

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

TALLY JOHNSON,)
)
 Plaintiff,)
)
 vs.)
)
 BURLINGTON NORTHERN RAILROAD COMPANY,)
 a Delaware Corporation,)
)
 Defendant.)

No. 81-C-517

FILED

DEC 31 1981

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

JUDGMENT

NOW on this 10th day of December, 1981, this cause comes on for Pre-trial hearing; plaintiff appearing by his attorney of record, T. E. Drummond, and the defendant appearing by its attorney, John Leo Wagner; and the Court, having been presented an offer of judgment and an acceptance of the offer of judgment and hearing certain oral motions of counsel and being fully advised in the premises, finds as follows:

That the defendant has filed in this Court an offer of judgment pursuant to Rule 68, Federal Rules of Civil Procedure, whereby said defendant offered to allow judgment to be taken against said defendant in favor of plaintiff for \$15,100.00 with costs as may be determined by the Court.

That the plaintiff has filed with this Court on this date an Acceptance of Offer of Judgment whereby said plaintiff accepts the offer of the defendant to take judgment against said defendant in favor of said plaintiff for \$15,100.00 with costs to be established by the Court.

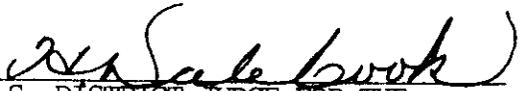
That the plaintiff in this matter has made oral application for attorney fees in this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff have and be granted judgment against said defendant, Burlington Northern Railroad Company, for \$15,100.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff have and recover judgment against the defendant for the Court

costs expended in the amount of \$45.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff be granted five (5) days from this date in which to file an application before this Court for attorney fees.


U. S. DISTRICT JUDGE FOR THE
U. S. DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

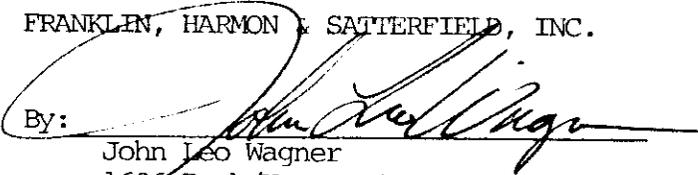
APPROVED:

DRUMMOND, RAYMOND, PAYNE & WEINSTEIN

By: 

T. E. Drummond
902 Utica Bank Tower
Tulsa, Oklahoma 74104
(918) 749-7378
Attorney for Plaintiff

FRANKLIN, HARMON & SATTERFIELD, INC.

By: 

John Leo Wagner
1606 Park/Harvey Center
Oklahoma City, Oklahoma 73102
Attorney for Defendant

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

IN RE AIR CRASH NEAR
VAN CLEVE, MISSISSIPPI
ON AUGUST 13, 1977

MDL 407

FILED
DEC 31 1981

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

H. P. LUCAS, et al.,
Plaintiffs,

vs.

MILLER AVIATION ENTERPRISES,
INC., et al.,
Defendants.

No. 79-C-486-C
80-C-169-C
80-C-170-C
80-C-228-C
(Consolidated)

AUDREY E. CRAWFORD, et al.
(Joseph White),
Plaintiffs,

vs.

MILLER AVIATION ENTERPRISES,
INC., et al.,
Defendants.

No. 79-C-506-C
80-C-164-C
80-C-171-C
80-C-140-C
(Consolidated)

NANCY CATHERINE DAVIS,
as Executrix of the Estate
of Cyrus W. Emery, Deceased,
Plaintiff,

vs.

BEECH AIRCRAFT CORPORATION,
et al.,
Defendants.

No. 80-C-229-C
80-C-669-C
(Consolidated)

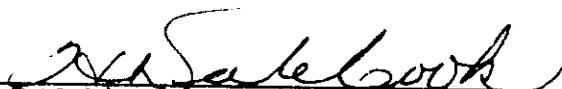
JUDGMENT OF DISMISSAL WITH PREJUDICE
UPON STIPULATION

There comes on for consideration the Stipulation of All Parties For Judgment of Dismissal with Prejudice of Plaintiffs' Complaints and Claims wherein the parties, and each of them, request this Court to enter an order dismissing the above-captioned complaints and each and every claim for relief and cause of action set forth therein, with prejudice, pursuant to Rule 11, Rules of the Judicial Panel on Multi-District Litigation and Rule 41, F.R.C.P., and the Court being fully advised and having considered the settlement and compromise agreement filed and entered into herein FINDS and IT IS ORDERED

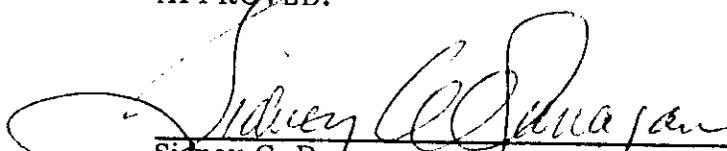
That plaintiffs' complaints, and each of them, and each and every claim for relief and cause of action set forth therein should be and are hereby dismissed with prejudice to the bringing of a future action thereon; and

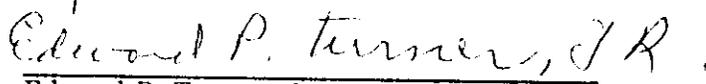
That each party hereto shall bear its own costs and attorneys' fees.

Dated this 31st day of December, 1981.


H. DALE COOK, Chief Judge, United
States District Court for the
Northern District of Oklahoma

APPROVED:


Sidney G. Dunagan
Liaison Counsel for all defendants


Edward P. Turner, Jr.
Liaison Counsel for all plaintiffs

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

IN RE AIR CRASH NEAR
VAN CLEVE, MISSISSIPPI
ON AUGUST 13, 1977

MDL 407

F I L E D

DEC 31 1981

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

H. P. LUCAS, et al.,
Plaintiffs,

vs.

MILLER AVIATION ENTERPRISES,
INC., et al.,
Defendants.

No. 79-C-486-C
80-C-169-C
80-C-170-C
80-C-228-C
(Consolidated)

AUDREY E. CRAWFORD, et al.
(Joseph White),
Plaintiffs,

vs.

MILLER AVIATION ENTERPRISES,
INC., et al.,
Defendants.

No. 79-C-506-C
80-C-164-C
80-C-171-C
80-C-140-C
(Consolidated)

NANCY CATHERINE DAVIS,
as Executrix of the Estate
of Cyrus W. Emery, Deceased,
Plaintiff,

vs.

BEECH AIRCRAFT CORPORATION,
et al.,
Defendants.

No. 80-C-229-C
80-C-669-C
(Consolidated)

JUDGMENT OF DISMISSAL WITH PREJUDICE UPON STIPULATION

There comes on for consideration the Stipulation For Judgment of Dismissal With Prejudice of Cross-Claims and Third Party Claims of the defendants hereto wherein the defendants, and each of them, request this Court to enter a judgment of dismissal with prejudice of each and every cross-claim and third party claim and each and every claim for relief and cause of action set forth therein, with prejudice, pursuant to Rule 11, Rules of the Judicial Panel on

Multi-District Litigation and Rule 41, F.R.C.P., and the Court being fully advised and having considered the Settlement and Compromise Agreement filed herein FINDS and IT IS ORDERED

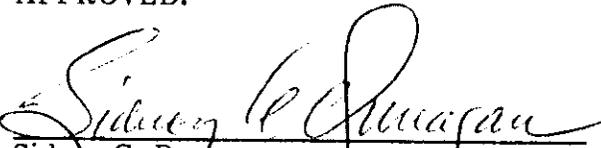
That each and every cross-claim and third party complaint and each and every claim for relief and cause of action set forth therein in each and all of the above captioned actions asserted by Aircraft Engine & Accessories Company, Miller Aviation Enterprises, Inc., and Ralph Stotts, should be and are hereby dismissed with prejudice to the bringing of a future action thereon; and

That each defendant hereto shall bear its own costs and attorneys' fees as they relate to the cross-claims and third party claims as asserted in the above-captioned actions.

Dated this 31st day of December, 1981.


H. DALE COOK, Chief Judge, United
States District Court for the
Northern District of Oklahoma

APPROVED:


Sidney G. Duragan
Liaison Counsel for All Defendants


William S. Hall
Attorney for Miller Aviation
Enterprises, Inc.


Don Black
Attorney for Aircraft Engine
& Accessories Company


James K. Secrest II
Attorney for Ralph Stotts

FILED

DEC 31 1981

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 81-C-627-C
)	
R. E. BRASHERS, JR.,)	
)	
Defendant.)	

AGREED JUDGMENT

This matter comes on for consideration this 31st day of December 1981, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Don J. Guy, Assistant United States Attorney, and the Defendant, R. E. Brashers, Jr., appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, R. E. Brashers, Jr., was personally served with Summons and Complaint on November 17, 1981. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of \$240.87, plus 12% interest from the date of this Judgment until paid.

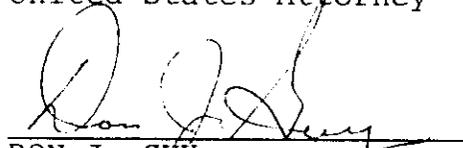
IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant, R.E. Brashers, Jr., in the amount of \$240.87, plus 12% interest from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney


DON J. GUY
Assistant U.S. Attorney


R. E. BRASHERS, JR.

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

DEC 31 1981

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROCKY E. CARPENTER,)
)
 Defendant.)

JACK G. SILVER, Clerk
U. S. DISTRICT COURT
CIVIL ACTION NO. 81-C-697-C

AGREED JUDGMENT

This matter comes on for consideration this 31st day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Don J. Guy, Assistant United States Attorney, and the Defendant, Rocky E. Carpenter, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Rocky E. Carpenter, was personally served with Summons and Complaint on November 23, 1981. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of \$228.40, plus 12% interest from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant, Rocky E. Carpenter, in the amount of \$228.40, plus 12% interest from the date of this Judgment until paid.

W. S. Salebrook
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

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

Rocky E. Carpenter
ROCKY E. CARPENTER

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

MLW, INC., an Oklahoma
corporation,

Plaintiff,

-vs-

THOMAS H. MOORE,

Defendant.

FILED
DEC 30 1981
Jack C. Selman, Clerk
U.S. Dist. Court

No. 81-C-557-E

JUDGMENT

NOW on this 30th day of December, 1981, the above styled and numbered cause comes on before the Court upon the Motion for Default Judgment and Entry of Default, pursuant to Rule 55 of the Federal Rules of Civil Procedure. It appearing to the Court that the defendant, Thomas H. Moore, has been duly and legally served with Summons and Complaint but has wholly failed to answer or to extend the time to answer and is in default, the plaintiff is entitled to judgment as prayed for in the Complaint.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, MLW, Inc., an Oklahoma corporation, have judgment against the defendant, Thomas H. Moore, in the sum of \$185,172.34, together with a reasonable attorneys fee of \$549.50.

FOR ALL OF WHICH LET EXECUTION ISSUE.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FILED

DEC 30 1981 *mm*

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

(Guardianship) ESTATE OF)
FORREST C. CONNELLY,)
JOSEPH D. SEITZ, Guardian,)
and the ESTATE OF DESSIE C.)
CONNELLY, Deceased, JOSEPH D.)
SEITZ, Guardian, Administrator,)
Plaintiffs)
v.)
UNITED STATES OF AMERICA,)
Defendant)

CIVIL NO. 80-C-36-E ✓

FINAL ORDER OF DISMISSAL

In accordance with the Stipulation of Dismissal filed by the parties, it is hereby ORDERED that the above-styled action is dismissed with prejudice, with each party to bear its own costs, including any possible attorneys' fees or other expenses of this litigation.

So ORDERED this 30th day of December, 1981.

James A. DeLoach
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 30 1981 *hm*

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

No. 81-C-481-E ✓

WEDBUSH, NOBLE, COOKE REALTY,)
INC., a California)
corporation,)

Plaintiff,)

vs.)

CAPITAL RESOURCES REAL)
ESTATE PARTNERSHIP II, a)
Limited Partnership, and)
AMERICAN REPUBLIC REALTY)
CORPORATION, a corporation,)

Defendants.)

ORDER OF DISMISSAL

The parties having so stipulated and agreed, IT IS
ORDERED, ADJUDGED AND DECREED that this action be dismissed
with prejudice, with each party to bear its own costs.

Given under my hand this 30th day of December,
198 / .

James O. Ellison
James O. Ellison
UNITED STATES DISTRICT JUDGE

FILED
DEC 30 1981 *hm*

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

HAROLD JONES,
Plaintiff,
vs.
SAND SPRINGS RAILWAY COMPANY,
an Oklahoma corporation,
Defendant.

No. 81-C-53-E ✓

ORDER DISMISSING COMPLAINT WITH PREJUDICE

On this 30th day of December, 1981, the Court having been advised by counsel for both parties hereto that they have satisfactorily resolved and compromised the matters disputed herein, and the Court being fully advised in the premises,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this cause dismissed with prejudice to any future action.

James O. Ellison
James O. Ellison
United States District Judge

APPROVED AS TO FORM:
By *S. Richard Farber*
S. Richard Farber
Attorney for Plaintiff

By *Cynthia S. Grosse*
Cynthia S. Grosse
Attorney for Defendant

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

LOYED D. BOWLINE,)
)
Plaintiff,)
)
v.)
)
PATRICIA ROBERTS HARRIS,)
Secretary of Health and)
Human Services of the)
United States of America,)
)
Defendant.)

No. 80-C-346-C

FILED

DEC 29 1981

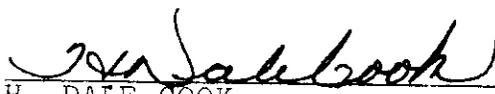
**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed herein on December 15, 1981 in which the Magistrate recommends that the case be remanded to the Administrative Law Judge for the purpose of making additional findings and for the purpose of including in the record additional evidence touching on Plaintiff's vocational capabilities to perform heavy, medium, light or sedentary jobs. No objections have been filed to the Findings and Recommendations of the Magistrate and the time for filing such objections has expired. The Court has reviewed the Findings and Recommendations of the Magistrate and finds that the same are fully supported by the record in this case.

IT IS, THEREFORE, ORDERED that this matter be remanded to the Administrative Law Judge for the purpose of making additional findings and for the purpose of including in the record additional evidence touching on Plaintiff's vocational capabilities to perform heavy, medium, light or sedentary jobs, and for such other action as deemed appropriate by the Secretary in compliance with this Order.

Dated this 29th day of December, 1981.


H. DALE COOK
CHIEF JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC 29

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DALE E. LOWRY,)
)
Defendant.)

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

CIVIL ACTION NO. 80-C-734-E

DEFAULT JUDGMENT

This matter comes on for consideration this 28th day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Philard L. Rounds, Jr., Assistant United States Attorney, and the Defendant, Dale E. Lowry, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Dale E. Lowry, was personally served with Summons and Complaint on December 31, 1980. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Dale E. Lowry, for the principal sum of \$2,225.00 (less the sum of \$400.00 which has been paid), plus the accrued interest of \$436.55 as of November 14, 1980, plus interest at 7% from November 14, 1980, until the date of Judgment, plus interest at the legal rate (12%) on the principal sum of \$2,225.00 (less the sum of \$400.00) from the date of Judgment until paid.

J. DALE C. SIBLEY

UNITED STATES DISTRICT JUDGE

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

THE VINCE HAGAN COMPANY,
a Texas Corporation,

Plaintiff,

vs.

ANCHOR CONCRETE COMPANY, an
Oklahoma Corporation,

Defendant.

No. 78-C-448-E

FILED
DEC 29 1981

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

JUDGMENT

This action came on for trial before the Court, Honorable James Ellison, District Judge, presiding, and the issues having been duly tried and the hearing on attorney fees had, and the decision having been duly rendered;

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff, The Vince Hagan Company, recover from the Defendant, Anchor Concrete Company, the sum of \$47,500.00 with a further judgment for interest thereon from the 8th day of March, 1976, at the rate of 12% per annum until the 10th day of November, 1981, in the sum of \$31,888.76 and a further judgment for the sum of \$12,000.00 as and for an attorney fee and the costs of this action, together with post-judgment interest on said sums at the rate of 12% per annum from and after the 10th day of November, 1981, save and except the costs of action and the attorney fee as set by the Court, until paid, all as provided by law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant take nothing and that its counter-claim be dismissed on the merits.

DATED at Tulsa, Oklahoma, this 28th day of December, 1981.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 29 1981

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DELBERT W. DABBS,
Defendant.

CIVIL ACTION NO. 81-C-607-E ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 28th day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, and the Defendant, Delbert W. Dabbs, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Delbert W. Dabbs, was personally served with Summons and Complaint on November 5, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Delbert W. Dabbs, for the principal sum of \$646.00, plus interest at the legal rate (12%) from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 29 1981

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 SHEILA M. JACKSON, a/k/a)
 SHEILA SLOAN,)
)
 Defendant.)

CIVIL ACTION NO. 81-C-486-E

DEFAULT JUDGMENT

This matter comes on for consideration this 28 day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Philard L. Rounds, Jr., Assistant United States Attorney, and the Defendant, Sheila M. Jackson, a/k/a Sheila Sloan, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Sheila M. Jackson, a/k/a Sheila Sloan, was personally served with Summons and Complaint on September 21, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Sheila M. Jackson, a/k/a Sheila Sloan, for the principal sum of \$1,495.00, plus the accrued interest of \$415.48 as of February 27, 1980, plus interest at 7% from February 27, 1980, until the date of Judgment, plus interest at the legal rate (12%) on the principal sum of \$1,495.00 from the date of Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FILED

GLENDA R. SANDERS,)
)
 Plaintiff,)
)
 vs.)
)
 NORTH AMERICAN VAN LINES, INC.,)
 and RICHARD L. MOHR,)
)
 Defendants.)

NO. 81-C-527-B

DEC 28 1981
 Jack C. Silver, Clerk
 U. S. DISTRICT COURT

ORDER OF DISMISSAL

ON This 24 day of December, 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/Thomas R Brett
 JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

N. FRANKLYN CASEY


 Attorney for Plaintiff.

ALFRED B. KNIGHT

 Attorney for Defendants.

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

FILED

JAMES R. SEARCY and)
BETTY SEARCY,)
)
Plaintiffs,)
)
-vs-)
)
CHEROKEE GRAIN COMPANY,)
a Kansas Corporation, and)
MARCUS E. HERRINGTON,)
)
Defendants.)

DEC 28 1981

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

NO. 81-C-309-B

ORDER OF DISMISSAL

On this 24 day of December, 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 plaintiffs filed herein against the defendants be and the same hereby is dismissed with prejudice to any future action.



JUDGE OF THE UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT

APPROVED AS TO FORM:



DON L. DEES
Attorney for Plaintiffs



RAY H. WILBURN
Attorney for Defendants

FILED

DEC 28 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.)
)
 KENNETH D. DEAN,)
)
 Defendant.)

CIVIL ACTION NO. 81-C-568-B

DEFAULT JUDGMENT

This matter comes on for consideration this 24 day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Philard L. Rounds, Jr., Assistant United States Attorney, and the Defendant, Kenneth D. Dean, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Kenneth D. Dean, was personally served with Summons and Complaint on October 23, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Kenneth D. Dean, for the principal sum of \$1,621.90, plus the accrued interest of \$451.69 as of April 15, 1981, plus interest at 7% from April 15, 1981, until the date of Judgment, plus interest at the legal rate (12%) on the principal sum of \$1,621.90 from the date of Judgment until paid.

S/ Thomas R. Butt
UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 28 1981

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NO. 81-C-630-B
)
DOUGLAS W. WORKINGS,)
)
Defendant.)

DEFAULT JUDGMENT

This matter comes on for consideration this 24 day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Don J. Guy, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Douglas W. Workings, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Douglas W. Workings, was personally served with Summons and Complaint on November 13, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Douglas W. Workings, for the principal sum of \$342.40, plus interest at the rate of 12 percent from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

FILED

DEC 28 1981

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 81-C-666-B
)	
JIMMIE McCORMICK,)	
)	
Defendant.)	

DEFAULT JUDGMENT

This matter comes on for consideration this 24 day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Don J. Guy, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Jimmie McCormick, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Jimmie McCormick, was personally served with Summons and Complaint on November 14, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Jimmie McCormick, for the principal sum of \$1,098.00, plus interest at the rate of 12 percent from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

FILED

DEC 28 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.) CIVIL ACTION NO. 81-C-738-B
)
MIKE BARCHUS,)
)
) Defendant.)

DEFAULT JUDGMENT

This matter comes on for consideration this 24 day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Mike Barchus, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Mike Barchus, was personally served with Summons and Complaint on November 20, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Mike Barchus, for the principal sum of \$226.00, plus interest at the rate of 12 percent from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT FOR THE **DEC 28 1981**
NORTHERN DISTRICT OF OKLAHOMA

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 81-C-746-B
)	
CHARLES Q. PAGE,)	
)	
Defendant.)	

DEFAULT JUDGMENT

This matter comes on for consideration this 24 day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Charles Q. Page, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Charles Q. Page, was personally served with Summons and Complaint on November, 20, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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 Q. Page, for the principal sum of \$331.20, plus interest at the rate of 12 percent from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC 28 1981 *hm*

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
CHRIS L. STANGER,)
)
Defendant.)

CIVIL ACTION NO. 81-C-820-EV ✓

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Philard L. Rounds, Jr., Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 28th day of December, 1981.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

Philard L. Rounds, Jr.
PHILARD L. ROUNDS, JR.
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was mailed to each of the parties hereto by mailing the same to them or to their attorneys of record on the 28th day of December, 1981.

Philard L. Rounds, Jr.
Assistant United States Attorney

The Court finds the Motion to Dismiss of Southwestern Bell Telephone Company should be overruled; the Motion to Dismiss of Robert L. Bryant should be sustained; and the Motion to Remand of the plaintiff should be overruled.

MOTION TO DISMISS OF SOUTHWESTERN BELL TELEPHONE COMPANY.

Southwestern Bell moved to dismiss on the basis of the May 11, 1981 order of dismissal being with prejudice. The nunc pro tunc order of December 14, 1981, amended the May 11 order to reflect the dismissal was without prejudice. Plaintiff commenced his action against Southwestern Bell within one year following the dismissal and said suit was timely commenced. 12 O.S. §100.

MOTION TO DISMISS OF ROBERT L. BRYANT.

Robert L. Bryant, an employee of Southwestern Bell Telephone company, has moved to dismiss alleging the statute of limitations has run as to him. The accident occurred on March 14, 1978 and the instant action was not commenced until October 30, 1981. The two-year statute of limitations is applicable in this case. 12 O.S. (5 (Third)). Robert L. Bryant was not named as a party defendant or served in the previous suit [80-C-212-E]. In order for plaintiff to avail himself of the saving provision of 12 O.S. §100 permitting the institution of a new action within one year after the prior action failed other than on the merits, the defendant must be served with summons in accordance with 12 O.S. §97. C & C Tile Company, Inc. v. Independent Schl. D. No. 7 of Tulsa Cty., 503 P.2d 554, 558 (Ok1. 1972).

PLAINTIFF'S MOTION TO REMAND.

In a removal based on an alleged fraudulent joinder the Court must be able to grant a motion to dismiss the allegedly fraudulently joined defendant from the case. Town of Freedom, Ok1. v. Muskogee Bridge Co., Inc., 466 F.Supp. 75, 78 (W.D.Ok1. 1978); Sparks v. St. Louis & San Francisco Railroad Corp., 366 F.Supp. 957 (N.D.Ok1. 1973); Thomas v. Archer, 330 F.Supp. 1181 (W.D.Ok1. 1971); Fine

v. Braniff Airway, Inc., 302 F.Supp. 496 (W.D.Okla. 1969); Winton v. Moore, 288 F.Supp. 470 (N.D.Okla. 1968).

In the instant case, it is apparent from the face of the complaint the statute of limitations had run as to the defendant, Robert L. Bryant, and he did not come within the saving provisions of 12 O.S. §100.

IT IS, THEREFORE, ORDERED as follows:

1. The Motion to Dismiss of Southwestern Bell Telephone Company is overruled.
2. The Motion to Dismiss of Robert L. Bryant is sustained.
3. The Motion to Remand of plaintiff is overruled.
4. Southwestern Bell Telephone Company is directed to file its answer on or before January 13, 1982.

ENTERED this 23rd day of December, 1981.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

KENNETT-MURRAY & CO.,)
a division of Kennett-Murray)
Corporation, a foreign)
corporation,)
)
Plaintiff,)
)
vs.)
)
THE PAWNEE NATIONAL BANK,)
a national banking)
corporation,)
)
Defendant.)

FILED

DEC 23 1981

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

No. 80-C-711-B

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law filed this date, IT IS HEREBY ORDERED Judgment is entered in favor of the defendant, The Pawnee National Bank, and against the plaintiff, Kennett-Murray & Co., a division of Kennett-Murray Corporation, on the plaintiff's claim and costs are to be assessed against the plaintiff. IT IS FURTHER ORDERED the defendant, The Pawnee National Bank, is awarded judgment against the plaintiff, Kennett-Murray & Co., on the defendant's counter-claim, in the amount of \$8,050.00 in accordance with the judgment previously filed on December 16, 1980 in favor of The Pawnee National Bank in the case of Kennett-Murray & Co., Plaintiff, vs. The Pawnee National Bank, Defendant, No. C-76-95 in the District Court within and for Pawnee County, State of Oklahoma.

ENTERED this 23rd day of December, 1981.



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

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 23 1981

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 GERALD E. HALE,)
)
 Defendant.)

CIVIL ACTION NO. 81-C-700-E

DEFAULT JUDGMENT

This matter comes on for consideration this 23rd day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Don J. Guy, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Gerald E. Hale, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Gerald E. Hale, was personally served with Summons and Complaint on November 18, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Gerald E. Hale, for the principal sum of \$256.30, plus interest at the rate of 12 percent from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 23 1981

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 LUTHER L. McCALL, JR.,)
)
 Defendant.)

CIVIL ACTION NO. 81-C-736-E

DEFAULT JUDGMENT

This matter comes on for consideration this 23rd day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Luther L. McCall, Jr., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Luther L. McCall, Jr., was personally served with Summons and Complaint on November 20, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Luther L. McCall, Jr., for the principal sum of \$772.50, plus interest at the rate of 12 percent from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

RECEIVED

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

DEC 22 1981

JACK C. CHAMBERS
U. S. DISTRICT JUDGE

LEWIS AARON BOWEN,)	
)	
Petitioner,)	
)	
vs.)	No. 81-C-204-B
)	
A. I. MURPHY, et al.,)	
)	
Respondents.)	

O R D E R

The Court now considers the pro se petition of Lewis Aaron Bowen requesting his conviction for robbery in 1965 be vacated and the time served thereon be applied to his current sentence under Case No. CRF-78-2815 (Tulsa County District Court), pursuant to 28 U.S.C. §2254. In that case, petitioner pleaded guilty to a charge of robbery with firearms after former conviction of a felony. It is the former felony conviction that is at issue. The state has moved to dismiss the petition.

Petitioner alleges his 1965 plea of guilty to a charge of robbery with firearms was taken in violation of his constitutional rights. Specifically, petitioner claims the Court never informed petitioner of his Miranda rights or made inquiries into the voluntariness of his guilty plea. In addition, petitioner asserts his guilty plea was the result of threats made against him by his alleged attorney.

As an initial matter, the Court has reviewed the entire file and determines an evidentiary hearing is not required. 28 U.S.C. foll. §2254 Rule 8(a); Townsend v. Spain, 372 U.S. 293 (1962).

Rule 9(a) of the Rules Governing Section 2254 cases reads as follows:

"Delayed petitions. A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred."

Rule 9 is based on the equitable doctrine of laches. Paprskar v. Estelle, 612 F.2d 1003, 1007 (5th Cir. 1980); Baxter v. Estelle, 614 F.2d 1030, 1033-34 (5th Cir. 1980); Hillery v. Sumner, 496 F.Supp. 632, 635 (E.D. Calif. 1980). Therefore, in order to invoke Rule 9, the state must show it has been prejudiced in its ability to respond to the petition; however, delay alone will not justify the denial of habeas corpus relief. Paprskar v. Estelle, *supra*, 612 F.2d at 1008; United States Ex Rel. Barksdale v. Blackburn, *supra*, 610 F.2d at 260; Henagan v. Anderson, 500 F.Supp. 641, 643 (E.D. Mich.1980). In considering whether the state has demonstrated prejudice, the Court is aided by the following comment contained in the Advisory Committee Note following Rule 9:

"If the delay is more than five years after the judgment of conviction, prejudice is presumed, although this presumption is rebuttable by the petitioner. Otherwise, the state has the burden of showing such prejudice."

The defects petitioner complains of allegedly took place in 1965, or approximately sixteen years ago. The state has presented the affidavit of the clerk of the District Court of Tulsa County stating there are no transcripts of any hearings in the matter of which plaintiff herein complains. Therefore, any testimony from the presiding judge or the prosecutor regarding the voluntariness of petitioner's guilty plea would have to come from recollections of events taking place over 16 years ago. Further, the state has produced a Certificate of Death for Amos T. Hall, the individual whom petitioner alleges acted as his attorney in the 1965 criminal matter. Therefore, it is now impossible to question attorney Hall as to petitioner's allegation that his guilty plea was the result of "threats" made by Hall to petitioner. Petitioner has made no allegations tending to provide a basis for his lengthy delay.

On the basis of the foregoing reasons, the Court concludes the state has made a sufficient demonstration of prejudice resulting from petitioner's delay of sixteen years in raising this complaint.

IT IS THEREFORE ORDERED the state's Motion to Dismiss is hereby granted, and the action is dismissed.

ENTERED this 21st day of December, 1981.



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

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

STANG HYDRONICS, INC.,)
)
Plaintiff,)
)
vs.)
)
WILLIE D. MOONEY d/b/a MOONEY)
DEVELOPMENT COMPANY d/b/a MOONEY)
HOME BUILDERS and RICKEY MOONEY,)
individuals,)
)
Defendants.)

No. 81-C-651-C ✓

FILED

DEC 22 1981 *hm*

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

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff by its counsel pursuant to Federal Rule 41(a)(1) and dismisses the above captioned matter without prejudice. Plaintiff states that counsel for Defendant has been contacted regarding this dismissal and has no objection. Plaintiff further states that the Defendant has not filed an answer or motion for summary judgment in the above captioned matter.

Respectfully submitted,

R. Casey Cooper
Craig A. Stokes
Of BOESCHE, McDERMOTT & ESKRIDGE
320 South Boston, Suite 1300
Tulsa, Oklahoma 74103
(918) 583-1777

By *Craig A. Stokes*
CRAIG A. STOKES

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Dismissal without Prejudice was served upon Ronald D. Wood, Grigg, Richards & Paul, Six East 5th Street, Suite 200, Tulsa, Oklahoma 74103 by depositing a copy thereof in the United States mail in Tulsa, Oklahoma with first-class postage thereon fully prepaid this 23rd day of December, 1981.

Craig A. Stokes

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JM DEC 22 1981

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CALVIN R. TURNER,)
)
 Defendant.)

CIVIL ACTION NO. 81-C-626-C ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 22nd day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Don J. Guy, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Calvin R. Turner, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Calvin R. Turner, was personally served with Summons and Complaint on November 17, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Calvin R. Turner, for the principal sum of \$756.00, plus interest at the rate of 12 percent from the date of this Judgment until paid.

W. J. Salbeck

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC 22 1981

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RANDALL E. SHIREMAN,)
)
 Defendant.)

CIVIL ACTION NO. 81-C-619-C

DEFAULT JUDGMENT

This matter comes on for consideration this 21st day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Randall E. Shireman, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Randall E. Shireman, was personally served with Summons and Complaint on November 16, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Randall E. Shireman, for the principal sum of \$233.20, plus interest at the legal rate (12%) from the date of this Judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 22 1981

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JACKIE D. COMER,)
)
 Defendant.)

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

CIVIL ACTION NO. 81-C-582-C ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 22nd day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Nancy A. Nesbitt, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Jackie D. Comer, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Jackie D. Comer, was personally served with Summons and Complaint on November 12, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Jackie D. Comer, for the principal sum of \$507.90, plus interest at the rate of 12 percent from the date of this Judgment until paid.

W. J. [Signature]
UNITED STATES DISTRICT JUDGE

3

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC 21 1981 *ye*

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
HERBERT C. HUGHART,)
)
Defendant.)

CIVIL ACTION NO. 81-C-735-E ✓

O R D E R

For a good cause having been shown, it is hereby ordered, adjudged and decreed that the above-referenced action is hereby dismissed without prejudice against the United States of America.

James E. Deason
UNITED STATES DISTRICT JUDGE

FILED

DEC 21 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.)	CIVIL ACTION NO. 81-C-646-E
)	
TERRY D. OLIVER,)	
)	
Defendant.)	

DEFAULT JUDGMENT

This matter comes on for consideration this 21st day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Terry D. Oliver, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Terry D. Oliver, was personally served with Summons and Complaint on November 12, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Terry D. Oliver, for the principal sum of \$471.23, plus interest at the legal rate (12%) from the date of this Judgment until paid.

James Bell
UNITED STATES DISTRICT JUDGE

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

FLOYD E. FIELDS,)
)
 Plaintiff,)
)
 vs.)
)
 VAN DORN CO., an Ohio corporation,)
 et al.,)
)
 Defendants.)

No. 80-C-387-E ✓

FILED

DEC 21 1981 *hm*

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

O R D E R

The Court has before it for consideration the motions for summary judgment filed by Defendants Robintech and Colonial Engineering pursuant to Fed.R.Civ.P. 56. Also before the Court is Plaintiff's application to amend his complaint, filed pursuant to Fed.R.Civ.P. 15(a).

Plaintiff has not opposed the motion for summary judgment filed by Defendant Colonial Engineering. At a pre-trial conference held before the Court, Plaintiff indicated it would have no response to the affidavit of Wendell Potter, Vice-President of Colonial Engineering. That affidavit, filed by Colonial Engineering in support of its motion, indicates that Colonial Engineering did not manufacture the pipe cap described in Plaintiff's complaint.

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). In the case at bar, Defendant's unopposed affidavit establishes that there are no genuine issues of material fact between Plaintiff and Defendant Colonial Engineering. Under those circumstances, the Court finds that Defendant Colonial Engineering is entitled to summary judgment in its favor.

Defendant Robintech has moved for summary judgment on the grounds that it has never manufactured or sold a pipe cap such as the one described by Plaintiff in his complaint. Plaintiff has filed a brief in response to Defendant Robintech's motion. Plaintiff states that if Plaintiff's application to amend his complaint is granted by the Court, Plaintiff will not oppose Defendant Robin-

tech's motion for summary judgment.

In Plaintiff's application to amend his complaint, Plaintiff seeks leave of Court pursuant to Fed.R.Civ.P. 15(a) to amend his complaint so that Plastiline, Inc. rather than Plastiline, P & C, Inc. is named as a party-defendant. The Court notes at the outset that Plastiline P & C, Inc., is no longer a party in this lawsuit, the Court having granted previously Plastiline P & C, Inc.'s motion for summary judgment. Therefore, the actual effect of Plaintiff's application is to add a new party to this lawsuit.

Rule 21 of the Federal Rules of Civil Procedure provides that parties may be added by order of the court "on such terms as are just." This rule gives the Court broad discretion in the matter of adding parties. Moore's Federal Practice, Vol. 3A § 21.05; Solar v. G and U, Inc., 86 F.R.D. 524, 528 (S.D. N.Y. 1980). The general standard to be used by the Court in ruling on an application to add a party is the same general standard of liberality afforded to motions to amend pleadings under Rule 15 of the Federal Rules of Civil Procedure. Fair Housing Development Fund Corp. v. Burke, 55 F.R.D. 414 (E.D. N.Y. 1972); Kaminsky v. Abrams, 41 F.R.D. 168 (S.D. N.Y. 1966). The law is clear that leave to amend is to be freely granted unless the amendment would create undue delay or substantial prejudice. Foman v. Davis, 371 U.S. 178 (1962); Polin v. Dun and Bradstreet, Inc., 511 F.2d 875, 877 (Tenth Cir. 1975); R.B.E., Inc. v. Ralston Purina Co., 525 F.2d 749, 751 (Tenth Cir. 1975).

After a careful review of the record in this case, and bearing in mind the standards to be applied, the Court finds that Plaintiff's application should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motions for summary judgment filed by Defendants Colonial Engineering and Robintech should be and the same are, hereby sustained.

IT IS FURTHER ORDERED that Plaintiff's application to add Plastiline, Inc., as a party-defendant is also granted.

It is so Ordered this 21st day of December, 1981.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

ROBERT EARL JACKSON,)
)
) Petitioner,)
)
 vs.)
)
) L.T. BROWN, WARDEN, and)
) THE STATE OF OKLAHOMA,)
)
) Respondent.)

No. 81-C-300-B ✓

FILED

DEC 21 1981

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

ORDER

The Court now considers the petition by Robert Earl Jackson challenging the validity of his conviction by virtue of a plea of guilty to the crime of Robbery with a Firearm in the District Court of Garfield County, Oklahoma, pursuant to 28 U.S.C. §2254. The Court will also consider Petitioner's Motion for Judgment on the Pleadings.

The Court has reviewed the entire file and determines an evidentiary hearing is not required. 28 U.S.C. fol. 2254 Rule 8(a); Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1962).

On October 16, 1972, petitioner, represented by Court appointed counsel, entered a plea of guilty and was sentenced to be incarcerated for a term of 30 years. On January 7, 1981 [some 8 years later] an Application for Post-Conviction Relief was denied by the District Court of Garfield County and on June 9, 1981, the Court of Criminal Appeals affirmed the

denial in PC-81-214.^{1/} The Respondent concedes petitioner has exhausted available state remedies.

In his §2254 petition, petitioner complains:

- (1) He entered a plea of guilty pursuant to plea bargaining and expected to serve five or six years of confinement;
- (2) Denial of effective assistance of counsel [alleged denial of due process of law and equal protection of the law].
- (3) Conviction was obtained by guilty plea which was unlawfully induced, not voluntarily made with understanding of the nature of the charge or the consequences of the plea.
- (4) Conviction was obtained by use of evidence obtained pursuant to an unlawful search and seizure.^{2/}
- (5) Conviction was obtained as a result of plea of guilty while defendant was mentally incompetent.
- (6) Conviction was obtained by the unlawful failure of the prosecution to disclose evidence favorable to the defense.^{2/}

^{1/} The Court of Criminal Appeals found:
(1) Plaintiff had not been denied due process because he was "tried and sentenced in the same day";
(2) Plaintiff's claim he was without adequate representation during the trial proceedings was not substantiated by the record which reflected he was represented by his court-appointed counsel during all of the proceedings;
(3) The record showed plaintiff was satisfied with the representation of his appointed counsel;
(4) The record did not reflect any plea bargaining as to a sentence of 5 to 6 years;
(5) The record did not substantiate plaintiff's claim he was unaware of the nature of the proceedings due to pain from a severe burn; and
(6) The record "reflects that petitioner was not mistreated or coerced and that he was competent and capable of entering a voluntary plea of guilty."

^{2/} These two grounds are not raised in the state proceedings so petitioner has not exhausted his available state remedies.

The Respondent advances two propositions to support the position petitioner is not entitled to §2254 relief, i.e., (i) respondent will be prejudiced by the delay of more than five years in commencing this habeas corpus proceeding, relying on 28 U.S.C. fol. 2254 Rule 9(a); and (ii) this Court may presume the correctness of a state finding from the same trial record that was considered by the appellate court upon a review of the facts in that record.

28 U.S.C. fol. 2254 Rule 9(a) provides:

"(a) Delayed petitions. A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred."

In the advisory note following Rule 9 the following comment is found:

"If the delay is more than five years after the judgment of conviction, prejudice is presumed, although this presumption is rebuttable by the petitioner. Otherwise, the state has the burden of showing such prejudice."

Rule 9 is based on the equitable doctrine of laches. Paprskar v. Estelle, 612 F.2d 1003, 1007 (5th Cir. 1980); Baxter v. Estelle, 614 F.2d 1030, 1033-1034 (5th Cir. 1980); Hillery v. Sumner, 496 F.Supp. 632, 635 (E.D. Calif.1980).

Rule 9 applies only to cases filed after February 1, 1977. Bouchillon v. Estelle, 628 F.2d 926, 929 (5th Cir. 1980); Baxter v. Estelle, supra, 614 F.2d at 1032-1033; United States Ex. Rel. Barksdale v. Blackburn, 610 F.2d 253, 260-261 (5th Cir. 1980); Jackson v. Estelle, 570 F.2d 546 (5th Cir. 1978).

To invoke Rule 9, the state must show somehow it has been prejudiced in its ability to respond to the petition. In other words, under Rule 9, the state must make a particularized showing of prejudice, for delay alone will not justify the denial of habeas corpus relief. Paprskar v. Estelle, supra, 612 F.2d at 1008; United States Ex Rel. Barksdale v. Blackburn, supra, 610 F.2d at 260; Henagan v. Anderson, 500 F.Supp. 641, 643 (E.D. Mich. 1980). The state has claimed prejudice by reason

of the delay, but does not explain how it is prejudiced. The record furnished this Court contains a transcript of the proceedings when petitioner entered his plea of guilty and the issues properly before the Court can be determined from the record and the transcript of the proceedings.

The Court finds petitioner's petition should not be dismissed under Rule 9.

In reviewing a state petitioner's application for writ of habeas corpus, the federal court is bound by the provisions set forth in 28 U.S.C. §2254(d) and the standards set forth in Sumner v. Mata, _____ U.S. _____, 101 S.Ct. 764, 66 L.Ed. 2d 722 (1981); LaValle v. Delle Rose, 410 U.S. 690, 92 S.Ct. 1203, 35 L.Ed. 2d 637 (1973); Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980). Thus, in a federal habeas corpus proceeding instituted by a state prisoner, a determination after a hearing on the factual issues made by a state court of competent jurisdiction and evidenced by a written finding, written opinion or other reliable and adequate written indicia shall be presumed to be correct unless one of the seven specified conditions set forth in 28 U.S.C. §2254 is found to exist or unless the habeas corpus court concludes that the relevant state court determination is not fairly supported by the record. Sumner v. Mata, supra, 101 S.Ct. 764; Williams v. Blackburn, 649 F.2d 1019, 1022-1023 (5th Cir. 1981). The interest in federalism recognized by Congress in enacting §2254(d) requires deference by federal courts to factual determinations of all state courts. Reardon v. Manson, 644 F.2d 122, 129 (2nd Cir. 1981).

Under 28 U.S.C. §2254(d), a federal court has only limited power to reject a determination of a factual issue made by a state court after a hearing on the merits. Sumner v. Mata, supra, 101 S.Ct. 764. A review of the trial court record by the appellate court is clearly a hearing within the meaning

of §2254(d). Sumner v. Mata, supra, 101 S. Ct. at 768. The statute provides that unless the petitioner establishes, or the state admits, one of seven factors, the state determination of a factual issue shall be presumed to be correct. 28 U.S.C. §2254(d). Alternatively, the state court's factual determination may be rejected if it is not fairly supported by the record. If one of these factors are established, the presumption of correctness applies and can only be overcome by "convincing evidence." Sumner v. Mata, supra, 101 S.Ct. 764. The Court finds the presumption of correctness applies in this case.

The Court, therefore, finds petitioner's Writ for Habeas Corpus pursuant to 28 U.S.C. §2254 should be denied.

Petitioner has moved for Judgment on the Pleadings Pursuant to F.R.Civ.P. 12(c) and Summary Judgment pursuant to F.R.Civ.P. 56. The Court is of the opinion petitioner's Motion should be denied.

IT IS, THEREFORE, ORDERED as follows:

1. Petitioner's Motion for Judgment on the Pleadings is overruled.

2. The Petition of Robert Earl Jackson for Writ of Habeas Corpus under Title 28 U.S.C. §2254 is denied.

ENTERED this 21ST day of December, 1981.



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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 21 1981

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

WAYNE K. McFEE,)

Defendant.)

CIVIL ACTION NO. 81-C-509-E

O R D E R

For a good cause having been shown, it is hereby ordered, adjudged and decreed that the above-referenced action is hereby dismissed without prejudice against the United States of America.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED
DEC 21 1981
Jack G. Silver, clerk
U. S. DISTRICT COURT

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

S & S BUILDING SERVICES, INC.,)
an Oklahoma Corporation,)
)
Plaintiff,)
)
vs.)
)
REGENCY INDUSTRIES, INC.,)
a Kansas Corporation,)
)
Defendant.)

No. 80-C-557-E ✓

JOURNAL ENTRY OF JUDGMENT

This matter comes on before the Court this 21st day of December, 1981, and Plaintiff appeared by its counsel PRAY, WALKER, JACKMAN, WILLIAMSON & MARLAR by Bert C. McElroy and Defendant appeared by its counsel WILLIAM R. MOSS and TIM POOL by Tim Pool and the Court being well and fully advised in the premises finds:

1. That judgment should be entered for Plaintiff as in its Complaint prayed in the amount of \$37,400.00;
2. That judgment should be entered in favor of Plaintiff and against the Defendant on Defendant's Cross-Complaint and that Plaintiff should recover the sum of \$ 3000⁰⁰ as and for attorneys fees and costs expended herein.

NOW THEREFORE BE IT ORDERED, ADJUDGED AND DECREED by the Court that Judgment be and the same is hereby entered in favor of Plaintiff and against the Defendant in the sum of \$37,400.00 together with \$ 3,000⁰⁰ as and for attorneys fees, costs

and expenses incurred by the Plaintiff, for all of which let
execution issue.

S/ JAMES O. ELLISON
U. S. DISTRICT COURT JUDGE

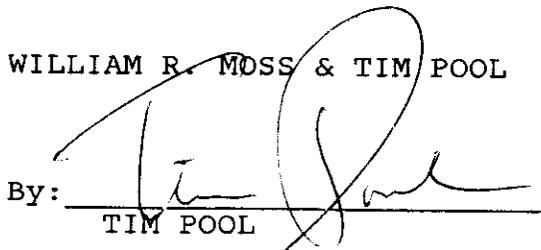
APPROVED AS TO FORM & CONTENT:

PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

By: 
BERT C. MCELROY

Attorneys for Plaintiff

WILLIAM R. MOSS & TIM POOL

By: 
TIM POOL

Attorneys for Defendant

The Court finds that this action should be dismissed based upon such Joint Stipulation, each party to bear its own costs and attorney's fee.

IT IS SO ORDERED, ADJUDGED AND DECREED.

~~S/ JAMES O. ELISON~~
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E

DEC 21 1981

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JOHN H. JACKSON,)
)
Defendant.)

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

CIVIL ACTION NO. 81-C-677-B

AGREED JUDGMENT

This matter comes on for consideration this 21st day
of Dec, 1981, the Plaintiff appearing by Frank Keating,
United States Attorney for the Northern District of Oklahoma,
through Don J. Guy, Assistant United States Attorney, and the
Defendant, John H. Jackson, appearing pro se.

The Court, being fully advised and having examined the
file herein, finds that the Defendant, John H. Jackson, was
personally served with Summons and Complaint on November 17,
1981. The Defendant has not filed his Answer but in lieu thereof
has agreed that he is indebted to the Plaintiff in the amount
alleged in the Complaint and that Judgment may accordingly be
entered against him in the amount of \$778.67, plus 12% interest
from the date of this Judgment until paid.

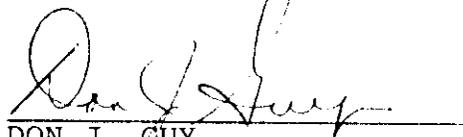
IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that
the Plaintiff have and recover Judgment against the Defendant,
John H. Jackson, in the amount of \$778.67, plus 12% interest from
the date of this Judgment until paid.

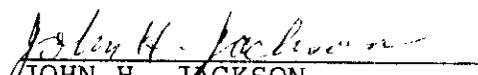

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney


DON J. GUY
Assistant U.S. Attorney


JOHN H. JACKSON

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D
DEC 21 1981

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
JOHN D. ESTEP,)
)
 Defendant.)

CIVIL ACTION NO. 81-C-639-B

DEFAULT JUDGMENT

This matter comes on for consideration this 21st day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Nancy A. Nesbitt Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, John D. Estep, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, John D. Estep, was personally served with Summons and Complaint on November 19, 1981. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, John D. Estep, for the principal sum of \$504.13, plus interest at the legal rate (12%) from the date of this Judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 21 1981

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs-)
)
)
 DANIEL J. LASATER,)
)
 Defendant.)

Civil No. 81-C-554-B

CONSENT JUDGMENT

This matter coming on before this Court this 21st day of Dec., 1981, and the Court being informed in the premises and it appearing that the parties have agreed and consent to a judgment as set forth herein; in accordance therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff, United States of America, have and recover judgment against Defendant, Daniel J. Lasater, for overpayment of Veterans Administration education assistance allowance in the principal sum of \$971.80, plus interest at twelve percent (12%) per annum from the date of judgment until paid, as provided by law, and costs in the amount of \$27.00.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

AGREED:

ROBERT M. JAMES, District Counsel
Veterans Administration
125 South Main Street
Muskogee, Oklahoma, 74401

By: David M. Demmer
DAVID M. DEMMER, Attorney
Counsel for Plaintiff

AGREED:

Daniel J. Lasater
DANIEL J. LASATER, Defendant
333 West Fifth
Tulsa, OK 74103

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

DOROTHY CHASTAIN,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID DILLION, d/b/a)
 DAVID DILLION HOMES,)
)
 Defendant and)
 Third-Party Plaintiff,)
)
 vs.)
)
 ROBERT T. CHASTAIN,)
 a/k/a TERRY CHASTAIN,)
)
 Third-Party Defendant.)

No. 80-C-531-B

FILED
DEC 21 1981

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

LIN HOWARD CHASTAIN,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID DILLION, d/b/a)
 DAVID DILLION HOMES,)
)
 Defendant and)
 Third-Party Plaintiff,)
)
 vs.)
)
 ROBERT T. CHASTAIN,)
 a/k/a TERRY CHASTAIN,)
)
 Third-Party Defendant.)

No. 80-591-BT

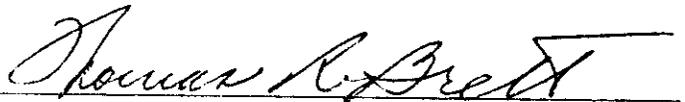
J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law entered herein, IT IS HEREBY ORDERED AND ADJUDGED the defendant, David Dillion, is to have judgment against the plaintiff, Dorothy Chastain, and the plaintiff, Lin Howard Chastain, on their claims with costs assessed to said respective plaintiffs. Further, the third-party plaintiff, David Dillion, is to have judgment against the third-party defendant, Robert T. Chastain, for compensatory damages in the amount of \$32,004.62, with interest at the rate of 10% from March 15, 1980, and at the rate of 12% from the date of this judgment; and further the

third-party plaintiff, David Dillion, is to have judgment against the third-party defendant, Robert T. Chastain, in the amount of \$10,000.00 as and for exemplary damages; and the third-party plaintiff, David Dillion, is to have judgment against the third-party defendant, Robert T. Chastain, in the amount of \$29,976.36 as and for a reasonable attorney fee.

IT IS FURTHER ORDERED the third-party plaintiff, David Dillion, is to take nothing from the third-party defendant, Robert T. Chastain, on the additional third-party claim and the third-party defendant is to have judgment thereon; and IT IS FURTHER ORDERED the defendant, David Dillion, is to take nothing on his counter-claims against Dorothy Chastain and Lin Howard Chastain, and said plaintiffs are to have judgment against the defendant on said counter-claims.

ENTERED this 21st day of Dec., 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

pt **DEC 21 1981**

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

DYER CONSTRUCTION COMPANY, an)
Oklahoma Corporation, and)
HANOVER INSURANCE COMPANY,)
)
Plaintiffs,)
)
vs.)
)
HYDRO CONDUIT CORPORATION, a)
foreign corporation, and TWIN)
T. ERECTORS, a foreign corpora-)
tion,)
)
Defendants.)

No. 80-C-412-E

O R D E R

This action arises out of an accident that occurred during the construction of the Home Savings & Loan Building in Bartlesville, Oklahoma. A column apparently fell through the floor below it, causing damage to equipment, as well as to the building. Dyer Construction Company was the general contractor, and it, in turn, had subcontracted part of its work to Hydro Conduit Corporation, which had, in turn, subcontracted with Twin T. Erectors. Dyer Construction Company purchased, from Hanover Insurance Company, a builder's risk policy.

Now pending before the Court are the motions of Hydro Conduit and Twin T. Erectors for partial summary judgment and for summary judgment. The motions have been fully briefed by all parties.

The motions for summary judgment essentially rely upon two arguments, one being that Hanover has no subrogation rights against the Defendants because its named insured, Dyer Construction, had, by contract, waived its right to proceed against Hydro Conduit and Twin T, and the other being that the Defendants enjoy the status of co-insureds with Dyer under the builder's risk policy, and an insurer cannot seek subrogation against its own insured. As to the motion for partial summary judgment, Defendants contend that Dyer's actual loss is in the neighborhood of \$24,000.00, rather than the \$131,154.61 alleged.

Having reviewed the applicable contracts, the insurance policy, and the relevant law, the Court is of the opinion that the Defendants' motions should be granted in toto.

The Court first will address the issue of whether the Defendants

enjoy the status of co-insureds with Plaintiff Dyer.

The principle of subrogation is subject to no hard and fast rules. As Judge Brightmire has put it:

The principle of subrogation was begotten of a union between equity and her beloved - the natural justice of placing the burden of bearing a loss where it ought to be. Being so sired this child of justice is without the form of a rigid rule of law. On the contrary it is a fluid concept depending upon the particular facts and circumstances of a given case for its applicability. To some facts subrogation will adhere -- to others it will not.

Sutton v. Jondahl, 532 P.2d 478, at 481-482 (Okla. App. 1975).

The cases also hold that whether or not subrogation is available under a particular set of circumstances is to be determined according to state law, see, e.g., Transamerica Ins. Co. v. Gage Plumbing and Heating Co., 433 F.2d 1051 (Tenth Cir. 1970). Unfortunately, there appears to be no clear Oklahoma precedent on the question of the availability of subrogation under circumstances similar to these.

The policy in question herein provides for coverage of "Dyer Construction Company and/or Sub-Contractors as their interest may may appear ..." Similar language was considered by Judge Daugherty in the case of Public Service Co. v. Black & Veatch, 328 F.Supp. 14 (N.D. Okla. 1971). In that case, the court analyzed the reasons for denying subrogation when the loss was caused by the negligence of a co-insured, and determined that there was no equitable reason to deny the proposition that the party allegedly causing a loss should be liable for damages to the property of another even though the damage was to the property of a co-insured covered by the insured. Other courts, however, have also analyzed the problem, among them the courts of Nevada in Harvey's Wagon Wheel, Inc. v. MacSween, 606 P.2d 1095 (Nev. 1980), and Alaska in Baugh-Belarde Constr. Co. v. College Utilities Corp., 561 P.2d 1211 (Alaska 1977).

In Baugh-Belarde, supra, the court said:

First, a severe conflict of interest would exist if an insurer were permitted to recover from one of its own insureds. As an insured, College Utilities was under an implied duty to

cooperate fully with its insurer in its inspection of any loss covered under the policy. As part of this duty of cooperation, College Utilities was obligated to answer the questions of insurance agents concerning the facts surrounding any loss and to permit inspection of its property and equipment on the site. If the insurer were permitted to subrogate to Baugh-Belarde's claims against College Utilities, it could use College Utilities' Cooperation in the investigation of the loss to build a liability case against the insured subcontractor. Such a conflict of interest would result in a breach of the fiduciary relationship between the insurer and its insured. This danger of conflict of interest was recognized by the court in Home Insurance Co. v. Pinski Brothers, Inc., 160 Mont. 219, 225-226, 500 P.2d 945, 949 (1972) in its enumeration of reasons why insurers should not be permitted to sue their own insureds:

To permit the insurer to sue its own insured for a liability covered by the insurance policy would violate these basic equity principles, as well as violate sound public policy. Such action, if permitted, would (1) allow the insurer to expend premiums collected from its insured to secure a judgment against the same insured on a risk insured against; (2) give judicial sanction to the breach of the insurance policy by the insurer; (3) permit the insurer to secure information from its insured under the guise of policy provisions available for later use in the insurer's subrogation action against its own insured; (4) allow the insurer to take advantage of its conduct and conflict of interest with its insured; and (5) constitute judicial approval of a breach of the insurer's relationship with its own insured. (emphasis added)

A second policy reason for not permitting a builder's risk insurer to subrogate against its insured, regardless of the extent of the insured's property in the construction project, is reduction of litigation. If an insurer on a major construction job were able to recover from one or more of its insureds, most losses on construction jobs would result in costly litigation. This result is clearly not in the public interest, especially since the cost of such litigation would ultimately be passed on to the general public in the form of increased insurance premiums and higher construction costs.

Our third policy consideration concerns the tremendous burden which would be placed on subcontractors in College Utilities' position if a builder's risk insurer were permitted to recover against its own insured. Each subcontractor working on a multi-million dollar project would be forced to protect against liability for loss to the entire project by paying huge premiums

for his own liability insurance. Again, these higher premiums would be calculated into the subcontractors' bids and would increase the entire cost of the construction project.

All three of these policy problems can be avoided by viewing the builder's risk policy as a single policy which protects each insured party against his own negligence. The entire loss should be borne by the insurer which has accepted one premium covering the entire property.

561 P.2d at 1214-1213. The court in Harvey's Wagon Wheel, supra, agreed with the policy considerations set forth in Baugh-Belarde, and added another valid consideration:

[4-7] The partial summary judgment is further supported by the rule of construction that an ambiguous clause in an insurance policy should be construed liberally in favor of the insured and against the insurer. ... In the case at bar, the phrase, "as their interests may appear", may reasonably be read to limit the recovery by the added insureds in case of loss, but not to shift the risk of loss from Fireman's to MacSween and Johnson. If an insurer intends to restrict the coverage of the policy, it should clearly and precisely state that intent. ... There is no explicit proviso in the insurance policy at issue that makes a subcontractor liable for losses sustained by others that were caused by the subcontractor's negligence.

606 P.2d at 1098. See also Transamerica Ins. Co. v. Gage Plumbing and Heating Co., supra.

For the policy reasons stated in the Nevada and Alaska cases, and for the reason that ambiguities in policies are to be construed most strongly against the insurer, the Court is of the opinion that the Defendants are co-insureds, and that under the circumstances of this case, subrogation should be denied. Additionally, the Court notes that the General Conditions of Contract Article 5.3.5 provide that the parties to the contract are to waive all rights as against each other except such rights as they may have to the proceeds of insurance.

For the foregoing reasons, the Court is of the opinion that Hydro Conduit's motion for summary judgment against Hanover Insurance Company filed August 17, 1981, and Twin T Erectors' motion for summary judgment against Hanover Insurance Company filed August 28, 1981, should both be sustained.

As to the Defendants' motion for partial summary judgment, the Defendants argue that the claim of Dyer should be reduced from \$131,154.61 to \$24,707.67, for the reason that the higher figure includes claims by several subcontractors including Hydro Conduit, and that the actual damages to Dyer are only in the sum of \$28,740.86. Defendants also argue that \$4,033.19 has already been received by Dyer from Hanover Insurance as part of the property damage settlement arising out of the occurrence, and that by the contractual provision, Dyer has waived its right to claim the amount of \$4,033.19. Defendants also argue that Hanover Insurance Company has paid \$83,417.87 pursuant to the insurance policy issued to Dyer, and that the contract provides for the waiver of Dyer's right to proceed against the Defendants for money paid for property damage pursuant to the property damage insurance policy.

Having reviewed the relevant portion of the deposition of W. Reed Woods, the Court is of the opinion that the amount of damages claimed by Dyer Construction Company should be reduced to \$28,740.86, inasmuch as Dyer is in no position to claim damages caused to entities other than itself, under the existing facts and circumstances. See Okla.Stat.tit. 23 § 61. The Court also finds that the contract in Article 9 specifically provides that Dyer waives all rights against all other subcontractors for damages "to the extent covered by property insurance." Since Dyer has already received \$4,033.19 from Hanover Insurance Company from property damage arising out of the occurrence, Dyer has no right to seek that amount from these Defendants. Accordingly, the Defendants' motion for partial summary judgment should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the summary judgment motions filed by Defendants Hydro Conduit and Twin T Erectors are hereby sustained.

IT IS FURTHER ORDERED that the partial summary judgment motions filed by Defendants Hydro Conduit and Twin T Erectors are also sustained.

It is so Ordered this 21st day of December, 1981.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

Kay Eloise Robinson, Eva Mae Robinson,
Harry Robinson & George Samuel Robinson,
Plaintiffs,

vs.

Audi NSU Auto Union Aktien-Gesellschaft and
Volkswagen of America, Inc.,
Defendants.

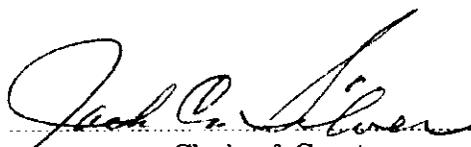
CIVIL ACTION FILE NO. 80-C-85,
80-C-86,
80-C-87,
80-C-88-E
Consol.
JUDGMENT

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, for the defendants.

It is Ordered and Adjudged that having found in favor of the defendants'
the plaintiffs' take nothing.

FILED
DEC 21 1981
Jack C. Silver, Clerk
U. S. DISTRICT COURT

Dated at Tulsa, Oklahoma, this 21st day
of December, 19 81.


Clerk of Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

RAYMOND J. DONOVAN,
Secretary of Labor,
United States Department of Labor,
Plaintiff,

v.

MCKISSICK PRODUCTS COMPANY and
AMERICAN HOIST AND DERRICK
CORPORATION d/b/a, MCKISSICK
PRODUCTS DIVISION,
Defendant.

Civil Action File
No. 77-C-485-C ✓

FILED
DEC 18 1981

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

JUDGMENT

In accordance with the findings of fact and conclusions of law signed and entered in this action on the 19th day of June, 1981, and on December 18, 1981, it is,

ORDERED, ADJUDGED and DECREED that defendant McKissick Products Company, and American Hoist and Derrick Corporation d/b/a McKissick Product Division and 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 Section 7 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 7 and 15(a)(2) of the Act, 29 U.S.C. §§207 and 215(a)(2) employ any employee in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than forty (40) hours, unless the employee receives compensation for his employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he is employed.

It is further ORDERED, ADJUDGED and DECREED that defendants be, and they hereby are, enjoined from withholding payment of overtime compensation in the total amount of \$ 90,218.75, 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 Nov 21, 1974, to Dec 18, 1981. To comply with this provision of this judgment, defendants, within ten (10) 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 \$ 90,218.75, 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.

It is further ORDERED that the defendants pay an additional sum of 35.85 for each day that this judgment is not paid in full and proof of satisfaction is not filed of record.

It is further ORDERED that the costs of this action be, and the same hereby are, taxed against defendants for which execution may issue.

Done and ordered this 18th day of December, 1981.

Gene Salebock
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 18 1981

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES E. KEITH,)
)
 Defendant.)

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

CIVIL ACTION NO. 81-C-714-B ✓

AGREED JUDGMENT

This matter comes on for consideration this 17th day
of Dec, 1981, the Plaintiff appearing by Frank Keating,
United States Attorney for the Northern District of Oklahoma,
through Don J. Guy, Assistant United States Attorney, and the
Defendant, James E. Keith, appearing pro se.

The Court, being fully advised and having examined the
file herein, finds that the Defendant, James E. Keith, was
personally served with Summons and Complaint on November 19,
1981. The Defendant has not filed his Answer but in lieu thereof
has agreed that he is indebted to the Plaintiff in the amount
alleged in the Complaint and that Judgment may accordingly be
entered against him in the amount of \$429.33, plus 12% interest
from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that
the Plaintiff have and recover Judgment against the Defendant,
James E. Keith, in the amount of \$429.33, plus 12% interest from
the date of this Judgment until paid.

Thomas L. Best
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

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

James E. Keith
JAMES E. KEITH

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

RAYMOND J. DONOVAN, Secretary)
of Labor, United States)
Department of Labor,)
)
Plaintiff,)
)
vs.)
)
McKISSICK PRODUCTS COMPANY and)
AMERICAN HOIST AND DERRICK)
COMPANY, d/b/a McKissick)
Products Division,)
)
Defendants.)

No. 77-C-485-C

FILED
DEC 18 1981

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

O R D E R

Now before the Court for its consideration is the motion of the plaintiff, pursuant to Rule 56 of the Federal Rules of Civil Procedure for a judgment prospectively enjoining the defendants from violating the provisions of the Fair Labor Standards Act of 1938, (hereinafter, the Act), as amended, 29 U.S.C. §201, et seq., and enjoining defendants from withholding payment of overtime compensation due their employees.

This is an action brought by the Secretary of Labor, alleging that defendants have failed to pay the overtime compensation required by the Act, Title 29 U.S.C. §207. The Secretary specifically contended that the two wage plans used by the defendants violated section 7(a) of the Act as a matter of law. The parties herein stipulated on May 1, 1978 in a pretrial order that there were only 3 contested issues of fact. One of these issues, whether defendants violated Section 7 of the Act, was decided by this Court in favor of plaintiff in a partial summary judgment on June 17, 1980. The two remaining issues in controversy involve the amount of overtime compensation due to the defendants' employees because of the illegal pay plan, and whether prior to November of 1974 defendants had been aware of the Act and the Act's requirements.

On June 20, 1979, the parties stipulated that payroll summaries prepared by Randy O'Neal of the Wage-Hour Division, Employment Standards Administration, United States Department of Labor, reflected the actual hours worked by the Maintenance employees and the amounts paid to such employees for these hours up to February, 1978. As to the period from February, 1978 to the present, Mr. O'Neal has submitted his arithmetical calculations as to total amount due with interest, based on defendants' records produced to plaintiff.

The pleadings, summaries, answers to interrogatories, admissions in the pretrial order, and the affidavit of Randy O'Neal show there is no genuine issue of fact and that plaintiff is entitled judgment as a matter of law. Overtime compensation is governed by Section 7a of the Act, which provides in pertinent part as follows:

No employer shall employ any of his employees
. . . for a workweek longer than 40 hours
unless such employee receives compensation
for his employment. . . at a rate of not less
than one and one-half times the regular rate
. . . .

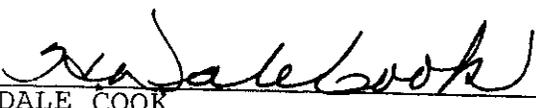
The proper method for computing the overtime due an employee is to divide the salary by the number of hours worked to determine a regular rate. One-half times this regular rate is then awarded for all hours in excess of 40. Overnight Motor Transportation Company v. Missel, 40 F.Supp. 174 (D.C.Ma, 1941), rev'd 126 F.2d 98, aff'd 316 U.S. 577, 62 S.Ct. 1216, 86 L.Ed. 1682 (1942); Triple AAA v. Wirtz, 378 F.2d 884 (10th Cir. 1967). This rule applies unless the employer can establish that he is entitled to a 7(f) or other exemption from this rule. See also 29 CFR §778.1, §778.108, §778.109, §778.403. The Court has already ruled that none of the exemptions to the Act apply to defendants. (See Order of June 17, 1980.)

As to the issue of the Statute of Limitations for recovery of overtime compensation due under the Act, it is clear that the three-year period for willful violations applies in this action.

The term "willful" includes voluntary as distinguished from accidental conduct, marked by careless disregard of the right to so act. U.S. v. Illinois Central Railroad Company, 303 U.S. 239, 58 S.Ct. 538 (1938). The deposition of Charles Lucas herein, and the provisions of the contracts in issue establish that defendants knew their actions were governed by the Act. If an employer knows or has reason to know that his actions are covered by the Act, violations of the Act must be considered as willful under §255 of Title 29. Marshall v. Georgia Southwestern College, 489 F.Supp. 1322 (D.C.Ga. 1980); Dunlop v. Zager, 529 F.2d 524 (6th Cir. 1975); Brennan v. Air Terminal Parking of Columbia, 498 F.2d 1397 (5th Cir. 1975).

It is therefore the judgment of the Court that plaintiff's motion for summary judgment should be and hereby is sustained; that the amount of compensation due to defendants' employees is to be calculated according to the method proposed by the plaintiff; and that the three-year Statute of Limitations for willful violation of the Act applies herein, requiring compensation to be calculated beginning with the date of November 21, 1974.

It is so Ordered this 18th day of December, 1981.


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

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

NORTHWEST BANK OF OKLAHOMA)
CITY, an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
BETTY SUE HINES, et al.,)
)
Defendants.)
)
UNITED STATES OF AMERICA,)
)
Plaintiff on)
Cross-Claim &)
Counterclaim,)
)
vs.)
)
BETTY SUE HINES, et al.,)
)
Defendants on)
Cross-Claim,)
)
and)
)
NORTHWEST BANK OF OKLAHOMA)
CITY, an Oklahoma)
corporation,)
)
Defendant on)
Counterclaim.)

No. 78-C-320-C

FILED
DEC 18 1981
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

It is the judgment of the Court that Leroy Dale Hines is the true and equitable owner of the property at issue herein, and Betty Sue Hines was merely his nominee. The assessments, liens, and judgment existing in favor of the United States are hereby confirmed, including unsatisfied liens for unpaid federal taxes in the amount of \$774,540.71, together with interest accrued and accruing thereon according to law, such liens attaching to all property and rights to property belonging to Leroy D. Hines and, specifically, to that piece of real estate (located within the jurisdiction of this Court) which is the subject matter of the plaintiff's petition herein, being further described as follows:

The West Half (W/2) of the North Half (N/2)
of the North Half (N/2) of the Northeast

Quarter (NE/4) of the Northeast Quarter
(NE/4) of Section thirty-three (33), Township
eighteen (18) North, Range Thirteen (13) East
of the Indian Base and Meridian, Tulsa
County, State of Oklahoma, according to the
United States Government Survey thereof.

Further, it is the judgment of this Court that the judgment and
tax liens described in the cross-claim and counter-claim of the
United States, and the attachments thereto, are superior to all
other claimants.

It is the further order of the Court that the proceeds of
the sale of the real estate described herein be distributed to
the United States in satisfaction of its rights and in accordance
with the findings of this Court.

It is so Ordered this 19th day of December, 1981.



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

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

FILED
DEC 18 1981

HENRY ANDERSEN OF TEXAS, INC.,)
)
Plaintiff,)
)
-vs-)
)
HASKELL LAVERNE FUGATE,)
)
Defendant.)

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

81-C-126-E

JOURNAL ENTRY OF JUDGMENT

THIS MATTER coming on for hearing before me, the undersigned Judge of the United States District Court for the Northern District of Oklahoma, on the Plaintiff's Motion for Default Judgment, this 4th day of December, 1981. The Plaintiff, Henry Andersen of Texas, Inc., appearing through its attorney of record, Gibbon, Gladd, Taylor, Smith & Hickman, and the Defendant appearing not.

The Court finds that the Defendant herein, Haskell Lavern Fugate, was properly served with summons on April 4, 1981, and that said Defendant has wholly failed to file his Entry of Appearance or in any way answer the complaint of the Plaintiff herein, and that said Defendant is therefore in default.

Having first examined sworn affidavits of Henry Andersen, President of Henry Andersen of Texas, Inc., and having been fully advised in the premises, the Court finds that the allegations of the Plaintiff's complaint are true.

The Court specifically finds that the Plaintiff is a corporation organized and existing under the laws of the State of Texas, and the Defendant is a citizen of Craig County, State of Oklahoma; that the amount in controversy exceeds the sum of \$10,000.00, and that the Court has jurisdiction of the parties hereto, and the subject matter herein.

The Court finds that on the 16th day of May, 1980, Plaintiff was the owner of a 1978 Peterbilt Diesel Tractor, and that said vehicle was being driven by the Plaintiff's employee in a southerly

direction on U.S. Highway 69 in Mayes County, Oklahoma. That the Plaintiff's vehicle was struck by a 1974 Chrysler Imperial automobile, owned and being driven in a northerly direction on Highway 69 by the Defendant. That said collision was solely and proximately caused by the negligence of the Defendant, Haskell Laverne Fugate.

The Court finds that as a direct and proximate result of the collision caused by the Defendant's negligence, the Plaintiff's 1978 Peterbilt Tractor sustained damage in the amount of \$8,027.14. That the Plaintiff's Tractor was rendered inoperable for a period of Fifty Three (53) days, and that the Plaintiff lost income in the amount of \$5,681.65, as a further result of the Defendant's negligence.

After being advised that the Plaintiff has no evidence to support its allegation that the Defendant was guilty of gross and wanton negligence, the Court finds that said Plaintiff is not entitled to punitive damages.

The Court finds that judgment should be entered on behalf of the Plaintiff, and against the Defendant, in the total sum of THIRTEEN THOUSAND SEVEN HUNDRED EIGHT DOLLARS AND SEVENTY-NINE CENTS (\$13,708.79).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, Henry Andersen of Texas, Inc., have and recover judgment against the Defendant, Haskell Laverne Fugate, in the sum of THIRTEEN THOUSAND SEVEN HUNDRED EIGHT DOLLARS AND SEVENTY-NINE CENTS (\$13,708.79), plus interest and the costs of the action.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF MAILING

A true and correct copy of the above and foregoing instrument has been mailed this _____ day of _____, 198__, with proper postage thereon fully prepaid, to:
Haskell L. Fugate
463 North 2nd
Vinita, Oklahoma 74301.

By: _____
Robert H. Taylor,
Attorney for Plaintiff

pt

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

FILED

DEC 18 1981

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

97

NO: 81-C-98-B ✓

JESSEE COBB, an Individual,)
)
Plaintiff,)
)
vs.)
)
REXNORD, INC., a foreign)
corporation)
)
Defendant,)

ORDER OF DISMISSAL

NOW, on this 18th day of December, 1981, upon review of the Stipulation for Dismissal jointly filed by the Parties herein, the Court finds that the above entitled cause of action should be dismissed without prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the above entitled cause of action be dismissed without prejudice to the filing of any future claim or cause of action.


UNITED STATES DISTRICT JUDGE

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

FILED
DEC 18 1981

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 PAUL D. RATLIFF,)
)
 Defendant.)

CIVIL ACTION NO. 81-C-206-B

O R D E R

For a good cause having been show, it is hereby
ordered, adjudged and decreed that the above-referenced action is
hereby dismissed without prejudice against the United States of
America.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

FILED

DEC 18 1981

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

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

RICHARD D. COX,)
)
 Plaintiff,)
)
 vs.)
)
 MEDLINE INDUSTRIES, INC., an)
 Illinois corporation, and)
 TRAVENOL LABORATORIES, INC.,)
 a Delaware corporation,)
)
 Defendants.)

Case No. 81-C-280-B ✓

ORDER OF DISMISSAL AS AGAINST THE
DEFENDANT TRAVENOL LABORATORIES, INC.
AND RELEASE OF REMOVAL BOND

This cause having come before me pursuant to the Joint Stipulation for Dismissal with Prejudice, and Joint Stipulation for Release of Removal Bond, between the plaintiff and the defendant, TRAVENOL LABORATORIES, INC., only, and the Court being fully advised in the premises, it is therefore,

ORDERED, ADJUDGED AND DECREED, that the Complaint herein, together with the causes of action as against the defendant, TRAVENOL LABORATORIES, INC., only, as set forth therein, be and hereby is dismissed with prejudice, with each party to bear its own costs.

IT IS FURTHER ORDERED, that the defendant TRAVENOL LABORATORIES, INC., be and hereby is released from its Removal Bond posted herein, and shall have no liability to plaintiff arising out of the removal of this action to this Court. The Clerk of the Court is hereby directed to return to said defendant its security posted in connection with such Removal Bond.

IT IS SO ORDERED this 17 day of December, 1981.


UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 18 1981

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
LLOYD E. CAUDILL,)
)
Defendant.)

CIVIL ACTION NO. 81-C-720-E

AGREED JUDGMENT

This matter comes on for consideration this 18th day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Philard L. Rounds, Jr., Assistant United States Attorney, and the Defendant, Lloyd E. Caudill, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Lloyd E. Caudill, was personally served with Summons and Complaint on November 23, 1981. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of \$543.33, plus 12% interest from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant, Lloyd E. Caudill, in the amount of \$543.33, plus 12% interest from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney


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


LLOYD E. CAUDILL

FILED
DEC 17 1981
Jack C. Silver, Clerk
U. S. DISTRICT COURT

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

SMITH BARNEY, HARRIS UPHAM & CO., INC.,
a Delaware Corporation,

Plaintiff,

vs.

CORPORATE MORTGAGE, INC.,
an Oklahoma Corporation,

Defendant.

)
)
)
)
)
)
)
)
)
)
)
)

81-C-435-BT

JUDGMENT

Pursuant to the Order entered this date, IT IS ORDERED
Judgment is entered in favor of Smith Barney, Harris Upham & Co.,
Inc., and against Corporate Mortgage, Inc., in the amount of
\$32,847.72, with interest at the rate of 12% from this date until
paid, and attorney fees and costs in the amount of \$1403.69.

ENTERED this 17th day of December, 1981.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

DEC 17 1981

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 81-C-725-E
)	
ROBERT L. NEWSON,)	
)	
Defendant.)	

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Philard L. Rounds, Jr., Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 17th day of December, 1981.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney


PHILARD L. ROUNDS, JR.
Assistant United States Attorney

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

IN RE:
IMPERIAL COAL COMPANY,
Debtor.

)
)
)
)
)

District Court Appeal
No. 81-C-252-G

FILED

DEC 17 1981

O R D E R

U. S. DISTRICT COURT

Now before the Court for its consideration is the appeal of the Imperial Coal Company, appellant, of a decision and order of the Bankruptcy Court of the Northern District of Oklahoma.

Appellant alleges that the court committed the following errors, which are sufficient to justify reversal of the trial court:

1. The trial court erred in its findings pursuant to F.R.C.P. 56(d) and by the subsequent shift of the burden of proof to appellant.

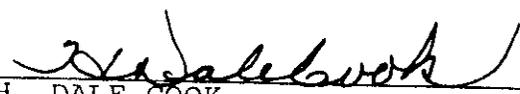
2. The trial court denied defendant's right to cross-examine witnesses.

3. The trial court erred in failing to sustain appellant's Motion to Dismiss made pursuant to F.R.C.P. 41(b).

Appellees contend that the Bankruptcy Court did not commit reversible error, and even if an error or errors were committed, appellant waived any error by rejecting the Bankruptcy Court's offer of continuance.

Under Rule 810 of the Bankruptcy Rules, this Court is required to accept the referee's findings of fact unless they are clearly erroneous. Zarate v. Baldwin, 578 F.2d 293 (10th Cir. 1978). The Court has reviewed the briefs and authorities herein, and finds nothing clearly erroneous in the decision of the bankruptcy court. Therefore, the order of the bankruptcy court herein is hereby affirmed.

It is so Ordered this 16th day of December, 1981.


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

FILED

DEC 17 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.)
)
 LLOYD G. LARKIN, II)
)
 Defendant.)

CIVIL ACTION NO. 81-C-623-E

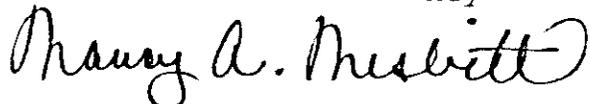
NOTICE OF DISMISSAL

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

Dated this 17th day of December, 1981.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney



NANCY A. NESBITT
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 17 1981

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 81-C-702-E
)	
DOROTHY J. BRITTON,)	
)	
Defendant.)	

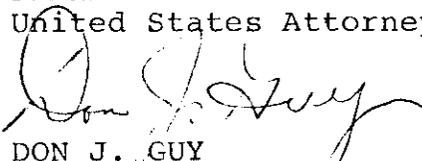
NOTICE OF DISMISSAL

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

Dated this 17th day of December, 1981.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney


DON J. GUY
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 16 1981

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
RALPH J. ESPINOZA,)
)
Defendant.)

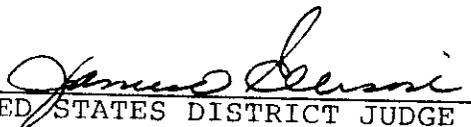
CIVIL ACTION NO. 81-C-703-E ✓

AGREED JUDGMENT

This matter comes on for consideration this 16TH day of December, 1981, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Don J. Guy, Assistant United States Attorney, and the Defendant, Ralph J. Espinoza, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Ralph J. Espinoza, was personally served with Summons and Complaint on November 20, 1981. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of \$730.57, plus 12% interest from the date of this Judgment-until paid.

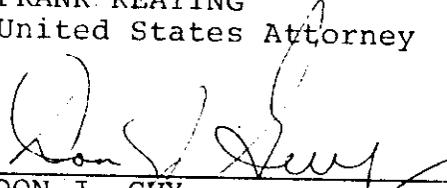
IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant, Ralph J. Espinoza, in the amount of \$730.57, plus 12% interest from the date of this Judgment until paid.

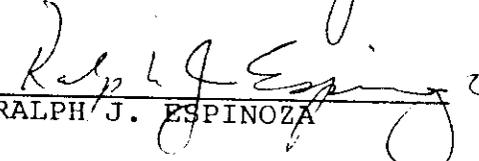

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney


DON J. GUY
Assistant U.S. Attorney


RALPH J. ESPINOZA

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 16 1981

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ROY L. SMITH,)
)
Defendant.)

CIVIL ACTION NO. 81-C-687-E ✓

AGREED JUDGMENT

This matter comes on for consideration this 16TH day of December 1981, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Don J. Guy, Assistant United States Attorney, and the Defendant, Roy L. Smith, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Roy L. Smith, was personally served with Summons and Complaint on November 24, 1981. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of \$671.00, plus 12% interest from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant, Roy L. Smith, in the amount of \$671.00, plus 12% interest from the date of this Judgment until paid.

James O. Ellison
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

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

Roy L. Smith
ROY L. SMITH

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION NO. 81-C-653-C
)
 Leonard L. Jones,)
)
 Defendant.)

NOTICE OF DISMISSAL

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

Dated this 14th day of December, 1981.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

Nancy A. Nesbitt

NANCY A. NESBITT
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION NO. 81-C-439-B
)
 Darlene Fern,)
)
 Defendant.)

NOTICE OF DISMISSAL

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

Dated this 14th day of December, 1981.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

Nancy A. Nesbitt

NANCY A. NESBITT
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION NO. 81-C-751-E
)
 Arlis Blanton,)
)
 Defendant.)

NOTICE OF DISMISSAL

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

Dated this 14th day of December, 1981.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

Nancy A. Nesbitt

NANCY A. NESBITT
Assistant United States Attorney

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

DEC 14 1981

U.S. District Court
U.S. District Court

MERRILL LYNCH, PIERCE,)
FENNER & SMITH, INC.,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
ROBERT R. PARRIS, an)
individual,)
)
Defendant.)

No. 80-C-299-E

ORDER OF DISMISSAL

Upon the Parties' Joint Stipulation for
Dismissal, and for good cause,

IT IS HEREBY ORDERED that the Plaintiff's
Complaint, the Defendant's Counterclaim (denominated
in this case as "Complaint"), and all claims for relief
that either the Plaintiff or the Defendant may have
against the other based upon or connected in any way
with the facts that are the subject matter of either
such Complaint or Counterclaim, be dismissed with
prejudice; and further that each side shall bear its
own costs and attorneys' fees.

DATED this 11th day of December, 1981.

United States District Judge

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

WARREN SPAHN, LEON HARDESTY,)
ELBRIDGE G. KING, MICHAEL W.)
CHAMPION, FRED E. KANT, VINCENT)
MATTORE, FRANK W. CHITWOOD,)
RICHARD BANKER, ROGER A. MICHAEL,)
MARVIN WILSON and)
TROY WILLIAMSON,)

Plaintiffs,)

v.)

ROSENTHAL COMMODITIES CO.,)
a partnership,)

Defendant and Third)
Party Plaintiff,)

v.)

LLOYD F. SMITH and)
ROBERT L. HUFFMAN,)

Third-Party)
Defendants.)

FILED
DEC 11 1981
Jack C. Silver, Clerk *js*
U. S. DISTRICT COURT

No. 79-C-66-B ✓

O R D E R

The matter presently before the Court for consideration concerns the dismissals of the plaintiffs, C. W. Kirby and Michael H. Treat. On his own motion, Michael H. Treat was dismissed as party-plaintiff without prejudice in this case on June 18, 1981. Through inadvertence, Treat subsequently appeared again as party-plaintiff in the caption of various pleadings. At the pre-trial conference held in this matter on November 16, 1981, counsel for plaintiffs, Joe Witherspoon, represented to the Court that Treat was no longer a party. Accordingly, it is appropriate for the Court to issue an order dismissing Michael H. Treat as of June 18, 1981 nunc pro tunc.

At the same pre-trial hearing on November 16, 1981, attorney Witherspoon also represented that C. W. Kirby was no longer a party-plaintiff, and accordingly, should be dismissed without prejudice as of that date.

IT IS THEREFORE ORDERED Michael H. Treat is dismissed as a party to this action without prejudice as of June 18, 1981, nunc pro tunc.

IT IS FURTHER ORDERED C. W. Kirby is dismissed as a party
to this action without prejudice as of November 16, 1981,
nunc pro tunc.

ENTERED this 10th day of December, 1981.

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

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

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

JOHN BAKER,)
)
 Plaintiff,)
)
 vs.)
)
)
 CUMMINS SALES & SERVICE, INC.,)
 a foreign corporation,)
)
 Defendant.)

FILED

DEC 11 1981

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

No. C-80-159-~~A~~E

JOURNAL ENTRY OF JUDGMENT

NOW on this 10th day of November, 1981, comes on to be heard the Motion of Defendant that it be awarded its reasonable attorney fees for the defense of this matter as the prevailing party. Plaintiff appears by and through his attorney of record, Allen Mitchell, of the law firm of Thompson & Mitchell, Sapulpa, Oklahoma. Defendant appears by and through its attorney, Walter D. Haskins, of the law firm of Best, Sharp, Thomas, Glass & Atkinson, Tulsa, Oklahoma.

WHEREUPON, the Court examines its file, the Briefs submitted by these parties, and further is well advised in the premises. The Court, upon consideration, finds that this was an action for breach of implied warranty and further that the Defendant was a prevailing party on the issue of breach of implied warranty. The Court finds that therefore Defendant's Motion that it be awarded its reasonable attorney fees in the defense of this action is and should be SUSTAINED, with exception granted to Plaintiff.

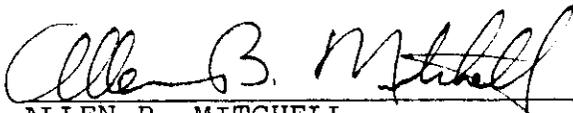
THEREUPON, the Court hears the evidence of Defendant as to its reasonable attorney fees. Defendant presents witnesses, and documentary evidence, and rests. Plaintiff presents no evidence or documentary materials. Upon consideration of the evidence, the Court finds that the amount of \$3,237.27 is a reasonable attorney fee to compensate Defendant for its legal expenses occurred in the defense of this action. Exception is granted to Plaintiff.

IT IS, THEREFORE, THE ORDER, JUDGMENT, AND DECREE of this Court that the Defendant have judgment against the Plaintiff in the amount of \$3,237.27 as its attorney fees expended in the defense of this action.



JUDGE JAMES O. ELLISON

APPROVED AS TO FORM:



ALLEN B. MITCHELL
Attorney for Plaintiff



WALTER D. HASKINS
Attorney for Defendant

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

FILED

DEC 10 1981

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

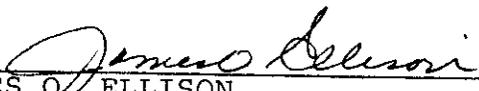
COCA-COLA BOTTLING COMPANY OF)
ELIZABETHTOWN, INC.,)
)
Plaintiff,)
)
vs.) No. 81-C-411-E
)
THE COCA-COLA COMPANY,)
)
Defendant.)

ORDER OF DISMISSAL

The Court has been notified by counsel of record that the limited purpose for which this case was brought has been satisfied. Accordingly, this case no longer needs to remain upon the Court's docket.

IT IS THEREFORE ORDERED that this action be, and hereby is, dismissed with prejudice but without prejudice to the right of either party to reinstate this matter, if necessary, on the Court's docket at any time within 90 days from the date of this Order.

It is so Ordered this 10th day of December, 1981.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

DEC 10 1981

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

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

THE NORTH AMERICAN MANUFACTURING COMPANY,

Plaintiff,

vs.

J-F THERMAL PRODUCTS, INC.

Defendant.

Case No. 81-C-179-E

JOURNAL ENTRY OF JUDGEMENT

NOW on this 13th day of November, 1981, there came on for hearing before the undersigned United States District Judge, pretrial hearing in the above-captioned matter.

The Plaintiff THE NORTH AMERICAN MANUFACTURING COMPANY appeared by its counsel Ralph Grabel and the Defendant J-F THERMAL PRODUCTS, INC., appeared by its counsel John R. Paul.

The Court having heard statement of counsel and being advised by counsel for the Defendant J-F THERMAL PRODUCTS, INC., that the Defendant does admit and confess that the allegations as contained in the Complaint filed by the Plaintiff THE NORTH AMERICAN MANUFACTURING COMPANY as being true and correct and that the said Defendant having no objection to an Order being issued by this Court granting a Judgement in favor of the Plaintiff.

The Court being fully advised in the premises and having considered the statement of counsel, finds that Judgement should be rendered in favor of the Plaintiff THE NORTH AMERICAN MANUFACTURING COMPANY against the Defendant J-F THERMAL PRODUCTS, INC.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the Plaintiff THE NORTH AMERICAN MANUFACTURING COMAPNY is hereby granted a Judgement against the Defendant J-F THERMAL PRODUCTS, INC., in the amount of \$11,842.08, principal plus interest at the rate of six percent (6%) from May 1, 1980 until day of Judgement and for interest at the rate of twelve percent (12%) per annum from the date of Judgement until paid, together with attorney

Law Office
RALPH GRABEL
Suite 625
Grabel-Wright Building
Tulsa, Oklahoma 74103
(318) 585-1227

fees of \$1,900.00, and for all costs of this action.

James J. O'Leary
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

THE NORTH AMERICAN MANUFACTURING COMPANY,
Plaintiff,

Ralph Grabel

By: _____
It's Attorney

J-F THERMAL PRODUCTS, INC.
Defendant

Charles E. Paul

By: _____
J-F THERMAL PRODUCTS, INC.
Defendant

John R. Paul
By: _____
It's Attorney

CERTIFICATE OF MAILING

I, Ralph Grabel, do hereby certify that on the _____ day of December, I mailed a true and correct copy of the above and foregoing Journal Entry of Judgement to Mr. John R. Paul, Attorney for Defendant, 6 East 5th, Suite 200, Tulsa, Oklahoma 74103, by U. S. Mail, with postage prepaid thereon.

RALPH GRABEL

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

DAVID O. NORVELL,)
)
 Plaintiff,)
)
 vs.)
)
 SYS MANUFACTURING CO., d/b/a)
 SYSTEMS MANUFACTURING CO., a)
 foreign corporation, and MORGAN)
 STAINES and GRACE N. STAINES,)
 CO-ADMINISTRATORS OF THE ESTATE)
 OF ROBERT STAINES, DECEASED;)
 P.H.E. HYDRAULICS, INC., a)
 foreign corporation; PRINCE)
 MANUFACTURING COMPANY, a foreign)
 corporation; BERT SIKLI; GEORGE)
 YEWELL; ED WICKENHEISER; DELCO)
 GRAVES; DAVID SYERS; ANTHES)
 INCORPORATED, a foreign corpora-)
 tion, and HIGH REACH MANUFACTURING)
 PRODUCTS COMPANY,)
)
 Defendants.)

No. 81-C-417-E
81-C-420-E
81-C-459-E
(Consolidated)

FILED
D. C. S. S. S.
JACK C. SIMS, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration Plaintiff's motion to consolidate and Plaintiff's motion to remand. For the sake of clarity, the Court finds it necessary to detail the procedural history of this litigation.

Plaintiff initiated this products liability action in the District Court of Creek County, Oklahoma, on December 20, 1979. The original petition named "Systems Manufacturing Co." as the sole defendant. On March 13, 1980, Plaintiff filed an amended petition in the state court. The amended petition differed in no manner except that it redesignated the Defendant as "SYS Manufacturing Co." On March 25, 1980, SYS filed a petition for removal to this Court (case no. 80-C-154). Plaintiff's motion to remand was sustained by this Court on November 17, 1980, on the ground that the petition for removal filed by SYS was untimely. On July 15, 1981, Plaintiff filed a second amended complaint in state court joining ten additional defendants. On July 17, 1981, Plaintiff filed an amendment to the second amended petition, adding an additional party defendant.

On August 14, 1981, Defendant Anthes filed its petition for removal in case no. 81-C-417. On that same date, Defendants SYS, Staines, Yewell, Sikli, Wickenheiser, Graves and Syers also filed a petition for removal in case no. 81-C-420. On September 2, Defendant P.H.E. Hydraul-

lics, Inc. filed another petition for removal, in case no. 81-C-459. Defendant Prince joined in this latter petition.

Plaintiff has moved the Court to consolidate cases 81-C-417, 81-C-420 and 81-C-459, for what are obvious reasons. It is apparent that all three of these cases attempt removal of the same underlying case. Under the circumstances, the Court will order the consolidation of cases 81-C-417, 81-C-420 and 81-C-459, pursuant to Fed.R.Civ.P. 42(a).

Turning now to Plaintiff's motion to remand, the Court has carefully reviewed the briefs filed by the parties in connection with this motion. Plaintiff contends that Defendants' removal of this action was improper since all Defendants could not join in the petition for removal, as required by 28 U.S.C. § 1441(a), due to Defendant SYS' failure to timely petition for removal at the outset of this litigation. Plaintiff further alleges that the amendment of his petition in state court on July 15, 1981, did not make this case removable by reviving the removal period, as contemplated in 28 U.S.C. § 1446(b).

Defendants allege that Plaintiff's July 15, 1981 amendment entitled them to remove the case to federal court pursuant to 28 U.S.C. § 1446(b). In the alternative, Defendants assert that this case was properly removed pursuant to 28 U.S.C. § 1441(c), since Plaintiff's amended complaint states separate, removable and independent claims against Defendants Anthes and High Reach.

Title 28, § 1446(b) provides the following:

The petition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

Defendants contend that this case meets the requirements for re-

removal under § 1446(b) set forth by the Tenth Circuit in O'Bryan v. Chandler, 496 F.2d 403 (Tenth Cir. 1974), cert. denied, 419 U.S. 986 (1974), reh. denied, 420 U.S. 913 (1975). A careful reading of the O'Bryan case, however, shows otherwise. In O'Bryan, the Tenth Circuit established the requirements to be met before removal is proper under § 1446(b):

To come within the perimeters of § 1446(b), the amendment of the state court complaint must be one that makes the case removable at the time of the amendment, when the original state court petition did not state a removable action. ...

The cases develop the following principles to be applied in determining the granting of a second petition to remove. First, the plaintiff must voluntarily amend his state court complaint after an order of remand has been entered. ... Second, the voluntary action of the plaintiff in amending his state complaint must set forth a ground for removal that appears for the first time. ...

These cases, therefore, hold that a different ground for removal must be alleged in the second petition that was not alleged in the first petition. For example, if the plaintiff adds or dismisses a party to his state action after the remand and creates diversity of citizenship, a defendant may remove the action for the second time. The federal court then again may determine whether diversity exists so as to grant the second removal petition. ... Similarly, if the plaintiff amends his state court petition to exceed the federal jurisdictional amount ... the federal court can determine whether the second petition to remove should be granted.

O'Bryan v. Chandler, supra, at 409-410.

In the case at bar, Plaintiff's original state court complaint was, in fact, removable, as this Court so held in case no. 80-C-154. In addition, the "ground for removal" which is involved here, diversity of citizenship, does not "appear for the first time" after Plaintiff's amendment of his complaint. Diversity has existed in this case since the inception of the litigation in Creek County in December of 1979. The O'Bryan case, in the opinion of this Court, in no way lends support to Defendants' arguments.

Although the literal language of § 1446(b) and the Tenth Circuit's opinion in O'Bryan, supra, would seem to preclude removal of an

amended claim more than thirty days after the filing of the state court action which was itself originally removable, there is authority for the proposition that if the state court amendment substantially changes the nature of the litigation, removal may be proper. Henderson v. Midwest Refining Co., 43 F.2d 23, 25 (Tenth Cir. 1930); Cox v. Gatliff Coal Co., 52 F.Supp. 482, 484 (E.D. Ky. 1943); Adams v. Western Steel Buildings, Inc., 296 F.Supp. 759, 761 (D. Colo. 1969); Dow Corning Corp. v. Schpak, 65 F.R.D. 72, 74 (N.D. Ill. 1974). The question is whether the alteration has "so changed the character of the litigation as to make it substantially a new suit begun that day." Fletcher v. Hamlet, 116 U.S. 408, 410 (1886).

Assuming, without deciding, that removal could be properly effected under § 1446(b) under those enumerated circumstances, Defendants in the case at bar would still be unable to properly remove under this section. Plaintiff's July 15, 1981 amendment, which added ten additional party defendants based upon their relationships with Defendant SYS, did not change the essential character of the litigation. The amendment merely expanded the field of those who might ultimately be held liable in Plaintiff's products liability suit.

Defendants cite Vincent v. Small Business Administration, 402 F.2d 769 (Fourth Cir. 1968) and Emery v. Chicago, B. & Q.R.Co., 119 F.Supp. 654 (S.D. Iowa 1954) as authority for their position that Plaintiff's July 15, 1981 amendment in the case at bar allows removal under § 1446(b). The Court has examined those particular cases and finds that the original complaints prior to amendment in both cases were nonremovable at the outset of the litigation. Those cases are clearly distinguishable from the facts of the present situation. The Court finds that the belated addition of additional party defendants by Plaintiff on July 15 and 17, 1981, did not revive the right to remove or create any new removal rights under 28 U.S.C. § 1446(b). Crocker v. A. B. Chance Co., 270 F.Supp. 618 (S.D. Fla. 1967); Miles v. Starks, 440 F.Supp. 947 (N.D. Tex. 1977).

Defendants further contend, arguing in the alternative, that removal is proper here under the provisions of 28 U.S.C. § 1441(c). The Court has carefully reviewed the applicable law and finds Defendants' argument to be totally without merit.

Section 1441(c) provides:

Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

The leading case interpreting § 1441(c) is American Fire & Casualty Co. v. Finn, 341 U.S. 6 (1951). In that case, the Supreme Court made the following observations:

[W]here there is a single wrong to Plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no separate and independent claim or cause of action under § 1441(c).

Id. at 9. The Supreme Court stated, quoting from Baltimore S. S. Co. v. Phillips, 274 U.S. 316, 321 (1927), that "a cause of action does not consist of facts, but of the unlawful violation of a right which the facts show." American Fire & Casualty Co. v. Finn, supra, at 13.

In Climax Chemical Co. v. C. F. Braun & Co., 370 F.2d 616 (Tenth Cir. 1966), the Tenth Circuit, interpreting the American Fire & Casualty Co. case, stated that § 1441(c) requires "substantive separability and no more." Climax Chemical Co., supra, at 619. In an earlier case, which involved application of § 1441(c), the Tenth Circuit stated that:

The word "separate" means distinct; apart from; not united or associated. The word "independent" means not resting on something else for support; self-sustaining; not contingent or conditioned.

Snow v. Powell, 189 F.2d 172, 174 (Tenth Cir. 1951). See also Gray v. New Mexico Military Institute, 249 F.2d 28, 32 (Tenth Cir. 1957).

The Tenth Circuit has, in addition, recognized that § 1441(c) was intended to restrict and not enlarge removal rights. Greenshields v. Warren Petroleum Corp., 248 F.2d 61, 65 (Tenth Cir. 1957).

Applying these rules to the amended complaint filed by Plaintiff on July 15, 1981, it is clear to the Court that a careful reading of that complaint shows that Plaintiff seeks recovery for a single wrong-

the damages he has allegedly suffered as a result of the allegedly defective product manufactured and designed by Defendants. Plaintiff's attempt to recover from Defendants Anthes and High Reach is not predicated upon a different "wrong." The liability of Anthes and High Reach is contingent upon the potential liability of the other Defendants. Plaintiff's claim against Anthes and High Reach, under the applicable law, is neither "separate" nor "independent" from the claims asserted against the other Defendants.

Even if two separate and independent causes of action existed here, which is not the case, it is clear to this Court that removal under § 1441(c) could not be maintained. Section 1441(c) by its own language cannot be utilized unless a separate, non-removable cause of action is joined with the claim sought to be removed. The so-called "separate" claim against Defendants SYS, Staines, P.H.E., Prince, Sikli, Yewell, Wickenheiser, Graves and Syers could hardly be described as "otherwise non-removable." Complete diversity exists and has existed in the entire lawsuit since its inception. Section 1441(c) was never intended to be applied to a situation where a defendant has waived (willingly or otherwise) its right to remove pursuant to § 1441(a). See American Fire & Casualty Co. v. Finn, supra. Since these cases were improperly removed, they must be remanded, pursuant to 28 U.S.C. § 1447(c).

Plaintiff has asked the Court to grant him costs, including attorney's fees, for Defendants' improvident removal of this case from the Creek County District Court. The Court finds, under the circumstances, that pursuant to 28 U.S.C. § 1447(c), Plaintiff is entitled to "just costs." The Court declines to award attorney's fees, however, since it has not been established that Defendants acted in bad faith in removing after Plaintiff's July 15, 1981 amendment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that cases no. 81-C-417, 81-C-420 and 81-C-459 are hereby consolidated by this Court.

IT IS FURTHER ORDERED that Plaintiff's motion to remand should be and the same is hereby granted. The Clerk is directed to effect the remand of these consolidated cases to the Creek County District Court.

IT IS FURTHER ORDERED that Plaintiff be awarded costs in ac-

cordance with this opinion.

It is so Ordered this 10th day of December, 1981.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED
DEC 10 1981
Jack C. Silver, Clerk
U. S. DISTRICT COURT

DONNA FURBECK, Administratrix)
of the Estate of Harold)
Furbeck, Deceased,)
Plaintiff,)
v.)
FIBREBOARD CORPORATION,)
et al.,)
Defendants.)

No. 79-C-617-BT

MOTION TO DISMISS

Plaintiff, Donna Furbeck, respectfully shows the Court that plaintiff and defendant, Owens-Illinois, Inc., have agreed to and reached a settlement herein and therefore moves the Court to dismiss this action with prejudice as to defendant, Owens-Illinois, Inc.

Dated this 16 day of November, 1981.

FILED

DEC 10 1981

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

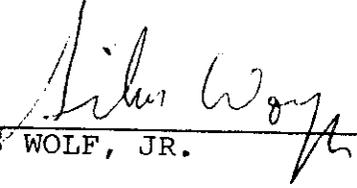
Donna Furbeck
DONNA FURBECK, Administratrix of
the Estate of Harold Furbeck,
Deceased

ORDER OF DISMISSAL

On this 10th day of December, 1981, the above styled and numbered cause comes on for hearing before the undersigned Judge of the United States District Court in and for the Northern District of Oklahoma, upon plaintiff's Motion to Dismiss the defendant, Owens-Illinois, Inc., and the Court having examined the pleadings and being fully advised in the premises, IT IS ORDERED that the above entitled cause be and the same is hereby dismissed with prejudice to any future action against defendant, Owens-Illinois, Inc.

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

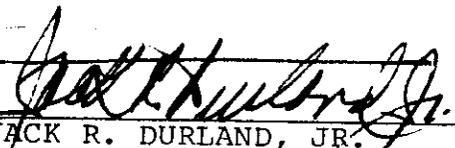
APPROVED:



SILAS WOLF, JR.

WOLF & WOLF
111 North Peters
550 Commerce Building
Norman, Oklahoma 73069

ATTORNEYS FOR PLAINTIFF



JACK R. DURLAND, JR.

CROWE & DUNLEVY
20 North Broadway
1800 Mid-America Tower
Oklahoma City, Oklahoma 73102

ATTORNEYS FOR DEFENDANT,
OWENS-ILLINOIS, INC.

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

BRUCE H. HARLTON, JR.,)
)
 Plaintiff,)
)
 vs.) No. 81-C-469-E
)
 SECRETARY OF THE UNITED STATES)
 TREASURY AND THE INTERNAL REVENUE)
 SERVICE,)
)
 Defendants.)

FILED
DICKSON
Jack C. Silver Clerk
U. S. DISTRICT COURT

ORDER

The Court has before it for consideration Defendants' motion to dismiss. Plaintiff, Bruce H. Harlton, Jr., owes unpaid federal income taxes in an as yet undetermined amount. Plaintiff tendered, in partial payment of his taxes, an assignment of a judgment he holds against the United States Air Force. The Internal Revenue Service refused to accept Plaintiff's tender. Plaintiff seeks in this action a declaratory judgment requiring the Internal Revenue Service to accept the tender and an injunction against any collection activities by the Internal Revenue Service.

After a careful review of the applicable law, the Court finds that this action must be dismissed. Pursuant to the terms of 26 U.S.C. § 7421(a) and 28 U.S.C. § 2201, this Court lacks jurisdiction over the subject matter of this action.

Section 7421(a) provides in applicable part:

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

Section 2201 provides in applicable part:

In a case of actual controversy within its jurisdiction, except with respect to federal taxes ... any court of the United States upon the filing of an appropriate pleading may declare the rights and other legal relations of any interested party seeking such declaration, whether or not relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. [emphasis added].

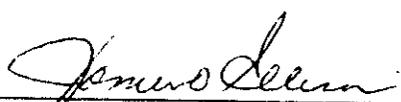
These statutes, by their very terms, prohibit Plaintiff from using this suit as a vehicle to force the government to accept his

tender of judgment in payment of the taxes he owes to the government. Calafut v. Commissioner, 277 F.Supp. 267, 268 (N.D. Penn. 1967).

The Court recognizes that there is a judicially created exception to § 7421(a). The literal terms of § 7421(a) can only be avoided, however, upon Plaintiff's proof of two factors: (1) Plaintiff will suffer irreparable injury unless the suit is maintained and (2) Plaintiff is certain to succeed on the merits of his claim. Enochs v. Williams Packing and Navigation Co., 370 U.S. 8 (1962); Bob Jones University v. Simon, 416 U.S. 736 (1974); Commissioner v. Shapiro, 424 U.S. 614 (1976); Blech v. United States, 595 F.2d 462 (Ninth Cir. 1979); McCabe v. Alexander, 566 F.2d 963 (Fifth Cir. 1976); Smalldone v. Kurtz, 450 F.Supp. 1138 (D.C.C. 1978). Plaintiff in the case at bar has failed to demonstrate that his case falls within this narrow exception. Accordingly, Plaintiff's action must be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' motion to dismiss should be and the same is hereby granted.

It is so Ordered this 10th day of December, 1981.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 10 1981

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

AMERICAN CAN COMPANY,)
)
Plaintiff,)
)
vs.)
)
JACK N. STOOPS,)
)
Defendant.)

No. 80-C-59-BT

J U D G M E N T

In accordance with the Findings of Fact and Conclusions of Law filed herein this 10th day of December, 1981, judgment is hereby entered in favor of the defendant, Jack N. Stoops, and against the plaintiff, American Can Company, with the costs of the action to be assessed against the plaintiff. The issue of the defendant's request for attorney fees remains for further consideration by the Court.

DATED this 10th day of December, 1981.



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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 10 1981

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID L. SADLER,)
)
 Defendant.)

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

CIVIL ACTION NO. 81-C-564-B

AGREED JUDGMENT

This matter comes on for consideration this 10th day
of December, 1981, the Plaintiff appearing by Frank Keating,
United States Attorney for the Northern District of Oklahoma,
through Nancy A. Nesbitt, Assistant United States Attorney, and
the Defendant, David L. Sadler, appearing pro se.

The Court, being fully advised and having examined the
file herein, finds that the Defendant, David L. Sadler, was
personally served with Summons and Complaint on October 21, 1981.
The Defendant has not filed his Answer but in lieu thereof has
agreed that he is indebted to the Plaintiff in the amount alleged
in the Complaint and that Judgment may accordingly be entered
against him in the amount of \$2,567.03, plus 12% interest from
the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that
the Plaintiff have and recover Judgment against the Defendant,
David L. Sadler, in the amount of \$2,567.03, plus 12% interest
from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney


NANCY A. NESBITT
Assistant U.S. Attorney


DAVID L. SADLER

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

FILED

DEC

LOCK C. SHAW
U. S. DISTRICT COURT

NOBLE LEE BANKS, JR.,)
)
Plaintiff,)
)
vs.)
)
MISSOURI PACIFIC RAILROAD COMPANY,)
)
Defendant.)

No. 80-C-723

ORDER FOR DISMISSAL

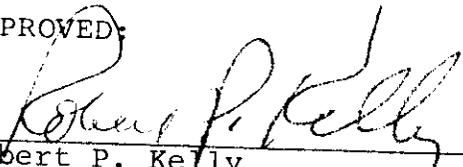
Now on this 9^m day of Dec., 1981, this matter coming on before me, the undersigned Judge of the United States District Court for the Northern District of Oklahoma, upon the parties' stipulation and agreement that the Court enter an Order of Dismall with Prejudice, the Court finds that the Order of Dismissal with Prejudice should be granted.

The Court further finds that the parties hereto have settled their differences and that the defendant has, without the admission of any fault, and in a spirit of compromise, agreed to pay certain sums to plaintiff in compromise and settlement of this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this action be, and the same is hereby, dismissed with prejudice to the bringing of any further cause of action against the defendant by this plaintiff.


UNITED STATES DISTRICT JUDGE

APPROVED:


Robert P. Kelly
Attorney for Plaintiff


Tom L. Armstrong
Attorney for Defendant

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

F I L E D

DEC - 9 1981

pt

F.L.I., INC. d/b/a)
JOHN'S FURNITURE FACTORY)
)
Plaintiff,)
)
v.)
)
INTERNATIONAL BUSINESS)
MACHINES CORPORATION)
)
Defendant.)

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

CASE NO. 80-C-156-E ✓

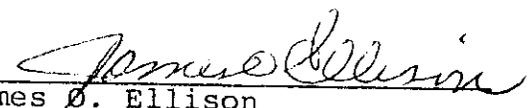
ORDER OF DISMISSAL

Now, on this 9 day of December, 1981,
upon the stipulation of the parties here for dismissal of the
complaint of the plaintiff, F.L.I., Inc. d/b/a John's Furniture
Factory, and of the counterclaim of the defendant, International
Business Machines Corporation, Inc., each to be with prejudice
to the filing of a future action;

IT IS ORDERED, ADJUDGED, AND DECREED that the complaint
of the plaintiff, F.L.I., Inc. d/b/a John's Furniture Factory, is
dismissed, with prejudice to the filing of a future action.

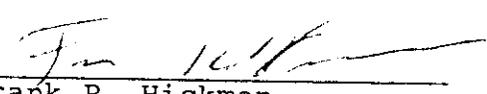
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
counterclaim of the defendant, International Business Machines
Corporation, Inc., is dismissed, with prejudice to the filing of
a future action.

DATED this 9 day of December, 1981.

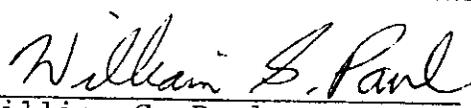

James O. Ellison
UNITED STATES DISTRICT JUDGE

APPROVED AND AGREED TO:

F.L.I., INC. d/b/a JOHN'S FURNITURE FACTORY

By: 
Frank R. Hickman
1419 South Denver; Tulsa, Oklahoma 74119
Attorney for Plaintiff

INTERNATIONAL BUSINESS MACHINES CORPORATION, INC.

By: 
William G. Paul
Of the Firm:
CROWE & DUNLEVY
1800 Mid-America Tower
20 North Broadway; Oklahoma City, Oklahoma 73102
Attorney for Defendant

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

FILED

HOWARD JONES and DORIS JONES,)
)
 Plaintiff,)
)
 vs.)
)
 C. L. PARKER ENTERPRISES, INC.,)
)
 Defendant.)

DEC - 9 1981

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

No. 81-C-253-B

ORDER OF DISMISSAL

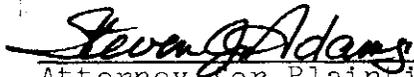
ON This 9th day of December, 1981, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and Counterclaim and all causes of action, the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and Counterclaim and have requested the Court to dismiss said Complaint and Counterclaim with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint and Counterclaim should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and Counterclaim and all causes of action of the plaintiffs and/or the defendant, filed herein be and the same hereby are dismissed with prejudice to any future action.

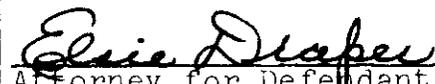

JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

STEVEN J. ADAMS


Attorney for Plaintiffs

ELSIE DRAPER


Attorney for Defendant

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

SUSAN DOWNIE, an Individual,)
)
Plaintiff,)
)
vs.)
)
G.W. "Dub" JILES, an)
Individual, JICO EXPLORATION,)
INC., JICO, INC., A. C.)
CANTRELL, an Individual and)
H. D. SAULS, an Individual,)
)
Defendants.)

No. 81-C-701-E

FILED

U.S. DISTRICT COURT
TULSA, OKLAHOMA
DEC 11 1981

NOTICE OF DISMISSAL

Plaintiff herein voluntarily dismisses the above
entitled action.

SNEED, LANG, ADAMS,
HAMILTON, DOWNIE & BARNETT

By Melinda J. Martin
Melinda J. Martin
Sixth Floor
114 East Eighth Street
Tulsa, Oklahoma 74119
(918) 583-3145
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF MAILING

I, Melinda J. Martin, do hereby certify that on
the 7th day of December, 1981, I mailed a true and correct
copy of the above and foregoing instrument, with proper
postage thereon prepaid, to:

A.C. Cantrell
H.D. Sauls
G.W. "Dub" Jiles
Jico, Inc.
3000 Foundation Building
Oklahoma City, Oklahoma 73112

and

Barth P. Walker, Esq.
Registered agent for Jico Exploration, Inc.
950 National Foundation Life Building
Oklahoma City, Oklahoma 73112

Melinda J. Martin
Melinda J. Martin

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

BRAZZYER PADILLOW,)
)
 Plaintiff,)
)
 vs.)
)
 C. C. CHESNUT, et al.,)
)
 Defendants.)

No. 81-C-18-C ✓

FILED

DEC-8 *hm*

ORDER

U.S. DISTRICT COURT

Now before the Court for its consideration is defendants' Motion for Summary Judgment. The present action was filed by the plaintiff to recover monetary relief for alleged violations of his civil rights under 42 U.S.C. §1983. The Court also notes that the plaintiff is presumably asking this Court to issue a writ of habeas corpus that would release him from the custody of the Oklahoma prison authorities. The Court makes that determination from a careful reading of plaintiff's requested relief. Plaintiff's request for relief states in part, "I ask this Honorable court . . . order the Oklahoma Parole Board to Honor my Parole. . . ." The Court takes this to mean that the plaintiff is requesting immediate release from the Oklahoma State Penitentiary at McAlester, Oklahoma. The Court has carefully reviewed the pleadings, affidavits and exhibits in this case and has determined that the defendants' Motion for Summary Judgment should be granted and that plaintiff's apparent request for issuance of a writ of habeas corpus should be denied.

In plaintiff's initial complaint he alleged that he was denied "due process of law" because he was not allowed to personally appear before the Oklahoma Pardon and Parole Board (hereafter referred to as the Board) in July and August of 1980. After the defendants had filed an answer to plaintiff's complaint denying that plaintiff has any constitutionally protected right

to so personally appear the plaintiff filed what he labeled a "Response to Defendants' answer. In construing pleadings liberally in favor of a pro se civil rights litigant this Court will treat plaintiff's response as an amended complaint. See Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). In plaintiff's response he alleges that an unknown member of the Board made a racial remark as the plaintiff was leaving his personal interview before the Board. The alleged statement is "we've turned too many Blacks loose on Parole already, and he's Black, so we'll deny his Parole." The Court will first discuss the alleged failure of the Board to allow the plaintiff a personal appearance and then discuss the consequences of the alleged racial remark.

Plaintiff alleges in his initial complaint that he was denied a personal appearance before the Board in both July and August of 1980. However, an exhibit filed with this Court by the plaintiff himself clearly shows that the plaintiff was allowed a personal appearance before the Board in July of 1980. This exhibit is attached both to the original complaint and plaintiff's Pretrial Memo, as exhibit J, filed on June 25, 1981. Exhibit J is a memorandum letter dated October 6, 1980 from Betsy Pain, a staff interviewer with the Board, to the plaintiff. The letter states:

In answer to your request, I have ascertained that you were considered at the August, 1980, meeting as a Level IV Jacket Review. You personally appeared at the July meeting, and the Board voted to pass your case pending receipt of additional information. Therefore, there was no need for the Board to interview you again. Since the meeting was not at OSP in August, you could not have been interviewed anyway. A copy of the criteria for your type of jacket review is marked on the attached (sic).

Plaintiff apparently now admits that he personally appeared at the July meeting in that his response to defendants' answer contains the allegation of a racial remark at the plaintiff's first interview before the Board.

In the case of Shirley v. Chestnut, 603 F.2d 805 (10th Cir. 1979) it was held that the Oklahoma statutory scheme regarding parole does no more than create a parole system and that such system does not establish a liberty interest, which would call into play specific due process procedures. In Shirley it was acknowledged that according to the Board rules inmates are entitled to a hearing before the Board. However, the Court can find no statute and it has been provided with no Board rule, from either the defendant or the plaintiff, which requires a personal appearance hearing each time an inmate is considered for parole. In fact, in the present action, the Court concludes that the August 1980 "jacket review" was merely a continuation of the July 1980 review, at which time the plaintiff was afforded a personal appearance. It is, therefore, determined by the Court that any constitutionally protected right the plaintiff may have had to personally appear before the Board was satisfied by his appearance at the July 1980 Board meeting.

In the case of Candelria v. Griffin, 641 F.2d 868 (10th Cir. 1981) the Tenth Circuit Court of Appeals had before it a similar situation to the one presently before this Court involving alleged racial motivation in parole decisions. In Candelaria, the plaintiff claimed, among other things, that his parole possibilities were substantially prejudiced because of his race. The plaintiff was Hispanic. The Court of Appeals held that such an allegation is not frivolous on its face and remanded to the trial court so that the racial claim could be adequately considered. The Court of Appeals, however, closed its opinion by noting that even if a claim is not frivolous it still may be dismissed by the utilization of proper summary procedures. The Court has determined that the record before this Court indicates that a writ of habeas corpus cannot issue and defendant's motion for summary judgment should be granted.

As shown by the documents attached to the Supplemental

Attachment to Defendants' Motion for Summary Judgment the plaintiff was denied parole by the Board by a five to zero vote. The Court, therefore, concludes that even if the racial remark was made, as the plaintiff alleges, by one of the Board members and this unknown Board member's reasons for denying parole were racially motivated a changing of this unknown Board member's vote to "yes" would not have changed the outcome of the parole proceeding. The plaintiff still would have been denied parole recommendation by a four to one vote. Plaintiff's own exhibit attached to both the complaint and his Pretrial Memo, exhibit G, make it clear that three (3) affirmative votes are necessary in order for the Board to recommend parole to the Governor of Oklahoma. The Governor cannot act unless he is presented with a favorable recommendation from the Board. See Shirley, supra, at 807. Exhibit G is a letter to the plaintiff from Ms. Linda Eddings, plaintiff's case manager at Oklahoma State Penitentiary. The Court, therefore, determines that the plaintiff's request for issuance of a writ of habeas corpus should be denied.

In relation to the Section 1983 claim for damages this Court is convinced that the plaintiff has suffered no compensable damage as a result of the alleged racial remark. Plaintiff has no right to be released on parole. See Phillips v. Williams, 608 P.2d 1131 (Okla. 1980). Even if the racial remark were never made, the plaintiff would still be incarcerated in the Oklahoma prison system. The Court would also note that all five Board members have submitted affidavits denying any such racial remark was made at the July meeting. On the present record and being fully advised in the premises, this Court has determined that defendants' motion for summary judgment should also be granted.

It is, therefore, the Order of this Court that the plaintiff's apparent request for issuance of a writ of habeas corpus is denied.

It is the further Order of this Court that defendants'

motion for summary judgment should be and is granted.

It is so Ordered this 8th day of December ~~November~~, 1981.


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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC - 6 1981 *hm*

U. S. DISTRICT COURT

SHOWTIME MARKETING, INC.

Plaintiff,

-against-

VARIOUS JOHN DOES, JANE DOES
and ABC COMPANY,

Defendants.
_____X

DEFAULT JUDGMENT
PERMANENT INJUNCTION
AND ORDER OF DISPO-
SITION AND SEIZURE
81 C 183 CV

Plaintiff, having moved by Order to Show Cause for a preliminary injunction enjoining and restraining the defendants from manufacturing, selling and distributing clothing and other merchandise bearing the name and trademark Rush and/or likenesses of members of the group Rush and ordering the seizure and impounding of such articles; and a hearing having been held on April 30, 1981, before Honorable H. Dale Cook, Chief U.S. District Judge; and Jules D. Zalon, Esq. appearing on behalf of the plaintiff and no one having appeared in opposition; and a preliminary injunction having been issued on April 30, 1981, and the defendants not having thereafter appeared, answered or moved with respect to the Complaint and the time for appearing, answering or moving with respect thereto having expired,

Now, on motion of Jules D. Zalon, attorney for plaintiff,

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the plaintiff have judgment against the defendants and that the defendants and each of them and various John Does and other unidentified persons and corporations acting in concert with said defendants, and their agents, servants, employees, successors and assigns are permanently enjoined and restrained from

- (a) using the name or trademark Rush, or the likenesses of members of the group Rush, or any colorable imitation thereof on or in connection with the advertising, sale, distribution or offering for sale of any merchandise;
- (b) manufacturing, distributing, selling or holding for sale any articles identified in paragraph (a) bearing or otherwise using the name or trademark Rush, or the likenesses of members of the group Rush;
- (c) filling any order which specifies any merchandise identified in paragraphs (a) or (b) above, or representing in any manner to any party that any of the defendants are a source of Rush merchandise;
- (d) inducing or encouraging any third party to use the

name or trademark Rush or likenesses of members of the group on or in connection with the sale, offering for sale, distribution or advertising of any merchandise;

- (e) aiding, abetting, encouraging or inducing another to do any of the acts herein enjoined;

AND IT IS FURTHER ORDERED that all infringing items heretofore or hereafter seized pursuant hereto are to be delivered up to the plaintiff for destruction or other disposition;

AND IT IS FURTHER ORDERED that the U.S. Marshal(s) for any district in which plaintiff enforced this order, Jules D. Zalon, Esq., Michael McLoughlin, and persons acting under their supervision are hereby directed, and the appropriate local and state police are hereby authorized and requested to seize and impound, wherever found, any and all infringing and imitation Rush merchandise which the defendants, their agents, servants, employees, attorneys, successors and assigns, and all persons, firms and corporations acting in concert with said defendants, may hereafter manufacture, distribute, sell or hold for sale, including any carton, container, vessel or other means of carriage in which said merchandise is found, and deliver the same up to the plaintiff for destruction or other disposition; and to serve a copy of this Order and the complaint upon which it is based upon such person(s) at the time such seizure is effected. All clothing, jewelry, posters, photographs and other merchandise bearing the name and trademark Rush or likenesses of the members of the group Rush, sold or held for sale in the vicinity of any Rush concerts, or elsewhere where such merchandise is being sold, held for sale or otherwise found, shall be considered to be infringing articles subject to the provisions of this Order.

Dated: Tulsa, Oklahoma

December 8, 1981



H. Dale Cook
Chief United States District Judge

TFB:slb
10/23/81

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

LOCAL UNION 584 INTERNATIONAL BROTHERHOOD)
OF ELECTRICAL WORKERS, AFL-CIO,)
a labor organization, VIRGINIA BEEKMAN)
and CLIFFORD EDGAR,)

Plaintiffs,)

vs.)

GOULD INC., SWITCHGEAR DIVISION,)

Defendant.)

DEC - 8 1981

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

NO. 77-C-337-C

ORDER SUSTAINING MOTION TO RECONSIDER AND
GRANTING PLAINTIFFS' APPLICATION TO DISMISS
AND GRANTING DEFENDANT'S APPLICATION TO DISMISS

COMES NOW, before me, the undersigned Judge of the United States District Court, and after having reviewed pleadings and briefs on file, having heard argument of counsel, and having fully considered the matter, the Court finds that the Plaintiffs' Motion to Reconsider the Court's Findings of Fact and Conclusions of Law previously entered herein on the 29th day of July, 1980, should be sustained, and the Findings of Fact and Conclusions of Law previously entered herein on the 29th day of July, 1980, be modified to be in conformance with the opinion issued by the Tenth Circuit Court of Appeals issued on October 7, 1980, in Case No. 79-1029.

The Court also finds that the Plaintiff has filed its Dismissal of the action against the Defendant, and the Defendant has filed its Dismissal of Counter-Claim and Cross-Petition against the Plaintiff. The Court finds, therefore, that the above captioned action should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the Plaintiffs' Motion to Reconsider the Court's Findings of Fact and Conclusions of Law previously entered herein on the 29th day of July, 1980, be, and the same is hereby sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the Plaintiffs' Dismissal without Prejudice dated October 22, 1981, be, and the same is hereby granted, and that the Defendant's Dismissal dated the 22nd day of October, 1981, of its Counter-Claim against the Plaintiff, be, and the same is

LAW OFFICES

UNGERMAN,
CONNER,
LITTLE,
UNGERMAN &
GOODMAN

MIDWAY BLDG.
2727 EAST 21 ST.
SUITE 400

P. O. BOX 2099
TULSA, OKLAHOMA
74101

hereby granted.

IT IS THEREFORE FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the above captioned cause of the Plaintiff against the Defendant, and the Defendant's Counter-Claim against the Plaintiff both be, and the same are, hereby dismissed, and the case is ordered closed.

DONE this 7th day of Dec., 1981.

S/ Thomas R. Brett
U. S. District Judge

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

FILED

GEORGE W. HADDOCK,)
GENEVIEVE P. HADDOCK,)
CAROL R. CHANEY and)
ELEANOR J. CHANEY,)
)
Plaintiffs,)
)
v.)
)
FARMERS INSURANCE COMPANY,)
INC., an insurance)
corporation,)
)
Defendant.)

DEC 8 1981

JOHN G. SILVER CLERK
U. S. DISTRICT COURT

No. 81-C-99-B

ORDER OF DISMISSAL

NOW on this 8th day of December, 1981, the Court,
having examined the Defendant's Request for Order of Dismissal
and the pleadings signed by the plaintiffs, the Court finds
that the motion should be granted and the matter is hereby
dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the
Court that the Defendant's Request for Order of Dismissal be
granted and the above captioned matter is dismissed with
prejudice against the defendant, Farmers Insurance Company,
Inc.

S/Thomas R. Bress
Judge of the United States
District Court for the
Northern District of
Oklahoma

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

CZAR RESOURCES, INC., a)
Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
STO-BUR PETCO, INC., an)
Oklahoma corporation, and JACK L.)
STOUT, an individual,)
)
Defendants.)

No. 81-C-336-E

FILED

DEC - 7 1981

Jack P. ... Clerk
U. S. District Court

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 7th day of December, 1981.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

RHEA SMITH,)
)
 Plaintiff,)
)
 vs.) No. 80-C-562-E
)
 STATE FARM MUTUAL AUTOMOBILE)
 INSURANCE COMPANY,)
)
 Defendant and)
 Third Party)
 Plaintiff,)
)
 and)
)
 DONALD RAY NATION,)
)
 Third Party)
 Defendant.)

FILED
DEC - 7 1981
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration the question of whether or not these cases, 80-C-561-E and 80-C-562-E should be remanded to state court. In these two separate cases, Plaintiffs, husband and wife, seek to recover from the Defendant insurance company their medical expenses incurred as a result of an automobile accident. Plaintiffs also seek damages for pain and suffering.

The cases were removed to federal court by the Defendant insurance company pursuant to 28 U.S.C. § 1441(a). At a pretrial hearing before the Court on August 14, 1981, Plaintiff's attorney indicated to the Court for the first time that remand of these cases was both necessary and proper since the actual amount in controversy in each case was less than \$10,000.00. Plaintiff's attorney stated to the Court that before the cases were removed, Plaintiffs had orally amended their complaints at a state court hearing, in open court, to the reduced sum of \$9,990.00 each. The Court instructed the parties to brief the remand issue raised by Plaintiff at the pretrial conference. The parties have filed their respective briefs, along with affidavits, in an attempt to establish what actually happened at the state court hearing in question.

The Court has carefully reviewed the entire record in this case, along with the applicable law, and concludes, for the following reasons, that these cases should in fact be remanded to state court. At the outset, the Court notes that, under the law, the Court has an obligation to examine carefully its jurisdiction and to correct jurisdictional de-

fects on its own motion where necessary. Davis v. Licari, 434 F.Supp. 23, 25 (D.C. C. 1977), citing Mansfield, C. and L. M. Ry. v. Swan, 111 U.S. 379, 384, 4 S.Ct. 510, 28 L.Ed. 462 (1884); United States v. Southern Pacific Transp. Co., 543 F.2d 676, 682 (Ninth Cir. 1976); Colorado Life Co. v. Steele, 95 F.2d 535, 536 (Eighth Cir. 1938); Umbenhower v. Mutual of Omaha Ins. Co., 298 F.Supp. 927, 928 (W.D. Mo. 1969).

It is equally apparent that remand is not discretionary with the Court, but may only be ordered under the statutorily-prescribed circumstances. Section 1447(c) Title 28 United States Code commands the federal courts to remand a case which has been improvidently removed or where the Court is without jurisdiction. It is the duty of the Court, at all times and at any time during the pendency of the suit to remand the case when it is manifest that the case has been improperly removed into the federal court. Cannon v. United Insurance Co. of America, 352 F.Supp. 1212, 1217 (D.S.C. 1973).

A case is removed improvidently and without jurisdiction, for example, when the jurisdictional requirement has not been met, as is alleged by Plaintiffs in this case. Plaintiffs contend that Defendant knew or should have known at the time of removal that the actual amount in controversy was less than \$10,000.00, despite the fact the pleadings on file state a larger amount. The Court finds, based upon Plaintiffs' affidavits, that the jurisdictional minimum does not in fact exist in these cases. As the Court in Duarte v. Donnelley, 266 F.Supp. 380, 383 (D. Haw. 1967), stated:

"[W]hen there is evidence that the defendant, when he removed the case, knew or had reason to believe that the plaintiff's claim involved less than \$10,000.00, the Court may take that into consideration in acting upon a motion to remand."

The Court does not mean to imply by its ruling that the attorneys for the Defendant insurance company have engaged in any improper conduct by their removal of this case. There has obviously been a misunderstanding or lack of communication regarding Plaintiffs' reduction of their prayer in state court. The Court notes that such confusion was undoubtedly amplified by the Plaintiffs' failure to file amended complaints within 20 days after the September 3, 1980 hearing held in state court, as ordered by the presiding state court

judge. The Court notes that the Defendant insurance company had to file its removal petitions within 30 days of that September 3, 1980, hearing. For the protection of their clients' rights, it was necessary that counsel act within that time or not at all, thus it was proper for the Defendant to petition for removal. Removal was effected on September 29, 1980. The Court further notes that if Plaintiff had timely filed its amended complaint reflecting its reduction of the ad damnum in these cases in state court, then Defendant would have had no possible reason to remove these cases. Accordingly, this Court is of the opinion that the Defendant insurance company should be awarded costs incurred in the removal proceedings in these cases. Duarte v. Donnelley, supra, at 384.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that cases number 80-C-561-E and 80-C-562-E should be, and the same are hereby remanded to Creek County District Court for further proceedings.

IT IS FURTHER ORDERED that the Defendant insurance company be awarded costs incurred in these removal proceedings.

It is so Ordered this 29th day of December, 1981.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

CHARLES E. SMITH,)
)
Plaintiff,)
)
vs.) No. 80-C-561-E
)
STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)
)
Defendant and)
Third Party)
Plaintiff,)
)
and)
)
DONALD RAY NATION,)
)
Third Party)
Defendant.)

FILED
DEC - 7 1981
Jack C. Siler, Clerk
U.S. DISTRICT COURT

O R D E R

The Court has before it for consideration the question of whether or not these cases, 80-C-561-E and 80-C-562-E should be remanded to state court. In these two separate cases, Plaintiffs, husband and wife, seek to recover from the Defendant insurance company their medical expenses incurred as a result of an automobile accident. Plaintiffs also seek damages for pain and suffering.

The cases were removed to federal court by the Defendant insurance company pursuant to 28 U.S.C. § 1441(a). At a pretrial hearing before the Court on August 14, 1981, Plaintiff's attorney indicated to the Court for the first time that remand of these cases was both necessary and proper since the actual amount in controversy in each case was less than \$10,000.00. Plaintiff's attorney stated to the Court that before the cases were removed, Plaintiffs had orally amended their complaints at a state court hearing, in open court, to the reduced sum of \$9,990.00 each. The Court instructed the parties to brief the remand issue raised by Plaintiff at the pretrial conference. The parties have filed their respective briefs, along with affidavits, in an attempt to establish what actually happened at the state court hearing in question.

The Court has carefully reviewed the entire record in this case, along with the applicable law, and concludes, for the following reasons, that these cases should in fact be remanded to state court. At the outset, the Court notes that, under the law, the Court has an obligation to examine carefully its jurisdiction and to correct jurisdictional de-

fects on its own motion where necessary. Davis v. Licari, 434 F.Supp. 23, 25 (D.C. C. 1977), citing Mansfield, C. and L. M. Ry. v. Swan, 111 U.S. 379, 384, 4 S.Ct. 510, 28 L.Ed. 462 (1884); United States v. Southern Pacific Transp. Co., 543 F.2d 676, 682 (Ninth Cir. 1976); Colorado Life Co. v. Steele, 95 F.2d 535, 536 (Eighth Cir. 1938); Umbenhower v. Mutual of Omaha Ins. Co., 298 F.Supp. 927, 928 (W.D. Mo. 1969).

It is equally apparent that remand is not discretionary with the Court, but may only be ordered under the statutorily-prescribed circumstances. Section 1447(c) Title 28 United States Code commands the federal courts to remand a case which has been improvidently removed or where the court is without jurisdiction. It is the duty of the Court, at all times and at any time during the pendency of the suit to remand the case when it is manifest that the case has been improperly removed into the federal court. Cannon v. United Insurance Co. of America, 352 F.Supp. 1212, 1217 (D.S.C. 1973).

A case is removed improvidently and without jurisdiction, for example, when the jurisdictional requirement has not been met, as is alleged by Plaintiffs in this case. Plaintiffs contend that Defendant knew or should have known at the time of removal that the actual amount in controversy was less than \$10,000.00, despite the fact the pleadings on file state a larger amount. The Court finds, based upon Plaintiffs' affidavits, that the jurisdictional minimum does not in fact exist in these cases. As the Court in Duarte v. Donnelley, 266 F.Supp. 380, 383 (D. Haw. 1967), stated:

"[W]hen there is evidence that the defendant, when he removed the case, knew or had reason to believe that the plaintiff's claim involved less than \$10,000.00, the Court may take that into consideration in acting upon a motion to remand."

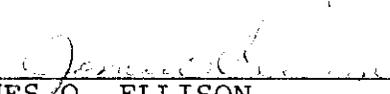
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judge. The Court notes that the Defendant insurance company had to file its removal petitions within 30 days of that September 3, 1980, hearing. For the protection of their clients' rights, it was necessary that counsel act within that time or not at all, thus it was proper for the Defendant to petition for removal. Removal was effected on September 29, 1980. The Court further notes that if Plaintiff had timely filed its amended complaint reflecting its reduction of the ad damnum in these cases in state court, then Defendant would have had no possible reason to remove these cases. Accordingly, this Court is of the opinion that the Defendant insurance company should be awarded costs incurred in the removal proceedings in these cases. Duarte v. Donnelley, supra, at 384.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that cases number 80-C-561-E and 80-C-562-E should be, and the same are hereby remanded to Creek County District Court for further proceedings.

IT IS FURTHER ORDERED that the Defendant insurance company be awarded costs incurred in these removal proceedings.

It is so Ordered this 7th day of December, 1981.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

UNITED STEELWORKERS OF AMERICA)
(AFL-CIO-CLC), and UNITED STEEL-)
WORKERS OF AMERICA, Local No.)
7568 (AFL-CIO-CLC),)

Plaintiffs,)

vs.)

C-E NATCO and C-E INVALCO,)
Division of COMBUSTION ENGINEER-)
ING, INC.,)

Defendants.)

No. 80-C-348-E

FILED

DEC - 7 1981

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

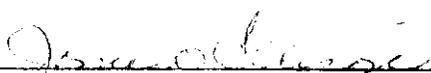
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 10 day of December, 1981.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

NICHOLS & WOLFE, INC.

By: *Thomas P. Nally*
Thomas P. Nally

ECHOLS & ECHOLS

By: *John Echols*
John Echols *by D.H.*

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

PHYLLIS BEDINGFIELD and)
GROVER BEDINGFIELD,)
)
Plaintiffs,)
)
vs.)
)
HARRY STEGE, Individually and)
as CHIEF OF POLICE IN THE POLICE)
DEPARTMENT OF THE CITY OF TULSA,)
OKLAHOMA; JAMES INHOFE AS MAYOR)
OF THE CITY OF TULSA; OFFICER T.)
C. VAN MATRE; OFFICER J.V.)
LAFAYETTE; OFFICER M. LITTLE,)
Individually and as police)
officers of the CITY OF TULSA;)
and THE CITY OF TULSA, a)
Municipal Corporation of the)
State of Oklahoma; JOHN BLACKBURN,)
Individually; and BEVERLY)
BLACKBURN, Individually,)
)
Defendants.)

FILED

DEC 4 1981

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

No. 80-C-431-E

STIPULATION OF DISMISSAL

It is hereby stipulated by Tom Coleman, counsel for the plaintiffs, and David Pauling, Scott Knowles, and Robert Roark, counsel for the defendants that this action should be dismissed with prejudice as to the named defendants Officer M. Little, James Inhofe as Mayor of the City of Tulsa, and the City of Tulsa, a municipal corporation of the State of Oklahoma.

This stipulation of dismissal is made by agreement of counsel pursuant to Rule 41 of the Federal Rules of Civil Procedure.

Dated this ____ day of December, 1981.

SCOTT KNOWLES

TOM COLEMAN

ROBERT ROARK

DAVID PAULING

O R D E R

Upon stipulation filed in this action on the 4th day of December, 1981, it is ordered that this action be dismissed as to the defendants Officer M. Little, James Tahoff as Mayor of the City of Tulsa, and the City of Tulsa, a municipal corporation of the State of Oklahoma.

S/ James O. Ellison
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL DUNN, Regional Director)
of the Sixteenth Region of the)
National Labor Relations Board,)
for and on behalf of the)
NATIONAL LABOR RELATIONS BOARD,)
Petitioner,)

vs.)

TEAMSTERS LOCAL UNION NO. 245,)
affiliated with INTERNATIONAL)
BROTHERHOOD OF TEAMSTERS,)
CHAUFFEURS, WAREHOUSEMEN AND)
HELPERS OF AMERICA,)
Respondent.)

Civil No. 81-C-624-E ✓

FILED

DEC 3 1981 *ji*

Jack C. Silver Clerk
U. S. DISTRICT COURT

ORDER

This matter is before the Court on the petition of the Regional Director of Region Sixteen of the National Labor Relations Board for a temporary injunction pursuant to the National Labor Relations Act, as amended, 29 U.S.C. Section 160(1), and upon this Court's Order To Show Cause, issued on November 4, 1981, why injunctive relief should not be granted.

On November 19, 1981, a hearing was held at which all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to present evidence on the issues and to argue on the evidence and the law.

After full consideration of all the pleadings and evidence filed herein, the oral arguments of counsel and testimony adduced at the hearing, and the applicable law, the Court makes and enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Petitioner is Regional Director of the Sixteenth Region of the National Labor Relations Board (hereinafter referred to as the Board) and filed this petition on behalf of the Board.
2. Respondent is Teamsters Local No. 245, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

3. On October 28, 1981, Coca Cola Bottling Company of Aurora, Inc. (hereinafter referred to as Aurora) filed a charge with the Board alleging that the Respondent has been and is engaging in unfair labor practices within the meaning of the National Labor Relations Act, 29 U.S.C. Section 158(b)(4)(B).

4. Petitioner has reasonable cause to believe that the Respondent, in furtherance of its labor dispute with Aurora, expanded its picketing and handbilling activities against Northeast Oklahoma Bottling Company (hereinafter referred to as Northeast) by picketing Northeast's Vinita, Oklahoma facility, following Northeast's delivery trucks and picketing the trucks while drivers were making deliveries, and picketing and/or handbilling customers of certain grocery stores to which Northeast was making deliveries.

5. Petitioner does not have reasonable cause to believe that an ally relationship does not exist between Northeast and Aurora by virtue of uncontroverted evidence showing common ownership, actual common control over labor relations, and a high degree of interchange and integration between the two companies.

CONCLUSIONS OF LAW

1. The standards by which a Federal District Court must be guided in determining whether an injunction may be issued under the National Labor Relations Act, 29 U.S.C. Section 160(1), include a determination as to whether there is reasonable cause to believe that an unfair labor practice has been committed and whether the injunctive relief requested is just and proper under general equitable principles. Danielson v. Joint Board of Coat, Suit and Allied Garment Workers' Union, 494 F.2d 1230, 1243 (CA2, 1974); see also, Hendrix v. Meat Cutters, District Local 340, 555 F.2d 175, 178 (CA8, 1977).

2. Because of the existence of an ally relationship between Aurora and Northeast, the Respondent's extension of its picketing and handbilling activities toward the latter Company cannot constitute a violation under 29 U.S.C. Section 158(b)(4)(B) of the Act, because by virtue of this relationship, Northeast is not neutral or

"wholly unconcerned" with respect to the Respondent's labor dispute with Aurora within the meaning of that section of the Act. See, Teamsters Local 560 (Curtin Matheson Scientific), 248 NLRB No. 156, 104 LRRM 1003, 1005.

3. Petitioner, therefore, does not have reasonable cause to believe that the Respondent engaged in any acts or conduct in violation of 29 U.S.C. Section 158(b)(4)(B) of the National Labor Relations Act, as amended.

4. Petitioner's request for an injunction should be denied.

IT IS HEREBY ORDERED that the petition of the Regional Director of the Sixteenth Region of the National Labor Relations Board for a temporary injunction be, and the same is, denied.


United States District Judge

Dated: 12/2/81

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

FILED

RAY MARSHALL, Secretary of)
Labor, United States Department)
of Labor,)
)
Plaintiff,)
)
vs.)
)
BARTLESVILLE AMERICAN PUBLISHING)
CO. and PRESTON GADDIS,)
)
Defendants.)

DEC 2 1981 *dm*

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

No. 80-C-269-E ✓

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 1st day of December, 1981.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

BOBBY L. BUSH and TERRIE BUSH,)
)
 Plaintiffs,)
)
 vs.)
)
 FARMERS INSURANCE COMPANY,)
)
 Defendant.)

No. 81-C-250-C

1981

U. S. DISTRICT COURT

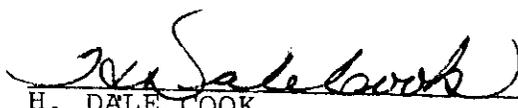
JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law filed simultaneously herein, it is hereby ordered that judgment be entered for the plaintiffs and against the defendant, for the sum of \$30,102.07 with interest at the statutory rate from the date of the filing of this Judgment.

It is the further Order of this Court that the plaintiff supply the Court written documentation of the services rendered and amount thereof expended in litigating this case within ten (10) days of the filing of this Judgment. The written documentation should be in compliance with the rules set out in State Ex. Rel. Burk v. City of Oklahoma, 598 P.2d 659 (Okla. 1979), which details the methodology a court shall use for a determination of the appropriate amount allowable for a reasonable attorney fee award.

It is the further Order of this Court that the defendant file within ten (10) days after the plaintiffs have filed their documentation any objections they may have to the reasonableness or accuracy of plaintiffs' documentation, stating with particularity and specificity any and all objections.

It is so Ordered this 2nd day of December, 1981.


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

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

FILED

DEC - 2 1981

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

GEORGE BERGER and DIANNA BERGER,
Husband and Wife, et al.,

Plaintiffs,

vs.

No. 80-C-337-C

BRAY LINES, INC., an Oklahoma
corporation, et al.,

Defendants.

ORDER OF DISMISSAL

Pursuant to oral order entered by the Court at the Second Pretrial Conference on October 15, 1981, in the presence of all counsel, pursuant to the written order of October 15, 1981 of the Court filed on October 27, 1981, and pursuant to the twenty (20) day extension until November 29, 1981 granted by Minute Order of November 9, 1981, the Court finds that twenty (20) days have expired since that Minute Order and that no Entry of Appearance has been filed by successor counsel and that the cause should be dismissed without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action is dismissed without prejudice against the Plaintiffs.

DATED this 2nd day of December, 1981.


CHIEF UNITED STATES DISTRICT JUDGE

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

FILED

ANNIS I. TOWNSLEY,)
)
 Plaintiff,)
)
 vs.)
)
 FRED H. MOCK,)
)
 Defendant.)

No. 80-C-642-B

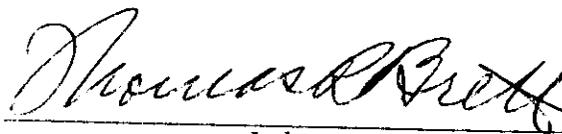
DEC 2 1981

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

ORDER

And now on this 2nd day of December, 1981, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, stipulation of the parties hereto of dismissal, parties hereto having advised the Court that all disputes between the parties have been settled.

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



Judge

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

FILED

NATIONAL UNION FIRE)
INSURANCE COMPANY,)
)
Plaintiff,)
)
vs.)
)
L. B. JACKSON COMPANY,)
)
Defendant.)

DEC - 1 1981

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

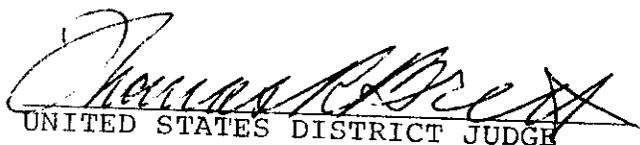
No. 81-C-3-B

ORDER OF DISMISSAL

On this 1st day of Dec, 1981,

upon written application of the parties for a Dismissal
With Prejudice of the Complaint and the Counter-Claim
herein 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 the Counter-Claim and have requested the
Court to dismiss said Complaint and Counter-Claim with
prejudice to any further action.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED BY
THE COURT, that the Complaint, Counter-Claim and any and all
other causes of action of the plaintiff or defendant to this
action filed herein, be and the same hereby are dismissed with
prejudice to any further action at plaintiff's cost.


UNITED STATES DISTRICT JUDGE