

*Entered*

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

**FILED**

FEB 29 1984

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

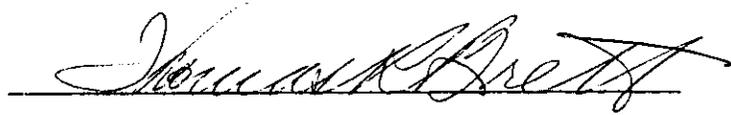
No. 83-C-358-BT

COMBOTRONICS, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE HOME INDEMNITY COMPANY, )  
 )  
 Defendant. )

J U D G M E N T

In accordance with the Court's order entered this date which sustained the defendant's motion for summary judgment, judgment is hereby entered in favor of defendant, The Home Indemnity Company, and against plaintiff, Combotronics, Inc.

IT IS SO ORDERED this 29<sup>th</sup> day of February, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Entered

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

FILED  
FEB 29 1984

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

UNITED FOOD AND COMMERCIAL )  
WORKERS UNION LOCAL 76 )  
AFCWIU, AFL-CIO, CLC, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
McCARTNEYS, INC., )  
 )  
Defendant. )

NO. 83-C-855-B

O R D E R

This matter comes before the Court on defendant's motion to dismiss and plaintiff's motion for summary judgment. A hearing has been held on the motions. For the reasons set forth below, the motion to dismiss is overruled; the motion for summary judgment is sustained.

This suit arises under the Labor Management Relations Act, 29 U.S.C. §185. Plaintiff seeks a declaratory judgment that defendant is obligated to proceed to arbitration of certain employment grievances under Articles 5 and 6 of the collective bargaining agreement between the parties.

The controversy arises from McCartney's termination from employment of Ralph Craycraft, a journeyman meatcutter and member of the plaintiff union. Craycraft was terminated January 4, 1983, for presenting an unauthorized doctor's release to return to work. The union presented notice in writing of a controversy resulting from the discharge, in accordance with Article 5.3 of the collective bargaining agreement. Also pursuant to the agreement, the parties began grievance proceedings.

Article 6, "Grievance and Arbitration," provides for a series of steps in grievance proceedings. These steps were followed and when the controversy was not resolved, the union notified the company of its desire to proceed to arbitration, pursuant to Step 4 of Article 6.2. The parties then selected an arbitrator pursuant to Article 6.3.

McCartneys now refuses to go forward with arbitration on the grounds that the union refuses--and has refused throughout grievance proceedings--to make available all medical records, files and business records of physicians relied upon by Craycraft as a justification for his absence from work.

McCartneys argues since the union has refused to produce the requested information, it has failed to live up to obligations under the collective bargaining agreement which McCartneys contends are prerequisite to enforcement of the arbitration clause. Further, the defendant argues, the court should refuse to hear the case on equitable principles because the union comes with unclean hands, having failed to produce the requested information.

Under the National Labor Relations Act, the court's role in hearing disputes concerning arbitration is extremely narrow. In United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564 (1960, the Supreme Court stated:

"The function of this court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is then confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract

"interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for."

Id. at 567-68. In a companion case, United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960), the Supreme Court acknowledged that under §301 of the Labor Management Relations Act, courts have the duty to determine whether a party has breached his obligation to arbitrate:

"For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. Yet, to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under §301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or did agree to give the arbitrator power to make the award he made. An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

Id. at 582-83.

In the present case, the parties have agreed the matter in dispute--that is, termination of the employee--is arbitrable, and have gone so far as to select an arbitrator. It is the Court's view that under the National Labor Relations Act and the United Steelworkers cases, its only choice at this point is to order the parties to proceed through arbitration pursuant to the collective bargaining agreement. The disagreement over

production of medical records is a procedural matter for the arbitrator rather than this Court to decide.<sup>1/</sup> John Wiley & Sons, Inc. v. Livingstone, 376 U.S. 543, 557 (1964):

Rule 56 of the Federal Rules of Civil Procedure provides summary judgment is proper when no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. Bruce v. Martin-Marietta, 544 F.2d 442, 445 (10th Cir. 1974); Ando v. Great Western Sugar Co., 475 F.2d 531, 535 (10th Cir. 1973).

The Court hereby grants plaintiff's motion for summary judgment. A judgment shall issue declaring McCartneys has an obligation to proceed to arbitration and ordering it to do so.

ENTERED this 25 day of February, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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<sup>1/</sup> The Court notes in a related lawsuit brought by the employee, Ralph Craycraft, against McCartneys in the District Court in and for Tulsa County (No. CT-83-364), the Honorable Robert Caldwell ordered Craycraft to produce the records in dispute as part of the discovery process. It would appear to the Court that McCartneys can obtain the required documents as a result of this order. It would further appear the store's request for production of the documents is reasonable and may be honored in the course of arbitration proceedings.

- Entered

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

FILED

FEB 29 1984

COMBOTRONICS, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE HOME INDEMNITY COMPANY, )  
 )  
 Defendant. )

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

NO. 83-C-358-B

O R D E R

This matter comes before the Court on defendant's motion for summary judgment filed pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the following reasons, defendant's motion is granted.

Defendant requests summary judgment on the grounds that plaintiff's suit was not timely filed due to the one-year statutory period of limitation. The one-year statute of limitations is provided as a requisite clause in all standard fire insurance policies pursuant to 36 Okl.St. Ann. §4803(G). Lines 157 through 161 of the standard fire insurance policy provide:

"Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss. 36 Okl. St. Ann. §4803(G) (Emphasis added)

The standard fire insurance policy specifically excludes loss by reason of theft, but the statute provides that additional coverage insuring against perils other than fire or lightning may be attached to the standard fire insurance policy, and the coverage may include those perils excluded in the standard policy. 36 Okl. St. Ann. §4803(C). The contract at issue here provided for theft

coverage. Plaintiff's complaint was filed on March 31, 1983, almost two years after the alleged theft. The Court agrees with the defendant.

Plaintiff alleges that on October 23, 1980 it entered into an insurance contract with defendant for a three-year term. On May 18, 1981, supplies and inventory were stolen from plaintiff; defendant was immediately notified of the theft. Plaintiff alleges that it performed all actions and conditions required by the policy, and that defendant has failed to perform according to the terms of the policy, i.e., defendant has not compensated plaintiff for its losses. Plaintiff alleges damages in the amount of \$101,885.67 for the defendant's breach of contract.

Summary judgment must be denied if a genuine issue of material fact is presented to the trial court. Exnicious v. United States, 563 F.2d 418 (10th Cir. 1977). In making this determination the evidence must be viewed in the light most favorable to the party against whom the judgment is sought. National Aviation Underwriters, Inc. v. Altus Flying Service, Inc., 555 F.2d 778, 784 (10th Cir. 1977). Factual inferences tending to show triable issues must be resolved in favor of the existence of those issues. Lockett v. Bethlehem Steel Corp., 618 F.2d 1373, 1377 (10th Cir. 1980).

Plaintiff's response to defendant's motion fails to set forth any evidence with which to put the facts presented by defendant in issue. Furthermore, plaintiff concedes defendant's superior position by stating that the facts set forth by defendant are correct and that the cases cited support defendant's proposition. Even though the opposing party has not made a proper

response under Rule 56(e), Fed.R.Civ.P., summary judgment is "appropriate only to the extent that the movant has carried his burden ...." Securities & Exchange Commission v. Spence & Green Chemical Co., 612 F.2d 896 (5th Cir. 1980), cert. denied, 449 U.S. 1082 (1981). No genuine issue of fact remains as it is uncontroverted plaintiff's action was not commenced within the one year period.

IT IS THEREFORE ORDERED defendant's motion for summary judgment is hereby granted.

ENTERED this 29th day of February, 1984.

A handwritten signature in cursive script, appearing to read "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

UNITED STATES OF AMERICA and )  
TAMMY HARRIS, Special Agent )  
Internal Revenue Service, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
COMMUNITY BANK AND TRUST CO. )  
and NETTIE ROBINSON, Vice- )  
President/Cashier, )  
 )  
Defendant. )

FEB 20 1984

W. C. Silver  
U.S. DISTRICT COURT

No. 82-C-1153-E

O R D E R

NOW on this 29<sup>th</sup> day of February, 1984 comes on for hearing the Plaintiff's objections to proposed findings of fact and conclusions of law filed by the Magistrate in the above-styled action and the Court, being fully advised in the following finds as follows:

The Magistrate has correctly concluded that all issues in this case are moot except the amount of reimbursement to the bank for performing the search required by the IRS summons. Consequently all references made to the burdensomeness of the summons should be stricken from the findings.

The IRS urges this Court to find that the law under the adoption of proposed regulation 301.7610-1 effective July 18, 1983, should control the amount of reimbursement. In 1976 Congress directed the IRS to set rates and procedures for reimbursing third parties for the costs of labor and materials necessary to comply with IRS summonses. (Tax Reform Act of

1976) In 1977 the IRS published a press release in which it set as reimbursement costs \$5 per hour and 10¢ per copy. The proposed regulation 301.7610-1 published in 1980 incorporated these same rates. At the time the Magistrate completed his findings the IRS had not adopted final regulations on the costs for reimbursement.

The cases cited by the IRS do not support the position that the rate set out in the proposed regulation controls. U.S. v. Southwestern Bank and Trust, 693 F.2d 994 (10th Cir. 1982) was cited by the IRS to support its position that the cost is controlled by § 7610. The Tenth Circuit here reversed the district court's denial of an entire summons because it did not determine whether compliance could be limited in scope to avoid undue hardship on the bank. The Court also stated that on remand the court may wish to consider applicability of 26 U.S.C. § 7610 which authorizes reimbursement of costs in some circumstances. The language falls short of a Tenth Circuit mandate as it applies to this case.

The IRS has attached to its Brief in Support of Costs pursuant to 26 U.S.C. § 2610 the Western District case of U.S. v. Dan Thompson, Civ-79-06-T, filed May 14, 1979 wherein the Magistrate used the \$5 per hour, 10¢ per copy rate in setting amount of reimbursement. The use of the lower rate scale in U.S. v. Dan Thompson is not binding on this Court.

There is ample case law to support the Magistrate's determination that the rates set out in 301.7610-1 do not control in this case. The proposed regulation had not been adopted

according to the requirement set out in the Administrative Procedure Act, 5 U.S.C. § 553(d); therefore, it is not binding on this Court in determining the amount of costs. The Tenth Circuit in Rowell v. Andrus, 631 F.2d 699 (10th Cir. 1980) held that the Bureau of Land Management's proposed regulation to increase annual non-competitive oil and gas lease payments from 50¢ to \$1 per acre could not govern the Plaintiff's case because it arose prior to the thirty-day period required by the APA. The court stated:

The required publication of the adopted rule, and the subsequent time lapse required before it effective date, cannot be dispensed with by the agency merely because the adopted rule turns out to be the same as the proposed rule. Id. at 703.

Similarly, at the time of this action the IRS's proposed rule had not become effective and the fact that the adopted rule is the same as the proposed regulation does not push back the date of its effectiveness.

The Magistrate asserts that since the IRS has failed to set rates in accordance with the Administrative Procedures Act the Court should adopt its own standard of reasonable rates.

District Courts have the power to require the government to reimburse banks for costs of production of requested bank records. U.S. v. Friedman, 532 F.2d 928 (3rd Cir. 1976). In Friedman the Court went on to explain that before reimbursement is imposed the Court must make individual determination that the cost of complying with the summons exceeded the cost incurred in the usual course of business.

Banks have a duty to respond to government summonses and may

have to assume some expenses in doing so. SEC v. Arthur Young, 584 F.2d 1018, 1033 (D.C.Cir. 1978). Nevertheless a court ordering enforcement of the summons has within its discretion the power to set limits to protect a respondent from excessive expense. U.S. v. Southwestern Bank and Trust Co., 693 F.2d 994, 996 (10th Cir. 1980); Arthur Young, 584 F.2d at 1032.

Some Courts have allowed reimbursement for the actual cost of complying with IRS summonses. U.S. v. Farmers & Merchants Bank, 397 F.Supp 418 (9th Cir. 1975). Here the government argued that the costs incurred through compliance were of the kind normally involved as a part of everyday banking business. The Court rejected this argument and held that a bank should only be required to bear minimal costs in complying with an IRS summons. Id at 421.

It is within this Court's discretion to determine the amount of reimbursement due to Community Bank. The bank, however, should shoulder nominal costs for the search. The Magistrate suggests that the Court adopt the rates set forth for other government agencies. 12 U.S.C. § 3415; 12 C.F.R. § 219.3. That rate is \$10 per hour and 15¢ per copy.

A secondary issue to be addressed is the amount of time for which the bank should be reimbursed. The Court finds the bank was justified in continuing its search while the enforcement action was pending in district court. The Court finds it should therefore be reimbursed for the total period of its search.

The final conclusion of the Magistrate is that the bank should recover its attorney's fees since it was the prevailing

party. The Court agrees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the findings and recommendations of the Magistrate should be adopted by this Court with the following amendments: Findings of Fact number 7, 8 and 10 are hereby stricken; Conclusions of Law number 18 is ordered stricken. Further the first two sentences of Conclusion of Law number 21 are hereby stricken as immaterial.

It is so ORDERED.

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

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

FILED

FEB 29 1984

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

THE FIRST NATIONAL BANK )  
AND TRUST CO. OF TULSA, )  
JOHN BURCH MAYO, and )  
MARJORIE MAYO FEAGIN, Co- )  
Executors of the Estate of )  
Lillian C. Mayo, Deceased, )

Plaintiffs, )

vs. )

No. 81-C-294-E

UNITED STATES OF AMERICA, )

Defendant. )

JUDGMENT

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 Plaintiffs recover of the Defendant the sum of \$16,662.80 with interest thereon at the rate of 10.11 per cent as provided by law, and their costs of action.

DATED at Tulsa, Oklahoma this 29<sup>th</sup> day of February, 1984.

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

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

*Entered*

FILED

FEB 23 1984 ✓

THOMAS R. SILVER, CLERK  
U.S. DISTRICT COURT

LENNDA J. BRIDGES, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MARTIN R. PRESSGROVE, individually )  
and FARMERS INSURANCE COMPANY, )  
INC., a foreign corporation, )

NO. 83-C-449-B ✓

ORDER OF DISMISSAL

ON this 29<sup>th</sup> day of February, 1984, upon the written application of the parties for A Dismissal with Prejudice of the Complaint and all causes of action. The Court having examined said application, finds that said parties have entered into a compromised settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

*Thomas R. Silver*  
\_\_\_\_\_  
JUDGE, DISTRICT COURT OF THE UNITED STATES,  
NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

STEPHEN C. WOLFE,

*Stephen C. Wolfe*  
\_\_\_\_\_  
Attorney for the Plaintiff,

RICHARD D. WAGNER,  
*Richard D. Wagner*  
\_\_\_\_\_  
Attorney for Pressgrove,

RAY H. WILBURN,

Ray H. Wilburn  
Attorney for Farmers.

FEB 28 1984

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

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

GEORGE W. HAILEY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MARGARET M. HECKLER, Secretary )  
 of Health and Human Services, )  
 )  
 Defendant. )

No. 82-C-886-E/

ORDER

The Court has before it the motion of the Plaintiff "Joining the Magistrate's Recommendations and Requesting Further Order of the Court" filed January 9, 1984. The Plaintiff in his motion states that he is in accord with the findings and recommendations of the Magistrate that the case be remanded to the Secretary for the purpose of allowing Plaintiff to offer additional evidence and testimony. Plaintiff also requests that this Court order the reinstatement of the disability benefits previously terminated on April, 1981 pending the outcome of the remand proceedings. In support of his request the Plaintiff cites § 2, Public Law 97-455 and § 223(g) of the Social Security Act.

Defendant Secretary of Health and Human Services argues that interim benefit payments upon remand are not authorized by the Social Security Act. 42 U.S.C. § 405(i) provides for the payment of benefits upon a "final decision" by the Secretary or a final judgment by the Court that an individual is entitled to receive them. Title 42 U.S.C. § 423(g) provides for the continuation of

disability benefits during appeal for termination cases in which a determination of non-entitlement was made or an appeal therefrom was pending between January 12, 1983 and October 1, 1983. A review of the record in this case shows that § 423(g) would not be applicable here. Plaintiff's disability benefits were deemed to have ceased in February, 1981. Plaintiff appeared before an Administrative Law Judge on October 1, 1981. A written decision was issued January 6, 1982 and a review of such decision was denied by the Social Security Appeals Council February 25, 1982. Upon request of counsel the Appeals Council withdrew its February 25 action but subsequently denied claimant's request for review on July 23, 1982.

In certain rare cases courts have exercised their equitable powers to award interim benefits. See Day v. Schweiker, 685 F.2d 19 (2nd Cir. 1982), cert. granted, 103 S.Ct. 1873 (1983); White v. Matthews, 559 F.2d 852 (2nd Cir. 1977). These cases concerned a finding by the district court that the state of Vermont's process of handling disability termination appeals violated due process in that hearings were not given within a reasonable time. The award of interim benefits was part of the Court's remedy for such violations. Upon review of the record this Court finds that these cases are not applicable.

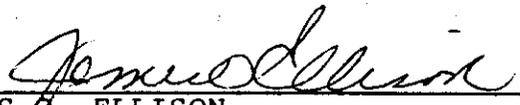
This Court has reviewed the findings and recommendations of the Magistrate and is in full accord therewith.

IT IS THEREFORE ORDERED AND ADJUDGED that the findings and recommendations of the Magistrate be and the same are hereby fully adopted by this Court.

IT IS FURTHER ORDERED that the motion of Plaintiff for an Order requiring the Secretary to reinstate disability benefits be and the same is hereby denied.

IT IS FURTHER ORDERED that this case be remanded to the Secretary for the purpose of permitting the Plaintiff to offer additional medical evidence and vocational testimony on the issue of whether he has "regained the functional capacity to engage in unrestricted work activity".

ORDERED this 28<sup>th</sup> day of February, 1984.

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

FILED

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

FEB 28 1984

CLARENCE G. SUMNER, CLERK  
DISTRICT COURT

DENNIS S. FUNKHOUSER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 80-C-422-C
	)	
DAVE FAULKNER,	)	
S. M. FALLIS, JR.,	)	
	)	
Defendants.	)	

O R D E R

On November 28, 1983 this Court allowed the plaintiff fifteen (15) days to file an amended complaint in this action for the reason that the initial complaint filed by the plaintiff contained insufficient factual allegations against defendant Faulkner to support a claim for monetary relief against said defendant. On January 4, 1984, the Court granted the plaintiff an extension until January 15, 1984 to comply with the Order of November 28, 1983. On January 10, 1984 the plaintiff filed his amended complaint. Thereafter, on January 27, 1984 the defendant filed a motion to dismiss plaintiff's amended complaint for the reason that it failed to state a claim upon which relief could be granted pursuant to Fed.R.Civ.P. 12(b)(6). The plaintiff was granted until February 10, 1984 to file a response to the motion to dismiss of defendant. No response has been filed by the plaintiff.

In his complaint the plaintiff alleges that he was incarcerated in the Tulsa County Jail for approximately two months. He contends that at the time of his incarceration defendant Faulkner was charged with the operation of the jail. The plaintiff alleges four violations which he contends rise to the level of constitutional significance:

1. the plaintiff was not allowed physical exercise outside of his cell during the two month detention;
2. the cell in which he was detained was filthy and it was infested with insects;
3. when first admitted to the jail he was not given proper bedding and he was required to sleep on a steel table; and
4. he was denied access to a telephone for an unspecified period of time as a result of filing the instant action.<sup>1</sup>

The plaintiff in the present action has never alleged how he was personally damaged by the conditions in the Tulsa jail facility. He has never alleged that his health was adversely affected by any lack of outside exercise, by the alleged lack of cleanliness of the facility or by his having to sleep on a steel table for an unspecified period of time.

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<sup>1</sup> The record in this case reflects that the plaintiff is again incarcerated in the Tulsa County Jail which, since the institution of this action, has been consolidated with the Tulsa City Jail and is now known as the  
(Footnote Continued)

The plaintiff has further failed to allege that defendant Faulkner had any knowledge or participated in any manner in any punishment of the plaintiff by depriving him of regular telephone use for his initiating this action.

Total denial of exercise to inmates for an extended period of time may involve a denial of constitutional rights if the inmate's health is adversely affected. Sweet v. South Carolina Dept. of Corrections, 529 F.2d 854 (4th Cir. 1975); Parnell v. Waldrep, et al., 511 F.Supp. 764 (D.C.N.C. 1981); Rutherford v. Pitchers, 457 F.Supp. 104 (D.C.Cal. 1978); Clayton, et al., v. Thurman, et al., 79 C.723-Bt (N.D.Okla. decided August 2, 1983). Likewise, the inadequacy of sanitary conditions or inhumane living conditions are subject to scrutiny by federal courts if those conditions are barbaric or fail to comply with evolving standards of human decency. However, when a claim for monetary relief is requested in such a situation, a plaintiff must allege and prove that he has somehow been personally damaged by the alleged constitutional violations. If no such allegations are made the claim for monetary damages is subject to dismissal. Pickens v. Brand, No. 80-2120 (10th Cir. Jan. 13, 1982).

In the instant action the plaintiff has been given every opportunity to inform this Court as to how he was personally damaged by the conditions in the jail of which he complains. At

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(Footnote Continued)

Tulsa City-County Jail. The plaintiff does not complain of any current conditions in the jail facility.

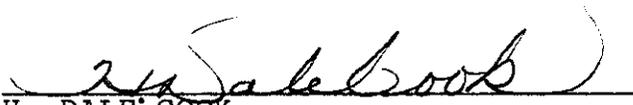
most, he has alleged in his amended complaint that the conditions of confinement subjected him to an unreasonable risk of illness or physical injury. Nowhere has he alleged that he was in fact injured in any way or that he suffered any illness as a result of the alleged constitutional violations. In such a situation, this Court concludes that any claim for monetary relief based upon the allegations contained in 1 through 3 above should be dismissed as frivolous pursuant to 28 U.S.C. §1915(d). It is clear that plaintiff can make no rational argument on the facts or the law that would support an award of monetary relief in the absence of some personal damage to the plaintiff. There are further no allegations in the amended complaint which would support a claim for punitive damages against defendant Faulkner.

In his final contention, as mentioned above, the plaintiff nowhere asserts that defendant Faulkner had any knowledge or participation in the alleged denial of telephone calls. In an action brought pursuant to 42 U.S.C. §1983 the personal participation of a defendant must be alleged and established before liability can be found. Kite v. Kelley, 546 F.2d 334 (10th Cir. 1976); Bennett v. Passic, 545 F.2d 1260 (10th Cir. 1976). The plaintiff has made no such allegations either in regard to the telephone issue or the other issues raised herein. He has neither alleged that defendant Faulkner had knowledge of the denial of telephone calls or that such conduct on the part of jail officials was condoned by defendant Faulkner. Furthermore, no personal damage has been alleged by plaintiff as a result of

any denial of use of the telephone on certain unspecified occasions.

It is therefore the Order of this Court that the instant action should be and hereby is dismissed in all respects pursuant to 28 U.S.C. §1915(d).

It is so Ordered this 28<sup>th</sup> day of February, 1984.

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

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

BRENDA K. KELLY, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 83-C-708-E ✓  
 )  
 INDEPENDENT SCHOOL DISTRICT )  
 NUMBER I-20 of Craig County, )  
 Oklahoma, ARLAN RIDGLEY, CALVIN )  
 BRYANT, GALE NIGH, JIM SPUNAGLE )  
 and FRANK LONG, individually )  
 and in their official capacity )  
 as members of the Board of )  
 Education for Independent School )  
 District Number I-20, )  
 )  
 Defendants. )

FILED

FEB 28 1984 *mm*

*John C. Silver*  
DISTRICT CLERK

ORDER OF DISMISSAL OF DEFENDANT  
CALVIN BRYANT

THIS MATTER comes on for hearing this 28<sup>th</sup> day  
of February, 1984, before the undersigned United States  
District Judge pursuant to plaintiff's motion to dismiss  
complaint against the defendant, CALVIN BRYANT, only.

The Court for good cause shown finds that  
the plaintiff's motion to dismiss should be sustained  
pursuant to Rule 41(a)(2) and that an Order should be  
entered dismissing without prejudice plaintiff's claims  
as against the defendant, CALVIN BRYANT.

IT IS THEREFORE ORDERED that the plaintiff's  
complaint is dismissed as to the defendant, CALVIN BRYANT;

that said dismissal is without prejudice and that plaintiff shall take nothing by way of her complaint against said CALVIN BRYANT.

  
UNITED STATES DISTRICT JUDGE

FILED

FEB 28 1984

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
HERMAN THOMPSON, JR.	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-863-C

AGREED JUDGMENT

This matter comes on for consideration this 28<sup>th</sup> day of February, 1984, 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, Herman Thompson, Jr., appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Herman Thompson, Jr., was served with Summons and Complaint on January 19, 1984. 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 \$808.07, plus costs and interest at the current legal rate of 12.11 percent from the date of judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Herman Thompson, Jr., in the amount of \$808.07, plus costs and interest at the current legal rate of 10-11 percent from the date of judgment until paid.

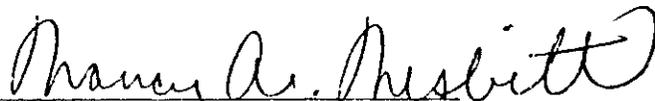
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

  
NANCY A. NESBITT  
Assistant U.S. Attorney

  
GREG A. FARRAR  
Attorney for Defendant, Herman Thompson, Jr.

FILED

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

FEB 28 1984

ERNEST ROSS HAWK, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RALEIGH HILLS HOSPITAL, )  
 ADVANCED HEALTH SYSTEMS, )  
 INC., AND PETROLANE, INC., )  
 )  
 Defendants. )

No. 83-C-666-E

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

O R D E R

The Court has before it the motion of the Defendant Petrolane, Inc. to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Pursuant to a previous Order of this Court a hearing was held on February 15, 1984 at 8:30 a.m. to consider evidence of the relationship of the Defendant Petrolane to Defendant Advanced Health Systems, Inc., d/b/a Raleigh Hills Hospital.

The Plaintiff has claimed that the allegedly negligent acts committed by the employees of Advanced Health System, Inc., the owner-operator of the Raleigh Hills Hospital, should be imputed to its corporate parent Petrolane, Inc. Plaintiff alleged negligent acts and omissions on the part of employees of Raleigh Hills Hospital and further alleged that at all relevant times each employee and staff member of the hospital acted as an express and implied agent of Petrolane, Inc.

Upon consideration of the arguments and authorities submitted by the parties and the evidence submitted at hearing, this Court finds that Defendant Petrolane's motion must be

granted.

Defendant Advanced Health Systems, Inc. is a subsidiary corporation of Petrolane. Petrolane, Inc. owns the majority of the stock of Advanced Health Systems. (See the affidavit of Ernest R. Milligan attached as Exhibit A to the Supplemental Brief in Support of Defendant's motion to dismiss.) Since Plaintiff has submitted no evidence of any direct involvement by employees of Petrolane, in order to impute the negligent acts of employees of Advanced Health Systems to Petrolane it would have to be found that the subsidiary corporation was a mere instrumentality of its parent corporation, and that the corporate veil therefore should be pierced. In order to establish this, evidence must show that the parent corporation's control is so complete as to render the subsidiary a mere dummy or sham corporation. See Gulf Oil Corporation v. State, 360 P.2d 933 (Okla. 1961). The factors to be utilized in making this determination were first set forth by the Tenth Circuit in the case of Fish v. East, 114 F.2d 177 (1940). The Court held that the following factors should be considered:

1. Whether the parent corporation owns all or a majority of the capital stock of the subsidiary;
2. Whether the parent and subsidiary corporations have common directors or officers;
3. Whether the parent finances the subsidiary;
4. Whether the parent corporation subsidiary to all the capital stock of the subsidiary or otherwise causes its

- incorporation;
5. Whether the subsidiary has grossly inadequate capital;
  6. Whether the parent corporation pays the salaries or expenses or losses of the subsidiary;
  7. Whether the subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation;
  8. Whether the subsidiary is referred to in the papers of the parent corporation and in statements of its officers as a department or division;
  9. Whether the directors or the executives of the subsidiary fail to act independently in the interest of the subsidiary but instead take direction from the parent corporation; and
  10. Whether the formal legal requirements of the subsidiary as a separate and independent corporation were observed.

In the current case one of the foregoing factors is present. At all relevant times to the suit a majority of the stock in Advanced Health Systems was owned by Petrolane, Inc. See affidavit of Ernest R. Milligan. However, the mere fact that a parent owns the majority of the stock of a subsidiary is insufficient to destroy the identity of that subsidiary. See Rea v. An-son Corporation, 79 F.R.D. 25 (W.D. Okla. 1978). Thus in order to pierce the corporate veil in this case, Plaintiff would have to show that more than this factor is present.

Plaintiff at the hearing submitted as Plaintiff's Exhibit 1

a copy of the personnel policy manual including employee benefit programs of Advanced Health Systems, Inc. The manual reveals that the parent corporation, Petrolane, affords Advanced Health Systems' employees the opportunity to join a shared credit union and to participate in other joint employee benefits. The manual however fails to show any control exerted by Petrolane over the employees in any way. Plaintiff's Exhibit 2 consists of three press stories written by United Press International between April 23, 1982 and May 22, 1982. The stories concerned the resignation of Henry Blakley, the head of the Raleigh Hills Alcohol Treatment Centers. The stories referred to Petrolane, Inc. as "the energy conglomerate which owns Raleigh Hills parent company, Advanced Health Systems, Inc." and "the energy conglomerate which operates Raleigh Hills parent company" and quotes a spokesman for Petrolane as stating that the firm was making an earnest effort to reevaluate the practices at their 21 alcohol treatment centers. There is no evidence that the use of the term "operates" was based on any facts discovered by the reporter. The story reveals nothing beyond ownership by Petrolane.

In view of the affidavits submitted by Petrolane as an exhibit to its supplemental brief and of the evidence submitted by Plaintiff at the time of hearing, this Court finds that the Defendant Petrolane, Inc. does not meet any of the criteria of Fish v. East, with the exception of the majority ownership of the capital stock. This factor alone is insufficient to support an argument that Advanced Health System is merely an instrumentality

of Petrolane.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Defendant Petrolane, Inc. to dismiss for failure to state a claim pursuant to 12(b)(6) of the Federal Rules of Civil Procedure be and the same is hereby granted.

ORDERED this 28<sup>th</sup> day of February, 1984.

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

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

FILED

FEB 29 1984

HOWARD SILVER, CLERK  
U.S. DISTRICT COURT

SHELTER MUTUAL INSURANCE CO., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WILLIAM T. HALLACY, BARBARA )  
THURMAN and THE ATCHISON, )  
TOPEKA & SANTA FE RAILWAY CO., )  
a foreign corporation, )  
 )  
Defendants. )

No. 83-C-606-C

J U D G M E N T

This action came on before the Court and the issues having been duly determined and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that none of the defendants in this action are covered under insurance policy numbered 15-1-872846-1 issued by plaintiff, Shelter Mutual Insurance Company, to defendant, William T. Hallacy, by virtue of an automobile accident of November 29, 1982 involving William T. Hallacy and defendant Barbara Thurman;

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff recover of the defendants its costs of action.

It is so Ordered and Adjudged this 28<sup>th</sup> day of February, 1984.

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

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

FILED  
FEB 28 1984

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

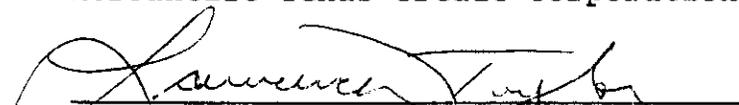
MERCANTILE TEXAS CREDIT CORPORATION, )  
 )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 83-C-922-E  
 )  
 BURLESON PROPERTIES, INC., )  
 )  
 )  
 Defendant. )

STIPULATION OF DISMISSAL

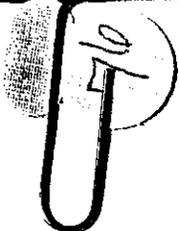
The plaintiff Mercantile Texas Credit Corporation, and the defendant, Burleson Properties, Inc., hereby agree and stipulate that the above entitled action should be dismissed with prejudice, and that each party shall bear its own costs of the action, including attorneys' fees.

  
Terry M. Thomas  
Janet L. Spaulding  
NORMAN, WOHLGEMUTH & THOMPSON

Attorneys for the Plaintiff,  
Mercantile Texas Credit Corporation

  
Lawrence D. Taylor

Attorney for the Defendant,  
Burleson Properties, Inc.



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

FEB 28 1984

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JERRY DALE GORDON, et al., )  
 )  
 Defendants. )

Jack G. Silver, Clerk  
U.S. DISTRICT COURT  
*[Signature]*

CIVIL ACTION NO. 79-C-367-E

CORRECTED JUDGMENT OF FORECLOSURE

The findings, orders, and judgment contained in the Judgment of Foreclosure filed herein on January 31, 1984, are incorporated herein by reference as if set forth fully herein, except that the first sentence of said Judgment of Foreclosure should read as follows:

THIS MATTER COMES on for consideration this 31st day of January, 1984.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

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

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 2 1984 *ent.*

TULSA 23 LIMITED PARTNERSHIP,

Plaintiff,

v.

HOME BOX OFFICE, INC.,

Defendant.

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

No. 83-C-866-E

CONSENT JUDGMENT

Plaintiff having moved this Court for a preliminary injunction enjoining defendant from using the trademark "MOVIE STAR" or "WE ARE YOUR MOVIE STAR" or any other confusingly similar designation alone or in combination with other words, as a trademark, trade name component or otherwise, to market, advertise or identify defendant's services or movie programming, and said motion having come on for a hearing on November 16, 17 and 18, 1983, and the Court having entered an Order on November 23, 1983, granting plaintiff's motion, and plaintiff and defendant having agreed upon a settlement of the matters averred in the complaint and having agreed that a consent judgment in the form herein set forth be entered, it is hereby ORDERED, ADJUDGED AND DECREED:

1. This Court has jurisdiction over the parties and the subject matter.

2. Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, are hereby permanently enjoined from using at any locality in the United States the trademark "MOVIE STAR" or "WE ARE YOUR MOVIE STAR," or any colorable imitation of "MOVIE STAR," alone or in combination with other words or designs, in the advertising or promotion of movie television programming and related television services. The phrase "active concert or participation," wherever used herein, shall not be construed so as to impute to HBO any violation of this Agreement in situations where a sister corporation to HBO, acting without HBO's active concert or participation, acts in derogation of Tulsa 23's "MOVIE STAR" trademark rights or rights under this Agreement.

3. This injunction is not to be construed as preventing defendant from describing in its promotional, advertising, or public relations materials, persons or things appearing in movies, including without limitation, actors, actresses, animals, mechanical objects, etc., as "movie stars," provided that any such description does not appear in a form that is confusingly similar to plaintiff's "MOVIE STAR" trademark.

4. This injunction also is not to be construed to prevent defendant from using separately the words "Star" or "Stars" or the words "Movie" or "Movies" in promotional, advertising or public relations materials, provided that any such use does not appear in a form that is confusingly similar to plaintiff's "MOVIE STAR" trademark.

5. Defendant will not contest in any proceedings between the parties by way of defense or counterclaim that:

(a) Plaintiff is now, and has continuously been since first use in interstate commerce in October 1980, the owner of the trademark "MOVIE STAR," which it uses to identify, promote and advertise KOKI-TV, Tulsa, Oklahoma, of which it is the licensee, and the movie programming broadcast by KOKI-TV.

(b) Plaintiff's "MOVIE STAR" trademark is good and valid in law and, as between plaintiff and defendant, plaintiff has trademark priority and is entitled to protection under the Lanham Act and related Oklahoma unfair trade practice and common law.

(c) Plaintiff lacks an adequate remedy at law.

(d) This Consent Judgment is valid and enforceable.

6. In view of the aforementioned settlement agreement, the Court does not separately order an accounting or award damages to plaintiff.

7. Also in view of the aforementioned settlement agreement, the Court does not separately assess costs or attorneys' fees. Each party shall bear its own costs.

Entered this 28 day of Feb., 1984,  
at Tulsa, Oklahoma.

S/ JAMES O. ELLISON

James O. Ellison  
United States District Judge

The defendant hereby consents to the entry of the foregoing Consent Judgment and waives any rights of appeal.

HOME BOX OFFICE, INC.  
1271 Avenue of the Americas  
New York, New York 10020

By: Shelley D. Fischel  
Vice President

Albert Robin  
Albert Robin  
1270 Avenue of the Americas  
Suite 220  
New York, New York 10020

Counsel for Defendant

James Head and Paul H. Johnson  
HEAD, JOHNSON & STEVENSON  
228 West 17th Place  
Tulsa, Oklahoma 74119

Fred Nelson and Donald Kahl  
HALL, ESTILL, HARDWICK,  
GABLE, COLLINGSWORTH &  
NELSON  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172

Michael H. Rosenbloom  
Michael H. Rosenbloom

Mary A. McReynolds  
Mary A. McReynolds

Mark N. Mutterperl  
Mark N. Mutterperl

WILNER & SCHEINER  
Suite 300  
1200 New Hampshire Ave., N.W.  
Washington, D.C. 20036

Counsel for Plaintiff

February 27, 1984



mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."

The death knell for the Plaintiff's claim sounded when his physician, Dr. Garfinkel, in a letter admitted into record (tr-197) stated that "[a]ny work that would not require a strenuous physical activity or prolonged walking would certainly be acceptable for his medical condition." The letter, dated January 19, 1982 reflected Plaintiff's physical condition at the time of the trial before the Administrative Law Judge.

Plaintiff objects to the Magistrate's findings, suggesting that: (1) the findings did not mention the comprehensive medical report of Dr. Garfinkel; and (2) no weight was given to Dr. Minor Gordon's testimony on cross-examination.

The record taken as a whole, would justify the Magistrate's upholding of the Secretary's denial of benefits. After examining the medical records submitted to the Magistrate and taking into account the testimony of Dr. Gordon that there are sedentary jobs which the Plaintiff could undertake and Dr. Garfinkel's letter stating that Plaintiff's medical condition would allow him to do such work, a reasonable mind could come to the conclusion that Mr. Ward is not disabled under the definition set forth in 42 U.S.C. § 423(d)(2).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Findings and Recommendations of the Magistrate be and are hereby adopted and affirmed. Judgment is hereby entered for Defendant Richard Schweiker, Secretary of Health and Human Services.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 28 1984

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

UNITED STATES OF AMERICA )  
and ROBERT RANDOLPH, )  
Revenue Officer, Internal )  
Revenue Service, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
DONALD L. ROBINSON, )  
 )  
Respondent. )

CIVIL ACTION NO. M-1032-C

ORDER DISCHARGING RESPONDENT AND DISMISSAL

ON THIS 28<sup>th</sup> day February, 1984, Petitioners' Motion to Discharge Respondent and for Dismissal came for hearing. The Court finds that Respondent has now complied with the Internal Revenue Service Summons served upon him August 26, 1982, that further proceedings herein are unnecessary and that the Respondent, Donald L. Robinson, should be discharged and this action dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that the Respondent, Donald L. Robinson, 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

FILED

FEB 28 1984

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

JAMES DOOMAN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 83-C-455-C
	)	
PETROLITE CORPORATION, a	)	
foreign corporation, and	)	
WILLIAM E. NASSER,	)	
	)	
Defendants.	)	

O R D E R

Now before the Court for its consideration is the motion of the plaintiff to remand this action to the District Court in and for Tulsa County, State of Oklahoma and the motion of defendant Nasser to dismiss him as a party defendant to this action. The Court, after reviewing the pleadings and the applicable law, has determined that the instant action was removed improvidently and without the jurisdiction of this Court and it should be remanded to the District Court in and for Tulsa County, State of Oklahoma pursuant to 28 U.S.C. §1447(c). Accordingly, defendant Nasser must seek relief in state court in regard to its motion to dismiss.

It is therefore the Order of the Court that the instant action should be and hereby is remanded to the District Court in and for Tulsa County, State of Oklahoma. The Clerk of this Court

shall forthwith take the steps necessary to effectuate the Order of this Court.

It is so Ordered this 25<sup>th</sup> day of February, 1984.

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

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

FILED

LOUIS PORTER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

FEB 27 1984

Jack C. Silver, Clerk

No. 84-C-114-EM S. DISTRICT COURT  
80-CR-33-E

ORDER

NOW on this 27<sup>th</sup> day of February, 1984, the Court has before it the Motion of Louis Porter to vacate and set aside or correct sentence filed pursuant to 28 U.S.C. § 2255. The movant was found guilty by a jury and sentenced by this Court on November 7, 1980 of having violated Title 18 U.S.C. §§ 371, 1341 and 2 and 1962(a) and 1963 and 2 as charged in Counts One through Sixteen of the Indictment brought against him. Defendant Porter was sentenced to five (5) years as to each count, Counts two through sixteen to run concurrently with the sentence imposed in Count one, said sentence imposed pursuant to 18 U.S.C. § 4205(b)(2).

Movant thereafter filed a Motion to Reduce Sentence and/or in the Alternative Motion for Suspension of Sentence and Probation pursuant to Rule 35, which after evidentiary hearing was granted insofar as sentence was reduced from five to three years. A similar motion was reurged January 1, 1984 and denied.

Movant now asserts he was denied effective assistance of counsel at trial in violation of his sixth amendment rights;

specifically he alleges his attorney's failure to object to the Court's refusal to give the "good faith" instruction submitted by movant's trial counsel rises to a level of incompetence so as to render his assistance ineffective. Movant claims entitlement to a new trial by virtue of this revelation.

The standard this Court must follow in reviewing competency of trial counsel is set forth in Dyer v. Crisp, 613 F.2d 275 (1980). Under this, the Court finds movant's petition must fail. The record before this Court does not substantiate a claim that counsel for Defendant's representation fell below the minimum standard of reasonable skill and competence expected of a defense attorney in a criminal case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motion of Louis Porter to vacate, set aside or correct sentence be and is hereby denied.

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

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

FILED

LOUIS PORTER, )  
)  
Plaintiff, )  
)  
vs. )  
)  
UNITED STATES OF AMERICA, )  
)  
Defendant. )

FEB 27 1984

No. 84-C-114-EU. S. DISTRICT COURT  
80-CR-33-E

Jack C. Silver, Clerk

O R D E R

NOW on this 27<sup>th</sup> day of February, 1984, the Court has before it the Motion of Louis Porter to vacate and set aside or correct sentence filed pursuant to 28 U.S.C. § 2255. The movant was found guilty by a jury and sentenced by this Court on November 7, 1980 of having violated Title 18 U.S.C. §§ 371, 1341 and 2 and 1962(a) and 1963 and 2 as charged in Counts One through Sixteen of the Indictment brought against him. Defendant Porter was sentenced to five (5) years as to each count, Counts two through sixteen to run concurrently with the sentence imposed in Count one, said sentence imposed pursuant to 18 U.S.C. § 4205(b)(2).

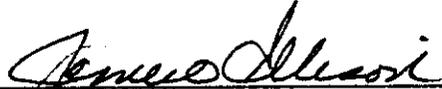
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Movant now asserts he was denied effective assistance of counsel at trial in violation of his sixth amendment rights;

specifically he alleges his attorney's failure to object to the Court's refusal to give the "good faith" instruction submitted by movant's trial counsel rises to a level of incompetence so as to render his assistance ineffective. Movant claims entitlement to a new trial by virtue of this revelation.

The standard this Court must follow in reviewing competency of trial counsel is set forth in Dyer v. Crisp, 613 F.2d 275 (1980). Under this, the Court finds movant's petition must fail. The record before this Court does not substantiate a claim that counsel for Defendant's representation fell below the minimum standard of reasonable skill and competence expected of a defense attorney in a criminal case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motion of Louis Porter to vacate, set aside or correct sentence be and is hereby denied.

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

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

FILED  
FEB 27 1984

AETNA LIFE INSURANCE COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
INDUSTRIAL FABRICATING COMPANY, )  
 )  
Defendant. )

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

No. 83-C-104-E

CONSENT JUDGMENT

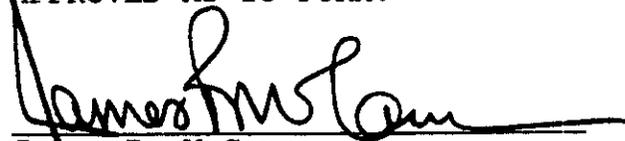
Plaintiff, Aetna Life Insurance Company, and Defendant, Industrial Fabricating Company, through their attorneys, have advised the Court that the above-captioned case has been settled by agreement of the parties and that judgment may be entered on Plaintiff's Complaint in the amount of \$40,000.

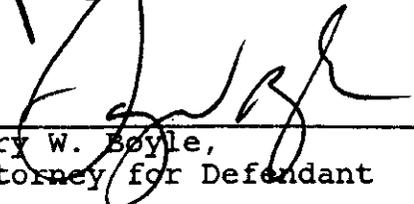
Accordingly, it is hereby ordered that judgment be entered in favor of Aetna Life Insurance Company and against Industrial Fabricating Company in the amount of FORTY THOUSAND and NO/100 DOLLARS (\$40,000.00).

  
James O. Ellison,  
United States District Judge

DATED: Feb. 27, 1984.

APPROVED AS TO FORM:

  
James P. McCann,  
Attorney for Plaintiff

  
Gary W. Boyle,  
Attorney for Defendant

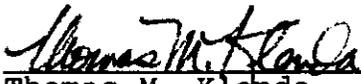
IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

EXCHANGE NATIONAL BANK, a )  
national banking association, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 83-C-289-C  
 )  
SMITH BARNEY, HARRIS, UPHAM )  
& COMPANY, INC., a corporation, )  
 )  
Defendant. )

STIPULATION OF DISMISSAL

It is hereby stipulated by Plaintiff, Exchange National Bank, a national banking association, and by Defendant, Smith Barney, Harris, Upham & Company, Inc., a corporation, pursuant to the settlement agreement entered into between the parties, that the above-entitled action be dismissed with prejudice and that each party hereto shall bear its own costs.

DATED this 19 day of January, 1984.

  
\_\_\_\_\_  
Thomas M. Klenda  
NORMAN, WOHLGEMUTH & THOMPSON  
909 Kennedy Building  
Tulsa, Oklahoma 74103  
(918) 583-7571

Attorneys for Plaintiff,  
Exchange National Bank

*John S. Athens*

---

John S. Athens  
CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Attorneys for Defendant,  
Smith Barney, Harris, Upham  
& Company, Inc.

FILED

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

FEB 27 1984 A

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

LLOYD L. GRAY,

Plaintiff,

v.

McDONNELL DOUGLAS CORPORATION,  
a Maryland corporation, and  
DARRELL WATERS,

Defendants.

Civil Action No.

83-C-412-C ✓

ORDER

In accordance with the memorandum of this Court  
filed this date and incorporated herein by this reference,  
it is hereby

ORDERED, ADJUDGED and DECREED that this action is  
dismissed, with prejudice. Defendants are to recover their  
costs of action from Plaintiff.

IT IS SO ORDERED this 27 day of February, 1984.



H. DALE COOK  
Chief United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 COLIN T. STANGEBY, )  
 )  
 Defendant. )

FEB 27 1984  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 83-C-804-C

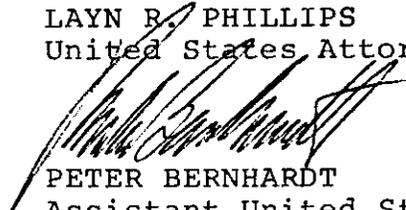
NOTICE OF DISMISSAL

COMES NOW the United States of America by Layn R. Phillips, 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 27th day of February, 1984.

UNITED STATES OF AMERICA

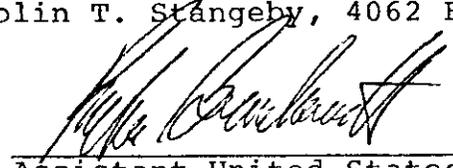
LAYN R. PHILLIPS  
United States Attorney



PETER BERNHARDT  
Assistant United States Attorney  
460 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of February, 1984, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Colin T. Stangeby, 4062 East 22nd Street, Tulsa, Oklahoma 74114.

  
Assistant United States Attorney

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

FILED

FEB 27 1964 *hu*

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

ELMER HALL,

Petitioner,

vs.

T. C. MARTIN,

Respondent.

No. 83-C-1075-CV ✓

O R D E R

Now before the Court for its consideration is the petition of Elmer Hall for a Writ of Habeas Corpus by a person in federal custody, under 28 U.S.C. § 2241. The petitioner is incarcerated at the federal penitentiary in El Reno, Oklahoma, and has named as respondent T. C. Martin, the Warden of the El Reno facility. In his petition, Hall alleges that he has been denied due process by the Parole Board in its refusal to grant him parole.

It is well-established that habeas corpus jurisdiction lies only when petitioner's custodian is within the jurisdiction of the district court. Roy v. Mabry, 556 F.2d 881 (8th Cir. 1977); see Braden v. Thirtieth Judicial Circuit Ct., 410 U.S. 484 (1973).

This petition herein has no connection with this Court since it attacks not the sentence of this Court but rather the process by which the federal parole commission made its decision to deny parole to the petitioner.

Therefore, this action is in all respects transferred to the United States District Court for the Western District of Oklahoma.

It is so Ordered this ~~27~~<sup>28</sup> day of February, 1984.

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

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

**FILED**

HARTFORD ACCIDENT & INDEMNITY )  
COMPANY, a Connecticut )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOHN STRUBE and ELLIS )  
HUTCHINSON, JR., )  
 )  
Defendants. )

FEB 24 1984

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

No. 83-C-451-E/

**JUDGMENT**

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 Hartford Accident & Indemnity Company recover judgment of the Defendants John Strube and Ellis Hutchinson, Jr., that the contract of insurance be declared unenforceable as against Plaintiff and that Plaintiff be awarded its costs of action.

DATED at Tulsa, Oklahoma this 24<sup>th</sup> day of February, 1984.

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

*entered*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 EDWARD ALFRED STEVENS and )  
 HELEN MARIE STEVENS, husband )  
 and wife; and HARVARD TOWER )  
 BANK, )  
 )  
 Defendants. )

**FEB 24 1984**  
**Jack C. Silver, Clerk**  
**U. S. DISTRICT COURT**

CIVIL ACTION NO. 83-C-608-E

JUDGMENT OF FORECLOSURE

THIS MATTERS COMES on for consideration this 24<sup>th</sup> day  
of February, 1984. Plaintiff appears by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendant, Harvard Tower Bank, appears by Robert O.  
Williams, Jr.; and the Defendants, Edward Alfred Stevens and  
Helen Marie Stevens, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Harvard Tower Bank, entered  
its general appearance on September 29, 1983, waiving service of  
process upon this Defendant; and that the Defendants, Edward  
Alfred Stevens and Helen Marie Stevens, were served with Summons  
and First Amended Complaint on August 17, 1983. It appears that  
the Defendant, Harvard Tower Bank, has filed its Answer on  
October 21, 1983, and that the Defendants, Edward Alfred Stevens  
and Helen Marie Stevens, have failed to answer and their default  
has been entered by the Clerk of this Court on February 14, 1984.

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

Lot Fifteen (15), Block One (1), SUMMERFIELD, an Addition in the City and County of Tulsa, State of Oklahoma, according to the recorded plat thereof;

That on January 27, 1982, Edward Alfred Stevens and Helen Marie Stevens executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their promissory note in the amount of \$57,950.00 payable in monthly installments with interest thereon at the rate of 15½ percent per annum.

That as security for the payment of the above described note, Edward Alfred Stevens and Helen Marie Stevens executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a real estate mortgage dated January 27, 1982, covering the above described property. Said mortgage was recorded on February 3, 1982, in Book 4593, Page 1886, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Edward Alfred Stevens and Helen Marie Stevens, made default under the terms of the aforesaid promissory note and mortgage 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 indebted to the Plaintiff in the principal sum of \$58,471.29, plus interest at the rate of 15½ percent per annum

from May 1, 1982, until judgment, plus interest thereafter at the legal rate until paid, plus costs of this action accrued and accruing.

The Court further finds that on April 18, 1983, Edward Alfred Stevens and Helen Marie Stevens executed and delivered to Harvard Tower Bank a real estate mortgage covering the above described property. Said mortgage was recorded on April 25, 1983, in Book 4686, Page 590, in the records of Tulsa County, Oklahoma. As a result of their default under said real estate mortgage the above named Defendants are indebted to Harvard Tower Bank in the principal sum of \$9,262.70, plus accrued interest of \$644.60 from August 3, 1983, until February 17, 1984, plus interest accruing thereafter at the daily rate of \$3.28 until paid, plus court costs, and an attorney's fee of \$926.00.

The Court further finds that the above mortgage of Harvard Tower Bank is a second mortgage on the real property involved herein and is subject and inferior to the first mortgage lien of Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, United States of America, have and recover judgment against the Defendants, Edward Alfred Stevens and Helen Marie Stevens, in the principal amount of \$58,471.29, plus interest at the rate of 15½ percent per annum from May 1, 1982, until judgment, plus interest thereafter at the current legal rate of 10.11 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Harvard Tower Bank, have and recover judgment against the Defendants, Edward Alfred Stevens and Helen Marie Stevens, in the principal amount of \$9,262.70, plus accrued interest of \$644.60 from August 3, 1983, until February 17, 1984, plus interest accruing thereafter at the daily rate of \$3.28 until paid, plus court costs, and an attorney's fee of \$926.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon failure of the Defendants, Edward Alfred Stevens and Helen Marie Stevens, to satisfy the money judgment of the Plaintiff 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 appraisalment the real property herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including cost of the sale of said real property;

Second:

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

Third:

In payment of the judgment rendered herein in favor of Harvard Tower Bank.

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



**FILED**

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

FEB 24 1984

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

ITT INDUSTRIAL CREDIT )  
COMPANY, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
JERRY D. GARLAND and )  
PAUL T. INMAN, )  
 )  
Defendants.)

No. 82-C-884-E

O R D E R

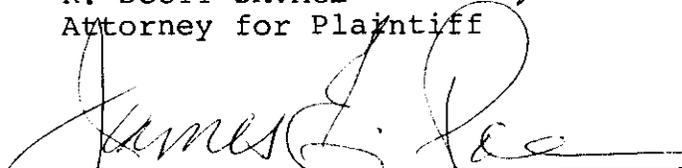
On this 23rd day of February, 1984, upon stipulation of the Plaintiff and Defendant, INMAN, and by reason of a compromise settlement between said parties, it is hereby ordered that the within styled and numbered cause of action is hereby dismissed as to Defendant, PAUL T. INMAN, only, Plaintiff having reserved its action against Defendant, GARLAND.

**S/ JAMES O. FURMAN**

JUDGE

APPROVED:

  
\_\_\_\_\_  
R. SCOTT SAVAGE  
Attorney for Plaintiff

  
\_\_\_\_\_  
JAMES E. POE, Attorney for  
Defendant, Paul T. Inman

*Entered*

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

FEB 24 1984

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

BRIAN KELLY, )  
)  
Plaintiff, )  
)  
v. )  
)  
MAURICE S. POTGIETER and )  
MARILYN J. POTGIETER, )  
)  
Defendants. )

---

Civil Action No.  
83-C-897-B

JUDGMENT

There comes on for hearing this 24<sup>th</sup> day of February, 1984, the plaintiff's motion for summary judgment, with the plaintiff appearing by and through his attorneys of record, Gerald G. Stamper and Marykay Martin of Nichols & Wolfe, Inc., and the defendants appearing by and through their attorney of record, Nancy Woods.

The Court, upon review of the pleadings filed herein, answers to interrogatories, admissions, arguments of counsel and stipulations by the parties, and being fully informed in the premises, specifically finds that the Court has jurisdiction over the parties hereto and the subject matter hereof. In addition thereto, the Court finds:

1. That the defendants entered into an agreement with the plaintiff in Toronto, Ontario, Canada on or about June 12, 1983, whereby the plaintiff loaned to the defendants Sixty Thousand

Dollars (\$60,000), repayable in two installments of Thirty-Five Thousand Dollars (\$35,000) each, the first payment to be made on July 28, 1983, and the second to be made on August 28, 1983.

2. That the agreement also provided that in the event of default by the defendants in the repayment of the obligation to the plaintiff, the defendants had the option to convey to the plaintiff their undivided one-half interest in the following real estate, to-wit:

That certain tract of land beginning 538.7 feet South of the Northeast corner of the East Half (E/2) of the Southeast Quarter (SE/4) of Section Eight (8), Township 18 North, Range 14 East, Tulsa County, Oklahoma; thence West 1320 feet to the West boundary of said E/2 of the SE/4; Thence South 330 feet; Thence East 1320 feet to the East boundary of said section; Thence North 330 feet to the point of beginning, containing ten (10) acres, more or less, according to the U.S. Government Survey thereof, also know as 7600 129th East Avenue, Broken Arrow, Oklahoma.

3. That the agreement further provided that if such a conveyance were made, the plaintiff would indemnify the defendants from all liability on a note executed by the defendants to Continental Federal Savings & Loan Association secured by a mortgage lien on the above-described real estate.

4. That the agreement entered into on June 12, 1983 was subsequently confirmed in writing by an agreement dated June 28, 1983 signed by the defendants in Tulsa, Oklahoma.

5. That the defendants failed to make the required payments when due and have elected to convey their undivided one-half interest in and to the above-described real estate to the plaintiff.

6. That the defendant Marilyn S. Potgieter conveyed all of her right, title and interest in and to the above-described real estate by quit claim deed to the defendant Maurice Potgieter. Said conveyance was duly recorded on January 18, 1984 in the Tulsa County Clerk's office at Book 4760, Page 130.

7. That the defendant Maurice Potgieter has executed and tendered to the plaintiff a quit claim deed conveying his interest in the above-described real estate but that the plaintiff has refused said tender.

8. That the plaintiff and defendants have each been required to employ the services of attorneys in this matter and each should bear their own costs for such.

IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff's motion for summary judgment is denied and that the plaintiff not recover personal judgment against the defendants, either jointly or severally, by virtue of the above-described agreement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the above-described agreement shall give to the plaintiff and defendants the option to convey their one-half interest in and to the above-described real estate if the plaintiff pays Seventy Thousand Dollars (\$70,000) to the defendant by August 28, 1983.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff accept tender of the defendant Maurice Potgieter's one-half interest in the above-described real estate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff be required to indemnify the defendant Maurice Potgieter from all liability on the note executed to Continental Federal Savings & Loan Association secured by a mortgage lien on the above-described real estate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that from and after said acceptance of the tendered conveyance by the defendant Maurice Potgieter to the plaintiff, by virtue of this judgment and decree, that the parties be forever barred from all claims against each other with respect to the above-described agreement, and that the defendants Maurice Potgieter and Marilyn Potgieter be forever barred from claiming any right, title, interest or estate in and to the land and tenements described above, or any part thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that all parties shall bear their own costs and attorneys fees in this matter.

IT IS SO ORDERED.

S/ THOMAS R. BRETT

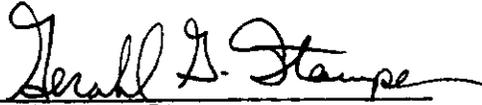
JUDGE OF THE U.S. D  
NORTHERN DISTRICT C

ICT COURT  
LAHOMA

APPROVED AS TO FORM AND CONTENT:

NICHOLS & WOLFE, INC.

By:



Gerald G. Stamper  
400 Old City Hall Building  
124 East Fourth Street  
Tulsa, Oklahoma 74103  
(918) 584-5182

ATTORNEYS FOR PLAINTIFF



Nancy L. Woods  
2626 East 21st Street, Suite 2  
Tulsa, Oklahoma 74114

ATTORNEY FOR DEFENDANTS



*dm*

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

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

FEB 26 1984

FILED

TELECOMMUNICATIONS UNIVERSAL, )  
INC., an Oklahoma corporation, )

Plaintiff, )

vs. )

No. 84-C-105-E ✓

U. T. S., INC., a Kansas )  
corporation; ROBERT W. PURDY, )  
an individual; ORENE P. PURDY, )  
an individual, )

JURY TRIAL REQUESTED

Defendants. )

NOTICE OF DISMISSAL

COMES NOW the plaintiff and hereby dismisses the above cause  
without prejudice.

Dated this 23<sup>rd</sup> day of February, 1984.

GASAWAY, GREEN & HARRIS, P.A.

Sharon M. Strauss  
Steven M. Harris  
Sharon M. Strauss  
P. O. Box 14070  
Tulsa, OK 74159  
(918) 742-0548

*Recd*

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

**FILED**

**FEB 24 1984**

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

THE ST. PAUL INSURANCE CO., )  
a Texas corporation, )

Plaintiff, )

vs. )

PARADISE CONSTRUCTION CO., )  
INC., an Oklahoma )  
corporation, )

Defendant. )

No. 82-C-50-E

JOURNAL ENTRY OF JUDGMENT

NOW on this 1st day of February, 1984, the declaratory judgment action of the St. Paul Insurance Co., a Texas corporation, against Paradise Construction Co., Inc., an Oklahoma corporation, came on for hearing, the action having previously been submitted to the Court for determination based on the Plaintiff's previously filed Motion for Summary Judgment and the Briefs of both parties in regard to that Motion as well as supplemental briefs filed by both parties following pre-trial hearing. The Plaintiff appeared by and through Mr. Ronald D. Wood, its attorney of record, and the Defendant appeared by and through Mr. Steven M. Harris, its attorney of record.

Neither party requested a Jury trial of the action and both parties through their attorneys of record, waived their right to a trial before the Court and submitted this matter to the Court for judgment based upon the briefs as set out above. The Court,

after having fully examined the pleadings, the motions, the briefs and attached evidential documents and after having heard the argument and propositions stated by both counsel of record at the pre-trial hearing and being fully advised in the premises, in consideration finds as follows:

1. This Court has jurisdiction of the parties hereto and venue of the subject matter herein.

2. This is a properly instituted declaratory judgment action by the Plaintiff St. Paul Insurance Co., a Texas corporation (hereinafter "St. Paul"), and the Plaintiff's Petition filed herein sets forth a good and sufficient cause of action against the Defendant Paradise Construction Co., Inc. which this Court is empowered to decide.

3. Parties, by and through their counsel of record, have stipulated that the Court may decide this case based upon the record before it as set out above.

4. Upon Application by the Defendant Paradise Construction Co., (hereinafter "Paradise Construction"), the Court has dismissed the allegations of bad faith raised by Paradise Construction in its Answer filed herein.

5. Defendant Paradise Construction has admitted in its Brief in Response to Plaintiff's Motion for Summary Judgment that the Second Cause of Action against Paradise Construction in the State Court action filed in Creek County, Oklahoma falls within the exclusions of the contract of insurance and therefore, St. Paul has no duty to defend nor indemnify Paradise Construction

under any of the allegations contained in the Second Cause of Action in the State Court lawsuit.

6. The Court finds that the policy of insurance requires a defense of suits even where groundless, false or fraudulent, but further finds that this obligation is only triggered where bodily injury or property damage occur under circumstances covered by the provisions of this policy of insurance.

7. The Court further finds that the first cause of action set forth against Paradise Construction Co. in the State Court lawsuit filed in Creek County, Oklahoma, alleges that grading and leveling of a lot where a home was to be built, was allegedly done in a negligent manner which later caused surface water, draining across the property, to wash out soil from under the footings and foundations of the house causing damages to certain areas or portions of the house. Damages were sought to correct the faulty grading and lot leveling as well as for the necessary repairs to the house which was under construction. The Court finds that this cause of action sounds in breach of the implied warranty of competent workmanship, which the Court further finds is excluded from coverage under the terms of the policy of insurance.

8. The Court further finds that the construction project is indivisible for purposes of insurance coverage and St. Paul has no duty to defend or indemnify Paradise Construction under the Second Cause of Action in the State court lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that the alleged acts or omissions of Paradise Construction which form the basis of the State Court lawsuit against Paradise are not covered by the terms and conditions of the policy of insurance which exists between St. Paul and Paradise Construction. Further, that these acts or omissions alleged against Paradise, fall within the exclusions of said policy of insurance, and therefore, St. Paul has no duty to defend the State Court lawsuit against Paradise Construction Company, which is filed in Creek County, Oklahoma, nor does St. Paul have a duty to pay the costs of the defense of said lawsuit or to indemnify Paradise for any judgment that might be rendered against it in the State Court action.

IT IS FURTHER ordered, adjudged and decreed, that the Plaintiff St. Paul Insurance Company, a Texas Corporation, have judgment in its declaratory judgment action against the Defendant Paradise Construction Co., Inc., an Oklahoma corporation, and that the Plaintiff is awarded the costs of this action, but each party is to pay the fees of its own attorney, respectively.

S/ JAMES O. ELLISON

\_\_\_\_\_  
JAMES O. ELLISON,  
U.S. DISTRICT JUDGE

s/Steven M. Harris  
\_\_\_\_\_  
Steven M. Harris, Attorney  
for Defendant Paradise  
Construction Co., Inc.

*Ronald D. Wood*  
\_\_\_\_\_  
Ronald D. Wood, Attorney  
for Plaintiff St. Paul  
Insurance Company

FILED

FEB 23 1984

BY C. SILVER, CLERK  
DISTRICT COURT

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

FRANCINE L. ISACSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 83-C-560-C
	)	
RAYTHEON DATA SYSTEMS COMPANY,	)	
a wholly owned division of	)	
Raytheon Company, a corporation,	)	
	)	
Defendant.	)	
	)	

ORDER

It appearing that this cause has been amicably settled by the parties hereto, obviating the necessity for further litigation,

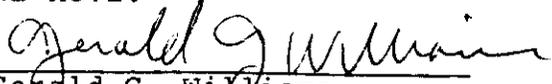
NOW, on motion of Gerald G. Williams, Attorney for Plaintiff, and with the consent of Terry M. Thomas of Pritchard, Norman and Wohlgemuth, Attorneys for the Defendant,

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

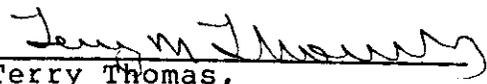
Dated this 23 day of February, 1984.

  
 \_\_\_\_\_  
 JUDGE H. DALE COOK

WE MOVE:

  
 \_\_\_\_\_  
 Gerald G. Williams,  
 Gerkin & Williams,  
 Attorney for the Plaintiff

WE CONSENT:

  
 \_\_\_\_\_  
 Terry Thomas,  
 Pritchard, Norman, Wohlgemuth,  
 Attorney for the Defendant

FILED

FEB 23 1984

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

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

LLOYD L. GRAY,

Plaintiff,

v.

McDONNELL DOUGLAS CORPORATION,  
a Maryland corporation, and  
DARRELL WATERS,

Defendants.

Civil Action No.

83-C-412-C

MEMORANDUM

This matter came before the Court on February 14, 1984, for Final Pretrial Conference and hearing on Defendants' Motion to Impose Sanctions. All parties were represented at the conference by counsel, and were afforded the opportunity to present evidence and argument. Having fully considered all evidence and argument presented, the Court concludes that, for reasons more fully explained herein, this action should be dismissed with prejudice.

On December 15, 1983, this Court entered a Protective Order which, in pertinent part, strictly prohibited the dissemination of any of the documents, or any of the information contained therein, which were provided by Defendants to Plaintiff pursuant to discovery procedures in this case, and which were marked CONFIDENTIAL pursuant to the Protective Order. Prior to its entry by this Court, all parties stipulated and agreed to the Protective Order. Nonetheless, an internal company memorandum which was supplied by Defendants to Plaintiff,

pursuant to discovery in this case, and which was properly marked as CONFIDENTIAL pursuant to the Protective Order, was anonymously circulated to a nonlitigant, in apparent violation of the Protective Order. Certain sensitive and potentially embarrassing information about this nonlitigant was contained in the confidential memorandum. Based upon an examination of the circumstances and all available evidence in the record, and after considering the argument of counsel, the Court is convinced and so finds that Plaintiff circulated or caused the circulation of the CONFIDENTIAL memorandum, in violation of the Protective Order.

Defendants have moved, pursuant to Federal Rule 37(b), for the sanction of dismissal based upon Plaintiff's violation of the Protective Order. Plaintiff failed to respond to Defendants' Motion before the February 14, 1984 hearing on that Motion and thereby waived opposition to Defendants' Motion. The sanction of dismissal is proper when a party willfully or in bad faith violates an order relating to discovery. Societe Internationale v. Rogers, 357 U.S. 197, 78 S.Ct. 1087 (1958); National Hockey League v. Metropolitan Club, Inc., 427 U.S. 537, 96 S.Ct. 2778 (1976). See also, Rule 41(b) Fed. R. Civ. P. The Court concludes that this action should be dismissed based on Plaintiff's violation of this Court's Protective Order.

Defendants have also moved for dismissal based upon Plaintiff's failure to comply with Orders of this Court and the Local Rules of Court regarding the pretrial activities of the parties. Specifically, Plaintiff has failed to file an agreed-to Pretrial Order and has failed to complete discovery within the time established by the Court.

The Court finds that Defendants have submitted to Plaintiff interrogatories and a request for production of documents. Plaintiff has had that discovery material for over ninety (90) days and has made no response, causing Defendants to file a Motion to Compel. Again, Plaintiff has not responded to that Motion and therefore does not contest any matter contained therein. This Court previously ordered that all discovery be completed by January 16, 1984 and Plaintiff, by failing to respond to Defendants' discovery, violated that Order.

The Court had previously Ordered that an agreed-to Pretrial Order be filed by February 4, 1984. It is Plaintiff's responsibility to prepare the Pretrial Order and submit to the Court the Order agreed to by all parties, Rule 17(c), Rules of the U.S. District Court, Northern District of Oklahoma. Plaintiff, by failing to complete discovery and by failing to submit a Pretrial Order, violated a specific Order of this Court, this Court's standard Pretrial Instructions to Parties, and the Local Rules of Court.

The Court further finds that Plaintiff's stated failures to act constitute a failure to properly prosecute this action. The Court concludes that Plaintiff's violation of Orders and Local Rules, and his failure to properly prosecute, separately and independently warrant dismissal of this action. Rule 41(b) Fed R. Civ. P.

Wherefore, for the reasons set forth herein, this action shall be dismissed, with prejudice, and Defendants shall recover their costs of action from Plaintiff.

Dated this 23 day of February, 1984.

s/H. DALE COOK

---

H. DALE COOK  
Chief United States District Judge

FILED

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

FEB 23 1984

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

DYCO PETROLEUM CORPORATION, )  
a Minnesota corporation, )  
) )  
Plaintiff, )  
) )  
vs. )  
) )  
HESTON OIL COMPANY, an )  
Oklahoma corporation, and )  
HESTON OIL COMPANY 1981-B )  
PRIVATE DRILLING PROGRAM, )  
a limited partnership, )  
) )  
Defendants. )

No. 83-C-133-C

ORDER FOR DISMISSAL WITHOUT PREJUDICE

The parties to this action having so stipulated and agreed,  
this Court does hereby:

ORDER, ADJUDGE AND DECREE that this action is herein  
dismissed without prejudice with each party to bear its own  
costs.

s/H. DALE COOK

United States District Judge

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

FILED

FEB 23 1984

DALE C. SILVER, CLERK  
DISTRICT COURT

FRED WOODARD, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
TULSA PUBLIC SCHOOLS, known as )  
INDEPENDENT SCHOOL DISTRICT NO. 1, )  
 )  
Defendant. )

No. 81-C-585-C

JUDGMENT

On February 14, 1984, this matter came on for trial on the merits before the court pursuant to the parties' previous stipulation of waiver of trial by jury. The plaintiff was present and represented by Darrell Bolton. The defendant was present and represented by J. Douglas Mann of Rosenstein, Fist & Ringold. Both sides announced ready for trial.

The plaintiff presented his evidence and rested. The defendant moved for involuntary dismissal of the plaintiff's action pursuant to Rule 41(b), Fed. R. Civ. P. on the grounds that based on the facts and the law, the plaintiff did not show any right to relief. After stating from the bench certain findings of facts and conclusions of law, which findings and conclusions are made a part of this judgment, the court sustained the defendant's motion to dismiss.

IT IS THEREFORE ORDERED AND ADJUDGED that the plaintiff's action against the defendant is dismissed on the merits with prejudice and that the defendant recover from the plaintiff its costs of the action.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Darrell Bolton  
Attorney for Plaintiff

  
\_\_\_\_\_  
J. Douglas Mann  
Attorney for Defendant

FILED

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

55-25101 *hm*

SHEILA ANN THOMAS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 INDEPENDENT SCHOOL DISTRICT )  
 NO. 6 OF ROGERS COUNTY, STATE )  
 OF OKLAHOMA, et al., )  
 )  
 Defendants. )

No. 82-C-88-EV

Jack G. Silver  
U. S. DISTRICT CT

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

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

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

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

DATED this 22<sup>d</sup> day of February, 1984.

*James O. Ellison*  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

HAROLD KENNETH THOMPSON and HELEN LOUISE THOMPSON, Plaintiffs, vs. FIBREBOARD CORPORATION, et al., Defendants.

FEB 21 1984 A. JACK G. SILVER, CLERK DISTRICT COURT No. 82-C-836-C

STIPULATION FOR DISMISSAL

COMES NOW, Mark H. Iola, counsel for the Plaintiffs, and Murray E. Abowitz, counsel for Keene Corporation who is authorized to act for the named Defendants herein, and show the Court that the issues between the Plaintiffs and the Defendants Owens-Illinois, Inc., Fibreboard Corporation, Eagle-Picher Industries, Inc., Celotex Corporation, GAF Corporation, Combustion Engineering, Inc., Pittsburgh-Corning Corporation, Forty-Eight Insulation, Inc., Keene Corporation, Standard Insulation, Inc., Raymark Industries, Inc., and Flintkote Company have been resolved pursuant to a compromise settlement.

WHEREFORE, these parties pray that an Order of Dismissal with Prejudice be entered herein as the issues between them are now moot.

THIS Stipulation for Dismissal is neither intended to be nor is it a Stipulation of Dismissal of the Johns Manville Sales Corporation, Unarco Industries, Inc., Nicolet Industries, Inc., Ryder Industries, Inc., or H. B. Fuller Company.

LAW OFFICES UNGERMAN, CONNER & LITTLE

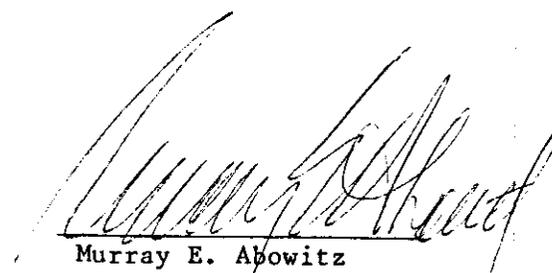
UNGERMAN, CONNER & LITTLE

MIDWAY BLDG. 2727 EAST 21 ST. SUITE 400 P. O. BOX 2098 TULSA, OKLAHOMA 74101

Signature of Mark H. Iola, Attorney for Plaintiffs

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

Attached

  
Murray E. Abowitz  
Attorney for Keene  
Corporation on behalf  
of named Defendants

ORDER OF DISMISSAL

NOW, on this 23 day of Feb, 1984, the Court being advised that a compromise settlement having been reached between the Plaintiffs and the named Defendants, and those parties stipulating to the Dismissal with Prejudice, the Court orders that the captioned case be dismissed with prejudice as to the Defendants Owens-Illinois, Inc., Fibreboard Corporation, Eagle-Picher Industries, Inc., Celotex Corporation, GAF Corporation, Combustion Engineering, Inc., Pittsburgh-Corning Corporation, Forty-Eight Insulation, Inc., Keene Corporation, Inc., Standard Insulation, Inc., Flintkote Company, Raymark Industries, Inc., only.

  
UNITED STATES DISTRICT JUDGE

FILED

FEB 23 1984

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

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA FEB 21 1984

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

MERLAND G. MORGAN and )  
HELEN MORGAN, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
FIBREBOARD CORPORATION, )  
et al., )  
 )  
Defendants. )

No. ~~82-C-836-C~~  
82-C-781-C

STIPULATION FOR DISMISSAL

COMES NOW, Mark H. Iola, counsel for the Plaintiffs, and Murray E. Abowitz,, counsel for Keene Corporation who is authorized to act for the named Defendants herein, and show the Court that the issues between the Plaintiffs and the Defendants, Owens-Illinois, Inc., Fibreboard Corporation, Eagle-Picher Industries, Inc., Celotex Corporation, GAF Corporation, Combustion Engineering, Inc., Pittsburgh-Corning Corporation, Forty-Eight Insulation, Inc., Keene Corporation, Aeroquip Corporation, Mundit Cork Company, Libby-Owens Ford Company, Flintkote Company, Nicolet, Inc., Standard Asbestos Manufacturing and Insulating Company, Raybestos Manhattan, Inc. have been resolved pursuant to a compromise settlement.

WHEREFORE, these parties pray that an order of Dismissal with Prejudice be entered herein as the issues between them are now moot.

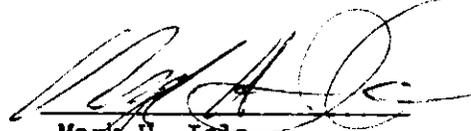
LAW OFFICES  
UNGERMAN,  
CONNER &  
LITTLE

MIDWAY BLDG.  
2727 EAST 21 ST.  
SUITE 400  
  
P. O. BOX 2099  
TULSA, OKLAHOMA  
74101

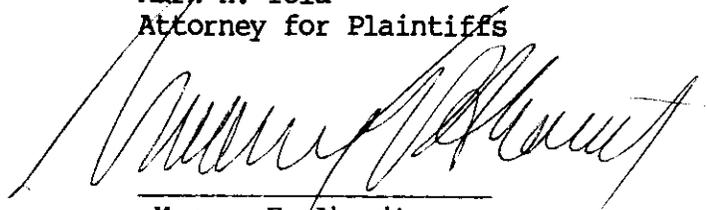
NOTE: THIS ORDER IS TO BE MAILED  
BY MOVANT TO ALL COUNSEL AND  
PRO SE LITIGANTS IMMEDIATELY  
UPON RECEIPT.

THIS Stipulation for Dismissal is neither intended to be nor is it a Stipulation of Dismissal of the Johns-Marville Sales Corporation, Unarco Industries, Inc., Ryder Industries, Inc. or H. B. Fuller Company.

UNGERMAN, CONNER & LITTLE



Mark H. Iola  
Attorney for Plaintiffs



Murray E. Abowitz  
Attorney for Keene Corporation  
on Behalf of the Named Defendants

ORDER OF DISMISSAL

NOW, on this 23 day of Feb., 1984, the Court being advised that a compromise settlement having been reached between the Plaintiffs and the named Defendants, and those parties stipulating to the Dismissal with Prejudice, the Court orders that the captioned case be dismissed with prejudice as to the Defendants Owens-Illinois, Inc., Fibreboard Corporation, Eagle-Picher Industries, Inc., Celotex Corporation, GAF Corporation, Combustion Engineering, Inc., Pittsburgh-Corning Corporation, Forty-Eight Insulation, Inc., Keene Corporation, Aeroquip Corporation, Mundit Cork Company, Libby-Owens Ford Company, Flintkote Company, Nicolet Industries, Inc., Standard Asbestos Manufacturing and Insulating Company, and Raybestos Manhattan, Inc., only.

FILED

FEB 23 1984

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

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

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

FILED  
FEB 21 1981

HAROLD KENNETH THOMPSON and HELEN )  
LOUISE THOMPSON, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 FIBREBOARD CORPORATION, et al., )  
 )  
 Defendants. )

MARK D. SILVER, CLERK  
DISTRICT COURT

No. 82-C-836-C

STIPULATION FOR DISMISSAL

COMES NOW, Mark H. Iola, counsel for the Plaintiffs, and Murray E. Abowitz, counsel for Keene Corporation who is authorized to act for the named Defendants herein, and show the Court that the issues between the Plaintiffs and the Defendants Owens-Illinois, Inc., Fibreboard Corporation, Eagle-Picher Industries, Inc., Celotex Corporation, GAF Corporation, Combustion Engineering, Inc., Pittsburgh-Corning Corporation, Forty-Eight Insulation, Inc., Keene Corporation, Standard Insulation, Inc., Raymark Industries, Inc., and Flintkote Company have been resolved pursuant to a compromise settlement.

WHEREFORE, these parties pray that an Order of Dismissal with Prejudice be entered herein as the issues between them are now moot.

THIS Stipulation for Dismissal is neither intended to be nor is it a Stipulation of Dismissal of the Johns Manville Sales Corporation, Unarco Industries, Inc., Nicolet Industries, Inc., Ryder Industries, Inc., or H. B. Fuller Company.

LAW OFFICES  
UNGERMAN,  
CONNER &  
LITTLE

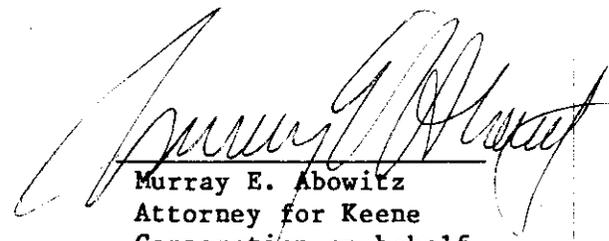
UNGERMAN, CONNER & LITTLE



Mark H. Iola  
Attorney for Plaintiffs

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

MIDWAY BLDG.  
2727 EAST 21 ST.  
SUITE 400  
  
P. O. BOX 2099  
TULSA, OKLAHOMA  
74101



Murray E. Abowitz  
Attorney for Keene  
Corporation on behalf  
of named Defendants

ORDER OF DISMISSAL

NOW, on this 23 day of Feb., 1984, the Court being advised that a compromise settlement having been reached between the Plaintiffs and the named Defendants, and those parties stipulating to the Dismissal with Prejudice, the Court orders that the captioned case be dismissed with prejudice as to the Defendants Owens-Illinois, Inc., Fibreboard Corporation, Eagle-Picher Industries, Inc., Celotex Corporation, GAF Corporation, Combustion Engineering, Inc., Pittsburgh-Corning Corporation, Forty-Eight Insulation, Inc., Keene Corporation, Inc., Standard Insulation, Inc., Flintkote Company, Raymark Industries, Inc., only.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

FILED

FEB 23 1984

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

Entered

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHN J. BRYAN, )  
 )  
 Defendant. )

**FILED**

FEB 23 1984

J. G. Silver  
CLERK

CIVIL ACTION NO. 83-C-676-B

ORDER OF DISMISSAL

Now on this 22<sup>nd</sup> day of February, 1984, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, John J. Bryan, be and is dismissed without prejudice.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

FILED

FEB 23 1984

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

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

PHILLIP B. MASSLICH and )  
ELEANOR A. MASSLICH, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 GEORGE R. FLETCHER and )  
 FRANCES GASTON, )  
 )  
 Defendants. )

Case No. 83-C-78-B

ORDER

NOW ON this 23 day of February, 1984, comes on to be heard the Stipulation of the parties that the above-captioned action may be dismissed with prejudice. The Court, being well advised in the premises, finds that the Stipulation of the parties should be accepted and this action is dismissed with prejudice to the filing of another.

Thomas Brett  
Judge of the United States District Court

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

FILED

FEB 23 1984

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

BADGER METER, INC., a )  
Wisconsin corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FRONTIER ROOFING, INC., an )  
Oklahoma corporation, )  
STOCKDALE, INC., a Texas )  
corporation, and NEW HAMPSHIRE )  
INSURANCE COMPANY, a New )  
Hampshire corporation, )  
 )  
Defendants. )

No. 83-C-685-C

ORDER

For good cause shown and based upon representations of counsel at the pre-trial conference, it is hereby ordered that the counterclaim of Frontier Roofing, Inc. is hereby dismissed without prejudice as to New Hampshire Insurance Company.

It is so ORDERED this 23 day of February, 1984.

s/H. DALE COOK

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

FILED

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

25684 *hm*  
Silver

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, a federal )  
banking agency as Receiver )  
for Penn Square Bank, N.A., )  
Plaintiff, )  
vs. )  
REVCO PETROLEUM CORPORATION, )  
a corporation, and GEORGE E. )  
REWARD, an Individual, )  
Defendants. )

No. 83-C-244-E ✓

JUDGMENT

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 Federal Deposit Insurance Corporation recover of the Defendants Revco Petroleum Corporation and George E. Revard the sum of \$779,657.75 principal, and interest computed from June 10, 1982 to the date of default at the rate of 1 1/2% above Penn Square Bank's prime rate charged per annum for the applicable period, plus interest from the date of default to this date at the rate of 6 1/2% above Penn Square Bank's prime rate for the applicable period, and post judgment interest at the rate of 10.11% as provided by law, and its costs of action.

DATED at Tulsa, Oklahoma this 22<sup>d</sup> day of February, 1984.

*James O. Ellison*  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED

FEB 23 1984

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

BADGER METER, INC., a )  
Wisconsin corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FRONTIER ROOFING, INC., an )  
Oklahoma corporation; )  
STOCKDALE, INC., a Texas )  
corporation; and NEW HAMPSHIRE )  
INSURANCE COMPANY, a New )  
Hampshire corporation, )  
 )  
Defendants. )

No. 83-C-685-C

ORDER OF DISMISSAL

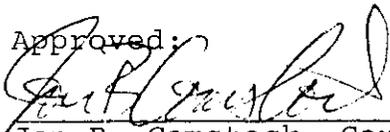
For good cause shown and upon the Stipulation of Dismissal filed in this action, IT IS ORDERED that the claim of the plaintiff against the defendant, New Hampshire Insurance Company, be dismissed without prejudice.

It is so ordered this 23 day of Feb., 1984.

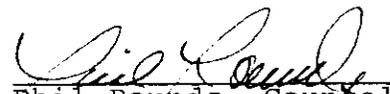
s/H. DALE COOK

H. DALE COOK, U.S. DISTRICT JUDGE

Approved:



Jon B. Comstock, Counsel for Plaintiff



Phil Rounds, Counsel for Defendant  
New Hampshire Insurance Company,  
Granite State Insurance Company

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

FILED

FEB 23 1984

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

FIRSTBANK FINANCIAL CORPORATION, )  
a Massachusetts corporation, )

Plaintiff, )

vs. )

No. 83-C-600-C

MGF DRILLING COMPANY-MIDLAND, )  
a Texas corporation, MICHAEL C. )  
BIGHEART, C. F. BIGHEART, WESLEY R.)  
McKINNEY, LES G. GODDARD, R. JAMES )  
STILLINGS, LYLE W. TURNER, BOBBY H.)  
YOUNG, JOE D. WILLARD, D. RICHARD )  
CLARK, JAMES V. SMITH, JAMES R. )  
CROCKER, )

Defendants. )

ORDER OF DISMISSAL

On this 23 day of February, 1984, upon the joint motion of all of the parties Plaintiff and Defendant, except the Defendant Lyle W. Turner, the above styled action is hereby dismissed without prejudice to the refiling thereof as to all of the Defendants above named except the Defendant Lyle W. Turner.

s/H. DALE COOK

H. DALE COOK,  
United States District Judge

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

CLARK RESOURCES, INC.,  
Plaintiff,  
vs.  
EMC, INC.,  
Defendant.

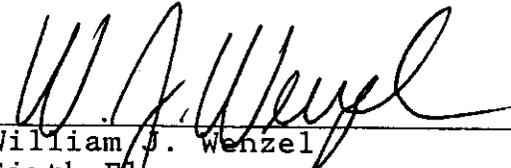
No. 83-C-546-E

STIPULATION OF DISMISSAL  
WITH PREJUDICE

Plaintiff, Clark Resources, Inc., hereby dismisses with prejudice its Complaint filed June 27, 1983, as against Defendant, EMC, Inc.

SNEED, LANG, ADAMS,  
HAMILTON, DOWNIE & BARNETT

By

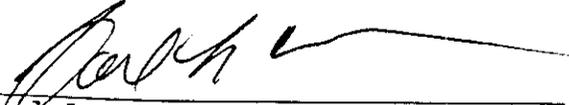
  
William J. Wenzel  
Sixth Floor  
114 East Eighth Street  
Tulsa, Oklahoma 74119  
(918) 583-3145

Attorneys for Plaintiff

STIPULATED AND AGREED TO:

CARSON, RAYBURN, HIRSCH & MUELLER

By

  
Joel L. Carson,  
Attorneys for Defendant

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

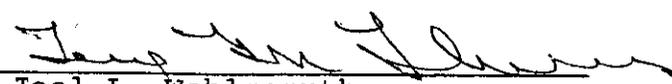
FEB 22 1983  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
TULSA

HALLIBURTON COMPANY, )  
a Delaware corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
B. L. ENERGY, INC., )  
an Oklahoma corporation, )  
 )  
Defendant. )

No. 83-C-1018-C

NOTICE OF DISMISSAL

The plaintiff, Halliburton Company, hereby dismisses its action against the defendant B. L. Energy, Inc. without prejudice, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure.



Joel L. Wohlgemuth  
Terry M. Thomas  
Norman, Wohlgemuth & Thompson  
909 Kennedy Building  
Tulsa, Oklahoma 74103  
(918) 583-7571

Attorneys for the Plaintiff,  
Halliburton Company

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

FILED

FEB 21 1994

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

BUSTER H. BARKER and  
LAVETA BARKER,

Plaintiffs,

vs.

UNIROYAL, INC.,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 83-C-978-C ✓

O R D E R

This cause came on to be heard on plaintiffs' Motion for a voluntary dismissal without prejudice of said cause;

IT IS ORDERED that said action be dismissed without prejudice and that each party pay their own respective costs.

  
UNITED STATES DISTRICT JUDGE

DATE	NR.	83-C-895-C PRAGUE v PICKERING PROCEEDINGS 83-C-895-C
10-24	1	PETITION for removal.a
10-24	2	REMOVAL BOND.a
10-24	3	NOTICE of removal.a
10-26	4	ANSWER of Deft. pt
11-4	MO	ORDER that PT is set for 2-15-84 @ 2:30 PM; PTO or memo due 2-6-84; disc completed by 2-1-84(HDC-J)a ntc/mld
12-14	5	MOTION of defts for judgment on the pldgs. tj
12-14	6	BRIEF in support of #5. tj
1-23-84	7	ORDER that defts mot/judgment on the pldgs is converted to mot/sj & Parties are granted to 2-3-84 to present the Ct w/material appropriate to said motion(HDC-J)a cps/mld to attys & pltf @ her home address.
2-2	8	NOTICE of pltf of discharge of counsel, Terry Meltzer.a
2-2	9	MOTION of pltf to dismiss.a
2-10	10	OBJECTION of Defts. to Pltf's mot/dismiss. pt
2-10	11	BRIEF in support of mot. #10. pt
2-15	Min:	CASE CALLED FOR PRETRIAL. Pltf. not present or rep. Deft. rep. Ct. makes record of pltf. discharge of counsel. Deft. moves to dismiss w/prej. Ct. dismisses case w/prej. and assesses costs & atty fees against pltf. Deft. to prepare proper ORDER wi/10 days.(HDC-J) (VM-cr)
2-16	MO	ORDER that dismissal entered on 2-15-84 is hereby vacated & reset for PT on 2-21-84 @ 10:30 A.M.(HDC-J)a ntc/mld
2-21	Min:	HRG. re dismissal or Pretrial. Pltf. appearing pro se & req. dismissal of case. Ct. dismisses lawsuit for lack of Federal jurisdiction. (HDC-J) (VM-cr)rm

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

FILED

FEB 21 1984

JACK G. SILVER, CLERK  
DISTRICT COURT

KAMILLE McKINLEY, a minor, by )  
JANE McKINLEY, Guardian, and )  
KENNETH McKINLEY, )

Plaintiffs, )

vs. )

THE WESTERN CASUALTY AND )  
SURETY COMPANY, a Kansas )  
corporation, )

Defendant, )

vs. )

CHERYL STICE and FARMERS )  
INSURANCE GROUP, )

Third Party Defendants. )

NO. 83-C-681-C

ORDER OF DISMISSAL

ON this 21 day of February, 1984, upon the written application of the parties for A Dismissal with Prejudice of the Complaint and all causes of action. The Court having examined said application, finds that said parties have entered into a compromised settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

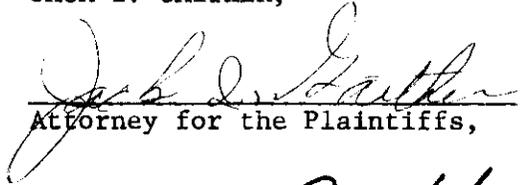
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiffs filed herein against the defendants be and the same hereby are dismissed with prejudice to any future action.

ALLAN COOK

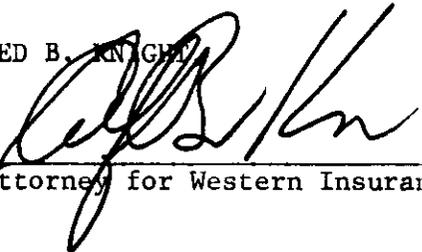
JUDGE, DISTRICT COURT OF THE UNITED STATES,  
NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

JACK I. GAITHER,

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

ALFRED B. KNIGHT

By:   
\_\_\_\_\_  
Attorney for Western Insurance,

RAY H. WILBURN,

  
\_\_\_\_\_  
Attorney for Third Party Defendants.

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

FILED

FEB 21 1984

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

JERRY ALLEN TAYLOR, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 T. K. INTERNATIONAL, INC., )  
 et al., )  
 )  
 Defendants. )

No. 83-C-387-C ✓

O R D E R

Now before the Court for its consideration is defendant T. K. International's Motion to Dismiss based on several grounds, including plaintiff's failure to file timely charges with the EEOC.

Plaintiff has filed his action pro se under Title VII (42 U.S.C. §20003), and Title 42 U.S.C. §1981, alleging racial discrimination in his termination of July 2, 1980. On October 28, 1983 a status conference was held at which plaintiff appeared. At that time, plaintiff was granted 20 days to submit additional documentation with regard to proceedings before the EEOC.

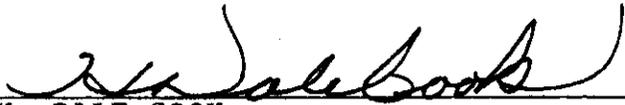
Plaintiff has filed a letter directed to him from the EEOC, dated July 29, 1982, stating that the EEOC had received plaintiff's communication of June 23, 1982 and had directed plaintiff's letter to the OFCCP at the Department of Labor. Plaintiff's letter of June 23, 1982 has also been submitted to

the Court. This letter asks only for compliance review of T. K. International in relation to its government contracts. Even if plaintiff's letter could be construed as notice of his alleged discriminatory discharge, this notice was filed well outside the required statutory limitation period. (42 U.S.C. §2000e(5)(3)). Therefore, plaintiff's complaint must be dismissed as to all defendants with respect to plaintiff's claim under Title VII.

Plaintiff's Complaint also appears to attempt to state a claim under Title 42 §1981. However, plaintiff's complaint fails to allege any facts in support of his claim of discrimination. Where no factual basis for the alleged discrimination is asserted in the complaint, the complaint must be dismissed for failure to state a claim. Smith v. Gibson, 524 F.S. 664 (D.C.Mich. 1981).

Therefore it is the Order of the Court that plaintiff's complaint should be and hereby is dismissed in all respects, including any pendent state claims which plaintiff may have asserted in addition to claims under Title VII and Title 42 §1981. The motion of defendant T. K. International for default judgment is therefore moot. All counterclaims by defendant Local Union 620 of the International Association of Bridge, Structural, and Ornamental Ironworkers, AFL-CIO are also hereby dismissed.

It is so Ordered this 17 day of February, 1984.

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

**FILED**

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

FEB 21 1984

HALLIBURTON COMPANY,  
a Delaware corporation,  
  
Plaintiff,  
  
vs.  
  
PETROLEUM SERVICE COMPANY,  
an Oklahoma corporation,  
  
Defendant.

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

No. 83-C-1019-E

JUDGMENT OF DEFAULT

Defendant Petroleum Service Company has been served with process. It has failed to appear and answer the plaintiff's Complaint filed herein. The default of defendant Petroleum Service Company has been entered. It appears from the Affidavit in Support of Entry of Judgment of Default that the plaintiff is entitled to judgment.

IT IS ORDERED AND ADJUDGED that plaintiff recover from defendant Petroleum Service Company the sum of \$22,809.59 plus interest of \$1,907.14, plus interest accruing after June 1, 1983 at the daily rate of \$6.34 until paid, a reasonable attorneys' fee <sup>to be set upon application</sup> ~~in the amount of \$694.25~~, and the costs of this action.

Dated this 21 day of February, 1984.

S/ JAMES E. ELLISON

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

FILED

THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FEB 21 1984

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

IVA I. POPERA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BARTLETT MEMORIAL MEDICAL )  
 CENTER, INC., an Oklahoma )  
 Corporation, )  
 )  
 Defendant. )

No. 83-C-562-E

ORDER OF DISMISSAL WITHOUT PREJUDICE

Upon application of the Plaintiff, and without objection of the Defendant, the Court does hereby dismiss Plaintiff's cause of action without prejudice.

DATED this 21<sup>st</sup> day of February, 1984.

James O. Davis  
JUDGE OF THE NORTHERN DISTRICT OF  
OKLAHOMA

*entered*

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

RICHARD LEE McCARTHER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DR. WILLIAM FORD, DR. G. J. )  
 GREGORATTI and DR. R. D. )  
 GARCIA, )  
 )  
 Defendants. )

No. 82-C-1171-E ✓

**FILED**

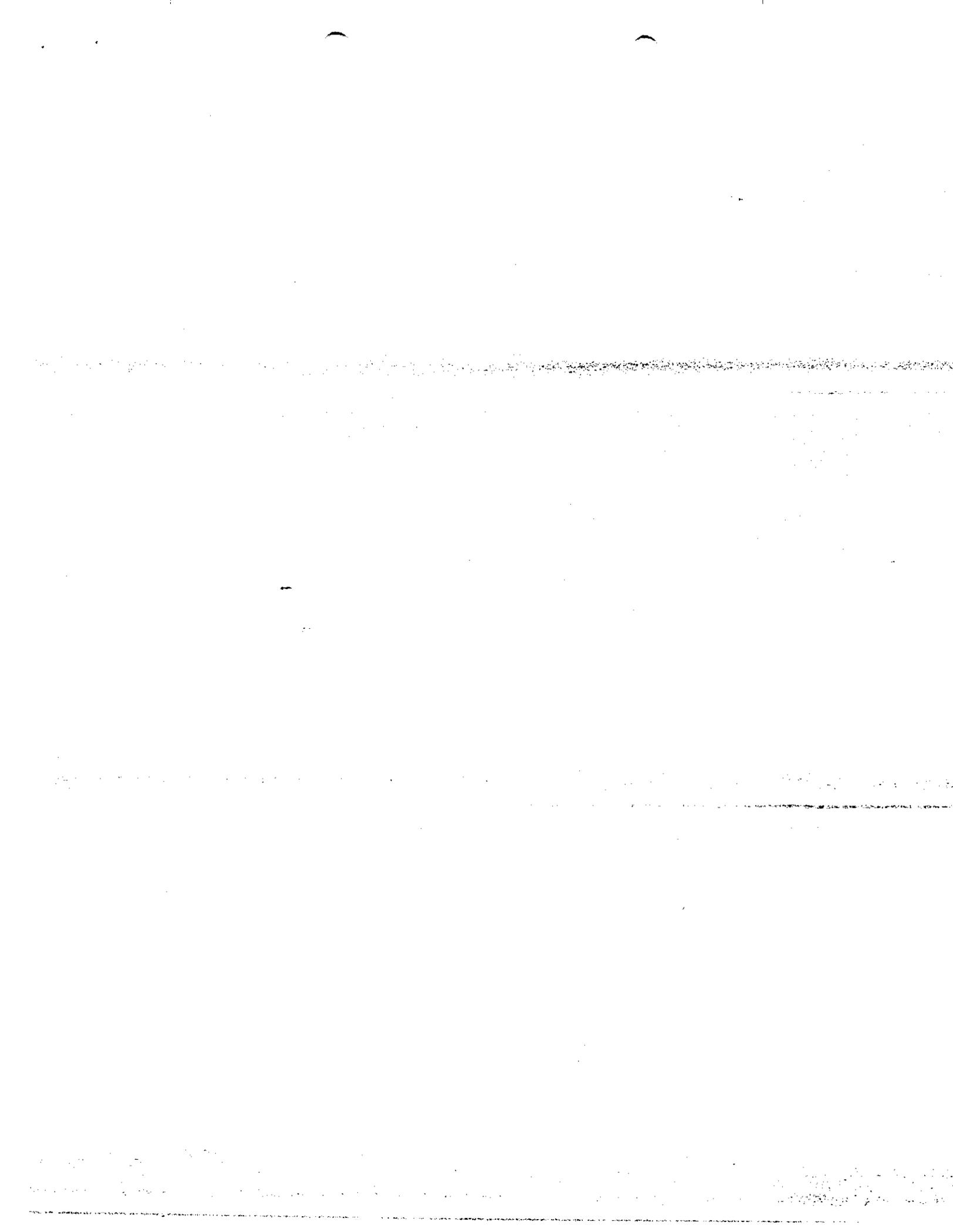
FEB 2 / 1982

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

ORDER

The Court has before it the motion of Defendants to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1915(d). In support of their motion Defendants assert that Plaintiff's complaint fails to state a claim upon which relief can be granted and that Defendants are absolutely immune from liability for damages since they were acting in a quasi-judicial capacity pursuant to an Order of the Tulsa County District Court.

Plaintiff Richard Lee McCarther was arrested December 18, 1981 by the Tulsa Police Department. On February 5, 1982 upon application of Defendants' attorney, Plaintiff was transferred to Eastern State Hospital by Order of the Court. At that time, Plaintiff was charged by information in the District Court of Tulsa County with the crimes of robbery with firearms; shooting with intent to kill and carrying a firearm after former conviction of felony. The purpose of the transfer to Eastern



State Hospital was the determination of Plaintiff's competence to stand trial pursuant to 22 O.S. § 1175.1 et seq. Upon admission Plaintiff was reported to be hostile, suspicious and paranoid and suffering from severe depression, crying spells and shaking. Plaintiff was given a diagnosis of Schizophrenia Paranoid type and Anti-social Personality. Plaintiff was prescribed certain medications at this time which he took voluntarily and willingly. On 2-16-82 Plaintiff refused further medication and it was discontinued. On 2-18-82 Plaintiff took one dose of thiorazine, 100 milligrams and refused to take it again. No further medication was given until Plaintiff's discharge on 2-24-82 to the Tulsa County District Court with a recommendation that he was incompetent to stand trial and mentally ill. The recommendation to the Court stated that it was believed Plaintiff would respond to treatment and would eventually regain competency to stand trial.

On March 1, 1982 Plaintiff was committed to Eastern State Hospital by the District Court until such time as he was declared competent to stand trial. From March 3, 1982 to March 25, 1982 Plaintiff was treated by Dr. Gregoratti. Plaintiff was treated by group therapy, educational films, recreational activities and medication. At all times the medication was offered to him to be taken orally and was taken willingly. The reports on the Plaintiff at this time stated that he was "a Christian". Contacts with Plaintiff's family and friends failed to uncover any evidence of membership in any specific denomination. On the 19th of March, plaintiff spoke to the patient advocate stating

that he objected to oral medication and asserting that he was a Christian Scientist. In view of the investigation into Plaintiff's background and the fact that no further discussions were had regarding the matter, it was determined that this statement was a "maneuver" of the Plaintiff to question his need for medication.

On the 28th of March, Plaintiff escaped from Eastern State Hospital under conditions that indicated some pre-planning on his part.

In April of 1982 Plaintiff was arrested by the Okmulgee Police Department and transferred back to the Tulsa County Jail. Plaintiff subsequently escaped from the Tulsa County Jail and was arrested on the 2nd of June, 1982 in Midwest City. On the 3rd of September, 1982 Plaintiff was ordered committed to Eastern State Hospital by the Oklahoma County District Court and was readmitted on the 7th of September for continuation of his treatment and to be restored to competency to stand trial in Tulsa County. Upon his recommittment, Plaintiff was taken to the security ward and treated by Dr. William Ford. Plaintiff initially and throughout his stay refused to talk with Dr. Ford or any members of the treatment team. Plaintiff was continued on a regimen of Haldol, 20 milligrams orally two times a day, which was reduced to 15 milligrams twice a day after one month's treatment. Plaintiff continued to improve under the chemotherapy, recreational therapy and group therapy. Such improvement was noted despite the fact that he refused to speak with or cooperate with his treatment team. No discussions were

had at this time concerning religious principles. Plaintiff did not refuse to take any of the medication offered to him.

On January 21, 1983 Plaintiff was released from the hospital to the Tulsa County District Court with a report indicating Plaintiff had responded to his treatment and was currently competent to stand trial.

Plaintiff's civil rights complaint was filed in this Court on the 20th of December, 1982. Plaintiff alleged a violation by Dr. Carcia, Dr. Gregoratti and Dr. Ford of his first amendment rights to free expression of his religious beliefs. Plaintiff also alleged continued treatment for a non-existent mental illness. The following relief was requested: (1) a temporary restraining order and permanent injunction prohibiting the administration of medication to him; (2) release from the hospital for a jury trial on the issue of competence; (3) \$1 million dollars in damages to his health for pain and suffering and violation of his constitutional rights. Plaintiff has since been released from Eastern State Hospital and declared competent to stand trial. The only issue before this Court therefore is the question of money damages under 42 U.S.C. § 1983.

Defendants contend that since they were performing their duties pursuant to a Court order they are entitled to "quasi-judicial immunity" and are therefore absolutely immune from liability for damages in a § 1983 action. Defendants cite Mills v. Small, 446 F.2d 249 (9th Cir. 1971); Burks v. Callion, 433

F.2d 318 (9th Cir. 1970); Franklin v. Meredith, 386 F.2d 958 (10th Cir. 1967). These cases and others cited by Defendants describe a "quasi-judicial immunity" which is available to persons whose acts were committed "in the performance of an integral part of the judicial process". Burks, supra 433 F.2d at 319. Types of activities covered by these cases include preparation and submission of medical reports to a state court by a court-appointed psychiatrist, the certificate to the court that a psychiatric examination had taken place pursuant to an order of the court, recommendations to a court in regard to the commitment of persons by members of a medical commission appointed by the county court, and statements to the court that a party was mentally competent to stand trial. Such physicians appointed by courts to conduct examinations of persons under the jurisdiction of the Court were afforded the same immunities from civil damage suit as other quasi-judicial officers while they were acting pursuant to and in the scope of such appointment. See Philips v. Singletary, 350 F.Supp. 297 (D. S.C. 1972).

In this case Dr. R. D. Garcia, Chief Forensic Psychiatrist at Eastern State Hospital, treated the Plaintiff and performed the evaluation pursuant to an order of the Tulsa County District Court. The court had committed Plaintiff to the hospital for the purpose of determining his competence to stand trial. Dr. Garcia evaluated Plaintiff and recommended that he was incompetent and mentally ill. Plaintiff was then returned to the district court.

This Court finds that Dr. Garcia was acting in a quasi-

judicial capacity and pursuant to an Order of the Court when he diagnosed Plaintiff and treated Plaintiff for symptoms of illness. Dr. Garcia therefore would be absolutely immune from damages in a civil suit pursuant to 42 U.S.C. § 1983.

The treatment of persons judicially determined incompetent would not in this Court's view fall within the purview of "acts committed in the performance of an integral part of the judicial process". The absolute immunities from civil damages accorded to judges, legislators and prosecutors must be jealously guarded in order to prevent the total erosion of remedies allowed under 42 U.S.C. § 1983. Although state officials are not routinely cloaked with absolute immunity, the Supreme Court has sanctioned a "qualified immunity" which shields certain state actors from damage liability for official actions found to have been taken in "good faith". See O'Connor v. Donaldson, 422 U.S. 563, 95 S.Ct. 2486 (1975); Wood v. Strickland, 420 U.S. 308, 95 S.Ct. 992 (1975). In a recent case, the Supreme Court has stated:

The resolution of immunity questions inherently requires a balance between the evils inevitable in any available alternative. In situations of abuse of office an action for damages may offer the only realistic avenue for vindication of constitutional guarantees (citations omitted) ... It is this recognition that has required the denial of absolute immunity to most public officers.

Harlow v. Fitzgerald, 102 S.Ct. 2727, 2736 (1982).

Qualified or "good faith" immunity is an affirmative defense that must be pleaded by a defendant official. The previous cases had established that the good faith defense had both an objective

and subjective aspect. Referring both to the objective and subjective elements the Court has held that qualified immunity would be defeated if an official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the Plaintiff or if he took the action with malicious intention to cause a deprivation of constitutional rights or other injury ...". See Wood, supra 95 S.Ct. at 1000 through 1001. In Harlow v. Fitzgerald, however, the Court recognized that insubstantial claims carry with them a very high social cost not only to defendant officials but to society as a whole. Such costs include the expense of litigation, the diversion of official energy from pressing public issues and the deterrence of able citizens from acceptance of public office. The Court further recognized that damage suits concerning constitutional violations need not necessarily proceed to trial but can be terminated on a properly supported motion for summary judgment based on the defense of immunity. The Court, concluding that bare allegations of malice should not be enough to subject officials to the costs of trial or the burdens of broad-reaching discovery, held in Harlow that "... government officials performing discretionary functions should generally be shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow, supra, at p. 2738. In pursuance of this standard courts are to determine whether the law in question was clearly established when the

conduct complained of occurred. See Miller v. City of Mission, Kansas, 705 F.2d 368 (10th Cir. 1983); A. E. and R. R. v. Anthony Mitchell, et al., \_\_\_ F.2d \_\_\_ (10th Cir. 1983).

In connection with this motion the Court has reviewed matters outside the pleadings. The Federal Rules provide that under such circumstances the Court should convert the 12(b)(6) motion to a summary judgment under Federal Rules of Civil Procedure 56. Rule 56 provides that summary judgment shall be rendered if the pleadings and other documents on file with the court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The moving party must demonstrate entitlement to judgment beyond a reasonable doubt. Norton v. Liddell, 620 F.2d 1375 (10th Cir. 1980).

Constitutional law with respect to the medication of mental health patients is currently in a state of flux and is unsettled within this district, particularly in view of the fact that Plaintiff herein was committed pursuant to an Order of the Court to be treated until he became competent to stand trial in a criminal proceeding. It would not be reasonable to expect a physician in a state supported hospital to be aware of new and unsettled areas of constitutional law.

Additionally the Court finds that Dr. William Ford had no reason to believe that Plaintiff refused medication on the basis of his religion. Dr. Ford treated Plaintiff after September 7,

1982. At this time, the Plaintiff consistently refused to speak to any member of his treatment team and never informed Dr. Ford of his religious preferences.

The Court additionally finds that Dr. Gregoratti became aware of Plaintiff's claim in regard to the Christian Scientist faith but after due investigation determined that no members of Plaintiff's family were a member of the denomination, that no one knew about Plaintiff's alleged religious preference and that Plaintiff himself had not claimed to be a Christian Scientists until several weeks after he had been admitted to the hospital.

At no time did any of the Defendants force Plaintiff to take medication. Given the mental condition of the Plaintiff, the characteristic symptoms he displayed, and the unstable state of the law in regard to the medication of mental patients, this Court finds that the conduct of the Defendants Ford and Gregoratti did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. See Harlow v. Fitzgerald, supra. In light of the entire record before this Court, summary judgment would be proper in this case in regard to Drs. Ford and Gregoratti.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Defendants to dismiss as to Defendant R. D. Garcia be and the same is hereby granted.

IT IS FURTHER ORDERED that the motion of Defendants to dismiss as to Drs. Ford and Gregoratti considered by this Court as a motion for summary judgment pursuant to Rule 56 of the

Federal Rules of Civil Procedure be and the same is hereby granted.

All parties to bear their own costs.

ORDERED this 2/5<sup>1</sup> day of February, 1984.

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

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

FEB 27 1984

SAINT FRANCIS HOSPITAL, )  
INC., an Oklahoma non-profit )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RICHARD S. SCHWEIKER, )  
SECRETARY OF HEALTH )  
AND HUMAN SERVICES, )  
 )  
Defendant. )

No. 79-C-184-E and  
82-C-759-E ✓  
(Consolidated)

JUDGMENT

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 Saint Francis Hospital, Inc. take nothing from the Defendant Richard S. Schweiker, Secretary of Health and Human Services, that the action be dismissed on the merits, and that the Defendant Richard S. Schweiker, Secretary of Health and Human Services recover of the Plaintiff Saint Francis Hospital, Inc. his costs of action.

DATED at Tulsa, Oklahoma this 2/27 day of February, 1984.

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

ent.

FILED

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

FEB 21 1984

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

TED WILLIAM FORD, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 FRANK THURMAN, )  
 )  
 Respondent. )

No. 83-C-1072-E

ORDER

The Court has before it the petition of Ted William Ford for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition filed January 4, 1984 in forma pauperis by leave of the Court alleged three separate grounds for relief. Grounds one and two were discussed in a previous Order of this Court. This Order is in reference to ground three only.

Petitioner alleges in ground three "unlawful confinement by denial of Petitioner's right to counsel when unlawfully and highly suggestive display of Petitioner's photograph and prejudicial utterances made." In support of this ground, Petitioner alleges that his confinement was enhanced by "prejudicial, discriminatory and unconstitutional actions where Petitioner was denied his right to counsel at unnecessary and abusive pre-trial showing of Petitioner's photograph by the prosecution for the state and suggestive utterances made conducive of a gross miscarriage of justice." This ground is substantially the same as that alleged in ground two but appears

to emphasize the showing of his photograph prior to trial without the presence of his counsel. No further information could be gleaned from the petition since, instead of supporting facts, Petitioner has simply made a series of legal claims.

As was true of ground two of the petition, ground three has not yet been raised on direct appeal. This issue was presented in a habeas corpus petition in the Oklahoma Court of Criminal Appeals prior to his jury trial in the state court, and the writ was denied. Since Petitioner has not yet exhausted his rights to appeal and his remedies available in the state courts, raising of this issue before this Court is premature and ground three of the petition must therefore be dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED that ground three of the petition for writ of habeas corpus be and the same is hereby dismissed.

ORDERED this 21<sup>st</sup> day of February, 1984.

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

FILED

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

FEB 21 1984

VINCENT KEITH PARTRIDGE, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 CHIEF OF POLICE OF THE CITY )  
 OF TULSA, et al., )  
 )  
 Respondents. )

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

No. 84-C-71-E ✓

O R D E R

Petitioner Vincent Partridge has filed with leave of Court in forma pauperis a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. After an examination of the petition, the Court makes the following findings and order.

It appears from the petition that Partridge is in custody of the Respondent Tulsa County Sheriff pending trial on the charge of armed robbery and kidnapping. Petitioner was arraigned on such charge on June 11, 1983. Petitioner alleges a coerced confession to a crime he did not commit, a coerced guilty plea, and ineffective assistance of counsel. In early February of 1984, Petitioner filed a motion in Tulsa County District Court "to recant" and to fire his lawyer.

The petition affirmatively shows that Partridge has not utilized his remedies by way of direct action in the state court by writ of habeas corpus in the state court, or by way of direct appeal. In addition he makes no showing that his available state

court remedies are either inadequate or ineffective. Before seeking relief in this Court he must exhaust his available and effective state remedies. See Boyd v. Oklahoma, 375 F.2d 481 (10th Cir. 1967); Runnels v. Hess, 713 F.2d 596 (10th Cir. 1983); Engle v. Isaac, 456 U.S. 107, 102 S.Ct. 1558 (1982).

The Court recognizes that the allegations of Mr. Partridge are very serious, but may not intervene until he has had a chance to use the remedies available to him in the state courts. Therefore this Court must dismiss this petition for writ of habeas corpus on the merits, without prejudice to its refiling at a later time if the Petitioner is not able to obtain a remedy in the state courts.

IT IS THEREFORE ORDERED AND ADJUDGED that the petition of Vincent Keith Partridge for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be and the same is hereby dismissed.

IT IS FURTHER ORDERED that copies of this Order be transmitted to Petitioner and to the office of the State Attorney General.

ORDERED this 21<sup>ST</sup> day of February, 1984.

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

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

RICHARD LEE McCARTHER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DR. WILLIAM FORD, DR. G. J. )  
 GREGORATTI and DR. R. D. )  
 GARCIA, )  
 )  
 Defendants. )

No. 82-C-1171-E ✓

FILED

FEB 24 1984

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

JUDGMENT

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 Richard Lee McCarther take nothing from the Defendants William Ford and G. J. Gregoratti, that the action be dismissed on the merits, all parties to bear their own costs.

DATED at Tulsa, Oklahoma this 21<sup>ST</sup> day of February, 1984.

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







Entered

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FEB 17 1984

RECEIVED  
CLERK  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DEBORAH J. DONNELLY, a/k/a )  
 DEBORAH J. BRANSCOMB )  
 )  
 Defendant. )

CIVIL ACTION NO. 83-C-369-B ✓

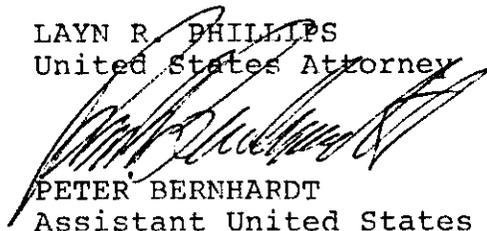
NOTICE OF DISMISSAL

COMES NOW the United States of America by  
Layn R. Phillips, 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 with prejudice.

Dated this 17 day of February, 1984.

UNITED STATES OF AMERICA

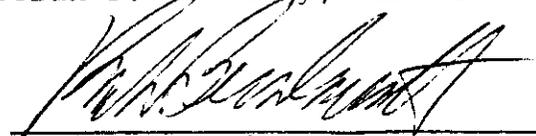
LAYN R. PHILLIPS  
United States Attorney



PETER BERNHARDT  
Assistant United States Attorney  
460 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 18<sup>th</sup> day of February,  
1984, a true and correct copy of the foregoing was mailed,  
postage prepaid thereon, to: Deborah J. Donnelly, 422 West  
Beaver, Jenks, Oklahoma 74037.



Assistant United States Attorney

*entered*

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

**FILED**

**FEB 17 1984**

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

WILBUR TUCKER,  
Plaintiff,

vs.

JACK DENNIS & ASSOCIATES, INC.,  
Defendant.

)  
)  
)  
)  
)  
)  
)

CASE NO. 83-C-842-B

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW on this 16th day of February, 1984, comes on before me, the undersigned Judge, the Application of Plaintiff for an Order dismissing the above styled and numbered cause without prejudice. The Court finds that there is no objection by the Defendant and finds that same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled and numbered cause be dismissed without prejudice to any future action.

S/ THOMAS R. BRETT

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

IRVIN VICTOR LYLE, JR.,

Plaintiff,

vs.

THE CITY OF GROVE, OKLAHOMA;  
WILLIAM D. SHERWOOD, Individually  
and in his official capacity as  
Chief of Police for the City of  
Grove, Oklahoma; MAX SANKS,  
Individually and in his capacity  
as City Manager for the City of  
Grove, Oklahoma; HUBER LOGUE,  
Individually and in his official  
capacity as Mayor of the City of  
Grove, Oklahoma; and RAYMOND  
JOHNSON, Individually and in his  
official capacity as Captain of  
Police of the City of Grove,  
Oklahoma,

Defendants.

NO. 82-C-874-C

**FILED**

FEB 17 1984

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

ORDER OF DISMISSAL

On this 17 day of Feb, 1984, 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 and have requested the Court to dismiss said  
cause with prejudice to any future action, and the Court having been fully  
advised in the premises finds that said Complaint should be dismissed  
pursuant to said application.

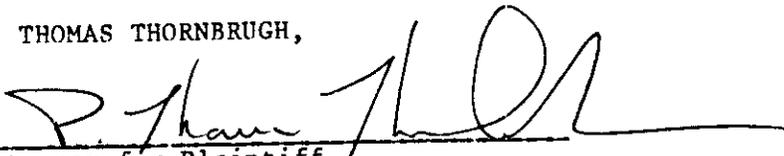
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that  
the Complaint and all causes of action of Plaintiff filed herein against  
the Defendants be and the same hereby are dismissed with prejudice to any  
future action.

s/H. DALE COOK

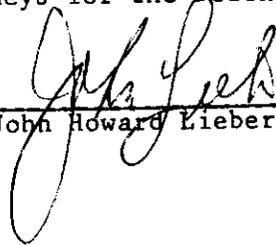
United States District Judge

APPROVALS:

P. THOMAS THORNBRUGH,

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

KNIGHT, WAGNER, STUART, WILKERSON & LIEBER  
Attorneys for the Defendants

By:   
\_\_\_\_\_  
John Howard Lieber

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GARRETT J. BAKER; )  
COUNTY TREASURER and BOARD OF )  
COUNTY COMMISSIONERS, Tulsa )  
County, Oklahoma; and )  
OKLAHOMA TAX COMMISSION, )  
 )  
Defendants. )

**FILED**

FEB 17 1984

Jack U. Sinner, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 83-C-28-C

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17 day of Feb, 1984. Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, appear by David A. Carpenter, Assistant District Attorney; the Defendant Oklahoma Tax Commission appears by Joe Mark ElKouri, Assistant General Counsel; and the Defendant, Garrett J. Baker, appears not, but makes default.

The Court being fully advised and having examined the file herein finds that the Defendant, Garrett J. Baker, was served with Summons and Complaint on January 25, 1983; that the Defendant, County Treasurer, Tulsa County, Oklahoma, was served with Summons and Complaint on January 13, 1983; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, was served with Summons and Complaint on January 13, 1983; and that the Defendant, Oklahoma Tax Commission, was served with

Summons and Complaint on January 14, 1983. It appears that the Defendants County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma have filed their Answers on February 3, 1983; that the Defendant, Oklahoma Tax Commission, has filed its Answer and Cross-Petition on February 9, 1983; and that the Defendant, Garrett J. Baker, has failed to answer and his default has been entered by the Clerk of this Court on January 9, 1984.

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

Lot Ten (10), Block Thirty-Nine (39), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof,

That on December 29, 1976, Garrett J. Baker executed and delivered to the United States of America; acting through the Administrator of Veterans Affairs, his promissory note in the amount of \$11,000.00, payable in monthly installments, with interest thereon at the rate of eight and one half percent (8½%) per annum.

That as security for the payment of the above described note, Garrett J. Baker executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a real estate mortgage dated December 29, 1976, covering the above described property. Said mortgage was recorded in Book 4244, Page 2510, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Garrett J. Baker, made default under the terms of the aforesaid promissory note and mortgage by reason of his failure to make monthly installments due thereon, which default has continued and that by reason thereof the above named Defendant is indebted to the Plaintiff in the sum of \$11,507.55, as of January 31, 1984, plus interest thereafter at the rate of eight and one half percent (8½%) per annum or \$2.45 per day, until judgment, plus interest thereafter at the legal rate until fully paid, plus the costs of this action accrued and accruing.

The Court further finds that the Defendant, Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of income tax warrant No. 20682, issued on October 29, 1982, against Garrett J. Baker, and filed of record in Tulsa County, Oklahoma, on November 18, 1982, for assessed, unpaid and delinquent income taxes, in the principal amount of \$86.51, plus penalties and interest accrued and accruing to the State of Oklahoma, which lien is subject and inferior to the first mortgage lien of Plaintiff.

The Court further finds that there are currently no ad valorem or personal property taxes due with respect to the above described property and that the Defendants, County Treasurer, and Board of County Commissioners, Tulsa County, Oklahoma, do not have any lien on the property which is the subject matter of this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Garrett J. Baker, in the amount of \$11,507.55, plus interest at the rate of eight and one half percent (8½%) per annum or \$2.45 per day, from January 31, 1984, until judgment, plus interest thereafter at the current legal rate of 10.11 percent per annum until fully paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Oklahoma Tax Commission, have and recover judgment against the Defendant, Garrett J. Baker, in the principal amount of \$86.51, plus penalties and interest accrued and accruing to the State of Oklahoma, plus costs this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of the Defendant, Garrett J. Baker, to satisfy the money judgment of the Plaintiff 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 of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

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

Third:

In payment of the judgment rendered herein in favor of the Defendant, Oklahoma Tax Commission.

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

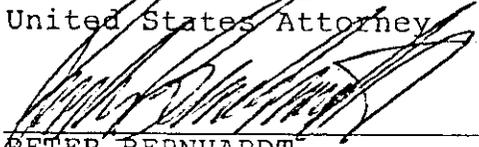
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, the Defendant and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right,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

s/H. DALE COOK

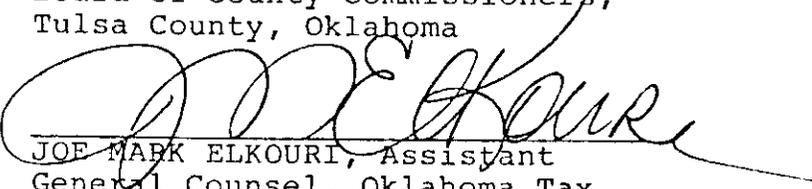
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA  
LAYN R. PHILLIPS  
United States Attorney

  
\_\_\_\_\_  
PETER BERNHARDT  
Assistant United States Attorney

  
\_\_\_\_\_  
DAVID A. CARPENTER, Assistant  
District Attorney, Attorney for  
Defendants, County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

  
\_\_\_\_\_  
JOE MARK ELKOURI, Assistant  
General Counsel, Oklahoma Tax  
Commission

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

**FILED**  
IN OPEN COURT

FEB 17 1984 *jm*

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

UNITED STATES FIDELITY AND )  
GUARANTY COMPANY, a )  
corporation, )

Plaintiff, )

vs. )

JIMMY D. FISHER, individually, )  
and d/b/a FISHER OIL COMPANY, )

Defendant. )

No. 83-C-93 C ✓

J U D G M E N T

This cause came on for trial on this 17th day of February, 1984, at which time the plaintiff appeared by its attorney, David H. Sanders, and the defendant appeared by his attorney, Robert M. Butler. The Court, after hearing the testimony of witnesses sworn and examined in open court, finds the issues in favor of the plaintiff and against the defendant and finds that plaintiff is entitled to have and recover a judgment of and from the defendant for the sum of \$14,484.55, with interest thereon from July 23, 1982 to date in the sum of \$1,366.69, and for an attorney's fee in the sum of \$ 1200.<sup>00</sup>, with interest thereon at the rate of <sup>10-11%</sup> ~~15%~~ per annum from date hereof until paid in full.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, United States Fidelity and Guaranty Company,

have and recover a judgment of and from the defendant, Jimmy D. Fisher, individually, and d/b/a Fisher Oil Company, for the sum of \$14,484.55, with interest thereon from July 23, 1982 to date in the sum of \$1,366.69, and for an attorney's fee in the sum of \$ 1200.<sup>00</sup>, with interest thereon at the rate of <sup>10.11%</sup>~~15%~~ per annum from date hereof until paid in full.

FOR ALL OF WHICH LET EXECUTION ISSUE.

  
UNITED STATES DISTRICT JUDGE

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

FILED

FEB 17 1994

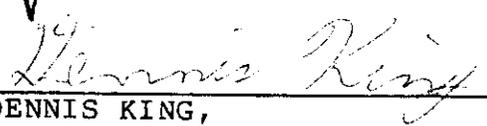
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

LINDA D. HOLDER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FARMERS INSURANCE )  
 COMPANY, INC. )  
 )  
 Defendant. ) No. 83-C-393-C

STIPULATION OF DISMISSAL

COMES NOW, the parties and each of them and hereby  
dismiss the case with prejudice since a compromised settlement  
has been reached by the parties.

  
\_\_\_\_\_  
JOHN NICKS,  
Attorney for Plaintiff

  
\_\_\_\_\_  
DENNIS KING,  
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

FEB 17 1984

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TERRY L. HARLAN, )  
 )  
 Defendant. )

CIVIL ACTION NO. 83-C-986-C

AGREED JUDGMENT

This matter comes on for consideration this 17 day  
of Feb, 198~~3~~<sup>4</sup>, the Plaintiff appearing by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Nancy A. Nesbitt, Assistant United States  
Attorney, and the Defendant, Terry L. Harlan, appearing pro se.

The Court, being fully advised and having examined the  
file herein, finds that the Defendant, Terry L. Harlan, was  
served with Summons and Complaint on December 2, 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 \$936.70, plus costs and interest at the  
current legal rate of 10.11 percent from the date of judgment  
until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that  
the Plaintiff have and recover judgment against the Defendant,  
Terry L. Harlan, in the amount of \$936.70, plus costs and

interest at the current legal rate of 10.11 percent from the date of judgment until paid.

s/H. DALE COOK

---

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

  
NANCY A. NESBITT  
Assistant U.S. Attorney

  
TERRY L. HARLAN  
Defendant

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

FILED  
FEB 15 1984  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

CRAWFORD ENTERPRISES, INC., )  
 )  
Plaintiff, )  
 )  
vs. ) Civil Action )  
 ) No. 83-C-859-C )  
 )  
DAVID L. HOWARD, d/b/a M & H )  
GATHERING, INC., a sole )  
proprietorship; and M & H GAS )  
GATHERING, INC., an Oklahoma )  
corporation, )  
 )  
Defendants. )

JOURNAL ENTRY OF DEFAULT JUDGMENT  
AGAINST DEFENDANT M & H GAS GATHERING, INC.

On this 15 day of February, 1984, the above-styled case comes on before me, the undersigned Judge of the United States District Court for the Northern District of Oklahoma, pursuant to the plaintiff's request and upon the plaintiff's affidavit, in accordance with Rule 55 of the Federal Rules of Civil Procedure. The plaintiff's claim against the defendant is for sums which by computation can be made certain. The defendant M & H Gas Gathering, Inc. is in default for failure to appear and answer or otherwise plead. Defendant M & H Gas Gathering, Inc. is neither an infant nor an incompetent person.

After hearing sworn testimony, taking evidence, examining the court file and being fully advised in the premises, the Court finds as follows.

The Court finds that plaintiff Crawford Enterprises, Inc. ("CEI") and defendants entered into a written equipment lease contract on December 31, 1981, in which CEI agreed to lease to the defendants property which was to be located in Washington County, Oklahoma and is described as:

One (1) Superior Model MW-63 compressor with one (1) 15", one (1) 9 1/2" and one (1) 6 1/2" cylinders driven by a Superior 8G-825 natural gas engine complete three (3) stage package.

The Court finds that in accordance with the terms of the above-described lease contract, defendants agreed to pay to the plaintiff rental and insurance payments for a term of two (2) years payable at the rate of \$11,550.00 per month for the above-described equipment. A true and accurate copy of the written equipment lease contract is attached to and incorporated in plaintiff's Exhibit "A".

The Court finds that plaintiff has fully performed all its duties and obligations in accordance with Exhibit "A" of the complaint and no further conditions precedent remain to be performed.

The Court finds that the defendants failed to make monthly payment of the \$11,550.00 commencing in June of 1982

and have continuously failed to make any of the monthly payments owed since June of 1982 in default of the terms of the lease contract.

The Court finds that the total sum owed by defendants to plaintiff under the agreement became payable immediately upon defendants' default and the amount of unpaid rentals owed to plaintiff in accordance with the terms of the lease contract is \$219,450.00.

The Court finds that plaintiff performed various repair and maintenance services on the equipment for which the defendants agreed to be responsible with regard to payment; the value of the repair and maintenance services is \$2,300.00 and the defendants are responsible for this payment.

The Court finds that plaintiff took possession of the equipment in accordance with the lease contract upon defendants' default of the agreement, and plaintiff incurred expenses in the sum of \$6,000.00 for which defendants are also responsible.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff is entitled to judgment against the defendant M & H Gas Gathering, Inc. in the sum of \$219,450.00 for rentals owed for the equipment, \$2,300.00 for repair and maintenance costs, \$6,000.00 for repossession costs, \$ 10,000 00 for plaintiff's

attorney's fees, together with interest on all these sums at the highest legal rate and plaintiff's court costs herein.

s/H. DALE COOK

---

Judge of the United States  
District Court for the  
Northern District of Oklahoma

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

**FILED**

EXCALIBUR OIL, INC., an )  
Oklahoma corporation, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
SANTA FE MINERALS CORPORATION, )  
a corporation, et al., )  
 )  
Defendants. )

No. 83-C-790-C

FEB 16 1987

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

ORDER

Now before the Court for its consideration is the motion of defendants to dismiss this action pursuant to Fed.R.Civ.P.12(b)(1). The plaintiffs have responded to this motion and it is now ready for the Court's determination. The sole issue before this Court is whether or not the principal place of business of defendant Santa Fe-Andover Oil Company is in the State of Oklahoma for subject matter jurisdiction purposes. 28 U.S.C. §1332(c).

The parties herein do not dispute the allegations in the second amended complaint that the three corporate plaintiffs have their principal places of business in Tulsa, Oklahoma.<sup>1</sup> The

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<sup>1</sup> The fourth plaintiff named in this action is an individual, Bruce McDonald, who is a citizen of Canada. Mr. McDonald's presence herein is (Footnote Continued)

dispute between the parties centers around the contention of the defendants that the principal place of business of defendant Santa Fe-Andover Oil Company is in the State of Oklahoma.

Section 1332(c) provides that corporations have "dual" citizenship for diversity purposes. Corporations are deemed to be a citizen not only of the state of incorporation, but also in the state where the principal place of business is located. Santa Fe-Andover Oil Company is incorporated under the laws of the State of Wyoming. There is no dispute as to this fact. The issue here revolves around determining the principal place of business of Santa Fe-Andover Oil Company.

The burden of proving the existence of diversity jurisdiction is upon the plaintiffs, the parties invoking the jurisdiction of this Court. Basso v. Utah Power and Light Company, 495 F.2d 906 (10th Cir. 1974). A determination of the principal place of business of a corporation is to be determined as a question of fact and the relevant inquiry should be on the character of the corporation, its purposes, the kind of business in which it is engaged and the situs of its operations. United Nuclear Corporation v. Moki Oil & Rare Metals Co., 364 F.2d 568, 570 (10th Cir. 1966).

In the instant case the plaintiffs first contend that Santa Fe-Andover Oil Company does not really have a principal place of

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(Footnote Continued)

irrelevant to the Court's determination in this matter. See 28 U.S.C. 1332(a) (3).

business and that it is actually "a shell" or dummy corporation, which does not in reality operate or function. Plaintiffs contend that all of the business of Santa Fe-Andover Oil Company is conducted by Santa Fe Minerals, a division of defendant Santa Fe International Corporation. The plaintiffs conclude from this that Santa Fe-Andover Oil Company should be totally disregarded for jurisdictional purposes. Alternatively, the plaintiffs assert that because Santa Fe-Andover Oil Company is operated by the chairman of the board of Santa Fe International Corporation and because, it alleges, the president and directors' offices are in California that its principal place of business is in California. Finally, the plaintiffs allege that Santa Fe-Andover Oil Company is in fact a defunct company and that its principal place of business would have to be the same state as its incorporation--in this case, Wyoming.<sup>2</sup>

The defendants counter the assertions of the plaintiffs and allege that Santa Fe-Andover Oil Company is in fact a viable, separate and distinct corporate entity (though they admit it is a subsidiary of Santa Fe International Corporation), with the substantial majority of its business being conducted from and in

---

<sup>2</sup> In support of their position the plaintiffs have attached to their Brief in Support of Diversity Jurisdiction three documents which do support a finding that there is some relationship between Santa Fe Minerals, Santa Fe International Corporation and Santa Fe-Andover Oil Company. The defendants do not dispute that there is a relationship between these parties. The plaintiffs have also quoted in their Brief passages from the deposition of Jack Roland Ingram, director of operations for the Eastern Region of Santa Fe Minerals, without attaching any portion of the deposition to their brief or requesting to file the deposition with the Court.

the State of Oklahoma. From affidavits of Robert W. Cox, Corporate Secretary of Santa Fe-Andover Oil Company submitted by defendants, it is clear that said defendant is a viable corporate entity. The affidavit of Mr. Cox attached to defendant's Supplementary Brief in Support of Motion to Dismiss shows the following:

1. Santa Fe-Andover Oil Company is engaged in the business of exploration for, and the production and marketing of, hydrocarbons;
2. A substantial majority of the business of Santa Fe-Andover Oil Company is conducted from and in the State of Oklahoma;
3. Five vice-presidents of the company reside in Oklahoma and regularly conduct business within Oklahoma;
4. The company owns and maintains substantial production and transportation facilities within Oklahoma;
5. Santa Fe-Andover Oil Company, through numerous partnerships of which it is a general partner, conducts oil and gas exploration activities within Oklahoma;
6. Through the above partnerships the company has responsibility in the operation and maintenance of hundreds of oil and gas wells in Oklahoma;
7. Substantially all of the net income of the company is derived from its business activities in Oklahoma;
8. The majority of the day-to-day business and the decisions with regard to the daily activities are conducted from corporate and operational offices in

Tulsa, Oklahoma and operational offices in El Reno, Oklahoma.

9. All of the records of the company are maintained in Oklahoma; and
10. All of the meetings of directors and shareholders have taken place in Tulsa, Oklahoma to date.

The Court concludes from the record herein that the plaintiffs have failed to carry their burden to show that Santa Fe-Andover Oil Company is a dummy corporation whose principal place of business should be ignored in this action for jurisdictional purposes. The Court also concludes that the plaintiffs have failed to show that the principal place of business of Santa Fe-Andover is in California by virtue of some overall control of its activities by its parent company Santa Fe International Corporation. Burnside v. Sanders Associates, Inc., 507 F.Supp. 115 (N.D.Tex. 1980), aff. 643 F.2d 389 (5th Cir. 1981). The Court further believes that there has not been a sufficient showing or for that matter any showing at all, by the plaintiff that defendants have attempted to manipulate their corporate existence or relationships to preclude the jurisdiction of this Court. Glenny v. American Metal Climax, Inc., 494 F.2d 651 (10th Cir. 1974). The majority of the actual business of Santa Fe-Andover Oil Company is conducted from and within the State of Oklahoma, its books and records are maintained in Oklahoma and the majority of its net income is derived from activities in Oklahoma.

This Court believes that, on the record before it, the principal place of business of Santa Fe-Andover Oil Company is in the State of Oklahoma. The subsidiary corporation here is a separate entity and its principal place of business is the determining factor, even though some overall control of its activities is exercised by its parent corporation. See Luve Company v. Loew's San Francisco Hotel Corporation, 315 F.Supp. 405 (N.D.Cali. 1970); Burnside, supra at 167-168. The plaintiffs have been given every opportunity to discover relevant material in regard to this issue and present such to the Court, but the material they have presented falls short of the mark in convincing this Court that Santa Fe-Andover Oil Company should be ignored for jurisdictional purposes or that its principal place of business is anywhere else but in Oklahoma.

It is therefore the Order of this Court that the motion of the defendants to dismiss this action pursuant to Fed.R.Civ.P. 12(b)(1) is granted and this action should be and hereby is dismissed for lack of subject matter jurisdiction.

It is so Ordered this 16<sup>th</sup> day of February, 1984.

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

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

RONN FRITZ,

Plaintiff,

vs.

STEVEN WILCOX, and  
JIM NELSON FORD, INC.,  
an Oklahoma corporation,

Defendants.

No. 83-C-1052-C

**FILED**

FEB 13 1984

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

ORDER

Now before the Court for its consideration is the motion of defendant Steven Wilcox to dismiss, filed on January 31, 1984. The Court has no record of a response to this motion from the plaintiff. Rule 14(a) of the local Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) Briefs. Each motion, application and objection filed shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within ten (10) days after the filing of the motion or objection, and any reply memoranda shall be filed within ten (10) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Therefore, since no response has been received to date herein, in accordance with Rule 14(a), the failure to comply constitutes a confession of the motion to dismiss.

Accordingly, it is the Order of the Court that the motion of defendant Steven Wilcox to dismiss should be and hereby is sustained.

It is so Ordered this 16<sup>th</sup> day of February, 1984.

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



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

TIMMY McCARTHY, a minor child, )  
TINA McCARTHY, a minor child, )  
by and through their father )  
and mother and next friends, )  
THOMAS S. McCARTHY and )  
PATRICIA D. McCARTHY, and )  
THOMAS S. McCARTHY and )  
PATRICIA D. McCARTHY, )  
individually, )

Plaintiffs, )

v. )

TENNECO OIL COMPANY, a )  
corporation, )

Defendant. )

**FILED**

**FEB 14 1984**

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

No. 83-C-<sup>228</sup>288-C

JOURNAL ENTRY OF JUDGMENT

NOW on this 13th day of February, 1984, this hearing to settle the record concerning minors comes on for hearing; the Plaintiffs appeared in person and by their attorney, Terrell B. DoRemus, and the Defendant appeared through its attorney, John S. Zarbano. Upon the evidence submitted to the Court by the testimony of the parents of Timmy and Tina McCarthy, Patricia D. McCarthy and Thomas S. McCarthy, the Court finds:

1. It is the intent of the parties to settle the claims of the minor children, Timmy McCarthy and Tina McCarthy, and to settle the parents' claims for any and all

claims which arise out of the injury received to Timmy McCarthy on June 24, 1982, against the Defendant Tenneco Oil Company.

2. The Settlement Agreement provides \$1,000.00 to Timmy McCarthy, \$1,000.00 to Tina McCarthy and \$33,000.00 to the parents on their individual claims. The parents understand that this settlement will bar all claims against Defendant Tenneco Oil Company arising out of this accident occurring on June 24, 1982, and that the sum of \$1,000.00 to Timmy McCarthy and \$1,000.00 to Tina McCarthy is a full, final and complete settlement of all claims possessed by Timmy McCarthy and Tina McCarthy against Tenneco Oil Company.

3. The settlement in the amount of \$33,000.00 to the parents individually is a full, final and complete settlement of all claims possessed by the parents in their individual capacity against Defendant Tenneco Oil Company. It is in the best interests of the children to accept such settlement.

IT IS ORDERED, ADJUDGED AND DECREED by the Court that the findings of this Court with respect to all matters therein set forth, be and the same are ORDERED, ADJUDGED and DECREED and hereby made the Order of this Court as fully as if hereinafter set out at length.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, in accord with the findings of the Court, that the settlement in the amount of \$1,000.00 to Timmy McCarthy, \$1,000.00 to Tina McCarthy and \$33,000.00 to the parents is approved as a full, final and complete settlement of all claims as to all parties of the above-styled cause.

151 H. Dale Cook  
UNITED STATES DISTRICT COURT JUDGE

Approved as to form and content:

151  
Terrell B. DoRemus  
Attorney for Plaintiffs

151  
John S. Zarbano  
Attorney for Defendant

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

FILED  
FEB 14 1984  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

COMMERCE BANK, an Oklahoma )  
banking corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ENTRA, INC., a Texas )  
corporation; and HANS WAMBACH, )  
an individual )  
 )  
Defendants. )

No. 83-C-710-C ✓

J U D G M E N T

Pursuant to the Order of this Court, filed simultaneously herein, judgment is hereby entered in favor of plaintiff Commerce Bank and against defendant Entra, Inc. on plaintiff's First Cause of Action in the amount of \$49,900.00, the principal sum due under Note 82-1981 under the Extension and Assumption Agreement, together with accrued interest as of October 1, 1982, together with further interest thereon from October 1, 1982 until fully paid at the Default Rate provided for in Note 82-1981, together with an attorney fee of 15% of all amounts due under Note 82-1981 on default.

Judgment in rem is hereby entered in favor of plaintiff Commerce Bank and against defendant Entra, Inc. on plaintiff's Second Cause of Action, together with an attorney fee of 15% of all amounts due under Note 82-1981 on default.

Judgment is hereby entered on plaintiff's Third Cause of Action in favor of plaintiff and against defendant Hans Wambach in the amount of \$49,900.00, together with accrued interest thereon as of October 1, 1982 and together with interest accruing thereafter at the Default Rate until fully paid, plus attorney fees.

It is so Ordered this 14<sup>th</sup> day of February, 1984.



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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EDDY L. PATTERSON )  
 )  
 Defendant. )

FEB 14 1984

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

CIVIL ACTION NO. 83-C-871-C

AGREED JUDGMENT

This matter comes on for consideration this 14 day of Feb, 198<sup>84</sup>~~3~~, 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, Eddy L. Patterson, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Eddy L. Patterson, was served with Summons and Complaint on October 21, 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 \$306.00, plus costs and interest at the current legal rate of 9.87 percent from the date of judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Eddy L. Patterson, in the amount of \$306.00, plus costs and

interest at the current legal rate of 9.87 percent from the date of judgment until paid.

151 H. Gale Cook  
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING  
United States Attorney

Nancy A. Nesbitt  
NANCY A. NESBITT  
Assistant U.S. Attorney

Eddy L. Patterson  
EDDY L. PATTERSON

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

**FILED**

TOM CAFFARO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
GULF INSURANCE COMPANY, a )  
Missouri corporation, )  
)  
Defendant. )

NO. 84-C-5-C

FEB 13 1984

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

ORDER OF DISMISSAL

On this 13 day of February, 1984, 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 and have requested the Court to dismiss said cause 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 are dismissed with prejudice to any future action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

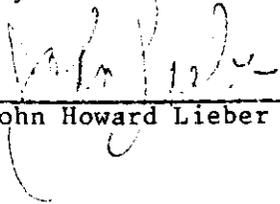
APPROVALS:

THOMAS H. STRINGER,

  
Attorney for Plaintiff

KNIGHT, WAGNER, STUART, WILKERSON & LIEBER  
Attorneys for the Defendant

By:

  
\_\_\_\_\_  
John Howard Lieber

**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FEB 13 1984

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAMES D. WILEY, )  
 )  
 Defendant. )

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

CIVIL ACTION NO. 83-C-1006-C

DEFAULT JUDGMENT

This matter comes on for consideration this 13 day of February, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney, and the Defendant, James D. Wiley, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, James D. Wiley, was served with Summons and Complaint on January 3, 1984. 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, James D. Wiley, for the principal sum of \$2,890.00, plus accrued interest of \$508.80 through December 31, 1983, plus costs and interest at the current legal rate of 9.87 percent from the date of judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

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

FLORAFAX INTERNATIONAL, INC.,  
an Oklahoma corporation,

Plaintiff,

vs.

FLOWER WORLD OF AMERICA, INC.,  
a foreign corporation,

and

ROBERT SHEETS, a New Jersey  
Individual,

Defendants.

~~FILED~~  
FEB - 9 1984  
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

No. 83-C-83-C

**FILED**

FEB 13 1984

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

JOURNAL ENTRY OF JUDGMENT

NOW ON THIS 13<sup>th</sup> day of February, 1984, the above-entitled cause comes on before me, the undersigned Judge of the above-entitled Court. Plaintiff appears by its counsel, James R. Elder, and Defendants' counsel appear not, having heretofore read and approved this Journal Entry of Judgment as evidenced by their signatures hereinbelow.

THE COURT FINDS, that the parties and each of them have stipulated as follows in connection with this action.

1. The parties stipulate that there is a principal balance due Plaintiff from Defendants, and each of them, in the sum of SIXTY-FIVE THOUSAND EIGHT HUNDRED FORTY-SIX AND .47/100 (\$65,846.47) DOLLARS.

2. The parties stipulate that the Plaintiff is entitled to accrued interest from Defendants, and each of them, in the

sum of THIRTY THOUSAND THREE HUNDRED AND .62/100 (\$30,300.62) DOLLARS.

3. The parties stipulate that Defendants, and each of them, should be assessed a reasonable attorney's fee for the use and benefit of Plaintiff's attorney, James R. Elder, in the sum of TEN THOUSAND SIX HUNDRED TWENTY-SIX AND .97/100 (\$10,626.97) DOLLARS.

4. The parties stipulate that the sums due and owing herein should accrue further interest until all of the foregoing is paid in full, at the rate of eighteen (18%) percent per annum.

5. The parties stipulate that judgment should be entered in the above-entitled cause for all of the foregoing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court, that the Plaintiff, Florafax International, Inc., have judgment against the Defendants, Flower World of America, Inc., and Robert Sheets, and each of them, in the sum of ONE HUNDRED SIX THOUSAND SEVEN HUNDRED SEVENTY-FOUR AND .06/100 (\$106,774.06) DOLLARS, together with interest thereon at the rate of eighteen (18%) percent per annum until fully paid, together with costs of the action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/  
James R. Elder,  
Attorney for Plaintiff

/s/  
N. Keith Martin,  
Attorney for Defendants

/s/  
H. I. Aston,  
Co-Counsel for Defendants

CERTIFICATE OF MAILING

I, JAMES R. ELDER, hereby certify that on the date of filing the above and foregoing JOURNAL ENTRY OF JUDGMENT, I deposited a true and correct copy of same into the United States Mail with proper postage thereon fully prepaid to: Mr. N. Keith Martin, and Mr. H. I. Aston, Attorneys at Law, 3010 South Harvard, Suite 210, Tulsa, Oklahoma 74114, Attorneys for Defendants.

\_\_\_\_\_  
JAMES R. ELDER

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

**FILED**

BURKHART PETROLEUM )  
CORPORATION, a Delaware )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PETRO-DYNAMICS CORPORATION )  
formerly Petro Dynamics, )  
Ltd., a Kansas corporation, )  
 )  
Defendant. )

SEP 13 1984

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

No. 83-C-41-C

JUDGMENT

This action came on for consideration before the undersigned Chief Judge of the United States District Court for the Northern District of Oklahoma. The Plaintiff is represented by the firm of Conner & Winters, by Douglas L. Inhofe and Steven K. Balman. The Defendant is represented by the firm of Hall, Estill, Hardwick, Gable, Collingsworth & Nelson, by Richard A. Paschal and Tyrus V. Dahl, Jr.

Trial by jury was waived by all parties and judgment is entered by consent, and pursuant to an agreement, of the parties. The Court being fully advised in the premises, and having examined all the pleadings herein, finds as follows:

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

2. That the allegations set forth in Plaintiff's Complaint are true and correct.

3. That the Plaintiff, Burkhart Petroleum Corporation, should recover from the Defendant, Petro-Dynamics Corporation, the sum of \$89,000.00, together with interest thereon at the rate of ~~fifteen percent (15%)~~ <sup>9.87%</sup>.

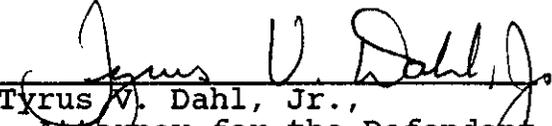
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, Burkhart Petroleum Corporation, recover from the Defendant, Petro-Dynamics Corporation, the sum of \$89,000.00, plus interest thereon at the rate of ~~fifteen percent (15%)~~ <sup>9.87%</sup> per annum from the date this judgment is entered until paid.

(Signed) H. Dale Cook

Chief Judge of the United States  
District Court for the Northern  
District of Oklahoma

Approved as to form:

  
Steven K. Balman, Attorney  
for the Plaintiff  
BURKHART PETROLEUM CORPORATION

  
Tyrus M. Dahl, Jr.,  
Attorney for the Defendant  
PETRO-DYNAMICS CORPORATION

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

FILED

FEB 13 1984

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

G-N LIMITED, an Ohio corporation, )  
et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
VEMCO 1981 PRIVATE DRILLING PRO- )  
GRAM, an Oklahoma corporation, )  
et al., )  
 )  
Defendants. )

NO. 83-C-926-BT

ORDER

Plaintiffs' notice of dismissal without prejudice is hereby approved upon the following condition agreed upon by the parties: If, in the future, this alleged cause of action or claim is ever refiled as a class action it will only be filed in the United States District Court for the Northern District of Oklahoma.

IT IS THEREFORE ORDERED plaintiff's notice of dismissal without prejudice is approved, subject to the condition set forth above, and said action is hereby dismissed without prejudice.

ENTERED this 10<sup>th</sup> day of February, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

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

JAN 17 1984

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

CURTIS L. LAWSON, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STATE OF OKLAHOMA, ex rel )  
OKLAHOMA BAR ASSOCIATION and )  
OKLAHOMA STATE SUPREME COURT, )  
 )  
Defendants. )

No. 83-C-498-E

O R D E R

NOW on this 11<sup>TH</sup> day of January, 1984, comes on for hearing Plaintiff's motion to reconsider and the Court, being fully advised in the premises finds the same should be denied.

The Court fully addressed the issues raised at the motion hearing held November 15, 1983 and finds no compelling factual or legal issues which would compel the Court to find differently at this time.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's motion to reconsider be and is hereby denied.

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

Entered

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

FEB 10 1984

U.S. DISTRICT COURT

TWIN OAKS ENERGY, INC., an )  
Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JACK HAMMOND, d/b/a )  
HYDROCARBON OF TEXAS, )  
 )  
Defendant. )

Case No. 83-C-269-B

JUDGMENT

IT IS ORDERED, ADJUDGED AND DECREED by the court that plaintiff have judgment by default against the defendant, Hydrocarbon Recovery of Texas Inc., and recover of said defendant the sum of \$42,560.64, attorney's fees in the amount of \$979.95, interest from the 11th day of January, 1983, until the date of this judgment at the rate of six percent (6%) per annum, and interest thereafter until paid at the rate of 9.87 percent (\_\_\_\_%) per annum, and costs for filing the complaint in the amount of \$60.00.

IT IS SO ORDERED this 10th day of February, 1984.

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

**FILED**

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

FEB 10 1984

THE GREAT WESTERN SUGAR )  
 COMPANY, a Delaware corporatin, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BAMA PIE, INC., a Texas )  
 corporation, )  
 )  
 Defendant. )

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

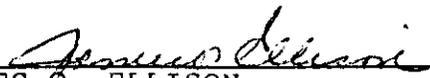
No. 82-C-103-E ✓

JUDGMENT

This action came on for trial 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 Great Western Sugar Company take nothing from the Defendant Bama Pie, Inc., that the action be dismissed on the merits, and that the Defendant Bama Pie, Inc. recover of the Plaintiff Great Western Sugar Company its costs of action.

DATED at Tulsa, Oklahoma this 10<sup>TH</sup> day of February, 1984.

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

Entered

FILED

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

FEB 10 1984

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

MARVIN C. CATRON AND HELEN CATRON, )  
 )  
 Plaintiffs )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant )

CIVIL NO. 82-C-754-B

AMENDED JUDGMENT

In accordance with the findings of fact and conclusions of law entered December 8, 1983, judgment is hereby entered in favor of plaintiffs, Marvin C. Catron and Helen Catron, against Defendant United States of America, for \$33,805.05 (this amount represents tax plus interest calculated to Jan. 31, 1984) plus interest after Jan. 31, 1984, as provided by 28 U.S.C. Sec. 2411 and Internal Revenue Code of 1954 (26 U.S.C.) Sec. 6622 referred to herein. Costs are assessed against defendant.

Entered this 9th day of February, 1984.

S/ THOMAS R. BRETT

United States District Judge

APPROVED AS TO FORM:

H. Vic Conrad  
H. VIC CONRAD  
Attorney for United States

Kurt Ray  
KURT RAY  
Attorney for Plaintiffs

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

PETER C., a minor child,  
individually and on behalf of  
all other persons similarly  
situated,

Plaintiff,

and

J. [REDACTED] G., a minor child, by  
and through his natural mother  
and next friend, J. [REDACTED] G.,  
individually, and on behalf  
of all other persons similarly  
situated,

Plaintiff-Intervenor,

vs.

LEE MITCHELL, et al.,

Defendants.

NO. 82-C-1046-E

**FILED**  
FEB 10 1984  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

SETTLEMENT AGREEMENT AND CONSENT DECREE

This action came on regularly for trial to the Court on this 6th day of February, 1984, and all parties announced ready for trial.

This case is a civil rights action brought pursuant to 42 U.S.C. §1983, challenging, inter alia, the conditions and practices for children within the Mayes County jail. A class of plaintiffs, composed of all children who have been, are now or may be confined in adult jails by the defendants, was certified by order of the Court on April 18, 1983.

Whereupon, the parties announced to the Court a proposed settlement agreement in resolution of the merits of this action.

The agreement of the parties is set forth herein. Nothing herein shall be construed to be a finding or admission of liability by the defendants as to any of the conditions and practices for children in the Mayes County jail.

I. JURISDICTION

The Court finds that it has jurisdiction of this action under 28 U.S.C. §§1331 and 1343 (3). The parties agree to the entry of this Settlement Agreement and Consent Decree as the final judgment of this Court with respect to all issues in this action.

II. DEFINITIONS

A. Child

Any person defined as a child by the Oklahoma Statutes.

B. Status Offender

Any child charged or taken into custody for an act which would not be a crime if committed by an adult.

C. Traffic Offender

Any child charged or taken into custody for an offense or offenses defined by the Oklahoma Statutes or case law as a "traffic offense".

D. Sheriff's Department

The Sheriff of Mayes County, Oklahoma, his or her employees, agents and successors in office.

E. Felony Offense Against Persons

Any offense defined as a felony offense against the person as set forth in Title 21, Oklahoma Statutes, Part III, Chapters 20 through 30, inclusive.

D. Reverse Certification Offense

Any of the offenses enumerated in 10 O.S. Supp. 1983 §1104.2(A).

G. CRCS

The division of Court Related and Community Services of the Department of Human Services, located in Pryor, Oklahoma.

III. AGREED RELIEF

A. The defendants, their employees, agents, successors in office, and all persons acting in concert with them are permanently enjoined and restrained from confining any child in any adult jail.

B. Whenever a child is taken into custody, the Sheriff's Department shall immediately contact CRCS.

C. The Sheriff's Department shall exhaust all available alternatives to the confinement of any child in an adult jail, as provided by CRCS.

D. The defendants shall be permitted until no later than July 1, 1985 to fully implement the prohibition upon the jailing of all children, subject to the following provisions and limitations:

1. No status offender, traffic offender or intoxicated child shall be confined in any adult jail.

2. A child may be confined in an adult jail only when:

(a) the child is sixteen (16) years of age or older, and has been taken into custody for a delinquent act which would be a felony offense against persons if committed by an adult; or

(b) the child is twelve (12) years of age or older, and has been taken into custody for a reverse certification offense.

3. The use of the designated juvenile cell in the Mayes County jail to house children shall cease immediately.

4. Supervision of any child in the Mayes County jail by jail personnel shall be provided at least every thirty (30) minutes.

5. No child shall be held in any adult jail in excess of seventy-two (72) hours.

6. Children confined in the Mayes County jail shall be permitted daily exercise out of their cell.

7. Parents and other relatives of children confined in the Mayes County jail shall be permitted to visit in the jail at all reasonable times.

8. Intoxicated children who cannot be released to a responsible adult, and who are violent, shall not be jailed, but may be taken to an appropriate medical facility; or provided with such other appropriate disposition as may be made by CRCS.

E. Upon a consideration of the entire record herein, the Court finds the proposed settlement agreement of the parties to be fair, adequate and reasonable, and the same is hereby approved by the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

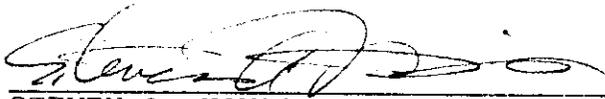
F. The Court shall retain jurisdiction of this action until such time as this order has been fully implemented.

ENTERED this 10<sup>th</sup> day of February, 1984 at Tulsa, Oklahoma.

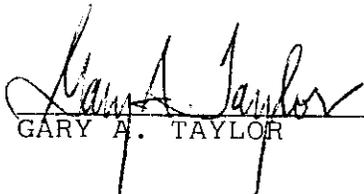
  
\_\_\_\_\_  
JAMES O. ELLISON  
United States District Judge

APPROVED FOR ENTRY:

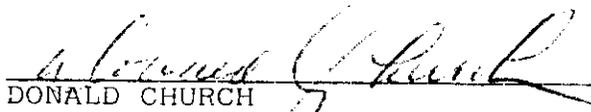
ATTORNEYS FOR PLAINTIFFS:

  
\_\_\_\_\_  
STEVEN A. NOVICK

  
\_\_\_\_\_  
BARBARA J. DEW

  
\_\_\_\_\_  
GARY A. TAYLOR

ATTORNEY FOR DEFENDANTS:

  
\_\_\_\_\_  
DONALD CHURCH

**FILED**

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

FEB 10 1984 ∞

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

DESERT ENERGY EQUIPMENT, INC., )  
a Texas corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DON R. RHYNES, SHARON L. )  
RHYNES, and D & S FABRICATORS )  
& CONSTRUCTORS, an Oklahoma )  
general partnership, )  
 )  
Defendants. )

No. 83-C-438-E ✓

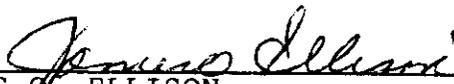
JUDGMENT BY DEFAULT

Pursuant to this Court's Order granting the motion of Plaintiffs for sanctions under Rule 37(b)(2)(C) of the Federal Rules of Civil Procedure,

IT IS HEREBY ORDERED that judgment be granted in favor of the Plaintiff Desert Energy Equipment, Inc. and against Defendants Don R. Rhynes, Sharon L. Rhynes, and D & S Fabricators & Constructors, an Oklahoma general partnership in the amount of \$63,514.54.

IT IS FURTHER ORDERED that Defendants bear the costs of the action.

ORDERED this 10<sup>th</sup> day of February, 1984.

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

FILED

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

FEB 10 1984

PAXTON NATIONAL INSURANCE )  
COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TRANSPORT INDEMNITY COMPANY, )  
 )  
Defendant. )

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

No. 83-C-898-E

ORDER

For good cause shown, it is hereby ordered that this  
action be transferred to the Western District of Oklahoma.

Dated this 10<sup>th</sup> day of February, 1984.

James O. Ellison  
JAMES O. ELLISON  
UNITED STATES DISTRICT COURT JUDGE



FILED

FEB 9 1984

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

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

CLARK RESOURCES, INC.,

Plaintiff,

vs.

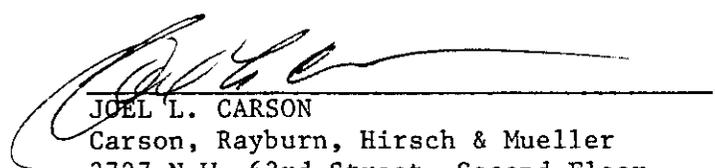
EMC, INC.,

Defendant.

Case No. 83-C-546-E

DISMISSAL WITH PREJUDICE

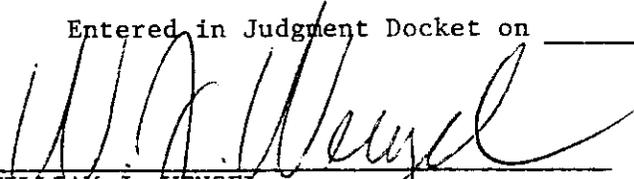
COMES NOW the Defendant, EMC, Inc., and herewith and hereby dismisses with prejudice its counterclaim and cause of action against the Plaintiff, Clark Resources, Inc.

  
\_\_\_\_\_  
JOEL L. CARSON  
Carson, Rayburn, Hirsch & Mueller  
3727 N.W. 63rd Street, Second Floor  
Oklahoma City, Oklahoma 73116  
(405) 947-8702  
Attorneys for Defendant

IT IS SO ORDERED this 9<sup>th</sup> day of February, 1984.

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

Entered in Judgment Docket on \_\_\_\_\_, 1984.

  
\_\_\_\_\_  
WILLIAM J. WENZEL  
Sneed, Lang  
114 East Eighth Street, Sixth Floor  
Tulsa, Oklahoma 74119  
(918) 583-3145  
Attorneys for Plaintiff

*entered*

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

FILED

SAN FRANCISCO-OKLAHOMA PETROLEUM  
EXPLORATION CORPORATION,

FEB -9 1984

Plaintiff,

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT  
No. 82-C-190-BT

v.

CARSTAN OIL COMPANY, INC.,  
COURTNEY G. ROGERS, an individual,  
and WILLIAM R. ROGERS, an individual,

Defendants.

AMENDED JUDGMENT

The Court's judgment entered April 14, 1983, in favor of defendant, William R. Rogers, and against plaintiff, San Francisco-Oklahoma Petroleum Exploration Corporation, is amended insofar as the Court finds there is no just reason for delay and that the April 14, 1983 judgment is a final decision, appealable pursuant to Fed.R.Civ.P. 54(b).

IT IS SO ORDERED this 9 day of February, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

FEB - 9 1984

JACK ADAM BENJAMIN, JR., )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 A. I. MURPHY, Warden, et al., )  
 )  
 Respondents. )

No. 81-C-862-E

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

O R D E R

NOW on this 9<sup>th</sup> day of February, 1984 comes on for hearing Petitioner's objections to the Findings and Recommendations of the Magistrate filed July 6, 1983 and the Court, being fully advised in the premises finds the same should be denied.

The Court has carefully reviewed the Magistrate's Recommendations and finds the analysis of the law as it applies to the facts of this case to be accurate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's objections to the Findings and Recommendations be and is hereby denied. Accordingly, the Court concludes the Findings of Fact and Recommendations of the Magistrate should be and are hereby affirmed and adopted as the Findings and Conclusions of this Court. Petitioner's Petition for Writ of Habeas Corpus is denied.

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

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

FILED

FEB - 9 1984

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

DONNA KAY HALLMARK, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
FRANK THURMAN, et al., )  
 )  
Respondents. )

798  
No. 82-C-789-E

O R D E R

NOW on this 9<sup>th</sup> day of February, 1984 comes on for hearing Petitioner's Objections to the Findings and Recommendations of the Magistrate and the Court, being fully advised in the premises finds the same should be denied.

The Court has carefully reviewed Petitioner's brief in light of the legal and factual conclusions reached by the Magistrate and finds the latter to be most persuasive concerning the issues in this case.

The Court notes the absence of response to Petitioner's Objections by the State and finds this to be unacceptable; however, in light of the law as it applies to this case, the Court must find in favor of the findings as submitted by the Magistrate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's Objections to the Findings and Recommendations of the Magistrate be and are hereby denied; the Findings and Recommendations of the Magistrate are hereby affirmed and adopted as the Findings and Conclusions of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petition for Writ of Habeas Corpus filed by Petitioner be and is hereby denied.

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

**FILED**

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

FEB - 11 1984

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

CATHY L. STANLEY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TANK SERVICE, INC., a )  
 corporation, )  
 )  
 Defendant. )

No. 83-C-25-E ✓

ORDER

NOW on this 9<sup>TH</sup> day of February, 1984 comes on for hearing Defendant's motion to dismiss and the Court, being fully advised in the premises finds as follows:

This action was instituted pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. Plaintiff alleges unlawful employment discrimination on the part of her former employer, Defendant in this action, on account of her sex. Specifically Plaintiff alleges she was hired as a welder for approximately two to three months prior to January, 1979; that in January, 1979 she was laid off her job allegedly because of a lack of work. Plaintiff states that from the time she was laid off, she periodically contacted Defendant to see if work was available; that at first the contacts were weekly and then tapered off to bi-monthly, monthly and then for periods in excess of several months. Plaintiff alleges that on June 11, 1981 she contacted Defendant and was told by Frank Morton that she would not be recalled because she was a woman. There is some testimony

that she was aware this was the reason she was not recalled prior to that date; however it is admitted by all parties that she was made aware of the reason on June 11. Prior to that date, she was consistently told no work was available. On January 21, 1982 Plaintiff filed a written charge with the EEOC and the Oklahoma Human Rights Commission alleging sex discrimination. On September 16, 1982, pursuant to Plaintiff's request, the EEOC issued a Notice of Right to Sue by certified mail which was never accepted and on October 22, 1982 Plaintiff received the same by regular mail.

This action was filed January 12, 1983. On October 25, 1983 Defendant filed a motion to dismiss based upon Plaintiff's failure to timely file.

25 O.S. 1981 § 1502(a) requires an aggrieved party to file a complaint with the Oklahoma Human Rights Commission, either directly or by deferral from the EEOC, within 180 days of the act of discrimination before the 300 day filing period is triggered pursuant to § 706(d) of the Civil Rights Act. The dispositive issue is whether this occurred in this case. Plaintiff urges this is a case of continuing violation and attaches transcripts of phone calls made from Plaintiff's attorney's office by Plaintiff to Defendant in October and November of 1981 to show Plaintiff was refused employment on account of her sex on a continuing basis.

The Court does not agree. Under Plaintiff's theory, employers would remain vulnerable to charges of this type indefinitely so long as claimants made an additional contact only

to be rejected for employment on the ground claimant already knew to exist. The Court agrees with the reasoning of Farmer v. Washington Federal Savings & Loan Assn., 71 F.R.D. 385 (N.D. Miss. 1976) as urged by Plaintiff but finds Plaintiff learned the truth so as to start the procedural clock running on June 11, 1981.

Dubois v. Packard Bell Corp., 470 F.2d 973 (10th Cir. 1972) disposes of Plaintiff's contention that her claim need not be timely filed with the state agency so long as it is filed within the 300 day limit. The Court notes this issue is again on appeal but sees no reason to find the Tenth Circuit will deviate from its earlier pronouncement. Plaintiff's motion to stay must therefore be overruled.

The Court finds Plaintiff in this case did not file her grievance with the appropriate state agency within 180 days as required by law. Accordingly, her action must fail.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's motion to dismiss be and is hereby granted. All other motions are rendered moot.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB - 1984

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BOB J. WALLAIN, )  
 )  
 Defendant. )

CIVIL ACTION NO. 83-C-749-E

ORDER

Good cause having been shown, it is hereby ORDERED,  
ADJUDGED, AND DECREED that the above-referenced action is hereby  
dismissed with prejudice.

Dated this \_\_\_\_\_ day of February, 1984.

*[Signature]*  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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

FILED

FEB - 9 1984

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

ST. PAUL INSURANCE COMPANY,  
a Texas corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TOBY JOSEPH ARMELLINI, et al., )  
 )  
Defendants. )

No. 83-C-989-E

O R D E R

NOW on this 9th day of February, 1984 comes on for hearing Defendant, Mustang Fuel Corp.'s motion to dismiss or in the alternative, to transfer venue and the Court, being fully advised in the premises finds:

This is an action for declaratory judgment arising out of a contract for insurance issued on September 11, 1981 by the Plaintiff, St. Paul Insurance Company, through the Walter Bryce Insurance Agency to Armellini Engineering, Inc.

On or about October 9, 1981 Defendant Toby Armellini, President of Armellini Engineering was working at Mustang Fuel Corp.'s plant located in Cogar, Oklahoma, when an explosion occurred causing personal injury and property damage.

As a result of the explosion, several parties filed suits against Armellini and Armellini Engineering. Armellini demanded defense and indemnification coverage from St. Paul as to these suits.

St. Paul denied coverage and filed this action asking this

Court for an Order declaring that the acts alleged in the pending suits were outside the scope of the policy.

On December 20, 1983 the Defendant Mustang Fuel filed a motion to dismiss pursuant to 28 U.S.C. § 1391(a) based upon improper venue or in the alternative to transfer venue to the Western District of Oklahoma.

The Defendant bases his arguments on the following:

1. The fact that Plaintiff, St. Paul Insurance Co. is a Texas corporation;
2. The fact that not all defendants are residents of the Northern District of Oklahoma; and
3. The presumption that the claim arose in the Western District, where the explosion occurred.

The Plaintiff, in response to Defendant's motion to dismiss or transfer venue, states venue is proper in the Northern District since the claim arose in Tulsa, where the insurance policy in question was issued.

In determining where a claim arose for venue purposes several different considerations arise: Where the operative facts took place, where a substantial part of events or omissions giving rise to the claim occurred; the convenience of the aggrieved party and where the witnesses and records are most accessible. "The district court is charged not only with evaluating the contacts between the forum and the plaintiff's allegation, but also weighing that forum's convenience for the litigants." Thornwell v. U.S., 471 F.Supp. 344 (D.C.D.C. 1979).

The Supreme Court in Leroy, et al. v. Great Western United

Corp., 443 U.S. 173, 99 S.Ct. 2710 (1979) determined that for purposes of deciding where the claim arose under § 1391(b), a court could consider convenience of the defendants but not of the plaintiffs. In Akbar v. New York Magazine Co., 409 F.Supp. 60 (1980), the District Court for the District of Columbia stated that consideration of plaintiff's convenience is not a factor under § 1391(b) because under that section venue does not lie in the district in which all the plaintiffs reside, only that in which all the defendants reside. However, since under § 1391(a) venue may be found in the district in which all the plaintiffs reside courts may consider the plaintiff's convenience in deciding where the claim arose.

The Akbar court further states that the factors which determine where a claim arose do not need to tip decisively in favor of litigating a claim in a certain district. All that is necessary is that the action be tried in one of two or more districts which have approximately equal plausibility with respect to venue.

It is debatable where the operative facts in this suit took place. The nature of the suit is one for declaratory judgment. The issue is the interpretation and application of an insurance policy. The Plaintiff has asked this Court to declare that Armellini's actions at the Mustang Fuel plant and the resulting injuries were not covered under Armellini's insurance policy.

The policy was issued in Tulsa by the Walter Bryce Insurance Agency. The Plaintiff is licensed to do business in Oklahoma, the Defendant Armellini is a resident of Tulsa. If the only

issue was the interpretation of the policy language the scales would certainly tip in favor of venue remaining in the Northern District.

There is another issue in this suit which also weighs in the venue dispute; that is whether the policy covers the accident which occurred at the Mustang plant in the Western District. The determination of this question necessarily involves the testimony of witnesses to the explosion. This issue could more readily be settled in the Western District. The incident occurred there and there are currently several suits against Armellini pending there in connection with this same event.

Under the rationale of Akbar, the question is whether the two districts have approximately equal plausibility with respect to venue. This Court finds there is greater plausibility for finding venue in the Western District.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Mustang Fuel Corporation's motion to dismiss or in the alternative to transfer venue be and is hereby granted as follows: This action is ordered transferred to the Western District of Oklahoma for all purposes, the Court finding venue to more properly lie in that district.

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

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

**FILED**

FEB - 9 1984

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

UNION TEXAS EXPLORATION )  
CORPORATION, a Delaware )  
corporation; and FLORIDA )  
EXPLORATION COMPANY, a )  
Texas corporation, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
UNIVERSAL ENERGY CORPORATION, )  
an Oklahoma corporation, )  
 )  
Defendant. )

No. 83-C-1027-E

JUDGMENT

The Defendant Universal Energy Corporation, having failed to plead or otherwise defend in this action and its default having been entered,

NOW upon application of the Plaintiff and upon affidavit that the Defendant is indebted to Plaintiffs in the sum of \$795,151.22 with interest at the rate of 12% per annum from the 4th day of January, 1982, until date of judgment and thereafter at the rate of 9.87% per annum plus costs and attorney fees, that Defendant has been defaulted for failure to appear and that Defendant is not an infant or incompetent person, and is not in the military service of the United States, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiffs recover of Defendant the sum of \$795,151.22 with interest at the rate of 12% per annum from the 4th day of January, 1982, until the date of judgment and thereafter at the rate of 9.87% per annum plus costs and attorney fees.

ORDERED this 8<sup>th</sup> day of February, 1984.

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

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

FILED

FEB -8 1984

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

JAMES A. HECKERT & WAYNE CREASY )

Plaintiff(s), )

vs. )

No. 82-C-163-C

JOHN W. VANDERFORD, JR. & )

RHI, INC. )

Defendant(s). )

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

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

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

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

Dated this 8<sup>th</sup> day of February, 19 84.

*W. Salebrook*  
UNITED STATES DISTRICT JUDGE

FILED

FEB -8 1984

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

WICK D. SILVER, CLERK  
DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 79-CR-83-C
	)	(84-C-25-C)
KENNETH RAY GAINES,	)	
	)	
Defendant.	)	

O R D E R

Now before the Court for its consideration is the motion of defendant Kenneth Ray Gaines pursuant to Title 28 U.S.C. §2255 to vacate, set aside, or correct sentence.

Section 2255 provides for a motion for relief if "the sentence was imposed in violation of the Constitution or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack."

The Court has reviewed the grounds alleged by defendant as a basis for relief under Section 2255 of Title 28, and finds that the defendant has not alleged any ground which would provide a basis for relief under this section.

Therefore, defendant's motion pursuant to Title 28 U.S.C.

Section 2255 should be and hereby is overruled.

It is so Ordered this 8 day of February, 1984.

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

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

FILED  
FEB -8 1984

FLOYD G. BLAIR, Personal )  
Representative of the Estates )  
of Mary J. Blair and Virgil W. )  
Blair, both deceased, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MISSOURI-KANSAS-TEXAS RAIL- )  
ROAD COMPANY )  
 )  
Defendant. )

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

No. 82-C-964-B ✓

J U D G M E N T

In accordance with the jury verdicts entered herein on February 8, 1984, judgment is hereby entered in favor of the defendant, Missouri-Kansas-Texas Railroad Company, and against the plaintiff, Floyd G. Blair, Personal Representative of the Estates of Mary J. Blair and Virgil W. Blair, both deceased, on the plaintiff's claims for damages for wrongful deaths. Further, that costs be assessed against the plaintiff.

February 8, 1984



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

FEB -7 1984

CLERK OF DISTRICT COURT  
U.S. DISTRICT COURT

STANG HYDRONICS, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DIESEL ENERGY PRODUCTS, INC., and )  
 PACTEX CORPORATION, )  
 )  
 Defendant. )

No. 83-C-817-B

NOTICE OF DISMISSAL

COMES NOW the Defendant, Diesel Energy Products, Inc., and pursuant to Rule 41(A) of the Federal Rules of Civil Procedure, hereby gives Notice of Dismissal without prejudice of its Cross Complaint filed against the Defendant, Pactex Corporation.

PRAY, WALKER, JACKMAN,  
WILLIAMSON & MARLAR,

By   
Wm. Gregory James  
Attorney for Defendant  
Diesel Energy Products, Inc.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 7<sup>th</sup> day of February, 1984, a true and correct copy of the foregoing Notice was mailed, by depositing the same in the United States Mail with sufficient postage thereon to:

Bert Bishop, Esq.  
Boesche, McDermott & Eskridge  
320 South Boston, Suite 1300  
Tulsa, Oklahoma 74103

Mike Givens, Esq.  
Jones, Givens, Gotcher,  
Doyle & Goban, Inc.  
201 West 5th, Suite 400  
Tulsa, Oklahoma 74103

  
Wm. Gregory James

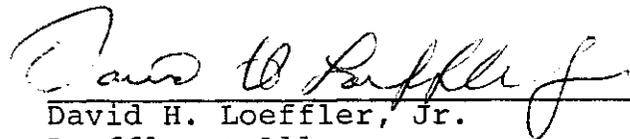
UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
FEB -7 1984  
MACK G. SIMON, CLERK  
U.S. DISTRICT COURT

FRANK E. BASIL, INC. OF DELAWARE, :  
 :  
Plaintiff, :  
 :  
v. : Civil Action No. 83-C-789-C  
 :  
JOHN L. RAINWATER, :  
 :  
Defendant. :

STIPULATION OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1), the parties hereby stipulate that the Complaint in this action is dismissed with prejudice.

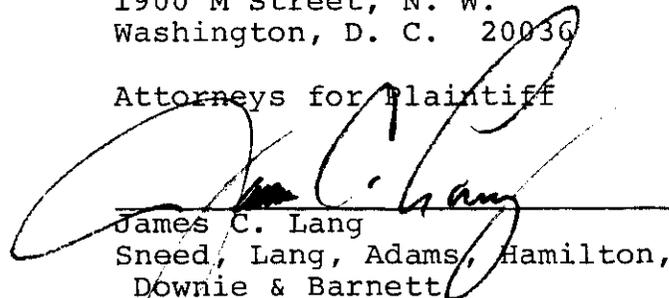


David H. Loeffler, Jr.  
Loeffler & Allen  
4150 South Harvard  
Suite G2 & G3  
Tulsa, Oklahoma 74135



Charles Lee Eisen  
Kirkpatrick, Lockhart, Hill,  
Christopher & Phillips  
1900 M Street, N. W.  
Washington, D. C. 20036

Attorneys for Plaintiff



James C. Lang  
Sneed, Lang, Adams, Hamilton,  
Downie & Barnett  
Sixth Floor  
114 East Eighth Street  
Tulsa, Oklahoma 74119

Attorney for Defendant

Dated: 2-7-84



Entered

FILED

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

FEB -6 1984

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

STANG HYDRONICS, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DIESEL ENERGY PRODUCTS, INC. )  
and PACTEX CORPORATION, )  
 )  
Defendants. )

Case No. 83-C-817-B

STIPULATION OF DISMISSAL

COME NOW Plaintiff Stang Hydronics, Inc. and Defendant Diesel Energy Products, Inc. and stipulate to the dismissal of the Plaintiff's action against Defendant Diesel Energy Products, Inc., without prejudice.

Respectfully submitted,

/s/ Burk E. Bishop  
R. Casey Cooper  
Burk E. Bishop  
Of BOESCHE, McDERMOTT & ESKRIDGE  
320 South Boston, Suite 1300  
Tulsa, Oklahoma 74103

Counsel for Plaintiff

/s/ Wm Gregory James  
Wm. Gregory James  
Pray, Walker, Jackman, Williamson  
& Marlar  
2200 Fourth National Building  
Tulsa, Oklahoma 74119

Certificate of Service

I certify that service of the Stipulation of Dismissal was mailed

by first class mail, postage prepaid, on February 6, 1984, to

Ms. C. Melanie McCaa  
Tual, Garrison & Tual  
47 North Third  
Memphis, Tennessee 38103

Mr. Michael J. Gibbens  
Jones, Givens, Gotcher, Doyle & Bogan, Inc.  
201 West 5th Street, Suite 400  
Tulsa, Oklahoma 74103

A handwritten signature in black ink, appearing to be "Boggs", is written over a horizontal line.

Entered

FILED

FEB -6 1984

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

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

STANG HYDRONICS, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 83-C-817-B
	)	
DIESEL ENERGY PRODUCTS, INC.	)	
and PACTEX CORPORATION,	)	
	)	
Defendants.	)	

NOTICE OF DISMISSAL

COMES NOW Plaintiff Stang Hydronics, Inc. and dismisses its action against Defendant Pactex Corporation, without prejudice.

Respectfully submitted,

---

R. Casey Cooper  
Burk E. Bishop  
Of BOESCHE, McDERMOTT & ESKRIDGE  
320 South Boston, Suite 1300  
Tulsa, Oklahoma 74103

Certificate of Service

I certify that service of the Notice of Dismissal was mailed by first class mail, postage prepaid, on February \_\_, 1984, to

Ms. C. Melanie McCaa  
Tual, Garrison & Tual  
47 North Third  
Memphis, Tennessee 38103

Mr. Michael J. Gibbens  
Jones, Givens, Gotcher, Doyle & Bogan, Inc.  
201 West 5th Street, Suite 400  
Tulsa, Oklahoma 74103

Mr. William Gregory James  
Pray, Walker, Jackman, Williamson & Marlar  
2200 Fourth National Building  
Tulsa, Oklahoma 74119.

---

FILED

UNITED STATES DISTRICT COURT FOR THE 6th DISTRICT OF OKLAHOMA FEB - 6 1984

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DAVID R. HODGES; SHIRLEY K. )  
 HODGES; BOARD OF COUNTY )  
 COMMISSIONERS, MAYES COUNTY, )  
 OKLAHOMA; COUNTY TREASURER, )  
 MAYES COUNTY, OKLAHOMA, )  
 )  
 Defendants. )

CIVIL ACTION NO. 83-C-646-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 3rd day of February, 1984. The Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney; the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, appearing by their attorney, Steven J. Adams, Assistant District Attorney; and Defendants, David R. Hodges, and Shirley K. Hodges appearing not.

The Court being fully advised and having examined the file herein finds that the Defendants, David R. Hodges and Shirley K. Hodges, acknowledged receipt of Summons and Complaint on August 16, 1983, and acknowledged receipt of Summons and Amendment to Complaint on November 14, 1983; that the Defendant, County Treasurer, Mayes County, Oklahoma, acknowledged receipt of Summons and Complaint on August 5, 1983, and acknowledged receipt

of Summons and Amendment to Complaint on October 28, 1983; and that the Defendant, Board of County Commissioners, Mayes County, Oklahoma, acknowledged receipt of Summons and Complaint on August 15, 1983.

It appears that the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, filed their Answer herein on August 22, 1983; and that the Defendants, David R. Hodges, and Shirley K. Hodges, have failed to answer the Complaint and Amendment to Complaint or otherwise plead and that their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a Promissory Note and for foreclosure of a Real Estate Mortgage securing said Promissory Note upon the following-described real property located in Mayes County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Numbered Three (3), of the GRACEMONT ADDITION to the Incorporated Town of PRYOR CREEK, Mayes County, Oklahoma, according to the Official Survey and Plat thereof, filed for record in the Office of the County Clerk of said County and State.

THAT Charles C. Edwards and Candace G. Edwards did, on the 5th day of December, 1974, execute and deliver to the United States of America, acting through the Farmers Home Administration, their Real Estate Mortgage and Promissory Note in the sum of \$18,000.00, payable in monthly installments, with interest thereon at the rate of nine (9) percent per annum.

The Court further finds that the Defendants, David R. Hodges and Shirley K. Hodges, did on the 23rd day of February,

1981, assume the obligation of Charles C. Edwards and Candace G. Edwards to the United States of America as set forth above.

The Court further finds that the Defendants, David R. Hodges and Shirley K. Hodges, did on the 23rd day of February, 1981, execute and deliver to the United States of America acting through the Farmers Home Administration, their Real Estate Mortgage and Promissory Note in the sum of \$15,700.00, payable in monthly installments, with interest thereon at the rate of thirteen (13) percent per annum.

The Court further finds that the Defendants, David R. Hodges and Shirley K. Hodges, made default under the terms of the aforesaid Promissory Notes by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the above-named Defendants are indebted to the Plaintiff in the principal sum of \$32,802.05, plus accrued interest of \$2,424.03 as of April 1, 1983, plus interest thereafter at the rate of \$9.8551 per day, plus the costs of this action accrued and accruing.

The Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, have an interest in the above-described real property by virtue of real estate taxes for the years 1983 in the amount of \$ 149.13 now due and owing and unpaid, which are a lien against said real property. Said lien is prior and superior to the mortgage lien of the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants,

David R. Hodges and Shirley K. Hodges, in the principal sum of \$32,802.05, plus accrued interest of \$2,424.03 as of April 1, 1983, plus interest thereafter at the rate of \$9.8551 per day, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of previously named Defendants to satisfy the 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 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 the real estate taxes assessed against the subject real property in the amount of \$ 149,13;

Third:

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

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 and

Amendment to 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.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

LAYN R. PHILLIPS  
United States Attorney

  
NANCY A. NESBITT  
Assistant United States Attorney

  
STEVEN J. ADAMS  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Mayes County, Oklahoma

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

CHARLES E. SMALLEY, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. 83-C-837-C  
 )  
 SOUTH PRAIRIE CONSTRUCTION )  
 CO., an Oklahoma corpora- )  
 tion, )  
 )  
 Defendant. )

STIPULATION OF DISMISSAL WITH PREJUDICE

Come now the plaintiff, Charles E. Smalley, by his attorney Walter M. Benjamin, and the defendant, South Prairie Construction Co., by its attorney James C. Chandler, being all parties having appeared in the above styled and numbered action, and pursuant to Rule 41(a)(1) F.R.Civ.P., file herein their stipulation of dismissal of said action with prejudice, said action having been fully settled by the compromise settlement agreement of the parties.

  
\_\_\_\_\_  
Walter M. Benjamin

543 East Apache Street, Suite 201  
P. O. Box 6099  
Tulsa, Oklahoma 74148

Attorney for Plaintiff .

*James C. Chandler*

---

James C. Chandler

LYTLE, SOULE, CURLEE, HARRINGTON,  
CHANDLER & VAN DYKE  
2210 First National Center  
Oklahoma City, Oklahoma 73102

Attorney for Defendant

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

FILED

SAINT FRANCIS HOSPITAL, INC., )  
an Oklahoma non-profit )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RICHARD S. SCHWEIKER, )  
SECRETARY OF HEALTH AND )  
HUMAN SERVICES, )  
 )  
Defendant. )

FILED  
JUL 10 1984  
JUL 10 1984  
No. 79-C-184-E ✓  
83-C-759-B  
(Consolidated)

MEMORANDUM OPINION

NOW on this 3<sup>rd</sup> day of February, 1984 comes on for hearing cross-motions for summary judgment in the above styled action and the Court, being fully advised in the premises finds as follows:

The parties hereto filed a Stipulation of Facts on March 7, 1980 which is incorporated herein by reference. On September 14, 1981 this Court entered an Order based on the briefs of the parties and agreed stipulations in which the Court found that the decision of the Administrator of Public Health Care Financing Administration dated February 4, 1979 was "arbitrary and irrational" and remanded the case to the Administrator for clarification of the agency's decision. The Deputy Administrator rendered his decision June 7, 1982.

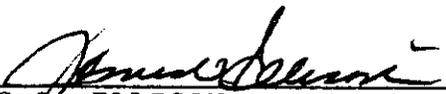
The Court finds the Deputy Administrator has adequately stated the basis for his opinion in the June 7, 1982 decision. Specifically, he found the transactions in the case at bar to be unrelated because of a lack of documentation supporting the

intent of the parties and the fact that the transactions were not carried out within a reasonable time period of each other.

In reaffirming and explaining the decision rendered previously, the Deputy Administrator found the loans in question could not be considered necessary under the Medicare Act and regulations.

The standard for review by this Court is whether the decision rendered below is supported by substantial evidence. The Court finds it is. The opinion issued June 7, 1982 clarifies the points which troubled this Court in its initial review. The result reached by the Administrator is a reasonable interpretation of the established regulations and should be upheld. St. Louis University v. Blue Cross Hospital Service, 537 F.2d 283 (8th Cir. 1976), cert. denied, 429 U.S. 977 (1976).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's motion for summary judgment be and is hereby granted; Plaintiff's motion for summary judgment is denied.

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

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

CURTIS J. MULLINS, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 83-C-815-E  
 )  
 FLAGSHIP INTERNATIONAL INC., )  
 a Delaware corporation )  
 formerly d/b/a SKY CHEFS )  
 CORPORATION, )  
 )  
 Defendant. )

**FILED**

FEB - 3 1984

*James G. Silver, Clerk*  
DISTRICT COURT

ORDER

There being no response to the Defendant Flagship International Inc.'s motion to dismiss and more than ten (10) days having passed since the filing of the Defendant's motion to dismiss 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 Flagship International Inc.'s motion to dismiss is therefore granted.

DATED this 3<sup>rd</sup> day of February, 1984.

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

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

**FILED**

FEB - 5 1984

THE WESTERN INSURANCE CO., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CIMARRON PIPELINE )  
CONSTRUCTION INC., et al., )  
 )  
Defendants. )

No. 81-C-62-ET  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT

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 the Western Insurance Co. recover judgment of the Defendant Cimarron Pipeline Construction Inc. that the contract of insurance be declared unenforceable as against Plaintiff and that Plaintiff be awarded its costs of action.

DATED at Tulsa, Oklahoma this 3<sup>rd</sup> day of February, 1984.

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

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

HOUSTON GENERAL INSURANCE )  
COMPANY, a Texas Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HOME INDEMNITY COMPANY, A )  
New Hampshire Corporation, )  
 )  
Defendant. )

No. 81-C-1-E

**FILED**

FEB - 3 1984

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

JUDGMENT

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 Houston General Insurance Company recover of the Defendant Home Indemnity Company the sum of \$300,000.00 with interest thereon at the rate of 9.87 per cent as provided by law, and its costs of action.

DATED at Tulsa, Oklahoma this 3<sup>rd</sup> day of February, 1984.

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

*en*

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

HOUSTON GENERAL INSURANCE )  
COMPANY, a Texas corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HOME INDEMNITY COMPANY, a )  
New Hampshire corporation, )  
 )  
Defendant. )

No. 81-C-1-E

**FILED**

FEB 28 1984

O R D E R

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

NOW on this 3rd day of February, 1984 comes on for hearing objections to Findings and Recommendations of the Magistrate filed by Defendant and the Court being fully advised in the premises finds the same should be overruled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's objections to the Findings and Recommendations of the Magistrate be and are hereby overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Findings and Recommendations of the Magistrate are adopted by this Court and are specifically incorporated herein by reference. Based upon the same, judgment is entered for Plaintiff in the sum of \$300,000.00 plus interest and costs.

IT IS SO ORDERED.

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

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

**FILED**

FEB - 5 1984

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

THE WESTERN INSURANCE CO., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CIMARRON PIPELINE )  
CONSTRUCTION INC., et al., )  
 )  
Defendants. )

No. 81-C-62-B

JUDGMENT

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 the Western Insurance Co. recover judgment of the Defendant Cimarron Pipeline Construction Inc. that the contract of insurance be declared unenforceable as against Plaintiff and that Plaintiff be awarded its costs of action.

DATED at Tulsa, Oklahoma this 3rd day of February, 1984.

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



**FILED**

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

FEB - 3 1984

BARRY A. RICHARDSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CAPTAIN JAMES MATNEY, et al., )  
 )  
 Defendants. )

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

No. 83-C-861-E

ORDER

There being no response to the Defendants' motion to dismiss and more than ten (10) days having passed since the filing of the motion to dismiss 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 Defendants' motion to dismiss is therefore granted.

DATED this 3rd day of February, 1984.

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

**FILED**

**FEB 2 1984**

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

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

MARY JANE WAGNON, Administratrix of the )  
Estate of JAMES DEAN LUCAS, Deceased, )  
Plaintiff, )

NO. 82-C-514-E

-v-

DONALD R. SPORE, Administrator of the )  
Estate of CARL R. SPORE, Deceased, and )  
ALLSTATE INSURANCE COMPANY, a foreign )  
corporation, )  
Defendant, )

ORDER

This matter comes on for decision on this 11th day of January 1984, the Court having previously heard all the testimony presented by the Plaintiff through their attorney, Jack Sellers and Jeff Sellers, and the Defendant Allstate Insurance Company through their attorney Richard D. Gibbon. The Court announces its findings as follows:

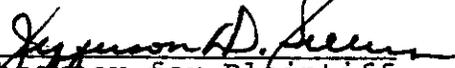
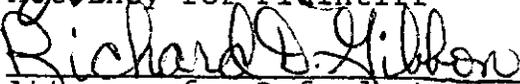
The Court finds under the evidence that was presented that the custody change order supplemented by the factual change of location of the deceased minor child, placed him in a residency that was the sole residency of his father prior to the events that resulted in his death. The Court finds that the residency of the minor child at the time of his death was Pawnee County, State of Oklahoma, and with that finding further finds that this residency does not meet the terms of the policy of the Allstate Insurance Company, presented to this court, and finds that the Plaintiff

RDG/pj  
1/27/84  
A 190

has no right of recovery under the terms and conditions of said policy. This finding entered as Court's judgment on the 11th day of January, 1984.

  
\_\_\_\_\_  
JUDGE OF THE UNITED STATES  
DISTRICT COURT

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Attorney for Plaintiff  
  
\_\_\_\_\_  
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

FEB - 11 1984

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GURNEY TAYLOR; CONNIE L. )  
TAYLOR; COUNTY TREASURER, )  
Tulsa County, Oklahoma; and )  
BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma, )  
Defendants. )

CIVIL ACTION NO. 83-C-1008-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 2nd day of February, 1984. Plaintiff appears by Layn R.

Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by Gary W. Clark, Assistant District Attorney; having previously filed their disclaimer herein; the Defendants Gurney Taylor and Connie L. Taylor, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 12, 1983; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 14, 1983; that the Defendant, Gurney Taylor, acknowledged receipt of Summons and Complaint on December 27, 1983; and that the Defendant, Connie L. Taylor,

acknowledged receipt of Summons and Complaint on December 27, 1983. It appears that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have filed their Answers on December 28, 1983, and that the Defendants, Gurney Taylor and Connie L. Taylor, have failed to answer and their default has been entered by the Clerk of this Court on January 20, 1984.

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

The North Four (4) feet of Lot One (1) Block Eight (8), FACTORY ADDITION to Tulsa, Tulsa County State of Oklahoma, according to the recorded plat thereof, and also the South Forty-Four (44) feet of vacated Fostoria or Birch Street adjoining said Lot One (1) on the North and a tract of land as follows: BEGINNING at a point Four (4) feet South of the Northwest Corner of Lot One (1), Block Eight (8), in said FACTORY ADDITION: THENCE West Sixty-four (64) feet; thence North Forty-eight (48) feet; thence East Sixty-four (64) feet; thence South Forty-eight (48) feet to the POINT OF BEGINNING, all of which tracts constitute one parcel of land in the form of parallelogram, the North and South Boundary lines of which run East and West, One hundred thirty (130) feet in length; and the East and West Boundary lines of which run North and South are Forty-eight (48) feet in length; and the Southeast Corner of said parallelogram is Four (4) feet South of the Northeast Corner of said Lot one (1), in block Eight (8), all of which said tract or parallelogram being part of the Southwest Quarter (SW/4) of Section Six (6), Township Nineteen (19) North, Range Thirteen (13) East, according to the Original Government Survey thereof.

That on July 14, 1982, Gurney Taylor and Connie L. Taylor executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their promissory note in the amount of \$30,500.00 payable in monthly installments with interest thereon at the rate of 15½ percent per annum.

That as security for the payment of the above described note, Gurney Taylor and Connie L. Taylor executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a real estate mortgage dated July 14, 1982, covering the described property. Said mortgage was recorded in Book 4625, Page 1319, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Gurney Taylor and Connie L. Taylor, made default under the terms of the aforesaid promissory note and mortgage 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 indebted to the Plaintiff in the sum of \$30,290.45, plus interest at the rate of 15½ percent per annum from February 1, 1983, until judgment, plus interest thereafter at the legal rate until paid, plus the costs of this action accrued and accruing.

The Court further finds that there are currently no ad valorem or personal property taxes due relating to the property which is the subject matter of this action, and that there exist no liens on the subject property in favor of the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, United States of America, have and recover judgment against the Defendants, Gurney Taylor and Connie L. Taylor, in the amount of \$30,290.75, plus interest at the rate of 15½ percent per annum from February 1, 1983, until judgment, plus interest thereafter at the current legal rate of 9.97% percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon failure of the Defendants, Gurney Taylor and Connie L. Taylor, to satisfy the money judgment of the Plaintiff 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 of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including cost of the sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

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 this Complaint, 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.

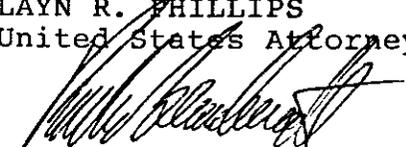
S/ JAMES O. ELLISON

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UNITED STATES DISTRICT JUDGE

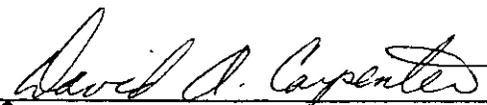
APPROVED:

LAYN R. PHILLIPS  
United States Attorney



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PETER BERNHARDT  
Assistant United States Attorney



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<sup>67</sup> CARY W. CLARK, Assistant  
District Attorney, Tulsa,  
Oklahoma, Attorney for County  
Treasurer, Tulsa County,  
Oklahoma and Board of County  
Commissioners, Tulsa County,  
Oklahoma



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

FILE

FEB 21 1984

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

SOUTHWESTERN BELL TELEPHONE  
COMPANY, a Missouri  
corporation,

Plaintiff,

v.

BEAVER OIL COMPANY, INC.,  
B and M OIL COMPANY, INC.,  
GULF OIL CORPORATION, SUN OIL  
COMPANY, STONEY LOVELACE and  
PENNANT PETROLEUM COMPANY,

Defendants.

No. 83-C-748-E

ORDER

Defendant Sun Oil Company, also known as Sun Refining  
and Marketing Company is hereby dismissed, upon joint  
application of plaintiff and this defendant.

IT IS SO ORDERED.

s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

OF COUNSEL:

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707 N. Robinson, Rm. 921  
Oklahoma City, OK 73102  
(405) 236-6757  
Attorney for Southwestern Bell  
Telephone Company

John R. Richards  
9 East Fourth St., Suite 400  
Tulsa, OK 74103  
(918) 584-2583  
Attorney for Sun Oil Company a/k/a  
Sun Refining and Marketing Company

Richard D. Wagner  
233 West 11th Street  
Tulsa, OK 74110  
Attorney for Pennant Petroleum Company

Alfred K. Morlan  
JONES, GIVENS, GOTCHER,  
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201 W. Fifth, Suite 400  
Tulsa, OK 74103  
Attorney for Gulf Oil Company

James E. Poe  
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Tulsa, OK 74103  
Attorney for B & M Oil Company

John Barker  
Fourth National Building  
Tulsa, Oklahoma 74119  
Attorney for B & M Oil Company

Paul E. Garrison  
1509 S. Victor  
Tulsa, OK 74104  
Attorney for Stoney Lovelace and  
Pennant Petroleum Company

Entered

FILED  
FEB -1 1984

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

JACK D. HINES, CLERK  
U.S. DISTRICT COURT

NEAL ENERGY CORPORATION, INC.,	)	
an Oklahoma corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. 83-C-1036(b)
	)	
SAM WOODS, JR.,	)	
	)	
Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 30<sup>th</sup> day of January, 1984, the plaintiff appearing by Stephen P. Gray, and the defendant, Sam Woods, Jr., not appearing.

The court being fully advised and having examined the file herein, finds that the defendant, Sam Woods, Jr., was served with Summons and Complaint on December 20, 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 a judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against the defendant, Sam Woods, Jr., for the principal sum of \$15,386.06, plus interest at the legal rate from the date of this judgment until paid, and costs of this action.

UNITED STATES DISTRICT JUDGE

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

FILED  
FEB -1 1984

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

CLIFTON DALE MOSIER, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 83-C-439-C  
 )  
 TULSA COUNTY and DAVE FAULKNER, )  
 et al., )  
 )  
 Defendants. )

O R D E R

Now before the Court for its consideration on its own motion is plaintiff's complaint, and the Special Report prepared by the Oklahoma State Department of Health at the direction of the Court.

Plaintiff is currently an inmate at the Oklahoma State Penitentiary in McAlester, Oklahoma. He instituted this action pursuant to 42 U.S.C. Section 1983 seeking monetary damages for alleged violations of his civil rights. In his complaint, plaintiff alleges that while incarcerated in the Tulsa County Jail in May of 1981, he was denied medical aid. Plaintiff contends he had hepatitis during such incarceration and that this disease was not diagnosed until he was transferred to the Oklahoma Department of Corrections Assessment and Reception Center, which is located in Lexington, Oklahoma. The only two

named defendants in this action are Tulsa County and Dave Faulkner, former Sheriff of Tulsa County.

The Special Report indicates that the plaintiff was booked into the Tulsa County Jail on or about August 12, 1980 on charges of Murder in the First Degree and Shooting with Intent to Kill. It further reflects that plaintiff was transported to the Oklahoma Department of Corrections on or about May 25, 1981. The Report further reflects that plaintiff requested medical attention approximately seventy-two times during his stay in the Tulsa County Jail and that he was seen and treated by members of the medical staff on twenty-four occasions during such time period. On at least one occasion the plaintiff was transported to an outside local facility for medical treatment. The sick call requests of the plaintiff and schedules of the treatment received are attached to the Report. Evidently, if the plaintiff had hepatitis during his stay in the Tulsa County Jail it was not diagnosed by the jail authorities.

The Court would first note that a recent unpublished opinion of the United States Court of Appeals for the Tenth Circuit disapproved the use of so-called "Martinez" reports prepared by officials of the Oklahoma Department of Health in actions brought by individuals incarcerated in county jails in the state as pretrial detainees. Worley v. Sharp, Unpublished No. 83-1024 and 83-1026 (10th Cir. filed December 21, 1983); see also Key v. Ogburn, Unpublished No. 81-2363 (10th Cir. filed April 27, 1982). "Martinez" reports have, however, been approved for use by a

district court when such reports are prepared by responsible officials of the involved facility. See Martinez v. Aaron, 570 F.2d 317 (10th Cir. 1978); Martinez v. Chavez, 574 F.2d 1043 (10th Cir. 1978). As noted in Chavez the reports are to provide the trial court with a record by which preliminary issues, including jurisdiction and frivolity pursuant to 28 U.S.C. §1915(d) can be determined. Of course, the reports cannot be used to decide material disputed fact questions, but only to determine the preliminary matters as set forth above. In other words, the reports are not a substitute for a trial, if one is warranted, or a methodology for deciding the issues in an action by conflicting affidavits.

After carefully reviewing Worley, this Court is convinced that an important consideration has been overlooked by the Tenth Circuit panel involved in that case. Under OKLA.STAT.ANN. tit.74, §192, the Oklahoma State Department of Health is required to inspect, at least once each year, all city and county jails to ensure compliance with certain standards as set forth in Section 192 for such facilities. One of the standards set forth in Section 192 is that detainees in such institutions are being provided with adequate medical care. This Court is convinced that utilization of the Oklahoma State Department of Health in the manner herein is the most efficient and just way to handle the preliminary matters outlined in Aaron and Chavez, supra. The Department of Health is one of the responsible state agencies required to inspect county jail facilities and its position is

such that an unbiased and economical review of any complaints by pretrial detainees against their custodians can be performed. This Court, therefore, concludes that utilization of the Oklahoma State Department of Health is proper in this situation and similar ones, and that such use will only tend to enhance the effective processing of complaints of this nature.

The Supreme Court of the United States has declared that insufficiency of medical treatment will not amount to cruel and unusual punishment in violation of the Eighth Amendment unless there has been "deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 104, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). An inadvertent or accidental failure to provide adequate care will not suffice to sustain a violation under the Eighth Amendment. Estelle v. Gamble, 554 F.2d 653 (5th Cir. 1977). Negligence or malpractice will not suffice to sustain a claim under 42 U.S.C. §1983. Smart v. Villar, 547 F.2d 112 (10th Cir. 1976); Estelle v. Gamble, supra. The plaintiff must allege and prove exceptional circumstances and conduct so grossly incompetent, inadequate or excessive so as to shock the conscience or to be intolerable to basic fairness. Dewell v. Lawson, 489 F.2d 877 (10th Cir. 1974). From a careful review of the record herein, it is clear that plaintiff has alleged no more than a mistake or negligence on the part of jail officials in their diagnosis of a medical condition. Such does not rise to the level of constitutional cognizance. Therefore, this Court concludes that the plaintiff has not been deprived of any right

protected by the United States Constitution and that he has no cause of action pursuant to 42 U.S.C. §1983.

In order to establish a cause of action under Section 1983, plaintiff must allege that defendants have deprived him of a federally protected right and that the person who has deprived him of that right acted under color of state law. Gomez v. Toledo, 446 U.S. 635, 640, 100 S.Ct. 1920, 1923, 64 L.Ed.2d 572, (1980).

Since a review of the pleadings filed herein does not indicate that the plaintiff has been deprived of rights secured under the U. S. Constitution, plaintiff has no claim cognizable under §1983. Baker v. McCollan, 443 U.S. 137, 146-147, 99 S.Ct. 2612, 61 L.Ed.2d 321 (1979).

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. Hagans v. Lavine, 415 U.S. 528, 536 (1973); Wells v. Ward, 470 F.2d 1185, 1187 (10th Cir. 1972); Smart v. Villar, supra.

In view of its holding that the plaintiff has suffered no deprivation of rights constitutionally protected, the Court concludes that this action is frivolous and that plaintiff's

claim is unsubstantial. Accordingly, this action is, in all respects, dismissed.

It is so Ordered this 31<sup>st</sup> day of January, 1984.

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