

**FILED**

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

MAY 31 1983

U.S. District Court  
Northern District of Oklahoma

CARL D. SCHIFFMAN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CIMARRON AIRCRAFT CORPORATION, )  
 )  
 Defendant. )

No. 82-C-875-E

ORDER

NOW on this <sup>th</sup> 27 day of May, 1983, comes on for hearing the defendant's Motion To Dismiss and Motion For Change of Venue, the Court being informed of the agreement reached between Counsels of record concerning said Motions finds that the defendant's Motion To Dismiss should be overruled, plaintiff having timely filed his Complaint, and further that the defendant's Motion For change of Venue is sustained and venue transferred to the Western District of Oklahoma for further proceedings.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant's Motion To Dismiss is overruled. Defendant's Motion For Change of Venue is hereby sustained and venue transferred to the Western District of Oklahoma for further proceedings.

S/ JAMES O. ELLISON

JUDGE



FILED

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAY 31 1983

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DANIEL W. SNIDER, )  
 )  
 Defendant. )

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

CIVIL ACTION NO. 83-C-276-B

DEFAULT JUDGMENT

This matter comes on for consideration this 31 day of May, 1983, 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, Daniel W. Snider, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Daniel W. Snider, was served with Summons and Complaint on April 15, 1983. 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, Daniel W. Snider, for the principal sum of \$1,125.00, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

  
UNITED STATES DISTRICT JUDGE

*2766*

**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAY 31 1983

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SCOTT A. HARPER, )  
 )  
 Defendant. )

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

CIVIL ACTION NO. 83-C-70-B ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 31 day of May, 1983, 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, Scott A. Harper, is appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Scott A. Harper, was served with Summons and Complaint on February 7, 1983. 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, Scott A. Harper, for the principal sum of \$544.67, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

*Harold Cross*  
UNITED STATES DISTRICT JUDGE

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

**FILED**

JOHN M. HARPER and CATHERINE )  
HARPER, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
SKAGGS COMPANIES, INC., )  
AMERICAN STORES COMPANY, and )  
SOL SIMON d/b/a SSS IMPORT, )  
INC., )  
 )  
Defendants. )

MAY 31 1983

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

No. 82-C-1007B

STIPULATED ORDER OF DISMISSAL

It is hereby stipulated, by and between counsel for all parties hereto, subject to the approval of the Court, as follows:

I.

All claims presented by the Complaint and all cross-claims herein shall be dismissed with prejudice as to all parties pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

II.

Each party shall bear his or its own costs and attorney fees.

DATED this 25<sup>th</sup> day of April, 1983.

JOHN S. DENNEY

By John S. Denney  
John S. Denney  
Attorney for Plaintiffs  
Room 116, 4528 South Sheridan  
Tulsa, Oklahoma 74145

WHITTEN, GOREE, DAVIES & MADDEN

By David P. Madden  
David P. Madden  
Attorney for Defendants  
Suite 410 City Plaza West  
5310 East 31st Street  
Tulsa, Oklahoma 74135

ORDER

Comes now the United States District Judge for the Northern District of Oklahoma and upon the application of the parties herein for a stipulated order of dismissal grants the same herein.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

**FILED**

T. J. WILLIAMS, INC. )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PAUL REID d/b/a )  
 TULSA TRUCK COLLISION, )  
 )  
 Defendant. )

MAY 31 1983

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

No. 82-C-492-2

ORDER

Pursuant to the Application for Order Approving Settlement and Dismissing Case with Prejudice the Court finds that the Plaintiff has agreed to settle all claims it has or may have, including costs, attorney fees and interest as a result of the occurrence complained of herein for the total sum of TWENTY THREE THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$23,250.00) which this Court finds to be fair, reasonable and just; whereupon the Court orders that the settlement be approved and further orders that all Plaintiff's claims against Paul Reid, d/b/a Tulsa Truck Collision be dismissed with prejudice.

THOMAS R. BRANT

JUDGE OF THE DISTRICT COURT

APPROVAL AS TO FORM AND CONTENT:

Joseph Titus  
J. Schaad Titus

John B. Stuart  
John B. Stuart

Michael Seymour  
Michael L. Seymour

Jeffrey A. King  
Jeffrey A. King

Allen B. Mitchell  
Allen B. Mitchell

Jack Y. Goree  
Jack Y. Goree



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

STEVEN R. LUKENBILL, as )  
guardian of the person and )  
estate of L. VERNON LUKENBILL, )  
JR., )  
Plaintiff, )  
vs. )  
OKLAHOMA MORRIS PLAN COMPANY, )  
an Oklahoma corporation, )  
Defendant. )

No. 83-C-96-C

**FILED**  
MAY 31 1983 *pm*  
Jack G. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

This matter comes on before the Court this 26th day of May, 1983, for a status conference before the Honorable H. Dale Cook, United States District Judge. Present for the Plaintiff are James W. Dunham, Jr. and D. Gregory Bledsoe, attorneys at law. Present for the Defendant is Anita Enz, attorney at law. The Court, having before it the pleadings of the parties, hearing statements of counsel and having reviewed the Plaintiff's Motion for Summary Judgment filed herein and further being otherwise fully advised in the premises finds as follows:

1. The parties stipulate and agree and the Court finds that the Statement of Facts contained in Plaintiff's Brief in Support of his Motion for Summary Judgment is true and correct;

2. The Court finds that the Plaintiff's Motion for Summary Judgment on his Complaint should be sustained;

3. Further, the Court finds and the parties do hereby stipulate that Defendant's Counterclaim for Interpleader should be denied and their request for the addition of certain parties defendant should also be denied;

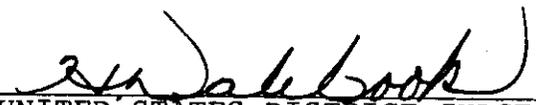
4. Further, the parties stipulate and agree to bear their own respective costs and attorney fees and the Court is advised by Plaintiff's counsel, James W. Dunham, Jr., that contemporaneous with this hearing he has consulted with the Honorable Robert Frank, Judge of the District Court of Tulsa County and has obtained that Court's approval to so stipulate on behalf of the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment on his Complaint is sustained and Plaintiff is hereby granted judgment against the Defendant on his Complaint in the sum of \$44,375.63.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based on the aforementioned stipulation of the parties that Defendant's Counterclaim for Interpleader and the request to join additional parties defendant should be and is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based on the aforementioned stipulations of the parties that each party hereto should bear their own costs and attorney fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the execution and filing of this Order, the Defendant is allowed to withdraw those funds previously deposited by it with the Clerk of the United States District Court for the Northern District of Oklahoma, and the Clerk is hereby ordered and directed to disburse said funds to the Defendant upon proper execution and filing of this Order.

  
UNITED STATES DISTRICT JUDGE

APPROVAL AS TO FORM AND CONTENT:

  
JAMES W. DUNHAM, JR.  
Attorney for Plaintiff

  
ANITA ENZ  
Attorney for Defendant

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

ALBERT BENJAMIN PRESIDENT )

Petitioner, )

vs. )

No. 82-C-213-C ✓

L. T. BROWN, and the )  
ATTORNEY GENERAL OF THE )  
STATE OF OKLAHOMA, )

Respondents. )

ORDER

Now before the Court for its consideration is the petition for a writ of habeas corpus filed by Albert Benjamin President, petitioner herein. The petitioner is presently serving a custodial sentence within the Department of Corrections of the State of Oklahoma pursuant to a judgment and sentence rendered on May 11, 1978 in the District Court of Tulsa County, Oklahoma, Case No. CRF-78-31 and as modified on October 24, 1979 by the Oklahoma Court of Criminal Appeals in Case No. F-78-617. See President v. State, 602 P.2d 222 (Ok1.Cr. 1979). On January 11, 1983 the petitioner informed the Court that he was raising in his amended petition the following issues:

1. That the trial court erred by allowing the State to introduce into evidence before the jury numerous gruesome color

slides of the deceased after autopsy which tended to appeal to the passion and prejudice of the jury in the trial of this matter and this deprived the petitioner of his right to a fair and impartial trial by his peers.

2. That the trial court erred by allowing the Assistant District Attorney to make prejudicial and inflammatory statements during voir dire, throughout the trial, and during the closing arguments that prevented the petitioner from having a fair and impartial trial.

Petitioner generally contends that he was deprived of a fair and impartial trial due to the admission of certain prejudicial evidence and because of continued prejudicial comments of the prosecuting attorney during his trial for second degree murder. The petitioner raised these issues on direct appeal. The Oklahoma Court of Criminal Appeals considered these issues and determined that the petitioner was impermissibly prejudiced at trial to the extent that the admission of duplicative gruesome color slides of the victim and the comments of the prosecutor prevented the jury from proper consideration of the trial court's full instructions as to whether or not the killing was perpetrated in the heat of passion. The Court of Criminal Appeals noted that the only real question was whether, on the facts, the crime constituted murder or manslaughter, since the petitioner admitted, at trial, to inflicting the blows which ultimately resulted in the victim's death. The record of the

state trial fully supports the view that petitioner inflicted the blows which resulted in the death of the victim.

This Court has thoroughly reviewed the state court record in this matter and is in complete agreement with the assessment of the Oklahoma Court of Criminal Appeals as to the issues raised by the petitioner herein. There are no factual issues left unresolved by the state court proceedings which would require a hearing before this Court. The findings of the Oklahoma Court of Criminal Appeals are entitled to a "presumption of correctness", unless one of the factors specifically set forth in 28 U.S.C. §2254(d) are present, or this Court concludes that the state-court determination is not fairly supported by the record. Sumner v. Mata, 449 U.S. 539, 101 S.Ct. 764, 66 L.Ed.2d 722 (1981). None of these factors are applicable here.

The Oklahoma Court of Criminal Appeals provided to petitioner the appropriate relief in that forum. Petitioner's conviction and sentence were modified by that court from second degree murder and life imprisonment to manslaughter in the first degree and forty-five (45) years imprisonment. See OKLA.STAT.ANN. tit.22, §1066. The judgment and sentence as modified was then affirmed. The petitioner is entitled to no additional relief here on the grounds raised in his amended petition.

This Court would finally note that it has determined that petitioner has abandoned any claim he may have been raising in

this Court concerning the apparent failure of the Oklahoma Court of Criminal Appeals to provide petitioner with notice of hearing and opportunity to present mitigation evidence at his appellate sentencing as being violative of due process. Due to the uncertainty as to exactly what issues the petitioner was raising in this Court, by Order of December 30, 1982, a request was made of petitioner to specifically inform the Court of the grounds raised or asserted by petitioner to support his claim for relief. The above stated ground was not mentioned in petitioner's response to this request, nor has it ever been specifically raised by petitioner in this Court. It was originally included as an apparent ground for relief in the April 20, 1982 Order of this Court because the petitioner had attached to his initial petition the Order Denying Application For Post-Conviction Relief of the District Court of Tulsa County, State of Oklahoma, where said issue was ruled upon. This Court, therefore, has no occasion to rule on the merits of this contention or to determine said issue which was specifically left unresolved by the United States Supreme Court in Hicks v. Oklahoma, 447 U.S. 343, 347 (f.n.5), 100 S.Ct. 2227, 65 L.Ed.2d 175 (1980).

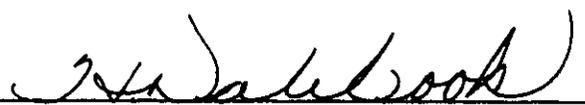
Counsel for petitioner in his direct appeal on his conviction for second degree murder alternatively requested in petitioner's appellate brief the remedy of sentence modification and specifically acknowledged the authority of the Oklahoma Court of Criminal Appeals to so modify under OKLA.STAT.ANN. tit.22,

§1066. See Wood v. Wilson, 385 F.Supp. 1055 (W.D.Okla. 1974).  
The Court no longer considers the petitioner as raising any issue  
in that regard and no determination will be made here upon it.

It is therefore the Order of this Court that the petition  
for writ of habeas corpus is denied.

In view of the Court's ruling in this matter the motion of  
the Attorney General of the State of Oklahoma to be dismissed as  
a party respondent is moot.

It is so Ordered this 27<sup>th</sup> day of May, 1983.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALFRED BEASLEY,

Defendant.

CIVIL ACTION NO. 82-C-1157-E

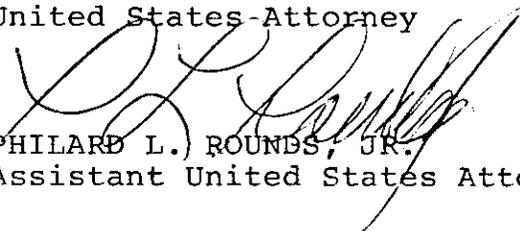
NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through 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 27th day of May, 1983.

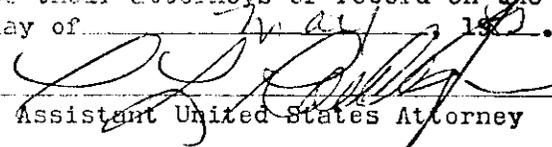
UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

  
PHILARD L. ROUNDS, JR.  
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 27 day of May, 1983.

  
Assistant United States Attorney



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

JIM LUMAN,

Plaintiff,

vs.

T. C. MARTIN, Warden, Federal  
Correctional Institution at  
El Reno, Oklahoma, R. BENEFEIL,  
Executive Assistant to the Warden,  
Federal Correctional Institution  
at El Reno, Oklahoma, and R.  
WINGFIELD, Chief Correctional  
Supervisor, Federal Correctional  
Institution, El Reno, Oklahoma,

Defendants.

No. 83-C-402-E

F I L E D  
MAY 27 1983  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

The Court, in reviewing the file in the above-styled action finds, sua sponte, that the case should be transferred to the United States District Court for the Western District of Oklahoma.

Title 28 U.S.C. § 1404(a) provides that

[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

The Court finds the criteria set forth by statute is met in this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-styled action be and is hereby transferred to the United States District Court for the Western District of Oklahoma.

DONE this 26<sup>th</sup> day of May, 1983.

JAMES G. ELLISON  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

PAUL PATRIC McBRIDE, )

Defendant. )

CIVIL ACTION NO. 82-C-196-E

JUDGMENT

On May 13, 1983, this matter came on for hearing on Plaintiff's Complaint against the Defendant for enforcement of an Order of the Federal Aviation Administration and for assessment of a civil penalty for violation of that Order.

The Court having examined the file herein and the exhibits admitted at trial and having heard the testimony and argument presented by the parties, hereby finds that Defendant's actions in failing to surrender Airman Certificate Number 440345597 when directed to do so by the Federal Aviation Administration violated Section 61.19(f) of the Federal Aviation Regulations [14 C.F.R. §61.19(f)] and 49 U.S.C. §1471(a)(1).

The Court further finds that judgment should therefore be entered for the Plaintiff and in execution thereof the Court hereby orders:

1. That the Defendant shall surrender Airman Certificate Number 440345597 to the Federal Aviation Administration within thirty-five (35) days of the date of entry of this Judgment; and

2. That the Defendant shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00) to the United States of America within thirty-five (35) days of the date of entry of this Judgment.

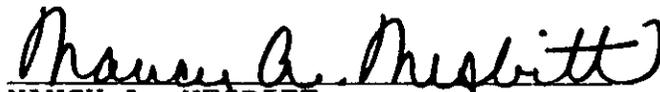
IT IS SO ORDERED this 21 day of May, 1983.

S/ JAMES O. ELLISON

---

UNITED STATES DISTRICT JUDGE

Approved as to form:

  
NANCY A. NESBITT  
Assistant United States Attorney

---

PAUL PATRIC McBRIDE  
Defendant

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

BARRY LYNN DAY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SHEFFIELD STEEL CORPORATION, )  
 a Delaware corporation in )  
 good standing, JOHN CHEATHAM, )  
 and E. C. BOWERS, )  
 )  
 Defendants. )

Case No. 83-C-368-B

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

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, BARRY LYNN DAY, by and through his Attorney of record, GLENN R. BEUSTRING, and hereby gives notice of dismissal, without prejudice, for the reason that the above entitled cause has been settled by the parties.

Respectfully submitted,

BEUSTRING, FAULKNER & ASSOCIATES,  
Attorneys for Plaintiff

By: Glenn R. Beusting  
GLENN R. BEUSTRING  
2624 E. 21st Street, Suite 1  
Tulsa, Oklahoma 74114  
(918) 747-1341

CERTIFICATE OF MAILING

I hereby certify that I have this 27<sup>th</sup> day of May, 1983, mailed a true and correct copy of the foregoing instrument to John H. Tucker, Attorney for Defendants, at Rhodes, Hieronymus, Jones, Tucker & Gable, 2900 Fourth National Bank Building, Tulsa, Oklahoma 74119, and to Donald W. Savelson, Attorney for Defendants, at Proskauer, Rose, Goetz & Mendelsohn, Suite 815, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036, by U.S. Mail, with proper postage thereon fully prepaid.

Glenn R. Beusting  
GLENN R. BEUSTRING

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

GULF AMERICAN RESOURCES, INC., )  
a Texas corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BOB HIGHFILL, an individual )  
both d/b/a HIGHFILL SUPPLY CO., )  
 )  
Defendant. )

No. 82-C-833-E

ORDER

MAY 27 1983  
U.S. DISTRICT COURT

This action comes before the Court on the stipulation of  
the parties to dismiss this action,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the  
action be dismissed.

Done this 27<sup>th</sup> day of May, 1983.

[Signature]  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM & CONTENT:

JONES, FRANCY, DORIS, SUTTON &  
EDWARDS, INC.

By [Signature]  
Ira L. Edwards, Jr.  
114 East 8th Street, Suite 400  
Tulsa, OK 74119  
Attorneys for Plaintiff

JONES, GIVENS, GOTCHER, DOYLE &  
BOGAN, INC.

By [Signature]  
Alfred K. Morlan  
201 West Fifth, Suite 400  
Tulsa, OK 74103  
Attorneys for Defendant

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

**FILED**

MAY 26 1983

U. S. DISTRICT COURT

NORMAN CLARK, )  
)  
Plaintiff, )  
)  
vs. )  
)  
OKLAHOMA EMPLOYMENT )  
SECURITY COMMISSION, )  
)  
Defendant. )

No. 83-C-88-B

O R D E R

The Court now considers the Motion to Dismiss of the defendant pursuant to F.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction and finds the Motion to Dismiss should be sustained for the following reasons.

The gravamen of the plaintiff's complaint is his disagreement with the determination by an appeals referee of the Oklahoma Employment Security Commission Appeal Tribunal in November 1982. Since there is no diversity of citizenship between the parties, both being Oklahoma citizens, the only other applicable subject matter jurisdiction would be the federal question, 28 U.S.C. §1331:

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

The plaintiff has alleged no violation of his federal constitutional rights or any statutory rights afforded him by an act of Congress. Any judicial review of the employment commission's termination is mandated in the Oklahoma Statutes to be had in the state district court. See 40 Okl.St. Ann. §2-610 (1980).

As was stated by a District Court in the Fourth Circuit, "It is policy of federal courts to abstain from jurisdiction in matters clearly within province of state courts, and it is the duty of federal courts to examine pleadings to see if substantial federal question is present." Resolute Insurance Company v. State of North Carolina, 276 F.Supp. 660 (D.C.N.C. 1967), aff'd 397 F.2d 586, cert. denied 393 U.S. 978 (1968).

This Court has examined the pleadings and has found a lack of subject matter jurisdiction according to its own jurisdictional statutes, 28 U.S.C. §1331 et seq.

Therefore, the Motion to Dismiss of the defendant is sustained.

IT IS SO ORDERED.

ENTERED this 26<sup>th</sup> day of May, 1983.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CIVIL ACTION NO. 82-C-971-C  
 )  
 RICHARD M. PHILLIPS, )  
 )  
 Defendant. )

DEFAULT JUDGMENT

This matter comes on for consideration this 26 day of May, 1983, 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, Richard M. Phillips, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Richard M. Phillips, was served with Summons and Complaint on April 25, 1983. 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, Richard M. Phillips, for the principal sum of \$940.00, plus the accrued interest of \$75.16 as of September 15, 1982, plus interest on the

principal sum of \$940.00 at 7 percent (7%) from September 15, 1982, until the date of Judgment, plus interest on the Judgment at the legal rate until paid and \$42.31 in costs.

(Signed) H. Dale Cook

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UNITED STATES DISTRICT JUDGE

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

WORD INDUSTRIES PIPE FABRICATING,  
INC., an Oklahoma corporation,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY, a New York  
corporation,

Defendant.

FILED

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U. S. DISTRICT COURT

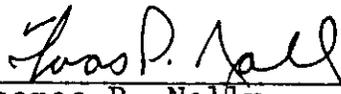
Case No. 83-C-392-E

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Word Industries Pipe Fabricating, Inc., and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure hereby reports to the Court that subsequent to the commencement of the proceedings, the Plaintiff has received all principal sums owed to it by the Defendant. The Plaintiff further reports that the Defendant has failed to file any responsive pleading herein, and as provided in Rule 41(a)(1) of the Federal Rules of Civil Procedure, the instant proceeding should be and hereby is dismissed without prejudice.

NICHOLS & WOLFE, INC.

By:

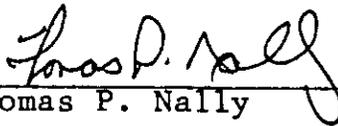
  
\_\_\_\_\_  
Thomas P. Nally  
124 East Fourth Street  
Tulsa, Oklahoma 74103  
(918) 584-5182

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of May, 1983, a true and correct copy of the above and foregoing Dismissal Without Prejudice was mailed, with proper postage thereon fully prepaid, to the Defendant:

General Electric Company  
Corporate Legal Operations  
One River Road  
Schenectady, N.Y. 12305

  
\_\_\_\_\_  
Thomas P. Nally

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

HARRISON BOLT & NUT )  
COMPANY, an Oklahoma )  
domesticated corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RICHARD GASKET & MACHINED )  
PRODUCTS COMPANY, a division )  
of Richard Lee Industries, )  
a Pennsylvania corporation, )  
 )  
Defendant. )

No. 83-C-212-E

U. S. DISTRICT COURT

AGREED JOURNAL ENTRY OF JUDGMENT

THIS MATTER comes on for hearing this 25<sup>th</sup> day of May, 1983, upon the Complaint of Harrison Bolt & Nut Company, an Oklahoma Corporation, against Richard Gasket & Machined Products Company, a division of Richard Lee Industries, a Pennsylvania corporation; plaintiff is present and represented by its attorney, Jon B. Comstock, of Garrison & Comstock, Inc., and the defendant is present and represented by its attorney, Philip McGowan of Sanders and Carpenter; the parties having announced to the Court a mutual settlement, the Court finds that the parties have agreed as follows:

1. That Harrison Bolt & Nut Company should have a judgment against the defendant for the sum of \$9,524.56 to bear interest at the rate of 12% per annum from the date of the judgment herein.

2. That each party should bear their own costs and attorney fees.

DMC  
Cohen  
220

3. That Harrison Bolt & Nut Company would specifically agree not to attempt any formal collection of this judgment as long as the defendant pays said judgment according to the following agreed schedule: Payoff of the judgment at equal installments over a maximum period of one year with a maximum interval between payments of three (3) months, and with the initial payment being paid within thirty (30) days of entry of this agreed judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, Harrison Bolt & Nut Company, does and hereby is granted judgment against Richard Gasket & Machined Products Company, a division of Richard Lee Industries, a Pennsylvania corporation, in the sum of <sup>Richard Lee Industries, Inc.</sup> \$9,524.56 with said judgment to bear interest at the rate of 12% per annum from this date until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of the parties shall bear their own costs and attorney fees incurred herein.

IT IS FURTHER ORDERED AND DECREED that pursuant to the agreement of the parties, Harrison Bolt & Nut Company, should refrain from attempting any formal collection of this judgment as long as the defendant pays said judgment according to the following agreed schedule:

Payoff of the judgment at equal installments over a maximum period of one year with a maximum interval between payments of three (3) months, and with the initial payment being paid within thirty (30) days of entry of the Journal Entry of Judgment.

DONE this 25<sup>th</sup> day of May, 1983.

**S/ JAMES O. ELLISON**

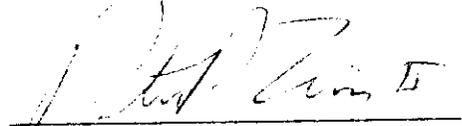
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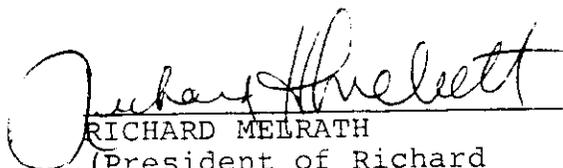
JAMES O. ELLISON  
Judge of the U.S. District Court

APPROVED:

  
\_\_\_\_\_  
JON B. COMSTOCK  
Attorney for Plaintiff

  
\_\_\_\_\_  
PHILIP MCGOWAN  
Attorney for Defendant

  
\_\_\_\_\_  
PETER P. ZION, II  
Attorney for Defendant

  
\_\_\_\_\_  
RICHARD MELRATH  
(President of Richard  
Gasket & Machined  
Products Company)

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

OKLAHOMA HOSPITAL ASSOCIATION, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 OKLAHOMA DEPARTMENT OF HUMAN )  
 SERVICES, et al., )  
 )  
 Defendants. )

NO. 83-C-396-B ✓

MAY 25 1983 *hm*

O R D E R

Before the Court for consideration are defendants' alternative motions to dismiss or for change of venue under 28 U.S.C. §§1406(a) and 1404(a). Plaintiffs have filed their response thereto. For the reasons set forth below, defendants' motion for transfer of venue pursuant to 28 U.S.C. §1406(a) is sustained.

The Oklahoma Hospital Association and five individual Oklahoma hospitals bring this action challenging the recently modified methodology adopted by the Oklahoma Department of Human Services ("DHS"), for reimbursing Oklahoma hospitals which provide inpatient hospital care to Medicaid patients. Plaintiffs also seek preliminary and permanent injunctive and declaratory relief to prevent DHS from implementing the new plan. Defendants seek either dismissal or transfer of the lawsuit for improper venue pursuant to 28 U.S.C. §1406(a) or for change of venue from the United States District Court for the Northern District of Oklahoma to the United States District Court for the Western District of Oklahoma pursuant to 28 U.S.C. §1404(a).

Venue herein is governed by the two-pronged requirement of 28 U.S.C. §1391(b) which provides:

"(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except otherwise provided by law."

Plaintiffs admit all defendants herein reside in the Western District of Oklahoma but argue their claim arose in the Northern District of Oklahoma.<sup>1</sup> Thus, plaintiffs argue venue is proper in either district but their choice of forum should not be disturbed. Defendants claim the cause of action arose in the Western District.

In Lamont v. Haig, 590 F.2d 1124, 1134-35 (D.C.Cir. 1978), the language "in which the claim arose," of 28 U.S.C. §1391(b) was discussed at length. The Court said:

"This practical orientation of Section 1391(b), then, counsels against adherence to mechanical standards in its application. Rather, where 'the claim arose' should in our view be ascertained by advertence to events having operative significance in this case, and a commonsense appraisal of the implications of those events for accessibility to witnesses and records. And, though a proliferation of permissible forums is staunchly to be avoided, it is evidence that the often unfruitful pursuit of a single locality as the one and only district in which the claim arose is not needed to ensure the efficient conduct of the litigation. Not surprisingly, then, courts in some number have construed Section 1391(b) as conferring venue in a district where a substantial

---

<sup>1</sup> See page 2 of plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss or for Change of Venue filed May 20, 1983, footnote 1.

"portion of the acts or omissions giving rise to the actions occurred, notwithstanding that venue might also lie in other districts. We endorse that interpretation wholeheartedly. So long as the substantiality of the operative events is determined by assessment of their ramifications for efficient conduct of the suit--an important step upon which we would unfailingly insist--loyalty to the objectives of Section 1391(b) will be amply preserved...." (Emphasis added)

Under Lamont v. Haig, supra, the test for where the claim arose is where the "substantial portion of the acts or omissions giving rise to the actions occurred." It appears from the affidavit of Henry Bellmon, Director of the Department of Human Services, filed herein on May 13, 1983, that the development of the disputed rate methodology was undertaken by DHS personnel in Oklahoma City, Oklahoma. Administration for the Medicaid State program is located in Oklahoma City; hospital claims for reimbursement are processed and approved in Oklahoma City. Further, the Commission for Human Services and the DHS Medical Care Advisory Committee periodically meet in Oklahoma City.

On the other hand, plaintiffs argue the DHS Medicaid Plan decisions have a substantial impact in the Northern District of Oklahoma. Three of the named plaintiffs reside in Tulsa and the proper Medicaid payments sought by these three hospitals will be due in the Northern District. Plaintiffs claim Tulsa hospitals in particular will be significantly affected by the DHS reimbursement plan. Plaintiffs claim conditions existing in Oklahoma hospitals, including those in the Northern District, had an impact on the DHS decision to revise the payment methodology. Finally,

plaintiffs claim the DHS maintains a Tulsa office, which does not directly handle hospital reimbursement but does administer certain aspects of the state's Medicaid program.

It appears to the Court the substantive decision-making and administrative actions pertinent to this matter occurred in Oklahoma City. Under the Lamont v. Haig test, supra, the Court concludes the substantial portion of the acts or alleged omissions giving rise to the action occurred in the Western District of Oklahoma. Because all the defendants reside in the Western District of Oklahoma and the cause of action arose in the Western District of Oklahoma, the Court concludes venue in this district is improper.

28 U.S.C. §1406(a) provides:

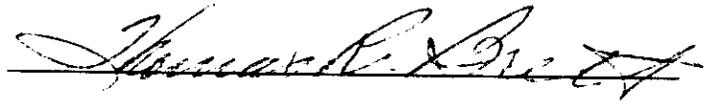
"(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."

Where the interests of justice so dictate, transfer is preferable to dismissal. De La Fuente v. I.C.C., 451 F.Supp. 867, 872 (N.D. Ill. 1978); Moore v. Conway, 481 F.Supp. 563, 565 (E.D.Wis. 1979). As stated in Nation v. United States Government, 512 F.Supp. 121, 126 (S.D. Ohio 1981):

"Selection between options of dismissal and transfer, for improper venue, is a matter within the sound discretion of the district court. 1 Moore's Federal Practice §0.146[5]. However, transfer in and of itself is generally considered to be more in the 'interest of justice' than dismissal and, therefore, doubts should be resolved in favor of preserving the action, particularly where it appears that venue may be properly laid in the proposed transferee district."

Because venue is improper in this district and appears to lie in the United States District Court for the Western District of Oklahoma, the Court in its considerable discretion finds the matter should be so transferred pursuant to 28 U.S.C. §1406(a) and defendants' motion to dismiss denied.

IT IS SO ORDERED this 25<sup>th</sup> day of May, 1983.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

ERSKINE HOGUE STANBERRY,

Plaintiff

Vs.

Case No. 81-C-291-C

FUEL DYNAMICS, INC., a  
Kansas Corporation,

Defendant

JESS HEFNER and DON HEFNER,  
Partners, d/b/a Hefner & Son  
Coal Company,

Third Party Defendants,

U. S. DISTRICT COURT

ORDER

It appearing to the satisfaction of this Court that all matters and controversies have been compromised by and between the defendant and the third party defendants, as evidenced by the signatures of their attorneys on the stipulation filed herein on the 23 day of May, 1983; therefore,

IT IS ORDERED that the third party complaint and amended third party complaint of the defendant be, and the same is hereby dismissed with prejudice; and

IT IS FURTHER ORDERED that each of the said parties pay their respective attorneys fees and costs incurred herein.

Dated this 25<sup>th</sup> day of May, 1983.

(Signed) H. Dale Cook

---

Judge

APPROVED AS TO FORM AND CONTENT:

Coy D. Morrow

Coy D. Morrow,  
Wallace & Owens, Inc.  
Attorneys for Defendant

Jot Hartley

Jot Hartley  
Rorschach, Pitcher, Castor  
& Hartley  
Attorney for Third Party Defendants  
AAA31/4-5

DISMISSAL WITH PREJUDICE

IN THE UNITED STATES COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

*Stipulation of Dismissal*

~~DISMISSAL BY STIPULATION~~

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

Charles E. Robinson )  
 )  
Plaintiff )  
 )  
-vs- )  
 )  
Madison Machinery )  
 )  
Defendant )

Case No. 82-C-829-B

Comes now the plaintiff and hereby dismisses the above  
cause with prejudice and the parties stipulate the case is  
dismissed by compromise and settlement.

Dated this *23rd* day of May, 1983.

*Charles E. Robinson*  
\_\_\_\_\_  
Plaintiff

*James R. Hunt*  
\_\_\_\_\_  
Attorney for Defendant

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

ALLEN L. LINDEMANN, an  
individual,

Plaintiff

vs.

THE INTELEPLEX CORPORATION,  
a New Jersey Corporation,  
JOHN VOIGT, an individual  
and BONNIE E. WONIK, an  
individual,

Defendants.

No. 83-C-324-B

NOTICE OF PARTIAL DISMISSAL WITH PREJUDICE  
OF THE THIRD THROUGH SEVENTH CLAIMS FOR RELIEF

COMES NOW the Plaintiff, ALLEN L. LINDEMANN, by and  
through its attorneys, Hall, Estill, Hardwick, Gable,  
Collingsworth & Nelson, P.C., and dismisses with prejudice  
the third through seventh claims for relief in the above-  
entitled action against Inteleplex Corporation, Bonnie E.  
Wonik, and John Voight, each party to bear its own costs.

HALL, ESTILL, HARDWICK, GABLE,  
COLLINGSWORTH & NELSON, P.C.

By

  
Jed L. Marcus  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, OK 74172  
(918) 588-4099

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing document with proper postage being fully prepaid this 24 day of May, 1983 to John M. Imel, 320 South Boston, Suite 920, Tulsa, Oklahoma 74103.

  
\_\_\_\_\_

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

FILED  
5-24-83 (w)

LEE W. FURGASON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 INDIAN ELECTRIC COOPERATIVE, )  
 INC., an Oklahoma corporation and )  
 AMES OIL AND GAS CO., INC., a )  
 Texas corporation, )  
 )  
 Defendants. )

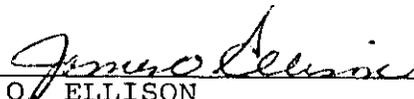
No. 82-C-991-E ✓

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison presiding, and the issues having been duly heard, and a decision having been duly rendered,

It is Ordered and Adjudged that the Plaintiff take nothing from the Defendant Ames Oil and Gas Co., Inc., that the action is dismissed on the merits as to Defendant Ames, and that the Defendant Ames recover of the Plaintiff, Lee W. Furgason, its costs of action.

Dated in Tulsa, Oklahoma this 23<sup>rd</sup> day of May, 1983.

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

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

**FILED**

MAY 24 1983

IN RE: )  
 )  
 ACE-HI ENERGY COMPANIES, INC., )  
 )  
 Debtor. )  
 )  
 JAMES R. ADELMAN; )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 R. K. PIPE & SUPPLY, INC., )  
 a foreign corporation, )  
 )  
 Defendant. )

No. M-1067-B

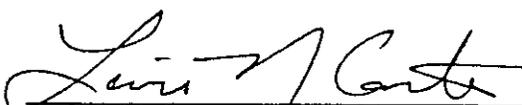
WARREN L. McCONNICO, CLERK  
U. S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OKLAHOMA

Transferred from  
Bankruptcy Court  
Case No. 82-00542  
Adv. No. 83-0412

*ms* MAY 24, 1983  
Jack C. Street, Clerk  
U. S. DISTRICT COURT

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, James R. Adelman, and files notice of dismissal of the above-entitled action pursuant to Fed. Rule Civ. Pro. 41(a)(1), as adopted by Federal Bankruptcy Rule No. 741, and does hereby dismiss the above-entitled action.

  
 WILLIAM C. ANDERSON  
 LEWIS N. CARTER  
 Doerner, Stuart, Saunders,  
 Daniel & Anderson  
 1000 Atlas Life Building  
 Tulsa, Oklahoma 74103  
 (918) 582-1211

Attorneys for Plaintiff

CERTIFICATE OF MAILING

The undersigned hereby certifies that, on the 21 day of May, 1983, a true and correct copy of the above and foregoing Voluntary Dismissal was mailed to Earl W. Arnold, Esq., 303 Center Office Building, 707 South Houston, Tulsa, Oklahoma 74127, with proper postage prepaid thereon.

  
\_\_\_\_\_  
Lewis N. Carter

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

FILED  
MAY 24 1983

PHYLLIS BEDINGFIELD and GROVER )  
BEDINGFIELD, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. 80-C-431-E  
 )  
OFFICER T. C. VAN MATRE, et al., )  
 )  
Defendants. )

JUDGMENT

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and at the conclusion of Plaintiffs' evidence, Defendant Harry Stege moved for directed verdict, which the Court finds should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Harry Stege's motion for directed verdict be and is hereby sustained. The action is therefore dismissed as to Defendant Harry Stege.

DATED at Tulsa, Oklahoma this 24<sup>th</sup> day of May, 1983.

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

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

FILED  
MAY 24, 1983  
TACK C. SIVER, CLERK  
U.S. DISTRICT COURT

WES ATOR AND LINDA ATOR, )  
husband and wife, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ALLIS CHALMER TRACTOR COMPANY, )  
 )  
Defendant. )

Case No. 83-C-47-B

JOURNAL ENTRY OF JUDGMENT

On May 18, 1983 the above captioned matter came on for evidentiary hearing, the plaintiffs, Wes Ator and Linda Ator, husband and wife, appearing in person and by and through their attorney, Richard D. White, Jr. The defendant, Allis Chalmer Tractor Company, having been duly served and having received lawful notice in this matter, did not appear. The Court heard testimony of witnesses and, having reviewed the pleadings filed herein finds as follows:

1. That based on information given counsel for the plaintiffs, service of summons was made upon C.T. Corporations System, the service agent of record for the defendant. That said C.T. Corporations Systems responded to plaintiffs that it was not the service agent for Allis Chalmer Tractor Company. That service of summons was subsequently made on the Oklahoma Secretary of State. That said summons and petition were received by the Secretary of State of Oklahoma as evidenced by the return of service filed by the U.S. Marshall. That defendant Allis Chalmer Tractor Company has failed to answer, plead, or otherwise defend and is wholly in default.

2. That the plaintiff, Wes Ator a/k/a Rueul Ator, is entitled to judgment against defendant in the sum of ten thousand, four hundred and thirty dollars (\$10,430.00), along with interest at the rate of 8.72% accruing as of May 18, 1983. Further, that plaintiff Wes Ator is entitled to judgment in the sum of sixty-nine dollars (\$69.00) as and for court costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, West Ator a/k/a Rueul Ator, have judgment against defendant, Allis Chalmer Tractor Companh, in the sum of ten thousand, four hundred and ninety-nine dollars (\$10,499.00) along with interest at the rate of 8.72% accruing from May 18, 1983.

ENTERED THIS 24<sup>th</sup> day of May, 1983.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

MAY 24, 1983

JACK C. SILVER, CLERK

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

JAMES H. JOHNSON and	)	
WAYNE JOHNSON, d/b/a	)	
RUNNING J. RANCH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. 82-C-796-B
	)	
TOM H. VENABLE,	)	
	)	
Defendants.	)	

ORDER

IT APPEARS to the Court that the above entitled action has been fully settled, adjusted and compromised and based on stipulation; therefore,

IT IS ORDERED AND ADJUDGED that the above entitled action be and it is hereby dismissed without cost to any party and with prejudice to all the parties.

Dated ~~April~~ <sup>May</sup> 24, 1983.

*Thomas R. Brett*  
 \_\_\_\_\_  
 JUDGE OF THE UNITED STATES  
 DISTRICT COURT

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

FILED  
MAY 24, 1983

CUSTOM AIR SYSTEMS, INC., )  
 )  
Plaintiff, )  
 )  
vs. ) No. 82-C-763-E  
 )  
ARKANSAS BEST FREIGHT COMPANY, )  
 )  
Defendant. )

Jack C. Silver, 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. 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 within forty-five (45) days that settlement has not been completed and further litigation is necessary. Parties are to submit all settlement papers within thirty (30) days of this date.

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 24<sup>TH</sup> day of May, 1983.

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

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

FILED  
MAY 24 1983

FLOYD G. BLAIR, Personal  
Representative of the  
Estates of MARY J. BLAIR  
and VIRGIL W. BLAIR, both  
deceased,

Plaintiffs,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY and OKLAHOMA, KANSAS  
AND TEXAS RAILROAD COMPANY and  
KATY INDUSTRIES, INC.,

Defendants.

Case No. 82-C-964-B

ORDER

This matter comes before the Court on defendant Katy Industries, Inc.'s motion to dismiss for lack of jurisdiction over the person, filed pursuant to F.R.Civ.P. 12(b)(2). The plaintiff, in response, has conceded that he has neither evidence nor legal authority to offer the Court in opposition to such motion.

FOR GOOD CAUSE SHOWN, defendant's motion is hereby sustained, and Katy Industries, Inc., is dismissed with prejudice.

ENTERED THIS 24 day of May, 1983.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**FILED**

THE HUGHES GROUP,

Plaintiff,

vs.

KENT GERSTNER, an individual;  
and COWGIRL ENERGY CORPORATION,  
an Oklahoma corporation,

Defendants.

MAY 25 1983

John C. Silver

No. 82-C-805-B

JOURNAL ENTRY OF JUDGMENT

This action came on for hearing and trial before the Court the 16th day of May, 1983, and Plaintiff appeared by and through its counsel, William J. Wenzel of Sneed, Lang, Adams, Hamilton, Downie & Barnett. Defendants, Kent Gerstner and Cowgirl Energy Corporation, appeared by and through their attorney, Douglas L. Boyd. The parties announce in open court that the action has been settled and resolved and that judgment may be entered in favor of Plaintiff and against Defendants and each of them as follows:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that judgment is entered on the First Claim for Relief filed by Plaintiff on August 24, 1982, in favor of Plaintiff, The Hughes Group, and against Defendants, Kent Gerstner and Cowgirl Energy Corporation, jointly and severally, in the amount of \$2,650.00, each party to bear its own court costs and attorneys' fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff is determined to be the lawful owner of two oil

storage tanks removed by Defendants in January of 1982 and described as a 202 tank and a 210 tank, and Defendants, and each of them, are directed to allow Plaintiff to remove such equipment from their possession, if Defendants have not already done so.

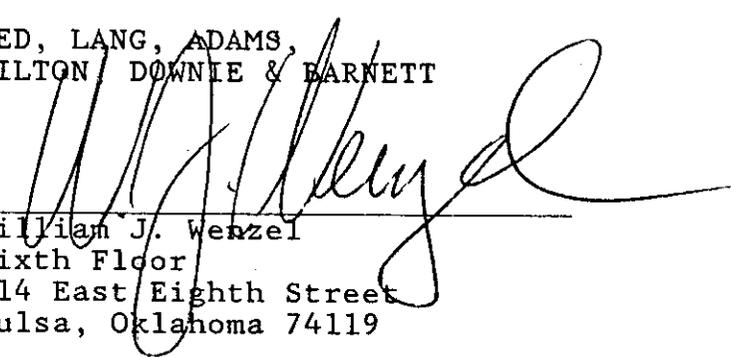
DONE this 23 day of May, 1983.

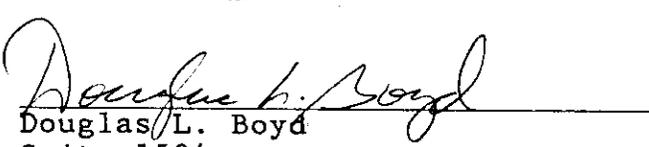
S/Thomas R. Brett  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO  
FORM & CONTENT:

SNEED, LANG, ADAMS,  
HAMILTON, DOWNIE & BARNETT

By

  
William J. Wenzel  
Sixth Floor  
114 East Eighth Street  
Tulsa, Oklahoma 74119

  
Douglas L. Boyd  
Suite 1504  
320 South Boston  
Tulsa, Oklahoma 74103

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

THRIFTY RENT-A-CAR SYSTEM, INC., )  
 )  
 ) Plaintiff, )  
 )  
 v. ) Civil Action No.  
 )  
 FIFTY RENT-A-CAR, ) 83-C-0058-C  
 )  
 )  
 )  
 Defendant. )

MAY 23 1983  
U.S. DISTRICT COURT

O R D E R

The parties having stipulated and agreed to transfer the above action to the U.S. District Court for the Western District of Pennsylvania,

IT IS HEREBY ORDERED that the above action be transferred to the U.S. District Court for the Western District of Pennsylvania.

Dated this 23 day of May, 1983.

(Signed) H. Dale Cook  
\_\_\_\_\_  
H. Dale Cook  
Chief Judge, United States  
District Court for the  
Northern Disdriect of Oklahoma

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

R. W. GARRETT, et al )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PARKROAD PETROLEUM, INC., an )  
Oklahoma Corporation, and )  
RONNIE DEAN HODGE, an )  
Individual, )  
 )  
Defendants, )  
 )  
vs. )  
 )  
ROBERT A. TURLEY, )  
 )  
Third-Party Defendant. )

No. 82-C-31-E

FILED  
1982  
U.S. DISTRICT COURT

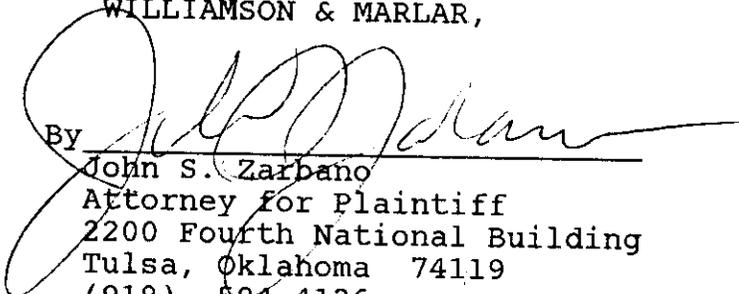
STIPULATION OF DISMISSAL

Pursuant to the Federal Rules of Civil Procedure, Rule 41(a), the parties hereby stipulate that Plaintiffs, R. W. Garrett, Lawrence L. Hurst, Noma Turley, Louise W. Osborn, LeRoy Heavner, Howard Brown, Robert E. Sullivan, William A. Stott, Don Q. Hamblet, Terry R. Toma, Norman L. Gritton, James L. Rayl, Michael Whitehead, Wynona G. Wood, individually and as Administratrix of the Estate of William M. Wood, George Day, Tommy W. Stewart, William W. Hartshorn, J. C. Pulliam, Joseph Palmeri, Jerry Riffle, Phillip L. Jones, John Doulliard, A. F. Martin, Ruth I. Martin, Charles Self,

Patsy Self, Charles G. Olentine, Nancy M. Chouteau, Gene Burbelo, Kenneth Grounds, dismiss with Prejudice their cause of action of counts one and two in the above styled cause against the Defendants, Parkroad Petroleum, Inc. and Ronnie Dean Hodge.

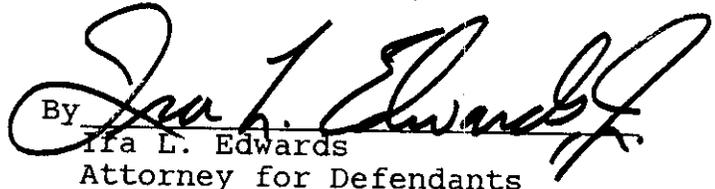
IT IS FURTHER stipulated by and between the parties, that the Defendants, Parkroad Petroleum, Inc., and Ronnie Dean Hodge dismiss with Prejudice their cause of action against the Third-Party Defendant, Robert A. Turley.

PRAY, WALKER, JACKMAN,  
WILLIAMSON & MARLAR,

By 

John S. Zarbano  
Attorney for Plaintiff  
2200 Fourth National Building  
Tulsa, Oklahoma 74119  
(918) 584-4136

JONES, FRANCY, DORIS,  
SUTTON & EDWARDS,

By 

Iifa L. Edwards  
Attorney for Defendants  
114 East 8th Street  
Suite 400  
Tulsa, Oklahoma 74119  
(918) 584-4136

YOUNG AND YOUNG

By John M. Young  
John M. Young, Attorney for  
Third-Party Defendant  
2 North Main, P. O. Box 1364  
Sapulpa, Oklahoma 74066  
(918) 224-3131

ORDER

Pursuant to the above stipulation it is so Ordered.

S/ JAMES O. ELSON

U. S. DISTRICT COURT JUDGE

*C. S. Elson*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PATSY C. FAULCONER, a/k/a )  
 PATSY C. KINCADE; BOB EUGENE )  
 KINCADE; OKLAHOMA STATE BANK )  
 AND TRUST COMPANY; PHOENIX )  
 FEDERAL SAVINGS AND LOAN )  
 ASSOCIATION; BOARD OF COUNTY )  
 COMMISSIONERS, CRAIG COUNTY, )  
 OKLAHOMA; and COUNTY TREASURER, )  
 CRAIG COUNTY, OKLAHOMA, )  
 )  
 Defendants. )

**FILED**

MAY 25 1983

Jack G. Silver, Clerk

CIVIL ACTION NO. 83-C-56-B

JUDGMENT OF FORECLOSURE

THIS MATTER COMES ON FOR consideration this 23<sup>rd</sup> day of May, 1983. 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 Defendants, Board of County Commissioners, Craig County, Oklahoma; and County Treasurer, Craig County, Oklahoma; by Orvan J. Hanson Jr., Assistant District Attorney for Craig County, Oklahoma; and the Defendants, Patsy C. Faulconer, a/k/a Patsy C. Kincade, Bob Eugene Kincade, Oklahoma State Bank and Trust Company; and Phoenix Federal Savings and Loan Association, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Patsy C. Faulconer, a/k/a Patsy C. Kincade; Oklahoma State Bank and Trust Company; Phoenix Federal Savings and Loan Association; Board of County Commissioners, Craig County, Oklahoma; and County Treasurer,

Craig County, Oklahoma; were served on January 19, 1983.

Further, Bob Eugene Kincade was served on February 16, 1983.

It appears that the Defendants, Patsy C. Faulconer, a/k/a Patsy C. Kincade; Bob Eugene Kincade; Oklahoma State Bank and Trust Company have failed to answer and that default has been entered by the Clerk of this Court.

Further, it appears that Defendant, Phoenix Federal Savings and Loan Association, has disclaimed any interest in the property, the subject of this foreclosure by virtue of their alias release of mortgage filed April 6, 1983.

It appears that the Defendants, Board of County Commissioners, Craig County, Oklahoma, and County Treasurer, Craig County, Oklahoma, have answered herein on January 27, 1983.

The Court further finds that this is a suit based upon a mortgage note and for a foreclosure of real property mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern District of Oklahoma:

The Northerly 45 feet of Lot 11,  
Block 78, in the City of Vinita,  
Oklahoma.

THAT the Defendants, Patsy C. Faulconer, then a single person who is now also known as Patsy C. Kincade, did, on the 21st day of December, 1976, execute and deliver to Farmers Home Administration her mortgage and mortgage note in the sum of \$15,800.00 with 8 % (percent) interest per annum, and further providing for the payment of monthly installments of principal and interest.

That the Defendant Patsy C. Faulconer, a single person, filed her petition in bankruptcy on December 27, 1979. However, prior to discharge being granted this debtor on February 22, 1980, reaffirmed her obligation and executed a new promise to pay the note mentioned above.

The Court further finds that Defendants, Patsy C. Faulconer, a/k/a Patsy C. Kincade, made default under the terms of the aofresaid mortgage note by reason of her failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the principal sum of \$15,602.11, plus plus accrued interest of \$3,751.80 with interest accruing at the rate of 8 % (percent) per annum from June 23, 1982, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Craig, State of Oklahoma, from Defendant, Patsy C. Faulconer, a/k/a Patsy C. Kincade, the sum of \$ 158.70 plus interest according to law for real property taxes for the year(s) 1982 and that Craig County should have judgment for said amount, but that such judgment is superior to the first mortgage lien of the Plaintiff herein.

The Court finds that there is due and owing to the County of Craig, State of Oklahoma, from Defendant, Patcy C. Faulconer a/k/a Patcy C. Kincade, the sum of \$ 19.35 plus interest according to law for personal property taxes for the year(s) 1978 through 1982 and that Craig County should have judgment for said amount, but that such judgment is inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Patsy C. Faulconer, a/k/a Patsy C. Kincade, for the principal sum of \$15,602.11 plus accrued interest of \$3,751.80 as of June 23, 1982, with interest thereafter at the rate of 8 % (percent) per annum from June 23, 1982, until paid, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

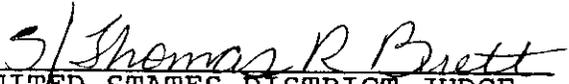
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Craig have and recover judgment against Defendants, Patsy C. Faulconer, a/k/a Patsy C. Kincade, for the sum of \$ 158.70 as of the date of this judgment plus interest thereafter according to law for real property taxes, but that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Craig have and recover judgment against Defendants, Patsy C. Faulconer, a/k/a Patsy C. Kincade, for the sum of \$ 19.35 as of the date of this judgment, plus interest thereafter according to law for personal property taxes, but that such judgment is inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United

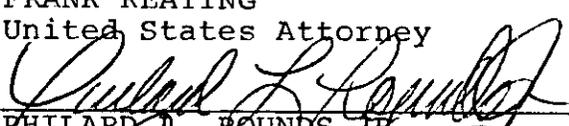
States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

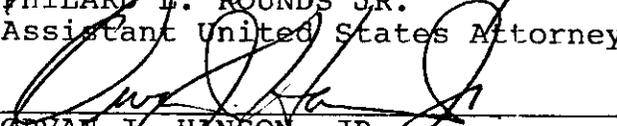
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint herein are forever barred and foreclosed of any right, title, interest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

  
UNITED STATES DISTRICT JUDGE

APPROVED:

FRANK KEATING  
United States Attorney

  
PHILARD D. ROUNDS JR.  
Assistant United States Attorney

  
ORVAN J. HANSON, JR.,  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Craig County, Oklahoma

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

**FILED**

APR 10 1983

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

JOHN D. VETTER, an individual, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SOUTHWEST SPORTING GOODS COMPANY, )  
INC., an Oklahoma corporation; )  
NATIONAL SPORTS, INC., a Colorado )  
corporation; and JAMES COBERN, )  
JAMES CORBIN, and DONALD TALTON, )  
individuals, )  
 )  
Defendants. )

Case No. 83-C-17 C

O R D E R

It appearing to the court that the parties to the shareholder derivative action and suit for involuntary dissolution of Southwest Sporting Goods Company, Inc., namely John D. Vetter, Southwest Sporting Goods Company, Inc., National Sports, Inc., James Cobern, James Corbin, and Donald Talton, have stipulated to the dismissal of the above-entitled action without prejudice pursuant to the dictates of Fed. R. Civ. P. 23.1 and 41(a)(1), and since no notice is required for dismissal since all shareholders are parties to the suit, the court finds that the dismissal should be and the same hereby is approved by the court. Rulings as to the intervenor Montgomery Ward & Co., Inc. are reserved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this action by John D. Vetter against Southwest Sporting Goods Company, Inc., National Sports, Inc., James Cobern, James Corbin, and Donald Talton is hereby DISMISSED without prejudice with each of the parties to bear its own costs.

ENTERED this 20 day of May, 1983.

(Signed) H. Dale Cook

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H. Dale Cook, Chief Judge  
United States District Court

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA )  
and KYLE DAMERON, )  
Revenue Officer, Internal )  
Revenue Service, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
WILLIAM T. DRAPALA, )  
 )  
Respondent. )

FILED  
MAY 20 1983  
JUD. DIST. CLERK  
U.S. DISTRICT COURT

CIVIL ACTION NO. M-1033

ORDER DISCHARGING RESPONDENT AND DISMISSAL

ON THIS 20 day of May, 1983, Petitioners' Motion to Discharge Respondent and for Dismissal came for hearing and the Court finds that Respondent has now complied with the Internal Revenue Service Summons served upon him, that further proceedings herein are unnecessary and that the Respondent, William T. Drapala, should be discharged and this action dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that the Respondent, William T. Drapala, be and he is hereby discharged from any further proceedings herein and this cause of action and Complaint are hereby dismissed.

(Signed) H. Dale Cook  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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

AETNA CASUALTY & SURETY COMPANY, )  
 )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
 TOM LANGE COMPANY, INC., LLOYD G. )  
 SHIVERS and ISAAC HACKETT )  
 JOHNSTON, next friend and guard- )  
 ians of Jerol Johnston and )  
 Joseph Johnston, minors, )  
 )  
 ) Defendants. )

No. 82-C-1040-B

**FILED**

**MAY 20 1983**

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

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law filed this date, Judgment is hereby entered in favor of the defendant, Tom Lange Company, Inc., and against the plaintiff, Aetna Casualty & Surety Company; the plaintiff being required to defend said action and provide liability coverage within the terms of the policy of insurance and consistent with the Findings of Fact and Conclusions of Law.

The plaintiff is to pay the costs of this action and each party is to pay their own respective attorney's fee.

ENTERED this 20 day of May, 1983.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

AETNA CASUALTY & SURETY COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TOM LANGE COMPANY, INC., LLOYD G. )  
SHIVERS and ISAAC HACKETT )  
JOHNSTON, next friend and guard- )  
ians of Jerol Johnston and )  
Joseph Johnston, minors, )  
 )  
Defendants. )

NO. 82-C-1040-B

**F I L E D**

**MAY 20 1982**

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

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This is an action for declaratory relief brought by plaintiff pursuant to 28 U.S.C.A. §2201. Plaintiffs seek a declaration by the Court that coverage on an insurance policy issued to defendant Tom Lange Company, Inc., ("Lange") does not extend coverage for liability arising from a semi-truck/car collision on Interstate 44 in Tulsa, Oklahoma July 29, 1978. The parties have agreed to submit the case for judgment on the record, consisting of the pleadings in this action, oral arguments, and the amended complaints of March 24, 1980 and January 5, 1982, in a related vehicle accident case in the Northern District, numbered 79-C-417-B and styled:

"Lloyd G. Shivers and Isaac Hackett Johnston, Guardians and Next Friend for Jerol Johnston and Joseph Johnston, Minors, Plaintiffs v. Claude Michael Davis; T.L.C. Farmlines, Inc.,

a foreign corporation, Carolina Casualty Insurance Company, C.D.B., Inc., a foreign corporation; Michigan Mutual Insurance Company; R.M. Gerawan Company and Tom Lange Company, Defendants."

Based upon the record, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff, the Aetna Casualty & Surety Company, is a corporation organized and existing under the laws of the State of Connecticut. The defendant, Tom Lange Company, Inc., ("Lange") is a Missouri corporation with its principal place of business in St. Louis, Missouri. Defendants Lloyd G. Shivers and Isaac Hackett Johnston, are believed to be residents of the State of New Jersey. The amount in controversy, exclusive of interest and costs, exceeds \$10,000.00.

2. Plaintiff issued defendant Lange a "Comprehensive Liability Policy," effective from February 1, 1978 until February 1, 1979. The insurance policy provided in part:

"1. BODILY INJURY LIABILITY COVERAGE  
PROPERTY DAMAGE LIABILITY COVERAGE

The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

bodily injury or  
property damage

to which this insurance applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements."

An "occurrence" was defined as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured."

3. The policy contained the following exclusions:

"This insurance does not apply:

- (a) to liability assumed by the insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or quality of the named insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;
- (b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of
  - (1) any automobile or aircraft owned or operated by or rented or loaned to any insured, or
  - (2) any other automobile or aircraft operated by any person in the course of his employment by any insured."

Under "Persons Insured," the policy stated:

"This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a named insured."

4. On June 15, 1979, the vehicle accident case 79-C-417-B was removed from the District Court of Tulsa County, State of Oklahoma, to the United States District Court for the Northern District of Oklahoma. On March 24, 1980, the complaint was amended to add Lange as a defendant. On January 5, 1982, the complaint was again amended to add allegations concerning the relationship of defendants T.L.C. Farmlines, Inc., and Tom Lange Company.

5. The amended complaint of March 24, 1980, alleges that on July 29, 1978, at 6:15 P.M., a 1975 Kenworth semi-trailer tractor driven by defendant Claude Davis, west-bound on Interstate 44 in the city limits of Tulsa crossed the center median of the highway and collided head-on with a car driven by the plaintiffs' decedent, Jerol F. Johnston. The plaintiffs contend that Davis was negligent in that he operated the truck in a careless and negligent manner; failed to keep a proper lookout; and failed to apply his brakes or turn his vehicle to avoid the collision.

6. The complaint alleges defendant T.L.C. Farmlines, Inc., along with defendant Gerawan (since dismissed from this action) entered into an arrangement to ship certain goods in

interstate commerce and employed Davis to transport the goods.<sup>1</sup> The complaint states:

"...the Defendants T.L.C. and Gerawan were negligent in the selection of employing Davis and entrusting him to haul commodities for them, when they knew, or in the exercise of reasonable care should have known, that he was a reckless, careless and negligent driver by reason of his previous accidents, driving record and traffic violations; that he was operating his tractor-trailer without necessary permits to lawfully operate through the states which he would be traveling; that he did not maintain the requisite liability or cargo insurance thereon; that its drivers, including Davis did operate their vehicles while under the influence of controlled drugs and other dangerous substances. Furthermore, that the Defendants T.L.C. and Gerawan failed to conduct sufficient inquiry into the ability, experience and reliability of Davis before allowing him to operate his tractor-trailer on the public highways so as to disregard the minimum safety requirements established for the trucking industry."

7. With regard to the relationship between T.L.C. Farmlines and Lange, the complaint states:

"The Defendant Lange was the supervisor, general manager and agent for T.L.C. with full control, supervision and knowledge of its operations thereof. Lange specifically trained and instructed employees of T.L.C. in the business practices and knew or in the

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<sup>1</sup> T.L.C. Farmlines, Inc., is a farm cooperative that provides brokerage services for the sale of farm produce. Tom Lange Co. is the general manager of T.L.C. Gerawan, Inc., is a farm product shipping company whose facilities serve as a gathering point for produce. Claude Davis is an independent truck contractor who, when he wanted to haul a load, would contact T.L.C. Farmlines and tell them he was available for work. T.L.C. directed Davis to Gerawan to pick up the produce load involved herein.

exercise of reasonable care should have known about the policies of T.L.C. in hiring or contracting with drivers to be used in the operation of hauling agricultural goods in interstate commerce. Furthermore, Lange did exercise direct dominion and control over the directions of carriage of such goods during its transit. Such policies of T.L.C. as instructed by Lange constitute a total disregard for the lawful and prudent operations for interstate commerce and were inheritly (sic) dangerous to the general public and would constitute gross negligence."<sup>2</sup>

8. In their amended complaint of January 5, 1982, plaintiffs allege the defendant T.L.C. was organized in 1976 by Lange as its "alter ego" to transport agricultural products after Lange arranged their purchase and sale as a produce broker. Plaintiffs contend T.L.C. has no separate corporate existence and exists solely to permit Lange to conduct business under the guise of another separate corporate entity. Plaintiffs allege that at all times material, Lange wholly controlled the actions and dictated the policies of T.L.C. Further, the complaint alleges:

"In the alternative Plaintiff is informed and believes, and upon such information and belief alleges, that at all times mentioned hereinafter, Defendants, Lange and T.L.C., were and still are partners doing business under the name TLC Farmlines, Inc., with its principal office and place of business in Kern County, State of California. That these defendants are engaged in a partnership relation for the business of transporting agricultural produce and other products by highway carrier, but because said defendants have failed to comply with the laws of the State of California concerning the filing of

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<sup>2</sup> The complaint also states: "the Plaintiffs do verily believe that Davis was operating his Kenworth semi-trailer as an actual agent and employee for the Defendants, T.L.C., Lange and Gerawan..." At the hearing on this matter, however, all parties conceded Davis was not an agent for Lange.

business certificates for such partnership, diligent search for full and accurate information as to said relationship does not reveal either the entities engaged therein or the form of business organization involved."

9. Based upon a reading of the complaint, negligence contentions against Lange are centered in the following theories:

- a) In its capacity as manager of T.L.C. Lange breached an obligation of supervision and instruction regarding compliance with Department of Transportation safety regulations and selection of drivers.
- b) By virtue of its relationship with T.L.C., Lange either controlled T.L.C. on a principal/agent basis or was the alter ego of T.L.C.; therefore, the acts of T.L.C. are legally the acts of Lange, and allegations against T.L.C. relating to negligent entrustment are allegations against Lange.
- c) Lange is liable for the acts of T.L.C. because Lange and T.L.C. were either partners or joint venturers.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction under 28 U.S.C. §1332.
2. Any Finding of Fact which might be properly characterized a Conclusion of Law is incorporated herein.
3. Any obligation of the insurance carrier herein to defend Tom Lange Company in the underlying personal injury suit will rest upon the allegations of the complaint in the personal injury suit. Home Indemnity Co. v. Lively, 353 F.Supp. 1191, 1195 (W.D. Okl. 1972).

4. In the absence of contrary statutory provision, the insurer may include in the policy any number or kind of exceptions and limitations to which the insured will agree, for insurance companies have the same right as individuals to limit their liability and impose whatever conditions they please on their obligations, not inconsistent with public policy. Couch on Insurance 2d, 15:47. Clear and specific exceptions must be given effect. Commercial Standard Insurance Co. v. Gilmore, Gardner & Kirk Oil Co., 157 F.2d 929, 930 (10th Cir. 1946).

5. The provisions of a policy exempting the insurer from liability are to be construed in case of doubt strictly against the insurer. Continental Oil Co. v. National Fire Ins. Co. of Connecticut, 541 P.2d 1315, 1320 (Okla. 1975).

6. Provision 3(a) of the policy, excluding from coverage "liability assumed by the insured under any contract or agreement except an incidental contract" is not applicable to the present fact situation. The provision is at best ambiguous, and must be construed against the insurer. Great American Ins. Co. v. O.K. Packing Co., 211 P.2d 1014, 1016 (Okla. 1949). Furthermore, the Court believes the management contract Lange had with T.L.C., if any, was incidental to the course of business and would therefore be covered under the terms of the policy.

7. The terms of an insurance policy are to be accepted in their plain and ordinary sense. Continental Oil Co. v. National Fire Ins. Co. of Connecticut, 541 P.2d 1315, 1320 (Okla. 1975). Provision 3(b) of the policy, the automobile exclusion, excludes

liability for bodily injury or property damage arising out of the "ownership, maintenance, operation, use, loading or unloading of" a vehicle "owned or operated by or rented or loaned to any insured." Neither the underlying complaint nor the complaint in this action, allege that either T.L.C. or Tom Lange owned, operated, rented or borrowed the rig involved in the accident.<sup>3</sup>

The language of the exclusion, accepted in its plain and ordinary sense, applies only to vehicles actually owned or operated by or rented or loaned to the insured, Tom Lange Company. Therefore, under either a theory of negligent management or a theory of

---

<sup>3</sup> Aetna contends the terms "operated by", "rented", and "loaned to" should be interpreted so as to apply to situations in which the insured is being sued for negligent entrustment. The Tenth Circuit Court of Appeals, in Douglas v. Hartford Insurance Co., 602 F.2d 934 (1979), upheld the decision of a federal district court in Colorado that an automobile exclusion clause in a homeowner's liability policy was inapplicable to a situation involving alleged negligent entrustment of an automobile. The district court there relied principally on Upland Mutual Insurance, Inc. v. Noel, 519 P.2d 737 (Kan. 1974), in which the Supreme Court of Kansas held that an automobile exclusion clause in a homeowner's liability policy was limited in scope to those situations where the claim against the insured is based directly upon negligence in the ownership, maintenance, operation and use of an automobile and did not extend to negligent entrustment. The Oklahoma Supreme Court has never spoken to the issue, and courts across the country are split. Cases holding the exclusion clause applies to negligent entrustment include: Bankert v. Thresherman's Mut. Ins. Co., 313 N.W.2d 854 (Wisc. App. 1981); Cooter v. State Farm Fire and Cas. Co., 344 So.2d 496 (Ala. 1977); Barnstable County Mutual Fire Ins. Co. v. Lally, 373 N.E.2d 966 (Mass. 1978); and Aetna Cas. & Sur. Co. v. American Mfg. Mut. Ins. Co., 547 S.W.2d 757 (Ark. 1977). Cases holding to the contrary include: Upland Mutual Insurance Inc. v. Noel, *supra*; Eichelberger v. Warner, 434 A.2d 747 (Pa. Supp. Ct. 1981); State Farm Mutual Automobile Insurance Co. v. Partridge, 514 P.2d 123 (Cal. 1973); and Lejeune v. Allstate Insurance Co., 365 So.2d 471 (La. 1978).

control/alter ego,<sup>4</sup> the exclusion would not be applicable as the truck involved was owned and operated by the defendant Davis.<sup>5</sup>

8. The exclusion for liability arising from "the conduct of any partnership or joint venture of which the insured is a partner or member" might be applicable should plaintiffs in the underlying personal injury action prevail on their theory that T.L.C. and Lange were involved in a partnership or joint venture. However, at this time, the Court has nothing before it save a bald allegation, unsupported by evidence of such of a relationship. Further, the plaintiffs in the underlying suit set forth two other theories upon which, should they prevail, coverage under the policy could be effective. Where the pleaded allegations of the insured's adversary state facts, which if proved, could bring the insured's liability within the policy coverage, the insurer must defend against the alleged cause of action. Maryland Casualty Co. v. Willsey, 380 P.2d 254, 258 (Okla. 1963). Therefore, Aetna has a duty to defend Lange in the underlying

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<sup>4</sup> Aetna argues the potential liability of T.L.C. for negligent entrustment, as outlined in Hudgens v. Cook Industries, 521 P.2d 813 (Okla. 1974), should be imputed to Lange. In Hudgens, the court held a grain shipper liable for negligent entrustment for allowing an independent truck contractor to haul its product. The Court is not deciding at this time whether Lange could be held liable for negligent entrustment based upon Hudgens or whether Lange's alleged negligent management would create a prima facie negligence cause of action.

<sup>5</sup> Lange argues the language of the automobile exclusion is ambiguous and should therefore be construed in favor of the insured. The Court, however, finds no ambiguity in the language of paragraph 3(b) of the policy quoted at page 3 above.

action in accordance with the terms of the insurance contract.<sup>6</sup>

9. Plaintiff's request for declaratory relief is hereby denied. Judgment for defendants shall be entered in accordance with the Court's Findings of Fact and Conclusions of Law.

ENTERED this 20<sup>th</sup> day of May, 1983.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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<sup>6</sup> The Court recognizes that although Aetna has a duty to defend, it may ultimately, depending on the outcome of various issues discussed above, have no duty to indemnify Lange against liability imposed.

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

WAL-MART STORES, INC., )  
a Delaware corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CARROLL W. CALDWELL, d/b/a )  
COMMERCIAL ROOF COATINGS OF )  
TULSA, )  
 )  
Defendant. )

NO. 82-C-639-B ✓

**FILED**

MAY 20 1983 *Ann*

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

J U D G M E N T

Pursuant to the verdict of the jury entered April 26, 1983, IT IS ORDERED AND ADJUDGED the plaintiff, Wal-Mart Stores, Inc., is to have judgment against Carroll W. Caldwell, d/b/a Commercial Roof Coatings of Tulsa in the amount of Sixty One Thousand Three Hundred Forty-Two and 66/100 Dollars (\$61,342.66), plus post-judgment interest at the rate of 8.98% per annum and the costs of this action; FURTHER, IT IS ADJUDGED the plaintiff, Wal-Mart Stores, Inc., is to have judgment against Carroll W. Caldwell, d/b/a Commercial Roof Coatings of Tulsa as and for attorney's fees in the sum of Seven Thousand Two Hundred Sixty Seven and 50/100 Dollars (\$7,267.50), for all of which let execution issue.

ENTERED this 19<sup>th</sup> day of May, 1983.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

WAL-MART STORES, INC., )  
a Delaware corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CARROLL W. CALDWELL, d/b/a )  
COMMERCIAL ROOF COATINGS OF )  
TULSA, )  
 )  
Defendant. )

NO. 82-C-639-B

**FILED**

MAY 20 1983 *rm*

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

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW CONCERNING ATTORNEY'S FEES  
AND PRE AND POST-JUDGMENT INTEREST.

In this case on April 26, 1983, the jury duly empanelled and sworn returned a verdict in the amount of \$61,342.66 in favor of the plaintiff and against the defendant. Coming on for hearing before the Court on May 6, 1983 is the plaintiff's application for attorney's fees pursuant to 12 Okl.St. Ann. §936 and/or §939 as well as plaintiff's claim for pre- and post-judgment interest. After considering the matter presented to the Court, statements of counsel, as well as the applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Inhering in the verdict of the jury is an award to the plaintiff and against the defendant based upon the plaintiff's claim of breach of an express warranty.

2. The parties agree that if the plaintiff is entitled to an attorney's fee, which the defendant denies, plaintiff's coun-

sel's claim of expending 96.9 hours at the rate of \$75.00 per hour is in all respects considered reasonable. The total agreed reasonable attorney's fee claimed by the plaintiff is \$7,267.50.

3. The nature of the plaintiff's claim is unliquidated because the amount due was disputed and uncertain, requiring the plaintiff's proof and the determination of said amount by the trier of fact.

4. The parties agreed the plaintiff is entitled to post-judgment interest.

#### CONCLUSIONS OF LAW

1. Any Finding of Fact above which might be properly characterized a Conclusion of Law is incorporated herein.

2. The plaintiff's claim centered in a breach of an express warranty and the jury's verdict awarded plaintiff damages thereon. 12 Okl.St. Ann. §939 provides as follows:

"In any civil action brought to recover damages for breach of an express warranty or to enforce the terms of an express warranty made under Section 2-313 of Title 12A of the Oklahoma Statutes, against the seller, retailer, manufacturer, manufacturer's representative or distributor, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, which shall be taxed and collected as costs."

The plaintiff is entitled to recover the amount of the agreed attorney's fee herein which is \$7,267.50.

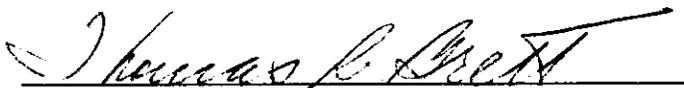
3. The claim of the plaintiff was an unliquidated claim so the plaintiff is not entitled to recover pre-judgment interest.

Metropolitan Electric Company, Inc. v. Mel-Jac Construction Company, 576 P.2d 323 (Okl. 1978); 23 Okl.St. Ann. §6.

4. The plaintiff is entitled to post-judgment interest at the rate of 8.98% pursuant to 12 Okl.St. Ann. §727 and 28 U.S.C. §1961.

A judgment incorporating the above Findings and Conclusions along with the verdict of the jury is to be prepared as of this date.

ENTERED this 19<sup>th</sup> day of May, 1983.



THOMAS R. BRET  
UNITED STATES DISTRICT JUDGE

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

JEAN L'AQUARIUS, )  
)  
Plaintiff, )  
)  
vs. )  
)  
WILLIAM WHISTLER; GLEN H. )  
(PETE) WEAVER; V. E. WEST; )  
H.T.CAMPBELL; and H. N. )  
LANGLEY, )  
)  
Defendants. )

No. 82-C-1133-BT

Filed  
MAY 19, 1983

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O R D E R

On December 6, 1982, plaintiff filed his complaint under 42 U.S.C. §1983 for alleged violations of his constitutional rights by defendants William Whistler, Glen H. (Pete) Weaver, V. E. West, H.T. Campbell and H.N. Langley under color of state law. Plaintiff, an inmate of Joseph Harp Correctional Center, Lexington, Oklahoma, was allowed to file his complaint without prepayment of costs but was informed any subsequent pleadings must be granted leave of court in order to be filed. On January 25, 1983, defendant Weaver filed his motion to dismiss Counts I and II of the complaint for failure to state a cause of action due to the running of the applicable statute of limitations on plaintiff's §1983 cause of action. On February 10, 1983, defendants Weaver, West and Campbell filed their motion to dismiss for failure to state a cause of action also due to the running of the

applicable statute of limitations. On February 15, 1983, defendant Whistler filed his motion to dismiss for several reasons, including failure to state a claim due to the running of the applicable statute of limitations. Plaintiff filed a response to defendant Weaver's motion to dismiss then later filed a general response to all the motions to dismiss.

Subsequently, plaintiff sent to the Court Clerk of this district his amended complaint and notice of joinder of additional defendants. This Court has granted plaintiff leave to file the amended complaint and notice of joinder of additional defendants, however, has not directed summons to be issued because of the reasons expressed infra. The amended complaint incorporates the counts alleged in the original complaint and adds several counts. This order will be divided into two parts: that dealing with plaintiff's original complaint and the defendants' motions to dismiss and that dealing with plaintiff's amended complaint.

#### ORIGINAL COMPLAINT

The constitutional rights violations of which plaintiff complains in the original complaint occurred between December 4, 1976 and February 14, 1977 while he was a pre-trial detainee in the Mayes County Jail. Plaintiff states:

"While so detained he was denied medical treatment, denied a diet in accordance with his Religious beliefs, his mail and telephone communications were denied or censored, he was denied visitors and contact with witnesses..., housed with 11 other men in a cell area designed for 5 persons, not segregated(sic) from juveniles or convicted persons, not provided bedding, clothing, hygiene supplies, etc., nor washing facilities, not allowed to take regular showers or

"baths, not provided with recreational facilities or allowed to exercise. His money was literally stolen by the jailer on the instructions of the sheriff." Plaintiff's complaint filed December 6, 1982 at pg. 3.

At the time of the alleged violations defendant, William Whistler, was a district judge of Mayes County; Glen H. (Pete) Weaver was the sheriff of Mayes County; Langley, West and Campbell were the county commissioners of Mayes County.<sup>1/</sup> Plaintiff claims the defendants knowingly failed and refused to perform certain ministerial duties prescribed by law in conspiracy with others to deliberately violate his constitutional and statutory rights.

Since there are no applicable federal statutes of limitations relating to civil rights actions brought under §1983, federal courts must apply "the most appropriate one provided by state law."

Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 462 (1975); Board of Regents v. Tomanio, 446 U.S. 478, 484 (1980); Garcia v. University of Kansas, Tenth Circuit Court of Appeals Slip Op. 79-1166 (March 9, 1983); Brown v. Bigger, 622 F.2d 1025, 1026 (10th Cir. 1980); Crosswhite v. Brown, 424 F.2d 495, 496 (10th Cir. 1970).

As stated by the Tenth Circuit Court of Appeals, the determination of the appropriate state statute of limitations must center on the "cause of action asserted" under §1983. Garcia v. University of Kansas, supra at 3. "We should not be concerned with how the rights were violated, such as by a discharge or by an assault, as this is only an assertion of the manner in which

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<sup>1/</sup> H.N. Langley died in March 1979.

the violation was accomplished. It is not a description of the rights violated." Id. at 3.

Here, the alleged violation of plaintiff's constitutional rights occurred while he was a pre-trial detainee from December 4, 1976 to February 14, 1977. Plaintiff filed his original complaint in this matter on December 6, 1982--approximately five and one-half years after the latest constitutional violation could have possibly occurred.

The applicable Oklahoma statute of limitations herein is 12 Okl.St. Ann. §95 (Third) which provides as follows:

"Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

Third. Within two (2) years: ... an action for injury to the rights of another, nor arising on contract, and not hereinafter enumerated; ..."

Plaintiff's cause of action thus appears to be barred.

This result is supported by Crosswhite v. Brown, 424 F.2d 495 (10th Cir. 1970), where the Tenth Circuit Court of Appeals affirmed the trial court's application of 12 Okl.St. Ann. §95 (Third) to a §1983 cause of action to recover for damages for a civil conspiracy.

For the above reasons, defendants' motions to dismiss are sustained and plaintiff's original complaint is dismissed.

AMENDED COMPLAINT:

Plaintiff's amended complaint adds Counts III through VII and plaintiff seeks to name 27 public officials and judges as defendants to the amended complaint. The new counts appear to allege constitutional violations occurring mainly from the date of plaintiff's sentencing and continuing until the present.

COUNTS III AND IV: In Count III plaintiff alleges "State officials, acting under color of law, including Judges, prosecuting Attorneys, Lawyers acting as court-appointed counsel, prison officials and others have criminally conspired to violate the Constitutional rights of the plaintiff by deliberately refusing him meaningful access to the Courts, both directly as a petitioner and indirectly as a witness or lay-counsel on behalf of others in violation of his rights under the 1st, 9th and 14th Amendments." In Count IV plaintiff alleges, "State officials, acting under color of law as Judges, prosecuting attorney's and court-appointed counsel have maliciously maligned, libeled and slandered the name, reputation and veracity of the plaintiff in violation of his rights under the 1st, 9th and 14th Amendments."

As supporting facts to Counts III and IV, plaintiff claims he has raised five questions of constitutional law in numerous courts of the State of Oklahoma. The courts have failed to grant plaintiff the relief to which he claims he is entitled. The five questions of law are:

1. The state courts of Oklahoma had no jurisdiction over plaintiff under the Magna Carta (1215) because he has elected to serve God rather than the State.

2. Oklahoma statutes relating to marijuana are unconstitutional because they make no provision for the use of marijuana for religious purposes and the State of Oklahoma has not shown it has a compelling interest to control, regulate or prohibit the use of marijuana as a religious sacrament.

3. Plaintiff did not receive a fair trial and was unconstitutionally convicted because of the unconstitutional conditions of confinement and treatment while in custody of the Mayes County jail as a pre-trial detainee.

4. Plaintiff was subjected to cruel and unusual punishment because the sentence imposed upon him by the Mayes County District Court was unconstitutional since the entire Oklahoma prison system has been found to be per se unconstitutional and the unconstitutional condition existed at the time of plaintiff's sentencing.

5. Plaintiff's incarceration was and is unconstitutional because:

a. Of the federal court ruling in Battle v. Anderson, 376 F.Supp. 402 (E.D. Okl. 1974).

b. The federal prison system receives federal funds but does not extend federal constitutional rights to prisoners, in particular, it refuses to pay prisoners for labor performed.

c. State prison officials, private banks and businesses have stolen, embezzled and converted to their own use personal funds of prisoners and public funds appropriated for the benefit and care of prisoners.

Also in support of Counts III and IV, plaintiff attaches a list of cases in which he was a party or assisted a party involved which plaintiff claims all or some of the above questions of law were raised.<sup>2/</sup> Exhibit A to plaintiff's amended complaint. Plaintiff claims the large number of cases in which the questions of law were raised is further support for his claim of conspiracy to deny him his constitutional rights.

On March 23, 1982, plaintiff filed a pro se petition for writ of habeas corpus in the United States District Court for the Western District of Oklahoma, L'aquarius v. Meachum and The Attorney General of the State of Oklahoma (Case No. CIV-82-405-E). On March 25, 1982, Judge Luther Eubanks transferred the cause to the United States District Court for the Northern District of Oklahoma before Judge James O. Ellison (Case No. 82-C-36-9E). An examination of plaintiff's petition for writ of habeas corpus reveals the five

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<sup>2/</sup> The Court takes judicial notice of thirteen cases in various state courts in which plaintiff herein was a party. See Exhibit A to plaintiff's amended complaint and plaintiff's motion for judicial notice filed February 22, 1983.

questions of law were also raised in that case.<sup>3/</sup> In Judge Ellison's order dated August 13, 1982, all the five questions of law were directly addressed on the merits with the exception of the latter two, 5(b) and 5(c) above:<sup>4/</sup> the federal prison system receives

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3/ The grounds raised for relief in the habeas corpus proceeding before Judge Ellison were:

a. denial of a fair trial and constitutional conviction due to unconstitutional conditions of confinement and treatment while a pre-trial detainee in the Mayes County jail.

b. unconstitutional sentence because the trial judge was aware at the time of sentencing that the Oklahoma prison system was unconstitutional as set forth in Battle v. Anderson.

c. unconstitutional incarceration in that petitioner's religious rights have been violated, his sentence lengthened and property and funds stolen without due process and prison officials have stolen vast sums of taxpayers funds appropriated by the State and Federal legislatures for petitioner's benefit.

d. the State had no jurisdiction over the person of the petitioner under his constitutional rights guaranteed by the federal constitution and the Magna Carta.

e. Petitioner's conviction is unconstitutional because the Oklahoma statutes under which he was convicted make no provision for the religious use of marijuana and the State has never shown a compelling interest to prohibit marijuana for religious purposes.

4/ With regard to question of law #3 above, Judge Ellison said, "Habeas corpus is not a proper remedy for alleged constitutional violations relating to pre-sentence confinement of the petitioner, when said conditions of confinement had no discernible effect on the conviction and the present confinement of the petitioner. In the instant case, it appears clear that, as the trial court found in post-trial hearings on this same issue, the petitioner was treated fairly during his incarceration in the Mayes County jail before and during his trial."

Whether the above excerpt from Judge Ellison's August 13, 1982 Order was a decision on the merits is not applicable since the above plaintiff is barred from litigating the above question of law because the applicable statute of limitations has run. 12 Okl.St. Ann. §95(Third).

federal funds but does not extend federal constitutional rights to prisoners in that it refuses to pay prisoners for labor performed and state prison officials, private banks and businesses have stolen, embezzled and converted to their own use personal funds of prisoners and public funds appropriated for the benefit and care of prisoners.

Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating in a second lawsuit issues that were or could have been raised in the first action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action. With the exception of plaintiff's cause of action against Larry Meachum<sup>5/</sup>, collateral estoppel appears to apply herein as opposed to res judicata, for plaintiff's original cause of action was for a writ of habeas corpus and the subsequent cause of action is under §1983.

It is clear collateral estoppel applies from a habeas corpus cause of action to a §1983 cause of action. In Williams v. Ward, 556 F.2d 1143, 1156 (2nd Cir. 1977), the court said, "[E]ven a judgment in habeas can effect issue preclusion in a §1983 cause of action if the issue was litigated and the decision was on the merits." See, e.g., Preiser v. Rodriguez, 411 U.S. 475, 493-94 (1973). The important question is whether the claims raised by

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<sup>5/</sup> The cause of action against Larry Meachum in the Western District of Oklahoma before Judge Russell, referred to infra, was also under §1983. Thus, with regard to the issues raised in that case against Meachum, plaintiff is barred by res judicata.

plaintiff in the habeas proceeding and the claims raised in the §1983 proceeding are the same. After a careful review of the issues raised and adjudged on the merits, this Court concludes plaintiff is collaterally estopped from relitigating questions of law 1, 2, 3, 4 and 5(a).<sup>6/</sup>

With regard to questions of law 5(b) and 5(c), the Court takes judicial notice that plaintiff filed a §1983 proceeding in the United States District Court for the Western District of Oklahoma before Judge David R. Russell, L'aquarius v. Larry Meachum, Case No. CIV-82-453-R, in which plaintiff alleged Larry Meachum, as Director of the Oklahoma Department of Corrections knowingly permitted prison officials to steal vast sums of taxpayers' funds, including federal funds appropriated for the benefit and care of plaintiff and other prisoners.<sup>7/</sup> Judge Russell dismissed plaintiff's §1983 action, including question of law 5(c) herein, as frivolous, containing conclusory and unsupported allegations.<sup>8/</sup> Judge Russell's decision was affirmed by the Tenth Circuit Court of Appeals in Slip Opinion No. 82-1434 dated July 29, 1982 (not for routine publication). This Court also finds questions of law 5(b) and 5(c) are conclusory and wholly unsupported by factual allegations in plaintiff's complaint. As such they are insufficient and may be summarily dismissed. See, e.g., Brice v. Day, 604 F.2d 664 (10th Cir. 1979), cert. denied, 444 U.S. 1086 (1980);

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<sup>6/</sup> The Court further notes question of law 2 has been conclusively decided by the Oklahoma Supreme Court and Oklahoma Court of Criminal Appeals in L'aquarius v. Maynard, 634 P.2d 1310 (Okl. 1981) and Lewellyn v. State, 592 P.2d 538 (Okl.Crim. 1979).

<sup>7/</sup> Plaintiff refers to this case in his Notice of Disqualification filed May 17, 1983 at pg. 2, paragraph 5.

<sup>8/</sup> Order filed March 31, 1982.

Hilliard v. United States, 345 F.2d 252 (10th Cir. 1965); Martinez v. United States, 344 F.2d 325 (10th Cir. 1965).

Because plaintiff is collaterally estopped from relitigating questions of law 1, 2, 3, 4 and 5(a) and because questions of law 5(b) and 5(c) are conclusory, together constituting the facts supporting Counts III and IV, this Court concludes Counts III and IV must be dismissed.

COUNT V: In Count V plaintiff alleges, "State officials, acting under color of law, have knowingly and maliciously denied the plaintiff's right to freedom of religion and subjected him to incarceration, harrassment(sic), oppression and other penalties and indignities for his religious beliefs in violation of his rights under the 1st, 9th and 14th Amendments." As supporting facts, plaintiff attaches as "Exhibit B," information on the Holy American Church, orders of various judges and correspondence to and from prison officials. Plaintiff claims the documentary evidence contained in "Exhibit B" "shows and demonstrates the unconstitutional behavior of the defendants." Plaintiff also claims again the defendants had no jurisdiction of his person under the Magna Carta, but notwithstanding have "punished, malign-ed and subjected [plaintiff] to dehumanizing, demeaning treatment for his beliefs." Plaintiff's amended complaint at pg. 6. In his August 13, 1982 order, Judge Ellison found plaintiff had not been denied his right to free exercise of his religious beliefs. Further, this Court finds plaintiff has failed to allege with some particularlity how the defendants have denied him his right to freedom of religion. Thus, for the reasons stated with regard to Counts III and IV, the Court concludes Count V must be dismissed.

COUNT VI: As Count VI, plaintiff alleges, "State officials, acting [under] color of law, have conspired to steal, embezzle or otherwise convert to their own use, public monies, funds and property, both State and Federal, that was appropriated for the treatment, care and custody of the plaintiff in violation of his rights under the 8th, 9th and 14th Amendments.

As supporting facts to Count VI, plaintiff refers to a list of cases in "Exhibit A" in which he was either a party or assisted in the defense or prosecution. Plaintiff claims the numerous presentations of the claims in the cases illustrates the State of Oklahoma has never answered or refuted the claims. Plaintiff also states, "the Courts have never addressed or adjudicated them nor transmitted the sworn allegations of criminal behavior to proper authorities for investigation and prosecution..."

Again, the Court notes this question was raised before Judge Russell in plaintiff's §1983 cause of action in the Western District of Oklahoma. Judge Russell dismissed the §1983 cause of action, including Count VI herein, as frivolous. This Court can find nothing in plaintiff's complaint which supports factually plaintiff's allegation. Thus, this Court also concludes Count VI should be dismissed as legally insufficient. See Brice v. Day, supra; Hilliard v. United States, supra; and Martinez v. United States, supra.

COUNT VII: As Count VII, plaintiff alleges, "State Officials, acting under color of law, have conspired to force the plaintiff to work under conditions that constitute slavery in violation of his rights under the 1st, 8th, 9th, 13th and 14th Amendments."

In support of Count VII, plaintiff urges the same supporting facts as Count VI.

Once again, the Court notes this point was raised in the §1983 action before Judge Russell in the Western District of Oklahoma. Judge Russell dismissed plaintiff's allegation of work conditions constituting slavery as conclusory and unsupported by factual allegations. Nor does this Court conclude plaintiff has alleged sufficient factual allegations to support his claim. Thus, this Court cannot conclude plaintiff's allegation of conspiracy to force plaintiff to work under conditions constituting slavery to be sufficient under §1983.

#### PLAINTIFF'S PENDING MOTIONS

Presently pending before this Court are several of plaintiff's motions:

1. Motion for judicial notice of two current actions in the Oklahoma Supreme Court, L'aquarius v. Whistler, No. 59718 and L'aquarius v. Brett, et al., No. 59719. The motion is hereby sustained.

2. Motion to join the United States of America as party plaintiff and motion for conference on the issue of joinder of the United States as party plaintiff. In view of the dismissal of plaintiff's original complaint and amended complaint, these motions are now moot. Thus, the motions are hereby overruled as moot.

3. Motion for transfer of venue to the United States District Court for the Eastern District of Oklahoma. Since many of the incidents giving rise to plaintiff's §1983 complaint occurred in Mayes County, it appears venue is proper in this district. Plaintiff's motion for change of venue is hereby overruled.

4. Plaintiff's notice of disqualification. In plaintiff's notice of disqualification he apparently mistakes the undersigned judge with Judge Tom Brett of the Oklahoma Court of Criminal Appeals. The undersigned judge is the nephew of Judge Tom Brett of the Court of Criminal Appeals. The mere existence of a family relationship between two judges on different courts before whom the same legal propositions may have been advanced is not sufficient to raise a question as to the impartiality of a judge in the mind of a reasonable person. Further, plaintiff's notice of disqualification of all federal trial judges of the State of Oklahoma sets forth no valid factual basis for the requested disqualifications. Plaintiff's notice of disqualification, deemed a motion herein, is therefore overruled.

IT IS THEREFORE ORDERED defendants' motions to dismiss plaintiff's original complaint are sustained for the reasons expressed herein. Plaintiff's amended complaint is dismissed sua sponte, without issuance of summons to the numerous additional state official defendants, again for the reasons stated above, and for failure to state a cause of action. Plaintiff's motion for judicial notice is sustained. Plaintiff's motion to join the United States of America as party plaintiff and motion for conference on the issue of joinder of the United States of America as party plaintiff are overruled. Plaintiff's motion for disqualification is overruled. Plaintiff's motion for transfer of venue is also overruled.

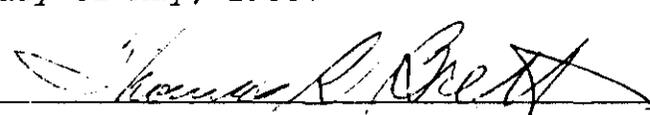
ENTERED this 19<sup>th</sup> day of May, 1983.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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ENTERED this 19<sup>th</sup> day of May, 1983.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CIVIL ACTION NO. 82-C-520-E  
 )  
 BOBBY G. MOSLEY, PATRICIA J. )  
 MOSLEY, BENEFICIAL FINANCE )  
 COMPANY OF OKLAHOMA, PLAZA IGA, )  
 COUNTY TREASURER, Washington )  
 County, Oklahoma, BOARD OF )  
 COUNTY COMMISSIONERS, )  
 Washington County, Oklahoma, )  
 AL WOLFE, and SHARON WOLFE, )  
 )  
 Defendants. )

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 19<sup>th</sup> day of  
May, 1983. 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 Defendants, Beneficial Finance Company of Oklahoma, by  
Steve Conatser; County Treasurer, Washington County, State of  
Oklahoma, and Board of County Commissioners, Washington County,  
State of Oklahoma, Bobby G. Mosley, Patricia J. Mosley, Al Wolfe,  
Sharon Wolfe, appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendants, Bobby G. Mosley and Patricia  
J. Mosley were served on May 11, 1982, that Defendants, Al Wolfe  
and Sharon Wolfe, were served on November 19, 1982, that  
Defendants, Board of County Commissioners and County Treasurer  
for Washington County, Oklahoma were served May 11, 1982, that  
Defendant Plaza IGA was served on November 19, 1982, and that

Defendant Beneficial Finance Company of Oklahoma, was served May 10, 1982.

It appears that the Defendants, Al Wolfe, Sharon Wolfe, Bobby G. Mosley and Patricia J. Mosley have failed to answer and that default has been entered by the Clerk of this Court on February 3, 1983.

It appears that Defendant, Plaza IGA and County Treasurer and Board of County Commissioners, Washington County, Oklahoma disclaimed any right, title or interest to the real property which is the subject of this action.

The Court further finds that this is a suit based upon a mortgage note and for a foreclosure of a real property mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots Sixteen (16), Seventeen (17), and Eighteen (18), Block 2, TYLERTON ADDITION, Dewey, Washington County, Oklahoma.

That on June 7, 1978, Bobby G. Mosley and Patricia J. Mosley executed and delivered to the United States of America acting through the Farmers Home Administration, their Promissory Note in the amount of \$22,630.00, and Mortgage Note in the sum of \$22,630.00 with 8½ percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That on April 3, 1979, Bobby G. Mosley and Patricia J. Mosley executed and delivered to the United States of America acting through the Farmers Home Administration, their Promissory Note in the amount of \$2,300.00 and Mortgage Note in the sum of

\$2,300.00 with 8 3/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Bobby G. Mosley and Patricia J. Mosley made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$25,419.49 as unpaid principal, plus accrued interest of \$1,276.34 as of October 23, 1981, with interest thereafter at the rate of \$5.7769 per day from October 23, 1981, until paid, plus the cost of this action accrued and accruing.

The Court further finds that on January 26, 1981, Bobby G. Mosley and Patricia J. Mosley executed and delivered to the Beneficial Finance Company of Oklahoma their Promissory Note in the amount of \$9,492.00, and Mortgage Note in the sum of \$9,492.00 with 18.66 percent interest per annum.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Bobby G. Mosley and Patricia J. Mosley for the principal sum of \$25,419.49, plus accrued interest of \$1,276.34 as of October 23, 1981, with interest thereon at the rate of \$5.7769 per day from October 23, 1981, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Beneficial Finance Company of Oklahoma, have and recover judgment against Defendants Bobby G. Mosley and Patricia J. Mosley for the principal sum of \$5,796.62, with interest thereon at the rate of 18.66 percent per annum, from April 23, 1982, until paid, together with attorney fees in the amount of \$579.66, and for its costs herein.

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

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

UNITED STATES DISTRICT JUDGE

APPROVED:

FRANK KEATING  
United States Attorney

  
PHILARD L. ROUNDS, JR.  
Assistant United States Attorney

  
STEVE CONATSER  
Attorney for Defendant  
Beneficial Finance Company of  
Oklahoma

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

CITIES SERVICE COMPANY, HARRY C. )  
BADER and ANN D. FRIEL, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
GULF OIL CORPORATION and GOC )  
ACQUISITION CORPORATION, )  
 )  
Defendants. )

No. 82-C-809-E ✓

FILED  
MAY 19, 1983  
JACK C. SILVER CLERK  
U.S. DISTRICT COURT

ORDER GRANTING PLAINTIFFS'  
MOTION TO REMAND

The Court has before it the motion of the Plaintiffs Cities Service, Harry C. Bader and Ann D. Friel to remand. In support of their motion, the Plaintiffs argue that removal of this action from the District Court of Tulsa County, Oklahoma was patently improper. Plaintiffs argue that it is clear from the face of their petition that the requisite diversity of citizenship between the Plaintiffs and the Defendants does not exist in this case in two different respects. First, both the Plaintiff Cities Service and the Defendant GOC Acquisition Corporation are incorporated in the State of Delaware; second, Plaintiffs Bader and Friel, two Cities Service shareholders who tendered their stock in response to the offer to purchase are citizens of Pennsylvania, the state in which Defendant Gulf is incorporated and maintains its principal place of business and in which Defendant GOC Acquisition Corporation maintains its principal place of business.

The Defendants argue that this Court may exercise removal jurisdiction over this action pursuant to 28 U.S.C. § 1441(c) on the grounds that:

1. The citizenship of Defendant GOC Acquisition Corporation

should be disregarded for diversity purposes because as a wholly owned subsidiary of Gulf created solely for the purpose of facilitating the merger and purportedly having no corporate assets or business it is a "formal and nominal party" in this action; and

2. The claims of Plaintiff Cities Service are "separate from and independent of" the claims asserted by Plaintiffs Bader and Friel and thus the entire state court petition may be removed to this Court pursuant to 28 U.S.C. § 1441(c).

28 U.S.C. § 1441(c) provides as follows:

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.

Since the Plaintiffs Bader and Friel have the same citizenship as Defendant Gulf and Plaintiff Cities Service has the same citizenship as Defendant GOC Acquisition Corporation, Defendants can sustain jurisdiction in this Court under 28 U.S.C. § 1441(c) only if they demonstrate both (a) that GOC Acquisition is a "formal and nominal party" to this action and (b) that the claims of Plaintiffs Bader and Friel are "separate and independent" from removable claims of Cities Service. Since it has not been shown that the claims of Cities Service were properly removable to this Court, it will not be necessary to decide whether or not Cities' claims are separate and independent from the claims of Bader and Friel.

The Defendant Gulf had contended that GOC Acquisition Corporation was a "formal and nominal party" to this action and that its citizenship should be ignored for purposes of diversity jurisdiction. In Salem Trust Company v. Manufacturer's Finance Company, 264 U.S. 182, 44 S.Ct. 266 (1924) the United States Supreme Court set the standard to be followed in deciding whether or not the citizenship of a party must be considered for purposes of diversity jurisdiction. The Court stated that:

Jurisdiction cannot be defeated by joining formal or unnecessary parties. The right of removal depends upon the case disclosed by the pleadings when the petition therefor is filed, and is not affected by the fact that one of the defendants is a citizen of the same state as the Plaintiff if that Defendant is not an indispensable party to the controversy between the Plaintiff and Defendant who are citizens of different states.

In Salem, the Court determined that a controversy between the petitioner, a citizen of Massachusetts and the respondent finance company, a citizen of Delaware, could be determined without affecting any interest of another respondent who was a citizen of Massachusetts. The Court stated that the latter was:

not an indispensable party ... it has no interest in the controversy between the petitioner and the other respondent; its only obligation is to pay over the amount deposited with it when it is ascertained which of the other parties is entitled to it. On the question of jurisdiction an unnecessary and dispensable party will not be considered.

The Court further stated that "... here no cause of action exists against the international trust company because it has not been determined which of the other parties is entitled to payment".

The Tenth Circuit also spoke to this question in Hann v. City of Clinton, 131 F.2d 978 (10th Cir. 1942). The Court states at page 981:

In determining the question of whether diversity of citizenship requisite to jurisdiction exists, a court looks to the citizenship of the real parties in interest; and where there is complete diversity between them the presence of a nominal party with no real interest in the controversy will be disregarded. Jurisdiction is not ousted by the joinder or non-joinder of mere formal parties ... the city was merely a formal party, not necessary to a complete adjudication of the controversy between the owners of the bonds on one hand and the owners of the property covered by the assessment lien on the other. There was complete diversity of citizenship between the real parties in interest and therefore the court did not lack jurisdiction for want of it.

The Tenth Circuit again spoke to this question in Becker v. Angle, 165 F.2d 140 (10th Cir. 1947). In the Becker case, twenty-two named defendants could not be found in Oklahoma and did not answer the complaint. The parties had stipulated the complainants were citizens and residents of the State of Illinois but did not stipulate that all of the defendants were residents of Oklahoma or non-residents of the State of Illinois. The Court stated that "if the unanswering and unknown Defendants were merely nominal defendants against whom no relief was sought, failure to show their residence or citizenship would not deprive the Court of jurisdiction because in determining the question of diversity we look to the citizenship of the real parties in interest - not nominal parties with no real interest in the controversy." The Court went on to determine that the unknown defendants were real and necessary parties to the suit because the complainants were seeking the same relief against them as against the answering defendants.

According to the above cited cases, Courts will disregard the

citizenship of a party in an action, for purposes of diversity, when that party has no real interest in the controversy before the Court, and when the Court can determine the entire controversy without the presence of that party. Such a policy prevents a party from defeating diversity merely by joining another party that has no real interest in the controversy. Such is not the case here. The Defendant GOC Acquisition Corporation is not a "formal or nominal party" to this action. It is alleged by the Plaintiffs that the Defendant GOC Acquisition Corporation:

- A. Was a party to the merger agreement with Cities Service;
- B. Agreed to commence and thereafter use its "best efforts" to consummate the offer to purchase;
- C. Agreed to issue a fixed income security valued at \$63 to Cities Service shareholders in the second step merger; and
- D. Breached the merger agreement and perpetrated a fraud upon Cities Service shareholders by wrongfully terminating the merger agreement and the offer to purchase.

The Plaintiffs have pled against GOCA both breach of contract and fraud claims under Oklahoma law. Where facts have been alleged which if proven would entitle Plaintiffs to a judgment against a defendant, that defendant is not a "nominal or formal party". Whether or not Defendant GOCA has any assets or is otherwise "judgment proof" is irrelevant for purposes of federal diversity or removal jurisdiction. Bricker v. Ford Motor Company, 514 F.Supp. 1236 (S.D. Tex. 1981); Richardson v. Exxon Corporation, 491 F.Supp. 201 (M.D. Pa. 1980).

In order to completely adjudicate the controversy in this case, including allegations made against GOCA itself, it must remain a party

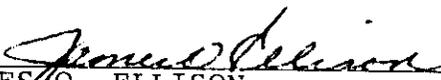
in the action. Such is clearly not an indication of "formal" or "nominal" status.

Accordingly, the Court must consider the citizenship of GOC Acquisition Corporation when deciding the question of removal jurisdiction. Since the Defendant GOCA has the same citizenship as the Plaintiff Cities Service in this case, there exists no claim or cause of action which would be removable if sued upon alone as required under § 1441(c). This case has been inprovidently removed and should be remanded to the Tulsa County District Court.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of the Plaintiffs Cities Service Company, Harry C. Bader and Ann D. Friel to remand be and hereby is granted.

IT IS FURTHER ORDERED that this case be remanded to the Tulsa County District Court, Tulsa, Oklahoma.

ORDERED this 19<sup>th</sup> day of May, 1983.

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

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

FILED  
MAY 19, 1983  
Jack C. Silver  
U.S. DISTRICT COURT

CHARLES F. COFFEE )  
 )  
 Plaintiff, )  
 )  
 VS. )  
 )  
 HARRIS CORPORATION )  
 )  
 Defendant )

No. 82-C-885-E

ORDER

NOW, before the Court for its consideration is the Motion to Dismiss filed by the Plaintiff herein, pursuant to Fed. R. Civ. P. 41. The Court having reviewed and considered the Motion to Dismiss, together with the other Pleadings filed herein, hereby Orders as Follows:

1. The Petition filed by the Plaintiff, Charles F. Coffee against the Defendant, Harris Corporation, is hereby dismissed without prejudice.

IT IS SO ORDERED this 19<sup>th</sup> day of May, 1983.

  
United States District Judge

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

C. E. EQUIPMENT COMPANY, INC. )  
and HARCO CORPORATION, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
GENERAL CORROSION SERVICES )  
CORPORATION, et al., )  
 )  
Defendants. )

No. 83-C-237-C ✓

**FILED**

MAY 10 1983 *rm*

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

O R D E R

Now before the Court for its consideration is the motion of defendant, Corrosion Control, Inc. to transfer this action as to it to the United States District Court for the Western District of Louisiana, Shreveport Division, pursuant to 28 U.S.C. §1406(a), on the ground that venue is improper in this judicial district as to it and that venue is proper in the Western District of Louisiana. The plaintiffs have responded to this motion by written pleading, filed April 25, 1983, in which they state while not concurring in the "Statement of Facts" section of Corrosion's brief or to the Affidavit of the President of defendant attached thereto, that they have no objection to Corrosion's motion.

On March 7, 1983 the Honorable Tom Stagg, United States District Judge for the Western District of Louisiana made certain rulings pertaining to motions pending in Civil Action No.

82-1438, styled C. E. Equipment Company, Inc. and Harco Corporation vs. Southern Natural Gas Company, General Corrosion Services Corporation and Corrosion Control, Inc. That action which was filed in the Western District of Louisiana, is currently under an indefinite stay order issued by Judge Stagg. Among the rulings of Judge Stagg was a transfer of the Louisiana action to this Court as it pertained to defendants General Corrosion Services Corporation and Corrosion Control, Inc. In Judge Stagg's ruling jurisdiction over defendant Corrosion was retained by that Court should this Court determine that venue or personal jurisdiction over defendant Corrosion was not proper under 28 U.S.C. §1400(b), the patent venue statute.

Defendant Corrosion has submitted to this Court a concise brief and an affidavit of the president of Corrosion which indicate that said defendant is incorporated in the State of Louisiana and that it has no regular and established place of business in Oklahoma. As mentioned above, the plaintiffs have informed this Court that they have no objection to the motion of Corrosion, though plaintiffs generally state that they do not concur, in a part of defendant's brief, or in the Affidavit attached thereto of Corrosion's president. The plaintiffs have submitted nothing to this Court which would indicate that venue is proper in the Northern District of Oklahoma pursuant to 28 U.S.C. §1400(b), as to defendant Corrosion.

It is therefore the Order of this Court that the motion of defendant Corrosion Control, Inc. is granted and all proceedings against said defendant are transferred to the United States

District Court for the Western District of Louisiana, Shreveport Division.

It is the further Order of this Court that the Clerk of this Court shall, forthwith, transfer copies of Corrosion's motion to transfer for improper venue, its brief in support thereof (with attached affidavit), plaintiff's response to Corrosion's motion and the Northern District of Oklahoma docket sheet to the Clerk of the United States District Court for the Western District of Louisiana, Shreveport Division.

It is so Ordered this 17<sup>th</sup> day of May, 1983.

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

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

EUGENE A. GAITERS,  
Plaintiff,

vs.

IMPLEMENT DEALERS MUTUAL INSURANCE  
COMPANY, a North Dakota corpora-  
tion, doing business in Oklahoma,  
Defendant.

NO. 83-C-313-C

**FILED**

MAY 17 1983

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

ORDER OF DISMISSAL

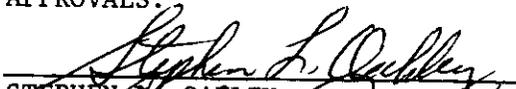
ON this 17 day of May, 1983, upon the written application of the parties for a dismissal with prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

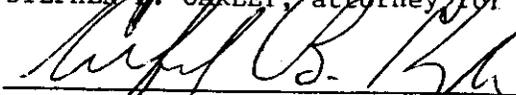
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

(Signed) H. Dale Cook

JUDGE, UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

  
STEPHEN W. OAKLEY, attorney for Plaintiff

  
ALFRED B. KNIGHT, attorney for Defendant

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

BARBARA A. EVERETT, Administra- )  
trix of the Estate of JAMES )  
PATRIC EVERETT, Deceased, )

Plaintiff, )

vs. )

BENSEN AIRCRAFT CORPORATION, )  
a corporation and McCULLOCH )  
CORPORATION, a corporation, )

Defendants. )

No. 81-C-590-E ✓

FILED

MAY 17 1983

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

J U D G M E N T

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged that the Plaintiff take nothing of the Defendant McCulloch Corporation, that the action be dismissed on the merits as to Defendant McCulloch Corporation only, and that the Defendant McCulloch Corporation recover of the Plaintiff, its costs of action.

DATED at Tulsa, Oklahoma this 16<sup>TH</sup> day of May, 1983.

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

FILED

MAY 17 1983

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

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

JIMMIE BUTLER and BETTY )  
 BUTLER, husband and wife, )  
 and LEONARD WALLSTEN, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 INTERNATIONAL HARVESTER CREDIT )  
 CORPORATION, a Delaware corpo- )  
 ration; JERRY GILLAM d/b/a )  
 JERRY GILLAM RECOVERY SERVICE, )  
 )  
 Defendants. )

No. 82-C-1052E

ORDER

THIS MATTER comes on for hearing before the under-  
signed United States District Judge this 16<sup>th</sup> day of May,  
1983, pursuant to Plaintiffs' Application for Order Dismiss-  
ing the Defendant International Harvester Credit Corporation.

The Court, for good cause shown, finds that Plain-  
tiffs' Application should be and the same is hereby granted.

IT IS THEREFORE ORDERED that Plaintiffs' causes of  
action contained in their Complaint filed herein as to the De-  
fendant International Harvester Credit Corporation are dis-  
missed with prejudice.

S/ JAMES O. ELLISON

United States District Judge

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

FILED

MAY 17 1983

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

POOLS BY GLAMOUR ENTERPRISES,  
a Missouri corporation, ...Plaintiff,

v.

JIM METCALF and LINDA METCALF,  
husband and wife, d/b/a GREEN  
COUNTRY POOLS, ...Defendants,

No. 82-C-815-C

ORDER DISMISSING CASE

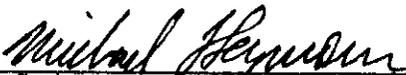
NOW, on this 17 day of May, 1983, the Application of the Plaintiff for an order dismissing the above-styled action without prejudice to refiling comes on before the Court, and the Court being fully advised in the premises finds that the relief prayed for should be granted, and pursuant thereto,

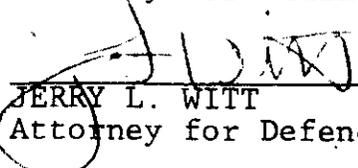
IT IS THEREFORE ORDERED by the Court that the above-styled action is hereby dismissed without prejudice to refiling.

(Signed) H. Dale Cook

JUDGE OF THE UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

  
MICHAEL L. SEYMOUR  
Attorney for Plaintiff

  
JERRY L. WITT  
Attorney for Defendants

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

ERSKINE HOGUE STANBERRY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FUEL DYNAMICS, INC., a )  
 Kansas corporation, )  
 )  
 Defendant, )  
 )  
 JESS HEFNER and DON HEFNER, )  
 Partners, d/b/a Hefner & Son )  
 Coal Company, )  
 )  
 Third Party Defendants. )  
 \_\_\_\_\_ )

NO. 81-C-291-C

FILED

MAY 17 1983

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

JUDGMENT

NOW, on this 16 day of May, 1983, the above entitled cause comes on before me, the undersigned Judge, and upon the stipulation of the parties herein.

The Court finds that the complaint, first cause of action, heretofore filed on behalf of the Plaintiff, generally in favor of the Plaintiff as against Fuel Dynamics, Inc., a Kansas corporation.

The Court further finds the issues generally in favor of the Defendant as to the second and third causes of action.

IT IS, THEREFORE, THE ORDER, JUDGMENT AND DECREE of the Court that the Plaintiff, Erskine Hogue Stanberry, shall have and recover a judgment against the Defendant, Fuel Dynamics, Inc., in the sum of \$88,600.00.

IT IS THE FURTHER FINDING, ORDER, JUDGMENT AND DECREE of the Court that the Plaintiff shall recover nothing as and for her second and third causes of action.

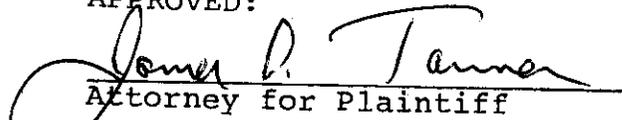
IT IS THE FURTHER FINDING, ORDER, JUDGMENT AND DECREE of the Court that the parties shall each bear their respective costs of litigation, including attorney's fees.

(Signed) H. Dale Cook

---

JUDGE

APPROVED:

  
Attorney for Plaintiff

  
Attorney for Defendant

FILED

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. 83-C-140-E
	)	
HAROLD V. HANCE III,	)	
	)	
Defendant.	)	

AGREED JUDGMENT

This matter comes on for consideration this 2<sup>nd</sup> day of March, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Harold V. Hance III, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Harold V. Hance III, was served with Summons and Complaint on February 14, 1983. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff and that Judgment may accordingly be entered against him in the amount of \$242.20, plus interest at the legal rate 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,

Harold V. Hance III, in the amount of \$242.20, plus interest at the legal rate from the date of this Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney



PETER BERNHARDT  
Assistant U.S. Attorney



HAROLD V. HANCE III

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

DENNIS R. MILLER, )

Defendant. )

CIVIL ACTION NO. 83-C-115-E

MAY 17 1983

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

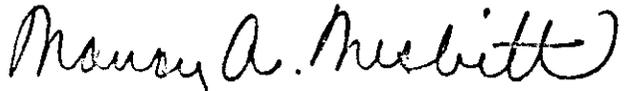
NOTICE OF DISMISSAL

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 May, 1983.

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney



NANCY A. NESBITT  
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing notice of dismissal was served on each of the parties named on the return of the same to this court by depositing the same on the \_\_\_\_\_ day of \_\_\_\_\_, 1983.

  
P. L. Rowdy  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 27 1983

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MELVIN K. CRAFT, )  
 )  
 Defendant. )

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

CIVIL ACTION NO. 83-C-111-E

DEFAULT JUDGMENT

This matter comes on for consideration this 16<sup>th</sup> day of May, 1983, 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, Melvin K. Craft, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Melvin K. Craft, was personally served with Summons and Complaint on April 2, 1983. 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, Melvin K. Craft, for the principal sum of \$234.20, plus interest at the legal rate from the date of this Judgment until paid, and cost of the action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

JOHN F. BOHMFALK, III, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

No. 82-C-1192-E

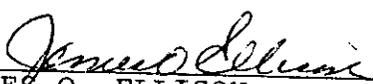
FILED  
MAY 17 1983  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

There being no response to the Defendant's motion to dismiss or in the alternative for summary judgment, and more than ten (10) days having passed since the filing of the motion, and no extension of time having been sought by Plaintiff, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiff has therefore waived any objection or opposition to the motion. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Defendant's motion is therefore granted and the case is dismissed.

DATED this 16<sup>th</sup> day of May, 1983.

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

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

MAY 17 1983

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

BANK OF TULSA, a )  
banking corporation, )  
 )  
Plaintiff, )  
vs. ) No. 82-C-1152E  
 )  
THE TUCSON CLINIC, INC., )  
 )  
Defendant. )

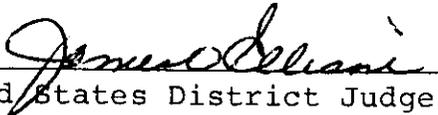
ORDER

Now on this 26th day of April, 1983, this cause came on for hearing on the Motion of Plaintiff to Remand, Plaintiff appeared by its counsel, Frank R. Hickman, and Defendant appeared by its counsel, R. A. Huffman, Jr.

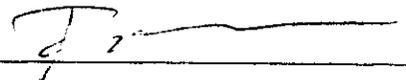
The Court, having reviewed Briefs of both parties and having heard arguments of counsel, finds as follows:

1. Plaintiff stated, through its counsel, that it will not seek recovery of attorney's fees if successful in this cause and specifically disclaimed any right to such fee whether this action is ultimately litigated in State or Federal Court.
2. Based on Plaintiff's waiver of a fee in the cause, the Court finds that this action does not involve a sum sufficient to satisfy the jurisdictional requirements of 28 U.S.C. §1332 and, therefore, Plaintiff's Motion to Remand should be granted.

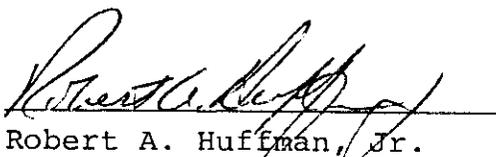
IT IS THEREFORE ORDERED that this cause be, and it is, hereby remanded to the District Court of Tulsa County, and the clerk of this court is directed to take such action and to execute such instruments as may be necessary to effect such transfer.

  
United States District Judge

APPROVED:

  
Frank R. Hickman  
1419 S. Denver  
Tulsa, Oklahoma 74119

Attorney for Plaintiff  
Bank of Tulsa

  
Robert A. Huffman, Jr.  
510 Oklahoma Natural Building  
Tulsa, Oklahoma 74119

Attorney for Defendant  
The Tucson Clinic, Inc.

FILED

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

MAY 17 1983

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

RONNY LYNN OSBURN, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 GEORGE SHENOLD, JAMES BUCKNER, )  
 JEFFREY JOHNSON, JACK FRIDAY, )  
 RUDY McCARTY, and BRUCE HARLTON, )  
 JR., )  
 )  
 Defendant. )

NO. 80-C-304-E

ORDER

NOW on this 16<sup>th</sup> day of May, 1983, comes on the

Application for Order of Dismissal With Prejudice of Plaintiff and Defendant Harlton herein. The Court finds that the controversy between Plaintiff and Defendant in the above entitled action has been compromised and settled between Plaintiff and said Defendant.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled cause is dismissed as between the Plaintiff and Defendant Harlton, only, each party to bear his own costs, said dismissal being with prejudice.

S/ JAMES O. ELLISON

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

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

MAY 17, 1983

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

SCOTT L. SIMPSON, )  
 )  
Plaintiff, )  
 )  
vs. ) NO. 82-C-838-B  
 )  
PETRO HUNTER ENERGY, LTD., )  
a foreign corporation and )  
STEVEN J. SIMONYI-GINDELE, )  
a Canadian citizen, )  
 )  
Defendants. )  
 )  
SUPREME INVESTMENTS, INC., )  
a Colorado corporation; )  
STERLING PETROLEUM, INC., )  
a Colorado corporation; )  
STEVEN DIRGO, a Colorado )  
citizen and an individual; )  
SANDRA K. DIRGO, a Colorado )  
citizen and an individual; )  
and LINDA SIMPSON, an Oklahoma )  
citizen and an individual, )  
 )  
Third Party Defendants, )  
 )  
PETROHUNTER ENERGY, INC., )  
 )  
Third Party Plaintiff. )

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, IT IS HEREBY ORDERED AND ADJUDGED the plaintiff, Scott L. Simpson, is hereby denied his claim for restitution and the defendants, Petro Hunter Energy, Ltd., and Steven J. Simonyi-Gindele, are granted judgment thereon; IT IS FURTHER ORDERED AND ADJUDGED the defendant, Petro Hunter Energy, Ltd., is to deliver 72,770 shares of its common stock to the plaintiff, Scott L. Simpson. The defendant, Petro Hunter Energy, Ltd., is

obligated at its expense to take all reasonable measures to assure said 72,770 shares of its common stock are freely tradeable in the State of Oklahoma (complying with both United States and Oklahoma securities laws). Failing within 120 days from this date to obtain the necessary approval to make said stock freely tradeable in the State of Oklahoma, the defendant, Petro Hunter Energy, Ltd., its successors and assigns, is hereby required to indemnify Scott L. Simpson and purchase said stock from Scott L. Simpson when requested in writing to Petro Hunter Energy, Ltd.'s Canadian home office (registered or certified mail, return receipt requested, or comparable Canadian mail) at the price as reflected on the date of receipt of such written request as reflected on the Alberta, Canada securities exchange. Said indemnity and the right to "put" said stock to the defendant, Petro Hunter Energy, Ltd., as provided, that is, if said stock is not freely tradeable as stated, must be exercised on or before October 1, 1984.

IT IS FURTHER ORDERED AND ADJUDGED the defendants, Petro Hunter Energy, Ltd., and Steven J. Simonyi-Gindele, are to have judgment against the plaintiff, Scott L. Simpson, in the amount of \$2,500.00 for attorney's fees as a result of the contempt hearing on December 28, 29 and 30, 1982; otherwise, the parties are to pay their own respective costs and attorney's fees herein.

DATED this 17 day of May, 1983.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

MAY 17, 1983

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

SCOTT L. SIMPSON, )  
 )  
Plaintiff, )  
 )  
vs. ) NO. 82-C-838-B  
 )  
PETRO HUNTER ENERGY, LTD., )  
a foreign corporation and )  
STEVEN J. SIMONYI-GINDELE, )  
a Canadian citizen, )  
 )  
Defendants, )  
 )  
SUPREME INVESTMENTS, INC., )  
a Colorado corporation; )  
STERLING PETROLEUM, INC., )  
a Colorado corporation; )  
STEVEN DIRGO, a Colorado )  
citizen and an individual; )  
SANDRA K. DIRGO, a Colorado )  
citizen and an individual; )  
and LINDA SIMPSON, an Oklahoma )  
citizen and an individual, )  
 )  
Third Party Defendants, )  
 )  
PETROHUNTER ENERGY, INC., )  
 )  
Third Party Plaintiff. )

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This case was tried to the Court sitting without a jury on March 28, 29 and 31, 1983. The plaintiff herein seeks rescission of a corporate stock sale agreement alleging misrepresentations by the defendants in violation of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The Court had previously heard evidentiary testimony presented concerning the entry of a preliminary injunction on September 8

and 9, 1982.<sup>1</sup> After having considered the evidence presented, the statements of counsel and the applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

1. At the time of the filing of this action the plaintiff was a resident of the State of Oklahoma. The defendant, Petro Hunter Energy, Ltd., is a Canadian corporation incorporated under the laws of the Province of Alberta, Canada. The defendant, Steven Simonyi-Gindele, is a citizen and resident of the country of Canada.

2. Commencing in August 1981 the defendant, Petro Hunter Energy, Ltd. ("Energy, Ltd."), undertook negotiations with the plaintiff, Scott L. Simpson ("Simpson"), who was acting on behalf of himself and other shareholders of Pathfinder Energy, Inc. ("Pathfinder") of which he was chief executive officer and the principal stockholder, concerning Energy, Ltd., purchasing all of the stock of Pathfinder. Pathfinder was a newly formed company having been incorporated in Oklahoma in early August 1981.

3. During negotiations leading to the signing of the written agreement, Energy, Ltd., furnished Simpson a copy of a 23-page new stock issue prospectus (P-49) of Energy, Ltd., dated May 21, 1981. This prospectus, inter alia, revealed that Energy, Ltd., was incorporated on February 10, 1981, under the Companies

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<sup>1</sup> Pursuant to Rule 65(a) of the F.R.Civ.P., the Court will also consider the evidence presented at the time of the preliminary injunction.

Act of the Province of Alberta as a public company. It also revealed Energy, Ltd., had a wholly-owned United States subsidiary known as Petrohunter Energy, Inc., which was its operating arm in the United States.

4. As part of the Energy, Ltd.-Pathfinder stock purchase negotiations, Energy, Ltd., furnished Simpson an Energy, Ltd., unaudited balance sheet dated August 31, 1981. (P-5) Simpson and Simonyi-Gindele discussed P-5 in some detail. One item reflected on P-5 is "loan - \$820,000.00". Simonyi-Gindele advised Simpson this was a loan by Energy, Ltd., Inc., to Northwest Commercial Sales Company ("NWCS") of Alberta, Canada, an established heavy equipment dealer. Simonyi-Gindele further advised Simpson negotiations were under way to merge NWCS into Energy, Ltd.

5. In early October 1981, before signing of the Energy, Ltd.-Pathfinder stock purchase agreement, and to acquaint himself with Energy, Ltd., and NWCS, Simpson went to Alberta, Canada. While there Simpson met with the principals of NWCS and Energy, Ltd., viewing their facilities, and was also given the opportunity to review financial records concerning NWCS and Energy, Ltd., had he desired.

6. On or about October 15, 1982 Simpson and the only other two stockholders of Pathfinder entered into a written agreement in which Energy, Ltd., acquired all of the outstanding stock of Pathfinder. (P-9A)

Inter alia, the written agreement provided that in exchange for Simpson's 60% ownership of Pathfinder, and loans due

Simpson from Pathfinder, he was to receive 12,770 shares of Energy, Ltd.<sup>2</sup> Simpson was also to receive up to an additional 60,000 shares of limited stock depending on an evaluation of Pathfinder's only two oil and gas property interests, the Vincent and the Heck. Subsequently the Vincent property was determined to be valueless, but evaluations in April and May 1982 established the Heck property was of such value that Simpson was entitled to an additional 60,000 shares of Energy, Ltd.

Simpson was to serve on the Board of Directors of Energy, Ltd. He was also to be president of Petrohunter, Inc., (the U.S. subsidiary) in Tulsa, Oklahoma at a salary of \$3,000.00 per month and serve on its Board of Directors. Simpson's wife, Linda, was also to be employed by Petrohunter, Inc., at a salary of \$1,200.00 per month, as was Simpson's father. Stock options as an Energy, Ltd., director were also made available to Simpson.

The closing of the Pathfinder stock sale was to take place before October 30, 1981.

7. On or about November 11, 1981, NWCS entered into voluntary receivership proceedings under Canadian jurisdiction. At that time NWCS owed Energy, Ltd., a balance on the loan in the amount of \$820,000.00. Substantial questions developed concerning

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<sup>2</sup> The balance of the 40% of Pathfinder outstanding stock was owned one-half (20%) by Robert Simpson, Scott Simpson's father, and one-half (20%) by Scott Simpson's father-in-law, Lloyd Nelson. Robert Simpson and Lloyd Nelson were likewise parties to the Energy, Ltd.-Pathfinder stock purchase agreement. (P-9A) In October 1981 when the Energy, Ltd.-Pathfinder stock purchase agreement was closed, the total value of all outstanding Pathfinder stock approximated \$50,000 and the value of the consideration paid therefor by Energy, Ltd., likewise approximated \$50,000.

Energy, Ltd.'s secured position and whether the loan guarantees by NWCS principals were collectible. This event had a material negative impact on the net worth of Energy, Ltd.

8. Immediately after learning of the NWCS receivership and loan default, Simonyi-Gindele, as president of Energy, Ltd., called a Board of Directors' meeting. Simpson and the other directors gave Simonyi-Gindele a vote of confidence at this meeting, although Simonyi-Gindele had approved and entered into the NWCS loan without Energy, Ltd., Board of Directors' approval. (P-14).

9. In January and February 1982 Simpson expressed dissatisfaction with the Energy, Ltd.-Pathfinder stock purchase transaction essentially because of the substantial reduction in net worth of Energy, Ltd., due to the NWCS loan default. As a result of Simpson's dissatisfaction, Simonyi-Gindele offered the shareholders of Pathfinder, including Simpson, an additional amount of stock equal to that originally issued each stockholder in the October 15, 1981 stock purchase agreement. In addition, on January 19, 1982, 200,000 shares of Energy, Ltd., stock options were made available to Simpson by the Energy, Ltd., Board of Directors. Simpson exercised his stock option on the 200,000 shares but subsequently did not pay for such shares.

10. On March 10, 1982 Simony-Gindele confirmed by letter the offer to Simpson to make up for any diminution in value of Simpson's Energy, Ltd. stock because of the NWCS loan default, by having the additional previously mentioned stock in Energy, Ltd., issued to the stockholders of Pathfinder. Simpson orally acquiesced in this proposal.

11. The Energy, Ltd., stock conveyed to Simpson in exchange for the Pathfinder stock was freely tradeable on the Alberta stock exchange. Trading could be accomplished through United States brokerage firms having Canadian stock exchange affiliations. Energy, Ltd., took steps to get the initially conveyed stock of Energy, Ltd., to Simpson freely tradeable in the United States, but the record is unclear if this has yet been achieved.

The written agreement between the parties contained no representations the issued stock would be freely tradeable in the United States.

12. In May 1982 it was confirmed the Heck well (Washita County, Oklahoma) was a prolific gas producer. Previous to the Energy, Ltd.-Pathfinder stock purchase agreement, Energy, Ltd., had under lease 30 acres and Pathfinder 5 acres of the minerals underlying the Heck well. Simpson took no action to rescind the Energy, Ltd.-Pathfinder stock purchase agreement before the Heck well was found to be a substantial producer in May 1981. The Heck deep gas well was being drilled for approximately five months before it was confirmed as a gas producer.

13. Simpson acknowledged his agreement to accept additional stock, equal to that initially conveyed to him, as a result of the NWCS loan default controversy at the June 11, 1982 Energy, Ltd. Board of Directors meeting. (P-37). The plaintiff commenced this action on September 3, 1982.

14. The plaintiff (Simpson) has not established by a preponderance of the evidence that the defendants made material misrepresentations and failed to disclose relevant and/or pertinent facts to Simpson with knowing intent to deceive, to induce Simpson to enter into the Energy, Ltd.-Pathfinder stock purchase agreement.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter and the parties herein under Title 15 U.S.C. §78J(b) and by virtue of Title 28 U.S.C. §§1331(a) and 1332(a)(2).

2. Any Finding of Fact above which might also be characterized a Conclusion of Law is incorporated herein.

3. The evidence has not established a violation by the defendants of §10(b) of the Securities and Exchange Act of 1934 or §10b-5 promulgated thereunder, so the plaintiff is not entitled to rescission herein. The necessary element of "scienter", that is "a mental state embracing intent to deceive, manipulate or defraud" has not been established. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 96 S.Ct. 137, 47 L.Ed.2d 668 (1976).

4. Oral negotiations between the parties merge into the parties' ultimate written agreement. 15 Okl.St. Ann. §137; CIT Corp. v. Shogren, 176 Okl. 388, 55 P.2d 956 (1936); Guess v. Miner, 130 Okl. 93, 265 Pac. 633 (1928); Kinnard-Haines Co. v. Dillingham, 73 Okl. 129, 175 Pac. 208 (1918); Liverpool & L & G Ins. Co. v. T. M. Richardson Lumber Co., 11 Okl. 579, 69 Pac. 936 (1902) aff'd 11 Okl. 585, 69 Pac. 938.

5. Because the plaintiff did not urge rescission before the Heck well was announced as a producer in May 1982, and the fact plaintiff had acquiesced in accepting additional stock, the plaintiff is now prevented by the doctrine of laches from urging rescission. Alexander v. Phillips Petroleum Company, 130 F.2d 593 (10th Cir. 1942), and Lawson v. Haynes, 170 F.2d 741 (10th Cir. 1948).

6. Any counterclaim at this time by the defendant Petrohunter Energy, Ltd., against the plaintiff for conduct and actions by the plaintiff resulting in losses to Petrohunter, Inc., is hereby denied because Petrohunter Energy, Inc., is not a party to this action. (The Court is not ruling on the merits of such claims but simply that they are not before the Court because Petrohunter, Inc., is not a party herein.)

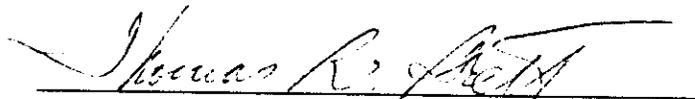
7. The plaintiff is entitled to receive forthwith from the defendant Petrohunter Energy, Ltd., 72,770 of its common shares (12,770 equaling the amount of shares of stock in the October 15, 1981 agreement plus 60,000 shares of stock due from the Heck well evaluation). Having subsequent to the October 15, 1981 stock purchase agreement advised the plaintiff such stock would be freely tradeable by Simpson in the State of Oklahoma, Energy, Ltd., is obligated at its expense to take all reasonable measures to assure said 72,770 shares are freely tradeable in the State of Oklahoma (complying with both United States and Oklahoma securities requirements). Failing within one hundred and twenty (120) days from the date of judgment to obtain the necessary ap-

proval to make said stock freely tradeable in the State of Oklahoma, the defendant Petrohunter Energy, Ltd., its successors and assigns, is hereby required to indemnify the plaintiff and purchase said stock from the plaintiff when requested in writing to Petrohunter Energy, Ltd.'s Canadian home office (registered or certified mail, return receipt requested), or comparable Canadian mail, at the price as reflected on the date of receipt of such written request as reflected on the Alberta, Canada securities exchange. If plaintiff exercises his right to "put" the stock to defendant, Petrohunter, Ltd., as provided herein, that is if it is not otherwise tradeable as provided, said "put" must be exercised on or before October 1, 1984.

8. The defendants are to have judgment against the plaintiff in the sum of \$2,500.00 for attorney's fees as a result of the contempt hearing held on December 28, 29 and 30, 1982. Otherwise, the parties are to pay their own respective costs and attorney's fees herein.

9. A separate judgment in accordance with these Findings of Fact and Conclusions of Law will be entered this date.

ENTERED this 17 day of May, 1983.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED  
MAY 17 1983

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

JOHNNY KEISTER,	)
	)
	)
Plaintiff,	)
	)
vs.	)
	)
BURLINGTON NORTHERN, INC.,	)
Successor by Merger to the	)
St. Louis - San Francisco	)
Railway Company,	)
	)
Defendant.	)

Case No. 82-C-731-B

ORDER OF DISMISSAL

This Court has now before it the Application of the parties herein to dismiss the above styled action with prejudice.

Upon a showing by the parties herein that a settlement agreement has been reached regarding this case, and for good cause shown,

IT IS THEREFORE the order of this Court that the above styled action be dismissed with prejudice and that each party herein bear its cost of this action.

DATED at Tulsa, Oklahoma this 17 day of May, 1983.

S/Thomas R Brett  
THOMAS R. BRETT  
United States District Judge

**FILED**

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

**MAY 17 1983**

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

THOMAS MICHAELS (a/k/a MICHAEL THOMAS),  
  
Plaintiff,  
  
vs.  
  
TIM WEST, et al.,  
  
Defendants.

NO. 82-C-1050-BT

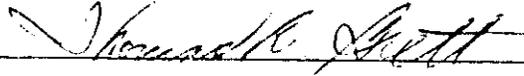
O R D E R

On November 10, 1982, petitioner filed his petition for writ of habeas corpus attempting to attack the validity of a detainer lodged against him by the State of Missouri. On December 23, 1982, this Court issued its order requiring respondents to show cause why petitioner should not be granted a writ of habeas corpus. On March 24, 1983, respondents filed a motion to dismiss the petition for habeas corpus claiming petitioner's petition was mooted by events occurring subsequent to its filing. The petitioner has not responded to the motion to dismiss.

It appears the State of Missouri has formally discharged petitioner from his parole on the 1978 conviction. On January 6, 1983, the State of Missouri notified petitioner of its decision to drop the detainer action. Further, the Oklahoma Department of Corrections has noted in petitioner's records that the detainer has been dropped. From this sequence of events it can be seen that petitioner's cause of action is now moot.

IT IS THEREFORE ORDERED respondent's motion to dismiss is sustained. Petitioner's petition for writ of habeas corpus is dismissed.

ENTERED this 17<sup>th</sup> day of May, 1983.



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THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

MAY 17 1983

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

MERRILL LYNCH PIERCE FENNER  
AND SMITH, a Delaware  
corporation,

Plaintiff,

vs.

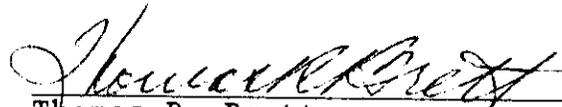
EDWARD C. VARNER,

Defendant.

No. 81-C-356-B

ORDER

NOW on this 17<sup>th</sup> day of May, 1983, the Court  
having received and reviewed Plaintiff's Dismissal Without Pre-  
judice, hereby shows the above-styled matter as closed.

  
Thomas R. Brett,  
Judge of the District Court

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

**FILED**

MAY 15 1983

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

FIRST NATIONAL BANK IN )  
BARTLESVILLE, a national )  
banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CRAIG A. CARDON, WILFORD A. )  
CARDON, ELIJAH A. CARDON, )  
and JOHN C. GABBERT, )  
 )  
Defendants. )

Case No. 82-C-409-E

ORDER OF DISMISSAL WITH PREJUDICE

Upon consideration of the Stipulation for Dismissal with Prejudice by plaintiff, First National Bank in Bartlesville, and defendants, Craig A. Cardon, Wilford A. Cardon, Elijah A. Cardon, and John C. Gabbert, for the dismissal with prejudice of all claims of plaintiff against defendants and all counterclaims of defendants against plaintiff, the Court is of the opinion said stipulation should be allowed and incorporated by order.

IT IS, THEREFORE, ORDERED that all claims of plaintiff, First National Bank in Bartlesville, against defendants, Craig A. Cardon, Wilford A. Cardon, Elijah A. Cardon, and John C. Gabbert, and all counterclaims of said defendants against plaintiff in the above-entitled action be, and they hereby are, dismissed with prejudice.

ENTERED this 12th day of <sup>May</sup>~~April~~, 1983.

S/ JAMES O. ELLISON

JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

ROBINSON, BOESE & DAVIDSON

By

  
C.S. Lewis, III  
P.O. Box 1046  
Tulsa, Oklahoma 74101  
918-583-1232

Attorneys for Plaintiff, First  
National Bank in Bartlesville

By

  
Thomas J. Kirby

OF COUNSEL:

Huffman Arrington Kihle Gaberino & Dunn  
Fifth Floor Oklahoma Natural Building  
Tulsa, Oklahoma 74119  
918-585-8141

Attorneys for Defendants, Craig A.  
Cardon, Wilford A. Cardon, Elijah A.  
Cardon and John C. Gabbert

FILED

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAY 13 1983

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHN R. TYNER, )  
 )  
 Defendant. )

CIVIL ACTION NO. 82-C-553-E

AGREED JUDGMENT

This matter comes on for consideration this 12<sup>th</sup> day  
of May, 1983, 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, John R. Tyner, appearing pro se.

The Court, being fully advised and having examined the  
file herein, finds that the Defendant, John R. Tyner, was  
personally served with Summons and Complaint on April 13, 1983.  
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 \$229.83, plus interest at the legal  
rate 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 R. Tyner, in the amount of \$229.83, plus interest at the legal rate from the date of this Judgment until paid.

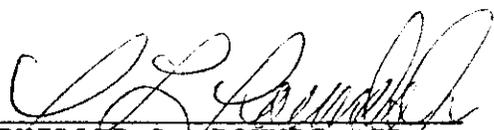
S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

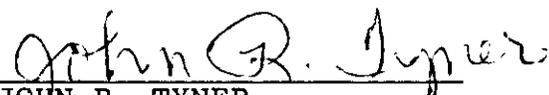
APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney



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

  
JOHN R. TYNER

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FORREST V. CROTWELL, )  
 )  
 Defendant. )

CIVIL ACTION NO. 83-C-187-E

**FILED**

MAY 18 1983

DEFAULT JUDGMENT

This matter comes on for consideration this 12th day of May, 1983, 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, Forrest V. Crotwell, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Forrest V. Crotwell, was served with an Alias Summons and Complaint on March 31, 1983. 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, Forrest V. Crotwell, for the principal sum of \$605.89, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

*Filed*  
*MAY 13, 1983*

KINETICS TECHNOLOGY INTER- )  
NATIONAL CORPORATION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FOURTH NATIONAL BANK OF )  
TULSA, )  
 )  
Defendant. )

U. S. DISTRICT COURT

NO. 78-C-79-BT

J U D G M E N T

In accordance with the opinion of the Court of Appeals of the Tenth Circuit dated April 14, 1983, and the mandate entered May 11, 1983 pursuant thereto,

IT IS ORDERED, ADJUDGED AND DECREED that Judgment be entered in favor of Plaintiff, Kinetics Technology International Corporation, and against the Defendant, Fourth National Bank of Tulsa, in the sum of \$95,000.00, together with interest thereon from February 2, 1978, at the rate of six percent (6%) until date of judgment, and at the rate of twelve percent (12%) per annum thereafter until paid, together with its costs. (The records of the court reflect that on April 28, 1983 a Release and Satisfaction of Judgment was filed by the defendant, The Fourth National Bank of Tulsa, and in keeping therewith the judgment herein has been paid in full by the plaintiff.)

ENTERED this 13 day of May, 1983.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

CIVIL ACTION NO. 82-C-1085E

DON E. SAMARA, MARY L. SAMARA, )  
CLYDE L. HARRIS, MARY M. HARRIS, )  
CENTRAL DEVELOPERS LIMITED, a )  
limited partnership, CHARLOTTE )  
BROAD, JAMES J. WASSON, BANK OF )  
TULSA, HALL AND WYNES CARPETS AND )  
DRAPERIES, INC., COUNTY TREASURER, )  
TULSA COUNTY, OKLAHOMA, and BOARD )  
OF COUNTY COMMISSIONERS, TULSA )  
COUNTY, OKLAHOMA, )

Defendants. )

**FILED**

MAY 18 1983

U.S. District Court

JUDGMENT OF FORECLOSURE

THIS MATTER comes on for consideration this 18th day of May, 1983, the Plaintiff, United States of America on behalf of its agency and instrumentality, the Small Business Administration, appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney; the Defendant Bank of Tulsa appearing by its attorney, Frank R. Hickman; the Defendant James J. Wasson appearing by his attorney J. Stewart Arthurs; the Defendants County Treasurer, and Board of County Commissioners, Tulsa County, Oklahoma appearing by David A. Carpenter, Assistant District Attorney; and the Defendants Don E. Samara, Mary L. Samara, Clyde L. Harris, Mary M. Harris, Central Developers Limited, a limited partnership, Charlotte Broad, and Hall and Wynes Carpets and Draperies, Inc., appearing not.

The Court, being fully advised and having examined the file herein, finds that the Defendant Bank of Tulsa was served with Summons and Complaint on November 16, 1982, and filed its Disclaimer herein on November 19, 1982. The Defendant James J. Wasson was served with Summons and Complaint on November 17, 1982, and filed his Answer and Cross-Claim against Defendants Don E. Samara and Mary L. Samara on December 15, 1982. The County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma were served with Summons and Complaint on November 16, 1982, and filed their Answers on December 3, 1982.

The Defendants Don E. Samara and Mary L. Samara were served with Summons and Complaint on December 20, 1982. The Defendants Clyde L. Harris and Mary M. Harris were served with Summons and Complaint on December 30, 1982. The Defendant Charlotte Broad was served with Alias Summons and Complaint on March 7, 1983. The Defendant Central Developers Limited, a limited partnership, was served with process by the service upon James J. Wasson on November 17, 1982, and by the service upon Charlotte Broad on March 7, 1983. The Defendant Hall and Wynes Carpets and Draperies, Inc., was served with Summons and Complaint on November 16, 1982. These Defendants did not answer or otherwise move as to the Complaint and their default was, therefore, entered by the Clerk of this Court on April 26, 1983.

The Court further finds that this is a suit based upon a Promissory Note, and the real estate mortgage securing said note covering certain real property located in Tulsa County, Oklahoma, described as follows:

All that part of the East Half of the Northeast Quarter (E/2 NE/4) of Section Twenty-four (24), Township Nineteen (19) North, Range Thirteen (13) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, being more particularly described as follows, to wit:

BEGINNING at a point in the West Right-of-Way line of South Mingo Road, said point being 1058.31 feet South and 50 feet West of the Northeast corner of said NE/4; thence due West and parallel to the North line of said NE/4, a distance of 150 feet to a point; thence North  $0^{\circ} 11' 14''$  East and parallel to the East line of said NE/4, a distance of 200 feet to a point; thence due East and parallel to the North line of said NE/4, a distance of 150 feet to a point; thence South  $0^{\circ} 11' 14''$  West and parallel to the East line of said NE/4, a distance of 200 feet to the Point and Place of Beginning.

-AND-

All that part of the East Half of the Northeast Quarter (E/2 NE/4) of Section Twenty-four (24), Township Nineteen (19) North, Range Thirteen (13) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, being more particularly described as follows, to wit:

BEGINNING at a point, said point being 858.31 feet South and 200 feet West of the Northeast corner of said NE/4; thence due West and parallel to the North line of said NE/4, a distance of 133 feet to a point; thence South  $0^{\circ} 11' 14''$  West and parallel to the East line of said NE/4, a distance of 340 feet to a point; thence due East and parallel to the North line of said NE/4, a distance of 133 feet to a point, said point being 1198.31 feet South and 200 feet West of the Northeast corner of said NE/4; thence North  $0^{\circ} 11' 14''$  East and parallel to the East line of said NE/4, a distance of 340 feet to the Point and place of Beginning.

On December 18, 1979, the Defendants Don E. Samara, Mary L. Samara, Clyde L. Harris, and Mary M. Harris, executed and delivered to Bank of Tulsa, Tulsa, Oklahoma, their Promissory Note in the amount of \$288,000.00, with interest on the unpaid principal computed from the date of each advance to the makers at the rate of 15½ percent per annum, payment to be made in monthly installments of \$4,416.00. On August 17, 1981, said note was assigned to the Small Business Administration.

On December 18, 1979, as security for the payment of the above-described note, the Defendants Don E. Samara, Mary L. Samara, Clyde L. Harris, and Mary M. Harris executed and delivered to the Bank of Tulsa, Tulsa, Oklahoma, a Real Estate Mortgage covering the above-described real property. On August 17, 1981, said Mortgage was assigned to the Small Business Administration.

The Court finds that the Defendants Don E. Samara, Mary L. Samara, Clyde L. Harris, and Mary M. Harris have made default under the terms of the Note and Mortgage described above by their failure to pay the monthly installments thereon, although payment has been demanded, which default has continued and that by reason thereof, the above-named Defendants are now indebted to the Plaintiff in the principal sum of \$280,807.42, plus accrued interest in the amount of \$56,500.77 through June 15, 1982, plus interest thereafter at the rate of \$120.90 per day.

The Defendants Central Developers Limited, a limited partnership, Charlotte Broad, and James J. Wasson have an interest in the above-described real property by virtue of a Real Estate Mortgage dated December 18, 1979. This Mortgage was given

by the Defendants Don E. Samara, and Mary L. Samara to secure payment of their Promissory Note in the principal amount of \$72,000.00, with interest thereon at the rate of 12 percent per annum. Said mortgage lien is junior and inferior to the mortgage lien of the Plaintiff.

The Defendant Hall and Wynes Carpets and Draperies, Inc. has an interest in the above-described real property by virtue of a Mechanic's Lien for \$875.00. Said Mechanic's Lien is junior and inferior to the mortgage lien of Plaintiff.

The Defendant County Treasurer, Tulsa County, Oklahoma, has an interest in the above-described real property by virtue of 1980-82 real estate taxes in the amount of \$9,740.00 now due owing and unpaid which are a lien against said real property. Said lien is prior and superior to the mortgage lien of Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants Don E. Samara, Mary L. Samara, Clyde L. Harris, and Mary M. Harris in the principal sum of \$280,807.42, plus accrued interest in the amount of \$56,500.77 through June 15, 1982, plus interest thereafter at the rate of \$120.90 per day, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants Central Developers Limited, a limited partnership, Charlotte Broad, and James J. Wasson have and recover judgment against the Defendants Don E. Samara, and Mary L. Samara in the principal amount of \$72,000.00, with interest thereon from December 18, 1979, at the rate of 12 percent per annum.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the previously named Defendants to satisfy the money judgments herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property herein, and apply the proceeds thereof as follows:

First: In payment of the costs of this action, accrued and accruing, including the costs of sale;

Second: In payment of 1980-82 real estate taxes assessed against the subject real property in the amount of \$9,740.00;

Third: In payment of the judgment rendered herein in favor of Plaintiff;

Fourth: In payment of the judgment rendered herein in favor of the Defendants Central Developers Limited, a limited partnership, Charlotte Broad, and James J. Wasson;

Fifth: In payment of the Mechanic's Lien of Hall and Wynes Carpets and Draperies, Inc., in the amount of \$875.00.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of the Complaint herein, be and they are forever barred and foreclosed of any

right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED:

FRANK KEATING  
United States Attorney

Nancy A. Nesbitt  
NANCY A. NESBITT  
Assistant United States Attorney

Stewart Arthurs  
J. STEWART ARTHURS  
Attorney for James J. Wasson

David A. Carpenter  
DAVID A. CARPENTER  
Assistant District Attorney

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

MASSACHUSETTS BAY INSURANCE )  
COMPANY, a Massachusetts )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THEODORE J. GROF, JR., and )  
PEGGY GROF, )  
 )  
Defendants. )

FILED  
MAY 13, 1983  
Jack C. Silver  
U.S. District Court

NO. 83-C-260-E

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ORDER OF DISMISSAL WITHOUT PREJUDICE

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On this 12<sup>yk</sup> day of May, 1983, there comes on for hearing the Application for Order of Dismissal Without Prejudice of Plaintiff's cause. The Court finds that a settlement has been reached by the parties and that this case should be dismissed without prejudice.

IT IS SO ORDERED.

S/ JAMES O. ELLISON

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JUDGE  
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THOMAS W. VANDYKE, )  
 )  
 Defendant. )

CIVIL ACTION NO. 82-C-293-E

**FILED**

MAY 15 1983

DEFAULT JUDGMENT

Jack C. Silver, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

This matter comes on for consideration this 12th day of May, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Thomas W. Vandyke, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Thomas W. Vandyke, was personally served with an Alias Summons and Complaint on March 31, 1983. 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, Thomas W. Vandyke, for the principal sum of \$604.87, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
JUL 13 1983  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ALFRED BEASLEY, )  
 )  
 Defendant. )

CIVIL ACTION NO. 83-C-55-B ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 13 day of May, 1983, 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, Alfred Beasley, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Alfred Beasley, was served with an Alias Summons and Complaint on April 12, 1983. 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, Alfred Beasley, for the principal sum of \$1,000.00, plus the accrued interest of \$330.79 as of October 31, 1982, plus interest on the

principal sum of \$1,000.00 at 7 percent from October 31, 1982,  
until the date of Judgment, plus interest on the Judgment at the  
legal rate until paid, and costs of the action.

S. Thomas R. Brett  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
MAY 11 1983  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MACK P. BUCKNER, )  
 )  
 Defendant. )

CIVIL ACTION NO. 83-C-112-B

DEFAULT JUDGMENT

This matter comes on for consideration this 13 day of May, 1983, 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, Mack P. Buckner, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Mack P. Buckner, was served with an Alias Summons and Complaint on April 9, 1983. 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, Mack P. Buckner, for the principal sum of \$332.10, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

S/Thomas R. Brett  
UNITED STATES DISTRICT JUDGE

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

IN RE: )  
 )  
ANCOR EXPLORATION COMPANY, )  
a general partnership, )  
 )  
Debtor. )  
 )  
IN RE: )  
 )  
ANCOR PETROLEUM, INC., )  
 )  
Debtor. )  
 )  
IN RE: )  
 )  
BLUEBELL OIL & GAS, INC., )  
 )  
Debtor. )

NO. 83-C-239-BT

**FILED**

MAY 12 1983 *agm*

*John O. Silver, Clerk*  
U.S. District Court  
Northern District of Oklahoma

AMENDED ORDER

(REPLACING ORDER DATED MAY 4, 1983)

This matter comes before the Court on appeal from the March 3, 1983 order of the Bankruptcy Court approving the sale of substantially all of the assets of the debtors in a Chapter 11 proceeding pursuant to the "Notice of Hearing and Application for Order Approving Sale of Assets" filed on January 27, 1983, by Robert A. Franden, trustee for Ancor Exploration Company ("Ancor"), Bluebell Oil & Gas, Inc. ("Bluebell") and Ancor Petroleum, Inc., ("Petroleum"), collectively referred to herein as "debtors." The appeal presents the following question: In a Chapter 11 proceeding, with Bankruptcy Court approval and absent an emergency, can a trustee by private sale not in the ordinary course of business and over the objection of an interested party, sell substantially all of the estate assets without first comply-

ing with the plan and disclosure requirements of 11 U.S.C.  
§1125 et seq?

#### THE SCOPE OF REVIEW

Following the recent decision by the United States Supreme Court in Northern Pipeline Construction Co. v. Marathon Pipeline, \_\_\_ U.S. \_\_\_, 102 S.Ct. 2858 (1982), which found the jurisdictional grant of the Bankruptcy Reform Act unconstitutional, the judges of the United States District Court for the Northern District of Oklahoma entered an Order adopting a Rule which delegated certain authority to the judge of the Bankruptcy Court.<sup>1</sup> Paragraph (e)(2)(B) of the Rule allows the District Court to conduct a de novo review of a bankruptcy court if it so desires. The Rule states:

"In conducting review, the District Judge may hold a hearing and may receive such evidence as appropriate and may accept, reject, or modify, in whole or in part, the order or judgment of the Bankruptcy Judge, and need give no deference to the findings of the Bankruptcy Judge."

In the exercise of its discretion, the Court concludes a de novo hearing will not be conducted.

The standard of review of the Bankruptcy Court's approval of the proposed sale is whether the Court's findings were clearly erroneous. Rule 810 of the Rules of Bankruptcy Procedure; United States v. United States Gypsum Company, 333 U.S. 364, 394-95 (1948).

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<sup>1</sup> Local rule M-128 adopted December 23, 1982.

FACTUAL BACKGROUND<sup>2</sup>

There are six Geostratic partnerships involved herein as creditors (sometimes referred to collectively as "the Geostratics"). Sixth Geostratic Energy Drilling Program 1980, Seventh Geostratic Energy Drilling Program 1980 and Eighth Geostratic Energy Drilling Program 1980 are known as the investor partnerships. They are limited partnerships whose general partner is Robert S. Sinn and Jan S. Mirsky and whose limited partners are unnamed investors. First Ancor-Geostratic Drilling Partnership 1980, Second Ancor-Geostratic Drilling Partnership 1980 and Third Ancor-Geostratic Drilling Partnership 1980 are known as the drilling partnerships. First, Second and Third Ancor-Geostratic Drilling Partnerships 1980 are limited partnerships in which Sixth, Seventh and Eighth Geostratic Energy Drilling Programs 1980 respectively are limited partners, the debtor, Ancor, is now a limited partner, and Sinn and Mirsky are now the

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<sup>2</sup> The corporate and partnership maze overly contributes to the complexity of the matter. See the organizational chart attached. (Exhibit "A")

general partner.<sup>3</sup> Basically the investor partnerships raised the drilling program funds and the drilling partnerships developed and drilled the oil and gas leases. The investor partnerships and the drilling partnerships along with Sinn and Mirsky as individuals are appellants herein.

Under the contract agreements creating First, Second and Third Ancor-Geostratic Drilling Partnerships 1980, the debtor Ancor originally was the general partner. Ancor is an Oklahoma partnership comprised of Docko, Inc., an Oklahoma corporation, and Harry E. McPhail, Jr., individually. McPhail was the active managing partner and chief operating officer of Ancor and thereby the manager of First, Second and Third Ancor-Geostratic Drilling Partnerships 1980. On May 21, 1982, because of alleged defalcations of McPhail, Docko, Inc., moved to dissolve Ancor in the District Court of Tulsa County, Oklahoma and caused a temporary receiver to be appointed, thereby removing McPhail from his management position and further involvement in Ancor. On July 8, 1982, Docko, Inc., filed an involuntary petition for reorganiza-

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<sup>3</sup> Under paragraph 15.3 of the First, Second and Third Ancor-Geostratic Drilling Partnerships 1980 written agreements, if the business of the drilling partnerships is continued in accordance with paragraph 15.2, the status of the bankrupt or removed general partner, Ancor herein, is changed to that of limited partner.

See also In re Harms, 10 Bankr. 1017 (Bankr. Colo. 1981) where it was held a general partner in a limited partnership cannot remain the general partner once the limited partnership files its petition in bankruptcy and the general partner becomes the debtor-in-possession. The Court found the general partner in a limited partnership to be in a fiduciary relationship with the limited partners which is in conflict with the change in legal status occasioned by the filing of the bankruptcy.

tion on behalf of Ancor under Chapter 11 of the Bankruptcy Code in this district. On the same day Docko, Inc., filed its voluntary bankruptcy petition for reorganization under Chapter 11.<sup>4</sup>

Pursuant to the provisions of paragraphs 15.1 and 15.2 of the First, Second and Third Ancor-Geostratic Drilling Partnerships 1980 written agreements, Sinn and Mirsky were elected and designated by the undersigned Court as the new general partner of First, Second and Third Ancor-Geostratic Drilling Partnerships 1980 on November 29, 1982.<sup>5</sup>

Docko, Inc., is an Oklahoma corporation formed for the purpose of being a partner in Ancor. Docko, Inc. is a wholly owned subsidiary of A/S Docko Corporation, a large Norwegian corporate conglomerate. A/S Docko Corporation also wholly owns A/S Selvaagbygg, another Norwegian corporation. A new company, "Newco," has now been organized as an Oklahoma corporation called Agathon, Inc. (referred to herein as "Newco/Agathon"). It is a wholly owned subsidiary of A/S Selvaagbygg. Moreover, A/S Docko originally owned 90 per cent of the stock of Bluebell but transferred the Bluebell stock to Ancor as the capital contribution of Docko, Inc. in the Ancor partnership. Ancor Petroleum, Inc., is wholly owned by Ancor. (See Exhibit "A").

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<sup>4</sup> Bluebell Oil & Gas, Inc., a Texas corporation, and Ancor Petroleum, Inc., an Oklahoma corporation, filed voluntary petitions for reorganization under Chapter 11 on August 23, 1982.

<sup>5</sup> Case No. 81-C-576-BT pending in this court is basically a contract dispute between the Geostratics and Ancor, et al.

The trustee for the debtors on January 27, 1983 applied to the Bankruptcy Court to sell substantially all of the assets of Ancor, Bluebell and Petroleum to Newco/Agathon. In consideration of the conveyance of the assets, A/S Selvaagbygg, the owner of Newco/Agathon, has proposed to the trustee the following transaction:

1. In exchange for substantially all the assets of the debtor estates (consisting primarily of oil and gas working interests, undeveloped leases, three drilling rigs and incidental office furniture and equipment), the debtor estates will receive:

- a) \$1,350,000 cash.
- b) the release of debtors from \$5,375,000 of promissory notes (approximately \$936,000 secured by the Wilson rig, the balance unsecured), payable to A/S Selvaagbygg.
- c) the release of Ancor and assumption by Newco/Agathon of a promissory note payable to First National Bank of Oklahoma City with a present balance of \$800,000. Although First National Bank will release Ancor, its lien will remain as against the working interests of First, Second and Third-Ancor Geostratics which are

now being administered by Sinn and Mirsky as general partner.<sup>6</sup>

- d) the assumption of the defense by Newco/Agathon of Ancor in two pending lawsuits in the United States District Court for the Northern District of Oklahoma, Nos. 81-C-576-B and 82-C-684-B, the former being the Geostratics claim, to the extent of the amount of any recovery against Ancor which would have been received by that claimant in a liquidation under Chapter 7 of the Bankruptcy Code.

2. Included in the terms of the "Newco" offer is a closing date of March 31, 1983, subsequently extended. Also included is an "upset price" provision which limits the trustee to accepting other offers only if in excess of \$8,600,000.<sup>7</sup>

Appellants propose the following as additional terms of the sale:<sup>8</sup> 1) Appellants claim the working interests of Sixth, Seventh and Eighth Geostratic Energy Drilling Programs

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<sup>6</sup> These working interests were pledged as collateral by Ancor for the loan from First National Bank of Oklahoma City. The validity of First National Bank's lien is the subject of litigation in the United States District Court for the Western District of Oklahoma between the Geostratics and the bank.

<sup>7</sup> The "upset price" was proposed by Newco/Agathon and calculated on the cash price to be paid plus the value of the loans to be forgiven by A/S Selvaagbygg. Transcript of the Hearing on Application for Order Approving Sale of Assets held February 25, 1983, before the Bankruptcy Court, pp. 19-20. The "upset price" appears to be unrealistic in that it includes a substantial sum of unsecured debt. The "upset price," as a practical matter, deterred the trustee from making inquiry of other potential purchasers.

<sup>8</sup> No other creditor objected to the proposed sale.

1980 and revenue attributable to those working interests in the approximate amount of \$500,000 were being held in trust by Ancor as the former general partner of the First, Second and Third Ancor-Geostratic Drilling Partnerships 1980. Appellants claim the Newco/Agathon offer should make some accommodation for the payment of the alleged trust monies; 2) Appellants claim the First National Bank of Oklahoma City lien should be removed from the working interests of the First, Second and Third Ancor-Geostratic Drilling Partnerships 1980; and 3) Appellants claim Newco/Agathon's liability as successor to Ancor should be bonded.

#### LEGAL ANALYSIS

Several courts have considered whether a trustee may, with court approval and over the objection of an interested party, sell all or substantially all of the estate assets not in the ordinary course of business without compliance with Chapter 11 requirements. The underlying issue is how 11 U.S.C. §363(b) fits into the reorganization scheme of Chapter 11.

11 U.S.C. §363(b) provides:

"The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. §1123(b)(4), dealing with the contents of a reorganization plan, states a plan may:

"provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;..."

Under 11 U.S.C. §1125(b), an acceptance or rejection of a plan may not be solicited from a creditor of the estate unless prior to the solicitation an approved plan and disclosure statement are transmitted to the creditor. The creditors must then vote on the plan (11 U.S.C. §1126), and if approved, the Bankruptcy Court must confirm the plan (11 U.S.C. §1129). Therefore, under the provisions of Chapter 11 it appears a sale of all or substantially all of the estate assets may be made, but only after disclosure, approval and confirmation. Section 363(b), a general administrative provision of the Bankruptcy Code, would allow such a sale after notice and a hearing, thus conflicting with the procedural and substantive provisions of Chapter 11.<sup>9</sup>

Courts attempting to reconcile this apparent conflict have differed in their results. In support of their argument that the trustee cannot sell the assets of the debtors herein absent an emergency without compliance with Chapter 11 provisions, appellants rely upon the cases of In re White Motor Credit Corporation, 14 Bankr. 584 (Bankr.N.D. Ohio 1981); In re D.M. Christian Co., 7 Bankr. 561 (Bankr. N.D.W.Va. 1980); and In re Solar Mfg. Corp., 176 F.2d 493 (3rd Cir. 1949). Appellees rely upon the more liberal view allowing such a sale under §363 when it is in

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<sup>9</sup> The trustee herein obtained court approval on March 3, 1983, for the sale of substantially all of the debtors' assets after notice and hearing in compliance with §363(b). Thereafter, on March 29, 1983, the trustee filed a disclosure statement containing a liquidation plan which included the sale to Newco/Agathon as an element of the plan.

the best interests of the estate, as exemplified by In re Dania Corporation, 400 F.2d 833 (5th Cir. 1968), cert. denied, 393 U.S. 1118 (1969) and its progeny.<sup>10</sup>

In White Motor Credit Corporation, supra, White Motor and two of its subsidiaries in reorganization entered into an agreement for the sale of substantially all of the subsidiaries' truck manufacturing operations to AB Volvo. The subsidiaries filed an application for a hearing to consider the proposed sale and the trustee for the subordinated debenture holders of White Motor objected to the proposed sale until the Bankruptcy Court determined whether such a sale was appropriate prior to the filing and/or confirmation of a plan of reorganization.

After an extensive examination of the legislative history of §363(b), the White Motor court found Congress deliberately rejected the suggestion that sales of all or substantially all of the estate assets might be accomplished under §363(b). The court said:

"As a matter of legislative intent, to endow section 363 with the purpose of or a potential for total reorganization would nullify, at debtor's option, the major protections and standards of chapter 11 of the Code...."

"It is clear, and the Court holds accordingly, that in a chapter 11 reorganization under the Bankruptcy Code,

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<sup>10</sup> See In Re Coastal Cable T.V., Inc., 24 Bankr. 609 (Bankr. 1st Cir. 1982); In re Boogaart of Florida, Inc., 17 Bankr. 480 (Bankr.S.D. Fla.1981); In re WHET, Inc., 12 Bankr. 743 (Bankr.Mass.1981); In re WFDR, Inc., 10 Bankr. 109 (Bankr. N.D. Ga. 1981); and In Re Tele/Resources, Inc., 6 Bankr. 628 (Bankr. S.D.N.Y. 1980).

Section 363(b) does not authorize sale of all or substantially all assets of the estate." White Motor Credit Corporation, 14 B.R. at 590.

However, the White Motor court did find Congress intended to leave intact the "emergency exception" developed by case law wherein a sale of substantially all of the estate assets could be accomplished under §363(b) in a demonstrated emergency situation. The White Motor court found it was faced with such an emergency because the debtor estates faced a substantial likelihood of a loss approximating \$40 billion should the proposed sale not proceed.

In contrast to the White Motor Credit Corporation case is In re WHET, Inc., 12 Bankr. 743 (Bankr. Mass. 1981). There, the trustee proposed a sale of substantially all of the assets of radio station WHET and gave notice of the proposed sale under §363(b). The notice was widely advertised and resulted in three counteroffers. Objections to the sale challenged the trustee's authority to sell substantially all of the estate assets in the absence of a confirmed plan providing for such a sale. The court said:

"As to the authority of a trustee to sell all the assets of an estate, 11 U.S.C. §363(b) plainly authorizes a trustee, after notice and hearing, to sell property of the estate other than in the ordinary course of business. Section 363 does not limit the quantity of property which may be sold by the trustee and case law interpreting §363(b) is clear that the broad wording of this provision contemplates a sale of even all of a debtor's assets.

"As to whether the sale by a Trustee of all the Debtor's assets must take place in the context of a confirmed reorganization plan, the case law is again clear that there is nothing objectionable about a sale of all the assets outside of a Chapter 11 plan. Although a trustee is authorized pursuant to 11 U.S.C. §1123(b)(4) to propose a plan which provides for the sale of all or substantially all of the property of the estate, this authorization is permissive and is not the exclusive authority to which substantially all the assets of a debtor may be sold. A trustee may, in appropriate circumstances, first liquidate the assets of a debtor and then propose a plan for distributing the proceeds to creditors." In re WHET, Inc., 12 Bankr. at 750. (Emphasis added)

Thus, the WHET court concluded in a chapter 11 proceeding a sale of substantially all of the estate assets other than in the usual course of business may be authorized under either §363(b) or §1123(b)(4), prior to plan approval. However, the court stated:

"There are circumstances where the proposed sale of substantially all of the assets of the Debtor would be inappropriate despite the authority of Sections 363(b) and 1123(b)(4) and the cases decided thereunder and, upon objection, not allowed by the Court. Such circumstances might include cases where the assets have not been properly exposed to the market or where the sale has been arranged by the debtor who is to have an interest in the purchasing entity." In re WHET, Inc., 12 Bankr. at 751. (Emphasis added)

The White Motor Credit and WHET cases present each side of the issue. But, neither case dealt with the situation facing the Court herein. Here, the proposed sale is to an "insider"--a

newly formed corporation owned by an affiliate of the debtor.<sup>11</sup>

The Court concludes the bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business under §363(b). However, each such proposed sale must be examined from its own facts to determine whether approval is justified.

The Bankruptcy Court should make the following specific findings supported by the record:<sup>12</sup>

- 1) Whether there are facts constituting an emergency or in the absence of a demonstrated emergency, whether there are compelling facts and circumstances which support approval of the sale, be it public or private;
- 2) If the trustee has not solicited other prospective purchasers, private or public, whether there are facts that justify the trustee not doing so; and
- 3) Whether the sale, private or public, is in the best interests of the debtor estate when the consideration paid and all other relevant factors are taken into account.

Here, the Bankruptcy Court approved by order dated March 3, 1983, the proposed sale of substantially all of the estate assets

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<sup>11</sup> Newco/Agathon is an "insider" as defined in 11 U.S.C. §101(25) of the Bankruptcy Code because of its affiliation with the A/S Docko interests as shown on Exhibit "A".

<sup>12</sup> Such detailed findings are even more compelling when the sale is to an "insider."

to Newco/Agathon and without supporting factual findings concluded:

- "1. That due and sufficient notice of this hearing was given in accordance with law and the Orders of this Court.
2. That the Agreement contains terms and conditions that are fair, proper, reasonable, and that the performance of the Agreement would be in the best interests of the Debtors and others interested therein, and should be approved."

No emergency was presented from the record although Newco/Agathon imposed deadlines for acceptance of the offer. Moreover, by the trustee's own admission, no attempt was made to "shop" for better offers with the exception of the drilling rigs. At pages 11-12 of the transcript of the hearing on the trustee's application for order approving sale of assets, the following was stated:

Q: (By Paul Kurland) Have you made any attempts in terms of advertising these assets to obtain cash counteroffers for the assets, forgetting for the moment the security interests?

A: (By Robert Franden, trustee) We have not made advertised offers. We have not put the oil and gas properties up for sale. We are operating solely on the reserve analysis there. We have asked on the rigs, to try and get offers on the rigs, and have had people go by and look at them and give us offers. For the longest time we didn't get any, and then we got one on the small rig. We were offered \$150,000 for it."

Nor has the trustee given any justification on the record for his failure to solicit other offers for the assets. The trustee found the offer to be "a bird in the hand," and sought quick

court approval for the purpose of getting the creditors paid as soon as possible.<sup>13</sup>

Further, the record is unclear concerning the value being paid by the purchaser in return for the value received. From the information available in the record on appeal the consideration for the sale appears as follows:<sup>14</sup>

<u>Newco/Agathon obligation:</u>	<u>Approximate or appraised value</u>
1. Pay \$1,350,000 cash	\$1,350,000.00
2. Release \$5,375,000 of promissory notes payable to A/S Selvaagbygg (approximately \$936,000 of which is secured)	936,000.00+
3. Assume \$800,000 promissory note payable to First National Bank of Oklahoma City	800,000.00
4. Defense of Ancor in pending lawsuits and pay to extent of Chapter 7 liquidation	?
TOTAL	\$ ?

Newco/Agathon receiving:

A. Three drilling rigs:	\$1,136,760.00 333,345.00 936,187.00
B. Bluebell and Ancor producing properties including reserves (25% of \$4,076,685.00)	1,019,171.25
C. Young producing property	57,742.00
D. Undeveloped leases	?

13 Transcript of the February 25, 1983 hearing before the Bankruptcy Court at pg. 13.

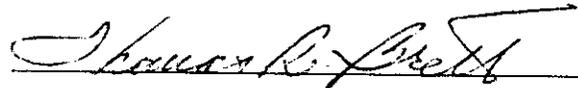
14 It may not be possible to make reasonably accurate appraisals of items 2, 4 and F.

E.	Net proceeds from the sale of the Meier lease	205,000.00
F.	Claims of Ancor against Sixth, Seventh and Eighth Geostratic Partnerships	?
G.	Office furniture and equipment	<u>?</u>
	TOTAL	?

The present record is inadequate to yield the specific findings required as a necessary predicate for approval of the sale in question.

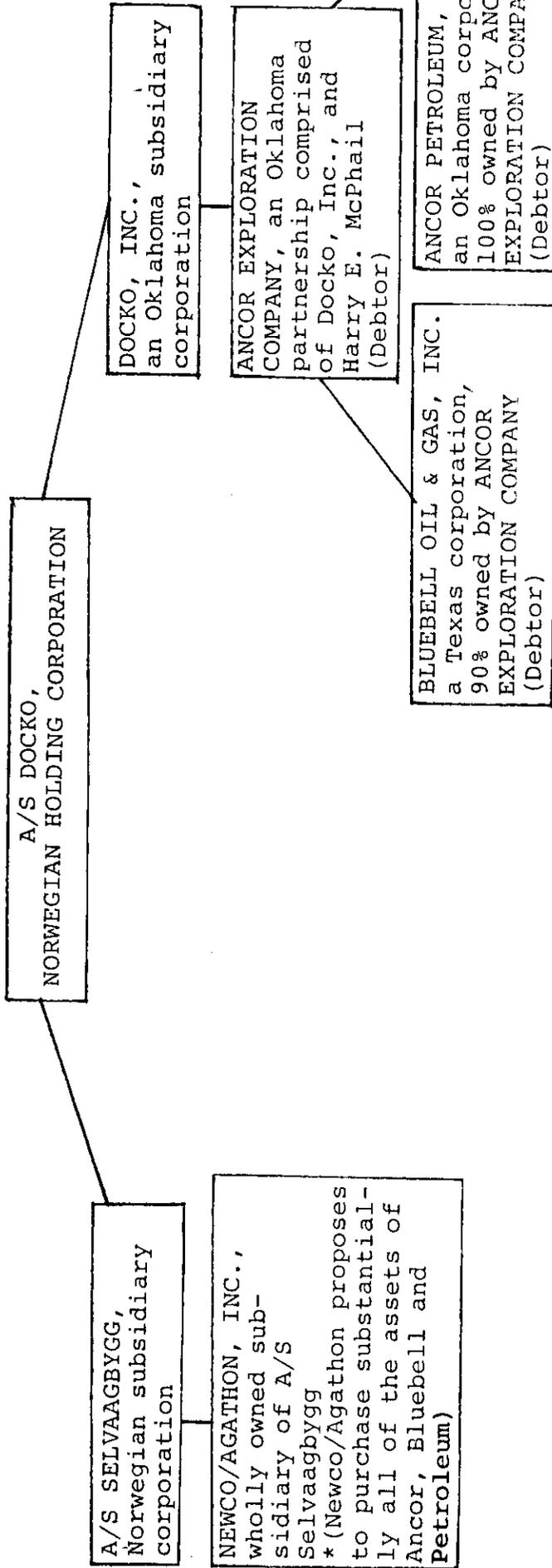
IT IS THEREFORE ORDERED the matter is remanded to the Bankruptcy Court for the purpose of conducting hearings and entering findings not inconsistent with this Order.

ENTERED this 12<sup>th</sup> day of May, 1983.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

A/S DOCKO INTERESTS  
(SELVAAG FAMILY INTERESTS)



GEOSTRATIC INTERESTS

First Ancor-Geostratic Drilling Partnership 1980

**General Partner:**  
Ancor Exploration Company (Oklahoma Partnership) (since 11/29/82 limited partner)

**General Partners:**  
Sinn (New York),  
Mirsky (Florida)

**Class A Limited Partner:**  
Sixth Geostratic Energy Drilling Program 1980

**Limited Partners:**  
Unnamed Investors

**Class B Limited Partners:**  
Sinn (New York),  
Mirsky (Florida)  
(since 11/29/82 general partner)

Second Ancor-Geostratic Drilling Partnership 1980 bears the same relationship to Seventh Geostratic Energy Drilling Program 1980 as that illustrated above between First Ancor-Geostratic Drilling Partnership 1980 and Sixth Geostratic Energy Drilling Program 1980; similarly, Third Ancor-Geostratic Drilling Partnership 1980 occupies an identical position relative to Eighth Geostratic Energy Drilling Program 1980.

IN THE UNITED STATES COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

KANSAS CITY FIRE AND CASUALTY )  
 INSURANCE COMPANY, a Missouri )  
 corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LARRY DON CARMAN, MATHEW J. FLETCHER, )  
 DONNA RUTH TUCKER, CAROLYN EVANS and )  
 LONNIE CARMAN, )  
 )  
 Defendants. )

MAY 11 1983 *rm*  
 Jack U. Smith, Clerk  
 U. S. DISTRICT COURT

NO. 83-C-262-C

JUDGMENT AND ORDER OF DISTRIBUTION AND APPROVAL  
OF SETTLEMENT

This matter came on for hearing on this 10<sup>th</sup> day of May, 1983, pursuant to oral motions of the Plaintiff and those Defendants having made claim herein, and pursuant to Stipulation entered into by those parties and representatives made by duly filed pleadings and answers herein, this Court makes the following findings:

1. This interpleader action was filed by the Plaintiff and named therein all person involved in that automobile accident as described in Plaintiff's Complaint that occurred on September 10, 1982. This Court did acquire proper jurisdiction and venue of this matter and each Defendant herein was duly and properly served with summons and copy of Plaintiff's Complaint.
2. The only parties that have made claim herein are the Defendants, Mathew J. Fletcher, Donna Ruth Tucker, Carolyn Evans and Lonnie Carman, and the Oklahoma Department of Human Services which is not a named party herein but which is acknowledged by all names parties as to have a claim, and said parties have filed their claims herein.

17

3. The Plaintiff insurance company, Kansas City Fire and Casualty Insurance Company a/k/a Kansas City Fire and Marine Insurance Company, had issued an automobile policy of insurance to Larry Carman, which policy insures against liability of Larry Carman to the maximum amount of TWENTY THOUSAND DOLLARS AND NO/100 (\$20,000.00) to each occurrence. There has been made an oral application to this Court, with due notice to all other parties, that the Plaintiff is desirous of settling any disputed claims to that portion of their policy pertaining through the liability coverage and application has been made to this Court to approve settlement of the disputed coverage in the amount of TWENTY THOUSAND DOLLARS AND NO/100 (\$20,000.00). All applications are hereby approved by the Court and found to be in the best interest of all parties involved, with this Court recognizing that all claims and cross claims, if any, filed herein are hereby dismissed with prejudice to refiling of same.

4. The only parties before this Court, who have not specifically and legally disclaimed any right of contribution to the proceeds of said policy are the following named parties who are entitled to distribution of the proceeds on deposit with this clerk and distribution to be made in the following manner:

- (a) The Defendant, Donna Ruth Tucker, and her attorney, George Briggs, receive FIVE THOUSAND DOLLARS AND NO/100 (\$5,000.00) of said sum.
- (b) The Defendant, Carolyn Evans, and her attorney, George Briggs, receive FIVE THOUSAND DOLLARS AND NO/100 (\$5,000.00) of said sum.
- (c) The Defendant, Lonnie Carman, and his attorney, George Briggs, receive the sum of FIVE THOUSAND DOLLARS AND NO/100 (\$5,000.00).
- (d) The Defendant, Larry Don Carman, receive nothing.
- (e) The Defendant, Mathew J. Fletcher, his attorney, Robert Kelly, and the Oklahoma Department of Human Services, receive the sum of FIVE THOUSAND DOLLARS AND NO/100 (\$5,000.00).

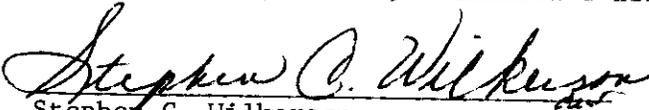
5. In accordance with the Stipulation of the parties hereto, and the oral application for approval of settlement and distribution of funds, it is the findings of this Court that the clerk of this Court should and is hereby ordered to distribute said funds as aforestated, and that all other persons or entities who may make but have not made claim herein are hereby precluded and forever barred from making claim against the insurance policy of Kansas City Fire and Casualty Insurance Company a/k/a Kansas City Fire and Marine Insurance Company, as described in the Complaint of said insurance company which might have been payable in any manner or respect as a result of the automobile accident that occurred on September 10, 1982, as set forth in the Complaint.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that the Defendants above named are liquidating the claims herein by agreement and upon receipt of the funds distributed by this order are forever barred from execution against, or making further claim against the Plaintiff as a result of the insurance policy as described in Plaintiff's Complaint.

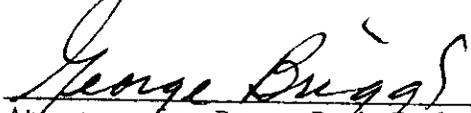
  
JUDGE OF THE NORTHERN DISTRICT

APPROVALS:

KNIGHT, WAGNER, STUART, WILKERSON & LIEBER

  
Stephen C. Wilkerson  
Attorney for Plaintiff

GEORGE BRIGGS

  
Attorney for Donna Ruth Tucker, Carolyn Evans,  
Larry Don Carman and Lonnie Carman

ROBERT P. KELLY

Robert Kelly  
Attorney for Mathew J. Fletcher

DEPARTMENT OF HUMAN SERVICES

By: Angela Gullatt  
Angela Gullatt

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

RUDOLPH HICKMAN and ERMA HICKMAN, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
SHELTER MUTUAL INSURANCE CO., )  
formerly MFA MUTUAL INSURANCE Co., )  
 )  
Defendant. )

No. 82-C-<sup>814</sup>~~414~~-C

**FILED**  
MAY 10 1983  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

Now on this 10 day of May, 1983, 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.

(Signed) H. Dale Cook

\_\_\_\_\_  
Judge

**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAY 11 1983

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GARY M. GORMAN, )  
 )  
 Defendant. )

CIVIL ACTION NO. 83-C-208-B

DEFAULT JUDGMENT

This matter comes on for consideration this 11<sup>th</sup> day of May, 1983, 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, Gary M. Gorman, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Gary M. Gorman, was served with an Alias Summons and Complaint on April 1, 1983. 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, Gary M. Gorman, for the principal sum of \$306.13, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

S/Thomas R. Brett  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAY 11 1983

Jack C. Silver  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAMES L. NUSSER, )  
 KERRY D. WARNER, )  
 )  
 Defendants. )

CIVIL ACTION NOS. 82-C-1167-B  
83-C-189-B

O R D E R

Now on this 11<sup>th</sup> day of May, 1983, it appears that the Defendants in the above-captioned cases have not been located within the Northern District of Oklahoma, and therefore attempts to serve them have been unsuccessful.

IT IS THEREFORE ORDERED, that the Complaints against Defendants James L. Nusser and Kerry D. Warner be and are dismissed without prejudice.

  
UNITED STATES DISTRICT JUDGE

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

SATELLITE SYNDICATED SYSTEMS, )  
INC., an Okla. corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WESTERN UNION TELEGRAPH )  
COMPANY, a New York corp., )  
 )  
Defendant. ) No. 83-C-101-<sup>B</sup>~~E~~

**FILED**

MAY 14 1983

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

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 11 day of March, 1983, the above styled and numbered cause comes on for consideration by the Court on the Joint Stipulation for Dismissal filed herein by the Plaintiff and Defendant. The Court, having examined the Joint Stipulation for Dismissal, finds that the Plaintiff and the Defendant have entered into a compromise agreement in settlement of the claims set forth in the Complaint and that the causes of action set forth therein should be dismissed with prejudice as against the Defendant, Western Union Telegraph Company, pursuant to the Joint Stipulation for Dismissal.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the causes of action filed by the Plaintiff against the Defendant are hereby dismissed with prejudice to future filing.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAMES L. NUSSER, )  
 KERRY D. WARNER, )  
 )  
 Defendants. )

MAY 1 1983  
FEDERAL CLERK  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NOS. 82-C-1167-B  
83-C-189-B

O R D E R

Now on this 11<sup>th</sup> day of May, 1983, it appears that the Defendants in the above-captioned cases have not been located within the Northern District of Oklahoma, and therefore attempts to serve them have been unsuccessful.

IT IS THEREFORE ORDERED, that the Complaints against Defendants James L. Nusser and Kerry D. Warner be and are dismissed without prejudice.

  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAY 11 1983

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THOMAS W. VANDYKE, )  
 )  
 Defendant. )

Jack C. Silver, Clerk  
DISTRICT COURT

CIVIL ACTION NO. 82-C-319-B

DEFAULT JUDGMENT

This matter comes on for consideration this 11<sup>th</sup> day of May, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Thomas W. Vandkye, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Thomas W. Vandyke, was personally served with an Alias Summons and Complaint on March 31, 1983. 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, Thomas W.

Vandyke, for the principal sum of \$1,002.32, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

S/Thomas R. Brett  
UNITED STATES DISTRICT JUDGE

FILED

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

MAY 11 1983

RIDLEY SOUND CO., an	)
Oklahoma corporation,	)
	)
Plaintiff,	)
	)
vs.	)
	)
PLESSEY INCORPORATED, a	)
foreign corporation,	)
	)
Defendant.	)

NO. C-383-B

ORDER

Upon Joint Application for Dismissals With Prejudice, and for good cause shown, the Court finds:

1 The Complaint of the Plaintiff Ridley Sound Co. against the Defendant Plessey, Inc., should be and is hereby dismissed, with prejudice, each party to pay its own costs and attorneys fees.

2. The Counterclaims of the Defendant Plessey, Inc., including three (3) causes of action contained therein, asserted against the Plaintiff Ridley Sound Co. should be and is hereby dismissed, with prejudice, each party to pay its own costs and attorneys fees.

SO ORDERED this <sup>11</sup>/11 day of May, 1983.

  
 THOMAS R. BRETT  
 U.S. District Judge

Order JP FRIDAY

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

SATELLITE SYNDICATED SYSTEMS, )  
INC., an Okla. corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WESTERN UNION TELEGRAPH )  
COMPANY, a New York corp., )  
 )  
Defendant. ) No. 81-C-503-E

**FILED**

MAY 1 8 1983

Jack C. Silver Clerk

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 9<sup>th</sup> day of May, 1983, the above styled and numbered cause comes on for consideration by the Court on the Joint Stipulation for Dismissal filed herein by the Plaintiff and Defendant. The Court, having examined the Joint Stipulation for Dismissal, finds that the Plaintiff and the Defendant have entered into a compromise agreement in settlement of the claims set forth in the Complaint and that the causes of action set forth therein should be dismissed with prejudice as against the Defendant, Western Union Telegraph Company, pursuant to the Joint Stipulation for Dismissal.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the causes of action filed by the Plaintiff against the Defendant are hereby dismissed with prejudice to future filing.

JAMES G. LINDSEY

UNITED STATES DISTRICT JUDGE

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

CHAMPLIN PETROLEUM COMPANY, )  
a Delaware corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
H.B.H. OIL COMPANY, a Limited )  
Partnership; Larry M. Hamblet, )  
R. E. Bresnahan, and M.G. )  
Huddleston, )  
 )  
Defendant. )

**FILED**

MAY 1 1993

No. 82-C-453-B

Mark P. Silver, Clerk  
U.S. District Court  
Northern District of Oklahoma

ORDER OF DISMISSAL WITH PREJUDICE

Upon consideration of the Stipulation for Dismissal filed herein, it is hereby ordered that the above entitled action shall be, and it is hereby, dismissed with prejudice.

  
United States District Court  
Judge for the Northern District  
of Oklahoma

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

103  
1983-05-10  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 79-C-74-E  
 )  
v. ) This action applies to the  
 ) Overriding Royalty Interest  
80.00 Acres of Land, More or ) only in the oil and gas  
Less, Situate in Washington ) leasehold interest in the  
County, State of Oklahoma, and ) estate taken in Tract No.  
Rosa Goodman, et al., and ) 204-A.  
Unknown Owners, )  
 ) (Included in D.T. filed in  
Defendants. ) Master File #400.14)

J U D G M E N T

1.

NOW, on this 10<sup>th</sup> day of May, 1983,  
this matter comes on for disposition on application of the  
parties for entry of judgment on the Report of Commissioners  
filed herein on April 14, 1982, and the Court, after having  
examined the files in this action and being advised by counsel  
for the parties, finds that:

2.

This judgment applies to the entire estate condemned in  
Tract No. 204-A, as such estate and tract are described in the  
Complaint filed in this action.

3.

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

4.

Service of Process has been perfected personally as  
provided by Rule 71A of the Federal Rules of Civil Procedure, on

all parties defendant in this cause, who are interested in subject property.

5.

The acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, on February 13, 1979, the United States of America filed its Declaration of Taking of a certain estate in such tract of land, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

6.

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

7.

The Report of Commissioners filed herein on April 14, 1982, hereby is accepted and adopted as a finding of fact as to subject tract. The amount of just compensation for the estate taken in the subject tract, as fixed by the Commission, is set out below in paragraph 12.

8.

This judgment will create a surplus between the amount deposited as estimated just compensation for the estate taken in subject tract and the amount fixed by the Commission and the

Court as just compensation and will also create an overpayment to the owners, and a sum of money sufficient to cover such overpayment should be deposited by the former owners. Calculations showing such surplus and overpayment are set out below in paragraph 12.

9.

The defendants named in paragraph 12 as owners of the estate taken in subject tract were the only defendants asserting any interest in such estate. All other defendants having either disclaimed or defaulted, the named defendants were (as of the date of taking) the owners of the estate condemned herein. Since the filing of the Declaration of Taking applicable to this case, Marie Arnold Matthews has died. Under the laws of the state of Oklahoma, Cecil Elmer Matthews has been appointed Executor of the Estate of Marie Arnold Matthews, deceased, and is entitled to share in the just compensation awarded by this judgment, and is likewise responsible for repayment of the overpayment made from the deposit made in this case.

10.

It is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the subject tract, as such tract is described in the Complaint filed herein, and such property, to the extent of the estate described in such Complaint, is condemned, and titled thereto is vested in the United States of America, as of February 13, 1979, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

It is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the ownership of the estate taken herein in subject tract, the right to receive the just compensation awarded by this judgment, and the responsibility for repayment of the overpayment from the deposit of estimated compensation, is vested in the persons as shown below in paragraph 12.

12.

It is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on April 14, 1982, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property, as shown by the following schedule:

Tract No. 204-A

Owners, as of date of taking:

1. Rosa Wilson Goodman, life estate;
2. Marie Arnold Matthews, remainder.

Provided: Since the filing of the Declaration of Taking applicable to this case, and since the disbursal of the deposit of estimated compensation, Marie Arnold Matthews has died and Cecil Elmer Matthews has been appointed Executor of the Estate of Marie Arnold Matthews. Therefore, such Executor is entitled to share in the just compensation awarded by this judgment, but likewise is responsible for refunding the overpayment made to the owners from the deposit of estimated compensation.

Deposited as estimated compensation-----	\$1,642.00	
Disbursed to owners Goodman and Matthews-----		\$1,642.00
Award of just compensation pursuant to Commissioners report-----	<u>\$1,049.96</u>	<u>\$1,049.96</u>
Overdeposit-----	\$ 592.04	
Overpayment to owners-----		\$ 592.04 plus interest

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall have judgment against Cecil Elmer Matthews, Executor of the Estate of Marie Arnold Matthews, deceased, for the overpayment described in paragraph 12 above, in the amount of \$592.04, together with interest on such amount at the rate of six (6) percent per annum, from the date of filing this judgment until the same be paid.

Payment of such judgment shall be made by the judgment debtor depositing the amount due with the Clerk of the United States District Court for the Northern District of Oklahoma.

14.

When the deposit required by paragraph 13 above has been made, the Clerk of this Court shall disburse the entire sum so deposited by the former owner to:

Treasurer of the United States of America.

S/ JAMES O. ELLISON

APPROVED:

Hubert A. Marlow

James L. Pe



determine the respective interests of all members of the class represented by Plaintiff herein. Pursuant to the Court's order of October 18, 1982, the Court finds this Court should retain jurisdiction over this action for the purpose of allowing the receiver to complete determination of the respective interests of the class members herein, complete his duties as receiver and render a final accounting to the Court and the parties herein. Counsel for Plaintiff and the receiver are directed to file status reports every sixty (60) days advising the Court as to the status of the receiver's actions and to advise this Court at such time as the receivership may be terminated and distribution effected to the members of the Plaintiff class.

ORDERED this 9<sup>th</sup> day of May, 1983.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
MAY - 6 1983  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

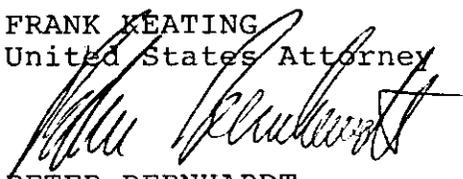
UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CIVIL ACTION NO. 82-C-1161-C  
 )  
 MICHAEL VARNER, )  
 )  
 Defendant. )

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, 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 5th day of May, 1983.

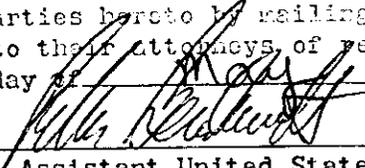
UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney  


PETER BERNHARDT  
Assistant United States Attorney  
460 U.S. Courthouse  
Tulsa, OK 74103  
(918) 581-7463

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 9th day of May, 1983

  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
MAY 9 1983  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CIVIL ACTION NO. 82-C-1195-C  
 )  
 RICHARD L. HIGGS, )  
 )  
 Defendant. )

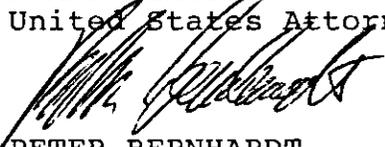
NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, 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 6th day of May, 1983.

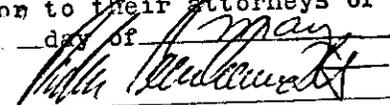
UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

  
PETER BERNHARDT  
Assistant United States Attorney  
460 U.S. Courthouse  
Tulsa, OK 74103  
(918) 581-7463

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the \_\_\_\_\_ day of May, 1983.

  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
MAY 11 1983  
E. Dale Cook, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LONNIE HICKS, )  
 )  
 Defendant. )

CIVIL ACTION NO. 83-C-116-C

DEFAULT JUDGMENT

This matter comes on for consideration this 9<sup>th</sup> day of May, 1983, 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, Lonnie Hicks, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Lonnie Hicks, was served with Summons and Complaint on March 21, 1983. 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, Lonnie Hicks, for the principal sum of \$717.40, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

Signed: E. Dale Cook

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CIVIL ACTION NO. 83-C-137-C  
 )  
 RAYMOND E. ALLEN, )  
 )  
 Defendant. )

DEFAULT JUDGMENT

This matter comes on for consideration this 9<sup>r</sup> day  
of May, 1983, the Plaintiff appearing by Frank Keating, United  
States Attorney for the Northern District of Oklahoma, through  
Peter Bernhardt, Assistant United States Attorney, and the  
Defendant, Raymond E. Allen, appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendant, Raymond E. Allen, was  
personally served with Summons and Complaint on February 11,  
1983. 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, Raymond E.  
Allen, for the principal sum of \$111.36, plus interest at the  
legal rate from the date of this Judgment until paid, and costs  
of the action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

F I L E D  
JUL 11 1983  
JAMES G. BILBO, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) CIVIL ACTION NO. 82-C-257-C  
 )  
ALAN F. MOON, )  
 )  
Defendant. )

DEFAULT JUDGMENT

This matter comes on for consideration this 9<sup>th</sup> day of May, 1983, 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, Alan F. Moon, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Alan F. Moon, was served with an Alias Summons and Complaint on March 16, 1983. 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, Alan F. Moon, for the principal sum of \$887.99, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

(Signed) H. Dale Cook  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
MAY 1983  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

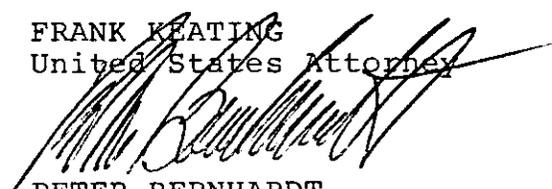
UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CIVIL ACTION NO. 83-C-66-C  
 )  
 RONALD J. LEBOEUF, )  
 )  
 Defendant. )

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 Peter Bernhardt, 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 \_\_\_\_\_ day of May, 1983.

UNITED STATES OF AMERICA  
FRANK KEATING  
United States Attorney



PETER BERNHARDT  
Assistant United States Attorney





John R. Richards, Esquire  
RICHARDS & PAUL  
9 E. Fourth St., Suite 400  
Tulsa, OK 74103  
(918) 584-2583

By Joseph D. Zulli  
JOSEPH D. ZULLI  
Attorney for the Defendant

ORDER OF DISMISSAL WITH PREJUDICE

This case came on before the Court upon the above and foregoing Stipulation of the parties for a voluntary dismissal of said cause with prejudice; and the Court being fully advised, it is:

ORDERED, that the above styled and entitled action and each of the claims and causes of action of the Plaintiff, be and the same is hereby dismissed with prejudice to the filing of a future action; and it is further:

ORDERED, that each of the parties bear his or its own costs incurred herein.

DATED, this 12<sup>th</sup> day of May, 1983.

**FILED**

MAY 12 1983

Jack C. [unclear]  
11 [unclear]

James O. Ellison  
JAMES O. ELLISON, United States  
District Judge

FILED

MAY - 6 1983

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

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

DEVCO OVERSEAS COMPANY, a )  
Cayman Island corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SAUDI SULFUR COMPANY, a )  
Saudi limited liability )  
company, ALI AND FAHD )  
SHOBOKSHI GROUP, a Saudi )  
limited liability company, )  
and FAHD SHOBOKSHI, an )  
individual, )  
 )  
Defendants. )

No. 83-C-346-C

ORDER PERMITTING DISMISSAL

The Dismissal with prejudice filed herein by the  
Plaintiff is hereby approved and this case is dismissed.

DATED this 5<sup>th</sup> day of May, 1983.

(Signed) H. Dale Cook

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

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

MAY 6 1983

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

ROBERT J. ZANI,  
Plaintiff,

vs.

MARGARET LAMM,  
Defendant.

No. 83-C-268-C

O R D E R

Now before the Court sua sponte is the complaint of the plaintiff, Robert Zani, in which he alleges that Judge Margaret Lamm violated his constitutional rights to due process and equal protection by assuming jurisdiction while the issue was on appeal before the Tenth Circuit Court of Appeals. Additionally, plaintiff alleges that Judge Lamm violated plaintiff's constitutional guarantees by failing to follow a known code of rules of evidence; by refusing to allow this pro se defendant to contact any of his witnesses; by refusing to set bail for him while granting bail for his co-defendant; by refusing to give him a full and fair opportunity to litigate Fourth Amendment claims; by refusing to give plaintiff a speedy trial in accordance with the Uniform Detainer Act; by refusing to order plaintiff removed from prolonged violation in county jail; by refusing to

acknowledge the "full faith and credit clause" of the U. S. Constitution; by committing alleged reversible errors during trial; by refusing to order transcripts changed when undisputed errors were pointed out; by refusing to let him talk to media; and by refusing to turn over to plaintiff several pretrial transcripts where the court had allegedly made disparaging remarks, and where the court had attempted to intimidate plaintiffs.

It is well-established that judges are absolutely immune from civil liability for judicial acts, unless committed in the clear absence of all jurisdiction. Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978); Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967). Since plaintiff's complaint is based on defendant's judicial acts, and plaintiff has failed to show clear absence of all jurisdiction except in conclusory language, he has not established any basis for a claim against Judge Lamm.

The Court authorized commencement of this action in forma pauperis under authority of 28 U.S.C. §1915. Subsection (d) of that statute permits the dismissal of a case when the court is satisfied that the action is frivolous. Moreover, both the Supreme Court and the Tenth Circuit Court of Appeals have held that federal jurisdiction does not lie where a purported civil rights claim is simply unsubstantial, or where no rational argument can be made on the facts or the law. Hagans v. Lavine,

415 U.S. 528, 536 (1973); Wells v. Ward, 470 F.2d 1185, 1187  
(10th Cir. 1972; Smart v. Villar, 547 F.2d 112 (10th Cir. 1976);  
Henricksen v. Bentley, 644 F.2d 852 (10th Cir. 1981).

Accordingly, this action is, in all respects, dismissed.

It is so Ordered this 6<sup>th</sup> day of May, 1983.

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

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

**FILED**

MAY - 6 1983

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

AMERICAN STATES INSURANCE )  
COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LARRY DARNELL JONES, FRED A PEARL )  
WIND, DAN E. FISHER, and )  
JACK L. STEPHENS, )  
 )  
Defendants. )

No. 83-C-18-C

ORDER OF DISMISSAL

This 5<sup>th</sup> day of May, 1983 upon joint application and motion for dismissal made by the remaining parties IT IS THE ORDER, JUDGMENT AND DECREE OF THIS COURT that the plaintiff be and is hereby released from any and all liability, actions, causes of action, claims, demands, damages, costs or expenses made by any of the defendants by virtue of the insurance coverages which are before this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a permanent injunction be issued against all parties from instituting any proceedings in any Court, Federal or State, against this plaintiff for the recovery of all or any part of the insurance coverages which are before this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff recover \$750.00 in attorney fees and \$60.00 in Court costs to be disbursed pursuant to the Court's order to disburse.

(Signed) H. Dale Cook

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

APPROVED AS TO FORM:

5/  
Attorney for Plaintiff

Richard A Brewer  
Attorney for Plaintiff

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

FIRST BANK OF GROVE, an Oklahoma )  
banking corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
EDWARD MICHAEL CHILDS, an individual, )  
DERYL A. BORDERS, III, an individual, )  
and HOME PRODUCTS, INC., a suspended )  
Oklahoma corporation, )  
 )  
Defendants. )

No. 82-C-1074C

**FILED**

MAY - 6 1982

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

O R D E R

This matter comes on before me, the undersigned H. Dale Cook, Chief Judge of the District Court for the Northern District of Oklahoma, and it appearing that the defendant, Home Products, Inc., a suspended Oklahoma corporation, is a dispensable party, may be dismissed without prejudice pursuant to Federal Rules of Civil Procedure 41 (a)(1).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Home Products, Inc., a suspended Oklahoma corporation, is a dispensable party in the above entitled cause, and that same shall be, and is hereby, dismissed without prejudice pursuant to Federal Rules of Civil Procedure 41 (a)(1).

(Signed) H. Dale Cook

\_\_\_\_\_  
Judge of the District Court

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

THOMAS S. ANDERSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 IRWIN HALL, III, et al., )  
 )  
 Defendants. )

NO. 82-C-986-B

MAY 6, 1983  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

This matter comes before the Court on defendants' motion to dismiss. Plaintiff has not responded to the defendants' motion. For the reasons set forth below, the motion is granted.

Plaintiff, who is currently incarcerated in the Conners Correction Center, filed this action pursuant to 28 U.S.C. §1983. He alleged he has been denied access to copies of his Department of Corrections (DOC) psychiatric/psychological records in violation of his civil rights and the Freedom of Information Act.

Plaintiff contends in his complaint that he wants to file copies of his psychiatric/psychological reports with a petition for post-conviction relief and that "Without these records to substantiate plaintiffs motion, state would consider it a frivolous (sic) petition and summarly (sic) deny it."

Under the DOC's policy on "Release of Health Care Information" (Policy No. OP-160140), an inmate may review his psychiatric/psychological records (page 5, no. 5(A)). Copies of the record are not provided to the inmate (page 6, no. 5(D)). However, the DOC will produce the records upon service with either a subpoena duces tecum or a lawful court order calling for the

production of health records in connection with civil litigation or criminal proceedings (page 1, no. 1(A)).

In the Court's view, this regulation satisfies any need for copies of the record in relation to plaintiff's alleged post-conviction proceedings. If the court in those proceedings believes the records will be helpful, it may obtain them.

Administrative remedies are to be presumed to be constitutional and may be set aside only if no grounds can be conceived to justify them. Stiner v. Califano, 438 F.Supp. 796 (W.D. Okl. 1977). In the present action, it appears to the Court that the administrative regulations provide an adequate remedy for plaintiff's needs.

Defendants' motion to dismiss is hereby sustained.

ENTERED this 1<sup>st</sup> day of May, 1983.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAY - 5 1983

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAMES R. RESER, )  
 )  
 Defendant. )

CIVIL ACTION NO. 83-C-210-B

AGREED JUDGMENT

This matter comes on for consideration this 6<sup>th</sup> day  
of May, 1983, the Plaintiff appearing by Frank Keating,  
United States Attorney for the Northern District of Oklahoma,  
through Peter Bernhardt, Assistant United States Attorney, and  
the Defendant, James R. Reser, appearing pro se.

The Court, being fully advised and having examined the  
file herein, finds that the Defendant, James R. Reser, was  
served with Summons and Complaint on March 4, 1983. 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 \$501.20 (less the sum of \$50.00 which has  
been paid), plus interest at the legal rate 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 R. Reser, in the amount of \$501.20 (less the sum of \$50.00 which has been paid), plus interest at the legal rate from the date of this Judgment until paid.

S/ THOMAS R. BRETT

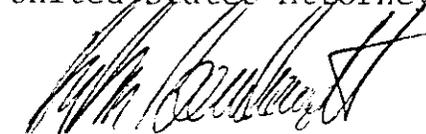
---

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney



---

PETER BERNHARDT  
Assistant U.S. Attorney



---

JAMES R. RESER

FILED

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

THE HUGHES GROUP, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PERRY A. MORGAN, MRS. )  
 PERRY A. MORGAN and )  
 GLENN MORGAN, )  
 )  
 Defendant. )

No. 82-C-995-BT

AMENDED JUDGMENT

On April 15, 1983, the Court sustained plaintiff's motion for summary judgment with regard to the portion of plaintiff's complaint which sought declaratory relief that Oklahoma's Surface Damages Act, 52 Okl.St. Ann. §318.2 through 318.9 was inapplicable to the lease involved therein.

On April 26, 1983, the Court incorrectly entered judgment in favor of plaintiff, The Hughes Group, and against defendants, Perry A. Morgan, Mrs. Perry A. Morgan and Glenn Morgan "in reference to defendants' claim for damages under 52 Okl.St. Ann. §§318.2 through 318.9."

IT IS HEREBY ORDERED the April 26, 1983 judgment is modified to reflect judgment is rendered in favor of plaintiff, The Hughes Group, and against defendants, Perry A. Morgan, Mrs. Perry A. Morgan and Glenn Morgan because Oklahoma's Surface Damages Act, 52 Okl.St. Ann. §§318.2 through 318.9, is inapplicable to plaintiff's lease.

ENTERED this 5<sup>th</sup> day of May, 1983.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**FILED**

SAFEWAY STORES, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

CIVIL NO. 82-C-1134-B

ORDER OF DISMISSAL

AND NOW, upon stipulation of the parties, this action is hereby dismissed, with prejudice, each party to bear its own costs and attorneys fees.

Entered this 5 day of May, 1983.

Thomas R. Brett  
United States District Judge

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

FILED

RICHARD COREY, Individually )  
and on Behalf of a Class of )  
Similarly Situated Persons, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CURTIS A. WOLFER, et al., )  
 )  
Defendants. )

MAY 5, 1983  
JACK C. Silver, Clerk

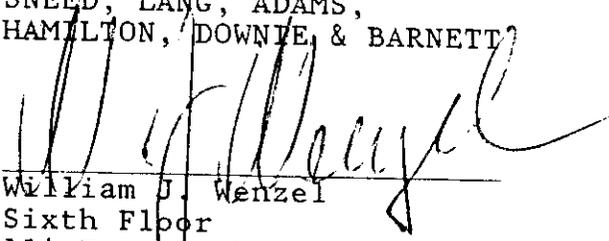
No. 81-C-637-C ✓

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, Richard Corey, individually and on behalf of a class of similarly situated persons, as described on the Amended Complaint as amended by the Court's order of October 18, 1982, hereby dismisses with prejudice as against Defendants, Curtis A. Wolfer, an individual; G.L.C. Advisors, Ltd., an Oregon corporation; G.L.C. Oil and Gas, a Nevada corporation; and Susan Mae Wolfer a/k/a Susan Mae Watts, only, the causes of action and claims set out by Plaintiff in Counts I, II, III, IV, V, VI, VII, VIII and XI of the Second Amended Complaint.

SNEED, LANG, ADAMS,  
HAMILTON, DOWNIE, & BARNETT

By

  
William J. Wenzel  
Sixth Floor  
114 East Eighth Street  
Tulsa, Oklahoma 74119  
(918) 583-3145

Attorneys for Plaintiff

STIPULATED AND AGREED TO THIS  
5 DAY OF May, 1983

BONDS, MATTHEWS, BONDS and HAYES

By Albert R. Matthews, Esq.

CERTIFICATE OF MAILING

I, William J. Wenzel, do hereby certify that on the 5<sup>th</sup>  
day of May, 1983, I caused to be mailed a true and  
correct copy of the above and foregoing instrument, proper postage  
thereon prepaid, to:

John Howard Lieber, Esq.  
Knight, Wagner, Stuart,  
Wilkerson & Lieber  
Suite 205  
616 South Main  
Tulsa, Oklahoma 74119

Richard D. Forshee, Esq.  
Phillips Petroleum Company  
America First Tower  
Tenth Floor  
101 North Robinson  
Oklahoma City, Oklahoma 73102

Ronald Ricketts, Esq.  
Gable & Gotwals  
20th Floor  
Fourth National Bank Building  
Tulsa, Oklahoma 74119

Albert R. Matthews, Esq.  
Bonds, Matthews, Bonds and Hayes  
444 Court Street  
Post Office Box 1906  
Muskogee, Oklahoma 74401

G. Robert English, Jr., Esq.  
524 McCulloch Building  
Fifth & Grand  
Post Office Box 130  
Okmulgee, Oklahoma 74447

William J. Wenzel

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

RICHARD COREY, Individually )  
and on Behalf of a Class of )  
Similarly Situated Persons, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CURTIS A. WOLFER, et al., )  
 )  
Defendants. )

No. 81-C-637-C  
**FILED**

MAY 5, 1983  
JACK C. Selver, Clerk

DISMISSAL WITHOUT PREJUDICE

Plaintiff, Richard Corey, individually and on behalf of a class of similarly situated persons, and pursuant to leave of Court heretofore given, hereby dismisses without prejudice all causes of action and claims as asserted in the Amended Complaint filed December 4, 1981, regarding the oil and gas leases covering the following described real property:

N/2 of the NW/4 of the NW/4 and the S/2 of the NW/4 and the SE/4 of the SE/4 of Section 6, Township 12 North, Range 14 East, and the NE/4 of the NW/4 of Section 7, Township 12 North, Range 14 East, Okmulgee County, Oklahoma (hereinafter referred to as the "Burchfield Lease")

NE/4 of Section 5 and the N/2 of the NW/4 of the NW/4 of Section 6, Township 12 North, Range 14 East, Okmulgee County, Oklahoma (hereinafter referred to as the "Lawson Lease")

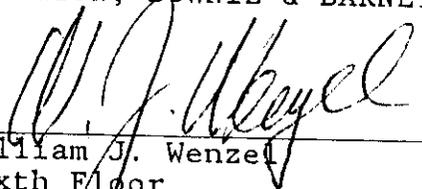
NW/4 of Section 8, Township 12 North, Range 12 East, Okmulgee County, Oklahoma (hereinafter referred to as the "Watkins Lease")

NE/4 of the NW/4 of Section 32, Township 13 North, Range 11 East, Okmulgee County, Oklahoma (hereinafter referred to as the "Opal Lease")

DATED this 5<sup>th</sup> day of MAY, 1983.

SNEED, LANG, ADAMS,  
HAMILTON, DOWNIE & BARNETT

By

  
William J. Wenzel  
Sixth Floor  
114 East Eighth Street  
Tulsa, Oklahoma 74119  
(918) 583-3145

Attorneys for Plaintiff

CERTIFICATE OF MAILING

I, William J. Wenzel, do hereby certify that on the 5<sup>th</sup> day of May, 1983, I caused to be mailed a true and correct copy of the above and foregoing instrument, proper postage thereon prepaid, to:

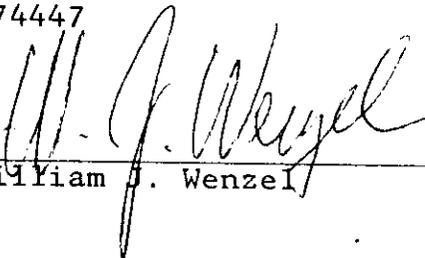
John Howard Lieber, Esq.  
Knight, Wagner, Stuart,  
Wilkerson & Lieber  
Suite 205  
616 South Main  
Tulsa, Oklahoma 74119

Richard D. Forshee, Esq.  
Phillips Petroleum Company  
America First Tower  
Tenth Floor  
101 North Robinson  
Oklahoma City, Oklahoma 73102

Ronald Ricketts, Esq.  
Gable, Gotwals, Rubin, Fox,  
Johnson & Baker  
20th Floor  
Fourth National Bank Building  
Tulsa, Oklahoma 74119

Albert R. Matthews, Esq.  
Bonds, Matthews, Bonds and Hayes  
444 Court Street  
Post Office Box 1906  
Muskogee, Oklahoma 74401

G. Robert English, Jr., Esq.  
524 McCulloch Building  
Fifth & Grand  
Post Office Box 130  
Okmulgee, Oklahoma 74447

  
\_\_\_\_\_  
William J. Wenzel

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAY - 5 1983

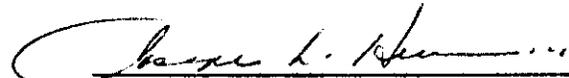
NICK WINEBRENNER, )  
 )  
 Plaintiff, )  
 )  
 VS. )  
 )  
 MULTIPLE TECHNOLOGIES )  
 CORPORATION, INC., a )  
 Michigan Corporation )  
 )  
 Defendant. )

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

NO. 83-C-265-E

*Notice of*  
DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, and pursuant to the provisions of Rule 41(1) shows this Court that no answer has been filed herein and, that the plaintiff dismisses its cause against the defendant, with prejudice.

  
\_\_\_\_\_  
JOSEPH L. HULL, III  
Attorney for Plaintiff  
1717 South Cheyenne  
Tulsa, Oklahoma 74119-4689  
(918) 582-8252

CERTIFICATE OF MAILING

I, Joseph L. Hull, III, do hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal With Prejudice to Mr. Robert Miller, Berry, Moorman, King, Lott, and Cook, 2600 Detroit Bank and Trust Building, Detroit, Michigan 48226, on this \_\_\_\_\_ day of April, 1983, with proper postage pre-paid and affixed thereto.

  
\_\_\_\_\_  
JOSEPH L. HULL, III

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

RICHARD COREY, Individually  
and on Behalf of a Class of  
Similarly Situated Persons,  
  
Plaintiff,  
  
vs.  
  
CURTIS A. WOLFER, et al.,  
  
Defendants.

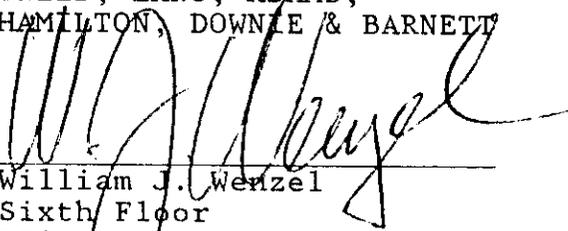
MAY 4, 1983  
JACK C. SILVER, Clerk

No. 81-C-637-C✓

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, Richard Corey, individually and on behalf of a class of similarly situated persons, as described on the Amended Complaint as amended by the Court's order of October 18, 1982, hereby dismisses without prejudice any and all claims remaining before the Court with regard to Brio Petroleum Corporation, a Texas corporation; and Phillips Petroleum Company, a Delaware corporation.

SNEED, LANG, ADAMS,  
HAMILTON, DOWNIE & BARNETT

By 

William J. Wenzel  
Sixth Floor  
114 East Eighth Street  
Tulsa, Oklahoma 74119  
(918) 583-3145

Attorneys for Plaintiff

STIPULATED AND AGREED TO THIS  
2nd DAY OF February, 1983

PHILLIPS PETROLEUM COMPANY

By Shelley J. Himel  
Shelley J. Himel  
Attorney for Phillips Petroleum

GABLE & GOTWALS

By Ronald N. Ricketts  
Ronald N. Ricketts,  
Attorneys for Brio Petroleum

CERTIFICATE OF MAILING

I, William J. Wenzel, do hereby certify that on the 2nd  
day of May, 1983, I caused to be mailed a true and  
correct copy of the above and foregoing instrument, proper postage  
thereon prepaid, to:

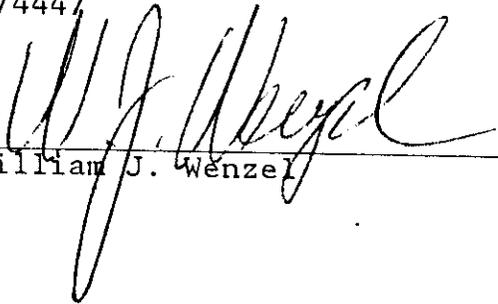
John Howard Lieber, Esq.  
Knight, Wagner, Stuart,  
Wilkerson & Lieber  
Suite 205  
616 South Main  
Tulsa, Oklahoma 74119

Shelley J. Himel, Esq.  
Phillips Petroleum Company  
America First Tower  
Tenth Floor  
101 North Robinson  
Oklahoma City, Oklahoma 73102

Ronald Ricketts, Esq.  
Gable & Gotwals  
20th Floor  
Fourth National Bank Building  
Tulsa, Oklahoma 74119

Albert R. Matthews, Esq.  
Bonds, Matthews, Bonds and Hayes  
444 Court Street  
Post Office Box 1906  
Muskogee, Oklahoma 74401

G. Robert English, Jr., Esq.  
524 McCulloch Building  
Fifth & Grand  
Post Office Box 130  
Okmulgee, Oklahoma 74447

  
\_\_\_\_\_  
William J. Wenzel

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CIVIL ACTION NO. 83-C-76-E  
 )  
 WILLIAM WILLIAMS, III, )  
 )  
 Defendant. )

AGREED JUDGMENT

This matter comes on for consideration this 3d day of May, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, William Williams, III, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, William Williams, III, was served with Summons and Complaint on January 31, 1983, by certified mail, return receipt requested, signed by Arlene Williams. 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 \$390.21, plus interest at the legal rate 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,



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

CARLIS LEIGH and BETTY LOU  
LEIGH,

Plaintiffs,

vs.

BESSER COMPANY, a Michigan  
corporation,

Defendant.

No. 81-C-144-E

ORDER OF DISMISSAL

This matter came on for consideration on this \_\_\_\_ day of May, 1983, upon the Joint Application for Dismissal With Prejudice filed herein. The Court being duly advised in the premises, finds that said application for dismissal is in the best interests of justice and should be approved, and the above styled and numbered cause of action dismissed with prejudice to a refiling.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Joint Application for Dismissal With Prejudice by the parties be and the same is hereby approved and the above styled and numbered cause of action and Complaint is dismissed with prejudice to a refiling.

Approved:

JAMES O. ELLISON  
United States District Judge

18/ Michael B. Thomas  
Attorney for Plaintiffs

Lawrence J. ...  
Attorney for Defendant

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

GERALD L. COAST and  
T. F. SCHWERMER,

Plaintiffs,

vs.

PERMEATOR CORPORATION, a  
corporation, OKLAHOMA COAL  
PROCESSORS, INC., a  
corporation, and NOWATA OIL  
SERVICE, INC., a corporation,

Defendants.

No. 82-C-1148-C

FILED

May 2 1983

Bank of Oklahoma, Clerk  
U. S. DISTRICT COURT

O R D E R

Now before the Court for its consideration is the plaintiffs' motion to remand the instant action to the District Court in and for Nowata County, State of Oklahoma, from where it was removed to this Court by one defendant in the state court action. The only parties who have appeared before this Court are the plaintiffs, Gerald L. Coast and T. F. Schwermer, and the defendant, Permeator Corporation. These parties have fully briefed the issues involved in the matter of the plaintiffs' motion to remand and that motion is now ready for the Court's determination. After reviewing the briefs and submissions of the parties, the applicable law, the Petition for Removal and the attached state court record, this Court concludes that the Petition for Removal is fatally defective and that it would be

inappropriate for this Court to allow the defendant Permeator leave to amend the Petition for Removal in an attempt to cure the defective nature of the Petition after the 30-day time limit for removal contained in 28 U.S.C. §1446(b) has expired. Furthermore, the Court concludes that even if this Court were to allow leave to amend pursuant to 28 U.S.C. §1653 such amendment would be unable to cure the defectiveness of said Petition. Finally, this Court concludes that the instant action was improvidently removed from the state court and it should be remanded thereto.

On November 24, 1982, the plaintiffs herein filed a petition in the District Court in and for Nowata County, State of Oklahoma, naming as defendants Permeator Corporation, B. J. Oil & Drilling Company, Oklahoma Coal Processors, Inc. and Nowata Oil Service, Inc. Generally, the state court action was for a mortgage foreclosure against certain oil and gas properties and default on a promissory note by defendant Permeator. Apparently, plaintiffs filed a voluntary dismissal as to defendant B. J. Oil & Drilling Company before removal to this Court. Defendant Oklahoma Coal was alleged to have acquired a 2% of 100% overriding royalty interest in the oil and gas property by assignment from defendant Permeator and defendant Nowata was alleged to be claiming some interest in the oil and gas property, the extent and nature of which was unknown to the plaintiffs at the time the action was instituted. The plaintiffs sought to adjudge any interest of Nowata to be inferior to the mortgage of the plaintiffs. The Court has learned that Nowata, apparently,

performed services and supplied materials for use on the oil and gas property, for which they claim a lien on the subject property.

Removal of an action is generally governed by 28 U.S.C. §§1441 and 1446. Section 1446(a) and (b) provide as follows:

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(b) 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.

In the present action only defendant Permeator removed from state court. The other defendants neither joined in the Petition for Removal, nor did the Petition offer any explanation or reason why the other state court defendants did not so join. The Petition alleged original federal jurisdiction based on diversity and amount in controversy, plaintiffs both being citizens of

Oklahoma and defendant Permeator having as its place of incorporation the State of Delaware and its principal place of business in Houston, Texas. It turns out that both Oklahoma Coal and Nowata are Oklahoma corporations and if they are properly defendants in this action complete diversity of citizenship would be non-existent and this Court would have no original jurisdiction pursuant to 28 U.S.C. §1332.

Defendant Permeator now admits that its Petition for Removal is defective because of its failure to contain an explanation as to the status of the Oklahoma defendants and why they were not required to join in on the Petition. Permeator contends this Court should allow it to amend to cure the Petition by inserting the missing allegations. It is basically contended that said allegations would be that defendant Oklahoma Coal is only a nominal party herein, and thus its citizenship -- as a nominal party -- should not be considered for jurisdictional purposes and that it would not be required to join in the Petition for Removal. Further, Permeator contends Nowata should be realigned as a party plaintiff, so that complete diversity between opposing parties would exist. This Court is unpersuaded by the arguments of defendant Permeator.

In the case of McCurtain County Production Company v. Cowett, 482 F.Supp. 809 (E.D.Okla. 1978) the general rule is set forth that all defendants to a state court action must join in the removal petition, or consent to the removal within the 30-day time limitation applicable to removal procedures subject to certain exceptions. See 28 U.S.C. §§1446(a), (b) and 1441(c).

If all defendants have not so joined or consented within the 30-day time period the Petition itself should provide an appropriate explanation of why said defendants have not so joined and why they are not required to. In the instant case the Petition for Removal is completely devoid of any such explanation, the state court record before this Court does not contain sufficient factual information, if any at all, as to why Oklahoma Coal and Nowata would not be required to so join and the 30-day time limit to effectuate removal has long since passed.

There is a clear difference in the fact situation present here and that confronted by the district and appellate courts in the case of Northern Illinois Gas Company v. Airco Industrial Gases, 676 F.2d 270 (7th Cir. 1982), which is cited by Permeator in support of its position. In that case, the state court record accompanying the Petition for Removal contained a letter from the purported nominal defendant disclaiming any interest in the litigation, other than that it was to act as the arbitrator pursuant to an agreement between the two principal parties. In Northern Illinois Gas, an amendment was filed by defendant Airco a day or two after the 30-day time limitation for removal expired setting forth the nominal status of the arbitrator, which had not been set forth in the initial Petition.

As mentioned above, a clearly distinguishable situation exists here. Nothing in the state record would require this Court to presume defendant Oklahoma Coal is only a nominal party and that defendant Nowata should be realigned as a party plaintiff. If amendment were allowed here it would not be to

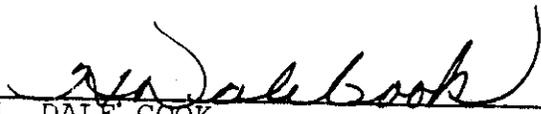
simply transfer those matters already before the Court from the state court record to the Petition for Removal in order to cure the defective nature of the Petition. Here, Permeator wants to supply totally missing allegations, contained in no way, in the state court record submitted to this Court. Before the 30-day time limit expired this Court would certainly allow such an attempt at amendment. However, after the 30-day limit it would be inappropriate and not in accordance with the mandatory language of 28 U.S.C. §1446(b).

Finally, even if this Court could and did allow amendment to the Petition for Removal it is the view of this Court that removal from state court is simply inappropriate in this action. Defendant Permeator really seeks from this Court a partial, if not total determination, of the claims of Oklahoma Coal and Nowata to the subject oil and gas property. These are, at least, partly factual matters that are surely in a premature state for such determination. Nowata and Oklahoma Coal have not appeared before this Court and it would be improper to adjudicate their rights at this time, notwithstanding the apparent fact that the lien of Nowata was subsequent in time to the plaintiffs' mortgage. First in time is not the exclusive factor for priority and this Court is in no position to guess at what the position of Nowata would be in respect to its lien. Likewise, the Court could only guess at the position to be taken by defendant Oklahoma Coal.

For all of the above reasons, it is the Order of this Court that the plaintiffs' motion to remand this action to the District

Court in and for Nowata County, State of Oklahoma, is granted pursuant to 27 U.S.C. §1447(c). The Clerk of this Court shall, forthwith, mail a copy of this Order to the Clerk of the District Court in and for Nowata County, State of Oklahoma.

It is so Ordered this 29<sup>th</sup> day of April, 1983.

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

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

FILED  
MAY 2, 1983  
JACK SILVER, Clerk  
U.S. District Court

HERBERT C. FOWLER, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD S. SCHWEIKER, )  
Secretary of Health and )  
Human Services, )  
 )  
Defendant. )

No. 81-C-355-E ✓

O R D E R

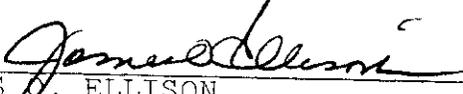
The Court has for consideration the Findings and Recommendations of the Magistrate filed on April 15, 1983 in which it is recommended that this case be remanded to the Secretary for further administrative proceedings. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

Accordingly, it is Ordered that this case be remanded to the Secretary for further proceedings as recommended by the Magistrate with respect to the reopening issue under 20 CFR §404.988 on the basis of "fraud or similar fault," and with respect to the issues of "fault" and whether recovery of any overpayments would either defeat the purpose of the Act or be against equity and good conscience under 42 U.S.C.

§§ 404(b), 1395gg(c) and 20 CFR 404.507.

It is so Ordered this 3<sup>rd</sup> day of April, 1983.

  
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JAMES J. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**FILED**

MAY 1 1983

WARREN L. McCONNICO, CLERK  
U. S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OKLAHOMA

IN RE: CHASE EXPLORATION CORPORATION, )  
 an Oklahoma corporation, )  
 Debtor, )  
 CHASE EXPLORATION CORPORATION, )  
 a Nevada corporation, )  
 Debtor, )  
 CHASE DRILLING CORPORATION, )  
 Debtor, )  
 CHASE GATHERING SYSTEMS, INC., )  
 Debtor, )  
 CEC SUPPLY COMPANY, INC., )  
 Debtor, )  
 CHASE OILFIELD SERVICES, INC., )  
 Debtor, )  
 JAMES R. ADELMAN, Trustee, )  
 Plaintiff, )  
 -vs- )  
 JAMES E. WARREN and LOLA ILLENE )  
 WARREN, husband and wife, and WILLIAM )  
 H. THOMAS, )  
 Defendants. )

No. 82-00454

(Jointly Administered)

M-1052-B ✓

**FILED**

MAY 1 1983

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

Adversary No. 83-0246

JOINT STIPULATION OF DISMISSAL

Plaintiff, James R. Adelman, Trustee of the estate of Chase Exploration Corporation, an Oklahoma corporation, by and through his attorneys of record, Jones, Givens, Gotcher, Doyle & Bogan, Inc., by Mac D. Finlayson, and Defendants, James E. Warren and Lola Illene Warren, husband and wife, and William

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H. Thomas, hereby file their Joint Dismissal without prejudice for relief contained in the Complaint herein filed on March 24, 1983, pursuant to Federal Rules of Civil Procedure, Rule 41(a) (1), 28 U.S.C., on the grounds and for the reason that as a result of the Court's Order entered herein on the 8th day of April, 1983, denying the issuance of a preliminary injunction with regard to the issues therein contained, those remaining issues relating to the issuance of a permanent injunction have now been rendered moot.

JAMES R. ADELMAN, Trustee of the  
Bankruptcy Estate of Chase Exploration  
Corporation, an Oklahoma corporation,  
et al.

By: JONES, GIVENS, GOTCHER, DOYLE &  
BOGAN, INC.

By: Mac D. Finlayson  
Mac D. Finlayson  
201 West Fifth, Suite 400  
Tulsa, Oklahoma 74103  
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JAMES E. WARREN

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LOLA ILLENE WARREN

Lola Illene Warren  
Defendant

WILLIAM H. THOMAS

William H. Thomas  
Defendant