

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

FILED

SEP 28 1994<sup>19</sup>

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

THE HUGHES GROUP, an )  
Arizona corporation, )

Plaintiff-Appellee, )

vs. )

PERRY A. MORGAN and MRS. )  
PERRY A. MORGAN, )

Defendants-Appellants. )

No. 81-C-231-B ✓

THE HUGHES GROUP, an Arizona )  
corporation, )

Plaintiff-Appellant, )

vs. )

PERRY A. MORGAN and MRS. PERRY )  
A. MORGAN, )

Defendants-Appellees. )

No. 81-C-231-BT

THE HUGHES GROUP, an Arizona )  
corporation, )

Plaintiff-Appellee, )

vs. )

PERRY A. MORGAN, MRS. PERRY A. )  
MORGAN, and GLENN MORGAN, )

Defendants-Appellants. )

No. 82-C-995-BT

THE HUGHES GROUP, an Arizona )  
corporation, )

Plaintiff-Appellee, )

vs. )

PERRY A. MORGAN, MRS. PERRY A. )  
MORGAN, and GLENN MORGAN, )

Defendants-Appellants. )

No. 82-C-231-BT

ORDER ASSESSING ATTORNEYS' FEES

Upon consideration of the parties' stipulation of fact and joint motion to determine and assess attorneys' fees, the Court finds that the plaintiff was the prevailing party on appeal and is entitled to the sum of One Thousand Eight Hundred Twenty-five Dollars (\$1,825.00) as reasonable compensation for attorneys' fees incurred on appeal.

It is ordered that the plaintiff is awarded an attorney fee in the sum of One Thousand Eight Hundred Twenty-five Dollars (\$1,825.00) against the defendants, and each of them.

A handwritten signature in black ink, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT COURT  
JUDGE

Entered

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

FILED

SEP 28 1984

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

THE HUGHES GROUP, an )  
Arizona corporation, )  
 )  
Plaintiff-Appellee, )

vs. )

No. 81-C-231-B

PERRY A. MORGAN and MRS. )  
PERRY A. MORGAN, )  
 )  
Defendants-Appellants. )

THE HUGHES GROUP, an Arizona )  
corporation, )  
 )  
Plaintiff-Appellant, )

vs. )

No. 81-C-231-BT

PERRY A. MORGAN and MRS. PERRY )  
A. MORGAN, )  
 )  
Defendants-Appellees. )

THE HUGHES GROUP, an Arizona )  
corporation, )  
 )  
Plaintiff-Appellee, )

vs. )

No. 82-C-995-BT

PERRY A. MORGAN, MRS. PERRY A. )  
MORGAN, and GLENN MORGAN, )  
 )  
Defendants-Appellants. )

THE HUGHES GROUP, an Arizona )  
corporation, )  
 )  
Plaintiff-Appellee, )

vs. )

No. 82-C-231-BT

PERRY A. MORGAN, MRS. PERRY A. )  
MORGAN, and GLENN MORGAN, )  
 )  
Defendants-Appellants. )

ENTRY OF JUDGMENT

Judgment is hereby entered on behalf of plaintiff THE HUGHES GROUP, in the amount of One Thousand Eight Hundred Twenty-Five Dollars (\$1,825.00), against the defendants, and each of them, along with post-judgment interest thereon at a rate of 11.36% per annum, until paid.

ENTERED this 5<sup>th</sup> day of October, 1984.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED  
SEP 28 1984

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

RANGER INSURANCE COMPANY, )  
)  
Plaintiff, )

vs. )

No. 84-C-396C )

ROY CLAXTON GARRETT, individual; )  
MARIE GARRETT, individual; )  
KENDALL JR. GARRETT, individual; )  
SANDRA GALE RUMFELT, individual, )  
and as mother and next friend of )  
THOMAS E. GARRETT, an individual; )  
JANE PHILLIPS EPISCOPAL MEMORIAL )  
MEDICAL CENTER, and KENDALL )  
HOWELL GARRETT, an individual, )  
)  
Defendants)

JOURNAL ENTRY OF JUDGMENT

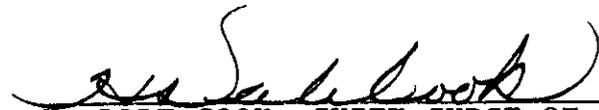
NOW on this 28 day of Sept, 1984, the above entitled matter came on regularly for trial. Plaintiff appeared by its attorneys, Chris Harper of the firm of Holloway, Dobson, Hudson and Bachman; the Defendant ROY CLAXTON GARRETT appeared by his attorney of record, Darrell L. Bolton; the Defendant MARIE GARRETT appeared by her attorney of record, Alan R. Carlson, of the firm of Garrison, Brown & Carlson; the Defendant KENDALL GARRETT, JR. appeared by his attorney of record, Daniel Bassett of the firm Bassett & Stocker; the intervenor LORENE SMITH, appeared by her attorney of record Daniel Bassett of the firm Bassett & Stocker; the Defendant SANDRA GALE RUMFELT appeared by her attorney Jack Heskett of the firm of Heskett, Heskett, Daniel & Esser; the Defendant JANE PHILLIPS EPISCOPAL MEMORIAL MEDICAL CENTER, appeared not; and the Defendant KENDALL HOWELL GARRETT, appeared not. Thereupon, the Court found that it had jurisdiction in the premises.

THEREUPON, this case proceeded to trial; the Plaintiff and the Defendants in open court waived trial by jury; and, the Court having heard the statements of counsel, and being fully advised in the premises found that KENDALL HOWELL GARRETT has no claim to any insurance proceeds. Further, the Court finds that ROY CLAXTON GARRETT having been injured in the accident in question, and has presented a claim for his personal injuries arising out of said accident is entitled to a judgment in the amount of eight thousand three hundred one dollars and 18/100 (8,301.18). The Court further finds that MARIE GARRETT, as the widow of THOMAS LEE GARRETT, who was killed in the accident in question, has a claim for loss of consortium and for grief, and is entitled to a judgment in the amount of three thousand seven hundred seventy three and 67/100, (\$3,773.67). The Court further finds that KENDALL GARRETT, JR., who received personal injuries in the accident, and who was a passenger at the time of the accident in question, is entitled to receive the sum of one thousand seven hundred sixty<sup>-six</sup>/dollars and 98/100 (\$1,766.98). The Court further finds that the Intervenor, LORENE SMITH, has a claim for the burial expenses involved in the burial of Thomas Garrett and is entitled to receive two thousand seven hundred sixty seven and 27/100 (\$2,767.27). The Court further finds that SANDRA GALE RUMFELT, as mother and the next of friend of Thomas E. Garrett, is the custodian of the minor son of Thomas Garrett who was killed in the accident, and that SANDRA GALE RUMFELT as the mother and next of friend, has a claim on behalf of the minor son of Thomas Garrett who died as a result of the injuries he receive in the accident, and that SANDRA GALE RUMFELT is entitled to a judgment in the amount of four thousand twenty eight dollars and 44/100 (\$4,028.44). Further,

the Court finds that the request on behalf of RANGER INSURANCE COMPANY that they be awarded their attorneys fees is hereby denied.

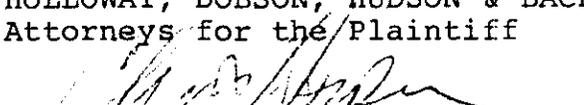
IT IS THEREFORE ORDERED ADJUDGED AND DECREED BY THE COURT that KENDALL HOWELL GARRETT has no claim to any insurance proceeds; that ROY CLAXTON GARRETT is granted a judgment in the amount of eight thousand three hundred one dollars and 18/100 (\$8,301.18); that MARIE GARRETT is granted a judgment in the amount of three thousand seven hundred and seventy three dollars and 67/100 that KENDALL GARRETT, JR., is granted a judgment in the amount of one thousand seven hundred and sixty-six Dollar and 98/100 (\$1,766.98); that LORENE SMITH is granted a judgment in the amount of two thousand seven hundred Sixty-seven dollars and 27/100. that SANDRA GALE RUMFELT as mother and the next of friend of Thomas E. Garrett, is granted a judgment in the amount of four thousand Twenty eight dollars and 44/100 (4,028.44.

IT IS FURTHER ORDERED ADJUDGED AND DECREED BY THE COURT that the request on behalf of RANGER INSURANCE COMPANY that they be awarded their attorneys fees is denied.

  
H. DALE COOK, CHIEF JUDGE OF THE  
UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

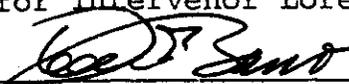
HOLLOWAY, DOBSON, HUDSON & BACHMAN  
Attorneys for the Plaintiff

  
Chris Harper

HESKETT, HESKETT, DANIEL, ESSER  
Attorneys for Sandra Gale Rumfelt as  
Mother and next friend of Thomas E. Garrett

  
Jack Heskett

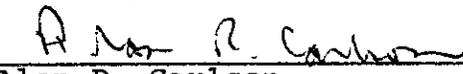
BASSETT & STOCKER  
Attorneys for Kendall Garrett Jr., and  
for Intervenor Lorene Smith

  
\_\_\_\_\_  
Daniel Bassett

DARRELL L. BOLTON  
Attorney for Roy C. Garrett

  
\_\_\_\_\_  
Darrell L. Bolton

GARRISON, BROWN & CARLSON  
Attorneys for Marie Garrett

  
\_\_\_\_\_  
Alan R. Carlson

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

JOHNSON'S TRUCKING INC., )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BURLINGTON NORTHERN RAILROAD )  
COMPANY, a foreign corporation, )  
 )  
Defendant and Third-Party )  
Plaintiff, )  
 )  
vs. )  
 )  
MISSION INSURANCE COMPANY, a )  
foreign corporation, )  
 )  
Third-Party Defendant. )

FILED

SEP 28 1984

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

Case No. 84-C-212-E

ORDER OF DISMISSAL WITHOUT PREJUDICE OF  
OF PLAINTIFF'S COMPLAINT

NOW on this 28<sup>th</sup> day of September, 1984, upon the written stipulation of the plaintiff for a Dismissal without Prejudice of the plaintiff's Complaint, the Court having examined said stipulation for dismissal, finds that the defendant has also so stipulated, and the Court being fully advised in the premises, finds that the plaintiff's Complaint against the defendant should be dismissed without prejudiced to the re-filing thereof.

IT IS THEREFORE ORDERED BY THE COURT that the Complaint of the plaintiff against the defendant be and the same is hereby dismissed without prejudice to any future action.

  
UNITED STATES DISTRICT JUDGE

*Entered*

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

JOHNSON'S TRUCKING INC., )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BURLINGTON NORTHERN RAILROAD )  
COMPANY, a foreign corporation, )  
 )  
Defendant and Third-Party )  
Plaintiff, )  
 )  
vs. )  
 )  
MISSION INSURANCE COMPANY, a )  
foreign corporation, )  
 )  
Third-Party Defendant. )

SEP 28 1984

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

Case No. 84-C-212-E

ORDER OF DISMISSAL WITHOUT PREJUDICE OF  
OF PLAINTIFF'S COMPLAINT

NOW on this 28 day of Sept, 1984, upon the written stipulation of the plaintiff for a Dismissal without Prejudice of the plaintiff's Complaint, the Court having examined said stipulation for dismissal, finds that the defendant has also so stipulated, and the Court being fully advised in the premises, finds that the plaintiff's Complaint against the defendant should be dismissed without prejudiced to the re-filing thereof.

IT IS THEREFORE ORDERED BY THE COURT that the Complaint of the plaintiff against the defendant be and and the same is hereby dismissed without prejudice to any future action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

*Entered*

**FILED**

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

SEP 28 1984

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

GRETTA M. MCKELLIPS, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 SAINT FRANCIS HOSPITAL, INC., )  
 et al., )  
 )  
 Defendants. )

No. 83-C-605-E

O R D E R

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the Court, hearing Defendants' motion for directed verdict at the conclusion of Plaintiffs' case in regard to the liability of Defendant Caldwell and the vicarious liability of Defendants Emergency Care Inc. and St. Francis Hospital, finds the same should be granted for failure of Plaintiffs to prove the essential elements of their claim.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendants' motion for directed verdict be and is hereby granted, that Plaintiffs take nothing, that the case be dismissed on the merits and that the Defendants recover of the Plaintiffs their costs of the action.

DATED this 28<sup>th</sup> day of September, 1984.

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

25

*Entered*

FILED

SEP 28 1984

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

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

MELVIN LAWRENCE,

Plaintiff,

vs.

SAFEWAY STORES, INC.,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 82-C-1172-E

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiff Melvin Lawrence recover of the Defendant Safeway Stores, Inc. the sum of \$14,100.00 with interest thereon at the statutory rate of 11.36% and his costs of action.

DATED at Tulsa, Oklahoma this 28<sup>th</sup> day of September, 1984.

*James O. Ellison*  
\_\_\_\_\_  
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. )  
 )  
 HARVEY REED, JR. and THETIS )  
 REED, husband and wife; )  
 EDDIE MAURICE DAVIS; )  
 TORI KEIA OUTLAND; )  
 COUNTY TREASURER and BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants. )

SEP 27 1984

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

CIVIL ACTION NO. 84-C-597-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 27<sup>th</sup> day  
of September, 1984. The 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 Susan K. Morgan,  
Assistant District Attorney; and the Defendants, Harvey Reed,  
Jr., Thetis Reed, Eddie Maurice Davis, Tori Keia Outland, a/k/a  
Tori Keia Outland Davis, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Harvey Reed, Jr.,  
acknowledged receipt of Summons and Complaint on July 15, 1984;  
that the Defendant Thetis Reed, acknowledged receipt of Summons  
and Complaint on July 15, 1984; that the Defendant, Eddie Maurice  
Davis, acknowledged receipt of Summons and Complaint on July 2,

1984; that the Defendant, Tori Keia Outland, a/k/a Tori Keia Outland Davis, acknowledged receipt of Summons and Complaint on July 2, 1984; that the Defendant County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 29, 1984; and that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 3, 1984.

It appears that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have filed their Answers on July 19, 1984; and that the Defendants, Harvey Reed, Jr., Thetis Reed, Eddie Maurice Davis, and Tori Keia Outland, a/k/a Tori Keia Outland Davis, have failed to answer and their default has been entered by the Clerk of this Court on September 18, 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 Three (3), Block Four (4), POWDER AND POMEROY ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT on February 1, 1982, Harvey Reed, Jr., and Thetis Reed, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their promissory note in the amount of \$31,895.00, 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, Harvey Reed, Jr., and Thetis Reed executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a real estate mortgage dated February 1, 1982, covering the above described property. Said mortgage was recorded on February 2, 1982, in Book 4593, Page 1282, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendants, Harvey Reed, Jr., and Thetis Reed, 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 \$31,998.71, plus interest at the rate of 15½ percent per annum from October 1, 1983, 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 there are currently no ad valorem or personal property taxes due relating to 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 have and recover judgment against the Defendants, Harvey Reed, Jr., and Thetis Reed, in the principal amount of \$31,998.71, plus interest at the rate of 15½ percent per annum

from October 1, 1983, until judgment, plus interest thereafter at the legal rate until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said the Defendants, Harvey Reed, Jr., and Thetis Reed, 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 involved 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;

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

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS  
United States Attorney



PETER BERNHARDT  
Assistant United States Attorney



SUSAN K. MORGAN  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

Entered

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

SEP 27 1984 19

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

GEOSOURCE, INC., a  
Delaward Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
 )  
B G & S MANUFACTURING, an )  
unincorporated association, )  
et al., )  
 )  
Defendant. )

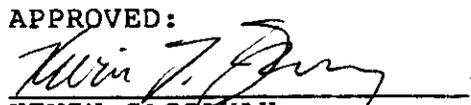
No. 84-C-288-B

ORDER FOR DISMISSAL WITHOUT PREJUDICE

On this 27 day of September, 1984 there having come on for hearing in the above entitled action the plaintiff's application for dismissal without prejudice due to lack of jurisdiction; and the court having reviewed said application and finding that the statements contained therein are true, that the application should be granted, and that the attorney for the defendants Gene Bias and Robin Bias have no objection to its being granted;

IT IS, THEREFORE, ORDERED by the court that the above entitled action be and it is hereby dismissed, without prejudice to the real party in interest, Wheatley Pump and Valve, Inc., to refile the same in any court of competent jurisdiction.

  
UNITED STATES DISTRICT JUDGE

APPROVED:  
  
KEVIN GASSAWAY

ATTORNEY FOR PLAINTIFF

*Entered*

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

FILED

SEP 27 1984

PEGGY MCKINNEY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PERRY WILLIS, et al., )  
 PERRY WILLIS, individually )  
 and as Superintendent of )  
 Coleman Schools, DENNIS )  
 STEPHENS, FLOYD WHITE, CECIL )  
 WHITE, DOYLE WATSON and )  
 EARL "BUDDY" SCRIBNER, in )  
 their official capacities )  
 as the Board of Education )  
 of Coleman Independent )  
 Schools, and COLEMAN SCHOOL, )  
 an Independent Public School )  
 under the Education Laws of )  
 the State of Oklahoma, )  
 )  
 Defendants)

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

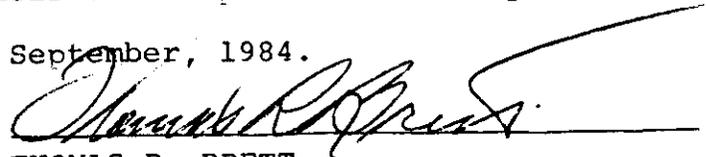
No. 83-C-917-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the defendants, Perry Willis, individually and as Superintendent of Coleman Schools, Dennis Stephens, Floyd White, Cecil White, Doyle Watson and Earl "Buddy" Scribner, in their official capacities as the Board of Education of Coleman Independent Schools, and Coleman School, an independent public school under the education laws of the State of Oklahoma, and against the plaintiff, Peggy McKinney, and costs are assessed against the plaintiff.

The parties are to pay their own respective attorneys' fees.

ENTERED this 27 day of September, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

Entered  
FILED

SEP 27 1984

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

AUDRA M. SEELEY,

Plaintiff,

v.

R. D. GARCIA, M.D.; SIFIK  
BARA, M.D.; and ALEJANDRO  
LIZARRAGA, M.D.:

Defendants.

Case No. 83-C0525 B

ORDER OF DISMISSAL

It appearing to the satisfaction of the Court that all matters and controversies have been compromised by and between the parties, as evidenced by the signatures of their attorneys on the stipulation filed herein on the 26<sup>th</sup> day of September, 1984; therefore,

IT IS ORDERED that the Plaintiff's suit be, and the same is hereby dismissed without prejudice to refileing thereof.

DATED this 27 day of September, 1984.

Thomas R. Greff  
UNITED STATE DISTRICT JUDGE

FILED

SEP 27 1984

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

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

HAROLD GENE JONES,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MILWAUKEE ELECTRIC TOOL	)	
CORPORATION,	)	
	)	
Defendant.	)	No. 83-C-123-C

ORDER OF DISMISSAL WITH PREJUDICE

The Court being fully advised in the premises and upon consideration of the parties' Joint Application for Dismissal With Prejudice, finds that such order should issue.

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff's cause be and the same is hereby dismissed with prejudice; each of the parties to bear their respective costs.

DONE and DATED this 27 day of September, 1984.

(Signed) H. Dale Cook  

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H. DALE COOK, Chief United  
States District Judge

Entered

FILED

SEP 27 1984

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

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

AUDRA M. SEELEY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
R. D. GARCIA, M.D.; )  
SIFIK BARA, M.D.; and )  
ALEJANDRO LIZARRAGA, M.D.; )  
 )  
Defendants. )

Case No. 83-C0525 B

ORDER OF DISMISSAL

It appearing to the satisfaction of the Court that all matters and controversies involving the defendants Diaram Amurd and Robert O'Toole have been compromised by and between the parties, as evidenced by the signatures of their attorneys on the stipulation filed herein on the 26<sup>th</sup> day of September, 1984; therefore,

IT IS ORDERED that the plaintiff's suit be, and the same is hereby dismissed against the defendants Diaram Amurd and Robert O'Toole.

DATED this 27 day of September 1984.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

OKLAHOMA SURETY COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant. )

SEP 27 1984

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

CIVIL ACTION NO. 82-C-694-E

ORDER OF DISMISSAL

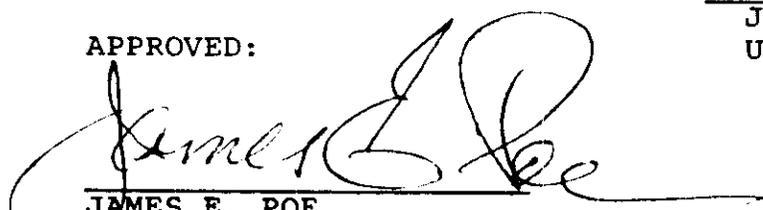
Upon the joint Motion of the Plaintiff, Oklahoma Surety Company and the Defendant, United States of America, and for good cause shown it is hereby ORDERED that Plaintiff's Complaint shall be, and it hereby is, dismissed with prejudice as against the Defendant, United States of America, by reason of a compromise settlement which has been executed between the parties. IT IS FURTHER ORDERED that this dismissal shall not affect in any manner whatsoever the pending Third-Party Complaint of the United States of America against C and D Grading Company, Inc.

Dated this 26<sup>th</sup> day of September, 1984.

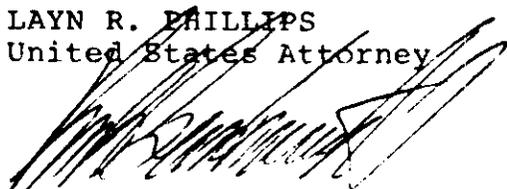
s/ JAMES O. ELLISON

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

APPROVED:

  
\_\_\_\_\_  
JAMES E. POE  
Attorney for Plaintiff  
OKLAHOMA SURETY COMPANY

LAYN R. PHILLIPS  
United States Attorney

  
\_\_\_\_\_  
PETER BERNHARDT  
Assistant U.S. Attorney  
Attorney for Defendant  
UNITED STATES OF AMERICA

*Entered*

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

MIDAMERICA FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, )

Plaintiff, )

v. )

No. 84-C-461-B

FIRST TULSA BANCORPORATION, )  
INC., a Delaware corporation; )  
LIBERTY NATIONAL CORPORATION, )  
a Delaware corporation; BANKS )  
OF MID-AMERICA, INC., a Dela- )  
ware corporation; THE FIRST )  
NATIONAL BANK AND TRUST COMP- )  
ANY OF TULSA, a national bank- )  
ing association; and THE LIB- )  
ERTY NATIONAL BANK AND TRUST )  
COMPANY OF OKLAHOMA CITY, a )  
national banking association, )

Defendants. )

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

SEP 26 1984

FILED

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COME NOW MidAmerica Federal Savings and Loan Association,  
First Tulsa Bancorporation, Inc., Liberty National Corporation,  
Banks Of Mid-America, Inc., The First National Bank and Trust  
Company Of Tulsa, and The Liberty National Bank and Trust Company  
Of Oklahoma City, all of the parties hereto, and pursuant to Rule

41(a)(ii), hereby dismiss without prejudice all of their claims herein.

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

Sam P. Daniel, Jr. (OBA No. 2153)  
William E. Hughes (OBA No. 4469)  
Richard P. Hix (OBA No. 4241)

By: Richard P. Hix  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for the Plaintiff  
MidAmerica Federal Savings and  
Loan Association

CROWE & DUNLEVY

William G. Paul (OBA No. 6974)  
John J. Griffin, Jr. (OBA No. 3613)

By: John J. Griffin, Jr.  
1800 Mid-America Tower  
20 North Broadway  
Oklahoma City, Oklahoma 73102  
(405) 235-7700

CONNER & WINTERS

Douglas L. Inhofe (OBA No. 4550)  
J. David Jorgenson (OBA No. 4829)

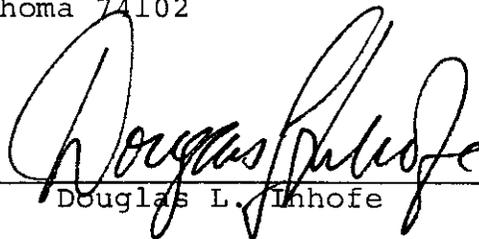
By: Douglas L. Inhofe  
First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of September, 1984, I caused a true and correct copy of the above and foregoing Stipulation of Dismissal Without Prejudice to be mailed with proper postage thereon fully prepaid to:

Richard P. Hix, Esq.  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103

John J. Griffin, Jr., Esq.  
Crowe & Dunlevy  
1800 Mid-America Tower  
20 North Broadway  
Oklahoma City, Oklahoma 74102

  
\_\_\_\_\_  
Douglas L. Inhofe



FILED  
SEP 25 1984  
JACK B. CONYERS, CLERK  
U.S. DISTRICT COURT

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

BRENDA GARRETT, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PHILADELPHIA LIFE INSURANCE )  
 COMPANY, a Pennsylvania )  
 corporation, )  
 )  
 Defendant. )

No. 84-C-136 E ✓

ORDER OF DISMISSAL

Now on this 25<sup>th</sup> day of September, 1984, this cause comes on for hearing upon the joint application of plaintiff and defendant, wherein it is alleged that the parties hereto have arrived at an amicable settlement as to the issues in this cause, and that the case should accordingly be dismissed with prejudice.

IT IS THEREFORE ORDERED that the action filed herein by plaintiff as against the defendant, upon the insurance policy set out in the complaint, be and the same is hereby dismissed with prejudice.

James DeLoach  
United States District Judge

APPROVED AS TO FORM:

JOE B. WOMACK, C. J. BERNARD

By Joe B. Womack )  
 Attorneys for Plaintiff )

HENRY W. CONYERS, HICKMAN & HICKMAN

By Henry W. Conyers )  
 Attorneys for Defendant )

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

Entered  
FILED

SEP 25 1984

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

BILLY J. C. INGRAM, and )  
MARSALETE INGRAM, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
FIBREBOARD CORPORATION, )  
et al., )  
 )  
Defendants. )

No. 83-C-890-B

ORDER OF DISMISSAL WITH PREJUDICE

The Stipulation for Dismissal with Prejudice by Plaintiffs and Defendant Rock Wool Manufacturing Company comes on for consideration and review, and the Court noting that the parties hereto pursuant to a compromise settlement have stipulated and requested a dismissal with prejudice as to the Defendant Rock Wool Manufacturing Company only, each party to pay its own costs and attorney's fees, it is

ORDERED, that the above action be dismissed with prejudice as to the Defendant Rock Wool Manufacturing Company, only, each party to pay its own costs and attorney's fees.

DATED this 24 day of September, 1984.

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Entered  
**FILED**

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

SEP 25 1984

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

AMOS ADETULA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 YUBA HEAT TRANSFER CORPORATION, )  
 a foreign corporation domesti- )  
 cated in Oklahoma, CALVIN HARDEN, )  
 DAVID HENRY, JOE MITCHO, H.V. )  
 CHANEY, and JIM EASTON, )  
 )  
 Defendants. )

NO. 83-C-757-B

O R D E R

This matter comes before the Court on the defendants' motion to dismiss and alternative motions to strike or for a more definite statement. Plaintiff has objected to the motions. For the reasons set forth below, defendnts' motion to dismiss individual defendants is sustained. The motion to dismiss the complaint is overruled and the alternative motion to strike is sustained.

Plaintiff is a black male citizen of the United States, of Nigerian origin. He worked for defendant Yuba Heat Transfer Corporation from March 1, 1977 until November 10, 1982, when he was terminated for alleged falsification of his time card. Plaintiff originally filed suit for employment discrimination under Title VII, violation of his civil rights under 42 U.S.C. §§1981, 1985 and 1986, defamation, and violation of Oklahoma civil rights laws. On March 7, 1984, the Court entered an order dismissing his claims under 42 U.S.C. §§1985 and 1986 and state

civil rights claims. Further, the Court ordered plaintiff to amend his complaint to show why individual defendants Mitcho, Chaney and Easton should remain in the lawsuit and to state which acts of the defendants violated his rights under §1981. In the amended complaint, plaintiff dropped his common law claim of defamation. Thus, the only claims remaining in the lawsuit are plaintiff's claims of employment discrimination under 42 U.S.C. §2000e et seq., and civil rights violations under 42 U.S.C. §1981.

Defendants have moved for dismissal of the Title VII employment discrimination claims against the individual defendants; and dismissal of the Title VII and 1981 claims against the corporation for failure to state facts sufficient to state a claim.

#### MOTION TO DISMISS INDIVIDUAL DEFENDANTS

Plaintiff failed to name the individual defendants in EEOC charges he filed. Ordinarily, suit may not be maintained against a party not named in EEOC charges. However, under certain circumstances, suit may be maintained. Romero v. Union Pacific Railroad, 615 F.2d 1303 (10th Cir. 1980). Four factors are to be considered in determining whether suit may be maintained against a party not named in an EEOC charge:

"1) whether the role of the unnamed party could through reasonable effort by the complainant be ascertained at the time of the filing of the EEOC complaint; 2) whether, under the circumstances, the interests of a named party are so similar as the unnamed party's that for the purpose of obtaining voluntary conciliation and compliance it would be unnecessary to include the unnamed party in

the EEOC proceedings; 3) whether its absence from the EEOC proceedings resulted in actual prejudice to the interests of the unnamed party; 4) whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party."

Id. at 1312, citing Glus v. G.C. Murphy Co., 562 F.2d 880 (3rd Cir. 1977). In his amended complaint, plaintiff states:

"The individually named defendants herein should be held liable for violations of Title VII since they are all in management and supervisory positions with defendant YUBA. They all had notice of the charge with EEOC. They all took part in the investigation conducted EEOC (sic). Defendant EASTON was the plant superintendent when a White employee fired several shots from a rifle at Black employees and nothing in the way of disciplinary action was taken against him for this life threatening conduct. Defendant MITCHO is the Human Resources Director and was the agent of defendant Yuba who took part in the unsuccessful conciliation efforts of the EEOC, and was one of the individuals who denied that the White employee who had fired the rifle shots was one of their employees. Defendant CHANEY was the immediate supervisor of plaintiff ADETULA, and was the defendant who initiated the charges which was the basis for the termination of plaintiff ADETULA. All of the defendants are management or supervisory employees of defendant YUBA and their interests are similar to those of the employer that it was not necessary to name them in order to attempt to obtain voluntary conciliation and compliance (sic). Since they all had actual notice they were not prejudiced by not being named individually in the charge."

The Court concludes these allegations are insufficient to comply with the criterion of Romero. Nowhere in his complaint does plaintiff address the question of whether the role of the individuals in the alleged violations could have been ascertained

at the time of the EEOC complaint. Although plaintiffs made general allegations that the individuals were aware of charges against the company by virtue of their management positions, he makes no allegations that the individuals were aware of any charges against them individually, or that their interests were so related to those of the company that they need not be included in EEOC proceedings. Further, there is no allegation the individual defendants made any representations to plaintiff that their relationship with him was to be through the company. Therefore, the Court finds the individual defendants, Calvin Harden, David Henry, Joe Mitcho, H. V. Chaney and Jim Easton, should be dismissed from this action.

MOTION TO DISMISS UNDER RULE 12(b)(6)

Defendant Yuba has moved to dismiss both the EEOC claim and the §1981 claim under F.R.Civ.P. 12(b)(6) for failure to state a claim. Defendant contends plaintiff has not alleged facts sufficient to state a claim for employment discrimination or racial discrimination under §1981.

Plaintiff alleges in his complaint that Yuba has, in the operation and administration of employment, intentionally adopted and sanctioned racially discriminatory practices with respect to blacks. Plaintiff contends blacks are under-represented in supervisory and management positions, that defendant has followed a pattern of creating and allowing a racially hostile work environment, and defendant has allowed blacks to be harassed, abused, threatened with physical harm and called derogatory names.

Plaintiff further contends blacks are discriminated against in disciplinary procedures. Plaintiff also complains that the defendant objected to plaintiff receiving unemployment compensation, that defendant has aided, incited and abetted employees in taking part in or acquiescing to unlawful activities to deprive plaintiff of his rights. He contends he was wrongfully accused of stealing appliances and equipment and was wrongfully terminated for alleged falsification of his time card. The only date plaintiff provides regarding alleged wrongful acts of the defendants is his termination date, November 10, 1982. Thus, except for the claim that he was wrongfully discharged, plaintiff fails to allege specifically what act or acts of defendant have violated his rights under either Title VII or §1981.

The rules of pleading in Title VII cases are liberal in this circuit. United States v. Gustin-Bacon Div., Certaineed Products Corp., 426 F.2d 539 (10th Cir. 1970). However, conclusory allegations of employment discrimination unsupported by any underlying factual details, are insufficient to state a claim for relief. See Ogletree v. McNamara, 449 F.2d 93 (6th Cir. 1971); Albany Welfare Rights Organization Day Care Center, Inc. v. Schreck, 463 F.2d 620 (2nd Cir. 1972), cert. den. 410 U.S. 944 (1973); Williams v. General Foods Corp., 492 F.2d 399 (7th Cir. 1974); Peak v. Topeka Housing Authority, City of Topeka, 78 F.R.D. 78 (D. Ks. 1978). Likewise, these conclusory allegations fail to state a claim under 42 U.S.C. §1981. United Black Firefighters v. Hirst, 604 F.2d 844 (4th Cir. 1979).

Plaintiff Adetula has stated with sufficient specificity his claim under Title VII that he was wrongfully discharged for alleged falsification of his time card. Therefore, plaintiff's Title VII claim will not be dismissed. However, the Court orders the remaining allegations of plaintiff's complaint concerning Title VII and §1981 violations stricken for failure to set forth facts sufficient to state a claim.

The motion to dismiss the individual defendants is sustained. The motion to dismiss the complaint pursuant to F.R.Civ.P. 12(b)(6) is overruled and the alternative motion to strike is sustained.

Defendant is to file an answer to the complaint on or before October 2, 1984. Nonjury trial is set for January 28, 1985, at 9 a.m. Suggested Findings of Fact and Conclusions of Law, and any trial briefs the parties wish to submit are to be filed on or before January 21, 1985. The parties are to file an agreed pretrial order on or before January 14, 1985. All discovery is to be completed on or before December 31, 1984. The parties are to exchange the names and addresses, in writing, of all witnesses, including experts, on or before December 17, 1984.

ENTERED this 25<sup>th</sup> day of September, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

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

SEP 25 1984

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

THE TRIDENT COMPANY, a Texas )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
COMPETITIVE PRECISION MACHINE, )  
INC., a/k/a C.P.M. MANUFACTURING, )  
INC., a Minnesota corporation, )  
 )  
Defendant. )

No. 84-C-452-E

DEFAULT JUDGMENT

The defendant, Competitive Precision Machine, Inc., having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, and the default of said defendant having been duly entered, and it appearing that said defendant is not an infant or an incompetent person, and it appearing by the affidavit of the plaintiff that plaintiff is entitled to judgment herein.

IT IS ORDERED AND ADJUDGED that the plaintiff have and recover from defendant, Competitive Precesion Machine, Inc., the sum of \$15,447.25, with interest thereon at the rate of 1 1/8 per month from October, 1982, until paid, together with costs in the sum of \$78.00.

Dated this 25 day of Sept, 1984.

Jack C. Silver, Clerk

P. J. Jurek, Deputy Clerk  
CLERK OF THE DISTRICT COURT

*Entered*

**FILED**

SEP 25 1984

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

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

SYLVIA D. HARRIS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THE FOURTH NATIONAL BANK OF )  
TULSA, )  
 )  
Defendant. )

No. 84-C-548-E

O R D E R

This matter is before the Court on a motion of the Defendant to dismiss for lack of jurisdiction. In support of its motion the Defendant argues that the Plaintiff has not met jurisdictional requirements 42 U.S.C. § 2000e-5(f)(1) for a suit under Title VII of the Civil Rights Act of 1964.

Plaintiff has filed two complaints with the Equal Employment Opportunity Commission in regard to her employment with the Defendant. However neither of those complaints is the subject of this suit. Perusal of the complaint makes it apparent to this Court that Plaintiff here is seeking judicial review of an administrative decision of the Board of Review of the Oklahoma Employment Security Commission. Plaintiff seeks this review pursuant to 40 O.S. § 2-610. The statute provides in paragraph 1 in pertinent part:

Within ten days after the day a notice of decision of the Board of Review is mailed to the parties, commission or any party to the proceedings before the Board of Review, may obtain judicial review thereof by filing in the district court of the county in which the claimant resides, or if the claimant is not a resident of the State of Oklahoma then the

4

district court of Oklahoma County, a petition for review of such decision against the Board of Review.

The decision of the Board of Review is mailed to the claimant with a notice appearing thereon in bold print under the title Appeal Rights. The notice quotes verbatim the language of Title 40 O.S. § 2-610 with regard to the place of filing of an appeal.

Within ten days of the mailing of the notice of decision of the Board of Review Plaintiff filed this action. Unfortunately the statute does not vest jurisdiction in the federal district court, but instead vests it in the state district court of the county of the residence of the plaintiff. The language however does not make it clear to a layman that the appeal rights are vested only in state district court, and the Plaintiff herein not being represented by counsel, and having been advised by an employee of the Oklahoma State Employment Service to file the case in federal court, could not be expected to know the proper place for a filing of the complaint. However, this Court finds under the language of the statute creating a right of review, that it has no jurisdiction over this action, and could not exercise jurisdiction even if it so desired. Jurisdiction over this claim properly rests with the Tulsa County District Court.

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

ORDERED this 25<sup>TH</sup> day of September, 1984.

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

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

FILED

SEP 25 1984

THE LOMAS & NETTLETON COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ALFRED FRANKLIN GREENWOOD, )  
et al., )  
 )  
Defendants. )

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

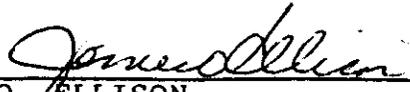
No. 84-C-688-E

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 The Lomas & Nettleton Company take nothing from the Defendants Alfred Franklin Greenwood, Paulette Greenwood, County Treasurer and Board of County Commissioners of Osage County, Oklahoma and Gilcrease Hills Homeowners Association, that the action be dismissed on the merits, and that the Defendants Alfred Franklin Greenwood, Paulette Greenwood, County Treasurer and Board of County Commissioners of Osage County, Oklahoma recover of the Plaintiff The Lomas & Nettleton Company their costs of action.

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

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

Entered

**FILED**

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

SEP 25 1984

GREAT WESTERN LAND COMPANY, )  
 INC., an Oklahoma Corporation, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LANDMARK PETROLEUM CORP., a )  
 Texas Corporation; and BOBBY )  
 LOGGINS, an individual, )  
 )  
 Defendants, )  
 )  
 v. )  
 )  
 ROBERT L. KEASLER, )  
 )  
 Third-Party )  
 Defendants. )

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

No. 82-C-890-B

ORDER OF DISMISSAL WITH PREJUDICE

THIS matter comes on for hearing before the under-  
signed United States District Judge this 24<sup>th</sup> day of Septem-  
ber, 1984, pursuant to the joint Stipulation of Dismissal filed  
herein.

The Court for good cause shown finds the Plaintiff's  
Second Amended Complaint and the Defendant Landmark Petroleum  
Corporation's Counterclaim should be dismissed with prejudice.

IT IS THEREFORE ORDERED by the Court that Plaintiff's

Second Amended Complaint and Defendant Landmark Petroleum Corporation's Counterclaim are hereby dismissed with prejudice.

S/ THOMAS R. BRETT

---

United States District Judge

*Entered*

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

**FILED**

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WARREN F. YOUNG and )  
BEVERLY A. YOUNG, )  
 )  
Defendants. )

SEP 25 1984

JACK C. SHUCH Clerk  
U. S. DISTRICT COURT

No. 83-C-609-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered September 18, 1984, Judgment is hereby entered in favor of the defendants, Warren F. Young and Beverly A. Young, and against the plaintiff, United States of America. Costs are assessed against the plaintiff.

ENTERED this 27<sup>th</sup> day of September, 1984.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Entered

FILED

SEP 25 1984

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

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

BILLY J.C. INGRAM and )  
MARSALETE INGRAM, )  
Plaintiffs, )  
v. )  
FIBREBOARD CORPORATION, et al, )  
Defendants. )

No. 83-C-890-B

ORDER OF DISMISSAL

NOW, on this 24 day of September, 1984,  
upon Stipulation for Dismissal by Plaintiffs and Defendant  
The Flintkote Company,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant  
The Flintkote Company is dismissed from the above captioned  
matter.

S/ THOMAS R. BRETT

\_\_\_\_\_  
U.S. DISTRICT JUDGE

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

Entered  
FILED

SEP 25 1984

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

IN RE: )  
 )  
CAROLYN SUE DAVIS, ) Bankruptcy No. 83-01624  
SS# 440-32-8445, )  
 )  
Debtor. ) District Ct. No. 84-C-386B

ORDER DISMISSING APPEAL

Pursuant to an agreement signed and filed by counsel to the parties of the above entitled action, filed in this Court on the 20<sup>th</sup> day of Sept ~~July~~, 1984, and pursuant to Rule 42, Federal Rules of Appellate Procedure and Rule 8001(c)(2), Rules of Bankruptcy Procedure,

IT IS ORDERED by the Clerk of this Court that the appeal taken by the debtor in this action be, and the same is hereby dismissed.

Dated this 24 day of Sept ~~July~~, 1984.

S/ THOMAS R. BRETT

~~Clerk of the District Court~~

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

HOLLY REYNOLDS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ALBRITTON COMMUNICATIONS CO., )  
 d/b/a KTUL-TV and JOHN )  
 GARWOOD, )  
 )  
 Defendant. )

No. 84-C-598-C

**FILED**

**SEP 25 1984**

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

ORDER OF DISMISSAL

THIS CAUSE having come before the Court on the Joint Application for Dismissal with prejudice, and this Court being fully advised in the premises and the parties having stipulated, and the Court having found that the parties have reached a private settlement of the individual claims of the Plaintiff and that such claims should be dismissed, it is, therefore;

ORDERED, ADJUDGED AND DECREED that the Complaint of the Plaintiff and her causes of action set forth therein against the Defendants be and are hereby dismissed with prejudice with each party to bear its own costs.

Ordered this 25 day of Sept, 1984.

LAW OFFICES

UNGERMAN,  
CONNER &  
LITTLE

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

MIDWAY BLDG.  
2727 EAST 21 ST.  
SUITE 400

P. O. BOX 2099  
TULSA, OKLAHOMA  
74101

FILED

SEP 24 1984

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

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

CAMELOT PRODUCTION CO., INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FIRST NATIONAL BANK OF HOMINY, )  
 )  
Defendant. )

No. 83-C-544-E

ORDER

The Court has now before it the motion of Defendant First National Bank of Hominy to dismiss for lack of subject matter jurisdiction. The Court, upon a review of the record, the deposition of Mr. Besser attached to Defendant's motion, the arguments of the parties, the authorities submitted and the representations in open court finds that the motion to dismiss must be granted.

This Court is controlled by the holding of the Tenth Circuit in United Nuclear Corporation v. Moki Oil and Rare Metals Co., 364 F.2d 568 (10th Cir. 1966) in which the court states "where a corporation has its principal place of business for purposes of diversity jurisdiction is a question of fact to be determined by the character of the corporation, its purposes, kind of business in which it is engaged, and situs of its operations." United Nuclear, supra at page 570. In a determination of the principal place of business of a corporation, the locus of corporate operations is a more important factor than the locus of overall

policy direction or control. See Foster v. Midland Valley Railroad Co., 245 F.Supp. 60 (W.D. Okla. 1965); Fellers v. Atchison, Topeka & Santa Fe Railway Co., 330 F.Supp. 1334 (D. Kan. 1971).

In view of the facts before this Court, to equate the principal place of business with the executive offices would be in error according to the authorities cited. The Plaintiff corporation was formed for the purpose of operating oil and gas leases in the state of Oklahoma. Some funds were raised by the Plaintiff, however, the vast bulk of investment dollars were raised by others and invested in the corporation in drilling operations within the state of Oklahoma. The majority of the activity of the corporation was conducted within the state of Oklahoma, the two wells drilled in the state of California were on a small lease, and were incidental to the major purpose of the company, which was the development of leases in Oklahoma.

The instant motion to dismiss was filed late in the afternoon of the day previous to the date set for selection of jury and trial of the case. A number of potential jurors were called specially to be present for the selection of this jury. In view of the lateness of the motion and the necessity for allowing the Plaintiff the opportunity to respond on the record, it was not possible to dispose of this motion before the jurors had been called and were in place.

In view of the fact that the information upon which the motion was based was available to the Defendant well in advance

of the trial setting the Court finds that it must assess the jury costs against the Defendant. The Court further finds that, since the disposition of this motion should have been possible without the presence of the Plaintiff, and since the Plaintiff's representative was already enroute to Oklahoma at the time the motion was filed, the expenses of travel of Mr. Besser should be assessed against the Defendant.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Defendant to dismiss for lack of jurisdiction be and the same is hereby granted.

IT IS FURTHER ORDERED that jury costs in the amount of \$360.00 for twelve jurors be assessed against the Defendant.

IT IS FURTHER ORDERED that the travel expenses of Plaintiff's representative Mr. Besser be assessed against the Defendant.

ORDERED this 14<sup>th</sup> day of September, 1984.

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

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

A. G. EDWARDS & SONS, INC.

Plaintiff(s),

vs.

MIKE KELLY a/k/a STEVEN J.  
BERNARD

Defendant(s).

No. 84-C-35-C

**FILED**

SEP 24 1984 *jm*

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

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, 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 24<sup>th</sup> day of SEPTEMBER, 1984.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

FILED

SEP 24 1984

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

JAMES L. HARROLD, SR., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHN S. MORGAN, )  
 )  
 Defendant. )

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

No. 84-C-754-E ✓

ORDER

This matter is before the Court on the motion of Defendant to dismiss. In support of his motion, Defendant Morgan invokes the doctrine of quasi-judicial immunity, extended to prosecutors by Imbler v. Pachtman, 96 S.Ct. 984 (1976).

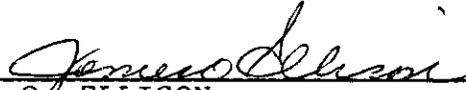
Plaintiff alleges in his complaint that the Defendant made defamatory and abusive remarks about him during a conference between Defendant and Plaintiff's court appointed counsel. The remarks were made in Defendant's office preceeding a discussion of certain court matters involving the Plaintiff, and were made in the presence of another attorney.

Defendant Morgan argues that such conduct is entitled to immunity from redress by suit for damages, since the remarks were made in the course of acting within his prosecutorial function. This Court must agree. The indictment had been returned and the case had been set for arraignment, and Mr. Morgan was technically acting in his role as a prosecutor when the remarks were made. Such entitles him to immunity from damage suits. Imbler, supra; Barr v. Matteo, 360 U.S. 564 (1959); Expeditions Unlimited v. Smithsonian Institute, 556 F.2d 289 (D.C. Cir. 1977), cert.

denied 438 U.S. 915 (1978); Tigue v. Swaim, 585 F.2d 909 (8th Cir. 1978).

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Defendant to dismiss be, and the same is hereby granted.

ORDERED this 24<sup>th</sup> day of September, 1984.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

SEP 24 1984

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
KELLY S. FITZZALAND, )  
 )  
Defendant. )

CIVIL ACTION NO. 84-C-515-E

DEFAULT JUDGMENT

This matter comes on for consideration this 24<sup>th</sup> day of September, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Kelly S. Fitzzaland, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Kelly S. Fitzzaland, was served with Summons and Complaint on August 16, 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 the Defendant, Kelly S. Fitzzaland, in the amount of \$209.67, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.63 per month from August 19, 1983, and \$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the

current legal rate of 11.98 percent from the date of judgment until paid, plus the costs of this action.

S/ JAMES O. ELLISON  

---

UNITED STATES DISTRICT JUDGE

**FILED**

**SEP 24 1984**

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

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

FRED EDWARD MASSINGALE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE HONORABLE DISTRICT )  
 COURT JUDGE CLIFFORD HOPPER, )  
 AND TOMMY GILLERT, ASSISTANT )  
 DISTRICT ATTORNEY, )  
 )  
 Defendants. )

No. 84-C-400-E

O R D E R

The Court has now before it the motion of Defendants to dismiss the civil rights complaint filed by Fred Edward Massingale pursuant to 42 U.S.C. § 1983. In his complaint Plaintiff alleges that his constitutional right to a fair trial under the 14th amendment to the United States Constitution was violated, in that the trial judge exhibited prejudice and bias to the jury and that the prosecutor made prejudicial remarks and pointed a firearm at Plaintiff in the presence of the jury. The Plaintiff was convicted and sentenced to 513 years, which he alleges is cruel and unusual punishment in violation of the 8th amendment to the Constitution.

The Plaintiff requests this Court to dismiss a district court judge and an assistant district attorney from their respective duties. Such a remedy is frivolous and unavailable to Plaintiff under any legal theory.

The Court authorized commencement of this action in forma

pauperis under the 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 insubstantial. Hagans v. Lavine, 415 U.S. 528, 536 (1973); Wells v. Ward, 470 F.2d 1185, 1187 (10th Cir. 1972); Smart v. Villar, 547 F.2d 112 (10th Cir. 1976).

Assuming the allegations in the petition to be true, the Court finds that no "rational argument" can be made on the law in support of Plaintiff's claim. He is entitled to no relief under the law, and thus his claim is wholly without merit. Bennett v. Passic, 545 F.2d 1260, 1261 (10th Cir. 1976).

The Defendants also assert that this Court has the power to grant attorney fees against a plaintiff under 42 U.S.C. § 1988 where the court finds that the plaintiff's claim is frivolous, unreasonable, groundless or brought in bad faith. Any request for attorney fees as a prevailing party under 42 U.S.C. [ 1988 must be made to this Court pursuant to Rule 6(f) of the Rules of the United States District Court for the Northern District of Oklahoma.

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

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

**FILED**

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

SEP 24 1984

KENNETH WOODRUFF AND RAY	)
HEDGES,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
DOVER CORPORATION/NORRIS	)
DIVISION,	)
	)
Defendant.	)

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

No. 83-C-938-E

O R D E R

The Court has now before it the motion of Defendant Dover Corporation to dismiss for failure to state a claim over which this Court has subject matter jurisdiction or upon which relief may be granted.

Plaintiffs Kenneth Woodruff and Ray Hedges are both employed by the Defendant Dover Corporation/Norris Division at its Tulsa, Oklahoma facility. On July 16, 1982 both of them executed a form W-4 Employee's Withholding Allowance Certificate which certified under penalty of perjury that they were completely exempt from federal income tax withholding. Under the tax laws, 26 U.S.C. § 3402, an employer is not required to deduct and withhold any tax on wages if there is in effect at that time a withholding allowance certificate furnished to the employer by the employee certifying that the employee anticipates he will incur no liability in the current taxable year.

On January 5, 1983 Hedges renewed his claim of tax exempt status by filing a second form W-4. The Defendant employer

submitted copies of the form to the IRS as required by regulation. At that time there was no reason to believe that both Plaintiffs' weekly wages would be less than \$200.00. The district director of the IRS by separate letters dated February 2, 1983 notified the Defendant that the forms W-4 were defective and advised Defendant it must disregard them for purposes of computing withholding, and that the Defendant must withhold federal income taxes from each Plaintiff's pay on the basis of an "S-1 withholding allowance" until the Plaintiffs supply the Defendant with a new and correct certificate. The S-1 status provides for withholding as though the employee is a single person with no exemptions.

Each of the Plaintiffs were given a copy of this letter and were told that they could file a withholding certificate reflecting the correct number of allowances. They were also told that until they did so, the Defendant would have to withhold in accordance with the instructions of the IRS. Neither Plaintiff has filed a new withholding certificate to this date.

In the complaint Plaintiffs seek an order enjoining and restraining the Defendant from honoring any "levy or otherwise from the pay of Plaintiffs" or they will "suffer irreparable injury". Plaintiffs claim that this cause of action arises from a property dispute involving a common-law employment contract and that the only questions to be decided by this Court are (1) did

the Dover Corporation enter into an agreement of employment with the Plaintiffs; (2) is the Dover Corporation in breach of that agreement; and (3) does the Dover Corporation owe to the Plaintiffs any money as prescribed by the employment agreement. Plaintiffs argue that the IRS ruling in regard to their forms W-4 is not law, and that only the courts can make a determination of whether or not 26 U.S.C. § 3402 applies in this circumstance. Plaintiffs also cite the case of United States v. Malinowski, 347 F.Supp. 347 at page 352 for the proposition that the "employer is not authorized to alter the form or to dishonor the employee's claim."

The Malinowski case was a prosecution for supplying false information on a form W-4. The Court did state that the effectiveness of the system as a tax collection device depended on the honesty of the withholding exemptions claims submitted by the employees, and that the employer is not authorized to alter the form or to dishonor the employee's claim but that the certificate goes into effect automatically in accordance with certain standards enumerated in § 3402(f)(3). While this may be so, in this instance, the employer is not accused of altering or dishonoring the employee's claim. The employer is merely responding to the letter of the IRS informing it that the employees form W-4 is dishonored.

Plaintiffs also contend that the IRS withholding regulations direct a seizure of Plaintiff's property. The Tenth Circuit in United States v. Smith, 484 F.2d 8 (1973) has stated that the withholding process does not result in the taking of property

without due process under the Fifth Amendment because the Amendment is not a limitation on the taxing power conferred upon Congress by the Constitution. Due process considerations would come into play only if the seizure complained of was so arbitrary as to compel the conclusion that it was not really taxation, but the confiscation of property.

Contrary to the protestations of the Plaintiffs, this suit is in reality a suit to restrain or interfere with the collection of taxes which is specifically prohibited by Title 26 U.S.C. § 4221(a). The United States District Court for the District of Nevada, in Stefanelli v. Silvestri, 524 F.Supp. 1317 (1981) dismissed with prejudice a plaintiff's claim for injunctive relief, intimating that the proper method of challenging one's withholding tax assessment is to pay the tax allegedly due and thereafter sue for a refund. In a related case, the court stated:

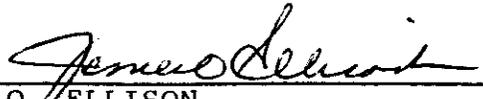
The defendants argue that, although the suit is styled as one seeking relief against the defendants in their capacity of an employer of the plaintiff, in reality this is an action to enjoin the government from collecting taxes. I agree with the defendants. To grant the plaintiff's requested injunctive relief would clearly amount to judicial interference with the expeditious collection of taxes and as such would clearly be contrary to § 7421(a).

Citing United States v. American Friends Service Committee, 419 U.S. 7, 75 S.Ct. 13 (1974). See also Lynch v. Polaroid Corporation, 80-1 U.S.T.C. paragraph 9191 (D. Mass. 1980); Press v. McNeil, 568 F.Supp. 256 (E.D. Pa. 1983); Stonecipher v. Bray, 653 F.2d 398 (9th Cir. 1981).

Exceptions to the anti-injunction rule are made only under circumstances where the taxpayer can demonstrate (1) that under no circumstances can a government defendant prevail and (2) that the taxpayer will be irreparably harmed if the injunction is not granted. In light of the facts of this case it would be ludicrous to assume that a plaintiff who has submitted a patently false form W-4 will prevail in an action against the IRS for a return of withheld wages.

This Court therefore follows a long line of cases in holding that this suit is in effect one seeking to restrain or interfere with the collection of taxes which is specifically prohibited by Title 26 U.S.C. § 7421, and therefore must be dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Defendant Dover Corporation/Norris Division to dismiss be and the same is hereby granted.

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

**FILED**

SEP 24 1984

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

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

ITT INDUSTRIAL CREDIT CO., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JERRY D. GARLAND AND PAUL T. )  
 INMAN, )  
 )  
 Defendants. )

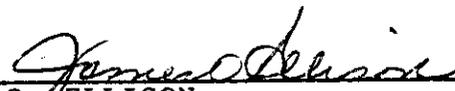
No. 82-C-884-E

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 ITT Industrial Credit Co., recover of the Defendant Jerry D. Garland, the sum of \$321,866.62 with interest thereon at the rate of 11.98 per cent as provided by law, and its costs of action.

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

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

*Entered*  
**FILED**

**SEP 24 1984**

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

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

ITT INDUSTRIAL CREDIT CO., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JERRY D. GARLAND AND PAUL T. )  
INMAN, )  
 )  
Defendants. )

No. 82-C-884-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 ITT Industrial Credit Co., recover of the Defendant Jerry D. Garland, the sum of \$321,866.62 with interest thereon at the rate of 11.98 per cent as provided by law, and its costs of action.

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

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

*Entered*  
**FILED**  
SEP 21 1984

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THOMAS H. NICHOLS, )  
 )  
 Defendant. ) CIVIL ACTION NO. 84-C-531-E

DEFAULT JUDGMENT

— This matter comes on for consideration this 20<sup>th</sup> day of September, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Thomas H. Nichols, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Thomas H. Nichols, was served with Summons and Complaint on August 15, 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 the Defendant, Thomas H. Nichols, in the amount of \$479.07, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from August 9, 1983, and \$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the current legal rate of 11.98% percent from the date of judgment until paid, plus the costs of this action.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

60

Entered

FILED

SEP 21 1984

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

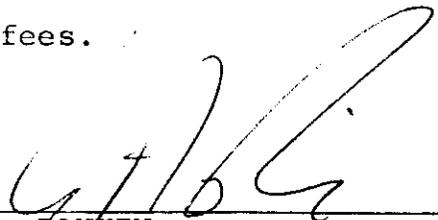
IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

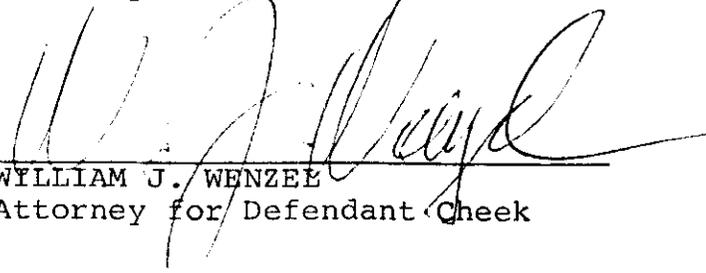
GARY LIVENGOOD, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LLOYD CHEEK and )  
 SONNY McNATT, )  
 )  
 Defendants. )

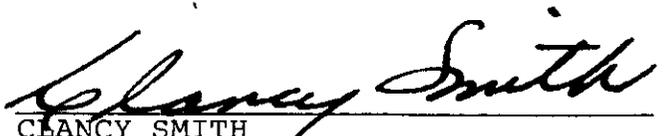
No. 83-C-977-B

STIPULATION OF DISMISSAL

The parties by agreement stipulate pursuant to F.R.C.P. 41(a) that the above referenced action is dismissed with prejudice. It is further stipulated that each party shall bear its own costs and attorney fees.

  
\_\_\_\_\_  
RANDY A. RANKIN  
Attorney for Plaintiff

  
\_\_\_\_\_  
WILLIAM J. WENZEE  
Attorney for Defendant Cheek

  
\_\_\_\_\_  
CLANCY SMITH  
Attorney for Defendant McNatt

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

FILED

SEP 20 1984 ✓

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

PETER LEE JAMES AUGERBRIGHT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
C. RAY SMITH, )  
 )  
Defendant, )  
 )  
SUMMIT HOME INSURANCE COMPANY, )  
 )  
Garnishee. )

No. 80-C-50-C ✓

**FILED**

SEP 20 1984 pt

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

O R D E R

Now before the Court for its consideration is the applica-  
tion of garnishee for attorney fees, filed on August 13, 1984.  
The Court has no record of a response to this application from  
plaintiff or defendant. 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, in that plaintiff and defendant have failed to comply with local Rule 14(a) and no responsive pleading has been filed to date herein, the Court concludes that plaintiff and defendant have waived any objection to said application and have confessed the matters contained therein.

Accordingly, it is the Order of the Court that garnishee's application for attorney fees should be and hereby is granted in the amount of \$2,985.84.

IT IS SO ORDERED this 20 day of September, 1984.

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

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 20 1984

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BEVERLY A. ROBERTS, d/b/a )  
 CHEROKEE STEAK HOUSE AND SILVER )  
 MINE RECREATIONAL CENTER AND )  
 SKATING RINK; GWEN McEWEN, )  
 a/k/a COUSIN CALLIE MAE )  
 CALHOUN; ROGER LAUBACH; )  
 BEATRICE ROBERTSON JOHNSTON; )  
 R.C. SPORTS, a Division of )  
 Medalist, Inc.; )  
 RONALD J. CRETEN, d/b/a CRETEN )  
 CONSTRUCTION CO.; )  
 BONNIE FISHER, d/b/a FISHER'S )  
 BUILDING MATERIALS; )  
 N.E.O. BOTTLING COMPANY; )  
 ROBERT ONIONS; JAMES JEFFREY; )  
 SATER OFFICE SUPPLY; GRAND )  
 RIVER ABSTRACT AND TITLE )  
 COMPANY; MOBILE COMFORT )  
 CENTER, INC.; AND COUNTY )  
 TREASURER AND BOARD OF COUNTY )  
 COMMISSIONERS OF DELAWARE )  
 COUNTY, OKLAHOMA, )  
 )  
 Defendants. )

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

CIVIL ACTION NO. 83-C-537-C

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 20 day  
of Sept, 1984. The Plaintiff appears by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney; the Defendant Roger Laubach appears by his attorney  
Phil Thompson; the Defendant Beatrice Robertson Johnston appears  
pro se; the Defendants R. C. Sports, a Division of Medalist,  
Inc., and Ronald J. Creten, d/b/a Creten Construction Co., appear  
by their attorney Joe Moss; the Defendants County Treasurer,

Delaware County, Oklahoma, and Board of County Commissioners, Delaware County, Oklahoma, appearing by their attorneys Thomas H. May, District Attorney, and Waldo F. Bales, Assistant District Attorney; the Defendant Mobile Comfort Center, Inc. appearing pro se; and the Defendants

Beverly A. Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink, Gwen McEwen, a/k/a Cousin Callie Mae Calhoun, Bonnie Fisher, d/b/a Fisher's Building Materials, N.E.O. Bottling Company, Robert Onions, James Jeffrey, Sater Office Supply, and Grand River Abstract and Title Company, appear not, but make default.

The Court being fully advised and having examined the file herein finds that Defendant Beverly A. Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink was served with Summons and Complaint on March 7, 1984, and with Summons and First Amended Complaint on January 4, 1984; that the Defendant Gwen McEwen, a/k/a Cousin Callie Mae Calhoun, was served with Summons and Complaint on March 27, 1984, and with Summons and First Amended Complaint on May 10, 1984; that the Defendant Roger Laubach was served with Summons and Complaint on June 28, 1983, and with Summons and First Amended Complaint on January 30, 1984; that the Defendant Beatrice Robertson Johnston was served with Summons and Complaint on July 11, 1983, and with Summons and First Amended Complaint on March 6, 1984; that the Defendant Bonnie Fisher, d/b/a Fisher's Building Materials was served with Summons, Complaint, and First

Amended Complaint on February 6, 1984; that the Defendant N.E.O. Bottling Company was served with Summons and Complaint on June 29, 1983, and with Summons and First Amended Complaint on February 10, 1984; that the Defendant Robert Onions was served with Summons and Complaint on July 13, 1983, and with Summons and First Amended Complaint on February 3, 1984; that the Defendant James Jeffrey was served with Summons and Complaint on July 8, 1983, and with Summons and First Amended Complaint on March 2, 1984; that the Defendant Sater Office Supply was served with Summons, Complaint and First Amended Complaint on March 7, 1984; that the Defendant Grand River Abstract and Title Company was served with Summons and Complaint on June 28, 1983, and with Summons and First Amended Complaint on March 7, 1984; that the Defendant County Treasurer, Delaware County, Oklahoma was served with Summons and Complaint on June 24, 1983, and with Summons and First Amended Complaint on March 7, 1984; that the Defendant Board of County Commissioners, Delaware County, Oklahoma was served with Summons and Complaint on June 27, 1983; and that the Defendant Mobile Comfort Center, Inc. was served with Summons, Complaint, and First Amended Complaint on or about January 28, 1984.

It appears that the Defendant Roger Laubach filed his Answer on August 2, 1983, and his Answer to First Amended Complaint on February 21, 1984; that the Defendant Beatrice Robertson Johnston filed her Answer on August 10, 1983, and her Answer to First Amended Complaint on March 15, 1984; that the Defendants R. C. Sports, a Division of Medalist, Inc., and

Ronald J. Creten, d/b/a Crete [redacted], filed their Answer and Cross-Petition with [redacted] the Complaint on July 27, 1983, and their Answer [redacted]-Petition with regard to the First Amended Complaint on [redacted] 24, 1983; that the Defendant County Treasurer, Delaware County, Oklahoma, filed its Answer on June 27, 1983, and its Answer to First Amended Complaint on November 21, 1983; that the Defendant Board of County Commissioners, Delaware County, Oklahoma, filed its Answer on June 27, 1983, and its Answer to the First Amended Complaint on November 21, 1983; and that the Defendant Mobile Comfort Center, Inc. filed its Answer on November 4, 1983. The Defendants Beverly A. Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink, Gwen McEwen, a/k/a Cousin Callie Mae Calhoun, B. Gene Fisher, d/b/a Fisher's Building Materials, N.E.O. Bottling Company, Robert Onions, Walter Jeffrey, Sater Office Supply, and Grand River Abstract and Title Company, have failed to answer and their default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon certain promissory notes and for foreclosure of real estate mortgages securing said promissory [redacted] described real property located in [redacted] County, Oklahoma within the Northern Judicial District [redacted].

A tract of land in the [redacted] Section 5, Township 24 North, Delaware County, Oklahoma, is described as follows:

Beginning at the SW corner [redacted] SE/4, SW/4; thence North [redacted] of beginning; thence Nor [redacted]

East 150 feet; thence South 200 feet; thence West 150 feet to the point of beginning;

That on March 19, 1981, Defendant Beverly A. Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink, executed and delivered to Grand Lake Bank of Grove, Oklahoma, her promissory note in the amount of \$160,000.00, plus interest.

That as security for the payment of the above described note, Beverly A. Roberts executed and delivered to Grand Lake Bank of Grove, Oklahoma, a real estate mortgage dated March 19, 1981, covering the above described real property. Said mortgage was recorded on March 26, 1981, in Book 413, Page 69, in the records of Delaware County, Oklahoma.

On August 11, 1982, Grand Lake Bank of Grove, Oklahoma, assigned the real estate mortgage described above to the Small Business Administration, which assignment was recorded on October 25, 1982, in Book 437, Page 917, in the records of Delaware County, Oklahoma.

The Court further finds that on July 13, 1981, Defendant Beverly Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink, executed and delivered to Grand Lake Bank of Grove, Oklahoma, her promissory note in the amount of \$10,000.00, plus interest.

That as security for the payment of the above described note, Beverly A. Roberts executed and delivered to Grand Lake Bank of Grove, Oklahoma, a real estate mortgage dated July 13, 1981, covering the above described real property. Said mortgage

was recorded on July 14, 1981, in Book 418, Page 129, in the records of Delaware County, Oklahoma.

On August 11, 1982, Grand Lake Bank of Grove, Oklahoma, assigned the real estate mortgage described above to the Small Business Administration, which assignment was recorded on October 25, 1982, in Book 437, Page 918, in the records of Delaware County, Oklahoma.

The Court further finds that on August 5, 1981, Defendant Beverly A. Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink, executed and delivered to Grand Lake Bank of Grove, Oklahoma, her promissory note in the amount of \$170,000.00, plus interest. Said note is a consolidation and is inclusive of the notes given by said Defendant to Grand Lake Bank of Grove, Oklahoma, on March 19, 1981, and July 13, 1981. On July 29, 1982, said note was assigned to the Small Business Administration by endorsement thereon.

That as security for the payment of the above described note, Beverly A. Roberts executed and delivered to Grand Lake Bank of Grove, Oklahoma, a real estate mortgage dated August 5, 1981, covering the above described real property. Said mortgage was recorded on September 1, 1981, in Book 420, Page 133, in the records of Delaware County, Oklahoma.

On July 29, 1982, Grand Lake Bank of Grove, Oklahoma, assigned the real estate mortgage described above to the Small Business Administration, which assignment was recorded on October 25, 1982, in Book 437, Page 916, in the records of Delaware County, Oklahoma.

The Court further finds that the Defendant Beverly A. Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink, made default under the terms of the aforesaid promissory notes and mortgages by reason of her failure to make the installments due thereon, which default has continued, and that by reason thereof the Defendant Beverly A. Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink, is indebted to the Plaintiff in the principal sum of \$171,934.74, plus accrued interest of \$70,954.54 as of June 30, 1984, plus interest thereafter at the rate of \$85.97 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant Roger Laubach has a lien on the real property which is the subject matter of this action by virtue of a mortgage dated May 8, 1981, and recorded on June 2, 1981, in Book 416, Page 106, in the records of Delaware County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America, because of a Subordination Agreement executed by said Defendant on July 1, 1981, recorded July 14, 1981, in Book 418, Page 130, in the records of Delaware County, Oklahoma.

The Court further finds that the Defendant Beatrice Robertson Johnston has a lien on the real property which is the subject matter of this action by virtue of a mortgage dated March 19, 1981, recorded March 19, 1981, in Book 413, Page 70, in the records of Delaware County, Oklahoma. Said lien is inferior

to the interest of the Plaintiff, United States of America, because of a Subordination Agreement executed by said Defendant on July 13, 1981, recorded July 14, 1981, in Book 418, Page 131, in the records of Delaware County, Oklahoma.

The Court further finds that the Defendants R. C. Sports, a Division of Medalist, Inc., and Ronald J. Creten, d/b/a Creten Construction Company, have liens on the real property which is the subject matter of this action by virtue of mechanic's and materialman's liens recorded on September 4, 1981, in Book 420, Page 313, and in Book 420, Page 312, respectively, in the records of Delaware County, Oklahoma. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Delaware County, Oklahoma, has a lien on the real property which the subject matter of this action by virtue of ad valorem taxes in the amount of \$ -0-, plus applicable penalties and interest for the year(s) of -0-. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant Mobile Comfort Center, Inc., has an interest in the real property which is the subject matter of this action by virtue of a lease. Said interest is inferior to the interest of the Plaintiff, United States of America.

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

Beverly A. Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink in the amount of \$171,934.74, plus accrued interest in the amount of \$70,954.54, as of June 30, 1984, plus interest thereafter at the rate of \$85.97 per day, until judgment, plus interest thereafter at the current legal rate of 11.98 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants R. C. Sports, a Division of Medalist, Inc. and Ronald J. Creten, d/b/a Creten Construction Company, have and recover judgment against the Defendant Beverly A. Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink on their mechanic's and materialman's liens in the amounts of \$4,446.43, and \$1,447.50, respectively, plus their costs in this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the Defendant Beverly A. Roberts, d/b/a Cherokee Steak House and Silver Mine Recreational Center and Skating Rink, 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 for sale with appraisement the real property involved 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 the costs of the

sale of said real property;

Second:

In payment of the Defendant County Treasurer, Delaware County, Oklahoma, in the amount of \$ — 0 —, ad valorem taxes which are presently due and owing on said property, plus applicable penalties and interest;

Third:

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

Fourth:

In payment of the note and mortgage of the Defendant Beatrice Robertson Johnston;

Fifth:

In payment of the note and mortgage of the Defendant Roger Laubach;

Sixth:

In payment of the judgments rendered herein in favor of the Defendants R. C. Sports, a Division of Medalist, Inc., and Ronald J. Creten, d/b/a Creten Construction Co.

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, all of the Defendants and all persons claiming under them since the filing of the

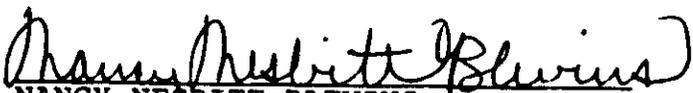
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

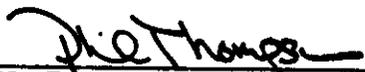
s/H. DALE COOK

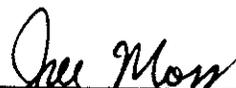
UNITED STATES DISTRICT JUDGE

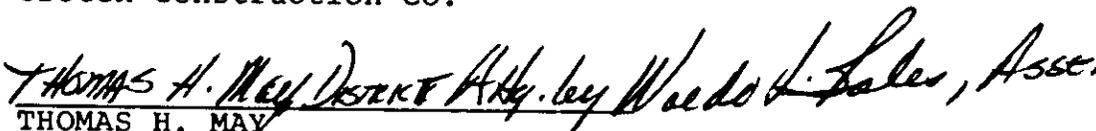
APPROVED:

LAYN R. PHILLIPS  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

  
PHIL THOMPSON  
Attorney for Defendant  
Roger Laubach

  
JOE MOSS  
Attorney for Defendants R. C.  
Sports, a Division of Medalist,  
Inc. and Ronald J. Creten, d/b/a  
Creten Construction Co.

  
THOMAS H. MAY  
District Attorney  
WALDO F. BALES  
Assistant District Attorney  
Attorneys for County Treasurer  
and Board of County Commissioners,  
Delaware County, Oklahoma

  
JOHN C. JEFFREY  
President, Mobile Comfort  
Center, Inc.

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

FILED

SEP 20 1984

THRIFTY RENT-A-CAR SYSTEM, INC., )

Plaintiff, )

vs. )

ROBERT MOUTRIE, )

Defendant. )

NO. 84-C-487-C

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

JUDGMENT

Now on this 12th day of September, 1984, this matter comes on for hearing pursuant to regular setting on the Court's Status Docket. Plaintiff's appeared by its Counsel, Mack Muratet Braly, but Defendant appeared not, neither in person nor by an Attorney, although the Clerk has given notice of this hearing by mail to Defendant at his residence address.

Upon review of the file it is the finding of the court that summons and complaint, together with motion for summary judgment, brief and affidavits and exhibits in support, were duly served upon Defendant on July 31, 1984, by personally delivering copies thereof to his residence and leaving them with a person above the age of fourteen years who regularly resided there, to wit: Mrs. Moutrie, wife of Defendant;

It is further found by the Court that Plaintiff's moving papers in support of summary judgment having been duly served on Defendant, and Defendant having failed to respond thereto in accordance with Rule 56 (b) Federal Rules Civil Procedures and local rules 14 (a) and (b), Defendant has thereby confessed the

matters raised by Plaintiff's pleadings and waived his objection to the motion for summary judgment; and the court having reviewed the file and pleadings, finds:

1. This is a suit on a promissory note;
2. The amount in controversy exceeds \$10,000.00 exclusive of interest and costs;
3. Plaintiff is a citizen of Oklahoma, and Defendant is a citizen of Canada.
4. Jurisdiction is therefore proper in this court pursuant to 28 U.S.C. 1332 (a) (3).
5. Defendant has admitted under oath that the note was made, was due and owing, and is unpaid;
6. No defense has been made in this action.

IT IS THEREFORE ORDERED, DECREED AND ADJUDGED, that Plaintiff have judgment in this action against Defendant in the sum of \$50,000.00, together with interest accrued and accruing to the date of judgment pursuant to the terms of the note in the amount of \$13,437.50; and interest accruing thereafter at the rate of 15%; and for the costs and disbursements of this action to be taxed by the clerk; and for an attorney's fee pursuant to the terms of the note in the amount of \$5,50.00; for all of which let judgment enter.

DONE THIS 18th DAY OF SEPTEMBER AS OF THE DATE FIRST NOTED ABOVE.

s/H. DALE COOK  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

*Entered*

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

JOHNSON'S TRUCKING, INC., )  
 an Oklahoma corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BURLINGTON NORTHERN RAILROAD )  
 COMPANY, a foreign corporation, )  
 )  
 Defendant and )  
 Third-Party Plaintiff, )  
 )  
 vs. )  
 )  
 MISSION INSURANCE COMPANY, a )  
 foreign corporation, )  
 )  
 Third-Party Defendant. )

No. 84-C-212-E

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

SEP 20 1984

FILED

NOTICE OF DISMISSAL WITH PREJUDICE OF  
DEFENDANT'S COUNTERCLAIM AND THIRD-PARTY ACTION

Pursuant to F.R.Civ.P. 41(a)(1), defendant and third-party plaintiff, Burlington Northern Railroad Company, hereby dismisses with prejudice its counterclaim and third-party action.

*John A. Mackechnie*  
 John A. Mackechnie, of  
 KORNFELD FRANKLIN & PHILLIPS  
 P.O. Box 26400  
 Oklahoma City, Okla. 73126  
 (405) 840-2731  
 Attorneys for Defendant and  
 Third-Party Plaintiff,  
 Burlington Northern Railroad Co.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument has been mailed to Roger R. Williams, 1605 South Denver, Tulsa, Okla. 74119, attorney for plaintiff, on this 16<sup>th</sup> day of September, 1984.

*John A. Mackechnie*  
 \_\_\_\_\_

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

FILED

SEP 20 1984

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

VERNA PADGETT, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 84-C-211-B  
 )  
 MAVERICK RESTAURANT CORPORA- )  
 TION, a Kansas corporation, )  
 )  
 Defendant. )

ORDER SUSTAINING MOTION FOR DIRECTED  
VERDICT AT CONCLUSION OF PLAINTIFF'S  
EVIDENCE

The captioned case came on for trial to a jury on September 17, 1984. The parties announced ready through their respective counsel of record and the Court proceeded with the empanelling of a duly qualified jury. Following opening statements of counsel, plaintiff introduced her evidence and at the conclusion of which the defendant moved for a directed verdict. The Court took the matter under advisement overnight and on the morning of September 18, 1984, following consideration by the Court of the applicable legal authorities and hearing argument of counsel, the Court sustained the defendant's motion for directed verdict at the conclusion of the plaintiff's evidence in chief. The basis for the Court's sustaining of the defendant's motion for directed verdict at the conclusion of the plaintiff's evidence was that the plaintiff's evidence failed to establish a prima facie case of negligence in this alleged fall-down case, i.e., the alleged aisle obstruction of which the plaintiff complained was open and obvious and under the existing

law of Oklahoma did not support the establishment of a prima facie case. Hull v. Newman Memorial Hospital, Inc., Okl., 379 P.2d 701 (1963); Safeway Stores, Inc. v. McCoy, Okl., 376 P.2d 285 (1962); Safeway Stores v. Sanders, Okl., 372 P.2d 1021 (1962), City of Drumright v. Moore, 197 Okl. 306, 170 P.2d 230 (1946).

IT IS THEREFORE ORDERED AND ADJUDGED the motion for directed verdict of the defendant, Maverick Restaurant Corporation, at the conclusion of the evidence presented by the plaintiff, Verna Padgett, is hereby sustained, the defendant granted judgment herein with costs assessed against the plaintiff. The parties are to pay their own respective attorneys fees.

ENTERED THIS 19<sup>th</sup> day of September, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 20 1984

JACK C. SILVER CLERK  
U.S. DISTRICT COURT

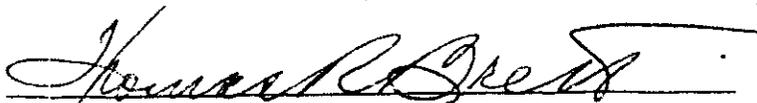
WILLIS REAMES, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 INSURANCE COMPANY OF NORTH )  
 AMERICA, a foreign corpora- )  
 tion, )  
 )  
 Defendant. )

No. 84-C-294-B ✓

J U D G M E N T

In accordance with the verdict of the jury filed September 20, 1984, Judgment is hereby entered in favor of plaintiff, Willis Reames, and against the defendant, Insurance Company of North America, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), plus pre-judgment interest from March 1, 1982 to the date of judgment at the rate of 6% per annum (15 Okl.St. §266 and 23 Okl.St. §6) and post-judgment interest at the rate of 11.98% (28 U.S.C. §1961) from and after the date of judgment on the total of said principal sum and prejudgment interest. Costs are assessed against the defendant herein.

ENTERED this 20th day of September, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

SEP 19 1984

MAVERICK TRANSPORTATION, INC., )  
an Arkansas corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
EARLY AMERICAN INSURANCE )  
COMPANY, an Alabama corporation, )  
 )  
Defendant. )

JACK E. ... CLERK  
U.S. DISTRICT COURT

No. 83-C-994-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, the Court hereby enters judgment that defendant, Early American Insurance Company, an Alabama corporation, extends excess liability insurance coverage according to the policy provisions to Maverick Transportation, Inc., for any liability Maverick may incur over and above the amount of the primary insurance coverage of the Forum Insurance Company, as a result of claims arising from the subject vehicle accident of April 9, 1982 on Highway 69 near Chouteau, Oklahoma.

ENTERED this 19<sup>th</sup> day of September, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



*Steven K. Bunting*

---

Steven K. Bunting  
Rosenstein, Fist & Ringold  
525 S. Main, Suite 300  
Tulsa, OK 74103  
(918) 585-9211

Attorneys for defendant, Bentley  
Mills, Inc.

*Paul Walters*

---

Paul Walters  
Spradling, Alpern, Friot & Gum  
700 Continental Savings Bldg.  
101 Park Ave.  
Oklahoma City, OK 73102  
(405) 272-0211

Attorneys for defendant, Earl W.  
Bentley Operating Company, Inc.

*Entered*

FILED

SEP 19 1984

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

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

LORD JIM, INC., an Oklahoma  
corporation,  
  
Plaintiff,  
  
vs.  
  
UNITED CHARTER COMPANY LIMITED,  
et al.,  
  
Defendants.

No. 84-C-712-E

NOTICE OF DISMISSAL

The plaintiff, Lord Jim, Inc., hereby dismisses its action  
against United Charter Company, Ltd.

*Janet L. Spaulding*  
Terry M. Thomas  
Janet L. Spaulding  
NORMAN, WOHLGEMUTH & THOMPSON  
909 Kennedy Building  
Tulsa, Oklahoma 74103  
(918) 583-7571

Attorneys for the Plaintiff,  
Lord Jim, Inc.

CERTIFICATE OF MAILING

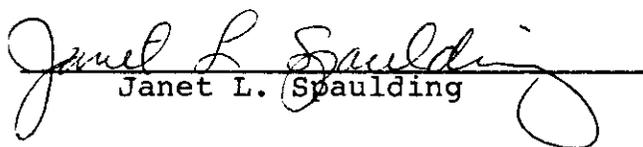
I hereby certify that on the 18<sup>th</sup> day of September, 1984, I  
mailed a true and correct copy of the above and foregoing  
instrument to:

Elizabeth Head  
Claire Eagan Barret  
James J. Proszek  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, OK 74172

Joe Edwards, Esq.  
Edwards, Roberts & Winterstein  
2 Grand Park, Suite 250  
5701 N. Shartel  
Oklahoma City, OK 73118-5994

J. David Jorgenson  
Conner & Winters  
2400 First National Tower  
Tulsa, OK 74103

by depositing said copy on the U.S. mail, postage prepaid  
thereon.

  
Janet L. Spaulding

**FILED**

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

*11/10* SEP 19 1984

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

BILLY J. C. INGRAM and MARSALETE INGRAM,  
Plaintiffs,

vs.

No. 83-C-890-B

RAYMARK INDUSTRIES, INC., et al.,  
Defendants.

ORDER

NOW on this 19<sup>th</sup> day of September, 1984, the joint application of the Plaintiffs, Billy J. C. Ingram and Marsalete Ingram, and the Defendant, Raymark Industries, Inc., comes on for hearing before the undersigned Judge. After reviewing the Application of the parties, the Court finds that the Plaintiffs' Complaint against the Defendant, Raymark Industries, Inc., should be dismissed with prejudice to the Plaintiffs' right to file another action thereon.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiffs' Complaint against the Defendant, Raymark Industries, Inc., is hereby dismissed with prejudice to the rights of the Plaintiff to file another action thereon.

*Thomas R. Brett*  
UNITED STATES DISTRICT JUDGE



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

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

AMZIE CRANSON,

Defendant(s).

No. 84-C-572-C

**FILED**

SEP 18 1984

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

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

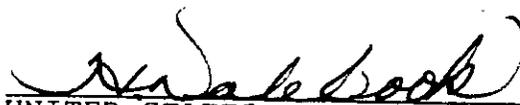
for the Government

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 18 day of September, 1984.

  
UNITED STATES DISTRICT JUDGE

**FILED**

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

SEP 18 1984

BILLY GENE MARSHALL # 87494, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LARRY R. MEACHUM, et al., )  
 )  
 Defendants. )

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

No. 84-C-287-E

ORDER

NOW on this 18<sup>th</sup> day of September, 1984 comes on for hearing the above-styled case and the Court being fully advised in the premises finds as follows:

Plaintiff, a prisoner at the Conner Correctional Center, has filed a complaint against the Defendants, Officials of the Oklahoma Department of Corrections and the Conner Correctional Center. The Plaintiff alleges that the Defendants have deprived him of his rights under the Constitution of the United States by enforcing 57 O.S.Supp. 1976, § 138 because this statute constitutes an ex post facto law. The Plaintiff, pursuant to 42 U.S.C. § 1983 seeks compensatory damages as well as punitive damages from each Defendant.

The Attorney General of the State of Oklahoma, appearing on behalf of the Defendants seeks dismissal of the action pursuant to Rule 12(B)(2), (5) and (6) Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. Defendants further assert the Court lacks jurisdiction over the person, and there has been insufficient service.

The Court finds the first issue to be dispositive; that is, whether the amended version of 57 O.S.Supp. 1973 § 138 constitutes an ex post facto law resulting in the Plaintiff being illegally detained in prison thus depriving the Plaintiff of his rights under the Constitution of the United States.

Plaintiff was incarcerated on January 22, 1974. He was sentenced to serve three consecutive terms of thirty, ten and five years. At the time of the Plaintiff's incarceration 57 O.S.Supp. 1973 § 138 was in effect. Under this statute a prisoner's sentence was reduced for "good time" according to the following schedule:

1st year	2 months
2nd year	2 months
3rd year	4 months
4th year	4 months
5th year	5 months
Each subsequent year	5 months

In addition, the prisoner's sentence was reduced by two days for each six days worked.

In 1976, § 138 was amended and "good time" was abolished. The amended law calls for the prisoner to receive a reduction in his sentence of six days for every six days worked. The Plaintiff alleges that the amendment constitutes an ex post facto law and as a result he is being forced to serve more time than he would have under the old law.

Two critical elements must be present for a criminal or penal law to be ex post facto: It must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it. Weaver v. Graham, 101 S.Ct. 960, 964 (1981).

In the instant case, the amended law is retrospective in that the Plaintiff committed his crime before the date of the Amendment's enactment. The remaining issue is whether the law as amended works to the disadvantage of the Plaintiff.

The Plaintiff, in reliance on Spalding v. Maynard, 527 F.Supp. 398 (W.D. Okl. 1981), contends that the law does work to his disadvantage and that he is entitled to the benefits of both the pre-1976 and the 1976 version of § 138. In Spalding, the court held that prisoners who committed crimes prior to September 8, 1976 (the date of the enactment of the amended § 138) are entitled to benefits of § 138 as it existed at that time. In addition, such persons are entitled to such additional credits as they may have earned under the amended statute. The Plaintiff contends that this means that he is entitled to the "good time" credit for the length of his forty-five year sentence according to the pre-1976 version of § 138 as well as work credits allowable under that statute. In addition, the Plaintiff contends that he is entitled to six days credit for each six days worked after September 8, 1976 pursuant to the 1976 Amendment. These contentions would lead to the following result: The Plaintiff would receive all of his "good time" credit for the whole sentence, two days credit for each six days worked from January 22, 1974 until September 8, 1976 and eight days credit for each six days worked after September 8, 1976.

The Court concludes the sentence should be calculated as follows: The Plaintiff should receive his "good time" credit for the whole forty-five year sentence. The Plaintiff should receive

two days credit for each six days worked from January 22, 1974 until September 8, 1976. The Plaintiff should receive six days credit for each six days worked after September 8, 1976. Since the Plaintiff would then have received his "good time" credit for the whole sentence and since he would then have actually received more credit than he was originally entitled to for the period after September 8, 1976, he would have received the benefits of both statutes as contemplated by the Court in Spalding. No ex post facto problem is presented because the amended statute, rather than working to the Plaintiff's disadvantage, actually works to his advantage.

The Court concludes that the amended version of 57 O.S.Supp. 1973 § 138 does not constitute an ex post facto law because it does not disadvantage the Plaintiff. The Plaintiff has not been illegally detained in prison as a result of the amendment nor has he been deprived of his rights under the Constitution of the United States. The Court further concludes Plaintiff has not stated a claim upon which relief can be granted. The motion to dismiss should be granted pursuant to Rule 12(B)(6), Fed.R.Civ.P.

It is so ORDERED.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BRIAN C. RUTTER, )  
 )  
Defendant. )

SEP 18 1984

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

CIVIL ACTION NO. 84-C-545-C

AGREED JUDGMENT

This matter comes on for consideration this 18 day of September, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Brian C. Rutter, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Brian C. Rutter, has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against Brian C. Rutter in the amount of \$358.87, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from November 21, 1983, and \$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the legal rate from the date of judgment until paid, plus the costs of this action.

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

C. Rutter, in the amount of \$358.87, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from November 21, 1983, and \$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the current legal rate of 11.98 percent from the date of judgment until paid, plus the costs of this action.

(Signed) H. Dale Cook

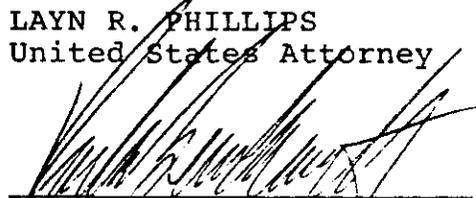
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UNITED STATES DISTRICT JUDGE

APPROVED:

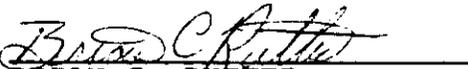
UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

---

PETER BERNHARDT  
Assistant U.S. Attorney

---

BRIAN C. RUTTER

SEP 18 1984

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

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

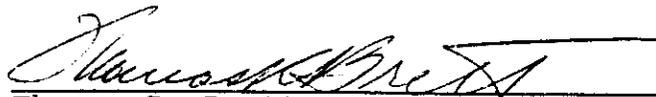
WILLIAM B. SCHLUNEGER and	)	
BRIGID A. SCHLUNEGER,	)	
individuals,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 84-C-104-B
	)	
KIDDER, PEABODY & CO., INC.,	)	
a Delaware corporation,	)	
	)	
Defendant.	)	

ORDER

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

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

DATED this 15<sup>th</sup> day of September, 1984.

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

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

FILED

SEP 18 1984

NATHANIEL WEDGEWORTH, #119308, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TIM WEST, WARDEN, MS. CARLO )  
ELROD, CORRECTIONAL OFFICER )  
AT CONNER CORRECTIONAL CENTER, )  
LARRY MEACHUM, DIRECTOR, DEPT. )  
OF CORRECTION, )  
 )  
Defendants. )

Jack C. Silver, Clerk  
U. S. DISTRICT COURT  
No. 84-C-430-E

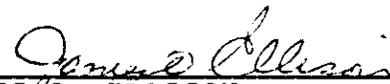
ORDER

There being no response to the Defendants' motion to dismiss and more than ten (10) days having passed since the filing of the same 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 Defendants' motion. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

Plaintiff filed a motion for default judgment which must be denied. Defendants filed motion for enlargement of time which was granted and motion to dismiss which constitutes an answer in this case and therefore Plaintiff's motion for default is without merit. Plaintiff's motion for default judgment is therefore overruled.

The Defendants' motion to dismiss is therefore granted.

DATED this 18<sup>th</sup> day of September, 1984.

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

**FILED**

SEP 18 1984 *me*

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

L. R. ROBERTS, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 LARRY FIELDS, )  
 )  
 Respondent. )

No. 82-C-895-E ✓

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 Petitioner L. R. Roberts take nothing from the Respondent Larry Fields that the action be dismissed on the merits.

DATED at Tulsa, Oklahoma this 18<sup>th</sup> day of September, 1984.

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

**FILED**

SEP 18 1984

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

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

BILLY JONES, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CITY OF TULSA, et al., )  
 )  
Defendants. )

No. 82-C-1066-E

O R D E R

NOW on this 18<sup>th</sup> day of September, 1984 comes on for hearing the above-styled case and the Court, being fully advised in the premises finds as follows:

This Court entered an order on August 8, 1984 requiring Plaintiff to file a narrative statement of his claims by August 31, 1984 and finalize arrangements to acquire the services of Bill Musseman as counsel. The Court was contacted by Mr. Musseman and advised that he would not enter an appearance in the case under any circumstances and to date nothing has been filed by Plaintiff to comply with the Court's order requiring a narrative statement. The Court advised Plaintiff on August 8, 1984 that failure to comply with this order would result in dismissal of this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case be and is hereby dismissed pursuant to Rule 41 of the Federal Rules of Civil Procedure for failure to comply with the order of the Court.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**  
IN OPEN COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STEPHEN J. PENCE, )  
 )  
Defendant. )

SEP 14 1984

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

CIVIL ACTION NO. 84-C-573-C

DEFAULT JUDGMENT

This matter comes on for consideration this 14 day of September, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Stephen J. Pence, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Stephen J. Pence, was served with Summons and Complaint on August 22, 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 the Defendant, Stephen J. Pence, in the amount of \$1,523.10, plus interest in the amount of \$174.46, and administrative costs in the amount of \$13.35, plus interest at the rate of 15.05 percent per annum until judgment, plus interest thereafter at the current legal

rate of 11.98 percent from the date of judgment until paid,  
plus the costs of this action.

(Signed) H. Dale Cook

---

UNITED STATES DISTRICT JUDGE

Entered

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

FILED

SEP 14 1984

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ROBERT B. SUTTON; )  
 SUTTON INVESTMENTS, INC.; )  
 BPM, LIMITED; )  
 SCURRY OIL COMPANY; )  
 SOONER REFINING COMPANY, INC.; )  
 and WILLIAM C. SANDOZ, )  
 as Trustee for Sooner )  
 Refining Company, Inc., )  
 )  
 Defendants. )

NO. 82-C-1069-B

JUDGMENT

This matter was tried to the court sitting without a jury commencing May 7, 1984 through June 7, 1984. For the reasons stated in the court's Findings of Fact and Conclusions of Law of August 17, 1984 and in keeping with the Court's sustaining of the Plaintiff's Motion to Modify Remedy filed September 4, 1984, it is by the Court this 14<sup>th</sup> day of September, 1984,

ORDERED that defendants, Robert B. Sutton; Sutton Investments, Inc.; BPM, Limited; Scurry Oil Company and Sooner Refining Co., Inc., and William C. Sandoz, as Trustee for Sooner Refining Company, Inc., ("Sutton"), shall no later than 30 days from the date hereof, as restitution and not as a penalty, remit to the United States Department of the Treasury (the "Treasury") a sum equal to the total of \$423,050,902.92 (representing \$210,736,532.92 in

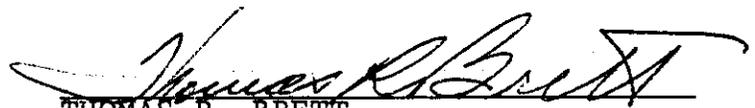
restitution and \$212,314,369.00 in interest accumulated through August 31, 1984); plus interest of \$132,315.97 per day for each day after August 31, 1984, through the date of this Judgment; plus interest at the rate of 11.98% per annum on the total judgment (restitution amount and prejudgment interest) in accordance with 28 U.S.C. § 1961 for each day after the date of this Judgment until full payment has been made in accordance with this paragraph; and it is further

ORDERED that Sutton shall deposit such sum by bank-to-bank wire transfer, in accordance with instructions to be provided to counsel for Sutton by counsel for the United States Department of Energy ("DOE"), into an interest-bearing Treasury escrow account, such deposit to earn interest at a rate to be determined by the Fiscal Assistant Secretary of the Treasury until distributed in accordance with this judgment; and it is further

ORDERED that within 10 days after the conclusion of all appeals in this case, the Fiscal Assistant Secretary of the Treasury shall disburse the monies deposited by Sutton, together with the interest earned thereon pro rata in accordance with historical consumption patterns of refined petroleum products in the United States in the percentages set forth in Appendix A, to each of the States, the District of Columbia, the Commonwealth of Puerto Rico, and territories and possessions of the United States, said disbursement to be made pursuant to instructions, which shall be provided to the Fiscal Assistant Secretary of the Treasury by DOE; and it is further

ORDERED that the States and other jurisdictions identified above shall designate all funds so disbursed for use in three existing energy programs: Part A of the Existing Buildings Act of 1976 (42 U.S.C. § 6861 et seq.); Part G of Title III of the Energy Policy and Conservation Act (42 U.S.C. § 6371 et seq.); the Low Income Home Energy Assistance Act of 1981 (42 U.S.C. § 8621 et seq.); and it is further

ORDERED that Sutton shall bear its own costs in this lawsuit and shall pay to the United States Department of Energy the reasonable costs of the United States in this case. No later than 10 days from the date hereof, the United States shall file a timely bill of costs with this Court.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

## APPENDIX A

BASED ON CONSUMPTION  
PERCENTAGE SHARE

<u>STATE</u>	
Alaska	00.3983
Alabama	01.4832
Arkansas	01.0772
Arizona	00.9913
California	09.4668
Colorado	01.0326
Connecticut	01.6479
Dist. of Columbia	00.2332
Delaware	00.4569
Florida	04.5576
Georgia	02.1514
Hawaii	00.6912
Iowa	01.2338
Idaho	00.3941
Illinois	04.5221
Indiana	02.3643
Kansas	01.0553
Kentucky	01.2864
Louisiana	02.9721
Massachusetts	03.3413
Maryland	01.7905
Maine	00.7260
Michigan	03.2848
Minnesota	01.6432
Missouri	01.8678
Mississippi	01.1908
Montana	00.4344
Nebraska	00.6894
North Carolina	02.1575
North Dakota	00.3491
New Hampshire	00.4456
New Jersey	03.7516
New Mexico	00.5977
Nevada	00.3871
New York	07.6895
Ohio	03.5621
Oklahoma	01.1838
Oregon	00.9821
Pennsylvania	04.5877
Rhode Island	00.3836
South Carolina	01.1695
South Dakota	00.3344
Tennessee	01.5873
Texas	08.5456
Utah	00.5620
Virginia	02.5402
Vermont	00.2290
Washington	01.5595
Wisconsin	01.6722
West Virginia	00.5850
Wyoming	00.3920
Puerto Rico	01.0127
Virgin Islands	00.5966
Guam	00.1275
American Samoa	00.0166
No. Marianas	00.0086

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**  
IN OPEN COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CLAUDIA F. STAMBOLIS, )  
 )  
 Defendant. )

SEP 14 1984

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

CIVIL ACTION NO. 84-C-497-C

DEFAULT JUDGMENT

This matter comes on for consideration this 14 day of September, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Claudia F. Stambolis, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Claudia F. Stambolis, was served with Summons and Complaint on August 10, 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 the Defendant, Claudia F. Stambolis, in the amount of \$197.90, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from July 27, 1983, and \$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the

current legal rate of 11.78 percent from the date of judgment until paid, plus the costs of this action.

(Signed) H. Dale Cook

---

UNITED STATES DISTRICT JUDGE

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

FILED

SEP 14 1984

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

JACQUES LeFRANCE

Plaintiff(s),

vs.

ALASKA LAND LEASING, INC.,  
TERRY J. RISENHOOVER, CHARLES  
WELLER, VIC GAINER and  
DAVID KANE,

Defendant(s).

No. 84-C-484-C

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

for the Plaintiff

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 14<sup>th</sup> day of September, 19 84.

  
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 14 1984

JUDGE DALE  
U.S. DISTRICT

COOK  
CLERK

TULOMA, INC. and THE HOME )  
INSURANCE COMPANY, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. 83-C-222-C  
 )  
DM INTERNATIONAL, INC., )  
 )  
Defendant. )

JUDGMENT DISMISSING ACTION WITH PREJUDICE

Upon the Joint Stipulation of Dismissal With Prejudice  
filed herein on September 12, 1984,

IT IS ORDERED that the Judgment Dismissing Action By  
Reason of Settlement, entered September 10, 1984, is vacated.

IT IS FURTHER ORDERED that the above styled and numbered  
case be, and the same is hereby, dismissed with prejudice.

IT IS SO ORDERED this 14 day of September, 1984.

**(Signed) H. Dale Cook**

---

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

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

NORMAN CLARK, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BYRON JACKSON PUMP DIVISION, )  
 a Borg-Warner Corporation, )  
 )  
 Defendant. )

Case No. 82-C-958-C

**FILED**

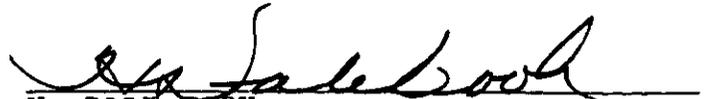
**SEP 14 1984**

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

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Defendant, BYRON JACKSON PUMP DIVISION, a Borg-Warner Corporation, and against the Plaintiff, NORMAN CLARK. The Defendant is to pay its own attorney's fees and its costs of this action.

ENTERED this 14th day of August, 1984.

  
H. DALE COOK  
UNITED STATES DISTRICT COURT JUDGE



*Entered*

**FILED**

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

SEP 13 1984

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

SELECT INSURANCE COMPANY, a	)	
foreign corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. 83-C-914-E
	)	
TAMMIE REED, a minor, JAMES REED,	)	
BETTY REED; TAMMY BOCK, a minor,	)	
MICHAEL BOCK and JANE DOE BOCK,	)	
	)	
Defendants.	)	

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Select Insurance Company, by and through its attorney of record, Stephen C. Wilkerson, and the Defendants, Tammy Bock, a minor, Michael Bock and Jane Doe Bock, by and through their attorney of record, Don I. Nelson, and hereby agree that this matter can be and is dismissed without prejudice against the Defendants, Tammy Bock, a minor, Michael Bock and Jane Doe Bock, only.

KNIGHT, WAGNER, STUART, WILKERSON & LIEBER  
Attorneys for Plaintiff  
233 West 11th Street  
Tulsa, Oklahoma 74119  
(918) 584-6457

By: *Stephen C. Wilkerson*  
Stephen C. Wilkerson

DON I. NELSON & ASSOCIATES, INC.  
Attorneys for Defendants Tammy Bock, Michael  
Bock and Jane Doe Bock  
P. O. Box 209  
Mannford, Oklahoma 74044  
(918) 241-3864

By: *Don I. Nelson*  
Don I. Nelson

**FILED**

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

SEP 13 1984

THE TRAVELERS INSURANCE )  
 COMPANY, a Connecticut )  
 corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 VERITAS, INC., a California )  
 corporation, d/b/a PAT )  
 WALKER'S FIGURE PERFECTION )  
 SALONS INTERNATIONAL, )  
 )  
 Defendant. )

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

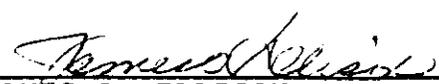
No. 82-C-188-E

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 The Travelers Insurance Company take nothing from the Defendant Veritas, Inc., d/b/a Pat Walker's Figure Perfection Salons International, that the action be dismissed on the merits, and that the Defendant Veritas, Inc., d/b/a Pat Walker's Figure Perfection Salons recover of the Plaintiff The Travelers Insurance Company its costs of action.

DATED at Tulsa, Oklahoma this 10<sup>th</sup> day of ~~August~~ <sup>September</sup>, 1984.

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

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

FILED

SEP 13 1984

No. 84-C-1498 JUDY A. SILVER, CLERK  
U.S. DISTRICT COURT

PETER NIKWEI, TAIWO ABESON, )  
KEVIN VORGMAN, SEGUN THANNI, )  
OMOTAYO OLUWADAISI, CHUCWUDIKE )  
CHYKE WOGU, AKEEM ADIO, LIASU )  
BALOGUN, FRANSON UCHE, VICTOR )  
A. ENNI and FREDERICK HERBERT )  
GLINTON, )

Plaintiffs, )

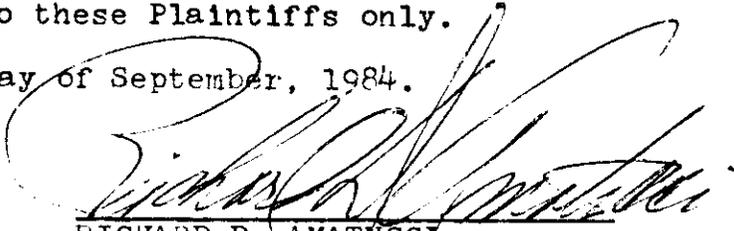
vs. )

ROSS SCHOOL OF AVIATION, INC., )  
an Oklahoma Corporation, and )  
RUDOLPH G. BABCOCK, )  
Defendants. )

NOTICE OF DISMISSAL

COMES NOW the Plaintiffs, SEGUN THANNI and LIASU  
BALOGUN, and hereby dismiss the above cause of action  
without prejudice as to these Plaintiffs only.

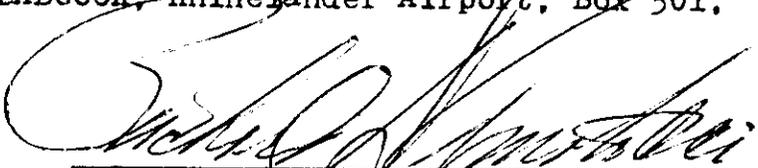
Dated this 12th day of September, 1984.



RICHARD D. AMATUCCI  
Attorney for Plaintiffs  
SEGUN THANNI and LIASU BALOGUN

CERTIFICATE OF MAILING

This is to certify that on the 13th day of September,  
1984, a true and correct copy of the above and foregoing  
Dismissal was mailed, postage prepaid thereon, to: ROSS  
SCHOOL OF AVIATION, INC., General Delivery, Rhinelander, WI  
54501 and C/O Jeanette Edmonson, Secretary of State, State  
of Oklahoma, Room 101, State Capital Building, Oklahoma City,  
OK 73105 and RUDOLPH G. BABCOCK, Rhinelander Airport, Box 501,  
Rhinelander, WI 54501.



RICHARD D. AMATUCCI

Entered

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

FILED

SEP 13 1984

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

RICHARD D. RANDALL, SR. )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
AETNA LIFE & CASUALTY COMPANY, )  
 )  
Defendant. )

No. 83-C-744-B

ORDER OF DISMISSAL

ON This 12<sup>th</sup> day of Sept. 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 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.

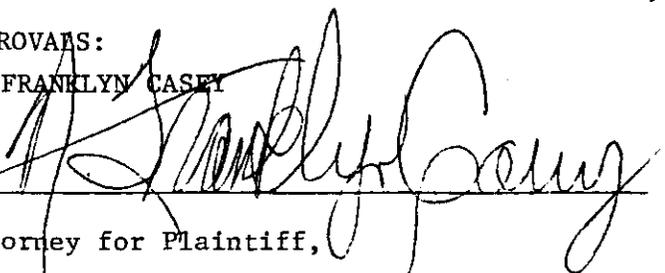
IT IS THEREFORE ORDERED, AND ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby are dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

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

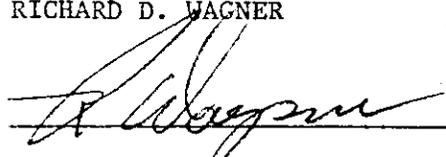
APPROVALS:

N. FRANKLYN CASEY

By: 

Attorney for Plaintiff,

RICHARD D. WAGNER



Attorney for Defendant.

Entered

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

SEP 13 1984

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

KIDDER, PEABODY & CO., INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DONALD E. SMOLEN, )  
 )  
Defendant. )

83-C-892-BT

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 12<sup>th</sup> day of SEPTEMBER, 1984.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PRISCILLA SCOTT, )  
 )  
 Defendant )

SEP 13 1984  
COURT CLERK  
DISTRICT COURT

CIVIL ACTION NO. 83-C-1009-B

DEFICIENCY JUDGMENT

NOW on this 12<sup>th</sup> day of September, 1984,  
there came on for hearing the Motion of the Plaintiff United  
States of America for leave to enter a Deficiency Judgment  
herein, said Motion being filed on September 6, 1984, and a copy  
of said Motion being mailed by Certified Mail to Priscilla A.  
Scott, 1119 East 50th Street North, Tulsa, Oklahoma. The  
Plaintiff, United States of America, acting on behalf of the  
Administrator of Veterans' Affairs, appeared by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma through Peter Bernhardt, Assistant United States  
Attorney, and the Defendant Priscilla A. Scott appeared neither  
in person nor by counsel.

The Court upon consideration of said Motion finds that  
the amount of the Judgment rendered herein on March 14, 1984, in  
favor of the Plaintiff United States of America, and against the  
Defendant Priscilla A. Scott, with interest and costs to date of  
sale is \$35,748.49.

The Court further finds that the market value of the  
real property at the time of sale was \$27,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered March 14, 1984, for the sum of \$32,590.00.

The Court further finds that Plaintiff United States of America is accordingly entitled to a deficiency judgment against the Defendant Priscilla A. Scott as follows:

Principal as of June 8, 1984	\$30,314.37
Interest	4,900.92
Late charges	121.68
Appraisal	100.00
Management broker fees	<u>311.52</u>
	TOTAL
	\$35,748.49
Credit from sale	<u>\$32,590.00</u>
	DEFICIENCY
	\$ 3,158.49

plus interest on said deficiency judgment at the legal rate of 11.98<sup>7</sup>/<sub>10</sub> percent per annum from date of judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the amount credited to Plaintiff, United States of America, after the Marshal's Sale of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff United States of America have and recover from the Defendant Priscilla A. Scott a deficiency judgment in the amount of \$3,158.49 plus interest at the legal rate of 11.98 percent annum on said deficiency judgment from date of judgment until paid.

  
UNITED STATES DISTRICT JUDGE

Entered

FILED

SEP 10 1984

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

JUDICIAL CLERK  
U.S. DISTRICT COURT

TEKNICA RESOURCE DEVELOPMENT, LTD., a Canadian corporation,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 83-C-1071-B
	)	
LARRY W. HALL, an individual, d/b/a EARTH SCIENCE PROGRAMMING,	)	
	)	
Defendant.	)	

O R D E R

NOW on this 12<sup>th</sup> day of September, 1984, the Joint Application For Dismissal of the parties comes on for hearing before the under- signed Judge. Upon consideration of the parties' Application, the Court finds that this action should be dismissed with prejudice as to any claims by both parties.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that this action is dismissed with prejudice as to any claims by both parties.

S/ THOMAS R. BRETT

\_\_\_\_\_  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



1. On or about August 6, 1984, Mercantile National Bank at Dallas and Mercantile Texas Credit Corporation (collectively "Mercantile") filed a Third-Party Complaint against Steven L. Schluneger, E.P. Reedy, Arbitration Services, R&H Oil Company and unknown John Doe(s). No answer or motion for summary judgment has been filed by any of the third-party Defendants. Indeed, Mercantile has withheld service of process on said Third-Party Defendants, pending resolution of its Motion to Dismiss.

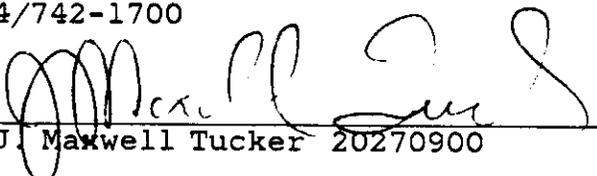
2. On August 7, 1984, the United States District Court for the Northern District of Oklahoma entered an Order of Dismissal with respect to the Original Complaint filed by R&H Oil Company against Mercantile.

3. As a result of said dismissal, Mercantile is of the view that the economic benefits to be obtained as a result of further prosecution of the Third-Party Complaint, will not likely exceed the litigation expenses to be incurred by Mercantile in connection with the prosecution of said claims in this forum at this time.

4. Accordingly, Mercantile Texas Credit Corporation and Mercantile National Bank at Dallas file their Notice of Dismissal Without Prejudice pursuant to Rule 41, Federal Rules of Civil Procedure.

Respectfully submitted,

WINSTEAD, McGUIRE, SECHREST & MINICK  
1700 Mercantile Dallas Building  
Dallas, Texas 75201  
214/742-1700

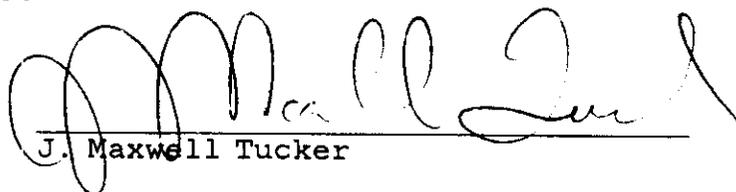
BY   
J. Maxwell Tucker 20270900

ATTORNEYS FOR MERCANTILE NATIONAL  
BANK AT DALLAS AND MERCANTILE  
TEXAS CREDIT CORPORATION

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion was served on the following attorney of record on the 5th day of September, 1984, by certified mail, return receipt requested:

Steven M. Harris, Esq.  
Gasaway, Greene & Harris, P.A.  
Post Office Box 14070  
Tulsa, OK 74195

  
J. Maxwell Tucker

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

FILED

SEP 12 1994

JACK O. HEVENS, CLERK  
U.S. DISTRICT COURT

Case No. 84-C-712-E

LORD JIM, INC., an  
Oklahoma corporation,

Plaintiff,

vs.

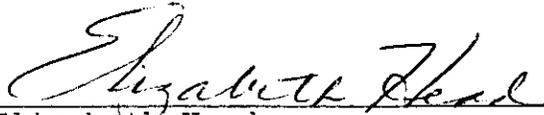
UNITED CHARTER COMPANY, LIMITED,  
a Gibraltar corporation; BANQUE  
GUTZWILLER, KURZ, BUNGENER, S.A.  
a Swiss banking corporation;  
FIRST CITY BANK, N.A., a national  
banking association; and  
CONTINENTAL NATIONAL BANK OF  
FORT WORTH, a national banking  
association,

Defendants.

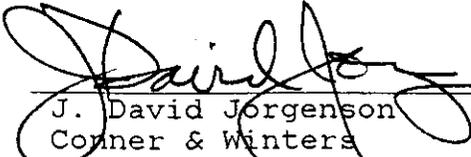
STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW Plaintiff Lord Jim, Inc.; and Defendants Banque Gutzwiller, Kurz, Bungener, S.A.; First City Bank; and Continental Bank of Fort Worth; all the parties which have appeared herein, and by and through their undersigned attorneys, stipulate pursuant to Fed. R. Civ. P. 41(a)(1)(ii) that Plaintiff's action in the above entitled and numbered case is hereby dismissed with prejudice, with each party to bear its own costs and attorneys fees.

  
Terry M. Thomas  
Janet L. Spaulding  
Norman, Wohlgenuth & Thompson  
Attorneys for Plaintiff,  
Lord Jim, Inc.

  
Elizabeth Head  
Claire V. Eagan  
James J. Proszek  
Hall, Estill, Hardwick, Gable,  
Collingsworth & Nelson, Inc.  
Attorneys for Defendant,  
Banque Gutzwiller, Kurz,  
Bungener, S.A.

  
Joe Edwards  
Morris Galloway  
Edwards, Roberts & Winterstein  
Attorneys for Defendant,  
First City Bank, N.A.

  
J. David Jorgenson  
Conner & Winters  
Attorneys for Defendant,  
Continental National Bank  
of Fort Worth, N.A.

*Entered*

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

FILED  
SEP 12 1984  
JACK O. SILVER, CLERK  
U.S. DISTRICT COURT

DESIGN 1, a California )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HALCYON DEVELOPMENT )  
CORPORATION, an Oklahoma )  
corporation, and E. R. ALBERT, )  
JR., an individual, )  
 )  
Defendants. )

No. 83-C-263-C

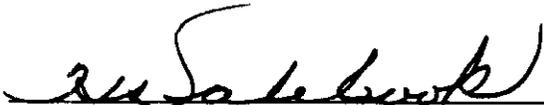
JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

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.

IT IS SO ORDERED this 11 day of September, 1984.

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

17

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

FILED

SEP 12 1984

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

KEN COURTEMANCHE, Administrator )  
of the Estate of HELEN )  
COURTEMANCHE, deceased; and )  
KEN COURTEMANCHE, individually, )

Plaintiff, )

-vs- )

JOHNNY WAKES d/b/a WAKES FARM )  
AND FEED; GARY DALE WATKINS; and )  
R.B. SCHAFER ENTERPRISES, INC., )  
a Missouri corporation, )

Defendant. )

NO. 83-C-698-C

ORDER OF DISMISSAL

ON this 11 day of Sept, 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 defendant be and the same hereby is

dismissed with prejudice to any future action.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Michael T. Rooney  
MICHAEL T. ROONEY,  
Attorney for Plaintiff

Ray H. Wilburn  
RAY H. WILBURN,  
Attorney for Defendant

FILED

SEP 12 1984

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

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

WELLS FARGO CREDIT CORPORATION,	)
a California corporation,	)
	)
Plaintiff,	)
	)
vs.	)
	)
RICHARD L. FINNELL, an	)
individual,	)
	)
Defendant.	)

No. 83-C-900-C ✓

JOURNAL ENTRY OF JUDGMENT

NOW on this 14 day of August, 1984, the Court, upon the application and agreement of all parties to this lawsuit, finds as follows:

1. On October 25, 1983, the Plaintiff filed a Complaint herein requesting judgment against the Defendant, Richard L. Finnell, on the basis of his unconditional guarantee of Finnell

Compressor, Inc.'s debt to Plaintiff upon a One Hundred Fifty-Three Thousand Five Hundred Twenty-Nine Dollar and Fifty Nine Cent (\$153,529.59) Promissory Note executed and delivered to Plaintiff by Finnell Compressor, Inc. on or about March 20, 1981.

2. Finnell Compressor, Inc. has defaulted upon the Promissory Note and there remains an unpaid principal balance on said Note of One Hundred Fifty Thousand Five Hundred Thirty Dollars Sixty-Two Cents (\$150,530.62) together with accrued interest of \$58,625.09.

3. The Defendant, Richard Finnell, as an individual Guarantor of said Note, is personally liable for the full amount of principal owed, plus interest, accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, Wells Fargo Credit Corporation have judgment against the Defendant, Richard L. Finnell, for the amount of One Hundred Fifty Thousand Five Hundred Thirty Dollars and Sixty-Three Cents (\$150,530.63) as the amount of

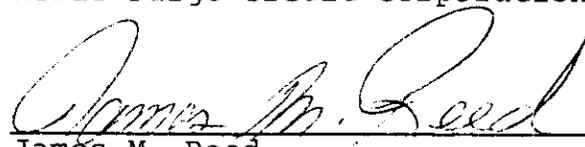
principal as yet unpaid, together with accrued interest to August 14, 1984 of \$58,625.09, interest to continue to accrue on the Judgment amount at the rate of 15% per annum, a reasonable attorneys fee of \$ 645.00 , and the costs of this action being \$ 89.70 .

IT IS SO ORDERED. DATED THIS 14 DAY OF AUGUST, 1984.

  
\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Theodore Q. Elicit  
Attorney for Plaintiff,  
Wells Fargo Credit Corporation

  
\_\_\_\_\_  
James M. Reed

OWENS & MCGILL, INC.  
Attorneys for Defendant, Richard L. Finnell  
1606 First National Bank Building  
Tulsa, OK 74103  
(918) 587-0021

8128C/JMR  
8-14-84/clh

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

*Entered*

FILED

SEP 12 1984

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

JONATHAN SHENI, a citizen  
of Nigeria, )  
)  
)  
Plaintiff, )  
)  
)  
v. )  
)  
ROSS SCHOOL OF AVIATION, INC., )  
an Oklahoma corporation, and )  
CONTINENTAL CASUALTY COMPANY, )  
an Illinois corporation, )  
)  
Defendants and )  
Third-Party )  
Plaintiffs, )  
)  
v. )  
)  
ROBERT M. SNOWBERGER, an )  
individual, and DOSS AVIATION, )  
INC., )  
)  
Third-Party )  
Defendants. )

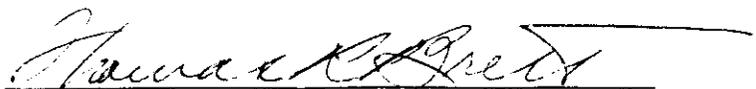
NO. 83-C-394-B

ORDER

On May 8, 1984, third-party defendants Robert M. Snowberger and Doss Aviation, Inc., filed a motion to dismiss for failure to state a claim and on June 7, 1984, defendants and third-party plaintiff Continental Casualty Company filed a motion for summary judgment. Plaintiff has failed to respond to either motion. The Court is further informed that the plaintiff, Jonathan Sheni, has left the United States. Therefore, the Court finds this case should be dismissed without prejudice for failure to prosecute, pursuant to F.R.Civ.P. 41(b).

IT IS SO ORDERED.

ENTERED this 12<sup>th</sup> day of September, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

SEP 11 1984

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

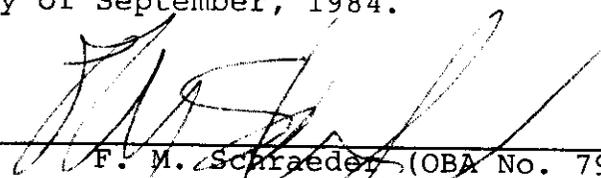
LINDA F. BOYD, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CARBONEX COAL COMPANY, )  
 )  
 Defendant. )

No. 83-C-981-B

STIPULATION AND NOTICE OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure the Plaintiff Linda F. Boyd, by and through her attorney of record F. M. Schraeder and the Defendant Carbonex Coal Company by and through its attorneys of record Doerner, Stuart, Saunders, Daniel & Anderson and Lynn Paul Mattson and Linda C. Martin and submit herewith their Stipulation and Notice of Dismissal, dismissing the above-referenced action.

DATED this 11 day of September, 1984.

  
\_\_\_\_\_  
F. M. Schraeder (OBA No. 7981),  
717 S. Houston, Suite 509  
Tulsa, Oklahoma 74127  
(918) 583-9822

Attorney for Plaintiff  
Linda Faye Boyd

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By: Linda C. Martin

Lynh Paul Mattson  
(OBA No. 5795)

Linda C. Martin  
(OBA No. 5732)

1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for Defendant Carbonex  
Coal Company

*Entered*

**FILED**

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

SEP 10 1984

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

DARLENE P. GUILLEN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 INTERNAL REVENUE SERVICE, )  
 COMMISSIONER OF INTERNAL )  
 REVENUE, and R. E. BARNES, )  
 Revenue Officer, )  
 )  
 Defendants. )

No. 83-C-987-BT

O R D E R

Before the Court for consideration is the motion to dismiss or, in the alternative, motion for summary judgment of defendants. Plaintiff has filed her brief in opposition thereto. Oral arguments were heard by the Court on April 12, 1984, and the parties have filed supplements to their briefs. For the reasons set forth below, the Court finds defendants' alternative motion for summary judgment should be sustained with respect to defendants, United States of America, Internal Revenue Service and Commissioners of Internal Revenue Service. Defendants'

alternative motion for summary judgment is overruled with respect to defendant, R. E. Barnes, Revenue Officer.<sup>1</sup>

Plaintiff's case arises from an alleged wrongful levy of her wages in the amount of \$151.19 by the Internal Revenue Service for alleged tax deficiencies in tax years 1980 and 1981. Plaintiff claims she did not receive a notice of deficiency from the IRS for those tax years and for that reason any levy is wrongful. Plaintiff asserts a constitutional tort action arising out of defendants' alleged conversion of her wages, defendants' alleged libel of her and defendants' alleged intentional infliction of emotional distress. Plaintiff seeks injunctive relief and damages, both actual and punitive.

The issue presented by plaintiff's case is whether the defendants had sufficient notification of plaintiff's present address at the time the notice of deficiency for tax years 1980 and 1981 was sent so that the levy on plaintiff's wages was wrongful.

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<sup>1</sup> Rule 12(b) of the Federal Rules of Civil Procedure provides:

"If, on a motion asserting the defense (6) to dismiss for failure of the pleadings to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as one provided in Rule 56, and all parties shall be given reasonable opportunity to present all material pertinent to such a motion by Rule 56."

As both plaintiff and defendants have attached several exhibits to their briefs and defendants have presented to the Court several affidavits, the Court must treat defendants' motion as one for summary judgment.

FACTS BEFORE THE COURT

1. On April 15, 1983, the "Chief, Service Center, Examination Branch" mailed to plaintiff a form letter stating in pertinent part:

Dear Taxpayer:

We received the new Form W-4 or additional information you sent with regard to our previous Form W-4 determination shown above. After careful evaluation, we have determined that the information you sent:

\* \* \*

X Does not justify a change in our determination regarding your Form W-4.

\* \* \*

X Does not justify waiving the penalty. Therefore, we are assessing the \$500 penalty. You will receive a bill. Although the bill will be identified as relating to your 1981 income tax return, the amount is, in fact, the \$500 civil penalty for false information with regard to withholding in 1982.

\* \* \*

This letter was mailed to plaintiff at 9814 E. 37th St., Tulsa, OK 74145." On the right hand side above the body of the letter is stated: "Date of Previous Letter: 12-3-82." (Plaintiff's Exhibit P)

2. Also on April 15, 1983, the "Chief, Service Center, Compliance Division" mailed to plaintiff a letter giving plaintiff notice that her request for an adjustment of the \$500 W-4 civil penalty had been denied. This letter was mailed to plaintiff at "9814 E. 37th St., Tulsa, OK 74145." (Plaintiff's Exhibit M).

3. On May 4, 1983, the IRS sent to plaintiff by certified mail a notice of deficiency for tax year 1980, claiming plaintiff owed \$927.00 in unpaid taxes. This notice of deficiency was mailed to 101 N. Broadway #312, Shawnee, Oklahoma. The address on plaintiff's 1980 income tax return was 101 N. Broadway #312, Shawnee, Oklahoma. The notice of deficiency was returned to the IRS by the postal service as undeliverable. (Exhibit 6 to Defendants' Supplement to Memorandum of Law in Support of Motion to Dismiss or, In the Alternative Motion for Summary Judgment filed April 12, 1983).

4. On May 18, 1983, the IRS sent to plaintiff by certified mail a notice of deficiency for tax year 1981, claiming plaintiff owed \$1164.00 in unpaid taxes in addition to a negligence and estimated tax penalty. This notice of deficiency was again mailed to 101 N. Broadway #312, Shawnee, Oklahoma, although the address on plaintiff's 1981 return was P.O. Box 959, Broken Arrow, Oklahoma. (Exhibit 8 to Defendants' Supplement to Memorandum of Law in Support of Motion to Dismiss or, In the Alternative Motion for Summary Judgment filed April 12, 1983).

5. On September 26, 1983, the IRS sent to plaintiff a "Statement of Adjustment to Your Account" for tax year 1980. The calculations in this Statement adjusted the alleged tax deficiency upward to \$1,837.92. The September 26, 1983 statement was sent to plaintiff "c/o Love Envelopes, Inc., 10733 E. Ute, Tulsa, OK 74116."

6. On September 27, 1983, plaintiff wrote to the IRS disagreeing with the proposed changes in her 1980 return, stating "I respectfully demand that my right to an appeal hearing and a Notice of Deficiency be preserved as required by law."

7. On October 24, 1983, the IRS mailed to plaintiff a "Statement of Adjustment to Your Account for tax year 1981. This statement was mailed to plaintiff "c/o Love Envelopes, Inc., 10733 E. Ute, Tulsa, OK 74116." In it, the IRS calculated plaintiff's tax deficiency for tax year 1981 to be \$2,363.83.

8. On October 27, 1983, plaintiff wrote to the IRS in regard to the October 24, 1983 "Statement of Adjustment to Your Account" denying she owed the deficiency. Plaintiff stated in the letter, "ALSO, this is notice to you that you are not using my correct mailing address. I have indicated a new address on previous correspondence, but either you didn't make a note of it, or disregarded it. In the future, all correspondence to me to (sic) should be addressed to the address below." The address listed "below" was "9814 E. 37th Street, Tulsa, Oklahoma 74145."

9. On November 2, 1983, the IRS mailed to plaintiff at 9814 E. 37th Street, Tulsa, Oklahoma her "Final Notice."

10. On November 7, 1983, plaintiff wrote to the IRS again disputing the proposed changes setting forth five "contentions," one of which stated:

"I have never knowingly or intentionally requested, received or exercised a privilege, franchise or benefit, including limited liability for payment of debt, from any agency or subdivision of government, which as a consequence might have made me a 'person liable' for an 'income' tax."

11. On November 15, 1983, the IRS served on plaintiff's employer a "Notice of Levy on Wages, Salary, or Other Income."

12. On November 22, 1983, plaintiff's attorney wrote to plaintiff's employer requesting the employer not honor the alleged wrongful levy.

13. On November 23, 1983, plaintiff's attorney wrote to R.E. Barnes again notifying the IRS that plaintiff claimed she had never received a "Notice of Deficiency" and that any purported levy on her wages would be wrongful.

#### INJUNCTIVE RELIEF

Defendants claim plaintiff has failed to state a cause of action for injunctive relief for two reasons: 1) the Court lacks subject matter jurisdiction by reason of 26 U.S.C. §7421(a); and 2) plaintiff's remedy at law is adequate.

26 U.S.C. §7421 provides in pertinent part:

"(a) Tax. Except as provided in sections . . . 6213(a), . . . no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

However, plaintiff claims she may seek an injunction against the IRS under 26 U.S.C. §6213(a) which provides in pertinent part:

". . . [N]o levy or proceeding in court for its collection [the tax deficiency] shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day . . . period, . . . Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such

proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court."

Plaintiff claims she never received the Notice of Deficiency referred to in §6213(a). Defendants argue that mailing to plaintiff's address on her 1980 Individual Income Tax return was sufficient mailing for the purposes of the 1980 and 1981 deficiency. In response, plaintiff claims defendants knew she was no longer residing at the address on her 1980 return and had, in fact, corresponded with her at her new address and work address.

Under Rule 65 of the Federal Rules of Civil Procedure four factors are to be considered in ruling on a request for an injunction: 1) whether there is a likelihood that the plaintiff will prevail on the merits of her claim; 2) whether it is likely the applicant will suffer irreparable injury if the injunction is not granted; 3) whether the threatened injury to the applicant outweighs any threatened harm the injunction may have to parties against whom it will operate; and 4) public interest considerations. See Lundgrin v. Claytor, 619 F.2d 61, 63 (10th Cir. 1980); United States v. Moore, 427 F.2d 1020, 1024 (10th Cir. 1970); Lee v. McManus, 543 F.Supp. 385, 391 (D.Kan. 1982). Irreparable harm is the key factor in determining whether to grant injunctive relief. Sampson v. Murray, 415 U.S. 61, 88 (1974). Where the aggrieved party's remedy at law is adequate, that party will suffer no irreparable harm should the Court deny issuance of an injunction.

Here, plaintiff appears to have an adequate remedy at law. Under 26 U.S.C. §7422, plaintiff may pay the amount of the assessed deficiency, file a claim for refund, and if the claim is denied, institute an action in district court. See also Allen v. LeBaube, 52 A.F.T.R.2d 6015 (W.D.Mo. 1983). The Court thus concludes defendants are entitled as a matter of law to summary judgment against plaintiff on her claim for injunctive relief.

#### CONSTITUTIONAL TORT ACTION

Initially, the Court notes that Bivens-type<sup>2</sup> constitutional tort actions do not lie against the United States of America as the United States may be sued only to the extent it has consented to suit by statute. Terrapin Leasing, Ltd. v. United States, 449 F.Supp. 7, 8 (W.D.Okl. 1978); United States v. Sherwood, 312 U.S. 584 (1941). An action against the Internal Revenue Service is effectively one against the United States. Terrapin Leasing, Ltd. v. United States, Id. at 8. Thus, plaintiff's cause of action against the United States of America and Internal Revenue Service must fail as a matter of law.

Defendants, Commissioner of Internal Revenue and R. E. Barnes, revenue agent, seek summary judgment on the basis of either absolute or qualified immunity with respect to plaintiff's action.

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<sup>2</sup> Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), established that "a citizen suffering a compensable injury to a constitutionally protected interest could invoke the general federal-question jurisdiction of the district courts to obtain an award of monetary damages against the responsible federal official. Butz v. Economou, 438 U.S. 478, 505 (1978).

There appears to be two lines of cases bearing on absolute and qualified immunity.<sup>3</sup> One line, beginning with Barr v. Matteo, 360 U.S. 564 (1959), and recognized in Butz v. Economou, 438 U.S. 478 (1978), deals with absolute immunity accorded government officials who are accused of committing a common law tort. The other line deals with qualified immunity available to government officials who are charged with violating the federal constitution or federal statute. See Butz v. Economou, Id.; Harlow v. Fitzgerald, 457 U.S. 800 (1982). Thus, the type of immunity accorded defendants, Commissioner of Internal Revenue and R.E. Barnes, revenue agent, turns upon the characterization of plaintiff's constitutional tort action as one involving the commission by defendants of common law torts or the violation by defendants of the federal constitution or federal statute. The Court concludes the latter characterization is more applicable herein as plaintiff's causes of action for conversion, libel and intentional infliction of emotional distress are dependent on and arise out of plaintiff's cause of action under Bivens.

Therefore, the proper immunity inquiry with respect to defendants is the qualified or good faith immunity. Accord: Terrapin Leasing, Ltd. v. United States, supra at 9; G. M. Leasing Corp. v. United States, 560 F.2d 1011, 1015 (10th Cir. 1977). The district judge stated in Terrapin Leasing, supra, at 9:

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<sup>3</sup> See Strothman v. Gefreh, Tenth Circuit Court of Appeals Slip Opinion 83-1108 (July 20, 1984).

"The doctrine of absolute immunity is inapplicable to the defendants' actions in executing the levy. *G.M. Leasing Corp. v. United States*, 560 F.2d 1011 (10th Cir. 1977). The proper inquiry is whether the agents are protected from damages liability by qualified immunity.

'[I]n varying scope, a qualified immunity is available to officers of the executive branch of the government, the variation being dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based. It is the existence of a reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief, that affords a basis for qualified immunity of executive officials for acts performed in the course of official conduct.' *Scheuer v. Rhodes*, 416 U.S. 232, 247-248, 94 S.Ct. 1683, 1692, 40 L.Ed.2d 90 (1974). See also *Wood v. Strickland*, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975), rehearing denied, 421 U.S. 921, 95 S.Ct. 1589, 43 L.Ed.2d 790 (1975)."

The Supreme Court recently restated the rule of qualified immunity in *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982), to the effect that an official's claim of qualified immunity will 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 the malicious intention to cause a deprivation of constitutional rights or other injury. The Court further concluded bare allegations of malice should not suffice to subject government officials either to the costs of trial or

discovery. The Court stated, "We therefore hold that government officials performing discretionary functions generally are 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 at 818. See also Davis v. Scherer, 52 U.S.L.W. 4956 (June 26, 1984).

Although plaintiff's attorney stated to the contrary at the April 12, 1984 hearing<sup>4</sup>, it appears plaintiff is a "tax protestor." From the affidavit of Richard J. Whitburn, IRS special agent and former Oklahoma City Illegal Tax Protestor Coordinator, it appears that the address on plaintiff's 1981 tax return, P.O.Box 959, Broken Arrow, Oklahoma, was an address found on returns "on which taxpayers claimed to be exempt from federal income tax." Whitburn stated that during an investigation by him, it was determined that returns listing the P.O.Box 959 address were being prepared by David Martin who "often did not forward correspondence sent by the Internal Revenue Service to the individuals listed as taxpayers on said returns." Whitburn stated he "instructed the personnel in the Criminal Investigation Branch of the Austin Service Center not to send any letters or correspondence to said address" since he believed the taxpayer would not likely receive it.

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<sup>4</sup> Robert Flynn, plaintiff's attorney, stated to the Court, "Your honor, she is not a tax protestor. She is willing to pay all taxes that are due." Transcript of April 12, 1984 hearing, page 35, lines 11-12.

Nelda Harbaugh, tax examiner of the Austin Service Center currently assigned to the Criminal Investigation Branch of the Illegal Tax Protestor Team, stated in her affidavit that "All income tax returns claiming that wages are not income are referred for review to Criminal Investigation Branch of the Austin Service Center." Plaintiff's 1981 tax return has the following notations typed in above certain lines, "WAGES NOT INCOME UNLESS FROM PRIVILEGE MORGAN V. COMM 309 US 80" and "FEDERAL RESERVE NOTES ARE NOT CASH. VALUE 10¢ 3401 (A) IRC." Attached to plaintiff's 1981 return is a six-page "affidavit" of David L. Martin purporting to support the typed-in statements on the front of the return. Harbaugh further states:

"When the only address on the income tax return is an address of a tax-protestor-return preparer, it is our practice to obtain a microfilm from the National Computer Center in Martinsburg, West Virginia, that contains the complete taxpayer's history of filing returns. It is our practice to use the most current address listed on the microfilm for mailing letters to the taxpayer if there is no correspondence from the taxpayer showing a more recent address."

Harbaugh states that the most recent address "we had in July 1982 was the address listed on her 1980 income tax return, which was 101 North Broadway, No. 312, Shawnee, Oklahoma 74801."

Margaret Ellis, present manager in the Correspondence Examination Branch of the Austin Service Center and former manager of the Files and Maintenance Unit of the Examination Branch of the Service Center, states in her affidavit that the latter Unit has the responsibility of preparing statutory notices

of deficiency when taxpayers do not agree to proposed changes to their tax liabilities. Ellis states:

"4. In choosing the address to which a statutory notice of deficiency was to be sent, we were instructed not to use certain addresses that were known to be the addresses of certain return preparers who prepared returns in which the taxpayers claimed to be exempt from federal income tax. One such address is P.O. Box 969, Broken Arrow, Oklahoma 74012.

"5. When the return, being examined contained such an address, it was our policy to choose an address for the statutory notice of deficiency by consulting the microfilm that contained a taxpayer's history of filing returns. The address on the most recently filed return would be used as the address to which the statutory notice of deficiency was mailed unless our administrative file contained correspondence from a taxpayer indicating a more recent address."

Under 26 U.S.C. §6212(b)(1) notice of deficiency is sufficient if mailed to the taxpayer at his "last known address." In construing the phrase "last known address," it is generally held that a notice of deficiency is sufficient if it is mailed to the address where the Commissioner reasonably believed the taxpayer wished to be reached. United States v. Ahrens, 530 F.2d 781 (8th Cir. 1976); Sorentino v. Ross, 425 F.2d 213 (5th Cir. 1970); Green v. United States, 437 F.Supp. 334, 336-37 (N.D.Okla. 1977). If the notice is mailed to the last known address, it is valid even if it is not actually received by the taxpayer. United States v. Ahrens, supra; Green v. United States, supra. The Commissioner is required to use reasonable care and diligence in mailing a deficiency notice to the correct address, Arlington

Corp. v. Commissioner of Internal Revenue, 183 F.2d 448 (5th Cir. 1950); Green v. United States, supra, and the burden of proof is upon the taxpayer to prove that this care and diligence was not exercised. Butler v. District Director, 409 F.Supp. 853 (S.D.Tex. 1974); Green v. United States, supra.

A taxpayer's last known address is that on his most recent return, unless the taxpayer communicates to the IRS "clear and concise" notice of a change of address. United States v. Zolla, 724 F.2d 808, 811 (9th Cir. 1984); McPartlin v. Commissioner, 653 F.2d 1185, 1189 (7th Cir. 1981); Alta Sierra Vista, Inc. v. Commissioner, 62 T.C. 367 (1974), aff'd mem. 538 F.2d 334 (9th Cir. 1976). A taxpayer contending that a deficiency notice has been mailed to her at the wrong address, has the burden of proof to show that she furnished the IRS with a clear and concise notification concerning a definite change of address. Kuebler v. Commissioner of Internal Revenue, 38 T.C.M. (CCH) 454 (1979). Until such notification, the IRS is entitled to rely on the address shown on the taxpayer's return. Alta Sierra Vista, Inc. v. Commissioner, supra at 374.

The mere filing of a tax return for a subsequent taxable year prior to the issuance of a statutory notice of deficiency with respect to an earlier year is not sufficient to notify the IRS of a change of address. Kuebler v. Commissioner of Internal Revenue, supra. Moreover, information about the taxpayer's address gained by the collection division of the IRS will not be imputed to the examination division. United States v. Zolla,

supra at 810-11; Kuebler v. Commissioner of Internal Revenue, supra. The rationale for this rule was stated by the Ninth Circuit Court of Appeals in Zolla:

"Because a notice of deficiency is invalid if not properly addressed, and because the statute of limitations will often bar the IRS from later issuing a correct notice if the first is invalid, the IRS must have clear guidance as to what information it must examine in determining a taxpayer's last known address. If we required agents mailing notices of deficiency to take into account address information acquired by agents in different divisions in the course of unrelated investigations, the IRS could ensure that notices were validly addressed only by systematically recording in a central file all address information acquired in any fashion. We decline to require the IRS to do that. First, it would impose an unreasonable administrative burden on the IRS. Second, where the taxpayer himself did not communicate the change of address to the IRS, the taxpayer would not be estopped from arguing that a change of address noted by the IRS was incorrect." Zolla at 811.

Applying these principles to the facts at hand, it appears that plaintiff's 1981 tax return bearing the "P.O. Box 959" address on it was not sufficient to give the IRS clear and concise notification of her new address in Tulsa. This is especially true in light of plaintiff's designation as a "tax protestor."

The Court thus turns to whether the two correspondences from the IRS to plaintiff prior to the May 4 and 18, 1983 mailing of notices of deficiency constituted sufficient notice to the IRS of plaintiff's new address. The first April 15, 1983 correspondence from the "Chief, Service Center, Examination Branch" was mailed

to plaintiff at 9814 E. 37th St., Tulsa, Oklahoma. The second April 15, 1983 correspondence from the "Chief, Service Center, Compliance Division" was also mailed to plaintiff at 9814 E. 37th St., Tulsa, Oklahoma. The notices of deficiency were mailed by the examination division.

The affidavit of Gary L. Collins, former revenue officer in the Collection Division of the IRS, states that the examination division and collection division of the IRS are "separate functions within the Internal Revenue Service." Collins stated:

"6. The major function of the Examination Division is to examine filed returns to determine whether additional taxes are owed.

7. The Collection Division's major function is to collect delinquent tax liabilities. These liabilities may have been reported on returns by taxpayers or may have been determined by Examination Division.

8. When a revenue officer receives a taxpayer delinquent account for collection, the amount of the tax has already been assessed. Revenue officers do not assist the Examination Division in conducting their examinations nor are they involved in issuing statutory notices of deficiency to taxpayers."

In response to a query by the Court as to whether the "Compliance Division" was a part of the examination division, the collection division or a separate division, defendants have filed an affidavit of Richard R. Auby which states that the Compliance Division was established in 1979 "to direct and coordinate Examination, Collection and Criminal Investigation activities at the Service Center." The Compliance Division at the Austin Service Center is organized into three branches and one staff: 1) the collection branch; 2) the examination branch; 3) the

criminal investigation branch; and 4) the windfall profit tax staff.

Under the Zolla case, the knowledge of plaintiff's new address possessed by the Chief of the Examination Division may not be imputed to the collection division and, by implication, to revenue agent Barnes. Moreover, the Court likewise concludes that the knowledge of plaintiff's new address possessed by the Chief of the Compliance Division may not be imputed to the collection division as the compliance division appears to be separate from the collection division, primarily involved with efficient functioning and coordination of the branches and staff of which it is composed.

Under Harlow v. Fitzgerald, supra, an official may not be accorded qualified immunity if he knew or reasonably should have known that the action he took within the sphere of official responsibility would violate the constitutional rights of the plaintiff, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury.

Plaintiff alleges that Barnes' actions were motivated by his belief that the plaintiff was a "tax protestor" and that Barnes acted with malice. Agent Barnes received plaintiff's "file" for collection on November 1, 1983 from the collection division of the Shawnee branch of the IRS. (Deposition of R.E. Barnes, May 7, 1983, p. 6, lines 2, 9-12). Before he signed the notice of levy sent to plaintiff's employer, Barnes was aware that plaintiff had written a letter to the IRS explaining that she had

not received her notice of deficiency. (Barnes deposition, p. 3, lines 16-22). In fact, plaintiff had written two letters to the IRS stating she had never received a notice of deficiency. (See plaintiff's letter dated September 27, 1983, Exhibit A to plaintiff's complaint, and plaintiff's letter dated October 31, 1983, Exhibit C to plaintiff's complaint). It is not clear from Barnes' deposition which of plaintiff's letters he was aware. Moreover, it appears from the record before the Court at this time that in the file of plaintiff available to Barnes at the time he issued the November 15, 1983 notice of levy "one of the accounts had a Shawnee address that was crossed out and changed to a Tulsa address, ..." (Barnes depo., page 6, lines 21-23).

On November 23, 1983, plaintiff's attorney wrote to Barnes notifying the IRS that plaintiff claimed to have never received a notice of deficiency. With respect to the November 23, 1983 letter, the following exchange took place between plaintiff's attorney and Barnes:

Q: . . . At the time you received that, and I was stating that she hadn't received her constitutional rights, why did you not stop at that point from levying her wages?

A: Because the 90-day letter had been sent, and the assessment had been made, and it's our duty to collect the tax due.

Q: Did you actually check back in your file to see if she had possibly not been sent a 90-day notice correctly?

A: No, because (sic) I know our procedures call for a 90-day letter to be sent.

Q: Did you check with any other employee to see if this lady's, possibly this lady's

constitutional right had been (sic) violated?

A. No, I did not.

Q: Did any other employee in your office check, that you know of?

A: Not that I know of.

(Barnes deposition, p. 21, lines 23-24; p. 22, lines 1-13). In his affidavit, Barnes states:

"3. That in the conduct of my official duties, within the scope of my employment, I signed a Notice of Levy that was served by mail on plaintiff's employer to collect said tax liabilities. My signing said Notice of Levy was in accordance with Internal Revenue Service procedures and was done in good faith."

Upon consideration of defendant's motion for summary judgment with respect to whether defendant Barnes acted with malice or intentional disregard of plaintiff's constitutional rights, the Court is not satisfied that the record before it does not contain material issues of fact. The Court concludes further factual development is required. Summary judgment is therefore inappropriate. Carter v. Stanton, 405 U.S. 669, 671 (1972); Harsha v. United States, 590 F.2d 884, 887 (10th Cir. 1979).

With respect to the Commissioner of Internal Revenue, there are no allegations of personal involvement in the issuance of the notice of levy. Any liability of the Commissioner would have to be predicated on his position alone. Further, the Court notes that the Commissioner is not R.E. Barnes' employer, thus, respondeat superior has no application even if R. E. Barnes was liable to plaintiff. Rule 56 of the Federal Rules of Civil

Procedure provides summary judgment is proper where no issue of genuine 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. 1976).

IT IS THEREFORE ORDERED defendants' alternative motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure is sustained as to defendants, United States of America, Internal Revenue Service and Commissioner of Internal Revenue Service, and overruled as to defendant, R.E. Barnes.

IT IS FURTHER ORDERED the matter is set for jury trial October 15, 1984 at 9:30 a.m. Trial briefs, requested voir dire and requested instructions shall be filed on or before October 9, 1984. An agreed pretrial order shall be filed on or before October 3, 1984 at which time the parties shall exchange exhibits. All discovery shall be complete on or before September 21, 1984. The names and addresses of all witnesses shall be exchanged in writing on or before September 14, 1984 as well as a statement of anticipated testimony of any witnesses who have not been deposed.

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



THOMAS R. BRET  
UNITED STATES DISTRICT JUDGE

*Entered*

**FILED**

SEP 10 1984  
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BUSTER S. BAYOUTH; )  
KENNETH DON WIGINTON; )  
HARRY H. BAYOUTH; )  
FRED J. McDONALD; and )  
JON H. BAYOUTH, )  
 )  
Defendants. )

CIVIL ACTION NO. 83-C-773-B

DEFAULT JUDGMENT

This matter comes on for consideration this 7th day of September, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Jon H. Bayouth, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Jon H. Bayouth, was served with Alias Summons and Amended Complaint on August 8, 1984. The time within which the Defendant could have answered or otherwise moved as to the Amended 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 the Defendant, Jon H. Bayouth, under its First Cause of Action in the amount of \$357,303.03, together with interest accrued thereon through January 12, 1984, in the sum of \$30,365.67, and interest accruing

thereafter at the rate of \$124.06 per day; and under its Second Cause of Action in the amount of \$98,832.32, together with interest accrued thereon to January 13, 1984, of \$36,050.94, and interest accruing thereafter at the rate of \$44.61 per day, until judgment, plus interest thereafter at the current legal rate of 11.98% percent from the date of judgment until paid, plus the costs of this action.

S/ THOMAS R. BRETT

---

UNITED STATES DISTRICT JUDGE

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

VIRGIL HOLDING, Individually and )  
as Administrator of the Estate of )  
DELBERT WAYNE HOLDING, Deceased, )  
Plaintiff, )

-vs-

SPEEDWAY TRANSPORTATION, INC., )  
a Foreign Corporation; MARK S. )  
GRIFFIN; and GREAT WEST CASUALTY )  
COMPANY, a Foreign Insurance )  
Corporation, )  
Defendants. )

FILED  
Sept 10, 1984  
Jack C. Silver, Clerk

NO. 84-C-550-E

ORDER  
STIPULATION OF DISMISSAL WITHOUT PREJUDICE  
AS TO DEFENDANT MARK S. GRIFFIN

NOW on this 10<sup>th</sup> day of Sept, 1984, Plaintiff's  
Application to Dismiss without Prejudice Defendant MARK S. GRIFFIN  
comes on for hearing before the undersigned Judge.

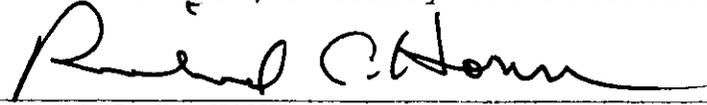
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said  
Application be granted by stipulation of the parties and that the  
Defendant, MARK S. GRIFFIN, is hereby dismissed from this lawsuit  
herein without prejudice to future filing.

S/ JAMES C. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

DAVID P. REID, Attorney for Plaintiff

  
RICHARD C. HONN, Attorney for Defendants

FILED

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

SEP 10 1984 *mc*

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

HESS OIL VIRGIN ISLANDS CORP., )  
 a United States Virgin Islands )  
 corporation; FEDERAL INSURANCE )  
 COMPANY, a New Jersey )  
 corporation; and INSURANCE )  
 COMPANY OF NORTH AMERICA, a )  
 Pennsylvania corporation, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 UOP, INC., a Delaware )  
 corporation, )  
 )  
 Defendant. )

No. 75-C-383-C ✓

J U D G M E N T

This action came on for trial before the Court and a jury and the issues having been duly tried, the jury having rendered its verdict and the Court having determined all other issues,

It is Ordered and Adjudged that the plaintiffs recover of the defendant UOP, Inc. the sum of \$1,166,638.82 with post judgment interest as provided by law and their costs of action in the amount of \$20,178.78.

It is so Ordered and Adjudged this 10<sup>th</sup> day of September, 1984.

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

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

FILED

SEP 10 1984 *rm*

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

HESS OIL VIRGIN ISLANDS CORP., )  
a United States Virgin Islands )  
corporation; FEDERAL INSURANCE )  
COMPANY, a New Jersey )  
corporation; and INSURANCE )  
COMPANY OF NORTH AMERICA, a )  
Pennsylvania corporation, )  
Plaintiffs, )  
vs. )  
UOP, INC., a Delaware )  
corporation, )  
Defendant. )

No. 75-C-383-C ✓

O R D E R

Now before the Court for its consideration are the motions of the defendant UOP, Inc., for judgment notwithstanding the verdict pursuant to Fed.R.Civ.P. 50(b), for new trial pursuant to Fed.R.Civ.P. 59(a), to alter or amend judgment pursuant to Fed.R.Civ.P. 59(e), to set aside entry of judgment in Clerk's docket and request for oral argument on the entry of judgment and taxation of costs, to review taxation of costs and the request of the defendant to submit special interrogatories. Also before the Court are the motions of the plaintiffs for new trial, to tax costs including attorney fees and the motion of plaintiffs requesting the entry of an order requiring defendant UOP, Inc. to file a supersedeas bond. After carefully reviewing pertinent

portions of the record herein, the submissions of the parties and the applicable law, this Court has determined that the motions of the defendant for judgment notwithstanding the verdict, for new trial, to set aside entry of judgment in Clerk's docket, to review taxation of costs and defendant's request to submit special interrogatories, should be denied. The Court further concludes that the motion of the plaintiffs for new trial should be denied and that the plaintiffs' motion to recover attorney fees as costs should be denied. The Court has further determined that the motion of the plaintiffs for an order requiring defendant UOP to file a supersedeas bond should be denied as moot in light of the disposition of the other pending post-trial motions. Finally, the Court has determined that the motion of the defendant to alter or amend the judgment should be sustained in part and denied in part.

In its motion to tax costs, including attorney fees, the plaintiffs rely solely on OKLA.STAT.ANN. 12, §940A. In this action, the Court concludes that the law governing the substantive issues controls whether an award of attorney fees to the prevailing party is appropriate. That law would be the law of the Virgin Islands. Oklahoma has no significant interest, if any at all, in this litigation and it would be inappropriate for this Court to award attorney fees to the plaintiff based on Section 940A. This Court concludes that the state courts of the State of Oklahoma would apply the law of the Virgin Islands to determine the propriety of an award of attorney fees here. The plaintiffs do not base their request for attorney fees on any Virgin Island

statute, though the law of the Virgin Islands would apparently allow for an award of attorney fees. Title 5 V.I.C. §541. The only documentation presented to the Court on the amount of attorney fees by the plaintiffs is a one-page affidavit of one of their attorneys to the effect that a reasonable attorney fee would be \$997,588.00. On this slim record it would be inappropriate for this Court to set an amount for attorney fees. The Court would finally note in this regard that the defendant's assertion in its response to plaintiff's memorandum of law in support of Court's taxation of costs that this Court's Order of June 17, 1980 precludes the plaintiffs from recovering interest and costs is without merit.

The only matter remaining for the Court in this action is to determine the amount of the final judgment to be awarded to the plaintiffs. In this regard, the Court has determined that the jury verdict in this action must be reduced to the amount paid to Hess Oil Virgin Islands Corporation by the two plaintiff insurance companies, that from this amount must be deducted an amount equal to the percentage of negligence of Hess Oil Virgin Islands Corporation, and finally that the settlement amounts paid to Hess Oil Virgin Islands Corporation by Fisher Controls Company and Word Industries Pipe Fabricating, Inc. totalling \$1,500,000.00 must be deducted from the final award due the plaintiffs. This would leave a total judgment due the plaintiffs in this action from defendant UOP, Inc. of \$1,166,638.82. The Court has finally determined that in the circumstances of this action and based upon the submissions of the parties that no

reduction should be made for any indemnity agreement entered into by Litwin Corporation and Hess Oil Virgin Islands Corporation.

It is therefore the Order of this Court that the motions of defendant UOP, Inc. for judgment notwithstanding the verdict, for new trial, to set aside entry of judgment in Clerk's docket and for oral argument on entry of judgment and taxation of costs, to review taxation of costs and the request of the defendant to submit special interrogatories should be and are hereby denied.

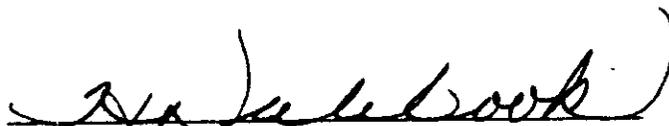
It is the further Order of the Court that the motion of the plaintiffs for new trial is hereby denied.

It is the further Order of the Court that the motion of the plaintiffs to tax costs, including attorney fees is denied to the extent it seeks the recovery of attorney fees.

It is the further Order of the Court that the motion of plaintiffs requesting the entry of an Order requiring defendant UOP, Inc. to file a supersedeas bond is denied as moot.

It is the further Order of the Court that the motion of defendant UOP, Inc. to alter or amend judgment is sustained in part and denied in part.

It is so Ordered this 10<sup>th</sup> day of August, 1983.

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

Entered

SEP 10 1984

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ERNEST R. HAWK,  
  
Plaintiff,  
  
vs.  
  
RALEIGH HILLS HOSPITAL,  
130 A Street SW  
Miami, Oklahoma 74354 and  
ADVANCED HEALTH SYSTEMS, INC.  
OF IRVINE, CA.,  
  
Defendants.

Case No. 83-C-666-E

ORDER OF DISMISSAL WITH PREJUDICE

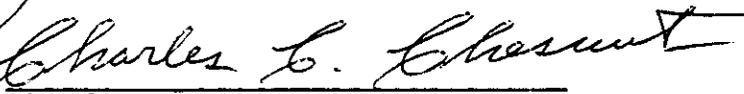
NOW ON this 10<sup>th</sup> day of Sept, 1984, the Court finds  
and it is hereby ordered that the above-styled and numbered  
cause is dismissed with prejudice to the refileing of it against  
all Defendants and that each party shall bear their own costs.

**S/ JAMES O. ELLISON**

James O. Ellison  
United States District Judge

APPROVED AS TO FORM  
AND CONTENT:

  
James E. Green, Jr.  
Attorney for Defendants

  
Charles C. Chesnut  
Attorney for Plaintiff

  
Ernest Ross Hawk

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

SEP 10 1984

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SAMMY J. WRIGHT, )  
 )  
Defendant. )

CIVIL ACTION NO. 84-C-326-E

ORDER OF DISMISSAL

Now on this 10<sup>th</sup> day of September, 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, Sammy J. Wright, be and is dismissed without prejudice.

S/ JAMES O. ALLISON

UNITED STATES DISTRICT JUDGE

Entered

FILED

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

SEP 10 1984

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JIMMY CUMBY, )  
 )  
 Defendant. )

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

CIVIL ACTION NO. 84-C-297-E

ORDER OF DISMISSAL

Now on this 10<sup>th</sup> day of September, 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, Jimmy Cumby, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 10 1984

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GARY L. NORMAN, )  
 )  
 Defendant. )

CIVIL ACTION NO. 84-C-534-C

DEFAULT JUDGMENT

This matter comes on for consideration this 10 day of September, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Gary L. Norman, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Gary L. Norman, was served with Summons and Complaint on July 24, 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 the Defendant, Gary L. Norman, in the amount of \$399.00, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from September 30, 1983, and \$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the

current legal rate of 11.98 percent from the date of judgment until paid, plus the costs of this action.

s/H. DALE COOK  

---

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PHILLIP C. WEBB, )  
 )  
 Defendant. )

SEP 10 1984

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

CIVIL ACTION NO. 84-C-525-C

DEFAULT JUDGMENT

This matter comes on for consideration this 10 day of September, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Phillip C. Webb, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Phillip C. Webb, was served with Summons and Complaint on August 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 the Defendant, Phillip C. Webb, in the amount of \$267.37, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from July 26, 1983, and \$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the current

legal rate of 11 98 percent from the date of judgment until paid, plus the costs of this action.

s/H. DALE COOK

---

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 10 1984

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JODY D. WHITE, )  
 )  
Defendant. )

CIVIL ACTION NO. 84-C-327-C

ORDER OF DISMISSAL

Now on this 10 day of September, 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 her have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Jody D. White, be and is dismissed without prejudice.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

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

FILED

SEP 10 1984

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

AUXIER-SCOTT SUPPLY CO., )  
Plaintiff )  
vs. )  
SEALCOATING, INC., )  
Defendant. )

83-C-494-C

ADMINISTRATIVE DISMISSAL ORDER

IT IS HEREBY ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IT IS FURTHER ORDERED that the parties are to file a final dismissal within two weeks or by September 21, 1984.

IT IS SO ORDERED this 10 day of Sept, 1984.

  
UNITED STATES DISTRICT JUDGE  
H. DALE COOK

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

FILED

SEP 10 1984

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

Case No. 82-C-1115-C

ARTHUR BUMPHUS, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
JERRY MCFARLAND, et. al, )  
 )  
Defendants. )

CONSENT DECREE

THE PLAINTIFF, Arthur Bumphus, by his attorney of record, Thomas E. Salisbury, filed his Complaint herein on November 22, 1982, alleging violations of his civil rights under the United States Constitution, seeking declaratory, injunctive, monetary relief and attorney's fees against the Defendants herein. Plaintiff, by his attorney of record and Defendants, by their attorney of record, Imogene Harris, Assistant City Attorney, have appeared and by their respective attorneys have each consented to the making and entry of this Consent Decree, without trial or adjudication of any issue of fact or law herein, and the Court having considered the matter and being duly advised,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint properly states claims for relief against the Defendants under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and under 42 USC Sec. 1983.

2. The Plaintiff herein has acted in good faith in the prosecution of this lawsuit and the Defendants herein have acted

THOMAS E. SALISBURY  
24 WEST 41ST STREET  
SUITE B  
SAND SPRINGS,  
OK 74063  
(918) 599-9155

in good faith in the defense of this litigation and in the settlement of these claims to the benefit of the Plaintiff, the Defendants and the public. Further, because of the Defendants good faith during the pendency of this action, it appears at this time unnecessary for this Court to enter any declaratory or injunctive relief against the Defendants.

3. The provisions of this Consent Decree shall apply to the Defendants, and each of them, and all of their officers, agents, employees, successors and assigns, and to all persons in active concert or participation with Defendants who have received actual notice of this Consent Decree by personal service or otherwise.

4. The Defendants are hereby ordered and they agree to pay the sum of Eight Hundred Forty-seven Dollars (\$847.00) to Plaintiff as reasonable damages herein.

5. The Defendants are hereby ordered and they agree to pay the sum of Five Hundred Seventeen Dollars and Sixty-five cents (\$517.65) to Plaintiff as reasonable costs incurred in the litigation herein.

6. The Defendant are hereby ordered and they agree to pay the sum of Three Thousand Dollars (\$3,000.00) to counsel for Plaintiff as reasonable attorney's fees incurred in the litigation herein.

7. This Consent Decree shall not constitute an admission of liability or fault on the part of the Defendants.

8. This Consent Decree shall include and cover all issues of fact and law raised by Plaintiff's Complaint and all responsive pleadings raised by Defendants.

9. This Consent Decree shall act as a final judgment as to all issues raised by the parties and shall be a full and complete final judgment against all parties to this litigation.

DATED THIS 10 DAY OF <sup>Sept</sup> ~~AUGUST~~, 1984.

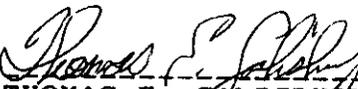
s/H. DALE COOK

-----  
H. Dale Cook  
United States District Judge

We, the undersigned, hereby consent to the entry of the foregoing Consent Decree as a final judgment herein.

  
-----  
ARTHUR BUMPHUS  
Plaintiff

  
-----  
IMOGENE HARRIS  
Assistant City Attorney  
For: Neil E. McNEILL  
City Attorney

  
-----  
THOMAS E. SALISBURY  
Attorney for Plaintiff



Entered

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

FILED  
SEP - 7 1984  
John C. Silver, Clerk  
U.S. DISTRICT COURT

AMCA INTERNATIONAL )  
CORPORATION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WINSTON A. ABLESON, )  
MID-AMERICA PRODUCTION )  
EQUIPMENT COMPANY, and )  
WINJUAN INDUSTRIES, INC., )  
 )  
Defendants. )

NO. 83-C-558-B

ORDER

FOR GOOD CAUSE SHOWN, the Stipulation for Dismissal with Prejudice filed by the parties herein is hereby GRANTED, and this matter, including claims and counterclaims, is hereby dismissed with prejudice with each party to bear its own fees and costs.

IT IS SO ORDERED this 6 day of September, 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

**SEP - 5 1984**

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

RAY M. LEAGUE, NORMA L. LEAGUE, )  
and ZELDA M. ROBERSON, )

Plaintiffs, )

vs. )

No. 83-C-889-E

E.F. HUTTON & COMPANY, INC., )  
a Delaware corporation, and )  
ROBERT T. KINDER, an individual, )

Defendant. )

DEFAULT JUDGMENT

UPON Plaintiffs' Combined Application for Default Judgment Against Defendant Robert T. Kinder ("Kinder"), and having fully examined the pleadings herein, the Court finds as follows:

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

2. Plaintiffs filed their Complaint against Defendant Kinder on January 23, 1984.

3. The Complaint, Summons, Notice, and Acknowledgment of Receipt of Summons and Complaint were mailed to Kinder by certified mail on January 23, 1984.

4. The above-referenced documents were received by Kinder on January 25, 1984.

5. The Acknowledgment of Receipt of Summons and Complaint was executed by Kinder on February 15, 1984, and was filed with the Court on February 22, 1984.

6. Kinder has failed to enter an appearance, plead, or answer the complaint.

7. There has been no request by Kinder for an extension of time within which to answer or otherwise plead.

8. Upon Plaintiffs' Request to Enter Default Against Defendant Robert T. Kinder, default was entered against Kinder by the Clerk of the Court on April 30, 1984.

9. All of the allegations of Plaintiffs' Complaint insofar as they relate to Kinder are true, and Plaintiffs are entitled to judgment thereon.

IT IS THEREFORE ORDERED AND ADJUDGED by the Court that Plaintiffs have judgment against Defendant Robert T. Kinder in an amount to be determined subsequent to a hearing upon the completion of all the evidence in the trial of Plaintiffs v. E. F. Hutton & Company, Inc.

DATED this 5<sup>th</sup> day of September, 1984.

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

*Entered*

12143

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA SEP -5 1984

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

CITY INSURANCE COMPANY, a )  
New Jersey Corporation, )  
 )  
Plaintiff, )

v. )

No. 84-C-405-F

CLYDE PETROLEUM, INC., an )  
Oklahoma corporation, THAMES )  
OKLAHOMA NUMBER TWO, INC., a )  
foreign corporation, SAPPHIRE )  
EXPLORATION AND PRODUCTION, )  
INC., a foreign corporation, )  
and LEVEN OIL LIMITED, a foreign )  
corporation, FLUOR SUPPLY )  
COMPANY, a foreign corporation )  
domesticated in Oklahoma, WACHOB )  
INDUSTRIES, INCORPORATED, an )  
Oklahoma corporation, RELIANCE )  
CASING CORPORATION, an Oklahoma )  
corporation, HALLIBURTON COMPANY, )  
a Delaware corporation, d/b/a )  
Halliburton Services, )

Defendants. )

STIPULATION FOR DISMISSAL AS TO  
DEFENDANT, HALLIBURTON COMPANY

It is hereby stipulated and agreed by and between the undersigned attorneys for plaintiff and the undersigned attorney for defendant, Halliburton Company d/b/a Halliburton Services, that the above entitled action be and the same hereby is discontinued and the complaint dismissed without prejudice as to the defendant, Halliburton Company d/b/a Halliburton Services.

Dated: *[Signature]* August, 1984.

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Eugene Robinson  
Paul V. McGivern, Jr.  
Attorneys for Plaintiff  
Legal Arts Building  
1515 S. Boulder  
Tulsa, OK 74119

---

Donald G. Hopkins  
Attorney for Defendant  
Halliburton Company  
5507 South Lewis  
Tulsa, OK 74103

CERTIFICATE OF MAILING

I hereby state and certify that a true and correct copy  
of the foregoing was mailed on this \_\_\_ day of August, 1984  
with postage thereon fully prepaid to:

Brad Heckenkemper  
610 South Main, Suite 300  
Tulsa, OK 74119

Roger R. Scott  
525 South Main, Suite 300  
Tulsa, OK 74103

Loyal Roach  
320 South Boston, Suite 1012  
Tulsa, OK 74103

Todd Markum  
109 North Walker  
Oklahoma City, OK 73102

Richard Honn  
117 East 5th  
Tulsa, OK 74103

Rex Short  
2805 East Skelly Drive  
Suite 806  
Tulsa, OK 74105

Richard Carpenter  
Denver Building  
624 South Denver  
Tulsa, OK 74119

---

*Entered*  
**FILED**

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

SEP - 5 1984

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

JAMES E. WOLFE, VIRGINIA LEE )  
WOLFE, LYNETTE WOLFE, LEEANN )  
WOLFE, DAVID SLATER, DEBRA WOLFE )  
AND JOHN M. WOLFE, )

Plaintiffs, )

vs. )

NO. 82-C-1181-E

SUSIE CHUWEE BLACKWOOD, and )  
her Known and Unknown Heirs, )  
Successors and Assigns, )

Defendants. )

JOURNAL ENTRY OF JUDGMENT

NOW ON THIS ...5... day of ...Sept....., 1984, the  
above captioned matter comes on for hearing, and the Plaintiffs  
appearing by and through their attorney, Earl W. Arnold, and  
the following Defendants, to-wit: Pickup Blackwood, Rural Route  
No. 1, Box 196, Springdale, Arkansas 72764; Nancy Blackwood,  
Rural Route No. 3, Stilwell, Oklahoma 74960; Julia Blackwood,  
Rural Route No. 3, Stilwell, Oklahoma 74960;  
Lucy Swimmer , Rural Route No. 3, Stilwell, Oklahoma 74960;  
John Blackwood, Rural Route #3, Box 133, Stilwell, Oklahoma  
74960, appearing by and through their attorney, Peter  
Bernhardt, Assistant United States Attorney for the Bureau of  
Indian Affairs and the aforementioned Defendants herein.

Thereupon, the Court examines the file and finds that  
each and every Defendant herein has been each personally served  
with summons and such has been returned according to law, and

that the answer date specified in said summons has passed and that the aforementioned Defendants and each of them, have appeared herein by and through their attorney of record, Peter Bernhardt; further any other parties to this action except as aforementioned and represented by above named counsel have failed, neglected and refused to plead or answer the Petition of the Plaintiffs filed herein, and are in default and default judgment should be rendered against them.

This Court further finds that the Judgment entered in this cause on the 9th day of November, 1983, which was subject to being vacated upon further findings herein, should be vacated and the findings and orders of this Court as set forth herein substituted therefor.

The Court further finds that the Defendants, the Heirs, Executors, Administrators, Devisees, Trustees and Assigns of Susie Chuwee Blackwood, Deceased, and the Unknown Successors of Susie Chuwee Blackwood, Deceased, have been served by Notice By Publication and that a period of more than forty-one (41) days has elapsed since first publication of said Notice By Publication, and that the answer date of said Defendants, as fixed in said Notice By Publication, is past, and that the Defendants not aforementioned and represented by above named counsel and each of them have failed, refused and neglected to plead or answer to the Petition of the Plaintiffs filed herein and they are in default by reason thereof.

The Court having examined the verified allegations of the Plaintiffs in this cause as reflected in the pleadings herein and having conducted a judicial inquiry into the

sufficiency of the Plaintiffs' search to determine the names and whereabouts of the Defendants who were served by publication, finds that the Plaintiffs have exercised due diligence, and have conducted a meaningful search of all reasonably available sources at hand. The Court hereby approves the publication service given herein as meeting both statutory requirements and minimum standards of State and Federal due process.

The Court further finds that the Defendant, State of Oklahoma, ex rel, Oklahoma Tax Commission, has filed its Disclaimer herein as to any interest in and to the real property hereinafter described, and that judgment should be entered accordingly.

Thereupon, the Plaintiffs presented their testimony and evidence in support of the allegations of their Petition, together with stipulations by counsel for the respective parties represented as hereinabove set forth, and the Court, being well and fully advised in the matter, FINDS: That except as against the following named Defendants whose addresses are set forth above in the first paragraph of this judgment, to-wit: Pickup Blackwood, Nancy Blackwood, Julia Blackwood, Lucy Swimmer, and John Blackwood, the Plaintiffs' title to the mineral interests located upon the property legally described below, was acquired by the acts of dominion and possession since December 9, 1959, of the said Plaintiffs, and that the said Plaintiffs have been in the open, adverse, hostile, exclusive, uninterrupted, continuous possession and dominion of and over such premises under a claim and right and

color of title since December 9, 1959, being more than 15 years prior to the institution of this action in their doing the following:

- (a) By leasing for development of the minerals;
- (b) By maintaining, replacing, repairing and operating equipment used to develop and produce minerals from the subject property;
- (c) By actual development, production and marketing of minerals upon the subject property;
- (d) By oral declaration to the community;
- (e) By undisputed reputation in the community.

That as a result of the continued aforesaid acts, the Plaintiffs have acquired title to the land by prescription against all parties except the following, to-wit: Pickup Blackwood, Nancy Blackwood, Julia Blackwood, Lucy Swimmer, and John Blackwood. The Court further finds that all right, title or interest of Defendants, except those aforesaid, in or to the said tract, if any, is barred by the Statute of Limitations and the prescriptive title statutes of the State of Oklahoma, as provided by Title 12, Sections 93 and 94, and Title 60, Section 333 of the Oklahoma Statutes, 1971.

The Court further finds that the said Susie Chuwee Blackwood died intestate on or about the *12<sup>TH</sup>* day of *JULY*, 197*1*., a resident of *...ADDAIR...* County, Oklahoma, leaving as her sole and only heirs the following persons who were entitled to inherit and take title to her interest in and to the said real property in the proportions set opposite their names, to-wit:

HEIR	Proportionate Interest
Pickup Blackwood	9/27
Nancy Blackwood	3/27
Julia Blackwood	2/27
Lucy Swimmer	11/27
John Blackwood	2/27

The Court further finds that a period of more than one (1) year has elapsed since the death of Susie Chuwee Blackwood, Deceased, without there having been a decree of a court of competent jurisdiction to administer upon her estate wherein it was determined who, by name, are or were her heirs and the persons entitled to participate in the distribution and ownership of her interest in and to the hereinabove described real property.

The Court further finds that if there are heirs at law and devisees of Susie Chuwee Blackwood, Deceased, other than the following named heirs, to-wit: Pickup Blackwood, Nancy Blackwood, Julia Blackwood, Lucy Swimmer, and John Blackwood, that such other Defendants, being the Unknown Successors of Susie Chuwee Blackwood, Deceased, claim some right, title or interest in and to the said real property involved herein, adverse to the Plaintiffs, which constitute clouds upon the title of the Plaintiffs, and that such other Defendants not identified by name above in this paragraph have no right, title or interest, either in law or in equity, in and to the the hereinabove described real property, and that such clouds should be cancelled and removed therefrom, and the title and possession thereto quieted and confirmed in the Plaintiffs as against each and all of such other Defendants not specifically named in this paragraph.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Judgment entered herein on the 9th day of November, 1983 be and hereby is vacated and the findings and orders of this Court as set forth herein are substituted

therefor.

IT IS FURTHER THEREFORE ORDERED, ADJUDED AND DECREED by this Court that the Plaintiffs have judgment against all Defendants, except the following named defendants whose addresses are as set forth in the first paragraph of this judgment, to-wit: Pickup Blackwood, Nancy Blackwood, Julia Blackwood, Lucy Swimmer , and John Blackwood, adjudicating that the Plaintiffs and the aforementioned Defendants, and they alone, have full fee simple title to the mineral interests located in and upon the property described as follows, to-wit:

The East One-half (E/2) of the Southeast Quarter (SE/4) of the Northwest Quarter (NW/4), and the Northwest Quarter (NW/4) of of the Southwest Quarter (SW/4) of the Northeast Quarter (NE/4) of Section five (5), Township Twenty-two (22) North, Range Fourteen (14) East of the Indian Base and Meridian, containing thirty (30) acres more or less,

by prescription and chain of title.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that Susie Chuwee Blackwood died intestate, on or about the *12TH* day of *July*, 19*71*, leaving as her sole and only heirs those persons hereinabove named, who share in her estate in the proportions set opposite their names, and that under the laws of succession of the State of Oklahoma, all of the right, title and interest of said deceased in and to the above described property descended to and became vested in said heirs as set forth above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that all Defendants except those named below in this paragraph, all other Heirs, Executors, Administrators, Devisees, Trustees and Assigns of Susie Chuwee Blackwood,

Deceased, all other Unknown Successors of Susie Chuwee Blackwood, Deceased, and the State of Oklahoma, ex rel, Oklahoma Tax Commission, and each of them, have no right, title, lien, claim, or interest, either in law or in equity, in and to the hereinabove described mineral estate, and that title and possession thereto is hereby quieted and confirmed in the Plaintiffs, as against each and all of the Defendants herein, except the following: Pickup Blackwood, Nancy Blackwood, Julia Blackwood, Lucy Swimmer , and John Blackwood.

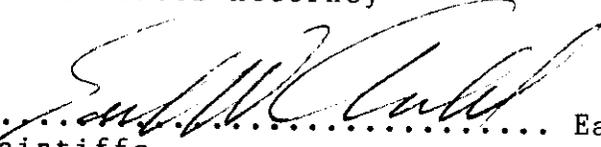
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that all of the purported claims, right, title, lien, or interest, either in law or in equity, of each and all of the Defendants except the following named defendants, to-wit: Pickup Blackwood, Nancy Blackwood, Julia Blackwood, Lucy Swimmer , and John Blackwood, asserted against the above described real property including mineral interests, are hereby cancelled and removed as clouds upon the Plaintiff's title thereto, and the Defendants other than those specifically named in this paragraph, and each of them are hereby perpetually enjoined and restrained from ever asserting or claiming any right, title, lien, estate, encumbrance, claim, assessment or interest thereto adverse to the title and possession of the Plaintiff.

S/ JAMES O. ELLISON

-----  
JUDGE OF THE DISTRICT COURT

Read and Approved as to Form and Content:

  
..... Peter Bernhardt, Assistant  
United States Attorney

  
..... Earl W. Arnold, Attorney for  
Plaintiffs