet Texas statutory requirements does not amount to a violation of plaintiff's constitutional rights. The Complaint simply does not articulate a violation of plaintiff's constitutional rights.

The Court further concludes that the Complaint does not contain an affirmative link between the defendant and the alleged injury to plaintiff. Personal participation is an essential allegation in a §1983 claim. See e.g. Bennett v. Passic, 545 F.2d 1260 (10th Cir. 1976). As the Court stated in Rizzo v. Goode, 423 U.S. 362, 371 (1976):

"As the facts developed, there was no affirmative link between the occurrence of the various incidents of police misconduct and the adoption of any plan or policy by petitioners - express or otherwise - showing their authorization or approval of such misconduct."

As stated above, the Complaint does not specify occurrences which constitute a violation of plaintiff's constitutional rights. Furthermore, the Complaint does not contain an "affirmative link" between the defendant and the harm to plaintiff. There is no allegation that defendant personally effected plaintiff's extradition in violation of plaintiff's civil rights. As the Court stated in Kite v. Kelley, 546 F.2d 334, 337 (10th Cir. 1976):

"The 'affirmative link' requirement of Rizzo means to us that before a superior may be held for acts of an inferior, the superior, expressly or otherwise, must have participated or acquiesced in the constitutional deprivation of which complaint is made."

This Complaint contains no such assertion. The allegations state only "It is further made known that the defendant had no

authority to transport the plaintiff from his jurisdiction across state lines to Texas." Therefore, the nexus between the person of the defendant and the alleged harm is not sufficient to overcome a Motion to Dismiss.

Defendant's Motion to Dismiss is hereby sustained.

IT IS SO ORDERED.

DATED this 27 day of July, 1981.



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

FILED

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JUL 27 1981

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SYLVIA A. HATCHER, )  
 )  
 Defendant. )

CIVIL ACTION NO. 80-C-736-B

DEFAULT JUDGMENT

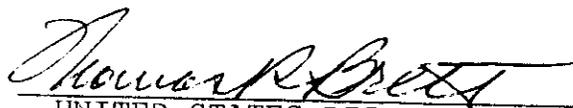
This matter comes on for consideration this 24  
day of July, 1981, the Plaintiff appearing by Philard L. Rounds, Jr.,  
Assistant United States Attorney for the Northern District of  
Oklahoma, and the Defendant, Sylvia A. Hatcher, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendant, Sylvia A. Hatcher, was  
personally served with Summons and Complaint on January 2, 1981,  
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, Sylvia A.  
Hatcher, for the principal sum of \$959.59 (less the sum of \$261.72  
which has been paid) plus the accrued interest of \$181.72 as of  
November 14, 1980, plus interest at 7% on the principal sum of  
\$959.59 (less the sum of \$261.72) from November 14, 1980, until  
the date of Judgment, plus interest at the legal rate on the

principal sum of \$959.59 (less the sum of \$261.72) from the date  
of Judgment until paid.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

  
PHILARD L. ROUNDS, JR.  
Assistant U. S. Attorney

FILED

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

JUL 27 1981

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

STEVE JONES d/b/a ODDYSSEY MALL; )  
MATHEW BUNYAN d/b/a STARSHIP; )  
GEARY A. NEWTON d/b/a OZ; and )  
JOHN L. LEBOW d/b/a GYPSY COWBOY, )  
 )  
 ) Plaintiffs, )  
 )

vs. )

No. 81-C-159-B

S. M. FALLIS, JR., District Attorney )  
for the Fourteenth Judicial District )  
of the State of Oklahoma, ex rel )  
STATE OF OKLAHOMA; DAVE FAULKNER, )  
County Sheriff of Tulsa County; )  
HARRY STEGE, Chief of Police of the )  
City of Tulsa, Oklahoma; and )  
WARREN HENDERSON, Director of Oklahoma )  
Bureau of Narcotics & Dangerous Drugs, )  
 )  
 ) Defendants. )

J U D G M E N T

Pursuant to a Memorandum Opinion filed by this Court in the Western District of Oklahoma on July 23, 1981, the Court concludes and declares that S.B. 114 is constitutionally valid. Judgment is hereby entered in favor of the defendants and against the plaintiffs. Further, the Court orders the parties to pay their own respective costs and attorneys fees.

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



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

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

|                            |   |                   |
|----------------------------|---|-------------------|
| LADY ANN'S ODDITIES, INC., | ) |                   |
| et al.,                    | ) |                   |
|                            | ) |                   |
| Plaintiffs,                | ) |                   |
|                            | ) |                   |
| vs.                        | ) | NO. CIV-81-500-BT |
|                            | ) |                   |
| ROBERT H. MACY, et al.,    | ) |                   |
|                            | ) |                   |
| Defendants.                | ) |                   |
|                            | ) |                   |
| TARIQ SHABAZZ d/b/a        | ) |                   |
| NATURE'S STORE,            | ) |                   |
|                            | ) |                   |
| Plaintiffs,                | ) |                   |
|                            | ) |                   |
| vs.                        | ) | No. CIV-81-501-BT |
|                            | ) |                   |
| ROBERT H. MACY, et al.,    | ) |                   |
|                            | ) |                   |
| Defendants.                | ) |                   |
|                            | ) |                   |
| ROBERT L. CONERLY d/b/a    | ) |                   |
| ABC BOOKSTORE,             | ) |                   |
|                            | ) |                   |
| Plaintiff,                 | ) |                   |
|                            | ) |                   |
| vs.                        | ) | No. CIV-81-504-BT |
|                            | ) |                   |
| ROBERT H. MACY, et al.,    | ) |                   |
|                            | ) |                   |
| Defendants.                | ) |                   |

MEMORANDUM OPINION

On April 13, 1981 the Governor of Oklahoma signed into law S.B. 114 which proscribes the use, possession, manufacture or delivery [transfer or sale] of "drug paraphernalia." The same day, plaintiff Lady Ann's Oddities, Inc., et al., brought this action for a Temporary Restraining Order enjoining enforcement of the Act and sought a judgment declaring the Act unconstitutional. Shortly thereafter, two identical suits were filed requesting the same relief. By stipulation of the parties, all three cases have been consolidated into the present action.<sup>1/</sup>

Plaintiff's request for a Temporary Restraining Order under F.R.Civ. P. 65(b) was effectively denied when the matter was set down for hearing on a preliminary injunction. After a series

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<sup>1/</sup> Cases identical to the instant case were also filed by plaintiffs' counsel in the Eastern District of Oklahoma (assigned to Judge Frank Seay) and the Northern District (assigned to this Court).

of hearings both in Oklahoma City (Western District) and Tulsa (Northern District), plaintiffs' counsel advised their respective clients to reopen their businesses, they having temporarily closed when the Act was signed into law. Lacking the requisite element of irreparable harm, plaintiffs withdrew the Application for Preliminary Injunction. The matter is now at issue and before the Court on plaintiffs' consolidated request for a declaratory judgment that S.B.114 is unconstitutional.

The Act contains essentially four parts: Section 1, defining terms including "drug paraphernalia"; Section 2, enumerating certain "logically relevant factors" that may be considered by a court of law to determine whether an object is "drug paraphernalia"; Section 3, establishing four substantive offenses and prescribing punishment; and Section 4, detailing objects subject to forfeiture pursuant to a violation of the act.

The Act is patterned after the so-called Model Act (MDPA) drafted by the Drug Enforcement Administration of the United States Department of Justice. The Model Act in various forms has been the subject of extensive prior litigation. See e.g., Hejira Corporation, d/b/a Budget Records and Tapes, Inc., et al., v. J.D. MacFarlane, et al., No. 80-2062 (10th Cir., May 5, 1981) \_\_\_ F.2d \_\_\_; Record Revolution No. 6, Inc. vs. City of Parma, 638 F.2d 916 (6th Cir. 1980) (cited hereinafter as "Parma (6th Cir.)")<sup>2/</sup>, The Casbah, Inc. v. Thone, No. 80-1925 (8th Cir., June 8, 1981); Back Door Records v. City of Jacksonville, No. LR-C-80-314 (E.D. Ark., Jan. 8, 1981); Nova Records, Inc. v. Sendak, 504 F.Supp. 938 (S.D. Ind. 1980); The Town Tobacconist v. Degnan, Superior Court of New Jersey, Chancery Division, March 12, 1981; New England Accessories Trade Association v. Browne, 502 F. Supp. 1245 (D. Conn. 1980); New England Accessories Trade Association v. City of Nashua, No. 80-530-D (D.N.H. Dec. 8, 1980); Brache v. County of Westchester, 507 F.Supp. 566 (S.D. N.Y. 1981); Lazy J, Ltd. v. Borough of State College, No. 80-1167 (M.D. Pa. Jan. 30, 1981). World Imports, Inc. v. Woodbridge Township, 493 F.Supp.

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<sup>2/</sup> By Order of May 26, 1981, the judgment in Parma (6th Cir.) was vacated by the Supreme Court and remanded to the Sixth Circuit for further consideration in light of the recently enacted Section 2925.4 of the Ohio Revised Code.

428 (D. N.J. 1980), Mid-Atlantic Accessories Trade Assn. v. State of Maryland, 500 F.Supp. 834 (D. Md. 1980), Delaware Accessories Trade Assn. v. Gebelein, 497 F.Supp. 289 (D.Del. 1980), Florida Business Men for Free Enterprise v. State of Florida, 499 F. Supp. 346 (N.D. Fla. 1980), Weiler v. Carpenter, et al., No. 80-637-JB, (D.N.M. Feb.11, 1981), General Stores, Inc. vs. City of Albuquerque, No. 81-0027-M Civil, (D.N.M. March 25, 1981), Florida Businessmen for Free Enterprise v. City of Hollywood, No. 80-6157-Civ-NCR (S.D. Fla. Aug. 29, 1980); Tobacco Accessories and Novelty Craftsmen Merchants Association of Louisiana v. Treen, 501 F.Supp. 168 (E.D. La. 1980). See also Record Revolution No. 6 v. City of Parma, Ohio, 492 F.Supp. 1157 (N.D. Ohio E.D.1980) (cited hereinafter as "Parma (N.D. Ohio E.D.)").

Moreover, in an apparent effort to overcome the constitutional objections raised by the Court in Parma (6th Cir.), the Oklahoma legislature deleted certain provisions otherwise contained in the Model Act. Furthermore, the legislature added an exclusionary clause not in the Model Act which states as follows: "Provided, however, drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps commonly used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco." See Section 1.

Plaintiffs contend that the statute is vague and overbroad, that it violates the due process clause because it is not rationally related to any legitimate state goal and constitutes an unlawful taking of property, that it is an impermissible restraint upon freedom of speech, and that it violates the equal protection and commerce clauses of the United States Constitution.

#### I.

The threshold question for the Court is whether the Act presents a case or controversy such that declaratory relief is appropriate. It is settled law that a genuine threat of criminal prosecution under legislation that allegedly is constitutionally defective

does present an actual case or controversy. Steffel v. Thompson, 415 U.S. 452 (1974) In the present case, the facts demonstrate that the threat of prosecution of plaintiffs under the Act is not "imaginary", "speculative" or "chimerical." Compare Id. Furthermore, two Federal Circuit Courts of Appeal have held that legislation similar to this statute presents a threat of criminal prosecution sufficient to constitute an actual case or controversy. See Parma (6th Cir.) and High Ol' Times, Inc. v. Busbee, 621 F.2d 135 (5th Cir. 1980). Therefore, this matter constitutes an actual case or controversy such that declaratory relief is appropriate.

## II.

Prior to an adjudication of the merits of this case, the Court must determine whether it is more appropriate to refrain from exercising jurisdiction under the abstention doctrine. As articulated in Railroad Commission of Texas v. Pullman Company, 312 U.S. 496 (1941), the abstention doctrine "counsels abstention in narrowly limited special circumstances...", "...where the challenged state statute is susceptible of a construction by the state judiciary that would avoid or modify the necessity of reaching a federal constitutional question." Babbitt vs. United Farm Workers National Union, 442 U.S. 289 (1979) quoting Kusper v. Pontikes, 414 U.S. 51 (1973). Three United States Courts of Appeal have concluded that the Pullman doctrine should not be invoked with respect to legislation similar to S.B. 114. See The Casbah, Inc. v. Thone, supra; Parma (6th Cir.) and High Ol' Times, Inc. v. Busbee, supra. The Court concluded in these cases abstention was not proper because the law was challenged on its face and the issues raised were predominantly questions of federal constitutional law. Compare Steffel v. Thompson, supra.

In the present case, the statute comes before this Court for a review of its facial validity and clearly raises questions of federal constitutional law. Therefore, abstention is not the proper course of action.

### III.

The authority of the federal district court to assess the constitutionality of a state statute is extremely limited. It is settled law that constitutional questions are not to be entertained in federal courts in the absence of the strictest necessity. Taylor v. United States, 320 F.2d 843 (9th Cir. 1963) cert. denied 376 U.S. 916 (1964).

In addition, the scope of a constitutional inquiry into a state statute is substantively constrained. When a due process challenge to a legislative enactment is presented, the doctrine of separation of powers requires that the Court may examine only the constitutionality and not the wisdom of the legislation. Provost v. Betit, 326 F.Supp. 920 (D. Vt. 1971) In determining the validity of the statute the Court's task is not to resolve issues of policy. Millard v. Harris, 406 F.2d 964, (D.C. Cir. 1968) The courts are not guardians of liberties of people against the press of legislation which does not violate constitutional provisions and are not concerned with the expediency, necessity, utility and propriety of legislation as long as constitutional principles are not violated. See Sims v. Board of Education of Independent School District No. 22, 329 F.Supp. 678 (D.N.M. 1971).

Once the narrow issue of constitutionality has been reached, the Court must consider the inherent limitations on its ability to construe the statute. It is settled law that a presumption of constitutionality attaches to all state statutes. E.g. Wells v. Hand, 238 F.Supp. 779 (M.D. Ga. 1965) aff'd. sub nom., Wells v. Reynolds, 382 U.S. 39 (1965). If possible the Court should not construe a statute in such a manner as to raise a serious constitutional issue. Civil Aeronautics Board v. United Airlines, Inc., 399 F.Supp. 1324 (N.D. Ill. E.D. 1975) Where it is fairly possible to construe a statute so as to avoid the question of its constitutionality a federal court should do so.

See Crowell v. Benson, 285 U.S. 22 (1932). In the present case, S.B. 114 was duly passed by the State legislature and signed into law by the Governor of Oklahoma. Therefore, the principles of restraint must guide this Court in its analysis and construction of the statutory provisions.

#### IV.

The doctrine of vagueness is embodied in the due process clauses of the Fifth and Fourteenth Amendments. Due process incorporates notions of fair notice or warning. Smith v. Goguen, 415 U.S. 566 (1974). As the Supreme Court stated in Connally v. General Construction Co., 269 U.S. 385, 391 (1926):

"[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

Accord, Colautti v. Franklin, 439 U.S. 379 (1979). Furthermore, as the Court stated in Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939), when a criminal statute is involved, "...[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."

Due process has two requirements: that laws provide notice to the ordinary person of what is prohibited and that they provide standards to law enforcement officials to prevent arbitrary and discriminatory enforcement. As the Supreme Court stated in Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972):

"Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."

There is concern that lawmaking will be entrusted "to the moment-to-moment judgment of the policeman on his beat."

Gregory v. City of Chicago, 394 U.S. 111, 120 (1969).

However, the vagueness doctrine does not invalidate every ordinance that could have been drafted more precisely. See e.g. Arnett, Director, Office of Economic Opportunity v. Kennedy, 416 U.S. 134 (1974). Reasonableness, not absolute certainty, of draftsmanship is required. Tobacco Road v. City of Novi, 490 F.Supp. 537 (E.D. Mich. S.D. 1979) Many ordinances are inherently ambiguous because "[i]n most English words and phrases there lurk uncertainties." Robinson v. United States, 324 U.S. 282, 286 (1945) As the Supreme Court stated in Boyce Motor Lines v. United States, 342 U.S. 337 (1952):

"[F]ew words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line."

The test is whether the enactment presents "ascertainable standards of guilt." Winters v. New York, 333 U.S. 507 (1948)

The overbreadth doctrine prohibits a statute from making criminal otherwise innocent and constitutionally protected conduct. Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973), Coates v. City of Cincinnati, 402 U.S. 611 (1971) The statutory language may be very clear yet "sweep unnecessarily broadly to invade the area of protected freedoms." Sawyer v. Sandstrom, 615 F.2d 311 (5th Cir. 1980) The harm from an overbroad statute is its chilling effect on constitutionally protected or otherwise lawful conduct. Parma (6th Cir.)

In applying these constitutional principles the Court is guided by a rebuttable presumption that legislative enactments

are valid unless it is shown that the statute or ordinance in question is violative of rights secured by the United States Constitution. United States v. Kiffer, 477 F.2d 349 (2nd Cir. 1973) cert. den. 414 U.S. 831. Moreover, the Court should favor an interpretation of the enactment which supports constitutionality. Screws v. United States, 325 U.S. 91 (1945) Finally, all laws should receive a sensible construction. United States v. Ryan, 284 U.S. 167 (1931) As the Court stated:

"A literal application of a statute which would lead to absurd consequences is to be avoided whenever a reasonable application can be given which is consistent with the legislative purpose."

Id. at 175.

V.

The primary focus of the Court in determining the constitutionality of S.B. 114 is the definition of the term "drug paraphernalia." As the Court stated in Parma (6th Cir.) at 927-928:

"If the definition of 'drug paraphernalia' is vague or overbroad in any respect the ordinances must be declared unconstitutional. A precise and unambiguous definition of drug paraphernalia is critical because the ordinances seek to ban in certain circumstances only the sale of every day items that have a myriad of innocent, lawful and beneficial purposes. To pass constitutional muster the ordinances must specify clearly the very limited circumstances in which the manufacture, sale or use of these common items is unlawful."

The key phrase used by the statute to separate lawful from unlawful items is "used or intended for use." The definition of "drug paraphernalia" turns on the actions of a person or the state of mind of a person with respect to the alleged offending object. Plaintiffs contend first that the statute violates due process by allowing a defendant to be arrested, prosecuted and convicted for the acts or state of mind of another person. For example, if the purchaser uses a pipe to smoke marijuana, the statute arguably permits the seller of the pipe to be arrested, prosecuted or convicted on the basis of the purchaser's use. Similarly, if the manufacturer intends that a chamber pipe be used for inhaling hashish and the purchaser so

uses the chamber pipe, the statute arguably permits the seller, who lacked such intent and did not use the chamber pipe himself to inhale hashish, to be arrested, prosecuted or convicted on the basis of the manufacturer's intent and the purchaser's use.

The phrase "used or intended for use" refers only to the acts or intent of the individual charged with a violation of the statute. Accord. Hejira Corporation v. J.D.McFarlane, et al., supra. Therefore, the statute permits a person to be arrested, prosecuted or convicted only for that person's own use or intent. Parma (6th Cir.) This construction comports with the fundamental principle of due process that a criminal act requires a criminal intent on the part of the person charged. See e.g. United States v. U.S.Gypsum Company, 438 U.S. 422 (1978) "The existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence." Dennis v. United States, 341 U.S. 494, 500 (1951). Furthermore, this construction is consistent with the comments of the drafters of the Model Act as follows:

"To insure that innocently possessed objects are not classified as drug paraphernalia [the definition] makes the knowledge of criminal intent of the person in control of an object a key element of the definition. Needless to say, inanimate objects are neither good nor bad, neither lawful nor unlawful. Inanimate objects do not commit crimes but when an object is controlled by people who use it illegally or who intend to use it illegally...the object can be subject to control and the people subjected to prosecution. [The definition] requires therefore that an object be used [or] intended for use ... in connection with illicit drugs before it can be controlled as drug paraphernalia."  
(Emphasis added)

See Parma (N.D. Ohio E.D.) at 1166-1167 quoting MDPA, Comment, pages 6 through 7, 1979. Finally, this construction parallels the criminal law of Oklahoma for possessory offenses requiring the person charged have knowledge of the presence of a proscribed item and the power and intent to control its disposition or use. See e.g. Brown v. State, 481 P.2d 475 (Okl. Cr. 1971)

The Court notes that to construe S.B. 114 so as to permit the criminal prosecution of an individual based upon the intent of another would render the statute constitutionally infirmed. See e.g. Weiler v. Carpenter, No. 80-637-JB (D.N.M. February 11, 1981). However, such a construction would be contrary to the responsibility of this Court to read the statute in a manner consistent with the Constitution. See Screws v. United States, 325 U.S. 91 (1945).

The presence of a culpable intent standard may save what might otherwise be a vague statute. See e.g. Boyce Motor Lines v. United States, 342 U.S. 337 (1952) In the present case, Section 1(32) refers to objects "used or intended for use" in conjunction with controlled dangerous substances. In view of the proper construction discussed above, this inclusionary language complies with the requirements of the Constitution. Accord Hejira Corporation, d/b/a Budget Records and Tapes, Inc., et al., v. J. D. McFarlane, et al., supra; Parma (6th Cir.)

However, Section 1 (32) also contains an exclusionary clause as follows:

"Provided, however, drug paraphernalia shall not include separation gins intended for use preparing tea or spice, clamps commonly used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco." (Emphasis added)

Plaintiffs argue that the Sixth Circuit specifically held the language "designed for" is unconstitutionally vague and consequently this proviso renders the statute fatally defective. Compare Parma (6th Cir.) Therefore, the issue becomes whether the language contained in this exclusion is sufficiently precise to withstand a constitutional challenge.

The first items described in the proviso are "separation gins intended for use in preparing tea or spice." As discussed above, the phrase "intended for use" refers to the intent of the person charged. Consequently, this language complies with the requirements of the Constitution.

The second items of the proviso, "clamps commonly used for constructing electrical equipment", present a more difficult problem. The term "commonly used" does not refer to the intent of the user. Rather, the language suggests that certain objective characteristics may exempt a clamp from the definition of drug paraphernalia. Clearly, a clamp "commonly used for constructing electrical equipment" cannot be defined with precision. Consequently, this section fails to provide an individual with adequate notice as to whether a clamp in his possession is in fact drug paraphernalia. Therefore, on its face the phrase "commonly used for constructing electrical equipment" is unconstitutionally vague.

The Court notes that if the exemption were construed to read "clamps used for constructing electrical equipment" the language would comport with constitutional standards. Furthermore, such a reading would not disturb the clear intent of the legislation. The objective of this proviso appears to be to emphasize that certain common objects, when used for their intended lawful purpose, will not become "drug paraphernalia" unless "used or intended for use" in conjunction with controlled dangerous substances.

However, the Court further notes that to excise language contained in the exclusionary clause in effect may extend the reach of the substantive offense section of the Act. For example, an individual who smokes a marijuana cigarette with the aid of a clamp that is without question "commonly used for constructing electrical equipment" arguably may not be charged under S.B. 114. However, if the word "commonly" is deleted from the statute, the same person acting in the same manner undoubtedly is subject to prosecution under the Act. Clearly, this result cannot obtain. The legislature cannot be deemed to have intended to punish anyone who is not "plainly and unmistakably" within the confines of the statute. See United States v. Lacher, 134 U.S. 624, 628 (1890); United States v. Gradwell, 243 U.S. 476, 485 (1916). Therefore,

the exclusionary clause must be construed in such a way that the individual in the above hypothetical is subject to prosecution whether or not the clamp in question is "commonly used for constructing electrical equipment." Concededly, this result renders meaningless this portion of the exclusionary clause. Compare United States v. Ryan, 284 U.S. 167 (1931). However, the alternative is to invalidate S.B. 114 on the grounds that the exemption for electrical clamps is not sufficiently precise. Compare Parma (6th Cir.) Therefore, if within the authority of the Court, the term "commonly" should be excised from the Act.

The Act specifically contemplates judicial excision of constitutionally offensive provisions. See Section 6. The appropriate test is "whether the void provision and the valid provision are essentially and inseparably connected and independent, one with the other, so that it cannot be presumed that the legislature would have enacted the valid provisions without the void one." Hejira Corporation, d/b/a Budget Records and Tapes, Inc., et al v. J.D. McFarlane, et al., supra at 12. As the Supreme Court stated in Champlin Refining Co. v. Commission, 286 U.S. 210, 234 (1932):

"The unconstitutionality of a part of an Act does not necessarily defeat ... the validity of its remaining provisions. Unless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law."

In the present case the term "commonly" as used in the last paragraph of Section 1(32) serves only to confuse the meaning of S.B. 114. Furthermore, excision of the term "commonly" results in a reasonable construction in accordance with the clear intent of the Act. Therefore, the term "commonly" should be deleted from the exclusionary clause. Cf. Hejira Corporation, d/b/a Budget Records and Tapes, Inc., et al v. J. D. McFarlane, et al., supra (deleting the term "adapted" from a Colorado paraphernalia statute).

The third and fourth items described in the exemption are "water pipes designed for ornamentation or pipes designed for smoking tobacco." The Court in Parma (6th Cir.) held that the phrase "designed for use" is vague and overbroad, citing with approval the reasoning stated in Indiana Chapter, NORML, Inc. v. Sendak, No. TH 75-142 (S.D. Ind. February 4, 1980) as follows:

"The term 'designed' could signify only devices that have no use or function other than as a means to ingest a controlled substance. Alternatively, 'designed' could include any devices that have a legitimate function but could be used for ingestion of drugs. That is, the term 'designed' could sweep into the definition of paraphernalia any device that could be altered from its normal function to become a makeshift drug device, such as a paper clip, tie bar, hand mirror, spoon, or piece of aluminum foil. The definition 'designed for drug use' gives no hint to those attempting to comply with I.C. 35-48-4-8 what is included in the definition. The definition fails to make clear what items are included in the statutory prohibition and what items are not."

The Court in Parma (6th Cir.) at 930 concluded:

"Vagueness enters in our case once the ordinances begin to define drug paraphernalia in terms of the primary adaption or dominant purpose of the design. Thus the definition begins to depend upon the ingenuity or purpose of the purchaser rather than the seller and upon the current practices of the clandestine society of drug users. Geiger v. City of Eagan, 618 F.2d 26 (8th Cir. 1980); Music Stop, Inc. v. City of Ferndale, 488 F.Supp. 390 (E.D. Mich. 1980)."

For the reasons discussed below and in view of the responsibility to give the statute a constitutional construction if possible, the Court declines to adopt the reasoning of the Sixth Circuit. Accord The Casbah, Inc., v. Thone, supra; Delaware Accessories Trade Assn. v. Gebelein, supra; Mid-Atlantic Accessories Trade Assn. v. State of Maryland, supra; see also Parma (E.D. Ohio N.D.)

If the term "designed for" referred to the shape, appearance or structure of the objects in question, it would clearly be unconstitutionally vague. See Parma (6th Cir.) However, the Court concludes that in this context "designed for" refers to the intent of the individual with knowledge and control of the

object in question. Accord Helira Corporation, d/b/a Budget Records and Tapes, Inc., et al., v. J.D. McFarlane, et al., supra.

The primary definition of the word "design" is "a mental project or scheme in which means to an end are laid down." Webster's Third New International Dictionary (Merriman Co., Springfield, Mass. 1976) Not until the sixth of seven definitions is the word defined in terms of structure, as follows: "the arrangement of elements that make up a work of art, a machine, or other man-made object." As the Court concluded in Delaware Accessories Trade Assn. v. Gebelein, supra, at 291:

"Thus, the word 'design' does not lead in the first instance to an examination of the suitability of the physical features of an item for use with drugs but rather to whether someone plans or designs that it be used to violate drug laws."

The provisions of the statute itself indicate that "designed for" refers to intent and not to structure. Specifically, Section 2 of the Act enumerates certain "logically relevant factors" that may be considered by a Court in determining whether an object is "drug paraphernalia." None of the factors listed refers in any way to the physical attributes of an object. Rather, as the Court in Delaware Accessories Trade Assn., observed, the factors "relate to the context in which an object is found at a given point in time and constitute what would normally be regarded in the law as circumstantial evidence of the intent or design of those dealing with the object at that time ..." Id at 291-292. The Court properly concluded:

"Thus, the list suggests that an object having one set of physical characteristics may be drug paraphernalia at one time and not at another depending upon which those dealing with it at a particular time have in their minds."

Finally, the appropriate construction of the term "designed for" has been determined previously by the courts in the analogous context of the National Prohibition Act. In Danovitz, Surviving Partner of Feitler Bottle Company v. United States, 281 U.S. 389, 390 (1930), the Supreme Court stated:

"As used in §25, the term 'property designed for the manufacture of liquor intended for use in violating this chapter' has a dual meaning, as follows:

(a) The property must be usable in the process of making liquor

(b) The property must be intended by the owner to be so used by himself..." (Emphasis added)

See also Israel v. United States, 63 F.2d 345 (3rd Cir. 1933); Street v. Lincoln Safe Deposit Co., 254 U.S. 88 (1920).

Similarly, the Court stated in United States v. Brunett, 53 F.2d 219 (W.D. Mo. 1931):

"My view is that the words 'designed' and 'intended' must be construed to include a design and intention on the vendor's part that the preparation, compound, and substance sold by him will be used in the unlawful manufacture of intoxicating liquor. Such a construction is the one most favorable to one accused. It has never been the policy of the law to make an act innocent in itself criminal if the actor had no wrongful purpose of intent. It is scarcely to be thought that Congress proposed to make the mere sale of a preparation, compound, or substance a crime unless the seller had also an intention and design that what was sold by him should be used in the commission of a crime. Certainly Congress did not intend that he should be guilty of an offense because the manufacturer, if he were other than the vendor, designed the preparation, compound, and substance for an ultimate unlawful use, or because the purchaser so intended to employ it."

Accord Parma (N.D. Ohio E.D.); Delaware Accessories Trade Assn. v. Gebelein, supra.

In the present case, S.B. 114 exempts "water pipes designed for ornamentation and pipes designed for smoking tobacco." This exclusion appears to be no more than legislative emphasis on the fact that an item is not "drug paraphernalia" under the Act when used without the proscribed intent.

In view of the above, this Court concludes that Section 1, including the exclusionary provision, may be construed in a way that is not unconstitutionally vague.

The Court further concludes that S.B.114 is not overbroad. In this case the issue of overbreadth is closely related to the vagueness argument. In essence, plaintiffs contend that those subject to the Act will not be able to tell what it

prohibits and will be reluctant to exercise constitutional rights that may arguably bring them within the sweep of the Act. However, S.B. 114 is not impermissibly vague. As the Court stated in Mid-Atlantic Accessories Trade Assn. v. State of Maryland, supra at 847:

"Reasonable people can readily tell whether their conduct will be violative of the law because it is their own state of mind which is ultimately determinative."

Under this appropriately narrow construction, the Act bans no conduct protected by the Constitution.

## VI.

Section 2 of the Act states in part: "In determining whether an object is 'drug paraphernalia', a Court shall consider, in addition to all other logically relevant factors, the following..." (Emphasis added) The statute sets forth twelve such "factors" which can best be characterized as items of circumstantial evidence.

In Parma (6th Cir.) the city ordinance provided in applicable part "a court or other authority should consider..." certain items of evidence. The Court concluded that this section was not intended "to supersede any rules of evidence" and "naturally incorporates" the principles of due process. Id. at 933-934.

In the present case, the statute directs that "a court shall consider..." the factors enumerated in Section 2. The word "shall" in S.B.114 must be given the same construction as the term "should" in the Parma city ordinance. Therefore, items of circumstantial evidence are admissible in court only if they are consistent with existing rules of evidence and constitutional protections.

Furthermore, it should be emphasized that "drug paraphernalia" cannot be defined by mere conformance with certain "factors." As the Court stated in Mid-Atlantic Accessories Trade v. State of Maryland, supra at 846:

"[The items of evidence] are ... only guides for determining whether the necessary criminal intent exists. To convict under the statute, a jury must still find beyond a reasonable doubt that a

"defendant had the requisite criminal intent. That these factors are relevant evidence of intent does not negate the fact that the statute clearly requires proof of specific intent before a violation can be found."

In the present case, plaintiffs challenge the constitutionality of certain "factors" contained in Section 2. The items at issue are discussed separately below.

Section 2(2) provides as follows: "the proximity of the object, in time and space, to a direct violation of this act." In Oklahoma, circumstantial evidence is admissible to show that the defendant knew of the presence of contraband and had the ability to control its disposition or use. See Staples v. State, 528 P.2d 1131 (Okla. Cr.1974). Therefore, this provision is constitutionally valid. As noted above, this conclusion in no way diminishes the burden on the prosecutor to prove beyond a reasonable doubt the criminal intent of the accused. Furthermore, it is well settled that guilt must be based on personal actions, statements or knowledge, not on association with other persons suspected of criminal conduct. Sawyer v. Sandstrom, 615 F. 2d 311 (5th Cir. 1980)

In part, Section 2 (5) provides as follows:

"...the innocence of an owner or of anyone in control of the object as to a direct violation of this act shall not prevent a finding that the object is drug paraphernalia."

In part, plaintiffs assert, "When this criteria is added to the forfeiture provisions of Section 2-503(6), it becomes obvious that discriminatory and arbitrary enforcement can lead to economic nightmares for even innocent retailers." Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 10. The Court cannot agree with this conclusion.

As plaintiffs observe, Section 2(5) must be read in the context of Section 2-503(6).<sup>3/</sup> Accordingly, this proviso merely emphasizes that an object may be subject to forfeiture under Section 2-503(6) even when the owner or someone in control of the object does not have the proscribed intent. For example,

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<sup>3/</sup> Section 2-503 provides: "The following shall be subject to forfeiture...(6) All drug paraphernalia as defined by this Act."

this result may obtain if the actual owner loans an object to a third party. The third party has the proscribed intent in regard to the object and is charged under the Act. The object is then subject to forfeiture despite the innocence of the true owner. Similarly, two individuals may share "control" of an item. One individual has the proscribed intent with respect to the object and is charged under the Act. The item is subject to forfeiture despite the innocence of a person "in control" of the object. In light of this construction, Section 2(5) is constitutionally valid.

Section 2(9) provides as follows:

"Whether an owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products."

In reference to this section, the District Court in Parma (N.D. Ohio E.D. 1980) stated:

"...the reference to 'legitimate' suppliers creates a danger of arbitrary and discriminatory enforcement. See Grayned v. City of Rockford, supra. Because the provisions of this Ordinance apply to all who use, distribute or advertise even an innocent item with the requisite intent, the term 'legitimate' supplier is imprecise and misleading...."

However, according to the Parma city ordinance the enumerated factors are for consideration by "a court or other authority." (Emphasis added) The district court opinion characterized the items in Section 2 as "indicia which law enforcement authorities may use to determine whether an object is 'drug paraphernalia.'" Id. at 1170-1171. The present Act refers only to consideration by "a court." Therefore, the concern that Section 2(9) will result in "arbitrary and discriminatory enforcement" is unfounded.

The language of Section 2(9) describes an item of circumstantial evidence. The purpose of such circumstantial evidence is to show the accused had the proscribed intent. As the Court

concluded in Mid-Atlantic Accessories Trade Association v. State of Maryland, supra at 846:

"Intent can logically be supported by proof of the offering for sale in a store of a combination of items which makes sense only in the context of the drug trade."

Therefore, Section 2(9) is constitutionally valid.

In applicable part, Section 2(10) provides as follows:

"Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise."

This section permits circumstantial evidence showing the percentage of a merchant's total volume of sales attributable to the object alleged to be "drug paraphernalia" and like items. If the ratio is high, the total sales of the accused includes a significant percentage of such items. From this calculation, the trier of fact may ascertain whether a merchant specializes in certain items. Presumably, this fact suggests a greater likelihood that the defendant is engaged in the trade of drug paraphernalia. The terms of this provision are not vague. Moreover, it will be for the trial court in each case to determine whether such circumstantial evidence is relevant to the central question of the accused's intent. In light of such judicial protection, this provision is constitutionally valid.

In applicable part, Section 2 (11) provides:

"The existence and scope of legitimate uses for the object in the community."

For the reasons discussed above, in the context of Section 2 (9) the term "legitimate" will not lead to "arbitrary and discriminatory enforcement." Therefore, Section 2(11) is constitutionally valid.

In summary, it should be stressed that the items contained in Section 2 are not intended to supersede the Oklahoma rules of evidence<sup>3/</sup> and cannot infringe upon the due process protections provided for in the Oklahoma and United States Constitutions. Any court conducting a criminal proceeding under the provisions of this statute will no doubt be guided accordingly. Accord Parma (6th Cir.)

VII.

Section 3 of S.B. 114 establishes four substantive offenses and prescribes punishment for violations of the Act. Section 3(A) is presently contained in 63 O.S. 1971, §2-405 and is not related to the constitutional challenge presently before the Court.

In applicable part, Section 3 (B) provides as follows:

"No person shall use or possess drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance in violation of this act who cannot show any medical or other need requiring the same, except those persons holding an unrevoked license in the professions of podiatry, dentistry, medicine, nursing, optometry, osteopathy, veterinary medicine or pharmacy." (Emphasis added)

This provision modifies the current statute, 63 O.S. 1971 §2-503, which states as follows:

"B. No person shall have in his possession or immediate control any paraphernalia used by abusers of controlled dangerous substances for administering a controlled dangerous substance who cannot show any medical or lawful need requiring the same except those persons holding an unrevoked license in the professions of podiatry, dentistry, medicine, nursing, optometry, osteopathy, veterinary medicine or pharmacy."

This statute was examined in some depth by the Oklahoma Court of Criminal Appeals in the case of Cole v. State, 511 P.2d 593 (Okla. Cr. 1973). The Court of Criminal Appeals concluded that the statute was unconstitutional for two reasons: (1) the term "paraphernalia" was not defined with sufficient precision; and (2) a burden is placed on the defendant to come forward with proof of his innocence. The Court stated in Cole:

"We further believe the statute is invalid for the reason that it shifts the burden to the defendant to show his innocence. Under this statute, all the State is required to prove is that the defendant was in possession of 'paraphernalia used by abusers of controlled dangerous substances for administering a controlled dangerous substance,' then the burden shifts to the defendant to prove that he possessed the article for 'a medical or other lawful need.' This is contrary to the basic concept of criminal justice that the 'defendant is innocent until proven guilty.'"

The amendments to Section 3 (B) contained in the Act including the new definition of the term "drug paraphernalia", do not cure all the defects identified by the Oklahoma Court of Appeals. Under the language of S.B. 114 the defendant is still required to come forward with evidence of "a medical or other lawful need." This shifting of the burden to the defendant is contrary to the protections of due process and therefore is constitutionally impermissible. Therefore, in accordance with the holding of Cole v. State, supra, Section 3 (B) is hereby excised from the Act.

In applicable part, Section 3 (C) provides as follows:

"No person shall deliver, possess or manufacture drug paraphernalia knowing, or under circumstances in which it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance in violation of this act."

Plaintiffs submit essentially two challenges to this charging section: (1) the Act contains no exemption for law enforcement personnel and therefore inadvertently marks as illegal activities which society clearly favors; and (2) the language "under circumstances in which" is unconstitutionally vague.

The present Act, S.B. 114, must be read in the context of the Uniform Controlled Dangerous Substances Act, 63 O.S. §2-101 et seq. Article 5 provides that a peace officer is empowered to "perform such other duties as are required to carry out the provisions of this Act." 63 O.S. §2-501(5). A "peace officer" is defined as a police officer, sheriff, deputy sheriff, district attorney's investigator or any other person elected or appointed by law to enforce any of the criminal laws of this state or of the United States." 63 O.S. §2-101(24) Therefore, it is clear that a law enforcement officer, duly appointed by law, is empowered to "test", "analyze", etc., drug paraphernalia under this Act so long as it is in keeping with his "lawful duties as required to carry out the provisions of this Act."

Consequently, the lack of a specific law enforcement exemption in Section 3 (C) does not constitute a defect.

The phrase "under circumstances in which" raises more serious problems. As noted above, the Oklahoma legislature made a sincere attempt to modify the Model Act in such a way as to come within the terms of Parma (6th Cir.). In Parma (6th Cir.) the Circuit Court struck down as unconstitutionally vague the standard "under circumstances where one reasonably should know" contained in the Model Act. In applicable part the Model Act examined by the Sixth Circuit provided:

"It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, etc, etc., ... "

The Sixth Circuit concluded that "the 'reason to know' standard is vague and overbroad. ...Because most uses of the outlawed items are lawful and common, the 'reason to know' standard is too open-ended and too susceptible to misapplication to satisfy the dictates of due process." Parma (6th Cir.) at 935-936.

In apparent recognition of the fact that the "reasonably should know" standard was struck down by the Sixth Circuit, the Oklahoma legislature deleted those precise words from the charging section of S.B. 114. Unfortunately, the result, "under circumstances in which" either creates a lower standard than the "reasonably should know" standard struck down by the Sixth Circuit or defies definition. In brief the Attorney General suggests that the "under circumstances" language should be given a constitutional construction in line with the "knowing" requirement contained in this section. In oral argument the Attorney General suggested that the language "under circumstances in which" is more in the nature of a typographical error and simply should be ignored by the Court. In either case, the language "under circumstances in which" is unconstitutionally vague and therefore is hereby excised from the Act.

## VIII.

In addition to the arguments regarding vagueness and overbreadth plaintiffs advance a number of other constitutional challenges to S.B. 114. The Court concludes that these arguments are not persuasive. Each such argument shall be treated separately below.

### DUE PROCESS

The concept of due process requires that all legislation be a reasonable means of achieving a legitimate state goal. Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978) Courts have consistently held that there is a rational relationship between banning drug paraphernalia and curbing drug abuse. See e.g. Geiger v. City of Eagan, 618 F.2d 26 (8th Cir. 1980) Indeed a number of courts have specifically concluded after a review of medical and other evidence, that drug paraphernalia and drug abuse are rationally related. See Williams v. Spencer, 622 F.2d 1200 (4th Cir. 1980). See also Mid-Atlantic Accessories Trade Assn. v. State of Maryland, supra. To hold that a rational relationship is present is consistent with the conclusion reached by every Federal court that has examined this issue.

In addition, it should be noted that the legislature is given great latitude in determining what statutes it chooses to pass. The legislature is not limited to passing laws it is sure will work completely but may "deal with one part of a problem without addressing all of it." Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975). Moreover, a legislature is entitled to experiment. Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952).

The role of the court in determining whether particular legislation lacks a rational basis is not to judge anew the wisdom of the statute. That has been done by the legislature whose task it is. The legislature is presumed to have acted correctly and their enactments are presumed to be constitutional.

Exxon Corp. v. Governor of Maryland, supra. In view of this authority and the record presently before the Court, the Court concludes that the plaintiffs have not rebutted this presumption. Accord Mid-Atlantic Accessories Trade Assn. v. State of Maryland, supra.

#### FOURTH AMENDMENT CLAIMS

Plaintiffs assert that the Act will in some way enable police to make searches without the probable cause contemplated by the Fourth Amendment. In their Proposed Findings of Fact and Conclusions of Law, plaintiffs request the following:

"All searches must be made upon probable cause. Mere possession of a particular accessory creates no more than a suspicion of illegal drug activity. That suspicion will not ordinarily justify a drug search. By making the accessory illegal under the paraphernalia law, the probable cause necessary for an otherwise illegal search is then provided."

The Court cannot agree with this reasoning. A search warrant may issue only upon a showing of probable cause. See e.g. Johnson v. United States, 333 U.S. 10 (1948) Probable cause exists when the facts and circumstances are sufficient to believe that seizable objects are located at the place to be searched. See Brinegar v. United States, 338 U.S. 160 (1949) Absent the requisite intent, an object cannot be considered drug paraphernalia, and consequently is not seizable. Therefore, under S.B. 114 a warrant will not issue without probable cause to believe that an individual is in possession of an object and the object is "used or intended for use" with a controlled dangerous substance. Mere possession of an object is not sufficient, and absent the required intent lacks the probable cause necessary for a search warrant under the Fourteenth Amendment.

As the Court stated in Delaware Accessories Trade Assn. v. Gebelein, supra, at 296:

"...nothing in the Act ... dilutes the Fourth Amendment probable cause standard and there is no reason to believe that its application will be any more difficult or uncertain in the context of the Act than in the context of any of the other multitude of statutes that proscribe otherwise innocent conduct when accompanied by the intent to commit or facilitate a crime."

### UNLAWFUL TAKING

Plaintiffs argue that the prohibitions contained in the Act will sanction an unlawful taking of property without just compensation and without due process of law. The Court finds no basis for this argument. While the statute contains no grandfather clause that would protect objects currently in the hands of plaintiffs, it remains that an object does not become drug paraphernalia without the requisite intent that it be used in connection with controlled dangerous substances. Therefore, a grandfather clause would be meaningless and defeat the purpose of the Act.

The Court concludes that since the proscribed intent is necessary to constitute a violation of this Act, the forfeiture provisions contained in Section 4 do not result in an unlawful taking prohibited by the Fourteenth Amendment.

### EQUAL PROTECTION

Plaintiffs argue that the statute violates the Equal Protection Clause "because they will necessarily result in discriminatory enforcement. Although these statutes do not facially single out for attention the so-called head shops, it is unquestionably these business establishments to which the statutes are admittedly directed...." Brief of plaintiff at 28.

If an ordinance restricts a fundamental interest such as voting, Harper v. Virginia Board of Elections, 383 U. S. 663 (1966), or involves a suspect classification such as race, Regents of the University of California vs. Bakke, 438 U.S. 265 (1978), the Court must carefully scrutinize it to determine whether the state has a compelling interest in the end it seeks to attain and whether the means used are closely congruent to that end. See e.g. In Re Griffiths, 413 U. S. 717 (1973) In this case neither a fundamental right nor a suspect classification is involved. Therefore, traditional equal protection analysis provides the standard of review. As the Supreme Court stated in New Orleans v. Dukes, 427 U.S. 297 (1976):

"Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude... In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines... in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment."

The authority of the Oklahoma legislature to regulate the use of controlled substances "is too firmly established to be successfully called into question." Robinson v. California, 370 U.S. 660, 664 (1962) Because the states' regulation of the use and distribution of drug paraphernalia is rationally related to this manifestly legitimate state interest, the plaintiffs' Equal Protection argument is unpersuasive.

This question has been raised in other litigation regarding the Model Act and perhaps best treated in Parma (N.D. Ohio E.D.) where the Court stated:

"The plaintiff argues that the ordinance violates the Equal Protection Clause of the Fourteenth Amendment because it is directed only at 'head shops' and not the many other establishments in Parma which distribute, sell or advertise items which are identical or functionally equivalent to the merchandise sold by it. The court concludes that this argument is meritless for two reasons. First, the basic premise of the argument is false; the Ordinance applies to all users, distributors or advertisers of drug paraphernalia who act with the requisite intent, not just 'head shops.' Second, the Ordinance does not violate the Equal Protection Clause because it is rationally related to a legitimate municipal goal."

#### RIGHT OF PRIVACY

Plaintiffs contend that the prohibitions contained in S.B. 114 infringe upon the privacy interests of potential purchasers of certain items sold by plaintiffs. Brief of plaintiffs at 29-30. However, it is settled law that an individual party has no standing to challenge an Act on the

ground that it may violate the privacy rights of third party purchasers in circumstances not currently before the Court. See Broadrick v. Oklahoma, 413 U.S. 601 (1973) Therefore, the Court concludes that the plaintiffs' argument in regard to the right of privacy is without merit. Accord. Delaware Accessories Trade Assn. v. Gebelein, supra.

#### COMMERCE CLAUSE

The commerce clause, Article I, §8 of the United States Constitution, grants to Congress the power to regulate foreign and interstate commerce. This affirmative grant also imposes limits upon state power to regulate commerce over which Congress has primary responsibility. Great Western United Corporation v. Kidwell, 577 F.2d 1256 (5th Cir. 1978) rev. on other grounds 443 U.S. 176 (1980). Nevertheless, not every exercise of state power with some impact on interstate commerce is invalid. "Rather, in areas where activities of legitimate local concern overlap with the national interests expressed by the Commerce Clause--where local and national powers are concurrent--the Court in absence of congressional guidance is called upon to make 'delicate adjustment of the conflicting state and federal claims.'"

The proper statutory analysis was articulated by the Supreme Court in Pike v. Church, Inc., 397 U.S. 137, 142 (1970) as follows:

"Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows: where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. Huron Cement Co. v. Detroit, 362 U.S. 440, 443, 4 L.Ed.2d 852, 856, 80 S.Ct. 813, 816 [78 A.L.R.2d 1294]. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local intent involved, and on whether it could be promoted as well with a lesser impact on interstate activities."

In the present case, S.B. 114 does not single out interstate commerce for special treatment but regulates all commerce "even-handedly." Furthermore, the Act seeks to reduce the glorification of drug abuse, a manifestly legitimate local public interest. Finally, the statute affects only a minor portion of the commercial market and consequently its impact on interstate commerce is at most incidental. Therefore, S.B. 114 does not violate the Commerce Clause. As the Court concluded in Mid-Atlantic Accessories Trade Association v. State of Maryland, *supra* at 849:

"The act prohibits commerce only in items intended to be used with illegal drugs and is no more an interference with interstate commerce than are ... statutes prohibiting the sale and use of illegal drugs themselves..."

#### FIRST AMENDMENT

Plaintiffs assert that S.B. 114 is an impermissible ban on "commercial speech" and therefore violative of the First Amendment. In brief, plaintiffs argue:

"Once it is recognized that the use, or offer for sale of paraphernalia constitutes commercial speech and that such speech is entitled to protection under the First Amendment, it becomes clear that the instant statutes cannot stand, for they are not supported by any constitutionally acceptable justification."

Plaintiffs' Memorandum of Points and Authorities at 17.

Commercial speech has been defined alternately as "expression related solely to the economic interests of the speaker and its audience", and "speech proposing a commercial transaction." See Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557, 561, 562 (1980). In the present case, the Act bans the sale and possession of items used or intended for use with controlled dangerous substances. However, the legislature deleted the provisions of the Model

Act prohibiting the advertisement and promotion of "drug paraphernalia."<sup>4/</sup> The Act does not ban any item absent the proscribed intent. Nor does the statute prohibit the expression of views by the possessor of any object, whether or not such object is "drug paraphernalia." S.B. 114 simply does not affect commercial speech. Therefore, the Act is not violative of the First Amendment.

IX.

With the judicial excision of certain terms, in accordance with the severability provisions of Section 6, S.B. 114 may be construed in a manner consistent with the United States Constitution.<sup>5/</sup> Therefore, the Court concludes that the Act is valid.

IT IS SO ORDERED.

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



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

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<sup>4/</sup> The Model Drug Paraphernalia Act provides in applicable part:

"...It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia."

<sup>5/</sup> Attached is a copy of the Act showing the provisions excised in accordance with this opinion.

# An Act

ENROLLED SENATE  
BILL NO. 114

BY: COMBS, SHEDRICK, LUTON,  
YOUNG, CULLISON, CAPPS,  
CUMMINS, GILES, KEATING,  
LAMB, LANDIS, LEONARD,  
McCUNE, MOORE, STIPE and  
JOHNSON of the SENATE

and

HOOPER, HASTINGS,  
LANCASTER, MANAR,  
WILLIAMSON, MONKS, MORGAN  
and DUCKETT of the HOUSE

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY;  
AMENDING 63 O.S. 1971, SECTIONS 2-101, AS AMENDED  
BY SECTION 1, CHAPTER 133, O.S.L. 1975, 2-405 AND  
2-503, AS AMENDED BY SECTION 1, CHAPTER 194,  
O.S.L. 1978 (63 O.S. SUPP. 1980, SECTIONS 2-101  
AND 2-503), WHICH RELATE TO DRUGS; DEFINING AND  
ADDING TERMS; ADDING CRITERIA FOR JUDICIAL  
DETERMINATION OF WHAT CONSTITUTES DRUG  
PARAPHERNALIA; PROHIBITING USE OF CERTAIN  
SUBSTANCES; MODIFYING CERTAIN PROHIBITED ACTS;  
PROVIDING EXCEPTIONS; ADDING PROHIBITED ACTS;  
PROVIDING PENALTIES; PROVIDING FOR FORFEITURE OF  
CERTAIN ITEMS; SPECIFYING ADDITIONAL PROPERTY  
SUBJECT TO FORFEITURE; DIRECTING CODIFICATION;  
PROVIDING SEVERABILITY; AND DECLARING AN  
EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 63 O.S. 1971, Section 2-101, as amended by Section 1,  
Chapter 133, O.S.L. 1975 (63 O.S. Supp. 1980, Section 2-101), is  
amended to read as follows:

Section 2-101. As used in this act:

1. "Administer" means the direct application of a controlled  
dangerous substance, whether by injection, inhalation, ingestion or  
any other means, to the body of a patient, animal or research subject  
by:

a. a practitioner (or, in his presence, by his authorized  
agent), or

Chairman. COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Correctly Enrolled:

*A. R. Miller*

Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS  
A. R. McLean  
Correctly Enrolled:

b. the patient or research subject at the direction and in the presence of the practitioner.

2. "Agent" means a peace officer appointed by and who acts in behalf of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances but does not include a common or contract carrier, public warehouseman or employee thereof, or a person required to register under this act.

3. "Board" means the Advisory Board to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

4. "Bureau of Narcotics and Dangerous Drugs" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice.

5. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine.

6. "Commissioner" or "Director" means the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

7. "Control" means to add, remove or change the placement of a drug, substance or immediate precursor under this act.

8. "Controlled dangerous substance" means a drug, substance or immediate precursor in Schedules I through V of this act.

9. "Counterfeit substance" means a controlled substance which, or the container or labeling of which without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

10. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance, whether or not there is an agency relationship.

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11. "Dispense" means to deliver a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for such distribution. "Dispenser" is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject.

12. "Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance.

13. "Distributor" means a person who distributes.

14. "Drug" means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; articles (other than food) intended to affect the structure or any function of the body of man or other animals; and articles intended for use as a component of any article specified in this paragraph; but does not include devices or their components, parts or accessories.

15. "Drug dependent person" means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

16. "Immediate precursor" means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the

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manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture.

17. "Laboratory" means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances and the use of controlled dangerous substances for scientific and medical purposes and for purposes of instruction.

18. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

19. "Marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

20. "Medical purpose" means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition not in violation of any state or federal law and not for the purpose of satisfying physiological or psychological dependence or other abuse.

21. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable

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origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- a. opium, coca leaves and opiates;
- b. a compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates;
- c. a substance (and any compound, manufacture, salt, derivative or preparation thereof) which is chemically identical with any of the substances referred to in clauses a. and b., except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

22. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under this act, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

23. "Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

24. "Peace officer" means a police officer, sheriff, deputy sheriff, district attorney's investigator or any other person elected or appointed by law to enforce any of the criminal laws of this state or of the United States.

25. "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

26. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

27. "Practitioner" means:

- a. a physician, dentist, podiatrist, veterinarian, scientific investigator or other person licensed,

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Correctly Enrolled: *John R. McLean*

registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state; or

- b. a pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state.

28. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance.

29. "State" means the State of Oklahoma or any other state of the United States.

30. "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

31. "Act" means the Uniform Controlled Dangerous Substances Act, as defined in Sections 2-101 through 2-608 of Title 63.

32. "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled dangerous substance in violation of this act. It includes, but is not limited to:

- a. kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of

- plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived;
- b. kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances;
  - c. isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance;
  - d. testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances;
  - e. scales and balances used or intended for use in weighing or measuring controlled dangerous substances;
  - f. diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances;
  - g. separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana;
  - h. blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances;
  - i. capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances;
  - j. containers and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body;
  - k. hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body;

1. objects used or intended for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

- (1) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
- (2) water pipes;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;
- (6) miniature cocaine spoons and cocaine vials;
- (7) chamber pipes;
- (8) carburetor pipes;
- (9) electric pipes;
- (10) air-driven pipes;
- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers.

Provided however, drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps commonly used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco.

SECTION 2. In determining whether an object is "drug paraphernalia", a court shall consider, in addition to all other logically relevant factors, the following:

- 1. Statements by an owner or by anyone in control of the object concerning its use;
- 2. The proximity of the object, in time and space, to a direct violation of this act;

Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

3. The proximity of the object to controlled dangerous substances; \_\_\_\_\_

4. The existence of any residue of controlled dangerous substances on the object; \_\_\_\_\_

5. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who intend to use the object to facilitate a violation of this act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is drug paraphernalia; \_\_\_\_\_

6. Instructions, oral or written, provided with the object concerning its use; \_\_\_\_\_

7. Descriptive materials accompanying the object which explain or depict its use; \_\_\_\_\_

8. The manner in which the object is displayed for sale; \_\_\_\_\_

9. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products; \_\_\_\_\_

10. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise; \_\_\_\_\_

11. The existence and scope of legitimate uses for the object in the community; and \_\_\_\_\_

12. Expert testimony concerning its use. \_\_\_\_\_

SECTION 3. 63 O.S. 1971, Section 2-405, is amended to read as follows: \_\_\_\_\_

Section 2-405. A. No person shall use tincture of opium, tincture of opium camphorated, or any derivative thereof, by the hypodermic method, either with or without a medical prescription therefor. \_\_\_\_\_

~~B. No person shall use or possess drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into~~

Correctly Enrolled: *[Signature]*

Correctly Enrolled: *John R. McLean*

~~the human body a controlled dangerous substance in violation of this act who cannot show any medical or other lawful need requiring the same, except those persons holding an unrevoked license in the professions of podiatry, dentistry, medicine, nursing, optometry, osteopathy, veterinary medicine or pharmacy.~~

C. No person shall deliver, possess or manufacture drug paraphernalia knowing ~~or under circumstances in which~~ it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance in violation of this act.

D. Any person eighteen (18) years of age or over who violates subsection C of this section by delivering drug paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior shall be guilty of a felony.

E. Any person who violates subsections A, B or C of this section is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year or a fine of not more than One Thousand Dollars (\$1,000.00), or both such fine and imprisonment.

SECTION 4. 63 O.S. 1971, Section 2-503, as amended by Section 1, Chapter 194, O.S.L. 1978 (63 O.S. Supp. 1980, Section 2-503), is amended to read as follows:

Section 2-503. The following shall be subject to forfeiture:

1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of this act.

2. All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled dangerous substance in violation of the provisions of this act.

Chairman. COMMITTEE ON ENGROSSED AND ENROLLED BILLS  
Correctly Enrolled: J. K. McLean

3. All property which is used, or intended for use, as a container for property described in paragraphs 1 and 2 of this section.

4. All conveyances, including aircraft, vehicles or vessels, which are used to transport or conceal, for the purpose of distribution as defined in Section 2-101 of this title, or in any manner facilitate the transportation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this section or when such property is unlawfully possessed by an occupant thereof, except that:

- a. no conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this act; and
- b. no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state.

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of this act.

6. All drug paraphernalia as defined by this act.

SECTION 5. Section 2 of this act shall be codified in the Oklahoma Statutes as Section 2-101.1 of Title 63, unless there is created a duplication in numbering.

SECTION 6. The provisions of this act are severable and if any part or provision shall be held void the decision of the court so

Chairman. COMMITTEE ON ENGROSSED AND ENROLLED BILLS  
Correctly Enrolled. *John R. McCune*

holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 6th day of April, 1981.

*Acting Mike Lamb*  
President of the Senate

Passed the House of Representatives the 2d day of April, 1981.

*Alan Spross*  
Speaker of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 13<sup>th</sup>  
day of April, 1981,  
at 3:05 o'clock P M.

By: *Dana P. Winstan*

Approved by the Governor of the State of Oklahoma the 13<sup>th</sup> day of  
April, 1981, at 3:42 o'clock P M.

*George F. High*  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 13<sup>th</sup>  
day of April, 1981,  
at 4:15 o'clock P M.

*Jeanette B. Edmundson*  
By: \_\_\_\_\_

FILED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

JUL 27 1981

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

|                      |   |                |
|----------------------|---|----------------|
| MAPCO, INC.,         | ) |                |
|                      | ) |                |
| Plaintiff,           | ) |                |
|                      | ) |                |
| v.                   | ) | No. 80-C-255-E |
|                      | ) |                |
| RICHARD G. GUERRERO, | ) |                |
|                      | ) |                |
| Defendant.           | ) |                |

ORDER

On this 27<sup>th</sup> day of July, 1981, the above entitled matter comes on for hearing before the undersigned Judge on the parties Stipulation for Dismissal and the Court finds that all parties are in agreement thereto and that said motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above referenced case is dismissed with prejudice, each party to bear his own costs.

S/ JAMES O. ELLISON  
United States District Judge

FILED

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

JUL 27 1961

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

91498 CANADA LIMITED, a Canada )  
corporation, )

Plaintiff, )

vs. )

No. 80-C-368-E

OKLAHOMA AEROTRONICS, )  
INCORPORATED, an Oklahoma )  
corporation, )

Defendant and Third )  
Party Plaintiff, )

vs. )

ARNOLD A. SEMLER, INC., )  
ASSOCIATED INDUSTRIES DIVISION, )  
a corporation, and MOHAB )  
SOUSSA, an individual, )

Third Party Defendants. )

O R D E R

Pursuant to the Joint Stipulation of Dismissal with Prejudice filed by plaintiff 91498 Canada Limited and defendant Oklahoma Aerotronics, Inc., said plaintiff's Complaint and defendant's Counterclaim and each and every claim for relief and cause of action therein are hereby dismissed with prejudice.

  
JAMES O. ELLISON  
United States District Judge



WHEREFORE, it is respectfully submitted that the provisions of the above captioned rule are applicable here and this cause should be dismissed without prejudice.

Respectfully submitted,

---

PAUL D. BRUNTON  
Attorney for Plaintiffs  
1310 South Denver  
Tulsa, Oklahoma 74119  
(918) 582-1993

CERTIFICATE OF DELIVERY

I hereby certify that on the 24th day of July, 1981, I delivered a true and correct copy of the foregoing Notice of Dismissal without Prejudice to Maynard I. Ungerman, Midway Building, 21st & Columbia, Tulsa, Oklahoma, Attorney for the Defendants.

---

PAUL D. BRUNTON

United States District Court

JUL 23 1981

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

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

CIVIL ACTION FILE NO. 79-C-611-E

COMMERCIAL UNION ASSURANCE  
COMPANIES

vs.

SEARS, ROEBUCK AND CO., and  
WHIRLPOOL, INC.

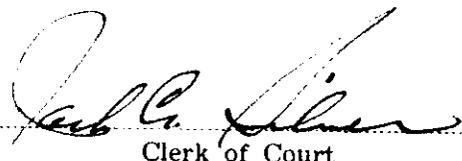
JUDGMENT

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 plaintiffs take nothing and that the  
defendant recover of the plaintiffs its costs of action.

Dated at Tulsa, Oklahoma  
of July , 19 81.

, this 23rd day



Clerk of Court

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

JUL 25 1961

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

RAYMOND J. DONOVAN, Secretary of )  
Labor, United States Department )  
of Labor, )  
 )  
Plaintiff, )  
v. )  
 )  
CLANTON TRUCK STOP, INC., )  
a Corporation and ARGENE CLANTON, )  
an Individual, )  
 )  
Defendants. )

Civil Action File  
No. 80-C-139-E

JUDGMENT

Plaintiff has filed his complaint and defendants have waived their defenses and have agreed to the entry of judgment without contest, it is, therefore, upon motion of the plaintiff and for cause shown,

.....

ORDERED, ADJUDGED and DECREED that defendants, their officers, agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of Sections 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 201, et seq., hereinafter referred to as the Act, in any of the following manners:

1. Defendants shall not, contrary to sections 6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), pay any employee who is engaged in commerce or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at a rate less the minimum hourly rates required by section 6 of the Act.

2. Defendants shall not, contrary to sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§211(c) and 215(a)(5), fail to make, keep and preserve adequate and accurate records of the persons employed by them, and the wages, hours and other conditions

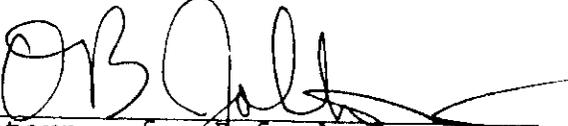
and practices of employment maintained by them as prescribed by regulations issued by the Administrator of the Employment Standards Administration, United States Department of Labor (29 C.F.R. Part 516).

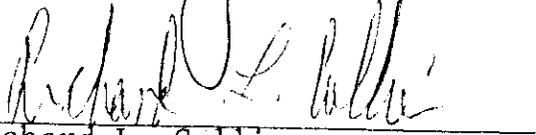
It is further ORDERED, ADJUDGED and DECREED that defendants be, and they hereby are, enjoined from withholding payment of minimum wages in the total amount of \$3,000.00, which the Court finds is due under the Act to defendants' employees named in Exhibit A attached hereto in the amounts indicated for the period March 19, 1979, to December 29, 1979. To comply with this provision of this judgment, defendants, within thirty (30) days from entry of this judgment, shall deliver to the plaintiff a cashier's or certified check payable to "Employment Standards Administration-Labor" in the total amount of \$3,000.00, less social security and income tax deductions, the proceeds of which check the plaintiff shall distribute to defendants' employees named herein. Any net sums which within one year after the payment pursuant to this judgment have not been distributed to such employees, or to their estate if necessary, because of plaintiff's inability to locate the proper persons, or because of their refusal to accept such sums, shall be deposited with the Clerk of this Court who shall forthwith deposit such money with the Treasurer of the United States pursuant to 28 U.S.C. §2041.

Done and ordered this 22<sup>nd</sup> day of July,  
1981.

James L. ...  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
\_\_\_\_\_  
Attorney for Defendants

  
\_\_\_\_\_  
Richard L. Collier  
Attorney for Plaintiff

SOL Case No. 09370

## EXHIBIT A

Clanton Truck Stop, Inc., et al.

| <u>NAME</u>       | <u>GROSS AMOUNT DUE</u> |
|-------------------|-------------------------|
| Don Allard        | \$ 11.03                |
| Tommy Allen       | 23.72                   |
| Darrell Atkins    | 94.33                   |
| Kenneth J. Blair  | 6.46                    |
| Michael Breazeale | 60.90                   |
| James D. Clements | 45.38                   |
| John W. Clontz    | 108.51                  |
| Jim Crane         | 150.92                  |
| Bobby Egnor       | 73.99                   |
| Dal Egnor         | 93.09                   |
| Mike Egnor        | 398.39                  |
| James D. Freeman  | 11.44                   |
| William Gilpin    | 31.34                   |
| Terry Hayes       | 52.48                   |
| Tommy Heard       | 312.25                  |
| Wendy Heard       | 24.87                   |
| Earl Hopkins      | 114.35                  |
| Chris Hudson      | 85.33                   |
| Jack Ingram       | 49.63                   |
| Melvin Jacobs     | 9.87                    |
| Wesley James      | 170.70                  |
| John Jenot        | 25.84                   |
| Doug Jones        | 139.74                  |
| Floyd D. Marshall | 74.73                   |
| Eugene McDonough  | 33.04                   |
| Don Meir          | 9.76                    |
| Bobby Nair        | 97.20                   |
| Johnny Nair       | 200.03                  |
| Jay D. Porter     | 30.03                   |
| Larry J. Summers  | 8.28                    |
| Danny Taffner     | 84.90                   |

Attached  
7-27-81

|                     |              |
|---------------------|--------------|
| Leroy Tune          | 16.90        |
| Roger Tune          | 15.69        |
| Mike Turner         | 55.48        |
| Evert Von Schultz   | 136.74       |
| Jack Williams       | 15.99        |
| Mike Woodard        | 23.00        |
| William Wright, Jr. | 18.27        |
| Mitch Herman        | 5.68         |
| Pat Ehardt          | <u>79.72</u> |
| TOTAL               | \$ 3,000.00  |

SOL Case No. 09370

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

JUL 23 1981

SYLVIA JEAN CROSS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF TULSA, )  
 )  
 Defendant. )

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

Civil Action No. 80-C-660-E

O R D E R

This case came on for hearing pursuant to regular setting before the undersigned on the 17th day of July, 1981, for preliminary pretrial consideration of the Defendant's Motion for Summary Judgment. The Plaintiff appeared pro se and the Defendant appeared by Imogene Harris, Assistant City Attorney.

After review of the court file, including depositions, affidavits, admissions, and all pleadings, and after conversation and interrogation of the Plaintiff, and also counsel for the Defendant, the court finds that the Defendant's Motion for Summary Judgment should be sustained and judgment granted to the Defendant, at the cost of the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment is sustained, and judgment is granted for the Defendant at the cost of the Plaintiff.

S/ JAMES O. ELLISON

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



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

F I L E D

JUL 22 1981

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

MARY BLANKENSHIP, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CONSOLIDATED OIL WELL SERVICES, )  
 INC., a Kansas corporation, and )  
 RALPH D. BEVER, )  
 )  
 Defendants. )

NO. 80-C-218-E

F I L E D

JUL 22 1981

ORDER OF DISMISSAL

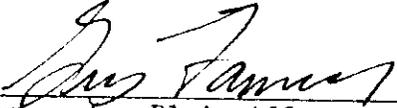
ON This 22<sup>nd</sup> day of July, 1981, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in 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 defendants be and the same hereby is dismissed with prejudice to any future action.

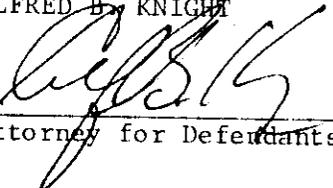
  
\_\_\_\_\_  
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

GUS FARRAR

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

ALFRED B. KNIGHT

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

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

CYNTHIA DEWAR,  
Plaintiff,

vs

KENNETH C. GARTON,  
Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

79-C-48-E

FILED

JUL 22 1981

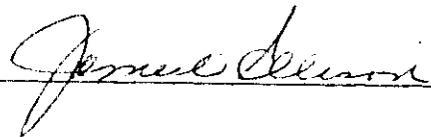
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

Now on this 17<sup>th</sup> day of July, 1981, there comes on for consideration of the undersigned Judge of the United States District Court for the Northern District of Oklahoma, the stipulation of the parties for an order of dismissal; the court being advised that the parties hereto have settled all disputes between them and requests the court for an order dismissing the above captioned cause with prejudice to future action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the above styled cause be and the same is hereby dismissed with prejudice to the right of the plaintiff from any future action arising from this cause.

JUDGE



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
AUG 11 1981  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
MUSKOGEE

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOYCE G. WILLIAMS, )  
 )  
Defendant. )

CIVIL ACTION NO. 80-C-691-E ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 22<sup>nd</sup>  
day of July, 1981, the Plaintiff appearing by Philard L.  
Rounds, Jr., Assistant United States Attorney for the Northern  
District of Oklahoma, and the Defendant, Joyce G. Williams,  
appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendant, Joyce G. Williams, was personally  
served with Summons and Complaint on December 10, 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, Joyce G.  
Williams, for the principal sum of \$830.00 (less the sum of \$120.00  
which has been paid) plus the accrued interest of \$426.57 as of  
October 30, 1980, plus interest at 7% from October 30, 1980 on the  
principal sum of \$830.00 (less the sum of \$120.00) until the  
date of Judgment, plus interest at the legal rate on the principal

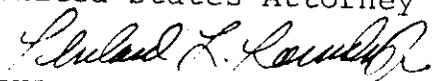
And? 740.00  
Accrued int: 426.57  
Int: .

sum of \$830.00 (less the sum of \$120.00) from the date of Judgment until paid.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

  
PHILARD L. ROUNDS, JR.  
Assistant U. S. Attorney

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

DAVID G. GOURLEY, JR., Legal )  
representative of the Estate of )  
DAVID G. GOURLEY, III, deceased, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SAM TANKSLEY TRUCKING, INC., JIM )  
McCLINTOCK and JERRY LYNN HULL, )  
 )  
Defendants. )

80-c-703-E

ORDER OF DISMISSAL

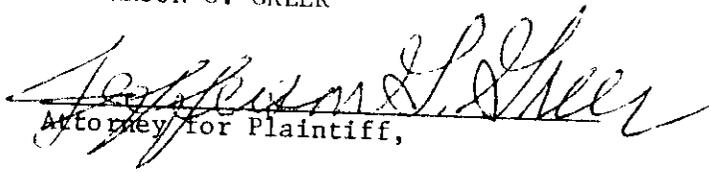
NOW on this 22<sup>nd</sup> day of July, 1981, upon the written application of the parties for a dismissal with prejudice of the complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromised settlement, covering all claims involved in the complaint and have requested the Court to dismiss said complaint with prejudice to any future action. The Court further finds that the sum of TWENTY THREE THOUSAND FIVE HUNDRED DOLLARS (\$23,500.00) is being paid to David G. Gourley, Jr. and Rita Gourley, as surviving parents, next of kin and on behalf of all next of kin and heirs at law of David G. Gourley, III, deceased. The Court further finds that there was no conscious pain and suffering and that no amount of the settlement is being paid to the estate of David G. Gourley, III, deceased, and the proceeds of said settlement and that all funds obtained by settlement and enure to the exclusive benefit of David G. Gourley, Jr. and Rita Gourley, individually and as parents and next of kin and on behalf of all surviving heirs at law of David G. Gourley, III, deceased.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the complaint and all causes of action of the Plaintiff filed herein against the Defendants, and each of them, be and the same hereby are dismissed with prejudice to any future action and that the Plaintiff executes and delivers unto the Defendants, and each of them, a General Release of all rights and claims against them or each of them, arising or growing out of the accident referred to in the complaint as per the Court's findings above.

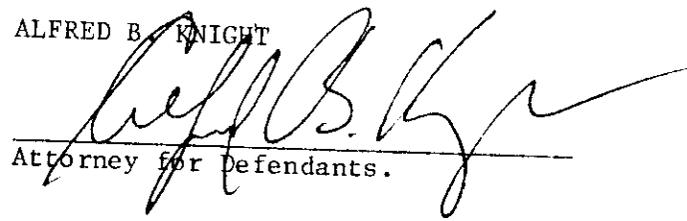
J. J. [Signature]  
JUDGE, DISTRICT COURT OF THE UNITED  
STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

JEFFERSON G. GREER

  
Attorney for Plaintiff,

ALFRED B. KNIGHT

  
Attorney for Defendants.

*Handwritten mark*

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

SHIRLEY ANN AINSWORTH, as )  
Administratrix of the Estate )  
of JERRY AINSWORTH, deceased, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
AMERACE CORPORATION and R. S. )  
GOODMAN COMPANY, foreign )  
corporations, )  
 )  
Defendants. )

NO. 81-C-17-E ✓

*Handwritten notes and initials*

O R D E R

The joint Motion of the Plaintiff and the Defendant R. S. Goodman Company of Oklahoma for an Order setting aside the Entry of Default and Default Judgment heretofore entered came on regularly to be heard. The Court finds that excusable neglect caused the delay in filing the Answer to the Complaint and that the Motion should be granted. The Court also finds that the Answer of the Defendant indicates that the Defendant has a meritorious defense.

IT IS THEREFORE ORDERED that the Entry of Default Judgment of April 6, 1981 and the Journal Entry of Default Judgment of April 10, 1981 entered in this action against the Defendant R. S. Goodman Company of Oklahoma, Inc. in favor of the Plaintiff be, and the same are, hereby vacated and set aside.

Dated this 22<sup>nd</sup> day of July, 1981.

James Ellison  
James Ellison, United States District Judge

APPROVALS:

STIPE, BOSSETT, STIPE, HARPER & ESTES  
Attorneys for the Plaintiff

By: Eddie Harper  
Eddie Harper

KNIGHT, WAGNER, STUART, WILKERSON & LIEBER  
Attorneys for the Defendant R. S. Goodman

By: John Howard Lieber  
John Howard Lieber

FILED

JUL 21 1981

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

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

WILLIAMS ELECTRICAL CONTRACTING,  
INC., an Oklahoma corporation,

Plaintiff,

vs.

WILLIAM J. McPARTLAND, et al.,

Defendants.

No. 75-C-507-E

ORDER

WHEREAS, on the 21st day of July, 1981, all of the parties herein filed their Joint Application for a dismissal with prejudice of this action upon the grounds that they had entered into a written Mutual Release on May 26, 1981, releasing one another of and from all liability herein asserted and alleging that the claims and causes of action heretofore asserted among them have now been rendered moot, and praying that this action should be dismissed with prejudice. The Court finds that said Joint Application should be sustained as the parties have settled their claims and causes of action one against the other, and this action should, therefore, be dismissed with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that this action, and all aspects thereof, be and the same is hereby and by these premises dismissed with prejudice as to all parties, with each party bearing its own costs.

  
UNITED STATES DISTRICT JUDGE

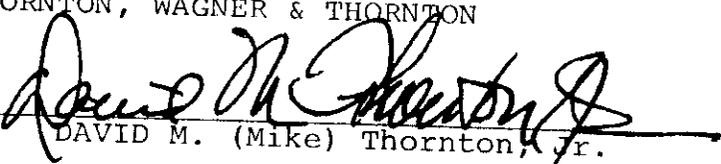
APPROVED AS TO FORM:

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By   
DALLAS E. FERGUSON  
Attorneys for Williams Electrical  
Contracting, Inc., and Ray A. Williams

THORNTON, WAGNER & THORNTON

By

  
DAVID M. (Mike) Thornton, Jr.

Attorneys for William J. McPartland,  
Connecticut Mutual Life Insurance  
Company, and City Plaza

SANDERS & CARPENTER

By

  
DAVID H. SANDERS

Attorneys for Safeco Insurance Company of  
America

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JUL 27 1981

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JERRY J. LITTLE and )  
CAROL L. LITTLE, )  
 )  
Defendants. )

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

CIVIL ACTION NO. 81-C-152-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 21<sup>st</sup> day of July, 1981, the Plaintiff appearing by Don J. Guy, Assistant United States Attorney; and the Defendants, Jerry J. Little and Carol L. Little, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant Jerry J. Little was served with Summons and Complaint on April 13, 1981, and that Defendant Carol L. Little was served with Summons and Complaint on May 14, 1981, both as appear from the United States Marshal's Service herein.

It appearing that the Defendants, Jerry J. Little and Carol L. Little, 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 Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Three (3), in Eastmont Addition, a subdivision in Creek County, Oklahoma, according to the duly recorded plat thereof

That the Defendants, Jerry J. Little and Carol L. Little, did, on the 7th day of December, 1971, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the sum

of \$16,000.00 with 7 1/4 percent interest per annum, and further providing for the payment of annual installments of principal and interest.

The Court further finds that Defendants, Jerry J. Little and Carol L. Little, made default under the terms of the aforesaid mortgage note by reason of their failure to make annual installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$14,227.15 as unpaid principal plus the accrued interest of \$1,554.96 as of June 9, 1981, plus interest at 7 1/4 percent per annum on the principal sum of \$14,227.15 from June 9, 1981, until paid, plus the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Jerry J. Little and Carol L. Little, in personam, for the principal sum of \$14,227.15 plus the accrued interest of \$1,554.96 as of June 9, 1981, plus interest at 7 1/4 percent on the principal sum of \$14,227.15 from June 9, 1981, until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and

all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

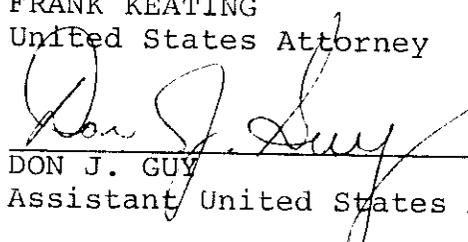


UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

  
DON J. GUY  
Assistant United States Attorney

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

DIANE RATEKIN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SAM TANKSLEY TRUCKING, INC., JIM )  
 McCLINTOCK and JERRY LYNN HULL, )  
 )  
 Defendants. )

NO. 80-C-704-E

JUL 27 1981

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

ORDER OF DISMISSAL

ON This 21st day of July, 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.

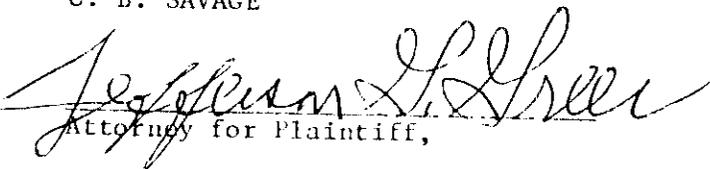
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendants be and the same hereby is dismissed with prejudice to any future action.

**/s/ JAMES O. ELLISON**

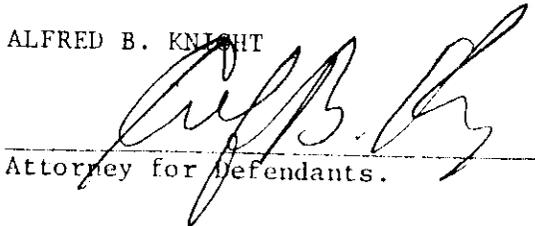
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

C. B. SAVAGE

  
Attorney for Plaintiff,

ALFRED B. KNIGHT

  
Attorney for Defendants.

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

|                           |   |
|---------------------------|---|
| EMMETT MARK MYLAR and     | ) |
| JUNE DAWN MYLAR,          | ) |
| husband and wife,         | ) |
|                           | ) |
| Plaintiffs,               | ) |
|                           | ) |
| vs.                       | ) |
|                           | ) |
| DONALD M. ADKISON and     | ) |
| UNITED STATES OF AMERICA, | ) |
|                           | ) |
| Defendants.               | ) |

No. 79-C-534-E

STIPULATION OF DISMISSAL

COME NOW the parties hereto and pursuant to Rule 41 (a) (1) (ii),  
Federal Rules of Civil Procedure and hereby stipulate and agree that all  
actions herein are dismissed with prejudice.

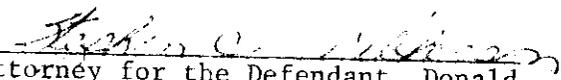
ERNEST BEDFORD,

  
\_\_\_\_\_  
Attorney for the Plaintiffs,

FRANK KEATING,

  
\_\_\_\_\_  
United States District Attorney  
for Northern District of Oklahoma  
By: PAULA OGG, Assistant U.S. District  
Attorney for Northern District of  
Oklahoma, and Attorney for  
Defendant United States of America,

STEPHEN C. WILKERSON,

  
\_\_\_\_\_  
Attorney for the Defendant, Donald  
M. Adkison.

ALL 2/11/80  
Jack C. Silber, Clerk  
U. S. DISTRICT COURT

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

MARLENE K. WHITSON,  
Plaintiff,

-vs-

TERRA RESOURCES, INC.,  
a Delaware corporation,  
Defendant.

No. 80-C-573-C ✓

F I L E D

JUL 17 1981 *hm*

Jack C. Sibley, Cl. k.  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

This cause having come before me pursuant to the Joint Stipulation for Dismissal With Prejudice, and the Court being fully advised in the premises, it is, therefore,

ORDERED, ADJUDGED and DECREED that the Complaint herein, together with the cause of action set forth therein, be and hereby is dismissed with prejudice, with each party to bear its own costs.

So Ordered this 17<sup>th</sup> day of July, 1981.

*W. S. Sibley*  
\_\_\_\_\_  
U.S. DISTRICT COURT JUDGE

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

NELLIE ATKINS ARMSTRONG,  
Plaintiff,  
vs.  
MAPLE LEAF APARTMENTS, LTD.,  
a Limited Partnership, et al,  
Defendants,  
vs.  
HAMILTON INVESTMENT TRUST, a  
Massachusetts Business Trust,  
and YOUNG & LATCH INVESTMENTS,  
a General Partnership,  
Third Party Plaintiffs,  
vs.  
HUSKIN F. ARMSTRONG, husband  
of Nellie Atkins Armstrong,  
and Manuel Brown,  
Third Party Defendants,  
MANUEL BROWN,  
Third Party Plaintiff,  
vs.  
C. A. WHITEBOOK,  
Third Party Defendant.

FILED

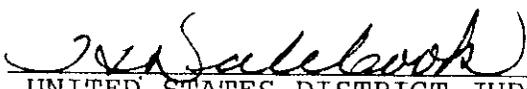
JUL 17 1981

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

No. 74-C-119

O R D E R

Now on this 17th day of July, 1981, upon  
Stipulation of the parties, the action of third party plaintiff,  
Young & Latch Investments, a General Partnership, against third  
party defendant, Manuel Brown, and the Third Party Complaint  
filed herein on June 17, 1975 alleging the same, be and the  
same hereby is ordered dismissed with prejudice to refileing,  
said third party plaintiff and third party defendant to bear  
their own costs.

  
UNITED STATES DISTRICT JUDGE

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

NELLIE ATKINS ARMSTRONG,

Plaintiff,

vs.

MAPLE LEAF APARTMENTS, LTD.,  
a Limited Partnership, et al,

Defendants,

vs.

HAMILTON INVESTMENT TRUST, a  
Massachusetts Business Trust,  
and YOUNG & LATCH INVESTMENTS,  
a General Partnership,

Third Party Plaintiffs,

vs.

HUSKIN F. ARMSTRONG, husband  
of Nellie Atkins Armstrong,  
and MANUEL BROWN,

Third Party Defendants,

MANUEL BROWN,

Third Party Plaintiff,

vs.

C. A. WHITEBOOK,

Third Party Defendant.

FILED

JUL 17 1981

U. S. DISTRICT COURT

No. 74-C-119 ✓

O R D E R

Now on this 17<sup>th</sup> day of July, 1981, upon  
Stipulation of the parties, the action of third party plaintiff,  
Manuel Brown, against third party defendant, C. A. Whitebook,  
and the Third Party Complaint filed herein on May 12, 1976  
alleging the same, be and the same hereby is ordered dismissed  
with prejudice to refiling, said third party plaintiff and  
third party defendant each to bear his own costs.

W. A. Whitebook  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

**JUL 16 1981**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GLENN E. WICKLINE, )  
 )  
 Defen dant. )

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

CIVIL ACTION NO. 81-C-258-E

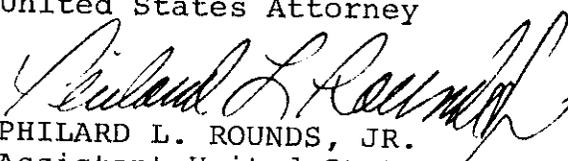
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein,  
by and through its attorney, Philard L. Rounds, Jr., 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 16<sup>th</sup> day of July, 1981.

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

  
PHILARD L. ROUNDS, JR.  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CHARLES R. WELDEN, )  
 )  
 Defendant. )

JUL 16 1981

Mark C. Silver, Cl. &  
U. S. DISTRICT COURT

CIVIL ACTION NO. 80-C-626-E

DEFAULT JUDGMENT

This matter comes on for consideration this 16<sup>th</sup> day of July, 1981, the Plaintiff appearing by Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Charles R. Welden, appearing not.

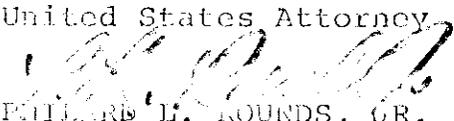
The Court being fully advised and having examined the file herein finds that Defendant, Charles R. Welden, was personally served with Summons and Complaint on November 13, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

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, Charles R. Welden, for the principal sum of \$2,000.00 (less the sum of \$135.00 which has been paid) plus the accrued interest of \$370.95 as of July 13, 1979, plus interest at 7% from July 13, 1979, until the date of Judgment, plus interest at the legal rate on the principal sum of \$2,000.00 (less the sum of \$135.00 which has been paid) from the date of Judgment until paid.

*S/* JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA  
FRANK KEATING  
United States Attorney  
  
PHILARD L. ROUNDS, JR.  
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 15 1981

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FRED L. ROSEBOROUGH, )  
 )  
 Defendant. )

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

CIVIL ACTION NO. 81-C-226-E

DEFAULT JUDGMENT

This matter comes on for consideration this 16<sup>th</sup> day of July, 1981, the Plaintiff appearing by Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Fred L. Roseborough, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Fred L. Roseborough, was personally served with Summons and Complaint on May 20, 1981, 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, Fred L. Roseborough, for the principal sum of \$1,638.88 plus the accrued interest of \$665.36 as of March 20, 1981, plus interest at 7% from March 20, 1981, until the date of Judgment, plus interest at the legal rate on the principal sum of \$1,638.88 from the date of Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney  
*Philard L. Rounds, Jr.*  
PHILARD L. ROUNDS, JR.  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED  
JUL 15 1981

U. S. DISTRICT COURT

PENNWELL PUBLISHING COMPANY )  
and OIL & GAS JOURNAL, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
HUTTON PUBLISHING COMPANY )  
individually and doing business as )  
OIL & GAS DIGEST, )  
 )  
Defendant. )

Number 79-C-693-C

ORDER

Plaintiffs and Defendant having stipulated that the above-styled action may be dismissed with prejudice pursuant to a certain Settlement Agreement entered into between the parties dated May 16, 1981,

IT IS HEREBY ORDERED that the above-styled cause be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41, without costs to any party.

DATED this 15<sup>th</sup> day of July, 1981.

15/ 11 Dale Cook  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA )  
 )  
 BY )  
 )  
 RAYMOND J. DONOVAN, Secretary of )  
 Labor, United States Department )  
 of Labor, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BOB BOLLES, an Individual, )  
 doing business as )  
 ARROW PRODUCTIONS, )  
 )  
 Defendant. )

Civil Action File  
No. 81-C-56-C

JUL 14 1981  
U.S. District Court  
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

On this date of July 14, 1981, came on to be heard plaintiff's motion for summary judgment against Bob Bolles, doing business as Arrow Productions, and it appearing that plaintiff's motion for summary judgment is appropriate and well taken, it is therefore

ORDERED, ADJUDGED AND DECREED that plaintiff have and recover from defendant, Bob Bolles, the amount of \$840.00 together with interest thereon at nine per cent per annum from May 21, 1979, the date said penalty became a final order of the Occupational Safety and Health Review Commission.

Costs of this action are taxed to defendant.

DATED this 14 day of July, 1981.

[Signature]  
UNITED STATES DISTRICT JUDGE

FILED

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

JUL 13 1981

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

UNITED STATES OF AMERICA, and )  
 ANITA M. VAUGHN, Special )  
 Agent, Internal Revenue )  
 Service, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 SOONER FEDERAL SAVINGS and )  
 LOAN, ET AL, )  
 )  
 Respondents. )

No. 81-C-215-C

ORDER OF DISMISSAL

Upon application of the United States of America the records so summoned have been received by the United States of America in accordance with the Court's Order.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that this case be dismissed.

Dated this 13<sup>th</sup> day of July, 1981.

151 H. Dale Cook  
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 13 1981

HYDRO CONDUIT CORPORATION, a )  
Delaware Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FRASER CONSTRUCTION COMPANY, an )  
Arkansas Corporation, )  
 )  
Defendant. )

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

No. 81-C-235-E

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the settlement agreement of the Parties,  
the Complaint of the Plaintiff, be and the same is hereby,  
dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Date: July 13, 1981

APPROVED:

BOESCHE, MCDERMOTT & ESKRIDGE  
320 South Boston, Suite 1300  
Tulsa, Oklahoma 74103  
(918) 583-1777

By: Charles W. Shipley  
Charles W. Shipley

Attorneys for Plaintiff

JONES, GILBREATH & JONES  
P. O. Box 2023  
401 North 7th Street  
Fort Smith, Arkansas 72902  
(501) 782-7203

By: Robert L. Jones, Jr.  
Robert L. Jones, Jr.

Attorneys for Defendant

FILED

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

JUL 13 1981

UNITED STATES OF AMERICA, and )  
DAVID P. MESSINGER, Special )  
Agent, Internal Revenue )  
Service, )

Petitioners, )

vs. )

WILEY HARBERT, Credit )  
Supervisor, CONOCO OIL, INC., )  
Ponca City, Oklahoma, )

Respondents. )

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

No. 81-C-123-E

ORDER OF DISMISSAL

Upon application of the United States of America  
the records so summoned have been received by the United States  
of America in accordance with the Court's Order.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that this  
case be dismissed.

Dated this 13<sup>th</sup> day of July, 1981.

S/ JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

FILED

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

JUL 13 1981

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

TRW INC., REDA PUMP DIVISION, )  
an Ohio corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STEVE SEMBRITZKY, d/b/a )  
AUDIO-VISUAL ENTERPRISES, )  
 )  
Defendant. )

Case No. 80-C-742-E

JOURNAL ENTRY OF JUDGMENT

Now on this 13<sup>th</sup> day of July, 1981, Defendant, Steve Sembritzky, d/b/a Audio-Visual Enterprises, having served upon the Plaintiff, TRW Inc., Reda Pump Division, an Offer to Confess Judgment and Plaintiff having within ten (10) days after service thereof served written notice upon the Defendant that the offer was accepted and said offer and Notice of Acceptance and proof of service thereof having been filed with the Plaintiff,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff, TRW Inc., Reda Pump Division, have judgment against the Defendant, Steve Sembritzky, d/b/a Audio-Visual Enterprises, in the amount of Twenty-Three Thousand Five Hundred Sixty-Eight Dollars (\$23,568.00) with interest at twelve percent (12%) per annum from February 23, 1981, until fully satisfied, plus interest at twelve percent (12%) per annum calculated on the amount of Twenty-Six Thousand Five Hundred Sixty-Eight Dollars (\$26,568.00) from August 20, 1980, to October 9, 1980; on the amount of Twenty-Four Thousand Five Hundred Sixty-Eight Dollars (\$24,568.00) from October 9, 1980, to October 29, 1980; on the amount of Twenty-Four Thousand Sixty-Eight Dollars (\$24,068.00) from October 29, 1980, to February 23, 1980, together with costs accrued to date.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

*Mark K. Blongewicz*  
Mark K. Blongewicz  
Attorney for Plaintiff

*J. Charles Shelton*  
J. Charles Shelton  
Attorney for Defendant



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

**F I L E D**

**JUL 10 1981**

WILLARD MERRIT and GEORGIN )  
MERRIT, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
STANADYNE, INC., a foreign )  
corporation, )  
 )  
Defendant. )

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

No. 81-C-74-C

DISMISSAL WITHOUT PREJUDICE

COME now the plaintiffs, Willard Merrit and Georgin Merrit, pursuant to Rule 41(a)(2) and moves this Court for an Order dismissing the above entitled without prejudice. Defendant filed an Answer herein on the 24th day of February, 1981, but makes no counter-claim against plaintiff and would not suffer substantial prejudice by the dismissal of this action.

McGIVERN, SCOTT, STEICHEN  
& GILLIARD

By

  
Michael D. Gilliard  
Attorney at Law  
Legal Arts Building  
1515 South Boulder  
Tulsa, Oklahoma 74119  
(918) 584-3391

ORDER OF DISMISSAL WITHOUT PREJUDICE

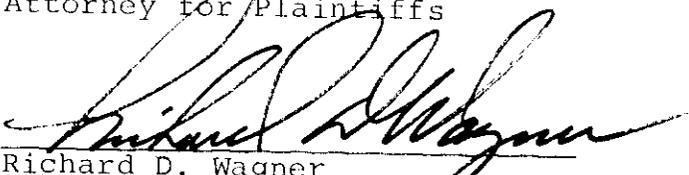
The Motion of plaintiffs for dismissal of the above entitled action without prejudice before me, the undersigned Judge, and it appearing that defendant in its Answer makes no counter-claim against plaintiffs and will not be substantially prejudiced by a dismissal.

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

13/ H. Dale Cook  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

  
Michael D. Gilliard  
Attorney for Plaintiffs

  
Richard D. Wagner  
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 10 1981

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EMMETT WOODLEY, JR., )  
 )  
 Defendant. )

CIVIL ACTION NO. 81-C-249-E

DEFAULT JUDGMENT

This matter comes on for consideration this 10<sup>th</sup> day of July, 1981, the Plaintiff appearing by Don J. Guy, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Emmett Woodley, Jr., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Emmett Woodley, Jr., was personally served with Summons and Complaint on June 8, 1981, 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, Emmett Woodley, Jr., for the principal sum of \$1,599.41 plus the accrued interest of \$412.16 as of May 5, 1981, plus interest at 7% from May 5, 1981, until the date of Judgment, plus interest at the legal rate on the principal sum of \$1,599.41 from the date of Judgment until paid.

JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA  
FRANK KEATING  
United States Attorney

*[Handwritten signature]*  
FRANK KEATING  
U. S. Attorney

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

**F I L E D**

**JUL 10 1981**

UNITED STATES OF AMERICA, and )  
DALE HOWARD, Internal Revenue )  
Agent, Internal Revenue )  
Service, )

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

Petitioners, )

vs. )

No. 79-C-699-Bt

FOURTH NATIONAL BANK, a )  
National Banking Association, )  
and JAMES BRYANT, JR., )

Respondents. )

ORDER OF DISMISSAL

Upon application of the United States of America  
the records so summoned have been received by the United States  
of America in accordance with the Court's Order.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that this  
case be dismissed.

Dated this 10<sup>th</sup> day of July, 1981.

5/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

ROBERT K. BELL ENTERPRISES, )  
INC., an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CONSUMER PRODUCT SAFETY )  
COMMISSION, et al., )  
 )  
Defendants. )

No. 79-C-40-C ✓

*[Handwritten signature]*  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

Pursuant to the Mandate of the Tenth Circuit Court of Appeals, the previous judgment of the Court herein is hereby vacated and judgment is entered sustaining plaintiff's motion for summary judgment on all points.

It is so Ordered this 10<sup>th</sup> day of July, 1981.

*[Handwritten signature: H. Dale Cook]*  
H. DALE COOK  
Chief Judge, U. S. District Court

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

INDEPENDENT SCHOOL DISTRICT NO. 3,  
BROKEN ARROW, TULSA COUNTY, OKLAHOMA,

Plaintiff,

-vs-

TAMMY SUE DETJEN; GATESWAY  
FOUNDATION, INC.; and  
OKLAHOMA STATE DEPARTMENT  
OF EDUCATION,

Defendants.

No. 81-C-114-C

FILED

JUL 9 1981

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

O R D E R

This case comes on for pre-trial conference on this 9th day of July, 1981, upon assignment from the Honorable H. Dale Cook. The parties appeared through counsel.

This case has pending before it Plaintiff's application to appoint guardian ad litem, Defendant State Departments oral Motion to Dismiss, and Plaintiff's Motion for Summary Judgment. Based upon the pleadings, depositions, and stipulations on file and in the record, the Court finds:

1. Gatesway Foundation, Inc., by and through its administrator, Nina Robinson, should be appointed guardian ad litem for Tammy Sue Detjen.

2. The State Department of Education's only involvement in this action has been to provide the Court with certified copies of the Record of the Due Process Hearing and Appeal Board Hearing, which the Defendant State Department has done. Thus, all issues pertaining to the State Department of Education are moot.

3. Tammy Sue Detjen has previously received from other accredited school districts all of the free public special education to which she is entitled under the law. Therefore, the Plaintiff School District is not financially or otherwise responsible for providing Tammy Sue Detjen with a free appropriate special education, or any other educational services.

4. Each party to this action should bear their own costs and attorney fees.

IT IS THEREFORE ORDERED, that Gatesway Foundation, Inc. by and through its administrator, Nina Robinson, is hereby

appointed guardian ad litem for Tammy Sue Detjen for the purpose of this litigation.

IT IS FURTHER ORDERED, that the Defendant's State Department's Motion to Dismiss is sustained, and said Defendant is dismissed from this action.

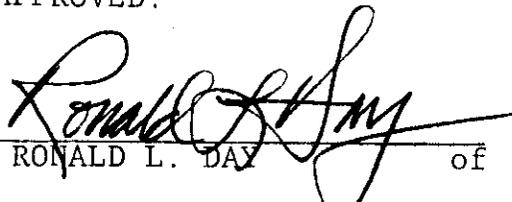
IT IS FURTHER ORDERED that the Plaintiff School District's Motion for Summary Judgment is sustained, and ORDERED that the Plaintiff, Independent School District No. 3, Broken Arrow, Tulsa County, Oklahoma, is not financially or otherwise responsible for providing Tammy Sue Detjen with a free appropriate special education, or any other educational services.

IT IS FURTHER ORDERED that the decisions of the Due Process Hearing Officers and the Appeal Team are reversed in so far as they are inconsistent with the findings and Orders of this Court. The Court finds that the Findings and Orders set forth herein render all other issues raised in this case moot, and the Court needs not and is not passing or ruling on said moot issues.

IT IS FURTHER ORDERED that each of the parties bear their own costs and attorney fees.

  
UNITED STATES DISTRICT JUDGE

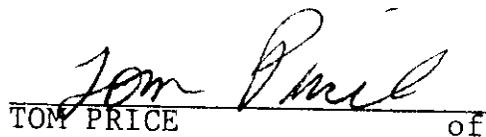
APPROVED:

  
RONALD L. DAY of

FENTON, FENTON, SMITH, RENEAU & MOON  
200 Court Plaza  
228 Robert S. Kerr Avenue  
Oklahoma City, Oklahoma 73102  
(405) 235-4671  
ATTORNEYS FOR PLAINTIFF  
INDEPENDENT SCHOOL DISTRICT NO. 3,  
BROKEN ARROW, TULSA COUNTY, OKLAHOMA

  
JAMES B. FRANKS of

ASSISTANT ATTORNEY GENERAL  
112 State Capitol Building  
Oklahoma City, Oklahoma 73105  
(405) 521-3921  
ATTORNEYS FOR DEFENDANT  
STATE DEPARTMENT OF EDUCATION

  
TOM PRICE of

PROTECTION & ADVOCACY AGENCY  
9726 East 42nd Street  
Tulsa, Oklahoma 74145  
(918) 664-5883  
ATTORNEYS FOR DEFENDANTS  
TAMMY SUE DETJEN AND  
GATESWAY FOUNDATION, INC.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

July 8, 1981 jf

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DOROTHY E. HEARD, )  
 )  
 Defendant. )

CIVIL ACTION NO. 81-C-139-E ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 8th day of July, 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Dorothy E. Heard, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Dorothy E. Heard, was personally served with Summons and Complaint on April 9, 1981, 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, Dorothy E. Heard, for the principal sum of \$1,027.15 (less the amount of \$600.00 which has been paid) plus interest at the legal rate from the date of this Judgment until paid.

UNITED STATES OF AMERICA  
FRANK KEATING  
United States Attorney  
*Paula S. Ogg*  
PAULA S. OGG  
Assistant U. S. Attorney

*James S. Lewis*  
UNITED STATES DISTRICT JUDGE

UNITED STATES OF DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ARTHUR L. ROGERS, and )  
 JUDITH L. ROGERS )  
 )  
 Defendants )

CIVIL ACTION NO. 81-C-119-E

O R D E R

NOW, on this 8<sup>th</sup> day of July, 1981, there came on for consideration a Stipulation of Dismissal filed by the parties hereto. Based on such stipulation, the Court finds this action should be dismissed, without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this action be and the same is hereby dismissed without prejudice.

)  
 UNITED STATES DISTRICT JUDGE

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

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

KENNETH D. MANUEL, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 80-C-543-E  
 )  
 JAMES BROWN, Tulsa Police Officer, )  
 )  
 Defendant. )

O R D E R

On December 15, 1980, Defendant filed his Motion to Dismiss and Alternative Motion for Summary Judgment. Plaintiff responded to Defendant's Motion to Dismiss on December 29, 1980. On February 23, 1981, this Court entered an Order giving Plaintiff notice that the Court would treat Defendant's motion as one for summary judgment. The Court allowed Plaintiff 20 days within which to file affidavits or pleadings opposing those filed by Defendant. Plaintiff has not filed any additional documents of any kind since that Order was issued.

The Court will at this time review the undisputed circumstances under which this case arose. The record indicates the Plaintiff was in the custody of the Tulsa Police Department on July 2, 1980, when he was forced by the Defendant police officer, James Brown, to participate in a line-up. On July 3, 1980, as a result of an identification which occurred in the line-up on the previous day, Plaintiff was charged with the crime of robbery by firearms. In his Complaint and subsequent pleadings, Plaintiff alleges that his constitutional rights were violated because he was not represented by counsel at the line-up which occurred on July 2, 1980. Plaintiff argues that the sixth and fourteenth amendments to the Constitution of the United States guaranteed him the right to an attorney at that time. Defendant officer Brown bases his Motion for Summary Judgment on the argument that individuals are not constitutionally entitled to counsel in line-ups which occur before any formal charges are filed against that individual.

The Federal Rules of Civil Procedure provide that summary judgment shall be rendered if the pleadings and other documents on file with the Court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.

Civ.P. 56(c). While it is the duty of a court to grant a motion for summary judgment in an appropriate case, the relief contemplated by Fed.R.Civ.P. 56 is drastic and should be applied with caution so that litigants will have an opportunity for trial on bona fide factual disputes. Redhouse v. Quality Ford Sales, Inc., 511 F.2d 230, 234 (Tenth Cir. 1975); Jones v. Nelson, 484 F.2d 1165, 1168 (Tenth Cir. 1973). Pleadings must therefore be liberally construed in favor of the party opposing summary judgment. Harsha v. United States, 590 F.2d 884, 887 (Tenth Cir. 1979). Summary Judgment must be denied unless the moving party demonstrates entitlement to it beyond a reasonable doubt. Norton v. Liddel, 620 F.2d 1375, 1381 (Tenth Cir. 1980); Madison v. Deseret Livestock Co., 574 F.2d 1027, 1037 (Tenth Cir. 1978).

It is clear to the Court from the record that the parties do not dispute the facts in this case. When facts are not in dispute, the question then becomes whether the movant is entitled to summary judgment as a matter of law. In the case of Kirby v. Illinois, 406 U.S. 682 (1972), the United States Supreme Court was faced with a factual situation similar to that in the case at bar. The Supreme Court made the following statement:

In a line of constitutional cases in this court stemming back to the court's landmark opinion in Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158, it has been firmly established that a person's sixth and fourteenth amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him. (citations omitted).

Kirby v. Illinois, supra at 688.

The Court explained the rationale behind this statement:

The initiation of judicial criminal proceedings is far from a mere formalism. It is the starting point of our whole system of adversary criminal justice. For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified. It is then that a defendant finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law. It is this point, therefore, that marks the commencement of the "criminal prosecutions" to which alone the explicit guarantees of the sixth amendment are applicable.

Id. at 689-690.

This Court is bound to follow the clear mandate of the United States Supreme Court in Kirby and subsequent cases that an individual's sixth amendment right to counsel does not come into play until after the institution of criminal proceedings. U.S. v. Mandujano, 425 U.S. 564, 581 (1976). The Court takes note of the fact that there have been no allegations by Plaintiff that the line-up in question was unnecessarily suggestive or conducive to mistaken identification, which would offend the due process guarantees of the fifth and fourteenth amendments. Manson v. Brathwaite, 432 U.S. 98, 121 (1977).

Having carefully reviewed the entire record in this matter and bearing in mind the law to be applied, the Court is of the opinion that summary judgment is an appropriate remedy in this case. The facts are not disputed and the law is clearly in Defendant's favor. Accordingly, Defendant's Motion for Summary Judgment is hereby granted.

It is so Ordered this 8<sup>th</sup> day of July, 1981.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

July 8, 1981

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ROBERT W. MURRAY, )  
 )  
 Defendant. )

CIVIL ACTION NO. 80-C-525-E

DEFAULT JUDGMENT

This matter comes on for consideration this 8<sup>th</sup> day of July, 1981, the Plaintiff appearing by Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Robert W. Murray, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Robert W. Murray, was personally served with Summons and Complaint on September 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, Robert W. Murray, for the principal sum of \$909.00 (less the sum of \$450.00 which has been paid) plus interest at the legal rate from the date of this Judgment until paid.

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA  
FRANK KEATING  
United States Attorney  
  
PHILARD L. ROUNDS, JR.  
Assistant U. S. Attorney



L-5713

*Filed  
July 8, 1981*

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

|                          |   |                                 |
|--------------------------|---|---------------------------------|
| JOHN BAKER,              | ) |                                 |
|                          | ) |                                 |
| Plaintiff,               | ) |                                 |
|                          | ) |                                 |
| v.                       | ) | Ct. No. C-80-159- <del>CE</del> |
|                          | ) |                                 |
| CUMMINS SALES & SERVICE, | ) |                                 |
| INC., a foreign          | ) |                                 |
| corporation,             | ) |                                 |
|                          | ) |                                 |
| Defendant.               | ) |                                 |

JOURNAL ENTRY OF JUDGMENT

NOW ON the 21st day of May, 1981, there came on for jury trial the above entitled matter. The plaintiff appeared by and through his attorney of record, Mr. Allen B. Mitchell of Thompson & Mitchell, Sapulpa, Oklahoma. The defendant appeared by and through its attorney of record, Walter D. Haskins, of the law firm of Best, Sharp, Thomas, Glass and Atkinson, Tulsa, Oklahoma. A jury was duly impaneled to try the issues between the parties. Witnesses were sworn and testimony presented.

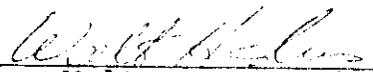
On the 22nd day of May, 1981, the evidence continued. The plaintiff rested and various motions were considered by the Court. The Court overruled defendant's motion for judgment at the conclusion of the plaintiff's evidence. Whereupon, the defendant presented its testimony. The defendant rested and moved for a directed verdict. The Court, upon the evidence presented, directed a verdict in favor of the defendant and against the plaintiff on that portion of its claim for damages dealing with lost future profits. The Court overruled defendant's directed verdict as it applies to incidental expenses of the plaintiff relating to the pick-up and delivery of the truck in question.

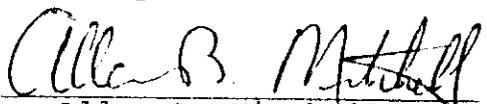
WHEREUPON, the parties conferred and found that the total remaining damages claimed by the plaintiff came to the amount of \$360.70. Thereupon, the parties conferred and agreed that informally the defendant would pay to the plaintiff the amount of \$360.70 (Three Hundred Sixty and 70/100ths Dollars), and that the plaintiff would dismiss its action against the defendant only to the extent that it relates to these expenses regarding the pick-up and delivery of the truck in question.

IT IS, THEREFORE, THE ORDER, JUDGMENT, AND DECREE of this Court that defendant's motion for a directed verdict as to the damages of the plaintiff relating to future lost income should be and hereby is sustained. The plaintiff's dismissal of its action as relating only to incidental expenses dealing with the pick-up and delivery of the truck in question is accepted by the Court.

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

Approved as to Form:

  
\_\_\_\_\_  
Walter D. Haskins  
Attorney for the Defendant

  
\_\_\_\_\_  
Allen B. Mitchell  
Attorney for the Plaintiff

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUL 8 1981

|                                |   |                                     |
|--------------------------------|---|-------------------------------------|
| United States of America,      | ) |                                     |
|                                | ) |                                     |
| Plaintiff,                     | ) | CIVIL ACTION                        |
|                                | ) |                                     |
| vs.                            | ) | Tracts Nos. 236-1, 236-2,           |
|                                | ) | 236E-1 and 236E-2                   |
| 26.45 Acres of Land, More or   | ) |                                     |
| Less, Situate in Washington    | ) | All interests in the estate         |
| County, State of Oklahoma, and | ) | taken <u>except</u> the oil and gas |
| Lowell E. Smith, et al., and   | ) | leasehold interest.                 |
| Unknown Owners,                | ) |                                     |
|                                | ) | (Included in D.T. filed in          |
| Defendants.                    | ) | Master File #400-14)                |

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

J U D G M E N T

1.

NOW, on this 8<sup>th</sup> day of July, 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. 236-1, 236-2, 236E-1, and 236E-2, 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 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 tracts a certain sum of money, and none 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 February 13, 1979, and all defendant 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. 236-1, 236-2, 236E-1  
and 236E-2

---

OWNERS: Lowell E. Smith and Phyllis Sue Smith,  
Individually and as Trustees of the  
Lowell and Phyllis Smith Trust

|                               |            |             |
|-------------------------------|------------|-------------|
| Award of Just Compensation    |            |             |
| pursuant to Stipulation ----- | \$1,616.00 | \$1,616.00  |
| Deposited as estimated        |            |             |
| compensation -----            | 808.00     |             |
| Disbursed to Owners -----     |            | <u>None</u> |
| Balance Due to Owners -----   |            | \$1,616.00  |
| Deposit Deficiency -----      | \$ 808.00  |             |

---

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 \$808.00, and the Clerk of this Court then shall disburse the deposit for such tracts as follows:

To:

Lowell E. Smith and Phyllis Sue Smith,  
Individually and as Trustees of the  
Lowell and Phyllis Smith Trust ----- \$1,616.00.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

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

JUL 8 1981

GAF CORPORATION, a Delaware corporation,  
Plaintiff,  
vs.  
TULSA SIDING & SUPPLY CO., INC.,  
an Oklahoma corporation,  
Defendant.

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

No. 80-C-37-B

ORDER OF DISMISSAL WITH PREJUDICE

The Plaintiff and Defendant having compromised and settled all issues in the action and having stipulated that the Complaint, Counterclaim, causes of action, and the action may be dismissed with prejudice,

IT IS THEREFORE ORDERED, that the Complaint, Counterclaim, causes of action, and this action are, by the Court, dismissed with prejudice to the bring of another action upon the same cause or causes.

Entered this 7 day of July, 1981.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

JUL 8 1981

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

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

|                           |   |                             |
|---------------------------|---|-----------------------------|
| UNITED STATES OF AMERICA, | ) |                             |
|                           | ) |                             |
| Plaintiff,                | ) |                             |
|                           | ) |                             |
| vs.                       | ) |                             |
|                           | ) |                             |
| PAMELA R. GRUNDY,         | ) | CIVIL ACTION NO. 80-C-406-B |
|                           | ) |                             |
| Defendant.                | ) |                             |

DEFAULT JUDGMENT

This matter comes on for consideration this 7 day of July, 1981, the Plaintiff appearing by Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Pamela R. Grundy, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Pamela R. Grundy, was personally served with Summons and Complaint on July 23, 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, Pamela R. Grundy, for the principal sum of \$1,215.00 (less the sum of \$400.00 which has been paid) plus the accrued interest of \$311.25, as of June 15, 1980, plus interest at 7% from June 15, 1980, until the date of Judgment, plus interest at the legal rate on the principal sum of \$1,215.00 (less the sum of \$400.00) from the date of Judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney  
*Philard L. Rounds, Jr.*  
PHILARD L. ROUNDS, JR.  
Assistant U. S. Attorney



FILED

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JUL 8 1981

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

|                           |   |                             |
|---------------------------|---|-----------------------------|
| UNITED STATES OF AMERICA, | ) |                             |
|                           | ) |                             |
| Plaintiff,                | ) |                             |
|                           | ) |                             |
| vs.                       | ) |                             |
|                           | ) |                             |
| NORMAN L. ROMANS,         | ) | CIVIL ACTION NO. 81-C-137-B |
|                           | ) |                             |
| Defendant.                | ) |                             |

DEFAULT JUDGMENT

This matter comes on for consideration this 7  
day of July, 1981, the Plaintiff appearing by Paula S. Ogg,  
Assistant United States Attorney for the Northern District of  
Oklahoma, and the Defendant, Norman L. Romans, appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendant, Norman L. Romans, was personally  
served with Summons and Complaint on April 4, 1981, 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, Norman L.  
Romans, for the principal sum of \$752.57 (less the sum of \$30.00  
which has been paid) plus interest at the legal rate from the  
date of this Judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA  
FRANK KEATING  
United States Attorney  
*Paula S. Ogg*  
PAULA S. OGG  
Assistant U. S. Attorney

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

DR. MARJORIE DAVIS, )  
 )  
 ) Plaintiff, )  
 )  
vs. )  
 )  
THE OKLAHOMA COLLEGE OF OSTEOPATHIC )  
MEDICINE AND SURGERY; THE BOARD OF )  
REGENTS OF THE OKLAHOMA COLLEGE )  
OF OSTEOPATHIC MEDICINE AND )  
SURGERY; DR. WALTER WILSON, LEONA )  
HAGERMAN, SIMON PARKER, DR. THOMAS )  
J. CARLILE, JEANNE SMITH, FANNIE )  
HILL, BARBARA WALTER, JOHN BARSON, )  
~~DR. JOHN RUTHERFORD; DR. G.H.GASS,~~ )  
 )  
 ) Defendants. )

No. 81-C-103-B ✓

**FILED**

JUL 7 1981 *h*

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

O R D E R

This action was instituted by plaintiff alleging sex discrimination in violation of Title VII, 42 U.S.C. §2000e et seq., [Count 1] and 20 U.S.C. §1681 [Count 2].

The Oklahoma College of Osteopathic Medicine and Surgery [hereinafter referred to as OCOMS] has moved to dismiss Count 2 pursuant to F.R.Civ.P. 12(b)(6) for failure to state a claim.

The Board of Regents of the Oklahoma College of Osteopathic Medicine and Surgery<sup>1/</sup>, Dr. Walter Wilson, Leona Hagerman, Simon Parker, Dr. Thomas J. Carlile, Jeanne Smith, Fannie Hill, Barbara Walter (hereinafter referred to as Regent Defendants), and Dr. John Rutherford, Dr. John Barson and Dr. G.H.Gass [hereinafter referred to as Administrative Defendants] have moved to dismiss Count 1 pursuant to F.R.Civ.P. 12(b)(2) for lack of jurisdiction over the person.

COUNT 1--Alleged Title VII Violation:

On June 20, 1979, plaintiff filed her first charge with the Equal Employment Opportunity Commission [hereinafter referred to as EEOC] [Charge No. 061-79-6030] alleging discrimination by OCOMS and the Oklahoma Regents for Higher Education.<sup>1/</sup> On

---

<sup>1/</sup> The Oklahoma State Regents for Higher Education, pursuant to 70 O.S. (1980) §4503, transferred the governance of the Oklahoma College of Osteopathic Medicine and Surgery to the Board of Regents of the Oklahoma College of Osteopathic Medicine and Surgery.

March 17, 1980, plaintiff filed an amended charge of discrimination with the EEOC [Charge No. 083-80-0393] against only the OCOMS. On December 18, 1980, a Notice of Right to Sue letter was issued by the EEOC and this suit was commenced thereafter on March 17, 1981.

Plaintiff contends her former attorney, when the original charge and the amended charge were filed with the EEOC, failed to include all necessary parties in the charge and she should not be penalized for such failure. She further contends the moving Regent Defendants and Administrative Defendants received notice<sup>2/</sup> of the charges filed with the EEOC prior to the filing of this action and their interests are so similar to the named party, OCOMS, it should be unnecessary to include them. She contends the fact they were not included has in no way prejudiced them in their efforts with the EEOC.

Section 706(f)(1) of the Act, 42 U.S.C. §2000e-5(f), provides the aggrieved party may bring a civil action "against the respondent named in the charge..." after exhausting administrative remedies. The filing of a timely charge with the EEOC is a jurisdictional prerequisite to the institution of a lawsuit. Romero v. Union Pac. RR., 615 F.2d 1303, 1333 (10th Cir. 1980); Alexander v. Gardner-Denver Co., 415 U.S. 36, 47, 94 S.Ct. 1011, 39 L.Ed.2d 147 (1974).

In Martin v. Easton Publ. Co., 478 F.Supp. 796, 797 (E.D.Pa. 1979), the Court said: "[T]he policy consideration underlying the requirement of §2000e-5(f)(1) and the restrictive interpretation

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<sup>2/</sup> Plaintiff contends the moving Administrative Defendants had notice and an opportunity to be heard at a Fact Finding Conference held on June 11, 1980, which was to be attended by John Barson, John Rutherford, Rodney Houlihan, George Gass, Daniel Overack, Sue McKnight and Stephen Andrew, attorney. The conference was conducted by Fred McKenzie, EEOC representative. As to the Regents Defendants, plaintiff contends under the statute, 20 O.S. (1980) §§4503, 4504, they are "to have the supervision, management and governmental control of the OCOMS", and, therefore "must be acquainted with the innerworkings of the College, including any lawsuits which may be pending as a result of charges of discrimination."

thereof adopted by many courts contemplate the possibility of resolving disputes without the antipathies spawned by litigation and of affording the prospective defendant an opportunity to comply with the law voluntarily or to explain and justify his conduct prior to the expense and publicity of litigation. To allow plaintiff to include defendants unnamed in the EEOC complaint denies them this valuable and salutary opportunity."

The omission of a party's name from the EEOC charge does not automatically mandate dismissal of a subsequent action under Title VII. Romero v. Union Pac. RR., supra, 615 F.2d 1303. In Romero, supra, the Court adopted the four factors listed in Glus v. G. C. Murphy Co., 562 F.2d 880 (3rd Cir. 1977) as pertinent to an evaluation of the failure to name a party before the EEOC:

- (1) whether the role of the unnamed party could through reasonable effort by the complainant be ascertained at the time of the filing of the EEOC complaint;
- (2) whether, under the circumstances, the interests of a named [party] are so similar as the unnamed party's that for the purpose of obtaining voluntary conciliation and compliance it would be unnecessary to include the unnamed party in the EEOC proceedings;
- (3) whether its absence from the EEOC proceedings resulted in actual prejudice to the interests of the unnamed party;
- (4) whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party.

Accord, Wong v. Calvin, 87 F.R.D. 148-9 (N.D. Fla.1980); Gill v. Monrow County Dept. of Social Services, 79 F.R.D. 316, 334 (W.D. N.Y. 1978); Vanguard Justice Society v. Hughes, 471 F.Supp. 670, 688-9 (D.Md. 1978); Williams v. Southern Bell Telephone & Telegraph Co., 464 F.Supp. 367, 371 (S.C. Fla. 1979); Green v. United States Steel Corp., 481 F. Supp. 295, 303-4 (E.D. Pa. 1979).

Dr. G. H. Gass is Chairman of the Basic Science Department and was employed by OCOMS on August 15, 1979 [after the first charge with the EEOC was filed but prior to the amended charge being filed]; Dr. John Rutherford was employed by the OCOMS on November 1, 1976, and on July 1, 1979, assumed the position of Acting Dean of Academic Affairs, which position was made permanent on July 1, 1980 [he assumed the Acting Dean position 20 days prior to the time plaintiff filed her original charge with the EEOC].<sup>3/</sup> Dr. John Barson is the President of OCOMS and occupied this position before plaintiff was employed.<sup>4/</sup>

In her complaint plaintiff alleges Dr. Barson is responsible for implementation of the Affirmative Action Compliance Plan for OCOMS and for monitoring the programs and procedures contained therein; Dr. John Rutherford is the immediate supervisor of Dr. Gass and Dr. Gass is plaintiff's immediate supervisor. There is no showing by plaintiff of lack of knowledge of the three Administrative Defendants, her only excuse being the failure of her former attorney to name them in the charges. There is no showing on plaintiff's part the elimination of these defendants would negate her prospect of recovering for the alleged sex discrimination.

As to the moving Regent Defendants, they stand in a different position than the Administrative Defendants. Pursuant to the laws of the State of Oklahoma, they are the governing body of OCOMS and as such are necessary parties to implement any decree that might be entered by the Court.

The Court finds the principal defendants, OCOMS and the Regent Defendants, have the power to correct any alleged sex discrimination and otherwise make financial compensation to plaintiff.

The Court therefore, finds the Motion to Dismiss Count 1 should be sustained as to the Administrative Defendants and overruled as to the Regent Defendants.

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<sup>3/</sup> Affidavit of Sue McKnight filed April 21, 1981.

<sup>4/</sup> Page 8 of plaintiff's brief filed June 22, 1981.

COUNT 2--Alleged Title IX Violation [20 U.S.C. §1681(a)]:

Plaintiff contends if her salary is paid by federal funds, she has a cause of action against the OCOMS.<sup>5/</sup>

Section 901(a) of the Education Amendments of 1972, codified at 20 U.S.C. §1681(a)<sup>6/</sup>, prohibits discrimination on the basis of sex under any education program or activity receiving federal financial assistance. Pursuant to 20 U.S.C. §1682 the Department of Health, Education and Welfare, promulgated regulations designed to effectuate the directive of §901(a).

The Supreme Court has held there is an implied private cause of action under Title IX, but did not discuss whether employees are protected under that statute. Cannon v. University of Chicago, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979).

Five Circuit Courts of Appeals have held the Department of Education's comprehensive employment discrimination regulations are illegal, as beyond the authority conferred by §§901 and 902 of Title IX of the Education Amendments of 1972.

In Isleboro School Committee v. Califano, 593 F.2d 424 (1st Cir. 1979), cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 387 (1979), [case involved pregnancy being treated differently from other temporary disabilities] it was held 20 U.S.C. §1681(a) does not include employment discrimination. The Court found the language of the statute, on its face, was aimed at the beneficiaries of federal monies, i.e., either students attending institutions receiving federal funds or teachers engaged in special research being funded by the U.S. Government. Accord, Junior College Dist. of St. Louis v. Califano, 597 F.2d 119 (8th Cir. 1979), cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 388 (1979), Court held §1682 does not

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<sup>5/</sup> At page 5 of plaintiff's June 22, 1981 brief she states: "...[i]f Dr. Davis' salary is paid by federal funds, she has a cause of action against OCOMS under Title 20 U.S.C. §1681. The determination of the salary funding base for Dr. Davis cannot be made until discovery is completed or trial has begun..."

<sup>6/</sup> Title 20 U.S.C. §1681 provides: "No person shall be discriminated against on the basis of sex, in the operation of any educational institution receiving financial assistance."

cover persons administering federally funded programs; Romeo Community Schools v. U.S. Dept. of H.E.W., 600 F.2d 581 (6th Cir. 1979), cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d (1979), Court held §1681 does not deal with sex discrimination against employees of educational institution. In Seattle University v. U.S. Dept. of Health, Ed., 621 F.2d 992 (9th Cir. 1980) the Court noted "[t]hat neither the plain language of Title IX nor the legislative history support HEW's contention that Congress intended ... the statute reach employment discrimination," citing with approval the Isleboro, Junior College District and Romeo Community Schools, supra.

The Court, in Dougherty County School System v. Harris, 622 F.2d 735 (5th Cir. 1980), petition for cert. filed December 22, 1980, sub nom Hufstedler v. Dougherty County School System, Number 80-1023, 49 LW 3495, found the regulations prohibiting sex discrimination in general employment practices by recipients of federal aid exceeded the Secretary's authority under Title IX as too broad. The Court, however, stated the Secretary should have limited such regulations to specific programs that receive financial assistance, saying at page 738:

"...There is evidence that the School receives aid from federal vocational education funds and that a substantial portion of these funds goes toward the salaries of home economics and vocational education teachers. Therefore, if a female home economics teacher receives less pay than a male vocational educational teacher for equal work, she is being subjected to discrimination under a program receiving federal financial assistance."

The only Circuit Court holding to the contrary is the 2nd Circuit and the Supreme Court of the United States granted certiorari in the case on February 23, 1981. See North Haven Bd. of Ed. v. Hufstedler, 629 F.2d 773 (2nd Cir. 1980), cert. granted, sub nom North Haven Board of Education v. Bell, No. 80-086, 49 LW 3617.

There is no reason for this Court not to proceed with this case under §1681 pending the decision of the Supreme Court. Plaintiff has stated her claim as to federal funds is subject to discovery. If discovery reveals no federal funds have been used to pay her salary, her claim fails. If on the other hand, there is some proof as to the federal funds, the Court can proceed in this case.

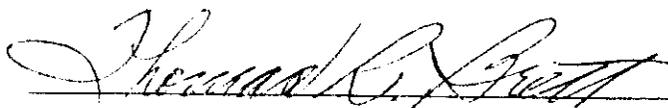
IT IS, THEREFORE, ORDERED as follows:

1. The Motion to Dismiss of The Board of Regents of the Oklahoma College of Osteopathic Medicine and Surgery, Dr. Walter Wilson, Leona Hagerman, Simon Parker, Dr. Thomas J. Carlile, Jeanne Smith, Fannie Hill and Barbara Walter is overruled. The Motion to Dismiss of Dr. John Barson, Dr. John Rutherford, and Dr. G.H.Gass is sustained.

2. The Motion to Dismiss of The Oklahoma College of Osteopathic Medicine and Surgery is overruled.

3. This case is set for pre-trial conference on the 1st day of September, 1981, at 1:30 o'clock    .M.

ENTERED this 6<sup>th</sup> day of July, 1981.



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

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

DR. MARJORIE DAVIS, )

Plaintiff, )

vs. )

No. 81-C-103-B )

THE OKLAHOMA COLLEGE OF OSTEOPATHIC )  
MEDICINE AND SURGERY; THE BOARD OF )  
REGENTS OF THE OKLAHOMA COLLEGE )  
OF OSTEOPATHIC MEDICINE AND )  
SURGERY; DR. WALTER WILSON, LEONA )  
HAGERMAN, SIMON PARKER, DR. THOMAS )  
J. CARLILE, JEANNE SMITH, FANNIE )  
HILL, BARBARA WALTER, JOHN BARSON, )  
DR. JOHN RUTHERFORD; DR. G.H.GASS, )

Defendants. )

**F I L E D**

**JUL 7 1981**

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

O R D E R

This action was instituted by plaintiff alleging sex discrimination in violation of Title VII, 42 U.S.C. §2000e et seq., [Count 1] and 20 U.S.C. §1681 [Count 2].

The Oklahoma College of Osteopathic Medicine and Surgery [hereinafter referred to as OCOMS] has moved to dismiss Count 2 pursuant to F.R.Civ.P. 12(b)(6) for failure to state a claim.

The Board of Regents of the Oklahoma College of Osteopathic Medicine and Surgery<sup>1/</sup>, Dr. Walter Wilson, Leona Hagerman, Simon Parker, Dr. Thomas J. Carlile, Jeanne Smith, Fannie Hill, Barbara Walter (hereinafter referred to as Regent Defendants), and Dr. John Rutherford, Dr. John Barson and Dr. G.H.Gass [hereinafter referred to as Administrative Defendants] have moved to dismiss Count 1 pursuant to F.R.Civ.P. 12(b)(2) for lack of jurisdiction over the person.

COUNT 1--Alleged Title VII Violation:

On June 20, 1979, plaintiff filed her first charge with the Equal Employment Opportunity Commission [hereinafter referred to as EEOC] [Charge No. 061-79-6030] alleging discrimination by OCOMS and the Oklahoma Regents for Higher Education.<sup>1/</sup> On

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<sup>1/</sup> The Oklahoma State Regents for Higher Education, pursuant to 70 O.S. (1980) §4503, transferred the governance of the Oklahoma College of Osteopathic Medicine and Surgery to the Board of Regents of the Oklahoma College of Osteopathic Medicine and Surgery.

March 17, 1980, plaintiff filed an amended charge of discrimination with the EEOC [Charge No. 083-80-0393] against only the OCOMS. On December 18, 1980, a Notice of Right to Sue letter was issued by the EEOC and this suit was commenced thereafter on March 17, 1981.

Plaintiff contends her former attorney, when the original charge and the amended charge were filed with the EEOC, failed to include all necessary parties in the charge and she should not be penalized for such failure. She further contends the moving Regent Defendants and Administrative Defendants received notice<sup>2/</sup> of the charges filed with the EEOC prior to the filing of this action and their interests are so similar to the named party, OCOMS, it should be unnecessary to include them. She contends the fact they were not included has in no way prejudiced them in their efforts with the EEOC.

Section 706(f)(1) of the Act, 42 U.S.C. §2000e-5(f), provides the aggrieved party may bring a civil action "against the respondent named in the charge..." after exhausting administrative remedies. The filing of a timely charge with the EEOC is a jurisdictional prerequisite to the institution of a lawsuit. Romero v. Union Pac. RR., 615 F.2d 1303, 1333 (10th Cir. 1980); Alexander v. Gardner-Denver Co., 415 U.S. 36, 47, 94 S.Ct. 1011, 39 L.Ed.2d 147 (1974).

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<sup>2/</sup> Plaintiff contends the moving Administrative Defendants had notice and an opportunity to be heard at a Fact Finding Conference held on June 11, 1980, which was to be attended by John Barson, John Rutherford, Rodney Houlihan, George Gass, Daniel Overack, Sue McKnight and Stephen Andrew, attorney. The conference was conducted by Fred McKenzie, EEOC representative. As to the Regents Defendants, plaintiff contends under the statute, 20 O.S. (1980) §§4503, 4504, they are "to have the supervision, management and governmental control of the OCOMS", and, therefore "must be acquainted with the innerworkings of the College, including any lawsuits which may be pending as a result of charges of discrimination."

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The omission of a party's name from the EEOC charge does not automatically mandate dismissal of a subsequent action under Title VII. Romero v. Union Pac. RR., supra, 615 F.2d 1303. In Romero, supra, the Court adopted the four factors listed in Glus v. G. C. Murphy Co., 562 F.2d 880 (3rd Cir. 1977) as pertinent to an evaluation of the failure to name a party before the EEOC:

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The Court finds the principal defendants, OCOMS and the Regent Defendants, have the power to correct any alleged sex discrimination and otherwise make financial compensation to plaintiff.

The Court therefore, finds the Motion to Dismiss Count 1 should be sustained as to the Administrative Defendants and overruled as to the Regent Defendants.

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<sup>3/</sup> Affidavit of Sue McKnight filed April 21, 1981.

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COUNT 2--Alleged Title IX Violation [20 U.S.C. §1681(a)]:

Plaintiff contends if her salary is paid by federal funds, she has a cause of action against the OCOMS.<sup>5/</sup>

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There is no reason for this Court not to proceed with this case under §1681 pending the decision of the Supreme Court. Plaintiff has stated her claim as to federal funds is subject to discovery. If discovery reveals no federal funds have been used to pay her salary, her claim fails. If on the other hand, there is some proof as to the federal funds, the Court can proceed in this case.

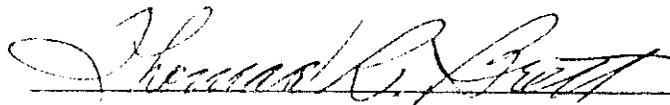
IT IS, THEREFORE, ORDERED as follows:

1. The Motion to Dismiss of The Board of Regents of the Oklahoma College of Osteopathic Medicine and Surgery, Dr. Walter Wilson, Leona Hagerman, Simon Parker, Dr. Thomas J. Carlile, Jeanne Smith, Fannie Hill and Barbara Walter is overruled. The Motion to Dismiss of Dr. John Barson, Dr. John Rutherford, and Dr. G.H.Gass is sustained.

2. The Motion to Dismiss of The Oklahoma College of Osteopathic Medicine and Surgery is overruled.

3. This case is set for pre-trial conference on the 1st day of September, 1981, at 1:30 o'clock    .M.

ENTERED this 6<sup>th</sup> day of July, 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**

JUL 7 1981

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

DYNASAUER CORP., )  
a Missouri corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
AMERICAN SAFETY SYSTEMS, INC., )  
an Oklahoma corporation, )  
 )  
Defendant. )

No. 81-C-48-B

O R D E R

This matter was brought pursuant to Federal Rules of Procedure Rules 55(c) and 60(b), whereby defendant moves to vacate default judgment ordered as to this case on March 19, 1981. A hearing including oral argument was had this date.

Plaintiff had filed complaint as a diversity action seeking judgment on a sum alleged to be due and owing, for goods manufactured and sold, together with interest and attorney fees as provided by Oklahoma law. Defendant was duly served with summons and complaint but did not answer, and upon proper application, plaintiff was awarded default judgment. The Court finds that defendant's Motion to Vacate Judgment failed to present a meritorious defense and it is hereby denied.

In an action at law, a complaint and its answer must both be filed with the Court. See F.R.Civ.P. Rules 3, 5 and 7. Failure to deny a pleading (Complaint) to which a responsive pleading (Answer) is required serves to admit to the complaint; F.R.Civ.P. Rule 8(e); and a defendant shall serve his answer within twenty (20) days after service of summons and complaint; F.R.Civ.P. Rule 12(a).

When a party against whom a judgment is sought fails to plead or defend according to the rules, upon proper application the court clerk will enter default and the court will award judgment. Thereafter, a motion to alter or amend the judgment must be taken within ten (10) days; F.R.Civ.P. Rule 59(e).

However, Rule 55(c) states that a Court may set aside a judgment by default in accordance with Rule 60(b). Rule 60(b) requires suitable reason(s) for setting a judgment aside, e.g., mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief. The requesting party must show a good reason for defaulting and existence of a meritorious defense to the action, if default judgment is to be set aside. See Gomes v. Williams, 420 F.2d 1364 (10th Cir. 1970) Moreover, "The trial court must have before it more than mere allegations that a defense exists," and failure to offer proof is a sufficient basis to deny Rule 60(b) relief. Id. at p. 1366.

Plaintiff's complaint was served on defendant on February 18, 1981, and defendant failed to answer. The Court rejects the novel claim by defendant's counsel that defendant appeared by being deposed by plaintiff. Moreover, the only record before the Court of the deposition is in the affidavit of plaintiff's counsel, Steven M. Harris, and defendant's representative, Michael Brown.

Plaintiff applied for default judgment in a proper and timely manner and judgment was rendered on March 19, 1981. Defendant did not move to vacate that judgment until April 15, 1981, and there is no affirmative showing of a meritorious defense in defendant's motion or supporting brief. While defendant claims that some offsetting adjustments were due from the underlying transactions between the parties, it makes no adequate offer of proof to support its claim. The affidavits reflect plaintiff stood ready to credit defective items returned, and defendant returned none. Plaintiff refused defendant's compromise proposal to pay for the yet to be delivered items on a C.O.D. basis. Moreover, defendant does not deny that plaintiff had a valid cause of action, nor does defendant state why it failed to answer the complaint. See Gomes, supra.

Accordingly, the Court concludes that defendant has failed to support its Motion to Vacate Judgment and it is hereby denied. In Re Stone, 588 F.2d 1316 (10th Cir. 1978); CIT Corporation v. John R. Allen, dba Allen Construction Co., No. 79-1637 (10th Cir. December 10, 1979) [unreported].

IT IS, THEREFORE, ORDERED that defendant's Motion to Vacate Judgment be and the same is hereby denied.

ENTERED this 7<sup>th</sup> day of July, 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**

**JUL 31 1981**

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

MATTIE LOU FLOWERS and WILLIE  
FLOWERS, as Co-Administrators of  
the Estate of MATTIE YVONNE HOOKS,  
Deceased; and KATHRYN ROCHELLE HOOKS  
and LATASHA MICHELLE HOOKS, Minor  
Children of MATTIE YVONNE HOOKS,  
Deceased, By and Through MATTIE LOU  
FLOWERS and WILLIE FLOWERS, Their  
Co-Guardians Ad Litem,

Plaintiffs,

vs.

MISSOURI-PACIFIC RAILROAD COMPANY,  
A Corporation,

Defendant.

No. 80-C-722-E

APPLICATION FOR DISMISSAL BY STIPULATION

COMES NOW the plaintiffs, by and through their attorney  
of record, Paul D. Brunton, and with the stipulation and agreement  
of the defendant herein moves the Court to dismiss the instant case  
without prejudice pursuant to U.S.C.S. Rules of Civil Procedure,  
Rule 41(a) (1).

PAUL D. BRUNTON  
Attorney for Plaintiffs  
1310 South Denver  
Tulsa, Oklahoma 74119  
(918) 582-1993

TOM L. ARMSTRONG  
WILLIAM K. POWERS  
DYER, POWERS, MARSH, TURNER &  
ARMSTRONG  
525 South Main, Suite 210  
Tulsa, Oklahoma 74103  
(918) 587-0141

**FILED**

**JUL 6 1981**

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

By  
TOM L. ARMSTRONG

ORDER

NOW, on this 6<sup>th</sup> day of July, 1981, the  
Court upon consideration of the Application for Dismissal by  
Stipulation of the parties hereto finds pursuant to U.S.C.S., Rules

of Civil Procedure, Rule 41(a)(1), that the instant case should be dismissed without prejudice.

S/ JAMES O. ELLISON  
JUDGE OF THE UNITED STATES  
DISTRICT COURT

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

JAMES M. HEWGLEY III and )  
GENIE K. HEWGLEY, )  
 )  
Plaintiffs )  
 )  
v. ) CIVIL NO. 80-C-532-B  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant )

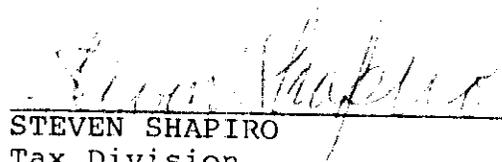
**FILED**  
JUL 6 1981  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL

It is hereby stipulated that the above-entitled action be dismissed with prejudice. Each party to bear its own costs.

  
\_\_\_\_\_  
W. KIRK CLAUSING  
409 City Plaza East  
5330 East 31st Street  
Tulsa, Oklahoma 74135

Attorney for Plaintiffs

  
\_\_\_\_\_  
STEVEN SHAPIRO  
Tax Division  
Department of Justice  
Washington, D. C. 20530

Attorney for Defendant

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

SHEPHERD OIL, INCORPORATED,

Plaintiff,

v.

CITIES SERVICE COMPANY,

Defendant.

Civil Action No.  
80-C-429

STIPULATION OF DISMISSAL

Plaintiff Shepherd Oil, Incorporated and defendant Cities Service Company, by their undersigned counsel, stipulate and agree, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, to the dismissal with prejudice of the complaint of plaintiff Shepherd Oil, Incorporated against Cities Service Company.

Respectfully submitted,

J. Todd Shields  
Jana Banahan  
Fulbright & Jaworski  
800 Bank of the Southwest  
Building  
Houston, Texas 77002  
(713) 651-5151

Gerald H. Barnes  
Jenifer L. Ewbank  
Cities Service Company  
P. O. Box 300  
Tulsa, Oklahoma  
(918) 561-8965

Charles W. Shipley  
Boesche, McDermott &  
Eskridge  
320 South Boston Building  
Suite 1300  
Tulsa, Oklahoma 74103  
(918) 583-1777

William H. Bode  
Alfred Lawrence Toombs  
John E. Varnum  
Batzell, Nunn & Bode  
1015 Fifteenth Street, N.W.  
Suite 1100  
Washington, D.C. 20005  
(202) 393-8535

By: Gerald H. Barnes  
Attorney for Defendant

By: [Signature]  
Attorney for Plaintiff

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

SMOKEY'S OF TULSA, INC., an  
Oklahoma corporation,  
  
Plaintiff,

vs.

AMERICAN HONDA MOTOR CO., INC.;  
SCHOFIELD, SCHOFIELD and NELMS,  
INC., d/b/a HOUSE OF HONDA, an  
Arkansas corporation; HARRISON  
MOTOR-SPORTS, INC. d/b/a HARRISON  
HONDA, an Arkansas corporation;  
BLUFF MOTORCYCLE SERVICE, INC.,  
a Missouri corporation d/b/a BLUFF  
HONDA; ABERNATHY MOTORCYCLE SALES,  
INC., a Tennessee corporation;  
BILL BENNETT d/b/a BILL'S CYCLES,  
  
Defendants.

No. 76-C-623-E ✓

**FILED**

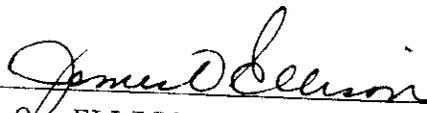
JUL 6 1981 *jk*

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

ORDER ALLOWING DISMISSAL ON PLAINTIFF'S MOTION

Upon Plaintiff's Motion for leave to discontinue this  
action, IT IS ORDERED that the Complaint be dismissed with  
prejudice, with costs to the Plaintiff.

Dated this 6<sup>TH</sup> day of July, 1981.



JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

CERTIFICATE OF MAILING

I, JACK C. SILVER, Clerk of the United States District  
Court for the Northern District of Oklahoma, hereby certify  
that on the date of filing the above and foregoing Order  
Allowing Dismissal on Plaintiff's Motion, I deposited a true  
and correct copy of same into the United States Mail with  
proper postage thereon fully prepaid to: Paul H. Johnson,  
of Head & Johnson, Attorneys at Law 228 W. 17th Pl., Tulsa,  
Oklahoma, Attorneys for Defendant Abernathy Motorcycle Sales,  
Inc., and to Mr. James R. Elder of Taliaferro, Malloy &  
Elder, Attorneys at Law, 1924 S. Utica, Suite 820, Tulsa,  
Oklahoma 74104, Attorneys for Defendant Harrison Motor-Sports,  
Inc., and to Mr. Lawrence A. G. Johnson, Attorney for Plaintiff,  
1732 E. 30th Pl., Tulsa, Oklahoma.

JACK C. SILVER, Clerk of the  
United States District Court for  
the Northern District of Oklahoma

By \_\_\_\_\_

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 6 1981

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOE D. ELLIS, )  
 )  
 Defendant. )

CIVIL ACTION NO. 81-C-131-E ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 6<sup>TH</sup> day of July, 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Joe D. Ellis, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Joe D. Ellis, was personally served with Summons and Complaint on May 29, 1981, 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, Joe D. Ellis, for the principal sum of \$931.43 plus the accrued interest of \$335.34 as of February 23, 1981, plus interest at 7% from February 23, 1981, until the date of Judgment, plus interest at the legal rate on the principal sum of \$931.43 from the date of Judgment until paid.

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

*Paula S. Ogg*  
PAULA S. OGG  
Assistant U. S. Attorney

*James C. Silver*  
UNITED STATES DISTRICT JUDGE



On April 3, 1981, a Complaint for Forfeiture against the above described articles was filed on behalf of the United States of America. The Complaint alleges that the aforesaid articles were adulterated when introduced into and while in interstate commerce within the meaning of the Federal Food, Drug and Cosmetic Act (Act), 21 U.S.C. 342(b)(2) in that glucose sirup has been substituted wholly or in part for (2 case, 64 jar lot) maple sirup and (16 case, 38 jar and 31 case, 39 can lots) sorghum sirup.

The complaint further alleges that the aforesaid articles were misbranded when introduced into and while in interstate commerce within the meaning of said Act, 21 U.S.C. as follows:

343(a)(1) in that the labels are false and misleading because they represent and suggest that the foods consist wholly of maple sirup (2 case, 64 jar lot) or of sorghum (16 case, 38 jar, 31 case, and 39 can lots), which representations and suggestions are contrary to fact;

343(g)(1) in that the article, (2 case, 64 jar lot) labeled as "Maple Syrup," is represented as maple sirup, a food for which a definition and standard of identity has been prescribed by regulation 21 CFR 168.140 promulgated pursuant to 21 U.S.C. 341 and it fails to conform to such definition and standard since 168.140(a) of such definition and standard provides, among other things, that maple sirup is made from the sap of the maple tree (Acer) or by solution in water of maple sugar (maple concrete) made from such sap; whereas, the article is made with sirup derived from a source other than the maple tree; and

343(g)(1) in that the article (16 case, 38 jar and 31 case, 39 can lots), labeled as "Sorghum," is represented as sorghum, a food for which a definition and standard of identity has been prescribed by regulation 21 CFR 168.160 promulgated pursuant to 21 U.S.C. 341 and it fails to conform to such definition and standard since 168.160(a) of such definition and

standard provides, among other things, that sorghum is made from the juice of sorghum cane (sorgos) (Sorghum vulgare); whereas, the article is made with sirup derived from a source other than sorghum cane.

It appearing that process was duly issued in this action and returned according to law; that public notice of the seizure of the articles in this action was given according to law; and that no claimant has appeared to claim the articles within the time specified by the applicable rule, Rule C(6), Supplemental Rules, Federal Rules of Civil Procedure:

Now, therefore, on motion of the United States of America, plaintiff herein, by the United States Attorney for this District, for Default Decree of Condemnation, and the Court being fully informed in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that the default of all persons having any right, title, or interest in the articles under seizure in this aciton be and is hereby entered herein, and it is further

ORDERED, ADJUDGED, AND DECREED that the articles under seizure are foods which were adulterated and misbranded when introduced into and while in interstate commerce within the meaning of 21 U.S.C. 342(b)(2) and 343(a)(1) and (g)(1), as alleged in the Complaint, and are therefore hereby condemned pursuant to 21 U.S.C. 334(a), and it is further

ORDERED, ADJUDGED, AND DECREED, pursuant to 21 U.S.C. 334, that the United States Marshal for this District shall forthwith constructively destroy the condemned articles by delivering them to a suitable charitable institution for use only by the charges of that institution and not for resale. The United States Marshal shall then make due return to this court.

Signed at Tulsa, Ok., this 6<sup>th</sup> day  
of July, 1981.

S/ JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

IN RE: )

ROSS DELBERT MINOR and )  
CLETA MARIE MINOR, )  
d/b/a C & R Trucking )  
a/k/a Ross Minor - Ross D. Minor )  
a/k/a Cleta M. Minor )  
d/b/a Ross TV Rental )  
d/b/a Rosco Manufacturing )  
d/b/a Greenback Pawn, )

Debtors, )

ADMIRAL BANK, )

Plaintiff, )

vs. )

ROSS DELBERT MINOR and )  
CLETA MARIE MINOR, )

Defendants. )

Case No. 81-00018

**FILED**

JUL 6 1981

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

Adversary No. 81-0093

*Appeal 81-C-208-E*

ORDER DISMISSING APPEAL  
TO THE DISTRICT COURT

Now on this 6<sup>th</sup> day of July, 1981, there comes on for hearing the Motion of defendants, Ross Delbert Minor and Cleta Marie Minor, defendants in the above and foregoing case and filed with this Court a Motion requesting that an order dismissing defendants' appeal to the District Court be entered. That the appeal was commenced by defendnat on the 11th day of May, 1981, and the plaintiff, Admiral Bank appeared by and through its attorney of record, Joseph Q. Adams, and defendants, Ross Delbert Minor and Cleta Marie Minor, appearing by and through their attorney of record, Charles A. Voseles, and evidence, oral and documentary having been introduced and the matter having been argued and submitted, and good cause appearing, therefore, the Court finds that the plaintiff and defendants have entered into an agreed settlement of the dispute between plaintiff and defendants, and that said appeal of defendants to the District Court should be dismissed as prayed for by defendants.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the appeal in the District Court taken by the defendants and commended on the 11th day of May, 1981, be and it is hereby dismissed with prejudice.

DATED this 6<sup>th</sup> day of July, 1981.

S/ JAMES O. ELLISON

\_\_\_\_\_  
Judge

APPROVED:

\_\_\_\_\_  
Joseph Q. Adams,  
Attorney for Plaintiff  
Admiral Bank

\_\_\_\_\_  
Charles A. Voseles  
Attorney for Defendants  
Ross Delbert Minor and  
Cleta Marie Minor

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

BOARD OF TRUSTEES OF THE PLUMBERS )  
AND PIPEFITTERS NATIONAL PENSION )  
FUND; BOARD OF TRUSTEES OF THE )  
HEALTH AND WELFARE FUND OF THE )  
PLUMBERS AND PIPEFITTERS LOCAL )  
UNION 205, Tulsa, Oklahoma; )  
BOARD OF TRUSTEES OF THE TULSA )  
PIPE TRADES TRAINING SCHOOL )  
APPRENTICESHIP FUND, )

Plaintiffs, )

vs. )

DICK MORROW, d/b/a D.M. COMPANY, )

Defendant. )

**FILED**

JUL 2 1981

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

No. 80-C-689-BT

ORDER OF DISMISSAL

Now on this 1<sup>st</sup> day of July, 1981, it appearing to the Court that the parties hereto have entered into a Stipulation of Settlement and all issues between the parties have been resolved and settled. That the above captioned case should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by the Court that the above entitled cause is hereby dismissed with prejudice.

S/ THOMAS R. BRETT

\_\_\_\_\_  
Judge

Approved:

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

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

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

**FILED**

JUL 2 1981 *Jun*

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

THEODORE TED McCOY and  
CAROLYN BROWN McCOY,  
  
Bankrupts,  
  
WARREN L. McCONNICO, Trustee,  
  
Plaintiff,  
  
vs.  
  
GENERAL MOTORS ACCEPTANCE  
CORPORATION,  
  
Defendant.

No. 78-C-370-C ✓

O R D E R

Pursuant to mandate to the Tenth Circuit Court of Appeals in the action herein, the judgment of this Court entered on February 2, 1979, is hereby vacated and the decision of the Bankruptcy Court is affirmed.

It is so Ordered this 21<sup>st</sup> day of July, 1981.

*H. Dale Cook*  
H. DALE COOK  
Chief Judge, U. S. District Court

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

JUL 21 1981 *P*

IN THE SWINE FLUE IMMUNIZATION )  
PRODUCTS LIABILITY LITIGATION )  
ELOISE JANE KECK, )  
Plaintiff, )  
vs. )  
UNITED STATES OF AMERICA, )  
Defendant. )

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

CIVIL ACTION NO.  
79-614-F ✓

STIPULATION OF DISMISSAL

Comes now the Plaintiff, Eloise Jane Keck, and pursuant to Rule 41 of the Federal Rules of Civil Procedure hereby dismisses the above captioned case.

Further, the parties hereto advise the Court that they have entered into a Stipulation whereby each party shall pay its own costs.

MORREL, HERROLD, WEST, HODGSON,  
SHELTON & STRIPLIN, P.A.

BY: *R. Dow Bonnell*  
R. DOW BONNELL  
4111 S. Darlington, Suite 600  
Tulsa, Oklahoma 74135

ATTORNEY FOR PLAINTIFF

*Thaddeus B. Hodgdon*  
THADDEUS B. HODGDON  
Trial Attorney, Torts Branch  
Civil Division  
U. S. Department of Justice  
Washington, D.C. 20530

*Eloise Jane Keck*  
ELOISE JANE KECK

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

FILED

JUL - 1 1981

CITICORP PERSON TO PERSON )  
FINANCIAL CENTER, INC., )  
 )  
Plaintiff, )

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

vs. )

No. 81-C-202-B

FRANKEY E. CROSS, EVELYN'S )  
NURSING SERVICE, INC., a )  
corporation, STOREY WRECKER )  
SERVICE, INC., a corporation )  
and THE UNITED STATES OF )  
AMERICA, )  
 )  
Defendants. )

JOURNAL ENTRY OF JUDGMENT

On this 13<sup>th</sup> day of July 1981, the Court, pursuant to the stipulations of Defendants, Frankey E. Cross and Evelyn's Nursing Service, Inc., and the agreement of Plaintiff and Defendants, Frankey E. Cross and Evelyn's Nursing Service, Inc., finds that:

1. A notice of dismissal has been filed by Plaintiff, Citicorp Person To Person Financial Center, Inc. ("Citicorp"), as to Defendant, Storey Wrecker Service, Inc.

2. Citicorp and Defendants, Frankey E. Cross and Evelyn's Nursing Service, Inc., have agreed to the entry of this Order.

3. On or about June 16, 1979, Frankey E. Cross entered into the installment contract, a copy of which is attached as Exhibit A to Plaintiff's Complaint and Amended Complaint, for the purchase of a 1979 Mobile Traveler, body serial no. MT28162 and chassis serial no. CGR3380156445 (the "Motor Home") from Jerry's Trav-L-Sales.

4. The installment contract was duly assigned to Plaintiff, Citicorp Person to Person Financial Center, Inc. ("Citicorp").

5. The Motor Home was delivered to Frankey E. Cross who took possession pursuant to the installment contract and sale.

6. The installment contract granted a security interest in the Motor Home to Jerry's Trav-L-Sales and its assignee, Citicorp, to secure the obligations set forth in the installment contract.

7. The certificate of title to the Motor Home was taken in the name of Evelyn's Nursing Service, Inc., an Oklahoma corporation of which Frankey E. Cross is the president.

8. The security interest of Citicorp in the Motor Home is valid and properly perfected and superior to any interest in the Motor Home of Defendants, Frankey E. Cross and Evelyn's Nursing Service, Inc.

9. The United States of America has a valid tax lien upon the Motor Home which is inferior only to the security interest of Citicorp in the Motor Home.

10. Frankey E. Cross is in default under the terms of the installment contract and security agreement with Citicorp because of her failure to make any installment payment to Citicorp since January 29, 1981.

11. Because of the default of Defendant, Frankey E. Cross, Plaintiff, Citicorp, is entitled to possession of the Motor Home and to sell or otherwise dispose of the Motor Home in any commercially reasonable manner in accordance with the Oklahoma Uniform Commercial Code, the installment contract and security agreement. The proceeds of the sale or other disposition should be applied to its reasonable expenses in retaking, holding and preparing the Motor Home for sale or other disposition, including reasonable attorney's fees and legal costs and expenses, and to the satisfaction of the indebtedness of Defendant, Frankey E. Cross.

12. The outstanding indebtedness of Defendant, Frankey E. Cross, under the terms of the installment contract, is \$16,511.73. In addition, Defendant, Frankey E. Cross, is indebted to Citicorp for the attorneys fees it has incurred in an amount to be determined upon proper application by Citicorp.

13. The surplus, if any, derived from the sale or other disposition of the Motor Home, after deduction of the amounts, set forth in paragraph #11, should be paid into Court pending determination of the rights of the parties to said surplus.

14. Plaintiff, Citicorp, is entitled to judgment against Defendant, Frankey E. Cross, for any deficiency between the amount realized from disposition of the Motor Home and the outstanding indebtedness due under the installment contract plus such attorneys fees as the Court may subsequently award.

IT IS THEREFORE ORDERED AND DECREED that Plaintiff, Citicorp, recover from Defendant, Frankey E. Cross, the sum of \$16,511.73, together with such attorneys fees as the Court may subsequently find to be reasonable and proper and the costs of this suit and that said sums are secured by the security interest of Citicorp in the above described Motor Home.

IT IS FURTHER ORDERED AND DECREED that the equity of redemption in and to the Motor Home of Defendant, Frankey E. Cross, and all parties claiming an interest by or through her in the Motor Home, is hereby barred and foreclosed.

IT IS FURTHER ORDERED AND DECREED that Plaintiff, Citicorp, is entitled to the possession of the Motor Home and to sell the Motor Home in a commercially reasonable manner in accordance with the provisions of the Oklahoma Uniform Commercial Code and to apply the proceeds arising from such sale as follows:

1. To the repayment of any reasonable expenses of Citicorp in retaking, holding and preparing the Motor Home for sale or other disposition including the costs of this action and such attorneys fees as the Court may subsequently award.

2. To the payment of the indebtedness of Defendant, Frankey E. Cross, in the amount of \$16,511.73.

IT IS FURTHER ORDERED AND DECREED that any surplus remaining after the payment of said sums be paid by Citicorp to the clerk of this court to await the further order of this court.

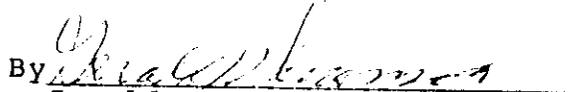
  
Thomas R. Brett,  
United States District Judge

APPROVED AND AGREED UPON AS TO FORM AND CONTENT:

ROSENSTEIN, FIST & RINGOLD

BY   
John E. Howland  
Attorney for Plaintiff,  
Citicorp Person to Person  
Financial Center, Inc.

FRANKEY E. CROSS AND EVELYN'S  
NURSING SERVICE, INC.

BY   
Gerald D. Swanson  
Attorney for Defendants,  
Frankey E. Cross and  
Evelyn's Nursing Service, Inc. -3-

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

FILED

CITICORP PERSON TO PERSON )  
FINANCIAL CENTER, INC., )

Plaintiff, )

vs. )

No. 81-C-202-B

JUL 1 1981

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

FRANKEY E. CROSS, EVELYN'S )  
NURSING SERVICE, INC., a )  
corporation, STOREY WRECKER )  
SERVICE, INC., a corporation )  
and THE UNITED STATES OF )  
AMERICA, )

Defendants. )

NOTICE OF DISMISSAL

Plaintiff, Citicorp Person To Person Financial Center, Inc., hereby dismisses, with prejudice, all counts which it has plead against Defendant, the United States of America, preserving all counts as against the remaining Defendants.

ROSENSTEIN, FIST & RINGOLD

By

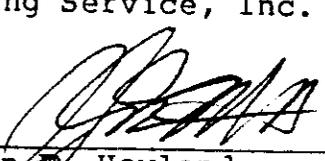
  
\_\_\_\_\_  
John E. Howland  
525 South Main, Suite 300  
Tulsa, Oklahoma 74103  
(918) 585-9211

CERTIFICATE OF MAILING

I, John E. Howland, do hereby certify that on this 15 day of July, 1981, I mailed a true and correct copy of the foregoing NOTICE OF DISMISSAL, with proper postage thereon fully prepaid, to:

Hubert A. Marlow  
Assistant United States Attorney  
United States Attorney's Office  
333 West 4th, Room 460  
Tulsa, Oklahoma 74103

Gerald D. Swanson  
Grantson Building, Suite 800  
5th and Boulder  
Tulsa, Oklahoma 74103  
Attorney for Defendants, Frankey E. Cross  
and Evelyn's Nursing Service, Inc.

  
\_\_\_\_\_  
John E. Howland



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

IN RE: SWINE FLU IMMUNIZATION  
PRODUCTS LIABILITY LITIGATION

ROSEMARY STORY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No.  
80-334-F ✓

**FILED**  
JUL 31 1981 *je*  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

STIPULATION FOR DISMISSAL

The parties, through their undersigned counsel, hereby stipulate and agree that the above referenced civil action is dismissed pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. Each party will bear their own costs.



GENE STIPE, ESQUIRE  
JOHN B. ESTES, ESQUIRE  
Stipe, Gossett, Stipe, Harper  
& Estes  
P.O. Box 53567  
Oklahoma City, Oklahoma 73152  
Telephone: (405) 524-2268



THADDEUS B. HODGDON, ESQUIRE  
Trial Attorney, Torts Branch  
Civil Division  
U.S. Department of Justice  
521 12th Street, N.W.  
Washington, D.C. 20530  
(202) 724-6706

APPROVED: Thomas G. Forester, Judge  
DATED: 29 June 1981

To Stipe Law Firm:

Please discontinue my claim against the Government I incurred subsequent to the Swine Flu inoculation. with

*no cost of any thing to me the undersigned*

*Rosemary Story*  
Mrs. Rosemary Story